In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-19-00036-CR

STEVEN CHARLES SUMLIN, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 227th District Court
Bexar County, Texas
Trial Court No. 2018CR1545, Honorable Dick Alcala, Presiding

May 28, 2020

MEMORANDUM OPINION

Before QUINN, C.J., and PARKER and DOSS, JJ.

Appellant Steven Charles Sumlin was convicted by a jury of continuous trafficking of persons[1] and sentenced to fifty-five years' confinement. On appeal, he contends the trial court erred by (1) denying his motion to quash the indictment, (2) denying his motion to sever the continuous trafficking "offenses" for separate trials, (3) prohibiting him from

[1] TEX. PENAL CODE ANN. § 20A.03(a) (West 2019).

presenting witnesses at his motion to suppress hearing, and (4) limiting his cross-examination of a fact witness, William Striebeck. We will affirm.[2]

Background

In 2016 and 2017, appellant trafficked G.T., a minor,[3] and Melissa Keith for the purposes of prostitution and received proceeds from their prostitution. During that time, appellant used an escorting website to advertise G.T. and Keith as prostitutes and to arrange meetings with buyers. G.T. was recovered by authorities in January 2017, after being reported as a missing person. Her recovery led to a police investigation of appellant for trafficking. Appellant was later arrested pursuant to an arrest warrant. Cell phones and other electronic equipment were seized from appellant during the arrest and searched pursuant to a search warrant. Evidence recovered from a cell phone and laptop were later used at his trial. Appellant was indicted and convicted for continuous trafficking of persons. This appeal followed.

Analysis

Issue–one Motion to Quash and Set Aside the Indictment

In his first issue, appellant claims the trial court erred by denying his motion to quash the indictment. He argues that the indictment failed to provide sufficient notice of the charges against him because it did not allege the manner or means by which he purportedly trafficked G.T. or Keith. The State contends the indictment provided sufficient

[2] Because this appeal was transferred from the Fourth Court of Appeals, we are obligated to apply its precedent when available in the event of a conflict between the precedents of that court and this Court. See TEX. R. APP. P. 41.3.

[3] Because G.T. was a minor when the offense was committed, we refer to her by her initials. TEX. R. APP. P. 9.10(a)(3).

notice because it tracked the statutory language of the offense of continuous trafficking of persons and identified the alleged predicate acts. We overrule the issue.

A criminal defendant has a constitutional right to be informed of the nature and cause of the accusations against him. U.S. CONST. amend. VI; TEX. CONST. art. I, § 10. Thus, an indictment must be specific enough to inform the defendant of those accusations so that he may prepare a defense. *State v. Mays*, 967 S.W.2d 404, 406 (Tex. Crim. App. 1998). Generally, an indictment that tracks the language of a criminal statute is sufficient to provide a defendant with such notice. *State v. Edmond*, 933 S.W.2d 120, 128 (Tex. Crim. App. 1996). However, when the statute defines the prohibited conduct to include more than one manner or means of commission, the State must allege the particular manner or means it seeks to establish to provide sufficient notice. *State v. Barbernell*, 257 S.W.3d 248, 251 (Tex. Crim. App. 2008). We review the sufficiency of an indictment de novo. *State v. Moff*, 154 S.W.3d 599, 601 (Tex. Crim. App. 2004).

Appellant was indicted for continuous trafficking of persons. A person commits this offense if, during a period of thirty or more days, the person engages two or more times in conduct that constitutes trafficking of persons under Section 20A.02 of the Penal Code. TEX. PENAL CODE ANN. § 20A.03. Section 20A.02 provides a list of acts that constitute trafficking of persons, including: (1) trafficking a person and, through force, fraud, or coercion, causing the trafficked person to engage in prostitution; (2) receiving a benefit from participating in a venture that involves trafficking of persons for prostitution; (3) trafficking a child and by any means causing the trafficked child to engage in or become the victim of compelled prostitution; and (4) receiving a benefit from participating in a venture that involves trafficking a child for compelled prostitution. TEX. PENAL CODE

ANN. § 20A.02(a)(3)(A), (a)(4), (a)(7)(H), (a)(8) (West Supp. 2019). The statute defines "traffic" to mean to transport, entice, recruit, harbor, provide, or otherwise obtain another person by any means. TEX. PENAL CODE ANN. § 20A.01(4) (West 2019).

Appellant's indictment alleged four predicate acts of trafficking of persons, those being that appellant knowingly (1) trafficked G.T., a minor, and by any means caused her to engage in compelled prostitution; (2) received a benefit from participating in a venture involved in trafficking G.T. for compelled prostitution; (3) trafficked Keith and through force, fraud, or coercion caused her to engage in prostitution; and (4) received a benefit from participating in a venture involved in trafficking Keith for prostitution.

Appellant argues the indictment should have identified the specific manner or means by which G.T. and Keith were allegedly trafficked for each predicate offense because the statute defines "traffic" to include more than one manner or means of commission.

