NUMBERS 13-19-00145-CR & 13-19-00146-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

HAMEED HAMEED, **Appellant,**

v.

THE STATE OF TEXAS, **Appellee.**

On appeal from the 144th District Court of Bexar County, Texas.

MEMORANDUM OPINION

Before Chief Justice Contreras and Justices Longoria and Hinojosa
Memorandum Opinion by Justice Longoria

Appellant Hameed Hameed appeals from his two convictions for aggravated robbery with a deadly weapon against T.Q. and her minor child, S.A.[1,2] *See* TEX. PENAL CODE ANN. § 29.03. By one issue, appellant argues that the trial court erred in not allowing him to cross examine T.Q. on the issue of bias. We affirm.

I. BACKGROUND[3]

The indictments alleged that:

> On or about the 10th day of November, 2016, [appellant], hereinafter referred to as Defendant, while in the course of committing theft of property and with intent to obtain and maintain control of said property, did intentionally and knowingly threaten and place [T.Q. and S.A.], in fear of imminent bodily injury and death and the Defendant did use and exhibit a deadly weapon, to wit: A firearm.

Officer Anthony Elias of the San Antonio Police Department testified that in February of 2017, he was assigned to the crisis response team located in a substation. T.Q. came into the substation to report an offense, which Officer Elias reported as an aggravated assault with a deadly weapon. Officer Elias provided her with the necessary forms to report the incident. T.Q. reported that the offense occurred on November 10, 2016.

Detective Jesus Rivera of the San Antonio Police Department homicide unit testified that he was assigned to the case after T.Q. reported the offense to Officer Elias.

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[1] Hameed was indicted in two separate trial court cause numbers, 2017-CR-5045 (appellate cause number 13-19-00145-CR) and 2017-CR-5047 (appellate cause number 13-19-00146-CR), for aggravated robbery with a deadly weapon. The indictments arose out of the same set of facts but were in relation to two separate complainants, T.Q. and S.A. The two counts of aggravated robbery with a deadly weapon were tried together. In the interest of judicial economy, and because both raise the same single issue, we address both appeals in one opinion.

[2] To protect the identity of the complainant and her minor child, we will refer to them and other family members in this case using aliases. *See* TEX. R. APP. P. 9.8.

[3] This appeal was transferred from the Fourth Court of Appeals in San Antonio pursuant to an order issued by the Texas Supreme Court. *See* TEX. GOV'T CODE ANN. § 73.001.

As part of his investigation, Detective Rivera interviewed T.Q., T.Q.'s daughter A.A., and appellant's girlfriend at the time the offense was reported. S.A. was interviewed by social workers. Appellant was interviewed by another detective. When appellant was arrested, a pawn ticket was located on his person. Detective Rivera went to the pawn shop and retrieved the pawned item, which was a gun. The gun had been pawned on December 15, 2016.

T.Q. testified she met appellant through a mobile application. T.Q. stated that over time, appellant borrowed money from her for various reasons and that appellant owed her approximately $45,000. Around the date of the incident, she said that things were "kind of rocky," explaining that while their dating relationship was smooth in the beginning, she began to see a different version of appellant as time passed, and they were no longer in a dating relationship. On the day of the incident, there was a plan that appellant was going to pick her up and bring her into his office to draft an agreement showing that he owed her the money and that he would pay her through his work. She said as part of the plan, appellant told her that she would need to bring her phone so that the Federal Bureau of Investigation (FBI) could analyze it to make sure she had not "burned his spot" as working undercover for the FBI.[4]

When appellant picked her up, he told her that there were cameras in the vehicle and to stay quiet. She testified that she did not bring her phone because she thought he would delete everything from it, including "his threats." She stated that appellant had threatened her in the past by saying things like: "I'll put a bullet in your head, you know,

[4] T.Q. testified that appellant told her that he worked undercover in the Federal Bureau of Investigation (FBI) office. Appellant worked as an interpreter for the United States Army in Iraq between 2004 and 2012. In 2012, appellant immigrated to the United States on a special access visa.

that's nothing to me. I've done it before. I'll burn you and your kids down. I'll burn the house down on your kids." T.Q. provided screenshots of her text messages with appellant to the detective assigned to the case. The screenshots of the text messages, some of which were translated from Arabic to English, were admitted into evidence.

