AFFIRM; and Opinion Filed April 19, 2017.

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-16-00170-CR

KAREASE LATOYA PETERSON, Appellant
V.
THE STATE OF TEXAS, Appellee

On Appeal from the Criminal District Court No. 6
Dallas County, Texas
Trial Court Cause No. F-1354557-X

MEMORANDUM OPINION

Before Justices Bridges, Evans, and Schenck
Opinion by Justice Schenck

Appellant Karease Latoya Peterson appeals from her conviction for aggravated sexual assault of a child. After appellant pleaded guilty, the trial court held a sentencing hearing, found her guilty, and sentenced her to fifteen years in prison. In a single issue, appellant contends that the State failed to offer sufficient evidence to support her conviction as required under article 1.15 of the Texas Code of Criminal Procedure. TEX. CODE CRIM. PROC. ANN. art. 1.15 (West 2005). For the reasons set forth in this opinion, we overrule appellant's issue and affirm the trial court's judgment. Because all issues are settled in the law, we issue this memorandum opinion. TEX. R. APP. P. 47.4.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant's live-in boyfriend, Matthew Jones, was charged with and pleaded guilty to continuous sexual assault of appellant's daughter G.P. Jones impregnated G.P. twice. G.P. was

13 years of age the first time and the record does not indicate her age at the second pregnancy. G.P. received no prenatal care and the first child died within five days of birth. Appellant knew of the abuse and continued to allow Jones to live with her and her children and eventually allowed Jones to take the children with him when he moved out of her house.

Appellant was originally indicted for continuous sexual abuse of G.P. The indictment was later amended to reduce the charge to aggravated sexual assault of a child. Appellant pleaded guilty to the reduced charge in writing on December 14, 2015, seeking deferred adjudication, and concurrently waiving her right to a jury trial. At the same time, she signed a written confession whereby she stipulated that she "intentionally and knowingly cause[d] the penetration of the female sexual organ of [G.P.], a child younger than 14 years of age . . . by the sexual organ of Matthew Jones."

Appellant entered her plea in open court. During the proceeding, the State presented appellant's judicial confession and appellant entered her plea of guilty and acknowledged that she was doing so freely and voluntarily. The trial court accepted appellant's plea, found the evidence presented was sufficient to substantiate her guilt, and recessed the case for a presentence investigation. When the case reconvened, the trial court took judicial notice of the presentence investigation and heard testimony offered by both parties. At the end of the proceeding, the trial court found appellant guilty of aggravated sexual assault of a child, and assessed punishment at 15 years' confinement in the penitentiary.

Appellant now asserts that her judicial confession is insufficient to support her conviction because she did not stipulate to the commission of sexual assault as an accomplice to Jones under the law of parties. In other words, appellant claims because someone else performed the act of penetration, she cannot be found guilty of the offense unless there is proof under the law of the parties that she committed an act with the intent to promote or assist the other person's conduct.

DISCUSSION

Where the defendant was not the principal actor, proof of culpability under the law of parties doctrine is essential. *Goff v. State*, 931 S.W.2d 537, 544 (Tex. Crim. App. 1996). A principal is one who enters into a relationship with another while a crime is being committed, and, knowing unlawful intent, aids by acts the commission of an offense, or endeavors to secure safety of the participants. *Hardie v. State*, 144 S.W.2d 571, 574 (Tex. Crim. App. 1940). In a sexual assault case, the act of assistance need not involve direct sexual contact by the defendant but may consist of other relevant conduct making the victim available. *Cuington v. State*, No. 05-93-01903-04-CR, 1996 WL 317096, at *5 (Tex. App.—Dallas May 31, 1996, no pet.) (not designated for publication).

Appellant cites various cases involving the law of parties, but each of those cases involved inapposite offenses and circumstance to this case.[1] Instead, we find this Court's decision in *Cuington v. State*, to be instructive here and to demonstrate appellant can be held responsible for the sexual assault of her daughter as a principal actor. 1996 WL 317096, at *5. In *Cuington*, the jury did not receive a jury instruction on law of the parties. Thus, this Court considered whether Cuington's conduct alone could lead any rational trier of fact to find the essential elements of aggravated sexual assault beyond a reasonable doubt. We concluded it did. Like appellant, Cuington was not the person who actually performed the act of sexual assault and the indictment alleged that Cuington "knowingly[ ] and intentionally cause[d] the penetration of the anus of [the victim] . . . without . . . consent . . . by means of an object, to-wit: the sexual organ of Frank Robinson." This Court noted that Cuington created an opportunity for Robinson

