Affirmed and Memorandum Opinion filed July 18, 2017.

In The

Fourteenth Court of Appeals

NO. 14-16-00631-CR

MICHAEL DWAYNE WILLIAMS, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 179th District Court
Harris County, Texas
Trial Court Cause No. 1465003

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

A jury found appellant Michael Dwayne Williams guilty of second-offender family-violence assault. The trial court sentenced appellant to confinement for forty years in the Institutional Division of the Texas Department of Criminal Justice. On appeal, appellant contends the trial court erred by overruling his hearsay and Confrontation Clause objections to a 911 call. Appellant further contends the trial

court erred by admitting evidence of the complainant's testimony from two bond-revocation hearings in violation of the Confrontation Clause. Because the evidence in the 911 call was admitted elsewhere without objection and the admission of evidence of the complainant's out-of-court statements, if error, was harmless, we affirm.

BACKGROUND

On November 28, 2014, the complainant was in a dating relationship with appellant. Complainant entered the leasing office of her apartment complex, where Halle Melonson was working. Complainant was holding her stomach and had blood on her hands and forehead and asked Melonson to call 911. Complainant said her boyfriend had beaten her. Melonson called 911. The call lasted only a few minutes. The dispatcher sent paramedics to the scene. Meanwhile, Melonson saw a blue Bentley automobile leave the apartment complex.

When the emergency responders arrived, complainant was evaluated by Eric Clay, a paramedic. During the evaluation, complainant told Clay that her boyfriend had struck her in the face, punched and kicked her, and threw her to the ground. After the evaluation, complainant was taken to the hospital.

Officer Cortez of the Houston Police Department received information regarding appellant's whereabouts. When Cortez arrived at that location, he spotted appellant and notified other officers. Appellant attempted to hide but was arrested.

Appellant had been convicted once before for family-violence assault. Complainant also had a protective order against appellant and had testified in bond-revocation proceedings. On those occasions, complainant identified appellant as her attacker and testified that he violated the protective order by making vulgar statements about her and threatening her.

At trial, complainant did not testify but the 911 call and a portion of complainant's testimony from the bond-revocation hearings were admitted into evidence over the defense's objections. After the jury found appellant guilty, the trial court sentenced him to prison for forty years. From that judgment, appellant brings this appeal, challenging the trial court's admission of this evidence.

STANDARD OF REVIEW

This court reviews a trial court's decision to admit or exclude evidence under an abuse-of-discretion standard. *Martinez v. State*, 327 S.W.3d 727, 736 (Tex. Crim. App. 2010). The trial court abuses its discretion only when the decision lies outside of the zone of reasonable disagreement. *Walters v. State*, 247 S.W. 3d 204, 217 (Tex. Crim. App. 2007). If the trial court's ruling is correct on any theory of law applicable to that ruling and is reasonably supported by the record, we uphold that decision. *State v. Ross*, 32 S.W.3d 853, 856 (Tex. Crim. App. 2000).

ANALYSIS

The 911 Call

In his first issue, appellant asserts the trial court abused its discretion in overruling his objections to the 911 call. He argues that statements made during the 911 call made the jury aware of the following: 1) complainant's need for medical care, 2) she was a victim of domestic violence, 3) she knew appellant, and 4) appellant drove away from the scene. While this evidence was contained in the 911 call, later the same evidence was admitted without objection. *See Leday v. State*, 983 S.W.2d 713, 718 (Tex. Crim. App. 1998) ("[O]verruling an objection to evidence will not result in reversal when other such evidence was received without objection, either before or after the complained-of ruling. This rule applies whether the other evidence was introduced by the defendant or the State."); *Chapman v. State*, 150

S.W.3d 809, 814 (Tex. App.—Houston [14th Dist.] 2004, pet. ref'd) ("[I]mproper admission of evidence is not reversible error if the same or similar evidence is admitted without objection at another point in the trial.").

Melonson, the 911 caller, and Clay, the paramedic, both testified at trial. Complainant's need for medical care was presented to the jury by Melonson's and Clay's testimony. Melonson testified that when complainant entered the leasing office, complainant was holding her stomach, had blood on her forehead and hands, and appeared to have been in a fight. The jury saw pictures of complainant's injuries. Clay testified that complainant appeared to be crying and in pain, had abrasions, possibly a busted lip and redness on the side of her face, and blood on her lip and the left side of her face.

Clay's testimony also informed the jury that complainant knew appellant and that complainant appeared to be a victim of domestic violence. Clay testified that complainant told him she had been struck multiple times in the face, thrown to the ground, kicked in the face, and repeatedly punched by her boyfriend. According to Clay, complainant said she blacked out several times during the attack and suffered a sharp pain at the mid-left chest and left upper-flank areas.

The jury also knew appellant left the scene through other evidence. Melonson testified that she saw a blue Bentley speed out of the apartment complex. Appellant testified to having access to a blue Bentley. Cortez testified to seeing appellant drive a blue Bentley several times.

The State argues this issue was not preserved for our review because appellant failed to specify the objectionable portions of the 911 call. Even if the trial court's admission of the 911 call amounted to error, there would be no harm. "There is no harm from improperly admitted evidence if the same evidence was admitted through another source without objection." *See Williams v. State*, 272 S.W.2d 614, 615 (Tex.

