

Affirmed and Opinion Filed June 20, 2018



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

Nos. 05-16-01520-CR

05-16-01521-CR

**QIAN HOKASHI-MECHALITH, Appellant
V.
THE STATE OF TEXAS, Appellee**

**On Appeal from the 296th Judicial District Court
Collin County, Texas
Trial Court Cause Nos. 296-81904-2016 & 296-81905-2016**

**MEMORANDUM OPINION
Before Justices Bridges, Brown, and Boatright
Opinion by Justice Bridges**

A jury convicted appellant Qian Hokashi-Mechalith of one count of aggravated sexual assault of a child and fourteen counts of sexual assault of a child. The jury assessed punishment a twenty-three years' confinement for aggravated sexual assault of a child, four years' confinement for one count of sexual assault of a child, two years' confinement for one count of sexual assault of a child, three years' confinement for two counts of sexual assault of a child, and six years' confinement on the remaining ten counts of sexual assault of a child. The trial court ordered the sentences to run concurrently. In a single issue, appellant argues the trial court erred by denying his motion to suppress and allowing three documents into evidence in violation of Texas Code of Criminal Procedure article 18.02(a)(10). *See* TEX. CODE CRIM. PROC. ANN. art. 18.02(a)(10) (West Supp. 2017). We affirm.

Background

Complainant placed an ad on Craig's List seeking a polyamorous relationship. At the time, she was sixteen-years-old, but her ad indicated she was eighteen-years-old. Appellant and his girlfriend, Rebecca Espericueta, responded to the ad. The three began communicating via text messages and eventually met in person. Complainant began spending time at their apartment, and her involvement with appellant turned sexual. She often spent three to four nights in a row at their apartment. To make things more permanent, the three discussed plans for complainant to move in with them. She began giving large portions of her paycheck to appellant to further this goal.

Although the relationship never turned polyamorous, complainant expressed to appellant her interest in BDSM, as she was a "submissive" and wanted him to be the "dominant." Complainant told appellant about a movie in which a couple entered into a contract defining behavior between a "submissive" and "dominant." Based on their conversation, appellant typed three documents titled, "House Rules," "Romance & Sex Rules," and "Do's and Don'ts List." Both women signed them, and Espericueta said they were posted on the refrigerator.

Appellant and complainant later got into an argument about money. When appellant refused to return her money, she went to the police and reported that appellant stole her money. Through questioning, she also revealed her sexual relationship with appellant. Complainant gave a forensic interview in which she explained in detail her sexual relationship with appellant.

An arrest warrant was issued for appellant and a search warrant was issued for his apartment. During the search, officers found the "House Rules," "Romance & Sex Rules," and "Do's and Don'ts List" inside appellant's closet.

Appellant filed a motion to suppress arguing the three documents seized during the search were personal writings and therefore fell within an exception to article 18.02(a)(10) of the code of criminal procedure. The trial court granted a motion in limine and ordered the parties not to refer

to the documents during trial without first approaching the bench. During Espericueta's testimony, the trial court held a hearing outside the jury's presence to consider whether the documents should be admitted. The trial court denied the motion to suppress, overruled appellant's objections, and admitted the documents.

The jury convicted appellant of aggravated sexual assault of a child and fourteen counts of sexual assault of a child. This appeal followed.

Discussion

In a single issue, appellant argues the trial court erred by denying his motion to suppress and admitting into evidence the three documents titled, "House Rules," "Romance & Sex Rules," and "Do's and Don'ts List" because they were his personal writings and could not be seized pursuant to article 18.02(a)(10) of the code of criminal procedure. The State responds the persona writings exception does not apply because the documents were intended to be published to a third party, which negated the exception in article 18.02(a)(10). Alternatively, the State argues the documents were properly seized pursuant to article 18.02(a)(9) as implements or instruments used in the commission of a crime.

We review a trial court's ruling on a motion to suppress under a bifurcated standard of review. *Valtierra v. State*, 310 S.W.3d 442, 447 (Tex. Crim. App. 2010). First, we afford almost total deference to a trial judge's determination of historical facts. *Id.* The trial judge is the sole trier of fact and judge of the credibility of the witnesses and the weight to be given their testimony. *Id.* He is entitled to believe or disbelieve all or part of the witness's testimony—even if that testimony is uncontroverted—because he has the opportunity to observe the witness's demeanor and appearance. *Id.* When findings of fact are not entered, we "must view the evidence 'in the light most favorable to the trial court's ruling' and 'assume the trial court made implicit findings of fact that support its ruling as long as those findings are supported by the record.'" *Id.* We

review a trial court's application of the law of search and seizure to the facts de novo. *Id.* We will sustain the trial court's ruling if that ruling is "reasonably supported by the record and is correct on any theory of law applicable to the case." *Id.* at 448.

