



**In the
Court of Appeals
Second Appellate District of Texas
at Fort Worth**

No. 02-22-00110-CR

ANTONIO RAMIREZVIRGEN, Appellant

V.

THE STATE OF TEXAS

On Appeal from the 485th District Court
Tarrant County, Texas
Trial Court No. 1607448D

Before Sudderth, C.J.; Wallach and Walker, JJ.
Memorandum Opinion by Justice Walker

MEMORANDUM OPINION

A jury found Appellant Antonio Ramirezvirgen guilty of continuous sexual abuse of a young child and assessed his punishment at forty years' imprisonment. *See* Tex. Penal Code Ann. § 21.02.¹ The trial court sentenced Ramirezvirgen accordingly.

On appeal, in one point, Ramirezvirgen argues that the evidence was insufficient to support his conviction. Specifically, he asserts, “[T]here was never any evidence presented to the jury that the sexual abuse went on for a period of thirty or more days in duration when [the complainant] was younger than fourteen years old.”

We hold that the evidence is sufficient, overrule Ramirezvirgen’s point, and affirm the trial court’s judgment.

¹In relevant part, the applicable statute provides:

(b) A person commits [the] offense [of continuous sexual abuse of a young child] if:

(1) during a period that is 30 or more days in duration, the person commits two or more acts of sexual abuse, regardless of whether the acts of sexual abuse are committed against one or more victims; and

(2) at the time of the commission of each of the acts of sexual abuse, the actor is 17 years of age or older and the victim is:

(A) a child younger than 14 years of age, regardless of whether the actor knows the age of the victim at the time of the offense;

Tex. Pen. Code Ann. § 21.02(b)(1), (2)(A).

I. TESTIMONY

The complainant testified that the sexual abuse started when she was nine years old and continued until she was fifteen years old. She could not remember how frequently the abuse occurred when she was nine years old, but she asserted that as she became older, the abuse became more frequent. At some point, the abuse occurred on a weekly basis.

II. STANDARD OF REVIEW

In our evidentiary-sufficiency review, we view all the evidence in the light most favorable to the verdict to determine whether any rational factfinder could have found the crime's essential elements beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979); *Queeman v. State*, 520 S.W.3d 616, 622 (Tex. Crim. App. 2017). This standard gives full play to the factfinder's responsibility to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts. *See Jackson*, 443 U.S. at 319, 99 S. Ct. at 2789; *Harrell v. State*, 620 S.W.3d 910, 914 (Tex. Crim. App. 2021).

The factfinder alone judges the evidence's weight and credibility. *See* Tex. Code Crim. Proc. Ann. art. 38.04; *Martin v. State*, 635 S.W.3d 672, 679 (Tex. Crim. App. 2021). We may not re-evaluate the evidence's weight and credibility and substitute our judgment for the factfinder's. *Queeman*, 520 S.W.3d at 622. Instead, we determine whether the necessary inferences are reasonable based on the evidence's cumulative force when viewed in the light most favorable to the verdict. *Braughton v. State*,

569 S.W.3d 592, 608 (Tex. Crim. App. 2018); *see Villa v. State*, 514 S.W.3d 227, 232 (Tex. Crim. App. 2017) (“The court conducting a sufficiency review must not engage in a ‘divide and conquer’ strategy but must consider the cumulative force of all the evidence.”). We must presume that the factfinder resolved any conflicting inferences in favor of the verdict, and we must defer to that resolution. *Broughton*, 569 S.W.3d at 608.

III. DISCUSSION

Ramirezvirgen contends that the State failed to prove that “during a period that is 30 or more days in duration,” he committed “two or more acts of sexual abuse” while the complainant was “a child younger than 14 years of age.” *See* Tex. Penal Code Ann. § 21.02(b)(1), (2)(A). Ramirezvirgen’s argument has two components.

