Opinion filed October 12, 2017

In The

Eleventh Court of Appeals

No. 11-15-00232-CR

ROBERT MENDOZA, JR., Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 35th District Court
Brown County, Texas
Trial Court No. CR21615

M E M O R A N D U M O P I N I O N

The jury convicted Robert Mendoza, Jr. of possession of a controlled substance with intent to deliver. The trial court assessed his punishment at confinement for forty years in the Institutional Division of the Texas Department of Criminal Justice. Appellant challenges his conviction in three issues on appeal. We affirm.

Background Facts

We previously considered the circumstances surrounding Appellant's arrest for the underlying offense in *State v. Mendoza*, No. 11-12-00145-CR, 2014 WL 1593134 (Tex. App.—Eastland Apr. 17, 2014, no pet. h.) (mem. op., not designated for publication). In the prior appeal, the State appealed the trial court's order granting Appellant's motion to suppress evidence. We concluded that the police officers that found methamphetamine in Appellant's car did not do so as a result of either an illegal detention or an illegal search. *Id.* at *8. Accordingly, we reversed the trial court's order and remanded the case for trial. *Id.* at *9. This appeal arises from that trial.

Appellant's first issue addresses the same subject matter as the prior appeal and many of the same facts that we previously addressed. The facts that we recited in the previous appeal were derived from the evidence offered at the suppression hearing. Those facts that we recited were as follows:

> [O]n the morning of June 18, 2011, Brownwood Police Officer Walker Willey was dispatched in response to an anonymous caller's report to police that a suspicious vehicle was parked in the parking lot of a strip mall in Brownwood before businesses in the mall had opened for the day. The caller stated that the car had been there since before 8:30 a.m. and that there were occupants in the car. The caller provided the police with a description of the car and the license plate number for the car.
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> Officer Willey was in a marked patrol vehicle. He arrived at the strip mall at 9:27 a.m. to perform a welfare check on the occupants of the car. Officer Willey saw a parked Cadillac in a parking space in front of the Western Union store. The Cadillac matched the description and had the license plate number that the anonymous caller had provided. Officer Willey said that the parking lot was a public parking lot.
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> Officer Willey parked his patrol car in a parking space that was behind the Cadillac. He did not block the Cadillac with his car. He said that there was at least a car length between the two vehicles and

that there was room for traffic to pass between the vehicles. Officer Willey got out of his car and approached the Cadillac. At that time, he contacted Rosa Isela Cortez, who was on the sidewalk of the strip mall. She told Officer Willey that she was going to the Western Union to get money. Cortez entered the Western Union.

Enemencio Delarosa IV was in the driver's seat of the Cadillac, and Mendoza was in the front passenger's seat. Officer Willey told Delarosa through the rolled-down driver's window the reason that he had been dispatched to the scene. Before Officer Willey requested anything from Delarosa and Mendoza, they informed him that they were at the Western Union to get money wired to them so that they could buy gas for the Cadillac and then go to San Angelo.

Officer Willey asked Mendoza and Delarosa for identification as part of his standard operating procedure for a welfare check. Neither Mendoza nor Delarosa had a valid driver's license. Delarosa told Officer Willey that he had not driven the Cadillac but that Cortez had been the driver. In response to Officer Willey's questions, Delarosa told Officer Willey that the group had been to Dallas and was returning to San Angelo. Mendoza told Officer Willey that his driver's license had been suspended. Mendoza claimed that he owned the Cadillac. Officer Willey told Mendoza that the Cadillac was registered to someone else. In response, Mendoza told Officer Willey that he was buying the car from the registered owner.

Cortez came out of the Western Union. Officer Willey asked her if she had a driver's license. Cortez showed Officer Willey a Texas driver's license and told him that her license was in good standing. Officer Willey performed driver's license checks on Mendoza, Delarosa, and Cortez through dispatch. Based on the check, Officer Willey learned that Cortez's license was suspended.

Officer Willey told Mendoza, Delarosa, and Cortez that they could not drive the Cadillac because they did not have valid driver's licenses. Officer Willey did not arrest anyone for an offense of driving with a suspended license in connection with the group's trip to Brownwood. He did not know who had driven. Officer Willey said that Mendoza, Delarosa, and Cortez made telephone calls in an effort to find a licensed driver to drive the Cadillac. After they made some calls, they

informed Officer Willey that a licensed driver was coming from Winters, Texas, to get them. Officer Willey said that the drive from Winters to Brownwood takes over an hour. Officer Willey believed that, if he left the scene before the licensed driver arrived, Mendoza, Delarosa, or Cortez would drive the Cadillac away. Therefore, Officer Willey stayed at the scene to make sure that Mendoza, Delarosa, or Cortez did not commit another driving offense.

