Affirmed as modified; Opinion Filed May 17, 2018.

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-16-00846-CR

DOUGLAS ALLEN MACHUTTA, Appellant
V.
THE STATE OF TEXAS, Appellee

No. 05-16-01160-CR

THE STATE OF TEXAS, Appellant
V.
DOUGLAS ALLEN MACHUTTA, Appellee

On Appeal from the Criminal District Court No. 7
Dallas County, Texas
Trial Court Cause No. F15-23625-Y

MEMORANDUM OPINION

Before Justices Francis, Evans, and Boatright
Opinion by Justice Evans

Douglas Allen Machutta was indicted for continuous sexual abuse of a child. The jury was instructed on continuous sexual abuse of a child or, alternatively, three lesser included offenses of aggravated sexual assault of a child. The jury found appellant guilty of the three lesser included offenses, and the trial court sentenced appellant to twenty-five years' imprisonment for each lesser included offense, to be served consecutively. Appellant filed a motion for new trial, which the trial court granted to the extent the judgment was modified to show only one conviction for

aggravated sexual assault of a child with a sentence of twenty-five years' imprisonment. These appeals followed.

The State contends that the trial court erred in granting appellant's motion for new trial and modifying its judgment to vacate two of the three convictions. Appellant contends that if this Court grants the relief requested by the State in its appeal and reinstates the original three-count judgment, the consecutive sentences order should be deleted because it is unauthorized by law, or in the alternative, disproportionate under the U.S. Constitution and the laws of the State of Texas.[1] Appellant also contends that the evidence is insufficient to support any conviction for aggravated sexual assault. For the reasons that follow, we modify the trial court's judgment and affirm the conviction.

BACKGROUND

Christopher Hawkins and appellant were half-brothers. In January 2015, Hawkins invited appellant to move into his home where he lived with his wife, Breanne,[2] their two children, and Breanne's daughter, HI. HI was twelve years old; appellant was twenty-six years old. Both appellant and HI had their own rooms. On March 26, 2015, after Hawkins got up and ready for work, he discovered that appellant had been in HI's room during the night. When Hawkins asked HI about it, she stated that "nothing happened." When he confronted appellant, appellant refused to talk. Hawkins then woke up his wife and told her that he had caught appellant in HI's room. His wife "freaked out" and demanded that he get appellant out of the house. Hawkins took appellant to a store so appellant could get money to pay Hawkins some of the rent he owed him.

[1] In the State's response brief filed in appellant's appeal (No. 05-16-00846-CR), the State raised two cross-issues alleging that the trial court erred by granting appellant's motion for new trial and modifying the judgment. In his reply brief, appellant contends that this Court lacks jurisdiction to consider the State's cross-issues. In the brief appellant filed in the State's appeal (No. 05-16-01160-CR), appellant also raised an issue regarding this Court's jurisdiction over the appeal. Appellant's claims regarding jurisdiction are moot. On January 19, 2017, this Court entered an ordered denying appellant's motion to dismiss the State's appeal based on lack of jurisdiction. The cross-issues raised by the State in appellant's appeal are identical to the issues raised by the State in its appeal.

[2] Breanne's first name is actually Marci but prefers to be called by her middle name, Breanne.

During the drive, appellant told him that he was just watching a movie in HI's room and fell asleep. While appellant was in the store, Hawkins got a phone call from his wife who had questioned HI while they were gone. After their conversation, the police were called and appellant was arrested shortly after he and Hawkins returned to the house.

HI testified that after appellant moved into the house, they talked a lot and appellant started flirting with her. She developed a crush on him. They started meeting in the kitchen or laundry room to talk after her parents were asleep. HI testified that one night, within a week of their nighttime meetings in the kitchen or laundry room, appellant followed her to the door of her bedroom and told her he wanted to lay down with her. After she told him no, he left. However, either that night or the next night, she woke up to find appellant lying behind her in the bed. HI testified that later that night appellant touched her on the outside of her vagina, both over and under her clothes. The next night appellant came into her bedroom, he had HI take off her pants and penetrated her vagina with his fingers. He also took off his shorts and had HI get on top of him and rub her vagina on his penis.

