TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-17-00156-CR

Veronica Trevino, Appellant

v.

The State of Texas, Appellee

FROM THE COUNTY COURT AT LAW NO. 5 OF TRAVIS COUNTY
NO. C-1-CR-15-206668, HONORABLE NANCY HOHENGARTEN, JUDGE PRESIDING

M E M O R A N D U M O P I N I O N

A jury found appellant Veronica Trevino guilty of prostitution, and the trial court sentenced her to 30 days' confinement. *See* Tex. Penal Code § 43.02(a)(1). On appeal, Trevino contends that the trial court abused its discretion in admitting certain evidence at trial. We will affirm the judgment of conviction.

BACKGROUND

Trevino was arrested during a sting operation conducted by the Austin Police Department (APD) in the Rundberg Lane area of Austin, Texas. As part of the operation, Officer Baldemar Ortiz, wearing plain clothes and driving an unmarked car through the area, spotted a woman, later identified as Trevino, walking on the sidewalk. According to his testimony at trial, Office Ortiz honked his horn to draw Trevino's attention and then offered her a ride, which she accepted. Officer Ortiz testified that as he drove, he and Trevino discussed sexual services and then

agreed on a price and a location. Upon Ortiz's signal, police officers pulled the car over, removed Trevino from the car, and placed her under arrest for prostitution.

ANALYSIS

In one issue on appeal, Trevino argues that the trial court abused its discretion in admitting certain evidence because, according to Trevino, the evidence constitutes hearsay, *see* Tex. R. Evid. 801, and its admission violates the Confrontation Clause, *see* U.S. Const. amend. VI.

Hearsay

First, we consider Trevino's assertion that the trial court abused its discretion by overruling her objection and allowing the admission of hearsay evidence. Hearsay is a statement, other than one made by the declarant while testifying at trial, that is offered to prove the truth of the matter asserted in that statement. Tex. R. Evid. 801(d) (defining "hearsay"). Hearsay is inadmissible except as provided by statute or by the rules of evidence. Tex. R. Evid. 802. We review a trial court's ruling on the admission or exclusion of evidence, including a ruling on a hearsay objection, for an abuse of discretion. *Zuliani v. State*, 97 S.W.3d 589, 595 (Tex. Crim. App. 2003); *Sandoval v. State*, 409 S.W.3d 259, 281-82 (Tex. App.—Austin 2013, no pet.) (reviewing trial court's decision to admit out-of-court statement over hearsay objection under abuse-of-discretion standard) . Unless the trial court's decision "lies outside the zone of reasonable disagreement," we will uphold the ruling. *Davis v. State*, 329 S.W.3d 798, 803 (Tex. Crim. App. 2010).

At trial, prior to Officer Ortiz's testimony concerning the events leading to Trevino's arrest, another officer involved with the sting operation, Officer Jeff Sarrels, testified about the

decision to initiate a sting operation in the Rundberg Lane area and how that operation was conducted. Officer Sarrels testified that APD had decided to conduct the operation based, in part, on the fact that it had received numerous complaints from residents. The following exchange took place:

> PROSECUTOR: And what type of complaints are generally made?
>
> SARRELS: We'll get complaints that the residents have their small children. There's a number of schools and churches in the area that the small children have to walk to and from all the time; that they're finding used condoms laying in the streets of the parking lots. There's—
>
> TRIAL COUNSEL: I do need to object to the hearsay, Judge. This is rank hearsay that is coming in.
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> PROSECUTOR: He's talking about general complaints that he gets. He's not talking about something that a specific person said.
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> TRIAL COUNSEL: I believe that's a specific complaint, Judge.
>
> PROSECUTOR: No. He's talking about general complaints.
>
> TRIAL COURT: Overruled.
>
> SARRELS: That the kids are walking past vehicles that people are having sex in. And then generally what we've found, my personal experience, once we start having a higher level of prostitution, we see an increased level of narcotics use. We see increased level of violent crimes occurring in that area, as far as assaults or robberies, murders.

On appeal, Trevino argues that the trial court abused its discretion in overruling her hearsay objection because "the prosecutor clearly offered the statements of the anonymous

complaints for the truth to the matter asserted." In response, the State asserts that the objected-to testimony of Officer Sarrels was not hearsay because the out-of-court statements were not offered to prove the truth of the matter asserted (i.e., whether condoms were littered on the ground or whether children passed by people having sex in cars) but instead to explain "why a twelve-man team of law enforcement officers undertook to conduct an undercover sting operation in that particular neighborhood."

