Affirmed and Memorandum Opinion filed January 21, 2016.

In The

Fourteenth Court of Appeals

NO. 14-14-00680-CR

GUYLANN BARROW, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 300th District Court
Brazoria County, Texas
Trial Court Cause No. 72928

M E M O R A N D U M O P I N I O N

A jury found appellant Guylann Barrow guilty of murder. *See* Tex. Penal Code Ann. § 19.02(b)(1), (b)(2) (Vernon 2011). The jury sentenced appellant to 80 years' imprisonment and assessed a fine of $10,000. Appellant argues on appeal that the trial court erred by: (1) excluding evidence regarding the decedent's cocaine use and an altercation between appellant and the decedent concerning the decedent's cocaine dealer; (2) refusing to grant a mistrial based on

juror misconduct; (3) refusing to grant a mistrial based on a juror's illiteracy; (4) failing to disqualify certain jurors and seat the alternate juror; and (5) admitting testimony based on the interrogation of appellant while he was intoxicated. We affirm.

BACKGROUND

Appellant moved in with his niece, Shlona Barrow, and her common-law husband, Phillip Vega, in late 2013. Over the following months, appellant repeatedly called and texted Shlona to check on her whenever she was not at the house.

Shlona and Vega spent the night at their deer lease on February 21, 2014, to have some time away from appellant. While at the deer lease, appellant again called and texted Shlona numerous times. When Shlona and Vega returned home the next day, they went into appellant's room and Vega told appellant that he needed to move out. The parties migrated outside, at which point an altercation developed between Vega and appellant that ended with Vega pushing appellant to the ground.

After the altercation, Vega and Shlona discovered that Shlona's dog had gone missing during the altercation. Shlona and Vega left to search the neighborhood for the dog, and appellant went back to his bedroom. After finding the dog, Shlona and Vega returned to the house, and Vega went inside to use the restroom. Shlona went inside and spoke with Vega while he was using the restroom, and then walked outside. As Shlona arrived at the porch, she heard a gunshot and rushed back inside to find Vega lying on the floor by the bathroom door. Vega had been shot in the head at close range.

At trial, appellant did not dispute that he shot Vega. Instead, appellant contended that he left his room to go get his beer and use the bathroom — taking his pistol with him because he was afraid of another confrontation with Vega — and that as he walked by the bathroom Vega came out, pinned appellant against the wall, told appellant he was going to kill him, and hit appellant. Appellant contended that he then slipped out from between Vega and the wall, drew his pistol, and shot Vega. Appellant argued that the shooting occurred in self-defense.

The jury found appellant guilty of murder, and this appeal followed.

ANALYSIS

I. Exclusion of Evidence

In his first issue, appellant contends the trial court abused its discretion by excluding evidence of Vega's cocaine use and of a recent dispute between appellant and Vega's cocaine dealer.

We review a trial court's decision to admit or exclude evidence, as well as its decision as to whether the probative value of the evidence was substantially outweighed by the danger of unfair prejudice, for an abuse of discretion. *Martinez v. State*, 327 S.W.3d 727, 736 (Tex. Crim. App. 2010). An abuse of discretion occurs only if the trial court's determination lies outside the zone of reasonable disagreement. *Id.*

Appellant sought to introduce evidence at trial that: (1) appellant had attempted to purchase cocaine directly from Vega's cocaine dealer, angering the dealer and causing the dealer to refuse to sell any more cocaine to Vega; (2) on the day of the shooting, Vega confronted appellant about appellant's interaction with the cocaine dealer; (3) toxicology reports showed that Vega was under the influence of cocaine at the time of his death; and (4) cocaine use can lead to violent

and erratic behavior in some users. Appellant contends on appeal that he sought to introduce the evidence to demonstrate that Vega was the first aggressor and that appellant reasonably perceived a threat from Vega that could only be repelled by deadly force.

In general, evidence of a person's character for violence may not be used to prove that the person acted in conformity with that character trait on a particular occasion. *See* Tex. R. Evid. 404(a), 60 Tex. B.J. 1134 (1998, superseded 2015). However, a defendant may offer reputation or opinion testimony, or evidence of specific prior acts of violence by the victim to show the reasonableness of the defendant's claim of apprehension of danger from the victim. *Ex parte Miller*, 330 S.W.3d 610, 618 (Tex. Crim. App. 2009); *see also* Tex. R. Evid. 404(b), 405(a), 60 Tex. B.J. 1134 (1998, superseded 2015). Such evidence is admissible because the defendant is attempting to prove his own self-defensive state of mind and the reasonableness of that state of mind — not the victim's conformity with those violent tendencies on the occasion in question. *Ex parte Miller*, 330 S.W.3d at 618-19.

