

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-16-00309-CR

KRISTEN WESTFALL MADDOX, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 1A District Court
Tyler County, Texas
Trial Cause No. 12,856

MEMORANDUM OPINION

Appellant Kristen Westfall Maddox appeals her conviction for capital murder. In three issues on appeal, Maddox complains about the admission of testimony and the denial of a fair trial due to defense counsel's allegedly deficient performance. We affirm the trial court's judgment.

BACKGROUND

Deputy Tony Reynolds of the Tyler County Sheriff's Office testified that on January 18, 2014, he responded to a call about shots being fired at Mount Carmel

Baptist Church. On arriving, Reynolds found a deceased male and female. Reynolds testified that he recognized the male as Nathan Maddox, and he knew that Nathan had been in a prior altercation with Paul and Letha Westfall (“the Westfalls”). Deputy Jeff Mashaw of the Tyler County Sheriff’s Office testified that he assisted in the investigation of the murders. Mashaw testified that he was friends with the Westfalls and knew about their custody battle with Nathan, and he suspected that the Westfalls could have been involved.

Ryan Deaton, Nathan’s attorney, testified that Nathan had hired him to defend against a protective order brought by the Westfalls, to prosecute a protective order against the Westfalls, and to get custody of his daughter, M.M. Nathan was previously married to Maddox, who is the Westfalls’ daughter and the mother of M.M. According to Deaton, Nathan had expressed fear of the Westfall family and had gotten into an altercation with Paul. Deaton explained that Child Protective Services had given the Westfalls possession of M.M., and the Westfalls had filed a petition seeking custody of M.M. from Maddox and Nathan. Deaton testified that Nathan had been awarded a stepped-up visitation plan that included supervised visitation at Mount Carmel Baptist Church, and Deaton anticipated that Nathan would eventually be awarded custody of M.M.

Texas Ranger Bobby Smith testified that he assisted in the murder investigation, and he found a .30-30 shell casing at the scene. Smith testified that Nathan and his wife, Krystal Maddox, were shot in the head, and a .30-30 rifle casing was recovered at the scene. Smith explained that Nathan's autopsy revealed that he had also been shot in the hip with a 20-gauge shotgun. Smith testified that based on Nathan's autopsy, he concluded that there had been two shooters. During his investigation, Smith learned that in October 2013, an altercation had occurred between Nathan and Paul. Smith testified that a grand jury indicted the Westfalls, Maddox, and Cameron Westfall, the Westfalls' son, for the felony offense of engaging in organized criminal activity, that being a conspiracy to commit the capital murders of Nathan and Krystal. Smith explained that later the Westfalls and Maddox were charged with capital murder, and Cameron was charged with tampering with physical evidence. Specifically, the indictment states that Maddox intentionally or knowingly caused the deaths of Nathan and Krystal by shooting them with a firearm, and that both murders were committed during the same criminal transaction. *See* Tex. Penal Code Ann. § 19.03(a)(7) (West Supp. 2016).

Ronald Duff, a Texas Ranger who investigated the murders, testified that the day after Paul was arrested, Paul guided Duff to a pond located on the property of one of Paul's neighbors. Duff testified that a police dive team located a white bag

containing a 20-gauge shot gun and some duct tape, and a .30-30 lever-action rifle with a spent shell casing. Aubrey Sturrock, Chief Investigator of the Tyler County Sheriff's Office, testified that Paul confessed and told police that Maddox was the second shooter. Sturrock also testified that the physical evidence corroborated Paul's confession.

Cameron testified that Maddox did not want Nathan visiting M.M. and that Maddox wanted Nathan out of the picture. According to Cameron, Maddox had claimed that she knew people who could kill Nathan, and after the October incident between Paul and Nathan, the Westfalls also wanted to have Nathan killed. Cameron testified that Maddox and the Westfalls tried to get Cody Shaver to kill Nathan. Cameron explained that when Maddox failed to get someone to kill Nathan, Paul decided to do it himself. According to Cameron, Maddox and Paul told him they shot Nathan and Krystal, and Maddox and Paul hid their clothes and guns in the woods.

