

Affirmed and Opinion Filed March 22, 2016



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

No. 05-15-00688-CR

RONAL ORDONEZ-OROSCO, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 219th Judicial District Court
Collin County, Texas
Trial Court Cause No. 219-81465-2014**

MEMORANDUM OPINION

Before Justices Francis, Lang-Miers, and Myers
Opinion by Justice Francis

Ronal Ordonez-Orosco appeals his conviction for continuous sexual abuse of P.P., a child younger than fourteen years of age. After the jury found him guilty, the trial court assessed punishment at fifty years in prison. In a single issue, appellant claims he was denied his right to confront P.P. when the trial court allowed her to testify at trial through closed circuit television. We affirm.

In January 2014, Plano police detective Jon Hoffman was assigned to investigate a case involving P.P., a thirteen-year-old girl who told school officials she had been raped by a fellow student and was pregnant. Hoffman arranged for Lisa Martinez of the Child Advocacy Center to interview P.P. who initially identified her attacker as C.G. As the investigation continued, P.P. admitted that appellant, her uncle, had sexually assaulted her, not C.G. When P.P. gave birth in April 2014, investigators gathered DNA samples from P.P., C.G., appellant, and the baby. The

DNA analysis excluded C.G. as the possible biological father of P.P.’s baby but could not exclude appellant. Tests showed the probability of appellant being the baby’s biological father was 99.99% as compared to an untested, unrelated male in the North American Hispanic population; the combined paternity index of the fifteen genetic areas tested was 1,324,477 to 1.

At trial, the State introduced the testimony of the detectives who investigated the offense, the DNA experts who tested the genetic material, and the forensic interviewer from the Child Advocacy Center who interviewed P.P. Before the State called P.P. to testify, the trial court held a hearing outside the jury’s presence. Based on the testimony of several witnesses, the trial court determined, despite appellant’s objections, that P.P. should be allowed to testify outside of appellant’s physical presence by way of closed circuit television. After hearing P.P.’s testimony and other evidence, the jury found appellant guilty, and the trial court assessed punishment at fifty years in prison.

In his sole issue, appellant argues he was denied his constitutional right to confront and question P.P. at trial when the trial court allowed her to testify by closed circuit television. He contends the trial court abused its discretion because P.P. suffered “nothing more than nervousness, excitement and some reluctance to testify” which he characterized as “de minimis.”

The Sixth Amendment to the United States Constitution provides that “[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him.” U.S. Const. amend. VI. The principal concern of the Confrontation Clause is “to ensure the reliability of the evidence against a criminal defendant by subjecting it to rigorous testing in the context of an adversary proceeding before the trier of fact.” *Maryland v. Craig*, 497 U.S. 836, 845 (1990). The right to confrontation is not absolute, and Texas courts have allowed witnesses to testify electronically when the witness was seriously ill, on active military duty in another country, or a child. *See Gonzales v. State*, 818 S.W.2d 756, 764 (Tex. Crim. App. 1991)

(child); *Rivera v. State*, 381 S.W.3d 710, 712–13 (Tex. App.—Beaumont 2012, pet. ref’d) (military); *Paul v. State*, 419 S.W.3d 446, 459 (Tex. App.—Tyler 2012, pet. ref’d) (health).

With respect to children, “if the State makes an adequate showing of necessity, the state interest in protecting child witnesses from the trauma of testifying in a child abuse case is sufficiently important to justify the use of a special procedure that permits a child witness in such cases to testify at trial against a defendant in the absence of face-to-face confrontation with the defendant.” *Marx v. State*, 987 S.W.3d 577, 580 (Tex. Crim. App. 1999) (quoting *Craig*, 497 U.S. at 855). The necessity justifying the use of such a special testimonial procedure in a child abuse case may be shown if the trial court determines that use of the procedure is necessary to prevent significant emotional trauma to the child witness caused by the defendant’s presence. *Id.*

