Opinion issued August 25, 2020

In The

Court of Appeals

For The

First District of Texas

NO. 01-19-00137-CR

THE STATE OF TEXAS, Appellant

V.

KEIARRA PETERSON, Appellee

On Appeal from the 177th District Court
Harris County, Texas
Trial Court Case No. 1529626

O P I N I O N

Appellant, the State of Texas, challenges the trial court's order granting the motion of appellee, Keiarra Peterson, to quash and dismiss the indictment[1] alleging

---

1 *See* TEX. CODE CRIM. PROC. ANN. art. 44.01(a)(1).

that she committed the felony offense of compelling prostitution by a minor.[2] In three issues, the State contends that the trial court erred in granting appellee's motion.

We reverse and remand.

Background

On March 1, 2017, a Harris County Grand Jury issued a true bill of indictment, alleging that appellee on or about November 3, 2016, "did then and there unlawfully, and knowingly cause by any means, K.O., a person younger than eighteen years of age, to commit prostitution."[3] (Emphasis omitted.)

Before trial, appellee moved to quash and dismiss the indictment, asserting that the indictment's failure to allege a more specific manner and means of committing the offense violated her due process right to be fairly informed of the charge against her. Appellee further asserted that the omission of a specific manner-and-means allegation exposed her to double jeopardy,[4] and she requested that the indictment be quashed "in the interests of justice."

---

2 *See* TEX. PENAL CODE ANN. § 43.05(a)(2), (b).

3 *See id.* § 43.05(a)(2) ("A person commits an offense [of compelling prostitution by a minor] if the person knowingly . . . causes by any means a child younger than 18 years to commit prostitution, regardless of whether the actor knows the age of the child at the time of the offense.").

4 *See* U.S. CONST. amend. V; TEX. CONST. art. I, § 14.

In its brief in response to appellee's motion to quash and dismiss the indictment, the State included additional allegations not stated in the indictment:

> On November 3, 2016 Houston Police Officers of the Southwest Division were conducting a proactive investigation. Officers observed a vehicle driven by [c]o-[d]efendant Deaundrell Johnson pull into a gas station located at 3223 South Loop West Harris County, Texas. After running the temporary tags registered to the vehicle, officers learned Johnson had possible city warrants. Officers then initiated a traffic stop on the vehicle and observed [appellee] to be the front passenger of the vehicle, and minor [complainant] K.O. to be in the back seat. Officers ran K.O.'s name and learned she was a fifteen[-]year[-]old listed runaway.
>
> K.O. admitted to [o]fficers that she was prostituting, and that . . . Johnson and [appellee] knew of her sex dates. Specifically, K.O. stated she had been with . . . Johnson and [appellee] for a few days in a hotel room provided by . . . Johnson. K.O. also stated that [Johnson and appellee] helped her post on Backpage.com, that . . . Johnson received the money she made from sex dates, and that she used proceeds from prostitution to buy [Johnson and appellee] food.

The State argued in its brief that it was not required to allege a specific manner and means of compelling prostitution because Texas Penal Code section 43.05 allows prosecution for the offense of compelling prostitution by a minor regardless of the means used in order to afford the greatest protection to minors.

At the hearing on appellee's motion to quash and dismiss the indictment, appellee argued that the indictment violated her right to due process and her right against double jeopardy because it lacked specificity, deprived her of the opportunity to prepare a defense, and violated her right to prevent subsequent prosecution arising from the same transaction with K.O. To demonstrate the difficulties associated with

preparing to defend a charge of compelling prostitution by a minor "by any means," appellee asserted that Texas Penal Code section 43.05 could apply equally to the conduct of a "pimp" who exploits a child for his own profit and to the conduct of a parent whose runaway child commits the offense of prostitution.[5] Appellee further asserted that, without knowing the specific conduct that the State alleged was criminal, her trial would be one by ambush.

In response, the State asserted that appellee had fair notice of the alleged criminal conduct not only from the allegations in the indictment but also because appellee had access to the State's entire file and the State had specified its factual theory in other pretrial filings, including its brief in response to appellee's motion to quash and dismiss the indictment.

