

COURT OF APPEALS OF TEXAS, TWELFTH COURT OF APPEALS DISTRICT

Miguel Williams, Sr. v. State

No. 12-18-00337-CR · No. No. 12-18-00337-CR · Decided January 15, 2020

SUMMARY

The Texas Twelfth Court of Appeals affirmed Miguel Williams, Sr.'s three convictions for indecency with a child by contact. The court held that although hearsay outcry evidence was improperly admitted because the victim was fifteen years old and therefore outside the applicable statutory age range, any error was harmless because similar evidence was admitted without objection and other evidence supported the convictions.

CASE DETAILS

COURT	Court of Appeals of Texas, Twelfth Court of Appeals District
WRITING FOR THE COURT	Brian Hoyle; Worthen, C.J.; Brian Hoyle, J.; Neeley, J.
JURISDICTION	Texas
DECIDED	January 15, 2020
DOCKET	No. 12-18-00337-CR
DISPOSITION	affirmed
PROCEDURAL POSTURE	Direct appeal from three convictions for indecency with a child by contact following a jury trial.
STANDARD OF REVIEW	The admission of outcry testimony under Texas Code of Criminal Procedure article 38.072 is reviewed for abuse of discretion. Any resulting evidentiary error is reviewed for nonconstitutional harm under Texas Rule of Appellate Procedure 44.2(b), requiring reversal only if the error affected the defendant's substantial rights.
PRECEDENTIAL VALUE	Unpublished memorandum opinion; marked DO NOT PUBLISH.
PARTIES	Miguel Williams, Sr. v. The State of Texas

TOPICS

- hearsay
- evidence
- criminal procedure
- harmless error
- appellate procedure

PRACTICE AREAS

- criminal law
- criminal procedure
- evidence
- appellate practice

QUESTIONS PRESENTED

1. Whether Texas Code of Criminal Procedure article 38.072 authorized admission of the victim's outcry statements when the victim was fifteen years old at the time of the alleged offenses.
2. Whether any error in admitting the outcry testimony and interview evidence affected Williams's substantial rights and required reversal.
3. Whether Williams preserved his complaint regarding the forensic interviewer's testimony and the video interview.

HOLDINGS

1. Article 38.072 did not apply because the victim was fifteen years old at the time of the alleged offenses, whereas the statute applies only when the child victim is younger than fourteen.
2. Williams arguably preserved error as to the victim's mother's testimony, but did not preserve error as to the forensic interviewer's testimony and the video interview because defense counsel disclaimed any further request concerning the statutory outcry procedure.
3. Any error in admitting the outcry evidence was harmless because the victim testified without objection to the same abuse in considerable detail, and other evidence independently supported the convictions.

KEY QUOTATIONS

“Accordingly, even though the outcry evidence should not have been admitted under Article 38.072, we have fair assurance that it did not influence the verdict or had but slight effect.” (at 4)

FACTUAL BACKGROUND

Williams was accused of touching the fifteen-year-old victim's genitals on three occasions with intent to gratify his sexual desire. The State introduced testimony from the victim's mother, a forensic interviewer, and a video interview as outcry evidence, over Williams's hearsay objections. The victim testified at trial in considerable detail without objection, and three adult brothers testified that Williams had sexually abused them when they were younger.

PROCEDURAL HISTORY

Williams was indicted for continuous sexual abuse of a child and pleaded not guilty. During trial, the State abandoned that charge and pursued three lesser-included counts of indecency with a child by contact. The jury convicted Williams on all three counts, assessed twenty years' imprisonment and a \$10,000 fine for each offense, and the trial court ordered the sentences to run consecutively. Williams appealed, challenging the admission of outcry hearsay evidence.

