Affirmed and Opinion filed November 18, 1999.

In The

Fourteenth Court of Appeals

NOS. 14-97-00301-CR
14-97-00302-CR

JOSEPH GARZA, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the County Criminal Court at Law No. 7
Harris County, Texas
Trial Court Cause Nos. 96-47770 & 96-47771

O P I N I O N

Appellant waived indictment and was charged by information for the offenses of assault and criminal trespass. A jury found appellant guilty of the charged offenses and sentenced him to 30 days in the Harris County Jail. In his sole point of error, appellant contends the trial court erred in not allowing defense counsel to cross-examine the complainant, the appellant's ex-girlfriend Daphnae Karavantos, about a possible motive for fabricating the charges against appellant. We affirm.

A recitation of the facts is not necessary to the disposition of the appeal. Accordingly, we will move directly to examining appellant's point of error.

While appellant does not specifically cite the Confrontation Clause of the Sixth Amendment of the United States Constitution, he does contend that his right to confront his accuser was violated by the trial court's refusal to allow defense counsel to cross-examine the complainant about her purported past fabrication of a pregnancy. Appellant argues the complainant had fabricated a pregnancy in the past in the hope of reconciling with appellant, with whom she had shared a four and a half year relationship. Appellant argues this behavior impeaches the complainant's credibility and demonstrates a motive for the complainant to have invented the charges: her desire to keep appellant and his current girlfriend apart.

Great latitude should be allowed for defense counsel to establish ill feeling, bias, motive, or animus on the part of any witness testifying against the accused. *See Koehler v. State*, 679 S.W.2d 6, 9 (Tex. Crim. App. 1984). Such evidence is relevant and admissible unless it is excluded by Constitution, statute, rule, or its probative value is substantially outweighed by its prejudicial effect. *See* TEX. R. EVID. 403; *McKnight v. State*, 874 S.W.2d 745, 747-48 (Tex. App.-Fort Worth 1994, no pet.). The trial court, however, has considerable discretion in weighing all relevant factors to balance the possible probative value of evidence against any possible prejudicial effects. *See Green v. State*, 676 S.W.2d 359, 363 (Tex. Crim. App. 1984). A defendant's right to cross-examine witnesses does not prevent a trial court from imposing reasonable restrictions on testimony establishing motive or bias of a particular witness. *See Hurd v. State*, 725 S.W.2d 249, 252 (Tex. Crim. App. 1987). A trial court may impose such reasonable limits on cross-examination after weighing its probative value against any danger of unfair prejudice, confusion of the issues, misleading the jury, undue delay, or needless presentation of cumulative evidence. *See* TEX. R. EVID. 403; *Miller v. State*, 741 S.W.2d 382, 389 (Tex. Crim. App. 1987).

In reviewing the trial court's conduct in weighing relevant factors and its decision to limit the admission of testimonial evidence to show bias or motive on the part of a witness, this court uses an abuse of discretion standard. *See Montgomery v. State,* 810 S.W.2d 372, 379-80 (Tex. Crim. App. 1990) (opinion on reh'g)*; Saldivar v. State,* 980 S.W.2d 475, 491 (Tex. App.--Houston [14th Dist.] 1998, pet. filed). As long as the trial court's ruling is within the zone of reasonable disagreement, the reviewing court will not intercede. *Montgomery*, 810 S.W.2d at 391.

In the instant case, the probative value of the complainant's possible past fabrication of pregnancy is minimal. Appellant was allowed to fully establish the extent of his relationship with complainant and offer testimony to attack complainant's potential prejudice towards him.[1] When the possible bias of a witness has been made patently obvious to the jury, and the accused has otherwise been afforded an opportunity for a thorough cross-examination, no violation of the defendant's right to confrontation has occurred. *See Recer v. State*, 821 S.W.2d 715, 718 (Tex. App.--Houston [14th Dist.] 1991), *rev'd on other grounds*, 815 S.W.2d 730 (Tex. Crim. App. 1991). Through testimony offered, the appellant was given ample opportunity to achieve the goals he argues the pregnancy fabrication would have accomplished, namely to impeach complainant's credibility and establish complainant's desire to keep appellant and his girlfriend apart. The alleged pregnancy fabrication testimony is therefore unnecessary to accomplish these ends.

On the other hand, the prejudicial danger of such testimony is high. The fabrication of a pregnancy by the complainant relates to the complainant's possible motive for testifying, but it does not directly bear on whether or not appellant committed assault and

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[1] Appellant's brother, Frank Garza, testified that the complainant told him she was pregnant the day of the incident. Frank Garza also testified that the complainant's reputation in the community for truthfulness and honesty, in his opinion, was "no good." In addition, appellant's girlfriend, Marianela Benitez, testified that the complainant threatened her on the day of the offense, and stated that "[appellant] and [Ms. Benitez] were not going to be together no matter . . . what it took," and that "if [complainant] had to do something, she would kill [appellant or Ms. Benitez]."

trespass. Instead, this kind of testimony has the potential to muddy the waters by confusing the issues at hand and/or misleading the jury.

