Affirmed and Memorandum Opinion filed February 24, 2011.

In The

Fourteenth Court of Appeals

NO. 14-10-00035-CR

VANESSA CHAMBLISS, A/K/A/ VANESSA WIENECKE, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 54th District Court
McLennan County, Texas
Trial Court Cause No. 2009-811-C2

MEMORANDUM OPINION

Appellant, Vanessa Chambliss, a/k/a/ Vanessa Wienecke, pleaded guilty to aggravated assault with a deadly weapon; a jury assessed punishment at fifteen years' confinement; and the trial court sentenced appellant accordingly. In a single issue, appellant contends the trial court erred in prohibiting her from cross-examining the complainant about a conviction for misdemeanor assault involving dating violence. We affirm.

I. BACKGROUND

The complainant, Karen Williams, had been living at appellant's house for about a month when the assault occurred. Williams was doing so at the request of appellant's brother. According to appellant, Williams was a bad influence on appellant's fourteen-year-old daughter, and appellant was upset that her brother was not finding another living arrangement for Williams. On the day of the assault, appellant's friend, Steve Wilson, was also at appellant's home. According to Williams and Wilson, all three had been in the living room drinking whiskey and listening to music when appellant began striking Williams with a metal pole or bar. At some point, appellant's daughter came into the living room, stopped her mother, and took the metal bar from her. Williams suffered a broken arm and multiple lacerations on her head, face, arms, and legs. After the assault, appellant, her daughter, and Wilson took Williams from the house, put her on the tailgate of Wilson's car, took her to a nearby bowling alley, and left her there. Someone called 911, and Williams was taken to the hospital, where she was treated and released. The injury to her face required seven stitches; and the injuries to her head, twenty-three staples.

Appellant was indicted for aggravated assault (serious bodily injury), with a deadly weapon, on a member of her household. Before jury selection, the state amended the indictment, abandoning the allegations of serious bodily injury and family violence. Appellant pleaded guilty and elected to have a jury assess punishment.

In its case-in-chief, the State called Williams, two Waco Police Department officers, and an H.E.B. manager, who testified about a prior theft involving appellant and her then ten-year-old daughter. The trial court denied appellant's request to cross-examine Williams about a prior conviction for misdemeanor assault against a man with whom she "has or had a dating relationship, by pushing, punching, or scratching him."

Appellant testified in her own behalf and called her father and a neighbor, both of whom testified in favor of placing appellant on probation. Appellant admitted she struck Williams and admitted to leaving Williams at the bowling alley. Appellant, however,

testified Williams was the first aggressor and claimed that (1) she had not used a metal bar, but only a "screw rod," to strike Williams, (2) Williams had declined her offer to take her to the emergency room, and (3) it was Williams's idea to be dropped at the bowling alley.

In rebuttal, the state called Steve Wilson, Olga Wilson, and appellant's daughter. Steve Wilson generally corroborated Williams' version of the assault. Olga Wilson testified about discussing the options of how to deal with getting Williams to move from the house. Appellant's daughter confirmed that State's Exhibit 127, a metal bar, was the weapon she had taken from her mother.

The jury rejected appellant's request for community supervision and assessed punishment at fifteen years' confinement.

II. ANALYSIS

In a single issue, appellant challenges the trial court's denial of her request to cross-examine Williams about her conviction of misdemeanor assault of a man with whom she had a dating relationship. *See* Tex. Fam. Code Ann. §§ 71.004(3), 71.0021 (West 2008); Tex. Penal Code Ann. § 22.01(a)(1) (West Supp. 2009). Appellant contends the evidence was admissible under Rule of Evidence 609(a), which provides:

> For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime shall be admitted if elicited from the witness or established by public record but only if the crime was a felony or involved moral turpitude, regardless of punishment, and the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to a party.

Tex. R. Evid. 609(a).