Additionally, a defendant may offer evidence of the victim's character trait for violence to demonstrate that the victim was the first aggressor. *Id.* at 619; Tex. R. Evid. 404(a)(2), 60 Tex. B.J. 1134 (1998, superseded 2015). Such evidence must take the form of reputation or opinion testimony. *See* Tex. R. Evid. 405(a), 60 Tex. B.J. 1134 (1998, superseded 2015); *Ex parte Miller*, 330 S.W.3d at 619. The defendant may not offer the victim's specific prior acts of violence to show that the victim was the first aggressor, because such use is an attempt to prove the victim's conduct was in conformity with his violent character. *See Ex parte Miller*, 330 S.W.3d at 620. However, specific prior acts of violence may be admissible if offered for a non-character purpose — such as explaining a victim's hostility

toward the defendant or providing a motive for the victim's attack on the defendant — but their admissibility remains subject to exclusion by the trial court under Rule 403. *See id.* at 620; *see also Mozon v. State*, 991 S.W.2d 841, 846 (Tex. Crim. App. 1999) ("The plain language of Rule 403, however, states all 'relevant evidence' is subject to its general balancing determination. There is no exception for evidence relevant to a defensive theory. Consequently, while evidence may be admissible under Rule 404 the trial court may nevertheless exclude the same evidence if it determines, within its discretion, that the probative value of such evidence is substantially outweighed by its unfair prejudice.") (internal citation omitted).

A. No Preservation

Initially, we determine that appellant did not identify to the trial court any basis of admissibility for the proffered evidence. When, as here, the ruling is one excluding evidence, "it is not enough to tell the judge that the evidence is admissible. The proponent, if he is the losing party on appeal, must have told the judge why the evidence was admissible." *Reyna v. State*, 168 S.W.3d 173, 177 (Tex. Crim. App. 2005); *see also Vinson v. State*, 252 S.W.3d 336, 340 (Tex. Crim. App. 2008) (proponent of evidence bears the burden of establishing the admissibility of the proffered evidence). Accordingly, appellant did not preserve this issue for appeal. *See* Tex. R. App. P. 33.1(a); *see also, e.g.*, *Clark v. State*, No. 03-11-00085-CR, 2014 WL 708910, at *6 (Tex. App.—Austin Feb. 19, 2014, pet. ref'd) (mem. op., not designated for publication) ("Clark did not, however, argue at trial that the complainant's character was an essential element of his defense nor argue the evidence was admissible under Rule 405(b). Accordingly, we conclude he has waived this issue on appeal.").

B. No Abuse of Discretion

Even had appellant preserved the issue, we conclude that the trial court did not abuse its discretion in excluding the evidence. Regarding Vega's cocaine use, appellant admitted during his proffer that he did not know that Vega was under the influence of cocaine on the day of the shooting. Because appellant had no knowledge that Vega was under the influence of cocaine at the time of the shooting, Vega's cocaine use had no bearing in determining whether appellant reasonably perceived a threat from Vega that could be repelled only by deadly force. Likewise, evidence of Vega's violent tendencies during prior uses of cocaine was properly excluded because it sought to prove that Vega was the first aggressor through the use of specific prior acts of violence. *See Ex parte Miller*, 330 S.W.3d at 620.

Evidence that appellant had angered Vega's cocaine dealer and that Vega confronted appellant about appellant's interaction with the dealer was properly excluded as irrelevant because such evidence added nothing to the evidence already admitted that tended to show Vega was the first aggressor or that appellant reasonably feared for his life. The trial court did admit relevant evidence that Vega was acting aggressively towards appellant before the shooting, that Vega used "very harsh, angry words" with appellant, and that Vega threatened to kill appellant several times. The jury also heard testimony that Vega assaulted appellant shortly before the shooting. Therefore, the jury was presented with substantial evidence that animosity existed between appellant and Vega, and that Vega was acting violently towards appellant prior to the shooting. The trial court acted within its discretion in excluding the extraneous evidence of the cocaine dealer interaction because Vega's violent actions leading up to the shooting were largely undisputed and needed no further explanation. *See Smith v. State*, 355

S.W.3d 138, 150-51 (Tex. App.—Houston [1st Dist.] 2011, pet. ref'd) ("If a victim's unambiguous, violent, and aggressive acts need no explanation, then evidence of a victim's extraneous conduct admitted in conjunction with his unambiguous act may not be relevant apart from its tendency to prove the victim's character conformity, which weighs against admissibility. . . . Accordingly, a trial court is within its discretion to exclude prior violent acts if the victim's conduct was plainly aggressive and no explanation is necessary to show that the defendant reasonably feared for his life.").

