

NO. 01-24-00408-CR

**IN THE FIRST COURT OF APPEALS
HOUSTON, TEXAS**

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DEBORAH M. YOUNG
Clerk of The Court

IVAN LOPEZ-LOPEZ,
Appellant,

v.

THE STATE OF TEXAS,
Appellee.

APPELLANT’S BRIEF

On Appeal from Cause No. 21-DCR-095036A
458TH Judicial District Court of Fort Bend County, Texas

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ORAL ARGUMENT REQUESTED

IDENTITY OF PARTIES AND COUNSEL

Pursuant to TEX. R. APP. P. Rule 38.1(a), appellant certifies that the following is a complete list of the parties to the final judgment and the names and addresses of counsel in the trial and on appeal:

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TRIAL JUDGE:

The Honorable Chad Bridges
Presiding Judge 458th District Court
Fort Bend County, Texas

REQUEST FOR ORAL ARGUMENT

Appellant respectfully requests oral argument in this case. Pursuant to the TEX. R. APP. P. 9.4(g) and 38.1(e), Appellant requests oral argument to benefit this Court because the State failed to prove its case.

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STATEMENT OF THE CASE

On, November 27, 2023, Appellant, was indicted for the felony offense of Sex Abuse of Child Continuous: Victim Under 14. (CR 1 at 8). The offense was alleged to have been committed on or about May 10, 2014, continuing through September 10, 2016. (CR 1 at 8). On May 1, 2024, Appellant plead not guilty to the indictment. (RR 5 at 9). On May 7, 2024, the Appellant was found guilty of the offense of Continuous Sexual Abuse of a Young Child, by the Jury. (RR 9 at 89). On May 8, 2024, Appellant was assessed a forty-year (40) sentence, in the Texas Department of Criminal Justice-Institutional Division, by the Jury. (RR 10 at 127).

On May 14, 2024, Appellant timely filed his notice of appeal. (CR 1 at 159).

ISSUE PRESENTED

Point of Error 1: *The evidence was legally insufficient to support the appellant's conviction.*

STATEMENT OF FACTS

Background:

Y.R. is the daughter of Yaneth Resendiz (“Yaneth”) and has three siblings, Mario, Yareli, and Ivan. (RR 5 at 19 and 22). She graduated high school in May of 2021 and is now a department supervisor at Lowes. (RR 5 at 90, 92). Y.R.’s stepfather is Ivan Lopez-Lopez (“Appellant” or “Mr. Lopez”) and has two stepsister’s, Estefania and Sharay. (RR 5 at 25).

Yaneth Resendiz married Appellant when Y.R. was in elementary school. (RR 5 at 25-26). The Appellant was a mechanic who also bought and sold cars. (RR 8 at 95). Y.R. would occasionally go with the Appellant to work and observed the Appellant communicating with his clients in both English and Spanish. (RR 5 at 28). Y.R.'s mother worked with Y.R.'s uncle cleaning pools and worked mainly on weekdays. (RR 5 at 86). However, the primary bread winner for the family was the Appellant. (RR 5 at 86).

When Y.R. was 12 years old, she lived in a two-bedroom trailer. (RR 5 at 29). The Appellant and her mother slept in the main bedroom, while she and her siblings slept in the other room. (RR 5 at 29-30). In her room, there was one bed with a rolling bed underneath it, one twin bed, and one foldable bed. (RR 5 at 95). Y.R. described the condition of the trailer as being well taken care of. (RR 5 at 95).

Y.R. lived and went to school in Guanajuato, Mexico for about a year and a half before moving to Joaquin, Texas. (RR 5 at 110-111).

She lived with her uncle Raul Resendiz ("Raul") in his trailer in Joaquin during April and May of 2015. (RR 5 at 30-31, 38, and RR 7 at 100). Although the Appellant recalled going to pick the kids up from Raul's home in December of 2015. (RR 8 at 103). Y.R., and her siblings, along with her uncle Raul, aunt, and five cousins lived in the trailer. (RR 5 at 100). The first incident occurred inside the restroom of Raul's trailer. (RR 5 at 30-31 and 38). Y.R.'s stated that her mom and

Appellant lived in Raul's home for a couple of weeks; however, the Appellant testified that he had never lived in Joaquin. (RR 5 at 100, 103, and RR 8 at 128).

