AFFIRMED; Opinion Filed July 17, 2020

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-19-00181-CR

PAULO ROGERIO OSTOLIN, Appellant
V.
THE STATE OF TEXAS, Appellee

On Appeal from the 219th Judicial District Court
Collin County, Texas
Trial Court Cause No. 219-82478-2017

MEMORANDUM OPINION

Before Justices Schenck, Molberg, and Nowell
Opinion by Justice Schenck

Paulo Rogerio Ostolin appeals his conviction for continuous sexual abuse of a child. Appellant urges the trial judge abandoned his role as a neutral arbiter when he commented about the admissibility of his evidence and erred in excluding evidence vital to his defense. Appellant also asserts he received ineffective assistance of counsel. We affirm the trial court's judgment. Because all issues are settled in the law, we issue this memorandum opinion. TEX. R. APP. P. 47.4.

BACKGROUND

Appellant was indicted for the offense of continuous sexual abuse of a child. TEX. PENAL CODE ANN. § 21.02. Appellant pleaded not guilty, and the case proceeded to trial before a jury.

The evidence presented at trial established the following. C.H., the complainant, was sixteen years old at the time of trial. In February 2011, when C.H. was nine years old, her mother began dating appellant. In August 2011, appellant moved into the home with C.H. and her mother. Eventually, appellant and C.H.'s mother married, and appellant became the chief disciplinarian of C.H.[1]

Appellant was obsessed with cleanliness and always having the house clean. He assigned chores to C.H. and created "chore charts" listing the weekday chores C.H. was to complete, including washing dishes; taking out the trash; cleaning the kitchen, the counters, and the stove; scooping up dog excrement; and replenishing toilet paper in the bathrooms. Appellant assigned C.H. additional chores on the weekends, including dusting, vacuuming, cleaning bathrooms and the dog's crate, and bathing the dog. The chore charts contained a "passed/failed" column. Appellant inspected C.H.'s work, and if he determined she failed a task, he would punish her by making her stand for hours facing a wall, "switching" her feet until

[1] Appellant owned his own landscaping business, so he had flexible hours. C.H.'s mother is a nurse and was working extended hours during the relevant time.

she could not walk, making her hold dog excrement or smearing it in her hands, making her run hundreds of laps in the backyard, or making her write the same letter numerous times.[2]

In addition to the physical and mental abuse, C.H. claimed appellant sexually abused her. She claimed the abuse began when she was ten years' old and continued until she was eleven or twelve. C.H. recounted four instances of sexual abuse and stated that, on each occasion, appellant spit in his hand and rubbed it on to himself before abusing her.[3] She claimed appellant threatened to end her world if she told anyone about the abuse.

In late spring or early summer of 2015, C.H. moved out of the house in which she had been living with appellant and her mother and moved in with her father. Shortly thereafter, C.H.'s mother separated from appellant. Over the next two years, C.H. was hospitalized three times due to mental health issues, including suicidal thoughts. C.H. did not disclose sexual abuse during those hospitalizations.

In May 2017, C.H. told her mother appellant had raped her four times. While C.H.'s mother, a registered nurse, had been trained to recognize the signs and symptoms of abuse of children, she never observed any with C.H. C.H.'s mother

[2] Although not admitted into evidence, appellant's counsel questioned C.H. about Defense Exhibits 5 and 6, which were letters appellant required C.H. to write numerous times. One was a letter to her dog apologizing for not leaving him clean water and not picking up all of the excrement in the backyard, and the other was a letter expressing gratitude and love for appellant.

[3] Appellant admitted that he spit on his hand and rubbed it on to himself before having sex with C.H.'s mother.

reported the abuse, and C.H. was then interviewed at the Child Advocacy Center. C.H. described the abuse during the interview and gave the forensic interviewer letters she had written concerning same. The forensic interviewer recounted the statements C.H. made during her interview and indicated that C.H. was able to provide sensory and general details of the abuse. The forensic interviewer admitted some of the things C.H. wrote in the letters were not consistent with what she told her during her interview, but she explored those inconsistencies with C.H. and ultimately did not see any red flags.

The jury found appellant guilty of the charged offense, and the trial court assessed punishment at fifty years' confinement.[4] The trial court denied appellant's request for a new trial, and this appeal followed.

