Opinion issued July 14, 2020

In The

Court of Appeals

For The

First District of Texas

NO. 01-19-00136-CR

JAMES RANDALL WILLIAMSON, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 176th District Court
Harris County, Texas
Trial Court Case No. 1603340

MEMORANDUM OPINION

James Randall Williamson was convicted of continuous sexual abuse of a child and sentenced to 25 years' confinement. *See* TEX. PENAL CODE § 21.02(b), (h). In three issues, Williamson contends that (1) the evidence is legally insufficient to support his conviction, (2) the trial court abused its discretion in

admitting the complainant's hearsay statements through the testimony of her older sister, and (3) the trial court abused its discretion in permitting the State to argue in closing that Williamson bore the burden of proof.

We affirm.

Background

This case concerns the repeated sexual abuse of the complainant, Mary,[1] by her step-grandfather, Williamson. Viewed in the light most favorable to the verdict, the evidence shows that Williamson sexually abused Mary on at least three occasions between March 24, 2009, and March 24, 2012, when Mary was between seven and nine years old and living with her mother, Rachel, and older sister, Jane.[2]

However, Mary did not make an initial outcry of abuse until years later in 2017, when she and Jane were living with their father, Mark. Mary made the outcry over Father's Day Weekend, when Mark, Jane, and Mary were on a camping trip in the Texas Hill Country. There, Mary, then 14 years old, and Jane, then 17 years old, discussed Mary's persistent bed-wetting, which had started when Mary was around seven years old. Mary asked Jane what she thought caused it,

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[1] To protect their privacy and for ease of reading, we refer to the complainant, her parents, and her sister by pseudonyms.

[2] Mary and Jane's parents divorced when Mary was 4 years old and Jane was 7 years old.

and Jane, in response, asked Mary whether she had ever been molested. Mary then burst into tears and said that she had—by their step-grandfather, Williamson, who regularly babysat her and Jane from 2010 to 2012, when they lived with Rachel. Upon hearing Mary's disclosure, Jane began to scream, prompting Mark to ask her what was wrong. Jane responded that Mary had just told her that Williamson had molested her. Mark then spoke with Mary privately, and Mary confirmed that when she and Jane lived with Rachel, Williamson would molest her when he babysat them. Mary said that Williamson stopped molesting her when she and Jane moved in with Mark in 2012.

Mark, Jane, and Mary drove back home. On the drive, Mark called Rachel and told her to meet them at his house. There, Mary spoke with Rachel privately and told her what Williamson had done to her. Mark and Rachel then called the police, who initiated an investigation and referred Mary to the Children's Assessment Center for a forensic interview and medical examination. During the forensic interview and medical examination, Mary recounted three specific instances of abuse.

Williamson was indicted for continuous sexual abuse of a child. He pleaded not guilty, and the case proceeded to trial. The jury found him guilty and assessed punishment at 25 years' confinement. The trial court entered judgment in accordance with the jury's verdict. Williamson appeals.

Legal Sufficiency

In his first issue, Williamson contends that the evidence is legally insufficient to support his conviction. Thus, we must review the evidence in the light most favorable to the verdict and determine whether any rational trier of fact could have found beyond a reasonable doubt that (1) Williamson, during a period of 30 or more days, committed at least two acts of sexual abuse against Mary and (2) at the time of the commission of each act of sexual abuse, Williamson was 17 years of age or older and Mary was 14 years of age or younger. TEX. PENAL CODE § 21.02(b) (establishing offense of continuous sexual abuse of a child); *Fernandez v. State*, 479 S.W.3d 835, 837–38 (Tex. Crim. App. 2016) (standard of review for challenge to sufficiency of evidence). If a rational factfinder could have so found, we will not disturb the verdict on appeal. *Fernandez*, 479 S.W.3d at 838.

At trial, the State presented testimony from numerous witnesses, including (1) Mary, (2) the forensic interviewer who interviewed Mary after her outcry, Lisa Holcomb, and (3) Mary's parents, Mark and Rachel.

Mary testified that Williamson had abused her "multiple times" when she was in elementary school and living with her mother. Mary testified that the abuse occurred when Williamson babysat her and her sister. Mary testified that she specifically remembered three incidents of sexual abuse. The first occurred in a bathroom at Mary's old townhome, where Williamson made Mary touch his penis

with her hands, and he touched her vagina with his hands. The second incident occurred in the living room of the house she lived in after the townhome, where Williamson again made Mary touch his penis with her hands. The third incident occurred in Mary's bedroom at the second house, where Williamson made her touch and lick his penis and tried to make her put his penis in her mouth. Mary testified that after each incident of abuse, Williamson told her not to tell anyone what had happened. Mary testified that she did not tell anyone about the abuse until the camping trip in June 2017, when she disclosed the abuse to her sister Jane and then to her father Mark.

Holcomb testified that, during her forensic interview of Mary, Mary recounted three incidents of sexual abuse: the first of which occurred in a bathroom at Mary's old townhome, the second of which occurred in the living room of the house she lived in after the townhome, and the third of which occurred in Mary's bedroom at the second house.

Mark and Rachel provided testimony that confirmed when (1) Williamson and Mary were born (1956 and 2003, respectively), (2) Mary lived in the townhome, (3) Mary lived in the second house, and (4) Williamson babysat Mary (2010–12, when Mary was between seven and nine years old).

