Affirmed and Opinion filed June 15, 2000.

In The

Fourteenth Court of Appeals

———————————

NO. 14-98-01138-CR

———————————

JOE ANTHONY MARTINEZ, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 338th District Court
Harris County, Texas
Trial Court Cause No. 765,967

O P I N I O N

Joe Anthony Martinez appeals his conviction by a jury for aggravated sexual assault of a child. The jury assessed his punishment at 17-1/2 years imprisonment. In nine points of error, appellant contends: (1) & (2) the evidence was legally and factually insufficient to sustain his conviction; (3), (4), & (5) the trial court erred in refusing to admit testimony of defense witnesses; (6) & (7) the trial court erred in allowing the State to present extraneous offense evidence; (8) the trial court erred in permitting the indictment to be amended; and (9) the trial court erred in overruling appellant's motion for new trial. We affirm.

On July 29, 1997, thirteen-year-old G. G. met appellant at a Taco Cabana. G.G. was introduced to appellant by a 15-year-old friend, Akari, who knew appellant. After buying both boys a soda, appellant invited the boys to ride around with him in his new red Mustang. An older boy, 18 to 20 years old was sitting in the front passenger seat, and G.G. and Akari got in the back seat. Appellant drove the boys around, and offered them beer that was in a carton in the back with G.G. and Akari. The boys drank a beer, and appellant stopped off at a store and bought some more beer. Appellant dropped off the older boy, then took G.G. and Akari to a pool hall where they played pool. Appellant gave G.G. a bourbon and coke while he was playing pool. After about 45 minutes, they all left the pool hall, and appellant dropped off Akari.

After driving around town for over an hour, appellant took G. G. to his apartment. They entered appellant's apartment through the back door, and G.G. passed out. When G.G. awoke, appellant was playing with G.G.'s penis. G.G. tried to push appellant away, but then passed out again. When G.G. awoke again, appellant was performing oral sex on him. Appellant took G.G. home the next morning, and told G.G. to meet him at Barnes and Noble that night.

Later that day, G.G. went to the Galleria and talked to a police officer, "Buster," about the sexual assault. Buster gave G.G. the telephone number of the Houston Police Department, and G. G. called Officer Richard Retz (Retz). Officer Retz came to the scene, interviewed G.G., and waited around Barnes and Noble with G.G. for appellant. When appellant came in, Officer Retz told him about G.G.'s complaint. Appellant denied sexually assaulting G.G., and told Retz he just picked him up and drove him to another part of town and let him out. Appellant told Retz he was going to meet G. G. at Barnes and Noble to help him find work. Appellant refused to consent to a search of his red Mustang, terminated the interview with Retz, and walked away. After the grand jury returned an indictment against appellant for aggravated sexual assault of a child, appellant was arrested with a warrant.

Appellant testified he went to the Taco Cabana at about 11:00 p.m. to eat. Akira, G. G., and two other boys joined appellant. Akira asked appellant to take them to Sharpstown, and appellant obliged them. Appellant dropped off the other two boys in Sharpstown. Appellant

stated that his beer was in the back, and Akira and G.G. started drinking it without asking him permission. Appellant said he wanted to go home, but they all went to a pool hall. Appellant bought some drinks for himself at the pool hall, and when he went to the bathroom, G.G. drank one of them without appellant's permission. Akira asked for a ride to Mission Bend, and appellant drove them there. Akira got out, but G.G. remained in the car and told appellant he had no place to stay. Appellant decided to take G.G. back to the Montrose area and drop him off. When they got to the Montrose area, it was 2:30 a.m. and the area was deserted. G.G. told appellant he needed a place to stay, and told appellant he could find one but needed to make a phone call. Appellant and G.G. then went to appellant's apartment, and appellant told G.G. to make his phone call. G.G. told appellant it was too early, so appellant told G.G. to wait in the living room. Appellant told G.G. he was going to lie down in his bedroom. While waiting for G.G. to make his phone call, appellant fell asleep in his bedroom. Appellant awakened to find G.G. standing next to him in his underwear. G.G. offered to have sex with appellant for $50.00. Appellant refused, and drove G.G. to Kirby and Richmond and left him there. G.G. came back to appellant's apartment and apologized, telling appellant he had no place to go. Appellant let him stay but found him later going through some boxes. G.G. told appellant he needed money, and appellant told him he thought he could get G.G. a job at Whataburger. Appellant made plans to meet G.G. at 7:00 p.m. at Barnes and Noble to discuss work for G.G. Appellant then took G.G. to a friend's place and dropped him off.

