Fourth Court of Appeals
San Antonio, Texas

OPINION

No. 04-18-00631-CR

Bruno Lewis **TOVAR**,
Appellant

v.

The **STATE** of Texas,
Appellee

From the 25th Judicial District Court, Guadalupe County, Texas
Trial Court No. 16-2662-CR-B
Honorable Daniel H. Mills, Judge Presiding

Opinion by: Liza A. Rodriguez, Justice

Sitting: Luz Elena D. Chapa, Justice
Irene Rios, Justice
Liza A. Rodriguez, Justice

Delivered and Filed: June 3, 2020

AFFIRMED IN PART; REVERSED AND REMANDED IN PART

Bruno Tovar appeals his convictions on three counts of sexual assault of a child (Counts I-III) and one count of delivery of a controlled substance to a child causing serious bodily injury (Count IV). *See* TEX. PENAL CODE ANN. § 22.011(a)(2); *see also* TEX. HEALTH & SAFETY CODE ANN. §§ 481.122, 481.141. We affirm the trial court's judgment on Counts I, II, and III, but reverse the judgment on Count IV and remand for a new punishment hearing and entry of judgment on the offense of delivery of a controlled substance to a child. *See* TEX. HEALTH & SAFETY CODE ANN. § 481.122.

BACKGROUND

When J.A. was 14 years old, she and her mother Rosalie needed a place to stay and moved into Bruno Tovar's home located at 154 Martinez Lane in Guadalupe County, Texas. Rosalie knew Tovar when they were in high school together. Tovar, 34 years old at the time, began a sexual relationship with J.A. that lasted from October 2015 to June 2016. J.A. and Tovar shared a bedroom in the house. Rosalie told people that Tovar was her boyfriend to cover for them. Rosalie had introduced J.A. to smoking methamphetamine when she was 13 or 14 years old. According to J.A., she and her mother smoked it every day. After they moved into Tovar's house, he also smoked methamphetamine with J.A. and Rosalie; on some days, it was just J.A. and Tovar who smoked methamphetamine together. J.A. stated the methamphetamine was supplied by Rosalie, Tovar, or herself.

On June 13, 2016, J.A. experienced a stroke and was taken to the emergency room. J.A. testified she was alone in the bedroom with Tovar when she had the stroke. Her mother was not at home. J.A. gave conflicting testimony about whether she smoked methamphetamine on the day of the stroke. J.A. initially stated she had been smoking methamphetamine with Tovar in their bedroom before she "got sick," but then stated she "did not really remember smoking that day." Later, on cross-examination, J.A. testified the last time she smoked methamphetamine before the stroke was with her mother a week earlier. J.A. conceded that she tested positive for methamphetamine when she arrived at the hospital but stated her belief that methamphetamine stays in a person's system for three days. Tovar also tested positive for methamphetamine that day.

At the hospital, it was determined that J.A. was approximately five to six weeks' pregnant. J.A. remained hospitalized for three months and was in a rehabilitation facility for an additional three months. J.A. gave birth to a daughter on January 24, 2017. J.A. testified that Tovar is the

father and DNA testing confirmed his paternity. As of the date of trial, J.A. had limited use of her left arm and walked with a limp on her left side due to the stroke.

Tovar was indicted on three counts of sexual assault of a child alleged to have occurred on or about October 1, 2015, January 1, 2016, and June 1, 2016 (Counts I-III, respectively) and one count of delivery of a controlled substance, i.e., methamphetamine, to J.A., a child, the ingestion of which caused J.A. to suffer serious bodily injury on or about June 13, 2016 (Count IV). Tovar pled not guilty to all counts and proceeded to a bench trial. Four witnesses testified during the guilt/innocence phase of trial: J.A., who testified about her drug use and sexual relationship with Tovar, as well as the effects of the stroke; Dr. Jane Appleby, the State's medical expert, who testified about J.A.'s medical records from her hospitalization and the potential causes of stroke; the investigating detective who interviewed J.A. and other witnesses and arrested Tovar; and the forensic scientist who performed the DNA analysis for paternity. The trial court found Tovar guilty on all four counts.