C. No Harm

Assuming for the sake of argument that the exclusion were error, however, we conclude such error would be harmless. Appellant does not argue that any alleged error entitles him to relief pursuant to Rule 44.2 of the Texas Rules of Appellate Procedure. *See* Tex. R. App. P. 44.2. Instead, appellant argues that the exclusion of the evidence violates his constitutional rights to due process. Appellant contends that he "was deprived of his right to fully confront witnesses against him and could not work effectively with his counsel to present a full defense, in violation of the Sixth and Fourteenth Amendments to the United States Constitution." Appellant provides no argument or citations to the record with respect to this contention, and therefore has not adequately briefed the issue for appeal. *See* Tex. R. App. P. 38.1(i). Regardless, we conclude that the trial court's exclusion of evidence did not deny appellant "a meaningful opportunity to present a complete defense." *See Crane v. Kentucky*, 476 U.S. 683, 690 (1986) (citing *California v. Trombetta*, 467 U.S. 479 (1984)). To the contrary, appellant testified before the jury that Vega trapped him against the wall, told him Vega was going to kill him, and hit him, prompting appellant to shoot Vega. Appellant adequately

presented his argument of self-defense to the jury, and was therefore not deprived of his constitutional rights.

We reach the same conclusion analyzing the alleged error under Rule 44.2. The exclusion of a defendant's evidence is constitutional error only if the evidence forms such a vital portion of the case that exclusion effectively precludes the defendant from presenting a defense. *Potier v. State*, 68 S.W.3d 657, 665 (Tex. Crim. App. 2002). "Erroneous evidentiary rulings rarely rise to the level of denying the fundamental constitutional rights to present a meaningful defense." *Id.* at 663. Because we have concluded above that appellant was not prevented from presenting a meaningful defense, the error is not constitutional and must therefore be disregarded unless it affected appellant's substantial rights. *See* Tex. R. App. P. 44.2(b).

A substantial right is affected if: (1) the error had a substantial and injurious effect or influence in determining the jury's verdict, or (2) leaves one in grave doubt whether it had such an effect. *Sauceda v. State*, 162 S.W.3d 591, 597 (Tex. App.—Houston [14th Dist.] 2005, pet. ref'd). In conducting our analysis, we consider the entire record, including all evidence admitted, the nature of the evidence in favor of the verdict, and the character of the alleged error and how it might be considered in connection with other evidence in the case. *Id.*

That appellant shot Vega is not in dispute. Instead, appellant's defensive theory at trial was self-defense. As discussed previously, appellant testified before the jury that Vega trapped him against the wall, told him Vega was going to kill him, and hit him, prompting appellant to shoot Vega. Appellant adequately presented his argument of self-defense to the jury, and the excluded testimony would, at most, have provided more context to the altercation between appellant and Vega.

Moreover, there was substantial evidence presented that appellant did not act in self-defense. First, Shlona testified that only seconds elapsed between her speaking with appellant and the gunshot, contradicting appellant's story that he was confronted by Vega in the hallway and assaulted by Vega before the shooting. When confronted with contradictions between his version of events and Shlona's, appellant stated that he did not have any reason to contradict Shlona's version and could not explain the discrepancy. Additionally, appellant testified that he told Shlona after the shooting that Vega "was never going to hit [him] again." Finally, appellant sent numerous texts to Shlona's sister in the weeks and hours leading up to the murder casting doubt on his self-defense argument, including:

- "Phillip will be out of the picture soon , but so will Uncle Guy ! I will have to pay for my actions !!" [sic]
- "I am so fucking close to putting a bullet in u know who that its not funny !!" [sic]
- "Sorry ! Things here r not good , I am about too go off in a BIG FUCKING WAY !!!!!" [sic]
- "He just pisses me off so much that I want to put a bullet in his head , but he is not worth the cost of the bullet !!!" [sic]

Considering the entire record, we conclude that the exclusion of evidence regarding Vega's cocaine use and the dispute concerning Vega's cocaine dealer did not affect appellant's substantial rights. The excluded testimony would not have added significantly to his defense, nor did its exclusion result in a substantial and injurious effect on the jury's verdict. Appellant's first issue is overruled.

