NO. 12-11-00343-CR

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

JAMES A. STUBBLEFIELD, APPELLANT	***§***	***APPEAL FROM THE 411TH***
V.	***§***	***JUDICIAL DISTRICT COURT***
THE STATE OF TEXAS, APPELLEE	***§***	***TRINITY COUNTY, TEXAS***

MEMORANDUM OPINION

James A. Stubblefield appeals his conviction for delivery of between four and two hundred grams of cocaine, for which he was sentenced to imprisonment for fifty years. Appellant raises three issues on appeal. We affirm.

BACKGROUND

Matthew Hancock agreed to work with the Texas Department of Public Safety (DPS) as a confidential informant. After having been briefed by DPS officers, Hancock contacted Appellant and asked to purchase one ounce of crack cocaine. Appellant agreed to meet Hancock at a convenience store.

Before going to the convenience store, Hancock met with several DPS officers. The officers searched Hancock and his truck for narcotics, and fitted him with a digital recording device. DPS Agent Kevin Franklin rode in the car with Hancock to the meeting with Appellant.

Upon his arrival at the convenience store, Hancock exited the vehicle and met with Appellant. Thereafter, Hancock returned to the vehicle, obtained money from Franklin, and gave that money to Appellant. Subsequently, Hancock returned to the vehicle and explained to Franklin that Appellant did not want to deliver the drugs to him at the convenience store. Rather,

Appellant told Hancock that the drugs were in a bag with two fast food chicken boxes and that he would lead Hancock to that location.

Hancock and Franklin followed Appellant as he drove to a location less than a mile from the convenience store. When Appellant pointed to a bag on the side of the road, Hancock stopped his vehicle and retrieved the bag. Upon seeing that Hancock had retrieved the bag, Appellant departed.

Hancock gave the bag to Franklin. Franklin inspected the bag, which was later determined to contain approximately one ounce of powder cocaine. Hancock called Appellant and told him that he had requested crack cocaine. But Appellant responded that he did not sell crack cocaine.

Thereafter, Hancock and Franklin met with the other DPS officers. Hancock was searched, and no drugs or money were found on him. Hancock returned the digital recording device to the DPS officers. However, the recording was inaudible.

Appellant was charged by indictment with delivery of between four grams and two hundred grams of cocaine and pleaded "not guilty." The matter proceeded to a jury trial, following which the jury found Appellant "guilty" as charged. During the subsequent trial on punishment, the State elicited testimony concerning fingerprint analysis from Special Prosecution Unit Investigator Joseph Willis to establish that Appellant previously had been convicted of a felony drug offense. Ultimately, the jury assessed Appellant's punishment at imprisonment for fifty years and a $10,000 fine. The trial court sentenced Appellant accordingly, and this appeal followed.

CORROBORATING TESTIMONY OF CONFIDENTIAL INFORMANT

In his first issue, Appellant contends that Hancock's testimony is not sufficiently corroborated.

Standard of Review and Governing Law

Texas Code of Criminal Procedure, Article 38.141 requires a conviction for delivery of a controlled substance on the testimony of a confidential informant to be "corroborated by other evidence tending to connect the defendant with the offense committed." TEX. CODE CRIM. PROC. ANN. art. 38.141(a) (Vernon 2005). "Corroboration is not sufficient . . . if the [evidence] only shows the commission of the offense." ***Id***. art. 38.141(b). We review confidential informant

corroboration just as we would review accomplice witness corroboration. *See* ***Torres v. State***, 137 S.W.3d 191, 196 (Tex. App.—Houston [1st Dist.] 2004, no pet.). The accomplice witness rule is a statutorily imposed review and is not derived from federal or state constitutional principles that define the legal sufficiency standards. *See* ***Malone v. State***, 253 S.W.3d 253, 257 (Tex. Crim. App. 2008).

To determine whether the confidential informant testimony is sufficiently corroborated, we must eliminate all confidential informant testimony and determine whether the remaining facts and circumstances in evidence tend to connect the appellant to the offense. *See* ***Torres***, 137 S.W.3d at 196 (citing ***McDuff v. State***, 939 S.W.2d 607, 612 (Tex. Crim. App. 1997)). The remaining evidence does not have to directly link the appellant to the crime, nor does it alone have to establish his guilt beyond a reasonable doubt. *See* ***McDuff***, 939 S.W.2d at 613. Rather, the remaining evidence must merely tend to connect the appellant to the offense. ***Id.***

