In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-21-00289-CR

LUIS FELIPE MATURINO-RODRIGUEZ, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 287th District Court
Parmer County, Texas
Trial Court No. 3712, Honorable Gordon H. Green, Presiding

September 28, 2022

MEMORANDUM OPINION

Before QUINN, C.J., and PARKER and DOSS, JJ.

Luis Felipe Maturino-Rodriguez appeals his two convictions for indecency with a child. Three issues pend for our review. One involves the sufficiency of the evidence supporting the convictions. Another concerns the submission of a jury instruction on voluntary intoxication, while the third implicates the outcry statute and testimony from an investigating deputy. We affirm.

ISSUE ONE—SUFFICIENCY OF THE EVIDENCE

Appellant begins his attack by arguing that the evidence is insufficient to support his convictions for indecency with a child by contact. We overrule the issue.

First, the standard of review is that described in *Brooks v. State*, 323 S.W.3d 893 (Tex. Crim. App. 2010). We apply it here. Second, one commits the crime of indecency with a child if he or she engages in "sexual contact" with a person under 17 years old. TEX. PENAL CODE ANN. § 21.11 (a)(1). "Sexual contact" includes any touching of the anus, breast or any part of the child's genitals with the intent to arouse or gratify the sexual desire of any person. *Id.* at § 21.11(c)(1). Furthermore, the testimony of a child victim alone is sufficient to support conviction. TEX. CODE CRIM. PROC. ANN. art. 38.07 (uncorroborated testimony of victim is sufficient to support conviction for sexual offense if victim was 17 years of age or younger at the time of the offense); *Ryder v. State*, 514 S.W.3d 391, 396 (Tex. App.—Amarillo 2017, pet. ref'd) (citation omitted) (noting same).

The record contains the following evidence. Appellant entered the bedroom of DS, who was 14 years old. Though asleep at the time, she testified to feeling someone rub her vaginal area and breasts. The touching caused her to stir and awaken. When she did, she found her shorts and underwear hanging from one leg and her breasts exposed from underneath her tank top. That led her to reach for her phone and take a Snapchat video of appellant handling the bedcovers and moving away. Appellant testified to thinking that the person in the bed was DS' mother, "touching" that person, and then lying beside her. He also conceded to knowing earlier that the child was in that bedroom while her mother slept elsewhere. Indeed, he and the child's mother had engaged in sexual

intercourse in the other room before he arose, walked across the house to use a bathroom closest to DS, and entered the room where she slept.

Appellant contends the evidence was insufficient because DS testified she initially thought she was dreaming. Whether dreaming or not, DS said she felt someone rub her vaginal area and touch her breasts. Whether dreaming or not, the child subsequently found herself partially disrobed with her breasts exposed while appellant appeared close enough to touch her. Additionally, testing uncovered DNA attributable to appellant on her vaginal area and breasts. Though appellant denied knowing that the person lying in the bed was DS, he knew she was sleeping in the room while her mother slept elsewhere. So too did he admit to kissing and touching DS as she lay in the bed.

Intent may be "inferred from circumstantial evidence such as acts, words, and the conduct of the appellant." *Guevara v. State*, 152 S.W.3d 45, 50 (Tex. Crim. App. 2004). Moreover, the credibility of witnesses and conflicts in the evidence are for the factfinder to resolve. *Robinson v. State*, 568 S.W.3d 718, 721 (Tex. App.—Amarillo 2019, no pet.). Thus, the jury was free to discredit appellant's claim of confusion about DS being her mother. It was also free to credit the child's testimony about feeling appellant touch her in the areas described, especially when other evidence placed him adjacent to her, his DNA on her in the areas she described, and his admission to kissing and touching her. Given this, we conclude the jury had before it ample evidence from which it could rationally deduce, beyond reasonable doubt, that appellant twice sexually contacted a fourteen-year-old with the intent to arouse or gratify his sexual desire. We overrule appellant's first issue.

ISSUE TWO—JURY CHARGE ERROR CONCERNING SUBMISSION OF VOLUNTARY INTOXICATION INSTRUCTION

Next, appellant contends the trial court erred in submitting to the jury an instruction on voluntary intoxication. TEX. PENAL CODE ANN. § 8.04(a).[1] We overrule the issue.

