

AFFIRMED as Modified; Opinion Filed June 2, 2016.



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-15-00993-CR

No. 05-15-00994-CR

**RASHAD LANG, Appellant
V.
THE STATE OF TEXAS, Appellee**

**On Appeal from the 292nd Judicial District Court
Dallas County, Texas
Trial Court Cause Nos. F-1471293-V & F-1500087-V**

MEMORANDUM OPINION

Before Justices Myers, Stoddart, and Whitehill
Opinion by Justice Stoddart

Rashad Lang was indicted for robbery and aggravated assault with a deadly weapon. Pursuant to a plea bargain agreement, he pleaded guilty to robbery and aggravated assault causing serious bodily injury in exchange for deferred adjudication community supervision. The State filed motions to revoke his community supervision and adjudicate guilt. Lang pleaded true to the allegations in the State's motions. The trial court revoked Lang's community supervision and found him guilty of both offenses. Following a hearing, the trial court sentenced Lang to five years' imprisonment in each case. In two issues, Lang argues the trial court erred by admitting hearsay testimony and asserts we should modify the judgment. We modify the judgment and affirm as modified.

The complainant was held for several hours in an apartment. During that time, Lang and two other people burned and beat her, scalded her with hot water, and sexually assaulted her. Detective Todd Haecker interviewed the complainant and reviewed her medical records. The detective and Lang both testified at Lang's trial.

In his first issue, Lang argues the trial court erred by admitting hearsay testimony. At trial, the detective testified:

[The complainant] was inside of [an] apartment . . . While she was inside of the apartment she was burned with a knife. She was tied up, had hot water poured on her, was kicked, beaten, locked in a closet. And ultimately what led to the sex - - the sex act was she was being beaten with a broom stick, and part of the broom handle went into her anus.

Lang objected that the detective's testimony was hearsay. The court overruled the objection. The detective later testified the victim was held in the apartment for "several hours." Lang again objected and the objection was overruled. On appeal, Lang contends the detective's statements are hearsay because they were offered to show "what offense Lang committed." He does not, however, argue the trial court's error in admitting the testimony over his objection harmed him.

We review the trial court's decision to admit or exclude evidence for an abuse of discretion. *Martinez v. State*, 327 S.W.3d 727, 736 (Tex. Crim. App. 2010). The trial court abuses its discretion when its ruling is arbitrary, unreasonable, or without reference to any guiding rules or principles. *Lyles v. State*, 850 S.W.2d 497, 502 (Tex. Crim. App. 1993). The trial court does not abuse its discretion unless its determination lies outside the zone of reasonable disagreement. *Martinez*, 327 S.W.3d at 736. A trial court's admission of inadmissible hearsay constitutes nonconstitutional error, and it will be considered harmless if we, after examining the record as a whole, are reasonably assured the error did not influence the jury verdict or had but a slight effect. See TEX. R. APP. P. 44.2(b); *Garcia v. State*, 126 S.W.3d 921, 927-28 (Tex. Crim. App. 2004). The improper admission of evidence is not reversible error if

the same or similar evidence is admitted without objection at another point in the trial. *See* TEX. R. APP. P. 44.2(b); *Mayes v. State*, 816 S.W.2d 79, 88 (Tex. Crim. App. 1991).

If we assume that the trial court abused its discretion by overruling Lang's objections to the detective's testimony, we conclude any error was harmless because the same or similar evidence was admitted without objection. The detective testified without objection that the complainant had burn marks on her body, "flesh that was torn from her body, as if it was something that was heated up, placed on her and pulled off," injuries to her anal area, and some bruising and swelling. The complainant told the detective that Lang was one of the people responsible for her injuries.

Lang also testified about the events surrounding the complainant's injuries. He said that he woke up "to them bringing her out tied up" and "tackling her" before taking her to the back room to "burn her and everything." He testified that "everything" included "burn, beat, pour water on her, held her against her rights." And because the other two people involved wanted to hold her for "hours and hours" before letting her go, he "told her to go on and let them hit her 38 times" in exchange for her being released more quickly.

Because the same or similar evidence was admitted without objection, we conclude Lang has failed to show reversible error. *See* TEX. R. APP. P. 44.2(b); *Mayes*, 816 S.W.2d at 88. We overrule Lang's first issue.