"Testimony by an officer that he went to a certain place or performed a certain act in response to generalized 'information received' is normally not considered hearsay because the witness should be allowed to give some explanation of his behavior." *Poindexter v. State*, 153 S.W.3d 402, 408 n.21 (Tex. Crim. App. 2005). In determining whether such testimony is permissible, "the appropriate inquiry focuses on whether the 'information received' testimony is a general description of criminality or a specific description of the defendant's purported involvement or link to that activity." *Id*. An officer "should not be permitted to relate historical aspects of the case, replete with hearsay statements in the form of complaints and reports on grounds that she was entitled to tell the jury the information upon which she acted." *Id.* (quoting *Schaffer v. State*, 777 S.W.2d 111, 114-15 (Tex. Crim. App. 1989)).

Here, the trial court could have reasonably concluded that Officer Sarrels's testimony relaying complaints made by area residents was offered to explain why APD had decided to conduct a prostitution sting operation in the Rundberg area. Although the substance of the complaints generally concerned possible prostitution activity in an area in which Trevino was encountered by police, the complaints did not provide "a specific description of [Trevino's] purported involvement

or link to that activity." *See id.* It would not be outside the zone of reasonable disagreement for the trial court to have concluded that this testimony was permissible "information received." Consequently, the trial court did not abuse its discretion in overruling Trevino's hearsay objection and admitting the evidence.

Confrontation Clause

Next, we consider Trevino's argument that the admission of the same objected-to testimony violated her rights under the Confrontation Clause. The Confrontation Clause of the Sixth Amendment provides that "[i]n all criminal prosecutions, the accused shall enjoy the right to be confronted with the witnesses against him." U.S. Const. amend VI. Generally, courts have construed the Confrontation Clause to prohibit prosecutors from admitting "testimonial" out-of-court statements against a defendant unless the prosecution can show that the declarant is presently unavailable to testify and that the defendant had a prior opportunity to cross-examine the declarant. *Crawford v. Washington*, 541 U.S. 36, 68 (2004); *Fulberg v. State*, 447 S.W.3d 304, 317 (Tex. App.—Austin 2014, pet. ref'd) (citing *De La Paz v. State*, 273 S.W.3d 671, 680 (Tex. Crim. App. 2008)). An appellate court reviews a trial court's legal ruling on an alleged violation of the Confrontation Clause, including whether a particular out-of-court statement is testimonial, under a de novo standard. *See Wall v. State*, 184 S.W.3d 730, 742 (Tex. Crim. App. 2006) ("Although the reviewing court defers to a trial court's determination of historical facts and credibility, the court reviews a constitutional legal ruling, *i.e.* whether a statement is testimonial or non-testimonial, *de novo*.").

In general, an out-of-court statement, even one that is testimonial, is not barred by the Confrontation Clause "to the extent it is offered for some evidentiary purpose other than the truth of the matter asserted." *See Langham v. State*, 305 S.W.3d 568, 576 (Tex. Crim. App. 2010) (citing *Crawford*, 541 U.S. at 59 n.9). Assuming without deciding that the out-of-court statements were "testimonial," we conclude that the trial court's decision to allow Officer Sarrels to testify to the out-of-court statements did not violate Trevino's rights under the Confrontation Clause.[1] As previously explained, the trial court could have reasonably determined that the evidence was offered as "information received" to explain police conduct—a purpose other than establishing the truth of the matter asserted. Moreover, Officer Sarrels's objected-to testimony provided only limited background to the jury—no more than necessary to explain the reason for the prostitution sting—and the substance of the complaints did not specifically involve Trevino or link her to the behavior that was the subject of the complaints. *Cf. id.* at 580 (explaining that evidence admissible as "background" evidence may "prove far more prejudicial than probative" and "the greater and more damning the detail contained in that out-of-court statement, the greater the likelihood that the jury will gravitate toward the improper use" and "erode judicial confidence that the accused has truly enjoyed his Sixth Amendment right to confront *all* of 'the witnesses against him'").

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[1] The United States Supreme Court has identified three kinds of out-of-court statements that could be regarded as testimonial: (1) "ex parte in-court testimony or its functional equivalent," such as affidavits, custodial examinations, prior testimony not subject to cross-examination, or "similar pretrial statements that declarants would reasonably expect to be used prosecutorially"; (2) "extrajudicial statements" contained in formalized testimonial materials, such as affidavits, depositions, prior testimony, or confessions; and (3) "statements that were made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial." *Crawford v. Washington*, 541 U.S. 36, 51-52 (2004).

Because the objected-to testimony of Officer Sarrels was not hearsay and because the admission of the evidence did not violate the Confrontation Clause, we overrule Trevino's sole issue on appeal.

CONCLUSION

We affirm the judgment of conviction.

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Scott K. Field, Justice

Before Justices Puryear, Field, and Bourland

Affirmed

Filed: November 3, 2017

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