Opinion issued July 7, 2020

In The

Court of Appeals

For The

First District of Texas

NO. 01-19-00134-CR

EDWARD VALDES, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 177th District Court
Harris County, Texas
Trial Court Case No. 1541542

MEMORANDUM OPINION

A jury found appellant, Edward Valdes, guilty of the felony offense of aggravated sexual assault of a child under fourteen years of age,[1] and the trial court

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[1] *See* TEX. PENAL CODE ANN. § 22.021(a)(1)(B)(iii), (a)(2)(B), (e); *see also id.* §§ 22.011(c); 22.021(b)(1).

assessed his punishment at confinement for fifty years. In three issues, appellant contends that the trial court erred in instructing the jury on certain lesser-included offenses and he was harmed as a result.

We affirm.

Background

The complainant testified that he was born in July 2002. At all relevant times, the complainant lived with his mother, his father, and his sister in a house located in Harris County, Texas. In the house, the dining area, the kitchen, the living room, and the complainant's parents' bedroom were located downstairs, while the complainant's bedroom, his sister's bedroom, a game room, and a guest bedroom were located upstairs.

The complainant testified that appellant is his cousin. Although the complainant did not know appellant's exact age, he stated that appellant is more than eighteen years old and "[a] lot" older than the complainant. The complainant would see appellant at family gatherings and "[s]ometimes [appellant] would just be around." The last time that the complainant saw appellant was the weekend of January 20, 2017.

On Friday, January 20, 2017, the complainant's mother picked him and his sister up from school with appellant in the car. When the complainant saw appellant, he felt scared, and he was not happy to see him. The complainant did not expect

appellant to be at his house that weekend. The complainant, his sister, his mother, and appellant all went back to the complainant's house and had dinner with the complainant's father. Appellant was supposed to stay overnight in the guest bedroom at the complainant's house.

After dinner, the complainant went to his bedroom to play videogames. At some point, appellant came into the complainant's room and laid down on the complainant's bed. Later, the complainant's father came into the complainant's bedroom to tell him that it was time to turn out the lights and go to bed. The complainant did not listen to his father's instruction and continued playing videogames until 3:00 a.m. Appellant also remained in the complainant's bedroom and stayed on the complainant's bed. At 3:00 a.m., the complainant turned out the lights. He told appellant that he was going to bed and that appellant "probably should[] too." He then said, "I'll see you in the morning." The complainant thought that appellant would get up and leave, but appellant did not leave. Instead, appellant laid next to the complainant in the complainant's bed. The complainant thought it was weird that appellant had not left his room, and he laid in his bed waiting for appellant to leave. When the complainant tried to go to sleep, appellant "made an advance towards [him]."

The complainant explained that appellant started rubbing the complainant's thigh and then "ma[de] his way towards" the complainant's penis. Appellant started

touching the complainant over the complainant's clothes and then "went under." Appellant touched the complainant's penis and under his testicles. The complainant felt scared, and he did not know what to do. Appellant took off the complainant's pants and put the complainant's penis in his mouth "for a while." Appellant also tried to put the complainant's hand on appellant's penis. Eventually, appellant stopped and left the complainant's room. The complainant felt terrified, uncomfortable, and relieved that appellant had left.

The next morning, on Saturday, the complainant's family was supposed to go to a soccer game for the complainant's sister, but the complainant did not want to get out of bed. He felt mortified and weird. When he took a shower, he locked the door behind him because he was scared that appellant "might come in and do something." While in the shower, the complainant cried because he felt "used." Eventually, the complainant got dressed, and he, along with this mother and father, left for the soccer game. Appellant did not go to the soccer game because "he left to go with his friends who were in town."

When the complainant and his family arrived at the soccer game, the complainant "didn't feel right" and felt that he "had to say something." He first told his father about what had happened the night before because he felt that "enough was enough." The complainant's father got upset and told the complainant's mother. They left the soccer game, and the complainant's parents called for emergency

assistance on the way back to their house. On the drive back, the complainant told his parents about what had happened the night before. Later that day, he went to Texas Children's Hospital, and he told the nurse at the hospital that what had occurred the night before with appellant had happened on three occasions.