During the punishment phase, Tovar testified and admitted to using methamphetamine with J.A. and sometimes her mother as well. He stated that all three of them supplied the methamphetamine at times. Tovar did not admit that he supplied or smoked methamphetamine with J.A. on the day of her stroke. Tovar testified that he had an on-going sexual relationship with J.A. during the time she lived in his home. He claimed he did not know that J.A. was only 14 years old when they first had sex. Tovar stated that when he learned J.A.'s age, he told her mother Rosalie about their relationship and Rosalie stated that J.A. "knew what she was doing." Tovar agreed that he is the father of J.A.'s child.

As to his criminal history, Tovar testified he had a prior conviction for aggravated robbery. A fingerprint expert testified that Tovar's prints matched the fingerprints on the final judgment for

the prior felony conviction. The trial court found the enhancement based on the prior conviction to be true.

At the conclusion of the punishment phase, the trial court reaffirmed its findings of guilt on all counts and sentenced Tovar to 30 years' imprisonment on each of the four counts,[1] with each sentence to be served consecutively. The trial court was required by statute to order the sentence on Count IV to be served consecutively. *See* TEX. HEALTH & SAFETY CODE ANN. § 481.141(c). In addition, the State filed a pretrial motion for consecutive sentences to protect the victim and the victim's family, as well as the community. *See* TEX. CODE CRIM. PROC. ANN. art. 42.08. Tovar appealed.

SUFFICIENCY OF THE EVIDENCE

In his first issue, Tovar argues the evidence was insufficient to support his conviction on Count IV, delivery of methamphetamine to a child causing serious bodily injury. Tovar does not challenge the sufficiency of the evidence to support his convictions for sexual assault of a child on Counts I-III.

Standard of Review

In reviewing the sufficiency of the evidence, we determine whether, viewing all the evidence in the light most favorable to the verdict, 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, 319 (1979); *Brooks v. State*, 323 S.W.3d 893, 899 (Tex. Crim. App. 2010). In determining whether the State met its burden under *Jackson v. Virginia*, we compare the elements of the offense, as charged in the indictment and defined by a hypothetically correct jury charge, to the evidence admitted at trial. *Thomas v. State,* 444 S.W.3d 4, 8 (Tex. Crim. App. 2014); *Johnson v. State,* 364

[1] The sexual assault of a child offenses are second degree felonies, but were enhanced to first degree felonies due to Tovar's prior felony conviction. *See* TEX. PENAL CODE ANN. §§ 22.011(f), 12.42(b).

S.W.3d 292, 294 (Tex. Crim. App. 2012). In conducting this analysis, we defer to the fact finder's assessment of the credibility of the witnesses and the weight to be given to their testimony. *Brooks*, 323 S.W.3d at 899; *Williams v. State*, 235 S.W.3d 742, 750 (Tex. Crim. App. 2007) (reasonable inferences may be drawn from the basic facts to the ultimate facts). We determine whether the necessary inferences are reasonable based upon the cumulative force of the evidence when viewed in the light most favorable to the verdict. *Murray v. State*, 457 S.W.3d 446, 448 (Tex. Crim. App. 2015). We presume that the fact finder resolved any inconsistencies in the evidence in favor of the verdict and defer to that resolution. *Id.* at 448-49; *Curry v. State*, 30 S.W.3d 394, 406 (Tex. Crim. App. 2000). Because Tovar's trial was a bench trial, we also consider evidence admitted during the punishment phase in determining whether the evidence is sufficient to support the findings of guilt. *Barfield v. State*, 63 S.W.3d 446, 450-51 (Tex. Crim. App. 2001).