Crim. App. 2008). Accordingly, any error in admitting the evidence was harmless. *See Lane v. State*, 151 S.W.3d 188, 193 (Tex. Crim. App. 2004); *see also Flores v. State*, 513 S.W.3d 146, 165 (Tex. App.—Houston [14th Dist.] 2016, pet. ref'd) (holding harmless erroneous admission of testimony that was admitted without objection elsewhere during trial). Appellant's first issue is overruled.

The Bond-Revocation Hearings

In his second issue, appellant contends the trial court erred in admitting into evidence State's Exhibits 22 and 23, transcripts of complainant's prior sworn testimony given at two bond-revocation hearings.[1] Appellant also complains of testimony from an investigator concerning what was said at the bond-revocation hearings.

Complainant did not appear to testify at trial. The trial court held a hearing outside the jury's presence regarding the State's request to admit complainant's testimony from the bond-revocation hearings. The trial court found complainant was unavailable to testify after good-faith efforts were made to locate her and that she was unavailable because of appellant's actions and words. The trial court also found the evidence was admissible as an exception to the rule against hearsay. *See* Tex. R. Evid. 804(b)(1)(B).

A defendant is prevented from tampering with a witness and then complaining that his right to confront that witness was violated by the doctrine of forfeiture by wrongdoing, an equitable exception to the Confrontation Clause. *See Crawford v. Washington*, 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004). Further, testimony is not excluded by the rule against hearsay in a criminal case if the

[1] The first hearing was held March 5, 2015. The record does not reflect a ruling was made. The second hearing was conducted on April 7, 2015, and at its conclusion the trial court revoked appellant's bond.

declarant is unavailable as a witness and it "(i) was given as a witness at a trial or hearing of the current or a different proceeding; and (ii) is now offered against a party who had an opportunity and similar motive to develop it by direct, cross-, or redirect examination . . ."

Appellant argues the evidence was not admissible under the forfeiture by wrongdoing exception or Rule 80(b)(1)(B) because:

- complainant was not unavailable, her absence was a matter of choice;
- the State did not make a good-faith effort to locate complainant;
- he did not have an opportunity and similar motive to cross-examine complainant; and
- his actions were not designed to keep complainant from testifying.

Appellant also complains the trial court did not find the allegations that appellant tried to intimidate or harrass complainant through a third party were substantiated.

A violation of the Confrontation Clause is not necessarily reversible error. *See Langham v. State*, 305 S.W.3d 568, 582 (Tex. Crim. App. 2010) (recognizing any Confrontation Clause error to be subject to a constitutional harm analysis); *see also Davis v. State*, 203 S.W.3d 845 (Tex. Crim. App. 2006). The *Davis* court considered the following factors in reviewing whether the error in admitting out-of-court statements in violation of *Crawford,* 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed.2d 177, is harmless beyond a reasonable doubt:

- The importance of the hearsay evidence to the State's case;
- Whether the hearsay evidence was cumulative;
- The presence or absence of evidence corroborating or contradicting the hearsay evidence on material points; and
- The overall strength of the State's case.

Davis, 203 S.W.3d at 853 (citing *Delaware v. Van Arsdall*, 475 U.S. 673, 684, 106 S.Ct. 1431, 89 L.Ed.2d 674 (1986)).

The transcripts from the bond-revocation hearings and the testimony of Barry Saucier of the Family Criminal Law Division of the Harris County District Attorney's Office about the contents of those transcripts contained evidence that appellant was the person who attacked complainant on the date of the offense and that appellant violated a protective order after the attack by contacting complainant and threatening her.

At trial, appellant's defensive theory was that he was not at the apartment complex on the day of the offense and that complainant lied that he was her attacker. As noted above, Clay testified that complainant told him that she had been struck multiple times in the face, thrown to the ground, kicked in the face and repeatedly punched by her boyfriend. Melonson saw a blue Bentley speed out of the apartment complex and Cortez saw appellant driving a blue Bentley on several occasions. Accordingly, the jury heard evidence from three disinterested witnesses that, taken together, identified appellant as the person who assaulted complainant.

We therefore conclude the hearsay evidence was not of such importance to the State's case as to make the first factor weigh in favor of finding harm. Regarding the second factor, the hearsay evidence that it was appellant who attacked complainant was cumulative. However, Saucier's recounting of complainant's testimony from the bond-revocation hearings was not. Thus the second factor weighs both for and against finding any error harmless. The other evidence admitted at trial corroborated the hearsay evidence that appellant was complainant's attacker. Saucier's testimony was not corroborated but neither was it contradicted. Thus the third factor weighs both for and against a finding of harm. Given the testimony of

the other witnesses, the strength of the State's case, the fourth factor, weighs in favor of finding any error harmless.

After analyzing the factors relevant to the harm analysis, we conclude that any error in admitting the hearsay evidence is harmless beyond a reasonable doubt. *See Diamond v. State*, 496 S.W.3d 124, 141 (Tex. App.—Houston [14th Dist.] 2016, pet. ref'd); *Lee v. State*, 418 S.W.3d 892, 901 (Tex. App.—Houston [14th Dist.] 2013, pet. ref'd). Issue two is overruled.

CONCLUSION

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

/s/ John Donovan
Justice

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