AFFIRMED; Opinion Filed March 9, 2016.

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-15-00203-CR

JOAN NOIS, Appellant
V.
THE STATE OF TEXAS, Appellee

On Appeal from the Criminal District Court No. 5
Dallas County, Texas
Trial Court Cause No. F13-58111-L

MEMORANDUM OPINION

Before Justices Fillmore, Myers, and Whitehill
Opinion by Justice Myers

A jury found appellant Joan Nois guilty of aggravated robbery and assessed punishment at thirteen years' imprisonment. In four issues, he argues that (1) the trial court erred by permitting the State to prove an extraneous aggravated robbery; (2) there was insufficient evidence to prove appellant committed the offense; (3) the trial court erred by permitting the State to amend the indictment; and (4) the trial court erred by permitting an individual who was not a certified translator to translate appellant's jail telephone calls. We affirm.

BACKGROUND

A Dallas County grand jury indicted appellant on August 29, 2013, for an aggravated robbery that occurred on July 13, 2013, at Ravi's Import Warehouse, located at 11029 Harry

Hines Boulevard in Dallas, Texas. The business was owned and operated by Ravi Bhatia and his son, Ashish.

The evidence at trial showed that on July 2, 2013, eleven days before the armed robbery at Ravi's Import, Alejandra Jasso was working at a T-Mobile store on Fort Worth Avenue in Dallas, Texas. At around 11:40 a.m. that day, she and her co-worker Martina were at the back desk receiving a shipment when two men entered the store and rushed at them with guns. The men were speaking both English and Spanish. They told the women not to move. Jasso was scared and thought she was going to die. She was five months pregnant at the time and feared for the life of her unborn child; she also thought about her family. She got under the desk. One man pointed a gun at her face. He was wearing a shirt and sunglasses, and a scarf covered his beard. The bearded man took her to the back where the cell phone inventory was stored. He wanted phones and money. She asked him not to hurt her because she was pregnant. The other man tied Martina's hands behind her back.

The bearded man told Jasso to hurry. He demanded all of the phones and the money in the safe, but she was unable to open the safe because she did not have the keys. When Jasso was putting the phones in white trash bags the man provided, his scarf fell off. He told her to turn away and not look at him, but she was able to see his beard. He also had a unique-sounding voice. He took all the store's inventory—hundreds of phones—worth approximately $40,000. One of those phones was a Google Nexus cell phone. The men left the store, loaded the stolen merchandise into a Honda, and drove away.

Jasso identified surveillance video recordings from the T-Mobile store, State's exhibits 56 and 57, that showed what happened that day. Among other things, the surveillance video showed a green Honda parked in front of the store shortly before the robbery. Jasso had noticed the Honda because it backed into the parking spot: "It had pulled in, but it didn't pull in like a

regular person would come in and pull just forward." Jasso identified the person in State's exhibit 55, a photograph of a bearded man with the top portion of the face blacked out, as the bearded man with the sunglasses who robbed the store that day. She testified that the person in that photograph was the same person she saw in court—appellant. She said she recognized appellant from his beard. She could not see the robber's eyes because he wore sunglasses. She also testified that the State showed her only one photograph and asked her if this was the man who robbed the store; she was not shown any other pictures or a photographic lineup. She identified appellant's voice from State's exhibit 62A, recordings of jail telephone calls made by appellant, as the voice of the man who robbed her. Jasso testified the State played one recording for her and that this voice identification took place at around the same time she was shown the photograph.

On July 2, 2013, at 12:53 p.m., Dallas police officer Frank Rispoli received a report of a car fire at 1250 Moulan Rouge. Firemen were already at the scene when Officer Rispoli arrived. The vehicle was a light green Honda Accord, and officers determined it was the same vehicle used in the T-Mobile aggravated robbery. It had been reported stolen that day. What had appeared to be a fire under the hood was actually a radiator problem. The plastic under the steering wheel had been torn out, the metal part ripped, and the switch pulled forward to start the car using a screwdriver instead of a key. There were some items from the T-Mobile store found in the back of the car—some cartons and boxes from cell phones and accessories.