[1] The cases cited by appellant are: *Zuckerman v. State*, 591 S.W.2d 495, 496 (Tex. Crim. App. 1979) (theft case in which the jury was authorized to convict appellant on a finding that his co-defendant committed the offense, without a finding that appellant personally committed the offense, or that he was criminally responsible for the acts of his co-defendant); *Wooden v. State*, 101 S.W.3d 542, 545 (Tex. App. Fort Worth 2003) (aggravated robbery case appellant was alleged to be a party to the offense, not a principal); *Scott v. State*, 946 S.W.2d 166, 168 (Tex. App. Austin 1997, pet. ref.) (robbery case evidence showed that appellant (1) drove Loving and another codefendant to the place where the robbery occurred, (2) waited for the codefendants in his car, (3) drove codefendants from the scene of the robbery, and (4) after leaving the scene, the codefendants told appellant they had committed robbery and gave appellant one hundred dollars was not sufficient to establish he was a party to the offense).

to commit sexual assault, provided a secluded place for Robinson to commit sexual assault, suggested that Robinson commit sexual assault, and taunted and intimidated the victim into compliance. We concluded that based upon this evidence a rational trier of fact could have found beyond a reasonable doubt that "but for" Cuington's conduct, the victim would not have been sexually assaulted. "A person is criminally responsible if the result would not have occurred but for his conduct, operating either alone or concurrently with another cause, unless the concurrent cause was clearly sufficient to produce the result and the conduct of the actor clearly insufficient." TEX. PENAL CODE ANN. § 6.04(a) (West 2011).

In this case, Appellant confessed to *causing* the penetration. She confessed as a principal; and just as in *Cuington*, the instrumentality just happened to be the sexual organ of another person. Thus, the State did not have to prove application of the law of parties to support her conviction. Rather, the State had to present evidence establishing appellant's guilt for the offense of aggravated sexual assault in addition to and independent of her plea of guilty to the offense. TEX. CODE CRIM. PROC. ANN. art. 1.15; *Menefee v. State*, 287 S.W.3d 9, 13–14 (Tex. Crim. App. 2009). The evidence does not have to establish the defendant's guilt beyond a reasonable doubt but must embrace every element of the offense charged. *Staggs v. State*, 314 S.W.3d 155, 159 (Tex. App.—Houston [1st Dist.] 2010, no pet.).

As stated above, appellant was indicted for aggravated sexual assault of a child. In order to substantiate appellant's guilty plea to the offense as charged, the State had to present evidence appellant intentionally or knowingly caused the unlawful penetration of a child younger than 14 years of age by any means. TEX. PENAL CODE ANN. § 22.021(a)(1)(B)(i) & (2)(B) (West 2014). The State presented a written confession signed by appellant and approved by the trial court, stating, in part:

> On the 10th day of March 2009, in Dallas County, Texas, I did unlawfully then and there, intentionally and knowingly cause the penetration of the female sexual

> organ of [G.P.], a child younger than 14 years of age . . . by the sexual organ of Matthew Jones.

This confession embraces every element of the offense and satisfies the requirements of article 1.15. A judicial confession alone, is sufficient to satisfy article 1.15 and sustain a conviction on a guilty plea. *Dinnery v. State*, 592 S.W.2d 343, 353 (Tex. Crim. App. 1980) (op. on reh'g).

Appellant argues alternatively, if she committed the offense of aggravated sexual assault, she did so under duress. Duress is an affirmative defense and must be proved by a preponderance of the evidence. TEX. PENAL CODE ANN. § 2.04(d) (West 2011). The actor must show that she engaged in criminal conduct due to compulsion by threat of imminent death or serious bodily injury that would render a person of reasonable firmness incapable of resisting the pressure. TEX. PENAL CODE ANN. § 8.05 (a) & (c). This defense is not available to a person who recklessly places herself in a situation where such compulsion was probable. *Id.* § 8.05(d).

The record in this case shows Jones told appellant he "was doing things" with her 12 year old daughter but had not had sex with her yet. At the time Jones told appellant this, he had not hit or threatened appellant or been mean to her children. Thus, at that time she was not under compulsion to engage in criminal conduct. If later she was compelled to do so, it was only because she recklessly placed herself in a situation where it was probable.

While appellant calls this Court's attention to the fact that she is borderline intellectual functioning, appellant acknowledges that she is not asserting an *Atkins* claim in this case, but rather raises the issue to bolster her compulsion argument. *See Atkins v. Virginia*, 536 U.S. 304 (2002). The trial court was aware of appellant's intellectual functioning by virtue of the psychiatrist's report on his evaluation of appellant for competency to stand trial, in which he found her competent to do so. Based upon the record before this Court, we conclude appellant failed to establish by a preponderance of the evidence that she committed the offense under duress.

We overrule appellant's sole issue.

CONCLUSION

We affirm the trial court's judgment.

/David J. Schenck/
DAVID J. SCHENCK
JUSTICE

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TEX. R. APP. P. 47

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Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

KAREASE LATOYA PETERSON,
Appellant

No. 05-16-00170-CR V.

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Opinion delivered by Justice Schenck.
Justices Bridges and Evans participating.

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

Judgment entered this 19th day of April, 2017.