In The

Court of Appeals

Ninth District of Texas at Beaumont

NO. 09-11-00259-CR

STEVEN LEE HOLLIS A/K/A STEVEN HOLLIS, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the Criminal District Court
Jefferson County, Texas
Trial Cause No. 10-08213

MEMORANDUM OPINION

A jury convicted Steven Lee Hollis a/k/a Steven Hollis of assault on a family member and sentenced Hollis to two years in prison. In one appellate issue, Hollis contends that the trial court abused its discretion by denying his motion for mistrial. We affirm the trial court's judgment.

On November 28, 2009, Officer Reagan Sweat arrived at the scene of a domestic disturbance. A.P., the complainant, told Sweat that her common law husband hit her. Sweat saw blood on A.P.'s left eye and scratches on A.P.'s leg and foot. He testified that A.P. was "very upset[,]" crying, and shaking.

A.P. testified that when Hollis arrived home that day, he became angry because he could not locate a check, and he began questioning A.P. about the check. A.P. testified that Hollis struck her on the side of her left eye hard enough that she fell backwards, and could not see. A.P. also testified that Hollis dragged her, pushed her so that she fell over an ottoman, and placed her in a choke hold. A.P. eventually escaped and went outside to scream for help. A neighbor heard A.P.'s screams and found A.P. with her nose and mouth bleeding. A.P. was crying and upset, and she told the neighbor, "He hit me." Sweat testified that Hollis claimed A.P. fell in the bathroom about four hours before and denied hitting A.P. Sweat arrested Hollis on an unrelated warrant.

Hollis testified that A.P.'s version of the events is not true. According to Hollis, A.P. was upset that he had been gone all day. Hollis testified that he had prepared a plate of food for A.P., but when he handed the plate to A.P., she went "berserk." Hollis testified that A.P. threw her plate onto the table, began yelling and screaming, and tripped over an ottoman as she was "charging" toward the front door. He testified that A.P. fell again after opening the front door. Hollis did not see any blood on A.P. Hollis denied striking A.P. or placing her in a choke hold. Hollis admitted that he and A.P. have had previous "altercations[,]" including "[w]restling matches, a push, a shove." He denied hitting, kicking, or dragging A.P.

Detective Darren Johnson testified that Hollis was previously convicted of family violence against a different woman. Hollis admitted pleading no contest to this charge.

He also admitted previously pleading no contest to charges of domestic assault and battery against A.P.

During closing arguments, the State made the following comments:

> . . . Domestic violence is scary. When you see instances like this of what [A.P.] had to go through on November 28th, 2009, it is scary. What's worse is to think for justice to be done, which is the last thing you're asked to do in the Charge given to you by the Court, see that justice is done, is she has to come to court and be raked over coals on cross-examination and made to look . . .

Defense counsel objected on grounds that the State was "striking at the Defendant over the shoulder of Counsel." The trial court sustained Hollis's objection and instructed the jury to disregard the State's comment, but denied Hollis's request for a mistrial.

Because the trial court sustained Hollis's objection and instructed the jury to disregard the State's argument, we must determine whether the trial court abused its discretion by refusing to grant Hollis's motion for mistrial. *See Archie v. State*, 340 S.W.3d 734, 738-39 (Tex. Crim. App. 2011). When making this determination, we consider: (1) the severity of the misconduct, *i.e.*, the magnitude of the prejudicial effect of the State's remarks, (2) the measures taken to cure the misconduct, *i.e.*, the efficacy of any cautionary instruction by the trial court, and (3) the certainty of conviction absent the misconduct, *i.e.*, the strength of the evidence supporting the conviction. *Id*. at 739. A mistrial is proper when the objectionable event is so emotionally inflammatory that curative instructions will not likely prevent the jury from being unfairly prejudiced against the defendant. *Id*.

On appeal, Hollis contends that he was entitled to exercise his right to confrontation by "vigorously" cross-examining A.P. and that the State's argument punished him for exercising this right. He contends that the trial court's instruction was insufficient to cure the effect of the State's argument.

We cannot say that the extent of prejudice from the State's argument was so severe as to render the trial court's instruction ineffective. *See id.* at 741. The trial court timely instructed the jury to disregard the State's comments. In its charge, the trial court instructed the jury that the attorneys' questions and comments are not testimony and cannot be considered as evidence. The law generally presumes that instructions to disregard and other cautionary instructions will be duly obeyed by the jury. *Id*. The State's comments were not so indelible that the jury would simply ignore the trial court's instruction to disregard them. *See id*. Moreover, the jury heard evidence that Hollis and A.P. had prior "altercations," that Hollis hit and dragged A.P. and placed her in a choke hold on November 28, and that witnesses subsequently saw blood on A.P.'s face. The evidence supporting Hollis's conviction is fairly compelling, such that the jury would likely have found beyond a reasonable doubt that Hollis committed the offense of assault on a family member, even without the State's argument. *See* Tex. Penal Code Ann. § 22.01(a) (West 2011); *see also Archie*, 340 S.W.3d at 742.

Accordingly, we conclude that the trial court did not abuse its discretion by denying Hollis's motion for mistrial. *See Archie*, 340 S.W.3d at 738-39. We overrule Hollis's sole issue and affirm the trial court's judgment.

AFFIRMED.

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STEVE McKEITHEN
Chief Justice

Submitted on June 25, 2012
Opinion Delivered July 11, 2012
Do Not Publish

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