The complainant noted that, related to the January 2017 sexual assault, he sometimes "push[ed] things back" and "tr[ied] to forget." And he had sometimes said that it did not happen because he did not want to relive it. But the complainant stated at trial that the truth was that, in January 2017, appellant had put his mouth on the complainant's penis and had touched the complainant without his consent. And this was not the only time that appellant had done such a thing to the complainant. The complainant believed that "[p]robably . . . twice" appellant had put his mouth on the complainant's penis. The complainant stated that there were "multiple occasions" in the past where incidents such as what had happened in January 2017 had also happened.

The complainant then testified that, in 2013, when his mother was celebrating her college graduation, his extended family came to stay at the complainant's house in Harris County, Texas. At that time, the complainant was in middle school. The complainant estimated that he was twelve years old or thirteen years old at the time.

According to the complainant, when his extended family was at his house for his mother's college graduation, the complainant's grandmother stayed in the guest

bedroom and the complainant and appellant slept by themselves on the couches in the game room. One night, the complainant woke up very late. There was no one else in the game room other than the complainant and appellant. When the complainant tried to go back to sleep, appellant came over to him, crouched down on his knees, and started touching the complainant. Appellant removed the blanket that was covering the complainant, pulled down the complainant's pants and underwear, and touched the complainant's penis with his hand. Appellant then put the complainant's penis in his mouth. The complainant felt scared and defenseless. Appellant had the complainant's penis in his mouth for "a few minutes." When appellant stopped, he went back to the other couch. The complainant pulled up his pants and went to sleep. The complainant told his mother about this 2013 sexual assault after he told her about the January 2017 sexual assault.

The complainant also testified that another incident involving appellant had happened at the complainant's grandmother's house in El Paso, Texas. According to the complainant, in the past, his family would go to El Paso to visit his grandmother and he would see appellant at his grandmother's house. Although the complainant would try to distance himself from appellant, one time, after the 2013 sexual assault, when the complainant was in middle school, he went to his grandmother's house and appellant was also there. When the complainant was sitting in the living room, appellant came into the room and sat next to him. No one

else was in the room. At first, they talked, but then appellant started rubbing the complainant's thigh. Appellant started moving his hand toward the complainant's penis and put his hand inside the complainant's pants and underwear. The complainant felt uncomfortable and "weirded out." The complainant told appellant to stop and tried to pull appellant's hand off, but appellant did not listen and continued to touch the complainant.

The next day, while still at his grandmother's house, the complainant went into the guest bedroom where appellant was staying to ask appellant to stop touching him. The complainant felt nervous. At the time, appellant was laying down on the bed, and the complainant sat down on the other side of the bed and made conversation. Appellant offered to let the complainant watch a television show with him. The complainant told appellant, "[S]ure, I'll watch it. Just don't do anything." But appellant moved toward the complainant and touched the complainant's penis under the complainant's clothing. Appellant continued until the complainant got up to go away. As the complainant was leaving, he said to appellant, "[H]ey, can you stop touching me? It makes me feel uncomfortable and grossed out, and it's not right." Appellant replied, "[O]kay." Because the complainant had told appellant to "stop," the complainant thought appellant would listen to him.

The complainant's mother testified that the complainant's birthday is July 2, 2002, and at all relevant times, she lived in a house in Harris County, Texas along

with her husband—the complainant's father—the complainant, and the complainant's sister. In January 2017, the complainant was fourteen years old and appellant was more than eighteen years old.

According to the complainant's mother, on Friday, January 20, 2017, appellant—her nephew—either called or texted to tell her that he was coming into town and he wanted to stop by and visit. The complainant's mother met appellant at her house in the afternoon, and appellant went with the complainant's mother when she picked up the complainant and his sister from school. When the complainant got into his mother's car, he was not happy to see appellant and was very quiet. They went back to the house for dinner with the complainant's father, and after dinner, the complainant went upstairs to his bedroom. Appellant was supposed to sleep upstairs in the guest bedroom. The complainant's parents "put everybody to sleep early" that night because they had to wake up early the next morning for the complainant's sister's soccer game.