Legal and Factual Sufficiency of the Evidence

In points one and two, appellant contends the evidence is legally and factually insufficient to support his conviction. Appellant argues that the only evidence of any sexual assault came from the testimony of G.G., and G.G. lacked credibility.

In reviewing the legal sufficiency of the evidence, we consider all the evidence, both State and defense, in the light most favorable to the verdict. *Houston v. State*, 663 S.W.2d 455, 456 (Tex. Crim. App. 1984); *Garrett v. State*, 851 S.W.2d 853, 857 (Tex. Crim. App. 1993). In reviewing the sufficiency of the evidence in the light most favorable to the verdict or

judgment, the appellate court is to determine whether any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979); *Ransom v. State*, 789 S.W.2d 572, 577 (Tex. Crim. App. 1989), *cert. denied*, 110 S.Ct. 3255 (1990). This standard is applied to both direct and circumstantial evidence cases. *Chambers v. State*, 711 S.W.2d 240, 245 (Tex. Crim. App. 1986). The jury is the exclusive judge of the facts, credibility of the witnesses, and the weight to be given to the evidence. *Chambers v. State*, 805 S.W.2d 459, 462 (Tex. Crim. App. 1991). In conducting this review, the appellate court is not to re-evaluate the weight and credibility of the evidence, but acts only to ensure the jury reached a rational decision. *Muniz v. State*, 851 S.W.2d 238, 246 (Tex. Crim. App. 1993); *Moreno v. State*, 755 S.W.2d 866, 867 (Tex. Crim. App. 1988). In making this determination, the jury can infer knowledge and intent from the acts, words, and conduct of the accused. *Dues v. State*, 634 S.W.2d 304, 305 (Tex. Crim. App. 1982).

Under *Clewis v. State*, 922 S.W.2d 126, 133 (Tex. Crim. App. 1996), a court of appeals reviews the factual sufficiency of the evidence when properly raised after a determination that the evidence is legally sufficient. *Id.* In conducting a factual sufficiency review, the court of appeals views all the evidence without the prism of "in the light most favorable to the prosecution" and sets aside the verdict only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. *Id.* In conducting a factual sufficiency review, the court of appeals reviews the fact finder's weighing of the evidence and is authorized to disagree with the fact finder's determination. *Id.* This review, however, must be appropriately deferential so as to avoid an appellate court's substituting its judgment for that of the jury. *Id.* If the court of appeals reverses on factual sufficiency grounds, it must detail the evidence relevant to the issue in consideration and clearly state why the jury's finding is factually insufficient. *Id.* The appropriate remedy on reversal is a remand for a new trial. *Id.*

G.G. testified he was thirteen years of age at the time of the offense, that he woke up after passing out in appellant's apartment to find appellant performing oral sex on him. The evidence is legally sufficient to prove aggravated sexual assault of a child under fourteen years

of age. TEX. PEN. CODE ANN. § 22.021(a)(1)(B)(iii) (Vernon 1994 and Supp. 2000) ([A] person commits an offense if the person intentionally or knowingly causes the sexual organ of a child to contact or penetrate the mouth . . . of the actor). Appellant's argument that G. G. was not credible was for the jury. *Chambers,* 805 S.W.2d at 462. The testimony of a victim standing alone, even when the victim is a child, is sufficient to support a conviction for sexual assault. *Ruiz v. State*, 891 S.W.2d 302, 304 (Tex.App.-San Antonio 1994, pet. ref'd). We find that a rational trier of fact could find appellant intentionally and knowingly caused the sexual organ of a child to contact or penetrate his mouth. Appellant's point of error one is overruled.

In point two, appellant further argues the same evidence is factually insufficient G.G. testified appellant performed oral sex on him. Appellant testified that he did not perform oral sex on G. G. Appellant's entire defensive theory was that G.G. was lying and that he was innocent. What weight to give contradictory testimonial evidence is within the sole province of the trier of the fact, because it turns on an evaluation of credibility and demeanor. *Cain v. State,* 958 S.W.2d 404, 408-09 (Tex.Crim.App.1997). Accordingly, we must show deference to the jury's findings. *Id.* at 409. A decision is not manifestly unjust merely because the jury resolved conflicting views of the evidence in favor of the State. *Id.* at 410. In performing a factual sufficiency review, the courts of appeals are required to give deference to the jury verdict, examine *all* of the evidence impartially, and set aside the jury verdict "only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust." *Cain*, 958 S.W.2d at 410; *Clewis,* 922 S.W.2d at 129. After reviewing the record, we conclude the jury's finding that appellant knowingly committed aggravated sexual assault on a child is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. We find the evidence is factually sufficient to sustain appellant's conviction, and we overrule his point of error two.