HI testified that after that night, appellant came to her room on many nights. She testified that appellant started performing oral sex on her and that he did this each night he came into her room. HI testified that appellant would also try to penetrate her vagina with his penis, but it would not fit inside and he would stop when she told him it hurt. HI testified that one time appellant masturbated and ejaculated onto her stomach; he also wanted her to masturbate him. HI also testified that there was one night that she performed oral sex on appellant.

HI testified that she liked when appellant came into her room at night and that she thought of him as her boyfriend. She initially testified that appellant was coming into her room three or four nights a week for almost two months, but later testified that it had been going on for two or

three weeks prior to spring break, which was the second week of March.[3] HI testified that on the night they were caught by her step-dad, appellant came into her room but he was tired and fell asleep. She thought they did nothing more than cuddle that night and she fell asleep with appellant. HI testified that prior to that night, they had been very careful about appellant getting up and getting back to his room before her step-dad got up for work in the morning. HI testified that when her mom asked her if appellant had touched her, she said yes. She also testified that when she was interviewed after being examined at the hospital, she told the forensic interviewer everything that happened between her and appellant.

Nakisha Biglow interviewed HI at the Dallas Children's Advocacy Center. Biglow testified that HI talked about several different instances of sexual abuse by appellant. Biglow's testimony regarding what HI told her regarding those instances was substantially similar to HI's testimony at trial, with more detail added to some of the conduct described. Biglow testified that HI told her that it happened before spring break and started in either the beginning to mid-February. Biglow testified that HI told her it happened quite frequently and that appellant typically came into her room around 12:30 at night and left around 4:30 a.m. because Hawkins got up at 5:00 a.m.

During appellant's interview with Detective White, appellant admitted that he went into HI's room at night to talk to her after her parents went to sleep. Appellant told HI that he could not be her boyfriend and denied that he ever did anything wrong or "crossed a line" with her. He told the detective that he did not think HI would lie in order to hurt him but had seen her lie to her mother.

HI's sexual assault examination was normal and revealed no injuries or abnormalities. The nurse testified that HI disclosed both digital and penile penetration of her vagina by appellant.

[3] The trial court judge took judicial notice of the Garland ISD school calendar for the year 2014-15 which listed the dates of spring break as March 9 through 13.

Appellant's DNA was not found on the swabs taken from HI during the exam, nor was appellant's DNA found on any of the bedding or clothing taken from HI's room. Following the disclosure of the sexual assaults by appellant, HI went to therapy treatment once a week for a year.

ANALYSIS

I. Multiple Convictions for Lesser included Offenses

In its appeal, the State contends that the trial court erred in granting appellant's motion for new trial and modifying its judgment to vacate two of the three convictions. Appellant argues that multiple convictions for the three predicate offenses of aggravated sexual assault, contained within the single continuous sexual abuse allegation, are prohibited under the indictment in this case. We agree with appellant.

The indictment charged appellant with continuous sexual abuse of a child, as follows:

> That **DOUGLAS ALLEN MACHUTTA II,** hereinafter called Defendant, **on or about 26th day of March, 2015** IN THE County of Dallas, State of Texas, did then and there intentionally and knowingly, during a period that was 30 or more days in duration, when the defendant was 17 years of age or older, commit two or more acts of sexual abuse against [HI], a child younger than 14 years of age, hereinafter called complainant, namely by: the contact of the complainant's female sexual organ by Defendant's sexual organ, by the penetration of the complainant's female sexual organ by Defendant's finger, and by contact between the mouth of the defendant and the sexual organ of the complainant.

Each one of the alleged acts of sexual abuse alleged in the indictment constituted aggravated sexual assault under penal code section 22.021. *See* TEX. PENAL CODE ANN. § 21.021(a)(1)(B)(i), (a)(1)(B)(iii), (a)(1)(B)(iv), (a)(2)(B) (West Supp. 2017). At the close of trial, the trial court instructed the jury to determine whether appellant was guilty of continuous sexual abuse, or in the alternative, whether appellant was guilty of one or more of the three lesser included offenses of aggravated sexual assault. Each of the three aggravated sexual assault offenses was presented in a separate paragraph in the jury charge and alleged the specific conduct contained in the

indictment. In three separate verdict forms containing the specific sexual conduct, the jury found appellant guilty of each of the three lesser included offenses.

