

Affirm; Opinion Filed December 15, 2020



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

No. 05-19-00917-CR

**ADILIO DAVILA, Appellant
V.
THE STATE OF TEXAS, Appellee**

**On Appeal from the 219th Judicial District Court
Collin County, Texas
Trial Court Cause No. 219-82171-2019**

MEMORANDUM OPINION

Before Justices Whitehill, Pedersen, III, and Reichel
Opinion by Justice Pedersen, III

A jury convicted appellant Adilio Davila of two counts of indecency with a child by contact, one count of indecency with a child by exposure, and one count of sexual assault. The trial court assessed prison sentences of twenty years on each of the indecency by contact counts, twenty years on the sexual assault count, and two years on the indecency by exposure count. In one issue, appellant complains that the trial court abused its discretion in admitting victim-impact testimony during the guilt-innocence phase of trial. We affirm.

Background

Two of appellant's nephews, cousins S.A.S. and C.S.L., testified that appellant had sexually abused them over a period of years, beginning when they were approximately seven years old and continuing until they were teenagers. The boys ultimately made outcries about this abuse to their Uncle Elmer.

After their outcries, the boys were forensically interviewed at the Children's Advocacy Center (CAC) in Collin County. Lisa Martinez, the Director of the CAC Forensic Interview Department, described the forensic interview process. She personally conducted the forensic interviews of S.A.S. She also described the forensic interview of C.S.L., conducted by Eli Molina, a CAC forensic interviewer. She testified that neither of the boys showed signs of coaching. Both were able to recount the abuse chronologically and in detail. They also displayed signs of stress, fear of appellant, and reluctance to discuss the abuse. Fernando Robledo, an investigator for the Collin County Sheriff's Department assigned to the Child Advocacy Center of Collin County, described his investigation of the allegations against appellant.

M.D.¹ is the mother of S.A.S. and appellant's half-sister. She testified that she felt upset, angry, and betrayed when she learned of her son's outcry that appellant had abused him. She testified that S.A.S. was sad and did not want to talk about what

¹ This witness is referred to as M.S. in the State's appellate brief, and M.D. in appellant's appellate brief.

happened. She also disclosed that appellant had sexually abused her when she was a child. She testified that appellant began sexually abusing her when she was nine years old and appellant was sixteen or seventeen years old.

Carlos Sumba Davila, the father of C.S.L., testified about growing up with appellant in El Salvador. His testimony provided background and timeframes for those periods of time when appellant lived with him, his wife, and children, and when appellant lived with other family members, both in El Salvador and in Texas. He described his son's behavior and avoidance of appellant, his own anger upon learning of the allegations, and the effect the allegations against appellant have had on his family.

The jury convicted appellant on all four charges, and the trial court assessed punishment. Appellant timely filed his notice of appeal.

Applicable Law

A. Standard of Review

We review the trial court's decision to admit evidence under an abuse of discretion standard. *Gonzalez v. State*, 544 S.W.3d 363, 370 (Tex. Crim. App. 2018). As long as the trial court's ruling is within the "zone of reasonable disagreement," there is no abuse of discretion. *Id.*; *Tillman v. State*, 354 S.W.3d 425, 435 (Tex. Crim. App. 2011).

To preserve error when evidence is admitted, a party must make a timely and proper objection and obtain a ruling. TEX. R. APP. P. 33.1(a). The party must object

each time the inadmissible evidence is offered or obtain a running objection. *Lane v. State*, 151 S.W.3d 188, 193 (Tex. Crim. App. 2004). “[E]rroneously admitting evidence ‘will not result in reversal when other such evidence was received without objection, either before or after the complained-of ruling.’” *Coble v. State*, 330 S.W.3d 253, 282 (Tex. Crim. App. 2010) (quoting *Leday v. State*, 983 S.W.2d 713, 718 (Tex. Crim. App. 1998)).

