# NUMBER 13-19-00259-CR

# COURT OF APPEALS

# THIRTEENTH DISTRICT OF TEXAS

# CORPUS CHRISTI - EDINBURG

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**NAVERSIA CEALLEN ALEXANDER A/K/A NAVERSIA CEALLEN ALEXANDER II, Appellant,**

**v.**

**THE STATE OF TEXAS, Appellee.**

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**On appeal from the 197th District Court of Cameron County, Texas.**

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# MEMORANDUM OPINION

## Before Chief Justice Contreras and Justices Benavides and Longoria
## Memorandum Opinion by Justice Benavides

A jury convicted appellant Naversia Ce Allen Alexander a/k/a Naversia Ceallen Alexander II of two counts of aggravated sexual assault of a child, first-degree felonies, and two counts of indecency with a child, second-degree felonies. *See* TEX. PENAL CODE ANN. §§ 21.11(A)(2), 22.021(A)(2)(B). By three issues, Alexander challenges his

convictions arguing that the trial court erred by: (1) allowing multiple witnesses to testify to outcry statements by C.S.[1], (2) allowing witness testimony whose only purpose was to bolster that of C.S.; and (3) the cumulative effect of the trial court's errors led to a fundamentally unfair trial. We affirm.

## I. BACKGROUND

C.S. is Alexander's stepdaughter; she was fourteen years old at the time of trial. She testified that Alexander began touching her when she was eleven- or twelve-years old. The most serious incident took place in her bedroom after she went to bed one night. He came into her room after she went to bed and told her to take her clothes off. He then began touching and kissing her breasts, digitally penetrated her vaginally, and "licked her." Also during the bedroom incident, Alexander grabbed her arm by the wrist and put it down his pants on his penis. She described it feeling "squishy."

Another incident occurred when the family was watching a movie. According to C.S., Alexander had C.S. sit next to him and he tried to put his hands down her pants. She also attested that Alexander would also come up behind her and hug her while pulling her close against him so that she could feel his "front part" from behind; he would also squeeze her breasts when hugging her.

C.S. said that Alexander told her not to tell anyone and threatened her if she told. After one of his threats, C.S.'s mother saw C.S. crying. Her mother kept insisting C.S. tell her why she was crying. Finally, C.S. told her that Alexander was touching her. Her mother confronted Alexander who denied that he was doing anything. Her mother called

[1] The indictment assigned the minor a pseudonym to protect her identity. *See* TEX. CODE CRIM. PROC. ANN. art. 57.02. We refer to her and her relatives by their initials to protect the minor's identity.

her grandmother and the three of them drove to Mexico. Her mother took her to see someone there to find out if she was lying but they did not discuss Alexander or the abuse. C.S. was not told whether the person she spoke to was a therapist or other kind of professional. When they got home, her mother just told her to lock her bedroom door at night. Over the next school year, C.S. separately told three of her friends that something had happened.

In April 2017 when C.S. was twelve years' old, she told her cousin E.C. that her stepfather was touching her inappropriately after E.C. told C.S. that she too had been sexually abused. E.C. told C.S.'s father, J.S., who did not have custody of C.S. but saw her regularly. J.S. arranged to see C.S. the day after E.C. revealed C.S.'s statement. When pressed, C.S. told her father about the abuse; he then contacted the Brownsville Police Department. Within a few days, a Child Protective Services (CPS) investigator, Gracie Zurita, interviewed C.S. C.S. revealed the details of the abuse to her. Zurita arranged for an interview at Monica's House, the children's advocacy center. Joanne Frausto interviewed C.S. there. C.S. was also taken for forensic examination to Valley Baptist Medical Center in Harlingen where she was seen by Laura Dominguez, a sexual abuse nurse examiner (SANE).

Alexander denied that he abused C.S. His defense was that C.S. made up the alleged abuse.

The jury convicted on all four counts. The trial court imposed punishment at seventeen years' imprisonment on each count to run concurrently. Alexander appealed.

