

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-15-00516-CR
NO. 09-15-00517-CR

CHASE A. BRANT, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 221st District Court
Montgomery County, Texas
Trial Cause No. 15-03-03211 (Counts 1 and 2)

MEMORANDUM OPINION

Chase Alden Brant (Brant or Appellant) was charged by indictment with two counts of possession of child pornography. Brant entered a “not guilty” plea, but the jury found him guilty as charged in each count. Brant elected to have the trial court determine his punishment, and the trial court, after hearing additional evidence, assessed Brant’s punishment in each count at confinement for seven years, to be

served consecutively. Appellant timely filed a notice of appeal of his convictions. We affirm.

EVIDENCE AT TRIAL

The State called two witnesses to testify during the guilt/innocence phase of the trial: Jason Martinez (Martinez), an investigator with the Montgomery County, Precinct 3 Constable's Office, and Jeffery Chappell (Chappell), a special agent with Homeland Security Investigations.

Martinez testified that he was a member of the Houston Metro Internet Crimes Against Children Task Force. According to Martinez, using computer software named "Grid Cop," the task force had identified various IP addresses that were sharing child pornography files. Martinez was alerted to one such IP address, and using a geolocation website named "Max Mind" and a law enforcement database, he determined that the physical address for the IP address was in Magnolia, Texas, at 38215 North Lost Creek Boulevard. The task force was able to obtain the account information for the IP address, which indicated that the account holder was Robert Holt, Brant's stepfather. Martinez explained that they used Grid Cop again to identify videos that had been downloaded at that IP address. Two of the seven videos downloaded to that IP address were identified as containing child pornography. Martinez then described the contents of the two videos to the jury. The first video

depicted a prepubescent female with a male of an unknown age, both nude, engaging in sexual acts. The second video showed an adult male and a female child that was approximately eight to ten years old, and the child was performing oral sex on the adult. Martinez then obtained a search warrant to search the home and computers located at 38215 North Lost Creek Boulevard, Magnolia, Texas.

Several individuals, including Brant, were inside the residence when law enforcement officers executed the warrant. The search of the home revealed that Brant lived at the residence, and law enforcement officers seized several electronic devices from Brant's room.

Martinez interviewed Brant in the back of a law enforcement vehicle that was parked in front of the home while other officers executed the search warrant. The interview was videotaped and the State initially offered a redacted copy of the video into evidence, which was admitted and shown to the jury. The redacted portion of the video contained a list of the titles of files that Grid Cop indicated were downloaded to the IP address. The defense objected to the list, arguing it was prejudicial, and the trial court initially sustained the objection and required the names of the files to be redacted. Later in the trial, the trial court found that Brant's counsel had opened the door to admission and admitted the list into evidence. Thereafter, the court also admitted the unredacted video. Martinez testified that

during the interview Martinez asked Brant about some of the titles of the videos, that Brant admitted to having seen some of the titles and also to searching for some of the terms within the titles, and that Brant admitted that some images or videos of child pornography were downloaded and stored on his tablet. According to Martinez, Brant also indicated to Martinez that he had an understanding of how peer-to-peer sharing networks function and that Brant knew what he had done was wrong.

Chappell testified that he recovered and examined a black tablet found in Brant's room and that he also discovered four videos believed to contain child pornography. Ultimately, two of the videos, which were identified by hash values, formed the basis of the two counts charged in the indictment in this case. Chappell determined that four child pornography videos had been downloaded from a peer-to-peer network by use of an application called "Gnutella" that had been installed on Brant's tablet approximately one month prior to the execution of the search warrant. Chappell also discovered the two child pornography videos for which Brant was indicted stored on a microSD card on Brant's tablet. Chappell concluded, based on his training and experience, that the download of the child pornography videos to the tablet was "more than likely [] a deliberate act."

Robert Holt (Holt), Brant's stepfather, was the only witness who testified on behalf of Brant at the guilt-innocence phase of the trial. Holt testified that on the day

the police showed up, Holt was in the kitchen, there was a loud knock on the door, and the police yelled “search warrant.” Holt explained that when he opened the door, officers armed with weapons entered the house, pulled all the residents outside, and then entered the home again for the search. According to Holt, he was not served with the actual warrant until after the police had searched the home and confiscated electronics and after the police had interrogated everyone. Holt described the event as “frightening.”

