Affirmed and Opinion filed June 7, 2001.

In The

Fourteenth Court of Appeals

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NO. 14-00-00370-CR

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JASON LARUE DEBOW, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 174th District Court
Harris County, Texas
Trial Court Cause No. 826,436

O P I N I O N

Jason Larue Debow appeals a conviction for indecency with a child[1] on the ground that the trial court erred by admitting the hearsay testimony of the State's outcry witness. We affirm.

Outcry Witness

Appellant's first issue contends that the trial court erred by admitting the hearsay testimony of Patsy Edwards, an "outcry" witness, because the complainant's then deceased mother, rather than Edwards, was the first person over eighteen years of age to whom the

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[1] A jury convicted appellant, and the trial court assessed his punishment at fifteen years confinement.

complainant disclosed the alleged abuse. Appellant's second issue contends that he did not receive a sufficient written summary of the complainant's statement in the statutory notice provided by the State.[2] Appellant claims the summary was deficient because it did not also state that appellant had threatened the complainant or that the alleged conduct happened over a period of years in several states.

Hearsay is not admissible except as provided by statute or the rules of evidence.[3] TEX. R. EVID. 802; *Long v. State*, 800 S.W.2d 545, 547 (Tex. Crim. App. 1990). Article 38.072 of the Texas Code of Criminal Procedure provides an exception, commonly known as the "outcry exception," for a hearsay statement made by a child abuse victim.[4] TEX. CODE CRIM. PROC. ANN. art. 38.072 § 2(a)(1) (Vernon Supp. 2001). In the prosecution of an offense committed against a child twelve years of age or younger, article 38.072 allows admission of statements that: (1) describe the alleged offense; (2) were made by the child against whom the offense was allegedly committed; and (3) were made to the first person, 18 years of age or older, other than the defendant, to whom the child made a statement about the offense. *Id*. at art. 38.072 §§ 1, 2(a). In order for the statement to be admissible under article 38.072 the party intending to offer the statement must so notify the adverse party on or before the 14th

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2 Contrary to the State's contention, this complaint was preserved by appellant's hearsay objection to the outcry testimony. *See Long v. State*, 800 S.W.2d 545, 548 (Tex. Crim. App. 1990) (holding that an objection based on hearsay preserves error for any failure to comply with the provisions of article 38.072)

3 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).

4 Suggested rationales for admitting outcry testimony include: (1) bolstering the testimony of young victims whose lack of cognitive or verbal skills prevent them from testifying effectively; (2) refuting any inference arising from the victim's post-offense silence that no offense had been committed; and (3) overcoming general concerns regarding children's difficulty perceiving and remembering events, their susceptibility to being manipulated, or their desire to manipulate others. *See* Daniel K. Peugh, *The Illinois "Outcry" Hearsay Exception*, 95 ILL. B.J. 503, 503-05 (1997).

day before the proceeding begins and provide the name of the witness and a written summary of the statement. *Id*. at art. 38.072 § 2(b).[5]

Nonconstitutional error is not reversible if it does not affect an appellant's substantial rights. TEX. R. APP. P. 44.2. Substantial rights are affected when the error has 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). The admission of inadmissible hearsay constitutes nonconstitutional error and will thus be considered harmless if, after examining the record as a whole, we are reasonably assured that the error did not influence the jury verdict or had but a slight effect. *Johnson v. State*, 967 S.W.2d 410, 417 (Tex. Crim. App. 1998). Likewise, improper admission of evidence is not reversible error if the same or similar evidence is admitted without objection at another point in the trial. *Dewberry v. State*, 4 S.W.3d 735, 754 n.18 (Tex. Crim. App. 1999).

In this case, the indictment alleged that on or about September 1, 1995, appellant intentionally and knowingly engaged in sexual contact with the complainant by touching her breast with the intent to arouse and gratify his sexual desire. In its article 38.072 notification, the State summarized the outcry witness's hearsay statement as follows:

> On or about February 14, 1998, the complainant, . . . told Pasty [sic] Edwards . . . that the defendant on more than one occassion [sic] touched her genital area and her breast and that he physically beat her and her brother Ja[c]quan.

At the outcry hearing, appellant's trial counsel objected to Edwards's outcry statement:

> We're going to object to [Edwards's] outcry statement on the grounds that by her own testimony she was not the first person over 18 years old that the complaining witness told about this offense. She said it was, in fact, her mother Lesley Myers. So she doesn't qualify under 38.072.
>
> In the alternative,... if the Court allows her to testify, I would ask the Court to limit what she says to the offense that's charged and not... about the touching of the vagina area and the breasts in the other two states. That's not in this indictment. It's not under 37.072. If the Court allows her to give the outcry statement, I'd ask you limit it as required by 37.072.

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[5] In addition, the child must either testify or be available to testify at the proceeding. TEX. CODE CRIM. PROC. ANN. art. 38.072 § 2(b)(3) (Vernon Supp. 2001).

At trial, the complainant, whose age was six at the time of the charged offense and ten at the time of trial, testified regarding the appellant's touching and rubbing of her breasts in Houston. The complainant further testified that, after the Houston touching, appellant threatened to kill her and her mother if she told anyone. The complainant also testified that appellant touched her breast when they lived in California and put his hand up her skirt and rubbed hard on her "private part" when they lived in Georgia.

Edwards, the outcry witness and the complainant's grandmother, subsequently testified at trial only that, while at the complainant's mother's funeral, the complainant informed her that appellant had touched her breasts when they lived in Houston. Thus, Edwards's trial testimony did not differ from or add to the trial testimony given by the complainant, which is not complained of on appeal, and did not go beyond the facts stated in the State's 38.072 notice.[6] Because evidence of the same facts were introduced without objection at other points in the trial and the outcry witness's testimony was not outside the State's summary, the trial court's admission of Edwards's outcry testimony, even if erroneous, was harmless.[7] Accordingly, appellant's two issues are overruled, and the judgment of the trial court is affirmed.

/s/ Richard H. Edelman
Justice

Judgment rendered and Opinion filed June 7, 2001.

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6 Further, contrary to appellant's second point of error, Edwards did not testify at trial regarding any alleged threats appellant made to the complainant or that the alleged abuse happened over a period of years in several states.

7 *Broderick v. State*, 35 S.W.3d 67, 74-75 (Tex. App.—Texarkana 2000, pet. ref'd) (holding that admission of inadmissible outcry testimony was harmless error because the same evidence was introduced through testimony of the complainant without objection); *Thomas v. State*, 1 S.W.3d 138, 142 (Tex. App.—Texarkana 1999, pet. filed) (same); *Poole v. State*, 974 S.W.2d 892, 899 (Tex. App.—Austin 1998, pet. ref'd) (same).

Panel consists of Justices Edelman and Frost and Senior Chief Justice Murphy.[8]

Do not publish — TEX. R. APP. P. 47.3.

[8] Senior Chief Justice Paul C. Murphy sitting by assignment.