The trial court granted appellee's motion to quash and dismiss the indictment without stating the reason for its ruling.

Standard of Review

Our review is de novo because the sufficiency of the indictment is a question of law. *Smith v. State*, 309 S.W.3d 10, 13–14 (Tex. Crim. App. 2010). We will

---

[5] Before trial, appellee also moved to declare Texas Penal Code section 43.05(a)(2) unconstitutional, arguing that it was vague because it lacked a definition for "by any means" rendering the statute ambiguous and making it "impossible to prepare an adequate defense." The trial court denied appellee's motion and that ruling is not before the Court in this appeal.

uphold the trial court's ruling if it is correct under any theory of law applicable to the case. *See State v. Zuniga*, 512 S.W.3d 902, 906 (Tex. Crim. App. 2017).

Sufficiency of Indictment

In its first, second, and third issues, the State argues that the trial court erred in granting appellee's motion to quash and dismiss the indictment because the indictment sufficiently informed appellee of the nature of the accusations against her, the indictment was not so vague as to violate her right against double jeopardy, and the indictment should not be quashed in the "interests of justice."

A. Adequate Notice

In its first issue, the State argues that the trial court erred in granting appellee's motion to quash and dismiss the indictment because the allegations in the indictment tracked the statutory language in Texas Penal Code section 43.05(a)(2), adequately informed appellee of the criminal charge against her, and even if the indictment standing alone was legally insufficient, the State had informed appellee of the criminal charge against her by other means.

A person accused of a crime is constitutionally entitled to notice of the charge against her as a matter of due process. *State v. Ross*, 573 S.W.3d 817, 820 (Tex. Crim. App. 2019). The indictment must be specific enough to inform the defendant of the nature of the accusations against her so she may prepare a defense. *State v. Moff*, 154 S.W.3d 599, 601 (Tex. Crim. App. 2004); *see also* TEX. CODE CRIM. PROC.

ANN. art. 21.03 ("Everything should be stated in an indictment which is necessary to be proved."); *id.* art. 21.11 ("An indictment shall be deemed sufficient which charges the commission of the offense in ordinary and concise language in such a manner as to enable a person of common understanding to know what is meant, and with that degree of certainty that will give the defendant notice of the particular offense with which he is charged, and enable the court, on conviction, to pronounce the proper judgment . . . .").

Generally, an indictment that tracks the language of the statute will satisfy the notice requirements; the State need not allege facts that are merely evidentiary in nature. *See Moff*, 154 S.W.3d at 602; *State v. Mays*, 967 S.W.2d 404, 406 (Tex. Crim. App. 1998). An indictment must go beyond the statutory language only when the statute is not "completely descriptive of the offense." *Haecker v. State*, 571 S.W.2d 920, 921 (Tex. Crim. App. [Panel Op.] 1978). The statutory language is not completely descriptive of the offense if the prohibited conduct is statutorily defined to include more than one manner or means of commission. *State v. Barbernell*, 257 S.W.3d 248, 251 (Tex. Crim. App. 2008). The statutory language also fails to be completely descriptive of the offense when it uses an undefined term of indeterminate or variable meaning. *Mays*, 967 S.W.2d at 407. In such cases, a more specific pleading is required to provide adequate notice to the defendant. *Barbernell*, 257 S.W.3d at 251.

When analyzing whether an indictment provides adequate notice, an appellate court engages in a two-step analysis. *See State v. Jarreau*, 512 S.W.3d 352, 354–55 (Tex. Crim. App. 2017); *see also Barbernell*, 257 S.W.3d at 255. First, the court must identify the elements of the offense. *Jarreau,* 512 S.W.3d at 354. Second, the court must consider whether the statutory language is sufficiently descriptive of the charged offense. *Id.*

The elements of compelling prostitution by a minor are: (1) knowingly causing by any means, (2) a person younger than eighteen years old, (3) to commit prostitution.[6] TEX. PENAL CODE ANN. § 43.05(a)(2). This is not a case in which the statutory language fails to be completely descriptive of the offense because the prohibited conduct is defined to include more than one manner or means of commission. *See Barbernell,* 257 S.W.3d at 251. Texas Penal Code section 43.05(a)(2) does not specify *any* means of compelling prostitution by a minor, let alone multiple means. Rather, it provides that the act of compelling a minor to commit prostitution may be committed "*by any means*." TEX. PENAL CODE ANN. § 43.05(a)(2) (emphasis added).

