

COURT OF APPEALS OF TEXAS, SECOND APPELLATE DISTRICT AT FORT WORTH

Joshua Cholico Galindo v. the State of Texas

No. 02-22-00151-CR (Tex. App.—Fort Worth Mar. 23, 2023) (mem. op.) · No. 02-22-00151-CR · Decided March 23, 2023

SUMMARY

The Texas Second Court of Appeals affirmed the judgment adjudicating Joshua Cholico Galindo guilty and revoking his probation. The court held that the trial court had no sua sponte duty under Texas Code of Criminal Procedure article 38.30(a) to appoint an interpreter for Galindo’s defense-witness mother, and that Galindo forfeited his hearsay argument by failing to present an admissibility exception to the trial court.

CASE DETAILS

COURT	Court of Appeals of Texas, Second Appellate District at Fort Worth
WRITING FOR THE COURT	Mike Wallach; Sudderth, C.J.; Kerr, J.; Wallach, J.
JURISDICTION	Texas
DECIDED	March 23, 2023
DOCKET	02-22-00151-CR
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a judgment adjudicating guilt and revoking deferred-adjudication probation after the trial court found the alleged probation violations true and sentenced Galindo to ten years' imprisonment.
STANDARD OF REVIEW	The denial or exclusion of evidence is reviewed for abuse of discretion. A ruling is not reversed unless it lies outside the zone within which reasonable persons might disagree. Preservation of error requires a timely and specific objection or motion and a ruling by the trial court.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Joshua Cholico Galindo v. The State of Texas

TOPICS

- criminal procedure
- evidence
- preservation of error
- appellate procedure
- right to counsel

PRACTICE AREAS

criminal law

criminal procedure

evidence

appellate practice

QUESTIONS PRESENTED

1. Whether Texas Code of Criminal Procedure article 38.30(a) required the trial court to appoint an interpreter for Galindo's defense-witness mother sua sponte when Galindo did not request one.
2. Whether Galindo preserved and established error when the trial court sustained hearsay objections to his testimony about conversations with his attorney.

HOLDINGS

1. Article 38.30(a) did not impose an independent sua sponte duty on the trial court to appoint an interpreter for Galindo's mother, a defense witness, absent a timely request. Because Galindo did not request an interpreter, the trial court did not err.
2. Galindo forfeited his appellate challenge to the exclusion of his testimony because, after the State objected on hearsay grounds, he did not respond or argue that a hearsay exception applied in the trial court. The trial court therefore did not commit reversible error in sustaining the objections.

KEY QUOTATIONS

“Because Galindo did not request an interpreter and the trial court had no duty to appoint one sua sponte under the circumstances presented in this case, there was no error.” (at 7)

“Thus, he has forfeited the error.” (at 9)

FACTUAL BACKGROUND

Galindo was placed on deferred adjudication and probation after pleading guilty to sexual assault of a child. At the adjudication hearing, the trial court found numerous probation violations true, including failure to register as a sex offender, and proceeded to adjudicate guilt and assess punishment. During punishment testimony, Galindo's mother, whose first language was not English, answered many questions despite some difficulty, and Galindo attempted to testify about conversations with his attorney; the trial court sustained the State's hearsay objections, and Galindo did not argue for a hearsay exception or otherwise respond.

PROCEDURAL HISTORY

Galindo pleaded guilty to sexual assault of a child under seventeen in 2019 under a plea bargain and received deferred adjudication and five years' probation. In 2022, the State moved to adjudicate guilt based on alleged probation violations. After a hearing, the trial court found the violations true, adjudicated Galindo guilty, revoked his probation, and imposed a ten-year prison sentence. The court of appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- *Abdygapparova v. State*, 243 S.W.3d 191, 201 (Tex. App.—San Antonio 2007, pet. ref'd)
- *Ochoa v. State*, No. 07-18-00045-CR, 2019 WL 1870108, at *2 (Tex. App.—Amarillo Apr. 25, 2019, no pet.) (mem. op., not designated for publication)
- *Garcia v. State*, 149 S.W.3d 135, 144-45 (Tex. Crim. App. 2004)
- *Balderas v. State*, 517 S.W.3d 756, 777 (Tex. Crim. App. 2016)
- *Miller v. State*, 177 S.W.3d 1, 5 (Tex. App.—Houston [1st Dist.] 2004, no pet.)
- *Ellis v. State*, 99 S.W.3d 783, 789 (Tex. App.—Houston [1st Dist.] 2003, pet. ref'd)
- *Zuliani v. State*, 97 S.W.3d 589, 595 (Tex. Crim. App. 2003)
- *Montgomery v. State*, 810 S.W.2d 372, 379 (Tex. Crim. App. 1990) (op. on reh'g)
- *Taylor v. State*, 268 S.W.3d 571, 578-79 (Tex. Crim. App. 2008)
- *White v. State*, 549 S.W.3d 146, 152 (Tex. Crim. App. 2018)
- *Le v. Shamblin*, No. 10-21-00105-CV, 2021 WL 4462519, at *3 (Tex. App.—Waco Sept. 29, 2021, no pet.) (mem. op.)
- *Wilson v. State*, 71 S.W.3d 346, 349 (Tex. Crim. App. 2002)