

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-11-00425-CV

IN RE COMMITMENT OF HOWARD EVAN FORD

On Appeal from the 435th District Court
Montgomery County, Texas
Trial Cause No. 10-10-11568-CV

MEMORANDUM OPINION

The State of Texas filed a petition to civilly commit Howard Evan Ford as a sexually violent predator under the Sexually Violent Predator Act. *See* Tex. Health & Safety Code Ann. §§ 841.001-.151 (West 2010 & Supp. 2011). A jury found Ford suffers from a behavioral abnormality that makes him likely to engage in a predatory act of sexual violence. *Id.* § 841.003. The trial court entered final judgment and an order of civil commitment under the Act. In two issues, Ford contends the trial court erred in admitting unfairly prejudicial evidence. *See* Tex. R. Evid. 403. We affirm the judgment of the trial court.

At the beginning of the trial, the State read into the record Ford's admissions to the commission of sexual offenses against several different children. The admissions contain details such as the age and sex of the child victim and the manner and means of the commission of the assaults. The State put Ford on the stand, and in the course of his testimony Ford described the manner in which he had committed the assaults and the period of time over which Ford abused each child. The State then called its forensic psychologist, Dr. Jason Dunham. Among other objections not at issue here, Ford objected that "this testimony is going to be more prejudicial than it is probative." The trial court overruled the objection. Dunham then described details about the assaults, without further objection, and provided his evaluation that Ford is a pedophile. He then stated that in his opinion, Ford has a behavioral abnormality that affects his volitional capacity and makes him likely to commit predatory acts of sexual violence. Dunham explained that Ford had many risk factors, including having five or six victims, committing assaults four times a week over four or five years, and employing a rare level of force and violence in the assaults. In particular, the forcible manner in which Ford committed the assaults was rare and presented a definite risk factor.

A psychiatrist, Dr. Sheri C. Gaines, also testified for the State. She was asked what she saw in her evaluation, review of the records and interview with Ford that led her to diagnose Ford with pedophilia. Ford made a "403 objection." The trial court overruled the objection and Gaines went on to describe, without further objection, details

about the offense that supported her diagnosis and her opinion that Ford has a behavioral abnormality that makes it difficult for him to control his behavior. Risk factors she found to be significant included particular acts of violence committed during the assaults. Gaines explained that a repetitive pattern of past behavior is important when attempting to predict future behavior.

To preserve error concerning the admission of evidence, a party's objection must be timely and must specifically state the grounds on which the objection is based if not apparent from the context. Tex. R. Evid. 103(a)(1). The State argues that Ford failed to preserve error because the evidence he complains about had already been admitted into evidence without objection. We understand Ford's complaint to be that the evidence is unfairly prejudicial because it involves the repeated admission of the same or similar evidence of particularly distasteful acts of sexual deviance. Otherwise relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice or "needless presentation of cumulative evidence." *See* Tex. R. Evid. 403. Ford did not waive error by waiting until the evidence was repeated to complain that it was prejudicial because it was needlessly cumulative. Ford objected only when each expert first started to refer to the details of Ford's offenses; however, Ford neither continued to object to this testimony nor did he request a running objection. To preserve error in the admission of evidence, a party must object and obtain an adverse ruling each time the complained-of evidence is presented or obtain a running objection to the

evidence. *See Duperier v. Tex. State Bank*, 28 S.W.3d 740, 755-56 (Tex. App.—Corpus Christi 2000, pet. dismissed). For this reason, Ford failed to preserve error. *See Tex. R. App. P. 33.1(a)*.

Even if Ford had preserved error regarding the experts' discussion of the details of Ford's offenses, we find the testimony Ford complains about on appeal was not unfairly prejudicial in this case. Evidence is unfairly prejudicial when it has an undue tendency to suggest that a decision be made on an improper basis, commonly, but not necessarily, an emotional one. *Vasquez v. State*, 67 S.W.3d 229, 240 (Tex. Crim. App. 2002); *Montgomery v. State*, 810 S.W.2d 372, 389 (Tex. Crim. App. 1990) (op. on reh'g). Factors that should be considered in applying Rule 403 include the probative value of the evidence, the potential of the evidence to impress the jury in some irrational way, the time needed to develop the evidence, and the proponent's need for the evidence. *Montgomery*, 810 S.W.2d at 389-90. Here, each expert explained which facts were considered and how those facts influenced the expert's evaluation. Because the evidence assisted the jury in weighing each expert's testimony and the opinion that each expert offered regarding the ultimate issue in the case, the experts' testimony about the details of the offense was not unfairly prejudicial. *See In re Commitment of Day*, 342 S.W.3d 193, 199 (Tex. App.—Beaumont 2011, pet. denied). We overrule issues one and two and affirm the trial court's judgment.

AFFIRMED.

CHARLES KREGER
Justice

Submitted on January 31, 2012
Opinion Delivered March 22, 2012

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