COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH

NO. 02-15-00377-CR

RICKY PAUL JACQUET — APPELLANT

V.

THE STATE OF TEXAS — STATE

FROM CRIMINAL DISTRICT COURT NO. 4 OF TARRANT COUNTY
TRIAL COURT NO. 1347243D

MEMORANDUM OPINION[1]

I. INTRODUCTION

Appellant Ricky Paul Jacquet appeals his conviction for aggravated robbery with a deadly weapon, to-wit: a knife. In two issues, Jacquet argues that the trial court abused its discretion by not allowing him to introduce a recording of his statement made to police and that the trial court abused its discretion by

[1]*See* Tex. R. App. P. 47.4.

allowing the State to question a defense witness regarding Jacquet's involvement in a prior conviction for aggravated robbery. We will affirm.

II. BACKGROUND

Antonio Briones was on his way to work on the morning of Saturday, October 26, 2013, when he stopped at a nearby gas station to purchase coffee, cigarettes, and fuel for his car. Because he had been paid the day before, Briones was carrying approximately $500 cash in his wallet. As Briones was pumping gasoline into his car, Jacquet approached him from behind and placed a hand on his back. In response, Briones turned around and saw Jacquet holding a knife. Jacquet then began to attack and stab Briones. According to Briones, while this attack occurred, Jacquet dug through Briones's pockets and grabbed everything he could. As the two continued to struggle, Briones's wallet fell out of his front pocket, and Jacquet grabbed it off of the ground and fled.

Officer Justin Tullis of the Fort Worth Police Department testified that he was patrolling the area near the gas station at the time, when several people flagged him down. Immediately upon pulling into the station, Tullis said that he could see Briones was covered in blood and that several people around him were pointing to the west side of the station, indicating to Tullis that he needed to go behind the gas station. As he proceeded toward the side of the gas station, Tullis encountered a man walking on the sidewalk who pointed towards a car parked on the side of the street. Looking towards the parked car, Tullis saw that someone was lying back in the front seat but that the person's head was still

visible. With his gun drawn, Tullis gave a verbal command for the person to exit the vehicle, but the vehicle was quickly driven away. With his partner driving their patrol car, Tullis began a high-speed pursuit. The driver of the vehicle, however, was able to get away, and Tullis returned to the gas station to investigate what had occurred, while other officers continued to look for the vehicle.

Following up on a tip received from a citizen informant, Police Officer Gregory Stanley of the Fort Worth Police Department testified that he was able to locate Jacquet's abandoned vehicle. The vehicle had apparently been run up onto a curb, the driver's airbag had been deployed, and the car had sustained some mild damage. On the floorboard of the car, Stanley found a black-handled folding knife that had blood on it. Stanley also saw blood on the inside and the outside of the car. According to Stanley, there was a small bundle of cash just outside of the vehicle.

As Stanley continued to catalog evidence in and around Jacquet's abandoned vehicle, the police received a report that a person matching Jacquet's description had been seen running in a direction that indicated he was running away from the abandoned vehicle and toward where police knew Jacquet lived. Other officers pursued Jacquet, and after a struggle that eventually included officers using a Taser to subdue him, police placed Jacquet under arrest.

Later, Briones was transported to John Peter Smith Hospital, where he remained for the next four days. Briones's injuries included a punctured lung,

which required surgery to repair. During his stay at the hospital, law enforcement presented Briones with a photo lineup and Briones identified Jacquet as the man who had attacked him.

Because police had Tasered Jacquet, he also had been transported to John Peter Smith Hospital. While he was receiving treatment, Detective Edward Brian Raynsford of the Fort Worth Police Department interviewed him. This interview was recorded. During the interview, Jacquet claimed that Briones had swung a fist at him and that he had produced a knife to defend himself. Further, Jacquet claimed that Briones had handed over his money willingly.

A DNA sample was obtained from Briones by Raynsford. Later, forensic analysis of blood stains on the knife found in Jacquet's car showed that Briones's DNA was present on the blade of the knife.

During trial, the defense presented two witnesses at the guilt-innocence phase: Roy Molett and Jacquet. During direct examination, Molett averred that he knew Jacquet "from [his] neighborhood." He also averred that he knew Briones as a person who purchased drugs in his neighborhood from both himself and Jacquet. Defense counsel further introduced evidence that Molett had a 2010 conviction for aggravated robbery. Defense counsel also asked and received a limiting instruction that evidence of Molett's aggravated robbery conviction was being submitted only for the jury's ability to make its own credibility determination regarding Molett.

