



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

No. 06-17-00170-CR

CARLOS ALFONSO DOMINGUEZ, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 336th District Court
Fannin County, Texas
Trial Court No. CR-16-25798

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

MEMORANDUM OPINION

Carlos Alfonso Dominguez committed the unauthorized practice of law. The evidence at trial demonstrated that while claiming to be an “Assistant to Attorney” at an immigration law office, Dominguez himself collected payment for immigration work he was unqualified to perform.¹ Dominguez’ “clients” testified that they paid Dominguez large sums of money for work he never completed based on his promises that he would handle their immigration cases. After hearing this evidence, a Fannin County jury convicted Dominguez of theft of property by deception valued at \$30,000.00 or more, but less than \$150,000.00, and assessed a sentence of eight years’ imprisonment, which the trial court imposed. *See* TEX. PENAL CODE ANN. § 31.03(e)(5) (West Supp. 2017).

On appeal, Dominguez argues (1) that the State engaged in improper name-calling during its opening statement and (2) that the trial court erred in admitting testimony regarding a telephone conversation which established that Dominguez no longer worked at a law firm where he once served as a translator. Because we find that Dominguez failed to preserve both issues for our review, we affirm the trial court’s judgment.

I. Dominguez Failed to Preserve his First Point of Error

In his first point of error, Dominguez complains of this portion of the State’s opening statement:

[BY THE STATE] Con man. Confidence man. Drifter. We’ve all heard the names and we know what they do. They take someone’s trust and confidence in exchange

¹The Texas Supreme Court has held that because “selecting and preparing . . . various immigration forms require[s] legal skill and knowledge,” preparing such documentation without a valid license to practice law constitutes the unauthorized practice of law. *Unauthorized Practice Comm., State Bar of Tex. v. Cortez*, 692 S.W.2d 47, 50 (Tex. 1985).

for a lie and then they turn around and they steal them blind. You'll see from the victims in this case when they testify -- you'll see that, you know, it will be hard to distinguish which is the bigger betrayal, the actual stealing of the money or when they give the defendant their trust and confidence based upon a lie -- or, several lies that you'll see in this case.

Specifically, Dominguez argues that the State engaged in improper name calling. Although he admits that he failed to object to the State's opening argument, Dominguez argues that he "did not receive a fair trial due to this name-calling, which tainted the entire trial."

To preserve a complaint for our review, a party must have presented to the trial court a timely request, objection, or motion that states the specific grounds for the desired ruling if they are not apparent from the context of the request, objection, or motion. TEX. R. APP. P. 33.1(a)(1); *Douds v. State*, 472 S.W.3d 670, 674 (Tex. Crim. App. 2015). Preservation of error is a systemic requirement. *Reynolds v. State*, 423 S.W.3d 377, 383 (Tex. Crim. App. 2014); *Gipson v. State*, 383 S.W.3d 152, 159 (Tex. Crim. App. 2012). Thus, we do not address the merits of an issue that has not been preserved for appeal. *Ford v. State*, 305 S.W.3d 530, 532 (Tex. Crim. App. 2009).

The preservation requirement applies to a complaint concerning an opening statement. *Estrada v. State*, 313 S.W.3d 274, 303 (Tex. Crim. App. 2010). In recent precedent, the Texas Court of Criminal Appeals held that "[t]he right to a trial untainted by improper jury argument is forfeitable." *Hernandez v. State*, 538 S.W.3d 619, 622 (Tex. Crim. App. 2018) (citing *Cockrell v. State*, 933 S.W.2d 73, 89 (Tex. Crim. App. 1996)). "Even an inflammatory jury argument is forfeited if the defendant does not pursue his objection to an adverse ruling." *Hernandez*, 538 S.W.3d at 622–23 (citing *Estrada*, 313 S.W.3d at 303 (even assuming prosecutor's argument was so egregious that instruction to disregard would be ineffectual, defendant "should have moved for a mistrial to preserve this error"))).

