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OFFICIAL NOTICE FROM
COURT OF CRIMINAL APPEALS OF TEXAS
P.O. BOX 12308, CAPITOL STATION,
AUSTIN, TEXAS 78711

[SEAL]

6/16/2021

Tr. Ct. No. 14-026A

CANO, JUAN JOE **WR-92,266-01**

This is to advise that the Court has denied without written order the application for writ of habeas corpus on the findings of the trial court without a hearing and on the Court's independent review of the record.

Deana Williamson, Clerk

RANDY SCHAFFER
ATTORNEY AT LAW
1021 MAIN ST. #1440
HOUSTON, TX 77002
* DELIVERED VIA E-MAIL *

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COURT OF CRIMINAL APPEALS OF TEXAS
P.O. BOX 12308, CAPITOL STATION,
AUSTIN, TEXAS 78711

[SEAL]

6/16/2021

Tr. Ct. No. 14-031A

CANO, JUAN JOE **WR-92,266-03**

This is to advise that the Court has denied without written order the application for writ of habeas corpus on the findings of the trial court without a hearing and on the Court's independent review of the record

Deana Williamson, Clerk

RANDY SCHAFFER
ATTORNEY AT LAW
1021 MAIN ST. #1440
HOUSTON, TX 77002
* DELIVERED VIA E-MAIL *

Cause No. 14-026, 14-031

EX PARTE	§	**IN THE DISTRICT**
	§	**COURT OF**
JUAN JOE CANO	§	**MATAGORDA COUNTY,**
	§	**TEXAS**
	§	**130th JUDICIAL**
	§	**DISTRICT COURT**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

(Filed Dec. 31, 2020)

Applicant Juan Joe Cano has filed applications for writ of habeas corpus, post-conviction, in these two causes. In one ground, Cano alleges his trial attorney provided ineffective assistance of counsel for various reasons.

In Cause No. 14-026, the jury found Cano guilty of indecency with a child and sentenced him to serve a two-year term. In No. 14-031, the jury found Cano guilty of sexual abuse of a child and sentenced him to a 25-year term. Judgments entered November 6, 2014.

In both cases, the appellate court affirmed and the Texas Court of Criminal Appeals refused the petition for discretionary review.

In reaching these findings, the court has reviewed Cano's application, brief and exhibits, the State's response, trial counsel's affidavit, the court files and records and its own recollection.

I.
Ineffective Assistance of Counsel

Applicant had the right to the effective assistance of counsel at trial pursuant to the Sixth and Fourteenth Amendments to the United States Constitution.

Applicant must show that counsel's performance was deficient under prevailing professional norms and, but for counsel's errors, there is a reasonable probability that the outcome of the trial would have been different. *Strickland v. Washington*, 466 U.S. 668, 687-88, 690 (1984). "A reasonable probability is probability sufficient to undermine confidence in the outcome." *Id.* at 694.

Applicant need not show a reasonable probability that, but for counsel's errors, he would have been acquitted. "The result of the proceeding can be rendered unfair, and hence the proceeding itself unfair, even if the errors of counsel cannot be shown by a preponderance of the evidence to have determined the outcome." *Strickland.* 466 U.S. at 694. The issue is whether applicant received a fair trial that produced a verdict worthy of confidence. *Cf. Kyles v. Whitley*, 514 U.S. 419, 434 (1995).

Assertions of ineffective assistance of counsel must be firmly founded in the record. *Bone v. State*, 77 S.W.3d 828, 835 (Tex. Crim. App. 2002).

II.
Ground One
Ineffective assistance of counsel in the guilt-innocence phase

Ground One in both applications claim trial counsel was ineffective in the guilt-innocence stage.

A. Failing to Object to Inadmissible Opinion Testimony.

Cano first alleges that trial counsel was ineffective for failing to file motions in limine and to object to inadmissible opinion testimony.

Cano claims that Cpl. Guajardo's (investigator) and Ms. Mikkelson's (forensic interviewer) testimony amounted to improper opinion testimony that the complainant was telling the truth in making the sexual assault allegations. The State and trial counsel argue that Guajardo merely testified as to their personal observations as to the complainant's demeanor.

The court finds that the State's position is well taken – the testimony by the two witnesses, taken as a whole, did not rise to improper opinion that the complainant told the truth.

B. Referring to the Complainant as "Victims"

Cano next alleges that trial counsel was ineffective for failing to object to the State's attorney and witnesses referring to the complainant as "victims."