Delivery of Methamphetamine Causing Serious Bodily Injury

A person commits the second-degree felony offense of delivery of a controlled substance to a child if he knowingly delivers a defined controlled substance to a person who is a child, i.e., a person younger than 18 years of age. TEX. HEALTH & SAFETY CODE ANN. § 481.122(a)(1); *id.* § 481.032 (including methamphetamine as one of the controlled substances). Section 481.141 enhances the section 481.122 offense to a first degree felony if the trier of fact at the guilt/innocence phase of trial determines beyond a reasonable doubt that the child "died or suffered serious bodily injury as a result of injecting, ingesting, inhaling, or introducing . . . any amount of the controlled substance . . . delivered by the defendant . . . ." *Id.* § 481.141(a), (b). Here, Count IV of the indictment charged Tovar with delivery of a controlled substance to a child and the enhancement, alleging that, on or about June 13, 2016, Tovar did:

> knowingly deliver, by actual transfer or constructive transfer, a controlled substance, namely, Methamphetamine, to [J.A.], a person younger than 18 years of age;

> And it is further presented that [J.A.] suffered serious bodily injury as a result of injecting or ingesting into the body of [J.A.] an amount of the controlled substance delivered by the defendant.

On appeal, Tovar challenges the sufficiency of the evidence to prove the following two elements under the section 481.141 enhancement: (1) that it was J.A.'s use of methamphetamine that caused her stroke; and (2) that he delivered the methamphetamine that caused J.A.'s stroke. Tovar concedes that J.A. was a child and that she suffered serious bodily injury. Tovar does not challenge the sufficiency of the evidence to prove he committed the offense of delivery of a controlled substance to a child under section 481.122.

Methamphetamine Use as the Cause of the Stroke

We first address Tovar's challenge to the sufficiency of the evidence on causation. Tovar argues the testimony of the State's medical expert and the contents of J.A.'s medical records failed to provide proof beyond a reasonable doubt that her stroke was caused by methamphetamine use. The State argues that, after drawing reasonable inferences from the evidence and resolving any conflicting evidence in its favor, the evidence is sufficient to support the finding of a causal link between J.A.'s methamphetamine use and her stroke.

During the guilt/innocence phase, Dr. Jane Appleby, board certified in internal medicine, hospice, and palliative care and the Chief Medical Officer for Methodist Hospital and Methodist Children's Hospital, testified she reviewed J.A.'s medical records[2] and helped coordinate her care in the hospital. Dr. Appleby stated the pediatric intensive care physician asked her to assist in coordinating J.A.'s care due to her need for adult hospital services such as OB/GYN care and neurology/stroke care; Dr. Appleby did not serve as a treating physician for J.A. Dr. Appleby testified that tests run in the ER confirmed that J.A. had suffered a "right-sided MCA distribution

[2] J.A.'s medical records were admitted into evidence as State's Exhibit No. 5.

stroke" which presented as an occlusion or blockage in the middle cerebral artery of the brain and caused the inability to move the left side of her body and face. Dr. Appleby stated that a stroke is a serious event and can cause death or permanent disfigurement.

When asked about the cause of J.A.'s stroke, Dr. Appleby testified she could not say with "100 percent certainty" or "any medical certainty" what caused the stroke. Further, she was not aware of anyone treating J.A. who determined "with any degree of medical certainty why [J.A.] had a stroke" and there was no definitive diagnosis or etiology in the records as to the cause of J.A.'s stroke. Dr. Appleby explained that the general risk factors for stroke are high blood pressure, diabetes, hypercholesterolemia, and atrial fibrillation in some circumstances in addition to pregnancy and use of drugs that cause vasoconstriction such as cocaine and methamphetamine. After ruling out the other risk factors, the remaining potential causes of J.A.'s stroke were pregnancy and methamphetamine, for which she had tested positive. When informed of J.A.'s habitual methamphetamine use, Dr. Appleby explained that she was not an expert in the etiology of strokes and their causation but opined that "use of a drug like methamphetamine . . . closer to the event would be more likely to be the cause rather than chronic [use.]" Dr. Appleby testified that methamphetamine use is a potential risk factor for and "has been associated with" stroke and that "some of the effects of pregnancy would be considered as [sic] potential cause or contributing factor" of stroke as well. However, Dr. Appleby explained that J.A. was in the early stages of pregnancy at five to six weeks and the consulting obstetrics physician had made a notation in J.A.'s medical records that "(pregnancy should not be primary cause of stroke)." Under questioning by the trial court, Dr. Appleby further testified that, according to the notes in the medical records, "it is the opinion of the treating obstetrics physician that she was not far enough along in her pregnancy to have a hypercoagulative state which would cause a stroke." The treating obstetrics

physician was not called to testify. No further evidence on the issue of causation was presented during the punishment phase.