DISCUSSION

I. Trial Court Comments

In his first issue, appellant urges the trial judge made comments concerning the admissibility of appellant's evidence in the presence of the jury that were improper under article 38.05 of the Texas Code of Criminal Procedure.

This Court reviews whether a judicial comment constitutes an improper comment on the weight of the evidence in violation of Texas Code of Criminal Procedure article 38.05 *de novo*. *Sanders v. State*, No. 05-14-01037-CR, 2016 WL

[4] Appellant faced punishment of imprisonment for life, or for any term of not more than 99 years or less than 25 years. TEX. PENAL CODE ANN. § 21.02(h).

326461, at *2 (Tex. App.—Dallas Jan. 27, 2016, no pet.) (mem. op., not designated for publication). Article 38.05 provides:

> In ruling upon the admissibility of evidence, the judge shall not discuss or comment upon the weight of the same or its bearing in the case, but shall simply decide whether or not it is admissible; nor shall he, at any stage of the proceeding previous to the return of the verdict, make any remark calculated to convey to the jury his opinion of the case.

TEX. CODE CRIM. PROC. ANN. art. 38.05. A trial court improperly comments on the weight of the evidence in violation of article 38.05 if it makes a statement that implies approval of the State's argument, indicates disbelief in the defense's position, or diminishes the credibility of the defense's approach to the case. *Clark v. State*, 878 S.W.2d 224, 226 (Tex. App.—Dallas 1994, no pet.).

Appellant complains about three comments the trial judge made during trial. First, appellant claims that the trial court improperly commented on the weight of the evidence during the following exchange concerning Defense Exhibits 5 and 6, which were letters appellant made C.H. write apologizing to her dog and expressing gratitude and love for appellant:

> [DEFENSE COUNSEL]: And, Judge, at this time we are also going to go ahead and offer State's Exhibit No. 5 (sic) -- I keep saying State, Judge, I mean Defense Exhibit No. 5.
>
> THE COURT: Defense Exhibit 5.
>
> [DEFENSE COUNSEL]: Defense, Defense -- No. 5, as well as Defense Exhibit No. 6.
>
> THE COURT: Five is the dog letter and six is the letter of the defendant?

[DEFENSE COUNSEL]: Yes, Your Honor.

THE COURT: Any objection?

[PROSECUTOR]: Can I have just one second, Your Honor, to look through this?

THE COURT: Ms. Dunagan, is this not hearsay just like all the rest of these exhibits?

[PROSECUTOR]: No, Your Honor, I mean it's hearsay. It just – we've never seen this before. I'd like to know exactly, you know, what it is they're saying. We'll object to hearsay.

THE COURT: Sustained.

[DEFENSE COUNSEL]: Judge, we would urge our same response to that. It's an exception to hearsay under present-sense impression. It is a -- it goes to her state of mind at the time under Rule 613.

THE COURT: That's very articulate. And that's overruled.

Appellant contends the trial court's statement "Ms. Dunagan, is this not hearsay like all of the rest of these exhibit?" was a comment on the weight of the evidence.

Prior to offering Defense Exhibits 5 and 6, appellant had proffered Defense Exhibits 4 and 7, which the trial court excluded after the State objected to them as hearsay.[5] Based on appellant's proffer, and the trial judge's comments, it is apparent the trial court was aware that Defense Exhibits 5 and 6 were letters written by C.H. concerning the dog and appellant, which were out-of-court statements, and thus were

[5] Exhibits 4 and 7 contained a handwritten note of C.H. expressing concern over how quickly her mother got involved with appellant after her father left and a diary entry expressing a desire to poison appellant.

inadmissible absent an exception to the hearsay rule. The complained-of comment concerned the admissibility of the exhibits, not their weight. *See Pelletier v. State*, No. 14-18-00008-CR, 2019 WL 2536188, at *5 (Tex. App.—Houston [14th Dist.] June 20, 2019, pet. ref'd) (mem. op., not designated for publication) (comment on admissibility of testimony, as opposed to weight of testimony, is not improper). The trial court is the gatekeeper of evidence, and it is the trial court's responsibility to determine whether evidence is admissible. *Layton v. State*, 280 S.W.3d 235, 241 (Tex. Crim. App. 2009). In this case, we conclude the trial judge's comment on the admissibility of Defense Exhibits 5 and 6 was in keeping with the court's gatekeeping function and did not approve of a State's argument, indicate disbelief in the defense's position on the merits, or diminish the credibility of the defense's approach to the case.

