NUMBER 13-16-00372-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

IN THE MATTER OF E.G.C., A JUVENILE

On appeal from the 98th District Court of Travis County, Texas.

MEMORANDUM OPINION[1]

Before Chief Justice Valdez and Justices Longoria and Hinojosa
Memorandum Opinion by Justice Hinojosa

Appellant E.G.-C, a juvenile, appeals a judgment wherein a trial court adjudicated him a delinquent for committing sexual assault. *See* TEX. FAM. CODE ANN. §§ 51.03, 53.045(a) (West, Westlaw through Ch. 49 2017 R.S.); TEX. PENAL CODE ANN. § 22.011 (West, Westlaw through Ch. 49 2017 R.S.). The trial court placed appellant on a

[1] This appeal was transferred to this Court from the Third Court of Appeals by order of the Texas Supreme Court. *See* GOV'T CODE ANN. § 22.220(a) (West, Westlaw through Ch. 49 2017 R.S.) (delineating the jurisdiction of appellate courts); TEX. GOV'T CODE ANN. §73.001 (West, Westlaw through Ch. 49 2017 R.S.) (granting the supreme court the authority to transfer cases from one court of appeals to another at any time when there is "good cause" for the transfer).

determinate sentence of probation for five years. In two issues, appellant contends that: (1) the evidence was legally insufficient to support a finding that he compelled D.M.,[2] the complainant, to submit by the use of physical force, threats, duress or violence; and (2) the order imposing a determinate sentence of probation erroneously provides that appellant signed a waiver of grand jury approval. We affirm as modified.

I. BACKGROUND

In a petition, the State alleged that appellant, at the age of sixteen years old, engaged in delinquent conduct by committing an offense of sexual assault. *See* TEX. PENAL CODE ANN. § 22.011. Specifically, the State alleged that appellant intentionally and knowingly caused the penetration of D.M.'s sexual organ, without her consent, and compelled D.M. to submit and participate by the use of physical force, threat, duress, and violence. *Id*. Appellant waived his right to a trial by jury, and the case proceeded to trial before the district court, sitting as a juvenile court. The most relevant testimony regarding the issues raised and our disposition came from: D.M.; D.M.'s grandmother;[3] and Angie Jones, a detective in the child abuse unit of the police department.

D.M., who was fourteen years old at the time of the incident, testified that she and appellant were friends during middle school, and they had recently reconnected through Facebook. On the day of the incident, D.M.'s grandmother drove D.M. to a "Seven-Eleven" near appellant's apartment. The two had planned to play video games. While on the couch in appellant's apartment, appellant kissed D.M. She did not want appellant

[2] We will refer to the complainant by her initials "D.M." *See* TEX. R. APP. P. 9.8(c)(2).

[3] To protect the complainant's identity and for simplicity, we will refer to D.M.'s step-grandmother as "grandmother." *See* TEX. R. APP. P. 9.8(c)(2).

kissing her, and she felt nervous and scared. Then, appellant lead D.M. by her hand to his bedroom. D.M. did not want appellant to hold her hand, and she was "confused" and wondered "what was happening." Once in appellant's bedroom, he shut the door, put D.M. on his bed, and pulled down her blue jeans and underwear. D.M. felt scared and "frozen." Appellant then pulled his shorts down, got on top of her, and touched D.M.'s stomach, leg and arm with his hands. Appellant inserted his penis into D.M.'s vagina, and D.M. told appellant to stop. D.M. recalled being "really, really scared," and she attempted to push appellant off of her. D.M. was initially unable to push appellant off of her because, according to D.M., he was "holding [her arms] to the side," preventing her from raising them to push appellant away from her. D.M. "kept moving around trying to, like, get him off." Eventually, D.M. "had enough force to" push appellant off of her. She pulled up her pants, grabbed her personal belongings, called her grandmother to pick her up, and left appellant's apartment.