While they waited for the licensed driver, Officer Willey asked Cortez for details about the group's trip. Like Delarosa, Cortez told Officer Willey that the group had been to Dallas. Cortez did not tell Officer Willey whether she had gotten any money at the Western Union.

Officer Willey was suspicious about the group's version of events related to their trip. He asked Cortez whether there was anything illegal in the vehicle. Cortez responded that she did not know, that the Cadillac was Mendoza's vehicle, and that Mendoza was in charge of the vehicle. Officer Willey asked Cortez to walk to the sidewalk so that she would not be in traffic in the parking lot.

Mendoza stood with Officer Willey near the trunk of the Cadillac. Officer Willey asked Mendoza whether there was anything illegal inside the Cadillac. Mendoza responded, "No." Officer Willey requested consent from Mendoza to search the Cadillac. Mendoza told Officer Willey, "No." Officer Willey asked Mendoza to go to the sidewalk while the group waited on the licensed driver. At that time, Delarosa was already on the sidewalk. Mendoza went to the sidewalk, and he, Delarosa, and Cortez sat on the sidewalk in the shade while they waited for their driver.

Officer Willey looked through the windows of the Cadillac. He did not see any contraband in plain view. As he walked around the back of the car, Mendoza opened the trunk with a key fob, even though Officer Willey did not request him to do so. Officer Willey said that the group did not have any luggage or personal effects in the trunk that would have been consistent with taking an overnight trip to Dallas.

Officer Willey testified that, because his suspicions were raised, he requested the assistance of a canine unit for an "open-air search"

> around the Cadillac. After he requested the canine unit, Officer Willey did not have any further conversations with Mendoza, Delarosa, or Cortez. Officer Willey did not tell Mendoza, Delarosa, or Cortez that they could not walk away from the scene, and they did not request to leave.
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> Detective James Stroope of the Brown County Sheriff's Office arrived with his police dog at 10:15 a.m., less than twenty minutes after Officer Willey requested assistance. Before Detective Stroope directed his dog to perform the free-air sniff, he explained the process to Mendoza. Detective Stroope told Mendoza that the police dog was trained to alert to cocaine, methamphetamine, marihuana, and heroin. Detective Stroope said that Mendoza and his companions did not indicate that they wanted to leave the scene.
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> The police dog performed a free-air sniff around the Cadillac. The dog alerted on the driver's door. Based on the alert, Detective Stroope let the dog into the car. The dog alerted to an area between the radio and the glove box. Detective Stroope and Officer Willey then searched the Cadillac. They found a white paper sack in the glove compartment with two plastic bags inside it. The bags contained about forty-five grams of methamphetamine. Mendoza, Delarosa, and Cortez were placed into custody and arrested for possession of methamphetamine.

Id. at *1–3.

The evidence offered at trial expanded upon the circumstances of the arrest as well as activities that occurred before and after the arrest. Officer Willey's trial testimony concerning his encounter with the occupants was consistent with his testimony at the hearing on the motion to suppress. The State also called Delarosa and Cortez as witnesses. They both pleaded guilty to drug possession as a result of the events occurring on June 18, 2011.

Cortez testified that she began a romantic relationship with Appellant in April or May 2011. Cortez stated that the trio left San Angelo around midnight for Dallas for the purpose of picking up methamphetamine. They traveled in Appellant's car.

She testified that Appellant organized the trip but that she did not know who was going to actually buy the drugs. Cortez drove first, but she fell asleep after they switched drivers. Cortez testified that she was asleep when the drugs were acquired. She further testified that she had previously used methamphetamine with Appellant and that he supplied it to her when they used it together. She had also purchased methamphetamine from Appellant, and she had observed others buying methamphetamine from him. Cortez also testified that she used methamphetamine with Appellant a week after their arrest when she visited him in San Angelo.

