Opinion issued August 13, 2020

In The

Court of Appeals

For The

First District of Texas

NO. 01-19-00326-CR

BLAKE CORNWALL, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 176th District Court
Harris County, Texas
Trial Court Case No. 1578050

MEMORANDUM OPINION

A jury found appellant, Blake Cornwall, guilty of the felony offense of aggravated robbery.[1] After appellant pleaded true to the allegation in an enhancement paragraph that he had been previously convicted of a felony offense,

[1] *See* TEX. PENAL CODE ANN. § 29.03(a)(2), (b).

the trial court assessed punishment at confinement for fifteen years. In two issues, appellant contends that the trial court erred in admitting certain evidence.

We affirm.

Background

Before trial, appellant moved to suppress "[a]ny tangible evidence seized in connection with [his] case," including a certain stolen firearm, which was purportedly "seized without warrant, probable cause or other lawful authority in violation of the rights of [appellant] pursuant to the Fourth, Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, Article I, Section 9, 10 and 19 of the Constitution of the State of Texas." At the hearing on appellant's motion to suppress, appellant's counsel argued:

> [M]y complain[t] as to the legality of the search is that the seizure must be openly made and then [law enforcement officers] have to approach a magistrate or other authority about the property. The applicability of [Texas Code of Criminal Procedure] [a]rticle 18.[1]6 has to be determined in light of a Fourth Amendment analysis.
>
> I'm not doubting the grounds. I am just saying that to -- not violate [appellant's] rights under the Fourth Amendment in Article I, Section 9 of the Texas Constitution, that there [are] certain procedures and that was not handled the way it should have been handled. He had a right to be free from search and seizure only from -- they followed the policies outlined in the [Texas] Code of Criminal Procedure [article] 18.16.[2]

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[2] Texas Code of Criminal Procedure article 18.16, in pertinent part, authorizes "[a]ny person . . . to prevent the consequences of theft by seizing any personal property that has been stolen and bringing it, with the person suspected of committing the theft, if that person can be taken, before a magistrate for examination[.]" TEX. CODE

The trial court denied appellant's motion to suppress and proceeded to trial the same day.

At trial, Harris County Sheriff's Office ("HCSO") Deputy M. Salinas testified that on January 26, 2018, he was on patrol when he was dispatched in response to a call for a welfare check about a firearm in a Chevy Trailblazer sport utility vehicle ("SUV"). After finding the SUV at a storage unit property, Salinas "ran the [license] plate" and found that it was registered to appellant. While walking around the SUV, Salinas saw a firearm on the dashboard, with the barrel of the firearm pointing toward the front of the SUV. Salinas could "read the serial number on the firearm" and so he "ran [it] through the FBI's database" and found that it was stolen. Salinas contacted the "reporting agency," the Montgomery County Sheriff's Office, who confirmed that the firearm was indeed stolen. Because he had found a stolen firearm, Salinas could not "just leave it on the scene," and he contacted the Harris County District Attorney's Office "to see if [law enforcement officers] could . . . ent[er] into the vehicle and recover th[e] gun." Salinas then entered the SUV, which was

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CRIM. PROC. ANN. art. 18.16. The statute requires that there be a "reasonable ground to believe the property is stolen." *Id.*

unlocked, and recovered the stolen firearm. The trial court admitted into evidence photographs of the SUV and the stolen firearm as well as the actual stolen firearm.

Deputy Salinas further testified that law enforcement officers searched the storage unit property for appellant but did not find him. But while at the storage unit property, Salinas heard "a couple of loud bangs" that "sounded like firecrackers or gunshots."

Eric Davidson, the complainant, testified that he is a security officer. On January 26, 2018, he was working as a security officer and sitting out in a vacant parking lot near a strip center "to keep people from going inside the building." Davidson's shift was from midnight until 7:00 a.m. When Davidson arrived, he parked his Dodge Durango SUV in the parking lot and turned his attention to "a lot of police cars, sheriff's cars," and tow trucks that were down the street. Davidson was "wondering what was going on" because it was unusual. As Davidson sat in his SUV, he saw appellant "coming up," and he opened his car door which startled appellant. Appellant "pointed [a] gun" at Davidson and said: "[G]et out of the car," "I need your car," and "I need you to get out." Appellant did not say that he needed help or that he was in danger. Davidson knew that he was "being car-jacked," believed that he was going to die, and feared for his life.

According to Davidson, appellant then demanded to be let inside Davidson's SUV and said: "I am taking you with me." When appellant got in the back seat of

the SUV, a struggle ensued between Davidson and appellant, and Davidson grabbed appellant's firearm as well as his own. Appellant jumped out of the SUV, and Davidson followed. Because Davidson thought that appellant was reaching into his jacket for another weapon and he was afraid, Davidson shot appellant in the upper thigh. Emergency assistance was called.

HCSO Deputy J. Hough testified that on January 26, 2018, while on patrol, he was dispatched in response to a call about a weapons disturbance. When Hough arrived at the scene, he saw Davidson, a security guard, and appellant, who was on the ground. When Hough spoke to appellant, appellant stated that he had attempted to take Davidson's SUV and he had "wanted to take [Davidson's] car" because someone was chasing him or "trying to get him." Appellant said that he had a firearm with him when he tried to take Davidson's SUV. Hough stated that appellant's firearm constituted a deadly weapon and could have caused serious bodily injury or death.

