

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-16-00116-CR
NO. 09-16-00117-CR
NO. 09-16-00118-CR
NO. 09-16-00119-CR
NO. 09-16-00120-CR
NO. 09-16-00121-CR
NO. 09-16-00122-CR
NO. 09-16-00123-CR

ALEJANDRO GUZMAN-LOPEZ, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 221st District Court
Montgomery County, Texas
Trial Cause No. 15-05-05080-CR (Counts 1, 2, 3, 4, 5, 6, 7, and 8)

MEMORANDUM OPINION

Alejandro Guzman-Lopez (“Guzman”) asks that we reverse the trial court’s judgment and grant his request asking for another punishment hearing because the trial court allowed the State to present a non-certified interpreter’s testimony

addressing her interpretations of several tape recorded conversations that the State captured of the telephone conversations Guzman had with others while he was in jail. Because Guzman's objection to the witness's qualifications to interpret the conversations was untimely, we overrule Guzman's issue and affirm the trial court's judgments.

Background

A grand jury indicted Guzman on several charges following an automobile collision that occurred on May 17, 2015, in Montgomery County, Texas. Bradley and Shae Frazier occupied the two front seats in a red SUV that was involved in the collision, and they died as a result of the injuries they received in the collision. The Frazier's two children were in the backseat of the SUV, and both were seriously injured in the collision.

In the guilt-innocence phase of Guzman's trial, the jury heard from six individuals who witnessed the wreck. The testimony in that phase of the case reflects that the collision occurred on Highway 59 and showed that the car Guzman was driving was travelling at a high rate of speed when he rear-ended the red SUV. Guzman fled from the scene after the collision occurred. At the end of the first day of his trial, Guzman advised the trial court that he wanted to change his plea. After changing his plea, Guzman pleaded guilty to an indictment charging him with two

counts of intoxication manslaughter, two counts of aggravated assault, and four counts for failing to stop and render aid.

Eight witnesses, including Guzman, testified during the punishment phase of Guzman's trial. Guzman testified with the assistance of a certified interpreter who was present during both the guilt-innocence and the punishment phases of his trial. Melody Pena, a legal assistant employed by the District Attorney's Office, is the witness whose testimony is the subject of the issue Guzman raises in his appeals.

The State called Pena during the punishment phase of the trial solely for the purpose of interpreting several statements she heard Guzman make while talking on the phone after he was arrested and jailed. Pena explained that she had listened to recordings of the telephone calls, and that she was familiar with Guzman's voice because she had listened to his voice on other recorded conversations that Guzman gave to the police after his arrest. Pena testified that in addition to recognizing Guzman's voice, she knew Guzman was the person who made the calls because the prisoners using the phone from jail have a unique number which is used when placing calls from jail. Pena created a written summary interpreting several portions of the taped conversations. After Pena authenticated her summary, Guzman's attorney asked the court for permission to take Pena on voir dire. On voir dire, Pena testified that the conversations between Guzman and the individuals on the phone

were conducted in Spanish. Pena explained that she was able to interpret the calls because “English is my second language and Spanish [is] my first language[.]” Pena stated that she is “not a certified translator.” At that point, arguing that the telephone calls should be “translated verbatim” and not admitted through a written summary, Guzman’s attorney objected to the State’s request to admit Pena’s written summary of the conversations which had been marked as an exhibit but not yet introduced.

With the trial court’s permission, the parties then approached the bench. After pointing out that the court had already admitted the disks containing the recordings of the conversations, the trial court proposed that, if possible, the State could play the portion of each call the State wanted to introduce into evidence and then have its witness, referring to Pena but without expressly naming her, summarize them. The trial court then commented that if the witness erroneously interpreted the conversations, Guzman’s attorney could “point it out.” Additionally, the trial court advised Guzman’s attorney that if Guzman wanted to put on his own interpreter to interpret the conversations, he could do so. At that point, Guzman’s attorney stated: “I agree to that.”

