

Affirmed and Opinion filed October 18, 2001.



In The
Fourteenth Court of Appeals

NO. 14-99-00937-CR
NO. 14-99-00938-CR

STEPHEN ALEXANDER WASAFF, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 185th District Court
Harris County, Texas
Trial Court Cause Nos. 800,081;800,082

OPINION

Appellant, Stephen Alexander Wasaff, appeals from his convictions for sexual assault of a child. We affirm.

Complainant, C.M., was a sixteen year-old foster child residing with the appellant's family at the time of the alleged offenses. According to C.M., the appellant started engaging in sexual conduct with her in 1998, after the appellant's wife began working nights outside the home. C.M. told another foster child at the home about the appellant's actions, but the child initially did not believe C.M. was telling the truth. The child testified that she later

believed C.M., after she overheard the appellant and C.M. discussing their “secret” and the appellant telling C.M. to keep it a secret so he would not get in trouble.

C.M. also told her therapist and a youth pastor at the appellant’s church that the appellant had touched her inappropriately, but later recanted her statements, after the pastor informed C.M. that he would have to report it. C.M. testified that she did not want to leave the appellant’s foster home as she felt a part of a family, and did not want to move to a girls’ home. The therapist testified that she felt strongly that C.M. had been trying to protect the appellant as the person with whom C.M. had been having sexual relations.

The appellant’s wife testified at trial on his behalf, stating that C.M. had a history of lying, stealing, and being generally disruptive. The wife also testified to problems with C.M. “sexually acting out,” and stated that she did not believe C.M. was credible.

The jury found the appellant guilty on two counts of sexual assault of C.M., and assessed punishment at two years’ confinement on one count and ten years’ probation on the other count. Under two points of error, the appellant argues that the evidence is legally and factually insufficient to support the convictions, as C.M.’s accusations against him were not credible. The appellant does not attack the weight or sufficiency of the evidence as a whole, but instead argues that C.M. was not a credible witness and should not have been believed, especially in the absence of physical evidence substantiating her allegations.

We apply the usual standards of review. *Wesbrook v. State*, 29 S.W.3d 103 (Tex. Crim. App. 2000) (legal); *Johnson v. State*, 23 S.W.3d 1 (Tex. Crim. App. 2000) (factual). The appellant recognizes the general rule that credibility of a witness is not to be reviewed on appeal, but argues that in this case the credibility of the complainant is so undermined that a reviewing court cannot have confidence in a verdict supported solely by her testimony.

We disagree with the appellant’s arguments. The only witness who attacked C.M.’s credibility was the appellant’s wife. As to the absence of physical evidence of the alleged sexual acts, a pediatrician who examined C.M. testified that it was not uncommon to find

no physical evidence of sexual penetration, and that her physical examination of C.M. did not rule out the alleged acts.

The jury is the exclusive judge of the facts and the credibility of witnesses. *Bowden v. State*, 628 S.W.2d 782, 784 (Tex. Crim. App. 1982). As the sole judge of the facts and credibility, the jury may choose to accept or reject any or all testimony for either side. *Alvarado v. State*, 818 S.W.2d 100, 105 (Tex. App.—San Antonio 1991, no pet.); *Dumas v. State*, 812 S.W.2d 611, 615 (Tex. App.—Dallas 1991, pet ref'd). This Court will not second guess the jury's verdict where there is evidence to support the jury's conclusions. *Bowden* at 784. The jury chose to believe C.M.'s testimony, and that choice is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. We decline to find that a rational trier of fact could not have found the essential elements of the crime beyond a reasonable doubt, or that the proof of guilt is so obviously weak as to undermine confidence in the fact finder's determination.

We overrule the appellant's two points of error, and affirm the convictions.

/s/ Scott Brister
 Chief Justice

Judgment rendered and Opinion filed October 18, 2001.

Panel consists of Chief Justice Brister and Justices Fowler and Seymore.

Do Not Publish — TEX. R. APP. P. 47.3(b).