Affirmed and Opinion filed February 11, 2010.

In The

Fourteenth Court of Appeals

NO. 14-08-01084-CR

JENNIFER LINDA ZAMORA, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the County Court at Law No. 8
Harris County, Texas
Trial Court Cause No. 1501564

O P I N I O N

A jury found appellant, Jennifer Linda Zamora, guilty of driving while intoxicated. *See* Tex. Penal Code Ann. § 49.04 (Vernon 2009). The trial court assessed punishment at six days' confinement in the Harris County Jail and imposed a fine of $600.00. Appellant raises two issues on appeal: (1) the trial court erred by overruling her objection to the jury charge, and (2) the trial court erred by admitting a DIC-24 Statutory Warning Form into evidence. Finding no error, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

At approximately 3 a.m. on January 9, 2008, Houston Police Department Officer Tony Tomeo witnessed a vehicle driving in two lanes of a three lane roadway. Officer Tomeo testified that the vehicle ran three red lights and was traveling at least twenty miles per hour over the stated speed limit. Officer Tomeo turned on his emergency lights in an attempt to pull the vehicle over. After the officer pursued the vehicle for three blocks, the vehicle pulled over. Officer Tomeo immediately noticed a strong odor of alcohol emanating from the driver's breath. Officer Tomeo also noticed the driver, appellant, had bloodshot eyes, slurred speech, and difficulty with her balance. Appellant told Officer Tomeo that she had consumed three beers between 10 p.m. and 2 a.m. Officer Tomeo performed field sobriety tests and came to the conclusion that appellant was intoxicated. Officer Tomeo arrested appellant for driving while intoxicated. Appellant was transported to the police station, and her car was towed.

At the police station, Houston Police Department Officer Donald Egdorf offered appellant a breath test. Officer Egdorf read appellant the statutory warnings contained on the DIC-24 Form, which explains the consequences of refusing to provide a breath specimen, or taking the breath test and failing it. A copy of the DIC-24 Form was entered into evidence at trial over appellant's objection. Appellant did not consent to or refuse the breath test; instead she threw the DIC-24 Form onto the ground. Officer Egdorf then conducted field sobriety tests on appellant, which were captured on videotape.

Appellant was charged with the offense of driving while intoxicated. The information charging appellant with the offense defined intoxication as follows:

> "namely not having the normal use of h[er] mental *and* physical faculties by reason of the introduction of ALCOHOL into h[er] body" (emphasis added)

A jury found appellant guilty of the charged offense and the trial court assessed punishment at six days' confinement in the county jail and imposed a $600.00 fine. Appellant timely filed this appeal.

DISCUSSION

I. Jury Charge

Appellant contends the trial court erred by overruling her objection to the jury charge. The jury charge defined intoxication as follows:

> "not having the normal use of mental *or* physical faculties by reason of the introduction of alcohol into the body" (emphasis added)

Appellant argues the charge was in error because it charged jurors on the definition of intoxication in the disjunctive (mental *or* physical faculties) while the information defined intoxication in the conjunctive (mental *and* physical faculties). Appellant objected to the charge and requested that the trial court replace the "or" in the charge with "and."

It is well settled law that the jury properly may be charged in the disjunctive while the indictment, or information, may be alleged in the conjunctive. *See Martinez v. State*, 129 S.W.3d 101, 103 (Tex. Crim. App. 2004). For example, courts have upheld challenges to a jury charge where an indictment alleges the offense was committed with the culpable mental states of "intentionally and knowingly" and the court charged the jury to find the defendant guilty if he acted "intentionally or knowingly." *Zanghetti v. State*, 618 S.W.2d 383, 387–88 (Tex. Crim. App. 1981). Furthermore, the loss of physical versus mental ability is not a separate element of the offense. *Bradford v. State*, 230 S.W.3d 719, 723 (Tex. App.—Houston [14th Dist.] 2007, no pet.). Therefore, whether loss of both faculties or just one has been proven does not affect whether the offense itself has been committed. *See Zanghetti*, 618 S.W.2d at 387 (quoting 1 Branch's Ann. P.C., 2nd Ed. Sec. 523). Accordingly, we hold the trial court did not err in refusing appellant's requested instruction. Appellant's first issue is overruled.

II. DIC-24 Form

Appellant contends the trial court erred in overruling appellant's objection to the admission of the DIC-24 Form. At trial, appellant objected to the Form on the basis it contained "extraneous matters from the civil side." On appeal, appellant contends the trial court erred in admitting this evidence because it contains extraneous matters from the civil

side and contains hearsay.

A. Standard of Review

An appellate court reviews a trial court's decision to admit or exclude evidence under an abuse of discretion standard. *Burden v. State*, 55 S.W.3d 608, 615 (Tex. Crim. App. 2001). An abuse of discretion will be found only when the trial judge's decision was so clearly wrong as to lie outside the zone of reasonable disagreement. *Cantu v. State*, 842 S.W.2d 667, 682 (Tex. Crim. App. 1992).

B. Analysis

As to appellant's objection to the DIC-24 Form on the basis of hearsay, we hold appellant failed to preserve this issue for review on appeal. *See Martinez v. State*, 22 S.W.3d 504, 507 (Tex. Crim. App. 2000). To preserve a complaint for appellate review, a party must make timely, specific objections in the trial court. Tex. R. App. P. 33.1. The point of error on appeal must correspond to the objection made at trial. *Turner v. State*, 805 S.W.2d 423, 431 (Tex. Crim. App. 1991). Where an objection does not comport with the complaint on appeal, the appellant does not preserve any error. *Barley v. State*, 906 S.W.2d 27, 37 (Tex. Crim. App. 1995). Appellant objected to the DIC-24 Form on the basis that it contained extraneous material. Appellant did not object on the basis of hearsay. Accordingly, appellant has not preserved a hearsay objection on appeal. *See id.*

We will construe appellant's objection that the DIC-24 Form contains extraneous matters as an objection to the DIC-24 Form's relevancy.[1] Relevant evidence is evidence having any tendency to make the existence of any consequential fact more or less probable than it would be without the evidence. *Layton v. State*, 280 S.W.3d 235, 240 (Tex. Crim. App. 2009). In order to be relevant, there must be a direct or logical connection between the actual evidence and the proposition sought to be proved. *Id.*

A person's refusal of a request by an officer to submit to the taking of a specimen of breath may be introduced into evidence at the person's trial. Tex. Transp. Code Ann. §

[1] In her brief appellant argues the DIC-24 Form contains extraneous matters not relevant to the trial on guilt or innocence.

724.061 (Vernon 1999). Before requesting that a person submit to the taking of a specimen, however, the officer must provide the person with certain information orally and in writing, including that the refusal may be admissible in a subsequent prosecution. Tex. Transp. Code Ann. § 724.015 (Vernon Supp. 2008). The DIC-24 Form contains the information the statute requires to be given in writing. We hold the DIC-24 Form is relevant to prove appellant refused to submit to the taking of a specimen of breath and was provided with the required information before her specimen was requested. Accordingly, the trial court did not err in admitting the DIC-24 Form. Appellant's second issue is overruled.

CONCLUSION

Having overruled both of appellant's issues, we affirm the judgment of the trial court.

/s/ Justice John S. Anderson

Panel consists of Chief Justice Adele Hedges, and Justices Anderson and Christopher.
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