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Case Name: ***Bruno Lewis Tovar v. The State of Texas*** RETURN TO TABLE OF CONTENTS

- **OFFENSE**: Sexual Assault of a Child / Delivery of a Controlled Substance to a Child
- **COUNTY**: Guadalupe
- **C/A CASE No**. 04-18-00631-CR
- **DATE OF OPINION**: June 3, 2020 **OPINION**: Justice Liza Rodriguez
- **DISPOSITION**: Affirmed in Part; Reversed in Part
- **TRIAL COURT**: 25th D/C
- **LAWYERS**: Susan Schoon (Defense); Christopher Eaton (State)

(**Background Facts**): When "J.A." was 14 years old, she and her mother Rosalie needed a place to stay and moved into Appellant's home located at 154 Martinez Lane in Guadalupe County, Texas. Rosalie knew Appellant when they were in high school together. Appellant, 34 years old at the time, began a sexual relationship with J.A. that lasted from October 2015 to June 2016. J.A. and Appellant shared a bedroom in the house. Rosalie told people that Appellant was her boyfriend to cover for them. Rosalie had introduced J.A. to smoking methamphetamine when she was 13 or 14 years old. According to J.A., she and her mother smoked it every day. After they moved into Appellant's house, he also smoked methamphetamine with J.A. and Rosalie; on some days, it was just J.A. and Appellant who smoked methamphetamine together. J.A. stated the methamphetamine was supplied by Rosalie, Appellant, or herself. On June 13, 2016, J.A. experienced a stroke and was taken to the emergency room. J.A. testified she was alone in the bedroom with Appellant when she had the stroke. Her mother was not at home. J.A. gave conflicting testimony about whether she smoked methamphetamine on the day of the stroke. J.A. initially stated she had been smoking methamphetamine with Appellant in their bedroom before she "got sick," but then stated she "did not really remember smoking that day." Later, on cross-examination, J.A. testified the last time she smoked methamphetamine before the stroke was with her mother a week earlier. J.A. conceded that she tested positive for methamphetamine when she arrived at the hospital but stated her belief that methamphetamine stays in a person's system for three days. Appellant also tested positive

for methamphetamine that day. At the hospital, it was determined that J.A. was approximately five to six weeks' pregnant. J.A. remained hospitalized for three months and was in a rehabilitation facility for an additional three months. J.A. gave birth to a daughter on January 24, 2017. J.A. testified that Appellant is the father and DNA testing confirmed his paternity. As of the date of trial, J.A. had limited use of her left arm and walked with a limp on her left side due to the stroke. Appellant was indicted on three counts of sexual assault of a child alleged to have occurred on or about October 1, 2015, January 1, 2016, and June 1, 2016 (Counts I-III, respectively) and one count of delivery of a controlled substance, i.e., methamphetamine, to J.A., a child, the ingestion of which caused J.A. to suffer serious bodily injury on or about June 13, 2016 (Count IV). He was convicted following a bench trial.

533.01 Sufficiency of the Evidence / Controlled Substances / Delivery: Appellant argues the evidence was insufficient to support his conviction on Count IV, delivery of methamphetamine to a child causing serious bodily injury. He does not challenge the sufficiency of the evidence to support his convictions for sexual assault of a child on Counts I-III.

Holding: Appellant argues the testimony of the State's medical expert and the contents of J.A.'s medical records failed to provide proof beyond a reasonable doubt that her stroke was caused by methamphetamine use. The State argues that, after drawing reasonable inferences from the evidence and resolving any conflicting evidence in its favor, the evidence is sufficient to support the finding of a causal link between J.A.'s methamphetamine use and her stroke. *** During the guilt/innocence phase, Dr. Jane Appleby, board certified in internal medicine, hospice, and palliative care and the Chief Medical Officer for Methodist Hospital and Methodist Children's Hospital, testified she reviewed J.A.'s medical records and helped coordinate her care in the hospital. *** Dr. Appleby explained that J.A. was in the early stages of pregnancy at five to six weeks and the consulting obstetrics physician had made a notation in J.A.'s medical records that "(pregnancy should not be primary cause of stroke)." Under questioning by the trial court, Dr. Appleby further testified that, according to the notes in the medical records, "it is the opinion of the treating obstetrics physician that she was not far enough along in her pregnancy to have a hypercoagulative state which would cause a stroke." *** Considering Dr. Appleby's testimony that methamphetamine can cause a stroke and J.A.'s positive result for methamphetamine, along with the obstetrician's opinion that J.A.'s early pregnancy should not have been the primary cause of her stroke, the trial court could have reasonably inferred that the methamphetamine use caused J.A.'s stroke. Viewing the evidence in the light most favorable to the finding of guilt and deferring to the trial court's assessment of credibility and weight of the evidence, we hold the evidence was sufficient to support the trial court's finding that methamphetamine use caused J.A.'s stroke.

