COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH

NO. 02-16-00327-CR

SAMUEL DEWON WALKER — APPELLANT

V.

THE STATE OF TEXAS — STATE

FROM THE 30TH DISTRICT COURT OF WICHITA COUNTY
TRIAL COURT NO. 56,967-A

MEMORANDUM OPINION[1]

A jury convicted appellant Samuel Dewon Walker of (1) aggravated kidnapping, (2) assault family violence with a previous conviction, (3) unlawful possession of a firearm by a felon, and (4) violation of a protective order by assault. During the punishment trial, the jury found the two enhancements true and assessed his punishment at life imprisonment on the first two counts,

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

35 years' imprisonment on the third count, and 40 years' imprisonment on the fourth count. The trial court sentenced Walker accordingly and ordered the sentences to run concurrently.

In the first three of his four points, Walker contends that the trial court abused its discretion by not allowing him to cross-examine the complainant about her active participation in his drug enterprise in violation of (1) rule 613(a) of the rules of evidence, (2) rule 613(b) of the rules of evidence, and (3) the Confrontation Clause of the Sixth Amendment of the United States Constitution. U.S. Const. amend. VI; Tex. R. Evid. 613(a), (b). Interrelated with these complaints is Walker's contention that the trial court should have admitted into evidence a recorded interview between the complainant and law enforcement, which Walker claims would have shown prior inconsistent statements and bias or self-interest on her part. In his fourth point, Walker argues that he was denied a fair and impartial judge in violation of the First, Fifth, and Fourteenth Amendments of the Constitution. U.S. Const. amends. I, V, XIV. We affirm.

I. The trial evidence showed that Walker and the complainant shared an abusive relationship.

Walker and the complainant first met in 2010 and had an intimate relationship. Walker went to prison later in 2010, and the complainant visited him for the first couple years but stopped when he complained about not having any money in his prison account. In 2014, when he got out of prison, they started communicating again and shortly thereafter resumed their intimate relationship.

In April 2015, the complainant discovered that Walker was stealing from her, so she reported him to the police. Notwithstanding the thefts, the complainant continued to see Walker.

The relationship took a turn for the worse in August 2015 when Walker physically attacked the complainant, forced her to withdraw $1,000 for him from her credit union, and then took her to a field where he told her that he was going to murder her and dump her body somewhere where no one would ever find it. Among other injuries, the complainant suffered a perforated eardrum. Instead of killing her, however, Walker released the complainant, after which she went to the police, reported his crimes, and obtained a protective order. Notwithstanding the seriousness of this incident, this appeal involves the following one that occurred several weeks later.

Undeterred by the protective order, Walker showed up at the complainant's house when she was returning from work on November 5, 2015. Walker called the complainant his "queen," denied that he was there to hurt her, and otherwise sweet-talked her. The complainant let Walker inside her house, admitting at trial that doing so was "stupid."[2]

[2]Walker's counsel pressed the complainant on why she kept letting Walker back into her life; she responded, "Well, I believe in the forgiving and the . . . seventy times seven in the Bible, and I'm a Christian. I try to live the way God wants me to live."

Once inside, the mood changed. Walker accused the complainant of seeing someone else and verbally assaulted her with a series of coarse accusations.

The assault then turned physical. Walker picked the complainant up and threw her down on her shoulder, leaving her collarbone broken in three places and visibly "sticking up," straining against the skin. Despite her pleas for medical treatment, Walker refused to let her leave the house.

Instead, Walker led the complainant to her bedroom, hit her in the head and the chest with his fist, and struck her on the ear with the perforated eardrum, making her very dizzy. Walker then raped her.

The next morning, the complainant overheard Walker on the phone telling someone that he had beaten her up and that he was worried she would call the police at her first opportunity because she was a "police[-]caller." The significance of this call soon became apparent.

As Walker was aware, the complainant kept a gun in a bedroom-closet safe, and he wanted it. Walker knocked her to the floor, struck her on the face and chest, and told her that he was going to kill her. Walker then grabbed one of her belts, wrapped it around her throat, and choked her. When the complainant tried to fight back, Walker struck her on the ear again and pulled out some of her hair. Finally, the complainant agreed to open the safe, and Walker retrieved her gun. The complainant told Walker that she had no bullets in the gun, but he refused to believe her.

Walker then told the complainant that he wanted her to know what "lead burn" felt like and that he was taking her somewhere to kill her. The two then got in the complainant's car, with Walker driving, and went to Williams Park.

Once there, Walker drove to a very remote area. He then grabbed the complainant, pointed the gun at her, and said that he was going to kill her. The clip was empty, though, so Walker pulled it out and said, "[W]e're gonna go find somebody that has some bullets."