Once Y.R. left Raul's trailer, she and her family went to live with her stepsister for a couple of months, with no incidents occurring there, and then moved to the trailer on Laterna Lane, in Houston, Texas. (RR 5 at 38).

After living on Laterna Lane for five years, Yaneth and Mr. Lopez bought a house in Beasley, in Fort Bend County. (RR 5 at 114). Y.R. stated that when they moved to the house where her mom currently lives, no incidents occurred. (RR 5 at 41-42). At their new home, Appellant would mainly say verbal sexual things like how good she looked but in a sexual dirty way. (RR 5 at 41-42). Y.R. believed that the Appellant stopped being physical because she was growing up already and had brought it to his attention that she was trying to put a stop to it, and she would complain to him. (RR 5 at 42).

Investigation/Testimony:

Initially, Y.R., anonymously brought in her siblings to the Fort Bend Sheriff's Office stating that Yareli may have made an outcry. (RR 7 at 51). A forensic interview of Yareli resulted in no outcry being made. (RR 7 at 53).

Prior to the report being made, within two weeks of the arrest, a big fight between Y.R.'s mom and stepdad happened, but Y.R. did not know what the fight was about. (RR 5 at 131-132).

On March 18, 2021, Y.R. made an outcry statement to Alejandro Diaz (“Alejandro”); however, with no detail. (RR 7 at 71). While Yaneth was at cosmetology school, she received a text message from Alejandro. (RR 7 at 108-109). Yaneth went home to speak to Y.R. regarding the message that she had just received, then Y.R. disclosed very little information that occurred between her and the Appellant. (RR 7 at 109-111). After speaking to Y.R., Yaneth went to hire an attorney who took her to the police station to make a report. (RR 7 at 111-113).

On March 24, 2021, an initial report was taken by the Fort Bend Sheriff’s Office. (RR 7 at 35). Y.R. and her mom first spoke to Deputy Yadira Rodriguez (“Rodriguez”). (RR 7 at 79). Nathaniel Key (“Key”), formerly employed by the Fort County Sheriff’s Office, was a detective assigned to the Special Crimes Unit during the investigation of this case. (RR 5 at 153). In 2021, he had been investigating child sex crimes for about a year. (RR 7 at 30). Key was assigned to investigate the charge of sexual assault and indecency against the Appellant. (RR 7 at 22). Key had a recorded conversation twice with Y.R. (RR 7 at 42). On one of those calls, he scheduled a forensic examination for Y.R. to occur on March 25, 2021, with the Child Advocacy Center in Richmond. (RR 5 159-160).

The forensic interview was held on March 25, 2021. (RR 7 at 36). Y.R. had a 35–45-minute detailed interview at the Children’s Advocacy Center (“CAC”). (RR 5 at 122-123). The only person in the room with Y.R. during the forensic

examination was the counselor. (RR 5 at 160). Key watched through a live feed from another room. (RR 5 159-160). During the examination, Y.R. described when the incidents took place, she could not give the exact dates. (RR 5 at 160). The first place was in Joaquin, Texas in Shelby County, the second place was at her home on Laterna Lane in Fort Bend County. (RR 5 at 161 & 166). In Y.R.'s report to the police she said her stepfather groped her several times from 2014 to 2017, and the groping began at the end of her sixth-grade year. (RR 5 at 121 & 130). Because Y.R. was still living with the Appellant, the case was given priority and moved on quickly. (RR 7 at 82).

After the report was made, Y.R. spoke to the Appellant in the living room and he apologized for what he did, the damage he caused her and that he did not know what got into him that made him do what he did. (RR 5 at 47). Over an objection of Defense counsel, State's Exhibit 19, a text from Appellant to Y.R., was admitted and translated on the stand, with the translation from a Certified Court Interpreter, Deyanira Walker, being the following:

"He/she asked me and I told her or him that she ask you. I am sorry. I apologize. I don't remember, I don't even remember how it happened. Forgive me, I hurt you. I will find a place to live. I hurt you and I also hurt myself because I love you guys. You are my family. And now I will not be able to be with you guys. I ask for your forgiveness, daughter, and forget it. I ask God to help you." And then another text message says: "What country is the one for the machine?" (RR 5 at 62-63).

