

COURT OF APPEALS OF THE FIFTH DISTRICT OF TEXAS AT DALLAS

JEFFERY MICHAEL WINEBERG v. THE STATE OF TEXAS

No. 05-21-00668-CR · No. 05-21-00668-CR · Decided June 14, 2023

SUMMARY

The Fifth District Court of Appeals at Dallas affirmed as modified a judgment convicting Jeffery Michael Wineberg of continuous sexual abuse of a child and sentencing him to life imprisonment. The court rejected challenges to the sufficiency of the evidence, exclusion of extrinsic impeachment evidence, and admission of an audio recording, among other issues, and sustained the State’s cross-issue concerning modification of the judgment.

CASE DETAILS

COURT	Court of Appeals of the Fifth District of Texas at Dallas
WRITING FOR THE COURT	Craig Smith; Chief Justice Burns; Justice Smith; Justice Breedlove
JURISDICTION	Texas
DECIDED	June 14, 2023
DOCKET	05-21-00668-CR
DISPOSITION	affirmed
PROCEDURAL POSTURE	Wineberg appealed his jury conviction and life sentence for continuous sexual abuse of a child. He raised eight issues concerning sufficiency of the evidence, evidentiary rulings, suppression, cumulative error, and the admission of an outcry witness's testimony. The State filed a cross-issue seeking correction of the judgment.
STANDARD OF REVIEW	Legal sufficiency is reviewed under whether any rational factfinder could have found the essential elements beyond a reasonable doubt, viewing the evidence in the light most favorable to the verdict and deferring to the factfinder's credibility and weight determinations. Evidentiary rulings and the trial court's outcry-witness determination are reviewed for abuse of discretion. Unpreserved evidentiary complaints are not reviewable. Constitutional error involving admission of evidence is reviewed for harmlessness beyond a reasonable doubt under Texas Rule of Appellate Procedure 44.2(a).
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Jeffery Michael Wineberg v. The State of Texas

TOPICS

criminal procedure

evidence

suppression of evidence

authentication

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the evidence was legally sufficient to support the conviction for continuous sexual abuse of a child under fourteen.
2. Whether the trial court erred by excluding chat messages from the victim's Movie Star Planet account as extrinsic evidence of prior inconsistent statements.
3. Whether the trial court erred by excluding or failing to admit internet-search evidence associated with the victim's Google account.
4. Whether the trial court abused its discretion by admitting a digitally enhanced audio recording of the sexual abuse.
5. Whether admission of evidence recovered from Wineberg's cell phone was constitutional error and, if so, harmful beyond a reasonable doubt.
6. Whether alleged trial errors cumulatively denied Wineberg a fair trial.
7. Whether the trial court erred in determining that the forensic interviewer was the proper outcry witness and admitting her testimony under Texas Code of Criminal Procedure article 38.072.
8. Whether the judgment should be modified to accurately state the victim's age and identify all counsel for the State.

HOLDINGS

1. The evidence was legally sufficient to support Wineberg's conviction for continuous sexual abuse of a child because a rational factfinder could find beyond a reasonable doubt that he committed at least two acts of sexual abuse against a child younger than fourteen during a period of at least thirty days.
2. The trial court did not abuse its discretion by excluding the chat messages because Wineberg failed to authenticate them as statements made by the victim.
3. Wineberg failed to preserve his challenge to the exclusion of the Google-search exhibit because he never obtained a ruling on the record concerning its admission.
4. The trial court did not abuse its discretion by admitting the audio recording, including the enhanced version.
5. Even assuming the trial court erred by admitting evidence from Wineberg's illegally seized phone, the error was harmless beyond a reasonable doubt.
6. Wineberg was not entitled to relief under the cumulative-error doctrine because the court found only one assumed error, and that error was harmless.

7. The trial court properly determined that forensic interviewer Rachel McConnell was the first proper outcry witness and properly admitted her testimony.
8. The appellate court had authority to modify the judgment to accurately reflect that the victim was thirteen at the time of the offense and to add the omitted prosecutor's name.

