



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-19-00643-CR

Angelika Stephanie **NAVARRO**,
Appellant

v.

The **STATE** of Texas,
Appellee

From the 437th Judicial District Court, Bexar County, Texas
Trial Court No. 2018CR1150
Honorable Raymond Angelini, Judge Presiding

Opinion by: Liza A. Rodriguez, Justice

Sitting: Sandee Bryan Marion, Chief Justice
Patricia O. Alvarez, Justice
Liza A. Rodriguez, Justice

Delivered and Filed: September 9, 2020

AFFIRMED

Angelika Stephanie Navarro was charged with theft from an elderly person in the amount of \$100,000 or more but less than \$200,000 (Count I), and exploitation of an elderly person (Count II). The State filed a notice of intent to use a prior conviction for enhancement purposes. After a jury trial, Navarro was found guilty of both counts. She elected for the jury to assess punishment. The jury found the enhancement allegation to be true and assessed punishment at life imprisonment and a fine of \$10,000 on Count I, and twenty years' imprisonment and a fine of \$10,000 on Count II. The trial court then sentenced Navarro in accordance with the jury's verdict.

On appeal, Navarro argues the trial court erred by overruling her objection and permitting “the State to read the enhancement allegation after both sides rested and closed at the punishment phase.” The record reflects that before trial, the State gave Navarro notice of its intent to use Navarro’s prior federal conviction to enhance her punishment under section 12.42 of the Texas Penal Code and of its intent to use the same prior conviction pursuant to article 37.07 of the Texas Code of Criminal Procedure. The State also notified Navarro that it would be using a fingerprint expert pursuant to Texas Rule of Evidence 702.

After Navarro was found guilty of both counts, the punishment phase of the trial began before the jury. The State called the fingerprint examiner to testify about taking a set of exemplar prints from Navarro. Additionally, an investigator for the district attorney’s office testified about locating a federal judgment against “Angelika C. Nino” for multiple felony counts of wire fraud and bank fraud. According to the investigator, he located the judgment using Navarro’s last name and the last four digits of her social security number. The investigator testified that “Angelika Nino” is one of Navarro’s aliases. State’s Exhibit 16, a certified judgment from the U.S. District Court for the Western District of Texas, was admitted in evidence without objection. Also admitted in evidence without objection was State’s Exhibit 17, an agreed order revoking Navarro’s supervised release in the same cause. Both parties rested without reading the enhancement allegation against Navarro or taking Navarro’s plea to said allegation.

The next day, the State moved to reopen its case so it could read the enhancement allegation to the jury and have Navarro enter her plea. Defense counsel objected to reopening the case because Navarro “didn’t have the official notice of the enhancement.” The trial court asked defense counsel if he had received a copy of the State’s intent to use Navarro’s prior conviction:

DEFENSE: I did—we did get a copy of that. But I mean procedurally it wasn't—

COURT: It is very, very sloppy work on the part of the prosecution. Absolutely. But you did get notice, correct?

DEFENSE: I did get that notice.

COURT: Okay. Your objection will be overruled. But make the objection in front of the jury.

In the jury's presence, the State again requested to reopen its case "for purposes of seeking the repeater enhancement" and argued notice had been "previously given to defense counsel and filed with the court."

DEFENSE: Your Honor, our objection is that this should have been done before as I believe it violates my client's constitutional rights.

COURT: Okay. It should have been done before, and I'm reluctant to grant it, but I'm going to grant it. And your objection is overruled.

The State then read the enhancement allegation:

Before the commission of the offense alleged in Cause No. 2018-CR-1150, hereinafter styled the primary offense on the 11th day of March, A.D., 2005, in Cause No. SA-03-CR-393(1)FB, in the United States District Court [for the] Western District of Texas, San Antonio Division, in Bexar County, Texas, the defendant was convicted and on the 29th day of March 2005, the defendant was sentenced on the federal felonies of two counts of bank fraud, eight counts of wire fraud, and one count of witness tampering.

Navarro pled "not true" to the enhancement allegation.

The State then recalled its fingerprint examiner and investigator to the witness stand. They both testified to the same facts as previously. State's Exhibits 16 and 17, consisting of the federal judgment and order revoking supervised release, were again admitted in evidence without objection. Both sides then rested for a second time. When the jury returned its verdict, it found the enhancement allegation to be true.

On appeal, Navarro argues that article 36.01(a)(1) of the Texas Code of Criminal Procedure was violated in this case because the trial court allowed the State to reopen its case.¹ Article 36.01(a)(1) provides the following:

A jury being impaneled in any criminal action, except as provided by Subsection (b) of this article, the cause shall proceed in the following order: 1. The indictment or information shall be read to the jury by the attorney prosecuting. When prior convictions are alleged for purposes of enhancement only and are not jurisdictional, that portion of the indictment or information reciting such convictions shall not be read until the hearing on punishment is held as provided in Article 37.07.

TEX. CODE CRIM. PROC. ANN. art. 36.01(a)(1).

This court has already decided the issue brought by Navarro. As in the instant case, in *Reese v. State*, 340 S.W.3d 838, 842 (Tex. App.—San Antonio 2011, no pet.), at the beginning of the punishment phase of trial, the prosecutor failed to read the enhancement allegation regarding a previous conviction and thus the appellant did not enter a plea on the allegation. Nonetheless, the prosecutor elicited testimony from witnesses about the appellant’s prior conviction. *Id.* at 843. The next day, when the prosecutor realized he had failed to read the enhancement allegation, he requested that the trial court properly arraign the appellant on the allegation regarding the prior conviction. *Id.* The trial court did so, but informed the prosecutor that he would need to re-offer evidence about the enhancement unless the appellant stipulated to the evidence. *Id.* The appellant pled “not true” to the enhancement allegation and refused to stipulate to the evidence. *Id.* The prosecutor then re-offered the same testimony and exhibits relating to the appellant’s prior conviction. *Id.* On appeal, this court explained that failure to read the enhancement allegation at the beginning of the punishment phase may be cured by later reading the enhancement allegation, having the defendant enter a plea to the enhancement allegation, and then re-offering evidence

¹Although defense counsel also objected at trial that his client’s “constitutional rights” were violated, Navarro has not raised any violation of constitutional rights on appeal.

related to the enhancement allegation. *See id.* at 843-44 (discussing *Turner v. State*, 897 S.W.2d 786, 788 (Tex. Crim. App. 1995), and *Warren v. State*, 693 S.W.2d 414, 416 (Tex. Crim. App. 1985)).

Here, Navarro was put on notice before trial of the State's intent to use her prior conviction for enhancement purposes. While the State failed to read the enhancement allegation at the beginning of the punishment phase, it cured this failure by subsequently reading the enhancement allegation, and upon Navarro's plea of "not true," re-offering evidence related to her prior conviction. *See id.* We therefore hold that any error by the trial court was harmless. *See* TEX. R. APP. P. 44.2(b).

We affirm the judgment of the trial court.

Liza A. Rodriguez, Justice

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