Cameron admitted that the day after the murders, Paul told him to get rid of the evidence, so he retrieved the evidence out of the woods. According to Cameron, Letha washed the clothes, and he put the guns and duct tape in a white bag and threw the bag in a pond. Cameron explained that he put the ammunition and cartridges in gloves that Paul had worn during the murders, and he threw those items into another

pond. Cameron testified that he guided the police to the ponds. Cameron further testified that he pleaded guilty to two counts of tampering with evidence, and as part of his plea bargain, he agreed to testify at trial against Maddox and Paul. According to Cameron, he did not tell the truth when he was arrested because he was trying to protect his family and because Maddox had told him to stick to the story.

Letha testified that Maddox did not like Nathan and Krystal visiting with M.M., and Maddox wanted Nathan dead and claimed that her people would take care of it. According to Letha, after the October incident, she and Paul embraced the idea of Maddox's people taking care of Nathan. Letha explained that Paul got aggravated and decided to get rid of Nathan himself. Letha admitted that she had asked Shaver if he knew anyone who could take care of Nathan. Letha testified that Paul and Maddox told her that they murdered Krystal and Nathan. Letha also admitted that she conspired to murder Nathan. Letha pleaded guilty to engaging in organized criminal activity and was sentenced to imprisonment for life.

Justin Reynolds, one of Maddox's friends, testified that Maddox and the Westfalls did not want Nathan to have rights to M.M., and that they were all mad at Nathan. Reynolds testified that Maddox and the Westfalls asked him to kill Nathan or to find someone to do it. According to Reynolds, the Westfalls told him that if he could not find someone to murder Nathan, they would do it themselves.

Cody Shaver, Maddox's friend, testified that Maddox did not like Nathan seeing M.M. Shaver testified that he heard Maddox and the Westfalls talk about wanting to kill Nathan because they did not want Nathan to have custody of M.M., and about killing Krystal if she happened to be present. Shaver testified that Maddox and the Westfalls asked him to help them kill Nathan or to find someone else to do it, and they offered to pay him money and provide the weapon. Shaver testified that he was also present when they asked other people to kill Nathan. According to Shaver, Maddox claimed that she had people who would do it, and Maddox and the Westfalls told him they would either find someone or do it themselves.

Shaver explained that Maddox had sent him a text message stating that if Shaver could not find someone to kill Nathan, Maddox would. Shaver testified that he showed the text message to his sister. Shaver further testified that a few days before the murders occurred, Shaver and Paul were driving past Mount Carmel Baptist Church when Paul mentioned killing Nathan. According to Shaver, Paul stated that it had to be done before the next weekend.

Tiffany Shaver Cox, Shaver's sister, testified that Shaver showed her the text message that Maddox had sent Shaver, and that the message stated "that they wanted to know if he would help them get rid of Nathan and if he wouldn't, they'd do it themselves or find someone else to do it." According to Cox, Shaver had told her

that Maddox and the Westfalls had asked Shaver to help them kill Nathan, and Cox understood Maddox's text to mean that they were asking Shaver to help kill Nathan.

Maddox testified in her defense and denied that she had conspired to shoot Nathan and Krystal and denied being at the church when the murders occurred. Maddox testified that Paul told her he shot Krystal and Nathan in the head and that Cameron also shot Nathan. Maddox claimed that she told her family to put the blame on her instead of Cameron because she wanted to protect Cameron. According to Maddox, the Westfalls lied to protect Cameron.

The jury found Maddox guilty of capital murder, and the trial court sentenced Maddox to confinement in prison for life without parole. Maddox's trial counsel filed a motion for new trial, arguing that the verdict was contrary to the law and the evidence and that the trial court should grant a new trial in the interest of justice. The trial court denied Maddox's motion for new trial.

