Opinion of March 29, 2001, Withdrawn, Affirmed and Corrected Opinion filed August 23, 2001.

In The

Fourteenth Court of Appeals

NO. 14-98-01293-CR
NO. 14-98-01294-CR

REGINALD MAURICE ALLEN, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 179th District Court
Harris County, Texas
Trial Court Cause Nos. 772,293 & 772,770

C O R R E C T E D O P I N I O N

The opinion of March 29, 2001, is withdrawn, because the trial court number was incorrect in this court's appellate cause number 14-98-01294-CR. Over his plea of not guilty, a Harris County jury found appellant, Reginald Maurice Allen, guilty of felony indecency with a child and aggravated sexual assault of a child. The jury sentenced appellant to ten years' confinement for the indecency offense and thirty years' confinement for the aggravated sexual assault. In one point of error, appellant argues the

evidence is legally and factually insufficient to support the jury's verdict. We affirm.

We review legal sufficiency challenges to determine "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed.2d 560 (1979); *Malik v. State*, 953 S.W.2d 234, 240 (Tex. Crim. App. 1997). The standard is the same in both direct and circumstantial evidence cases. *See Weyandt v. State*, No. 14-98-00194-CR, 2000 WL 1785015, *2 (Tex. App.—Houston [14th Dist.] Dec. 7, 2000, no pet.). To review appellant's factual sufficiency issue, we must ask whether a neutral review of the evidence, both for and against the finding, demonstrates that the proof of guilt is so obviously weak as to undermine confidence in the jury's determination, or the proof of guilt, although adequate if taken alone, is greatly outweighed by contrary proof. *See Johnson v. State*, 23 S.W.3d 1, 11 (Tex. Crim. App. 2000); *Childs v. State*, 21 S.W.3d 631, 634 (Tex. App.—Houston [14th Dist.] 2000, pet. ref'd).

A person commits the offense of indecency with a child if he engages in sexual contact with a child younger than 17 years and not his spouse. *See* TEX. PEN. CODE ANN. § 21.11(a)(1). "Sexual contact" means "any touching of the anus, breast, or any part of the genitals of another person with the intent to arouse or gratify the sexual desire of any person." TEX. PEN. CODE ANN. § 21.01(2). A person commits the offense of aggravated sexual assault of a child if the person, intentionally or knowingly, causes the penetration of the mouth of a child by the sexual organ of the actor, and if the child is younger than 14 years. *See* TEX. PEN. CODE ANN. §§ 22.021(a)(1)(B)(ii) and 22.021(a)(2)(B).

Here, the twelve-year-old complainant testified that after dragging her over a fence toward an area containing a blanket already spread out with a gun on it, appellant sucked on her breast and licked her vagina. Appellant told her he would kill her if she told anyone what he was doing.

A month later, appellant, holding a handgun in his hand, forced complainant to remove her clothing and began taking photographs of the young girl's naked body. Later, appellant rubbed baby oil all over her body and his private parts. He placed his finger in her vagina and after several attempts, he penetrated complainant's vagina with his penis. Next he grabbed and sucked her breasts, leaving the imprint of teeth marks. Complainant was also forced to touch appellant's penis and masturbate him until he ejaculated. Additionally, when complainant's mother called numerous times to check on her daughter, appellant held a gun to her head and reminded her to not tell anyone what was going on between them.

After reviewing the evidence in the light most favorable to the verdict, we find the evidence is legally sufficient to support the jury's verdict. *See Hayden v. State*, 928 S.W.2d 229, 232 (Tex. App.—Houston [14th Dist.] pet. ref'd); *Dufrene v. State*, 853 S.W.2d 86, 90 (Tex. App.—Houston [14th Dist.] 1993, pet. ref'd). Additionally, after conducting a neutral review of the evidence, we find the evidence is not so obviously weak as to undermine confidence in the jury's determination. Accordingly, we overrule appellant's sole point of error.

Having overruled appellant's sole point of error, we affirm the judgment of the trial court.

/s/ Ross A. Sears
Justice

Judgment rendered and Opinion filed August 23, 2001.

Panel consists of Justices Sears, Lee, and Amidei.*

* Senior Justices Ross A. Sears and Norman Lee, and Former Justice Maurice Amidei sitting by assignment.

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