During the State's cross-examination, and outside the presence of the jury but while Molett was still on the stand, the State asked the court to be allowed to question Molett about the fact that Jacquet was Molett's codefendant in the 2010 aggravated-robbery conviction. The State argued that its right to question Molett regarding this matter would be done for the purpose of showing that Molett had a bias in Jacquet's favor. The State specifically said that it would not go into the facts of that case.

In the presence of the jury, the State elicited testimony from Molett that Jacquet was his codefendant in the 2010 aggravated-robbery conviction and that Jacquet's brother, whom Molett had testified was someone whom Molett referred to as a "brother," visited Molett in jail on multiple occasions.

Jacquet testified that on the day of the assault, Molett had referred Briones to him to purchase $20 worth of cocaine, which, according to Jacquet, he supplied to Briones on credit with a promise of payment in the next few hours. By Jacquet's account, early the next morning as he was leaving his apartments, Jacquet saw Briones at the gas station. Jacquet said that he confronted Briones in an attempt to collect the $20. Jacquet averred that during the confrontation, Briones made a "sudden move" that caused Jacquet to pull out his knife and a struggle ensued. Jacquet said that once the struggle was over, he grabbed Briones's wallet and fled.

The jury found Jacquet guilty of aggravated robbery with a deadly weapon, and the trial court assessed punishment at forty-two years' incarceration. The trial court rendered judgment accordingly, and this appeal followed.

III. DISCUSSION

A. Jacquet's Attempt to Introduce His Recorded Statement

In his first issue, Jacquet argues that the trial court abused its discretion by not allowing him to introduce the entire recorded statement that he made to the investigating detective. According to Jacquet, the State "opened the door" to the introduction of the statement when Raynsford testified on direct that he had considered all the evidence he had gathered when deciding whose DNA to test.

We review a trial court's ruling to admit or exclude evidence under an abuse of discretion standard. *De La Paz v. State*, 279 S.W.3d 336, 343 (Tex. Crim. App. 2009). A trial court does not abuse its discretion if its evidentiary ruling falls within the "zone of reasonable disagreement" and was correct under any legal theory applicable to the case. *Winegarner v. State*, 235 S.W.3d 787, 790 (Tex. Crim. App. 2007). Because the trial court is usually in the best position to decide whether evidence should be admitted or excluded, we must uphold its ruling unless its determination was so clearly wrong as to lie outside the zone within which reasonable persons might disagree. *See id.* (quoting *Guzman v. State*, 955 S.W.2d 85, 89 (Tex. Crim. App. 1997)).

As a general proposition, when a party introduces matters into evidence, he invites the other side to reply to that evidence. *Kincaid v. State*, 534 S.W.2d 340, 342 (Tex. Crim. App. 1976). To this end, evidence that is otherwise inadmissible may be admitted to correct a false impression left by the questioning of a witness. *See Wheeler v. State*, 67 S.W.3d 879, 885 (Tex. Crim. App. 2002); *Jensen v. State*, 66 S.W.3d 528, 538 (Tex. App.—Houston [14th Dist.] 2002, pet. ref'd). But evidence is not admissible to correct a false impression created by "prompting or maneuvering" by the proponent of the inadmissible evidence. *Lopez v. State*, 928 S.W.2d 528, 532 (Tex. Crim. App. 1996); *see Crenshaw v. State*, 125 S.W.3d 651, 656 (Tex. App.—Houston [1st Dist.] 2003, pet. ref'd) (holding that false-impression exception does not "apply to permit opposing counsel to rely on his own interrogation during cross-examination to contradict the witness and then admit evidence of collateral matters which would otherwise be inadmissible").

Here, Jacquet argues that Raynsford's testimony that he had considered all the evidence he had gathered when deciding what evidence should be tested for DNA and whose DNA should be tested somehow opened the door to allowing him to introduce his recorded interview with the detective. Jacquet does not articulate what false impression may have been left upon the jury, and we cannot see how this general statement that all evidence was considered when determining what to test for somehow left such an impression with the jury regarding his interview with Raynsford. *See Curtis v. State*, 205 S.W.3d 656,

660 (Tex. App.—Fort Worth 2006, pet. ref'd) ("We cannot see how the State's general questions about various DNA-test methodologies left the jury with a false impression of anything."). But more than that, the only indication in the record that the jury had regarding whether Raynsford had interviewed Jacquet and whether the interview had been recorded was elicited by Jacquet during cross-examination.[2] And a party may not prompt or maneuver its way into the introduction of inadmissible evidence. *See Willich v. State*, No. 05-02-01390-CR, 2003 WL 21860789, at *2 (Tex. App.—Dallas Aug. 8, 2003, no pet.) ("However, because the alleged false impression was elicited by appellant, she was not permitted to offer otherwise inadmissible extrinsic evidence to then correct it.") (not designated for publication). Thus, the trial court's ruling excluding the recorded interview was not so clearly wrong as to lie outside the zone within which reasonable persons might disagree, and the trial court did not abuse its discretion by not allowing Jacquet to introduce the recording. We overrule Jacquet's first issue.