On Saturday, July 13, 2013, Ashish and his father were working at their warehouse on Harry Hines Boulevard. When it was near closing time, at around 7:00 or 7:30 p.m., they would typically "go outside and have a smoke or have a drink" and relax before taking the deposit bag with the day's receipts to the bank. At around 7:16 p.m., Ashish and his father were locking up. They took the deposit bag and put it in Ashish's car, an older model Lexus SUV, and then "lit up

a cigarette, poured a drink," and talked. With them were Amin, a long-time employee, another employee whose name Ashish did not recall, and Tony, who had a tenant space in a nearby building.

Then, suddenly, a Dodge minivan pulled up. Two men with guns got out of the minivan and told Ashish and the others to get face down on the ground, and demanded their wallets, car keys, and cell phones. The men were wearing bandannas, hoodies, and ball caps. Ashish gave them his iPhone 4, which had a "Find my iPhone" tracking application. They also gave the robbers the keys to all of the cars except the Lexus. When the two men demanded the keys to the Lexus, Ravi told them he did not have the keys. The robbers started beating Ashish and Amin and threatened their children. The beating left Ashish's face bruised, swollen, bleeding.[1] Ravi decided to give the two men the keys to the Lexus, and they removed the deposit bag.

The two men then demanded all watches. Everyone except Ravi gave up their watches. But Ravi was reluctant to part with his Rolex, for which he had worked and saved for many years. The robbers demanded the Rolex, and Ravi reluctantly let them take it off his arm. As the men were leaving, they fired a shot at Ashish and the others "and said that if we tried to follow them that they would kill us." Ashish saw a shell casing on the ground. Approximately $80,000 in cash and $309,000 in checks were taken.

After the two men drove away, Ashish went back to the office and logged into the Apple application to try to find the location of his phone. It showed the phone was approximately a mile away. The police were notified and went to that location, where they found the phone in a ditch. Ashish also identified surveillance video from his business that day, State's exhibit 58. The surveillance video showed a minivan pulling up in front of the business at 7:16 p.m., and two masked men getting out of the vehicle and walking toward the business, out of camera

[1] Photographs of Ashish, showing cuts to his face and a swollen, shut left eye, were admitted at trial.

range. One of the men could be seen going into the Lexus, retrieving a bag, and putting it in the minivan. Both men got back in their vehicle and drove away at 7:19 p.m.

On July 13, 2013, Bobby Lee Coleman was working as a security guard for Thomas Protective Service at the Hiland Dairy, located on Shady Trail near Walnut Hill, approximately a mile-and-a-quarter away from Ravi's Import Warehouse. At around 7:18 p.m., he heard vehicle tires screeching in the parking lot. He looked out the window and saw a tan-colored Lincoln Navigator drive through the parking lot. It was occupied by two Hispanic males. The Navigator did not appear to have a front license plate and the rear license plate was a paper or cardboard tag. Coleman testified that he left the building after the vehicle drove away and walked toward the street, where he saw an abandoned gray Dodge Caravan minivan. He noticed the doors were open and no one was inside. He called 9-1-1. The police told him that the individuals who occupied the vehicle had just committed a robbery and that the van had been stolen out of Lewisville, Texas.

Coleman reviewed the Hiland Dairy's security surveillance video from that day, State's exhibit 59, as it was played for the jury and explained that it showed the two vehicles entering the dairy's parking lot. On the surveillance video, the Dodge Caravan and the Lincoln Navigator can be seen parking at the edge of the lot. A figure gets out of the driver's side of the Navigator and walks around the front of the vehicle to the passenger's side, and the driver of the Dodge gets out and walks over to the driver's side of the Navigator. The Navigator then quickly drives across the parking lot and exits on to Shady Trail.

Dallas police officer Jesus Saucedo testified that he received a call on July 13, 2013, at around 7:30 p.m., about the aggravated robbery that had occurred at Ravi's Import. He and other officers responded to the call, where they found five persons had been robbed at gunpoint, and then went to the location provided by Ashish for his stolen iPhone. Another call came in shortly

after that about a vehicle matching the description of the one used in the charged offense, a Dodge Caravan, parked about a mile-and-a-quarter away at the Hiland Dairy on Shady Trail. The report said that property had been transferred to another vehicle. When Officer Saucedo inventoried the Dodge Caravan, he found a paper Texas dealer's tag, two cell phones, and some keys. The keys and phones were returned to their owners. Dallas police detective David Andree, assigned to the crime scene unit, lifted a fingerprint from plastic film that covered the paper dealer tag found in the minivan.