Delarosa testified that Appellant was his cousin. He arrived at Appellant's house between 8:00 and 9:00 p.m. on the day prior to their arrest. Delarosa testified that the trio left San Angelo around 11:00 p.m. Appellant invited him to go along on the trip. Delarosa testified that he was told that they were going to a party in Dallas. He stated that he was asleep in the backseat when they left and that he remained asleep while they were in Dallas. Delarosa testified that he did not know that they had picked up methamphetamine in Dallas. Delarosa had previously used methamphetamine with Appellant. He testified that Appellant always provided the methamphetamine on those occasions.

Detective Joe Aaron Taylor of the Brownwood Police Department testified that four cell phones were recovered from Appellant's vehicle after the trio had been arrested. Data recovered from Cortez's cell phone revealed that the purpose of the trip to Dallas was to pick up narcotics. He also testified that Cortez's purse contained baggies with drug residue, a spoon, and a smoking implement. Detective Taylor testified that the field weight of the methamphetamine recovered from Appellant's vehicle was forty-six grams. He described this amount as a "distribution amount" because a "user amount" would be half a gram. He testified that this was a significant amount of methamphetamine, which indicated it was acquired for distribution rather than personal use.

Billy Bloom was an investigator for the Tom Green County Sheriff's Department. Over Appellant's objections, Investigator Bloom testified to events occurring in July 2012, approximately one year after Appellant was arrested for the underlying offense. Investigator Bloom testified that a confidential informant told him that Appellant was dealing a large amount of methamphetamine in San Angelo. Upon executing a search warrant on the home where Appellant lived, officers observed Appellant trying to dispose of methamphetamine as they entered the home. Officers recovered paraphernalia for distributing methamphetamine, including digital scales, drug ledgers, and bundles of currency. Appellant was charged with possession with intent to deliver as a result of the discovery.

Appellant testified on his own behalf during the guilt/innocence phase. Appellant stated that he was a heavy methamphetamine user and that he used it every day, all day long. Because of his heavy use, he tried to keep seven or eight grams on hand. Appellant testified that in June 2011, he was getting methamphetamine from Cortez. Appellant also testified that he would share his methamphetamine with others if they came around. Appellant stated that Cortez was the person who had the idea for the trip to Dallas and that she was the person who was buying the methamphetamine. Appellant acknowledged that the purpose of the trip was to get a large amount of methamphetamine. Appellant testified that he just went along on the trip to get a "free high." Appellant did not know how the methamphetamine got into his car.

Appellant testified that, in the one-year period after his arrest for the underlying offense, he transitioned from just being a user into being a person that sold and distributed methamphetamine. On cross-examination, Appellant admitted that some of the writing in the ledgers was his handwriting. However, he testified that he only wrote what he was told to write in the ledgers by his girlfriend, Mireya Terrazas, who was his supplier.

Analysis

In his first issue, Appellant challenges the legal sufficiency of the evidence concerning the jury's rejection of an Article 38.23(a) instruction that the trial court gave in the jury charge. *See* TEX. CODE CRIM. PROC. ANN. art. 38.23(a) (West 2005). Article 38.23(a) precludes the admission of evidence obtained in violation of the constitution or laws of the State of Texas or the Constitution or laws of the United States of America. The article further provides:

> In any case where the legal evidence raises an issue hereunder, the jury shall be instructed that if it believes, or has a reasonable doubt, that the evidence was obtained in violation of the provisions of this Article, then and in such event, the jury shall disregard any such evidence so obtained.

Id. A defendant's right to the submission of jury instructions under Article 38.23(a) is limited to disputed issues of fact that are material to his claim of a constitutional or statutory violation that would render evidence inadmissible. *Madden v. State*, 242 S.W.3d 504, 510 (Tex. Crim. App. 2007).

The disputed issue of fact that Appellant relied upon for the Article 38.23(a) instruction was whether Officer Willey had detained Appellant "such that a reasonable person would not have felt free to leave under the totality of the circumstances" prior to the canine officer being called to the scene. The factual dispute focused on whether Officer Willey told the trio that they could not leave prior to the arrival of the canine officer. Officer Willey testified that he told them that they could not drive away without a licensed driver to drive the car, but that he did not tell them that they could not leave on foot. Delarosa testified that Officer Willey told them that they were not free to leave, under any circumstances, and that he placed them in handcuffs before the canine officer arrived. Cortez testified that she asked to go get a drink of water before the canine officer arrived and that Officer Willey refused her request and told the group to remain there.

