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Case Name: [Carlos Romo Jr. v. The State of Texas](#)

- **OFFENSE:** Continuous Sexual Abuse / Indecency with a Child / Poss. Of Child Pornography
- **COUNTY:** Webb
- **C/A CASE No.** 04-19-00772-CR
- **DATE OF OPINION:** May 26, 2021 **OPINION:** [Justice Liza Rodriguez](#)
- **DISPOSITION:** Reversed & Rendered
- **TRIAL COURT:** 111th D/C; Hon. Monica Notzon
- **LAWYERS:** [Miguel Serrano](#) (Defense); [David Reuthinger](#) & [Christina Rodriguez](#) (State)

(Background Facts): Following a jury trial, Appellant was convicted of continuous sexual abuse of a child, indecency with a child, and possession of child pornography. At trial, there was evidence presented of the following facts: “Sky” (a pseudonym) Appellant’s daughter, was twelve years old when she made an outcry that Appellant had been sexually abusing her since she was eight years old.

⚖️ **342 Preservation of Error / Contemporaneous Objections:** Police discovered a DVD titled “Nudist HDV” in Appellant’s office at the Food Bank where he worked. The DVD showed several young girls participating in a nude beauty competition. Appellant argues that the existence of “lewd” material in a child pornography case is a legal matter for the trial court to discern and not for the jury as factfinder to decide. According to Appellant, the trial court should have first determined whether the “Nudist HDV” DVD was lewd before it was shown to the jury. He argues that once the jury saw the video, it could not be impartial, thus resulting in his rights under the Sixth and Fourteenth Amendments being violated.

Holding: Romo did not object at trial to the admission of the “Nudist HDV” DVD. To preserve error, “a party must object each time the inadmissible evidence is offered or obtain a running objection.” *** Because Romo failed to object at the time the video was admitted, he has waived any error on appeal.

⚖️ **539.01 Sufficiency of the Evidence / Possession of Child Pornography:** At the time of the investigation, Romo was working at the Laredo Food Bank. Police recovered from Romo’s effects at the Food Bank a DVD video titled “Nudist HDV.” The video contained footage of men, women,

and girls at a purported nudist camp. In the jury charge, the jury was tasked with deciding whether the video constituted child pornography, specifically, whether it met the definition of “lewd exhibition of the genitals” as alleged in the indictment. The video opens with a disclaimer that it portrays nudist life in its simplicity in European camps, clubs, and areas, and that it is not sexually oriented or adult in nature. The video claims to violate no federal laws, to depict entire families, and to be documentary and educational material. The next screen states that the video depicts the lifestyle of “naturism,” which is followed by an offer of many downloadable hours with a single membership. The video focuses mainly on naked pre-pubescent girls who are outside in a grassy, picnic-type area on a windy day, talking both with other girls, and some adults. Some of the people in the video are sitting on blankets or towels that are placed on the ground, while others are walking about. There are no pre-pubescent boys shown in the video, and the video is entirely in French and contains no English subtitles. The video ends with the girls standing in a line waiting, one of whom appears pubescent, holding number placards from one to five. The video ends before the “pageant” concludes. Appellant claims the evidence is insufficient to sustain the conviction for possession of child pornography.

Holding: In determining whether depictions of nude children are “lewd” for purposes of child pornography, the Court of Criminal Appeals has relied on factors enunciated in *United States v. Dost*, 636 F. Supp. 828 (S.D. Cal. 1986). *** According to the Court of Criminal Appeals, the *Dost* factors “aid us in assessing how and why we know it when we see it.” The *Dost* factors “are useful for assessing the sufficiency of evidence, and pose questions that are (at least) germane to the issue.” *** Because no transcription of the video was offered in evidence, we are unable to determine what is being said on the video. *** We are left to review the visual images depicted on the video and the intonation of the voices, none of which appear to be out of the ordinary. Without more, on this record, and using the *Dost* factors as a guide, we conclude the evidence is legally insufficient to support a finding that the video depicts a “lewd exhibition of the genitals” as defined in the jury’s charge. Accordingly, with respect to Count III, we reverse judgment and render an acquittal.

Concurring / Dissenting Opinions: Justice Patricia Alvarez would have affirmed all three convictions, believing the evidence to be sufficient as to the child pornography conviction. Despite the fact that the people in the video are speaking in French and there was no translation into English, she argued that the “video itself is legally sufficient evidence that prevents us from taking the verdict away from the jury.” She also argued that, applying the *Dost* factors, a rational juror could have concluded beyond a reasonable doubt that Romo’s video was a lewd exhibition of child genitalia.”

Ed Note: The Court of Appeals found the evidence as to the convictions for Continuous Sexual Abuse and Indecency with a Child was sufficient.