The next morning, it took the complainant "a little bit to come" downstairs, and he seemed upset. According to the complainant's mother, the complainant did not want to get up that morning, he wanted to stay home, and the complainant's father "had to go up and talk to him." The complainant's demeanor was withdrawn and quiet, and he would not make eye contact with anyone. It was strange that the complainant was quiet, but the complainant's mother noted that he had also been

upset the night before. Eventually, the complainant, his mother, his father, and appellant left the house to go to the soccer game. After the first game, they returned to the complainant's house. Appellant then left to go meet some friends, and the complainant and his mother and father ate lunch. When the complainant and his mother and father arrived back at the soccer game after lunch, the complainant spoke to his father for "a little bit." When the complainant's mother walked over to the complainant and his father, she asked what was going on and she learned of a disclosure that was sexual in nature. The complainant and his parents immediately drove back to their house, and the complainant's mother called for emergency assistance on their drive home. Law enforcement officers arrived at the complainant's house, and the complainant's mother and father both spoke to the officers. The law enforcement officers did not speak to the complainant.

At some point, while the law enforcement officers were at the complainant's house, the complainant's mother spoke to the complainant privately and asked the complainant if anything similar had happened to him in the past. The complainant told her that around the time that she had graduated from college, in September 2013, appellant had also touched the complainant's "private parts" and appellant had placed the complainant's penis in his mouth.

The complainant's mother explained at trial that, in September 2013, appellant, as well as other extended family members, stayed at her house because

they were in town to celebrate her college graduation. The complainant and appellant both slept in the game room on the couches because the complainant's grandmother slept in the guest bedroom and the complainant's uncle and aunt slept in the complainant's bedroom. At that time, the complainant was under fourteen years of age—approximately twelve or thirteen years old—and appellant was more than eighteen years old. The complainant's mother testified that the 2013 sexual assault would have occurred on or about September 26, 2013.

The complainant also told his mother about an incident that had happened in El Paso, explaining that one time at the complainant's grandmother's house, appellant had "touched him in his private part[s]." The El Paso incident would have happened before the January 2017 sexual assault, and the complainant's mother noted that her family had seen appellant "several times" when they had visited El Paso between 2013 and 2017. According to the complainant's mother, typically when her family would visit the complainant's grandmother in El Paso, appellant would also visit at the same time.

The complainant's mother further testified that everything that the complainant told her, she told to law enforcement officers. And after the law enforcement officers left her house on Saturday, January 21, 2017, complainant's mother and father took the complainant to Texas Children's Hospital.

The trial court admitted into evidence copies of the complainant's medical records from Texas Children's Hospital. Those records state that the complainant was admitted to the hospital on January 21, 2017 after making an "outcry of sexual assault." The records state that the complainant reported that "he was sexually abused by his older [approximately] 25 y[ear old] cousin[]. . . . [And] [t]his [was] the 3rd time [that] the [complainant] had this happen[]" to him. The complainant also reported the following:

> [The complainant's] parents [had] brought him to [the hospital on January 21, 2017] after he disclosed that he was being inappropriately touched by his cousin, Edward. . . . Edward [was] an older cousin who occasionally w[ould] stay at [the complainant's] home when [he was] visiting Houston. . . . Edward would come into his room at night and touch [the complainant's] penis . . . . Edward touche[d] under the clothing and th[e] incident[s] ha[d] occurred about 3 times. . . . [T]he incident[s] ha[d] occurred at [the complainant's] home or when the family [had] visit[ed] the [complainant's] grandmother's house. . . . [T]he first incident occurred around 2013. . . . [The complainant] did not tell anyone because he did not understand what should be done.

Standard of Review

We review complaints of jury-charge error under a two-step process, considering first whether error exists. *Wooten v. State*, 400 S.W.3d 601, 606 (Tex. Crim. App. 2013); *Ngo v. State*, 175 S.W.3d 738, 743–44 (Tex. Crim. App. 2005). If error does exist, we then review the record to determine whether the error caused sufficient harm to require reversal. *Wooten*, 400 S.W.3d at 606; *Ngo*, 175 S.W.3d at 743–44. If the defendant preserved error by timely objecting to the trial court's

charge, an appellate court will reverse if the defendant has suffered some harm as a result of the error. *Sakil v. State*, 287 S.W.3d 23, 25–26 (Tex. Crim. App. 2009). If the defendant did not object at trial, we will reverse only if the error was so egregious and created such harm that the defendant did not receive a fair and impartial trial. *Id.* at 26.

Jury-Charge Error

In his first issue, appellant argues that the trial court erred in instructing the jury on the purported lesser-included offense of indecency with a child because although the offense of indecency with a child could be a lesser-included offense of aggravated assault of a child under fourteen years of age, it was not in this case as the lesser-included offense "required proof of a wholly different act." Appellant asserts that he was egregiously harmed as a result of this error.