The key inquiry in these cases is whether the method of electronic testimony used by the State preserves the “salutary effects of face-to-face confrontation” relevant to a Sixth Amendment analysis. *See Stevens v. State*, 234 S.W.3d 748, 782 (Tex. App.—Fort Worth 2007, no pet.) (citing *Craig*, 497 U.S. at 845–46). These salutary effects include the witness testifying under oath (or other admonishment appropriate to the child’s age and maturity to testify truthfully) and being subject to cross-examination, in addition to the factfinder’s ability to observe the witness’s demeanor, even if only on a video monitor. *See Craig*, 497 U.S. at 845–46; *Marx*, 987 S.W.2d at 580; *Gonzales*, 818 S.W.2d at 762–64.

At the start of the second day of trial, the trial court held the hearing outside the jury’s presence to determine whether to allow P.P. to testify by closed circuit television. Four witnesses testified. P.P.’s counselor, Gina Harwood, told the court she received several phone calls the previous day, asking her to come to the courthouse because it was the first day of trial and P.P. was “not doing well.” When Harwood arrived, P.P. was in the attorney’s lounge, wrapped in a blanket, “nonresponsive and visibly shaking.” P.P. appeared to be having a seizure

with her arms and torso visibly shaking. Harwood described her as “incredibly overwhelmed [and] in a state of panic.” After about ninety minutes, Harwood was able to get P.P. to say a few words but reported that “talking was difficult for her.” She eventually got P.P. up and walking around the courthouse but P.P.’s body continued to “shake and jolt.” Harwood believed P.P.’s fear was so overwhelming that she was disassociating. According to Harwood, in her nine-year career as a counselor, she had not seen a child in that state. She testified P.P. would be traumatized and revictimized if she had to testify in front of appellant.

Pamela Perez and her husband had been “kinship guardians” for P.P. until a foster family was found. Perez, a nurse, saw P.P. in the courtroom during the first day of trial and described seeing anxiety, extreme nervousness, and fear. P.P. had a “full-blown anxiety attack” and left the courtroom. P.P. was hyperventilating, sweating profusely, and shaking, and she passed out after leaving the courtroom.

CASA volunteer Mary Ingram and CPS conservatorship worker Angelica Gallegos each told the court P.P. was in emotional distress when they saw her. Ingram said P.P. had no family support since her outcry. She is raising her child by herself aided by “people who were previous strangers.” After viewing her in court, Ingram said P.P. appeared to be suffering physically and emotionally. According to Gallegos, P.P. was terrified and looked shocked when she entered the courtroom. She started crying and screaming; she could not talk and was shaking. Gallegos said this was the first time she had worked with a child who reacted as severely as P.P. did. Both women testified they were concerned for P.P.’s welfare if she had to testify in open court. Gallegos also noted that P.P. cried out for her father who had been murdered when P.P. was four years old, a murder that P.P. witnessed.

After hearing this testimony and considering the applicable law, the trial court concluded P.P. would be allowed to testify remotely through closed circuit television in the presence of the

trial court, an attorney for each side, the court reporter, and Harwood; appellant, the jury, and remaining counsel for each side watched from the courtroom. Following the State's direct examination, appellant, through trial counsel, thoroughly cross-examined P.P.

The record reflects P.P. was extremely emotional and traumatized by seeing appellant, to the point of hyperventilating and passing out. The closed-circuit-television procedure preserved the salutary effects of face-to-face confrontation: P.P. testified under oath, was subject to cross-examination and the jury was able to observe P.P.'s demeanor. *See Craig*, 497 U.S. at 845–46; *Marx*, 987 S.W.2d at 580. After reviewing the record, we cannot conclude the trial court erred by allowing the procedure or that appellant was denied his Sixth Amendment right to confrontation. We overrule appellant's sole issue.

We affirm the trial court's judgment.

/Molly Francis/
MOLLY FRANCIS
JUSTICE

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

JUDGMENT

RONAL ORDONEZ-OROSCO, Appellant

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Opinion delivered by Justice Francis,
Justices Lang-Miers and Myers
participating.

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

Judgment entered March 22, 2016.