In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-19-00321-CR

MICHAEL NEAL ROYAL, APPELLANT

V.

STATE OF TEXAS, APPELLEE

On Appeal from the 181st District Court of
Randall County, Texas
Trial Court No. 29,224B, Honorable Richard Dambold, Presiding

July 14, 2020

MEMORANDUM OPINION

Before QUINN, CJ., and PARKER and DOSS, JJ.

Michael Neal Royal appeals from the final judgment manifesting his two convictions for aggravated robbery against an elderly person and one for burglary of a habitation. The prosecutions arose from a home invasion resulting in the injury of the home's elderly couple. Five issues pend for our review. We address each in turn and affirm.

Issue One

Appellant initially attacks the trial court's decision to deny his motion to disqualify the district attorney. He believed himself entitled to same because the district attorney allegedly intercepted attorney client mail sent from appellant to defense counsel. That is:

> [b]y intercepting conversations between the Defendant and Defense Counsel, the State of Texas, acting through its agents the Randall County Sheriff's Office and the Randall County Criminal District Attorney's office, violated the Attorney Client Privilege which safeguards a defendant's right for effective assistance of counsel for advice, trial strategy and defense preparation, and his right to Due Process of law as set forth in the Sixth, Eighth and Fourteenth Amendments of the United States Constitution, Article I, Section 10 of the Constitution of the State of Texas and Article 1.05 of the Texas Code of Criminal Procedure.

According to the record, an evidentiary hearing was convened to address the allegation. Appellant offered no evidence at the proceeding, though. Rather, the State described how 1) a letter was seized during the execution of a search warrant; 2) the warrant was issued in effort to obtain evidence of criminal activity allegedly occurring between appellant and his girlfriend while he sat in jail; 3) the letter was delivered to a trial judge for review in camera; 4) that judge allegedly found it to be legal correspondence between appellant and his attorney; and 5) the item was released to defense counsel without being read by the prosecutor. We overrule the issue.

Simply put, there is no evidence of record suggesting that the district attorney read the letter. There is no evidence that it was seized improperly since appellant failed to challenge the validity of the warrant below or here. Nor did appellant attempt to illustrate below, or here, how seizing the letter via a lawfully issued warrant impacted his defense or his ability to present a defense. He offered no description of the defensive opportunities lost because of the letter's interception via a search warrant. Given this, appellant failed

to illustrate how he was denied due process, his right to counsel, or any other right by anything the district attorney did regarding the letter in question.

Issue Two

Next, appellant complains of the trial court's decision denying his motion to continue the trial of the cause. The substance of his argument consists of stating:

> Appellant was deprived of the opportunity to meaningfully cross examine and rebut the expert testimony of the DNA expert of the State. Given the damaging nature of this testimony, and the questions about the provenance of the evidence in question, this amounted to a total deprivation of Appellant's right to present a complete defense. Given the express waiver of a speedy trial and the significant delay between arrest and trial, there was no meaningful reason to deny the continuance. A simple matter of an additional month to prepare a defense DNA expert and properly examine the evidence against him would have afforded him due process, while not unduly burdening the State. The continuance should have been granted.

We overrule the issue.

The pertinent briefing rules obligate the appellant to provide citation to legal authority and both substantive analysis and references to the record which support the issue being urged. Failing to do that constitutes inadequate briefing and results in the waiver of the argument. *Approximately $23,606.00 U.S. Currency v. State*, No. 07-19-00297-CV, 2020 Tex. App. LEXIS 2602, at *8 (Tex. App.—Amarillo Mar. 27, 2020, no pet.) (mem. op.); *accord Olivas v. State*, No. 07-19-00075-CR, 2020 Tex. App. LEXIS 3593, at *5 n.2 (Tex. App.—Amarillo Apr. 28, 2020, no pet.) (mem. op., not designated for publication) (holding that the constitutional arguments were waived because appellant failed to offer any legal authority, references to the record, or substantive analysis in support of them). Furthermore, conclusory statements do not satisfy the requirement. *See Rodriguez v. State*, No. 08-17-00177-CR, 2019 Tex. App. LEXIS 5470, at *18–19 (Tex. App.—El Paso June 28, 2019, pet. ref'd) (not designated for publication) (stating

that where a party's argument consists only of conclusory statements without citation to appropriate authorities or substantive analysis, then the party has inadequately briefed its claim).

As can be seen by what we quote from appellant's brief, nothing more than conclusory statements comprises his argument. Nothing is said about how he was deprived of the opportunity to cross-examine and rebut testimony regarding DNA testing or how and why about the "provenance" of the evidence was subject to question. Nothing is said about what arguments he could have likely raised had a continuance been granted. Nor does he explain why the two earlier continuances granted him were insufficient to prepare for trial. Similarly missing is explanation as to why he waited until the week before trial to try and discover information about DNA testing when the trial court had authorized him to hire a DNA expert over a year earlier. *See Jalomo v. State*, No. 07-10-00345-CR, 2012 Tex. App. LEXIS 574, at *19–20 (Tex. App.—Amarillo Jan. 25, 2012, pet. ref'd) (mem. op., not designated for publication) (stating that one attacking the denial of a motion for continuance must show not only that the trial court erred in denying the relief but also that the decision harmed him). Given these circumstances, we cannot but conclude that appellant waived the issue due to inadequate briefing.