In his third issue, appellant argues that the trial court erred in instructing the jury on the purported lesser-included offense of sexual assault of a child because "[t]he [s]exual [a]ssault instruction d[id] not require 'proof of the same or less than all the facts required [to] establish[]'" the offense of aggravated sexual assault of a child under fourteen years of age—it "requir[ed] proof of a different act." Appellant asserts that he suffered some harm as a result of this error.

In his second issue, appellant argues that the trial court erred in instructing the jury on the purported lesser-included offense of sexual assault of a child after it

instructed the jury on the purported lesser-included offense of indecency with a child because "[s]exual [a]ssault [of a child] is never a lesser-included offense of [i]ndecency with a [c]hild" and the jury "could only consider [s]exual [a]ssault once it had dispatched with the [i]ndecency with a [c]hild" offense. Appellant asserts that he suffered some harm as a result of this error.

A trial court has an absolute duty to prepare a jury charge that accurately sets out the law applicable to the case. *See* TEX. CODE CRIM. PROC. ANN. art. 36.14; *Oursbourn v. State*, 259 S.W.3d 159, 179 (Tex. Crim. App. 2008); *see also Vasquez v. State*, 389 S.W.3d 361, 366 (Tex. Crim. App. 2012) ("The purpose of the trial judge's jury charge is to instruct the jurors on all of the law that is applicable to the case."). An offense is a lesser-included offense if:

> (1) it is established by proof of the same or less than all the facts required to establish the commission of the offense charged;
>
> (2) it differs from the offense charged only in the respect that a less serious injury or risk of injury to the same person, property, or public interest suffices to establish its commission;
>
> (3) it differs from the offense charged only in the respect that a less culpable mental state suffices to establish its commission; or
>
> (4) it consists of an attempt to commit the offense charged or an otherwise included offense.

TEX. CODE CRIM. PROC. ANN. art. 37.09.

Here, appellant was charged with the felony offense of aggravated sexual assault of a child under fourteen years of age. *See* TEX. PENAL CODE ANN.

§ 22.021(a)(1)(B)(iii), (a)(2)(B), (e); *see also id.* §§ 22.011(c), 22.021(b)(1). And the trial court instructed the jury as follows:

> Our law provides that a person commits the offense of aggravated sexual assault if the person intentionally or knowingly causes the sexual organ of a child to contact the mouth of another person, including [appellant]; and if the victim is younger than fourteen years of age.
>
> "Child" means a person younger than seventeen years of age.
>
> A person acts intentionally, or with intent, with respect to a result of his conduct when it is his conscious objective or desire to cause the result.
>
> A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result.
>
> Now, if you unanimously find from the evidence beyond a reasonable doubt that on or about the 23rd day of September, 2013, in Harris County, Texas, [appellant] did then and there unlawfully, intentionally or knowingly cause the sexual organ of [the complainant], a person younger than fourteen years of age, to contact the mouth of [appellant], then you will find [appellant] guilty of aggravated sexual assault of a child, as charged in the indictment.
>
> Unless you so find from the evidence beyond a reasonable doubt, or if you have a reasonable doubt thereof, or if you are unable to agree, you will next consider whether [appellant] is guilty of the lesser offense of indecency with a child.
>
> A person commits the offense of indecency with a child if, with a child younger than seventeen years of age, whether the child is of the same or opposite sex, he engages in sexual contact with the child.
>
> "Sexual contact" means any touching by a person, including touching through clothing, of the anus, breast, or any part of the genitals of a child or any touching of any part of the body of a child, including

touching through clothing, with the anus, breast, or any part of the genitals of a person with the intent to arouse or gratify the sexual desire of any person.

Therefore, if you find from the evidence beyond a reasonable doubt that on or about the 23rd day of September, 2013, in Harris County, Texas, [appellant] did then and there unlawfully, intentionally or knowingly engage in sexual contact with [the complainant], a child under the age of seventeen years, by touching the genitals of [the complainant] with the intent to arouse or gratify the sexual desire of [appellant], then you will find [appellant] guilty of indecency with a child.

Unless you so find from the evidence beyond a reasonable doubt, or if you have a reasonable doubt thereof, or if you are unable to agree, you will next consider whether [appellant] is guilty of the lesser offense of sexual assault of a child.

Our law provides that a person commits the offense of sexual assault if the person intentionally or knowingly causes the mouth of a child to contact the sexual organ of another person, including [appellant].

