In The
Court of Appeals
Sixth Appellate District of Texas at Texarkana

No. 06-15-00216-CR

LORENZO MARTINEZ, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 102nd District Court
Bowie County, Texas
Trial Court No. 13F0528-102

Before Morriss, C.J., Moseley and Burgess, JJ.
Memorandum Opinion by Justice Moseley

MEMORANDUM OPINION

Lorenzo Martinez pled guilty to burglary of a habitation[1] and was sentenced by a jury to fifteen years of incarceration. Martinez appeals, claiming the trial court erred in allowing victim impact testimony during the punishment phase of the trial. Finding no abuse of discretion, we affirm the trial court's judgment.

I. Factual and Procedural Background

When Savannah Smith answered a knock on the door to the apartment she shared with her boyfriend, Michael Robinson, Robinson's mother, Connie Robinson, and his sister, Caitlin, Martinez and a companion burst inside. Martinez wielded a gun which he pointed variously at Connie, Savannah, and Michael. When Connie inquired into the identity of Martinez' companion, Martinez and his companion fled the premises. The pair was captured a short time later, and Martinez ultimately pled guilty to burglary of a habitation with commission of assault.

At Martinez' punishment trial, Connie, the sole victim named in the indictment, was asked how the burglary affected her life. Martinez objected on the basis that the question called for victim impact testimony. The trial court overruled the objection, and Connie testified, "I stay -- I keep my doors locked. We don't open the door just -- I mean, I have to look out the window and make sure I know who's at my door. I mean, that's day and night." Martinez claims this testimony should have been excluded as improper victim impact testimony.

---

[1]*See* TEX. PENAL CODE ANN. § 30.02 (West 2011).

II. Analysis

We review the trial court's admission of victim impact testimony under an abuse of discretion standard. *Espinosa v. State*, 194 S.W.3d 703, 710 (Tex. App.—Houston [14th Dist.] 2006, no pet.). A trial court's ruling should only be reversed as an abuse of discretion when the decision lies outside the zone of reasonable disagreement. *Id*. In non-capital felony cases, the State may present evidence "as to any matter that the court deems relevant to sentencing." *See* TEX. CODE CRIM. PROC. ANN. art. 37.07, § 3(a)(1) (West Supp. 2015). Victim impact testimony is relevant to sentencing if it has "some bearing on the defendant's 'personal responsibility and moral guilt,'" *Stavinoha v. State*, 808 S.W.2d 76, 79 (Tex. Crim. App. 1991) (per curiam) (quoting *Miller-El v. State*, 782 S.W.2d 892, 896 (Tex. Crim. App. 1990)), including "the physical, psychological, or economic effects of a crime on the victim or the victim's family," *Espinosa*, 194 S.W.3d at 711 (citing *Stavinoha*, 808 S.W.2d at 79; *Miller-El*, 782 S.W.2d at 895); *Moreno v. State*, 38 S.W.3d 774, 778 (Tex. App.—Houston [14th Dist.] 2001, no pet.) (plurality op.) (victim impact evidence relevant if defendant should have anticipated particular effect on victim or victim's family).

Martinez acknowledges that the trial court has wide discretion to admit relevant evidence during the punishment phase of the trial. He claims, however, that because Connie testified, "*We* don't open the door," she improperly referred to the impact of the crime on others who were not named in the indictment. (Emphasis added). Consequently, Martinez maintains that the trial court erred in admitting this testimony, citing *Haley v. State*, 173 S.W.3d 510 (Tex. Crim. App. 2005). In *Haley*, though, the Texas Court of Criminal Appeals disapproved of the trial court's decision to

permit punishment phase evidence in a drug possession case of a mother regarding the loss of her daughter in an extraneous murder. *Id*. at 517–19. *Haley* held that such evidence was inadmissible because it was simply not relevant. *Id* at. 518. This holding followed the court's opinion in *Cantu v. State*, 939 S.W.2d 627 (Tex. Crim. App. 1997), in which the State offered punishment phase testimony of the mother of a murder victim killed in the same murderous episode as the victim named in the indictment. *Id.* at 636. The mother's testimony regarding her daughter's good character and the impact that the daughter's disappearance had on the rest of the family presented an unacceptably high "danger of unfair prejudice to a defendant inherent in the introduction of 'victim impact' evidence with respect to a victim not named in the indictment on which he is being tried." *Haley*, 173 S.W.3d at 518 (quoting *Cantu*, 939 S.W.2d at 637). *Haley* recognized, though, that the "central holding" of the *Cantu* court "was that such evidence was irrelevant under Texas Rule of Evidence 401." *Id*. In holding that the victim impact testimony in *Haley* was likewise irrelevant, the court explained that Haley had been indicted on the offense of possession of cocaine with the intent to deliver and that, therefore, "victim-impact and victim-character testimony regarding an extraneous offense or bad act was irrelevant under Rule 401 to the determination of the appropriate sentence Haley should receive on the facts of [that] case." *Id*.