The State also presented the notes prepared by the doctor who performed the medical examination on Mary after her outcry. The notes record Mary as stating

that Williamson abused her by touching her vagina and making her touch and lick his penis. The notes further record Mary as stating that the first incident of abuse occurred when Mary was six years old and the last incident occurred when she was eight or nine years old.

Viewed in the light most favorable to the verdict, this evidence would permit a rational trier of fact to find beyond a reasonable doubt that, during a period of 30 or more days, Williamson sexually abused Mary by (1) touching her vagina and forcing her to touch his penis, (2) forcing her to touch his penis, and (3) forcing her to touch and lick his penis.[3] The evidence would further permit a rational trier of fact to find beyond a reasonable doubt that, during this period, Williamson was older than 17 years of age and Mary was younger than 14 years of age.

Williamson nevertheless argues that the evidence is legally insufficient to support his conviction because there were certain inconsistencies between the statements Mary made before trial and the testimony Mary provided at trial. For example, during her forensic interview, Mary told Holcomb that Williamson made her lick his penis each time he abused her, whereas at trial Mary testified that Williamson only made her lick his penis the third time he abused her. The

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[3] By touching Mary's vagina and forcing her to touch his penis, Williamson committed indecency with a child through sexual contact. TEX. PENAL CODE § 21.11(a)(1), (c)(1), (2). And by forcing Mary to lick his penis, Williamson committed aggravated sexual assault. *Id.* § 22.021(a)(1)(B)(v), (2)(B). These acts constitute sexual abuse. *Id.* § 21.02(c)(2), (4).

resolution of these inconsistencies was the prerogative of the jurors. *Buxton v. State*, 526 S.W.3d 666, 675 (Tex. App.—Houston [1st Dist.] 2017, pet. ref'd). The jurors resolved these inconsistencies in favor of the prosecution, and we must defer to their determination on appeal. *Id.*

Williamson further complains that the trial testimony was not corroborated by DNA or other forensic evidence. But it is well-established that such corroboration is unnecessary to support a conviction for continuous sexual assault of a child. *See* TEX. CODE CRIM. PROC. art. 38.07 (conviction of continuous sexual assault of child is "supportable on the uncorroborated testimony of the victim"); *Prestiano v. State*, 581 S.W.3d 935, 941 (Tex. App.—Houston [1st Dist.] 2019, pet. ref'd) ("The uncorroborated testimony of the child is sufficient, standing alone, to support a conviction."); *Buxton*, 526 S.W.3d at 676–77 (holding that testimony of complainant, her sister, and medical examiner was legally sufficient to support finding that defendant committed at least two acts of sexual abuse against complainant during period of 30 or more days).

We hold that Williamson's conviction is supported by legally sufficient evidence. Therefore, we overrule Williamson's first issue.

Hearsay

In his second issue, Williamson contends that the trial court abused its discretion in overruling his objection to and admitting into evidence Mary's

hearsay statement through the testimony of Jane. During the State's examination of Jane, Jane testified that on the first night of their Father's Day camping trip in June 2017, she and Mary had a conversation. The State then asked, "And what was the subject matter of that conversation?" Williamson objected on hearsay grounds, and the trial court overruled his objection, stating, "[Jane] can answer that question without saying what [Mary] told [her]." Jane then answered the State's question, stating that the conversation was about whether Mary "had ever been molested before." Williamson argues that the trial court's ruling was an abuse of discretion because Jane's testimony was inadmissible hearsay, the erroneous introduction of which harmed Williamson by bolstering the credibility of Mary. We disagree.

Hearsay is an out-of-court statement offered to prove the truth of the matter asserted. *See* TEX. R. EVID. 801(d). But Jane did not testify to what Mary specifically *stated* during their conservation; instead, she testified to what their conversation was about in general. Thus, Jane's testimony was not hearsay. *See Morrow v. State*, 486 S.W.3d 139, 162 (Tex. App.—Texarkana 2016, pet. ref'd) (holding that witness's testimony that she had "a conversation with [the complainant] about [the defendant]'s 'status in the marriage [and] his fidelity'" did not constitute hearsay because "no out-of-court statement was offered").

We overrule Williamson's second issue.

Jury Argument

In his third issue, Williamson complains that the State improperly argued during closing argument that he bore the burden of proof when it made the following remarks: "[W]ith these types of cases, with any sex assault type case, it usually comes down to three main defenses: Either she's lying, she's mistaken, or she asked for it. I want you to think about those three categories and I want you to think what direction is [Williamson] going with his defense. What category is he choosing to go with to try and show that this wasn't him?"

However, Williamson made no objection during closing argument to these remarks, and when a defendant fails to object to jury argument, he forfeits his right to raise the issue on appeal. *Hernandez v. State*, 538 S.W.3d 619, 622 (Tex. Crim. App. 2018) ("The right to a trial untainted by improper jury argument is forfeitable."). Because he failed to object to the State's argument at trial, Williamson has waived his right to raise the issue on appeal.

We overrule Williamson's third issue.

Conclusion

We affirm.

Gordon Goodman
Justice

Panel consists of Chief Justice Radack and Justices Kelly and Goodman.

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