Dallas police detective Angela Nordyke, assigned to the Ravi's Import robbery, testified that the break in the case occurred when police received an anonymous tip after a Crime Stoppers' press release about the offense. The caller told police the exact address where they could find the suspected vehicle, the Navigator. Police went to that location—an apartment on Monmouth Lane, in Dallas, Texas—and checked the identifying information on the Navigator's license tag, finding it was registered to appellant's mother, Jacquelyn Marquez. Police also learned appellant had prior traffic infractions in that vehicle. By the time Nordyke arrived at the Monmouth address, appellant was already in custody.

Officer Daniel Eric Mulvihill of the Dallas Police Department was assigned to the Metro Task Force, a violent crime task force. He testified that on July 18, 2013, he was part of a surveillance team that was watching an apartment in the 5300 block of Monmouth Lane. The team was looking for an individual, appellant, who they believed was responsible for several robbery offenses, and they intended to arrest him on unrelated misdemeanor and traffic warrants and bring him to the station for questioning. The surveillance team saw appellant get in an Audi and leave the apartment complex, and Mulvihill, who was in uniform, pulled appellant over for a traffic stop after seeing him commit several minor traffic offenses. After Mulvihill and the other officers made sure appellant was the man they were looking for, he was placed under arrest. An

inventory search of appellant found on his person a Google Nexus 4 cell phone.

Officer Joshua Cordes testified that he was sent to an address on the 5300 block of Monmouth on July 18, 2013, to process a vehicle at that location and collect evidence from inside an apartment. The leaseholder, appellant's mother, Jacquelyn Marquez, consented for officers to search the apartment, number 103 at 2353 Monmouth Lane, and a Lincoln Navigator that was parked in front of the apartment. Appellant occupied a room at his mother's apartment. When they searched appellant's room officers found cell phones, a shotgun, a computer bag or briefcase holding approximately $16,000 in currency, and Ravi's gold Rolex watch. The currency was held together with rubber bands and most of it was in $100 denominations. Appellant also had $2600 in cash on his person when he was arrested. A photographic ID in the name of appellant, Joan Nois, was found on a table in the bedroom. White kitchen trash bags with orange handles were found in a pantry closet—the same kind of trash bags used during the T-Mobile robbery. A bill of sale found in the apartment showed that the tan/grayish Lincoln Navigator was purchased by Jacquelyn Marquez. The rear of the Navigator had a temporary, paper license plate; there was no plate on the front of the car. Officer Cordes lifted fingerprints from a sun visor on the driver's side mirror of the Navigator.

Detective Nordyke talked to persons at T-Mobile and learned that the Google Nexus 4 cell phone that was found on appellant's person when he was arrested was one of the cell phones taken during the T-Mobile robbery. The serial numbers matched. One of the contacts shown in the phone was for a person named "Juan." Police matched the latent print found in the Dodge minivan used in the Ravi's Import robbery to the fingerprints of Juan Martinez, whom Ashish testified had been an employee of Ravi's Import Warehouse in 2012 or 2013. Detective Nordyke and other Dallas police officers ultimately arrested Martinez and took him into custody. He was photographed. One photograph showed the word "Shadow," which was Martinez's nickname,

tattooed across his chest. As part of her investigation, Detective Nordyke obtained a warrant for a cell phone number attributed to appellant, (214) 429-5966, and was able to retrieve phone calls and text messages sent from that number. On July 12, 2013, at around 6:35 p.m., the phone number showed a text message written to appellant saying, "It's Shadow. Call me." Police also found that appellant's mother had one of the stolen T-Mobile cell phones. When Detective Nordyke interviewed appellant after his arrest, he confirmed that he lived at the Monmouth Lane apartment—the same location where Bhatia's Rolex and the $16,000 in cash was found. Appellant told Nordyke he worked part-time as a temporary laborer.

Deborah Rowles, a latent fingerprint examiner with the Dallas Police Department, testified that she compared the latent print that was taken from the driver's side mirror on the Navigator to fingerprints from appellant and determined there was a match to appellant's right ring finger. She took appellant's fingerprints in court before trial and compared them again, concluding appellant was the same individual from whom she had previously taken fingerprints and that appellant's latent print was on the driver's side mirror of the Navigator. Rowles also compared the latent print that was taken from the Texas dealer's tag found in the Dodge Caravan and concluded it came from the left index finger of Juan Martinez.

