Opinion issued February 9, 2012.

In The

Court of Appeals

For The

First District of Texas

NO. 01-10-00869-CR

LARRY E. MOLAND, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 185th District Court
Harris County, Texas
Trial Court Case No. 1241429

MEMORANDUM OPINION

Larry E. Moland was charged by indictment with capital murder arising out of the robbery and shooting of Tekayes Stewart. A jury found Moland guilty of capital murder and the court sentenced him to life in prison without the possibility

of parole. *See* TEX. PENAL CODE ANN. § 19.03(a)(2) (West 2011). On appeal, Moland argues that the trial court erred by excluding witness testimony and by sustaining an objection made by the State during Moland's closing argument, that the punishment assessed was cruel and unusual under both federal and Texas law, and that the statute under which he was sentenced violates the separation of powers doctrine. We affirm.

Background

On October 4, 2009, Stewart, a nineteen-year-old African American male, asked his friend Brent Woods to drive him to purchase firearms, including two AK-47s, from Moland. The gun deal previously had been arranged by Alejandro Rios and Mark Cornman, who met with Moland a few days before the shooting and set up the transaction. On the day of the shooting, Stewart, Woods, and Rios met Cornman and two other men, including Georgy Bikov, in a Wingstop parking lot. Cornman directed Stewart to follow Bikov's car to a nearby apartment complex. When the men arrived at the complex, they waited until Cornman received a call from Moland before Stewart and Cornman walked to an apartment that Moland had once occupied. Woods and Rios remained in the car.

According to Cornman, when he and Stewart arrived at the apartment, Moland was already waiting inside. After Stewart entered the apartment and locked the door behind him, Moland pulled out a gun, showed it to Stewart, and

then used the gun to hit Stewart in the face. Stewart fell backwards and Moland began to shoot Stewart. Cornman testified that he ran from the apartment complex to Bikov's house and waited outside until Bikov arrived. Cornman called Rios and repeatedly stated "he got shot" but did not provide any additional details.

After Cornman's phone call to Rios, Rios and Woods walked to the apartment and saw a group of people standing outside. Woods testified that the bystanders said that they had heard gunshots and that there was a boy wearing a hat in the kitchen. Woods and Cornman went into the apartment and found Stewart, suffering from multiple gunshot wounds and lying on the floor of the kitchen with his pants pulled down. Rios, who was in possession of illegal drugs at the time, fled to the parking lot. According to Rios, when he reached the parking lot he saw both Bikov and Cornman inside Bikov's car. Rios testified that Cornman looked scared and that either during their meeting in the parking lot or later on the phone, Cornman told him that a large African-American man with thick braids started beating Stewart outside of the apartment, and that Cornman heard gunshots as he ran from the apartment. Rios testified that when he spoke to Cornman later in the day Cornman said that he had not seen the shooter's face.

Hector Cruz testified that he was smoking marihuana in the apartment across the hall at the time of the shooting. Cruz testified that after he and his friends heard the shots, they went into the apartment and found Stewart. Cruz testified

that Stewart's pants were pulled low when Cruz found him and that Cruz did not touch the body. Although Woods testified that Stewart had over $1,000.00 in his pocket earlier in the day, and Rios testified that he had seen Stewart count a large amount of money and put it in his pocket before the meeting with Moland, no money was found on Stewart's body.

A couple of weeks after the shooting, the police questioned Cornman. Cornman told the police the same story that he initially told Rios: that Stewart had been shot by a 300-pound African-American man with braids, a description that, according to Rios, did not match Moland's appearance. Cornman later identified Moland in a photograph line-up and wrote "the one who shot the guy" next to Moland's picture. At trial, Cornman testified that he initially lied about the appearance of the shooter because Moland had called him after the shooting and threatened to kill Cornman if the shooting was traced back to Moland.

Moland was arrested and charged with capital murder for the death of Stewart in the course of a robbery.

Exclusion of Bystander's Statements

Moland argues that the trial court erred by excluding as hearsay the testimony of a witness, Twauna Collier, who would have testified about statements made to her at the scene by a deaf bystander, which were simultaneously translated from sign language to English by the bystander's young nephew. Citing *Saavedra*

v. State, 297 S.W.3d 342 (Tex. Crim. App. 2009), Moland asserts that the bystander's statements were admissible as an excited utterance or present sense impression and that the translation by the bystander's nephew did not add a layer of hearsay because the bystander authorized the boy to speak for her or adopted him as her agent for purposes of the translation. Moland also claims the exclusion of this testimony violated his Sixth Amendment right to present a complete defense. We address these issues in turn.

