Affirmed and Opinion filed January 18, 2001.

In The

Fourteenth Court of Appeals

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NO. 14-99-00510-CR

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TROY HOLLAND JOHNSON, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 180th District Court
Harris County, Texas
Trial Court Cause No. 778,746

O P I N I O N

A jury tried and convicted appellant, Troy Holland Johnson, of aggravated sexual assault of a child. Appellant pled true to allegations in the enhancement paragraph of the indictment, and the trial court assessed punishment at fifty years' confinement. Proceeding *pro se*, appellant now complains about the admission of hearsay and improper expert testimony, the State's failure to properly qualify expert witnesses, and legal and factual insufficiency of the evidence. We affirm.

I. BACKGROUND

In October 1997, appellant was staying in his ex-girlfriend's apartment. The ex-girlfriend shared the apartment with her eleven-year-old sister, who is the complainant in this case. One evening the complainant was sleeping on the living room couch. Just after waking from a dream, she saw appellant walking around. He then approached the complainant and, while she was lying on the couch, inserted and moved his finger in and out of her vagina, causing her pain. She told him to stop and threatened to tell her sister. Appellant eventually left.

The complainant did not tell her sister about the assault until February 1998. Upon learning of it, the complainant's sister notified the Houston Police Department, which dispatched Officers Glen Howard Dickerson and Robert Douglas to the complainant's home. In the officers' interview, the complainant described how appellant had sexually assaulted her. After being taken for evaluation to the Children's Assessment Center, the complainant described the assault to Dr. Deborah Bryant and then later to Officer Cheryl Wright, a sexual assault investigator with the Houston Police Department.

The State charged appellant with aggravated sexual assault of a person less than fourteen years old, and not the appellant's spouse, alleging appellant had placed his finger in the complainant's female sexual organ. Appellant pled not guilty. The jury found appellant guilty as charged in the indictment. The indictment alleged two prior felony convictions for punishment enhancement purposes, to which appellant pled true. The trial court sentenced appellant to fifty years' confinement.

II. ISSUES PRESENTED ON APPEAL

A. Expert Testimony

In his first point of error, appellant makes the multifarious contentions that: (1) the trial court erred in admitting the testimony of Officer Dickerson and Dr. Bryant because the State failed to qualify them as expert witnesses; (2) the expert testimony was unnecessary; (3) the experts' testimony impermissibly rendered opinions on the complainant's credibility, and (4) the trial court erred in sustaining a relevancy objection made by the State during appellant's cross-examination of Officer Dickerson.

We first note that this point of error is multifarious because it accumulates, in one point, issues which should be asserted in separate points of error. *See Euziere v. State*, 648 S.W.2d 700, 703 (Tex. Crim. App. 1983). While we may disregard and refuse to review multifarious points of error, we may also elect to consider them if we are able to discern, with reasonable certainty, the alleged error about which the complaint is made. *State v. Interstate Northborough P'ship*, 8 S.W.3d 4, 7 n.2 (Tex. App.—Houston [14th Dist.] 1999, pet. granted). We elect to consider each of the points raised in appellant's first point of error.

1. Witness Qualifications

Generally, to preserve appellate review, the complaining party must demonstrate that he lodged an objection and stated the basis therefor "with sufficient specificity to make the trial court aware of the complaint. . . ." TEX. R. APP. P. 33.1(a)(1)(A). It is well established that objection to a witness's competency or qualifications to testify cannot be raised for the first time on appeal. *See id.* at 33.1(a); *Wilson v. State*, 7 S.W.3d 136, 145 (Tex. Crim. App. 1999) (finding that failure to object to witness's qualification as an expert procedurally defaults that claim on appeal); *Matson v. State*, 819 S.W.2d 839, 852 (Tex. Crim. App. 1991) ("[T]he failure to object to a witness's competency to testify operates as a waiver of the witness's qualifications and may not be raised for the first time on appeal.").

