

Affirmed and Opinion filed March 15, 2001.

In The
Fourteenth Court of Appeals

NO. 14-99-00940-CR

RAMONA GAYLE LIBERTY, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the County Criminal Court at Law No. 2
Harris County, Texas
Trial Court Cause No. 99-07159**

OPINION

Appellant, Ramona Gayle Liberty, appeals her conviction, by a jury, for failure to report child abuse. In her sole point of error, appellant contends the trial court abused its discretion in admitting evidence that was not relevant to any issue in the case. We affirm.

Appellant's husband sexually abused the victim, a minor child. The victim repeatedly told appellant about the abuse, but appellant failed to report the abuse to the appropriate authorities. The victim subsequently made an outcry statement to a D.A.R.E. officer at her elementary school. This led to the involvement of the Harris County Sheriff's Department and Children's Protective Services. A criminal investigation ensued. During

the course of the investigation, appellant gave a written statement to Detective L. D. McFarland of the Harris County's Sheriff's Department. The statement was admitted as evidence at appellant's trial. In the statement, appellant admitted the victim repeatedly told her about her husband's abusive acts and that she did not contact the appropriate authorities. Moreover, the victim testified that she repeatedly told appellant about sexual abuse. Although the victim admitted that appellant confronted her husband regarding the abuse on several occasions, she did not report the incidents of abuse to authorities.

At appellant's trial, the State's attorney called Cindy Smith, the victim's first grade teacher, as the State's first witness. Ms. Smith testified that the victim frequently masturbated in class. Ms. Smith further testified that she was shocked by this behavior and reported it to both the school counselor and appellant. Appellant's sole point of error asserts the trial court abused its discretion by admitting this testimony because it was not relevant to any issue in the case and was so inflammatory that it denied appellant a fair trial.

Assuming, *arguendo*, that the trial court erred by failing to exclude Ms. Smith's testimony, we must determine whether the error was harmful. We look to rule of appellate procedure 44.2 to determine if reversal is mandated. *See* TEX. R. APP. P. 44.2. The proper harm analysis is dependent upon the kind of error involved. If the error is constitutional, we apply rule 44.2(a), otherwise we apply rule 44.2(b).

Complaints of erroneous evidentiary rulings are not constitutional and, therefore, are reviewed under the substantial rights standard set out in 44.2(b). *See King v. State*, 953 S.W.2d 266, 271 (Tex. Crim. App. 1997). A substantial right is affected when the error had a substantial and injurious effect or influence in determining the jury's verdict. *See King*, 953 S.W.2d at 271 (citing *Kotteakos v. United States*, 328 U.S. 750, 776 (1946)). A criminal conviction will not be reversed for non-constitutional error if the appellate court, after examining the record as a whole, has fair assurance that the error did not influence the jury, or had but a slight effect. *See Johnson v. State*, 967 S.W.2d 410, 417 (Tex. Crim. App.

1998). Appellant asserts that she did not receive a fair trial because the jury could not fairly and impartially consider the case after the admission of the “inflammatory” evidence at the beginning of the trial. After reviewing the record as a whole, including appellant’s confession and the victim’s testimony, we conclude the admission of Ms. Smith’s testimony did not have a substantial impact or injurious effect upon the verdict. Accordingly, we find the error, if any, in allowing the testimony was harmless. *See* TEX. R. APP. P. 44.2(b).

The judgment of the trial court is affirmed.

/s/ J. Harvey Hudson
Justice

Judgment rendered and Opinion filed March 15, 2001.

Panel consists of Justices Hudson, Draughn, and Amidei.*

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

* Senior Justice Joe L. Draughn and Former Justice Maurice Amidei sitting by assignment.