ISSUES ON APPEAL

On appeal, Appellant’s only complaint is about statements made by the prosecuting attorney during closing argument. Appellant argues that the trial court erred in overruling the defendant’s objections and in refusing to grant a mistrial. During the State’s closing arguments, the following exchange occurred, as the prosecutor referenced the video and interview of Appellant:

[The State]: After curiosity comes out, everything changes. That is the turning point in that interview. And eventually he goes on to admit to downloading child pornography. He admits to viewing child pornography. He admits to searching for child pornography. He admits to sharing child pornography. I told you that is what he did. And then I proved it.

And you don’t get to come in here after admitting to that and say “I am not guilty.”

[The Defense]: Your Honor, I object to the comment. Ask the jury to -- we would ask the Court to instruct the jury to disregard that comment.

The Court: Overruled.

[The Defense]: I move for a mistrial, Your Honor.

The Court: Denied.

[The State]: You don't get to download child pornography. You don't get to view it. You don't get to share it and search for it and then admit to it and then come into a court in Montgomery County, Texas, and deny it.

[The Defense]: Your Honor, I object. It is a misconception (sic) of the record. There is no record of Chase Brant admitting to these two videos anywhere.

The Court: What is your legal objection?

[The Defense]: You know, objection contrary to the evidence presented, misstates the evidence.

The Court: Overruled.

[The Defense]: [I] [m]ove for a mistrial, Your Honor.

The Court: Denied.

Appellant argues on appeal that he “exercised his right to remain silent throughout the guilt/innocence phase of his trial[,]” and “[t]he only time he spoke was after the charges against him were read and the court asked him to plead guilty or not guilty.” According to Appellant, during closing argument, “the prosecutor used those words against Appellant[.]” and implied that there was something wrong with the defendant pleading “not guilty.” Appellant contends that by overruling

Appellant's objection, the trial court "implicitly approved of the prosecutor's argument – which was an argument that Appellant's not-guilty plea and subsequent silence was a reason to convict him." Appellant also argues that the argument made by the prosecution that Appellant had no right to plead "not guilty" was an improper argument, and that the prosecutor's remarks caused harm because a jury could have believed that the rebuttal argument made by the prosecution meant that Appellant should not have entered a plea of "not guilty," and that the prosecutor's remarks were an attack on Appellant's "failure to testify."

To preserve a complaint about improper jury argument for appellate review, a defendant should (1) make a timely and specific objection, (2) request an instruction to disregard if the objection is sustained, and (3) move for a mistrial if the instruction to disregard is not sufficient to remove prejudice resulting from the argument. *See Cruz v. State*, 225 S.W.3d 546, 548 (Tex. Crim. App. 2007); *see also* Tex. R. App. P. 33.1. A defendant forfeits his right to complain on appeal about an improper jury argument if he fails to object to the argument or fails to pursue his objection to an adverse ruling. *Threadgill v. State*, 146 S.W.3d 654, 670 (Tex. Crim. App. 2004). Additionally, the point of error on appeal must comport with the objection made at trial. *Bekendam v. State*, 441 S.W.3d 295, 300 (Tex. Crim. App. 2014).

On appeal, the Appellant offers several arguments as to why the prosecutor's argument was improper, but none of those arguments were specifically raised at trial. Appellant's first objection at trial was "I object to the comment[,]" without any explanation. Appellant's only other objection at trial was:

[The Defense]: . . . It is a misconstruction (sic) of the record. There is no record of Chase Brant admitting to these two videos anywhere.

The Court: What is your legal objection?

[The Defense]: You know, objection contrary to the evidence presented, misstates the evidence.

Appellant failed to make the objection at trial that he makes on appeal. Appellant failed to state that he objected because the comment encroached upon a defendant's right to require the State to prove its case, a defendant's right to plead "not guilty," or a defendant's right to remain silent and refuse to testify. Appellant failed to preserve his complaints. *See Coffey v. State*, 796 S.W.2d 175, 179-80 (Tex. Crim. App. 1990) (error not preserved for appellate review where objection at trial that prosecutor's argument was a comment on defendant's failure to testify varied from argument on appeal that prosecutor's argument referred to evidence not in the record). We overrule his issues and affirm the judgments.

AFFIRMED.

LEANNE JOHNSON
Justice

Submitted on March 7, 2017
Opinion Delivered April 19, 2017
Do Not Publish

Before McKeithen, C.J., Horton and Johnson, JJ.