As they drove away from the remote area, they passed a Suburban with police lights. The game warden who was driving that Suburban turned on his lights and tried to block Walker from leaving. Walker apparently concluded that the complainant had somehow successfully contacted the police and launched into a curse-laden diatribe against her. Walker proceeded to drive "fast" and "crazy," went around the game warden, and nearly ran down a jogger. Because Walker was driving in the direction of a blind curve, the game warden, who was familiar with the area, decided for safety reasons not to pursue him. At some point, the complainant's car got a flat tire; Walker jumped out while the car was still rolling, waded across a creek, threw the gun away, and took off. Walker's grandparents lived roughly three blocks from the park.

The game warden associated Walker's desperate driving and the complainant's fearful expression with the behavior of suspects trying to escape a meth lab. He explained that people trying to escape a clandestine lab "don't care who they hurt or what happens, they're gonna get out of there." So rather than

pursue Walker and the complainant, the game warden went looking for a meth lab in the remote area but found nothing.

Meanwhile, the complainant managed to stop her rolling vehicle and call 911. When officers arrived at the scene, one found the complainant with her collar bone "look[ing] like a finger sticking up from the skin pointing upward" but "not breaking the skin," and another officer found the complainant's gun in front of a bush about 25 feet from her vehicle.

One of the officers followed the ambulance with the complainant in it to an emergency room, and after she was released, the officer took her back to her house. There, he found the belt with which Walker had tried to strangle the complainant and clumps of her hair that Walker had pulled out.

II. The trial court did not abuse its discretion by excluding the complainant's interview with the detective.

Walker's first three points all relate to his contention that the trial court erred by not admitting into evidence the complainant's recorded interview with a detective on October 14, 2015. That interview occurred after the August 2015 incident—when Walker forced the complainant to withdraw money from the bank and struck her, perforating her eardrum—and roughly three weeks before the November incidents that are the subject of this appeal. In particular, Walker contends that the trial court abused its discretion by not allowing him to cross-examine the complainant with this recorded interview about her drug usage and her alleged active participation in his drug enterprise, an evidentiary ruling that

Walker says violated (1) rule 613(a) of the rules of evidence, (2) rule 613(b) of the rules of evidence, and (3) the Confrontation Clause of the Sixth Amendment of the United States Constitution. U.S. Const. amend. VI; Tex. R. Evid. 613(a), (b). We disagree.

A. Rules of Evidence 613(a) and (b)[3]

1. Background

At trial, while being cross-examined, the complainant testified that she remembered being interviewed, that she did not remember the detective's name, and that she remembered talking about a phone call she had with Walker while he was in the Wise County jail. But because she did not recall much of what she told the detective about the jail call, she was allowed, outside both the jury's and the trial court's presence, to watch the video of her interview to refresh her recollection. The trial court then heard argument by the prosecutor and defense counsel and sustained the State's objection to Walker's pursuing this line of questioning.

The trial court later allowed Walker to make a bill of exception. The bill does not include any additional cross-examination of the complainant but only the proffer of a disk containing the recorded interview as a whole, without identifying which parts defense counsel would have put before the jury.

[3]Rule 613 lays out the foundational requirements before a party may impeach a witness with a prior inconsistent statement under subsection (a) or, under subsection (b), demonstrate a witness's bias or interest using circumstances or statements.

2. Standard of review

Courts review the decision to exclude evidence for an abuse of discretion. *Martinez v. State*, 327 S.W.3d 727, 736 (Tex. Crim. App. 2010), *cert. denied*, 563 U.S. 1037 (2011). A trial court abuses its discretion only if its decision is "so clearly wrong as to lie outside the zone within which reasonable people might disagree." *Taylor v. State*, 268 S.W.3d 571, 579 (Tex. Crim. App. 2008); *Montgomery v. State*, 810 S.W.2d 372, 391 (Tex. Crim. App. 1990) (op. on reh'g). A decision lies outside the zone of reasonable disagreement if "the court acted without reference to any guiding rules and principles," or if "the act was arbitrary and unreasonable." *Montgomery*, 810 S.W.2d at 380 (relying on *Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241–42 (Tex. 1985), *cert. denied*, 476 U.S. 1159 (1986)). A reviewing court must uphold an evidentiary ruling if it was correct on any applicable theory of law. *De La Paz v. State*, 279 S.W.3d 336, 344 (Tex. Crim. App. 2009). An appellate court cannot substitute its decision for the trial court's. *Moses v. State*, 105 S.W.3d 622, 627 (Tex. Crim. App. 2003).

3. Discussion

Walker contends that the complainant denied making a phone call to him while he was in the Wise County jail and that the interview would show that she did in fact make such a call. The record shows, however, that the complainant later admitted, before the jury, speaking to Walker by phone while he was in that

jail.[4] By her admitting to the call, the interview did not become admissible under rule 613(a) as a prior inconsistent statement or under rule 613(b) to impeach her for bias or interest. *See* Tex. R. Evid. 613(a)(4), (b)(4).