A. Were the bystander's translated statements inadmissible hearsay?

1. Standard of review

We review a trial court's decision to admit or exclude evidence under an abuse of discretion standard. *Martinez v. State*, 327 S.W.3d 727, 736 (Tex. Crim. App. 2010), *cert. denied*, 131 S. Ct. 2966 (2011); *Saavedra*, 297 S.W.3d at 349; *Zuliani v. State*, 97 S.W.3d 589, 595 (Tex. Crim. App. 2003). A trial court abuses its discretion in this regard if its determination "lies outside the zone of reasonable disagreement." *Martinez*, 327 S.W.3d at 736.

2. Applicable law

Hearsay is an out of court statement offered to prove the truth of the matter asserted. TEX. R. EVID. 801. Hearsay statements are not admissible unless they fall under a recognized exception to the hearsay rule. TEX. R. EVID. 802, 803. To

be properly admissible, each level of hearsay must fall under an exception. *See Crane v. State*, 786 S.W.2d 338, 353–54 (Tex. Crim. App. 1990).

In the context of translations, the Court of Criminal Appeals has held that an interpreter's translation does not add a layer of hearsay if the interpreter is acting as a "language conduit," translating the statement of one who has authorized him to translate or adopted the interpreter as his agent. *Saavedra*, 297 S.W.3d at 346. To determine whether the interpreter was acting as an agent, courts consider the following four factors: (1) who supplied the interpreter, (2) whether the interpreter had a motive to mislead or distort, (3) the qualifications and language skills of the interpreter, and (4) whether actions taken subsequent to the translated statement were consistent with the statement. *Id.* at 348 (citing *United States v. Nazemian*, 948 F.2d 522, 527 (9th Cir. 1991)). As the Court of Criminal Appeals noted in *Saavedra*, these four factors go not only to the question of whether the interpreter was acting as an agent and authorized to speak, but also to "the ultimate reliability of the proffered evidence—always a core consideration in fashioning any exception to the general rule against admitting hearsay evidence over objection." *Id*. at 349. No one factor is either necessary or sufficient to establish an interpreter acted as a language conduit; rather, the factors are related and must be considered together. *See Saavedra v. State*, No. 05-06-01450-CR, 2010 WL 2028111, at *3–4 (Tex. App.—Dallas May 24, 2010, no pet.) (mem. op., not designated for publication)

(citing *Saavedra*, 297 S.W.3d at 349)). Finally, the proponent of the evidence bears the burden of demonstrating to the satisfaction of the trial court that, after taking these factors into account, the out-of-court translation is admissible. *Saavedra*, 297 S.W.3d at 349.

3. Analysis

Collier lived in the apartment complex where the shooting occurred. She testified that, around the time of the shooting, she saw three men, including Moland, run by her apartment. She also saw a group of men load a two-foot long, black bag into a truck a few hours after the shooting. Shortly after seeing the men with the black bag, while standing on a staircase near the crime scene, Collier was approached by woman who looked upset and whom Collier believed to be deaf. According to Collier, the woman and her nephew, whom Collier estimated was twelve years old, were communicating through sign language. Collier testified that the woman pointed to the same group of men that Collier earlier had seen with the black bag and said, audibly, "that guy." Collier testified that the group to which the woman pointed was comprised of a few Hispanic men and one African American man, but Moland was not among them.

When Moland's counsel sought to elicit additional statements the woman signed to her nephew, as translated by the nephew into English for Collier, the State objected on hearsay grounds. Moland argued that the woman's statements

were admissible as an excited utterance. The State responded that the nephew's translation created a second layer of inadmissible hearsay. The trial court sustained the objection.

In his bill of exception, Moland established through Collier's testimony outside of the presence of the jury that Collier had seen the deaf woman around the apartment complex before. While she had not seen the boy with the woman before that day, she believed the boy was the nephew of the woman because the boy told her so. Collier then related the deaf woman's statements, as they had been translated to Collier by the boy: she and another lady "was passing by and seen [sic] one of the gentlemen with a gun" and "it was a black guy." According to Collier, the woman also said the Hispanic men that were standing there with the black man "all had something to do with it." Collier testified that it appeared to her that the boy was able to translate from sign language to English, but she also acknowledged that she did not understand sign language and did not know if the nephew was translating accurately.