We found no cases evaluating the sufficiency of an indictment for the offense of continuous trafficking of persons. However, the Court of Criminal Appeals has held that an indictment of a crime predicated on an underlying offense need not identify all elements of the underlying offense to provide sufficient notice of the accusations to the defendant. *See Alba v. State*, 905 S.W.2d 581, 585 (Tex. Crim App. 1995) ("an indictment need not allege the constituent elements of the underlying offense which elevates murder to capital murder"); *Hightower v. State*, 629 S.W.2d 920, 922-23 (Tex. Crim. App. 1981) ("… it is unnecessary to allege the elements of theft in an aggravated robbery indictment").

Applying this principal, appellate courts have held that indictments for the offenses of continuous family violence[4] and continuous sexual abuse of a child[5] need not allege the manner or means by which the defendant committed the predicate acts of those offenses to provide sufficient notice of the crime charged. *See State v. Stukes*, 490 S.W.3d 571, 577 (Tex. App.—Houston [14th Dist.] 2016, no pet.) (holding that an indictment for continuous family violence need not allege the manner or means of the underlying assaults); *Buxton v. State*, 526 S.W.3d 666, 682 (Tex. App.—Houston [1st Dist.] 2017, pet. ref'd) (holding that an indictment for continuous sexual abuse of a child need not allege the manner or means of the underlying acts of sexual abuse). Instead, the indictment need only track the language of the offense and allege that the defendant committed the predicate acts. *Buxton*, 526 S.W.3d at 682. We opt to apply this same principle to the indictment of continuous trafficking of persons. Therefore, an indictment of this offense need only identify the predicate acts of trafficking which the State intends to rely on at trial to provide the defendant with sufficient notice. It need not identify the manner or means by which those predicate acts were allegedly committed.

Here, the indictment tracked the statutory language of the offense of continuous trafficking of persons and identified four predicate acts constituting trafficking. Accordingly, the indictment provided appellant with sufficient notice of the accusations against him, and the trial court did not err in denying his motion to quash.

Furthermore, even if the indictment had failed to provide appellant with sufficient notice, such error is not reversible unless appellant suffered harm. TEX. CODE CRIM.

[4] TEX. PENAL CODE ANN. § 25.11(a) (West Supp. 2019).

[5] TEX. PENAL CODE ANN. § 21.02(b) (West 2019).

PROC. ANN. art. 21.19 (West 2009); *Adams v. State*, 707 S.W.2d 900, 903 (Tex. Crim. App. 1986). When a motion to quash is denied, a defendant suffers no harm if he received actual notice of the State's theory against which he would have to defend. *Kellar v. State*, 108 S.W.3d 311, 313 (Tex. Crim. App. 2003).

The record in this case reflects that the State provided appellant with extensive discovery before trial. That discovery included appellant's arrest warrant and supporting affidavit which described, in detail, the allegations of trafficking of persons against appellant. We, therefore, find that appellant received notice of the State's theory against which he would have to defend prior to trial. Accordingly, he suffered no harm from the purportedly insufficient notice.

Issue–two Motion for Severance

Next, appellant argues the trial court erred in denying his motion to sever the alleged trafficking offenses concerning G.T. and Keith into separate trials. Because appellant has misconstrued the consolidation and severance provisions of the Penal Code, we overrule the issue.

Section 3.02(a) allows the State to prosecute a defendant for all offenses arising out of the same criminal episode in a single trial. TEX. PENAL CODE ANN. § 3.02(a) (West 2011). If the State consolidates the offenses and the defendant is found guilty, the sentences must generally run concurrently. TEX. PENAL CODE ANN. § 3.03(a), (b) (listing the offenses which may run consecutively) (West Supp. 2019). A defendant has a right to sever any joined offenses. TEX. PENAL CODE ANN. § 3.04 (a), (c) (West 2011) (requiring the defendant to show unfair prejudice by the joinder before a court may sever certain offenses).

Appellant was indicted and tried for the single offense of continuous trafficking of persons. The allegations of trafficking G.T. and Keith were not separate offenses consolidated for trial but were the predicate acts that constituted the single offense. Because the State did not consolidate multiple offenses for trial under Section 3.02, there were no offenses to sever pursuant to Section 3.04. TEX. PENAL CODE ANN. §§ 3.02, 3.04; *see Hathorn v. State*, 848 S.W.2d 101, 113 (Tex. Crim. App. 1992) (holding that Section 3.04(a) is inapplicable where the indictment charges only one offense under multiple theories).

Issue–three Motion to Suppress

In his third issue, appellant argues the trial court erred by prohibiting him from calling witnesses at his suppression hearing. We overrule the issue.