ANALYSIS

In issue one, Maddox complains that the trial court erred by allowing Shaver to testify about statements made by Paul under a mistaken application of the co-conspirator exception to the hearsay rule. *See* Tex. R. Evid. 801(e)(2)(E). The record shows that the trial court allowed Shaver to testify, over defense counsel's objections, about a conversation Shaver had with Paul, during which Paul told

Shaver that they were going to shoot Nathan at Mount Carmel Baptist Church and that it had to be done by the following weekend. According to Maddox, the alleged statements that Paul made to Shaver are inadmissible hearsay because they were not made in the furtherance of a conspiracy, but rather to report on the status of the conspiracy to another person. Maddox also complains that because Paul did not appear at trial, she was denied her constitutional right to confront Paul as a witness regarding the alleged hearsay statements. According to Maddox, the admission of the inadmissible hearsay statements directly influenced the outcome of her trial.

We review the trial court's ruling to admit evidence under an abuse of discretion standard. *Martinez v. State*, 327 S.W.3d 727, 736 (Tex. Crim. App. 2010). The trial court abuses its discretion when its decision lies outside the zone of reasonable disagreement. *Id.* We will not disturb a trial court's evidentiary ruling if it is correct on any theory of law applicable to the case. *De La Paz v. State*, 279 S.W.3d 336, 344 (Tex. Crim. App. 2009). Further, because the alleged error is not constitutional, we will reverse the trial court's judgment only if the error affected Maddox's substantial rights. *See* Tex. R. App. P. 44.2(b). "A substantial right is affected when the error had a substantial and injurious effect or influence in determining the jury's verdict." *Schmutz v. State*, 440 S.W.3d 29, 39 (Tex. Crim. App. 2014). Substantial rights are not affected by the erroneous admission of

evidence if, after examining the record as a whole, the appellate court has fair assurance that the error either did not influence the jury or had only a slight effect. *Motilla v. State*, 78 S.W.3d 352, 355 (Tex. Crim. App. 2002). The presence of overwhelming evidence of guilt may play a role in resolving the issue of harm. *Id.* at 358.

The jury heard testimony from Letha that once Nathan's visitations at the church were finished, Nathan would have more access to M.M. The jury heard Letha testify that Paul became aggravated and told her that he was going to get rid of Nathan himself. Letha testified that on the morning of the murders, Paul started talking about killing Nathan, and Maddox told Letha afterwards that Maddox could not let Paul go to the church alone. The jury also heard Letha testify that Paul and Maddox told her the details about how they shot Nathan and Krystal, and Letha admitted that she had conspired to murder Nathan. The jury also heard Cameron testify that on the morning of the murders he heard Maddox and the Westfalls talking about getting Nathan out of the picture. The jury heard Cameron's testimony that Maddox and Paul told him that they shot Nathan and Krystal, and that Cameron saw Maddox and Paul hide their clothes and guns in the woods. On this record, we have fair assurance that the admission of Shaver's testimony either did not influence the jury or had only a slight effect and, therefore, did not affect Maddox's substantial

rights. *See* Tex. R. App. P. 44.2(b); *Schmutz*, 440 S.W.3d at 39; *Motilla*, 78 S.W.3d at 355, 358.

Maddox also asserts that Shaver's testimony concerning Paul's alleged hearsay statements violated her right to confront Paul as a witness. *See* U.S. Const. amend. VI. The State argues that Maddox's right to confrontation was not violated because Paul's statements are not hearsay; rather, they are statements of a co-conspirator made in furtherance of the conspiracy. *See* Tex. R. Evid. 801(e)(2)(E) (providing that statements of party-opponent's co-conspirator made during and in furtherance of the conspiracy are not hearsay). The State further argues that the error, if any, was harmless because substantially similar evidence was admitted without objection.