B. Victim-Impact Evidence

“Victim-impact” evidence has been defined as evidence concerning the effect of the crime after the crime occurs. *See Reynolds v. State*, 371 S.W.3d 511, 525 (Tex. App.—Houston [1st Dist.] 2012, pet. ref’d); *Maldonado v. State*, No. 05-16-01457-CR, 2018 WL 833372, at *2 (Tex. App.—Dallas Feb. 13, 2018, no pet.) (mem. op., not designated for publication). Generally, this evidence is admissible at the punishment phase of trial and not the guilt-innocence phase because it does not tend to make more or less probable the existence of any fact of consequence with respect to guilt or innocence. *Longoria v. State*, 148 S.W.3d 657, 659 (Tex. App.—Houston [14th Dist.] 2004, pet. ref’d). However, such testimony can be admissible as a “circumstance of the offense.” *Id.* Victim-impact testimony is admissible if it “would have a tendency to make more or less probable a fact of consequence at the guilt stage; that is, whether appellant committed the crimes at all.” *Id.* at 660.

Discussion

In his sole issue, appellant complains that on three separate occasions during the guilt-innocence phase of trial, the court erroneously allowed the State to elicit testimony from witnesses—appellant’s relatives—about the impact the allegations against appellant had on them and their family. He argues that such testimony was inadmissible victim-impact evidence, it was irrelevant and prejudicial, and admission of the testimony during guilt-innocence violated his constitutional right to a fair trial. In response, the State asserts that appellant waived all of his complaints by failing to properly raise his objections to the trial court.

In the argument portion of his appellate brief, appellant does not identify the witnesses or provide record citations for the testimony of which he complains.² Construing appellant’s brief liberally,³ we assume, based on appellant’s Statement of Facts, that appellant complains about the testimony of S.A.S., the witness testimony of M.D., and the witness testimony of Carlos Sumba Davila.

A. Testimony of S.A.S.

During his testimony, S.A.S. described how difficult it was for him to go through the forensic interview process. He testified that he was too embarrassed to

² An appellant’s brief must concisely state all issues or points presented for review and, among other things, must contain a clear, concise argument for the contentions made, with appropriate citations to authorities and to the record. TEX. R. APP. P. 38.1(i).

³ The Texas Supreme Court instructs that “briefs are to be liberally, but reasonably, construed so that the right to appeal is not lost by waiver.” *Horton v. Stovall*, 591 S.W.3d 567, 569 (Tex. 2019).

tell the interviewer everything during his first interview. He later returned to the CAC for a second interview. The prosecutor asked how he had been dealing with everything since he had disclosed what appellant had been doing to him. Defense counsel objected on the basis of relevance and stated, “[t]his is not a punishment issue.” The trial court overruled the objection. S.A.S. then testified that he felt better, he felt more free. The prosecutor questioned what it was like before he disclosed appellant’s abuse—when he was keeping it all inside. Defense counsel did not object to this query. S.A.S. responded that he didn’t do well, that he was scared and depressed.

On appeal, appellant argues that the impact of the alleged acts of abuse did not make any fact more or less probable than it would have been without this testimony. He insists that the purpose of this testimony was to inflame the passions and sympathies of the jury and thereby unfairly prejudice appellant. We disagree.

Appellant’s defensive theory was that the abuse never happened. Evidence that S.A.S. suffered emotional trauma before his outcry and relief afterward was probative of whether he was, in fact, abused—a fact in dispute at trial. Thus, the challenged testimony was pertinent to a disputed fact of consequence in the guilt phase, and the trial court acted within its discretion in admitting the testimony. *Longoria*, 148 S.W.3d at 659–60; *see Villanueva v. State*, Nos. 05-14-01396-CR & 05-14-01397-CR, 2016 WL 2609686, at *6 (Tex. App.—Dallas May 4, 2016, no pet.) (mem. op., not designated for publication) (trial court could have concluded

that victim’s fear, anger, confusion, and difficulty in school after alleged offenses tended to support assertions that assaults occurred, a disputed fact of consequence to guilt-innocence determination).

Appellant also argues, for the first time on appeal, that admission of this testimony violated his federal and state constitutional rights to a fair trial and the federal Due Process Clause. However, the record reveals that appellant did not make this complaint to the trial court by a timely objection, stating constitutional grounds for the exclusion of such testimony. *See* TEX. R. APP. P. 33.1(a). Even constitutional claims may be forfeited by failing to object at the trial court. *Clark v. State*, 365 S.W.3d 333, 339 (Tex. Crim. App. 2012) (“[I]f a party fails to properly object to constitutional errors at trial, these errors can be forfeited.”); *see Reyes v. State*, Nos. 05-18-01486-CR, 05-18-01487-CR, 05-18-01488-CR, 05-18-01489-CR & 05-18-01490-CR, 2020 WL 549065, at *3 (Tex. App.—Dallas Feb. 4, 2020, no pet.) (mem. op., not designated for publication). Based on the record before us, appellant forfeited any claim that admission of this testimony violated his federal and state constitutional rights.