Exclusion of Appellant's Evidence of Complainant's Reputation for Truth and Veracity

In points three and four, appellant contends the trial court erred in refusing to allow the testimony of Ralph Cash, G.G.'s teacher, and Dr. Sheila Jenkins, G.G.'s psychologist regarding G.G.'s truth and veracity. In point five, appellant contends the trial court erred in refusing to allow Ralph Cash (Cash) testify to one incident where G.G. called a female teacher a "no good f—g lesbian whore," and told Cash, "you're both the same."

Reputation witnesses's testimony must be based on discussion with others about the subject, or on hearing others discuss the person's reputation, and not just on personal knowledge. *See* TEX. R. EVID. 405(a); *House v. State*, 909 S.W.2d 214, 218 (Tex.App.--Houston [14 th Dist.] 1995), *aff'd*, 947 S.W.2d 251 (Tex.Crim.App.1997). Rule 405 requires only "substantial familiarity" with the reputation of the accused. *Hernandez v. State*, 800 S.W.2d 523, 524-25 (Tex.Crim.App.1990). Questions concerning the admissibility of evidence are within the province of the trial court. *Macklin v. State*, 861 S.W.2d 39, 41-42 (Tex.App.-Houston[14th Dist] 1993, pet. ref'd). When the admissibility of evidence depends on some preliminary question of fact, the existence or non-existence of that fact is determined by the trial court. *Id.* Rule 405(a) provides, in part, that a witness who gives opinion testimony on the character of an accused must have been familiar with the underlying facts or information upon which the opinion is based *prior to the date of the offense* (emphasis added). *Id.* at 42 & n.1. A trial court's determination that a sufficient predicate has been laid for the introduction of evidence will not be reversed absent an abuse of discretion. *Id.*

Cash testified out of the presence of the jury. Cash met G.G. *after* he had been sexually assaulted by appellant. Rule 405(a) specifically states that the witness must have been familiar with the reputation *prior to the date of the offense*. The State specifically objected to the testimony of Cash on the grounds that Cash did not know G.G. until after he had been sexually assaulted by appellant. Therefore, the trial court did not abuse its discretion in refusing to allow Cash's testimony because Cash was not a qualified witness. Appellant's point of error three is overruled.

In point four, appellant further contends that Sheila Jackson should have been allowed to testify as to G.G.'s tendency to lie. In his brief, appellant contends Dr. Jackson's testimony was relevant and admissible under rule 404(a)(2) (character of victim) because "it showed the child complainant [G.G.] to have an ongoing, persistent problem with telling lies, for feeling no remorse for all his past bad conduct, as well as demonstrating an obsession with sex." Appellant does not cite to any place in the record where such testimony appears.

Dr. Jenkins testified that G.G.'s mother told Dr. Jenkins that G.G. was lying and was obsessed with sex. Dr. Jenkins did not testify to G.G.'s lying or sexual obsession, and indicated she found no evidence of these traits in her examination. She diagnosed G.G. as having an "adjustment disorder with mixed disturbance of emotion and conduct." The trial court refused to admit the testimony because the lying and sexual obsession traits were hearsay declarations by the mother, and her diagnosis of adjustment disorder was not "probative." Appellant's trial objection was that Dr. Jenkins' testimony was admissible under rule 406 which concerns evidence of habit or routine practice.

In addition to not making proper reference to the record to support his point, appellant cites no authority to support his conclusory argument that Dr. Jenkins testimony should somehow be admitted with respect to the hearsay statements of G.G.'s mother to Dr. Jenkins about G.G's lying and sexual obsession. Under these circumstances, we cannot conclude this point has been adequately preserved for our review. *See Stahle v. State,* 970 S.W.2d 682, 692 (Tex.App.-Dallas 1998, pet. ref'd). We overrule appellant's point of error four.

