TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-16-00136-CV

In the Matter of I. P.

FROM THE DISTRICT COURT OF TOM GREEN COUNTY, 391ST JUDICIAL DISTRICT NO. D-15-0039-J, HONORABLE THOMAS J. GOSSETT, JUDGE PRESIDING

MEMORANDUM OPINION

After a bench trial, the juvenile court adjudicated appellant I.P. delinquent based on the offense of indecency with a child and placed him on probation for two years. *See* Tex. Penal Code § 21.11(a)(1). In one issue appellant challenges the sufficiency of the evidence to support his delinquency adjudication. We will affirm.

Appellant contends that the evidence was insufficient to support his adjudication as delinquent because the State did not establish beyond a reasonable doubt the element of intent for the offense of indecency with a child. Adjudications of delinquency in juvenile cases are based on the criminal standard of proof. *See* Tex. Family Code § 54.03(f). Therefore, we review challenges to the sufficiency of the evidence in juvenile cases using the standard applicable to criminal cases. *In re E.P.*, 963 S.W.2d 191, 193 (Tex. App.—Austin 1998, no pet.). To determine the legal sufficiency of the evidence, we review the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979). In applying this

standard of review, this Court does not ask whether *it* believes that the evidence at trial established beyond a reasonable doubt that appellant acted with the requisite intent. Instead, the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* reasonable trier of fact could have found that the element of intent was established beyond a reasonable doubt. *Id.*; *see Brooks v. State*, 323 S.W.3d 893, 912 (Tex. Crim. App. 2010). The trier of fact is the exclusive judge of the credibility of witnesses and the weight to be given their testimony and is free to accept or reject any or all of any witness's testimony. *Adelman v. State*, 828 S.W.2d 418, 421 (Tex. Crim. App. 1992).

The offense of indecency with a child occurs when a person engages in sexual contact with a child. *See* Tex. Penal Code § 21.11(a)(1). Section 21.11 defines "sexual contact" to include "any touching by a person, including touching through clothing, of the anus, breast, or any part of the genitals of a child" that is "committed with the intent to arouse or gratify the sexual desire of any person." *See id.* § 21.11(c)(1). Appellant contends that the evidence was insufficient to prove that he touched a child with the intent to arouse or gratify sexual desire.

The element of intent may be inferred from the actor's conduct, his remarks, or all of the surrounding circumstances. *McKenzie v. State*, 617 S.W.2d 211, 216 (Tex. Crim. App. 1981). Undisputed evidence admitted at the adjudication hearing established that the offense occurred in a bedroom in the child's house where several children were sleeping on two beds that had been pushed together. The room was the usual bedroom of the child and her brother and sister and was occupied that night by the child and her brother along with her stepbrother, appellant I.P., and another stepbrother who were visiting their father, the child's stepfather. The child testified that she

woke up because "[her] stepbrother did something I don't think he was supposed to be doing to me." The child testified that she felt appellant's leg on her leg and that she "felt that someone was right beside me and like going back and forth on my butt." According to the child, appellant was "touching [her] spots . . . where only nobody else is supposed to touch." When questioned, the child affirmed that appellant touched her where she "go[es] poop" and where she "go[es] pee." The child stated that when appellant was touching her his hand was inside her panties.[1] Appellant testified that while the children were sleeping on the beds, the child "was constantly putting her legs toward [him]" and that he was pushing her legs away from him with his hand. Appellant testified that his hand did not slip inside the child's shorts when he was pushing her legs away and that he did not ever place his hands inside of her shorts. The child's mother testified that the next morning the child "pretty much said that [appellant] was laying next to her and he put his hand through her back area of her shorts and was touching her down her butt through the back way."

Viewing the child's testimony that appellant placed his hand inside her panties and her outcry statement that appellant put his hand "through the back area of her shorts" in the light most favorable to the prosecution, we cannot say that *no* rational trier of fact could have inferred from that conduct that appellant acted with the requisite intent. Given the evidence that appellant placed his hand inside the child's shorts, a rational trier of fact could have found that the contact was not incidental. Although appellant testified that he was only pushing the child away from him and that his hand was never inside her shorts, we must accord great deference "to the responsibility of

[1] The child had testified that she was sleeping in her "day clothes," which she described as button-up shorts that were not stretchy, but she could not remember whether they were loose or tight.

the trier of fact [to fairly] resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." *Jackson*, 443 U.S. at 319. We must presume that any conflicting inferences from the evidence were resolved by the trier of fact in favor of the prosecution, and we defer to that resolution. *Id.* at 326. Guided by this standard, we conclude that a rational trier of fact could have inferred from appellant's conduct as described by the child the essential element of intent beyond a reasonable doubt. We overrule appellant's issue.

CONCLUSION

Having overruled appellant's sole appellate issue, we affirm the juvenile court's judgment of delinquency.

Scott K. Field, Justice

Before Chief Justice Rose, Justices Field and Bourland

Affirmed

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