



**IN THE
TENTH COURT OF APPEALS**

No. 10-18-00047-CR

No. 10-18-00048-CR

REGINO SALINAS,

Appellant

v.

THE STATE OF TEXAS,

Appellee

**From the 40th District Court
Ellis County, Texas
Trial Court Nos. 41398CR and 41399CR**

MEMORANDUM OPINION

The underlying cases were tried together. In both cases, the jury found Appellant Regino Salinas guilty of the offense of continuous sexual abuse of a young child. The jury then assessed Salinas's punishment at seventy-five years' imprisonment for each offense, and the trial court ordered the sentences to run consecutively. These appeals ensued. In

his sole issue in both appeals, Salinas contends that the trial court erred in admitting extraneous-offense evidence in violation of Rule 403. Because Salinas asserts the identical issue in both appeals, we will decide them together.

Rule of Evidence 403 provides: “The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, or needlessly presenting cumulative evidence.” TEX. R. EVID. 403. We review the trial court’s ruling under Rule 403 for an abuse of discretion. See *Montgomery v. State*, 810 S.W.2d 372, 391 (Tex. Crim. App. 1991) (op. on reh’g).

When a trial court balances the probative value of the evidence against its danger of unfair prejudice, a presumption exists that the evidence will be more probative than prejudicial. *Id.* at 389.

[A] trial court, when undertaking a Rule 403 analysis, must balance (1) the inherent probative force of the proffered item of evidence along with (2) the proponent’s need for that evidence against (3) any tendency of the evidence to suggest decision on an improper basis, (4) any tendency of the evidence to confuse or distract the jury from the main issues, (5) any tendency of the evidence to be given undue weight by a jury that has not been equipped to evaluate the probative force of the evidence, and (6) the likelihood that presentation of the evidence will consume an inordinate amount of time or merely repeat evidence already admitted. Of course, these factors may well blend together in practice.

Newton v. State, 301 S.W.3d 315, 319 (Tex. App.—Waco 2009, pet. ref’d) (quoting *Gigliobianco v. State*, 210 S.W.3d 637, 641-42 (Tex. Crim. App. 2006) (footnote omitted)).

Here, Salinas was charged with the continuous sexual abuse of his granddaughters Scarlett and Nora.¹ Along with evidence about the sexual abuse of Scarlett and Nora, however, the trial court allowed the State to present evidence of Salinas's sexual abuse of three of his step-granddaughters. Salinas argues that the extraneous sexual-abuse evidence should have been excluded because it was more prejudicial than probative. Salinas asserts that the extraneous sexual-abuse evidence was "merely cumulative," "intended to inflame and play on the emotions of the jury," and "consumed an inappropriate amount of testimony time."

Extraneous-offense evidence of this nature does have a tendency to suggest a verdict on an improper basis because of the inherently inflammatory and prejudicial nature of crimes of a sexual nature committed against children. *Id.* at 320. The extraneous sexual-abuse evidence here, however, was not "merely cumulative" and did not take an inordinate amount of time to develop. Instead, the extraneous sexual-abuse evidence was highly probative.

Salinas put forward a defensive theory that Scarlett and Nora, who were living with Salinas and his wife at the time, had manufactured the allegations against him because they wanted to go back to live with their mother in another state. Evidence of Salinas's very similar sexual abuse of three of his step-granddaughters, all of whom did

¹ The children were assigned pseudonyms in the trial court. To protect the children's privacy, we will continue to refer to the children by those pseudonyms.

not have such a motive to manufacture allegations, was therefore probative to rebut the defense's theory. As allowed by article 38.37, section 2 of the Code of Criminal Procedure, the evidence was also probative of Salinas's character and that Salinas performed acts against Scarlett and Nora in conformity with his character. See TEX. CODE CRIM. PROC. ANN. art. 38.37, § 2.

Rule 403 "envisions exclusion of [relevant] evidence only when there is a 'clear disparity between the degree of prejudice of the offered evidence and its probative value.'" *Hammer v. State*, 296 S.W.3d 555, 568 (Tex. Crim. App. 2009) (quoting *Conner v. State*, 67 S.W.3d 192, 202 (Tex. Crim. App. 2001)). We cannot say that there is a "clear disparity" between the danger of unfair prejudice posed by the extraneous-offense evidence and its probative value. Therefore, we hold that the trial court did not abuse its discretion in admitting the extraneous-offense evidence.

We overrule Salinas's sole issue in each of these appeals and affirm the trial court's judgments.

REX D. DAVIS
Justice

Before Chief Justice Gray,
Justice Davis, and
Justice Neill

Affirmed
Opinion delivered and filed August 31, 2020
Do not publish
[CRPM]

