Affirmed and Opinion filed May 25, 2000.

In The

Fourteenth Court of Appeals

NO. 14-99-00206-CR

JODY RAY GRUBBS, III, A/K/A DERRECK LEO REYNOLDS, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 337th District Court
Harris County, Texas
Trial Court Cause No. 753,711

O P I N I O N

Appellant, Jody Ray Grubbs, III, a/k/a Derreck Leo Reynolds, was convicted of the offense of sexual assault of a child and sentenced to twenty years confinement in the Texas Department of Criminal Justice - Institutional Division. In one point of error, appellant complains the trial court erred in submitting a jury charge that included his alias name. Finding no error in the jury charge, we affirm.

The indictment in this case charged appellant under the name "Jody Ray Grubbs III AKA Derreck Leo Reynolds." Appellant was arraigned before the trial court, wherein the charging paragraph of the indictment was read and appellant pleaded not guilty. At no point did appellant assert an objection to his name as presented in the indictment, the use of an alias name, or to a mistake of identity. After the defense

and the State rested their case, appellant objected for the first time to the inclusion of an alias name in the court's proposed jury charge. The trial court overruled the objection and the charge to the jury contained the name "Jody Ray Grubbs III also known as Derreck Leo Reynolds."

When reviewing jury charge error, we determine: (1) whether error actually exists in the charge; and (2) whether any resulting harm requires reversal. *See Hutch v. State*, 922 S.W.2d 166, 170 (Tex. Crim. App. 1996); *Almanza v. State*, 686 S.W.2d 157, 171 (Tex. Crim. App. 1985). Therefore, we first examine whether it was error to include appellant's alias in the jury charge.

After indictment, the law requires an arraignment in all felony cases for the purpose of fixing the identity of the defendant and hearing his plea. *See* TEX. CODE CRIM. PROC. ANN. arts. 26.01, 26.02 (Vernon 1989). "When the defendant is arraigned, his name, as stated in the indictment shall be distinctly called; and unless he suggest by himself or counsel that he is not indicted by his true name, it shall be taken that his name is truly set forth, and he shall not thereafter be allowed to deny the same by way of defense." TEX. CODE CRIM. PROC. ANN. art. 26.07 (Vernon 1989).

Although the reading of the indictment does not appear in the record, presumably appellant's name and alias, as charged, were distinctly called when he was arraigned. *See* TEX. R. APP. P. 44.2(c)(3) (court of appeals must presume defendant was arraigned). When appellant's name and alias were called at his arraignment, appellant's identity was fixed as alleged in the indictment. *See* TEX. CODE CRIM. PROC. ANN. arts. 26.02, 26.07 (Vernon 1989). By failing to object to the name alleged, appellant foreclosed any later attempt to object to or change his identity. *See* TEX. CODE CRIM. PROC. ANN. art. 26.07 (Vernon 1989). Therefore, appellant's subsequent objection to the use of his alias in the jury charge was properly overruled by the trial court. The resulting jury charge properly tracked the name alleged in the indictment and therefore was not erroneous because it was authorized by the indictment. *See Malik v. State*, 953 S.W.2d 234, 240 (Tex. Crim. App. 1997) (defining a hypothetically correct jury charge as one authorized by the indictment). We hold that the jury charge, which contains appellant's name as well as an alias name, was not erroneous.

The judgment of the trial court is affirmed.

/s/ John S. Anderson
Justice

Judgment rendered and Opinion filed May 25, 2000.

Panel consists of Justices Anderson, Fowler, and Edelman.

Do Not Publish — TEX. R. APP. P. 47.3(b).

The appellant also contends that the alias name should not have been included because the State used the alias to prejudice him. He bases this argument on the assumption that an ordinary juror would believe that ordinary citizens engaged in legal transactions do not use aliases. Appellant, however, has not brought forth proof of bad faith by the State in alleging the alias name. *See Toler*, 546 S.W.2d at 293. In fact, appellant acknowledged that the State apparently alleged the alias name as proof of the enhancement paragraph in the indictment.

Without a showing of bad faith or prejudice to the accused, removal of an alias name is not required. *See Toler v. State*, 546 S.W.2d 290, 293 (Tex. Crim. App. 1977).