

Affirmed and Opinion filed November 24, 1999.



In The

Fourteenth Court of Appeals

NO. 14-98-00213-CR

JOSE ANGEL GUERRERO JR., Appellant

V.

THE STATE OF TEXAS , Appellee

**On Appeal from the 178th District Court
Harris County, Texas
Trial Court Cause No. 738,765**

OPINION

A jury convicted Jose Angel Guerrero Jr. of aggravated sexual assault of a child. On appeal Guerrero contends the evidence is legally and factually insufficient to prove one element of the offense. We affirm.

FACTS AND PROCEDURAL HISTORY

Because Guerrero challenges the legal and factual sufficiency of the evidence to support his conviction, a somewhat detailed rendition of the facts is required.

The six-year-old complainant testified that Guerrero was one of her mother's boyfriends. She went to the kitchen of the apartment where she lived with her mother, two sisters and brother to get a glass of water, and Guerrero followed her. Guerrero lifted her up and sat her on top of the kitchen counter and began to kiss her. As she stated, Guerrero then moved her panties over a little bit, dropped his pants and "put his private in mine somehow." She felt his penis in her vagina, first hard, then soft, and said that it hurt. The genital contact lasted fifteen to twenty seconds; when her mother walked into the kitchen and interrupted. Using anatomically correct dolls, the complainant showed jurors that Guerrero had put his penis into her vaginal area.

Dr. Janna Williams examined complainant and said that while her hymen was not torn, she did have tenderness along both the labia majora and the labia minora. Dr. Williams said the soreness was consistent with penetration, with some force, of an object just past the outer fold of vaginal skin, and that this could indicate sexual abuse.

The complainant's mother testified she walked into her kitchen and found Guerrero engaged in what she thought was an inappropriate kiss. She said she immediately ordered Guerrero out of her house.

STANDARD OF REVIEW

A person commits aggravated sexual assault if he intentionally or knowingly causes the penetration of the female sex organ of a child by any means, and the child is under the age of 14. TEX. PEN. CODE ANN. § 22.021(a) (Vernon Supp. 1999). Guerrero contends the testimony given by the complainant and the medical witness are legally and factually insufficient to support his conviction. We disagree.

Appellant's first point of error challenges the legal sufficiency of the evidence to support the jury's verdict. *See Jackson v. Virginia*, 443 U.S. 307, 315-16, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). The standard for reviewing a legal sufficiency challenge is whether any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *Jackson*, 443 U.S. at 320, 99 S.Ct. at 2789; *Johnson v. State*, 871 S.W.2d 183, 186 (Tex. Crim. App. 1993), cert. denied, 511 U.S. 1046, 114 S.Ct. 1579, 128 L.Ed.2d 222 (1994). The evidence is examined in the light most favorable to the jury's verdict. *Jackson*, 443 U.S. at 320, 99 S.Ct. 2781; *Johnson*, 871 S.W.2d at 186. The standard is the same in both direct and circumstantial evidence cases. *Geesa v. State*, 820 S.W.2d 154, 162 (Tex.

Crim. App. 1991). A successful legal sufficiency challenge will result in rendition of an acquittal by the reviewing court. *Tibbs v. Florida*, 457 U.S. 31, 41-42, 102 S.Ct. 2211, 72 L.Ed.2d 652 (1982).

Appellant's second point of error challenges the factual sufficiency of the evidence to sustain the jury's verdict. *See Clewis v. State*, 922 S.W.2d 126 (Tex. Crim. App. 1996). In conducting factual sufficiency review, the evidence is no longer viewed in the light most favorable to the verdict. *Id.* at 134. The reviewing court must, however, be deferential to the fact finder, being careful not to invade the province of the jury to assess the credibility and weight of the evidence. *Id.* at 133, 135. The verdict will be set aside, and the cause remanded for a new trial, only if it is contrary to the overwhelming weight of the evidence and therefore clearly wrong and unjust. *Id.* at 129.

In *Vernon v. State*, 841 S.W.2d 407 (Tex. Crim. App. 1993), a complainant testified that her stepfather put his finger in her "vaginal area," and was unable to describe the contact any more specifically, other than to say that he "started pressing and it hurt." Medical testimony established the complainant had an injury under the fold of her labia majora but outside the vaginal canal. *Id.* at 409. The court held that penetration had occurred for purposes of the statute "so long as contact with the injured part of her anatomy could reasonably be regarded by ordinary English speakers as more intrusive than contact with her outer vaginal lips." *Id.* Additionally, a complainant's testimony that appellant's sexual organ penetrated her sexual organ, standing alone, is sufficient evidence of penetration. *Garcia v. State*, 563 S.W.2d 925, 928 (Tex. Crim. App. [Panel Op.] 1978). This is true even if medical testimony appears to contradict the complainant's testimony; even a slight penetration that does not leave medical evidence is sufficient to satisfy the statute. *Villanueva v. State*, 703 S.W.2d 244, 245 (Tex. App.—Corpus Christi 1985, no pet.).

We find the complainant's testimony that Guerrero entered her with enough force to hurt, combined with Dr. Williams' testimony that the soreness in her genital area was consistent with penetration by some object and with some force, and is sufficient to uphold Guerrero's conviction against a legal sufficiency challenge. We also hold that the verdict is not so contrary to the evidence as to be clearly wrong and unjust. We therefore overrule Guerrero's first and second points of error and affirm the judgment of the trial court.

Joe L. Draughn
Justice

Judgment rendered and Opinion filed November 24, 1999.

Panel consists of Justices Draughn, Lee, and Hutson-Dunn.*

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

* Senior Justices Joe L. Draughn, Norman Lee, and D. Camille Hutson-Dunn sitting by assignment.