Hancock's Testimony

Here, Hancock testified that he contacted Appellant and requested an ounce of crack cocaine. Hancock further testified that Appellant agreed to meet him at a convenience store. Hancock stated that he met with Appellant and gave Appellant seven hundred dollars. Hancock further stated that Appellant told him he would not conclude the transaction at the convenience store, but instead that Hancock would have to follow Appellant to another location to retrieve the drugs. Hancock testified that he followed Appellant for less than a mile from the convenience store where Appellant pointed to a bag on the side of the road. Hancock further testified that he retrieved the bag, which contained approximately one ounce of powder cocaine. Finally, Hancock stated that he called Appellant and told him he wanted crack cocaine rather than powder cocaine, but that Appellant replied that he did not sell crack cocaine.

Evidence Corroborating Hancock's Testimony

Even though the digital recording device worn by Hancock failed to adequately record his conversations with Appellant, other evidence tends to connect Appellant to the offense. Franklin was in the truck with Hancock. Franklin testified that he saw Appellant meet Hancock at the convenience store. He also testified that he could not hear Appellant and Hancock's conversation. Franklin stated, however, that he saw Hancock and Appellant speak to one another and that Franklin subsequently provided Hancock the money to give to Appellant. Franklin further stated that he was in the truck with Hancock when Appellant led them to the drugs.

Finally, Franklin testified that he saw Appellant point to the bag and that he opened up the bag and saw that it contained powder cocaine.

Based on the foregoing, we conclude that Franklin's testimony sufficiently connects Appellant to the offense. Accordingly, we hold that Hancock's testimony was properly corroborated. Appellant's first issue is overruled.

EVIDENTIARY SUFFICIENCY

In his second issue, Appellant argues that if Hancock's testimony is disregarded, the evidence is legally insufficient to support his conviction. As set forth in our analysis of his first issue, Hancock's testimony was properly corroborated. Thus, we may consider it in our analysis of evidentiary sufficiency under the ***Jackson v. Virginia***[1] standard.

Having examined all of the aforementioned evidence in the light most favorable to the jury's verdict, we conclude that the jury could have reasonably determined beyond a reasonable doubt that Appellant committed the offense of delivery of between four and two hundred grams of cocaine. Therefore, we hold that the evidence is legally sufficient to support the trial court's judgment. Appellant's second issue is overruled.

EXPERT TESTIMONY

In his third issue, Appellant argues that the trial court improperly permitted Investigator Willis to provide expert testimony regarding his analysis of Appellant's fingerprints even though the State had not shown that he was qualified as an expert witness.

Standard of Review and Governing Law

We review a trial court's decision to admit or exclude scientific expert testimony under an abuse of discretion standard. *See* ***Sexton v. State***, 93 S.W.3d 96, 99 (Tex. Crim. App. 2002). The trial court's ruling will be upheld if it is within the zone of reasonable disagreement. *See* ***id***. A witness may offer an opinion if he possesses specialized knowledge, skill, experience, training, or education related to a fact in issue. TEX. R. EVID. 702. However, the trial court serves as the gatekeeper to determine whether the proffered scientific evidence is sufficiently reliable and relevant. *See* ***Sexton***, 93 S.W.3d at 99. For scientific evidence to be reliable, the proponent must show that the underlying scientific theory is valid, the technique applying the theory is valid, and

[1] 443 U.S. 307, 315–16, 99 S. Ct. 2781, 2786–87, 61 L. Ed. 2d 560 (1979).

the technique was properly applied on the occasion in question. ***Id***. at 100.

As a prerequisite to presenting a complaint for appellate review, the record must show that (1) the complaint was made to the trial court (2) by a timely request, objection, or motion (3) that stated the grounds for the ruling the complaining party sought from the trial court (4) with sufficient specificity to make the trial court aware of the complaint, unless the specific grounds were apparent from the context. *See* TEX. R. APP. P. 33.1(a)(1)(A). The court of criminal appeals has elaborated on Rule 33.1(a) as follows:

> The purpose of requiring a specific objection in the trial court is twofold: (1) to inform the trial judge of the basis of the objection and give him the opportunity to rule on it; [and] (2) to give opposing counsel the opportunity to respond to the complaint . . . . [A] party must be specific enough so as to let the trial judge know what he wants, why he thinks himself entitled to it, and do so clearly enough for the judge to understand him at a time when the trial court is in a proper position to do something about it.

Resendez v. State, 306 S.W.3d 308, 312–13 (Tex. Crim. App. 2009) (quoting ***Lankston v. State***, 827 S.W.2d 907, 909 (Tex. Crim. App. 1992)).

