Affirmed and Memorandum Opinion filed March 8, 2011.

In The

Fourteenth Court of Appeals

NO. 14-10-00002-CR

LARRY DARNELL BARRINGER, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 184th District Court
Harris County, Texas
Trial Court Cause No. 1182459

MEMORANDUM OPINION

A jury convicted appellant of aggregate theft by a governmental contractor. On December 14, 2009, the trial court sentenced appellant to confinement for twenty-two years in the Institutional Division of the Texas Department of Criminal Justice. Appellant timely filed a notice of appeal. We affirm.

Appellant is a licensed professional counselor. He was indicted for aggregate theft in excess of $100,000, committed in the years from 2000 to 2004. The State presented evidence appellant fraudulently billed Medicaid approximately $167,000 for services he never performed. Appellant raises two issues on appeal.

In his first issue, appellant claims the trial court improperly allowed inadmissible hearsay regarding appellant's services into evidence. Appellant refers to the following exchange during the testimony of Russell Bliese, a certified fraud specialist working as an investigator with the State of Texas Attorney General's Office, Medicaid Fraud Control Unit:

> [THE STATE]: . . . Did you have the opportunity to meet with an individual by the name of Nell Robertson?
>
> [Russell Bliese]: Yes.
>
> [THE STATE]: And I will show you a photograph that's been previously admitted as State's Exhibit No. 14. Do you recognize who is in this photograph?
>
> [Russell Bliese]: Yes.
>
> [THE STATE]: And who is that person?
>
> [Russell Bliese]: Nell Robertson.
>
> [THE STATE]: And did you have the opportunity to visit with Ms. Nell Robertson?
>
> [Russell Bliese]: Yes.
>
> [THE STATE]: And did she provide you a statement about whether or not she knew Mr. Barringer?
>
> [Russell Bliese]: Yes, she did.
>
> [THE STATE]: And did she identify Mr. Barringer?
>
> [DEFENSE COUNSEL]: Objection, Your Honor. Calls for hearsay and the response calls – is based on hearsay information.
>
> [THE COURT]: You will have to lay a predicate, if this was a photospread or a lineup, so I can see if there is an exception to the hearsay rule.

> [THE STATE]: After you interviewed Ms. Robertson, did you feel it was important to obtain a statement from her?

The witness did not answer the question after the objection was made. The State then asked a different question and no further objection was made. Although appellant complains generally about other alleged hearsay evidence, "the admission of hearsay must be preserved with a timely and specific objection to the evidence." *Moore v. State*, 935 S.W.2d 124, 130 (Tex. Crim. App. 1996) (citing *Turner v. State*, 805 S.W.2d 423, 431 (Tex. Crim. App. 1991). Appellant does not refer this court to any other objections in the record. *See* Tex. R. App. P. 38.1(i). Appellant has not shown his complaint on appeal was made to the trial court. *See* Tex. R. App. P. 33.1(a)(1). Accordingly, nothing is presented for our review. Issue one is overruled.

Appellant's second issue asserts that his rights under the Confrontation Clause were violated by the admission of hearsay evidence regarding individuals the defense was not able to cross-examine. *See* U.S. Const. Amend. VI; and *Crawford v. Washington*, 541 U.S. 36, 68, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004). Appellant asserts that witnesses were allowed to testify at trial about the counseling treatment received by family members and alleges the testimony was hearsay.

The only witness identified in appellant's brief is Manda Denton Lagway. Appellant billed Medicaid for counseling services provided to Lagway and her three children. Appellant claims Lagway's testimony regarding the services provided to her children was hearsay. However, Lagway did not testify to any statement made by her children or appellant. *See* Tex. R. Evid. 801(d) ("'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.") Furthermore, Lagway testified she was present and listened to appellant's counseling sessions with her children. She did not, as appellant

suggests, testify based on what she was told by her children. Lagway's testimony was not hearsay.

Concerning any other witness, as well as Lagway, we note that a party is required to present a timely, specific objection and obtain a ruling by the trial court. *See* Tex. R. App. P. 33.1; *Mendez v. State*, 138 S.W.3d 334, 340-41 (Tex. Crim. App. 2004). "[T]he failure to object in a timely and specific manner during trial forfeits complaints about the admissibility of evidence. This is true even though the error may concern a constitutional right of the defendant." *Saldano v. State*, 70 S.W.3d 873, 889 (Tex. Crim. App. 2002). To preserve error on confrontation clause grounds, the general preservation rule must be followed. *See Paredes v. State*, 129 S.W.3d 530, 535 (Tex. Crim. App. 2004) ("Appellant failed to preserve error on Confrontation Clause grounds at trial").

No objection on confrontation clause grounds was made to Lagway's testimony. Appellant makes no reference to the record where a complaint that his rights under the confrontation clause had been violated was made to the trial court. *See* Tex. R. App. P. 33.1(a)(1) and 38.1(i). An appellate court has no duty to make an independent search of the record to determine whether an assertion of reversible error has merit. *See Cook v. State*, 611 S.W.2d 83, 87 (Tex. Crim. App. [Panel Op.] 1981); and *Pratt v. State*, 907 S.W.2d 38, 47 (Tex. App. – Dallas 1995, writ denied). Appellant has therefore waived this issue. Issue two is overruled.

The judgment of the trial court is affirmed.

/s/ Martha Hill Jamison
Justice

Panel consists of Justices Brown, Boyce, and Jamison.
Do Not Publish — Tex. R. App. P. 47.2(b).