DISPOSITION

affirmed

CASES CITED

- Soliz v. State, 353 S.W.3d 850, 854 (Tex. Crim. App. 2011)
- Sanchez v. State, 354 S.W.3d 476, 484 (Tex. Crim. App. 2011)
- Lopez v. State, 343 S.W.3d 137, 140 (Tex. Crim. App. 2011)
- Long v. State, 800 S.W.2d 545, 547-48 (Tex. Crim. App. 1990)
- Lamerand v. State, 540 S.W.3d 252, 258-60 (Tex. App.—Houston [1st Dist.] 2018, pet. ref'd)
- Sandoval v. State, 409 S.W.3d 259, 287-88 (Tex. App.—Austin 2013, no pet.)
- Kirby v. State, 208 S.W.3d 568, 574 (Tex. App.—Austin 2006, no pet.)
- Casey v. State, 215 S.W.3d 870, 885 (Tex. Crim. App. 2007)
- Nino v. State, 223 S.W.3d 749, 754 (Tex. App.—Houston [14th Dist.] 2007, no pet.)
- Barshaw v. State, 342 S.W.3d 91, 93 (Tex. Crim. App. 2011)
- Anderson v. State, 717 S.W.2d 622, 628 (Tex. Crim. App. 1986)
- Garner v. State, 523 S.W.3d 266, 271 (Tex. App.—Dallas 2017, no pet.)
- West v. State, 121 S.W.3d 95, 105 (Tex. App.—Fort Worth 2003, pet. ref'd)
- Baez v. State, 486 S.W.3d 592, 598-99 (Tex. App.—San Antonio 2016, pet. ref'd)

OPINION

PER CURIAM.

NO. 12-18-00337-CR IN THE COURT OF APPEALS TWELFTH COURT OF APPEALS DISTRICT TYLER, TEXAS MIGUEL WILLIAMS, SR., § APPEAL FROM THE 369TH APPELLANT V. § JUDICIAL DISTRICT COURT THE STATE OF TEXAS, APPELLEE § ANDERSON COUNTY, TEXAS MEMORANDUM OPINION Miguel Williams, Sr., appeals his three convictions for indecency with a child by contact.

In his sole issue on appeal, Appellant argues that the trial court abused its discretion in admitting outcry hearsay evidence. We affirm. BACKGROUND Appellant was indicted for continuous sexual abuse of a child. He pleaded “not guilty” to the offense and the matter proceeded to a jury trial. During the ensuing trial, the State abandoned the continuous sexual abuse charge because the victim was fifteen years old at the time of the offenses.

1 Instead, the State pursued three counts of the lesser-included offense of indecency with a child by contact. 2 At trial, the State offered testimony from the victim’s mother and the forensic interviewer who interviewed the victim, along with the video interview.

The trial court admitted the evidence over Appellant’s objections. The victim testified concerning the abuse, alleging that Appellant 1 See TEX. PENAL CODE ANN. § 21.02(b)(2) (West 2019) (requiring that child must be younger than fourteen years of age at time of each act of sexual abuse to support continuous sexual abuse of a young child offense). 2 See Tex. PENAL CODE ANN. § 21.11(a)(1), (c)(1) (West 2019); Soliz v. State, 353 S.W.3d 850, 854 (Tex.

Crim. App. 2011) (holding indecency with a child is lesser-included offense of continuous sexual abuse of child). touched the victim's genitals on three occasions under circumstances indicating that Appellant intended to gratify his sexual desire.

The victim's three adult brothers testified that they also suffered from sexual abuse by Appellant when they were children and teenagers. 3 The jury convicted Appellant of all three counts of indecency with a child by contact.

After a punishment hearing, the jury assessed twenty years of imprisonment and a \$10,000 fine on each offense. In its judgment, the trial court ordered that Appellant consecutively serve those sentences. This appeal followed. OUTCRY TESTIMONY In his sole issue, Appellant contends that the statute authorizing hearsay outcry statements does not apply because the victim was fourteen years of age or older at the time of the offenses, and therefore the trial court abused its discretion in admitting the outcry evidence.

