

AFFIRMED and Opinion Filed November 4, 2020



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

No. 05-19-01189-CR

**ROBERTO KONEZ, JR., Appellant
V.
THE STATE OF TEXAS, Appellee**

**On Appeal from the 366th Judicial District Court
Collin County, Texas
Trial Court Cause No. 366-81523-2018**

MEMORANDUM OPINION

Before Justices Whitehill, Pedersen, III, and Reichel
Opinion by Justice Reichel

Roberto Konez, Jr. appeals his conviction for two counts of sexual assault of a child younger than seventeen years of age. In a single issue, appellant contends the trial court erred in excluding evidence about the complaining witness's prior sexual history. We affirm the trial court's judgment.

In May 2018, appellant was indicted for two counts of sexual assault of C.E., a minor under the age of seventeen. Appellant entered an open plea of guilty to both counts. A punishment hearing was conducted before the trial court without a jury.

At the punishment hearing, the State called C.E. as a witness. C.E. testified about the trauma she suffered as a result of the offense and her fear of appellant. On cross examination, defense counsel began to question C.E. about her previous sexual history. The State objected stating the questioning was improper and inadmissible. Defense counsel responded that the complainant's prior history was relevant to show "how [the offense] is actually affecting her." The trial court sustained the State's objection.

On appeal, appellant contends the court erred in sustaining the State's objection because the testimony his counsel sought to elicit was admissible under rule 412 of the Texas Rules of Evidence. Rule 412 is a rape shield law. *Kesterson v. State*, 959 S.W.2d 247, 248 (Tex. App.—Dallas 1997, no pet.); *Wofford v. State*, 903 S.W.2d 796, 798 (Tex. App.—Dallas 1995, pet. ref'd). Its purpose is to protect a complainant's previous sexual conduct from exposure except in limited circumstances. *Kesterson*, 959 S.W.2d at 248. Rule 412 requires a defendant who intends to introduce evidence of the complainant's sexual history to inform the court before asking any questions of the witness and offer the evidence first at an in camera hearing to determine whether it is admissible. TEX. R. EVID. 412(c). The in camera hearing should exclude not only the jury, but also any unnecessary spectators, to spare the complainant any undue public embarrassment. *Wofford*, 903 S.W.2d at 798. Accordingly, the requirement for an in camera hearing applies equally to bench trials and jury trials. *See id.*

Appellant argues the evidence he sought to introduce fell within the limited circumstances for which such evidence is admissible under rule 412. *See* TEX. R. EVID. 412(b). But appellant failed to inform the trial court before he began questioning the complainant of his intent to introduce the evidence and the need for an in camera hearing to determine if the evidence was admissible. As a result, appellant did not meet the threshold requirements of rule 412 for the admissibility of the evidence and cannot complain now of its exclusion. *See Marx v. State*, 953 S.W.2d 321, 337 (Tex. App.—Austin 1997), *aff'd*, 987 S.W.2d 577 (Tex. Crim. App. 1999). We resolve appellant’s sole issue against him.

We affirm the trial court’s judgment.

/Amanda L. Reichek/
AMANDA L. REICHEK
JUSTICE

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TEX. R. APP. P. 47.2(b)
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**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

ROBERTO KONEZ, JR., Appellant

No. 05-19-01189-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 366th Judicial
District Court, Collin County, Texas
Trial Court Cause No. 366-81523-
2018.

Opinion delivered by Justice
Reichek. Justices Whitehill and
Pedersen, III participating.

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

Judgment entered November 4, 2020