The failure to file a motion in limine to prevent the State from referring to G.D. as a "victim" and to object to the use of that standing alone, does not require a finding of ineffective assistance of counsel. *Gonzalez v. State*, 510 S.W.3d 10, 31-32 (Tex. App.—Corpus Christi-Edinburg 2014, pet. ref'd.).

Counsel is not ineffective for failing to object to the use of the term "victim." *Weatherly v. State*, 283 S.W.3d 481, 486 (Tex. App.—Beaumont 2009, pet. ref'd).

Considering the evidence in full, the court finds that Cano's trial counsel did not perform ineffectively on this claim.

C. Cindy Cano's Testimony

Cano next alleges trial counsel was ineffective for not objecting when the complainant's grandmother, Cindy Cano, testified that she believed the complaintants were not telling the truth.

Trial counsel states that this was his client's defense – that the complainant's testimony was not truthful. He also testified he employed this strategy consistently through trial. Cindy Cano's testimony was consistent with this strategy.

The records bears out counsel's testimony. This is a reasonable trial strategy, and an effective one when the jury believes the testimony.

Here, the case is most similar to *Joseph v. State*, 367 S.W.3d 741, 745 (Tex. App.—Houston [14th Dist.]

2012, pet ref'd), where the court held a similar question harmless because the question "merely highlight[ed] the fact that the defendant disagrees with State's witnesses' testimony."

Likewise, the State's criticism of Cindy Cano's testimony only highlighted that the State disagreed with it.

D. Cindy Cano's Testimony, Opportunity and Impotence

Cano next claims trial counsel was ineffective for eliciting testimony from applicant's wife, that he was never alone with the complainants and that Cano was impotent.

As to the former testimony, Cano's wife did state on cross examination that Cano was alone with the children for a minute or two on occasion.

This testimony hardly impeached the wife's pervious testimony. In the end, the testimony as a whole was consistent with Cano's defense that he never had the opportunity to commit the offenses as the complainant described them.

Cano claims that testimony about Cano's impotence opened the door for Diana Estrada's harmful testimony about a previous affair. Trial counsel claims Estrada's testimony was inconsequential because the affair occured before the criminal conduct alleged occurred. He also claims the testimony was not credible

due to Estrada's prior ciminal conduct and pending charge.

The State answers that there is no evidence that Cano's attorney knew Estrada was available to testify (or that she existed) and that even so, the testimony that Cano was impotent was a legitimate judgment call.

The court agrees with the State. First, there was no expert medical testimony in the record regarding any medical condition that Cano suffered would render him impotent during the relevant times.

Second, Cano's wife would be in the best position to know whether or not Cano could achieve an erection. This testimony was beneficial to Cano's defense and there was no clear testimony regarding Cano's impotence in the relevant time period to contradict it. Eliciting the testimony as Cano's attorney was reasonable trial strategy that the court may not second guess in a *Strickland* analysis.

E. Complainants' Prior Inconsistent Statements

Cano next alleges his trial attorney failed to impeach each complainant with her prior inconsistent statements. The State responds that defense counsel's strategy to avoid hard cross examination of children who have testified they have suffered sexual assault is a reasonable strategy.

A defense attorney has to weight the potential for "incurring the jury's ire" for aggressively cross examining a child witness in that circumstance against the value of any information that might be gained from such an examination.

Defense counsel testified he was concerned in the moment given the child witness responses and demeanor that more aggressive questioning would result in little help with Cano's defense and would possibly make the child witnesses more sympathetic to the jury than they already might have been.

This is exactly the heat of the moment snap decision a defense attorney must make that trial courts are cautioned against second-guessing.

The court agrees with the State's argument that the court may not second guess attorney's choice in this matter.

F. Failing to Consult with Experts

Finally, Cano states his defense attorney performed ineffectively by failing to consult with a psychologist to review the evidence and testify that the parents asked the complainants leading questions that suggested that Cano sexually abused them before they accused him of sexual assualt thereby contaminating their subsequent accusations.

Texas high courts so far have not found that defense counsel have a general duty to consult with an

expert about questioning children who may have suffered sexual assault.

Cano cites four cases – two (*Briggs, Overton*) relate to death cases where cause of death can only be established by expert testimony. One, *Wright*, relates to the failure to call an expert to consult regarding therapists notes. There are no therapist notes in this case. The fourth case cited by Cano, *Mullins*, is a Kansas case.

The trial court believes it is not for the court in a writ proceeding to recommend the holding in this Kansas case be adopted in Texas.

While the court, with the benefit of hindsight, may find that some of defense counsel's strategies were unsuccessful or that other strategies might have been more successful, counsel's defense does not meet *Strickland's* standard for ineffective assistance.

