

EIGHTH COURT OF APPEALS OF TEXAS

Cantu v. State

No. 08-12-00348-CR, 2015 WL 40054 (Tex. App.—El Paso Jan. 30, 2015) · No. 08-12-00348-CR · Decided April 2, 2015

SUMMARY

This document is Robert Anthony Cantu’s Petition for Discretionary Review filed in the Texas Court of Criminal Appeals. The petition challenges the Eighth Court of Appeals’ decision affirming his conviction for sexual assault of a child, arguing that the admission of police officers’ opinions regarding the complainant’s credibility was improperly deemed harmless. The document includes the procedural history, arguments, requested relief, and an appendix containing the court of appeals’ opinion.

CASE DETAILS

COURT	Eighth Court of Appeals of Texas
WRITING FOR THE COURT	Steven L. Hughes; McClure, Chief Justice; Rodriguez, Justice; Hughes, Justice
JURISDICTION	Texas
DECIDED	April 2, 2015
DOCKET	08-12-00348-CR
DISPOSITION	affirmed
PROCEDURAL POSTURE	Cantu appealed his conviction for sexual assault of a child after the trial court admitted testimony from two police detectives that the complainant was truthful and credible. The State conceded the admission was error but argued it was harmless. The court of appeals affirmed.
STANDARD OF REVIEW	Admission of evidence is reviewed for abuse of discretion. Nonconstitutional error is harmless unless it affects the defendant's substantial rights; the court conducts a full harm analysis based on the entire record and reverses only if it has grave doubt that the result was free from the error's substantial effect.
PRECEDENTIAL VALUE	Unpublished and designated Do Not Publish; nonprecedential under the source opinion's designation.
PARTIES	Robert Anthony Cantu v. The State of Texas

TOPICS

evidence harmless error appellate procedure criminal procedure

PRACTICE AREAS

criminal appellate practice criminal evidence sexual assault

QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by admitting police detectives' direct opinions that the complainant was truthful and credible.
2. Whether the erroneous admission of the detectives' credibility testimony affected Cantu's substantial rights and required reversal.

HOLDINGS

1. A witness may not give a direct opinion that another witness is truthful or credible because that testimony invades the jury's province and is inadmissible.
2. The erroneous admission of the detectives' testimony was nonconstitutional error that did not affect Cantu's substantial rights and was therefore harmless.

KEY QUOTATIONS

“As we have previously noted, both lay and expert opinions as to the truthfulness of another witness invade the province of the jury and are inadmissible.” (at 3-4)

“After conducting a full harm analysis of the entire record, we conclude the erroneously-admitted testimony did not affect Appellant’s substantial rights and the error was harmless.” (at 9)

FACTUAL BACKGROUND

A.M., age fourteen at the time of the alleged offense, spent the night at Cantu's residence. She testified that Cantu twice sexually assaulted her while she was sleeping or partially awake, after which she left through a dog door, crossed a backyard wall, and called 911. The sexual-assault examination and DNA testing disclosed no physical or foreign-DNA evidence of the assault, although the nurse observed minor abrasions elsewhere on A.M.'s body. Two detectives testified over objection that A.M. was credible and truthful, and the prosecutor referred to that testimony during closing argument.

PROCEDURAL HISTORY

Cantu was charged with two counts of sexual assault. The first jury could not reach a verdict, and the trial court declared a mistrial after an Allen charge. At the second trial, the jury acquitted Cantu on the sexual-contact count but convicted him on the digital-penetration count, and the trial court assessed two years' confinement. The trial court denied Cantu's motion for new trial. The Eighth Court of Appeals affirmed, concluding that the erroneous admission of the detectives' credibility opinions was harmless nonconstitutional error.

DISPOSITION

affirmed

CASES CITED

- *Arzaga v. State*, 86 S.W.3d 767, 776-77 (Tex. App.—El Paso 2002, no pet.)
- *Brookins v. State*, No. 08-10-00242-CR, 2011 WL 6357786, at *2-3 (Tex. App.—El Paso Dec. 14, 2011, pet. ref'd)
- *Barshaw v. State*, 342 S.W.3d 91, 93-96 (Tex. Crim. App. 2011)
- *Yount v. State*, 872 S.W.2d 706, 712 (Tex. Crim. App. 1993)
- *Rhodes v. State*, 308 S.W.3d 6, 11 (Tex. App.—Eastland 2009, pet. dismiss'd)
- *Schutz v. State*, 63 S.W.3d 442, 443, 445-46 (Tex. Crim. App. 2001)
- *Wiseman v. State*, 394 S.W.3d 582, 584-86 (Tex. App.—Dallas 2012, pet. ref'd)
- *Allen v. United States*, 164 U.S. 492 (1896)