Opinion issued July 7, 2020

In The

Court of Appeals

For The

First District of Texas

NO. 01-19-00231-CR

BRIAN CHRISTOPHER MUMPHORD, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 339th District Court
Harris County, Texas
Trial Court Case No. 1452174

MEMORANDUM OPINION

A jury found Brian Christopher Mumphord guilty of the offense of continuous sexual abuse of a child, a first-degree felony. *See* TEX. PENAL CODE § 21.02(b), (h). The jury assessed Mumphord's punishment at 50 years in prison. In one issue,

Mumphord challenges the sufficiency of the evidence to support the judgment of conviction.

We affirm.

Background

The complainant, A.R., was born in March 2000. After A.R.'s mother, "Jane,"[1] began dating him, Mumphord moved in with A.R. and Jane in late 2011. At the time, Jane was pregnant with the first of two sons she would have with Mumphord. One son was born in 2012, and the other was born in 2013.

In the summer of 2013, A.R. told Jane that Mumphord had sexually abused her by putting his mouth on her "private parts." Jane and A.R. confronted Mumphord about the sexual abuse, and he denied it. He told A.R. that if she continued to tell lies, she would break up the family, and Jane would be left to raise A.R. and her two younger brothers alone.

Jane did not call the police to report Mumphord's sexual abuse of A.R. Instead, she bought a lock and installed it on A.R.'s bedroom door. However, after two weeks, the lock broke. Mumphord continued to sexually abuse A.R., and A.R. said nothing about the abuse again until the summer of 2014.

In July 2014, Jane noticed that A.R. had red marks on her face. When she asked A.R. about the marks, A.R. told Jane that Mumphord had slapped her and had

[1] "Jane" is a pseudonym.

put his "private" in her. Jane took A.R. directly to Texas Children's Hospital where A.R. underwent a sexual-assault examination.

Several days later, A.R. was interviewed by S. Odhiambo, a forensic interviewer, at the Children's Assessment Center. A.R. told Odhiambo that Mumphord had sexually assaulted her multiple times. A.R. indicated that, over the course of the abuse, Mumphord had performed oral sex on her and had penetrated her vaginally and anally.

A.R. described specific instances of sexual abuse to Odhiambo. A.R. said that the first incident of abuse by Mumphord was mouth-to-vaginal contact, which occurred the summer before seventh grade. A.R. told Odhiambo that, during the second semester of her eighth-grade year, Mumphord had penetrated her vaginally with his penis. A.R. also described another incident during which Mumphord had choked her in the hallway of their home, taken her to her room, made her bend over the bed, and then had penetrated her vaginally and anally.

Mumphord was indicted for the offense of continuous sexual abuse of a child. The indictment alleged, in relevant, part as follows:

> Brian Christopher Mumphord . . . on or about March 14, 2012 and continuing through March 13, 2014, did then and there unlawfully, during a period of time of thirty or more days in duration, commit two or more acts of sexual abuse against a child younger than fourteen years of age including an act constituting the offense of aggravated sexual assault of a child, committed against A.R. on or about March 14, 2012, and an act constituting the offense of aggravated sexual assault of a child, committed against A.R. on or about March 13, 2014, and the

> defendant was at least seventeen years of age at the time of the commission of each of those acts.

The case went to trial in March 2019. Among the State's trial witnesses was Odhiambo, who was the outcry witness. She testified regarding the incidents of sexual abuse A.R. had described during the forensic interview. A video of the forensic interview was admitted into evidence.

The State also called Jane, who testified, among other things, that A.R. had first reported Mumphord's sexual abuse to Jane in the summer of 2013. Jane further testified that in the summer of 2014, A.R. again reported to Jane that Mumphord was sexually abusing her. At that point, Jane took A.R. to the hospital to report the abuse.

The State's last witness was A.R. She described Mumphord's sexual abuse of her over a two-year period when she was 12 to 14 years old.

The jury found Mumphord guilty of the offense of continuous sexual abuse of a child and assessed his punishment at 50 years in prison. This appeal followed.

Sufficiency of the Evidence

In his sole issue, Mumphord contends that the evidence was legally insufficient to support his conviction for the offense of continuous sexual abuse of a child.

A. Standard of Review

We review a challenge to the sufficiency of the evidence under the standard enunciated in *Jackson v. Virginia*, 443 U.S. 307 (1979). *See Winfrey v. State*, 393 S.W.3d 763, 768 (Tex. Crim. App. 2013); *Brooks v. State*, 323 S.W.3d 893, 894–913 (Tex. Crim. App. 2010). Pursuant to the *Jackson* standard, we determine whether, after viewing the evidence in the light most favorable to the verdict, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Crabtree v. State*, 389 S.W.3d 820, 824 (Tex. Crim. App. 2012) (citing *Jackson*, 443 U.S. at 318). We can hold evidence to be insufficient under the *Jackson* standard when (1) the record contains no evidence, or merely a "modicum" of evidence, probative of an element of the offense, or (2) the evidence conclusively establishes a reasonable doubt. *See Jackson*, 443 U.S. at 320; *Britain v. State*, 412 S.W.3d 518, 520 (Tex. Crim. App. 2013).