This Court determined in *Hill v. State,* 265 S.W.3d 539 (Tex. App.—Houston [1st Dist.] 2008, pet. ref'd), that section 43.05(a)(2) sets out a result-of-conduct

---

[6] Appellee does not appear to dispute that the indictment alleges the elements of the offense of compelling prostitution by a minor as set out in Texas Penal Code section 43.05(a)(2).

offense in which the nature of the conduct is inconsequential to the commission of the offense. 265 S.W.3d at 543. In doing so, we explained that "[w]hat matters is that the conduct is done with the required culpability to effect the result that the Legislature has specified." *Id.* at 542. The holding in *Hill* leads us to conclude that the means of committing this result-of-conduct offense are not essential elements of compelling prostitution by a minor but instead are evidentiary facts that need not be alleged in the indictment.

Our conclusion is supported by the Dallas Court of Appeals' decision in *Tubbs v. State*, 670 S.W.2d 407 (Tex. App.—Dallas 1984, no writ). In that case, the defendant was charged with the felony offense of compelling prostitution by a minor. 670 S.W.2d at 408. The indictment read, in pertinent part, that the defendant "knowingly cause[d] [the minor complainant], a person younger than 17 years of age, to commit prostitution." *Id.* On appeal, the defendant argued that the indictment was insufficient because it alleged neither the means by which he caused the minor to commit prostitution nor that he had caused the minor to commit prostitution by any means. *Id.* The court of appeals rejected the defendant's argument, reasoning that "because an offense occurs if a defendant compels prostitution *regardless* of the means used to compel the prostitution, it logically follows that an indictment is not fundamentally defective for failing to describe the specific means used." *Id.* (emphasis added).

Appellee asserts that even if the indictment accurately states the elements of the offense, it still does not fairly inform her of the criminal charge against her because the statutory language is so vague or indefinite as to deny her effective notice of the criminal conduct she is alleged to have committed. In support of this assertion, appellee relies on *Moff*. In that case, the defendant—the chief appraiser of Nueces County, Texas—was alleged to have misapplied money and credit cards over a seven-year period. 154 S.W.3d at 600. After he was indicted for the offense of misapplication of fiduciary funds, the defendant filed a motion to quash the indictment for failing to specify which transactions formed the basis of the indictment. *Id.* The trial court granted the defendant's motion to quash, but the intermediate appellate court reversed. *Id.* The Court of Criminal Appeals granted review and reversed the intermediate appellate court's decision, explaining:

> It is unreasonable to require the defendant to gather evidence and prepare a defense for each of the credit card and cash transactions he made during the seven-year time frame of the indictment. Thus, additional information that is reasonably necessary for the defense to prepare its case must be provided. This is not to say that the State must lay out its case in the indictment, only that the defendant must be informed of the specific transactions that allegedly violate the statute. . . . [T]his due process requirement may be satisfied by means other than the language in the charging instrument.

Id. at 603 (internal quotations omitted). Based on this reasoning, the Court of Criminal Appeals held "the trial court did not err in quashing the indictment because

the State failed to give [the defendant] sufficiently specific notice of the particular act or acts with which he [was] charged." *Id.*