In point five, appellant further asserts the trial court erred in refusing to admit Cash's testimony concerning G.G.'s frequent outbursts against homosexuals, and by limiting appellant's cross-examination of G.G. to show G.G.'s bias and prejudice against homosexuals. As stated in this opinion under our discussion of point three, Cash stated that G.G. insulted him and a female teacher by calling the female a "no good f—g lesbian whore," and then stating, "you're both the same." Cash also heard G.G. call other students "faggot." The State further objected to Cash's testimony that these outbursts were not relevant and not admissible under

rule 608(b), Texas Rules of Evidence, prohibiting evidence of specific instances of the conduct of a witness for the purpose of attacking or supporting the witness' credibility.

Appellant contends that his rights to "due Process," "Due Course of Law, "and "Confrontation" allowed him the right to attack G.G.'s testimony by revealing biases, prejudices or ulterior motives that affected his testimony. Appellant contends he should have been able to develop G.G.'s bias against homosexuals by cross-examination of G.G. and by testimony from Cash.

Appellant cross-examined G.G. out of the presence of the jury to make his bill of exceptions, and G.G. stated that he did make these remarks. G.G. testified that he lived with some gay men in the Montrose area, that he made the remarks to the female teacher because of his temper problem, that he did not know if the teacher was a lesbian, and that the remark was an accident. G.G. stated that he had no animosity toward gay people or lesbians.

As part of the Sixth Amendment right to confrontation, a defendant must be given great latitude to show any fact that would tend to establish ill feeling, bias, motive, or animus on the part of a witness testifying against him. *Delaware v. Van Arsdall*, 475 U.S. 673, 678-79, 106 S.Ct. 1431, 1434-35, 89 L.Ed.2d 674 (1986); *Davis v. Alaska*, 415 U.S. 308, 316-17, 94 S.Ct. 1105, 1110-11, 39 L.Ed.2d 347 (1974); *Hurd v. State*, 725 S.W.2d 249, 252 (Tex.Crim.App.1987); *see Pointer v. Texas*, 380 U.S. 400, 403, 85 S.Ct. 1065, 1067-68, 13 L.Ed.2d 923 (1965) (Fourteenth Amendment incorporates confrontation right). Our rules of criminal evidence expressly recognize the right to impeach a witness by proof of circumstances or statements showing bias or interest on the part of the witness. TEX. R. EVID. 613(b). Unlike an attack on a witness's character, which reflects on the witness's truth-telling tendencies generally, an attack concerning bias or interest relates only to the specific litigation or parties. *Gonzales v. State*, 929 S.W.2d 546, 549 (Tex.App.-Austin 1996, pet. ref'd). The impeaching party must attempt to show that the witness's attitude is such that he is likely to favor or disfavor a particular litigant's position for reasons unrelated to the merits of the suit. *Id.*;1 STEVEN GOODE, OLIN GUY WELLBORN III & M. MICHAEL SHARLOT, TEXAS PRACTICE:

GUIDE TO THE TEXAS RULES OF EVIDENCE: CIVIL AND CRIMINAL § 613.6 (2d ed. 1993 & Supp. 1999) (hereafter "Guide to Texas Evidence ").

The rules of evidence grant a party greater latitude to prove a witness's bias than to prove a witness's untruthful character. *Gonzales*, 929 S.W.2d at 549. For the purpose of impeaching his credibility, a witness's character may be attacked by opinion or reputation evidence and by proof of certain criminal convictions. *Id.*; TEX. R. EVID. 608(a), 609. Other than conviction of a crime, a witness's character for truthfulness may not be impeached by proof of specific instances of conduct. *Id.* Rule 608(b) is very restrictive and allows for no exceptions. *Ramirez v. State*, 802 S.W.2d 674, 676 (Tex.Crim.App.1990). Rule 613, by contrast, places no limits on the sort of evidence that may be adduced to show a witness's bias or interest. Evidence of bias or interest covers a wide range, and the field of external circumstances from which probable bias or interest may be inferred is infinite. *Jackson v. State*, 482 S.W.2d 864, 868 (Tex.Crim.App.1972).