B. Testimony Regarding Jacquet's Prior Conviction

In his second issue, Jacquet argues that the trial court abused its discretion by allowing the State to question Molett about the fact that Jacquet was his codefendant in the 2010 aggravated-robbery conviction. Jacquet argues

[2]During its rebuttal, the State introduced portions of the interview. Jacquet does not complain about the admission of these portions of the interview, nor does he explain or discuss what portions of the interview were not later admitted at trial.

that this evidence was admissible under neither rule 613(b) nor rule 403 of the rules of evidence. *See* Tex. R. Evid. 403, 613(b).

As discussed above, we review a trial court's ruling to admit or exclude evidence under an abuse of discretion standard. *De La Paz*, 279 S.W.3d at 343.

Rule 613(b) permits a witness to be cross-examined on specific instances of conduct when those instances of conduct are used to establish a specific bias, self-interest, or motive for testifying in a particular fashion. Tex. R. Evid. 613(b); *Hammer v. State*, 296 S.W.3d 555, 563 (Tex. Crim. App. 2009). Under Rule 613(b), "[p]arties are allowed great latitude to show 'any fact which would or might tend to establish ill feeling, bias, motive and animus on the part of the witness.'" *Carpenter v. State*, 979 S.W.2d 633, 634 (Tex. Crim. App. 1998) (*quoting London v. State*, 739 S.W.2d 842, 846 (Tex. Crim. App. 1987)); *see Smith v. State*, 236 S.W.3d 282, 292 (Tex. App.—Houston [1st Dist.] 2007, pet. ref'd). The rule encompasses all facts and circumstances, which when tested by human experience, tend to show that a witness may shade his testimony for the purpose of helping to establish one side of the cause only. *Carroll v. State*, 916 S.W.2d 494, 497–98 (Tex. Crim. App. 1996) (*citing Jackson v. State*, 482 S.W.2d 864, 868 (Tex. Crim. App. 1972)). Among such facts and circumstances is the witness's familial or personal relationship with a party. *E.g.*, *Hanner v. State*, 572 S.W.2d 702, 707 n.4 (Tex. Crim. App. 1978), *cert. denied*, 440 U.S. 961 (1979); *Vaughn v. State*, 888 S.W.2d 62, 74–75 (Tex. App.—Houston [1st Dist.] 1994), *aff'd*, 931 S.W.2d 564 (Tex. Crim. App. 1996).

Here, evidence that Molett and Jacquet had previously been codefendants in a prior conviction would have tended to show that Molett might be inclined to shade his testimony for the purposes of establishing Jacquet's presentation of this case. *See Ricondo v. State*, 657 S.W.2d 439, 445 (Tex. App.—San Antonio 1983, no pet.) ("Evidence that the witness had been involved with the appellant in prior narcotic activities would certainly be useful to the jurors in assessing any bias, interest or motive the witness might have had to testify favorably for the appellant.").

Jacquet tacitly argues that the State "never told M[o]llet of the circumstance or statements tending" to show his bias. But the record demonstrates that Molett was fully aware that the State intended to ask him about the fact that Jacquet was his codefendant in the 2010 conviction. Indeed, the record demonstrates that Molett was on the stand for much of the discussion between the State, defense counsel, and the trial court regarding the State's seeking to question Molett on the matter. The record also demonstrates that Molett was represented by his own counsel during his time on the stand. It was not until after a lengthy discussion in Molett's presence that the State asked that Molett be excused while the parties and the trial court discussed the limited parameters under which the State would be allowed to question him regarding Jacquet's involvement in the 2010 conviction. And all of this occurred after defense counsel had already impeached Molett with the 2010 aggravated-assault conviction in an effort to preempt the State's questioning Molett about it. It

strains credulity to conclude that Molett did not know of the circumstances that the State intended to question him about. Furthermore, defense counsel never objected at trial that the State had not informed Molett regarding what it intended to question him about.[3]

Jacquet also argues that even if the trial court did not abuse its discretion by allowing the State to question Molett about Jacquet's being his codefendant in the 2010 conviction to show bias, the trial court nonetheless abused its discretion because, according to Jacquet, the prejudicial effect of this evidence outweighed its probative value. *See* Tex. R. Evid. 403.