The State also introduced audio recordings of telephone calls appellant made from the Dallas County Jail after his arrest, which were admitted as State's exhibit 62A. Juan Bedolla, an investigator with the Dallas County District Attorney's Office who was bilingual in English and Spanish, was called by the State to translate two calls from exhibit 62A from Spanish into English as they were played for the jury. Bedolla testified that he had listened to the selected calls, which were in both English and Spanish, a "[n]umerous amount of times."[2] He testified that in a July 19, 2013 jail telephone call, appellant was talking to a female, who referred to some

[2] The defense objected to Bedolla's testimony because he was not a certified interpreter, which is discussed in appellant's fourth issue.

tickets. Appellant then said, according to Bedolla's translation, "But maybe that other shit or fucking thing" and "all the evidence and the money that they found on me." The female asked, "Only what? Only the money?" Appellant replied, "Yes, only the money." In a July 18, 2013 call, appellant said "everything just happened. Everything happened." He also said, from what Bedolla understood, "They got everything, they got everything." Appellant added, "I don't know what's going to happen. I don't know what's going to happen. I might not be able to see the kids again." He also said, "They were watching me" and "[t]hat's a shitload of cops." After saying that the house had been searched, he mumbled, "I also knew it." Appellant told the female he wanted to see her because he "was gonna give you some money so you could hide for me, just in case something happened. You could use it." On cross-examination, however, Bedolla acknowledged that appellant never admitted to being involved in an armed robbery in any of these conversations.

After the State rested its case, the defense moved for a directed verdict and a mistrial,[3] which the trial court denied. The defense attempted to call its translator as an expert witness to testify regarding what would be required to get what it believed would be an accurate, impartial, and unbiased translation, and that those procedures were not followed here. The trial court found the proposed testimony was not sufficiently relevant to put before the jury. The defense then rested. Appellant did not testify. The jury found appellant guilty of aggravated robbery as charged in the indictment and, after hearing punishment evidence, assessed punishment at 13 years' imprisonment.

DISCUSSION

1. Extraneous Offense

In his first issue, appellant contends the trial court erred by permitting the State to prove

[3] This is discussed in appellant's third issue.

an extraneous robbery offense. The offense in question was the T-Mobile aggravated robbery.

Alejandra Jasso began the testimony in this trial by testifying about the July 2, 2013 aggravated robbery of the T-Mobile store where she worked. Appellant did not object to this testimony. When the surveillance camera footage of this aggravated robbery (State's exhibits 56 and 57) was offered, appellant stated, "No objections," and the exhibits were admitted. Jasso identified State's exhibits 61 through 69 as photographs of the T-Mobile store where she worked and her former co-worker Martina Silva, after which those photographs were offered for admission. Appellant again stated, "No objections," and the exhibits were admitted. Later in the trial, when the State called Dallas police officer Frank Rispoli to link appellant to the instant aggravated robbery by connecting him to the stolen Honda Accord, which was used in the T-Mobile aggravated robbery and later abandoned, appellant objected. The court overruled the objection.

We review a trial court's decision to admit or exclude evidence under an abuse of discretion standard, and may not reverse the judgment if the trial court's decision is within the zone of reasonable disagreement. *Martinez v. State*, 327 S.W.3d 727, 736 (Tex. Crim. App. 2010). To preserve a complaint for appellate review, the record must show that a specific and timely complaint was made to the trial court and that the trial court ruled on the complaint. TEX. R. APP. P. 33.1; *see Lovill v. State*, 319 S.W.3d 687, 691 (Tex. Crim. App. 2009). Moreover, the point of error on appeal must comport with the objection made at trial. *Lovill*, 319 S.W.3d at 691–92; *Pena v. State*, 285 S.W.3d 459, 464 (Tex. Crim. App. 2009).

Appellant objected at trial to the testimony about the stolen and burned Honda Accord, but his complaint on appeal is about the admission of the T-Mobile aggravated robbery. Because the argument on appeal does not comport with the objection at trial, appellant failed to preserve his argument for appellate review. Furthermore, appellant failed to object to Alejandara Jasso's

testimony regarding the T-Mobile robbery on any grounds, stated he had no objection to the video surveillance footage of that robbery, and made no objection to the photographs of the T-Mobile store and Silva. As a result, appellant failed to preserve any error as to the T-Mobile aggravated robbery. We overrule his first issue.

