

NO. 01-24-00930-CR

**IN THE COURT OF APPEALS
FOR THE FIRST JUDICIAL
DISTRICT OF TEXAS
HOUSTON, TEXAS**

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DEBORAH M. YOUNG
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JUSTIN RAY GONZALEZ, Appellant

VS.

THE STATE OF TEXAS, Appellee

**On Appeal from 240th District Court
Fort Bend County, Texas
Trial Court Cause No. 20-DCR-092936B**

APPELLANT'S BRIEF

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ORAL ARGUMENT IS NOT REQUESTED

IDENTITY OF PARTIES AND COUNSEL

Pursuant to TEX. R. APP. P. 38.1(a), the parties to this suit are as follows:

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STATEMENT REGARDING ORAL ARGUMENT

Pursuant to Texas Rule of Appellate Procedure 39.7, Appellant does not request oral argument.

STATEMENT OF THE CASE

Appellant was indicted and tried for the felony offense of Continuous Sexual Abuse of a Child. CR 10. Trial was had in the 240th District Court, The Honorable Surrenderan Pattel, Presiding. The State filed its Notice of Joinder on April 6, 2023. CR 16. On October 29, 2024, a jury found Appellant guilty and the Court assessed punishment at forty (40) years confinement in the Texas Department of Criminal Justice - Institutional Division. CR 291.

Notice of Appeal was timely filed on November 25, 2024. CR 317.

This brief follows.

ISSUE PRESENTED

SOLE POINT OF ERROR

The trial court erred by allowing witness Addison Carter to testify to hearsay statements about the abuse of the child complainants.

STATEMENT OF FACTS

The complainants Joan and Jane Doe are identical twin sisters. 3 RR 19-20. Following the divorce of their parents, the complainants lived primarily with their biological father. 3 RR 21; 4 RR 31-2. Appellant later married the girls' mother Jennifer. 3 RR 21-2.

The girls spent Spring Break 2020 at their mother's residence in Needville, Texas. 3 RR 30-1. Joan was 14 years old and in 8th grade. *Id.* Living in her mother's house at that time were both complainants, their brother Jaden, their mother Jennifer Gonzalez, and Appellant. 3 RR 31-2. From age 11-14, Joan was disciplined by her parents for interacting with boys on her phone. 3 RR 167. Before Spring Break 2020, Joan's father had taken her cell phone away when Joan was caught talking to boys. 3 RR 165-8. This punishment continued when Joan and Jane went to their mother's house during Spring Break. *Id.* That week, Joan stole her brother's iPad and used it to contact friends in violation of house rules. *Id.*; 3 RR 31-4. Appellant and Jennifer yelled at Joan for being on the iPad, and then Appellant contacted Joan's biological father. 3 RR 147-7. Joan made an outcry of sexual abuse against Appellant while Appellant and her mother Jennifer were

yelling at her for violating house rules. 3 RR 38-41. Her sister Jane then also made an outcry of sexual abuse against Appellant. 3 RR 40-1; 4 RR 40-2. Jennifer Gonzalez drove her daughters to the hospital where the girls underwent medical examinations and spoke to the police. 3 RR 41-5. Later the girls were interviewed multiple times at the child advocacy center. 3 RR 45-7. During her CAC interview, Joan admitted that she “lies a lot.” 3 RR 104. Joan testified that she had lied about her whereabouts and whether she was talking to boys on her phone. 3 RR 103-6.

At trial, Joan testified that Appellant began abusing her by putting his fingers in her vagina when she was 11 turning 12 years old. 3 RR 48-52. Joan described a time in which she was sitting on the couch and Appellant approached her from behind the couch and began kissing her, and then touched her vagina. 3 RR 121-38. Joan stated that the abuse later escalated to Appellant inserting his penis into her vagina. 3 RR 57-63. Joan stated that she was afraid of the dark so she often slept on the floor / under the bed in the bedroom with her mother Jennifer and Appellant. 3 RR 35, 37. Joan described a time in which she was asleep in bed and Appellant laid down next to her and got under the covers with her, and then inserted his penis into her vagina. 3 RR 150-8. Joan testified that this continued past her 14th birthday — the last time being a few weeks before spring break because Joan asked Appellant to stop. 3 RR 66, 172.

