IN THE
TENTH COURT OF APPEALS

No. 10-16-00267-CR

ROBERT THOMAS BRUCE,

Appellant

v.

THE STATE OF TEXAS,

Appellee

From the 52nd District Court
Coryell County, Texas
Trial Court No. 15-23163

MEMORANDUM OPINION

Robert Thomas Bruce was convicted of delivery of a controlled substance, methamphetamine, less than one gram and in a drug free zone, and sentenced to 10 years in prison with a $10,000 fine. *See* TEX. HEALTH & SAFETY CODE ANN. §§ 481.122, 481.134 (West 2017). Because the trial court did not abuse its discretion in excluding impeachment testimony regarding a witness's prior conviction, the trial court's judgment is affirmed.

In his sole issue on appeal, Bruce asserts that the trial court abused its discretion

in refusing to allow the impeachment of a State's witness with a prior conviction pursuant to Rule 609 of the Texas Rules of Evidence. The witness was the confidential informant (C.I.) used to purchase the methamphetamine which Bruce was convicted of delivering. On cross-examination, Bruce sought to impeach the C.I. with a previous conviction and probated sentence for hindering apprehension, arguing to the trial court that the conviction was admissible as a crime of moral turpitude. The State disputed whether the offense was a crime of moral turpitude. Ultimately, the trial court denied Bruce's attempt to impeach the C.I. on this basis.

PRESERVATION

Initially, the State asserts on appeal that Bruce's issue is either not preserved or does not comport with the argument raised at trial because Bruce did not mention Texas Rule of Evidence 609 as support for the attempted impeachment as he argues on appeal. We disagree with the State.

To preserve error a party must present "the grounds for the ruling that the complaining party sought from the trial court with sufficient specificity to make the trial court aware of the complaint, unless the specific grounds were apparent from the context." TEX. R. APP. P. 33.1(a)(1)(A). All a party has to do to avoid the forfeiture of a complaint on appeal is to let the trial judge know what he wants, why he thinks he is entitled to it, and to do so clearly enough for the judge to understand the complaint at a time when the trial court is in a proper position to do something about it. *Lankston v.*

State, 827 S.W.2d 907, 909 (Tex. Crim. App. 1992). Beyond this, there are no specific words or technical considerations required for an objection to ensure that the issue will be preserved for appeal. *Layton v. State*, 280 S.W.3d 235, 239 (Tex. Crim. App. 2009). Additionally, to preserve error, the issue on appeal must comport, or in other words, must not differ, with the objection made at trial. *See Wilson v. State*, 71 S.W.3d 346, 349 (Tex. Crim. App. 2002); *Thomas v. State*, 723 S.W.2d 696, 700 (Tex. Crim. App. 1986). We will not be hyper-technical in examining whether error was preserved. *Archie v. State*, 221 S.W.3d 695, 698 (Tex. Crim. App. 2007).

Since September 1, 1986, the admissibility of prior convictions for the purpose of impeachment has been governed by Rule 609 of the Texas Rules of Evidence. *Ex parte Menchaca*, 854 S.W.2d 128, 130 (Tex. Crim. App. 1993). A crime involving moral turpitude is one of the types of convictions that may be used for impeachment purposes. *See* TEX. R. EVID. 609. After reviewing the record for Bruce's issue, it appears clear that Bruce was attempting to impeach the C.I. with a prior conviction which he claimed was a crime of moral turpitude. This attempt invokes Rule 609. Accordingly, the issue is preserved and also comports with the argument made at trial.

RULE 609

Generally, evidence of a criminal conviction offered to attack a witness's character for truthfulness must be admitted if three components under Rule 609 are established. *See* TEX. R. EVID. 609(a). Those components are: (1) the crime was a felony or involved

moral turpitude, regardless of punishment; (2) the probative value of the evidence outweighs its prejudicial effect to a party; and (3) the crime is elicited from the witness or established by public record. *Id*.

In reviewing the trial court's decision whether to admit a prior conviction into evidence, we must accord the trial court "wide discretion." *Theus v. State*, 845 S.W.2d 874, 881 (Tex. Crim. App. 1992). If the court's ruling is correct on any theory of law applicable to the case, we must uphold the ruling. *See De La Paz v. State*, 279 S.W.3d 336, 344 (Tex. Crim. App. 2009).

Bruce elicited testimony from the C.I. regarding the underlying facts which resulted in her conviction for hindering apprehension, the third component of Rule 609, and argued that the crime involved moral turpitude, the first component of Rule 609.[1] Bruce did not, however, demonstrate at trial, nor does he on appeal, that the probative value of the evidence outweighs its prejudicial effect, the second component of Rule 609. The Court of Criminal Appeals has held that "any proponent seeking to introduce evidence pursuant to Rule 609 has the burden of demonstrating that the probative value of a conviction outweighs its prejudicial effect." *Theus v. State*, 845 S.W.2d 874, 880 (Tex. Crim. App. 1992). If a proponent does not demonstrate this specific component, an abuse of discretion by the trial court cannot be shown. *See Chitwood v. State*, 350 S.W.3d 746, 749

[1] There is some question about whether the conviction Bruce wanted to use for impeachment, hindering apprehension, is, under the circumstances, a crime involving moral turpitude. Because of the basis of our holding, we do not reach that issue.

(Tex. App.—Amarillo 2011, no pet.); *Yanez v. State*, 187 S.W.3d 724, 737 (Tex. App.—Corpus Christi 2006, no pet.). Bruce did not demonstrate that the probative value of the C.I.'s conviction outweighed its prejudicial effect; thus, he did not establish that the trial court abused its discretion in refusing to allow the C.I.'s impeachment with the conviction.

CONCLUSION

Accordingly, Bruce's sole issue is overruled, and the trial court's judgment is affirmed.

TOM GRAY
Chief Justice

Before Chief Justice Gray,
Justice Davis, and
Justice Scoggins
Affirmed
Opinion delivered and filed November 8, 2017
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