Appellant next claims that by stating "[t]hat's very articulate. And that's overruled" after defense counsel asserted the application of an exception to the hearsay rule, the trial court indicated disbelief in appellant's position in the case. At best, the comment indicates the trial judge disagreed with appellant on the admissibility of particular evidence. It does not suggest a disbelief in appellant's position that the complainant fabricated allegations of sexual abuse in retaliation for his strict disciplinary measures. It simply establishes the trial judge disagreed with counsel on the law and does not equate to a position on guilt or innocence.

With respect to the trial court's comment about the articulation of the objection, we are confronted by the inherent limitations of the appellate record, which ordinarily does not reflect the trial judge's tone of voice, demeanor, and facial expressions. While in most cases there might be no reason to build a record of such things, it is certainly possible for counsel to make an objection to the inappropriateness of a judge's tone of voice, demeanor, or facial expression. *Lankston v. State*, 827 S.W.2d 907, 909 (Tex. Crim. App. 1992). No such objection was made here. The comment that the objection was "very articulate" may have been an acknowledgment of the trial judge's appreciation for the specificity by which the objection was made. Even if the trial court made the comment in a sarcastic tone, the comment would still not be a comment on the strength of appellant's defense. *See Jasper v. State*, 61 S.W.3d 413, 421 (Tex. Crim. App. 2001) ("[A] trial judge's irritation at the defense attorney does not translate to an indication as to the judge's views about the defendant's guilt or innocence.").

Finally, appellant claims the trial court impermissibly commented on the weight of the evidence during the following cross-examination of the investigating detective:

> [DETECTIVE]: Then he would talk over me and I would say, hey, let's talk. Let's calm down, let's talk, okay, because I'm trying to obviously convey what we have and get his response on it. I asked if he wanted a drink - - got him a cup of water. I asked him to drink some water. I was trying to get his side of the story. I wasn't getting a lot because he was talking over me.

> COURT: Mr. Ayers, you're getting very dangerously close to eliciting illegal hearsay here, so be careful.
>
> [DEFENSE COUNSEL]: During your time with Mr. Ostolin, did at any point admit to you - -
>
> COURT: Mr. Ayers, that's exactly what I'm talking about.

Again, this comment went to the admissibility of the evidence not the weight. *Pelletier*, 2019 WL 2536188, at *5.[6] It was not an improper comment on the weight of the testimony. Moreover, under the rules of evidence and criminal procedure, a trial judge can make comments regarding whether or not testimony can be allowed. TEX. CODE CRIM. PROC. ANN. art. 38.05; TEX. R. EVID. 611(a); *Strong v. State*, 138 S.W.3d 546, 553 (Tex. App.—Corpus Christi–Edinburgh 2004, no pet.). Accordingly, we conclude appellant has failed to demonstrate any impropriety in the comment made.

Appellant contends that the trial judge's bias was demonstrated by the judge's comment during the punishment phase, outside the presence of the jury, "First I want to thank the jury for what I believe was 110 percent accurate verdict in this case." We conclude the trial judge's opinion on the accuracy of the jury's verdict fails to support a claim of judicial bias because it was formed from the evidence presented at trial rather than an extrajudicial source and was made after the jury returned its

[6] Because appellant does not raise an issue on appeal concerning the correctness of the trial judge's position concerning the admissibility of appellant's statements to the detective, we need not decide whether the trial judge erred in cautioning appellant's counsel against eliciting such testimony.

verdict. *Celis v. State*, 354 S.W.3d 7, 22 (Tex. App.—Corpus Christi–Edinburgh 2011), *aff'd on other grounds*, 416 S.W.3d 419 (Tex. Crim. App. 2013). When judicial comments do not reveal an opinion deriving from an extrajudicial source, they will only constitute bias "if they reveal such a high degree of favoritism or antagonism as to make fair judgment impossible." *Dockstader v. State*, 233 S.W.3d 98, 108 (Tex. App.–Houston [14th Dist.] 2007, pet. ref'd). Appellant has failed to establish the trial judge's opinion displayed a deep seated favoritism or antagonism that would make fair judgment impossible. *Id.*

We overrule appellant's first issue.

II. Evidentiary Rulings

In his second issue, appellant contends the trial court denied him his fundamental constitutional right to a fair opportunity to present a defense by excluding evidence he contends was vital to his defense.