Joan stated that she told one friend about these incidents in 7th grade. 3 RR 162-3. Addison Carter was later called to testify about the statements made by Joan

and Jane. 5 RR 9-11. After several sustained hearsay objections, the prosecutor asked the following question:

Q. (By Ms. Howard): Did Joan and Jane disclose sexual abuse to you by Justin Gonzalez?”

5 RR 11. After another objection was sustained, this time followed by a granted motion to strike and a denied motion for mistrial, the prosecutor again attempted to elicit the same testimony. 5 RR 11-12. At this time, the trial court excused the jury to hear argument on this point. *Id.* The prosecutor argued that this testimony was admissible as a prior consistent testimony; Appellant argued this was inadmissible hearsay and improper bolstering of the credibility of the complainants. 5 RR 12-21. In the end the trial court encouraged the prosecutor to rephrase the question. 5 RR 21. Over objection, Addison Carter was then permitted to testify that Joan and Jane told her that Appellant fingered both Joan and Jane in their home. 5 RR 22-3.

Jane also testified that her parents took her cell phone away for talking to boys and being on social media. 4 RR 33. Jane stated that her sister Joan got in trouble for using social media when she was not allowed to be on any “electronics.” 4 RR 37-8. During that moment, Joan states that “he does stuff to us” and Jane followed by saying “he fucks us” — which prompted their mother Jennifer to drive them to the hospital. 4 RR 41-2. Jane was examined at Texas Children’s Hospital and was later interviewed at the children’s advocacy center. 4

RR 43-5. Jane admitted that in the past she has lied to avoid getting in trouble. 4 RR 82.

Jane stated that Appellant began touching her breasts and her vagina with his fingers when she was 8 years old. 4 RR 50-2. Jane described a time in which Appellant asked her to sit on his lap and then he touched her vagina. 4 RR 54-7. Jane later described an incident where she was laying in bed with Appellant and her mother, and Appellant touched her vagina. 4 RR 59-62. Jane described several incidents in which Appellant inserted his penis into her vagina. 4 RR 62-67; 68-72. Jane stated that these particular incidents occurred in the bedrooms. *Id.* Jane testified that the sexual intercourse went on for around three years and that she was 14 years old the last time this happened which was the night before the outcries. 4 RR 73-5, 77.

Alma Diaz, a sexual assault nurse examiner at Texas Children's Hospital, examined Jane Doe in connection with this case. 4 RR 149. Because Jane complained of a recent sexual assault, evidence was collected from Jane's body. 4 RR 151. Diaz swabbed Jane's breasts, vulva, vagina, anus, and panties in addition to collecting a known saliva sample (buccal swab). *Id.*

Craig Radar is a certified peace officer with the Lamar Consolidated Independent School District. 4 RR 174-5. During 2020, Officer Radar worked as an investigator at the Needville Police Department. *Id.* Officer Radar investigated the sexual assault complaints by Joan and Jane Doe. *Id.* Radar collected the SANE

kit and delivered it to the evidence room. 4 RR 178-81, 89. Appellant agreed to interviews with Radar on two occasions; Radar also collected a DNA sample from him. 4 RR 182, 84. Officer Radar did not attempt to collect articles of clothing, linens, blankets, or the girls' cell phones, take photos, or apply for search warrants for any of these items. 4 RR 221-25. Radar did not attempt to interview the other occupants of the home where the incidents occurred. 4 RR 226.

