Affirmed as Modified; Opinion Filed June 16, 2020

In the
Court of Appeals
Fifth District of Texas at Dallas

No. 05-19-00845-CR

FELTNER DEAN HUNT, Appellant
V.
THE STATE OF TEXAS, Appellee

On Appeal from the 265th Judicial District Court
Dallas County, Texas
Trial Court Cause No. F18-75195-R

MEMORANDUM OPINION

Before Justices Whitehill, Osborne, and Carlyle
Opinion by Justice Carlyle

A jury convicted appellant Feltner Dean Hunt of continuous sexual abuse of a child under fourteen and assessed punishment at life imprisonment. Mr. Hunt asserts the trial court abused its discretion by admitting extraneous offense evidence regarding his alleged sexual abuse of the complainant's older sister. We affirm the trial court's judgment as modified in this memorandum opinion. *See* TEX. R. APP. P. 47.4.

The complainant, L.L., and her older sister, L.L.2, were born in Singapore in 1997 and 1994, respectively. After their biological father's death in 2006, they lived

in a three-bedroom apartment in Singapore with their mother, an aunt, and a cousin. Their mother began an online dating relationship with Mr. Hunt. L.L. and L.L.2 met him for the first time when he came to Singapore and stayed at their home for several weeks. Within a year of that visit, their mother married Mr. Hunt and they moved to the United States.

L.L. testified that at the time Mr. Hunt stayed with her family in Singapore, she was eleven years old. She stated that on more than one night during that visit, he came into the bedroom where she and her sister were sleeping, crawled into her bed, and touched her breasts and vagina with his hands. He also touched L.L.'s vagina with his penis during that visit.

Upon moving to the United States, the four of them first stayed with Mr. Hunt's brother in an apartment in California. According to L.L., "more touching happened at night" while she slept on a living room sofa there.

In 2008 or 2009, the family moved to a house in Dallas. The abuse continued and became more frequent. L.L. testified Mr. Hunt came into her room "[a]lmost every night" and touched or penetrated her sexual organ with his hands, penis, or mouth. After L.L.2 graduated high school and left for college, Mr. Hunt began abusing L.L. more frequently and earlier in the evening.

In 2014 or 2015, when L.L. was a senior in high school and L.L.2 was in college, an individual from Child Protective Services came to the family's home and questioned L.L. Through that interaction, L.L. learned for the first time that L.L.2

had also been abused. L.L. did not tell CPS about Mr. Hunt abusing her because he and her mother were in the house and could hear her. Also, she did not "think it's the best time to tell them" because she wanted to "hold out" until her graduation and then "forget about it" when she left for college.

L.L. told her college roommate about the abuse several years later and reported it to police in 2018. She stated her mother was not supportive of her when she revealed the abuse and they have not talked about it.

During L.L.'s testimony, the State introduced into evidence several emails between her and Mr. Hunt, including a 2009 message from L.L. in which she referred to Mr. Hunt coming to her room and having sex with her and she told him not to do it again. Mr. Hunt replied by email later that same day, stating "i must say you make me feel very nice. . . .i do hope that from time to time we may repeat our experience. I will be secretive and respectful. Can you tell me how you did feel as a result of the experience . . . I wish to become better..heheh. . . ."

Outside the jury's presence, the trial court conducted a hearing regarding the admissibility of extraneous offense evidence that Mr. Hunt sexually abused L.L.2. During that hearing, L.L.2 testified Mr. Hunt sexually abused her numerous times over a period of years starting with his visit to Singapore when she was thirteen or fourteen and continuing until she left for college. She described details of several specific incidents. During cross-examination, L.L.2 testified that in 2015 she denied any sexual abuse occurred, but she later reported it to police. In early 2017, Mr. Hunt

was indicted and tried for sexually abusing her. In that trial, the jury found Mr. Hunt not guilty on one count—"[h]is penis to her mouth"—and could not reach a verdict on the other two counts.

Defense counsel objected to L.L.2's testimony based on Texas Code of Criminal Procedure article 38.37. The defense argued that "not only were [the alleged extraneous offenses] unadjudicated but a jury of Mr. Hunt's peers heard and could not come to a conclusion regarding Mr. Hunt's guilt, which means the State could not prove their case beyond a reasonable doubt." The trial court ruled that "the part about the defendant's penis in the mouth" was not admissible, but "[e]verything else under this 38.37 would be admissible. And the jury if they don't believe it they'll ignore it."

L.L.2 then testified before the jury regarding the sexual abuse incidents the trial court had ruled were admissible, including instances of vaginal sex, anal sex, and hand-to-genital contact. She stated Mr. Hunt "would say that if I let him do anything he wanted to me he'll not do anything to my sister." After college, she began seeing a counselor to "get this out of my chest and out of my head." After speaking with the counselor, she met with a police detective about the abuse. The detective instructed her to call Mr. Hunt and record the conversation, which she did. That recording was admitted into evidence at trial and played for the jury. In the recording, Mr. Hunt admitted having sex with L.L.2 and said he regretted it.