G. Conclusion

Cano raises several claims that amount to a second-guessing of his attorney's trial strategy. Counsel articulated in his affidavit a plausible basis for each strategic decision.

A reviewing court's assessment of trial counsel's performance must be highly deferential – the court should indulge a strong presumption that counsel's performance fill within a wide range of reasonable representation. *Tong v. State*, 25 S.W.3d 707, 712 (Tex. Crim. App. 2000).

Reviewing courts are also cautioned not to second-guess counsel's reasonable but unsuccessful strategies and decisions with the benefit of hindsight, or because another attorney after the fact may have tried the case differently. *Blott v. State*, 588 S.W.2d 588, 593 (Tex. Crim. App. 1979).

Here, the record does not show trial counsel's performance to be reasonable and consistent through trial. The court concludes counsel did not provide ineffective of assistance of counsel.

The trial court recommends that the application be denied.

III.
Transmitting the Record

The Clerk of the Court is ORDERED to prepare a transcript of this cause, including therein all the pleadings and motions filed by the petitioner, all pleadings and motions filed by the state, including copies of all exhibits filed by the parties, the docket sheet, all orders of the court in this case, and the final Findings of Fact and Conclusions of Law of the trial court and transmit the transcript to the Court of Criminal Appeals pursuant to Article 11.071, Tex. Code. Crim. Pro., providing copies of this transcript to both the representatives of the State and to counsel for Applicant.

Signed: December 31, 2020 (9:15am).

/s/ Craig Estlinbaum
Judge Presiding

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OFFICIAL NOTICE FROM
COURT OF CRIMINAL APPEALS OF TEXAS
P.O. BOX 12308, CAPITOL STATION,
AUSTIN, TEXAS 78711

[SEAL]

11/9/2016 **COA No. 13-15-00005-CR**
Tr. Ct. No. 14-026
CANO, JUAN JOE **PD-1046-16**

On this day, the Appellant's petition for discretionary review has been refused.

Abel Acosta, Clerk

13TH COURT OF APPEALS CLERK
DORIAN RAMIREZ
901 LEOPARD
CORPUS CHRISTI, TX 78401
* DELIVERED VIA E-MAIL *

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P.O. BOX 12308, CAPITOL STATION,
AUSTIN, TEXAS 78711

[SEAL]

11/9/2016 **COA No. 13-15-00007-CR**
Tr. Ct. No. 14-031
CANO, JUAN JOE **PD-1048-16**

On this day, the Appellant's petition for discretionary review has been refused.

Abel Acosta, Clerk

13TH COURT OF APPEALS CLERK
DORIAN RAMIREZ
901 LEOPARD
CORPUS CHRISTI, TX 78401
* DELIVERED VIA E-MAIL *

2016 WL 4145966
Only the Westlaw citation is currently available.

SEE TX R RAP RULE 47.2 FOR
DESIGNATION AND SIGNING OF OPINIONS.

Do not publish. TEX. R. APP. P. 47.2 (b).
Court of Appeals of Texas, Corpus Christi-Edinburg.

Juan Joe CANO, Appellant,
v.
The STATE of Texas, Appellee.

NUMBER 13-15-00005-CR, NUMBER
13-15-00006-CR, NUMBER 13-15-00007-CR

|

Delivered and filed August 4, 2016.

|

Rehearing Overruled August 19, 2016

|

Discretionary Review Refused November 9, 2016

On appeal from the 130th District Court of Matagorda County, Texas, Hon. Craig Estlinbaum, District Judge.

Attorneys and Law Firms

Cary M. Faden, Attorney at Law, Sugar Land, TX, for Juan Joe Cano.

Robinson C. Ramsey, Langley & Banack, San Antonio, TX, Steven E. Reis, District Attorney, Lindsay K. Deshotels, Assistant District Attorney, Bay City, TX, for the State of Texas.

Before Justices Rodriguez, Benavides, and Perkes

MEMORANDUM OPINION

Memorandum Opinion by Justice Benavides

By three issues, appellant Juan Joe Cano challenges his conviction for indecency with a child by sexual contact, indecency with a child by exposure, and continuous sexual assault of a child.[1] *See* TEX. PENAL CODE ANN. §§ 21.11(a)(1), 22.11(a)(2), and 21.02 (West, Westlaw through 2015 R.S.). Cano alleges: (1) the joinder of two of his cases was unfairly prejudicial; (2) the evidence was insufficient to support a conviction for indecency with a child by exposure; and (3) double jeopardy was violated by charging him with indecency with a child by contact and continuous sexual assault of a child. We affirm.

