

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-15-00295-CR

RANDALL DEAN LONG, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 253rd District Court
Liberty County, Texas
Trial Cause No. CR31595**

MEMORANDUM OPINION

Randall Dean Long challenges his conviction for obstruction or retaliation. *See* Tex. Penal Code Ann. § 36.06(a)(1)(B) (West Supp. 2016).¹ The sole issue raised in this appeal contends that the trial court abused its discretion in the guilt phase of the trial by admitting into evidence a recording of a telephone call made

¹ Although the statute cited in this opinion has been amended since the date of this offense, the changes are not material to the issue on appeal; accordingly, we cite to the current version of the statute for convenience.

from the jail. Long argues the recording was not properly authenticated. *See generally* Tex. R. Evid. 901(a).

We review a trial court’s ruling on the admission of evidence for an abuse of discretion. *Casey v. State*, 215 S.W.3d 870, 879 (Tex. Crim. App. 2007). “A trial court abuses its discretion when its decision lies outside the zone of reasonable disagreement.” *Id.* For a party to satisfy the requirement of authenticating or identifying an item of evidence, “the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.” Tex. R. Evid. 901(a). The trial court decides whether the proponent of evidence has satisfied this threshold requirement of admissibility. *See* Tex. R. Evid. 104(a); *Tienda v. State*, 358 S.W.3d 633, 638 (Tex. Crim. App. 2012). In a jury trial, “[t]he preliminary question for the trial court to decide is simply whether the proponent of the evidence has supplied facts that are sufficient to support a reasonable jury determination that the evidence he has proffered is authentic.” *Tienda*, 358 S.W.3d at 638.

Rule 901(b) provides a nonexclusive list of methods for authenticating evidence. *See* Tex. R. Evid. 901(b). These methods include “[t]estimony that an item is what it is claimed to be[]” and “[a]n opinion identifying a person’s voice—whether heard firsthand or through mechanical or electronic transmission or recording—based on hearing the voice at any time under circumstances that connect it with the

alleged speaker.” *Id.* 901(b)(1), (5). Additionally, “[f]or a telephone conversation, evidence that a call was made to the number assigned at the time to . . . a particular person, if circumstances, including self-identification, show that the person answering was the one called[.]” *Id.* 901(b)(6)(A).

Long argues the sole evidence connecting him to the call is the fact that it was made using his Inmate Identification Number and he contends that prior to its admission in evidence, there was no evidence presented that the trial court or the jury could have used to determine that the person making the call was in fact Long. Prior to admitting the recording into evidence, the trial court considered testimony from several witnesses. Corporal Joshua Leal stated that he was able to identify both voices on the recording because he had engaged in conversations with the speakers and recognized their voices. Additionally, Leal stated that he listened to the calls with Sergeant Investigator Brian Bortz. Bortz testified that he has computer access to the program that is used for listening to and recording phone calls in the Liberty County Jail and that he frequently uses the program to recover information in cases he is investigating. Bortz also explained how the recording system operates. According to Bortz, the system records the date and time of each call, the phone numbers of the caller and the recipient, and the inmate’s unique personal identification number. He stated that he was with Leal when they listened to Long’s

jail calls. Another investigator, Terri Hughes, stated that she downloaded Long's calls and prepared a report of the calls from his identification number for September 5, 2014, through October 9, 2014. Hughes testified that the State's exhibits were true and correct recordings of redacted versions of the eight actual calls.

Letecia Garcia, a field technician for the communication company that provides phone service for the inmates in the Liberty County Jail, described the recording system and explained how the calls are stored and retrieved from the company's servers. The system monitors and records every call made by an inmate in the jail. According to Garcia, the system was operating normally and properly when the calls were made and recorded, and the computer files of the calls were created at or near the time of the calls.

Jamie Carnes, the warden of the Liberty County Jail, admitted it was possible for an inmate to obtain and use another inmate's personal identification number. However, she testified that the State's exhibits were calls made in the jail, the recording system was functioning properly when the calls were made, and because she had past conversations with him, she was familiar with Long's voice and could identify his voice on the recording.

The testimony of Garcia, Carnes, Bortz, and Hughes established that the monitoring and recording system was operating properly when the recordings were

made, and that the recordings are what they purport to be; that is, telephone calls made by an inmate at the Liberty County Jail. *See Tienda*, 358 S.W.3d at 638; *Banargent v. State*, 228 S.W.3d 393, 401 (Tex. App.—Houston [14th Dist.] 2007, pet. ref'd). That a voice on a recording is a particular person's may be established through testimony by a witness who is familiar with the person's voice. *See Angleton v. State*, 971 S.W.2d 65, 68 (Tex. Crim. App. 1998). We conclude that the testimony in Long's trial sufficiently established Leal's and Carnes's personal familiarity with Long's voice such that they were qualified to identify Long as the caller in the recordings. *See Tex. R. Evid. 901(b)(5)*. We conclude that the trial court did not abuse its discretion by overruling Long's objection as to the authenticity of the recordings and by admitting the recordings into evidence at trial. *See Tex. R. Evid. 901(a)*. We overrule the issue presented on appeal. The trial court's judgment is affirmed.

AFFIRMED.

CHARLES KREGER
Justice

Submitted on April 12, 2017
Opinion Delivered May 10, 2017
Do Not Publish

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