In The

Court of Appeals

Ninth District of Texas at Beaumont

NO. 09-11-00038-CR

JOHN AUGUST VALLAIR, III a/k/a JOHN A. VALLAIR, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 252nd District Court
Jefferson County, Texas
Trial Cause No. 07-00433

MEMORANDUM OPINION

John August Vallair, III a/k/a John A. Vallair appeals his conviction for aggravated assault. In issues one and two, Vallair contends the trial court erred in admitting a letter that allegedly contained his signature, and in submitting a jury charge that he argues allowed the jury to convict him of a crime for which he was not indicted. In issue three, Vallair contends the trial court erred by allowing the complaining witness to state her preference about the length of his sentence during the punishment phase of his trial. We affirm the trial court's judgment.

The Letter

In his first issue, Vallair contends the trial court erred by overruling his hearsay objection to a letter used by State's counsel while cross-examining Vallair's brother, Willie. We review a trial court's decision to admit evidence under an abuse of discretion standard. *Carrasco v. State*, 154 S.W.3d 127, 129 (Tex. Crim. App. 2005). We will uphold the trial court's ruling if it is "reasonably supported by the record and is correct under any theory of law applicable to the case." *Id.*

Hearsay is a "statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Tex. R. Evid. 801(d). A party's own statements, however, are not hearsay. Tex. R. Evid. 801(e)(2)(A); *see also Wilson v. State*, 7 S.W.3d 136, 141 (Tex. Crim. App. 1999) (noting that the defendant's out-of-court statements were not hearsay under the former Texas Rules of Criminal Evidence because they were "party-opponent admissions"). Discussing Rule 801(e)(2)(A), the Texas Court of Criminal Appeals noted that this rule "plainly and unequivocally states that a criminal defendant's own statements, when being offered against him, are not hearsay." *Trevino v. State*, 991 S.W.2d 849, 853 (Tex. Crim. App. 1999). A party's own statements "are admissible on the logic that a party is estopped from challenging the fundamental reliability or trustworthiness of his own statements." *Id.* Additionally, "party admissions, unlike statements against interest, need not be

against the interests of the party when made; in order to be admissible, the admission need only be offered as evidence against the party." *Id*.

The crime which is the subject of this suit occurred on February 14, 2007, between eleven thirty and noon. During the trial, the victim identified Vallair as the person who had assaulted her. Vallair called Willie to testify in his defense. According to Willie, Vallair was with him until eleven thirty on the morning of February 14. Willie explained that Vallair spent the night at his house on the evening before the assault occurred, and that he and Willie got up around nine o'clock on February 14, 2007. After eating breakfast, Willie testified that he dropped Vallair off at their sister's house at eleven thirty that morning.

When the State cross-examined Willie, the prosecutor showed him a letter allegedly containing the defendant's signature. Willie testified that the handwriting contained in the letter looked like Vallair's. Additionally, Willie agreed that the letter was addressed to the complaining witness, and that it contained Vallair's return address. In contrast to Willie's testimony during his direct examination, Vallair's letter indicates that "the only thing I did that day[w]as to go in the woods to crab." The letter does not mention that Willie and Vallair had been together most of the morning. After the prosecutor showed Willie the letter, Willie agreed that he was surprised that the letter failed to mention him.

We conclude that the letter did not constitute hearsay. *See* Tex. R. Evid. 801(e)(2)(A); *Trevino*, 991 S.W.2d at 853. We hold that Vallair's argument the letter constitutes hearsay has no merit.

Vallair also argues that the letter was not properly authenticated before it was admitted into evidence. With respect to authentication, the Texas Rules of Evidence provide that a person familiar with another's handwriting may authenticate a writing "based upon familiarity not acquired for purposes of the litigation." Tex. R. Evid. 901(b)(2). In this case, Willie, who was Vallair's brother, acknowledged that the handwriting looked like Vallair's and he acknowledged that it contained Vallair's signature. Willie then agreed that Vallair sent the letter to the victim's home. We conclude that Willie's testimony was sufficient to authenticate Vallair's letter. *See Bodiford v. State*, 630 S.W.2d 847, 852 (Tex. App.—Fort Worth 1982, pet. ref'd) (holding that "any person familiar with another's handwriting may identify it" and that "[i]t is only necessary that it be shown that the witness has had ample opportunity to view or observe the other's handwriting or that the witness be referred to papers containing the questioned handwriting"). Having rejected the arguments Vallair makes in his first issue, it is overruled.