Upon the jury’s return, the prosecutor played the portion of the first recording between Guzman and another individual that the prosecutor wanted to publish to the jury. Then, the prosecutor asked Pena to explain what those involved in the

conversation said. Pena interpreted the first conversation just after it had been published to the jury. Using this same procedure, the prosecutor published six total recordings of parts of the various telephone conversations Guzman had with others while he was in jail. After publishing the portions of the remaining conversations the State wanted to introduce into evidence, Pena provided the jury with her interpretation about what the parties to those conversations said. When the trial court gave Guzman's attorney the opportunity to question Pena about her testimony, he responded: "No questions." Importantly, when Pena testified, Guzman's attorney never told the court that he objected to Pena's qualifications to interpret a Spanish conversation because she was not certified by any certifying authority as an interpreter.

The day after Pena testified, Guzman's attorney advised the trial court that the testimony Pena provided to the jury about the telephone conversations "were summaries, they were not verbatim transcriptions." However, after Pena began testifying, Guzman's attorney never objected that she was summarizing the conversations and not interpreting them. The record shows that Guzman, who speaks some English, and Guzman's interpreter, were present in court when Pena testified. In presenting his objection about Pena's testimony, Guzman's attorney stated that he realized his objection was "not contemporaneous with the objection [that he]

made,” attempting to excuse his delay in objecting on the basis that he thought the trial court’s ruling allowed one of the interpreters in the courtroom, not Pena, to testify about the contents of the recordings that had been published in the trial. In response, the trial court explained that its ruling contemplated that Pena would testify about the recordings and that Guzman would then be allowed to both cross-examine Pena about her testimony and to call an interpreter to testify about the contents of the recordings. The prosecutor reminded the trial court that it had never represented that it intended to present the jury with an interpretation of the entire conversations in the recordings, but instead that he had intended to limit the scope of Pena’s testimony to the conversations the State believed were relevant to its case. When Guzman suggested that he wanted to present a document to provide a translation of the portions of the calls that the State had played to the jury,¹ the trial court declined his request, noting that at that point in the trial, Guzman had not been denied his right to present witnesses to testify about their interpretations of the conversations on the recordings. When Guzman was given the opportunity to present

¹ Before Guzman testified, and outside the jury’s presence, the trial court allowed the document prepared by Pena to be an exhibit for appellate purposes only. At the conclusion of the trial, Guzman’s attorney did not make a bystander’s bill or bill of proof to show how a certified interpreter might have interpreted the conversations, nor did he provide the trial court with a word-for-word written translation.

witnesses to contradict Pena's interpretation of the calls, he did not call the certified interpreter assigned to assist Guzman in the trial. While Guzman testified in the punishment phase of his trial, his testimony does not reflect that he ever complained that Pena interpreted the conversations incorrectly.

Issue

In one issue relating to all eight of his convictions, Guzman complains on appeal that the trial court committed reversible error by allowing Pena to provide the jury with an interpretation of the conversations when she is not a certified interpreter. In response, the State argues that Guzman failed to timely object to Pena's qualifications to interpret the recordings before she testified. Second, the State argues that Guzman's counsel expressly agreed to the procedure the trial court proposed to publish the conversations, which allowed Pena to testify about them. Third, the State asserts that no requirements exist under Texas law requiring that a foreign language conversation be interpreted by a certified interpreter.

Analysis

We agree with the State that Guzman's objection to Pena's qualifications to interpret the recordings was untimely. Under Texas law, "to preserve an issue for appeal, a timely objection must be made that states the specific ground of objection, if the specific ground was not apparent from the context." *Douds v. State*, 472

S.W.3d 670, 674 (Tex. Crim. App. 2015); *see also* Tex. R. App. P. 33.1(a). Under the procedural rules that govern error preservation, “the record must show that . . . the complaint was made to the trial court by a timely request, objection, or motion” stating the grounds for the ruling sought “with sufficient specificity to make the trial court aware of the complaint, unless the specific grounds were apparent from the context[.]” Tex. R. App. P. 33.1(a). The specific objection must be timely to (1) inform the trial judge of the basis of the objection to afford him an opportunity to rule on it, and (2) allow opposing counsel an opportunity to respond to the complaint. *Douds*, 472 S.W.3d at 674. With respect to specificity, “all a party has to do to avoid the forfeiture of a complaint on appeal is to let the trial judge know what he wants, why he thinks himself entitled to it, and to 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.” *Id.* (quoting *Lankston v. State*, 827 S.W.2d 907, 909 (Tex. Crim. App. 1992)).