It is a well-settled common law rule in Texas that unless some statutory or judicial exception applies, one indictment can result in no more than one conviction and one punishment. *See Shavers v. State*, 881 S.W.2d 67, 73 (Tex. App.—Dallas 1994, no pet.). Article 21.24(a) of the code of criminal procedure is a statutory exception to the rule of only one conviction per indictment. *Id*. Article 21.24 provides,

> (a) Two or more offenses may be joined in a single indictment, information, or complaint, with each offense stated in a separate count, if the offenses arise out of the same criminal episode, as defined in Chapter 3 of the Penal Code.
>
> (b) A count may contain as many separate paragraphs charging the same offense as necessary, but no paragraph may charge more than one offense.
>
> (c) A count is sufficient if any one of its paragraphs is sufficient. An indictment, information, or complaint is sufficient if any one of its counts is sufficient.

TEX. CODE CRIM. PROC. ANN. art. 21.24 (West 2009). Section (a) permits joinder of more than one offense in one indictment when the offenses are committed pursuant to the same transaction or pursuant to two or more connected transactions or constitute a common scheme or plan. *See id*. 21.24(a). Under article 21.24, when the State wishes to charge multiple offenses in a single indictment, it is required to set out each separate offense in a separate count. *See id.*; *Martinez v. State*, 225 S.W.3d 550, 554 (Tex. Crim. App. 2007). No paragraph of an indictment may charge more than one offense. *See id.* 21.24(b); *Shavers*, 881 S.W.2d at 73. The trial court may submit a jury charge that provides the jury the opportunity to render a verdict on each of the lesser included offenses of the main charge, however, once the verdicts are received, the trial judge must perform

the task of deciding what judgment is authorized by those verdicts in light of the controlling law, the indictment, and the evidence presented at trial. *Martinez*, 225 S.W.3d at 555.

The State contends that article 21.24 does not apply because the indictment did not join offenses, but rather charged only one continuous sexual abuse offense. The State argues that section 21.02(e) of the penal code is the statute which governs the circumstances in which a defendant may be convicted of a predicate act of sexual abuse and that section 21.02(e)(3) provides a statutory exception to the one conviction per indictment rule when a defendant has been convicted of a lesser included offense. Section 21.02(e) provides the following:

> (e) A defendant may not be convicted in the same criminal action of an offense listed under Subsection (c) [a predicate offense] the victim of which is the same victim as a victim of the offense alleged under Subsection (b) [continuous sexual abuse of a minor younger than 14] unless the offense listed in Subsection (c):
>
> (1) is charged in the alternative;
>
> (2) occurred outside the period in which the offense alleged under Subsection (b) was committed; or
>
> (3) is considered by the trier of fact to be a lesser included offense of the offense alleged under Subsection (b).

TEX. PENAL CODE ANN. § 21.02(e) (West Supp. 2017).[4] Before subsection (e)(3) was added, the text of section 21.02(e) at least appeared to prohibit a conviction for a lesser included offense. The addition of section 21.02(e)(3) authorized a conviction for "a lesser included offense," used the singular article and noun consistent with the common law rule of one conviction per indictment. The State concedes section 21.02(e)(3) is written in the singular, but it argues the Code Construction Act permits interpreting the singular to include the plural and there is nothing in the language of section 21.02(e)(3) which limits the number of convictions that can be obtained for

[4] Subsection 21.02(b) sets out the offense of continuous sexual abuse. *Id.* 21.02(b). Subsection (c) lists the offenses that may be used as elements of an offense under subsection (b). *Id.* 21.02(c).

lesser included offenses. *See* TEX. GOV'T CODE ANN. § 311.012(b) (West 2013). The penal code provides that section 311.012 applies to the penal code, "[u]nless a different construction is required by the context." *See* TEX. PENAL CODE ANN. § 1.05(b) (West 2011). Here the context of the term "a lesser included offense" indicates that it is singular for the following reasons.