On their way to the office, appellant stopped and parked in a parking lot and asked T.Q. for her phone, but she told him she did not bring it. She stated that appellant was very angry that she did not bring her phone and that after yelling at her, he got out of the car to make a phone call. When he got back into the car, he told her they needed to go get her phone. She said that on the drive back to get her phone, he was very angry, screaming at her and hitting her. When she attempted to get out of the car, she said he took out his gun, put it to her side, and told her to shut the door. When they arrived at her apartment, T.Q.'s twelve-year old daughter opened the door for them. T.Q. testified that she "was a mess" from crying and being hit by appellant. Her two younger children were also in the apartment, including her four-year-old son S.A. T.Q. said that she continued to refuse to give him her phone, and in response appellant kicked her, threatened to have her children taken away, and then placed a gun to her head in front of her daughter. When she still refused, she said he struck her on the side of the head with his gun and then grabbed S.A. and put the gun to his head. At that point, she gave in and she gave him her phone. She removed the passcode and he took the phone and left. She texted him later from her daughter's phone that she needed her phone back, and he eventually returned the phone the next day, after she threatened to tell the police what happened. T.Q. and appellant maintained some contact after the incident through text, mostly regarding the money owed to T.Q. When asked why she did not immediately report the

incident, T.Q. explained that she was afraid of what appellant would do, because she believed "he can get away with stuff." While she agreed that she had many neighbors in her apartment complex, she stated that there were no witnesses to the actions of appellant.

A.A., T.Q.'s fourteen-year-old daughter, testified that she was introduced to appellant as her mother's boyfriend. She recalled that on the day of the incident, she was babysitting her two younger brothers, and she was twelve years old at the time. She testified that when her mother returned home, "She was all red. She was crying, and her head scarf was messed up. She was, like—she just looked bad." Her mother was with appellant at that time. Appellant instructed both A.A. and her mother to sit on the couch while her younger brothers watched television. Appellant was asking her mother to give him the phone, and A.A. stated he was not asking nicely. A.A. testified that appellant was threatening her mother and hitting her. She witnessed appellant point a gun at her mother's head and her youngest brother's head. When the gun was pointed at S.A.'s head, T.Q. told A.A. to go get the phone from her closet and to give it to appellant. Appellant thanked her and left. On cross-examination, A.A. testified that she did not use her phone to call the police when appellant left the room, nor did she report the incident at school or to her teachers after it happened.

The jury found appellant guilty of both counts of aggravated robbery with a deadly weapon. Appellant elected for the trial court to assess punishment. He testified during the punishment phase of the trial that while he "accept[ed]" the jury's verdict, he maintained that he did not have a weapon on him during the incident. He asked the judge to impose the minimum sentence of five years' imprisonment. The trial court assessed punishment

at five years' imprisonment in cause number 2017-CR-5042 and fifteen years' imprisonment in cause number 2017-CR-5047, to run concurrently. This appeal followed.

II. CONFRONTATION CLAUSE

By his sole issue, appellant alleges that the trial court violated his constitutional right to confront his accuser by preventing him from cross-examining T.Q. regarding her religious bias against appellant.

A. Standard of Review and Applicable Law

We review a trial judge's decision on the admissibility of evidence under an abuse of discretion standard. *Tillman v. State*, 354 S.W.3d 425, 435 (Tex. Crim. App. 2011). A trial judge abuses his discretion when his decision falls outside of the zone of reasonable disagreement. *Martinez v. State*, 327 S.W.3d 727, 736 (Tex. Crim. App. 2010).

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. The constitutional right of confrontation includes the right to cross-examine the witnesses and the opportunity to show that a witness is biased or that his testimony is exaggerated or unbelievable. *Irby v. State*, 327 S.W.3d 138, 145 (Tex. Crim. App. 2010). Parties are allowed great latitude to show "any fact which would or might tend to establish ill feeling, bias, motive and animus on the part of the witness." *Carpenter v. State*, 979 S.W.2d 633, 634 (Tex. Crim. App. 1998). Nonetheless, the trial judge retains wide latitude to impose reasonable limits on such cross-examination "based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only marginally relevant." *Irby*, 327 S.W.3d at 145 (quoting *Delaware v. Van Arsdall*, 475 U.S. 673, 679 (1986)).

