

Affirmed and Opinion filed September 14, 2000.



In The

Fourteenth Court of Appeals

NO. 14-98-00674-CR

PAUL EARL SCHULTZ, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 23rd District Court
Brazoria County, Texas
Trial Court Cause No. 30,937**

OPINION

A jury found appellant, Paul Earl Schultz, guilty of aggravated sexual assault of a child and indecency with a child. The trial judge sentenced him to sixteen years' confinement. In two points of error, appellant contends the trial court erred in limiting the scope of cross-examination and in denying his request to admit extraneous conduct to prove the motive and plan of a witness. We affirm the trial court's judgment.

Standard of Review

The exclusion of potential impeachment evidence concerns appellant's Confrontation Clause rights. *See* U. S. CONST. amend. VI. The Confrontation Clause of the Sixth Amendment "protects the defendant's rights not only to confront the witnesses against him, but to cross-examine them as well." *Hoyos v. State*, 951 S.W.2d 503, 506 (Tex. App.—Houston [14th Dist.] 1997, no pet.) (citing *Davis v. Alaska*, 415 U.S. 308, 94 S. Ct. 1105, 39 L. Ed.2d 347 (1974)). However, the extent of cross-examination is not unlimited.

Appropriate cross-examination includes all avenues reasonably calculated to expose a motive, bias, or interest for the witness to testify. *See Stevenson v. State*, 997 S.W.2d 766, 768 (Tex. App.—Houston[1st Dist.] 1999, pet. ref'd) (citing *Carroll v. State*, 916 S.W.2d 494, 497 (Tex. Crim. App. 1996)). The scope of cross-examination is within the control of the trial court, which is given wide latitude to impose reasonable limits on cross-examination. *See Delaware v. Van Arsdall*, 475 U.S. 673, 678, 106 S. Ct. 1431, 89 L. Ed.2d 674 (1986); *Satterwhite v. State*, 499 S.W.2d 314, 317 (Tex. Crim. App. 1973). The trial court must consider the probative value of the evidence and weigh it against the risks of admission, including "the possibility of undue prejudice, embarrassment or harassment to either a witness or a party, the possibility of misleading or confusing a jury, and the possibility of undue delay or waste of time." *Hodge v. State*, 631 S.W.2d 754, 758 (Tex. Crim. App. 1982). The extent of cross-examination to show bias rests on the sound discretion of the trial judge. *See Chambers v. State*, 866 S.W.2d 9, 27 (Tex. Crim. App. 1993); *McKee v. State*, 855 S.W.2d 89, 91 (Tex.App.--Houston[14thDist.] 1993, no pet.). Cross-examination may also be limited if it is not calculated to reveal bias or motive to testify falsely. *See Carroll*, 916 S.W.2d at 498.

First Point of Error

In his first point of error, appellant argues that the trial court erred in disallowing cross-examination of the victim's brother, C.S. C.S. had engaged in oral sex with a third brother thirteen years previously. Further, he had been sexually assaulted by his own biological father

nine years earlier. Appellant contends the trial court should have allowed cross examination into C. S.'s prior oral sex and sexual assault. C.S. was never called as a witness.

During trial, the State called Margaret Kemp, a social worker and psychotherapist who treated the victim. Appellant's counsel attempted to ask Kemp about other possible sexual abusers in the victim's house and whether sexual abuse would tend to make a person an abuser. The trial court sustained the State's objection to these questions.

We note there is no evidence to support appellant's allegations that C.S. might have been the perpetrator in the instant case. Kemp noted the victim and C.S. had a normal relationship. The victim's testimony only implicated appellant. In fact, the victim stated he was not afraid of his two brothers, but was afraid of appellant. C.S.'s oral sex encounter occurred thirteen years prior to trial when he was only seven years old. Thus, C.S.'s oral sex evidence is not relevant and would have unduly caused him to suffer embarrassment and harassment. Similarly, evidence that C.S. was molested by his step-father was also not relevant.

We find the trial court did not abuse its discretion because the evidence appellant sought to introduce was not material or relevant to the issue of whether appellant was guilty of sexually abusing his five-year-old son. Accordingly, we overrule appellant's first point of error.

Second Point of Error

In his second point of error, appellant argues the trial court erred by excluding evidence that the victim's mother had previously accused an ex-husband of child abuse, allegedly revealing the mother's pattern of prejudice towards her husbands. The trial judge did not permit questions regarding the victim's mother's prior marriage because the evidence was not relevant and if it was relevant, any relevance was outweighed by the prejudicial effect and the confusion of the issues before the jury. *See* TEX. R. EVID. 401, 403.

Questions of relevance should be left largely to the trial court and will not be reversed absent an abuse of discretion. *See Ford v. State*, 919 S.W.2d 107, 115 (Tex. Crim. App. 1996); *Moreno v. State*, 858 S.W.2d 453, 463 (Tex. Crim. App. 1993). In reviewing a trial court's decision for abuse of discretion, as long as the trial court's ruling was within the zone of reasonable disagreement, we will not intercede. *See Ford*, 919 S.W.2d at 115. Moreover, error may not be predicated upon a ruling admitting or excluding evidence unless a party's substantial right is affected. *See* TEX. R. EVID. 103(a).

This victim's mother's previous marriage ended nine years before the instant charges. The mother raised sexual abuse allegations against her ex-husband nine months after the divorce. The trial court did not abuse its discretion in excluding this evidence.

Accordingly, we overrule appellant's second point of error and affirm the trial court's judgment.

/s/ Ross A. Sears
 Justice

Judgment rendered and Opinion filed September 14, 2000.

Panel consists of Justices Sears, Cannon, and Draughn.*

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

* Senior Justices Ross A. Sears, Bill Cannon, and Joe L. Draughn sitting by assignment.