C. MODIFICATION OF JUDGMENT

In his second issue, Lang asserts the record clearly shows the trial court's judgment in trial court cause number F15-00087-V should be modified to delete language regarding a deadly weapon finding on the second page of the judgment. When the record provides the necessary information to correct inaccuracies in a judgment, this Court has the authority to correct the judgment of the court below to make the record speak the truth. TEX. R. APP. P. 43.2(b); *Bigley*

v. State, 865 S.W.2d 26, 27-28 (Tex. Crim. App. 1993); *Asberry v. State*, 813 S.W.2d 526, 529-30 (Tex. App.—Dallas 1991, pet. ref'd).

The State charged Lang with robbery and aggravated assault with a deadly weapon. Under the plea bargain, the State agreed there would be no deadly weapon finding in the order placing Lang on deferred adjudication community supervision. At trial, the trial court stated:

The record should reflect that the Court at that time struck the part where it says “The Court finds the defendant used or exhibited a deadly weapon.” So this was aggravated assault, but it’s not with a deadly weapon.

However, the trial court’s judgment showed the offense for which Lang was convicted as “aggravated assault with a deadly weapon/knife.” The second page of the judgment includes a special finding: “The Court FINDS Defendant used or exhibited a deadly weapon, namely, KNIFE, during the commission of a felony offense or during immediate flight therefrom or was a party to the offense and knew that a deadly weapon would be used or exhibited.”

Lang filed a motion to correct the judgment on the ground that his plea bargain included an agreement to exclude a deadly weapon finding. The trial court issued a nunc pro tunc order stating the “judgment is incorrect” and the judgment “is hereby amended to read that the offense for which defendant [sic] convicted to be: aggravated assault causing serious bodily injury.” The trial court’s nunc pro tunc order did not address the special finding on the second page of the judgment.

The record shows Lang was convicted of aggravated assault causing serious bodily injury and the trial court did not make a deadly weapon finding. Rather, the trial court affirmatively struck the deadly weapon finding from Lang’s judicial confession when it accepted the plea, and when reading the charges at trial, the trial court stated the record should reflect that it had previously struck the deadly weapon finding. Further, on the face of the judgment and consistent with the nunc pro tunc order, the section titled “Findings on Deadly Weapon” reads “N/A.”

We conclude the record clearly shows that the trial court did not make an express deadly weapon finding and failure to delete the deadly weapon finding on the second page of the judgment is in error. We sustain Lang's second issue.

We delete the special finding on the second page of the judgment in trial court cause number F15-00087-V that states: "The Court FINDS Defendant used or exhibited a deadly weapon, namely, KNIFE, during the commission of a felony offense or during immediate flight therefrom or was a party to the offense and knew that a deadly weapon would be used or exhibited. Tex. Code Crim. Proc. art. 42.12 §3g[.]" As modified, we affirm the trial court's judgment in trial court cause number F15-00087-V.

We affirm the trial court's judgment in trial court cause number F14-71293-V.

/Craig Stoddart/

CRAIG STODDART
JUSTICE

Do Not Publish
TEX. R. APP. P. 47.2(b)
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**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

RASHAD LANG, Appellant

No. 05-15-00993-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 292nd Judicial District
Court, Dallas County, Texas

Trial Court Cause No. F-1471293-V.

Opinion delivered by Justice Stoddart.

Justices Myers and Whitehill participating.

Based on the Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

Judgment entered this 2nd day of June, 2016.



**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

RASHAD LANG, Appellant

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On Appeal from the 292nd Judicial District
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Trial Court Cause No. F-1500087-V.

Opinion delivered by Justice Stoddart.

Justices Myers and Whitehill participating.

Based on the Court's opinion of this date, the judgment of the trial court is **MODIFIED** as follows:

We delete the special finding on the second page of the judgment that states: "The Court FINDS Defendant used or exhibited a deadly weapon, namely, KNIFE, during the commission of a felony offense or during immediate flight therefrom or was a party to the offense and knew that a deadly weapon would be used or exhibited. Tex. Code Crim. Proc. art. 42.12 §3g[.]"

As **REFORMED**, the judgment is **AFFIRMED**.

Judgment entered this 2nd day of June, 2016.