The Sixth Amendment right to confront witnesses includes the right to cross-examine witnesses to attack their general credibility or to show their possible bias, self-interest, or motives in testifying. *Hammer v. State*, 296 S.W.3d 555, 561 (Tex. Crim. App. 2009). This right is not unqualified, however; the trial judge has wide discretion in limiting the scope and extent of cross-examination and the introduction of documentary evidence. *Id.*

Generally, the right to present evidence and to cross-examine witnesses under the Sixth Amendment does not conflict with the corresponding rights under state

evidentiary rules. *Id.* Thus, most questions concerning cross-examination may be resolved by looking to the Texas Rules of Evidence. *Id.* Trial courts do not violate a defendant's right to present a defense when evidence is properly excluded under those rules as long as the rules are not "arbitrary" or "disproportionate to the purposes they are designed to serve." *United States v. Scheffer*, 523 U.S. 303, 308 (1998) (quoting *Rock v. Arkansas*, 483 U.S. 44, 56 (1987)).

Here, appellant does not contend the trial court applied a rule that is arbitrary or disproportionate to the purpose it was designed to serve. Thus, appellant must establish the trial court erroneously excluded admissible evidence that formed such a vital portion of the case that exclusion effectively precluded him from presenting a defense. *Potier v. State*, 68 S.W.3d 657, 665 (Tex. Crim. App. 2002). For the reasons set forth herein, we need not determine whether the trial court's evidentiary rulings were erroneous because the trial court's rulings did not preclude appellant from presenting his defense.

Appellant challenges the trial court's exclusion of six exhibits, specifically Defense Exhibits 2 (letter from C.H.'s mother to appellant), 4 (diary entry in which C.H. expresses concern over her mother's relationship with appellant), 5 (multiple copies of a letter C.H. wrote to her dog), 6 (multiple copies of a letter C.H. wrote

expressing gratitude and love for appellant), 7 (diary entry expressing a desire to poison appellant), and 8 (the cover of one of C.H.'s diaries).[7]

Appellant attempted to introduce Defense Exhibit 2— an undated letter C.H.'s mother wrote to appellant concerning his uncontrollable anger—during cross-examination of C.H.'s mother. The State objected to the document as hearsay, and appellant's counsel urged the document is excepted from the rule excluding hearsay statements because it contains a present-sense impression and shows bias. The trial court sustained the State's objection and advised defense counsel, "you can cross-examine her based on the contents of it." Counsel proceeded to do so and questioned C.H.'s mother on appellant's anger issues and confirmed appellant was angry enough to punch holes in the walls, that she was concerned about C.H. growing up around such violence and that she was prepared to leave appellant if things did not get better. Thus, the portions of Exhibit 2 that were relevant to appellant's defensive theory were before the jury.

Defense Exhibits 4, 5, 6 and 7, respectively, contained writings of C.H. in which she expressed her belief her mother became involved with appellant too quickly after her father left, apologized to her dog, expressed gratitude and love for

[7] Appellant marked Defense Exhibit 8 for identification purposes during the cross-examination of C.H., but he did not attempt to introduce the diary into evidence at that time. When appellant made his offer of proof, he included Defense Exhibit 8. Defense Exhibit 8 is the cover of a diary. Appellant did not indicate why any of its individual entries was admissible (other than the one separately offered as Defense Exhibit 7). Thus, we have nothing to review with respect to Exhibit 8, and Exhibit 8 will not be further discussed herein. TEX. R. APP. P. 33.1.

appellant, and expressed a desire to poison appellant. The State objected to these exhibits on hearsay grounds. Defense counsel responded by asserting Exhibit 4 should be admitted to show C.H.'s mental state and Exhibits 5, 6, and 7 should be admitted to show C.H.'s bias and mental state and because they contain present-sense impressions. The trial court sustained the State's objections.

Defense counsel showed C.H. Exhibit 4 to refresh her recollection after she testified she did not believe her mother moved too fast in getting into a relationship with appellant. After doing so, she admitted that she did not feel that way at the outset. Thus, while appellant was not allowed to admit the document, he was able to convey to the jury that C.H., at one time, expressed a concern over her mother's relationship with appellant, which is the substance of what the excluded note conveyed.

As to Exhibits 5 and 6, prior to offering the letters into evidence, defense counsel went over all of the various "punishments" appellant gave to C.H., confirmed appellant forced her to write multiple copies of letters apologizing to her dog and expressing gratitude and love for appellant as a form of punishment and that it would take her several days to do so. Thus, appellant was able to present evidence to the jury both of this punishment and the resulting potential for C.H.'s bias. .