## II. ADMISSION OF EVIDENCE

By his first two issues, Alexander challenges the trial court's admission of outcry testimony from multiple witnesses and testimony that he describes as having no purpose other than to "bolster" C.S.'s testimony.

**A. Standard of Review and Applicable Law**

We review a trial judge's decision to admit or exclude evidence under an abuse of discretion standard. *Burden v. State*, 55 S.W.3d 608, 615 (Tex. Crim. App. 2001); *Green v. State*, 934 S.W.2d 92, 101–02 (Tex. Crim. App. 1996). A trial court abuses its discretion if it acts without reference to guiding rules and principles. *Petriciolet v. State*, 442 S.W.3d 643, 650 (Tex. App.—Houston [1st Dist.] 2014, pet. ref'd); *State v. Reyna*, 89 S.W.3d 128, 130 (Tex. App.—Corpus Christi–Edinburg 2002, no pet.).

In child sexual abuse cases, a trial court may admit the outcry statement of a child to the first adult witness to whom a full description of the alleged abuse was given, provided certain procedural prerequisites are met. *See* TEX. CODE CRIM. PROC. ANN. art. 38.072. Article 38.072 provides a statutory hearsay exemption for the outcry statement. *Id.* The parties agreed that CPS investigator Zurita was the proper outcry witness and that all the statutory prerequisites were met as to Zurita.

**B. Other "Outcry" Witnesses**

By his first issue, Alexander complains that Ramirez, Frausto, and Dominguez were improperly allowed to testify regarding C.S.'s outcry and caused a substantial and injurious effect on the trial.

Frausto testified regarding her interview with C.S., but stated only that C.S. made an outcry of sexual abuse and described C.S.'s demeanor. Defense counsel

cross-examined Frausto regarding the details of C.S.'s description of the sexual abuse, details that were not elicited on direct examination by the State. Because Alexander elicited the statements that he complains of, he has waived any claim of hearsay as to Frausto's testimony. *See Withers v. State*, 642 S.W.2d 486, 487 (Tex. Crim. App. 1982) (noting that a party may not complain on appeal when he offers the same testimony as that objected to); *Womble v. State*, 618 S.W.2d 59, 62 (Tex. Cr. App. 1981); *Botello v. State*, 362 S.W.2d 318, 319-20 (Tex. Crim. App. 1962) (holding appellant waived his hearsay argument on appeal when appellant brought out similar evidence in his cross-examination).

Next, Ramirez testified that she watched Frausto's interview with C.S. and later reviewed the records from the SANE examination. She confirmed that C.S. made an outcry of sexual abuse to the nurse without discussing any details of that outcry during the State's questioning. She also testified that she spoke to E.C., C.S.'s cousin, who told Ramirez that C.S. made an outcry that Alexander touched her. After Ramirez made that statement, defense counsel objected on hearsay grounds. The trial court overruled the objection because it was made after the question was asked and answered. *See* TEX. R. EVID. 103(a)(1). An objection made after the objectionable testimony has been given is untimely, and any potential error is waived. *Amunson v. State*, 928 S.W.2d 601, 607 (Tex. App.—San Antonio 1996, pet. ref'd). Here, the objection was not made until after the complained-of testimony had been elicited. Nothing is presented for review. *See id.*; *Durkovitz v. State*, 771 S.W.2d 12, 15 (Tex. App.—San Antonio 1989, no pet.).