Appellant also testified that Officer Willey told the individuals that they could not leave before the canine officer arrived. Conversely, Detective Stroope testified that the individuals were not in handcuffs when he conducted the canine search and that they were only handcuffed afterwards.

Appellant contends that the jury erred by failing to disregard all evidence obtained after he was detained because his detainment was illegal "as a matter of fact." The State initially contends that our prior resolution of the search and seizure question controls our disposition of Appellant's first issue under the "law of the case" doctrine. *See State v. Swearingen*, 424 S.W.3d 32, 36 (Tex. Crim. App. 2014). We disagree.

Under the law of the case doctrine, "an appellate court's resolution of questions of law in a previous appeal are binding in subsequent appeals concerning the same issue." *Id.* Therefore, "when the facts and legal issues are virtually identical, they should be controlled by an appellate court's previous resolution." *Id.* This rule promotes "judicial consistency and efficiency." *Id.* There are facts in the trial court record that were not present in the record from the hearing on the motion to suppress, namely the accounts of Appellant, Delarosa, and Cortez concerning their encounter with Officer Willey. Their differing accounts preclude the application of the law of the case doctrine in this appeal.

The State additionally contends that the jury's resolution of the instruction to disregard evidence under Article 38.23(a) is not reviewable on appeal. We agree. The Court of Criminal Appeals addressed Article 38.23 instructions in *Holmes v. State*, 248 S.W.3d 194, 199–200 (Tex. Crim. App. 2008). The court stated: "Had [the defendant] received an Article 38.23 jury instruction, he would have no appellate claim at all because the jury's decision regarding that factual dispute would be unreviewable." *Id.* at 200. Accordingly, the Court of Criminal Appeals has stated

that the matter raised by Appellant's first issue concerning the jury's implicit rejection of the Article 38.23(a) instruction is unreviewable on appeal.

Furthermore, Appellant couches his first issue as a challenge to the legal sufficiency of the evidence regarding the circumstances of his detainment. In conducting a legal sufficiency review, we defer to the factfinder's role as the sole judge of the witnesses' credibility and the weight their testimony is to be afforded. *Brooks v. State*, 323 S.W.3d 893, 899 (Tex. Crim. App. 2010). This standard accounts for the factfinder's duty to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007). When the record supports conflicting inferences, we presume that the factfinder resolved the conflicts in favor of the verdict and defer to that determination. *Jackson*, 443 U.S. at 326; *Clayton*, 235 S.W.3d at 778.

The evidence offered at trial concerning Officer Willey's encounter with Appellant and the occupants of his car was conflicting. The jury's resolution of this factual dispute was inherently a credibility determination for the jury to make. The jury is the sole judge of the witnesses' credibility, and we defer to that resolution when asked to review the sufficiency of the evidence.[1] Accordingly, we overrule Appellant's first issue.

In his second issue, Appellant challenges the sufficiency of the evidence supporting his conviction. He directs his challenge on the "intent to deliver" element of the offense. We review a challenge to the sufficiency of the evidence, regardless of whether it is denominated as a legal or factual claim, under the standard of review

[1]Given the fact that an Article 38.23 instruction is limited to disputed issues of fact (*see Madden*, 242 S.W.3d at 510), the pronouncement by the Court of Criminal Appeals in *Holmes*, that the jury's rejection of the instruction is unreviewable, is supported by the deference afforded to the jury's resolution of disputed fact issues, particularly those that depend on credibility determinations. *See Jackson*, 443 U.S. at 326; *Brooks*, 323 S.W.3d at 899, 912; *Clayton*, 235 S.W.3d at 778.

set forth in *Jackson*, 443 U.S. 307. *Brooks*, 323 S.W.3d at 912; *Polk v. State*, 337 S.W.3d 286, 288–89 (Tex. App.—Eastland 2010, pet. ref'd). Under the *Jackson* standard, we review all of the evidence in the light most favorable to the verdict and determine whether any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *Jackson*, 443 U.S. at 319; *Isassi v. State*, 330 S.W.3d 633, 638 (Tex. Crim. App. 2010). When conducting a sufficiency review, we consider all the evidence admitted at trial, including pieces of evidence that may have been improperly admitted. *Winfrey v. State*, 393 S.W.3d 763, 767 (Tex. Crim. App. 2013); *Clayton*, 235 S.W.3d at 778.