The violation of the Sixth Amendment right of confrontation constitutes constitutional error that is subject to harmless error analysis. *Shelby v. State*, 819 S.W.2d 544, 546 (Tex. Crim. App. 1991) (citing *Delaware v. Van Arsdall*, 475 U.S. 673, 684 (1986)). In the case of constitutional error, we must reverse a trial court's judgment unless we determine, beyond a reasonable doubt, that the error did not contribute to the conviction or punishment. *See* Tex. R. App. P. 44.2(a). In assessing harm in a Confrontation Clause case, we apply a three-pronged test. *Shelby*, 819 S.W.2d at 547. First, we assume that the damaging potential of the cross-

examination was fully realized. *Id.* Second, with that assumption in mind, we review the error by considering the following factors: the importance of the witness's testimony in the State's case; whether the testimony was cumulative; the presence or absence of evidence corroborating or contradicting material points of the witness's testimony; the extent cross-examination was otherwise permitted; and the overall strength of the State's case. *Id.* Third, in light of the first two prongs, we must determine whether the error was harmless beyond a reasonable doubt. *Id.*

Assuming that Maddox would have been able to fully cross-examine Paul and discredit him as a witness, we note that Paul's statement to Shaver that they were going to shoot Nathan at Mount Carmel Baptist Church and that it had to be done by the following weekend was cumulative of Letha's and Cameron's testimony, and Letha's and Cameron's testimony also corroborated Paul's statement. The trial court permitted Maddox to fully cross-examine Letha and Cameron, along with the State's other witnesses. Letha's and Cameron's testimony made a strong case against Maddox. Paul's testimony was not pivotal. Because our review of the record shows that the properly admitted evidence overwhelmingly established Maddox's guilt, we conclude, beyond a reasonable doubt, that the admission of Paul's statement to Shaver did not contribute to Maddox's conviction or punishment. We overrule issue one.

In issue two, Maddox complains that the trial court erred by allowing Cox to testify concerning allegedly inadmissible hearsay statements made by her brother, Shaver, and about the content of a text message that Maddox allegedly sent Shaver, which was not authenticated or admitted into evidence. According to Maddox, the admission of Cox's testimony bolstered the unreliable testimony of Shaver and affected her substantial rights. The State argues that Cox's testimony was admissible as a prior consistent statement of what Shaver testified to at trial and was offered to rebut a claim of recent fabrication made by the defense while cross-examining Shaver at trial. *See* Tex. R. Evid. 801(e)(1)(B).

The standard for reviewing a trial court's determination that a prior consistent statement is admissible because the cross-examination suggested or implied an assertion of recent fabrication is abuse of discretion. *Hammons v. State*, 239 S.W.3d 798, 806 (Tex. Crim. App. 2007). The trial court has substantial discretion to admit prior consistent statements under Rule 801(e)(1)(B), as there only has to be a suggestion that a witness has consciously altered or fabricated his testimony to permit the use of earlier statements that are generally consistent with the witness's testimony at trial. *Id.* at 804-05. For a prior consistent statement to be admissible, the following four requirements must be met: the declarant must testify at trial and be subject to cross-examination; there must be an express or implied charge of recent

fabrication or improper influence or motive of the declarant's testimony by the opponent; the proponent must offer a prior statement that is consistent with the declarant's challenged trial testimony; and the prior consistent statement must be made prior to the time that the supposed motive to falsify arose. *Id.* at 804.

The record shows that the State explained to the trial court that defense counsel had questioned Shaver about the multiple statements he made to police and about how his story had gotten bigger concerning the amount of money that he been offered to murder Nathan, and had also questioned Shaver regarding how the police had told Shaver that he needed to be a witness and that they were considering Shaver as a suspect. The record further shows that the trial court agreed with the State and allowed Cox to testify about prior consistent statements that Shaver made to Cox in November 2013. Cox testified that Shaver told her that Maddox had offered Shaver money to help murder Nathan, and that Shaver showed her a text message that Maddox had sent Shaver stating that if Shaver would not do it, they would find someone else or do it themselves.

