



NUMBER 13-15-00197-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

RODOLFO TRUJILLO-TELLO,

Appellant,

v.

THE STATE OF TEXAS,

Appellee.

**On appeal from the 36th District Court
of Aransas County, Texas.**

MEMORANDUM OPINION

**Before Chief Justice Valdez and Justices Rodriguez and Garza
Memorandum Opinion by Justice Rodriguez**

A jury convicted appellant Rodolfo Trujillo-Tello of continuous sexual abuse of a child. See TEX. PENAL CODE ANN. § 21.02 (West, Westlaw through 2015 R.S.). The trial court assessed appellant's punishment at thirty years in the Texas Department of Criminal Justice—Institutional Division. By one issue, appellant contends that the trial court

committed reversible error in admitting Constanica Gonzalez's hearsay testimony. We affirm.

I. BACKGROUND

Appellant was arrested for the offense of continuous sexual abuse of a child based on a relationship he had with his daughter D.T. Pursuant to D.T.'s testimony, appellant made inappropriate sexual advances toward her since she was thirteen years old. D.T testified that the sexual advances intensified throughout the years, and at eighteen years of age D.T made an outcry to her high school counselor, Roxanne Reininger, regarding her father's behavior. The evidence showed that D.T. made her outcry in the presence of Constanica Gonzalez, D.T.'s aunt and appellant's sister. Prior to trial, the State designated Reininger as its outcry witness. At trial, however, the court admitted Gonzalez's testimony relating to D.T.'s outcry, over defense counsel's objections. Based on this and other evidence, the jury found appellant guilty of continuous sexual abuse of a child, and the court assessed a thirty-year sentence.

II. APPLICABLE LAW AND STANDARD OF REVIEW

Pursuant to the Texas Rules of Evidence, hearsay is an out-of-court statement that is offered to prove the truth of the matter asserted. TEX. R. EVID. 801(d). Hearsay is not admissible except as provided by statute or other rules proscribed. *Id.* R. 802. The Texas Code of Criminal Procedure offers a statutory exception to the hearsay rule in the case of a child complainant. TEX. CODE CRIM. PROC. ANN. art. 38.072 (West, Westlaw through 2015 R.S.). Accordingly, the hearsay prohibition does not apply to statements by a child complainant to the first person, eighteen years of age or older, other than the

defendant, to whom the child describes certain sexual offenses committed against the child. *Id.*

In the event a hearsay statement is erroneously admitted, it is subject to the harm analysis under rule 44.2(b) of the Texas Rule of Appellate Procedure. TEX. R. APP. P. 44.2(b); see *Duncan v. State*, 95 S.W.3d 669, 671 (Tex. App.—Houston [1st Dist.] 2002, pet. ref'd) (applying a Rule 44.2(b) analysis to a non-constitutional outcry-hearsay error); see also *Jaycox v. State*, No. 13-13-00639-CR, 2015 WL 5233200, at *3–4 (Tex. App.—Corpus Christi Sept. 16, 2015, no. pet.) (mem. op., not designated for publication) (same). The error may not serve as the basis for appellate relief unless it affects the substantial rights of the appellant. TEX. R. APP. P. 44.2(b). “A substantial right is affected when the error ha[s] a substantial and injurious effect or influence in determining the jury's verdict.” *King v. State*, 953 S.W.2d 266, 271 (Tex. Crim. App. 1997). In determining whether the jury's decision was adversely affected by the non-constitutional error, an appellate court should consider testimony, physical evidence, jury instructions, the State's theories and any defensive theories, closing arguments, and voir dire, if applicable. *Motilla v. State*, 78 S.W.3d 352, 355–56 (Tex. Crim. App. 2002). Important factors include “the nature of the evidence supporting the verdict, the character of the alleged error and how it might be considered in connection with other evidence in the case,” and may include whether the State emphasized the error and whether overwhelming evidence of guilt was present. *Id.* at 355–56, 359.

Additionally, the improper admission of evidence may not be considered reversible error if the same or similar evidence is admitted without objection at another point in the

trial. See *Mayes v. State*, 816 S.W.2d 79, 88 (Tex. Crim. App. 1991) (en banc); *Hudson v. State*, 675 S.W.2d 507, 511 (Tex. Crim. App. 1984) (en banc). The two exceptions to this rule are (1) when the party asks for and receives a running objection and (2) when the party receives a ruling outside the presence of the jury. *Duncan*, 95 S.W.3d at 672; see TEX. R. EVID. 103(a)(1).

III. DISCUSSION

By his sole issue, appellant contends that the trial court committed reversible error in admitting Gonzalez's hearsay testimony under article 38.072, sections 1 and 2 of the Texas Code of Criminal Procedure. See TEX. CODE CRIM. PROC. ANN. art. 38.072, §§ 1–2. Although the State concedes that the trial court erred in admitting Gonzalez's hearsay testimony, it asserts that the error was harmless and does not warrant reversal. We agree with the State.

While the hearsay testimony may have been erroneously admitted, it did not have the effect of substantially or injuriously influencing the jury's verdict. See TEX. R. APP. 44.2(b); *King*, 953 S.W.2d at 271. Appellant complains of Gonzalez's testimony, but the record indicates that the trial court admitted, without objection, testimony from both Reininger and D.T. that was the same or similar to Gonzalez's testimony. See *Mayes*, 816 S.W.2d at 88; *Hudson*, 675 S.W.2d at 511. First, D.T.'s detailed discussion regarding the history of appellant's sexual conduct toward her illustrated the nature and degree of appellant's behavior and the circumstances surrounding the abuse. Moreover, Reininger, D.T.'s high school counselor, testified without any objection as to D.T.'s outcry. Both Reininger's and D.T.'s testimony were substantially similar to the contested

testimony of Gonzalez. See *Mayes*, 816 S.W.3d at 88. Finally, neither exception—a running objection or a ruling outside the presence of the jury—applies with regard to the various instances when the trial court admitted similar evidence. See *Duncan*, 95 S.W.3d at 672. Despite Gonzalez’s testimony, the jury could still have concluded that appellant was guilty of the continuous sexual abuse of a young child based on other testimony and evidence presented at trial: Gonzalez’s testimony included the same facts that were admitted into evidence through Reininger’s and D.T.’s testimony without objection. See *Mayes*, 816 S.W.2d at 88; *Hudson*, 675 S.W.2d at 511. We conclude that the hearsay testimony, even if erroneously admitted, did not have a substantial or injurious effect or influence on the jury’s verdict, and any error was, therefore, harmless. See TEX. R. APP. P. 44.2(b); *King*, 953 S.W.2d at 271.

Having concluded that the error was harmless, we overrule appellant’s issue.

IV. CONCLUSION

We affirm the judgment of the trial court.

NELDA V. RODRIGUEZ
Justice

Do not publish.
TEX. R. APP. P. 47.2(b).

Delivered and filed the
16th day of June, 2016.