Moland argued at trial, as he does on appeal, that these excluded translated statements are not hearsay. Specifically, Moland contends that the first layer of hearsay—the woman's statements to her nephew, which she made in sign language—are admissible under the excited utterance exception to the hearsay

rule.[1] Moland asserts, with respect to the nephew's translation, that it is not hearsay because the woman adopted her nephew as her interpreter or authorized her nephew to speak for her. *See Saavedra*, 297 S.W.3d at 348. Moland argues that three of the four *Saavedra* factors weigh in favor of admissibility and that the trial court abused its discretion in excluding the translated statements. We thus turn to the *Saavedra* factors.

i. Who supplied the interpreter?

The record does not contain any evidence suggesting that the nephew who translated the woman's statements to Collier was provided by either party. There is no indication that the nephew or the woman knew or had any relationship with Moland or the State, much less that they were communicating with Collier at the behest of either of them.

While Moland contends that this factor weighs in favor of admissibility because the woman "supplied" her nephew as her interpreter, this court previously has found that a relative of a witness who happens to be on location and serves as an interpreter is not supplied by either party for purposes of this four-factor analysis. *Driver v. State*, No. 01-07-00386-CR, 2009 WL 276539, at *6 (Tex. App.—Houston [1st Dist.] Feb. 5, 2009, pet. ref'd) (mem. op., not designated for publication) (finding relative of non-English-speaking wife of complainant who

[1] The State does not dispute this contention on appeal.

was at complainant's wife's home at time of police interview and translated interview was not supplied by either party); *see also Cassidy v. State*, 149 S.W.3d 712, 715 (Tex. App.—Austin 2004, pet. ref'd) (interpreter not provided by either party where he was coworker visiting accident victim when police arrived for interview). Accordingly, we conclude this factor is neutral, weighing neither in favor of nor against admissibility.

ii. Did the interpreter have any motive to mislead or distort?

We agree with Moland's contention, which the State does not dispute, that nothing in the record suggests that the boy had a motive to mislead or distort his aunt's statements. Nothing in the record shows that the nephew was motivated to provide anything but an accurate translation in English to Collier. Accordingly, we conclude this factor weighs in favor of admitting the testimony.

iii. What are the interpreter's qualifications and language skills?

There is scant evidence regarding the boy's language skills or qualifications as an interpreter. Collier testified that it appeared to her that the woman and her nephew were communicating in sign language. But she also stated that she did not know sign language and had no idea if the nephew was translating accurately. There is no other evidence in the record regarding the boy's qualifications or language skills. The trial court was concerned that this undermined the reliability of the translation. We agree with the trial court that this factor weighs against

admissibility. *See Saavedra*, 2010 WL 2028111, at *3–4 (although translator, a records clerk in the police department, was on approved list of department translators, third factor weighed against admissibility because no specific details on background of translator or requirements for placement on approved list were offered); *cf. Diaz v. State*, No. 08-07-00323-CR, 2010 WL 109703, at *8 (Tex. App.—El Paso Jan. 13, 2010, pet. dism'd) (mem. op., not designated for publication) (finding CPS investigator who acted as interpreter sufficiently skilled to translate Spanish to English where record demonstrated that Spanish was her first language and was spoken fluently in her household and she had taken Spanish in grade school, high school and college); *Driver*, 2009 WL 276539, at *6 (record demonstrated family member who served as interpreter had demonstrated her language abilities by translating Cambodian to English in two other police interviews of witness).

iv. Were actions taken subsequent to the translated statement consistent with the statement as translated?

The record contains no evidence of any action taken subsequent to the making of the statements at issue that would reveal any consistency or inconsistency with the translated statements. For example, there is no indication that the woman or the boy made any subsequent statement to the police or any other witness. And neither of them testified at trial. We find this factor neutral, weighing neither for nor against admissibility.