Jury Charge

In issue two, Vallair contends the trial court erred by submitting a jury charge that allowed the jury to convict him for the nature of his conduct, using a weapon which

resulted in a bodily injury, without requiring the jury to find that Vallair possessed the required criminal intent to cause the complaining witness's injury. Vallair argues that the culpable mental states, as defined in the charge, allowed his conviction on proving that Vallair used a deadly weapon which resulted in the complaining witness's bodily injury. According to Vallair, the error in the charge harmed him by allowing his conviction of a crime for which he had not been indicted.

In reviewing a claim of jury charge error, we must first decide whether error actually exists in the charge. *Ngo v. State*, 175 S.W.3d 738, 743 (Tex. Crim. App. 2005) (en banc) (citing *Middleton v. State*, 125 S.W.3d 450, 453 (Tex. Crim. App. 2003)). If we find that error exists, we must analyze that error for harm. *Id.* However, when a defendant fails to object or states that he has no objections to the charge, we will not reverse for charge error, unless the record shows "'egregious harm'" to the defendant. *Id.* at 743-44 (quoting *Almanza v. State*, 686 S.W.2d 157, 171 (Tex. Crim. App. 1985)).

During the charge conference, Vallair's attorney advised the trial court that Vallair did not have any objections to the proposed charge. Absent objections to the charge, to be reversible, the charge error being considered must be shown to have been so harmful that the defendant was denied a fair and impartial trial. *Almanza*, 686 S.W.2d at 171; *see also Allen v. State*, 253 S.W.3d 260, 264 (Tex. Crim. App. 2008). "For both preserved and unpreserved charging error, 'the actual degree of harm must be assayed in light of the entire jury charge, the state of the evidence, including [the]contested issues and weight of

probative evidence, the argument of counsel and any other relevant information revealed by the record of the trial as a whole.'" *Patrick v. State*, 906 S.W.2d 481, 492 (Tex. Crim. App. 1995) (en banc) (quoting *Almanza*, 686 S.W.2d at 171). "In assessing harm resulting from the inclusion of improper conduct elements in the definitions of culpable mental states, we 'may consider the degree, if any, to which the culpable mental states were limited by the application portions of the jury charge.'" *Patrick*, 906 S.W.2d at 492 (quoting *Hughes v. State*, 897 S.W.2d 285, 296 (Tex. Crim. App. 1994)).

A person commits the offense of aggravated assault if he intentionally, knowingly, or recklessly causes bodily injury to another and uses or exhibits a deadly weapon during the commission of the assault. Tex. Penal Code Ann. §§ 22.01(a)(1), 22.02(a)(2) (West 2011). Aggravated assault is a result-oriented offense. *Landrian v. State*, 268 S.W.3d 532, 537 (Tex. Crim. App. 2008). "It is error for a trial judge to not limit the definitions of the culpable mental states as they relate to the conduct elements involved in the particular offense." *Cook v. State*, 884 S.W.2d 485, 491 (Tex. Crim. App. 1994). Nevertheless, if the application paragraph of the charge points the jury to the appropriate portion of the definitions, an error in providing definitions that do not limit the jury to considering only the results of the defendant's conduct is considered harmless error. *Patrick*, 906 S.W.2d at 493; *Hughes*, 897 S.W.2d at 296-97.

In Vallair's case, in the abstract portion of the charge, the trial court provided the statutory definitions for the terms "intentionally," "knowingly," and "reckless." The

definitions of the terms "intentionally," "knowingly," and "reckless" used in the charge mirror the definitions of those terms in the Texas Penal Code. *See* Tex. Penal Code Ann. § 6.03(a), (b), (c) (West 2011). As a result, the definitions in this part of the trial court's charge did not limit the jury's considering only the result of Vallair's conduct, but instead allowed the jury to also consider the nature of his conduct in determining his guilt. *See id.* However, the application paragraph of the charge instructed the jury to find Vallair guilty if he "intentionally or knowingly or recklessly cause[d] bodily injury to [the complaining witness] . . . by the use of a deadly weapon, namely, a grave ornament, by striking her repeatedly about the head[.]"

Because the application paragraph of the charge limited the jury's consideration to the result of Vallair's conduct, causing bodily injury, we are confident that the jury's decision to convict Vallair was based on the result of his conduct. We conclude that the facts, as applied to the law in the application paragraph of Vallair's jury charge, pointed the jury to the appropriate portions of the definitions of the terms intentionally, knowingly, and recklessly. Therefore, we conclude that the trial court's failure to limit the definitions of the terms under discussion did not result in any egregious harm. *Patrick*, 906 S.W.2d at 492-93; *Hughes*, 897 S.W.2d at 296-97; *Coleman v. State*, 279 S.W.3d 681, 686-87 (Tex. App.—Amarillo 2006), *aff'd*, 246 S.W.3d 76 (Tex. Crim. App. 2008). We overrule Vallair's second issue.

