

AFFIRMED and Opinion Filed March 30, 2021



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

No. 05-20-00324-CR

No. 05-20-00325-CR

BRUCE HOPKINS, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 196th Judicial District Court
Hunt County, Texas
Trial Court Cause Nos. 32833CR; 32834CR**

MEMORANDUM OPINION

**Before Justices Schenck, Smith, and Garcia
Opinion by Justice Smith**

Bruce Hopkins appeals his two aggravated sexual assault of a child convictions. The trial court found appellant guilty in each case and sentenced him to consecutive life sentences. In a single issue, appellant argues the trial court erred in admitting certain evidence over his hearsay objection. We affirm the trial court's judgments.

In June 2019, appellant was charged by indictment with two aggravated sexual assaults of a child, A.R. The indictments alleged appellant intentionally and

knowingly caused the sexual organ of A.R., a child younger than fourteen and not the spouse of appellant, to contact and penetrate appellant's mouth.

On February 3, 2020, twenty-two days before trial, the State provided appellant notice that it intended to call Jessica Frances as an expert witness. Eighteen days before trial, the State also provided notice that it intended to introduce the outcry statement A.R. made to Frances describing the underlying offenses. At a hearing on pretrial motions the day before trial, the State offered State's Exhibit 2, records from the Child Advocacy Center, for predicate purposes, and appellant's counsel agreed, "for predicate purposes, that they are business records."

At a bench trial on February 25, 2020, Frances testified she is the program director of forensic services at the Hunt County Children's Advocacy Center. As part of her duties, Frances conducts forensic interviews of children. Frances earned a bachelor's of science degree in psychology in 2008, and she completed three blocks of specialized training specifically for forensic interviewing. Frances participated in a peer review at least twice a year where she was evaluated and critiqued by other forensic interviewers across the state. At the time of trial, Frances had been in her position for a year and a half, and she had conducted approximately 420 forensic interviews of children.

In preparation for her testimony, Frances reviewed State's Exhibit 2, notes concerning A.R.'s therapy "conducted by somebody over at the Hunt County Children's Advocacy Center." Although appellant had already agreed that State's

Exhibit 2 contained properly authenticated business records, appellant objected that the exhibit was “based on hearsay” when the State offered the exhibit into evidence for all purposes. The prosecutor responded that “as an expert, experts are allowed to rely on hearsay to form their opinions.” The trial court overruled appellant’s objection and admitted the notes “as the documents that were reviewed by this expert to form her opinions in this case.” At the conclusion of trial, the trial court found appellant guilty of both offenses, and these appeals followed.

In a single issue, appellant argues the trial court erred when it allowed hearsay testimony over his objection. Appellant’s argument in support of his issue revolves around the trial court’s admission into evidence of State’s Exhibit 2 and Frances’ testimony “regarding hearsay statements from the child.” Appellant quotes the record at length regarding the admission of State’s Exhibit 2 and appellant’s objection that the exhibit was “based on hearsay.” Appellant argues the “State used as its reason for the Court to allow hearsay was Ms. Francis [sic.] was an expert and thus entitled to rely on hearsay statements.” Appellant complains the State did not submit Frances as an expert, and the trial court did not make any necessary findings that justified declaring Frances was an expert.

We review a trial court’s decision to admit or exclude expert testimony for an abuse of discretion. *Wolfe v. State*, 509 S.W.3d 325, 335 (Tex. Crim. App. 2017). We uphold a trial court’s ruling if it is within the zone of reasonable disagreement. *Id.* Before admitting expert testimony, the trial court must be satisfied that three

conditions are met: (1) the witness qualifies as an expert by reason of her knowledge, skill, experience, training, or education; (2) the subject matter of the testimony is appropriate for expert testimony; and (3) admitting the expert testimony will actually assist the fact finder in deciding the case. *Vela v. State*, 209 S.W.3d 128, 131 (Tex. Crim. App. 2006). These conditions are commonly referred to as (1) qualification, (2) reliability, and (3) relevance. *Id.* Qualification is evaluated independently. *Id.*

The present opinion of a testifying witness does not constitute hearsay because it is not, and can never be, a statement other than one made by the declarant while testifying at trial. *Martinez v. State*, 22 S.W.3d 504, 508 (Tex. Crim. App. 2000); *Johnson v. State*, 605 S.W.3d 843, 848 (Tex. App.—Houston [1st District] 2020, pet. ref'd). This is true even when the expert relied in whole or in part upon information of which he has no personal knowledge, as long as the court determines that the expert has a sufficient basis for his opinion. *Martinez*, 22 S.W.3d at 508; *Johnson*, 605 S.W.3d at 848.

In making his argument, appellant “concedes that the expert exception to the hearsay rule can be a proper reason for the Court to admit hearsay.” However, appellant argues the State never offered Frances as an expert, failed to elicit testimony from Frances that would qualify her as an expert, and the trial court failed to find that Frances was qualified as an expert. Thus, appellant argues, the trial court violated his right to a fair trial by allowing Frances’ testimony that merely bolstered A.R.’s testimony, resulting in harm to appellant.

Appellant cites nothing in the record that would support an argument disqualifying Frances' testimony. The record shows the State notified appellant that Frances would testify at trial as an expert. Appellant did not object at trial to Frances' qualifications as an expert, even when the prosecutor responded to appellant's objection by arguing that, "as an expert, experts are allowed to rely on hearsay to form their opinions." Appellant also did not object to any specific part of the records contained in State's Exhibit 2. Further, the trial court clearly expressed its determination that it considered Frances an expert when it overruled appellant's objection and admitted the notes contained in State's Exhibit 2 "as the documents that were reviewed by this expert to form her opinions in this case." While the trial court never explicitly pronounced Frances was a qualified expert witness, it impliedly did so when it overruled appellant's objection "based on hearsay" to the exhibit Frances relied on, in part, in developing her expert testimony.

Moreover, Frances testified she is the program director of forensic services at the Hunt County Children's Advocacy Center where she conducts forensic interviews of children. Frances earned a bachelor's of science degree in psychology in 2008, and she completed specialized training specifically for forensic interviewing. Frances participates in a peer review at least twice a year. At the time of trial, Frances had been in her position for a year and a half, and she had conducted approximately 420 forensic interviews of children. Based on the above, we conclude the trial court did not abuse its discretion in impliedly finding Frances qualified as

an expert based on her knowledge, skill, experience, training, and education. *See Wolfe*, 509 S.W.3d at 335; *Vela*, 209 S.W.3d at 131. Therefore, the trial court did not err in overruling appellant’s objection “based on hearsay” and admitting State’s Exhibit 2. *See Martinez*, 22 S.W.3d at 508; *Johnson*, 605 S.W.3d at 848. We overrule appellant’s single issue.

We affirm the trial court’s judgment.

/Craig Smith/
CRAIG SMITH
JUSTICE

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**Court of Appeals
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JUDGMENT

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