A forensic scientist at the Texas Department of Public Safety, Sikta Patnaik, screened the DNA samples in this case. 5 RR 32-43. Another forensic scientist at the Texas Department of Public Safety, Shauna Joseph, analyzed and interpreted the DNA evidence in this case. 5 RR 50-2. Joseph stated that she performed YSTR testing on the evidence collected, and found a partial YSTR profile in the vulva swab of Jane Doe. 5 RR 58. Joseph interpreted this partial YSTR profile as originating from a single individual. *Id.* Joseph also stated that she could not exclude Appellant as a contributor of the male DNA profile. 5 RR 58-9. Joseph explained that this was a partial profile — meaning genetic information was found at only 8 out of 23 locations. *Id.* Joseph testified that in her initial report, she stated that this profile is found in 94 out of 16,388 total individuals within the database. 5 RR 58. Joseph later testified that in 2023 a new statistical method for YSTR was implemented, and new reports were issued. 5 RR 62. Joseph explained the added language in the supplemental report, stating that the “statistical confidence interval” is 95% and this profile is not expected to occur more frequently than 1 in

147 U.S. males. 5 RR 63-4. Joseph conceded that DNA can transfer between two individuals who have contact with one another, or who both have contact with the same inanimate object. 5 RR 68.

Jennifer Gonzalez testified that all household members frequently used the bath towels that were available and hanging near the shower. 5 RR 12-3. Jennifer repeatedly stated that she believes both Joan and Jane are lying about the allegations of sexual abuse by Appellant. 5 RR 117. Jennifer also stated that she did not believe any of these incidents occurred due to the logistics of the bedrooms and because she was in the same room many of the times. 5 RR 137-41. Jennifer discussed Joan's inappropriate contact with boys, "sneaking around on snapchat," inappropriate contact with older boys, meeting a boy at the ranch, and history of lying. 5 RR 147-53.

SUMMARY OF THE ARGUMENT

The trial court erred when it allowed witness Addison Carter to testify to hearsay statements by the child complainants because the statements did not qualify as prior consistent statements under Texas Rules of Evidence 801(e)(1)(B) and 613(c), and *Hammons v. State*, 239 S.W.3d 798, 804 (Tex. Crim. App. 2007) in that Appellant did not raise "an express or implied charge of recent fabrication or improper influence or motive of the declarant's testimony."

ARGUMENT AND AUTHORITIES

SOLE POINT OF ERROR

The trial court erred by allowing witness Addison Carter to testify to hearsay statements about the abuse of the child complainants.

Authorities

Standard of Review

A trial court's evidentiary rulings are reviewed for abuse of discretion. *Henley v. State*, 493 S.W.3d 77, 82–83 (Tex. Crim. App. 2016). An abuse of discretion occurs when the decision falls outside the zone of reasonable disagreement. *Id.* at 83.

Applicable Law

“ ‘Hearsay’ is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” TEX. R. EVID. 801(d). “Hearsay is not admissible except as provided by statute or [the Rules of Evidence] or by other rules prescribed pursuant to statutory authority.” TEX. R. EVID. 802.

“Once the opponent of hearsay evidence makes the proper objection, it becomes the burden of the proponent of the evidence to establish that an exception applies that would make the evidence admissible in spite of its hearsay character.” *Taylor v. State*, 268 S.W.3d 571, 578–79 (Tex. Crim. App. 2008).

“A prior statement of a witness which is consistent with the testimony of the witness is inadmissible except as provided in Rule 801(e)(1)(B).” TEX. R. EVID. 613(c). “A statement is not hearsay if ... [t]he declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is ... consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive.” TEX. R. EVID. 801(e)(1)(B).

The elements for introducing a prior consistent statement, are (1) the declarant testifies at trial and is subject to cross-examination, (2) an opposing party has raised an express or implied charge of recent fabrication or improper influence or motive of the declarant's testimony, (3) the declarant's prior statement is consistent with the declarant's challenged testimony at trial, and (4) the prior consistent statement must have been made before the time that the alleged motive to lie arose. *Hammons v. State*, 239 S.W.3d 798, 804 (Tex. Crim. App. 2007).

Argument

The trial court admitted hearsay statements of the abuse victims as prior consistent statements even though the statements did not meet the standard required for admission. Appellant properly objected to the hearsay statements, and after several sustained objections, the trial court excused the jury for a hearing on the matter. 5 RR 11-12. The prosecutor argued that the hearsay statements were admissible as prior consistent statements and Appellant argued these statements

were inadmissible hearsay under Rule 613 and improper bolstering of the credibility of the complainants. 5 RR 12-21. Following a lengthy back-and-forth between the parties off the record on this point, the trial court suggested to the prosecutor that she could rephrase the question. 5 RR 21. Then, over another hearsay objection, when a similar question was asked, Addison Carter was allowed to testify that Joan and Jane told her that Appellant fingered them in their home. 5 RR 22-3.

