In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-15-00350-CR

DANIEL LEE HELSLEY, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 251st District Court
Randall County, Texas
Trial Court No. 25,538-C, Honorable Ana Estevez, Presiding

March 8, 2017

MEMORANDUM OPINION

Before QUINN, C.J., and CAMPBELL and PIRTLE, JJ.

Daniel Lee Helsley (appellant) appeals his conviction for sexually assaulting a child. Two issues are raised. We overrule each and affirm the judgment.

First Issue

Appellant's first issue is:

> "Filing" and "presentment" are distinct concepts. Jurisdiction vests on *presentment* of an indictment, *i.e.*, one "duly acted upon" by the grand jury and received by the court. "Duly acted upon" includes the indictment's delivery by the foreman to the judge or court clerk. The court's records must note presentment; here they reflect only *filing*. Absent

> positive evidence of *actual* presentment recorded by the judge or court clerk – which "presentment" strictly requires – did jurisdiction lie below?

(Emphasis in original). To his question "whether jurisdiction lie[s] below," we answer "yes."

According to our Texas Constitution, "[t]he presentment of an indictment or information to a court invests the court with jurisdiction of the cause." TEX. CONST. art. V, § 12(b); *Ex parte Long*, 910 S.W.2d 485, 486 (Tex. Crim. App. 1995). Presentment occurs when the indictment "is delivered to either 'the judge ***or*** clerk of the court.'" *State v. Dotson*, 224 S.W.3d 199, 204 (Tex. Crim. App. 2007) (emphasis added); *see* TEX. CODE CRIM. PROC. ANN. art. 20.21 (West 2015). "Once an indictment is presented, jurisdiction vests with the trial court." *Dotson*, 224 S.W.3d at 204. Furthermore, the "fact that a signed indictment features an original file stamp of the district clerk's office is strong evidence that a returned indictment was 'presented' to the court clerk within the meaning of Article 20.21." *Id.*

The clerk's record at bar contains the indictment issued by the grand jury and signed by that body's "foreperson." Appearing on that instrument is the file-stamp of "Jo Carter, District Clerk, Randall County, Texas" dated "2014 Nov 24 AM 11:27." Per *Dotson*, because the indictment "bears an original file stamp, that fact convincingly shows the presentment requirement was satisfied." *Id*.

And, assuming *arguendo* that jurisdiction may be dependent on the appellate record also evincing that the trial court received the indictment, TEX. CODE CRIM. PROC. ANN. art. 12.06 (stating that "[a]n indictment is considered as 'presented' when it has

been duly acted upon by the grand jury and received by the court"),[1] we note that the record discloses its receipt by that court. For instance, the reporter's record reveals that the trial court directed the State to read the indictment to appellant in open court before trial began. So too did it ask appellant to enter a plea to the instrument. Given that the plain meaning of "received" includes such notions as "accepted," *Received,* DICTIONARY.COM, http://www.dictionary.reference.com/browse/received (last visited February 21, 2017) (definition of "received"), "to take into one's possession," *Receive*, MERRIAM-WEBSTER, http://www.merriam-webster.com/dictionary/receive (last visited February 21, 2017) (definition of "receive"), and that we must afford the words of a statute their plain meaning, *Ex parte Hood*, 211 S.W.3d 767, 773 (Tex. Crim. App. 2007), the aforementioned evidence appearing in the reporter's record establishes that the trial court accepted, came into possession of, or otherwise received the indictment. Indeed, if the indictment were not accepted or received by the trial court, it would seem rather ludicrous for it to ask the defendant to enter a plea to the charges contained therein once read to him in open court.

Evidence of "presentment" appearing of record, it is clear that the trial court had jurisdiction to try appellant for the charges encompassed by the indictment.

Issue Two

Through his second (and last) issue, appellant asks:

> Is equal protection denied if the circumstances here *are* accepted as proper presentment of a State-prepared document such as an indictment, while a motion for new trial – which is virtually always a defense filing – requires far more documentation to qualify as "presented"?

[1] In comparing article 20.21 to 12.06 and throwing the holding of *Dotson* into the mix, it appears that "presentment" may be satisfied in different ways.

(Emphasis in original). We need not expend effort in answering this interesting question since appellant did not expend effort to preserve it for review.

An equal protection claim must be preserved for review. *Moreno v. State*, 409 S.W.3d 723, 728-29 (Tex. App.—Houston [1st Dist.] 2013, pet. ref'd), citing *Saldano v. State*, 70 S.W.3d 873, 889-90 (Tex. Crim. App. 2002) (holding that appellant's equal protection complaint regarding the admission of evidence was not preserved for review because Saldano did not object at trial); *Cross v. State*, No. 09-11-00406-CR, 2012 Tex. App. LEXIS 10487, at *13 (Tex. App.—Beaumont Dec. 19, 2012, pet. ref'd) (mem. op., not designated for publication)(rejecting appellant's equal protection claim with regard to charge error since it was not preserved for review). To preserve a claim, the litigant "need only let *the trial court* know what he wants and why he feels himself entitled to it clearly enough for the judge to understand him." *Vasquez v. State*, 483 S.W.3d 550, 554 (Tex. Crim. App. 2016) (emphasis added). Appellant does not cite us to any portion of the record illustrating that he informed the trial court of his wants regarding "equal protection" and why he felt entitled to them. Nor did our review of the record uncover any such disclosure. Thus, the issue now before us went unpreserved for review.

We affirm the judgment of the trial court.

Brian Quinn
Chief Justice

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