

**COURT OF APPEALS FOR THE THIRTEENTH DISTRICT OF TEXAS,
CORPUS CHRISTI–EDINBURG**

Jorge Garza v. The State of Texas

No. 13-19-00472-CR (Tex. App.—Corpus Christi–Edinburg Mar. 4, 2021) (mem. op.) · No. 13-19-00472-CR ·
Decided March 4, 2021

SUMMARY

The Texas Thirteenth Court of Appeals affirmed Jorge Garza’s conviction for driving while intoxicated, third or more, a second-degree felony. The court held that the trial court properly admitted Garza’s medical records and toxicology report, did not err in allowing the State to reopen its case to prove prior convictions, and found no cumulative error.

CASE DETAILS

COURT	Court of Appeals for the Thirteenth District of Texas, Corpus Christi–Edinburg
WRITING FOR THE COURT	Justice Clarissa Silva; Chief Justice Contreras; Justice Hinojosa; Justice Silva
JURISDICTION	Texas
DECIDED	March 4, 2021
DOCKET	13-19-00472-CR
DISPOSITION	affirmed
PROCEDURAL POSTURE	Garza appealed his conviction for driving while intoxicated, third or more, a second-degree felony, after the trial court admitted his medical records, allowed the State to reopen its case, and the jury found him guilty.
STANDARD OF REVIEW	Evidentiary rulings are reviewed for abuse of discretion and will be upheld if within the zone of reasonable disagreement. Permission to reopen the State's case under Texas Code of Criminal Procedure article 36.02 is also reviewed for abuse of discretion. Preservation issues are governed by Texas Rule of Appellate Procedure 33.1.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Jorge Garza v. The State of Texas

TOPICS

evidence

hearsay

sixth amendment

appellate procedure

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PRACTICE AREAS

criminal law

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QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by admitting Garza's medical records and toxicology report over objections based on Rule 404(b), hearsay, and the Confrontation Clause.
2. Whether the trial court committed structural error or otherwise abused its discretion by allowing the State to reopen its case after resting.
3. Whether cumulative error required reversal.

HOLDINGS

1. Garza failed to preserve his Rule 404(b) argument because he did not make that objection in the trial court, and a Rule 403 objection is not implicitly contained in or interchangeable with a Rule 404 objection.
2. The trial court did not abuse its discretion by admitting Garza's medical records because they were admissible under the business-records exception and the medical-diagnosis-or-treatment exception.
3. Admission of the medical records and toxicology report did not violate the Confrontation Clause because the records were nontestimonial and Garza did not identify any testimonial statement.
4. Allowing the State to reopen its case after resting was not structural error and did not constitute an abuse of discretion under Texas Code of Criminal Procedure article 36.02.
5. Cumulative error did not require reversal because the court found no individual error to cumulate.

KEY QUOTATIONS

"If the out-of-court statement is relevant only if the trier of fact believes that the statement was both truthful and accurate, then the statement is hearsay." (at 8)

"Business records are generally not testimonial because they are created for the administration of an entity's affairs and not for the purpose of establishing or proving some fact at trial." (at 10)

"Because we have found no error in our analysis of Garza's previous issues, there is no error to cumulate, and we overrule Garza's third issue." (at 15)

FACTUAL BACKGROUND

Garza was stopped after failing to make a complete stop and continuing to drive for approximately a block and a half after an officer activated his lights. The officer observed an open beer can, green leafy residue, and a pipe in the vehicle, and described Garza as sweating profusely, having bloodshot eyes, slurred speech, and smelling of alcohol. After Garza resisted removal from the vehicle and attempted to drive away, he was arrested and transported for medical treatment. The hospital records admitted at trial included a toxicology screen positive for

benzodiazepine and cocaine, and the State later presented fingerprint evidence linking Garza to two prior DWI convictions.

