



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

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No. 07-19-00094-CR

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**ANTHONY WILLIAM LESSNER, APPELLANT**

**V.**

**THE STATE OF TEXAS, APPELLEE**

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On Appeal from the 47th District Court  
Randall County, Texas  
Trial Court No. 29,091-A, Honorable John B. Board, Presiding

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**May 21, 2020**

**MEMORANDUM OPINION**

**Before PIRTLE and PARKER and DOSS, JJ.**

Appellant Anthony William Lessner was convicted on six counts of aggravated sexual assault of a child.<sup>1</sup> On appeal, he challenges the trial court's ruling excluding from evidence a videotaped interview of the victim. We affirm the judgment of the trial court.

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<sup>1</sup> See TEX. PENAL CODE ANN. § 22.021(a)(1)(B)(ii) (West 2019).

## Background

In April of 2017, the Randall County Sheriff's Office received a call indicating that appellant had been sexually abusing Hailey,<sup>2</sup> his nine-year-old daughter. An investigator took Hailey to Northwest Texas Hospital for an exam by a sexual assault nurse examiner (SANE). During the exam, Hailey told the nurse that appellant "gets really bad leg cramps" and made her rub and suck his penis until the cramps went away. Hailey recounted different occasions when this had occurred. She also described the taste of appellant's penis and told the nurse that she did not like it.

Following the SANE exam, Hailey was taken to the Bridge Children's Advocacy Center, where she was interviewed by a forensic interviewer. During the interview at the Bridge, which was recorded, Hailey did not disclose any incidents of abuse.

Within a couple of days, Hailey began treatment with a licensed counselor. Hailey repeated to her counselor what she had told the sexual assault nurse examiner about the abuse. She made no other substantive disclosures until May of 2018, when she told the counselor that appellant had also digitally penetrated her vagina on each of the occasions when he had committed the other acts of sexual assault.

At trial, Hailey testified via closed-circuit television. She acknowledged that although she told the nurse and her counselor about the abuse, she did not say anything about it to the Bridge interviewer. Counsel for the State asked, "Why didn't you tell the

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<sup>2</sup> "Hailey" is a pseudonym we will use to protect the identity of the child victim. See TEX. R. APP. P. 9.10(a)(3).

people at the Bridge what you told me today?” Hailey responded, “I guess I just – because I didn’t know them. I guess I didn’t trust them.”

Before the Bridge interviewer testified, appellant’s trial counsel sought to admit into evidence the recording of Hailey’s interview at the Bridge in its entirety. Counsel acknowledged that Hailey had already testified that she did not mention any sexual abuse in the interview, but stated that “she simply testified she didn’t tell them anything.” He argued that the video revealed the lengths the interviewer went to when trying to elicit information from Hailey. Trial counsel stated that showing Hailey’s lack of disclosure in the face of those efforts was “much more substantial than [Hailey] simply saying, oh, yeah, I didn’t tell them anything.” He continued, “I think that it allows the jury to have a proper context and a proper – they can put it into the proper interpretation of – of how that happened.” He maintained that, since Hailey was telling the same story at trial that she had been asked about by the forensic interviewer, the video of the interview was admissible under the rule of optional completeness.

The State objected to the admission of the video, arguing that it was inadmissible hearsay and that there was no misunderstanding that required clarification under the rule of optional completeness. The State further argued that “only parts that are related to the part that’s offered by the State” would be admissible under the rule of optional completeness, not the entire video. The trial court determined that Rules 106 and 107 did not apply and sustained the State’s objection.

The forensic interviewer was then called to testify by the defense. Her testimony provided general information about her qualifications, experience, and the interview

process, but she did not testify specifically about her interview of Hailey. On cross-examination by the State, she described five phases of the disclosure process that child victims may experience. She agreed that some victims are “not ready to tell” what happened to them, but that did not necessarily mean that nothing had happened. On redirect, appellant’s counsel asked, “[Y]ou’re not specifically talking about [Hailey’s] case here, are you?” She replied, “No, I was talking about generally all the phases that can happen.”

Appellant’s trial counsel then re-urged the admission of the Bridge interview video. He argued that the State’s cross-examination was an attempt to “buttress up” Hailey’s testimony such that the defense should be able to offer the entire interview. Again, the trial court sustained the State’s objection to the admission of the video. The defense then rested.

The jury returned a verdict of guilty on six of the eleven charged counts. It assessed punishment at sixty years’ confinement in the Texas Department of Criminal Justice on count one, and ten years’ confinement each on the other five counts, with all sentences to run consecutively.

### Analysis

In his sole issue on appeal, appellant asserts that the trial court abused its discretion when it excluded the videotaped interview of Hailey, maintaining that the recording was admissible under the rule of optional completeness. See TEX. R. EVID. 107. According to appellant, the State’s questioning of the forensic interviewer created the possibility of the jury receiving a false impression from hearing only part of the

conversation, i.e., that the interview consisted of a singular denial of any acts of abuse by appellant, when in fact, “the nearly hour-long video reveals a comprehensive, deliberative, and compassionate inquiry into the allegations [Hailey] had made only the night before to the sexual assault nurse examiner.” In short, appellant says, he sought to introduce the recording for its propensity to reflect on Hailey’s credibility, or lack thereof.