Standard of Review and Applicable Law Hearsay is an out-of-court statement offered for the truth of the matter asserted, and is generally inadmissible unless a statute, the rules of evidence, or other rules prescribed under statutory authority provide otherwise. See TEX. R. EVID. 801, 802; Sanchez v. State, 354 S.W.3d 476, 484 (Tex. Crim. App. 2011). Texas Code of Criminal Procedure Article 38.072 allows the admission of a hearsay statement made to an outcry witness by certain abuse victims, including children under the age of fourteen who are victims of a sexual offense.

TEX. CODE CRIM. PROC. ANN. art. 38.072 (West Supp. 2019); Lopez v. State, 343 S.W.3d 137, 140 (Tex. Crim. App. 2011). The provisions of Article 38.072 are mandatory. Long v. State, 800 S.W.2d 545, 547 (Tex. Crim. App. 1990).

We review a trial court's admission of outcry testimony under Article 38.072 for an abuse of discretion. Lamerand v. State, 540 S.W.3d 252, 258 (Tex. App.—Houston [1st Dist.] 2018, pet. ref'd). The erroneous admission of evidence is nonconstitutional error. Sandoval v. State, 409 S.W.3d 259, 287–88 (Tex. App.—Austin 2013, no pet.); Kirby v. State, 208 S.W.3d 568, 574 (Tex.

App.—Austin 2006, no pet.); see Casey v. State, 215 S.W.3d 870, 885 (Tex. Crim. App. 2007); see also Nino v. State, 223 S.W.3d 749, 754 (Tex. App.—Houston [14th Dist.] 2007, no pet.) 3 See TEX. CODE CRIM. PROC. ANN. art. 38.37, §2(a)(1)(C), (b) (West 2018) (authorizing admission of extraneous offense evidence for any relevant purpose, including character conformity, for certain offenses such as indecency with a child).

2 (erroneous admission of outcry testimony). Nonconstitutional error requires reversal only if it affects the substantial rights of the accused. See TEX. R. APP. P. 44.2(b); Barshaw v. State, 342 S.W.3d 91, 93 (Tex. Crim. App. 2011).

We will not overturn a criminal conviction for nonconstitutional error if, after examining the record as a whole, we have fair assurance the error did not influence the jury or influenced the jury only slightly. *Barshaw*, 342 S.W.3d at 93; *Kirby*, 208 S.W.3d at 574. Inadmissible evidence can be rendered harmless if other evidence at trial is admitted without objection and it proves the same fact that the inadmissible evidence sought to prove.

See *Anderson v. State*, 717 S.W.2d 622, 628 (Tex. Crim. App. 1986). Discussion In relevant part, the outcry statute applies only in cases where the child victim is younger than fourteen years of age. TEX. CODE CRIM. PROC. ANN. art. 38.072, § 1. Appellant contends, and we agree the record reflects, that the victim was fifteen at the time of the alleged acts of abuse, rendering the statute inapplicable.

The parties were evidently aware of this fact because the State abandoned the continuous sexual abuse offense, which also requires that the victim be under the age of fourteen. The State responds that Appellant failed to preserve error for our consideration of this issue, and that in any event, any error in admitting the outcry evidence is harmless. When the State offered testimony from the victim's mother concerning the outcry, Appellant objected generally to "hearsay" and the State responded that she was a proper outcry witness.

The trial court overruled the objection. With regard to the forensic interviewer's testimony and the video interview evidence, the following exchange took place: [DEFENSE COUNSEL]: Judge, I would object to hearsay. It's clearly not an excited utterance. It's weeks after the initial outcry. I don't think there's any exception to the hearsay rule that would allow it.

THE COURT: The objection is overruled. State's 2 [forensic interview video] is admitted. (State's Exhibit No. 2 was offered and received) [PROSECUTOR]: For the record, the exception to hearsay rule we're doing is it was filed [as] a notice of outcry of under -- the Code of Criminal Procedure, under the rules for outcry witnesses of a child, we've filed this.