A person commits the offense of possession of a controlled substance with intent to deliver if he knowingly or intentionally possesses a drug with the intent to deliver it. *See* TEX. HEALTH & SAFETY CODE ANN. § 481.112(a) (West 2017). As relevant to this case, "[d]eliver means to transfer, actually or constructively, to another a controlled substance." *See id.* § 481.002(8).

Intent to deliver may be proved with circumstantial evidence, including evidence that the defendant possessed the contraband. *Moreno v. State*, 195 S.W.3d 321, 325 (Tex. App.—Houston [14th Dist.] 2006, pet. ref'd). "Intent can be inferred from the acts, words, and conduct of the accused." *Id.* at 326 (quoting *Patrick v. State*, 906 S.W.2d 481, 487 (Tex. Crim. App. 1995)). The expert testimony of an experienced law enforcement officer may be used to establish an accused's intent to deliver. *Id.* The factors to be considered in determining whether a defendant possessed contraband with an intent to deliver include the nature of the location where the defendant was arrested, the quantity of drugs the defendant possessed, the manner of packaging the drugs, the presence or absence of drug paraphernalia, whether the defendant possessed a large amount of cash, and the defendant's status as a drug user. *Kibble v. State*, 340 S.W.3d 14, 18–19 (Tex. App.—Houston [1st Dist.] 2010, pet. ref'd); *see Williams v. State*, 902 S.W.2d 505, 507 (Tex. App.—

Houston [1st Dist.] 1994, pet. ref'd). This list of factors is not exclusive, nor must they all be present to establish a defendant's intent to deliver. *Kibble*, 340 S.W.3d at 19.

Appellant asserts that "the great weight of the evidence" proves that Appellant "was only a user, not a dealer." He points out that the officers did not find any scales, money, or records of drug transactions in Appellant's vehicle at the time of arrest. Appellant additionally asserts that the evidence pointed toward Cortez as the person with the intent to distribute the methamphetamine found in Appellant's vehicle.

We find that the evidence permitted a rational jury to determine that Appellant had the intent to deliver the methamphetamine that he possessed. Cortez testified that Appellant organized the trip to Dallas to buy methamphetamine for the purpose of distributing it. Detective Taylor testified that the amount of methamphetamine constituted a "distribution amount" because it exceeded a user amount. Cortez also testified that forty grams of methamphetamine is more than a person could use in a week. There was also evidence that Appellant delivered methamphetamine before the arrest by providing it to his friends, and there was evidence that he actively participated in the delivery of methamphetamine afterwards. This evidence was probative of Appellant's intent with respect to the large amount of methamphetamine recovered from his car.

Additionally, the jury was charged on the law of parties. Even if one assumes that Cortez was the person that purchased the methamphetamine, the evidence supports a finding that Appellant was guilty of possession with intent to deliver under the law of parties because he admitted that he knew that the purpose of the trip was to acquire methamphetamine for distribution and he provided the car for the trip. Based upon the evidence offered at trial, we conclude that a rational jury could have determined that Appellant possessed the methamphetamine with the intent to deliver. We overrule Appellant's second issue.

In this third issue, Appellant contends that the trial court erred in admitting evidence of a subsequent extraneous offense. We review a trial court's ruling on admissibility of evidence for an abuse of discretion. *Coble v. State*, 330 S.W.3d 253, 272 (Tex. Crim. App. 2010). We will uphold the trial court's decision unless it lies outside the zone of reasonable disagreement. *Salazar v. State*, 38 S.W.3d 141, 153–54 (Tex. Crim. App. 2001).

Appellant objected to Investigator Bloom's testimony about Appellant's subsequent arrest on grounds of relevancy, prejudice, and Rule 404(b). *See* TEX. R. EVID. 401, 403, 404(b). On appeal, Appellant primarily asserts that the evidence was not admissible under Rule 404(b) because it was not relevant for any purpose other than to show character conformity. We disagree. Relevant evidence is evidence having "any tendency to make a fact more or less probable than it would be without the evidence[,] and . . . the fact is of consequence in determining the action." TEX. R. EVID. 401. Because the indictment charged Appellant with knowingly possessing methamphetamine with intent to deliver, the issue of Appellant's knowledge and intent were elements that the State was required to prove. *Powell v. State*, 5 S.W.3d 369, 383 (Tex. App.—Texarkana 1999, pet. ref'd) (citing *Morgan v. State*, 692 S.W.2d 877, 880 (Tex. Crim. App. 1985)). In *Powell*, the Texarkana Court of Appeals determined that a subsequent extraneous drug possession offense tended to make more probable an allegation that the defendant intended to deliver drugs in the charged offense. *Id.*; *see Mason v. State*, 99 S.W.3d 652, 656 (Tex. App.—Eastland 2003, pet. ref'd).

