

AFFIRMED and Opinion Filed June 11, 2020



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-18-01075-CR

**FRANCISCO LOPEZ, Appellant
V.
THE STATE OF TEXAS, Appellee**

**On Appeal from the 282nd Judicial District Court
Dallas County, Texas
Trial Court Cause No. F-1735119-S**

MEMORANDUM OPINION

Before Justices Bridges, Molberg, and Partida-Kipness
Opinion by Justice Bridges

Francisco Lopez appeals his continuous sexual assault of a young child conviction. A jury convicted appellant and sentenced him to sixty-five years' confinement. In a single issue, appellant argues the evidence is insufficient to show he committed acts of sexual abuse occurring over a period of thirty or more days. We affirm the trial court's judgment.

In February 2018, appellant was charged by indictment with the offense of continuous sexual assault of A.C., a child younger than 14 during a period that was thirty or more days in duration, "namely by the contact between the hand of

[appellant] and the genitals of the complainant with the intent to arouse and gratify the sexual desire of [appellant].”

At trial, A.C. testified he was born in March 2001. A.C. testified appellant is the father of his former stepfather. When he was younger, A.C. spent time at appellant’s house in Irving, and his family went to appellant’s house every Sunday. On one occasion “in the June timeframe,” A.C. was asleep on a couch in appellant’s house when he was awakened by appellant sliding his hand under A.C.’s shorts and underwear. A.C. testified appellant “touched my penis and was playing with it.” A.C. was “half asleep” and “in shock,” and he got up as soon as he realized what was happening. A.C. left the house and walked to his cousin’s house. After that first incident, A.C. resisted going back to appellant’s house, but his stepfather made him go. On “more than five” occasions, appellant continued to “grab [A.C.’s] penis over [his] clothing.” A.C. testified he remembered a “time in July” when he went to appellant’s kitchen, and appellant “tried to grab” him and touched A.C.’s penis over his clothes. The last time appellant touched A.C. was in August “right before school was about to start.” A.C. was in a hallway walking past appellant, and appellant touched A.C. “hand to penis” and A.C. moved appellant’s hand out of the way. The jury convicted appellant of continuous sexual abuse of a young child, and this appeal followed.

In his single issue, appellant contends the evidence was insufficient to support the verdict. Appellant’s argument is that the evidence shows the sexual acts, if any,

did not occur during a period of thirty or more days in duration. In making this argument, appellant characterizes the August abuse as a “form of horseplay” and argues there was “no evidence this contact involved ‘the intent to arouse or gratify the sexual desire of any person.’” Thus, appellant argues, the only incidents of sexual contact that could potentially constitute “sexual abuse” were the incidents at an unknown time in June 2013 and July 2013. Appellant asserts that a rational jury could not have found that the evidence of these two incidents proved beyond a reasonable doubt that they occurred during a period of thirty days or more.

A person commits the offense of continuous sexual abuse of a child if, during a period that is thirty or more days in duration, he commits two or more acts of sexual abuse and, at the time of the commission of each act, he is seventeen years of age or older and the victim is a child younger than fourteen. TEX. PENAL CODE ANN. § 21.02(b) (West 2011). Although the exact dates of the abuse need not be proven, the offense does require proof that two or more acts of sexual abuse occurred during a period of thirty days or more. *Garner v. State*, 523 S.W.3d 266, 271 (Tex. App.—Dallas 2017, pet. ref'd); see TEX. PENAL CODE ANN. § 21.02(d) (jury not required to unanimously agree on which specific acts of sexual abuse were committed by defendant or exact dates when those acts occurred, but jury must agree unanimously that defendant, during period of thirty or more days, committed two or more acts of sexual abuse).

In determining the sufficiency of the evidence, the reviewing court considers the evidence in the light most favorable to the verdict to determine whether any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *Acosta v. State*, 429 S.W.3d 621, 624–25 (Tex. Crim. App. 2014). The jury is the sole judge of the credibility and weight to attach to witness testimony. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). The testimony of a child victim alone is sufficient to support a conviction for continuous sexual abuse of a child. See TEX. CODE CRIM. PROC. ANN. art. 38.07(a) (West Supp. 2016); *Garner*, 523 S.W.3d at 271.

There is sufficient evidence in the record to support the jury’s determination that appellant committed the charged offense beyond a reasonable doubt. The evidence showed that, in June 2013, appellant put his hand under A.C.’s shorts and underwear and touched his penis. Appellant continued to grab A.C.’s penis over his clothing in July and August. A.C.’s testimony, plus the other evidence in the record, is sufficient to show that the acts of sexual abuse occurred during a period of thirty days or more. In reaching this conclusion, we reject appellant’s argument that the act of sexual abuse in August, the last of a series of abusive acts, was somehow non-sexual “horseplay.”

Deferring to the jury’s determination of the credibility of the witnesses and the weight to be given their testimony, based on the cumulative force of all the evidence when viewed in the light most favorable to the verdict, and considering the

reasonable inferences to be drawn from that evidence, we conclude a rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *See Acosta*, 429 S.W.3d at 624–25. Appellant’s single issue is overruled.

We affirm the trial court’s judgment.

/David L. Bridges/
DAVID L. BRIDGES
JUSTICE

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**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

FRANCISCO LOPEZ, Appellant

No. 05-18-01075-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 282nd Judicial
District Court, Dallas County, Texas
Trial Court Cause No. F-1735119-S.
Opinion delivered by Justice Bridges.
Justices Molberg and Partida-Kipness
participating.

Based on the Court's opinion of this date, the judgment of the trial court is
AFFIRMED.

Judgment entered June 11, 2020