First, based on the complainant’s testimony, he argues that some of the abuse that she described occurred after her fourteenth birthday. Thus, he concludes, the evidence is insufficient because some of the abuse on which the jury potentially relied fell outside the statutory range for committing the offense. We are not persuaded.

To qualify under the statute, the abuse must occur to a child under fourteen years old. *Id.* § 21.02(b)(2)(A). The jury charge specifically limited the time frame from the complainant’s ninth birthday in 2010 until the day before her fourteenth birthday in 2015. Thus, for purposes of the offense of continuous sexual abuse of a child, although the complainant testified that the abuse continued after her fourteenth birthday, the charge prohibited the jury from using any abuse that occurred on or

after her fourteenth birthday. Absent evidence to the contrary, we must presume that the jury understood and followed the court's charge. *Upchurch v. State*, 656 S.W.3d 170, 180 (Tex. App.—Fort Worth 2022, no pet.).

Second, Ramirezvirgen contends that other than the first instance of sexual abuse when the complainant was nine years old, the complainant failed to give any specific details about any other abuse or when it occurred, so the evidence is insufficient that the abuse spanned thirty days or more.² We disagree.

²The forensic interviewer explained why the complainant could describe the first instance but failed to give specifics about the later instances:

Chronic sexual abuse is . . . something that can definitely affect how a child discloses or how they're able to disclose. . . .

. . . [F]or something that's happening over and over again, your . . . brain cannot actually store every single traumatic event or lots of incidents that happen over and over again. It's not possible.

So . . . we call it script versus episodic memory when it comes to child abuse. It typically -- it[s] kind of generic -- [it] happens a lot of times. It's happening, same thing, same way. It follows this script.

Like, I'll give you the example of driving to work. Typically, I leave about the same time, same traffic patterns, generic how I drive to work most of the time. But the episodic parts are going to be the parts that stand out. So the first time, the last time, the time that something different happened.

Given this testimony, a rational factfinder could have reasonably concluded that the complainant's failure to identify specific instances of abuse was consistent with the chronic abuse that she described. See *Jackson*, 443 U.S. at 319, 99 S. Ct. at 2789; *Harrell*, 620 S.W.3d at 914.

The complainant said that the abuse started when she was nine years old, that it was “happening every week,” and that it continued until she was fifteen years old. A rational factfinder could have reasonably concluded that she was describing (for purposes of the statute) abuse occurring when she was nine, ten, eleven, twelve, and thirteen years old—but certainly a period spanning more than 30 days. *See Salinas v. State*, No. 02-18-00060-CR, 2019 WL 1574953, at *5 (Tex. App.—Fort Worth Apr. 11, 2019, pet. ref’d) (mem. op., not designated for publication); *Lawson v. State*, No. 02-17-00201-CR, 2018 WL 1192478, at *5 (Tex. App.—Fort Worth Mar. 8, 2018, no pet.) (per curiam) (mem. op., not designated for publication); *Lewis v. State*, No. 02-16-00179-CR, 2017 WL 2686325, at *7–8 (Tex. App.—Fort Worth June 22, 2017, pet. ref’d) (mem. op., not designated for publication); *Williams v. State*, 305 S.W.3d 886, 890 (Tex. App.—Texarkana 2010, no pet.). Several years more than qualifies as “a period that is 30 or more days in duration.” *See* Tex. Penal Code Ann. § 21.02(b)(1). A rational factfinder could have reasonably concluded that the complainant described two or more—indeed, far more than two—sexual assaults before her fourteenth birthday. *See Jackson*, 443 U.S. at 319, 99 S. Ct. at 2789; *Harrell*, 620 S.W.3d at 914.

We hold that the evidence is sufficient and overrule Ramirezvirgen’s point.

IV. CONCLUSION

Having overruled Ramirezvirgen’s sole point, we affirm the trial court’s judgment.

/s/ Brian Walker

Brian Walker
Justice

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Delivered: July 20, 2023