We hold that Dominguez failed to preserve his complaint about the State's opening statement by not objecting to the statement at trial. *See* TEX. R. APP. P. 33.1(a); *Hernandez*, 538 S.W.3d at 623; *see also Estrada*, 313 S.W.3d at 302–03. Therefore, we overrule Dominguez' first point of error on appeal.

II. Dominguez Failed to Preserve his Last Point of Error

Dominguez represented that he worked for the law firm of Rahilly Aleshire, PC. While personally collecting attorney fees, he presented his victims with attorney-client contracts with the firm's telephone number. The State established that one of Dominguez' victims called the firm's number to inquire about the status of his family's immigration paperwork. Dominguez argues that the trial court erred in admitting testimony showing that he was not working for this law firm, although he was hired as a translator for the firm in the past. Dominguez' arguments on appeal are based on the following portion of the trial transcript:

Q. [BY THE STATE] So you called this number here.

A. Yes.

Q. Okay. And you spoke to an attorney.

A. It was an attorney or an assistant.

Q. Okay. . . . When you called that number and spoke to whoever it was at that number, were you able to find out anything about any applications that had been filed for you?

[BY THE DEFENSE]: Object to hearsay.

THE COURT: Overruled.
You may answer.

A. (By the Witness) No, they didn't tell me anything. They just told me that [Dominguez] was no longer working there and they couldn't tell me anything.

To preserve error in admitting evidence, a party must make a proper objection and get a ruling on that objection. TEX. R. APP. P. 33.1(a)(1). At trial, Dominguez objected to the State's inquiry of whether the victim was able to uncover any information about his immigration paperwork. Yet, Dominguez' appellate argument complains of the victim's non-responsive, volunteered information that Dominguez was no longer working at the firm. Specifically, Dominguez argues that he was harmed by this information because the defense's sole theory in this case was that Dominguez was actually employed by the firm. A "point of error on appeal must comport with the objection made at trial." *Wilson v. State*, 71 S.W.3d 346, 349 (Tex. Crim. App. 2002). Because Dominguez never objected to the victim's non-responsive answer, his complaint regarding this testimony was unpreserved. *See* TEX. R. APP. P. 33.1(a)(1).

Moreover, "it has been consistently held that one must object each and every time inadmissible evidence is offered." *Long v. State*, 10 S.W.3d 389, 399 (Tex. App.—Texarkana 2000, pet. ref'd) (citing *Ethington v. State*, 819 S.W.2d 854, 858 (Tex. Crim. App. 1991)). The State later elicited the same testimony, without objection, as established by the following dialogue:

Q. [BY THE STATE] Have you ever spoken to Ms. Aleshire, the attorney?

A. I don't -- I don't know who it was when I called that one time, if it was the attorney or the assistant. They told me [Dominguez] didn't work there.

Q. Earlier you stated that they said [Dominguez] didn't work there anymore. Is that what they said?

A. Yes, yes, that's correct.

Q. So, are you under the impression that he was employed there at some point?

A. Yes. Because -- yes, he had his suitcase and he looked like he worked there. . . . And he told me he worked there. . . . And he told me that the vehicle he was driving, the attorney had given it to him because he worked for her.

“An error [if any] in the admission of evidence is cured where the same evidence comes in elsewhere without objection.” *Lane v. State*, 151 S.W.3d 188, 193 (Tex. Crim. App. 2004) (quoting *Valle v. State*, 109 S.W.3d 500, 509 (Tex. Crim. App. 2003)); see *Leday v. State*, 983 S.W.2d 713, 718 (Tex. Crim. App. 1998).

Because we conclude that Dominguez failed to preserve his last point of error, we overrule it.

III. Conclusion

We affirm the trial court’s judgment.

Bailey C. Moseley
Justice

Date Submitted: May 14, 2018

Date Decided: May 16, 2018

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