The particular facts of this case are not analogous to those in *Moff*. Although we can imagine a case in which an indictment for the offense of compelling prostitution by a minor might be vague or indefinite because it alleges, for example, criminal conduct occurring over a long period of time or pertaining to multiple complainants, that is the not case here. The time frame alleged in this indictment is far shorter than in *Moff*. The indictment alleges that the offense occurred on or about November 3, 2016; not over the course of several years or even months. The indictment also identifies the sole minor complainant, K.O., whom appellee allegedly compelled to commit prostitution. And appellee does not dispute that she knows K.O.'s identity. *Cf. King v. State*, 594 S.W.2d 425, 427 (Tex. Crim. App. 1980) (name of person at whom aggravating conduct is directed in felony-murder case not essential element of offense "but rather, a fact which is crucial to the accused's preparation of his defense"). Thus, appellee is aware from the indictment that she will have to contend with the allegations that she knowingly caused K.O., a known complainant, to commit prostitution. Also, because appellee knows when and where the offense is alleged to have occurred, she can begin to think productively about the kind of evidence she might want to marshal. *See Ross*, 573 S.W.3d at 828 (holding information that was completely descriptive of offense and

stated everything required to be proved in ordinary and concise terms gave defendant constitutionally sufficient notice).

In addition, as the Court of Criminal Appeals noted in *Moff*, we need not look solely at the language of the indictment when analyzing whether appellee received constitutionally sufficient notice of the offense. *See* 154 S.W.3d at 603; *see also Smith v. State*, 297 S.W.3d 260, 267 (Tex. Crim. App. 2009); *Buxton v. State*, 526 S.W.3d 666, 682 (Tex. App.—Houston [1st Dist.] 2017, pet. ref'd). The notice requirement "may be satisfied by means other than the language in the charging instrument." *Kellar v. State*, 108 S.W.3d 311, 313 (Tex. Crim. App. 2003); *see also* TEX. CODE CRIM. PROC. ANN. art. 21.19 ("An indictment shall not be held insufficient, nor shall the trial, judgment or other proceedings thereon be affected, by reason of any defect of form which does not prejudice the substantial rights of the defendant.").

The State indicated at the motion-to-quash hearing that at trial it will "attempt to prove that [appellee] was showing [K.O.] how to use Backpage[.com] as well as providing a room for her and taking the money that [K.O.] was earning from prostitution to purchase food." This theory of criminal liability is reflected in the State's pretrial filings, including in the State's brief in response to appellee's motion to quash and dismiss the indictment and the State's notice of intention to use extraneous offenses and prior convictions. The extraneous offenses notice

specifically informs appellee of the State's allegations that she, among other things, "managed a prostitution enterprise by causing by any means K.O., a person younger than eighteen years of age, to take explicit photographs [and] then post[] the photographs depicting explicit poses with an advertisement on [B]ackpage.com." The State also filed pretrial notices of its intention to use the business records of four specifically identified motels. And the record indicates that appellee's trial counsel interviewed K.O. and received the State's entire file, including all of the State's discovery.

We conclude that the State's various pretrial filings, considered together with the indictment's allegations that the offense of compelling prostitution by a minor occurred on or about November 3, 2016 and involved a single complainant whose identity is known to appellee, is adequate notice of the State's theory of criminal liability so that appellee can prepare a defense. *See Buxton*, 526 S.W.3d at 683 (holding, in continuous-sexual-abuse-of-child case, defendant had ample notice of charge when indictment was considered together with criminal complaint, probable cause affidavit, and State's notices of intention to use outcry statements and extraneous offenses); *State v. Stukes*, 490 S.W.3d 571, 577 (Tex. App.—Houston [14th Dist.] 2016, no pet.) (holding, in continuing-family-violence case, defendant "had ample notice in addition to that provided by the indictment" when State had provided defendant's counsel with offense reports and videotapes regarding two

predicate assaults). We hold that the trial court erred in granting appellee's motion to quash and dismiss the indictment because the indictment did not provide appellee with adequate notice.

We sustain the State's first issue.

B. Double Jeopardy

In its second issue, the State argues that the trial court erred in granting appellee's motion to quash and dismiss the indictment because appellee's assertion that the indictment is so vague as to violate her right against double jeopardy[7] is not ripe until the State initiates a subsequent prosecution against appellee. In response, appellee asserts that she should not be required to "wait to make [her double-jeopardy] argument at the point she is charged again and again with the same charge, since the words 'by any means' could open her up to multiple potential charges all arising out of the same transaction." We agree that appellee's double-jeopardy complaint is premature.