Here, appellant failed to object to the witnesses' qualifications as experts. Moreover, appellant did not voice any specific objection to Officer Dickerson's expert testimony, nor did he lodge any objection to Dr. Bryant's expert testimony as improperly rendering opinions not "otherwise admissible" on an "ultimate fact at issue," namely, whether the complainant's testimony was credible.[1] Because appellant

[1] The following exchange took place during the State's direct examination of Officer Bryant:

STATE:	Okay. Based upon your training and experience were the facts that she related to you and her emotional demeanor consistent with what she said happened to her?
DEFENSE:	I would object to that, Your Honor.
COURT:	It is overruled.
STATE:	Based on your training and experience –
OFFICER:	Yes.
STATE:	– did you believe – did you form an opinion based upon your training and your

failed to lodge complaints regarding admission of unqualified expert testimony and testimony regarding witness veracity at trial, he has failed to preserve them for appellate review.

2. Unnecessary Expert Testimony and Relevancy

Appellant makes no citations to the record in support of his "unnecessary" expert testimony argument. Further, appellant provides no argument or authority supporting his contention that the trial court should have overruled the State's relevancy objection. On this point, appellant states only that defense counsel's question "was a reasonable one, and the State's objection to the relevance should have been overruled." Texas Rule of Appellate Procedure 38.1 requires that parties provide "*clear and concise argument* for the contentions made, with appropriate citations to authorities *and to the record*." TEX. R. APP. P. 38.1(h). (emphasis added). "Parties who represent themselves must comply with the applicable law and rules of procedure . . . . Pro se litigants are held to the same standards as licensed attorneys." *Brown v. Tex. Employment Comm'n*, 801 S.W.2d 5, 8 (Tex. App.—Houston [14th Dist.] 1990, writ denied) (citation omitted); *see also Alvarado v. State*, 912 S.W.2d 199, 210 (Tex. Crim. App. 1995) ("As an appellate court, it is not our task to pore through hundreds of pages of record in an attempt to verify an appellant's claims . . . . [I]t is not our task to speculate as to the nature of an appellant's legal theory . . . . [T]he right to appellate review extends only to complaints made in accordance with our rules of appellate procedure.") (citations omitted). Because appellant has inadequately briefed these issues under

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experience and your interview of [complainant] that an offense had occurred?
OFFICER: Yes.
STATE: And what was the offense you believe occurred?
OFFICER: I believe she was sexually assaulted.

The State asked a similar question during its direct examination of Dr. Bryant:

STATE: Based upon your training and your experience as well as your interview of [the complainant] and also your medical evaluation of [complainant] was the medical evaluation consistent with what she was reporting happened to her?
DR. BRYANT: Yes.

Texas Rule of Appellate Procedure 38.1(h), his complaints are waived.[2] Accordingly, appellant's first point of error is overruled.

B. Hearsay Testimony

In his second point of error, outlined in a single, three-sentence paragraph, appellant complains the trial court erred in admitting hearsay testimony from Officer Cheryl Wright and the complainant's sister. Although appellant cites to authorities, he provides no argument and makes absolutely no citations to the record to support these assertions of error. Because appellant failed to make appropriate citations to authorities and to the record, he has waived appellate review of this point. *See* TEX. R. APP. P. 38.1(h). Appellant's second point of error is overruled.

C. Legal Sufficiency

In his third and final point of error, appellant contends the evidence is legally insufficient to support his conviction. In reviewing the legal sufficiency of the evidence, we view the evidence in the light most favorable to the verdict. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *Clewis v. State*, 922 S.W.2d 126, 133 (Tex. Crim. App. 1996). We accord great deference "'to the responsibility of 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.'" *Id*. (quoting *Jackson*, 443 U.S. at 319). We presume that any conflicting inferences from the evidence were resolved by the jury in favor of the prosecution, and we defer to that resolution. *Id*. at n.13 (citing *Jackson*, 443 U.S. at 326). In our review, we determine only whether "'*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *Id*. at 129 (quoting *Jackson*, 443 U.S. at 319).

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[2] During a post-conviction hearing, the trial court offered to provide appellant with an experienced appellate attorney for this appeal, but appellant declined the offer. In questioning appellant about his determination to proceed *pro se* on appeal, the trial court specifically addressed, and appellant stated that he understood: (1) the fact that appellant would be held to the same standards as a lawyer in making his points on appeal (appellant was asked about this twice); (2) the need to specifically cite to the record; and (3) the danger that appellant might waive appellate consideration of points by improperly raising them. It appears that appellant has made the very errors the trial court specifically cautioned against.