The sufficiency-of-the-evidence standard gives full play to the responsibility of the fact finder 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; *Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007). An appellate court presumes that the fact finder resolved any conflicts in the evidence in favor of the verdict and defers to that resolution, provided that the resolution is rational. *See Jackson*, 443 U.S. at 326.

In our review of the record, direct and circumstantial evidence are treated equally; circumstantial evidence is as probative as direct evidence in establishing the guilt of an actor, and circumstantial evidence alone can be sufficient to establish guilt. *Clayton*, 235 S.W.3d at 778. Finally, "[e]ach fact need not point directly and independently to the guilt of the appellant, as long as the cumulative force of all the incriminating circumstances is sufficient to support the conviction." *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007).

B. Elements of the Offense

To establish continuous sexual abuse of a child, the State must prove three elements:

> (1) the defendant "commit[ted] two or more acts of sexual abuse";
>
> (2) "during a period that is 30 or more days in duration"; and
>
> (3) "at the time of the commission of each of the acts of sexual abuse, the [defendant was] 17 years of age or older and the victim [was] a child younger than 14 years of age."

TEX. PENAL CODE § 21.02(b); *see Smith v. State*, 340 S.W.3d 41, 48 (Tex. App. (Tex. App.—Houston [1st Dist.] 2011, no pet.). "Acts of sexual abuse" are identified in the statute and include aggravated sexual assault. *See* TEX. PENAL CODE § 21.02. A person commits aggravated sexual assault if he intentionally or knowingly causes his sexual organ to contact or penetrate the sexual organ of a child younger than 14 years of age. *Id.* § 22.021(a)(1)(B)(i), (v), 22.021(a)(2)(B). A person also commits

aggravated sexual assault if he intentionally or knowingly causes his mouth to contact the sexual organ of a child younger than 14 years of age. *Id.* § 22.021(a)(1)(B)(iii), 22.021(a)(2)(B). To prove the offense of continuous sexual abuse, the State need not prove the exact dates of the abuse, only that "there were two or more acts of sexual abuse that occurred during a period that was thirty or more days in duration." *Buxton v. State*, 526 S.W.3d 666, 676 (Tex. App.—Houston [1st Dist.] 2017, pet. ref'd) (internal quotation marks omitted); *Lane v. State*, 357 S.W.3d 770, 773–74 (Tex. App.—Houston [14th Dist.] 2011, pet. ref'd) (stating that factfinder is not required to agree on exact dates that acts of sexual abuse were committed).

C. A.R.'s Testimony Shows When Sexual Abuse Occurred

Mumphord challenges the sufficiency of the evidence to support his conviction for the offense of continuous sexual abuse of a child by asserting that the evidence was insufficient to establish that he committed two or more acts of sexual abuse against A.R. during a period of 30 or more days in duration. We disagree. At trial, A.R. provided testimony showing that Mumphord's sexual abuse of her occurred over a period that was 30 or more days in duration.

A.R. testified that she was born in March 2000 and that Mumphord began sexually abusing her in 2012 when she was 12 years old. She said that Mumphord sexually abused her 15 times over the course of the next two years until she was 14

years old. A.R. testified that Mumphord sexually assaulted her vaginally four times over several months during her seventh-grade school year. The evidence showed that A.R. was 12 to 13 years old in the seventh grade.

A.R. also provided detailed testimony about specific instances of sexual abuse. A.R. described the first sexual assault, which occurred mid-summer 2012 when she was 12 years old. She testified that Mumphord came into her bedroom, pulled down her pants, and put his tongue in her vagina. A.R. said that her body was "stiff," and she stared straight up at the ceiling. She stated that it made her feel "uncomfortable."

A.R. testified that "[t]he first time [Mumphord sexually abused her] was the first and only time [Mumphord's abuse] was oral sex. Any time after that was vaginal sex." A.R. then provided detailed accounts of two other separate sexual assaults that occurred more than 30 days after the first mid-2012 sexual assault.

A.R. testified that during one of these two incidents, she hit the wall while trying to push Mumphord away. She said her hitting the wall caused "a loud bang," which woke up her youngest brother. Mumphord became angry, and he told her that she should not have done that because it might wake up her mother. A.R. testified that she then agreed to have vaginal sex with Mumphord on her bed. She clarified that vaginal sex meant Mumphord put his penis in her vagina. A.R. testified that, during the assault, she turned her head away from Mumphord and did not try to fight

back. She said that Mumphord's stomach rubbed against her, and he was "moving up and down." She described his breathing "like a heavy panting" that she could feel on her face. A.R. said that Mumphord "stopped when he was done." When asked how she had felt, she said that she felt "nothing." She testified, "At that time, I felt like I just stopped feeling because I didn't want to feel nothing." A.R. recalled that this incident occurred when her youngest brother—who was born in November 2013—was a couple of months old. She remembered that it was during the school year, and she was 13 years old. Thus, according to A.R.'s testimony, this incident of sexual assault occurred more than 30 days after the first mid-2012 sexual assault.

