Affirmed and Opinion Filed October 8, 2025

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-23-01147-CV

ROSA GARZA, Appellant
V.
MARY ALICE ROBINSON, Appellee

On Appeal from the 116th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-20-07834

MEMORANDUM OPINION

Before Justices Garcia, Miskel, and Lee
Opinion by Justice Miskel

This case arose from an accident in which Mary Alice Robinson's automobile was rear-ended by appellant Rose Garza. Garza sued Robinson for negligence. A jury found in Robinson's favor and the trial court rendered a take-nothing judgment against Garza. Garza appeals, claiming that (1) the trial court erred in admitting testimony from the investigating officer and (2) absent the erroneously admitted expert testimony, the evidence is factually insufficient. We affirm.

I. Background

Robinson was commuting from her job in Cedar Hill to her evening class in Frisco when she needed to stop for gas. Robinson testified she was traveling in the

right lane and was slowing to turn into a gas station. She was "hit from the right side in the rear." When the impact occurred, "the right – the backside" of her car was still on the road although she was no longer "parallel" to road. She never saw Garza's vehicle before the accident. Accordingly, Robinson could not tell "exactly where Garza's vehicle was located" before the collision.

Garza testified that she was in the *middle lane* when a car "cut in front of [her]" and "kept going . . . to the parking lot of the gas station." This car came from her *left*. The collision occurred in the middle lane, and Garza's airbag deployed. Garza was not taken to the hospital, but she claims that she sustained serious injuries from the accident.

Officer Duane Mayo of the Duncanville Police Department responded to the scene of the collision and completed an accident report.

A. Pre-Trial Proceedings

Garza sued Robinson regarding the collision. Garza's petition asserted claims for negligence, negligence per se, and gross negligence, and she sought damages and exemplary damages. Robinson denied Garza's allegations and asserted several affirmative defenses, including that Garza's own negligence was the proximate or a concurrent contributing cause of the accident.

Garza's second amended motion in limine sought to prohibit Robinson from offering "[a]ny testimony or hearsay evidence related to lay opinions regarding the cause of the subject crash" without first asking the trial court for a hearing outside

the presence of the jury. Garza asserted that "any conclusions derived from . . . Officer . . . Mayo have no place in this trial because he does not have adequate training and did not conduct sufficient investigation in order to be able to render the opinions he wrote in his report." At the beginning of the trial, the trial judge remarked on the record that she had granted portions of Garza's second amended motion in limine, including the item relating to Mayo's testimony and accident report.

B. The Trial

Garza's case was tried before a jury. Garza testified in her case, and she also offered the testimony of four other witnesses: (1) Robinson; (2) Steve Christofferson, an expert witness whom Garza retained to reconstruct the accident; (3) Officer Mayo; and (4) Scott Farley, M.D., an orthopedic surgeon who examined Garza for certain injuries that she allegedly sustained from the accident.

Officer Mayo testified that he served for sixteen years with the Duncanville Police Department, retiring as a sergeant. He held a master level certification from the Texas Commission on Law Enforcement and had completed over 3,000 hours of training, including on-the-job field training regarding investigating accidents. Over his career, Mayo investigated thousands of accidents.

On direct examination by Garza's counsel, Mayo testified that the duties of a patrol officer responding to an accident include making the scene safe, assessing injuries, and then working on the investigation. According to Mayo, an accident

investigation involves talking to both parties, gathering information, looking at the damage to the vehicles, and "mak[ing] our best judgments as to what happened." Mayo agreed with Garza's counsel that the things that go into an accident report are based on the responding officer's observations and statements of the drivers. Although Mayo had no recollection of the accident at issue in this case apart from his report, he had a practice of talking to drivers after an accident if they were available to speak with.[1] He also confirmed that any information in his report regarding Garza's name, address, and driver's license information would have come directly from her.

Mayo also testified that, in contrast to an accident investigation, "a reconstruction . . . involves a whole lot of math, some black boxes on the vehicles, and actually maybe even photography and going out and taking measurements." He testified that accident reconstructions are performed by traffic officers, who received specialized training for this role and perform reconstructions of accidents that involve a fatality. Mayo admitted he was not trained in accident simulations and had not served as a reconstruction investigator, although he had helped on several of them.

[1] By way of comparison, Robinson testified that she spoke with Mayo at the scene of the accident. Garza testified on direct examination that she did not recall speaking with Mayo. However, during Garza's cross examination, Robinson's counsel impeached Garza with her prior deposition testimony. Garza first claimed she could not remember giving this deposition. Robinson's counsel then showed Garza the transcript from her deposition, in which Garza stated that "[Mayo] just came and told me what happened and I said, 'I don't know . . . I just know that I got involved in an accident.'" On redirect, Garza further explained, "I remember he came, but I don't remember when I talked to him because I was with the people in the ambulance."