I. BACKGROUND[2]

In the summer of 2013, Corporal Maria Guajardo of the Bay City Police Department was assigned a case against Cano involving allegations of abuse by five complainants, Child 1, Child 2, Child 3, Child 4, and

---

[1] Cano was charged in three separate cause numbers that are on appeal with this Court: 14-026 (13-15-00005-CR); 14-027 (13-15-00006-CR); and 14-031 (13-15-00007-CR). The offenses were joined and tried in a consolidated trial. We will address the issues for all three cause numbers in one opinion.

[2] Because this is a memorandum opinion and the parties are familiar with the facts, we will not recite them here except as necessary to advise the parties of the Court's decision and the basic reasons for it. See TEX. R. APP. P. 47.4.

Child 5.[3] Based on the information the children provided in their forensic interviews, indictments were issued for Cano. He was charged with indecency with a child by contact with Child 1, indecency with a-child by exposure with Child 2, and continuous sexual assault with Child 2, Child 3, Child 4, and Child 5. *See id.* §§ 21.11(a)(1), 22.11(a)(2), and 21.02. The children involved in the case-were Cano's step-grandchildren. The State filed a motion to join the cause numbers for trial, which was granted. Prior to the beginning of trial, Cano filed a motion to sever, but after argument, the trial court denied the motion. *See id.* § 3.04 (West, Westlaw through 2015 R.S.). At trial, the jury found Cano guilty of all three offenses. Punishment was assessed at two years' imprisonment in the Texas Department of Criminal Justice—Institutional Division for the indecency with a child by contact charge, two years' imprisonment, probated for two years, for the indecency with a child by exposure charge, and twenty-five years' imprisonment for the continuous sexual assault of a child charge.[4] This appeal followed.

---

[3] Due to the age of the children and nature of the offenses, we will refer to the child complainants by pseudonym only.

[4] Cano was also charged with indecency with a child by exposure with Child 4, but the State dismissed the charge following the conclusion of the State's evidence.

II. EVIDENCE WAS SUFFICIENT[5]

By his second issue, Cano argues the evidence was insufficient to support his conviction for indecency with a child by exposure.

A. Standard of Review and Applicable Law

"The standard for determining whether the evidence is legally sufficient to support a conviction is 'whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *Johnson v State*, 364 S.W.3d 292, 293-94 (Tex. Crim. App. 2012) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)) (emphasis in original); *see Brooks v. State*, 323 S.W.3d 893, 898-99 (Tex. Crim. App. 2010) (plurality op.). The fact-finder is the exclusive judge of the credibility of witnesses and of the weight to be given to their testimony. *Brooks*, 323 S.W.3d at 899; *Lancon v. State*, 253 S.W.3d 699, 707 (Tex. Crim. App. 2008). Reconciliation of conflicts in the evidence is within the fact-finder's exclusive province. *Wyatt v. State*, 23 S.W.3d 18, 30 (Tex. Crim. App. 2000). We resolve any inconsistencies in the testimony in favor of the verdict. *Bynum v. State*, 767 S.W.2d 769, 776 (Tex. Crim. App. 1989) (en banc).

We measure the sufficiency of the evidence by the elements of the offense as defined by a hypothetically correct jury charge. *Villarreal v. State*, 286 S.W.3d 321,

[5] We will address Cano's issues out of order in this opinion.

327 (Tex. Crim. App. 2009) (citing *Malik v. State*, 953 S.W.2d 234, 240 (Tex. Crim. App. 1997)). Such a charge is one that accurately sets out the law, is authorized by the indictment, does not unnecessarily increase the State's burden of proof or unnecessarily restrict the State's theories of liability, and adequately describes the particular offense for which the defendant was tried. *Id.* The offense of indecency with a child by exposure, as alleged in the indictment, required the State to prove that appellant, with the intent to arouse or gratify the sexual desires of appellant, exposed his genitals, knowing that Child 2 was present. *See* TEX. PENAL CODE ANN. § 22.11(a)(2).

B. Discussion

Cano argues the evidence was insufficient to support his conviction for indecency with a child by exposure. During testimony, Child 2 stated that Cano had recently gotten out of the shower, walked into an open doorway, took off his towel exposing his genitals to her, and smiled before walking away. Cano offered this Court multiple hypothetical reasons he could have exposed himself to Child 2; however, a reasonable fact-finder could have found beyond a reasonable doubt that his action was intentional. The jury is allowed to draw reasonable inferences from the evidence, and we presume they did so. *See Lacour v. State*, 8 S.W.3d 670, 671 (Tex. Crim. App. 2000) (en banc).