KEY QUOTATIONS

“Based on the unique and overwhelming evidence in this case against appellant, we can conclude beyond a reasonable doubt that the trial court’s admission of appellant’s internet searches did not move the jury from a state of nonpersuasion to one of persuasion as to whether appellant sexually abused E.N. on two or more occasions during a period that was thirty days or more in duration and, thus, was harmless.” (at 25–26)

“That an email on its face purports to come from a certain person’s email address, that the respondent in an internet chat room dialogue purports to identify himself, or that a text message emanates from a cell phone number assigned to the purported author—none of these circumstances, without more, has typically been regarded as sufficient to support a finding of authenticity.” (at 17)

FACTUAL BACKGROUND

Wineberg was the victim's stepfather and was frequently alone with her while her mother worked. The victim testified that Wineberg sexually abused her repeatedly from approximately age eleven until age thirteen, including conduct involving genital and anal contact and penetration. She secretly recorded one incident, and the recording, forensic interviews, medical evidence showing a healed hymenal transection consistent with penetration, and other circumstantial evidence were presented to the jury. The jury convicted Wineberg of continuous sexual abuse of a child and assessed life imprisonment.

PROCEDURAL HISTORY

A Collin County jury convicted Wineberg of continuous sexual abuse of a child, and the trial court assessed life imprisonment. On appeal, the Fifth District Court of Appeals overruled all eight of Wineberg's issues, sustained the State's cross-issue, modified the judgment to state that the victim was thirteen rather than fourteen at the time of the offense and to add a prosecutor's name, and affirmed as modified.

DISPOSITION

affirmed

CASES CITED

- Chaney v. State, 314 S.W.3d 561, 565 (Tex. App.—Amarillo 2010, pet. ref'd)
- Jackson v. Virginia, 443 U.S. 307, 319 (1979)
- Isassi v. State, 330 S.W.3d 633, 638 (Tex. Crim. App. 2010)
- Malik v. State, 953 S.W.2d 234, 240 (Tex. Crim. App. 1997)
- Merritt v. State, 368 S.W.3d 516, 525 (Tex. Crim. App. 2012)
- Clayton v. State, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007)

- Hooper v. State, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007)
- Garner v. State, 523 S.W.3d 266, 271 (Tex. App.—Dallas 2017, no pet.)
- Brooks v. State, 323 S.W.3d 893, 899 (Tex. Crim. App. 2010)
- Wyatt v. State, 23 S.W.3d 18, 30 (Tex. Crim. App. 2000)
- Montgomery v. State, 810 S.W.2d 372, 391 (Tex. Crim. App. 1990) (op. on reh'g)
- De La Paz v. State, 279 S.W.3d 336, 344 (Tex. Crim. App. 2009)
- Tienda v. State, 358 S.W.3d 633, 638–42 (Tex. Crim. App. 2012)
- Angleton v. State, 971 S.W.2d 65, 67 & n.3 (Tex. Crim. App. 1998)
- Hernandez v. State, 60 S.W.3d 106, 108 (Tex. Crim. App. 2001)
- Westbrook v. State, 29 S.W.3d 103, 119 (Tex. Crim. App. 2000)
- Chamberlain v. State, 998 S.W.2d 230, 238 (Tex. Crim. App. 1999)
- Garcia v. State, 792 S.W.2d 88, 91–92 (Tex. Crim. App. 1990)
- Rodgers v. State, 442 S.W.3d 547, 552 (Tex. App.—Dallas 2014, pet. ref'd)
- In re Z.L.B., 102 S.W.3d 120, 122–23 (Tex. 2003) (per curiam)
- Bigley v. State, 865 S.W.2d 26, 27–28 (Tex. Crim. App. 1993)
- Asberry v. State, 813 S.W.2d 526, 529 (Tex. App.—Dallas 1991, pet. ref'd) (en banc)