Y.R. received the text around the time the report to law enforcement was made, and she never responded to the text. (RR 5 at 68).

Y.R. testified that if her mother had never confronted her, Y.R. is not sure that she would have ever told her because she did not know if she would have the heart to tell her, she did not want to see her mother devastated or feel like she failed Y.R. as a mom. (RR 5 at 83).

On March 26, 2021, Ivan Lopez-Lopez (“Appellant” or “Mr. Lopez”) was arrested. (RR 7 at 36). During Key’s investigation, he did not speak to Deputy Rodriguez and never questioned Alejandro regarding the statement that Y.R. made. (RR 7 at 69, 80). Although Mario was the first witness that Y.R. would have made the outcry to, Key did not interview Mario. (RR 7 at 68-69). After Key’s interview with the Appellant, he did not speak to any other witnesses or receive new evidence. (RR 7 at 28-29). Key did not investigate the scene or speak to anyone in Joaquin, Texas. (RR 7 at 37). At trial, Key described the sexual assault nurse examination (“SANE”) exams being scheduled during the investigation of cases within 120 hours of the alleged assault taken place. (RR 5 at 156-157). Y.R. was not given a SANE exam because time had elapsed between the date Y.R. was last assaulted when she made the outcry. (RR 5 at 168).

Y.R. testified that she did not want to prosecute at the time she reported the Appellant because she was not sure what was really going on, what she was feeling,

and did not know how to manage those feelings. (RR 5 at 73). Y.R. felt part of her childhood had died after Appellant did that, but as time went on, even besides the fact that he did what he did, Appellant tried his best to raise her, and the few little things that Y.R. knows, she learned them from the Appellant. (RR 5 at 74).

After the report was made, Y.R. learned that Sharay had gone through something similar. (RR 5 at 77). Y.R. and Sharay would see each other a couple of times every two months, mainly during the holidays or birthdays; during the family gatherings, it would be Y.R., her siblings, both stepsisters, and their partners and kids. (RR 5 at 78). Y.R. testified that when Sharay or Estafania would go over, they always brought their children, and they would sleep either in the living room or master bedroom. (RR 5 at 82).

Y.R. testified that the first person she did an outcry to was her older brother, Mario, then her ex-boyfriend, next Alejandro Diaz, whom she stated that she did not give details to either of them. (RR 5 at 44-45, 127, & 144). Y.R. told her mom after Alejandro then Y.R. told her current boyfriend. (RR 5 at 44-45). Y.R. testified that when she told her mom it was more of a confirmation because her mom already knew, Y.R. told her when it started but left out the details of the physical part of Appellant touching her body and the penetration. (RR 5 at 45-46). Y.R. testified that her mother was really upset with her because Y.R. never said anything about it, then

Y.R.'s mother confronted her stepdad and reported it to law enforcement. (RR 5 at 46).

During trial, Y.R. recalled a night the Appellant woke her up when she was in the living room, held her arm, then guided her to the restroom. (RR 5 at 31-32). She testified that Appellant did not say anything, and he just locked the door, grabbing her. (RR 5 at 32-34). He leaned her towards the sink with her back facing the sink, and his hands were under her shirt, touching her chest, and then he pulled her pajama pants and underwear all the way down. (RR 5 at 32-34). Y.R. described feeling uncomfortable when the Appellant touched her breasts and vagina with his hands. (RR 5 at 34-35). In the restroom, the Appellant turned her over with her stomach facing the sink then starting to penetrate her vagina while Appellant was shirtless and his pants and underwear on the floor. (RR 5 at 36-37). Y.R. states she was feeling pain everywhere and the penetration of her vagina lasted for three to four minutes. (RR 5 at 37). After it was over, Appellant put his underwear and pants back up, asked Y.R. to get dressed, and told her to stay quiet and go back to sleep, which she went back to the couch to sleep. (RR 5 at 37-38).

