

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-10-00411-CV

IN RE COMMITMENT OF RUBEN SENDEJAS

On Appeal from the 435th District Court
Montgomery County, Texas
Trial Cause No. 09-11-11172 CV

MEMORANDUM OPINION

The State of Texas filed a petition to commit Ruben Sendejas as a sexually violent predator. *See* Tex. Health & Safety Code Ann. §§ 841.001-.150 (West 2010). A jury found that Sendejas suffers from a behavioral abnormality that predisposes him to engage in a predatory act of sexual violence. The trial court signed a final judgment and an order of civil commitment. In this appeal, Sendejas raises issues regarding (1) the State's use of his responses to requests for admissions, (2) the trial court's explanation to the jury regarding the requests for admissions, and (3) the State's decision to call him to testify against himself. We affirm the trial court's judgment.

In his first issue, Sendejas argues that the State improperly utilized his responses to requests for admissions at trial, thereby conflicting with section 841.062(a) of the

Texas Health and Safety Code by reducing the State's burden of proof in violation of his due process rights. Specifically, Sendejas asserts that the State used his admissions to prove essential elements of the case, thereby lessening the State's burden of proof. In his second issue, Sendejas complains that the trial judge egregiously harmed him, showed bias in favor of the State, and commented on the weight of the evidence when he informed the jury that the admissions were conclusively proven and that Sendejas could not offer any evidence to contradict them. We address issues one and two together.

Section 841.062(a) requires the factfinder to determine, beyond a reasonable doubt, whether a person is a sexually violent predator. Tex. Health & Safety Code Ann. § 841.062. A matter admitted in response to requests for admissions is conclusively established, unless the trial court allows the admitting party to withdraw or amend the admission. Tex. R. Civ. P. 198.3; *In re Commitment of Frazier*, No. 09-10-00033-CV, 2011 WL 2566317, at *2 (Tex. App.—Beaumont June 30, 2011, no pet. h.) (mem. op.). To preserve error concerning the admission of evidence, a party must timely object, stating the specific ground of objection, if the specific ground is not apparent. Tex. R. Evid. 103(a)(1). An objection to an allegedly improper comment by the trial judge must be made when it occurs, unless the comment cannot be rendered harmless by a proper instruction. *Dow Chem. Co. v. Francis*, 46 S.W.3d 237, 241 (Tex. 2001).

At trial, before the State read Sendejas's admissions into evidence, the trial court gave the following explanation of requests for admissions to the jury:

Typically, these are done without a witness sitting on the stand. But requests for admissions are items that is [sic] a discovery technique that one side can send the other in cases such as these. When requests for admissions are sent, the other side has a proper duty to answer them. If they admit the requests for admissions, then those items, once read to the jury, are deemed to be conclusively proved, so much so that the party admitting them is prohibited from offering any contravening evidence as to those Requests for Admissions.

Sendejas did not object to the State's use of his admissions or to the trial court's explanation, but he contends that no objection was necessary because the fundamental error doctrine applies.

This Court has previously declined to address the type of unpreserved error assigned by Sendejas. In *Frazier*, Frazier asserted that: (1) the State's use of his answers to requests for admissions conflicted with section 841.062 and lowered the State's burden of proof in violation of due process, and (2) the trial court's explanation regarding the requests for admissions was an impermissible comment on the weight of the evidence and amounted to fundamental error. *Frazier*, 2011 WL 2566317, at **1-2. We noted in *Frazier* that the trial court's explanation of the requests for admissions "did not indicate approval of the State's argument, indicate disbelief in the defense's position, or diminish the credibility of the defense's approach." *Id.* at *2. Frazier failed to object to the State's reading of his admissions into evidence or to the trial court's explanation; therefore, we held that Frazier's complaints were not preserved for appellate review. *Id.* at **1-2.

As was the case in *Frazier*, the trial court's explanation in the case at bar did not indicate approval of the State's argument, indicate disbelief in Sendejas's position, or

diminish the credibility of Sendejas's approach. *See id.* at *2. Like Frazier, Sendejas failed to object when the State read his admissions into evidence and when the trial court explained the requests for admissions. Therefore, Sendejas has failed to preserve his complaints for appeal, and we overrule issues one and two. *See* Tex. R. Evid. 103(a)(1); *see also* Tex. R. App. P. 33.1; *Francis*, 46 S.W.3d at 241; *Frazier*, 2011 WL 2566317, at **1-2.

In his third issue, Sendejas argues that the State's decision to call him as an adverse witness required him to testify against himself and conflicted with section 841.062 by lowering the State's burden of proof in violation of his due process rights. Sendejas did not object to being called by the State as a witness. *See* Tex. R. App. P. 33.1. However, even if Sendejas had preserved error, the State explained the applicable burden of proof during voir dire and closing, and the jury charge included the proper burden of proof; therefore, calling Sendejas as an adverse witness did not lower the State's burden of proof. *See In re Commitment of Serna*, No. 09-10-00029-CV, 2011 WL 1203987, at *3 (Tex. App.—Beaumont Mar. 31, 2011, no pet.) (mem. op.); *see also Frazier*, 2011 WL 2566317, at *2. We overrule issue three and affirm the trial court's judgment and order of civil commitment.

AFFIRMED.

STEVE McKEITHEN
Chief Justice

Submitted on August 18, 2011
Opinion Delivered August 25, 2011
Before McKeithen, C.J., Gaultney and Kreger, JJ.