The trial court has considerable discretion in determining how and when bias may be proved, and what collateral evidence is material for that purpose. *Green v. State*, 676 S.W.2d 359, 363 (Tex.Crim.App.1984). The defendant's right to confront witnesses does not prevent a trial court from imposing reasonable restrictions on cross-examination into the bias of a witness. *Hurd*, 725 S.W.2d at 252. The trial court may impose reasonable limits on 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." *Van Arsdall*, 475 U.S. at 679, 106 S.Ct. at 1435; *Miller v. State*, 741 S.W.2d 382, 389 (Tex.Crim.App.1987).

In this case, G.G.'s outbursts were not directed to homosexuals in general, nor did G.G. knowthe female teacher was or was not a lesbian. If anything, it was a display of anger directed against the teachers individually and some students, and the verbal abuse does not indicate a prejudice or bias against homosexuals in general. G.G. testified at his bill of exceptions hearing that he lived with homosexual men and had no animosity toward homosexuals

generally. Appellant has not shown (1) that G.G.'s outbursts demonstrated bias or prejudice against homosexuals in general, and (2) that the outbursts show G.G. was falsely testifying against appellant because he hated homosexuals.

What first must be established is a specific connection between the witness's testimony and the cause, disclosing an actual bias or motive. *Willingham v. State*, 897 S.W.2d 351, 358 (Tex.Crim.App. 1995); *London v. State*, 739 S.W.2d 842, 846 (Tex.Crim.App.1987). This nexus must be demonstrated by laying the proper foundation. To lay a proper predicate for impeachment the witness should be asked about any possible interest or bias he may have before there is an attempt to prove interest or bias otherwise. *Willingham*, 897 S.W.2d at 358. The witness must first be informed as to the circumstances supporting a claim of bias or interest and must be given an opportunity to explain or deny such circumstances. TEX. R. APP. P. 613(b); *Id*. Appellant attempted to lay a foundation, but G.G.'s response indicated only that he was angry when he swore at the teachers and students, and that he did not hate homosexuals. Appellant denied that he was a homosexual, and further denied committing the homosexual offense in this case.

In this case, the trial judge found that G.G.'s outbursts were not relevant to his testimony against appellant. The trial judge has discretion to exclude evidence that is "only marginally relevant." *Van Arsdall*, 475 U.S. at 679, 106 S.Ct. at 1435; *Miller v. State*, 741 S.W.2d 382, 389 (Tex.Crim.App.1987). We hold that the trial court did not abuse its discretion in refusing to allow appellant to cross-examine G.G. as to any bias or prejudice he had against the appellant by showing G.G.'s profane outbursts to school teachers. *See Gonzales v. State*, 929 S.W.2d 546, 551 (Tex.App.–Austin 1996, pet. ref'd) (court of appeals found the evidence that a racial slur by police officer in another case involving arrest of black man was irrelevant to officer's testimony against Mexican-American in the instant case; the trial court did not abuse its discretion in refusing appellant the right to cross-examine officer for racial bias because the officer used this racial slur in another case). We further hold that G.G's outbursts were specific instances of conduct and were not admissible to prove untruthful

character under rule 608(b), Texas Rules of Evidence. We overrule appellant's point of error five.

Extraneous Offense Evidence of Prior Sexual Misconduct with a Child

In his sixth point, appellant contends the trial court erred in admitting evidence of an extraneous sexual offense with another child. Appellant contends that the testimony of the other child victim, Joseph Allen, was (1) not proper rebuttal, (2) too remote in time, and (3) constituted character conformity evidence.

After appellant testified, the State called Joseph Allen (Allen) as a rebuttal witness. Out of the presence of the jury, Allen testified that he was 15 years-old when appellant picked him up in 1989. Appellant first drove Allen to a Burger King where Allen applied for work. Allen met appellant later at a video store and told him he had applied for some jobs. Appellant suggested they celebrate, and bought some beer. Appellant drove Allen around town, bought him some clothes, and then drove to his house to continue the celebration. When they got to appellant's house, appellant brought a bottle of bourbon and Allen continued drinking. Allen took a shower, and appellant told him to go lay down. Allen laid down on a bed and watched a pornographic movie that was showing on appellant's T.V. set. Appellant came into the room, got in the bed, and grabbed Allen's penis. Allen jumped out of bed, and locked himself in the bathroom. Allen finally came out of the bathroom, and told appellant to leave him alone. Appellant drove Allen to a gas station and dropped him off. Appellant gave Allen some money and told Allen he never wanted to see him again. Allen reported the incident to the Fort Bend County Sheriff's Department and gave them a statement. The record does not contain any documentary evidence of a conviction; appellant's counsel stated that appellant was given deferred adjudication in 1989 for the offense.