Y.R. testified that when she was twelve years old, living on Laterna Lane, the Appellant would grab her by the arm, take her to his room, take their pants off, then the Appellant would touch her on the breasts and vagina and penetrate her. (RR 5 at 39-40). Y.R. testified that he would approach her most of the time that she was in

the living room watching TV with her siblings. (RR 5 at 43). Appellant would not put anything on his penis and Y.R. stated she did not really think much about that at the time. (RR 5 at 43). Y.R. stated that Appellant would threaten her by either giving her “siblings – or the way [her] biological dad did or doing something bad to [her] mom. (RR 5 at 44). A couple of times while Y.R. and Appellant were in the bedroom Y.R.’s younger siblings were looking for her and they would knock on the door and ask Appellant where Y.R. was, to which he would say maybe Y.R. went to the corner store. (RR 5 at 69-70). Y.R. stated that her younger brother was seven, and her little sister was about five or six when this started, but the kids never asked her where she was. (RR 5 at 71-72). As she was growing up Y.R. declared that he treated her differently sometimes because she would be in the wrong when arguing with her mom, but instead of Appellant correcting her, he would just take Y.R.’s side. (RR 5 at 73).

Y.R. testified that Appellant’s behavior lasted between two and three years, happening a couple times a week, then it stopped when she was about to turn 15, he did not grab her anymore. (RR 5 at 40-41). Y.R. indicated that for the entire period from 2014 to 2016 Appellant would do it two times a week for three years. (RR 5 at 116). Y.R. stated that she was repulsed by being around Appellant, and on a scale of 1-10 she was a ten at being scared that her stepdad could do something. (RR 5 at 116-117). Y.R. testified that a month before Appellant’s arrest that he took her to

visit Lamar University but she did not want him to take her, she had been planning on going by herself, and her plan was to pay for school on her own even if it meant taking out student loans. (RR 5 at 118-119). Y.R. testified that she was not afraid of her mom, and it was her mom that made the report on her own and later Y.R. went with her mom to the police station. (RR 5 at 120-121).

Y.R. stated that when she was interviewed, she did not disclose everything that happened at that time because she was scared, embarrassed, and felt ashamed; her heart and head were not in the right place. (RR 5 at 75-76). Y.R. testified that as time went on she became more comfortable with the prosecutors and knew she wanted the information to get out, and her mother had been supportive in the process. (RR 5 at 84-85).

After Appellant's arrest, on March 26th, he agreed to do a recorded interview with Key and Detective Smith. (RR 5 at 169-170). During the interview the Appellant was very cooperative. (RR 7 at 44). The Appellant stated that when he and Y.R. passed each other by in the hallways, they would rub against each other, and Y.R. would not push him away. (RR 5 at 183). The Appellant told Key that it never went that far, and he apologized, stating that what he did was wrong. (RR 5 at 187 & 191). During the interview, the Appellant admitted to Y.R. touching his penis and described Y.R. as a woman, telling Key that he should talk to Y.R.. (RR 5 at 192 & 193). During the interview, Appellant told Key that Y.R. was coming on to him

and he was not getting attention from his wife. (RR 5 at 196). On the witness stand, the Appellant admitted to kissing Y.R. in October of 2019. (RR 8 at 107). He stated that the kiss happened around four times during that day, however, it never happened again. (RR 8 at 128). Appellant never states that he and Y.R. had sex, he stated that his hands were under her underwear. (RR 5 at 196).

Extraneous

Sharay Lopez de Lara, the eldest daughter of Mr. Lopez testified for the prosecution to discuss an incident with the Appellant. (RR 7 at 164). When Sharay learned of the incident between the Appellant and Y.R., she reached out to Y.R. and opened up about her experience with the Appellant. (RR 7 at 173). She lived with the Appellant's brother, Carlos Salgado ("Carlos"), from the time she was 10 years old until she was 20 years old. (RR 162-164). During this time, Mr. Lopez lived on his own and occasionally would sleep over and stay in Sharay and her sister's room in a spare bed. (RR 7 at 165). When Sharay was in 5th grade, around 11 years old, she was sleeping on the top bunk when Mr. Lopez came home intoxicated and stood over her bed, reached out to where she was and attempted to touch her. (RR 7 at 167). Sharay testified that several times, over the course of a week, Mr. Lopez would go into her room, she would scoot as close to the wall as possible so Mr. Lopez could not touch her, but he would. (RR 7 at 167 and 183). Mr. Lopez would reach inside her shirt and rub her chest, if he noticed she was awake, he would whisper "I know