The trial court is given wide latitude to admit or exclude evidence of extraneous offenses. *See Montgomery v. State*, 810 S.W.2d 372, 390 (Tex. Crim. App. 1990) (op. on reh'g); *Poole v. State*, 974 S.W.2d 892, 897 (Tex. App.—Austin 1998, pet ref'd). A reviewing court must therefore recognize that the trial court is in a superior position to gauge the impact of the relevant evidence and not reverse a trial court's ruling if it is within the "zone of reasonable disagreement." *Mozon v. State*, 991 S.W.2d 841, 844 (Tex. Crim. App. 1999); *Montgomery*, 810 S.W.2d at 391. In balancing probative value and unfair prejudice under rule 403, an appellate court presumes that the probative value will outweigh any prejudicial effect. *Montgomery*, 810 S.W.2d at 389. It is

[3]We note that the foundation requirements for a prior "statement" under rule 613(b)(1) do not apply in this case. Tex. R. Evid. 613(b)(1). The State did not question Molett about a prior statement in an attempt to demonstrate his potential bias.

therefore the objecting party's burden to demonstrate that the probative value is substantially outweighed by the danger of unfair prejudice. *Hinojosa v. State*, 995 S.W.2d 955, 958 (Tex. App.—Houston [14th Dist.] 1999, no pet.); *Poole*, 974 S.W.2d at 897.

An appellate court must measure the trial court's balancing determination against the relevant criteria by which a rule 403 decision is made. *See Mozon*, 991 S.W.2d at 847; *see also Sanders v. State*, 255 S.W.3d 754, 760 (Tex. App.—Fort Worth 2008, pet. ref'd). The relevant criteria in determining whether the prejudice of an extraneous offense substantially outweighs its probative value include (1) how compellingly the extraneous offense evidence serves to make a fact of consequence more or less probable—a factor which is related to the strength of the evidence presented by the proponent to show the defendant in fact committed the extraneous offense; (2) the potential the other offense evidence has to impress the jury "in some irrational but nevertheless indelible way"; (3) the time the proponent will need to develop the evidence, during which the jury will be distracted from consideration of the indicted offense; and (4) the force of the proponent's need for this evidence to prove a fact of consequence, that is, does the proponent have other probative evidence available to him to help establish this fact, and is this fact related to an issue in dispute. *Sanders*, 255 S.W.3d at 760.

Here, applying the rule 403 balancing factors, we first examine how compellingly the extraneous act that Jacquet was Molett's codefendant in a 2010

aggravated robbery shows that Jacquet committed the charged offense in this case. Evidence that Jacquet has previously committed aggravated robbery makes it more likely—but probably not compellingly likely—that he committed the present aggravated robbery.

Next, under the second and third factors, we examine the potential of the evidence to impress the jury in some irrational but nevertheless indelible way and the amount of time the State used in developing the evidence. Molett's testimony, which consisted of merely acknowledging that Jacquet was his codefendant in an aggravated robbery several years prior to the current charges, may have potentially inflamed the jury, but Molett's brief testimony paled in comparison to the evidence the State put on regarding how Jacquet approached Briones, stabbed him and punctured his lung, took his wallet, and then fled the area, ultimately getting in a high-speed chase with police officers, all the while leaving him bleeding and injured on the pavement outside the gas station from which he was ultimately taken away in an ambulance. Indeed, in this nearly eight-volume record, Molett's testimony regarding Jacquet as his codefendant makes up less than two pages. Additionally, Molett's testimony was accompanied by a limiting instruction by the trial court that it was not to be considered for any other purpose than to demonstrate that Molett may have had a bias or interest in favor of the defense.

Looking to the fourth factor, we determine the force of the State's need for Molett's testimony. *See id.* The State possessed evidence and testimony

concerning Jacquet's direct acts against Briones. The State's need for Molett's testimony was thus only slight. Beginning with the presumption that Molett's testimony about Jacquet's being his codefendant was more probative than prejudicial and evaluating it under the rule 403 factors, however, we cannot say that Jacquet was unfairly prejudiced by Molett's testimony. *See id.* We therefore hold that the trial court did not abuse its discretion by allowing Molett to testify that Jacquet was his codefendant in the 2010 aggravated robbery conviction. *See Mozon*, 991 S.W.2d at 847. We overrule Jacquet's second issue.

IV. CONCLUSION

Having overruled both of Jacquet's issues, we affirm the trial court's judgment.

/s/ Bill Meier
BILL MEIER
JUSTICE

PANEL: WALKER, MEIER, and GABRIEL, JJ.

DO NOT PUBLISH
Tex. R. App. P. 47.2(b)

DELIVERED: February 2, 2017