Therefore, if you find from the evidence beyond a reasonable doubt that on or about the 23rd day of September, 2013, in Harris County, Texas, [appellant] did then and there unlawfully, intentionally or knowingly cause the sexual organ of [the complainant],[] a person younger than seventeen years of age, to contact the mouth of [appellant], then you will find [appellant] guilty of sexual assault of a child.

If you believe from the evidence beyond a reasonable doubt that [appellant] is guilty of either aggravated sexual assault of a child on the one hand or indecency with a child on the other hand, but you have a reasonable doubt as to which of said offenses he is guilty, then you must resolve that doubt in [appellant's] favor and find him guilty of the lesser offense of indecency with a child.

If you believe from the evidence beyond a reasonable doubt that [appellant] is guilty of either indecency with a child on the one hand or

> sexual assault of a child on the other hand, but you have a reasonable doubt as to which of said offenses he is guilty, then you must resolve that doubt in [appellant's] favor and find him guilty of the lesser offense of sexual assault of a child.
>
> If you have a reasonable doubt as to whether [appellant] is guilty of any offense defined in this charge you will acquit [appellant] and say by your verdict "Not Guilty."

Generally, we first determine whether the trial court's charge to the jury contains any actual error. *See Wooten*, 400 S.W.3d at 606; *Ngo*, 175 S.W.3d at 743–44. Here, however, we will presume that the trial court erred in instructing the jury that the offenses of indecency with a child and sexual assault of a child were both lesser-included offenses of the felony offense of aggravated sexual assault of a child under fourteen years of age. We will also presume that the trial court erred in instructing the jury on the purported lesser-included offense of indecency with a child before it instructed the jury on the purported lesser-included offense of sexual assault of a child. *See, e.g.*, *Hernandez v. State*, No. 11-17-00312-CR, 2020 WL 103679, at *2–3 (Tex. App.—Eastland Jan. 9, 2020, pet. ref'd) (mem. op., not designated for publication) (assuming without deciding that jury charge contained error and proceeding with harm analysis); *Carmon v. State*, No. 14-11-00334-CR, 2012 WL 1854746, at *3–6 (Tex. App.—Houston [14th Dist.] May 22, 2012, no pet.) (mem. op., not designated for publication) (same). Thus, we will focus on whether any of the aforementioned errors resulted in sufficient harm to require reversal of the trial court's judgment of conviction. *See Ngo*, 175 S.W.3d at 734–

44; *see also Reeves v. State*, 420 S.W.3d 812, 816 (Tex. Crim. App. 2013) ("Not all jury-charge errors require reversal.").

When error does exist and a defendant has preserved error by timely objecting to the trial court's jury charge, reversal is required if the defendant suffered some harm as a result of the error. *See Sakil*, 287 S.W.3d at 25–26. But when a defendant does not object at trial, reversal is only required if the error was so egregious and created such harm that the defendant did not receive a fair and impartial trial. *Id.* at 26. Appellant and the State disagree as to whether we should review the purported jury-charge errors for "some harm" or for "egregious harm." We need not decide which harm standard applies because even under the lesser "some harm" standard, the trial court's purported errors in instructing the jury in this case are not reversible. *See Ramjattansingh v. State*, 587 S.W.3d 141, 156–58 (Tex. App.—Houston [1st Dist.] 2019, no pet.) (no need to determine which harm standard applied because under "some harm" standard, trial court's error was not reversible (internal quotations omitted)).

Under the "some harm" standard, reversal is required if the error is "calculated to injure the rights of [the] defendant," which means there must be "some harm" to the defendant. *Almanza v. State*, 686 S.W.2d 157, 171 (Tex. Crim. App. 1984 (internal quotations omitted)); *see also Ramjattansingh*, 587 S.W.3d at 156. "Although the some harm standard is less stringent, it nonetheless requires a

reviewing court to determine actual, rather than mere theoretical, harm." *Ramjattansingh*, 587 S.W.3d at 156 (internal quotations omitted). Even under the "some harm" standard, an error will not lead to reversal if it is harmless. *See Almanza*, 686 S.W.2d at 171.