We review a trial court's decision to limit cross-examination under an abuse-of-discretion standard. *Sansom v. State*, 292 S.W.3d 112, 118 (Tex. App.—Houston [14th Dist.] 2008, pet. ref'd). Similarly, we apply an abuse-of-discretion standard to the trial court's decision to admit or exclude evidence. *Casey v. State*, 215

S.W.3d 870, 879 (Tex. Crim. App. 2007). A trial court abuses its discretion when its decision lies outside the zone of reasonable disagreement. *Id.*

Williams' conviction was for a misdemeanor; therefore, the crime had to be one of moral turpitude for evidence of it to be admissible. *See* Tex. R. Evid. 609(a). "'Moral turpitude' . . . [is] '[t]he quality of a crime involving grave infringement of the moral sentiment of the community as distinguished from statutory mala prohibita.'" *Hardeman v. State*, 868 S.W.2d 404, 405 (Tex. App.—Austin 1993) (quoting BLACK'S LAW DICTIONARY 1008–09 (6th ed. 1990)), *pet. dism'd, improvidently granted*, 891 S.W.2d 960 (Tex. Crim. App. 1995). Assault of a woman has been held to be a crime of moral turpitude. *See, e.g.*, *Lopez v. State*, 990 S.W.2d 770, 778 (Tex. App.—Austin 1999, no pet.). In contrast, "misdemeanor assaultive offenses which do not involve violence against women are not crimes involving moral turpitude." *Patterson v. State*, 783 S.W.2d 268, 271 (Tex. App.—Houston [14th Dist.] 1989, pet. ref'd); *see also Hardeman*, 868 S.W.2d at 405–07 (discussing cases).

Appellant has not cited a case in which a misdemeanor assault against a man was held to be a crime of moral turpitude. We have found none.

Appellant, instead, observes that Williams' crime involved dating violence, a category of family violence. *See* Tex. Fam. Code Ann. § 71.004(3) (listing "dating violence" as included in "family violence"). She then contends that, in light of the policy expressed in Code of Criminal Procedure article 5.01, an assault involving dating violence is a crime of moral turpitude regardless of the gender of the victim.[1] In support, she relies on *Ludwig v. State*, 969 S.W.2d 22 (Tex. App.—Fort Worth 1998, pet. ref'd).

[1] Code of Criminal Procedure Article 5.01 provides:

(a) Family violence is a serious danger and threat to society and its members. Victims of family violence are entitled to the maximum protection from harm or abuse or the threat of harm or abuse as is permitted by law.

In *Ludwig*, the court addressed whether the misdemeanor offense of violating a protective order was a crime of moral turpitude. *See id*. at 28. The protective order violations at issue involved Ludwig's violence to, or threats against, his former wife. *See id.* at 29. The court recognized that a protective order can have many different applications and restrictions, and stated "[w]e . . . hereby adopt a ***narrow rule*** that a conviction for the misdemeanor offense of violation of a protective order will be considered a crime of moral turpitude when the underlying, uncharged offense is one of family violence or the direct threat of family violence." *Id*. (emphasis added).

In explaining its decision, the *Ludwig* court opined, "One of the Legislature's primary tools in the war on family violence is the protective order." *Id.* The court further explained:

> The offenses at issue here are essentially misdemeanor assaults. [Appellant] was once convicted of violating a protective [sic] by committing family violence and twice convicted of violating a protective order by communicating directly with Betina and threatening her in a harassing manner. ***We see no reason why an assault or threatened assault that is characterized and punished by way of a conviction for violation of a protective order should not also be characterized as a crime involving moral turpitude when the underlying act is characterized as such.*** That appellant was not charged separately with assault should not matter.
>
> Our legislature has specifically targeted family violence and is particularly concerned with repeat or habitual offenders. Thus, we believe that a person who has committed family violence and is under a protective order to refrain from the same in the present, and who then commits such violence again, acts in a base, vile, and morally reprehensible manner. This is moral turpitude, and appellant's actions were crimes involving moral turpitude under the narrow framework discussed above.

> (b) In any law enforcement, prosecutorial, or judicial response to allegations of family violence, the responding law enforcement or judicial officers shall protect the victim, without regard to the relationship between the alleged offender and victim.

Tex. Code Crim. Proc. Ann. art. 5.01 (West 2005).

Id. at 30 (emphasis added).

Thus, in classifying some violations of protective orders as misdemeanors involving moral turpitude, the *Ludwig* court crafted a narrow rule, based in part on the function of protective orders. Additionally, the underlying behavior that led to the protective order violations in *Ludwig* consisted of assaults, or threatened assaults, against a woman. *Ludwig* is not persuasive authority for appellant's argument in the present case.

For the preceding reasons, we overrule appellant's sole issue.

CONCLUSION

Having overruled appellant's sole issue, we affirm the judgment.

/s/ John S. Anderson
Justice

Panel consists of Justices Anderson, Frost, and Brown.
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