Further, the motive appellant ascribes to the complainant, which appellant argues would be established through the testimony, is illogical in light of the situation. It would be counterproductive for the complainant to press charges against the man with whom she wanted to reconcile. Falsely testifying to implicate appellant in a crime he did not commit would seem to only push him away, not endear him to her.

In the alternative, if the trial court erred in denying the requested cross-examination, we must undertake a harmless error analysis. *See Delaware v. Van Arsdall,* 475 U.S. 673, 106 S.Ct. 1431, 89 L.E.2d 674 (1986); *Love v. State*, 861 S.W.2d 899, (Tex. Crim. App. 1993); *Shelby v. State*, 819 S.W.2d 544 (Tex. Crim. App. 1991). *See also* TEX. R. APP. P. 44.2. The United States Supreme Court developed a three-part test in *Van Arsdall* to determine whether the decision to deny cross-examination was harmless error. 475 U.S. at 684. That test has been adopted by the Texas courts. *See Love*, 861 S.W.2d at 904; *Shelby*, 819 S.W.2d at 546-47. First, a reviewing court assumes that the damaging potential of the cross-examination evidence was fully realized. *See Van Arsdall*, 475 U.S. at 684. Second, with that assumption in mind, the court reviews the error in connection with five factors: 1) the importance of the witness' testimony in the prosecution's case; 2) whether the testimony was cumulative; 3) the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points; 4) the extent of cross-examination otherwise permitted; and 5) the overall strength of the prosecution's case. *See id*. Finally, the court then determines, in light of these five factors, whether the error was harmless beyond a reasonable doubt. *See id.*

In the instant case, we begin by assuming that the full damaging potential of the pregnancy fabrication testimony was realized. In other words, we assume that if defense counsel was allowed to question the complainant about her past fabrication of pregnancy,

the complainant's credibility would have been suspect. We then examine the error denying cross-examination of the complainant in light of the five factors set forth in *Van Arsdall*.

1. The Importance of the Witness' Testimony in the Prosecution's Case

The testimony of the complainant was vital to the State's case. As the complaining witness, she gave an eyewitness account of the assault and trespass, in addition to testimony about her relationship with the appellant and his past behavior.

2. Whether the Testimony was Cumulative

The complainant's testimony regarding the fabrication of a pregnancy in the past would have been cumulative in large part. As noted above, appellant's brother testified that the complainant falsely told him that she was pregnant the day of the assault. Accordingly, this testimony was already included in the evidence before the jury.

3. The Presence or Absence of Evidence Corroborating or Contradicting the Testimony of the Witness on Material Points

The complainant was the only direct witness to the entire assault and trespass. However, the complainant's roommate, Elizabeth De Luna, testified that although she did not hear appellant come into the apartment the evening of the assault, she did hear an argument outside her room. She left her room to investigate, and saw the appellant, who appeared to be angry, standing over the complainant, who was lying on the couch. After the appellant left, De Luna testified that she noted several bruises on the complainant's body. In addition, Officer Albert Vasquez, the police officer who responded to the complainant's call, testified that upon his arrival, the complainant appeared to be shaken up and her apartment in disarray.

Appellant's brother and girlfriend testified in direct opposition to the complainant's and De Luna's recitation of the events the day of the assault. They testified that the complainant came over to the appellant's apartment that afternoon, and it was she who pushed her way in and argued with both appellant and his girlfriend. However, the

complainant's brother, Alex Figueroa, testified for the State that the afternoon in question, the complainant was shopping with him. Figueroa offered dated receipts from that day to support his testimony.

4. The Extent of Cross-Examination Otherwise Permitted

The record reflects that appellant's counsel was otherwise fully able to cross-examine the complainant. Further, defense counsel was able to get the complainant's past fabrication of pregancy into evidence through the testimony of appellant's brother. In addition, as noted above, appellant was given ample opportunity to attack the complainant's credibility and character through the testimony of both the appellant's girlfriend and his brother.

5. The Overall Strength of the State's Case

The State's case was fairly strong. The complainant, her roommate, and the responding officer all offered similar accounts of the events surrounding the assault. Further, the testimony of the complainant's brother contradicted the testimony of appellant's girlfriend and brother. The appellant did not testify.

After weighing the five relevant factors, we conclude that the trial court's decision to deny cross-examination about the complainant's past fabrication of pregnancy was harmless error. Although the complainant's testimony was vital to the State's case, her account was supported by her roommate, the responding officer, and her brother. And although appellant's counsel was not able to question the complainant about the pregnancy fabrication, he was able to offer the same evidence through the testimony of appellant's brother. Other than this one instance, appellant was allowed wide latitude in attacking the complainant's character and credibility. Finally, even if the complainant had admitted that she had fabricated a pregnancy, it would not have added anything new into evidence that would have changed the jury's impression of her character. The jury had already heard this evidence, and it did not prevent them from believing the complainant's version of the events.

We overrule appellant's sole point of error and affirm the trial court's judgment.

PER CURIAM

Judgment rendered and Opinion filed November 18, 1999.
Panel consists of Yates, Fowler and Frost.
Do Not Publish - TEX. R. APP. P. 47.3(b).