As the trier of fact charged with making credibility determinations, the trial court could have believed J.A.'s initial answer that she smoked methamphetamine the day of the stroke and disbelieved her subsequent denials. That testimony combined with the fact that J.A. tested positive for methamphetamine at the hospital supports a reasonable inference that she used methamphetamine the same day she suffered the stroke. As to whether J.A.'s methamphetamine use caused her stroke, Tovar points out that Dr. Appleby repeatedly testified she could not state "with any medical certainty" that methamphetamine use caused the stroke and could not exclude other potential causes of the stroke, namely her pregnancy. Neither "medical certainty" nor "reasonable medical probability" on the issue of causation is required in a criminal case where the burden of proof is beyond a reasonable doubt. *Crocker v. State*, 573 S.W.2d 190, 207 (Tex. Crim. App. [Panel Op.] 1978) (op. on reh'g) (proof of causation in terms of "reasonable medical probability" has no place in criminal law where the burden of proof is beyond a reasonable doubt); *Bigler v. State*, No. 02-04-00467-CR, 2006 WL 3525388, at *6 (Tex. App.—Fort Worth Dec. 7, 2006, no pet.) (mem. op., not designated for publication) (requiring proof by a "reasonable medical probability" improperly raises the State's burden of proof in a criminal case).

Considering Dr. Appleby's testimony that methamphetamine can cause a stroke and J.A.'s positive result for methamphetamine, along with the obstetrician's opinion that J.A.'s early pregnancy should not have been the primary cause of her stroke, the trial court could have reasonably inferred that the methamphetamine use caused J.A.'s stroke. Viewing the evidence in the light most favorable to the finding of guilt and deferring to the trial court's assessment of credibility and weight of the evidence, we hold the evidence was sufficient to support the trial

court's finding that methamphetamine use caused J.A.'s stroke. *See Brooks*, 323 S.W.3d at 899; *see also Williams*, 235 S.W.3d at 750.

Delivery of the Methamphetamine that Caused the Stroke

Tovar next contends there was no evidence to prove that the methamphetamine J.A. used on the day of her stroke[3] was delivered by him. We agree. The trial testimony on the issue of who supplied the methamphetamine that J.A. smoked on the day of the stroke, or on any other day, was limited. Both J.A. and Tovar testified generally on the issue, stating only that Rosalie, Tovar, or J.A. would obtain the methamphetamine they all smoked at various times. Thus, there were three possible suppliers of methamphetamine living in the household. Moreover, J.A. admitted she was already a daily methamphetamine user with her mother before she met Tovar; therefore, no inference can be reasonably drawn that Tovar introduced J.A. to using methamphetamine and was the only person who delivered methamphetamine to her. There was scant evidence regarding J.A.'s actions and Tovar's actions on the day of her stroke. J.A. testified only that she was alone in the bedroom with Tovar when she had the stroke and had not left the house that day; she stated she did not remember much about the day. Thus, there were no eyewitnesses to what occurred inside the bedroom other than J.A. and Tovar. *Compare Martinez v. State*, No. 02-13-00236-CR, 2014 WL 3868215, at *1-3 (Tex. App.—Fort Worth Aug. 7, 2014, pet. ref'd) (mem. op., not designated for publication) (multiple eyewitnesses testified defendant gave heroin to victim who suffered serious bodily injury as a result). Even though J.A. testified that she was alone in the bedroom with Tovar when she had the stroke and they both tested positive for methamphetamine at the hospital, that evidence does not support a reasonable inference that it was Tovar who

[3] We have already determined that the evidence supports a reasonable inference that J.A. smoked methamphetamine on the day of the stroke.

delivered the methamphetamine that J.A. used that day; based on the testimony, an equal inference exists that the methamphetamine was supplied by Rosalie or J.A. herself.

