



Macias v. State

2002 | Cited 0 times | Court of Appeals of Texas | November 20, 2002

AFFIRM

OPINION

A jury convicted Saul Aguilar Macias of aggravated sexual assault of a child under the age of fourteen and assessed punishment at twenty-five years imprisonment. On appeal, appellant asserts four points of error. In his first three points, appellant contends (a) the evidence is legally and factually insufficient to support the conviction; and (b) the trial court abused its discretion by denying appellant's motion for mistrial after the State introduced expert testimony the complainant was credible. In his fourth point, appellant asks us to review therapy and Children's Protective Services ("CPS") records, which the trial court reviewed in camera and then sealed, to determine whether they contain any exculpatory evidence the State should have given appellant. We affirm the trial court's judgment.

Background

Appellant was the stepfather of N.I., the complainant. According to N.I.'s testimony, her stepfather began assaulting her when she was about five years old. He would undress her, lower his pants and underwear, and then "put his middle part in [her] private parts . . . sometimes . . . in [her] front private part and sometimes . . . [her] back private part." Often, he would "spit" in her "private part number two before putting his part in there," and often, "gray, slimy stuff" would "come out of his middle part."

He also threatened to kill her family if she told anyone. The abuse stopped about three years later, when her mother learned about it and appellant was arrested. Medical findings were consistent with "penetration of [N.I.'s] female sexual organ by a male sexual organ,"¹ and a CPS investigator found "reason to believe" appellant had sexually abused N.I.²

Legal and Factual Sufficiency

In his first and second points of error, appellant challenges the legal and factual sufficiency of the evidence to support the conviction. Appellant's complaints focus on N.I.'s failure to identify him in open court as the perpetrator. Specifically, appellant relies on the following portion of the record: [PROSECUTOR]: Do you see your stepdad, the man who did these bad things to you?



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[N.I.]: No.

[PROSECUTOR]: Do you see him here in the courtroom?

[N.I.]: No.

[PROSECUTOR]: Are you looking for him?

[N.I.]: (No response)

[PROSECUTOR]: [N.I.], do you know it's important that people right over here know exactly who it is who did this bad stuff, okay?

[N.I.]: Okay.

[PROSECUTOR]: Can you tell us where he is or can you point to him?

[N.I.]: (No response)

The record reflects the prosecutor then stood behind each male, including appellant, seated at counsel table and asked N.I. if "he was the man who did this to [her]?" N.I. replied "no" each time, and when asked whether she even knew who appellant was and his name, also replied "no." The following then transpired: [PROSECUTOR]: Is the man who did this to you named Saul Aguilar Macias?

[N.I.]: No.

[PROSECUTOR]: What's his name?

[N.I.]: Saul Macias.

[PROSECUTOR]: Saul Macias is the man that did this to you?

[N.I.]: Uh-huh.

[PROSECUTOR]: And do you recognize the man over there?

[N.I.]: No.

[PROSECUTOR]: Okay. Citing Ledet v. State, 533 S.W.2d 817 (Tex. Crim. App. 1976), appellant maintains his conviction must be reversed because the evidence on identification is legally and



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factually insufficient. We disagree.

In reviewing a legal sufficiency challenge, we view the evidence in the light most favorable to the verdict and determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *Wilson v. State*, 7 S.W.3d 136, 141 (Tex. Crim. App. 1999). In conducting a factual sufficiency challenge, we determine whether a neutral review of all the evidence viewed by the fact finder establishes the proof of guilt is so obviously weak as to undermine confidence in the fact finder's determination, or the proof of guilt, although adequate if taken alone, is greatly outweighed by contrary proof. *Johnson v. State*, 23 S.W.3d 1, 11 (Tex. Crim. App. 2000); *Santellan v. State*, 939 S.W.2d 155, 164 (Tex. Crim. App. 1997). In both sufficiency reviews, the trier of fact may draw reasonable inferences from the evidence before it and is the exclusive judge of the witnesses' credibility and of the weight to give their testimony. *Jones v. State*, 944 S.W.2d 642, 647, 648 (Tex. Crim. App. 1996); *Bruno v. State*, 922 S.W.2d 292, 293 (Tex. App.-Amarillo 1996, no pet.). Likewise, resolution of conflicts in the evidence is within the fact finder's exclusive province. *Cain v. State*, 958 S.W.2d 404, 408-09 (Tex. Crim. App. 1997).