Based on the defense's cross-examination of Shaver, we conclude that the trial court did not abuse its discretion in determining that the defense was making an implied charge of recent fabrication during its cross-examination of Shaver.

Accordingly, we conclude that the trial court did not abuse its discretion in admitting Shaver's prior consistent statements to Cox. We overrule issue two.

In issue three, Maddox complains that trial counsel's deficient performance resulted in an unfair trial. Specifically, Maddox argues that trial counsel was deficient by making statements during voir dire that waived Maddox's constitutional right not to testify; opening the door to allow a police officer to testify about Paul's confession and statements to the police, thereby waiving Maddox's constitutional right to confront witnesses; failing to object to hearsay testimony of Cameron; failing to object to an improper reference to the Aryan Brotherhood; and failing to object to testimony concerning the statements of co-conspirators.

To prevail on a claim of ineffective assistance of counsel, an appellant must satisfy a two-pronged test:

First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.

Strickland v. Washington, 466 U.S. 668, 687 (1984); *see also Hernandez v. State*, 726 S.W.2d 53, 56-57 (Tex. Crim. App. 1986). An appellant must demonstrate a reasonable probability that but for counsel's errors, the outcome would have been

different. *Bone v. State*, 77 S.W.3d 828, 833 (Tex. Crim. App. 2002). “Appellate review of defense counsel’s representation is highly deferential and presumes that counsel’s actions fell within the wide range of reasonable and professional assistance.” *Id.*

Maddox must prove that there was no professional reason for specific acts or omissions of her trial counsel. *See id.* at 836. In addition, “[a]ny allegation of ineffectiveness must be firmly founded in the record, and the record must affirmatively demonstrate the alleged ineffectiveness.” *Thompson v. State*, 9 S.W.3d 808, 813 (Tex. Crim. App. 1999). The bare record on direct appeal is usually insufficient to demonstrate that “counsel’s representation was so deficient and so lacking in tactical or strategic decisionmaking as to overcome the presumption that counsel’s conduct was reasonable and professional.” *Bone*, 77 S.W.3d at 833 (citation omitted).

Maddox’s trial counsel filed a motion for new trial, in which she argued that the verdict is contrary to the law and the evidence and that the trial court should grant a new trial in the interest of justice. The record does not indicate that Maddox’s motion for new trial alleged ineffective assistance. Although the record reflects that the trial court conducted a hearing on Maddox’s motion for new trial, trial counsel did not testify regarding her trial strategy, so the record is silent as to trial counsel’s

tactical and strategic decision making. *See Estrada v. State*, 313 S.W.3d 274, 311 (Tex. Crim. App. 2010); *Thompson*, 9 S.W.3d at 813; *Bone*, 77 S.W.3d at 833. Trial counsel's alleged ineffectiveness is not apparent from the record. *See Freeman v. State*, 125 S.W.3d 505, 506-07 (Tex. Crim. App. 2003).

On this record, we conclude that Maddox has failed to defeat the strong presumption that counsel's decisions during trial fell within the wide range of reasonable professional assistance. *See Bone*, 77 S.W.3d at 833; *Thompson*, 9 S.W.3d at 813. The record does not demonstrate that trial counsel's performance was the product of an unreasoned or unreasonable trial strategy, or that counsel's performance led to an unreliable verdict or punishment. *See Bone*, 77 S.W.3d at 834. Absent evidence explaining trial counsel's complained-of acts or omissions, the record before us is insufficient to establish that, but for the complained-of errors, the result of Maddox's trial would have been different. *See id.* at 833. Accordingly, Maddox cannot defeat the presumption that trial counsel's assistance was reasonable and professional. *See id.*; *see also Thompson*, 9 S.W.3d at 814. We overrule issue three. Having overruled all of Maddox's issues, we affirm the trial court's judgment.

AFFIRMED.

STEVE McKEITHEN
Chief Justice

Submitted on November 3, 2017
Opinion Delivered December 20, 2017
Do Not Publish

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