II. Juror Conduct and Literacy

In his second, third, and fourth issues, appellant contends that the trial court erred by refusing to grant a mistrial based on one juror's alleged misconduct and

another juror's alleged illiteracy, and further erred by refusing to disqualify these jurors.

A. Juror Conduct

In his second issue, appellant contends the trial court erred by denying his motion for mistrial based on alleged juror misconduct.

During trial, Juror 9 commented to other jurors about the case "dragging on;" commented about the messy condition of the house in which the murder was committed; and said she already had her "mind made up." Based on those comments, appellant's counsel moved for a mistrial.

A juror must keep an open mind as to the ultimate question before him until all of the evidence has been received. *Quinn v. State*, 958 S.W.2d 395, 403 (Tex. Crim. App. 1997) (also noting that "it defies common sense and human nature to require that a juror have no impressions or opinions until the judge sends the jury to deliberations"). When a sitting juror makes statements outside of deliberations that indicate bias or partiality, such bias can constitute jury misconduct that prohibits the defendant from receiving a fair and impartial trial. *Granados v. State*, 85 S.W.3d 217, 235 (Tex. Crim. App. 2002). If a juror's statements or conduct raise a question as to whether the juror is biased, the trial court should conduct an inquiry to determine the juror's intent when making the statement. *Id.* at 236. The trial court retains discretion in determining whether a juror is biased, and we review the trial court's decision in the light most favorable to its recorded findings. *Id.*; *see also Anderson v. State*, 633 S.W.2d 851, 853-54 (Tex. Crim. App. [Panel Op.] 1982) ("When bias or prejudice are not established as a matter of law, the trial court has discretion to determine whether bias or prejudice actually exists to such a degree that the prospective juror is disqualified and should be excused from jury service."). The trial court also has discretion in determining whether to grant a

motion for mistrial based on allegations of juror misconduct. *Granados*, 85 S.W.3d at 236.

We have examined the alleged misconduct and conclude no error is presented. In light of appellant's motion for mistrial, the trial court spoke with each juror individually to determine what, if anything, Juror 9 had said to them about the case and whether they were able to keep an open mind about the case. After speaking with each juror, the trial court determined that Juror 9's comments had not influenced any other juror to prematurely decide the outcome of the case.

The trial court also questioned Juror 9 regarding whether she had a bias or prejudice for or against appellant and whether she had already made a final decision regarding the case. Juror 9 responded that she was not biased and that she had not yet reached a final decision regarding appellant's guilt. The trial court concluded that Juror 9 was fully and fairly able to perform her functions as a juror, and was not disqualified or disabled from continuing her service as a juror. Reviewing the trial court's decision in the light most favorable to its findings, we conclude that the trial court did not abuse its discretion in denying appellant's motion for mistrial based on alleged juror misconduct. *See Granados*, 85 S.W.3d at 236; *Anderson*, 633 S.W.2d at 854 ("Where the juror states he believes that he can set aside any influences he may have, and the trial court overrules a challenge for cause, its decision will be reviewed in light of all of the answers the prospective juror gives.").

Likewise, we reject appellant's argument that Juror 9 conversed with an unauthorized person about the case, and that this conversation raised a presumption of harm and shifted the burden of showing an absence of harm to the State. Article 36.22 of the Texas Code of Criminal Procedure states, in part, "No person shall be permitted to converse with a juror about the case on trial except in the presence and

by the permission of the court." Tex. Code Crim. Proc. Ann. art. 36.22 (Vernon 2006). The primary purpose of Article 36.22 is to insulate jurors from outside influence. *Ocon v. State*, 284 S.W.3d 880, 884 (Tex. Crim. App. 2009); *see also Chambliss v. State*, 647 S.W.2d 257, 266 (Tex. Crim. App. 1983) ("As we read Article 36.22, though, its main purpose is to prevent *an outsider* from saying anything that might influence a juror.") (emphasis in original). "A violation of Article 36.22, once proven by the defendant, triggers a rebuttable presumption of injury to the accused, and a mistrial may be warranted." *Ocon*, 284 S.W.3d at 884.