The Court of Criminal Appeals addressed a similar argument in *Burks v. State*, 876 S.W.2d 877 (Tex. Crim. App. 1994). There, the defendant moved to quash the indictment alleging that he had committed the offense of capital murder. 876 S.W.2d

---

[7] *See* U.S. CONST. amend. V ("[N]or shall any person be subject for the same offence to be twice put in jeopardy or life or limb[.]"); TEX. CONST. art. I, § 14 ("No person, for the same offense, shall be twice put in jeopardy of life or liberty; nor shall a person be again put upon trial for the same offense, after a verdict of not guilty in a court of competent jurisdiction.").

at 889. The defendant asserted that the indictment failed to allege the complainant in the underlying robbery offense and this "denied him adequate notice of the charges against him and denied him the right to claim prior jeopardy or double jeopardy in a subsequent prosecution." *Id.* The Court of Criminal Appeals declined to address the defendant's double-jeopardy argument, stating:

> In regard to any potential claim of jeopardy which [the defendant] might have to assert in a future prosecution, the proper time to argue this issue is after he has been charged or indicted for that unnamed future offense. As of now, that issue is far from ripe. It is not properly before this Court in the instant appeal.

Id.

Applying this holding, this Court declined in *Buxton* to consider the defendant's premature double-jeopardy challenge to an allegedly vague indictment. *See* 526 S.W.3d at 684–85. In *Buxton,* the jury convicted the defendant of the offense of continuous sexual abuse of a child, and the defendant asserted that the failure of the indictment to allege "which predicate offenses of aggravated sexual assault the State [had] charged him with" denied him the right to claim double jeopardy in a future prosecution for the offense of aggravated sexual assault based on one of the acts of abuse committed against the complainant. *Id.* After noting that there was no indication in the record, and no argument, that the State had initiated a subsequent prosecution for the offense of aggravated sexual assault and that the defendant's argument concerned only a future possibility, this Court declined to

consider the defendant's double-jeopardy complaint. *Id.* at 685. The Court stated that the issue could be raised if the State later undertook such a prosecution, but because the State had not done so, the issue was not ripe for the Court's consideration. *Id.*

The same result must be reached here. There is no indication in the record, and appellee makes no argument, that the State has initiated a second prosecution based on any act allegedly compelling prostitution by K.O. Instead, appellee makes the same argument that we rejected as premature in *Buxton*—that the lack of specificity in the indictment allows the State to undertake such a prosecution at some point in the future. *See id.* Because the State has not done so, however, appellee's double-jeopardy complaint is not ripe. Thus, we hold that the trial court erred in granting appellee's motion to quash and dismiss the indictment on a double-jeopardy basis. *See id.*

We sustain the State's second issue.

C. Interests of Justice

In its third issue, the State argues that the trial court erred in granting appellee's motion to quash and dismiss the indictment because the "interests of justice" do not require such a decision.

In her motion to quash and dismiss the indictment, appellee requested that the indictment be quashed "in the interests of justice." According to appellee, the

"interests of justice" required "the State to allege a specific manner and means to not only provide [her with] adequate notice of the offense for which she is charged, but additionally to prevent a further prosecution in violation of the [d]ouble [j]eopardy clauses of both the United States and Texas Constitutions." On appeal, appellee argues that the trial court properly granted her motion to quash and dismiss the indictment because the "State would not only have [appellee] figure out on her own what the exact allegations are against her with zero notice[] but open her up to any number of [d]ouble [j]eopardy violations" and there is "no justice in that."

Because the only reasons given in support of quashing and dismissing the indictment in the interests of justice in the trial court and on appeal are the same due-process and double-jeopardy reasons that we have already rejected, we hold that the trial court erred in granting appellee's motion to quash and dismiss the indictment because the "interests of justice" so required.

We sustain the State's third issue.

Conclusion

We reverse the January 29, 2019 order of the trial court granting appellee's motion to quash and dismiss the indictment. We remand the case to the trial court for further proceedings consistent with this opinion.

Julie Countiss
Justice

Panel consists of Justices Goodman, Hightower, and Countiss.

Publish. TEX. R. APP. P. 47.2(b).