In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-20-00035-CR

RAUL OZZY GARCIA, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the Criminal District Court 3
Tarrant County, Texas [1]
Trial Court No. 1618175R, Honorable Robb D. Catalano, Presiding

March 22, 2021

MEMORANDUM OPINION

Before QUINN, CJ., and PIRTLE and PARKER, JJ.

Appellant, Raul Ozzy Garcia, appeals his conviction for the offense of abandoning or endangering a child[2] and sentence of one year of incarceration. Appellant challenges the trial court's rulings admitting certain evidence. We affirm the judgment.

[1] Originally appealed to the Second Court of Appeals, this case was transferred to this Court by the Texas Supreme Court pursuant to its docket equalization efforts. *See* TEX. GOV'T CODE ANN. § 73.001 (West 2013). In the event of any conflict, we apply the transferor court's case law. TEX. R. APP. P. 41.3.

[2] *See* TEX. PENAL CODE ANN. § 22.041(c) (West 2019).

Factual and Procedural Background

On the morning of March 7, 2019, Uber driver James Kopacki was dispatched to an address in Watauga, Texas, to pick up Savannah Baum. When he arrived, Baum put a car seat into Kopacki's vehicle and began securing her daughter in the car seat. As she did, appellant approached and removed the car seat and grabbed the child. When appellant grabbed the child, Baum got into the car and told Kopacki to drive away. As Kopacki drove away, he noticed appellant was holding the child, who appeared to be a year or two old, by one foot upside-down over the sidewalk. Kopacki turned the car around and returned to the location where appellant was holding the child. When Baum got out of the vehicle, Kopacki saw appellant attempt to punch Baum. After Kopacki drove away from the incident, he called 9-1-1. Police arrived and arrested appellant.

Appellant was charged with endangering a child. The case proceeded to trial. The State called Kopacki and two Watauga police officers to testify. Appellant called Baum as his only witness. After Baum's testimony, the State recalled Detective Max Muller to impeach Baum's testimony. At the close of evidence, the jury found appellant guilty of the charged offense. After a brief punishment hearing, the jury returned a verdict sentencing appellant to incarceration for one year in a state jail facility. The trial court entered a judgment reflecting the verdicts of the jury. It is from this judgment that appellant appeals.

Appellant presents four issues by his appeal. Each of appellant's first three issues challenge evidentiary rulings of the trial court. Appellant challenges the admission of Baum's testimony about his other daughter, Baum's testimony about appellant assaulting

her while she was pregnant, and Muller's testimony that Baum stated that appellant frequently "dangles" their daughter. Appellant's fourth issue contends that, if none of his first three issues are reversible, the cumulative effect of the errors requires reversal.

Standard of Review

A trial judge is afforded wide discretion in admitting or excluding evidence at trial. *Montgomery v. State*, 810 S.W.2d 372, 378-79 (Tex. Crim. App. 1990). Furthermore, we review the exercise of that discretion under the abuse of discretion standard. *Davis v. State*, 329 S.W.3d 798, 803 (Tex. Crim. App. 2010). A court abuses its discretion if its decision is arbitrary, unreasonable, or is made without reference to any guiding rules or principles. *Rhomer v. State*, 569 S.W.3d 664, 669 (Tex. Crim. App. 2019). In conducting our review, we may not interfere with the trial court's decision so long as it fell within the zone of reasonable disagreement, *Davis*, 329 S.W.3d at 803, and was correct under any theory of law applicable to the case. *Ryder v. State*, 514 S.W.3d 391, 398 (Tex. App.—Amarillo 2017, pet. ref'd).

Law and Analysis

Issue One

By his first issue, appellant contends that the trial court abused its discretion by allowing the State to elicit testimony about appellant's custody status regarding appellant's other daughter. Specifically, the State elicited testimony from Baum that appellant is allowed only supervised visitation with his other daughter limited to one hour every other week.

In a criminal case, when the defendant offers evidence of his good character, the prosecutor can admit evidence of defendant's character to rebut the implication left by defendant's character evidence. TEX. R. EVID. 404(a)(2)(A); *Harrison v. State*, 241 S.W.3d 23, 27 (Tex. Crim. App. 2007). "[O]therwise inadmissible evidence may be admitted if the party against whom the evidence is offered 'opens the door.'" *Schutz v. State*, 957 S.W.2d 52, 71 (Tex. Crim. App. 1997) (en banc). Once a defendant opens the door to evidence pertinent to a character trait, trial courts may permit the State to introduce evidence to impeach the defendant's evidence concerning the trait at issue. *Roberts v. State*, 29 S.W.3d 596, 601 (Tex. App.—Houston [1st Dist.] 2000, pet. ref'd) (citing *McIlveen v. State*, 559 S.W.2d 815, 822 (Tex. Crim. App. 1977)).

In the instant case, during direct examination, Baum testified that appellant had never harmed or threatened to harm their child and is an "amazing father." As such, evidence that is pertinent to appellant's parenting became relevant to impeach the impression left by Baum that appellant is an "amazing father." The State's offer of evidence that appellant had lost custody of his other daughter and that he was only allowed supervised visitation directly refutes Baum's testimony that appellant is an "amazing father" and that he has never taken action that would harm his child.[3] Consequently, we overrule appellant's first issue.