A trial court may submit a section 8.04(a) instruction when it applies to the case. *Sakil v. State*, 287 S.W.3d 23, 26 (Tex. Crim. App. 2009) (citing *Delgado v. State*, 235 S.W.3d 244, 249 (Tex. Crim. App. 2007)). According to that statute, voluntary intoxication is not a defense to the commission of crime. TEX. PENAL CODE ANN. § 8.04(a). And, such an instruction is appropriate when evidence from any source may lead a jury to conclude that the defendant's intoxication somehow excused his actions. *Sakil*, 287 S.W.3d at 26 (citation omitted). Moreover, the defendant need not argue that intoxication excused his conduct as a prerequisite to informing the jury of section 8.04(a). *Hernandez v. State*, No. 07-19-00070-CR, 2020 Tex. App. LEXIS 3892, at *5 (Tex. App.—Amarillo May 7, 2020, no pet.) (mem. op., not designated for publication). So too may the evidence of intoxication be equivocal, as opposed to clear or undisputed. *Id.*

The trial court submitted the instruction at issue after the jury heard evidence that 1) appellant and DS' mother had been drinking, 2) appellant had "drank about six beers," 3) it was late, and 4) he fell asleep while using the bathroom nearest to DS. And, when asked why he entered the room in which DS slept, he said "[b]ecause I ended up falling asleep and I thought that that was the room that" both he and DS' mother had "fallen asleep in."

[1] Section 8.04(a) provides "Voluntary intoxication does not constitute a defense to the commission of crime." TEX. PENAL CODE ANN. § 8.04(a).

In *Hernandez*, we deemed the evidence sufficient to warrant a voluntary intoxication instruction. *Hernandez*, 2020 Tex. App. LEXIS 3892, at *5. That evidence consisted of reference to appellant being intoxicated or "on drugs" and reference to appellant's strength and stamina when fighting with the officer and a third party. *Id.* at *5-6. As can be deduced from that, it does not take much. Again, the evidence may be equivocal and far less than that needed to prove, beyond reasonable doubt, the accused's level of intoxication, if any. Here, we have evidence of appellant drinking multiple beers, falling asleep, and mistaking the room in which DS slept as the one in which he and her mother had just engaged in sexual intercourse. It, like the evidence in *Hernandez*, interjected the topic of intoxication into the mix and its effect on the defendant's conduct. From it, a juror could be misled into thinking his drinking excused his conduct, or so a trial court could reasonably infer. Whether that was what appellant intended mattered not. Thus, the trial court did not err by instructing the jury on voluntary intoxication and we resolve appellant's second issue against him.

Issue Three—Error In Admitting Outcry Testimony

Via his last issue, appellant argues the trial court erred when it admitted the testimony of Deputy Jayme Schlabs as the outcry witness. Allegedly, the deputy was not the appropriate outcry witness; rather, DS' mother was. We overrule the issue.

An outcry witness is not person-specific, but event-specific. *Robinett v. State*, 383 S.W.3d 758, 761 (Tex. App.—Amarillo 2012, no pet.). Thus, multiple outcry witnesses can testify about different instances of abuse committed by a defendant against the child. *Hutchinson v. State*, No. 07-19-00389-CR, 2020 Tex. App. LEXIS 7782, at *10 (Tex. App.—Amarillo Sept. 23, 2020, pet. ref'd) (mem. op., not designated for publication).

However, each outcry witness must testify about different events, rather than simply repeating the same event. *Id*. To qualify as legitimate outcry, the victim's words must do more than generally allude to misconduct. *Id.* They must detail the alleged offense in some discernible way. *Id.* Thus, an outcry witness is not the first adult to whom the child made some mention of the offense; it is the first adult to whom the child related specific details concerning the offense. *Id.*

Here, the record illustrates that DS told her mother that appellant "had touched her." Yet, she imparted no details of the incident to her mother. However, the child told Deputy Schlabs that 1) appellant rubbed her vaginal area with his hand and touched her bare skin and 2) her "breasts were out of her shirt." Thus, the deputy was the first adult to whom she described the offense in more than general allusion. So, Deputy Schlabs was the proper outcry witness, and the trial court did not err in allowing him to testify as same. Having overruled appellant's issues, we affirm the judgment of the trial court.

Brian Quinn
Chief Justice

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