



IN THE
TENTH COURT OF APPEALS

No. 10-18-00252-CR

WILLIAM MAYNARD HAYES,

Appellant

v.

THE STATE OF TEXAS,

Appellee

From the County Court at Law No. 2
McLennan County, Texas
Trial Court No. 2017-1790-CR2

MEMORANDUM OPINION

William Maynard Hayes was charged with assault-family violence, a class A misdemeanor, and interference with an emergency request for assistance, a class A misdemeanor. *See* TEX. PENAL CODE §§ 22.01(a); 42.062. After a jury trial, Hayes was convicted of assault-family violence and sentenced to pay a \$500 fine. Because the trial court did not abuse its discretion in determining a State's witness was qualified to testify as an expert and because Hayes's issue regarding the reliability of the expert's testimony was inadequately briefed, the trial court's judgment is affirmed.

In two issues, Hayes complains that the trial court erred in admitting Detective Michelle Star's testimony as an expert witness because she was not qualified and her opinions were not reliable. Specifically, Hayes contends the State did not prove Star was qualified in the field of domestic abuse and failed to meet any of the *Kelly* factors on reliability.

When properly challenged, the party offering the expert's testimony bears the burden to prove that the witness is qualified. *Broders v. Heise*, 924 S.W.2d 148, 151 (Tex. 1996). We review the admission of expert testimony for an abuse of discretion. *Joiner v. State*, 825 S.W.2d 701, 708 (Tex. Crim. App. 1992); *Latimer v. State*, 319 S.W.3d 128, 133 (Tex. App. – Waco 2010, no pet.).

QUALIFIED

Before admitting expert testimony under Rule 702, the trial court must be satisfied that three conditions are met: (1) the witness qualifies as an expert by reason of his or her knowledge, skill, experience, training, or education; (2) the subject matter of the testimony is an appropriate one for expert testimony; and (3) admitting the expert testimony will actually assist the fact-finder in deciding the case. *Rodgers v. State*, 205 S.W.3d 525, 527 (Tex. Crim. App. 2006); *Latimer*, 319 S.W.3d at 133. In his first issue, Hayes complains about the first condition: qualification.

The special knowledge which qualifies a witness to give an expert opinion may be derived from specialized education, practical experience, a study of technical works, or a varying combination of these things. *Wyatt v. State*, 23 S.W.3d 18, 27 (Tex. Crim. App. 2000). Because the possible spectrum of education, skill, and training is so wide, a trial

court has great discretion in determining whether a witness possesses sufficient qualifications to assist the jury as an expert on a specific topic in a particular case. *See Joiner v. State*, 825 S.W.2d 701, 708 (Tex. Crim. App. 1992); *Latimer*, 319 S.W.3d at 133. For this reason, we rarely disturb the trial court's determination that a specific witness is or is not qualified to testify as an expert. *Wyatt v. State*, 23 S.W.3d 18, 27 (Tex. Crim. App. 2000); *Latimer*, 319 S.W.3d at 133.

At a pretrial hearing pursuant to Rule 702, Star testified that she had 27 years' experience as a police officer, specializing in domestic violence for the previous 14 years. She is part of the family violence unit at the Waco Police Department. Star testified she had been to several state-wide and nation-wide training seminars on domestic violence. She typically attended the local or state-wide seminars yearly and the nation-wide seminars bi-annually. She reviewed articles on domestic violence as part of those training seminars. Star has been a police academy instructor on domestic violence, and also trains the Citizens Police Academy, the citizens on patrol, dispatchers, and volunteer or victim volunteer services at the police department on the dynamics of domestic violence. Star had also been trained in "statement analysis," a process to determine if a victim is being truthful or not in a written statement, and had attended the FBI's program on that process two years earlier. After the hearing, the trial court allowed Star to testify as an expert witness but only on the dynamics of family violence and only as it pertained to the complainant.

After reviewing the Rule 702 hearing, and given the wide spectrum of education, skill, and training which qualifies a witness to give an expert opinion, we cannot say the trial court abused its discretion in determining Star possessed sufficient qualifications to assist the jury as an expert on the dynamics of family violence as it pertained to the complainant in this case. Accordingly, Hayes's first issue is overruled.

RELIABILITY

As to his second issue, Hayes does not dispute that Star's expertise was considered a "soft science;" yet he contends that because no evidence regarding the specific factors in *Kelly* were proven, Star's testimony was not reliable. *Kelly v. State*, 824 S.W.2d 568, 573 (Tex. Crim. App. 1992). Hayes's argument does not consider that the factors announced in *Kelly* have been relaxed as they pertain to the "soft sciences." As the Court of Criminal Appeals announced in *Nenno* and reiterated in *Russeau*:

When addressing fields of study aside from the hard sciences, such as the social sciences or fields that are based primarily upon experience and training as opposed to the scientific method, *Kelly's* requirement of reliability applies but with less rigor than to the hard sciences.

Nenno v. State, 970 S.W.2d 549, 561 (Tex. Crim. App. 1998); *Russeau v. State*, 171 S.W.3d 871, 883 (Tex. Crim. App. 2005). Consequently, when considering the reliability of proffered expert testimony in a "soft science" field, those based primarily on experience and training rather than a rigorous scientific method, the trial court should inquire: (1) whether the field of expertise is a legitimate one; (2) whether the subject matter of the expert's testimony is within the scope of that field; and (3) whether the expert's testimony

properly relies on or utilizes the principles involved in the field. *Russeau v. State*, 171 S.W.3d 871, 883 (Tex. Crim. App. 2005); *Nenno v. State*, 970 S.W.2d 549, 561 (Tex. Crim. App. 1998); *Brewer v. State*, 370 S.W.3d 471, 473 (Tex. App.—Amarillo 2012, no pet). Hayes fails to address how Star’s testimony was unreliable in light of these “soft sciences” factors. We will not make his argument for him.

When presenting error to this Court, an appellant's brief must contain "argument for the contentions made, with appropriate citations to authorities and to the record." TEX. R. APP. P. 38.1(i). The failure to properly brief an issue presents nothing for us to review, and we are not required to make an appellant's arguments for him. *Lucio v. State*, 351 S.W.3d 878, 896 (Tex. Crim. App. 2011); *Busby v. State*, 253 S.W.3d 661, 673 (Tex. Crim. App. 2008).

Accordingly, this issue is improperly briefed and presents nothing for review. Hayes’s second issue is overruled.

CONCLUSION

Having overruled each issue on appeal, we affirm the trial court’s judgment.

TOM GRAY
Chief Justice

Before Chief Justice Gray,
Justice Davis, and
Justice Neill

Affirmed
Opinion delivered and filed July 14, 2020
Do not publish
[CR25]