Elizabeth Amaro, a family and marriage therapist, testified she provided therapy to L.L.2 from January 2016 through 2017. Ms. Amaro stated L.L.2 was feeling angry and "dysregulated emotionally" because of sexual abuse by her biological father and her stepfather when she was a child.

We review a trial court's ruling on the admissibility of extraneous offenses for an abuse of discretion. *De La Paz v. State*, 279 S.W.3d 336, 343–44 (Tex. Crim. App. 2009). We will not reverse a trial court's ruling on evidentiary matters unless the decision was outside the zone of reasonable disagreement. *Winegarner v. State*, 235 S.W.3d 787, 790 (Tex. Crim. App. 2007).

In a trial for continuous sexual abuse of a child under fourteen, evidence that the defendant has committed certain other separate child-sexual-abuse offenses may be admitted for any bearing the evidence has on relevant matters, including the character of the defendant and acts performed in conformity with the character of the defendant. TEX. CODE CRIM. PROC. art. 38.37, § 2(b). Before this evidence may be introduced, the trial judge must conduct a hearing outside the jury's presence and "determine that the evidence likely to be admitted at trial will be adequate to support a finding by the jury that the defendant committed the offense beyond a reasonable doubt." *Id*. art. 38.37, § 2–a.

Here, Mr. Hunt contends evidence of his alleged sexual abuse of L.L.2 "should have been excluded because the trial court erred by concluding a jury could find that he committed offenses against L.L.2 beyond a reasonable doubt." He argues

that L.L.2's testimony during the article 38.37 hearing was the same testimony "heard by the jury in the trial of the charges against Appellant for sexual abuse or L.L.2" and "found by the jury to be inadequate for them to find that the State proved the allegations of sexual abuse by Appellant against L.L.2 beyond a reasonable doubt."

"A hung jury is not equivalent to an acquittal." *Cherry v. State*, No. 05-91-00261-CR, 1992 WL 122820, at *5 (Tex. App.—Dallas June 2, 1992, no pet.) (not designated for publication) (citing *Richardson v. United States*, 468 U.S. 317, 325 (1984)); *see also Sattazahn v. Pennsylvania*, 537 U.S. 101, 117 (2003) (O'Connor, J., concurring) ("When, as in this case, the jury deadlocks . . . , it does not 'decide' that the prosecution has failed to prove its case . . . . Rather, the jury makes no decision at all. Petitioner's jury did not 'agre[e] . . . that the prosecution ha[d] not proved its case.'"); *cf. Tyler v. State*, No. 09-06-207-CR, 2007 WL 2323954, at *4 (Tex. App.—Beaumont Aug. 15, 2007, no pet.) (mem. op., not designated for publication) ("The mere fact of a prior acquittal for a different offense and a hung jury for the charged offense at an earlier trial does not render the evidence supporting this jury's verdict insufficient."). Mr. Hunt cites no authority, and we have found none, to support his position that the hung jury in his previous trial demonstrates L.L.2's testimony was inadequate to prove the sexual abuse allegations regarding L.L.2 beyond a reasonable doubt.

L.L.2's testimony described multiple instances of sexual abuse by Mr. Hunt that occurred while she was under seventeen. *See* TEX. CODE CRIM. PROC. art. 38.37, § 2(b); *see also id.* art. 38.07 (testimony of victim alone is sufficient to support conviction for continuous sexual abuse of child). On this record, we conclude the trial court did not abuse its discretion by admitting the complained-of extraneous offense evidence. *See id.* art. 38.37, § 2–a.

As to the State's cross-point, the trial court's judgment states, "The age of the victim at the time of the offense was 14 years." L.L. described multiple instances of sexual abuse by Mr. Hunt that occurred before she turned fourteen. The jury in this case found Mr. Hunt guilty of continuous sexual abuse of a young child under penal code section 21.02, which applies when the actor is seventeen or older and the victim is younger than fourteen. Accordingly, we modify the judgment to accurately state that the age of the victim at the time of the offense was under fourteen years of age. *See Bigley v. State*, 865 S.W.2d 26, 27–28 (Tex. Crim. App. 1993); TEX. R. APP. P. 43.2(b).

We affirm the trial court's judgment as modified.

/Cory L. Carlyle/
CORY L. CARLYLE
JUSTICE

Do Not Publish
TEX. R. APP. P. 47.2(b)
190845F.U05

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

FELTNER DEAN HUNT, Appellant	On Appeal from the 265th Judicial District Court, Dallas County, Texas
No. 05-19-00845-CR V.	Trial Court Cause No. F18-75195-R. Opinion delivered by Justice Carlyle.
THE STATE OF TEXAS, Appellee	Justices Whitehill and Osborne participating.

Based on the Court's opinion of this date, the judgment of the trial court is **MODIFIED** to state that the complainant was under fourteen years of age at the time of the offense.

As **MODIFIED**, the judgment is **AFFIRMED**.

Judgment entered this 16th day of June, 2020.