We review a trial court’s decision to admit or exclude evidence under an abuse of discretion standard. See *Martinez v. State*, 327 S.W.3d 727, 736 (Tex. Crim. App. 2010). A trial court abuses its discretion when its determination is beyond the zone of reasonable disagreement on the issue at hand. *Id.* If the trial court’s ruling was correct on any theory of law applicable to the case, considering what was before the trial court at the time of the ruling, then we must uphold it. *Sauceda v. State*, 129 S.W.3d 116, 120 (Tex. Crim. App. 2004).

Rule 107, known as the rule of optional completeness, provides:

If a party introduces part of an act, declaration, conversation, writing, or recorded statement, an adverse party may inquire into any other part on the same subject. An adverse party may also introduce any other act, declaration, conversation, writing, or recorded statement that is necessary to explain or allow the trier of fact to fully understand the part offered by the opponent. “Writing or recorded statement” includes a deposition.

TEX. R. EVID. 107. The rule allows a party to “complete,” for the purpose of correction or clarification, evidence that has been offered and admitted into evidence by the adverse party. See *Mendiola v. State*, 61 S.W.3d 541, 545 (Tex. App.—San Antonio 2001, no pet.) (op. on remand). The Court of Criminal Appeals identified Rule 107 as a rule “of admissibility [that] permits the introduction of otherwise inadmissible evidence when the evidence is necessary to fully and fairly explain a matter ‘opened up’ by the adverse

party.” *Walters v. State*, 247 S.W.3d 204, 218 (Tex. Crim. App. 2007). “It is designed to reduce the possibility of the jury receiving a false impression from hearing only a part of some act, conversation, or writing.” *Id.* The rule requires the omitted portions be “on the same subject” and “necessary” to make the earlier admitted evidence fully understandable. *Sauceda*, 129 S.W.3d at 123.

We will consider the testimony of both Hailey and the forensic interviewer in our analysis of whether the trial court properly excluded the recorded interview.

### Hailey’s Testimony

Hailey testified at trial that she did not recount her allegations of sexual abuse to the Bridge interviewer. This testimony was entirely consistent with the video. Thus, the video was not necessary to rebut any false impression created by Hailey’s testimony, because there was none. The jury was capable of understanding that Hailey remained silent on the issue without viewing a video showing her silence. Therefore, even if we assume, without deciding, that the rule of optional completeness was invoked by the reference to Hailey’s interview at the Bridge, we conclude that the trial court did not abuse its discretion in determining that the interview was not admissible under Rule 107 to complete or clarify Hailey’s testimony. See, e.g., *Godfrey v. State*, No. 14-13-00100-CR, 2014 Tex. App. LEXIS 879, at \*11-12 (Tex. App.—Houston [14th Dist.] Jan. 28, 2014, no pet.) (mem. op., not designated for publication) (in evading arrest case where officer testified unequivocally that defendant denied seeing him, there was no false impression created that defendant saw officer, so video was not needed to rebut any such impression).

## Forensic Interviewer's Testimony

Appellant argues that the forensic interviewer's discussion of the disclosure process was testimony that "opened up" the statements, or absence of statements, made by Hailey in the videotaped interview. He suggests that the testimony about the phases of disclosure could have created the false impression that Hailey's failure to make an outcry was the result of the disclosure process and not some other cause.

We reiterate that the rule of optional completeness "is designed to reduce the possibility of the jury receiving a false impression from hearing only a part of some act, conversation, or writing." *Walters*, 247 S.W.3d at 218. First, the forensic interviewer did not testify about any "part" of the interview, so the video would not have "completed" the jury's picture of the interview. Second, the interviewer testified clearly that her discussion of the disclosure process was a general discussion, not specific to Hailey's situation. Consequently, we fail to see how showing the video of Hailey's interview would correct a false impression created by the interviewer's testimony. The interviewer's general testimony did not assign any meaning to Hailey's non-disclosure; therefore, the video depicting the non-disclosure was not necessary to explain it. *See Allridge v. State*, 762 S.W.2d 146, 152-53 (Tex. Crim. App. 1988) (en banc) (defendant's statements not admissible under rule of optional completeness where State did not mislead jury or leave jury with a partial or incomplete version of the facts).

Thus, we conclude that the trial court did not abuse its discretion by excluding the Bridge interview from evidence because the decision was not outside the zone of reasonable disagreement. *See Martinez*, 327 S.W.3d at 736.

## Conclusion

Having overruled appellant's sole issue on appeal, we affirm the judgment of the trial court.

Judy C. Parker  
Justice

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Pirtle, J. concurs in the result.