The subsequent offense was relevant to the question of whether Appellant possessed the methamphetamine with an intent to deliver because it had a tendency to make the fact more probable. Furthermore, extraneous evidence offered to show intent is a listed exception to Rule 404(b). *See Prible v. State*, 175 S.W.3d 724, 731 (Tex. Crim. App. 2005). The court determined in *Powell* that the fact that extraneous

conduct occurs after the acts constituting the offense on trial does not render the evidence inadmissible under Rule 404(b). 5 S.W.3d at 383. We reached the same conclusion in *Mason*. 99 S.W.3d at 656. Accordingly, we conclude that the trial court did not abuse its discretion in determining that the evidence was relevant and admissible under Rule 404(b).

Appellant presented a "prejudice" objection under Rule 403 at trial, and he makes reference to that complaint in his appellate brief. Under Rule 403, relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury or by considerations of undue delay or needless presentation of cumulative evidence. *See Young v. State*, 283 S.W.3d 854, 874 (Tex. Crim. App. 2009). An analysis under Rule 403 includes, but is not limited to, the following factors: (1) the probative value of the evidence, (2) the potential to impress the jury in some irrational yet indelible way, (3) the time needed to develop the evidence, and (4) the proponent's need for the evidence. *Hernandez v. State*, 390 S.W.3d 310, 324 (Tex. Crim. App. 2012). Appellant's brief contains no argument or citation to any authority analyzing these factors other than to simply cite Rule 403 and the objection made at trial. We conclude that Appellant's contention under Rule 403 is inadequately briefed and presents nothing for review because this court is under no obligation to make Appellant's arguments for him. *See* TEX. R. APP. P. 38.1(i); *Lucio v. State*, 351 S.W.3d 878, 896–97 (Tex. Crim. App. 2011).

Moreover, we note that the trial court conducted a Rule 403 balancing test at trial. The trial court stated that it found the extraneous offense evidence "certainly will be prejudicial, but I do find that the probative value outweighs the prejudicial nature." The trial court additionally noted the similarity of the extraneous offense and the strength of the evidence in light of Appellant's conviction for the extraneous offense. The trial court also informed the parties that it would limit the evidence of

the extraneous offense because of its concern for impressing the jury in an improper way. The trial court further noted that the introduction of the evidence would not take an inordinate amount of time for the State to develop. Lastly, the trial court addressed the State's need for the evidence to show intent.

Rule 403 favors admission of relevant evidence and carries a presumption that relevant evidence will be more probative than prejudicial. *Hayes v. State*, 85 S.W.3d 809, 815 (Tex. Crim. App. 2002); *Render v. State*, 347 S.W.3d 905, 921 (Tex. App.—Eastland 2011, pet. ref'd). Evidence is unfairly prejudicial when it has the undue tendency to suggest an improper basis for reaching a decision. *Reese v. State*, 33 S.W.3d 238, 240 (Tex. Crim. App. 2000); *Render*, 347 S.W.3d at 921. In reviewing a trial court's determination under Rule 403, a reviewing court is to reverse the trial court's judgment "rarely and only after a clear abuse of discretion." *Mozon v. State*, 991 S.W.2d 841, 847 (Tex. Crim. App. 1999) (quoting *Montgomery v. State*, 810 S.W.2d 372, 392 (Tex. Crim. App. 1991)). We conclude that the trial court did not abuse its discretion in determining that the probative value of the evidence was not substantially outweighed by its prejudicial effect under the relevant factors. We overrule Appellant's third issue.

This Court's Ruling

We affirm the judgment of the trial court.

JOHN M. BAILEY
JUSTICE

October 12, 2017

Do not publish. *See* TEX. R. APP. P. 47.2(b).

Panel consists of: Wright, C.J.,
Willson, J., and Bailey, J.