Here, the alleged conversations were between Juror 9 and other jurors before deliberations. There was no communication between any juror and an outsider or unauthorized person, and appellant did not demonstrate a violation of Article 36.22. *See O'Bryant v. State*, 437 S.W.3d 578, 581-82 (Tex. App.—Houston [14th Dist.] 2014, no pet.) (concluding no violation of Article 36.22 where jurors conversed with each other about the case against the court's instructions, because no communication occurred between any juror and an outsider or unauthorized person).

Based on the foregoing, appellant has failed to meet his burden of proving juror misconduct, and his second issue is overruled.

B. Juror Literacy

In his third issue, appellant contends that the trial court abused its discretion when it denied appellant's motion for mistrial based on a juror's purported disqualification due to illiteracy.

While the trial court was questioning the jurors regarding Juror 9's alleged misconduct, it came to the trial court's attention that Juror 4 had some difficulty with the English language. After questioning Juror 4, the trial court concluded

that, although Juror 4 had some difficulty with English, there had been no challenge for cause with respect to Juror 4 and she therefore was not disqualified.

A juror who is unable to read or write may be stricken for cause. Tex. Code Crim. Proc. Ann. art. 35.16(a)(11) (Vernon 2006); *Pineda v. State*, 2 S.W.3d 1, 8 (Tex. App.—Houston [1st Dist.] 1999, pet. ref'd). However, the fluency requirement may be waived if no challenge for cause is made. Tex. Code Crim. Proc. Ann. art. 35.16(a); *Abney v. State*, 1 S.W.3d 271, 274 (Tex. App.—Houston [14th Dist.] 1999, pet. ref'd); *Martinez v. State*, 846 S.W.2d 345, 346 (Tex. App.—Corpus Christi 1992, pet. ref'd).

Appellant did not question the venire panel about their fluency in the English language during voir dire. Nor did appellant object to Juror 4's qualification or move for a mistrial on Juror 4's fluency during trial. Accordingly, we conclude that appellant waived any complaint regarding Juror 4's fluency. Appellant's third issue is overruled.

C. Seating Alternate Jurors

In his fourth issue, appellant contends the trial court abused its discretion by failing to disqualify either Juror 9 or Juror 4 and seat the alternate juror.

District courts may seat up to four additional jurors as alternate jurors. Tex. Code Crim. Proc. Ann. art. 33.011(a) (Vernon Supp. 2015). Alternate jurors "shall replace jurors who, prior to the time the jury renders a verdict on the guilt or innocence of the defendant . . . become or are found to be unable or disqualified to perform their duties . . . ." *Id.* § 33.011(b).

Texas courts have concluded that "unable," as used in Article 33.011, is indistinguishable from "disabled" as used in Article 36.29. *Sandoval v. State*, 409 S.W.3d 259, 279 (Tex. App.—Austin 2013, no pet.) (citing *Scales v. State*, 380

S.W.3d 780, 783 (Tex. Crim. App. 2012), and *Sneed v. State,* 209 S.W.3d 782, 786-87 (Tex. App.—Texarkana 2006, pet. ref'd)). The court of criminal appeals has interpreted article 36.29 to require that a disabled juror suffer from "a physical illness, mental condition, or emotional state that would hinder or inhibit the juror from performing his or her duties as a juror," or that the juror was suffering from a condition that inhibited him from "fully and fairly performing the functions of a juror." *Scales*, 380 S.W.3d at 783 (internal quotation marks omitted).

A juror may be disqualified by a challenge for cause for any of the grounds provided in Article 35.16, which include a juror's bias or prejudice against the defendant and a juror's illiteracy. *See* Tex. Code Crim. Proc. Ann. art. 35.16(a)(9), (11); *see also Brown v. State*, 183 S.W.3d 728, 739 (Tex. App.—Houston [1st Dist.] 2005, pet. ref'd) ("Bases for disqualification can be found in article 35.16."). However, a juror is not absolutely disqualified from service unless the juror: (1) has been convicted of misdemeanor theft or a felony; (2) is under indictment or other legal accusation for misdemeanor theft or a felony; or (3) is insane. Tex. Code Crim. Proc. Ann. art. 35.16(a)(11); Tex. Code Crim. Proc. Ann. art. 35.19 (Vernon 2006); *White v. State*, 225 S.W.3d 571, 573 (Tex. Crim. App. 2007). A trial court must not dismiss a juror for reasons related to that juror's evaluation of the sufficiency of the evidence. *Scales*, 380 S.W.3d at 783. We review a trial court's decision on whether to replace a juror with an alternate for an abuse of discretion. *See id.* at 783-84.