Appellant's objection as to remoteness of the offense under rule 609, Texas Rules of Evidence, is not preserved for review. Appellant did not object to Allen's testimony on these grounds. *See Winslow v. State*, 742 S.W.2d 801, 804 (Tex.App.-Corpus Christi 1987, pet. ref'd).

Appellant's defensive theory and testimony were that he was innocent, and G.G. was lying. Where a false picture is presented by the defense, the prosecution may impeach the defense witnesses' testimony by introduction of extraneous offenses. *Creekmore v. State*, 860 S.W.2d 880, 892 (Tex.App.–San Antonio 1993, pet. ref'd). Appellant's point of error six is overruled.

In point seven, appellant further contends the trial court erred by failing to conduct a rule 403 balancing test to determine if the probative value of Allen's testimony is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, or needless presentation of cumulative evidence. TEX. R. EVID. 403.

After Allen was examined and cross-examined out of the presence of the jury, appellant's counsel objected that the testimony was not relevant. The trial court found the testimony relevant to establish intent. Appellant asked the trial court to "place its reasons for a balancing test showing that the probative value outweighs the danger of unfair prejudice." The trial court stated: "I find that its probative value outweighs its prejudice."

When a party lodges an objection under rule 403, which provides that relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, a trial court "has no discretion to refuse to conduct a . . . balancing of probativeness versus prejudice . . . ." *Montgomery v. State*, 810 S.W.2d 372, 390 (Tex.Crim.App. 1991). A trial court is not, however, required to conduct two separate hearings on the matter or even to announce on the record that it is mentally balancing the two factors. *Id.* at 393 n. 4. The court of criminal appeals does not require the trial court to conduct the balancing test during a formal hearing held for that purpose or that it announce for the record that it has, in fact, conducted and completed the balancing test in its own mind. *Houston v. State*, 832 S.W.2d 180, 184 (Tex.App.--Waco 1992), *pet. dism'd, improvidently granted*, 846 S.W.2d 848 (Tex.Crim.App.1993).

The record reflects appellant lodged a rule 403 objection, which was overruled. The trial court did not refuse to conduct the requisite balancing test. The trial judge stated she *found* that the probative value of Allen's testimony outweighed its prejudice. Because the law does not require affirmative record evidence that the trial court conducted a rule 403 balancing test, and because the record does not indicate the trial court refused to conduct such a test, we cannot conclude the trial court abused its discretion by failing to balance the probative value of Allen's testimony against its unfairly prejudicial effect. *See Menchaca v. State*, 901 S.W.2d 640, 648-649 (Tex.App.-El Paso 1995, pet. ref'd). Appellant's seventh point of error is overruled.

Amendment of the Indictment

In point eight, appellant contends the trial court erred in allowing the State to amend the indictment to strike out the words, "and not the spouse of the Defendant" as surplusage. Appellant has failed to preserve this issue for review by failing to present a motion to quash or obtain a ruling on the motion prior to trial. *See Ho v. State*, 856 S.W.2d 495, 498 (Tex.App.–Houston[1st Dist.] 1993, no pet.). We overrule appellant's point of error eight.

Motion for New Trial Overruled.

In point nine, appellant contends the trial court erred in denying his motion for new trial which alleged as grounds the same issues raised on this appeal. In his brief, appellant states as grounds for the alleged error: "Appellant contends that the trial court abused its discretion in failing to grant a new trial for the above listed reasons." Appellant cites no authority in support of his proposition, nor does he provide any argument beyond his conclusory assertions. From appellant's brief, we cannot discern his specific arguments, and we will not brief appellant's case for him. Appellant's point of error nine is multifarious and inadequately briefed. TEX. R. APP. P. 38.1(h); *Heiselbetz v. State*, 906 S.W.2d 500, 512 (Tex.Crim.App. 1995). Appellant's point of error nine preserves nothing for review and is overruled.

We affirm the judgment of the trial court.

/s/ Bill Cannon
Justice

Judgment rendered and Opinion filed June 15, 2000.

Panel consists of Justices Sears, Cannon, and Hutson-Dunn.*

Do Not Publish — TEX. R. APP. P. 47.3(b).

* Senior Justices Ross A. Sears, Bill Cannon, and D. Camille Hutson-Dunn sitting by assignment.