Viewing the evidence in the light most favorable to the verdict, we are unable to conclude that the evidence was sufficient to support a finding beyond a reasonable doubt that it was Tovar, and not Rosalie or J.A., who delivered the methamphetamine that caused J.A. to suffer a stroke. *See Brooks*, 323 S.W.3d at 899. Therefore, we hold the evidence is insufficient to support the trial court's affirmative finding of the enhancement under section 481.141(a) based on delivery of the controlled substance that caused serious bodily injury. *See* TEX. HEALTH & SAFETY CODE ANN. § 481.141(a). Because Tovar does not challenge the sufficiency of the evidence to prove he delivered methamphetamine to J.A. on other days, and indeed admitted that he was one of the three people who supplied the methamphetamine he, Rosalie, and J.A. smoked, the evidence is undisputed that Tovar committed the offense of delivery of a controlled substance to a child under section 481.122(a)(1).[4] *See id.* § 481.122(a)(1). Therefore, we reverse the trial court's judgment on Count IV and remand to the trial court for a new punishment hearing and entry of judgment on the offense of delivery of a controlled substance to a child under section 481.122(a)(1).

JUDICIAL BIAS

In his second issue, Tovar contends he was denied his fundamental right to an impartial judge because the judge's words and actions expressed a bias in favor of the State. Tovar asserts the improper bias led to the trial court's decision to (1) find him guilty on Count IV despite its doubts about the proof, and (2) stack the sentences on Counts I-III to ensure he served those

[4] On appeal, Tovar only argues the evidence is insufficient to prove he delivered the methamphetamine that J.A. used on June 13, 2016, the day of her stroke. Because the portion of the indictment charging the offense of delivery of a controlled substance to a child alleged that he delivered methamphetamine to J.A. "on or about" June 13, 2016, the evidence is sufficient to prove he delivered methamphetamine to a child under section 481.122 if it shows Tovar supplied J.A. with methamphetamine on any date anterior to presentment of the indictment and within the statute of limitations. *See Sanchez v. State*, 400 S.W.3d 595, 600 (Tex. Crim. App. 2013).

sentences before he began serving the Count IV sentence in the event Count IV was reversed on appeal.

Standard of Review and Applicable Law

The federal and state constitutions guarantee a defendant the right to an impartial judge. *Abdygapparova v. State*, 243 S.W.3d 191, 208 (Tex. App.—San Antonio 2007, pet. ref'd) (citing *Gagnon v. Scarpelli*, 411 U.S. 778, 786 (1973), and *Brumit v. State*, 206 S.W.3d 639, 645 (Tex. Crim. App. 2006)). When a claim of judicial bias is raised, we review the entire record to determine if it shows the judge's bias or prejudice denied the defendant due process. *Id.* at 198. Absent a strong showing to the contrary, we presume the trial judge was neutral and impartial. *Id.*

Unfavorable rulings do not alone show judicial bias or prejudice; rather, the judicial ruling must "connote a favorable or unfavorable disposition or opinion that is somehow *wrongful* or *inappropriate*, either because it is undeserved, or because it rests upon knowledge that the subject ought not to possess . . . or because it is excessive in degree." *Id.* (quoting *Liteky v. United States*, 510 U.S. 540, 550 (1994)). Specifically, judicial remarks or rulings may show bias if they reveal "an opinion deriving from an extrajudicial source." *Liteky*, 510 U.S. at 555. When there is no claim of an extrajudicial source, judicial remarks will constitute grounds for reversal "only if they reveal such a high degree of favoritism or antagonism as to make a fair judgment impossible." *Id.* The "high degree of favoritism or antagonism" must be clearly apparent from the judicial remarks themselves without interpretation or expansion of the words. *Gaal v. State*, 332 S.W.3d 448, 457-58 (Tex. Crim. App. 2011). The denial of an impartial judge is structural error for which no harm analysis is necessary. *Abdygapparova*, 243 S.W.3d at 209 (citing *Arizona v. Fulminante*, 499 U.S. 279, 309 (1991)).