2. Sufficiency of the Evidence

In his second issue, appellant argues there was insufficient evidence to prove he committed aggravated robbery as charged in the indictment. In reviewing the sufficiency of the evidence, we view all the evidence in the light most favorable to the verdict and determine whether any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 313 (1979); *Brooks v. State*, 323 S.W.3d 893, 899 (Tex. Crim. App. 2010). The jury is the exclusive judge of the weight and credibility of the evidence. *See Harvey v. State*, 135 S.W.3d 712, 717 (Tex. App.—Dallas 2003, no pet.). We defer to the jury's determination of witness credibility. *Brooks*, 323 S.W.3d at 899; *Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007).

Appellant alleges that the evidence is insufficient to prove identity, i.e., to prove he was the person who committed the July 13, 2013 aggravated robbery at Ravi's Import Warehouse. The evidence at trial showed that the two men who committed the Ravi's Import aggravated robbery fled in a stolen Dodge Caravan that had paper license tags. That vehicle was found abandoned a short distance from the location of Ravi's Import Warehouse, and the two men that abandoned the Dodge drove away in a Lincoln Navigator that also had a rear paper license tag; there was no plate on the front of the vehicle. A Crime Stoppers tipster told the police where they could find the Navigator—at an apartment on Monmouth Lane that was leased to appellant's mother. When the police checked that Navigator they found from the identifying information on its rear paper license tag (there was no plate on the front of the vehicle) that it

was registered to appellant's mother. Police learned appellant had prior traffic infractions in that vehicle. When the police searched appellant after his arrest, they found on his person a Google Nexus 4 cell phone, which, according to the matching serial numbers, was one of the phones stolen during the T-Mobile aggravated robbery that occurred eleven days before the aggravated robbery at Ravi's Import. Police also learned that appellant lived in a room at his mother's apartment. When they searched that room they found various cell phones and a computer bag or briefcase. In the bag or briefcase, officers found approximately $16,000 in U.S. currency, most of it in $100 denominations, and the gold Rolex watch that belonged to Ravi Bhatia. Police also found a shotgun in appellant's room and a photographic ID in appellant's name. Additionally, appellant, who told the police his only job was part-time, temporary labor, had $2600 in cash on his person when he was arrested. And white kitchen trash bags with orange handles, the same kind of trash bags used to carry the merchandise taken from the T-Mobile store, were found in a pantry closet of appellant's mother's apartment. One of the victims from the T-Mobile armed robbery identified appellant as one of the two men who robbed the store. Looking at all of the evidence in the light most favorable to the verdict, we conclude the evidence is sufficient for a rational fact finder to conclude beyond a reasonable doubt that appellant is guilty of aggravated robbery. Appellant's second issue is overruled.

3. Amendment of the Indictment

In his third issue, appellant contends the trial court erred by allowing the State to amend the indictment in an untimely manner. The indictment in this case alleged that, on or about July 13, 2013, appellant did:

> [T]hen and there intentionally and knowingly, while in the course of committing theft of property and with intent to obtain or maintain control of said property, threaten and place RAVI BHATIA in fear of imminent bodily injury and death, and the defendant used and exhibited a deadly weapon, to-wit: A FIREARM[.]

The State subsequently filed a "Motion to Abandon Language in the Indictment," in which the

prosecutor indicated the State was abandoning the word "Ravi" and that the "abandonment does not charge the Defendant with an additional or different offense, nor does it prejudice the substantial rights of the Defendant." Although the motion was file-marked November 10, 2014, which was a Monday, the certificate of service states that the prosecutor emailed a copy of the motion to defense counsel on Friday, November 7, 2014. The trial court granted the motion on Friday, November 7, 2014, according to the order that is attached to the motion. The amended indictment was read before the start of voir dire on Monday, November 10. The jury was impaneled and sworn on Tuesday, November 11, 2014. After the jury was impaneled and sworn, the indictment was again read. Appellant did not object to the indictment prior to or after the jury was impaneled and sworn, and he did not ask for additional time to prepare.