As to Exhibit 7—the diary entry expressing a desire to poison appellant—in sustaining the State's objection, the trial court advised defense counsel, "you can cross-examine her just as before." Defense counsel proceeded to ask C.H., "[a]nd

you recall writing in this entry that you wanted to poison your stepdad?" and she responded, "I remember the voices, so I wrote them down. That's what my mom told me to do." Accordingly, by virtue of defense counsel's question, appellant was able to convey to the jury evidence of C.H.'s desire to remove appellant from her life and thus her mental state and potential bias.

Moreover, in furtherance of appellant's defense theory, defense counsel cross-examined C.H.'s mother about appellant's requirements that C.H. complete chores and his creation of detailed daily chore lists. He introduced into evidence forty-three pages of the Daily Chore Report Card and notes of whether C.H. sufficiently performed her assigned chores. He also elicited testimony establishing that when C.H. did not meet appellant's expectations, there were consequences, and C.H.'s mother described the various punishments appellant imposed. C.H.'s mother admitted that C.H. became resentful, sad, angry, and frustrated at what she had to endure.

Additionally, through cross-examination of C.H., defense counsel established the following. Appellant was hard on C.H. and made her do excessive amounts of chores. He was obsessed with respect and considered it disrespectful if she did not do her chores according to his expectations. If her efforts did not meet these expectations, appellant would punish her in a variety of ways. He would make a mess and make her re-do the chore or stand in the corner for hours. He would make her run hundreds of laps in the back yard, which often took days to weeks to

complete. He would also hold her feet together and switch the bottom of them.[8] On a few occasions, appellant smeared dog excrement on her if she did not adequately clean up after the dog. On several occasions she had to write letters. She would write multiple copies of the same letter by hand, which often took several hours to days to complete. Her home had become an increasingly unhappy place to live, and her relationship with her mom was torn apart. She suffered from some mental health issues, including hearing voices, and was hospitalized a few times. During her hospitalizations, she talked to professionals on a regular basis, yet she did not disclose any abuse, and she was exposed to other children's disclosures of sexual abuse.

Because appellant presented the substance of his defense—that C.H. fabricated acts of sexual abuse out of hatred for appellant because of his strict disciplinary actions—through his cross-examination of C.H. and C.H.'s mother, exclusion of the exhibits, even if erroneous, would not amount to the denial of a constitutional right. *See Ray v. State*, 178 S.W.3d 833, 836 (Tex. Crim. App. 2005) ("[B]ecause appellant was permitted to testify about her defensive theory, we cannot say that the exclusion of [the witness's] testimony effectively prevented her from presenting her defense."). We accordingly overrule appellant's second issue.

[8] Although appellant switched C.H.'s feet, he did not leave marks on them.

III. Assistance of Counsel

In his third issue, appellant urges his trial counsel rendered ineffective assistance by failing to properly investigate the case.

To obtain a reversal because of ineffective assistance, appellant must show: (1) that counsel's performance was so deficient that counsel was not functioning as the counsel guaranteed by the sixth amendment and (2) that there is a reasonable probability that, but for the deficient performance, the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984); *Garza v. State*, 213 S.W.3d 338, 347 (Tex. Crim. App. 2007).

There is a strong presumption that counsel's conduct fell within the wide range of reasonable professional assistance. *Thompson v. State*, 9 S.W.3d 808, 813 (Tex. Crim. App. 1999) (citing *Strickland*, 466 U.S. at 689)). We do not judge trial counsel's performance with the benefit of hindsight. *Miniel v. State*, 831 S.W.2d 310, 323 (Tex. Crim. App. 1992). Neither will we speculate on strategy in the absence of a record of the reasoning behind counsel's actions. *See Weeks v. State*, 894 S.W.2d 390, 392 (Tex. App.—Dallas 1994, no pet.) (citing *Jackson v. State*, 877 S.W.2d 768, 771 (Tex. Crim. App. 1994)).

Any allegation of ineffectiveness on direct appeal must be firmly founded in the record, and the record must affirmatively demonstrate the alleged ineffectiveness. *Thompson*, 9 S.W.3d at 813. In most instances, a silent record that provides no explanation for counsel's actions or inactions will not overcome the

strong presumption of reasonable assistance. *Id.* at 814. Without evidence of the strategy and methods involved concerning counsel's actions at trial, the court will presume sound trial strategy. *Id.* at 813.