Having examined all four *Saavedra* factors, we find the first and fourth factors are neutral, the second weighs in favor of admissibility and the third weighs against admissibility. On this record we cannot conclude that the trial court abused its discretion in finding that Moland failed to carry his burden to establish the admissibility of the translated statements. *See Saavedra*, 297 S.W.3d at 349 (noting proponent of evidence bears burden to persuade trial court on admissibility); *cf. Saavedra*, 2010 WL 2028111, at *4 (abuse of discretion to admit evidence where the record did not demonstrate declarant authorized police department employee to speak for him or that employee, despite being on the approved list of translation, was reliable translator); *Driver*, 2009 WL 276539, at *6 (no abuse of discretion where trial court admitted translation where first and second factors were neutral, translator demonstrated language abilities in two other police interviews, and witness whose statements were translated was subject to cross-examination at trial and repeated her identification of appellant through interpreter).

B. Did the exclusion of the bystander's statements violate Moland's right to present a complete defense?

Moland contends that even if the translated statements were inadmissible under the Texas Rules of Evidence, they should have been admitted because they were "necessary to establish a defense theory that someone other than [Moland] either shot Stewart, or stole Stewart's money." Relying on *Holmes v. South*

Carolina, Moland contends the exclusion of some of Collier's testimony, including the hearsay statements by the neighbor that she had seen one of the men standing near the crime scene with a gun and that "they all had something to do with it," violated his constitutional right to present a complete defense. *Holmes v. South Carolina*, 547 U.S. 319, 126 S. Ct. 1727 (2006). In *Holmes*, the defendant sought to prove that another man committed the crime of which he was accused. *Holmes*, 547 U.S. at 323. A South Carolina trial court excluded the evidence under the *Gregory* rule, which restricted the admissibility of evidence relating to third-party guilt. *Id.* at 323–24 (citing *State v. Gregory*, 16 S.E.2d 532 (S.C. 1941)). Under the rule, as extended by the court in *Holmes*, evidence was admissible if it raised an inference as to the defendant's own innocence, but was inadmissible if it only "cast bare suspicion upon another" or raised "a conjectural inference as to the commission of the crime by another." *Id.* (citing *Gregory*, 16 S.E.2d at 534). The purpose of the *Gregory* rule was "to focus the trial on the central issues by excluding evidence that has only a very weak logical connection to the central issues." *Id.* at 330. The United States Supreme Court held that the rule as applied by the South Carolina Supreme Court was "arbitrary" because it did not rationally serve the end that the *Gregory* rule was originally designed to further. *Id.* at 331.

In Texas, the improper exclusion of evidence may raise a constitutional violation in two circumstances: (1) when an evidentiary rule categorically and

arbitrarily prohibits the defendant from offering relevant evidence that is vital to his defense, or (2) when a trial court erroneously excludes evidence that is a vital portion of the case and the exclusion effectively precludes the defendant from presenting a defense. *Ray v. State*, 178 S.W.3d 833, 835 (Tex. Crim. App. 2005) (citing *Potier v. State*, 68 S.W.3d 657, 659–62 (Tex. Crim. App. 2002)).

This case is distinguishable from *Holmes* in that the trial court here excluded the statements under the hearsay rule, an established evidentiary rule trial courts may invoke to exclude otherwise relevant and admissible evidence. *See* TEX. R. EVID. 402. Out-of-court statements are subject to four "dangers"—faulty perception, faulty memory, miscommunication, and insincerity. *Williamson v. United States*, 512 U.S. 594, 598, 114 S. Ct. 2431, 2433 (1994); *Walter v. State*, 267 S.W.3d 883, 889 (Tex. Crim. App. 2008). Such statements generally do not have the same safeguards that are present for in-court statements, such as "[T]he oath, the witness' awareness of the gravity of the proceedings, the jury's ability to observe the witness' demeanor, and, most importantly, the right of the opponent to cross-examine . . . ." *Williamson*, 512 U.S. at 598. The hearsay rule serves to minimize these dangers for out-of-court statements. *Id.*