Appellant does not contend that Juror 9 or Juror 4 were "unable" to perform their duties as that term has been defined by the court of criminal appeals. Instead, appellant contends that Juror 9 was disqualified due to bias and that Juror 4 was disqualified due to illiteracy.

Appellant argued below only for a mistrial based on juror disqualification, and did not argue that the trial court should excuse Juror 9 or Juror 4 and seat the alternate juror. Accordingly, appellant has not preserved this issue for our review.[1] Even assuming appellant had preserved the issue, neither Juror 9's alleged bias nor Juror 4's alleged illiteracy forms a mandatory basis for disqualification. *See* Tex. Code Crim. Proc. Ann. arts. 35.16, 35.19. Having concluded above that the trial court did not abuse its discretion in finding that Juror 9 was not disqualified from serving, and having concluded that appellant waived any complaint regarding Juror 4's qualification to serve, we therefore conclude the trial court did not abuse its discretion in failing to replace Juror 9 or Juror 4 with an alternate juror. Appellant's fourth issue is overruled.

III. Voluntariness of Waiver

In his fifth issue, appellant contends that the trial court erred by admitting testimony of police officers from appellant's interrogation. Appellant contends he was too intoxicated at the time of his interrogation to voluntarily waive his *Miranda* rights. At a hearing on appellant's motion to suppress, appellant testified that he had been drinking all morning on the day of the shooting, and that he was "still pretty intoxicated" when the police arrived and questioned him. Appellant testified that he felt compelled to answer the officers' questions, and that he believed alcohol could have played a part in his feeling of compulsion.

[1] We reject appellant's argument that the trial court should have excused the jurors *sua sponte*. As discussed *infra*, neither juror was absolutely disqualified, and the trial court therefore had no authority to excuse them *sua sponte* for cause. *See Green v. State*, 764 S.W.2d 242, 246 (Tex. Crim. App. 1989) ("[T]he trial judge does not have the authority to *sua sponte* excuse a disqualified juror."); *Sanne v. State*, 609 S.W.2d 762, 770 (Tex. Crim. App. 1980) (a trial court should not *sua sponte* excuse jurors for cause unless they are absolutely disqualified).

Detective Beck testified regarding appellant's intoxication at the time of interrogation:

Q. Was he under the influence of alcohol?

A. Yes, ma'am.

Q. Do you believe he was intoxicated?

A. At the time I talked to him, possibly still intoxicated, yes.

Q. Did you believe he understood your questions?

A. Oh, he understood. I verified that he did.

Q. Did he respond to you in a coherent manner?

A. Yes, ma'am.

Q. Did his answers make sense to the questions you asked him?

A. Absolutely.

Q. Do you feel that his intoxication, if any, played a part in giving you a statement?

A. I'm sorry. Can you repeat that?

Q. Do you think it affected his ability to give you a statement?

A. Oh, no, ma'am.

Q. Do you think it affected his ability to understand his rights?

A. No, ma'am.

Detective Beck further testified that appellant told him at the crime scene that appellant "was intoxicated earlier but not so much right now."

At the conclusion of the hearing on appellant's motion to suppress, the trial court made its findings on the record. Among its findings, the trial court concluded that appellant understood his rights and that he knowingly, intelligently,

and voluntarily waived them. The trial court granted in part and denied in part appellant's motion to suppress the officers' statements.

Although relevant, evidence of the defendant's intoxication does not automatically render a statement involuntary. *Jones v. State*, 944 S.W.2d 642, 651 (Tex. Crim. App. 1996). "Instead, the question becomes whether the defendant's intoxication rendered him incapable of making an independent, informed decision to confess." *Id.* At a suppression hearing, the trial court is the sole judge of the credibility of witnesses and the weight of their testimony. *Id.* at 650.

Having reviewed the evidence summarized above, we cannot conclude that the trial court abused its discretion in finding that appellant's waiver of rights was voluntary despite his intoxication. *See id.* at 651; *see also Higgins v. State*, 924 S.W.2d 739, 743-45 (Tex. App.—Texarkana 1996, pet. ref'd) (where officers testified that defendant appeared to be drunk but there was no evidence of police coercion, defendant's statement was not rendered involuntary due to his intoxication). Therefore, the trial court did not err by overruling appellant's motion to suppress as to certain officers' statements. Appellant's fifth issue is overruled.

CONCLUSION

Having overruled all of appellant's issues on appeal, we affirm the judgment of the trial court.

/s/ William J. Boyce
Justice

Panel consists of Justices Boyce, Busby, and Brown.
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