you're awake" then he would go to his own bed. (RR 7 at 167-168). One night, she recalled, it was different, he got on top of her bed, then dragged her off to his bed where she ended up sitting on top of his chest, with Mr. Lopez holding her in a bear hug, where she could not move. (RR 7 at 169-170). Sharay testified that during this incident Mr. Lopez whispered in her ear whether she wanted to know what it felt like to be a woman, then he started to explain that a woman has two holes, one of the holes a person a woman, and it would hurt a little. (RR 7 at 170). Sharay described Mr. Lopez unzipping her pants then she was able to get off and ran to her uncle and aunt's bedroom, where she got help from Carlos. (RR 7 at 170-171). Carlos testified that the incident Sharay described of going to his room with her pants unzipped in untrue. (RR 8 at 54). He stated that the Sharay wore pajamas to bed that did not have a zipper. (RR 8 at 60). Carlos stated that his brother never slept in the room with Sharay, his girlfriend Carla would sleep in a bed in Sharay's room, while Appellant slept on the couch in the living room. (RR 8 at 64).

SUMMARY OF THE ARGUMENT

The evidence is legally insufficient to prove that Appellant is guilty of continuous sexual assault because the witness is not credible. A rational juror could not have found Y.R. credible, she only disclosed to plethora of details after she met with the prosecutors, not her mother, brother, friends, not the investigators, and not

an expert with the Child Advocacy Center that is trained to speak to children about abuse.

ARGUMENT AND AUTHORITIES

SUFFICIENCY

Appellant challenges the legal sufficiency of the evidence to support his conviction. The Court of Criminal Appeals has held that only one standard should be used in a criminal case to evaluate the sufficiency of the evidence to support findings that must be established beyond a reasonable doubt: legal sufficiency. *Brooks v. State*, 323 S.W.3d 893,894-95 (Tex. Crim. App. 2010). Accordingly, the review of the sufficiency of the evidence in this case is under a rigorous and proper application of the legal sufficiency standard of *Jackson v. Virginia*, 443 U.S. 307 (1979). *Brooks*, 323 S.W.3d at 906. When reviewing the sufficiency of the evidence, it is proper to view all of the evidence in the light most favorable to the verdict to determine whether the fact finder was rationally justified in finding guilt beyond a reasonable doubt. *Brooks*, 323 S.W.3d at 899; *Williams v. State*, 235 S.W.3d 742, 750 (Tex. Crim. App. 2007). The Court defers to the fact finder's resolution of conflicting evidence unless the resolution is not rational. *Brooks*, 323 S.W.3d at 902 n.19, 907. Appellant argues the evidence is legally insufficient to support his conviction. Accordingly, the review of the sufficiency of the evidence in this case

under a proper application is the *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979), legal sufficiency standard. *Brooks*, 323 S.W.3d at 905.

STANDARD OF REVIEW

When reviewing the sufficiency of the evidence, this Court views all of the evidence in the light most favorable to the verdict to determine whether the jury was rationally justified in finding guilt beyond a reasonable doubt. *Id.* at 898. *Dewberry v. State*, 4 S.W.3d 735,740 (Tex. Crim. App. 1999); see also *Sharp v. State*, 707 S.W.2d 611,614 (Tex. Crim. App. 1986) (stating the jury may choose to believe or disbelieve any portion of the testimony at trial). The duty as a reviewing court is to ensure that the evidence presented actually supports a conclusion that the defendant committed the crime. *Williams v. State*, 235 S.W.3d 742, 750 (Tex. Crim. App.2007).

ARGUMENT

Sec. 21.02. CONTINUOUS SEXUAL ABUSE OF YOUNG CHILD OR DISABLED INDIVIDUAL.

(a) In this section:

(1) "Child" has the meaning assigned by Section 22.011(c).

(2) "Disabled individual" has the meaning assigned by Section 22.021(b).