The exclusion of some of the deaf woman's hearsay statements did not amount to a constitutional error. Collier was allowed to testify that a few hours after the shooting, the deaf woman, while under the stress and excitement of the

situation, verbally stated, "that guy" while pointing to a group of five people, none of whom was Moland. Collier also was permitted to testify that a few moments before she spoke with the deaf woman, she had seen the same group of men with a black bag that was large enough to carry AK-47s. Moland thus was allowed to offer exculpatory evidence suggesting the group of men, which did not include Moland, was involved in the crime. We conclude that the trial court's application of the evidentiary rules did not deprive Moland of his Sixth Amendment right to present a complete defense. *See Segundo v. State*, 270 S.W.3d 79, 101–102 (Tex. Crim. App. 2008) (where appellant was allowed to offer testimony of existence of alternate suspects, appellant's constitutional rights were not violated by trial courts exclusion of additional hearsay evidence concerning the same where appellant failed to show excluded statements were relevant or reliable) (citing *Potier v. State*, 68 S.W.3d at 662, 665) (noting that "courts are free to apply evidentiary rules that are not arbitrary and unjustified," and concluding that "the exclusion of a defendant's evidence will be constitutional error only if the evidence forms such a vital portion of the case that exclusion effectively precludes the defendant from presenting a defense"); *see Soffar v. State*, No. AP-75363, 2009 WL 3839012, at *13 (Tex. Crim. App. Nov. 18, 2009) (not designated for publication) (exclusion of hearsay testimony was not violation of right to present complete defense under

Holmes), *cert. denied*, 130 S. Ct. 3507 (2010). We overrule Moland's first point of error.

Closing Argument

In his second point of error, Moland contends that the trial court erred in sustaining the State's objection to his closing argument. Moland argues that trial counsel was attempting to have the jurors "view Cornman's credibility and hence the degree of doubt which they should have, under the rationale which once formed the definition of reasonable doubt" under *Geesa v. State*, 820 S.W.2d 154 (Tex. Crim. App. 1991), *overruled in part on the same grounds by Paulson v. State*, 28 S.W.3d 570 (Tex. Crim. App. 2000). At trial the following argument was offered in closing:

> [Defense Counsel]: . . .Would you trust a guy like that? You knew everything about Mark Cornman that you know about him, would you trust him to do things—
>
> [Prosecutor]: Objection, that's an improper argument.
>
> [The Court]: Sustained. Please rephrase it.
>
> [Defense Counsel]: You know everything about Mark Cornman? Can you trust him? Would you trust him to do stuff in your everyday life?
>
> [Prosecutor]: I'm going to object. It's an improper argument.
>
> [Defense Counsel]: It's not improper, Judge. It's a reasonable deduction from the evidence.
>
> [The Court]: Can you rephrase it rather than the jurors?

Moland's counsel continued his argument as to Cornman's lack of credibility without objection.

The State contends Moland failed to preserve error because the record does not reflect what Moland's counsel would have argued to the jury had the trial court not sustained the State's objection. We agree. "Where the record does not fully demonstrate to the reviewing court what counsel would have argued but for an objection, no demonstration of harmful error is made." *Price v. State*, 870 S.W.2d 205, 209 (Tex. App.—Fort Worth) (appellant waived issue for review where record did not reflect what he would have argued if objection had not been sustained), *aff'd*, 887 S.W.2d 949 (Tex. Crim. App. 1994) (citing *Dean v. State*, 481 S.W.2d 903, 904 (Tex. Crim. App. 1972); *see Robinson v. State*, No. 05-03-01805-CR, 2005 WL 1405735, at *4 (Tex. App.—Dallas June 16, 2005, pet. ref'd) (mem. op., not designated for publication) (appellant's argument that trial court erred in sustaining State's objection during closing not preserved for appeal when appellant did not except to ruling, move for mistrial, or present bill of review) (citing *Ramirez v. State*, 815 S.W.2d 636, 648 (Tex. Crim. App. 1991)). Moland has not preserved this issue for our review. *See Price*, 870 S.W.2d at 209. We overrule Moland's second point of error.

Cruel and Unusual Punishment

In his third and fourth points of error, Moland argues that his mandatory sentence of life in prison without the possibility of parole constitutes cruel and unusual punishment because the sentencing scheme provided no vehicle for the consideration of mitigating evidence. Moland asserts this argument under both the Eighth Amendment of the United States Constitution and Article 1 of the Texas Constitution. *See* U.S. CONST. amend. 8; TEX. CONST. art. I, § 13.