Enhancement Finding under Count IV

Tovar first argues the trial court's extensive discussion with the prosecutor during closing arguments about the court's doubts that the State had met its burden to prove the section 481.141(a) enhancement under Count IV shows the court was "helping the State" and expressing a bias in favor of the State. When the prosecutor continued to argue the State had met its burden under its theory of the case, Tovar contends the trial court acquiesced to the State by affirmatively finding the enhancement elements under section 481.141(a) and "letting" him appeal it, revealing its favoritism toward the State.

During closing arguments at the end of the guilt/innocence phase, the trial court repeatedly referenced the beyond-a-reasonable-doubt standard and expressed its doubts that the State had met its burden to prove that Tovar delivered the methamphetamine used by J.A. on the day of her stroke and that her use of methamphetamine caused her stroke. The trial court discussed the evidence in detail and the inferences that could be reasonably drawn from the evidence in a lengthy exchange with the prosecutor. At one point the court noted, "I'm just trying to flush that - - flush that out with you and let you speak to it. And I know Mr. Collins [defense counsel] will get up and tell me why he disagrees with you here before long . . . ." The court further stated, "If I go your way [the State], you're the one that gets to defend this, and whoever on the Appeals Court gets to look at this dialogue that we had . . . I like to give everybody the chance to explain, their opportunity, because I think it's fair rather than just ruling, you can tell me why you think I'm erring, if you think I'm erring."

Tovar contends the lengthy discussion shows the trial court was "helping the State" and had a pro-prosecution bias. Tovar specifically complains of the trial court's comment to the prosecutor, "I'm trying to get you to come my way with me," comment to defense counsel, "[t]he State doesn't want to give an inch," and its statement that, "I'm inclined to find you guilty *to let*

you get to appeal that issue and see whether we could get any clarification from the Court of Criminal Appeals . . . as to whether this is sufficient evidence . . . ." (emphasis added). Instead of revealing a bias in favor of the State, when the trial court's comments are viewed within the entire context of the discussions the record reflects the court was working through its own analysis of the issues out loud, weighing the evidence and inferences against the burden of proof, in order to reach a decision. Simply because the trial court ultimately made an affirmative finding of the enhancement despite its doubts and noted the possibility or even probability of a reversal on appeal does not show the judge was biased — only that he may have been mistaken in his ruling. The record does not show the trial court's unfavorable finding was based on anything other than the court's own analysis of the sufficiency of the evidence on the enhancement elements. Tovar has not shown that the trial court's ruling was "wrongful or inappropriate" or based on a "high degree of favoritism or antagonism" as required to rebut the presumption of a neutral and impartial judge. *See Liteky*, 510 U.S. at 555; *see also Abdygapparova*, 243 S.W.3d at 198.

Consecutive Sentences

In his second argument, Tovar argues the trial court's "inability to disagree with the prosecution" and bias in favor of the State carried over to the way it structured his sentences at punishment. He contends the court revealed its favoritism toward the State (or antagonism toward Tovar) by stacking his sentences on Counts I-III to ensure Tovar would have to serve the first three 30-year sentences consecutively before he began the Count IV sentence — in case Count IV was reversed on appeal.

A defendant is denied due process during the punishment phase if a trial court arbitrarily refuses to consider the entire range of punishment and any mitigating evidence or imposes a predetermined sentence. *Ex parte Brown*, 158 S.W.3d 449, 456 (Tex. Crim. App. 2005); *Buerger v. State*, 60 S.W.3d 358, 364 (Tex. App.—Houston [14th Dist.] 2001, pet. ref'd) (citing *Gagnon*,

411 U.S. at 786-87). Within those confines, a trial court has wide discretion in determining a defendant's punishment. *Grado v. State*, 445 S.W.3d 736, 739 (Tex. Crim. App. 2014).