Dominguez then testified that she took a medical history from C.S. which detailed

the claimed abuse. The medical records from her examination and C.S.'s treatment were admitted into evidence without objection. The medical records were accompanied by a medical records affidavit and are admissible under a separate exception to the hearsay rule from the statutory hearsay exemption provided by article 38.072. *See* TEX. R. EVID. 803(6). In addition, the medical history reported by Dominguez is admissible pursuant to Rule 803(4) as statements made for the purpose of medical diagnosis or treatment. *See* TEX. R. EVID. 803(4); *Franklin v. State*, 459 S.W.3d 670, 678 (Tex. App.—Texarkana 2015, pet. ref'd) (holding trial court did not abuse its discretion in finding that the statements contained within SANE's reports, and trial testimony, were admissible under Rule 803(4)). Even if Alexander had objected, the trial court did not abuse its discretion by admitting Dominguez's testimony. *See* TEX. R. EVID. 103(a)(1), 803(4); *Franklin v. State*, 459 S.W.3d at 678.

We overrule Alexander's first issue.

**C. Bolstering Witnesses**

By his second issue, Alexander argues that the trial court allowed witness testimony whose sole purpose was to bolster C.S.'s testimony. "Bolstering" evidence is "any evidence the sole purpose of which is to convince the factfinder that a particular witness or source of evidence is worthy of credit." *Cohn v. State*, 849 S.W.2d 817, 819 (Tex. Crim. App. 1993); *Roberts v. State*, 866 S.W.2d 773, 778 (Tex. App.—Houston [1st Dist.] 1993, pet. ref'd); *see see Rivas v. State*, 275 S.W.3d 880, 886 (Tex. Crim. App. 2009) (noting that "the term 'bolstering' is slowly dying as an objection on its face" in part because of "its inherent ambiguity," but that "it has not yet expired, despite the fact that

the term itself failed to survive the adoption of the Rules [of Evidence in 1998]").

Alexander's defense in this case was that he did not do what he was accused of and C.S. made up the claim to "fit in" with friends and relatives who mentioned their abuse to her. During his opening statement, the defense asserted that C.S. told multiple, inconsistent stories to different people. Rule 801(e)(1)(B) permits the admission of a prior consistent statement to rebut a charge of "recent fabrication or improper influence or motive." *See* TEX. R. EVID. 801(e)(1)(B); *Klein v. State*, 273 S.W.3d 297, 315 (Tex. Crim. App. 2008). If a witness has been impeached as to material matters by evidence of prior inconsistent statements, then evidence of the witness's prior consistent statements is admissible to counter such impeachment. *Klein*, 273 S.W.3d at 316–17; *Pryne v. State*, 881 S.W.2d 593, 596 (Tex. App.—Beaumont 1994, pet. ref'd). Extensive cross-examination that suggests that the complainant is untruthful also supports the subsequent admission of prior consistent statements. *Pryne*, 881 S.W.2d at 596.

Alexander complains that CPS interviewer Zurita, the outcry witness, was permitted to comment that C.S.'s interview with Frausto at Monica's House, which Zurita observed, was consistent with what C.S. told her. Defense counsel objected before Zurita testified but the trial court overruled the objection. Because Alexander had already questioned C.S.'s veracity, the trial court did not abuse its discretion by allowing Zurita to state that the outcry C.S. reported to Zurita was consistent with C.S.'s later statement to Frausto. *See Klein*, 273 S.W.3d at 317; *Pryne*, 881 S.W.2d at 596.

We overrule Alexander's second issue.

## III. CUMULATIVE ERROR

By his third issue, Alexander argues that the cumulative effect of error in the admission of evidence rendered his trial fundamentally unfair. *See Linney v. State*, 401 S.W.3d 764, 780 (Tex. App.—Houston [14th Dist.] 2013, no pet.). ("A number of errors, even if harmless when separately considered, may be harmful in their cumulative effect"). However, we have held that the trial court did not abuse its discretion in admitting the challenged evidence. Non-errors do not produce harm in their cumulative effect. *Hughes v. State*, 24 S.W.3d 833, 844 (Tex. Crim. App. 2000). As a result, there is no cumulative error and we overrule Alexander's third issue. *See id.*

## IV. CONCLUSION

We affirm the judgment of the trial court.

GINA M. BENAVIDES,
Justice

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

Delivered and filed the
6th day of August, 2020.