Affirmed and Memorandum Opinion filed February 9, 2016.

In The

Fourteenth Court of Appeals

NO. 14-14-00919-CR

QUINTIN BEANARD BRANTLEY, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 174th District Court
Harris County, Texas
Trial Court Cause No. 1397470

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

This appeal stems from appellant Quintin Beanard Brantley's assertion that his trial counsel failed to provide effective assistance because trial counsel did not move to exclude statements appellant and the complainant made to police officers. Appellant contends the use of these statements violated his Fifth and Sixth Amendment rights under the United States Constitution. We conclude that, although the record does not show appellant was read his *Miranda* rights before making the statement, the statement was not the result of a custodial interrogation.

Presuming for the sake of argument that use of the complainant's statement violated appellant's right to confrontation, the record shows no prejudice resulted. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A Houston resident called 911 after seeing a man hitting, slapping, and punching a woman. The caller gave a description of the couple. Shortly after the resident's phone call, Officer William Peverill spotted a couple matching the description. Officer Lewis Mendez-Sierra, who responded to the call for assistance with Officer Peverill, detained appellant, interviewed the complainant, and documented the complainant's injuries.

Appellant was charged with an assault committed against a person with whom he had a dating relationship.[1] At trial, the 911-caller testified regarding her observations. Two police officers testified they had established appellant and the complainant had a dating relationship. The officers based their testimony regarding the relationship between the complainant and appellant on statements the two had made the night of the incident. The jury found appellant guilty as charged and assessed punishment at 15 years' confinement.

In a single issue, appellant asserts that his trial counsel provided ineffective assistance by failing to ask the trial court to exclude from evidence (1) a statement made by the complainant and (2) a statement made by appellant. Both were statements that the complainant and appellant were dating.

[1] An assault is elevated to a third-degree felony if the offense is committed against a person with whom the defendant has a dating relationship. *See* Tex. Penal Code Ann. § 22.01(b)(2)(A) (West, Westlaw through 2015 R.S.); Tex. Fam. Code Ann. § 71.0021(a)(1)(A) (West, Westlaw through 2015 R.S.).

INEFFECTIVE-ASSISTANCE-OF-COUNSEL ANALYSIS

To prevail on an ineffective-assistance claim, appellant must prove (1) counsel's representation fell below the objective standard of reasonableness, and (2) there is a reasonable probability that but for counsel's deficiency, the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668, 694, 104 S.Ct. 2052, 2068, 80 L.Ed.2d 674 (1984); *Hernandez v. State*, 726 S.W.2d 53, 55 (Tex. Crim. App. 1986). In considering an ineffective-assistance claim, we indulge a strong presumption that counsel's actions fell within the wide range of reasonable professional behavior and were motivated by sound trial strategy. *Strickland*, 466 U.S. at 689; *Thompson v. State*, 9 S.W.3d 808, 813 (Tex. Crim. App. 1999); *Jackson v. State*, 877 S.W.2d 768, 771 (Tex. Crim. App. 1994). To overcome this presumption, an appellant's claim of ineffective assistance of counsel must be firmly demonstrated in the record. *Thompson*, 9 S.W.3d at 814.

A. Appellant's Statement

Officer Mendez-Sierra testified that after locating appellant and the complainant and surmising they were the subject of the 911 phone call, he detained appellant and interviewed the complainant separately. As Officer Mendez-Sierra was handcuffing appellant, but before asking appellant any questions, appellant spontaneously stated that the complainant was his girlfriend and he had done nothing wrong. Officer Mendez-Sierra then began interviewing the complainant. While the officer interviewed the complainant, appellant began shouting things at him, including that appellant "had done nothing."