Before trial, the State filed a motion for consecutive sentences pursuant to article 42.08 "based on protection of the victim and her family, as well as the community." *See* TEX. CODE CRIM. PROC. ANN. art. 42.08. The trial court was therefore aware of the request for consecutive sentences during the presentation of the trial evidence. Indeed, the trial court commented a couple of times that it was considering stacking Tovar's sentences; it did not mention any specific term of imprisonment on any count. At the conclusion of the punishment evidence, the prosecutor argued for life sentences on each of the four counts and requested they all run consecutive because J.A. and her baby "got life sentences." Defense counsel argued for "40 to 50" year sentences. In imposing 30-year sentences on each of the four counts, the trial court sentenced Tovar below the terms requested by defense counsel and the State.

By ordering the sentences on Counts I-III to run consecutively, the trial court exercised its discretion under article 42.08. That statute allows a trial court, in its discretion, to cumulate sentences when a defendant has been convicted in two or more cases. TEX. CODE CRIM. PROC. ANN. art. 42.08(a). Tovar complains that the trial court made comments indicating its motive in stacking the sentences on Counts I-III was to keep him in prison regardless of whether Count IV was ultimately reversed on appeal. After imposing 30-year sentences on all four counts, the trial court considered but rejected the idea of withdrawing its finding of guilt on Count IV. The trial court explained its reasoning by stating, "being that Mr. Tovar is going to be in prison for a while and there's going to be an appeal, I'm going to go ahead and sentence him on count number 4 . . . which will sit on top of the others . . . my notion is when you go up on appeal . . . you're going to get count 4 reversed." The court continued, "[a]nd it won't make any difference at the time,

because he'll be serving his time on everything else." Tovar asserts this comment shows the court's pro-prosecution bias.

We disagree. That the trial court discussed the possibility that the fourth consecutive 30-year sentence (Count IV) would be reversed on appeal in making his sentencing decision does not reveal a pro-State bias, but rather the court's desire to ensure that J.A. and her baby were protected from Tovar notwithstanding what might happen on the appeal of Count IV. Tovar's punishment testimony and remarks to the trial court immediately prior to sentencing, along with the trial court's comments on the record, indicate the court's concern that J.A. and her baby needed future protection from Tovar. In addressing Tovar before sentencing, the court stated, "you have some notion that it may not have been legal, but somehow it was acceptable" to be in a relationship with J.A. and noted that Tovar had asked "who would help J.A." if he went away to prison. The court further noted that J.A. testified she still loved Tovar and would still be with him if he was not in jail. Immediately before imposing the sentences, the court stressed to Tovar the importance of accepting the consequences of his decisions and stated, "you [sic] got a 17-year-old that's handicapped, and you have an infant that is now handicapped [chances for success in society] because of the choices you made, Mr. Tovar." The record shows the court's decision to stack Tovar's sentences on Counts I-III was based on his desire to protect J.A. and her baby from any continued influence by Tovar in their lives, not on any favoritism toward the State. *See Gaal,* 332 S.W.3d at 458 (viewing the trial court's remarks in the context of the entire history of the case and the information before the judge at the time, there was nothing in the record to suggest the trial court was not impartial); *see also Grado*, 445 S.W.3d at 739 (trial court has wide discretion in determining the proper sentence).

We conclude there is nothing in the record to show the trial court failed to consider the full punishment range or any mitigating evidence or had a predetermined sentence in mind when it

chose to impose consecutive 30-year sentences on Counts I-III in addition to the required consecutive sentence on Count IV. *See Ex parte Brown*, 158 S.W.3d at 456. We therefore overrule Tovar's issue asserting judicial bias.

CONCLUSION

Based on the foregoing reasons, we affirm the trial court's judgment on Counts I, II, and III, and reverse the judgment on Count IV and remand to the trial court for a new punishment hearing and entry of judgment on the offense of delivery of a controlled substance to a child.

Liza A. Rodriguez, Justice

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