A jury was allowed to consider this instance of exposure to Child 2, as well as other incidents of abuse

about which she testified. We find the evidence was sufficient to support the jury's determination of guilt regarding the charge of indecency with a child by exposure. We overrule Cano's second issue.

III. JOINDER WAS PROPER

By his first issue, Cano argues that joining the indecency with a child by contact and the indecency with a child by exposure cases in a consolidated trial was unfairly prejudicial.

A. Standard of Review and Applicable Law

A "defendant may be prosecuted in a single criminal action for all offenses arising out of the same criminal episode." TEX. PENAL CODE ANN. § 3.02(a) (West, Westlaw though 2015 R.S.). "Criminal episode" means the "commission of two or more offenses, regardless of whether the harm is directed towards or inflicted upon more than one person or item of property, under the following circumstances . . . (2) the offenses are the repeated commission of the same or similar offenses." *Id.* § 3.01(2) (West, Westlaw through 2015 R.S.). However, "the right to severance under [Section 3.04] does not apply to a prosecution for offenses described by Section 3.03(b)[6] unless the court determines that the defendant or the state would be unfairly prejudiced by a joinder of offenses, in which

[6] Texas Penal Code section 3.03(b) refers to the sentences for offenses arising out of the same criminal episode. *See* TEX. PENAL CODE ANN. § 3.03(b) (West, Westlaw through 2015 R.S.).

event the judge may order the offenses to be tried separately or may order other relief as justice requires." *Id.* § 3.04(c) (West, Westlaw through 2015 R.S.).

The standard of review for whether a trial court properly ruled on a motion to sever, when that determination is left to the trial court by statute, is abuse of discretion. *Matthews v. State*, 152 S.W.3d 723, 730 (Tex. App.—Tyler 2004, no pet.).

B. Discussion

The State filed a motion for joinder of Cano's cases, to which Cano responded with a motion to sever the cases. *See* TEX. PENAL CODE ANN. § 3.04(c). Counsel for the State and Cano argued before the trial court as follows:

> Cano: And what I filed on the motion for severance—I understand under that, Judge, it says that the right to severance in this section doesn't apply to prosecution for offenses described in [section] 3.03(b). And that's indecency with a child and the sex case we're talking about here, but it gives the Court the discretion to determine whether the defendant of the State would be unfairly prejudiced by joinder of the offenses. And under the statute, it leaves it up to the Judge; and I'm asking that you do that in that trying all these together would unfairly prejudice my client.
>
> That's all I have, your Honor.
>
> . . . .

> State: Your Honor, the State would respond that that is correct, that the right to severance doesn't apply for these cases unless you determine that there is—that it is unfairly prejudicial to this defendant. However, the State would say that it's not unfairly prejudicial to this defendant because under the right circumstances in these types of cases, 38.37 under the Code of Criminal Procedure, allows for this type of evidence to come in anyways.
>
> So essentially, regardless of if the cases are joined for trial or separated, the same evidence is gonna come in.
>
> Court: Okay. The motion to sever is denied.

"'There is no presumption that the joinder of cases involving aggravated sexual assault against different children is unfairly prejudicial.'" *Hulsey v. State*, 211 S.W.3d 853, 858 (Tex. App.—Waco 2006, no pet.) (quoting *Salazar v. State*, 127 S.W.3d 355, 365 (Tex. App.—Houston [14th Dist.] 2004, pet. ref'd)). Here, the State referenced article 38.37 of the code of criminal procedure, which relates specifically to extraneous offenses or acts in the prosecution of sexual based offenses. *See* TEX. CODE CRIM. PROC. ANN. art. 38.37 (West, Westlaw through 2015 R.S.). Under article 38.37,

> evidence that the defendant has committed a separate offense as described by Subsection (a)(1) or (2) (sexual based offenses) may be admitted in the trial of an alleged offense described in Subsection (a)(1) or (2) for any bearing the evidence has on relevant matters,

> including the character of the defendant and acts performed in conformity with the character of the defendant.

See id., § 2(b). The State gave proper notice prior to trial of its intent to use extraneous sexual based offenses in Cano's trial. Therefore, even if the trial court had severed the cases, the State's argument that the offenses would have most likely been admissible was proper. The trial court did not abuse its discretion finding there would be no unfair prejudice to Cano to try the cause numbers together. We overrule Cano's first issue.

IV. NO DOUBLE JEOPARDY VIOLATION

By his third issue, Cano alleges his conviction for indecency with a child by contact could have formed part of the offense of continuous sexual assault and would have been a violation of double jeopardy. *See* TEX. PENAL CODE ANN. §§ 21.11(a)(1), 21.02.

