

Affirmed and Memorandum Opinion filed November 9, 2010.



In The

Fourteenth Court of Appeals

NO. 14-09-00999-CR

JUDY ANN PRUITT, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 177th District Court
Harris County, Texas
Trial Court Cause No. 1198719**

M E M O R A N D U M O P I N I O N

Appellant pleaded guilty to third degree felony theft and stipulated to two prior felony convictions. The trial court held a sentencing hearing at which appellant's witness was excluded for violating the sequestration requirement of Texas Rule of Evidence 614. The trial court sentenced appellant to confinement for 25 years. We affirm.

BACKGROUND

Pastor Walter Brumley first met appellant when Brumley was ministering to state jail prisoners in the facility where appellant was incarcerated. Upon appellant's release,

appellant and Brumely communicated about their common desire to establish a halfway house for previously incarcerated individuals. Appellant became associated with the church as a regular part of its ministry, and appellant received living expenses and other benefits from Brumley and the church during this time. Based on her professed need to pay for medical care, Brumley wrote approximately \$25,000 worth of checks to appellant to cover numerous medical bills. Appellant later admitted that she forged the purported medical bills. Brumley ultimately became suspicious of appellant's reasons for requesting the money, cut ties with appellant, and reported her alleged theft.

Appellant pleaded guilty to third degree felony theft and admitted to two prior felony convictions. The enhanced punishment range for the charged crime is 25 to 99 years, or life imprisonment. *See* Tex. Pen. Code §12.42(d) (Vernon 2003). Appellant is eligible for and requested deferred adjudication. *See* Tex. Crim. Proc. Code Ann. art. 42.12 § 5 (Vernon 2006) (after receiving a plea of guilty, trial court may in “the best interest of society and the defendant” defer further proceedings without entering an adjudication of guilt, and place the defendant on community supervision).

At her sentencing hearing, appellant testified that she grew up homeless after her parents abandoned her in a Houston motel room when she was eight years old. Appellant testified regarding her local notoriety based on several Houston Chronicle stories featuring her life on the streets and conversion to Christianity. Appellant testified at length regarding her activities as a member of Brumley's church and her life-long commitment to ministering to the homeless.

Appellant also called Alice Murray as a witness; she testified regarding appellant's religious convictions, desire to help others, and honest intent to establish a halfway house for previously incarcerated individuals. Murray testified that her knowledge of appellant's desire to benefit society was based on numerous brief visits while appellant was incarcerated, as well as conversations after appellant was released.

When Murray acknowledged that she had listened to Brumley's testimony earlier in the sentencing hearing, the trial court questioned Murray and defense counsel about

Murray’s violation of Texas Rule of Evidence 614. *See* Tex. R. Evid. 614. The trial court struck and excluded Murray’s testimony regarding Murray’s “discussions of ministry and/or observations of her beliefs as to the [appellant’s] genuine interest in others and genuine interest in the ministry or helping other people.” The trial court declined to place appellant on deferred adjudication and sentenced appellant to confinement for 25 years. Appellant bases her appeal on the trial court’s exclusion of her only witness’s testimony at the sentencing hearing.

ANALYSIS

Texas Rule of Evidence 614 is commonly referred to as “The Rule;” upon invocation by either party or by the court on its own motion, The Rule mandates exclusion of witnesses from the courtroom so they “cannot hear the testimony of other witnesses.” *Id.* One of the purposes of The Rule is to prevent witnesses from either consciously or subconsciously tailoring their testimony to that of other witnesses. *Longoria v. State*, 148 S.W.3d 657, 660 (Tex. App.—Houston [14th Dist.] 2004, pet. ref’d). Witness testimony should not be excluded solely for violations of The Rule, and a defendant’s constitutional right to call witnesses to testify must be taken into account before a witness is disqualified. *Id.* (reviewing trial court’s exclusion of witness testimony at punishment phase). Determining whether to exclude testimony for violation of The Rule rests within the trial court’s sound discretion. *Webb v. State*, 766 S.W.2d 236, 240 (Tex. Crim. App. 1989).

A reviewing court must ask two questions to determine whether the trial court abused its discretion by disqualifying a witness for violating The Rule:

- (1) Were there particular circumstances, other than the mere fact of the violation, which would tend to show the defendant or her counsel consented to, procured, or otherwise had knowledge of the witness’s presence in the courtroom, together with knowledge of the witness’s testimony?
- (2) If no particular circumstances existed to justify disqualification, was the excluded testimony crucial to the defense?

Longoria, 148 S.W.3d at 660 (citing *Webb*, 766 S.W.2d at 244–45).

I. Do the circumstances tend to show that defendant or defendant’s counsel consented to, procured, or otherwise knew of Murray’s presence in the courtroom?

Murray testified that appellant and her counsel told Murray to come to court, but they did not inform her that The Rule had been invoked or that she should stay outside the courtroom while other witnesses were testifying. When Murray arrived, she requested that an officer in the court room notify defense counsel regarding her presence. The officer handed appellant’s counsel a note indicating that “some people” had arrived. Counsel informed the court that the note did not list any names, and he did not know Murray was in the courtroom. Murray testified, and counsel confirmed, that counsel did not know what Murray looked like prior to her arrival. Murray testified that counsel and appellant remained facing away from Murray while she was in the courtroom. This evidence does not tend to show that appellant or her counsel consented to, procured, or otherwise had knowledge of Murray’s presence in the courtroom. *See id.*

II. Was the excluded testimony crucial to the defense?

Murray was the only witness who testified on appellant’s behalf. However, Murray’s testimony was not the only evidence bolstering appellant’s testimony that she would continue to benefit society through her ministry to the homeless if placed on deferred adjudication. Appellant proffered letters from four other individuals who have longstanding relationships with appellant. The letters echo Murray’s testimony that appellant is committed to her faith and dedicated to helping save and improve the lives of others. Because Murray’s testimony was cumulative, the trial court did not err in excluding the testimony. *See, e.g., Flores v. State*, 915 S.W.2d 651, 653 (Tex. App.—Houston [14th Dist.] 1996, pet. ref’d) (finding no error because excluded testimony was cumulative); *cf. Webb*, 766 S.W.2d at 246 (finding error because excluded testimony corroborating defendant’s version of alleged crime was “crucial” because it was not merely “cumulative or of questionable importance”).

CONCLUSION

We hold that the trial court did not err in excluding Murray's testimony. Accordingly, we affirm the judgment of the trial court.

/s/ William J. Boyce
Justice

Panel consists of Justices Seymore, Boyce, and Christopher.

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