While it is true that Connie was the sole victim named in the indictment, we do not believe that *Cantu* and *Haley* thereby restrict her testimony solely to the issue of how she alone was affected by the burglary. Unlike this case, *Cantu* and *Haley* involved victim impact testimony

regarding extraneous offenses, rather than the indicted offense.[2] Here, the victim impact testimony related solely to the indicted offense. This testimony was likewise relevant because Martinez should have anticipated that by bursting into Connie's apartment and wielding a gun at Connie and her family members, they would become reluctant to simply open the door without first checking to see who might be seeking entrance into their home. *See Stavinoha*, 808 S.W.2d at 79; *Moreno*, 38 S.W.3d at 778; *see also Espinosa*, 194 S.W.3d at 711 (testimony of police officer regarding wife's fear for his life while he worked as a police officer constituted proper victim impact evidence); *Salazar v. State*, 90 S.W.3d 330, 335 (Tex. Crim. App. 2002) (victim impact evidence designed to remind jury that crime has foreseeable consequences to victim's family and friends). Under the facts of this case, we cannot say that the trial court abused its discretion in allowing Connie's testimony. *See Moreno*, 38 S.W.3d at 778; *see also* TEX. CODE CRIM. PROC. ANN. art 37.07, § 3(a)(1).

---

[2]Martinez also cites *Barletta v. State*, 994 S.W.2d 708 (Tex. App.—Texarkana 1999, pet. ref'd), for the proposition that "the cases that validate victim impact testimony are limited to testimony about the victim named in the indictment upon which the defendant is being tried." *Id*. at 713. Like *Haley*, *Barletta* based this statement on *Cantu* and quoted directly from that case:

> The admission of such evidence would open the door to admission of victim impact evidence arising from *any* extraneous offense committed by a defendant. Extraneous victim impact evidence, if anything, is more prejudicial than the non-extraneous victim impact evidence found by this Court to be inadmissible in *Smith*, *supra*. We hold that such evidence is irrelevant under TEX. R. CRIM. EVID. 401 and therefore irrelevant in the context of the special issues under Art. 37.071[, the capital murder statute].

Id. (quoting *Cantu*, 939 S.W.2d at 637). Like *Cantu*, *Barletta* was concerned with the admissibility of victim impact evidence involving an extraneous offense. This Court determined, however, that any error in the admission of such testimony was not preserved. *Id*. at 715. Martinez also relies on *Killebrew v. State*, 746 S.W.2d 245 (Tex. App.—Texarkana 1987, pet. ref'd). In that case, however, this Court determined that the admission of victim impact testimony from the victim of an aggravated assault was proper in assessing punishment. *Id*. at 248.

III. Modification of Judgment

We have the "authority to reform the judgment . . . to make the record speak the truth when the matter has been called to [our] attention by any source." *French v. State*, 830 S.W.2d 607, 609 (Tex. Crim. App. 1992); *see* TEX. R. APP. P. 43.2; *Rhoten v. State*, 299 S.W.3d 349, 356 (Tex. App.—Texarkana 2009, no pet.). "Our authority to reform incorrect judgments is not dependent on the request of any party, nor does it turn on a question of whether a party has or has not objected in [the] trial court; we may act sua sponte and may have a duty to do so." *Rhoten*, 299 S.W.3d at 356 (citing *Asberry v. State*, 813 S.W.2d 526, 531 (Tex. App.—Dallas 1991, pet. ref'd)); *see French*, 830 S.W.2d at 609.

Here, the judgment incorrectly indicates that Martinez pled "not guilty" to the alleged offense. However, the record makes clear that Martinez pled "guilty" and elected to have his punishment trial to a jury. Accordingly, we modify the judgment to reflect Martinez' plea of "guilty" to the offense charged and by deleting the indication that a jury returned a verdict of guilty on the charged offense.

IV. Conclusion

We affirm the trial court's judgment, as modified.

Bailey C. Moseley
Justice

Date Submitted: July 12, 2016
Date Decided: July 20, 2016

Do Not Publish