There is no question the State was required to prove beyond a reasonable doubt that appellant was the person who sexually assaulted N.I. See *Roberson v. State*, 16 S.W.3d 156, 167 (Tex. App.-Austin 2000, pet. ref'd). While an uncertain in-court identification of an accused as the perpetrator of a crime, standing alone, is insufficient to support a conviction, an equivocal identification will not render "a verdict improper for lack of evidence if other evidence corroborates it." *Anderson v. State*, 813 S.W.2d 177, 179 (Tex. App.-Dallas 1991, no pet.); see also *Couchman v. State*, 3 S.W.3d 155, 162 (Tex. App.-Fort Worth 1999, pet. ref'd). This is so even if the evidence is circumstantial. See *Roberson*, 16 S.W.3d at 167. In fact, the State may prove identity by inferences. *Id.* (citations omitted). A witness uncertainty goes to the weight of the testimony and is for the jury to judge. *Anderson*, 813 S.W.2d at 179.

In this case, in contesting the issue of identity, appellant relies exclusively on the above-cited portion of the record, ignoring entirely the other evidence adduced at trial as required by the applicable standards of review. Viewing the evidence in the light most favorable to the verdict, the record reflects N.I. told the examining pediatrician that her stepfather would put his "private part" in her "front and back private parts" when the two were alone. At trial, N.I. testified her stepfather's name was "Saul Macias," and N.I.'s mother identified appellant in open court as N.I.'s stepfather. The record further reflects CPS investigated the case and concluded there was "reason to believe" appellant had sexually abused N.I. From this evidence, we conclude the jury could have found, beyond a reasonable doubt, appellant was the person who sexually assaulted N.I. We overrule appellant's first point of error.

We also overrule appellant's second point of error. Although N.I. failed to identify appellant in open court as the perpetrator, her failure went to the weight of her testimony, which was for the jury to determine. The jury's determination in the State's favor does not render the evidence factually



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insufficient. See *Cain*, 958 S.W.2d at 410. Viewing the evidence in a neutral light, we conclude the proof of guilt was neither so obviously weak as to undermine confidence in the jury's verdict nor greatly outweighed by contrary proof.

In overruling appellant's first and second points, we necessarily conclude *Ledet*, upon which appellant relies, does not control. In *Ledet*, a jury convicted the defendant, an African-American male, of oral sodomy. 533 S.W.2d at 817, 819. The court of criminal appeals reversed, finding the evidence on identity insufficient. *Id.* at 820. In so doing, the court noted that the complainant's mother testified she found the complainant in the defendant's apartment immediately following the offense and believed, based on the complainant's account, that the defendant was the perpetrator. *Id.* at 819. The court also noted, however, that the complainant described the perpetrator as a "white male with blue tattoos on his arms" and repeatedly testified the defendant was not the perpetrator. *Id.* at 817-19. Those are not the facts in this case. While N.I. did not identify appellant as the perpetrator in open court, she did not offer a physical description of her stepfather that varied from that of appellant's. Moreover, *Ledet* was decided before the adoption of the current legal and factual sufficiency standards of review and relied upon the now-rejected reasonable hypothesis analytical construct. See *Carlsen v. State*, 654 S.W.2d 444, 448-49 (Tex. Crim. App. 1983) (op. on reh'g) (adopting *Jackson v. Virginia* standard in both direct and circumstantial evidence cases), overruled on other grounds by *Geesa v. State*, 820 S.W.2d 154, 161 (Tex. Crim. App. 1991) (abandoning reasonable hypothesis analytical construct), overruled, in part, by *Paulson v. State*, 28 S.W.3d 570, 573 (Tex. Crim. App. 2000); *Clewis v. State*, 922 S.W.2d 126 (Tex. Crim. App. 1996) (adopting factual sufficiency standard of review); *Johnson v. State*, 23 S.W.3d 1 (Tex. Crim. App. 2000) (clarifying factual sufficiency standard of review). Appellant's reliance on *Ledet* is misplaced.