The use of singulars and plurals in section 21.02 indicates careful thought regarding how many convictions the statute authorizes. Subsection (e) refers to "an offense" that is listed in subsections (b) and (c). TEX. PENAL CODE ANN. § 21.02(e). Subsection (b) refers in the singular to "an offense" that is comprised of the plural "two or more acts," "acts," "one or more victims," and "each of the acts" in subsections (b)(1) and (2). *Id.* § 21.02(b). Subsection (c) refers to a singular "violation." *Id.* § 21.02(c). So in the context of the entire section 21.02 the Legislature carefully used singular and plurals to define a unique single offense comprised of multiple predicate acts, and then in subsection (e)(3) permitted a conviction for a singular "an offense" if it was a lesser included offense. We presume that the Legislature intentionally includes and excludes words in statutory text, and intends that each word be given effect. *State v. Schunior*, 506 S.W.3d 29, 34 (Tex. Crim. App. 2016). Presuming as we must that the Legislature's use of the singular or plural in section 21.02 was intentional and effective, then we must give the term "a lesser included offense" the effect that its context requires: a singular offense, rather than plural offenses.

Two court of criminal appeal opinions indicate that the higher court views section 21.02(e)(3) as authorizing a single conviction for a single lesser included offense. In *Soliz v. State*, 353 S.W.3d 850 (Tex. Crim. App. 2011) the court of criminal appeals analyzed penal code section 21.02 to determine whether the statutory language as to lesser included offenses meant that it was the jury that decided whether an offense constituted a lesser offense, or whether that issue was a matter of law to be determined by the trial court. In resolving that issue, the court noted that the purpose of the statute was the establishment of a crime that focuses on a pattern of abuse over

a period of time. *Id.* at 853. The court noted that subsection (e) was designed as an anti-carving provision and explained that under subsection (e) "Aggravated sexual assault committed within the time frame of the indicted offense could be charged in the alternative or as *a lesser-included offense (leading to just one conviction), but it could not be charged as an additional offense (leading to two convictions)."* *Id.* at 854 (emphasis added). Thus, the court of criminal appeals specified that section 21.02(e)(3)'s authorization of conviction for a lesser included offense allowed for "just one conviction."

Important to the court of criminal appeals' opinion was its observations in *Soliz* of the legislative history of section 21.02(e)(3). The court quoted this statement by Senator Shapiro that indicates section 21.02(e)(3) authorized one conviction for one lesser included offense: "If in fact during the trial of the continuous sexual assault, ... the jury says that maybe they couldn't find him guilty or her guilty of all of the continuous actions, *they can specify one of these five [sexual offenses]* without actually having to go back and retrying this case again." 353 S.W.3d at 853 (emphasis added) (footnotes omitted).[5]

Then in *Price v. State*, 434 S.W.3d 601 (Tex. Crim. App. 2014), the court of criminal appeals analyzed penal code section 21.02 to determine whether the statute permitted a defendant to be convicted both of the offense of continuous sexual abuse and of a criminal attempt to commit a predicate offense under that statute. In resolving that issue, the court examined the purpose of the statute, the circumstances under which it was enacted, and its legislative history. The court again referred to Senator Shapiro's statement: "Senator Shapiro's discussion of lesser-included offenses suggests that the Legislature intended to permit a fact finder to convict a defendant for *a lesser-included offense*, which would include the attempt to commit a predicate offense, but only

[5] The court, however, went on to quote less clear testimony by Williamson County District Attorney John Bradley that "prosecutors would be free to plea bargain, and 'the provision that Senator Shapiro added in the substitute makes it expressly clear that I can do that by talking about lesser-included offenses.'" *Id.*

as *an alternative* to conviction for continuous sexual assault." 434 S.W.3d at 608 (emphasis added). The court concluded that "the objective of the statute was to hold a defendant criminally liable *through a single conviction for all of the sexual acts* transpiring between him and the victim during a designated period of time." *Id.* (emphasis added).

In addition, in *Price*, it was important to the court of criminal appeals that their analysis in *Soliz* concluding that the statutory language of section 21.02(e) prohibited the State from carving individual offenses out of the pattern of sexual abuse charged in the indictment alleging continuous sexual abuse also applied to the number of convictions for lesser included offenses. The court stated: "Our comments in *Soliz* about the carving out of predicate offenses applies equally to the carving out of lesser included offenses." *Id.* at 609. Therefore, the court of criminal appeals indicated that just as there cannot be multiple convictions for predicate offenses, there cannot be multiple convictions for lesser included offenses.