After the State rested, appellant challenged the indictment through a motion for a directed verdict and a motion for mistrial. The defense's argument was based on the fact that Ravi Bhatia had not testified and no testimony was elicited from witnesses that he was placed in any fear of imminent bodily injury and death. The State pointed out that the amended indictment only said "Bhatia" and that Ravi's son, Ashish Bhatia, testified that they were both threatened with death. The State also reminded the court that a motion to abandon the word "Ravi" had been presented to the court and granted on Friday, November 7, that a copy of the motion had been emailed to defense counsel that same day, which was four days before trial commenced, and the amended indictment had been read to the jury without objection from the defense. The defense responded that it had not received the State's email nor did it have any notice the State was going to try to change the indictment, and that the State's motion to abandon was not file-marked until Monday, November 10, at 11:50 a.m. which was after the State started its voir dire. The prosecutor conceded the email had not gone through but assured the court he had spoken to defense counsel personally on Friday, after the court granted the motion, and told him about the change. The trial

court denied the motion for a directed verdict and the motion for mistrial.

An amendment to the charging instrument is subject to Texas Code of Criminal Procedure article 28.10, which provides:

> (a) After notice to the defendant, a matter of form or substance in an indictment or information may be amended at any time before the date the trial on the merits commences. On the request of the defendant, the court shall allow the defendant not less than 10 days, or a shorter period if requested by the defendant, to respond to the amended indictment or information.
>
> (b) A matter of form or substance in an indictment or information may also be amended after the trial on the merits commences if the defendant does not object.
>
> (c) An indictment or information may not be amended over the defendant's objection as to form or substance if the amended indictment or information charges the defendant with an additional or different offense or if the substantial rights of the defendant are prejudiced.

TEX. CODE CRIM. PROC. ANN. art. 28.10. Article 28.11 states that "[a]ll amendments to an indictment or information shall be made with the leave of the court and under its direction." *Id.* art. 28.11.

The Texas Court of Criminal Appeals has held that under the language of article 28.10(b) a defendant has "an absolute veto power over proposed amendments after trial on the merits has commenced." *Hillin v. State*, 808 S.W.2d 486, 489 (Tex. Crim. App. 1991) (plurality op.). This power is triggered when, after trial on the merits has commenced, the defendant makes a timely objection to the form or substance of the State's proposed amendment. *Id*. at 488. A trial on the merits commences at the time the jury is impaneled and sworn. *See, e.g., Hinojosa v. State*, 875 S.W.2d 339, 342 (Tex. App.—Corpus Christi 1994, no pet.); *Gonzalez v. State*, Nos. 01–11–00214–CR & 01–11–00215–CR, 2012 WL 2357439, at *3 (Tex. App.—Houston [1st Dist.] June 21, 2012, no pet.) (mem. op., not designated for publication). For purposes of article 28.10(c), a "different offense" means a different statutory offense. *Flowers v. State*, 815 S.W.2d 724, 728–29 (Tex. Crim. App. 1991). A change in an element of an offense changes the evidence required

to prove that offense, but it is still the same offense. *Flowers*, 815 S.W.2d at 728; *Bynum v. State*, 874 S.W.2d 903, 906 (Tex. App.—Houston [1st Dist.] 1994, pet. ref'd).

In this case, the amendment of the indictment was timely under article 28.10. The record shows that the motion to abandon was presented to and ruled on by the trial court on Friday, November 7, 2014, which was prior to the start of voir dire. The amended indictment was read before the start of voir dire on Monday, November 10, and appellant did not object or request additional time to prepare. Defense counsel argued he did not have notice of the motion to abandon because he never received the State's email, but the trial court presumably rejected this assertion based on the prosecutor's assurance that defense counsel was personally told about the amendment on Friday, November 7. In addition, the amendment of the indictment, which removed only the first name "Ravi," still charged appellant with aggravated robbery and did not charge a different statutory offense. *See Flowers*, 815 S.W.2d at 728–29 (amendment of indictment to change name of owner of property that was subject of theft charge did not charge "different offense" in violation of statute; different offense meant different statutory offense); *Bynum*, 874 S.W.2d at 906 (amendment of aggravated assault indictment to change name of the victim did not allege a different offense). Appellant does not argue that the amendment impaired his ability to prepare a defense. We conclude no prejudice to appellant's substantial rights has been shown. We overrule his third issue.

4. Translator's Qualifications

In his fourth issue, appellant argues the trial court erred by permitting a peace officer to translate appellant's jail telephone calls because that officer was not a certified translator.