Moland failed preserve his claimed errors for review. Before a party may present a complaint for appellate review, normally the record must show that the complaint was made to the trial court by a timely request, objection, or motion. TEX. R. APP. P. 33.1(a). Moland did not object to the sentence as being cruel and unusual under federal or Texas law following the pronouncement of the sentence, nor did he do so in his motion for new trial. Moland contends that he was not required to make an objection at trial to preserve this issue for review because any objection at trial would have been futile. We disagree. Both this Court and Fourteenth Court of Appeals have held that a cruel and unusual punishment claim is waived if not raised in the trial court. *Benson v. State*, 224 S.W.3d 485, 498 (Tex. App.—Houston [1st Dist.] 2007, no pet.) (appellant waived raise cruel and unusual punishment argument by failing to raise issue at trial); *Wilkerson v. State*, 347 S.W.3d 720, 722 (Tex. App.—Houston [14th Dist.] 2011, pet. ref'd) (same).

Because no specific and timely objections were made, Moland has waived these arguments by raising them for the first time on appeal.

We overrule Moland's third and fourth points of error.

Constitutionality of Section 12.31 (a)(2)

In his fifth point of error, Moland asserts that a mandatory life sentence without the possibility of parole under Texas Penal Code section 12.31(a)(2) violates the separation of powers doctrine under article II of the Texas Constitution. TEX. PENAL CODE ANN. § 12.31(a) (West 2011). That doctrine, as articulated in article II, section 1 of the Texas Constitution, states the following:

> The powers of the Government of the State of Texas shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to wit: Those which are Legislative to one; those which are Executive to another, and those which are Judicial to another; and no person, or collection of persons, being of one of these departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted.

TEX. CONST. art. II, § 1. Specifically, Moland argues that section 12.31(a)(2) shifts power away from the Board of Pardons and Paroles ("Board"), which is an executive agency, and into the hands of the prosecutor, who is an officer of the judiciary. *See* TEX. CONST. art. IV, § 11; TEX. CONST. art. V, § 21; *Meshell v. State*, 739 S.W.2d 246, 253 (Tex. Crim. App. 1987) (holding that county and district attorneys are officers within judicial department).

Moland's argument focuses on the discretionary aspect of sentencing under Texas Penal Code section 12.31. In a capital trial, the prosecutor may elect to seek a punishment in the form of death or, alternatively, a sentence of life without a possibility of parole. TEX. PENAL CODE ANN. § 12.31(a). When the prosecutor elects to seek life without the possibility of parole and a conviction is secured, the mandatory sentence precludes the Board from ever exercising its powers of executive clemency. *See* TEX. GOV'T CODE ANN. § 508.141 (West Supp. 2011). Moland claims that this violates the separation of powers doctrine because the election permits the prosecutor to determine that a capital defendant is not deserving of parole regardless of individual circumstances, a decision that is otherwise left to the Board when the defendant is convicted on a lesser charge. Moland contends that because any objection at trial would have been futile, he has not waived the right to make this argument for the first time on appeal. We disagree.

The Texas Court of Criminal Appeals has held that an appellant may not raise a facial challenge to the constitutionality of a statute for the first time on appeal. *Karenev v. State*, 281 S.W.3d 428, 434 (Tex. Crim. App. 2009). In reaching its holding, the Court overruled its earlier decision in *Rose v. State*, 752 S.W.2d 529 (Tex. Crim. App. 1987) (op. on reh'g), in which it held that a separation of powers challenge to a penal statute could be raised for the first time

on appeal. *Karenev*, 281 S.W.3d at 433–34. In *Karenev*, the Court stated that statutes are presumed to be constitutional until it is determined otherwise and "[t]he State and the trial court should not be required to anticipate that a statute may later be held to be unconstitutional." *Id.* at 434. Here, Moland concedes that he did not assert his constitutional challenge to Texas Penal Code section 12.31 (a)(2) at trial or in his motion for new trial. Accordingly, we hold that Moland has waived his right to appeal this issue. TEX. R. APP. P. 33.1; *Karenev*, 281 S.W.3d at 434; *see Wilkerson*, 347 S.W.3d at 724 (following *Karenev*, appellant cannot, for first time on appeal, raise argument that Texas Penal Code section 12.31 violates separation of powers doctrine); *see also Reyna v. State*, 168 S.W.3d 173, 179–80 (Tex. Crim. App. 2005) (holding that defendant did not preserve Confrontation Clause objection by failing to clearly articulate objection in trial court).

We overrule Moland's fifth issue.

Conclusion

We affirm the judgment of the trial court.

Rebeca Huddle
Justice

Panel consists of Chief Justice Radack and Justices Bland and Huddle.

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