The analysis of the statutory scheme by the court of criminal appeals in both *Soliz* and *Price* supports our conclusion that section 21.02(e)(3) does not create an exception to the one conviction per indictment rule. Under the court's view of section 21.02(e) expressed in *Soliz* and *Price*, section 21.02(e)(3) allows for only one conviction per indictment, even if that conviction is for a lesser included offense. There is nothing in the text of section 21.02(e) that authorizes a conviction for more than one lesser included offense nor is there any reasonable interpretation that abrogates the common law rule of one conviction per indictment. The only scenario under which appellant could be held criminally liable for more than one conviction for the sexual acts transpiring between him and HI is if each of the three lesser included aggravated sexual assaults

had been charged in the alternative. That was not done; Appellant cannot be convicted for more than one lesser included offense under this indictment. The State's issue is overruled.[6]

II. Sufficiency of the Evidence

In his first issue, Appellant contends that the evidence is insufficient to show that he committed any of the alleged sexual abuse. The jury found appellant guilty of each of the three aggravated sexual assault offenses alleged in the indictment as the predicate acts of sexual abuse. The trial court's "Judgment Modification Order" does not specify which two convictions were vacated after the trial judge granted appellant's motion for new trial. During oral argument, appellant's counsel requested this Court to consider that the judgment be based upon the first lesser included offense submitted to the jury.[7] Thus, in deciding appellant's issue, we review the evidence supporting the allegation that appellant committed aggravated sexual assault "by the contact of the complainant's female sexual organ by appellant's sexual organ."

In reviewing the sufficiency of the evidence, we view all the evidence in the light most favorable to the verdict, and determine whether any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 313 (1979); *Brooks v. State*, 323 S.W.3d 893, 899 (Tex. Crim. App. 2010). We assume the fact finder resolved conflicts in the testimony, weighed the evidence, and drew reasonable inferences in a manner that supports the verdict. *Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App.

[6] Due to our disposition of the State's issue contending that the trial court erred by vacating two of the three convictions for aggravated sexual assault, we need not address appellant's claims regarding disproportionate sentences and legality of the consecutive sentences order.

[7] The court of criminal appeals has held that the less serious offense(s) should be vacated when more than one conviction has been obtained improperly from one indictment. *See Shavers*, 881 S.W.2d at 75 (citing *Ex Parte Pena*, 820 S.W.2d 806, 808 (Tex. Crim. App. 1991)). In this case, we cannot conclude that any one of the three offenses is more serious than the others since each of three aggravated sexual offenses is a first degree felony, there is no difference in the sentences assessed, and there is no difference in parole eligibility. *Id.*

2007). We defer to the trier of fact's determinations of witness credibility and the weight to be given their testimony. *Brooks,* 323 S.W.3d at 899.

HI testified that one of the night's appellant came into her bedroom, she had her pants off and appellant took off his shorts and had HI get on top of him and rub her vagina on his penis.[8] She also testified that appellant would try to penetrate her vagina with his penis. In addition, the jury heard testimony from the forensic interviewer regarding the outcry HI made to her about the instances of sexual abuse by appellant, including appellant's attempt at vaginal penetration. The jury also heard the testimony of the nurse at the hospital regarding HI's disclosure to her regarding appellant's attempt to penetrate HI vaginally.

A child victim's testimony is sufficient to support a conviction for sexual assault. *See* TEX. CODE CRIM. PROC. ANN. art. 38.07(b)(1) (West Supp. 2017); *Martinez v. State*, 178 S.W.3d 806, 814 (Tex. Crim. App. 2005) (noting that article 38.07 "deals with the sufficiency of evidence required to sustain a conviction for" certain sexual offenses). Appellant's argument that the evidence is insufficient because there is no DNA or medical evidence is without merit. Physical evidence is not required when the complainant provides ample testimony to establish that a sexual assault occurred. *See Bargas v. State*, 252 S.W.3d 876, 889 (Tex. App.—Houston [14th Dist.] 2008, no pet.). Appellant's reference to possible impeachment evidence also does not change the outcome. The jury, as fact-finder, judged the credibility of the witnesses, reconciled conflicts in the testimony, and could have accepted or rejected any or all of the evidence on either side. We conclude the evidence is sufficient to support the conviction. We overrule appellant's first issue.

[8] HI testified that the sexual abuse that occurred that night started with appellant having her take her pants off and him penetrating her vagina with his fingers. It was after the digital penetration that appellant took off his shorts and had HI got on top of him.