The indictment charged appellant with the first-degree felony offense of aggravated sexual assault of a child under fourteen years of age. The jury then found appellant guilty of the first-degree felony offense of aggravated sexual assault of a child under fourteen years of age—the greatest offense with which appellant was charged. *See* TEX. PENAL CODE ANN. § 22.021(e) (aggravated sexual assault of child under fourteen years of age constitutes first-degree felony offense); *cf. id.* §§ 21.11(a)(1), (c), (d) (indecency with child constitutes second-degree felony offense), 22.011(a)(2)(C), (c)(1), (f) (sexual assault of child constitutes second-degree felony offense).

When an error occurs in the trial court's instruction to the jury for a lesser-included offense and the jury finds the defendant guilty of the greater-charged offense, the jury's verdict nullifies any possible harm from the defective instruction on the lesser-included offense. *Saunders v. State*, 913 S.W.2d 564, 569 (Tex. Crim. App. 1995); *McIntosh v. State*, 297 S.W.3d 536, 544–45 (Tex. App.—Houston [1st Dist.] 2009, pet. ref'd); *see also Tennison v. State*, No. 05-11-01431-CR, 2013 WL 3353329, at *2 (Tex. App.—Dallas June 28, 2013, pet. ref'd) (not designated for

publication). In other words, any error by the trial court in its instruction to the jury related to a lesser-included offense is rendered harmless by the jury's finding of guilt of the greater-charged offense. *Starks v. State*, 127 S.W.3d 127, 133 (Tex. App.—Houston [1st Dist.] 2003, pet. dism'd). As the Texas Court of Criminal Appeals has observed, when a jury convicts a defendant of the greater-charged offense, any "errors in the charge on the lesser[-]included offense, for which the [defendant] was not convicted, could not so have misled the jury." *Clark v. State*, 717 S.W.2d 910, 918 (Tex. Crim. App. 1986) (internal quotations omitted). This is because once the jury convicts a defendant of the greater-charged offense, it has no reason to consider whether the defendant might have been guilty of the lesser-included offense. *See Clark*, 717 S.W.2d at 918; *Starks*, 127 S.W.3d at 133.

Here, the trial court's charge to the jury instructed it to first consider whether it found from the evidence beyond a reasonable doubt that appellant was guilty of first-degree felony offense of aggravated sexual assault of a child under fourteen years of age. The jury was to consider whether appellant was guilty of either of the purported lesser-included offenses—indecency with a child or sexual assault of a child—only if it did not find appellant guilty of the offense of aggravated sexual assault of a child under fourteen years of age. We presume that the jury acted as it was directed. *See Thrift v. State*, 176 S.W.3d 221, 224 (Tex. Crim. App. 2005); *Luquis v. State*, 72 S.W.3d 355, 366 (Tex. Crim. App. 2002). And, thus, in this case,

the jury would have stopped deliberating after finding appellant guilty of the first-degree felony offense of aggravated sexual assault of a child under fourteen years of age because it did not have a reasonable doubt that would have required it to further consider whether appellant was guilty of one of the purported lesser-included offenses. *See Clark*, 717 S.W.2d at 918; *McIntosh*, 297 S.W.3d at 544–45 ("Once the jury convicted [the defendant] of [the greater offense of] burglary, having been properly charged on that offense, it had no reason to consider whether [the defendant] might be guilty of the lesser-included offense of criminal trespass."); *see also Quigley v. State*, No. 02-15-00441-CR, 2017 WL 930066, at *11 (Tex. App.—Fort Worth Mar. 9, 2017, no pet.) (mem. op., not designated for publication) ("[B]ecause the jury convicted [the defendant] of the greater offense of capital murder, it had no occasion to consider the lesser-included offense of murder, and consequently, any error in instructing the jury on . . . murder in the application paragraph[] relating to that lesser-included offense was not [harmful].").

Appellant only complains about errors in the jury charge related to the trial court's instructions on the purported lesser-included offenses of indecency with a child and sexual assault of a child. Appellant does not raise any complaints related to the trial court's instruction on the greatest-charged offense—aggravated sexual assault of a child under fourteen years of age—of which the jury found appellant guilty. Thus, we hold that any complained-of errors by the trial court in instructing

the jury related to the purported lesser-included offenses were harmless. *See Saunders*, 913 S.W.2d at 569; *Starks*, 127 S.W.3d at 133.

We overrule appellant's first, second, and third issues.

Conclusion

We affirm the judgment of the trial court.

Julie Countiss
Justice

Panel consists of Chief Justice Radack and Justices Lloyd and Countiss.

Do not publish. TEX. R. APP. P. 47.2(b).