“A complaint is timely if it is made ‘as soon as the ground of objection becomes apparent.’” *Pena v. State*, 353 S.W.3d 797, 807 (Tex. Crim. App. 2011) (quoting *Hollins v. State*, 805 S.W.2d 475, 476 (Tex. Crim. App. 1991)); *see also* *Lackey v. State*, 364 S.W.3d 837, 843 (Tex. Crim. App. 2012) (explaining the policies underlying the contemporaneous objection rule). To be sufficiently specific,

“the objection must simply be clear enough to provide the judge and the opposing party an opportunity to address and, if necessary, correct the purported error.” *Pena*, 353 S.W.3d at 807 (citing *Ford v. State*, 305 S.W.3d 530, 533 (Tex. Crim. App. 2009)). We consider whether a trial court was made aware of a defendant’s objection “in the context in which the complaint was made and the parties’ shared understanding of the complaint at that time.” *Id.* (citing *Lankston*, 827 S.W.2d at 911).

In our opinion, to be timely, Guzman needed to object to Pena’s qualifications to interpret the recordings before she testified about her interpretation of the conversations in Guzman’s trial. *See* Tex. R. App. P. 33.1(a)(1). In this case, the record shows that Guzman’s attorney objected to Pena’s testimony on the basis that the State had not shown that she was the custodian of the recordings from the jail, not because Pena did not hold a certification as an interpreter. Additionally, Guzman made a separate objection to the State’s request to introduce Pena’s written summary, but the record shows that the court granted that objection and the written summary that Pena prepared was not published to the jury. In summary, the issue that Guzman raises in his appeal, that Pena was not qualified to interpret the recordings because she was not a certified interpreter, is a different objection than the objections that he raised before Pena testified in his trial. *See Dixon v. State*, 2

S.W.3d 263, 273 (Tex. Crim. App. 1999) (affirming conviction where the complaint on appeal did not comport with the objection made at trial); *Broxton v. State*, 909 S.W.2d 912, 918 (Tex. Crim. App. 1995) (to preserve error for appellate review, complaint on appeal must comport with objection at trial, and an objection stating one legal theory may not be used to support a different legal theory on appeal). Guzman waited until the second day of his trial, after Pena had testified, before he made the objection that Pena was not a certified interpreter. Consequently, Guzman's objection that Pena did not hold the qualifications she needed to testify as an interpreter was untimely, it was properly overruled, and his issue was not properly preserved by a timely objection for appellate review. *See* Tex. R. App. P. 33.1(a); *Douds*, 472 S.W.3d at 674.

Moreover, even if the record showed that the trial court appreciated Guzman's objections on the day Pena testified to include an objection that she was not a certified interpreter, the record shows that, during the discussions of whether Pena should be allowed to testify about the recordings, Guzman agreed with the trial court's proposal allowing Pena to testify and then be subjected to cross-examination about her interpretation of the conversations. While Guzman's attorney agreed to this procedure, the record shows that he chose not to cross-exam Pena or to call any witnesses to provide alternative interpretations of the conversations captured by the

recordings. Given that Guzman’s attorney expressly agreed to allow Pena to interpret the recordings, he invited the testimony that he now complains was improper. *See Woodall v. State*, 336 S.W.3d 634, 644 (Tex. Crim. App. 2011). Generally, “a party is estopped from seeking appellate relief based on error that it induced.” *Id.* “To hold otherwise would be to permit [the defendant] to take advantage of his own wrong.” *Id.*

Because Guzman’s counsel agreed to the procedure the trial court proposed regarding Pena’s testimony, we conclude that he cannot now complain that the trial court allowed her to testify in his appeal. We further conclude that Guzman failed to lodge a timely objection to Pena’s testimony on the basis that she was not a certified interpreter.

We overrule the sole issue Pena presents in his appeals. We affirm the trial court judgments in trial court cause number 15-05-05080-CR on counts 1-8.

AFFIRMED.

HOLLIS HORTON
Justice

Submitted on August 7, 2017
Opinion Delivered September 20, 2017
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Before McKeithen, C.J., Kreger and Horton, JJ.