B. Testimony of M.D.

The State asked M.D. how she felt when she learned what appellant had been doing to her son and nephew. She testified, without objection, that she felt like she was going to die. She further testified that she felt upset, angry, and betrayed. The State asked, “[h]as this had a huge effect on your family?” Defense counsel objected

that the State was leading the witness, and the court sustained the objection. The State then rephrased the question, and M.D. testified, without objection, that learning of appellant's abuse of S.A.S. and C.S.L. has destroyed the entire family.

On appeal, appellant challenges M.D.'s testimony as inadmissible victim-impact testimony that should have been excluded. However, his objection on appeal does not comport with the objection actually made to the trial court. *Gibson v. State*, 541 S.W.3d 164, 166 (Tex. Crim. App. 2017) ("Appellant's argument need only comport with the trial objection."); *Clark*, 365 S.W.3d at 339 ("The point of error on appeal must comport with the objection made at trial.").

"To preserve a complaint regarding the erroneous admission of victim-impact evidence for appellate review, the defendant must object on the ground that the evidence constitutes impermissible victim-impact evidence." *Reynolds*, 371 S.W.3d at 525 (citing *Karnes v. State*, 127 S.W.3d 184, 195 (Tex. App.—Fort Worth 2003, pet. ref'd) (trial objection that testimony was irrelevant, highly prejudicial, and below threshold requirement of admissibility did not preserve appellate challenge that testimony was inadmissible victim-impact testimony)); see *Maldonado*, 2018 WL 833372, at *2. Defense counsel did not object that such testimony was inadmissible victim-impact evidence; he objected that the State was leading the witness. Therefore, the trial court did not abuse its discretion by allowing M.D. to testify about the effect on her family. To the extent that appellant complains that

admission of M.D.'s testimony violated his federal and state constitutional rights, this complaint was forfeited as discussed above.

C. Testimony of Carlos Sumba Davila

Carlos Sumba Davila testified that he could not believe what appellant, his half-brother, had done. The State asked how he felt when he first got the news. He testified, without objection, that he felt very angry. He described how the abuse had affected his son. The State asked, “[w]hat affect has this had on your family? Your marriage?” Defense counsel objected on the basis of relevance and the court overruled the objection. Defense counsel did not request a running objection to this line of questioning. *See Lane*, 151 S.W.3d at 193. Davila then testified how the allegations against appellant had many bad effects on his marriage and on the family.

On appeal, appellant complains that Davila’s testimony was inadmissible victim-impact testimony. However, as discussed above, to preserve his complaint that Davila’s challenged testimony was victim-impact testimony, appellant was required to object to the trial court on that ground—that the evidence was inadmissible victim-impact testimony. *See Reynolds*, 371 S.W.3d at 525; *Karnes*, 127 S.W.3d at 195. A trial objection on the basis of relevance does not preserve for appeal a complaint that the testimony was inadmissible victim-impact evidence “because the objection at trial does not comport with the complaint raised on appeal.” *Reynolds*, 371 S.W.3d at 525 (quoting *Karnes*, 127 S.W.3d at 195).

In summary, the trial court's evidentiary rulings discussed above were within the "zone of reasonable disagreement." *Tillman*, 354 S.W.3d at 435. Thus, there is no abuse of discretion. *Id.* Appellant's constitutional claims with respect to the trial court's evidentiary rulings were forfeited. *Clark*, 365 S.W.3d at 339. We resolve appellant's sole issue against him.

Conclusion

We affirm the judgment of the trial court.

/Bill Pedersen, III//

BILL PEDERSEN, III
JUSTICE

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

JUDGMENT

ADILIO DAVILA, Appellant

No. 05-19-00917-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 219th Judicial
District Court, Collin County, Texas
Trial Court Cause No. 219-82171-
2019.

Opinion delivered by Justice
Pedersen, III. Justices Whitehill and
Reichek participating.

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

Judgment entered this 15th day of December, 2020.