Are you requesting anything under that? [DEFENSE COUNSEL]: No. [PROSECUTOR]: So, that's how we're saying it's admissible, Your Honor. THE COURT: Okay. State's 2 is admitted. 3 Generally, an objection that a statement is "hearsay" will be considered sufficient to have apprised the trial court of a defendant's complaint that one or more of the requirements of Article 38.072 have not been met.

Long, 800 S.W.2d at 548. Appellant arguably preserved error with regard to the testimony of the victim's mother, but not with respect to the forensic interviewer's testimony and the video interview due to his counsel's disclaimer. See *id.* Even assuming Appellant preserved error, we conclude that Appellant was not harmed by any of the outcry evidence.

The testimony of the victim's mother was brief and contained only the basic accusation that Appellant told the victim to remove his clothing. The forensic interviewer's testimony and the

video contained more detail concerning the nature of the allegations.

However, the victim testified at trial, without objection, concerning the acts of abuse in considerable detail. Furthermore, Appellant's counsel cross-examined the victim, testing his consistency in describing the details of the abuse, such as the time and place where the abuse occurred, as well as whether the victim had any bias or motives to fabricate the allegations.

The testimony of a child victim alone is sufficient to support convictions for the alleged offenses here. See TEX. CODE CRIM. PROC. ANN. art. 38.07 (West Supp. 2018); *Garner v. State*, 523 S.W.3d 266, 271 (Tex. App.—Dallas 2017, no pet.).

Moreover, as we previously stated, any error in admitting outcry testimony is generally harmless when the same or similar evidence is admitted without objection at another point in the trial, such as in the present case when the victim provides detailed trial testimony of the abuse. See *Lamerand*, 540 S.W.3d at 259–60 (holding that any error in admitting outcry testimony under Article 38.072 was harmless when child testified at trial to same facts contained in outcry); see also *West v. State*, 121 S.W.3d 95, 105 (Tex.

App.—Fort Worth 2003, pet. ref'd) (same). Finally, three of the victim's adult brothers also testified Appellant committed similar acts of sexual abuse against them when they were children and teenagers. In fact, the brothers' disclosures to each other that they suffered abuse when they were younger led to the discovery of the victim's abuse in this case.

In this particular case, such extraneous offense evidence was admissible for any relevant purpose including character conformity evidence. See TEX. CODE CRIM. PROC. ANN. art. 38.37, § 2(b); *Baez v. State*, 486 S.W.3d 592, 598-99 (Tex. App.—San Antonio 2016, pet. ref'd).

Accordingly, even though the outcry evidence should not have been admitted under Article 38.072, 4 we have fair assurance that it did not influence the verdict or had but slight effect. See *Barshaw*, 342 S.W.3d at 93; See *Lamerand*, 540 S.W.3d at 259–60; see also *West*, 121 S.W.3d at 105. Appellant's sole issue is overruled. DISPOSITION Having overruled Appellant's sole issue, we affirm the trial court's judgment.

BRIAN HOYLE Justice Opinion delivered January 15, 2020. Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J. (DO NOT PUBLISH) 5 COURT OF APPEALS TWELFTH COURT OF APPEALS DISTRICT OF TEXAS JUDGMENT JANUARY 15, 2020 NO. 12-18-00337-CR MIGUEL WILLIAMS, SR., Appellant V. THE STATE OF TEXAS, Appellee Appeal from the 369th District Court of Anderson County, Texas (Tr.Ct.No.

369CR-17-33293) THIS CAUSE came to be heard on the appellate record and briefs filed herein, and the same being considered, it is the opinion of this court that there was no error in the judgment. It is therefore ORDERED, ADJUDGED and DECREED that the judgment of the court

below be in all things affirmed, and that this decision be certified to the court below for observance.

Brian Hoyle, Justice. Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.

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