

AFFIRMED and Opinion Filed June 26, 2020



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

No. 05-18-01323-CR

LOUIS RUSSO, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 366th Judicial District Court
Collin County, Texas
Trial Court Cause No. 366-80805-2016**

MEMORANDUM OPINION

Before Justices Bridges, Molberg, and Carlyle
Opinion by Justice Carlyle

Louis Russo contends the evidence is insufficient to support his conviction for continuous sexual abuse of a child. We affirm in this memorandum opinion. *See* TEX. R. APP. P. 47.4.

Mr. Russo and his former wife adopted N.R. when she was seven years old. When N.R. was fourteen, she told an adult neighbor Mr. Russo molested her. Following an investigation, the grand jury indicted Mr. Russo on one count of continuous sexual abuse of a child, *see* TEX. PENAL CODE § 21.02, and three counts of indecency with a child involving sexual contact, *see id.* § 21.11(a)(1).

N.R. was seventeen when she testified at the bench trial. She said Mr. Russo most recently abused her the night before her outcry in November 2015. N.R. was fourteen at the time, and she fell asleep in Mr. Russo's bed. She awoke when Mr. Russo began rubbing her back. He moved his hand to her stomach, slid it under her pants, rubbed her vagina with his fingers, and then moved his hand up her shirt to fondle her breasts. N.R. did not believe Mr. Russo knew she was awake, and he stopped once she pretended to wake up to go to her room.

N.R. detailed another incident that occurred in Mr. Russo's Chevy Malibu when she was nine or ten years old. She fell asleep as he drove and awoke when he began touching her stomach. He moved his hand under her pants, rubbed her vagina with his fingers, and stopped when she started moving.

N.R. said Mr. Russo often fondled her breasts early in the morning before leaving for work, estimating this happened three times a month. She also recalled another instance when Mr. Russo came into her bedroom at night while she slept, reached under the covers, slid his hand under her pants, and rubbed her vagina. She could not remember how old she was, but it was before the incident in the car.

N.R. said there were other times when Mr. Russo touched her vagina, but she could not recall specific details. And although she could not say if there were any years in which Mr. Russo did not abuse her, he abused her at least once a month, usually in her bedroom.

Other witnesses, including Mr. Russo, corroborated key parts of N.R.'s testimony. Although he denied touching N.R. inappropriately, he admitted rubbing her back under her nightshirt and wrapping his arm around her while she was in his bed the night before her outcry. He also admitted putting his hand down N.R.'s pants while she slept in the Chevy Malibu. He said there were ants crawling up her leg earlier that day, and she kept scratching her crotch while he was driving. He could not get her to wake up or stop scratching herself, so he reached down her pants to see if there was a problem—either with ants or with her wetting herself.

The State played a video of Mr. Russo's police interview in which he initially denied placing his hand down N.R.'s pants or touching near her crotch while she slept in the Malibu. He gradually changed his story, admitting first that he felt around her leg, then that he felt around her crotch, and finally that he put his hand down her shorts, all to make sure there were no ants there.

After the State abandoned one count of indecency, the trial court found Mr. Russo guilty of all remaining counts. It sentenced him to twenty-five years in prison for continuous sexual abuse and ten years for each count of indecency to run concurrently.

On appeal, Mr. Russo contends only that the evidence is insufficient to support a finding beyond a reasonable doubt that the vaginal contact took place at least thirty days apart and before N.R. turned fourteen. *See* TEX. PENAL CODE § 21.02(b). We evaluate this challenge under the familiar standard from *Jackson v. Virginia*, 443

U.S. 307, 319 (1979), and review all the evidence in the light most favorable to the verdict to determine whether the factfinder was rationally justified in finding guilt beyond a reasonable doubt. *See Brooks v. State*, 323 S.W.3d 893, 894, 901–02 (Tex. Crim. App. 2010); *Temple v. State*, 390 S.W.3d 341, 360 (Tex. Crim. App. 2013).

Mr. Russo argues that, because N.R. did not specify how much time elapsed between the two discreet instances of vaginal contact she described occurring before she turned fourteen, the trial court could not rationally conclude such contact occurred at least thirty days apart. This ignores a reasonable interpretation of N.R.’s testimony—that Mr. Russo engaged in a pattern of abuse that included touching N.R.’s vagina at least once a month in the years before her outcry—and incorrectly presumes that the victim must testify to specific days or dates. *See Reyes v. State*, No. 05-14-01400-CR, 2016 WL 326275, at *3 (Tex. App.—Dallas Jan. 27, 2016, no pet.) (not designated for publication).

Significant additional evidence corroborates N.R.’s testimony, though N.R.’s testimony alone, viewed in the light most favorable to the verdict, is sufficient to support the trial court’s rational conclusion that Mr. Russo abused her as charged. *See* TEX. CODE CRIM. PROC. art. 38.07(a), (b)(1); TEX. PENAL CODE § 21.02(b);

Garner v. State, 523 S.W.3d 266, 271 (Tex. App.—Dallas 2017, no pet.). We affirm.

/Cory L. Carlyle/

CORY L. CARLYLE

JUSTICE

Do Not Publish

TEX. R. APP. P. 47.2(b)

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

JUDGMENT

LOUIS RUSSO, Appellant

No. 05-18-01323-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 366th Judicial
District Court, Collin County, Texas
Trial Court Cause No. 366-80805-
2016.

Opinion delivered by Justice Carlyle.
Justices Bridges and Molberg
participating.

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

Judgment entered this 26th day of June, 2020.