Grandmother testified that when she picked up D.M., she appeared to be in "shock," would not make eye contact, and was "quiet and different." After multiple inquires about what was wrong, D.M. answered that she had been raped. Grandmother turned the car back towards the apartment complex. Upon returning, grandmother told the apartment manager "what had happened," and then she called the police.

Detective Jones sponsored most of the forensic evidence. She confirmed that the shirt D.M. wore during the incident had gold sequins on it. Photographs admitted as evidence showed a small gold sequin on appellant's bed sheet. Jones performed a penile swab of appellant, and a gold sequin was found on his penis.

The trial court adjudicated that appellant was a delinquent for committing sexual assault. *See* TEX. FAM. CODE ANN. §§ 51.03, 53.045(a); TEX. PENAL CODE ANN. § 22.011. It assessed a determinate sentence of probation for five years. This appeal followed.

II. DISCUSSION

Appellant argues that there is legally insufficient evidence to prove the State's allegation that appellant used physical force, threats, duress, or violence to compel D.M. The State responds that there is sufficient evidence to prove that appellant used physical force, threats, duress, or violence during the commission of the offense of sexual assault. Both parties agree that appellant did not sign a waiver of grand jury approval, but rather that the grand jury foreperson signed a certificate of approval.

A. Sexual Assault Evidence

1. Standard of Review and Applicable Law

In reviewing the adjudication phase of a juvenile case, we employ the criminal legal sufficiency standard of review because the State bears the same burden of proof in juvenile cases as it does in criminal cases. *See In re J.D.P.*, 85 S.W.3d 420, 422 (Tex. App.—Fort Worth 2008, no pet.); *In re E.P.* 963 S.W.2d 191, 193 (Tex. App.—Austin 1998, no pet.); *see also,* TEX. FAM. CODE ANN. § 54.03(f) (West, Westlaw through Ch. 49 2017 R. S.) (burden is on the state to prove that a child has engaged in delinquent conduct or is in need of supervision beyond a reasonable doubt). When assessing challenges to the legal sufficiency of evidence to establish the elements of a penal code violation, which forms the basis of the findings that the juvenile engaged in delinquent conduct, we apply the standard set forth in *Jackson v. Virginia*, 443 U.S. 307, 320 (1979). *See In re M.D.T.*,

153 S.W.3d 285, 287 (Tex. App.—El Paso 2004, no pet.). Under this criminal standard of review, we are to consider all the evidence in the light most favorable to the verdict and determine whether any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *See Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007) (citing *Jackson*, 443 U.S. at 319). This standard is applied to both direct and circumstantial evidence cases. *See In re G.A.T.,* 16 S.W.3d 818, 828 (Tex. App.—Houston [14th Dist.] 2000, pet. denied).

Juveniles, such as appellant, are entitled to the reasonable-doubt standard of criminal law when they are charged with committing an offense that constitutes delinquent conduct. *See In re J.L.H.*, 58 S.W.3d 242, 244 (Tex. App.—El Paso 2001, no pet.). In viewing the evidence in the light most favorable to the verdict under the *Jackson* legal-sufficiency standard, we defer to the trier of fact's credibility and weight determinations because they are the sole judge of witness credibility and the weight to be given to testimony. *See Brooks v. State*, 323 S.W.3d 893, 895 (Tex. Crim. App. 2010); *Jackson*, 443 U.S. at 319. We do not reevaluate the weight and credibility of the evidence but only ensure that the trier of fact reached a rational decision. *See In re G.A.T.,* 16 S.W.3d at 828. We will not reverse unless the proof of guilt is so obviously weak as to undermine confidence in the verdict. *See In re J.D.P.*, 85 S.W.3d at 425.