Issue Three

Next, appellant complains about supposedly "tainted evidence" violating his right to due process. The allegedly tainted evidence concerns shoes worn by appellant and blood specks appearing thereon. A photo taken of those shows upon his arrest and while on his feet supposedly revealed no blood stains. Yet, a close-up photo of the same shoes once they were removed from appellant revealed specks which were tested and found to

be blood. The blood was that of the elderly female victim. Given that the specks could not be seen in the initial picture, appellant believes that law enforcement officials "planted" the blood on the shoes after their removal from him. And, their allegedly having placed it on the shoes meant they fabricated evidence to obtain his convictions in violation of his right to due process. We overrule the issue.

Of course, our system of justice condemns the fabrication of inculpatory evidence to secure a conviction. Yet, fabrication must be established before condemnation occurs. It is not enough to merely allege fabrication. So, for this Court to accept his argument, appellant had and has the burden to direct us to evidence supporting the contention that law enforcement engaged in the supposed misconduct. *See* TEX. R. APP. P. 38.1(i) (stating that the appellant's brief must contain a clear and concise argument for the contentions made, with appropriate citation to authorities and the record). And, the only supposed evidence to which appellant refers in his argument are pictures of the shoes while on his feet and after their removal. And, because the stain purportedly cannot be seen in the former but can in the latter, we are asked to infer that the stains were placed on the shoes by law enforcement.[1]

Appellant's argument likens to a syllogism. Its components consist of two propositions leading to the synthesis. The propositions are 1) initial pictures taken by police of his shoes depict no blood stains and 2) later pictures taken by police of his shoes once the shoes were confiscated by police depict specks of blood. The synthesis from those propositions is that the police must have placed the specks on the shoes.

[1] This was the very same inference asked of and apparently rejected by the jury.

Underlying the two propositions, is another of which appellant says nothing. It is comprised of the notion that two different pictures of the same object taken at different times and under different conditions necessarily reveal the same images. Being jurists as opposed to trained photographers, though, we cannot simply assume the verity of this aspect of the syllogism. And, the argument being that of appellant, it was his burden to direct us to evidence of record establishing it in his favor. Yet, appellant cites us to nothing permitting us to conclude that all cameras take the same picture. Nor does he cite us to evidence of record suggesting that matter seen in one picture must necessarily be seen in another despite potential differences in lighting, angles, distances, and the like. And, there we halt. Without being shown proof of this aspect of the syllogism, we cannot proceed to the others. This is so since we have no reasonable basis to conclude that a speck of blood on a shoe seen in the close-up was not present when an earlier photo was made under different circumstances simply because it could not be seen in that earlier picture.

Issue Four

Appellant next contends that the trial court erred in failing to include within its charge the lesser-included offense of receiving stolen property. Yet, he never requested its inclusion. Appellant having failed to request it, the trial court had no obligation to include it. *See Young v. State*, No. 07-16-00015-CR, 2016 Tex. App. LEXIS 7731, at *6–7 (Tex. App.—Amarillo July 20, 2016, no pet.) (mem. op., not designated for publication) (stating that absent a proper request or timely objection, the trial court had no duty to submit a lesser-included offense); *see also Tolbert v. State*, 306 S.W.3d 776, 781 (Tex. Crim. App. 2010) (stating that the trial court had no duty to sua sponte instruct the jury on

the lesser-included offense of murder and that a jury instruction on that lesser-included offense was not applicable to the case absent a request by the defendant for its inclusion). So, we overrule the issue.

Issue Five

Appellant finally argues that the evidence was insufficient to support his conviction. He concedes to possessing property taken from the elderly couple during the burglary and assault but denies that the State proved he was the person who committed the assault and burglary during which it was taken. We overrule the issue.

The unexplained possession of recently stolen property supports an inference that the possessor committed the theft or burglary. *Vasquez v. State*, No. 07-07-0189-CR, 2007 Tex. App. LEXIS 7814, at *2 (Tex. App.—Amarillo Sept. 28, 2007, no pet.) (per curiam) (mem. op., not designated for publication). If an explanation is offered for possessing same, though, then the record must illustrate the explanation to be false or unreasonable. *Id.* at *2–3. And, whether it is unreasonable is a question of fact for the jury to decide. *Id.* at *3.

Here, the item of stolen property found in appellant's possession was a Rolex watch. He attempted to pawn it after the home invasion. When asked how it came into his possession, he said he obtained it from an individual named Doster. The record illustrates that the assault and burglary in question occurred on November 28. Doster had been booked into jail on November 2 and had remained there through the investigation of the burglary and assault, though. Doster being in jail during the occurrence of the burglary and assault enabled a reasonable juror to rationally reject as false appellant's explanation for having the Rolex. To that we further add the evidence

of a victim's blood being on appellant's shoe, a car similar to the one he drove being seen at the site of the burglary around the time of the burglary, and the description of the event as involving one assailant. This is more than ample evidence to allow a rational jury to conclude beyond reasonable doubt that appellant committed the crimes for which he was convicted.

The judgments are affirmed.

Brian Quinn
Chief Justice

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