(b) A person commits an offense if:

(1) during a period that is 30 or more days in duration, the person commits two or more acts of sexual abuse, regardless of whether the acts of sexual abuse are committed against one or more victims; and

(2) at the time of the commission of each of the acts of sexual abuse, the actor is 17 years of age or older and the victim is:

(A) a child younger than 14 years of age, regardless of whether the actor knows the age of the victim at the time of the offense;

or

(B) a disabled individual.

(c) For purposes of this section, "act of sexual abuse" means any act that is a violation of one or more of the following penal laws: (1) aggravated kidnapping under Section 20.04(a)(4), if the actor committed the offense with the intent to violate or abuse the victim sexually; (2) indecency with a child under Section 21.11(a)(1), if the actor committed the offense in a manner other than by touching, including touching through clothing, the breast of a child; (3) sexual assault under Section 22.011; (4) aggravated sexual assault under Section 22.021; (5) burglary under Section 30.02, if the offense is punishable under Subsection (d) of that section and the actor committed the offense with the intent to commit an offense listed in Subdivisions (1)-(4); (6) sexual performance by a child under Section 43.25; (7)

trafficking of persons under Section 20A.02(a)(3), (4), (7), or (8); and (8) compelling prostitution under Section 43.05.

(d) If a jury is the trier of fact, members of the jury are not required to agree unanimously on which specific acts of sexual abuse were committed by the defendant or the exact date when those acts were committed. The jury must agree unanimously that the defendant, during a period that is 30 or more days in duration, committed two or more acts of sexual abuse.

Although a child victim's uncorroborated testimony alone is sufficient to support a conviction for a sexual offense. *Gonzalez v. State*, 522 S.W.3d 48, 57 (Tex. App.— Houston [1st Dist.] 2017, no pet.); see also TEX. CODE CRIM. PROC. art. 38.07(b)(1), the jury are the exclusive judges of the credibility of the witnesses. Therefore, the jury must still believe a witness. Yolanda Rose was not credible, even on direct testimony as evidenced by the following dialogue with the prosecutor:

Q How old were you when this happened in the trailer? A 12.

Q Say that one more time. A 12.

Q How long did this last? A Between two to three years.

Q How often would he do it? A I'm sorry, what was that?

Q How often? A I'd say a couple of times a week.

Q So the first time that this happened, what grade were you in? A Sixth grade.

(RR 5 at 40).

Q What helps you remember when it stopped? A I was about to turn 15. It didn't really -- I mean, the physical stopped, but it never really like really stopped.

Q What do you mean by that? A He didn't -- I mean, he didn't touch me anymore. He didn't grab me anymore. I think mainly I remember because when we moved to the house that my mom lives in right now, nothing like that really happened. It was mainly verbal sexual things. (RR 5 at 41).

Q When you said that he would come and get you and bring you to his bedroom, how would he approach you? A He wouldn't really say anything. He would just grab me by the hand or by the arm and just guide me to the room.

Q What would you be doing when he came in and grabbed you by the arm? A Most of the time I was in the living room watching TV with my siblings. (RR 5 at 43).

Q Who was the first person that you told about this? A My older brother.

Q Did you tell him any details? A No.

Q Who was the next person that you told? A My ex-boyfriend.

Q Did you tell him any details? A No.

Q Who was the next person that you said something to? A A friend.

Q Who was the friend? A Alejandro.

Q And did you give Alejandro any details? A No.

Q Who was the next person that you told? A My current boyfriend.

Q And when was that? (RR 5 at 44). A I can't remember the date.

Q You said you can't remember a date. Do you remember how old you were?

A 19.

Q Say that one more time. A 19.

Q Who was the next person that you told? Did you tell your mom at any point?

A I told my mom after -- after I told Alejandro.

Q Was that before your current boyfriend? A Yes.

Q Okay. What details did you tell your mom? A I didn't really give my mom much details. It was just more of a confirmation.

Q Confirmation of what? A She -- she knew. She was asking me about it, and I just told her yes. But she would ask me for details, but I never really give her any except for when it first started.

Q Except for when it first started? A Yeah, just like where it had started, but not really the details. (RR 5 at 45).