Appellant objected to using Juan Bedolla—an investigator with the Dallas County District Attorney's Office, a former adult probation officer, and a certified peace officer in the State of Texas—to translate appellant's jail telephone calls because he was not a certified

interpreter. After hearing arguments, the trial court ruled that appellant's arguments would go to the weight of Bedolla's testimony, not its admissibility. The court allowed Bedolla to translate for the jury the selected portions of appellant's jail calls, which were in both English and Spanish, but provided appellant with his own court-appointed translator to listen to Bedolla's translation of the jail calls.

Bedolla testified that he was bilingual in English and Spanish. He also testified that his first language was Spanish, he had lived in Mexico, and had minored in Spanish in college. As a probation officer and currently as a peace officer, he had interpreted for Spanish-speakers many times. He told the jury that he had listened to the jail calls about which he testified "numerous" times—ten, twelve, or fifteen times, according to his testimony.

As with other decisions by a trial court that concern the admission or exclusion of evidence, appellant's attack on the competency of the interpreter is reviewed for an abuse of discretion. *Castrejon v. State*, 428 S.W.3d 179, 184 (Tex. App.—Houston [1st Dist.] 2014, no pet.); *see also Linton v. State*, 275 S.W.3d 493, 500 (Tex. Crim. App. 2009) (noting trial judge has "wide discretion in determining the adequacy of interpretive services"). The translation must be "true," i.e., it must be "accurate," but it need not be "perfect." *Linton*, 275 S.W.3d at 501–02. "The ultimate question is whether any inadequacy in the interpretation made the trial 'fundamentally unfair.'" *Linton*, 275 S.W.3d at 503 & n.26 (quoting *United States v. Huang*, 960 F.2d 1128, 1136 (2d Cir. 1992)).

In *Castrejon*, the court examined the relevant statutes, article 38.30(a) of the Texas Code of Criminal Procedure, which governs interpreters in court proceedings, and rule 1009 of the Texas Rules of Evidence, which governs translating a foreign language document, and found that "[n]either article 38.30 nor Rule 1009 requires an interpreter to be 'certified' or 'licensed' in order to provide an admissible translation." *Castrejon*, 428 S.W.3d at 188 (citing TEX. CODE

CRIM. PROC. ANN. art. 38.30(a); TEX. R. EVID. 1009); *see also Rodriguez v. State*, No. 2–05–398–CR, 2007 WL 174684, at *3 (Tex. App.—Fort Worth Jan. 25, 2007, pet. ref'd) (mem. op., not designated for publication) (concluding certified interpreter was not required by article 38.30(a) and that detective was allowed to interpret for appellant and to testify regarding their conversation in Spanish). The *Castrejon* court also stated that "[i]ndividuals called upon to act as interpreters during criminal proceedings are not required to have specific qualifications or training; instead, what is required is 'sufficient skill in translating and familiarity with the use of slang.'" *Castrejon*, 428 S.W.3d at 188 (quoting *Kan v. State*, 4 S.W.3d 38, 41 (Tex. App.—San Antonio 1999, pet. ref'd)). The court added that "[t]he competency of an individual to act as an interpreter is a question for the trial court, and, absent an abuse of discretion, this determination will not be disturbed on appeal." *Id.*

We conclude the trial court in this case could have reasonably determined Juan Bedolla had sufficient skill in translating Spanish and was familiar with the use of slang in Spanish such that he could render an accurate English translation of the jail telephone recordings. *See id.* There is no requirement of which we are aware that would require an interpreter to be "certified" or "licensed" in order to provide an admissible translation. *See id.* We also note that appellant was provided with his own translator and that defense counsel was free to cross-examine Bedolla regarding his credentials and the adequacy of the translations. Accordingly, the trial court did not abuse its discretion by determining Bedolla was qualified to translate the recordings. We overrule appellant's fourth issue.

We affirm the trial court's judgment.

/Lana Myers/
LANA MYERS
JUSTICE

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Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

JOAN NOIS, Appellant

No. 05-15-00203-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the Criminal District Court No. 5, Dallas County, Texas
Trial Court Cause No. F13-58111-L.
Opinion delivered by Justice Myers. Justices Fillmore and Whitehill participating.

Based on the Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

Judgment entered this 9th day of March, 2016.