

IN THE UNITED STATES COURT OF APPEALS  
for the Fifth Circuit

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No. 94-10291  
Summary Calendar

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JAMES WESLEY CHASE,

Petitioner-Appellant,

versus

WAYNE SCOTT, Director,  
Texas Department of Criminal  
Justice, Institutional Division,

Respondent-Appellee.

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Appeal from the United States District Court  
for the Northern District of Texas  
(4:93-CV-420-Y)

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(November 9, 1994)

Before DUHÉ, WIENER and STEWART, Circuit Judges.

PER CURIAM:\*

James W. Chase appeals the judgment of the district court rejecting his petition for a writ of habeas corpus from a state court conviction for aggravated sexual assault. For the following reasons, the judgment of the district court is affirmed.

BACKGROUND

James W. Chase was indicted and convicted of aggravated sexual assault in violation of Texas Penal Code 22.921. At trial the

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\* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

prosecution put on evidence that Chase had sexually molested an eight-year-old girl. Chase was convicted and sentenced to twenty-five years in prison. His conviction was affirmed on direct appeal. Upon denial of his state writ of habeas corpus, he filed this petition for a federal writ of habeas corpus, challenging the state court conviction. The magistrate judge issued a report and recommendation to deny the petition, which was adopted by the district court. Chase appeals the judgment of the district court.

#### DISCUSSION

Chase contends that there was insufficient evidence to convict him of aggravated sexual assault because the victim did not testify that he actually penetrated her sexual organs. At the time that Chase committed the offense, aggravated sexual assault was defined as "intentionally or knowingly caus[ing] the penetration of the anus or female sexual organ of a child by any means." Texas Penal Code § 22.021(a)(1)(B)(i). Chase argues that the victim stated that he had inserted his finger into her "wee wee," and that when the prosecution asked what part of the anatomically correct doll that was, she pointed to an area on the doll. The prosecution then asked that the record reflect that she indicated the vaginal area of the anatomically correct doll. Chase argues that this type of evidence is insufficient to prove that he actually penetrated her sexual organs. We disagree.

In examining the testimony of a child, courts have kept in mind the child's lack of technical knowledge in accurately describing the parts of the body. Clark v. Texas, 558 S.W.2d 887,

889 (Tex. Crim. App. 1977). Where the child has sufficiently communicated to the trier of fact that the touching occurred to a part of the body in violation of law, the evidence will be sufficient to support a conviction regardless of the unsophisticated language that the child uses. Id.

In this case, the child used an anatomically correct doll to identify the "wee wee" as the vaginal area. The prosecution asked the court to allow the record to reflect the non-verbal communications of the child. See Rohfling v. Texas, 612 S.W.2d 598, 601 (Tex. Crim. App. 1981) (stating that the term "let the record reflect" is a recommended method of preserving non-verbal testimony). Thus, the prosecution followed a lawful procedure to introduce sensitive testimony into trial. We therefore find this contention to be without merit.

Chase's argument that the victim's uncorroborated testimony is insufficient to support his conviction lacks merit. Texas state law does not require corroboration of the victim's testimony under these circumstances. Under Tex. Code Crim. Proc. art. 38.07, the uncorroborated testimony of the victim of a sexual offense is sufficient to support a conviction if the victim reports the offense to another person within six months. Article 38.07 further provides that the victim need not have reported the offense to another if the victim was younger than fourteen at the time of the offense. Because the victim was eight years old at the time of the offense, under Article 38.07, her uncorroborated testimony was sufficient to support the conviction. Moreover, even if

corroboration were required under Texas law, it is not required by federal law for purposes of federal habeas corpus review. Cf. Llewellyn v. Stynchcombe, 609 F.2d 194, 196 (5th Cir. 1980) (holding that Georgia's evidentiary requirement of independent corroboration of accomplice's testimony is not controlling upon federal collateral review).

Chase contends that the victim's testimony lacked credibility. Credibility determinations are within the sole purview of the trier of fact and are entitled to great deference on appeal. This claim is meritless. Pemberton v. Collins, 991 F.2d 1218, 1225 (5th Cir.), cert. denied, 114 S.Ct. 637 (1993).

Finally, Chase contends that the evidence does not support a finding of oral contact with the victim's vaginal area. However, as the state appellate court explained, evidence of either penetration or oral contact is sufficient to uphold a conviction of aggravated sexual assault because the indictment alleges both acts in the conjunctive. Vasquez v. State, 665 S.W.2d 484, 486-87 (Tex. Crim. App. 1984). Finding ample evidence in the record to support the verdict, we reject Chase's contention as meritless.

#### CONCLUSION

Because there is sufficient evidence in the record to support Chase's conviction for aggravated sexual assault, the judgment of the district court is AFFIRMED.