A. Discussion

Cano was convicted of both indecency with a child by contact and continuous sexual assault. *See* TEX. PENAL CODE ANN. §§ 21.11(a)(1), 21.02. The complainant in the indecency with a child by contact case was Child 1. The complainants in the continuous sexual assault case were Child 2, Child 3, Child 4, and Child 5. Cano argues the State claimed the event underlying the indecency with a child by contact charge occurred eight days after the time period the State

relied on for the continuous sexual assault charge; yet in the motion for joinder, the State argued the events arose out of a single criminal episode. However, a "criminal episode" can encompass "offenses [that] are the repeated commission of the same or similar offenses." *See* TEX. PENAL CODE ANN. § 3.01.

"Both Texas and federal courts recognize that prosecutors have broad discretion in deciding which cases to prosecute." *Neal v. State*, 150 S.W.3d 169, 173 (Tex. Crim. App. 2004) (en banc). "Thus, 'if the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether to prosecute and what charge to file generally rests entirely within his or her discretion.' " *Id.* (quoting *State v. Malone Serv. Co.*, 829 S.W.2d 763, 769 (Tex. 1992)).

The State had the discretion on how to charge Cano with the offenses they alleged he committed. Regardless of the time period alleged in the continuous sexual assault charge, the State was entitled to charge Child 1 as the complainant in a separate offense. No double jeopardy violation occurred since Child 1 was not an included complainant in the continuous sexual assault charge. The State argued that Cano committed the same or similar offenses in order to join them under the "same criminal episode." The trial court agreed and allowed the joinder of the cases. We overrule Cano's third issue.

V. CONCLUSION

We affirm the trial court's judgments.

[SEAL] **CASE NO. 14-026** COUNT 1
INCIDENT NO./TRN: 9228004665

THE STATE OF TEXAS	§	**IN THE 130TH DISTRICT**
	§	
v.	§	**COURT**
	§	
JUAN JOE CANO	§	**MATAGORDA COUNTY,**
	§	**TEXAS**
STATE ID NO.: TX06347492	§	

JUDGMENT OF CONVICTION BY JURY

Judge Presiding: HON. CRAIG ESTLINBAUM	Date Judgment Entered: 11/6/2014
Attorney for State: STEVEN REIS	Attorney for Defendant: MARIO MADRID
Offense for which Defendant Convicted: INDECENCY WITH A CHILD	
Charging Instrument INDICTMENT	Statute for Offense: 21.11(a)(1) Penal Code
Date of Offense: 7/7/2013	
Degree of Offense: 2ND DEGREE FELONY	Plea to Offense: NOT GUILTY
Verdict of Jury: GUILTY	Findings on Deadly Weapon: N/A
Plea to 1st Enhancement Paragraph: N/A	Plea to 2nd Enhancement/ Habitual Paragraph: N/A

Findings on 1st Enhancement Paragraph: N/A	Findings on 2nd Enhancement/ Habitual Paragraph: N/A

Punished Assessed by:	Date Sentence Imposed:	Date Sentence to Commence:
JURY	11/6/2014	11/6/2014

Punishment and Place of Confinement:	2 YEARS INSTITUTIONAL DIVISION, TDCJ

THIS SENTENCE SHALL RUN CONCURRENTLY.

☐ **SENTENCE OF CONFINEMENT SUSPENDED, DEFENDANT PLACED ON COMMUNITY SUPERVISION FOR N/A**

Fine:	Court Costs:	Restitution	Restitution Payable to:
$0.00	$599.00	$ N/A	☐ VICTIM (see below) ☐ AGENCY/AGENT (see below)

Sex Offender Registration Requirements apply to the Defendant. TEX. CODE CRIM. PROC. chapter 62.

The age of the victim at the time of the offense was 8 years.

If Defendant is to serve sentence in TDCJ, enter incarceration periods in chronological order.

Time Credited:				
	From 7/12/2013 to 7/13/2013		From	to
	From	to	From	to
	From	to	From	to

If Defendant is to serve sentence in county jail or is given credit toward fine and costs, enter days credited below.

N/A DAYS NOTES: N/A

All pertinent information, names and assessments indicated above are incorporated into the language of the judgment below by reference.

This cause was called for trial in Matagorda County, Texas. The State appeared by her District Attorney.

Counsel/Waiver of Counsel (select one)

☒ Defendant appeared in person with Counsel.
☐ Defendant knowingly, intelligently, and voluntarily waived the right to representation by counsel in writing in open court.

It appeared to the Court that Defendant was mentally competent and had pleaded as shown above to the charging instrument. Both parties announced ready for trial. A jury was selected, impaneled, and swore. The INDICTMENT was read to the jury, and Defendant entered a plea to the charged offense. The Court received the plea and entered it of record.