Article 18.02 of the code of criminal procedure provides that a search warrant may be issued to search for and seize "property or items, *except the personal writings by the accused*, constituting evidence of an offense or constituting evidence tending to show that a particular person committed an offense." TEX. CODE CRIM. PROC. ANN. art. 18.02(a)(10) (emphasis added). The personal writings exception was included to protect persons from searches designated to find written evidence by which a person might incriminate himself. *See Cavazos v. State*, No. 05-05-01352-CR, 2006 WL 3042130, at *10 (Tex. App.—Dallas Oct. 27, 2006, pet. ref'd) (not designated for publication) (citing *Porath v. State*, 148 S.W.3d 402, 409 (Tex. App.—Houston [14th Dist.] 2004, no pet.)).

Personal writings refer to writings like diaries, memos, or journals that were not intended by the writer to be published to third parties. *See Mullican v. State*, 157 S.W.3d 870, 873 (Tex. App.—Fort Worth 2005, pet. ref'd). It is the appellant's intent that is important to our inquiry. *Cavazos*, 2006 WL 3042130, at *10 (concluding letters in stamped, sealed envelope were intended to be mailed to a third party). Further, whether the document is easily accessible to others is a factor in determining whether it is a personal writing. *See Langley v. State*, No. 03-08-00722-CR, 2010 WL 1632700, at *2 (Tex. App.—Austin Apr. 23, 2010, pet. ref'd) (mem. op., not designated for publication) (pact written between father and daughter was not personal writing because, among other things, it was found in kitchen among other papers easily accessible to son).

Here, Espericueta testified appellant gave her the documents, she signed them, and they were posted on the refrigerator. Although the signed copies were not the ones admitted into evidence, she testified she recognized the ones presented to her at trial, and they were fair and

accurate copies. By signing the documents and posting them on the refrigerator, the documents were clearly published and intended for third parties. Additionally, the contents of the documents indicate appellant's intent to publish them for others rather than keeping them private. For example, the "House Rules" stated, "You don't argue with the Man of the House. Talk, Discuss, Debate, but NEVER argue," and "If HERO is still up when you have to get up, you can not sleep till 30min before leaving." It is undisputed Hero referred to appellant. The "Romance & Sex Rules" referred to what "You" must do for the "Dominant." For example, "You must cook your Dominant a romantic dinner a minimum of once a month." Complainant testified appellant was considered the "Dominant" in the relationship. Lastly, the "Do's and Don't's List" included rules such as, "Don't Keep Secrets from ME," and "Be transparent with ME." Appellant admitted "every single word" in the "Do's and Don't's List" was for Espericueta.

Appellant admitted he typed the documents, but denied he made complainant and Espericueta sign them. In his brief, he concedes the personal writings exception would not apply had the State offered into evidence the signed copies. Thus, his main complaint appears to be that unsigned copies were admitted into evidence and that complainant was unsure if the documents were the same.

Appellant's arguments are misplaced. First, Espericueta confirmed the unsigned documents were the same ones posted on the refrigerator. She also saw complainant's copies of the documents. To the extent complainant was unsure if the documents were the same as the ones she signed, any conflict in testimony between the two witnesses must be resolved in favor of the trial court's ruling. See *Valtierra*, 310 S.W.3d at 447. Further, it is appellant's intent that is important to our inquiry. *Cavazos*, 2006 WL 3042130, at *10. Therefore, even if the unsigned documents differed from complainant's signed documents, they were still intended for a third party. This is similar to *Cavazos*, in which we concluded a stamped, sealed envelope was not a

personal writing. *Id.* “The fact that appellant has not actually placed the letters with the postal service is, in our view, immaterial” *Id.* Thus, the fact that perhaps complainant had not seen the exact copy presented to her at trial is immaterial because it is only the intent to publish that is necessary.

The location of the documents also negates appellant’s contention that they were personal writings. During execution of the search warrant, an officer found the documents in the closet where complainant slept. Thus, the documents were readily accessible to her. *See Langley*, 2010 WL 1632700, at *2.

Because appellant shared the three documents with complainant and Espericueta, the personal writings exception in article 18.02(a)(10) does not apply. In light of this conclusion, we need not address the State’s alternative argument under article 18.02(a)(9). TEX. R. APP. P. 47.1. Accordingly, the trial court did not err by denying appellant’s motion to suppress. We overrule his sole issue.

Conclusion

The judgment of the trial court is affirmed.

/David L. Bridges/
DAVID L. BRIDGES
JUSTICE

Do Not Publish
TEX. R. APP. P. 47
161520F.U05



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

JUDGMENT

QIAN HOKASHI-MECHALITH,
Appellant

No. 05-16-01520-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 296th Judicial District
Court, Collin County, Texas
Trial Court Cause No. 296-81904-2016.
Opinion delivered by Justice Bridges.
Justices Brown and Boatright participating.

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

Judgment entered June 20, 2018.



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

JUDGMENT

QIAN HOKASHI-MECHALITH,
Appellant

No. 05-16-01521-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 296th Judicial District
Court, Collin County, Texas
Trial Court Cause No. 296-81905-2016.
Opinion delivered by Justice Bridges.
Justices Brown and Boatright participating.

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

Judgment entered June 20, 2018.