III. Modification of Judgment

Appellant was charged with continuous sexual abuse of a child. The jury found appellant guilty of each of the three aggravated sexual assault offenses alleged in the indictment as the predicate acts of sexual abuse. The trial court sentenced appellant to twenty-five years' imprisonment for each aggravated sexual assault offense, with each of the sentences to run consecutively. On July 5, 2016, the trial court entered a "Judgment of Conviction by Jury" stating the conviction for aggravated sexual assault of a child with punishment assessed at twenty-five years' imprisonment. It also stated that the sentence was to run consecutively as provided in the attached Judgment Addendum. A Judgment Addendum was attached which listed, under a single cause number, each of the three convictions for aggravated sexual assault, each specific conduct element and the cumulation orders.

On September 13, 2016, the trial court granted appellant's motion for new trial and ordered that the judgment be reformed to show only one conviction for aggravated sexual assault of a child and one sentence of twenty-five years' imprisonment. On that same date, the trial court entered a "Judgment Modification Order" stating that the original judgment and addendum was to be modified and reformed as follows: "The defendant was convicted on only one count of aggravated sexual assault of a child, and there is only one sentence, which is 25 years confinement in the Institutional Division of the Texas Department of Criminal Justice."

We have affirmed the trial court's judgment. By entering the Judgment Modification Order, the trial court vacated the two additional aggravated sexual assault convictions and cumulation orders in the Judgment Addendum. Therefore, we modify "The Judgment of Conviction by Jury" as follows:

> The Section listed directly below "Punishment and Place of Confinement: 25 years Institutional Division, TDCJ" is modified to state:
>
> "This Sentence Shall Run - N/A."

. . . .

"Sex Offender Registration Requirements do apply to the Defendant. TEX. CODE CRIM. PROC. chapter 62. The age of the victim at the time of the offense was 12."

The Section entitled "Furthermore, the following special findings or orders apply" is modified to state: "N/A."

See TEX. R. APP. P. 43.2(b); *Bigley v. State*, 865 S.W.2d 26, 27 (Tex. Crim. App. 1993); *Asberry v. State*, 813 S.W.2d 526, 529 (Tex. App.—Dallas 1991, pet. ref'd.).

CONCLUSION

As modified, we affirm the trial court's judgment.

/David Evans/
DAVID EVANS
JUSTICE

Do Not Publish
TEX. R. APP. P. 47
160846F.U05

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

DOUGLAS ALLEN MACHUTTA,
Appellant

No. 05-16-00846-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the Criminal District Court
No. 7, Dallas County, Texas
Trial Court Cause No. F15-23625-Y.
Opinion delivered by Justice Evans,
Justices Francis and Boatright participating.

Based on the Court's opinion of this date, the "The Judgment of Conviction by Jury" is **MODIFIED** as follows:

The Section entitled "Punishment and Place of Confinement" is modified to state:

"This Sentence Shall Run - N/A."

. . . .

"Sex Offender Registration Requirements do apply to the Defendant. TEX. CODE CRIM. PROC. chapter 62. The age of the victim at the time of the offense was 12."

The Section entitled "Furthermore, the following special findings or orders apply" is modified to state: "N/A.".

As **REFORMED**, the judgment is **AFFIRMED**.

Judgment entered this 17th day of May, 2018.

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

THE STATE OF TEXAS, Appellant	On Appeal from the Criminal District Court No. 7, Dallas County, Texas
No. 05-16-01160-CR V.	Trial Court Cause No. F15-23625-Y. Opinion delivered by Justice Evans,
DOUGLAS ALLEN MACHUTTA, Appellee	Justices Francis and Boatright participating.

Based on the Court's opinion of this date, the "The Judgment of Conviction by Jury" is **MODIFIED** as follows:

The Section entitled "Punishment and Place of Confinement" is modified to state:

"This Sentence Shall Run - N/A."

. . . .

"Sex Offender Registration Requirements do apply to the Defendant. TEX. CODE CRIM. PROC. chapter 62. The age of the victim at the time of the offense was 12."

The Section entitled "Furthermore, the following special findings or orders apply" is modified to state: "N/A.".

As **REFORMED**, the judgment is **AFFIRMED**.

Judgment entered this 17th day of May, 2018.