The jury heard the evidence submitted and argument of counsel. The Court charged the jury as to its duty to determine the guilt or innocence of Defendant, and the jury retired to consider the evidence. Upon returning to open court, the jury delivered its verdict in the presence of Defendant and defense counsel, if any.

The Court received the verdict and **ORDERED** it entered upon the minutes of the Court.

Punishment Assessed by Jury / Court / No election (select one)

☒ **Jury.** Defendant entered a plea and filed a written election to have the jury assess punishment. The jury heard evidence relative to the question of punishment. The Court charged the jury and it retired to consider the question of punishment. After due deliberation, the jury was brought into Court, and, in open court, it returned its verdict as indicated above.

☐ **Court.** Defendant elected to have the Court assess punishment. After hearing evidence relative to the question of punishment, the Court assessed Defendant's punishment as indicated above.

☐ **No Election.** Defendant did not file a written election as to whether the judge or jury should assess punishment. After hearing evidence relative to the question of punishment, the Court assessed Defendant's punishment as indicated above.

The Court **FINDS** Defendant committed the above offense and **ORDERS, ADJUDGES AND DECREES** that Defendant is **GUILTY** of the above offense. The Court **FINDS** the Presentence Investigation, if so ordered, was done according to the applicable provisions of TEX. CODE CRIM. PROC. art. 42.12 § 9.

The Court **ORDERS** Defendant punished as indicated above. The Court **ORDERS** Defendant to pay all fines, court costs, and restitution as indicated above.

Punishment Options (select one)

☒ **Confinement in State Jail or Institutional Division.** The Court **ORDERS** the authorized agent of the State of Texas or the Sheriff of this county to take, safely convey, and deliver Defendant to the **Director, Institutional Division, TDCJ**. The Court **Orders** Defendant to be confined for the period and in the manner indicated above. The Court **ORDERS** Defendant remanded to the custody of the Sheriff of this county until the Sheriff can obey the directions of this sentence. The Court **ORDERS** that upon release from confinement, Defendant proceed immediately to the Matagorda County District Clerk. Once there, the Court **ORDERS** Defendant to pay, or make arrangements to pay, any remaining unpaid fines, court costs, and restitution as ordered by the Court.

☐ **County Jail—Confinement / Confinement in Lieu of Payment.** The Court **ORDERS** Defendant immediately committed to the custody of the Sheriff of Matagorda County, Texas on the date the sentence is to commence. Defendant shall be confined in the **Matagorda County Jail** for the period indicated above. The Court **ORDERS** that upon release from confinement, Defendant shall proceed immediately to the **Matagorda County District Clerk**. Once there, the Court **ORDERS** Defendant to pay, or make arrangements to pay, any remaining unpaid fines, court costs, and restitution as ordered by the Court.

☐ **Fine Only Payment.** The punishment assessed against Defendant is for a **FINE ONLY**. The Court

ORDERS Defendant to proceed immediately to the **Office of the Matagorda County**. Once there, the Court **ORDERS** Defendant to pay or make arrangements to pay all fines and court costs as ordered by the Court in this cause.

Execution / Suspension of Sentence (select one)

☒ The Court **ORDERS** Defendant's sentence **EXECUTED**.

☐ The Court **ORDERS** Defendant's sentence of confinement **SUSPENDED**. The Court **ORDERS** Defendant placed on community supervision for the adjudged period (above) so long as Defendant abides by and does not violate the terms and conditions of community supervision. The order setting forth the terms and conditions of community supervision is incorporated into this judgment by reference.

The Court **ORDERS** that Defendant is given credit noted above on this sentence for the time spent incarcerated.

FURTHERMORE, THE FOLLOWING SPECIAL FINDINGS OR ORDERS APPLY:

The Court finds that the defendant has the present financial ability to repay the court-appointed attorney's fees. The Court further finds that payment of financial obligations ordered herein by the Court will not create an undue burden upon the defendant.

Defendant is hereby **ORDERED** to reimburse Matagorda County for court-appointed attorney's fees in the amount of $------.

