

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-02-00584-CR

Bobby Mitchell, Appellant

v.

The State of Texas, Appellee

**FROM THE DISTRICT COURT OF CALDWELL COUNTY, 274TH JUDICIAL DISTRICT
NO. 2001-155, HONORABLE JACK ROBISON, JUDGE PRESIDING**

MEMORANDUM OPINION

A jury found appellant Bobby Mitchell guilty of two counts of sexual assault, two counts of indecency with a child by contact, and one count of indecency with a child by exposure. *See* Tex. Pen. Code Ann. § 21.11 (West 2003), § 22.011 (West Supp. 2004). The district court imposed a five-year prison term and a \$5000 fine for each count. Appellant's only contention on appeal is that the court erred by overruling his motion to sever. We will overrule the contention and affirm the conviction.

The indictment contained seven counts alleging offenses against three complainants committed on six different dates.¹ Appellant filed a pretrial motion to sever. At a hearing, the State agreed that appellant was entitled to a severance with respect to the four counts alleging offenses

¹ The jury found appellant not guilty on one count of sexual assault and, in conformity to the court's charge, did not reach the count alleging attempted sexual assault.

committed before September 1, 1997. *See* Tex. Pen. Code Ann. 3.04(a) (West 2003) (mandatory severance). The court denied the severance motion with respect to the three counts alleging offenses committed after September 1, 1997. *See id.* § 3.04(c) (discretionary severance).² Subsequently, on the day trial began, appellant withdrew the severance motion in open court and announced his desire to be tried on all counts in a single proceeding.

Because appellant voluntarily withdrew the motion to sever, no error is presented. The point of error is overruled and the judgment of conviction is affirmed.

W. Kenneth Law, Chief Justice

Before Chief Justice Law, Justices B. A. Smith and Patterson

Affirmed

Filed: April 22, 2004

Do Not Publish

² Subsection (c) became effective on September 1, 1997, and applies only to offenses committed on or after that date.