

Affirm and Opinion Filed July 22, 2020



In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-18-00877-CR

MICHAEL GLEN GARZA, Appellant
V.
THE STATE OF TEXAS, Appellee

On Appeal from the 354th Judicial District Court
Hunt County, Texas
Trial Court Cause No. 31429

MEMORANDUM OPINION

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

Michael Glenn Garza appeals his jury conviction for murder in the first degree. The jury assessed punishment at 99 years' confinement. In his sole issue on appeal, Garza argues the trial court erred by denying his motion for mistrial. We affirm the trial court's judgment.

BACKGROUND

Garza was convicted of murdering Robert Poynter—the husband of Chacey Poynter, with whom Garza was having an affair¹—by shooting him in the head with

¹ The evidence at trial showed Chacey was having affairs with multiple men.

a shotgun after Chacey lured him to a remote area. The evidence at trial showed Chacey and Garza planned the murder and agreed Garza would kill Robert. Garza does not challenge the sufficiency of the evidence. His sole issue on appeal relates to the testimony of Michael Burk, a detective with the Royse City Police Department and the lead detective in the case. Specifically, Garza complains the trial court erred by denying his motion for mistrial after Detective Burk testified, “Well, [Chacey] did say Michael Garza killed her husband.”

During his cross-examination by defense counsel, Detective Burk testified about information provided to him by Chacey:

Q: Other information that you were receiving is about how the homicide actually occurred, wasn't that right, from Ms. Poynter as her – from her statement?

A: She did give some inclination of what she believed.

Q: Okay. And based upon your conversation with her at that point, you didn't have much faith in her credibility of the story; isn't that right?

A: Well, she did say Michael Garza killed her husband.

[Defense counsel]: Judge, I'm going to object. That's nonresponsive.

The Court: Sustained.

[Defense counsel]: I'm going to ask this jury be instructed to disregard that comment.

The Court: Please disregard the last comment.

[Defense counsel]: Judge, I'm going to move for a mistrial.

The Court: Denied.

Q (By [defense counsel]): Sergeant Burk, you understood my question to be about what your belief about her credibility was? Did you understand that question?

A: I believe you were asking about her interview.

Q: I asked about her credibility, Sergeant Burk. . . .

Although she was granted immunity, Chacey refused to testify and was held in contempt of court.

ANALYSIS

Because it is dispositive, we need only address whether Garza preserved his complaint for appellate review.

In order to properly exclude evidence or obtain an instruction to disregard, a party's objection must address both the non-responsiveness and the inadmissibility of the answer. *Smith v. State*, 763 S.W.2d 836, 841 (Tex. App.—Dallas 1988, pet. denied). “Even after the ‘nonresponsive’ portion of the objection is made, there remains the question of the testimony’s admissibility.” *Id.* In this case, Garza’s only objection was a “nonresponsive” objection to Sergeant Burk’s statement. The trial court’s instruction to the jury to disregard the statement, thus, was not even proper because Garza did not provide the trial court a reason the statement was not admissible. *Id.*

Complaints urged on appeal must comport with the objection made in the trial court in order to preserve the complaint for appellate review. *Yazdchi v. State*, 428 S.W.3d 831, 844 (Tex. Crim. App. 2014); *Van Byrd v. State*, 605 S.W.2d 265, 269

(Tex. Crim. App. 1980). Failure to properly object may waive even constitutional error. *Yazdchi*, 428 S.W.3d at 844. A defendant waives his constitutional right to confront witnesses if he does not object at trial. *Holland v. State*, 302 S.W.2d 696, 700 (Tex. Crim. App. 1991). Perhaps recognizing that his failure to object at trial to the admissibility of Detective Burk’s statement presents a waiver problem, Garza does not explicitly contend his rights under the Confrontation Clause of the Sixth Amendment to the United States Constitution were violated. *See* U.S. CONST. amend. VI.² Rather, he implies he was deprived of his right to confront witnesses by arguing that since Chacey refused to testify, “the defense would have no opportunity to confront Chacey about her claims allegedly made to Detective Burk” and “the State knew that Mr. Garza could never challenge the statements attributed to Chacey alleging Mr. Garza’s guilt.”

Garza did not advise the trial court that his motion for mistrial was based on a violation of his right to confront Chacey about her alleged statements to Detective Burk. *See* U.S. CONST. amend. VI. Nor did Garza raise a hearsay objection. Because Garza failed to argue on what basis Detective Burk’s statement was inadmissible, he waived any complaint about the trial court’s denial of his motion for mistrial. *See Nash v. State*, No. 05-15-01070-CR, 2017 WL 491256, at *3 (Tex.

² The Confrontation Clause of the Sixth Amendment provides that in all criminal prosecutions, the accused shall enjoy the right to be confronted with the witnesses against him. *Id.* The Confrontation Clause is implicated when the State offers a testimonial out-of-court statement made by a witness who is absent from trial and whom the defense had no opportunity to cross-examine either prior to or during trial. *Crawford v. Washington*, 541 U.S.36, 50–52 (2004).

App.—Dallas Feb. 7, 2017, no pet.) (mem. op.) (not designated for publication); *Carrion v. State*, 488 S.W.3d 925, 928 (Tex. App.—Eastland 2016, pet. denied); *Prince v. State*, No. 01-13-00269-CR, 2015 WL 5025902, at *7 (Tex. App.—Houston [1st Dist.] Aug. 25, 2015, no pet.) (mem. op.) (not designated for publication) (“Because [appellant’s] objection was that Sgt. Clopton’s testimony was nonresponsive, not that it constituted improper bolstering, his motion for mistrial does not comport with the argument now made on appeal, which accordingly has been waived.”).

We resolve Garza’s sole issue against him. We affirm the trial court’s judgment.

/Ken Molberg//

KEN MOLBERG
JUSTICE

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**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

MICHAEL GLEN GARZA,
Appellant

No. 05-18-00877-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 354th Judicial
District Court, Hunt County, Texas
Trial Court Cause No. 31429.

Opinion delivered by Justice
Molberg. Justices Schenck and
Nowell participating.

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

Judgment entered this 22nd day of July, 2020.