On the day of trial, appellant filed a motion to suppress all electronic devices seized by officers during his arrest and all evidence obtained from those devices. Before the trial commenced, the court instructed the parties that the motion to suppress would be "carried along" and that if certain factual issues arose, appellant could request a jury instruction or question. During a break on the second day of trial, the court conducted a hearing on the motion to suppress. Appellant made no request to continue the suppression hearing before it began.

The State presented three witnesses at the hearing, the officer who prepared the warrant affidavit and two arresting officers. Afterwards, appellant's counsel stated that his investigator was "getting some other officers" to testify and requested that the court allow appellant to present these "other officers" before closing the evidence on the motion to suppress. Counsel explained that he sought to obtain "some different testimony about

what was [found] where" at the time of appellant's arrest. The trial court denied the request and denied appellant's motion to suppress at the conclusion of the hearing.

On appeal, appellant does not challenge the trial court's denial of his motion to suppress. Rather, he claims the trial court erred by denying him the opportunity to call any witnesses at the suppression hearing. Because appellant had none of his alleged witnesses present at time of the hearing, he is essentially arguing that the trial court improperly denied his request for a continuance of the hearing to obtain witnesses.

A criminal action may be continued on a written and sworn motion setting forth sufficient cause. TEX. CODE CRIM. PROC. ANN. arts. 29.03, 29.08, 29.13 (West 2006). A motion for continuance that is neither in writing nor sworn to preserves nothing for review. *Montoya v. State*, 810 S.W.2d 160, 176 (Tex. Crim. App. 1989). Because appellant did not file a written and sworn motion for continuance of the suppression hearing, he did not preserve error for review on appeal. *Ortiz v. State*, No. 01-02-00494-CR, 2003 Tex. App. LEXIS 4006, at *3–4 (Tex. App.—Houston [1st Dist.] May 8, 2003, no pet.) (mem. op., not designated for publication).

Even if appellant had preserved error, a trial court's decision to refuse a continuance is reversible only for an abuse of discretion. *Matamoros v. State*, 901 S.W.2d 470, 478 (Tex. Crim. App. 1995). When a motion for continuance is based on an absent witness, the defendant must show: (1) that he exercised diligence to procure the witness's attendance, (2) that the witness's absence is not due to the failure to procure or consent of the defendant, (3) that the motion was not made for delay, and (4) the facts expected to be proved by the absent witness. *Nelson v. State*, 297 S.W.3d 424, 432 (Tex. App.—Amarillo 2009, pet. ref'd).

Here, appellant failed to show the identity of the "other officers" he sought to call as witnesses, that he exercised diligence to procure their attendance, that he did not consent to their absence, that his motion was not made for delay, or what facts he expected to be proved by their testimony. Accordingly, the record does not show that the trial court abused its discretion in denying appellant a continuance of the suppression hearing.

Issue–Four Cross-Examination of William Striebeck

Finally, appellant claims that the trial court improperly limited his cross-examination of William Striebeck. He argues the trial court erred in excluding evidence of Striebeck's pending criminal charges in violation of appellant's Sixth Amendment right to expose any witness bias or motive to testify falsely. We overrule the issue.

Appellant sought to develop the details of a criminal charge pending against Striebeck. The trial court granted him the opportunity to question the witness about bias and motive. It also noted that the witness invoked his right against self-incrimination and it was the witness's privilege to invoke. On appeal, however, appellant says nothing of the witness's assertion of the privilege. Nor does he address whether his Sixth Amendment right to confront witnesses somehow supersedes the witness's Fifth Amendment right to forego incriminating himself. *See Ellis v. State*, 683 S.W.2d 379, 383 (Tex. Crim. App. 1984) (stating that a witness's right against self-incrimination is superior to a defendant's right to compulsory process); *Hernandez v. State*, No. 04-05-00837-CR, 2007 Tex. App. LEXIS 1696, at *12–13 (Tex. App.—San Antonio Mar. 7, 2007, no pet.) (mem. op., not designated for publication).

If a trial court's adverse ruling can be sustained on more than one ground, the appellant must attack each independent basis for the ruling. *Agbilbeazu v. State*, No. 14-16-01023-CR, 2018 Tex. App. LEXIS 4071, at *5 (Tex. App.—Houston [14th Dist.] June 7, 2018, no pet.) (mem. op., not designated for publication); *accord Stewart v. State*, No. 07-19-00012-CR, 2019 Tex. App. LEXIS 7265, at *5 (Tex. App.—Amarillo Aug.16, 2019, no pet.) (mem. op., not designated for publication) (stating that when an unchallenged, independent ground supports the trial court's ruling, we must accept that unchallenged ground's validity). We will not *sua sponte* fill the void left if less than all the grounds are addressed. *Agbilbeazu*, 2018 Tex. App. LEXIS 4071, at *5. Appellant here having failed to explain why the trial court purportedly erred in preventing him from examining the witness about the details of his criminal act once the witness pled the Fifth, he failed to carry his burden to show error.

Having overruled appellant's issues, we affirm the judgment of conviction.

Per Curiam

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