However, this evidence was inadmissible because it did not meet the standard required for admission pursuant to *Hammons v. State*¹. Specifically, Appellant did not raise “an express or implied charge of recent fabrication or improper influence or motive of the declarant’s testimony.” *See* 239 S.W.3d at 804. Appellant suggested throughout cross examinations and in closing that the complainants’ accounts were not credible however Appellant never claimed **recent** fabrication or improper influence or motive of either complainants’ testimony. Additionally, the prior consistent statements were not made before the time that the alleged motive to lie arose. *See Hammons* at 804. Instead, Appellant’s defense was that the statements were always fabricated; the statements were always the produce of improper influence or motive. But this is not the scenario contemplated by Texas Rules of Evidence 801(e)(1)(B) and 613(c). In fact, in *Haughton v. State*, this Court held that Texas Rule of Evidence 801(e)(1)(B) requires that a prior

¹239 S.W.3d 798 (Tex. Crim. App. 2007)

consistent statement be made before the alleged improper influence or motive arose. 805 S.W.2d 405 (Tex. App.—Houston[1st Dist.] 1990). In that decision, this Court ruled that the alleged motive for fabrication arose prior to the making of the statement, and therefore that statement was not admissible as a prior consistent statement under Texas Rule of Evidence 801(e)(1)(B). *Id.*

In *Castillo v. State*, this Court held that the trial court’s admission of the complainant’s forensic interview as a prior consistent statement to rebut a charge of recent fabrication did not meet the standard announced in *Hammons* because the interview took place long after the alleged motive to fabricate. 573 S.W.3d 869, 878 (Tex. App.—Houston [1st Dist.] 2019).

Because Appellant did not raise “an express or implied charge of recent fabrication or improper influence or motive of the declarant’s testimony,” the trial court erred when it admitted Addison Carter’s hearsay statements of the child abuse complainants.

For these reasons, this Court should find that the trial court erred by admitting the hearsay statements made by the abuse victims.

Harm

Finding that the trial court erred by admitting the hearsay statements made by the abuse victims, this court must now consider whether the error requires reversal. The Texas Rules of Appellate Procedure provide that an appellate court must disregard a non-constitutional error that does not affect a criminal defendant's

“substantial rights.” TEX. R. APP. 44.2(b). Under that rule, an appellate court may not reverse for non-constitutional error if the court, after examining the record as a whole, has fair assurance that the error did not have a substantial and injurious effect or influence in determining the jury's verdict. *Johnson v. State*, 967 S.W.2d 410, 417 (Tex. Crim. App. 1998); *King v. State*, 953 S.W.2d 266, 271 (Tex. Crim. App. 1997).

The complainants’ accounts and their character for truthfulness were hotly contested at trial. Therefore, the trial court’s error affected Appellant’s substantial rights in that this evidence corroborated their accounts. No other evidence corroborated the complainants’ accounts of the abuse. Thus, there is no “fair assurance” that this error did not have a “substantial and injurious effect or influence” on the jury’s verdict.

For all of these reasons, the court should sustain Appellant’s point of error.

PRAYER

WHEREFORE, PREMISES CONSIDERED, the Appellant prays that this Court reverse the trial court's judgment and sentence, remand for a new trial, and grant any other relief that may be appropriate.

Respectfully submitted,

/s/ Daniel Lazarine

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CERTIFICATE OF SERVICE

This is to certify that on April 29, 2025, a true and correct copy of the above and foregoing Appellant's Brief was served on the Fort Bend County District Attorney's Office by electronic service through e-filing.

/s/ Daniel Lazarine
DANIEL LAZARINE

CERTIFICATE OF COMPLIANCE

Pursuant to TEX. R. APP. P. 9.4(1)(i)(1), I certify that this document complies with the type-volume limitations of TEX. R. APP. P. 9.4(i)(2)(D):

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