Q What details did you leave out? A The whole physical thing.

Q What does that mean? A The touching of my body, the penetrating, I didn't give her any details about that.

Q What did your mother do when she learned what little you did tell her? A She was upset with me. She talked with me, just asking me why I never said anything about it. And then she confronted my stepdad about it. (RR 5 at 46).

Q After it was reported, was this something that you wanted prosecuted? A No, not at the time. I wasn't sure what was really going on, what I was feeling. I didn't know how to manage those feelings.

Q Can you tell us a little bit why you were feeling that way? (RR 5 at 73). A Part of me is like my childhood, I guess is - I mean, it died after he did that. But as time went on, even besides the fact that he did what he did, he did try his best to raise me. I mean, the few little things that I know, I learned it from him. So, I mean, that part of my life is what makes all of this confusing. It just hurts. (RR 5 at 74).

Q When you were interviewed, did you disclose everything that happened at that time? A No. (RR 5 at 75).

Q Why not? A I was scared. I was embarrassed. I felt ashamed. I didn't -- my heart and my head were just not in the right place. I didn't know what was going on, but I just -- I choked, I guess. (RR 5 at 76).

Q (By Ms. Ellsworth) Did you ever tell Sharay or Estefania about what had been happening to you? A No.

Q So tell me, if your mother had never confronted you and asked you about it, would you have ever told? A I'm not sure.

Q Why is that? Why are you not sure? A I don't know if I would have had the heart to tell my mom. (RR 5 at 83).

Q (By Ms. Ellsworth) You weren't able to tell your mom very much and then you didn't tell the interviewer all the details either. When did you finally tell about the extent of the abuse?

MR. RIVERA: Objection. Compound question. THE COURT: Overruled as to compound. Please answer. THE WITNESS: I didn't really speak up about it until -- until I met with you guys. Q (By Ms. Ellsworth) When you met with us, why were you then able to tell us about the full extent of the abuse? A As time went by I became more comfortable with y'all and I knew I wanted this to get out. (RR 5 at 84).

No rational juror could have believed the complainant in this case. Her outcry was not until nine (9) years after the alleged behavior by the Appellant. In addition, according to the complainant, if this happened, as she testified to, twice a week for about 3 years, then the Appellant would have committed 288 acts of sexual abuse against the complainant. The complainant's testimony is not credible. Moreover, the complainant told three different people before she told her mother. She never shared any details with these three people, including her mother. It was not until she met with the prosecutors that she conveniently provided more details about the alleged acts the Appellant committed. Moreover, during a police interview, all that Yolanda testified to was that she was groped by her stepfather, the Appellant, several times from 2014 to 2017, which began at the end of her 6th grade school year. There wasn't

anything regarding penetration. Y.R. testified that she did not want to prosecute at the time she reported the Appellant because she was not sure what was really going on, what she was feeling, and did not know how to manage those feelings. (RR 5 at 73). She only disclosed groping, then after speaking to prosecutors, she gets on the stand and testifies to having been assaulted over 250 times, and they were all the same/similar act. A rational juror could not have believed Yolanda. Based upon Yolanda's incredible testimony and the surrounding circumstances, the evidence is clearly insufficient to uphold the Appellant's conviction.

CONCLUSION AND PRAYER

WHEREFORE PREMISES CONSIDERED, Appellant, Ivan Lopez-Lopez respectfully asks that the judgment of the trial court be reversed and that a judgment of acquittal be entered or in the alternative that Appellant's sentence be set aside and for such other and further relief to which Appellant may be justly entitled.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Appellant's Brief is computer-generated, with those portions required to be counted containing 5,225 words according to the word-count function of the application used to create it and complies with the word-count requirements of Rule 9.4, Texas Rules of Appellate Procedure. It is printed in 14-point typeface, except for the footnotes, which are printed in 12-point typeface.

/s/Michael C. Diaz

MICHAEL C. DIAZ

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing instrument has been served on the opposing counsel of record listed below by electronic service on Thursday, March 13, 2025.

Fort Bend County District Attorney's Office

Brian Marcus Middleton

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/s/ Michael C. Diaz

MICHAEL C. DIAZ

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