Signed and entered on November 6, 2014

X Craig Estlinbaum
CRAIG ESTLINBAUM
JUDGE PRESIDING

Clerk: Jamie Bludau [Right Thumbprint Omitted]

[SEAL] **CASE NO. 14-026** COUNT 1
INCIDENT NO./TRN: 9228004770

THE STATE OF TEXAS	§	**IN THE 130TH DISTRICT**
	§	
v.	§	**COURT**
	§	
JUAN JOE CANO	§	**MATAGORDA COUNTY,**
	§	**TEXAS**
STATE ID NO.: TX06347492	§	

JUDGMENT OF CONVICTION BY JURY

Judge Presiding: HON. CRAIG ESTLINBAUM	Date Judgment Entered: 11/6/2014
Attorney for State: STEVEN REIS	Attorney for Defendant: MARIO MADRID
Offense for which Defendant Convicted: CONTINUOUS SEXUAL ABUSE OF A CHILD	
Charging Instrument INDICTMENT	Statute for Offense: 21.02 Penal Code
Date of Offense: 3/11/2011	
Degree of Offense: 1ST DEGREE FELONY	Plea to Offense: NOT GUILTY
Verdict of Jury: GUILTY	Findings on Deadly Weapon: N/A
Plea to 1st Enhancement Paragraph: N/A	Plea to 2nd Enhancement/ Habitual Paragraph: N/A

Findings on 1st Enhancement Paragraph: N/A	Findings on 2nd Enhancement/ Habitual Paragraph: N/A

Punished Assessed by:	Date Sentence Imposed:	Date Sentence to Commence:
JURY	11/6/2014	11/6/2014

Punishment and Place of Confinement:	25 YEARS INSTITUTIONAL DIVISION, TDCJ

THIS SENTENCE SHALL RUN CONCURRENTLY.

☐ **SENTENCE OF CONFINEMENT SUSPENDED, DEFENDANT PLACED ON COMMUNITY SUPERVISION FOR**

Fine:	Court Costs:	Restitution	Restitution Payable to:
$0.00	$599.00	$ N/A	☐ VICTIM (see below) ☐ AGENCY/AGENT (see below)

Sex Offender Registration Requirements apply to the Defendant. TEX. CODE CRIM. PROC. chapter 62.

The age of the victim at the time of the offense was 10 years, 7 years.

	If Defendant is to serve sentence in TDCJ, enter incarceration periods in chronological order.			
	From 7/16/2013 to 7/18/2013		From	to
Time Credited:	From	to	From	to
	From	to	From	to

If Defendant is to serve sentence in county jail or is given credit toward fine and costs, enter days credited below.

N/A DAYS NOTES: N/A

All pertinent information, names and assessments indicated above are incorporated into the language of the judgment below by reference.

This cause was called for trial in Matagorda County, Texas. The State appeared by her District Attorney.

Counsel/Waiver of Counsel (select one)

☒ Defendant appeared in person with Counsel.
☐ Defendant knowingly, intelligently, and voluntarily waived the right to representation by counsel in writing in open court.

It appeared to the Court that Defendant was mentally competent and had pleaded as shown above to the charging instrument. Both parties announced ready for trial. A jury was selected, impaneled, and swore. The INDICTMENT was read to the jury, and Defendant entered a plea to the charged offense. The Court received the plea and entered it of record.

The jury heard the evidence submitted and argument of counsel. The Court charged the jury as to its duty to determine the guilt or innocence of Defendant, and the jury retired to consider the evidence. Upon returning to open court, the jury delivered its verdict in the presence of Defendant and defense counsel, if any.

The Court received the verdict and **ORDERED** it entered upon the minutes of the Court.

Punishment Assessed by Jury / Court / No election (select one)

☒ **Jury.** Defendant entered a plea and filed a written election to have the jury assess punishment. The jury heard evidence relative to the question of punishment. The Court charged the jury and it retired to consider the question of punishment. After due deliberation, the jury was brought into Court, and, in open court, it returned its verdict as indicated above.

☐ **Court.** Defendant elected to have the Court assess punishment. After hearing evidence relative to the question of punishment, the Court assessed Defendant's punishment as indicated above.

☐ **No Election.** Defendant did not file a written election as to whether the judge or jury should assess punishment. After hearing evidence relative to the question of punishment, the Court assessed Defendant's punishment as indicated above.

The Court **FINDS** Defendant committed the above offense and **ORDERS, ADJUDGES AND DECREES** that Defendant is **GUILTY** of the above offense. The Court **FINDS** the Presentence Investigation, if so ordered, was done according to the applicable provisions of TEX. CODE CRIM. PROC. art. 42.12 § 9.

The Court **ORDERS** Defendant punished as indicated above. The Court **ORDERS** Defendant to pay all fines, court costs, and restitution as indicated above.

Punishment Options (select one)

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SPECIAL FINDINGS OR ORDERS APPLY:

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Signed and entered on November 6, 2014

X Craig Estlinbaum
CRAIG ESTLINBAUM
JUDGE PRESIDING

Clerk: Jamie Bludau [Right Thumbprint Omitted]