[3] Appellant contends that this evidence "had no relevance apart from its tendency to prove that [a]ppellant acted in conformity with his character by being a bad father." The specific character trait that was put into issue by Baum's testimony was whether appellant was an "amazing father" who would not take action that was harmful to his children. As such, evidence that appellant has acted in a manner that requires that his visitation with one of his children be supervised is directly relevant to whether appellant is an "amazing father" who would not act in a manner that would harm his children.

Issue Two

By his second issue, appellant contends that the trial court abused its discretion by allowing the State to examine Baum about appellant assaulting her while she was pregnant.

An objection that evidence is "prejudicial" is too general to preserve a complaint for appellate review. *See* TEX. R. EVID. 403 (trial court may exclude "unfair[ly] prejudicial" evidence); *Lewis v. State*, No. 02-16-00179-CR, 2017 Tex. App. LEXIS 5794, at *23 (Tex. App.—Fort Worth June 22, 2017, pet. ref'd) (mem. op., not designated for publication) (objection that evidence is "prejudicial" is not sufficiently specific to preserve a Rule 403 objection); *see also Montgomery v. State*, 810 S.W.2d 372, 378 (Tex. Crim. App. 1990) ("[V]irtually all evidence proffered by a party to a lawsuit will be prejudicial to the opposing party."). Likewise, a "relevance" objection without more is not sufficient to preserve error. *See Barnard v. State*, 730 S.W.2d 703, 716 (Tex. Crim. App. 1987) (en banc) (general relevance objection does not preserve error for review); *McWherter v. State*, 607 S.W.2d 531, 535 (Tex. Crim. App. 1980) (objections that evidence is "irrelevant and immaterial" are not sufficient to preserve error).

In the present case, the State sought to admit Baum's testimony regarding appellant's assault of her after she testified that she would leave appellant if he ever did anything that would put their daughter in danger. After a brief bench conference discussing whether Baum's testimony opened the door to the assault testimony, the trial court ruled that it would allow the testimony. When the State inquired about the assault, appellant stated, "Objection, relevance and prejudicial." The trial court overruled this

objection and appellant did not assert any additional objections during the ensuing questioning of Baum concerning this matter. As discussed above, general objections of relevance or prejudice are too general to preserve error for appellate review. *See, e.g., Barnard*, 730 S.W.2d at 716 (relevance); *Lewis*, 2017 Tex. App. LEXIS 5794, at *23 (prejudice). Because appellant failed to preserve any objection to this evidence concerning appellant's assault of Baum, we overrule appellant's second issue.

Issue Three

By his third issue, appellant contends that the trial court abused its discretion when it allowed Muller to testify about statements made by Baum over appellant's hearsay objection. Specifically, Muller testified that Baum told him that appellant frequently "dangles" their daughter.

A statement is hearsay if it was made out-of-court and is offered to prove the truth of the matter asserted. TEX. R. EVID. 801(d). When such a statement is offered for a reason other than to prove the truth of the matter asserted, it is not hearsay. *Guerra v. State*, 771 S.W.2d 453, 474 (Tex. Crim. App. 1988) (en banc). So, if an out-of-court statement is offered for a reason other than to prove the truth of the matter asserted, it is not hearsay and is admissible over a hearsay objection. *Id*.

During Baum's testimony, she acknowledged telling one of the investigating officers that appellant frequently holds their daughter "above her head." But she indicated that her statement was not meant literally. After appellant rested, the State called Muller in rebuttal. When the State asked Muller about Baum's statement, appellant objected on hearsay grounds. The State informed the trial court that the testimony was being offered

to impeach Baum's testimony with her prior inconsistent statement. Following a brief discussion, the trial court overruled appellant's objection. Muller then testified that, contrary to Baum's testimony, she told him that appellant "dangles [the child] frequently" and that he does this in a threatening manner during arguments with Baum. He clarified that Baum never said that appellant held the child "over [her] head." He further testified that he did not believe that Baum's statement that appellant dangles their child was intended in the figurative sense.

Muller's testimony was explicitly offered as a prior inconsistent statement made by Baum. Muller's rebuttal testimony related entirely to the fact that Baum made a statement and whether it was inconsistent with her trial testimony. Muller's testimony was not offered to prove the truth of the matter asserted, that appellant frequently dangled his daughter, but rather to prove that Baum's trial testimony is inconsistent with a prior statement she made to Muller. Consequently, Muller's testimony concerning Baum's out-of-court statement was not hearsay. *See Guerra*, 771 S.W.2d at 474 ("An out of court statement offered for the purpose of showing what was said rather than the truth of the matter stated therein does not, however, constitute hearsay."). We overrule appellant's third issue.

Issue Four

By his fourth issue, appellant contends that the cumulative effect of the errors he identified in his first three issues present reversible error because they deprived him of due process. However, we have determined that appellant failed to preserve error relating to his second issue and failed to identify error related to his first and third issues.

As such, the cumulative effect of appellant's claims of error cannot justify reversal. *See Jenkins v. State*, 493 S.W.3d 583, 613 (Tex. Crim. App. 2016) ("[A]ppellant failed to show that the trial court erred. Therefore, there is no error to cumulate."); *Chamberlain v. State*, 998 S.W.2d 230, 238 (Tex. Crim. App. 1999) (en banc) ("[W]e are aware of no authority holding that non-errors may in their cumulative effect cause error."). We overrule appellant's fourth issue.

Conclusion

Having overruled each of appellant's issues, we affirm the judgment of the trial court.

Judy C. Parker
Justice

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