Only when the record clearly confirms that no reasonable trial counsel could have made such trial decisions is it not speculation to hold counsel ineffective. *See Weeks*, 894 S.W.2d at 392. Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Thompson*, 9 S.W.3d at 813.

While appellant called several witnesses to testify at the hearing on his motion for new trial, trial counsel was not among them. Accordingly, he did not have an opportunity to explain his investigation of the case and his tactical decisions concerning same. Thus, we will presume reasonable assistance unless the record confirms no reasonable counsel would have decided not to pursue the testimony elicited from these witnesses at the hearing on appellant's motion for new trial.

April Blackwell, a nurse at C.H.'s high school, testified C.H. was brought to her shortly after she moved in with her father to check for signs of being disciplined and she found none. Appellant contends that this evidence would have established C.H. made false allegations of physical abuse. Because all of the testimony concerning the punishments appellant gave C.H. when she failed to complete her chores to his satisfaction established there was no physical evidence of the abuse, it is not surprising the nurse found no sign C.H. had been disciplined, and her

testimony would not have advanced appellant's defensive theory. We conclude appellant has failed to demonstrate that his trial counsel's alleged lack of pursuit of evidence from this witness overcomes the strong presumption of reasonable assistance.

Corporal Stasik testified about observing a forensic interview at the Child Advocacy Center during which C.H. made an outcry concerning Kyle Campbell, a former neighbor of appellant. Corporal Stasik concluded that C.H.'s statements established Campbell's alleged contact with C.H.'s breast was incidental and not done with any intent to arouse or gratify anyone's sexual desire and therefore was not a criminal offense. Kyle Campbell testified that he was never contacted by law enforcement or CPS about C.H.'s allegation of abuse and only learned about the allegation in connection with counsel's request that he testify at the motion for rehearing.

Appellant claims on appeal that had defense counsel pursued testimony from Corporal Stasik and Campbell, he could have established C.H. made false allegations concerning sexual abuse and such testimony would have bolstered his defense. We disagree, because Corporal Stasik's and Campbell's testimony did not establish C.H.'s assertion concerning Campbell was false. The State's cross-examination of Corporal Stasik established the incident described by C.H. did not meet the elements of a crime because it appeared the contact was incidental and not intended to sexually arouse or gratify anyone. Defense counsel reasonably could have determined that

presenting the testimony of Corporal Stasik and Campbell could cause a jury to find C.H. to be more credible in her allegations against appellant based on the fact that she did not embellish what happened with Campbell when given the opportunity to do so. Therefore, defense counsel could have reasonably made the strategic decision not to delve into the prior referral to the Child Advocacy Center. Thus, appellant has failed to overcome the strong presumption of reasonable representation.

Appellant's divorce attorney testified appellant's incarceration benefited C.H.'s mother in the divorce proceeding and that he offered to give defense counsel appellant's computer and iPad, but he never retrieved them. Appellant claims that had defense counsel spoken with his divorce attorney he would have discovered another avenue of bias attributable to C.H.'s mother, that being financial gain, and had he retrieved the computer and iPad he would have discovered evidence to support his defense.

Defense counsel may have made the strategic decision not to introduce evidence concerning the divorce proceeding as it may have opened the door to unfavorable testimony concerning appellant. As to the computer and iPad, appellant has failed to establish what was on the computer and iPad that would have impacted his defense. In all events, the record does not show counsel acted unreasonably in not retrieving the computer and iPad from appellant's divorce attorney or in not pursuing a line of questioning regarding the impact appellant's incarceration had on the divorce proceeding.

We overrule appellant's third issue.

CONCLUSION

We affirm the trial court's judgment.

/David J. Schenck/
DAVID J. SCHENCK
JUSTICE

DO NOT PUBLISH
TEX. R. APP. P. 47
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Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

PAULO ROGERIO OSTOLIN, Appellant No. 05-19-00181-CR V. THE STATE OF TEXAS, Appellee	On Appeal from the 219th Judicial District Court, Collin County, Texas Trial Court Cause No. 219-82478-2017. Opinion delivered by Justice Schenck. Justices Molberg and Nowell participating.

Based on the Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

Judgment entered this 17th day of July, 2020.