A.R. then described another incident that occurred when she was 13 years old. She said that it occurred during the first semester of eighth grade but after her youngest brother had been born in November 2013. A.R. testified that Mumphord called her into the hallway where he then groped her chest and vaginal area while she leaned against the hall closet. She stated that it made her feel "disgusting." Mumphord put his hands under her clothes, rubbed her vagina, and then inserted his finger into it. She remembered thinking that there was not much she could do to stop it because Mumphord was bigger than her and she was "weak."

The assault continued in the hallway for a few minutes and then Mumphord opened the door to A.R.'s bedroom. Mumphord told A.R. to lean over the bed, and she complied. A.R. recalled thinking, "after what will happen[,] I [will] get to shower

whatever he left on me." A.R. stayed in that position for a few minutes and then Mumphord pulled her pants down. She testified that Mumphord "put his penis into my vagina and then performed vaginal sex." When asked how she had felt, she said that she had convinced herself "not to feel anything." A.R. testified that Mumphord "finished" and "collected himself and left the room." She said that she stayed in the same position for a few minutes and then took a shower.

Like the previously described sexual assault, this 2013 sexual assault occurred more than 30 days after the first mid-2012 sexual assault, and each of these three sexual assaults occurred before A.R.'s fourteenth birthday. Thus, A.R.'s testimony established the duration-of-the-abuse element of the offense.

On appeal, Mumphord asserts that A.R.'s testimony was not sufficient to support the jury's guilty finding. But it is well established that a child-sexual-assault complainant's uncorroborated testimony, standing alone, is sufficient to support a defendant's conviction. *See* TEX. CODE CRIM. PROC. art. 38.07; *see also Garcia v. State*, 563 S.W.2d 925, 928 (Tex. Crim. App. 1978) (holding victim's testimony of penetration by appellant, standing alone, was sufficient to support conviction); *Jensen v. State*, 66 S.W.3d 528, 534 (Tex. App.—Houston [14th Dist.] 2002, pet. ref'd) (stating testimony of victim, standing alone, was sufficient evidence). The State has no burden to produce physical or other corroborating evidence. *Jones v. State*, 428 S.W.3d 163, 169 (Tex. App.—Houston [1st Dist.] 2014, no pet.). And

here, the State offered other testimony supporting A.R.'s testimony. Jane testified that A.R. told her in the summer of 2013 that Mumphord had sexually assaulted her. Odhiambo's testimony regarding what A.R. told her in the forensic interview about the sexual abuse, and the video of the forensic interview also lent support to A.R.'s testimony.

Mumphord references a specific point near the beginning of A.R.'s testimony where she answered that she "vaguely" remembered the timeline of the sexual assaults. However, after providing that answer, A.R. described specific examples of sexual assault in detail and testified when they occurred and how old she was at the time.

Mumphord also points to other instances in A.R.'s testimony where she indicated that she could not remember what was said at a specific time, certain details of what happened relating to events surrounding the sexual assaults, or certain aspects of the sexual assaults. But A.R.'s inability to remember certain details did not definitively contradict the jury's verdict and instead bore on A.R.'s credibility. *See Revels v. State*, 334 S.W.3d 46, 52 (Tex. App.—Dallas 2008, no pet.).

It is the exclusive role of the fact finder "to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences[.]" *Buentello v. State*, 512 S.W.3d 508, 516 (Tex. App.—Houston [1st Dist.] 2016, pet. ref'd) (quoting *Jackson*, 443 U.S. at 319). We "may not re-evaluate the weight and credibility of the record

evidence and thereby substitute our judgment for that of the fact-finder." *Dewberry v. State,* 4 S.W.3d 735, 740 (Tex. Crim. App. 1999). Even contradictory evidence in the record will not diminish the sufficiency of evidence that otherwise supports the jury's verdict. *Buentello*, 512 S.W.3d at 516.

By returning a guilty verdict, we must infer that the jury believed A.R.'s testimony regarding Mumphord's sexual abuse, including when the abuse occurred and how old she was when it occurred. We defer to that determination. *See Jackson,* 443 U.S. at 318–19. Therefore, we disagree with Mumphord that A.R.'s testimony cannot support the duration-of-the-abuse element of the offense because she did not remember certain aspects of events. *Id.* at 319.

Viewing the evidence in the light most favorable to the verdict, we conclude that a rational fact finder could have found, beyond a reasonable doubt, each element necessary to support the finding that Mumphord committed the offense of continuous sexual abuse of a child as charged in the indictment. *See id.* at 318–19; *see also* TEX. PENAL CODE § 21.02. Accordingly, we hold that the evidence was sufficient to support the judgment of conviction.

We overrule Mumphord' sole issue.

Conclusion

We affirm the judgment of the trial court.

Richard Hightower
Justice

Panel consists of Justices Goodman, Landau, and Hightower.

Do not publish. TEX. R. APP. P. 47.2(b).