The request, objection, or motion must be timely; that is, the complaining party must have objected to the evidence, if possible, before it was admitted. *See* ***Ethington v. State***, 819 S.W.2d 854, 858 (Tex. Crim. App. 1991). In any event, an objection should be made to the evidence as soon as the ground for objection becomes apparent. *See* ***Lagrone v. State***, 942 S.W.2d 602, 618 (Tex. Crim. App. 1997). If a complaining party fails to object when objectionable evidence is introduced, and the party can show no legitimate reason to justify the delay, the party's objection is untimely, and any complaint about the admission of the evidence is not preserved. *See* ***id***. Further, when a party fails to effectively communicate his argument, the error is not preserved for appeal. *See* ***Resendez***, 306 S.W.3d at 312–13. Likewise, issues on appeal must correspond to or comport with objections and arguments made at trial, and an objection stating one legal theory may not be used to support a different legal theory on appeal. *See* ***Resendiz v. State***, 112 S.W.3d 541, 547 (Tex. Crim. App. 2003); *see also* TEX. R. APP. P. 33.1. Finally, an objection that is general in nature does not preserve error. *See* ***Denison v. State***, 651 S.W.2d 754, 760 (Tex. Crim. App. 1983).

Analysis

In the case at hand, Appellant objected during Willis's testimony, arguing that the State

had failed to establish Willis's expertise pertaining to fingerprint analysis. Thereafter, the State asked Willis to provide his qualifications to serve as an expert in fingerprint analysis. In response, Willis listed his training, background, and experience in this field.

The State next asked Willis if he took Appellant's fingerprints. Willis answered in the affirmative, and the fingerprint card was identified as State's Exhibit 6. Subsequently, the State asked Willis to review a document identified as State's Exhibit 7 that referenced a criminal conviction and contained a set of fingerprints. The State then asked Willis if he had compared the fingerprints in Exhibit 6 with the fingerprints in Exhibit 7. Willis responded that he had compared the two sets of fingerprints. The State asked Willis if he had an opinion as to whether the fingerprints in the two exhibits were from the same person. Willis responded that, in his opinion, the fingerprints were from the same person. Appellant declined to object to any of this testimony. The State offered Exhibit 6 into evidence without objection. When the State offered Exhibit 7, Appellant stated, "7, objection to 7." When asked by the trial court if he had any specific objection, Appellant answered "No."

Only after Willis had concluded his testimony and the State had rested its case did Appellant make the following objection to the trial court: "And as you gave me the opportunity in perfecting my objection, there was no predicate laid to say that State's Exhibit No. 7 is actually the prints of the defendant."

Based on our review of the record, we conclude that Appellant's objection to the fingerprint analysis conducted by Willis made after the State had rested its case was not timely. Accordingly, this objection was not preserved for appeal. *See* ***Lagrone***, 942 S.W.2d at 618. Additionally, Appellant's objection to Exhibit 7 made during Willis's testimony was too general to preserve error. *See* ***Denison***, 651 S.W.2d at 760. Moreover, when the trial court asked Appellant if he had any specific objection, Appellant replied that he did not. *See* ***Traylor v. State***, 855 S.W.2d 25, 26 (Tex. App.–El Paso 1993, no writ) (when defendant affirmatively states during trial that he has "no objection" to challenged evidence, defendant waives any error in admission). Therefore, we hold that Appellant has failed to preserve the error he now seeks to raise on appeal. Appellant's third issue is overruled.

DISPOSITION

Having overruled Appellant's first, second, and third issues, we ***affirm*** the trial court's

judgment.

BRIAN HOYLE
Justice

Opinion delivered on October 24, 2012.
Panel consisted of Worthen, C.J., Griffith, J., and Worthen, J.

(DO NOT PUBLISH)

COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

OCTOBER 24, 2012

NO. 12-11-00343-CR

JAMES A. STUBBLEFIELD,
Appellant
V.
THE STATE OF TEXAS,
Appellee

Appeal from the 411th Judicial District Court
of Trinity County, Texas. (Tr.Ct.No. 9658)

THIS CAUSE came to be heard on the appellate record and briefs filed herein, and the same being considered, it is the opinion of this court that there was no error in the judgment.

It is therefore ORDERED, ADJUDGED and DECREED that the judgment of the court below **be in all things affirmed**, and that this decision be certified to the court below for observance.

Brian Hoyle, Justice.
Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.