In The

Court of Appeals

Ninth District of Texas at Beaumont

NO. 09-09-00383-CR

CHARLES ALLEN REDDING, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 258th District Court
Polk County, Texas
Trial Cause No. 20,219

MEMORANDUM OPINION

Charles Allen Redding appeals his conviction for driving while intoxicated, his third or more offense, and a third-degree felony. *See* TEX. PEN. CODE ANN. § 49.04 (Vernon 2003), § 49.09(b)(2) (Vernon Supp. 2009). His punishment was then enhanced to a second-degree felony by two other prior felony convictions that were unrelated to his offense of having driven a vehicle while intoxicated. *See* TEX. PEN. CODE ANN. § 12.42(a)(3) (Vernon Supp. 2009). The jury sentenced Redding to twenty years' confinement. In a single issue, Redding contends that the trial court admitted an

extraneous offense of his having possessed methamphetamine in violation of his rights under the Confrontation Clause. We affirm the trial court's judgment.

During the punishment phase of his trial, the State introduced five convictions for other offenses unrelated to Redding's driving-while-intoxicated convictions. These were in addition to Redding's two prior convictions for involuntary manslaughter and for burglary of a building, to which Redding pleaded "true."

Redding's complaint on appeal is unrelated to any of these prior convictions, but instead relates to testimony about another extraneous offense. Before Officer Smith testified, Redding objected to his expected testimony. Redding contends the trial court allowed the State to prove that he had possessed methamphetamine without having proven the offense. Specifically, Redding's defense counsel objected by stating:

> As the Court I'm sure is aware[,] Mr. Redding has pending before this very court a state jail felony case, possession of a controlled substance methamphetamine. It is not going to trial yet. It has been indicted. We've had one or two appearances on it. [The Prosecutor] advises that she intends to prove up that case or try to prove up that case as part of the punishment hearing. The only problem is she does not have a lab person to testify that the substance that was allegedly found in Mr. Redding's possession to be methamphetamine. She does not have a lab person to testify to the weight analysis. Anything. She does not even have so much as a certificate of analysis from a lab person.
>
> Since she is, by what she has told me, and I'm sure she'll acknowledge this, is not going to be able to prove up the entirety of the case, the methamphetamine case, I don't think it would be proper to even get into it. She's obviously not going to be able to prove it beyond a reasonable doubt without a lab person, without a lab result certificate of analysis.

> So she has bunches of judgments against Mr. Redding to use. I think they will be sufficient to [mete] out whatever sentence [the Prosecutor] thinks is appropriate; but to go over and beyond that and to go into a case that she is, by what she told me, is not going to be able to prove up without a lab person would be prejudicial and inappropriate.

The trial court overruled Redding's objection and allowed Officer Smith to testify.

Officer Smith arrested Redding because Redding failed to comply with the conditions of his bond. During this arrest, Officer Smith found what he believed to be methamphetamine in Redding's possession. On appeal, Redding asserts that allowing Officer Smith's testimony about finding methamphetamine when he arrested Redding violated his Sixth Amendment right to confrontation because it allowed the fact-finder to consider whether the substance was methamphetamine without the laboratory technician's testimony about the test results performed on the substance. *See* U.S. CONST. amend. VI. But, Redding's objection at trial focused on whether the officer had a proper foundation for his opinion that the substance found was methamphetamine; Redding did not object at the trial to the officer's testimony based on his Sixth Amendment rights.

Redding's objection in the trial court is not consistent with the argument he now raises on appeal. Because he did not assert a Confrontation Clause claim during trial, his argument is not preserved for our review on appeal. *See* TEX. R. APP. P. 33.1(a); *Wright v. State*, 28 S.W.3d 526, 536 (Tex. Crim. App. 2000) (finding that error under the Sixth Amendment Confrontation Clause may be waived); *see also Gallo v. State*, 239 S.W.3d 757, 768 (Tex. Crim. App. 2007) (holding that appellant's trial objection did not comport

with his argument on appeal and therefore, his complaint on appeal was not preserved). We hold that Redding's Confrontation Clause complaint was not preserved; therefore, we overrule Redding's sole issue and affirm the trial court's judgment.

AFFIRMED.

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HOLLIS HORTON
Justice

Submitted on June 28, 2010
Opinion Delivered July 21, 2010
Do Not Publish

Before Gaultney, Kreger, and Horton, JJ.