



**In The
Court of Appeals
Seventh District of Texas at Amarillo**

No. 07-13-00351-CR

JACOB WESLEY FAUDI, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 19th District Court
McLennan County, Texas
Trial Court No. 2011-2270-C1, Honorable Ralph T. Strother, Presiding

October 8, 2015

MEMORANDUM OPINION

Before QUINN, C.J., and CAMPBELL and HANCOCK, JJ.

Appellant Jacob Wesley Faudi appeals from his convictions by jury of one count of indecency with a child by contact¹ and two counts of indecency with a child by exposure,² and the resulting sentences of twenty, and ten, years of imprisonment,

¹ TEX. PENAL CODE ANN. § 21.11(a)(1) (West 2014).

² TEX. PENAL CODE ANN. § 21.11(a)(2) (West 2014).

respectively.³ Through one issue, appellant contends the trial court erred by excluding an exhibit he offered at trial. We will affirm.

Background

Appellant does not challenge the sufficiency of the evidence to support his convictions, so we will set forth only those facts necessary to his appellate issue.

Via indictment, appellant was charged with four counts of indecency with a child, by contact and by exposure. During trial, the State abandoned one of the counts alleging indecency by contact. The six-year-old victim testified. The State also offered the testimony of an investigating police officer, the victim's mother, and a forensic interviewer. The interviewer's report also was admitted into evidence.

Appellant also testified, adamantly denying he committed any of the acts alleged. He acknowledged he had known the victim's father for "a long time" and had known the victim from the time she was a toddler. He also admitted he believed someone sexually abused the victim but denied he was the person who did so. During his case-in-chief, appellant sought admission of a thirteen-page investigative report created by the Texas Department of Family and Protective Services ("DFPS report"). The State objected on several grounds, including relevancy and hearsay. Appellant argued that the report was the "crux" of his case because it contained a statement that "[the victim] stated that she

³ The sentences for indecency by contact and one count of indecency by exposure are to be served concurrently. The ten-year sentence for the additional count of indecency by exposure is to begin when the concurrent sentences cease to operate.

has never been left in the care of Jacob Faudi.”⁴ Appellant contended the statement shows he was never alone with the victim, so it was not possible he engaged in the sexual conduct of which he was accused.

After hearing argument from both counsel and the State, the court denied admission of the document. The trial continued, after which the jury found appellant guilty of one count of indecency with a child by contact and two counts of indecency with a child by exposure and assessed punishment for each. This appeal followed.

Analysis

On appeal, as he did at trial, appellant argues the DFPS report was properly admissible as a public record under Rule of Evidence 803(8). See TEX. R. EVID. 803(8).⁵ He contends on appeal that the exclusion of the DFPS report denied him the opportunity to present his case because his defensive theory was dependent on

⁴ This statement appears in the witness summary of the Department investigator’s face-to-face interview with the victim. The report states the victim “indicated that [she] does not have any contact with the person that hurt her when she [is] at her mom’s or dad’s house. She stated that she has never been left in the care of [appellant]. She stated that he was just staying the weekend with her dad because her dad is married to [appellant’s] sister.”

⁵ Rule 803(8) reads as follows:

Public Records. --A record or statement of a public office if:

- (A) it sets out:
 - (i) the office's activities;
 - (ii) a matter observed while under a legal duty to report, but not including, in a criminal case, a matter observed by law enforcement personnel; or
 - (iii) in a civil case or against the government in a criminal case, factual findings from a legally authorized investigation; and
- (B) the opponent fails to demonstrate that the source of information or other circumstances indicate a lack of trustworthiness.

information contained within it. Without it, he argues, he was “denied his opportunity to examine [the investigator who created the report], to use the statements contained therein to impeach multiple witnesses, and to present the information, observations, and factual findings therein to the jury.”

We review the trial court's decision to admit or exclude evidence under an abuse of discretion standard. *Martinez v. State*, 327 S.W.3d 727, 736 (Tex. Crim. App. 2010) (citing *Green v. State*, 934 S.W.2d 92, 104 (Tex. Crim. App. 1996)). The trial court does not abuse its discretion unless its determination lies outside the zone of reasonable disagreement. *Martinez*, 327 S.W.3d at 736. We uphold the trial court's ruling if it was correct on any theory reasonably supported by the evidence and applicable to the case. *Willover v. State*, 70 S.W.3d 841, 845 (Tex. Crim. App. 2002). After review of the record, we conclude the trial court did not abuse its discretion by excluding the report.

We first reiterate that appellant testified at trial and denied the allegations against him. Several other witnesses also testified on his behalf. While the statement in the DFPS report might be seen as supportive of his denial he committed the offenses, we do not agree the record shows the statement was the “crux” of appellant’s case at trial.

We next note appellant offered the entire thirteen-page DFPS report into evidence without explaining the specific purposes for which it was offered. While appellant asserts on appeal he needed the report in part for impeachment purposes, he did not voice that purpose to the trial court during discussion of its admissibility. The trial court thus did not abuse its discretion by denying admission of the report for its impeachment value. See *Ramirez v. State*, No. 14-06-00538-CR, 2007 Tex. App. LEXIS

5825, at *23-24 (Tex. App.—Houston [14th Dist.] July 26, 2007, pet. ref'd) (mem. op. not designated for publication) (similar analysis).

Finally, the report included portions that the trial court could have determined to be inadmissible.⁶ As other courts have held in similar circumstances, the trial court was not obligated to sift through the entire report to separate the admissible evidence from the inadmissible. See *August v. State*, No. 02-04-00484-CR, 2006 Tex. App. LEXIS 3829, at *10 (Tex. App.—Fort Worth May 4, 2006, pet. ref'd) (mem. op., not designated for publication) (citing *Sauceda v. State*, 129 S.W.3d 116, 124 (Tex. Crim. App. 2004)). That is the obligation of the party offering the evidence. *August*, 2006 Tex. App. LEXIS at *10. Because appellant did not limit his offer to admissible portions of the report, the trial court did not err by excluding the entire report. *Id.*; see *Weiss v. State*, No. 02-07-00390-CR, 2009 Tex. App. LEXIS 9453, at *26 (Tex. App.—Fort Worth Dec. 10, 2009), *reh'g denied*, No. 02-07-00390-CR, 2010 Tex. App. LEXIS 410 (Tex. App.—Fort Worth Jan. 14, 2010) (trial court did not err in excluding police report when appellant offered the report in its entirety and report contained statements that would have been subject to exclusion).

⁶ See *Crane v. State*, 786 S.W.2d 338, 354 (Tex. Crim. App. 1990) (holding that even if the tape itself were admissible under a hearsay exception, any statements made in that recording were subject to the hearsay rule); *Trussell v. State*, 585 S.W.2d 736, 739 (Tex. Crim. App. 1979) (finding that if the report were offered for its truth, and not just for impeachment purposes, then statements contained in the report were hearsay and inadmissible).

Conclusion

We resolve appellant's issue against him and affirm the judgment of the trial court.

James T. Campbell
Justice

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