Walker next contends that the complainant denied keeping money in her safe but that during the interview she admitted doing so. In front of the jury, though, the complainant twice admitted keeping Walker's money in her safe. This is precisely what she said during the interview—that she kept Walker's money in her safe. These admissions again support the trial court's decision, in its discretion, to exclude the interview under either rule 613(a) or (b). *See id.*

Finally, Walker contends that the complainant admitted before the jury that during the jail phone conversation, she agreed that the two of them had discussed a dog-food sack. The complainant testified at trial that she had agreed to feed Walker's dog, but added that she did not remember exactly what she said. It was at this point that Walker asked that the complainant, outside the jury's presence, to refresh her memory by reviewing the interview that she had with the detective.

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[4]The record is somewhat murky on this point. Defense counsel first got a negative answer to the question, "Did you ever make a call *to him* in Wise County jail?" [Emphasis added.] When cross-examination resumed the next morning, the complainant recalled being interviewed "about a telephone call that [she] had *from Mr. Walker* while he was in the Wise County jail." [Emphasis added.] Regardless of who initiated the call, the complainant's admission of the call and testimony about her recollection of the call negated any possibility that the recorded interview would have revealed a prior inconsistent statement about the call's occurrence.

Walker argues that he wanted the jury to see that interview to show that what the complainant actually agreed to do was retrieve his crack cocaine from the bottom of a sack of dog food. When making his bill of exception, however, Walker simply introduced the disk (Defendant's Exhibit 2) containing the interview; he did not call the complainant back to the stand to ask if what she actually agreed to do was fetch the hidden crack from the dog-food sack where Walker had hidden it. Because Walker did not give the complainant an opportunity to explain or deny the true significance of the dog-food-sack discussion, he has not shown that the interview was admissible under rules 613(a) or (b). *See* Tex. R. Evid. 613(a)(3), (b)(3).

We overrule Walker's first two points.

B. The Confrontation Clause

In his third point, Walker contends that the trial court abused its discretion by preventing him from cross-examining the complainant about her own drug use and her willing participation in his drug enterprise. *See* U.S. Const. amends. I, V, XIV. Once again, we disagree.

1. Standard of review

"[T]he Confrontation Clause occasionally may require the admissibility of evidence that the Rules of Evidence would exclude." *Lopez v. State*, 18 S.W.3d 220, 225 (Tex. Crim. App. 2000). The Confrontation Clause grants a defendant the right to cross-examine the witnesses against him, and we determine whether there has been a Confrontation-Clause violation on a case-by-case basis. *Henley*

v. State, 493 S.W.3d 77, 95 (Tex. Crim. App. 2016). When determining whether evidence must be admitted under the Confrontation Clause, the trial court must balance the defendant's right to cross-examine a witness and the probative value of the proffered evidence against the risk factors associated with admitting the evidence. *Id.*; *Lopez*, 18 S.W.3d at 225. "The trial court maintains broad discretion to impose reasonable limits on cross-examination to avoid harassment, prejudice, confusion of the issues, endangering the witness, and the injection of cumulative or collateral evidence." *Henley*, 493 S.W.3d at 95.

2. Discussion

Walker had the opportunity to cross-examine the complainant and did so extensively. The complainant said that Walker admitted being an addict but denied that she was ever with him when he used drugs or that she herself used drugs with him. But she also testified about having to take Walker to buy drugs. The jury was thus aware of Walker's drug use, and defense counsel was free to encourage the jury to disbelieve the complainant's purported ignorance of it, given her and Walker's intimate relationship.

And urging the jury to disbelieve the complainant is precisely what defense counsel did during final arguments: "There's nothing to bind these two people together except maybe three things. Sex, drugs, or masochism. Masochism is getting pleasure from pain or humiliation." Defense counsel added later:

> She went and got, I think she said, $1,000 and gave it to him. What did she give it to him for? Well, she admitted she gave him money for drugs. She would take him to buy drugs and he used drugs. I

> think probably she used drugs with him. That could be a driving force of why she wanted to do what she was doing. Like I said, there's three things that make a person do what she said. Sex, drugs, and masochism. I think she had all three operating. And when she thought that she was going to lose this man, she turned up the heat on him.

Defense counsel was thus not precluded from presenting this argument.

Moreover, the excluded evidence—Defendant's Exhibit 2—would not have established that the complainant used drugs and would not have shown that she participated willingly and actively in Walker's drug-related activities. In fact, during the interview the complainant consistently condemned his drug activities.

Regarding the dog-food sack, the detective confronted the complainant about the telephone conversation she had with Walker while Walker was in jail and during which she and Walker were clearly talking in code. The complainant openly acknowledged they were talking about the crack cocaine that Walker had hidden, and she told the detective that she would have turned the drugs over to the police if she had actually found any. The interview, in short, does not show that she willingly participated in Walker's drug activities.