Evidentiary Issue

In his third point of error, appellant asserts the trial court erred in overruling his motion for mistrial after the lead detective testified she found N.I. to be "very credible, very believable." This testimony followed the prosecutor's attempt to clarify on re-direct the difference between what N.I. failed to say in her interview, as pointed out by defense counsel during cross-examination, and what N.I. did say. Appellant objected and the trial court sustained the objection. The trial court also ordered the jury to disregard but denied appellant's motion for mistrial. Appellant now maintains he was harmed because N.I., age nine at trial, was the only witness who testified appellant was the perpetrator. In response, the State argues any error was harmless. We agree with the State.

We review the trial court's ruling on a motion for mistrial under an abuse of discretion standard. See *Kipp v. State*, 876 S.W.2d 330, 339 (Tex. Crim. App. 1994). A mistrial is proper when an objectionable event is "so emotionally inflammatory that curative instructions are not likely to prevent the jury from being unfairly prejudiced against the defendant." *Sanders v. State*, 25 S.W.3d 854, 858 (Tex. App.-Houston [14th Dist.] 2000) (citing *Bauder v. State*, 921 S.W.2d 696, 698 (Tex. Crim. App. 1996)), pet. dismiss'd, 56 S.W.3d 52 (Tex. Crim. App. 2001). In all other situations, the jury is presumed to follow



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the trial court's instruction to disregard. See *Waldo v. State*, 746 S.W.2d 750, 754 (Tex. Crim. App. 1988). In determining whether the erroneous admission of evidence required a mistrial, we look at the record as a whole, including, but not limited to, testimony and physical evidence, the nature of the evidence supporting the verdict, and the character of the error and its relationship to other evidence. *Schutz v. State*, 63 S.W.3d 442, 444 (Tex. Crim. App. 2001); *Hinojosa v. State*, 4 S.W.3d 240, 252 (Tex. Crim. App. 1999).

In this case, the record reflects N.I. testified at length and in great detail concerning the sexual assaults that occurred over a three-year period. The record also reflects defense counsel cross-examined N.I. extensively. In addition, N.I.'s mother, the CPS investigator, the therapist, and the examining pediatrician also testified concerning N.I.'s statements to them about the abuse, and medical findings were consistent with and supported a strong history of sexual abuse. Again, defense counsel cross-examined each of those witnesses. Given this record, we conclude the inadmissible testimony was but a small portion of a large amount of evidence presented from which the jury could have assessed N.I.'s credibility. See *Schutz*, 63 S.W.3d at 446. Accordingly, we conclude any error in the admission of the detective's testimony was harmless. We overrule appellant's third point of error.

Sealed Records

In his fourth point, appellant asks us to review records the trial judge reviewed in camera and then sealed. Those records consist of the CPS file and the therapist's notes and exercise sheets completed during N.I.'s group therapy. Appellant asks that we determine whether the judge properly concluded the State did not have to disclose those records.

Under the due process clause of the Fourteenth Amendment, the State has an affirmative duty to disclose evidence favorable and material to a defendant's guilt or punishment. *Brady v. Maryland*, 373 U.S. 83, 87-88 (1963); *Lagrone v. State*, 942 S.W.2d 602, 615 (Tex. Crim. App. 1997). This duty attaches with or without a request for the evidence. *United States v. Bagley*, 473 U.S. 667, 682 (1985). When unsure of whether to disclose the evidence, the prosecutor should submit the evidence to the trial judge for his consideration. *United States v. Agurs*, 427 U.S. 97, 106 (1976); *Thomas v. State*, 841 S.W.2d 399, 407 (Tex. Crim. App. 1992).

In this case, the State tendered the CPS and therapist's records to the court for a determination of whether they should be disclosed. After reviewing them in camera, the trial judge ordered the records sealed and denied appellant access to them. We have reviewed the sealed records and conclude they do not contain any exculpatory or mitigating evidence. Thus, the trial court did not err in denying appellant access to the records. We overrule appellant's fourth point of error.

We affirm the trial court's judgment.

Do Not Publish Tex. R. App. P. 47



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1. The pediatrician who examined N.I. could not conclude "definitively" that N.I. had been sexually abused but believed the medical findings were consistent with and supported a strong history of sexual abuse.
2. The investigator explained her finding was based on a "preponderance of the evidence."