The essential elements of aggravated sexual assault of a child are outlined in Texas Penal Code section 22.021. A person commits an offense "if the person intentionally or knowingly . . . causes the penetration of the anus or female sexual organ of a child by any means . . . and . . . the victim is younger than 14 years of age" and not the offender's spouse. TEX. PENAL CODE ANN. § 22.021(a)(1)(B)(i) & (a)(2)(B) (Vernon 1994 & Supp. 2000). Aggravated sexual assault is a first degree felony offense. *Id*. § 22.021(e).

Viewing the evidence under our deferential standard, we conclude that a rational trier of fact could have found, beyond a reasonable doubt, that appellant committed the offense alleged in his felony indictment. The complainant testified that appellant moved his finger in and out of her "pee-hole." "The testimony of a victim[,] standing alone, even when the victim is a child, is sufficient to support a conviction for sexual assault." *Ruiz v. State*, 891 S.W.2d 302, 304 (Tex. App.—San Antonio 1994, pet. ref'd) (citing *Gonzalez v. State*, 647 S.W.2d 369 (Tex. App.—Corpus Christi 1983, pet. ref'd)); *Hayden v. State*, 928 S.W.2d 229, 232 (Tex. App.—Houston [14th Dist.] 1996, pet. ref'd). Moreover, the testimony of the complainant's sister as well as Dr. Bryant and both Officers Wright and Dickerson reflects that the complainant gave similarly detailed accounts of the assault to each of them. After reviewing the record in the light most favorable to the verdict, we find a rational jury could have found that appellant penetrated the eleven-year-old's female sex organ with his finger. *See, e.g., Ellis*, 877 S.W.2d 380, 383 (Tex. App.—Houston [1st Dist.] 1994, pet. ref'd). The evidence is legally sufficient to support appellant's conviction for aggravated sexual assault beyond a reasonable doubt.

D. Factual Sufficiency of the Evidence

Also in his third point of error, appellant challenges the factual sufficiency of the evidence, claiming the "evidence 'clearly demonstrates bias,' so as to be manifestly unjust[,] and is against the great weight and preponderance of the evidence." In reviewing evidence for factual sufficiency, we do not view the evidence in the light most favorable to the prosecution. *See Clewis v. State*, 922 S.W.2d at 134. Instead, we consider all the evidence and set aside the verdict "only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust." *Id.* However, appellate courts "are not free

to reweigh the evidence and set aside a jury verdict merely because the judges feel that a different result is more reasonable." *Id*. at 135 (citations omitted). In other words, we will not substitute our judgment for that of the jury. *Id*. at 133. To find the evidence factually insufficient to support a verdict, we must conclude that the jury's finding is manifestly unjust, shocks the conscience, or clearly demonstrates bias. *Id*. at 135.

To demonstrate factual insufficiency, appellant cites lack of witness credibility and "contradictions" in and among the testimony of the complainant, her sister, the police officers, and Dr. Bryant. For example, appellant points to: (1) the complainant being described as "eager" but also described as shy, fearful, and embarrassed in discussing the assault; (2) testimony regarding the complainant's "point of reference" in remembering when the assault occurred; (3) differences regarding whether the sister was present when Dr. Bryant interviewed the complainant; and (4) the complainant purportedly telling school officials that appellant "beat her up" while purportedly telling her sister that appellant had "slapped her." Appellant also complains that the complainant had been in trouble for lying and for taking others' things at school and that appellant's sister had questioned whether appellant committed the assault. These complaints go to the jury's evaluation of witnesses' credibility. The jury was entitled to believe or disbelieve all or any part of the witnesses' testimony. Although appellant has pointed out discrepancies with some testimony, those discrepancies are insufficient to demonstrate that the jury's finding is "manifestly unjust," a shock to the conscience, or a clear demonstration of bias. *See Clewis*, 922 S.W.2d at 135. To the contrary, viewed as a whole, the evidence supports the jury's finding of guilt. Accordingly, we find the evidence in this case factually sufficient to support the jury's verdict. Appellant's third and final point of error is overruled.

The judgment of the trial court is affirmed.

/s/ Kem Thompson Frost
Justice

Judgment rendered and Opinion filed January 18, 2001.

Panel consists of Justices Yates, Wittig, and Frost.

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