Punishment

In issue three, Vallair complains that the trial court allowed the complaining witness to testify as to her opinion that she "would like to see [Vallair] go away for life" because she thought "he's going to hurt someone else." The witness gave this testimony in response to the prosecutor's asking her about the length of sentence she desired that Vallair receive. Prior to the witness answering the question, the defendant's attorney objected, stating, "Objection, Your Honor; that's an improper question." Defense counsel offered nothing further to explain the basis of his objection, and the trial court overruled the objection.

Preservation of error is a systemic requirement that this court should review on its own motion. *Ford v. State*, 305 S.W.3d 530, 532-33 (Tex. Crim. App. 2009); *Jones v. State*, 942 S.W.2d 1, 2 n.1 (Tex. Crim. App. 1997). As a prerequisite to preserving a complaint for appellate review, a party must make a timely objection, motion, or request that states the grounds for the ruling desired with sufficient specificity to make the trial court aware of the complaint, unless the specific grounds are apparent from the context. *See* Tex. R. App. P. 33.1(a)(1)(A). As the Court of Criminal Appeals has expressed,

> The purpose of requiring a specific objection in the trial court is twofold: (1) to inform the trial judge of the basis of the objection and give him the opportunity to rule on it; (2) to give opposing counsel the opportunity to respond to the complaint. Although there are no technical considerations or forms of words required to preserve an error for appeal, a party must be specific enough so as to let the trial judge know what he wants, why he thinks himself entitled to it, and do so clearly enough for the judge to

> understand him at a time when the trial court is in a proper position to do something about it.

Resendez v. State, 306 S.W.3d 308, 312-13 (Tex. Crim. App. 2009) (internal footnote citations and quotations omitted).

A statement informing the court that a question is improper is tantamount to stating that a party objects to a question without providing any further explanation for the basis of the objection. A question can be improper for many reasons, for example, the question may elicit testimony that is irrelevant in the case, the question may elicit a response that is unduly prejudicial to the defendant, the question may be leading, the question may ask for an answer that is not based on the witness's personal knowledge, or the question may call for an opinion that the witness is not qualified to give. For instance, in this case, had defense counsel objected that the prejudicial value of the testimony outweighed its probative value, the trial court would have been required to balance the value of the testimony against its prejudicial effect. *See* Tex. R. Evid. 403 (Exclusion of Relevant Evidence on Special Grounds). If that was the intent of the objection, which is not obvious, objecting that the question was improper is insufficient to have informed the trial court that Vallair wanted the trial court to engage in a Rule 403 balancing test. *See id*. On the other hand, had counsel objected that the witness was not qualified to express her opinion as to Vallair's sentence, the trial court could have considered whether the victim's personal involvement put her in a unique position to express an opinion that would be helpful to the jury. *See* Tex. R. Evid. 701 (Opinion Testimony by Lay

Witnesses). Generally, to preserve error for review, a party's objection "must be specific enough so as to 'let the trial judge know what he wants, why he thinks himself entitled to it, and do so clearly enough for the judge to understand him at a time when the trial court is in a proper position to do something about it.'" *Resendez*, 306 S.W.3d at 313 (citing *Lankston v. State*, 827 S.W.2d 907, 909 (Tex. Crim. App. 1992)). Since the defense attorney's objection was not sufficiently specific, we conclude the error was not preserved in the trial court for our review on appeal. Tex. R. App. P. 33.1(a)(1)(A); *Robinson v. State*, 701 S.W.2d 895, 900 (Tex. Crim. App. 1985) ("Appellant's objection [to the question as improper] is so general as to amount to no objection at all."); *see also Henderson v. State*, 617 S.W.2d 697, 698 (Tex. Crim. App. 1981) (holding that objection stating "I don't think it's relevant[]" was too general to preserve error); *Wilson v. State*, 541 S.W.2d 174, 175 (Tex. Crim. App. 1976) (holding that objection "I can't see the relevancy" was too general to preserve error). We overrule issue three.

Having overruled all of Vallair's issues, the trial court's judgment is affirmed.

AFFIRMED.

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HOLLIS HORTON
Justice

Submitted on August 15, 2011
Opinion Delivered August 31, 2011
Do Not Publish

Before McKeithen, C.J., Kreger and Horton, JJ.