533.01 Sufficiency of the Evidence / Controlled Substances / Delivery: Appellant contends there was no evidence to prove that the methamphetamine J.A. used on the day of her stroke was delivered by him.

Holding: We agree. The trial testimony on the issue of who supplied the methamphetamine that J.A. smoked on the day of the stroke, or on any other day, was limited. Both J.A. and [Appellant] testified generally on the issue, stating only that Rosalie, [Appellant], or J.A. would obtain the

methamphetamine they all smoked at various times. Thus, there were three possible suppliers of methamphetamine living in the household. Moreover, J.A. admitted she was already a daily methamphetamine user with her mother before she met [Appellant]; therefore, no inference can be reasonably drawn that [Appellant] introduced J.A. to using methamphetamine and was the only person who delivered methamphetamine to her. There was scant evidence regarding J.A.'s actions and [Appellant]'s actions on the day of her stroke. J.A. testified only that she was alone in the bedroom with [Appellant] when she had the stroke and had not left the house that day; she stated she did not remember much about the day. Thus, there were no eyewitnesses to what occurred inside the bedroom other than J.A. and [Appellant]. *** Viewing the evidence in the light most favorable to the verdict, we are unable to conclude that the evidence was sufficient to support a finding beyond a reasonable doubt that it was [Appellant], and not Rosalie or J.A., who delivered the methamphetamine that caused J.A. to suffer a stroke. *** Therefore, we hold the evidence is insufficient to support the trial court's affirmative finding of the enhancement under section 481.141(a) based on delivery of the controlled substance that caused serious bodily injury. *** [We] reverse the trial court's judgment on Count IV and remand to the trial court for a new punishment hearing and entry of judgment on the offense of delivery of a controlled substance to a child under section 481.122(a)(1).

205 Trial Courts / Trial Court's Actions -- Improper Comments by Trial Judge: Appellant contends he was denied his fundamental right to an impartial judge because the judge's words and actions expressed a bias in favor of the State. He asserts the improper bias led to the trial court's decision to (1) find him guilty on Count IV despite its doubts about the proof, and (2) stack the sentences on Counts I-III to ensure he served those sentences before he began serving the Count IV sentence in the event Count IV was reversed on appeal.

Holding: Unfavorable rulings do not alone show judicial bias or prejudice; rather, the judicial ruling must "connote a favorable or unfavorable disposition or opinion that is somehow wrongful or inappropriate, either because it is undeserved, or because it rests upon knowledge that the subject ought not to possess . . . or because it is excessive in degree." ***Abdygapparova v. State***, 243 S.W.3d 191 (Tex.App. - San Antonio 2007)(see , Vol. 15, No. 30; 08/06/2007). *** Absent a strong showing to the contrary, we presume the trial judge was neutral and impartial. *** Specifically, judicial remarks or rulings may show bias if they reveal "an opinion deriving from an extrajudicial source." *** Appellant first argues the trial court's extensive discussion with the prosecutor during closing arguments about the court's doubts that the State had met its burden to prove the section 481.141(a) enhancement under Count IV shows the court was "helping the State" and expressing a bias in favor of the State. *** The record does not show the trial court's unfavorable finding was based on anything other than the court's own analysis of the sufficiency of the evidence on the enhancement elements. [Appellant] has not shown that the trial court's ruling was "wrongful or inappropriate" or based on a "high degree of favoritism or antagonism" as required to rebut the presumption of a neutral and impartial judge. *** [Appellant also] argues the trial court's "inability to disagree with the prosecution" and bias in favor of the State carried over to the way it structured his sentences at punishment. He contends the court revealed its favoritism toward the State (or antagonism toward [Appellant]) by stacking his sentences on Counts I-III to ensure [Appellant] would have to serve the first three 30-year sentences

consecutively before he began the Count IV sentence -- in case Count IV was reversed on appeal. *** We conclude there is nothing in the record to show the trial court failed to consider the full punishment range or any mitigating evidence or had a predetermined sentence in mind when it chose to impose consecutive 30-year sentences on Counts I-III in addition to the required consecutive sentence on Count IV.

(**John G. Jasuta**) I am quite sure that no evil intent existed in the mind of the trial judge when "crafting" this particular stacking scheme. He just fell into it. I do know, however, that this judge does understand how stacking works and its effects, and how to manipulate them.

(**David A. Schulman**) I would add that I believe, based on my personal experience, that the visiting trial judge in this case might always be considered to be prejudiced in favor of the State and against the defendant and defense counsel.