B. Analysis

Appellant complains that, although he was allowed to cross-examine T.Q., he was not allowed to inquire as to T.Q.'s religious background and her potential bias against him because of her religion. During the cross-examination of T.Q., the following colloquy took place:

Q. [Defense Counsel]	What—did [appellant] want your phone because he was concerned? Was there something on your phone that might affect his job, that you said?
A. [T.Q.]	Yes.
Q.	Okay. And was he concerned that you might tell others about some of the things that were on the phone?
A.	Yes.
Q.	Was he concerned that you would tell people at the mosque what was on his phone?
A.	No. I don't go to the mosque.
Q.	Okay. But you are Muslim, right?
A.	I am. But I don't go to the mosque.
Q.	And Hameed is an Iraqi Christian, right?
A.	I don't know—
[The State]:	Objection, relevance.
[Defense Counsel]:	Well, bias—
THE COURT:	Sustained.

Appellant contends on appeal that the purpose of his cross-examination regarding T.Q.'s religion "goes to the heart of her motive to lie."

The State contends that appellant failed to preserve this issue for our review. We agree. To preserve error for appellate review, a party is required to make a timely objection or make a request or motion to apprise the trial court what the party seeks. *Dollins v. State*, 460 S.W.3d 696, 698 (Tex. App.—Texarkana 2015, no pet.) (citing TEX. R. APP. P. 33.1(a)). Doing so gives the trial court an opportunity to remedy any purported error. *Id*. To "preserve error regarding improperly excluded evidence, a party must timely object, obtain a ruling from the trial court . . . and prove the substance of the excluded evidence via an offer of proof." *Id*. at 698–99 (citing TEX. R. APP. P. 33.1(a); TEX. R. EVID. 103(a); *Roberts v. State*, 220 S.W.3d 521, 532 (Tex. Crim. App. 2007)).

Confrontation Clause complaints are subject to these same preservation requirements. *In re E.H.*, 512 S.W.3d 580, 586 (Tex. App.—El Paso 2017, no pet.) (citing *Reyna v. State*, 168 S.W.3d 173, 177 (Tex. Crim. App. 2005) (concluding that the appellant failed to preserve his Confrontation Clause complaint because he did not argue to the trial court that the Confrontation Clause demanded admission of the proffered evidence)). Thus, a Confrontation Clause objection must be made at trial or it is waived on appeal. *In re E.H.*, 512 S.W.3d at 586; *see also Luna v. State*, No. 13-17-00484-CR, 2018 WL 3910721, at *1 (Tex. App.—Corpus Christi–Edinburg Aug. 16, 2018, no pet.) (mem. op., not designated for publication).

Here, after the State objected to appellant's cross-examination of T.Q., appellant replied "Well, bias— . . . ." He did not argue at any time that the testimony must be admitted to protect his confrontation rights, nor did he cite to any rules of evidence, cases, or constitutional provisions. Moreover, appellant did not provide an offer of proof to show the substance of the excluded evidence. *See* TEX. R. EVID. 103(a)(2). Accordingly,

because appellant failed to preserve his Confrontation Clause complaint, we overrule his sole issue. *See Reyna*, 168 S.W.3d at 179 (explaining that because the appellant "did not articulate" that the Confrontation Clause demanded admission of the evidence, the trial court did not have an opportunity to rule on that rationale and that as the losing party, the appellant "must suffer on appeal the consequences of his insufficiently specific offer"); *see also Luna*, 2018 WL 3910721, at *1 (concluding that appellant did not preserve his Confrontation Clause complaint where he did not object to the trial court's ruling on the basis that his confrontation rights were violated and did not provide an offer of proof to show the substance of the excluded evidence).

We overrule appellant's sole issue.

III. CONCLUSION

The judgment of the trial court is affirmed.

NORA L. LONGORIA
Justice

Do not publish.
TEX. R. APP. P. 47.2(b).

Delivered and filed the
9th day of April, 2020.