Appellant testified that on the night of January 25, 2018, he drove to his storage unit in his Chevy Trailblazer SUV. While he was at the storage unit property, a group of acquaintances approached him, pointed a firearm at him, and told him to "give [them] everything." After giving them the contents of his pockets, he grabbed a firearm from one of the individuals and ran out of the gate of the storage unit property. He then ran through a parking lot, still holding the firearm, and looked for

a place to hide. After hiding for a while, appellant saw a security officer's SUV and thought that the security officer, Davidson, would help him. According to appellant, Davidson was sleeping, and appellant approached the driver's side of the SUV. Appellant told Davidson that he had been robbed and asked him for help and a ride. Appellant got in the backseat of Davidson's SUV and put his firearm across the backseat. At some point, while outside of Davidson's SUV, appellant took off his jacket and Davidson shot him. According to appellant, Davidson shot him as he was running away. Appellant acknowledged that he had approached Davidson's SUV while carrying a firearm.

Preservation of Error

In his first issue, appellant argues that the trial court erred in admitting certain evidence about the stolen firearm found in his SUV because evidence about the stolen firearm was irrelevant, unfairly prejudicial, and inadmissible extraneous-offense evidence. *See* TEX. R. EVID. 402, 403, 404(b). In his second issue, appellant argues that the trial court erred in admitting Deputy Salinas's testimony that the firearm found in appellant's SUV was stolen and that the Harris County District Attorney's Office instructed Salinas to recover the stolen firearm from the SUV because such testimony was inadmissible hearsay. *See id.* 801(d), 802. Here, we do not reach either of these issues because they are not preserved for

our review. *See Wilson v. State*, 311 S.W.3d 452, 473 (Tex. Crim. App. 2010) (reviewing court should not address merits of unpreserved issue).

To preserve a complaint for appellate review, a defendant must show that he made his complaint to the trial court by a timely and specific request, objection, or motion, and the trial court either ruled on his request, objection, or motion, or refused to rule, and he objected to that refusal. TEX. R. APP. P. 33.1(a); *Griggs v. State*, 213 S.W.3d 923, 927 (Tex. Crim. App. 2007); *Geuder v. State*, 115 S.W.3d 11, 13 (Tex. Crim. App. 2003). The rationale of rule 33.1 is that if an objection is raised before the trial court as soon as error becomes foreseeable, the error may be addressed and possibly corrected or avoided. *Moore v. State*, 295 S.W.3d 329, 333 (Tex. Crim. App. 2009).

While no "hyper-technical or formalistic use of words or phrases" is required to preserve error, the objecting party must be specific enough to "let the trial [court] know what he wants, why he thinks he is entitled to it, and . . . do so clearly enough for the [court] to understand him at a time when [it] is in the proper position to do something about it." *Pena v. State*, 285 S.W.3d 459, 464 (Tex. Crim. App. 2009) (internal quotation omitted). The purpose of requiring a specific objection is twofold: (1) to inform the trial court of the basis of the objection so that it has an opportunity to rule on it and (2) to allow opposing counsel to remedy the error. *Clark v. State*, 365 S.W.3d 333, 339 (Tex. 2012).

Also, the complaint on appeal must comport with the objection made at trial. *Id.* In other words, an objection stating one legal basis may not be used to support a different legal theory on appeal. *See Heidelberg v. State*, 144 S.W.3d 535, 537 (Tex. Crim. App. 2004). In determining whether this requirement has been satisfied, we look to the context of the objection and the shared understanding of the parties at the time. *Lankston v. State*, 827 S.W.2d 907, 908–09, 911 (Tex. Crim. App. 1992).

As stated, appellant argues on appeal that the trial court erred in admitting certain evidence about the stolen firearm found in his SUV because such evidence was irrelevant, unfairly prejudicial, and inadmissible extraneous-offense evidence. *See* TEX. R. EVID. 402, 403, 404(b). Appellant also argues that the trial court erred in admitting certain testimony by Deputy Salinas because it was inadmissible hearsay. *See id.* 801(d), 802. But appellant did not make these objections at trial. Instead, when the State offered the challenged evidence and testimony, appellant renewed his objection "based on [his] motion [to suppress]."

In his motion to suppress and at the hearing on his motion—which was conducted on the same day that the State presented its case-in-chief to the jury and so within the immediate memory of the parties and the trial court—appellant argued that "[a]ny tangible evidence seized in connection with [his] case," including the stolen firearm, was seized in violation of Texas Code of Criminal Procedure article 18.16 and in violation of appellant's rights under "the Fourth, Fifth, Sixth, and

Fourteenth Amendments to the United States Constitution, Article I, Section 9, 10 and 19 of the Constitution of the State of Texas." *See* TEX. CODE CRIM. PROC. ANN. art. 18.16 (providing "[a]ny person has a right to prevent the consequences of theft by seizing any personal property that has been stolen and bringing it, with the person suspected of committing the theft, if that person can be taken, before a magistrate for examination"). The context of appellant's trial objection "based on the motion" did not inform the trial court or the State that appellant found the complained-of evidence and testimony objectionable for the reasons now advanced on appeal. Thus, we hold that appellant has not preserved for appellate review his complaints that the trial court erred in admitting certain evidence at trial.

Conclusion

We affirm the judgment of the trial court.

Julie Countiss
Justice

Panel consists of Justices Goodman, Hightower, and Countiss.

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