2. Analysis

The live petition alleged that appellant intentionally and knowingly penetrated D.M.'s sexual organ with his sexual organ without her consent, and the appellant compelled D.M. to submit by the use of physical force, threat, duress and violence. *See*

TEX. PENAL CODE ANN. § 22.011(a)(1)(A), (b)(1). Appellant does not dispute that he penetrated D.M.'s sexual organ but argues that the sexual conduct was consensual. Appellant asserts that the State produced legally insufficient evidence to prove beyond a reasonable doubt that he committed an offense of sexual assault by the use of physical force or violence. *See Jackson*, 443 U.S. at 318–19. Appellant bases this premise off of *Jiminez v. State*, 727 S.W.2d 789 (Tex. App.—Houston [1st Dist.] 1987, no pet.) and the testimony presented at trial.

In *Jiminez*, the complainant had consumed a large amount of alcohol prior to being sexually assaulted. *Id*. at 791. She searched for her boyfriend on a college campus. Unable to find him, she went to a building and passed out in a dark room. *Id*. She awoke to find someone touching her in the vaginal area. *Id*. She said and did nothing. *Id*. Instead, she feigned being asleep. *Id*. The incident was only the first of many that night. *Id*. The assailant, a university police officer, would leave and return to the room periodically after receiving calls. *Id*. Each time, he would touch her with his finger. *Id*. The complainant remained silent during each incident, each time pretending to sleep. *Id*. She finally "awoke" when appellant attempted to have intercourse with her. The appellate court held the evidence to be insufficient because there was no communication whatsoever between the appellant and the victim. *Id*. at 792.

Here, however, D.M. testified that she told appellant to stop, feeling "really, really scared" during the incident because appellant prevented her from moving her arms to push him off by "holding them to the side." When appellant loosened his grip, D.M. "had enough force to" push him off and leave. This evidence supports the existence of force

without D.M.'s consent, which is determined by the facts in each individual case. *See Gonzales v. State*, 2 S.W.3d 411 (Tex. App.—San Antonio 1999, no pet.) (finding testimony from complainant that defendant "threw" or "laid" her back on the couch, then laid on top of her, preventing her from moving because of his weight, to be legally sufficient to support a conviction for sexual assault).

Appellant further contends that there is no evidence of force or violence to convict him of sexual assault because there were no physical signs of force on complaint's body and because no testimony by any witness, including the complainant, supported these allegations beyond a reasonable doubt. We disagree. As noted above, the evidence is legally sufficient. Moreover, uncorroborated testimony from a child victim is sufficient to support conviction for a sexual offense. *See* TEX. CODE CRIM. PROC. ANN. art. 38.07(a), (b)(1) (West, Westlaw through Ch. 34 2017 R. S.); *see also Connell v. State,* 233 S.W.3d 460, 466 (Tex. App.—Fort Worth 2007, no pet.); *Perez v. State,* 113 S.W.3d 819, 838 (Tex. App.—Austin 2003, pet. ref'd).

Viewing the evidence in the light most favorable to the verdict, we conclude that a rational trier of fact could have found that appellant used physical force to penetrate D.M.'s sexual organ without her consent. *See Jackson*, 443 U.S. at 319; *see also Brooks*, 323 S.W.3d at 898–99. Therefore, under the *Jackson* standard, the evidence presented at trial was legally sufficient to support the juvenile court's finding that appellant engaged in delinquent conduct by committing sexual assault. Appellant's first issue is overruled.

B. Grand Jury Waiver

In appellant's second issue, he complains that the order imposing a determinate sentence of probation erroneously provides that appellant signed a waiver of grand jury approval. The State agrees that appellant did not sign a waiver of grand jury approval. Texas Rules of Appellate Procedure grant this Court the authority to modify the judgment to correct typographical errors and make the record speak the truth. *See* TEX. R. APP. P. 43.2(b); *see also French v. State*, 830 S.W.2d 607, 609 (Tex. Crim. App. 1992). Therefore, we sustain appellant's second issue and modify the judgment to reflect that appellant did not sign a waiver of grand jury approval.

III. CONCLUSION

The judgment of the trial court is affirmed as modified.

LETICIA HINOJOSA
Justice

Delivered and filed the
13th day of July, 2017.