Appellant asserts that his trial counsel provided ineffective assistance by failing to object to this evidence. According to appellant, counsel should have objected because appellant had not received the requisite warnings at the time of the statements. To satisfy the first prong of the *Strickland* test and prevail on an

ineffective-assistance claim premised on counsel's failure to object or file a motion to suppress, an appellant must show that the objection or motion to suppress would have been successful or that the trial court would have erred in overruling the objection or denying the motion. *Wert v. State*, 383 S.W.3d 747, 753 (Tex. App.—Houston [14th Dist.] 2012, no pet.). Under *Miranda v. Arizona* and article 38.22 of the Code of Criminal Procedure, an oral statement of an accused made as a result of custodial interrogation is not admissible at trial unless the accused was warned of his rights and knowingly, intelligently, and voluntarily waived those rights. *See* 384 U.S. 436, 478–79, 86 S.Ct. 1602, 1630, 16 L.Ed.2d 694 (1966); Tex. Code Crim. Proc. Ann. art. 38.22 § 3 (West, Westlaw through 2015 R.S.). But, statements from an accused that are not prompted by custodial interrogation are admissible despite the absence of warning, knowledge, and voluntary waiver of rights. *Oriji v. State*, 150 S.W.3d 833, 836 (Tex. App.—Houston [14th Dist.] 2004, pet. ref'd). Custodial interrogation is defined as questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. *Bass v. State*, 723 S.W.2d 687, 690–91 (Tex. Crim. App. 1986); *DeLeon v. State*, 758 S.W.2d 621, 625 (Tex. App.—Houston [14th Dist.] 1988, no pet.).

The evidence at trial showed appellant was not under interrogation when he stated that he was dating the complainant. Instead, the statement was a spontaneous protest of his detention. *See Dossett v. State*, 216 S.W.3d 7, 24 (Tex. App.—San Antonio 2006, pet. ref'd) (concluding spontaneous statement was not the result of custodial interrogation). *See also Roquemore v. State*, 60 S.W.3d 862, 868 (Tex. Crim. App. 2001). Thus, presuming appellant was in custody and had not received warnings, appellant's spontaneous statement still was admissible at trial. *See DeLeon*, 758 S.W.2d at 652. Because the trial court would not have

erred in overruling an objection or denying a motion filed by appellant's counsel to suppress appellant's statement, counsel's performance is not deficient under the first prong of *Strickland*. *See Wert*, 383 S.W.3d at 753; *DeLeon*, 758 S.W.2d at 625; *Dossett*, 216 S.W.3d at 24. Having failed to satisfy *Strickland's* first prong, appellant cannot prevail on his ineffective-assistance claim as to appellant's statement.

B. Complainant's Statement

Appellant also asserts trial counsel provided ineffective assistance by failing to object to testimony from Officer Mendez-Sierra that the complainant stated she and appellant were in a dating relationship. Appellant contends that admitting this statement into evidence violated his right of confrontation. *See Crawford v. Washington*, 541 U.S. 36, 50–51, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004). We presume for the sake of argument that the officer's testimony about the complainant's statements was inadmissible. Even presuming appellant satisfied the first prong of the *Strickland* test, under the second prong, appellant must demonstrate that counsel's deficient performance prejudiced appellant's defense. *Lopez v. State*, 343 S.W.3d 137, 142 (Tex. Crim. App. 2011). To prove prejudice, appellant must show that there is a reasonable probability, or a probability sufficient to undermine confidence in the outcome, that the result of the proceedings would have been different. *Id.* The record reveals that during the trial, the trial court admitted other evidence of the relationship between the complainant and appellant. Officer William Peverill testified that he knew the police had established the complainant and appellant were dating and Officer Mendez-Sierra testified that appellant stated the complainant and appellant were dating. Accordingly, even if the disputed evidence (Officer Mendez-Sierra's testimony that the complainant stated appellant and the complainant were dating)

should not have been admitted at trial, that evidence did not prejudice appellant. *See id.* Having failed to satisfy the prejudice prong of *Strickland,* appellant cannot prevail on his ineffective-assistance claim as to the complainant's statement.

CONCLUSION

Appellant's ineffective-assistance-of-counsel arguments provide no basis for appellate relief. Accordingly, we overrule appellant's only issue and affirm the trial court's judgment.

/s/ Kem Thompson Frost
Chief Justice

Panel consists of Chief Justice Frost and Justices Christopher and Donovan.
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