Abundant other evidence did show that the complainant went out of her way to help Walker, sometimes willingly and sometimes through compulsion. She bought him clothes. She took him out to dinner. She gave him a place to stay. At his own home the water was turned off, so the complainant let him use her shower. She would drive him places, like to his grandparents or to a job

interview. The complainant also testified about being forced to take Walker to purchase drugs.

Given the context of the complainant's and Walker's relationship, the October interview does nothing to explain why she would have fabricated her testimony—it certainly does nothing to suggest a motive for her to lie about the November events. The Confrontation Clause "guarantees an *opportunity* for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish." *Delaware v. Fensterer*, 474 U.S. 15, 20, 106 S. Ct. 292, 294 (1985). Walker had that opportunity.

In any event, Walker was not on trial for possessing or delivering drugs, and the proffered evidence had no direct bearing on any of the offenses Walker was indicted on. There is no evidence that the complainant's alleged drug use—which even the interview failed to support—and her alleged participation in Walker's drug-dealing—which the interview showed that she abhorred—played any part in the November events that left her kidnapped and battered.

After reviewing the facts, we cannot conclude that the trial court judge abused his discretion in excluding the evidence. *See Lopez*, 18 S.W.3d at 225. We overrule Walker's third point.

III. The trial judge was impartial.

Walker's fourth and final point argues that he was denied a fair and impartial judge because the trial court acted sua sponte to expand its limine order. Specifically, he contends that the trial court expanded that order to exclude

impeachment evidence that the complainant was not truthful because she actively participated in his drug enterprise. In Walker's view, a reasonable person would conclude that this shows trial-court bias.

A. Preservation

Our review of the record does not show that Walker preserved this complaint, and he does not argue that a complaint of this type needs no objection to preserve the issue for appeal. But because the record does not show trial-court partiality, we need not decide today whether a trial objection is required to preserve this alleged error. *See Brumit v. State*, 206 S.W.3d 639, 644–45 (Tex. Crim. App. 2006).

B. Standard of review

"Due process requires a neutral and detached hearing body or officer." *Id.* at 645. Absent a clear showing of bias, we will presume a trial court's actions to have been correct. *Id.*

C. Discussion

We disagree that the trial judge sua sponte expanded the scope of the State's limine motion in any event. The State's motion covered only prior convictions other than those for felonies and crimes of moral turpitude. In other words, the State's motion covered only rule 609 of the rules of evidence—impeachment by evidence of a criminal conviction. Tex. R. Evid. 609.

The record shows, however, that the State thought its limine motion—and the court's order granting it—were broader than they actually were, but neither

the trial court nor defense counsel balked when the State made that assertion. The record shows:

> Q. [Defense counsel] Okay. And you drove him over to the east side to buy drugs?
>
> A. [The complainant] I didn't know that's what we were going over there for.
>
> Q. But you knew he used drugs?
>
> A. He told me he was an addict.
>
> Q. You've seen him use drugs?
>
> A. No.
>
> Q. You've been with him when he used drugs?
>
> A. No.
>
> Q. You've used drugs with him, haven't you?
>
> A. No.
>
> [Prosecutor]: Objection. Relevance.
>
> THE COURT: Sustained.
>
> Q. (By [defense counsel]) Okay. So you didn't—
>
> [Prosecutor]: Your Honor, may we approach?
>
> (At the Bench, on the record.)
>
> [Prosecutor]: There's a Motion in Limine that deals with impeachment like that and he violated it.
>
> THE COURT: Okay. Remember the Motion in Limine, [defense counsel].
>
> [Defense counsel]: Okay.

Later, however, the prosecutor realized that the State's motion in limine was not as broad as he thought, so it was he who sua sponte brought his own mistake to the trial court's attention and asked it to expand the order in limine:

> [Prosecutor]: And, Your Honor, to the extent -- apparently my Motion in Limine is briefer than some of the ones that I file. I would just ask for an oral limine since [defense counsel] has twice tried to get into this that covers extraneous offenses.
>
> THE COURT: Okay. That will be granted.

In neither instance did the trial court act sua sponte, as Walker alleges.

Walker also complains that the trial court prevented him from impeaching the complainant about being an active participant in his drug trade. But our analysis of Walker's first three points shows that the trial court was acting in accordance with the law and did not abuse its discretion, thereby negating any showing of bias or partiality on the court's part.

We hold that Walker has not clearly shown bias. *See Brumit*, 206 S.W.3d at 645. We overrule Walker's fourth point.

IV. Conclusion

Having overruled Walker's four points, we affirm the trial court's judgments.

/s/ Elizabeth Kerr
ELIZABETH KERR
JUSTICE

PANEL: SUDDERTH, C.J.; KERR and PITTMAN, JJ.

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

DELIVERED: January 25, 2018