PROCEDURAL HISTORY

Garza was indicted in Hidalgo County for DWI and evading arrest with a vehicle and pleaded not guilty. During trial, the court admitted his medical records containing a toxicology report and permitted the State to reopen its case to present fingerprint and prior-conviction evidence. The jury declared a mistrial on the evading-arrest count but convicted Garza of DWI; after punishment proceedings, the court sentenced him to four years' incarceration. The court of appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- Wells v. State, 611 S.W.3d 396, 427 (Tex. Crim. App. 2020)
- Patterson v. State, 606 S.W.3d 3, 33 (Tex. App.—Corpus Christi–Edinburg 2020, pet. ref'd)
- Berry v. State, 233 S.W.3d 847, 857 (Tex. Crim. App. 2007)
- Camacho v. State, 864 S.W.2d 524, 533 (Tex. Crim. App. 1993)
- De La Rosa v. State, No. 13-18-00537-CR, 2020 WL 2610936, at *8 (Tex. App.—Corpus Christi–Edinburg May 21, 2020, pet. ref'd) (mem. op., not designated for publication)
- Ross v. State, No. 06-18-00174-CR, 2019 WL 2292335, at *3 (Tex. App.—Texarkana May 30, 2019, pet. ref'd) (mem. op., not designated for publication)
- Coble v. State, 330 S.W.3d 253, 290 n.101 (Tex. Crim. App. 2010)
- Bell v. State, 877 S.W.2d 21, 24 (Tex. App.—Dallas 1994, pet. ref'd)
- Jones v. State, 466 S.W.3d 252, 263 (Tex. App.—Houston [1st Dist.] 2015, pet. ref'd)
- Castillo v. State, 573 S.W.3d 869, 877 (Tex. App.—Houston [1st Dist.] 2019, pet. ref'd)
- White v. State, 549 S.W.3d 146, 160 (Tex. Crim. App. 2018) (Keller, P.J., concurring)
- Knapp v. State, 942 S.W.2d 176, 180 (Tex. App.—Beaumont 1997, pet. ref'd)
- Canales v. State, No. 13-16-00252-CR, 2018 WL 2252719, at *5 (Tex. App.—Corpus Christi–Edinburg May 17, 2018, pet. ref'd) (mem. op., not designated for publication)
- Sanchez v. State, 354 S.W.3d 476, 485–86 (Tex. Crim. App. 2011)
- Weatherred v. State, 15 S.W.3d 540, 542 (Tex. Crim. App. 2000)
- Burch v. State, 401 S.W.3d 634, 636 (Tex. Crim. App. 2013)
- Pointer v. Texas, 380 U.S. 400, 403 (1965)
- Crawford v. Washington, 541 U.S. 36, 59 (2004)
- Coronado v. State, 351 S.W.3d 315, 323 (Tex. Crim. App. 2011)
- Reyna v. State, 168 S.W.3d 173, 179 (Tex. Crim. App. 2005)
- Martinez v. State, 91 S.W.3d 331, 335–36 (Tex. Crim. App. 2002)

- Melendez-Diaz v. Massachusetts, 557 U.S. 305, 312 n.2, 324 (2009)
- Berkley v. State, 298 S.W.3d 712, 715 (Tex. App.—San Antonio 2009, pet. ref'd)
- Sullivan v. State, 248 S.W.3d 746, 750 (Tex. App.—Houston [1st Dist.] 2008, no pet.)
- Harding v. State, No. 13-14-00090-CR, 2015 WL 6687287, at *6–7 (Tex. App.—Corpus Christi–Edinburg Oct. 29, 2015, pet. ref'd) (mem. op., not designated for publication)
- Carpenter v. State, No. 11-15-00323-CR, 2018 WL 3763773, at *2 (Tex. App.—Eastland Aug. 9, 2018, no pet.) (mem. op., not designated for publication)
- Palacios v. State, No. 02-09-00332-CR, 2010 WL 4570072, at *5 (Tex. App.—Fort Worth Nov. 4, 2010, no pet.) (mem. op., not designated for publication)
- Jordan v. State, 256 S.W.3d 286, 290 (Tex. Crim. App. 2008)
- Johnson v. United States, 520 U.S. 461, 468 (1997)
- Tumey v. Ohio, 273 U.S. 510 (1927)
- Strong v. State, 138 S.W.3d 546, 552 (Tex. App.—Corpus Christi–Edinburg 2004, no pet.)
- Grado v. State, 445 S.W.3d 736, 739 (Tex. Crim. App. 2014)
- Silva v. State, 635 S.W.2d 775, 778 (Tex. App.—Corpus Christi–Edinburg 1982, pet. ref'd)
- Laws v. State, 549 S.W.2d 738 (Tex. Crim. App. 1977)
- DeBolt v. State, 604 S.W.2d 164, 166 (Tex. Crim. App. 1980)
- Howard v. State, 766 S.W.2d 907, 908 (Tex. App.—Fort Worth 1989, no pet.)
- Dacus v. State, No. 08-08-00026-CR, 2010 WL 546691, at *4 (Tex. App.—El Paso Feb. 17, 2010, pet. ref'd) (mem. op., not designated for publication)
- Moore v. State, No. 04-97-00275-CR, 1998 WL 877483, at *2 (Tex. App.—San Antonio Dec. 16, 1998, pet. ref'd) (mem. op., not designated for publication)
- Peek v. State, 106 S.W.3d 72, 79 (Tex. Crim. App. 2003)
- Moore v. State, 493 S.W.2d 844, 846 (Tex. Crim. App. 1973)
- Herrera v. State, No. 13-11-00084-CR, 2012 WL 2861673, at *10 (Tex. App.—Corpus Christi–Edinburg July 12, 2012, no pet.) (mem. op., not designated for publication)
- Chamberlain v. State, 998 S.W.2d 230, 238 (Tex. Crim. App. 1999)
- Jenkins v. State, 493 S.W.3d 583, 613 (Tex. Crim. App. 2016)
- Gamboa v. State, 296 S.W.3d 574, 585 (Tex. Crim. App. 2009)
- Temple v. State, 342 S.W.3d 572, 612 (Tex. App.—Houston [14th Dist.] 2010), aff'd, 390 S.W.3d 341 (Tex. Crim. App. 2013)
- Escobedo v. State, No. 13-19-00205-CR, 2020 WL 6052549, at *6 (Tex. App.—Corpus Christi–Edinburg Oct. 8, 2020, no pet.) (mem. op., not designated for publication)