On cross examination, Robinson's counsel, Kathy Reid, showed Mayo the accident report that he prepared. Mayo testified that accident reports are also reviewed by a supervisor and the "traffic person" to ensure they are complete. Although Mayo still could not recall the accident, he testified "I believe what I put down is what happened at the time." Reid then asked to approach the bench, and the reporter's record reflects that a bench conference occurred, although this conference was not transcribed by the court reporter.[2]

After the bench conference, Reid questioned Mayo about the "code sheet" for his report. Mayo testified that, according to his report, the front of Garza's automobile struck the back right corner of Robinson's automobile. Mayo estimated the damage to Garza's automobile to be a "two" out of seven, with the impact distributed across "the majority of the front the vehicle." He estimated the damage to Robinson's automobile to be a "one," with the impact in its "back right" corner. Mayo noted Garza's front-right airbags deployed, Robinson's airbags did not deploy, and neither driver reported injuries nor was taken to the hospital.

Mayo's report identified code 44, "following too closely," as a contributing factor and included an investigator's narrative: Robinson was turning right into a gas station when Garza, driving directly behind her in the same lane, failed to maintain

[2] In her reply brief in this appeal, Garza's counsel represents that the trial in this case took place in an auxiliary court room because the trial court's main courtroom was undergoing construction at the time. According to Garza's counsel, "[t]he auxiliary courtroom was much smaller and did not have the technical features to allow bench conferences to take place in the same room with the jury so the trial court would hold bench conferences in the hallway or auxiliary courtroom next door."

a safe distance and struck her vehicle. He clarified that a word "left" in the narrative was a typographical error and should have been "right." The report also contained a diagram depicting Robinson turning right with Garza behind her.

On redirect examination by Garza's counsel, Mayo conceded that he "did not know how the vehicles ultimately came to the place where they rested," nor did he have information regarding "the physical distance between the vehicles prior to the collision." Garza's counsel also asked Mayo whether, "based just upon the information that [he] had," he would have "take[n] any issue" with Garza's testimony that she was traveling in the center lane immediately prior the accident. Mayo responded, "[t]hat obviously wouldn't have been something she told me at the time or I would have drawn the diagram that way." Mayo testified that, based on information available to him at the time, the findings in his report "[are] the way [he] believed the accident happened." Following Mayo's examination, Garza rested her case.

Next, Robinson's counsel requested that the trial court conduct a hearing outside the presence of the jury. During this hearing, Robinson's counsel offered Mayo's report for admission into evidence, subject to redacting the last sentence in the "Investigator's Narrative" section of the report, which states "[Garza] appears to be at fault in the accident." Garza's counsel objected and argued that "the entire narrative" of Mayo's report should be redacted, because the narrative is both inadmissible opinion testimony and "the information came from hearsay." Garza's

counsel argued that Mayo was not qualified to give the opinions, his report contained a mistake, and his opinion could not account for information such as the position, distance, and speed of the vehicles prior to the accident. Robinson's counsel countered, among other arguments, that Mayo "has now testified as to the information in this report so the jury has heard it. And they have been represented that there is this report, so it should be allowed to be admitted[.]"

The trial court admitted Mayo's report into evidence with the final sentence of the narrative redacted, and the court also admitted the code sheet. Robinson moved for a directed verdict on Garza's gross negligence claim, which the trial court denied, and then rested her case.

C. The jury's verdict and the trial court's judgment

The jury unanimously found that Garza's negligence, but not Robinson's, proximately caused the accident. Based on this answer, the jury left the remaining questions in the charge unanswered.

The trial court rendered a take-nothing judgment against Garza and awarded Robinson $12,540.31 in costs. The trial court's judgment states that it is final, disposed of all claims and parties, and is appealable.[3] Garza timely appealed.

[3] There were several post-judgment motions and hearings, but we recount only the procedural history relevant to the disposition of this appeal.

II. Trial Court Did Not Abuse Discretion in Admitting Officer Opinions Related to Causation

Garza's first issue contends that the trial court erred in overruling her objections to, and admitting, Mayo's testimony "regarding the ultimate issue of causation." Garza asserts that Mayo was not qualified or competent to provide "such expert opinion testimony" and that "his ultimate expert opinion testimony" "probably caused the rendition of an improper judgment." We conclude that the trial court did not abuse its discretion in admitting Mayo's opinion testimony.

A. Garza's Challenge is Preserved

Before addressing the merits, we consider Robinson's arguments that Garza (1) "opened the door" to Mayo's testimony by calling him as a witness and eliciting testimony about his report and (2) failed to preserve error because the record shows no timely objection. We disagree that Garza opened the door to Mayo's opinions on causation, and the record reflects she made timely objections to both his testimony and the report.

1. Garza Did Not Open the Door

A party may not complain on appeal of the admission of improper evidence if the party "opened the door" by introducing evidence that is the same or similar in character. *Sw. Elec. Power Co. v. Burlington N. R.R.*, 966 S.W.2d 467, 473 (Tex. 1998).

On direct examination, Garza established only that Mayo had no independent recollection of the accident apart from his report, that his conclusions were based on

observations and driver statements, that his report noted no distraction or intoxication, and that he had never supplemented a report with later evidence. These general questions about the scope and basis of Mayo's report were not the same as Robinson's later questions about the narrative's statements on causation. Thus, Garza's examination did not open the door to Mayo's opinion testimony regarding the cause of the accident.

2. Garza Preserved Her Objections

At the outset, the trial court granted portions of Garza's motion in limine, including her request to exclude Mayo's opinions because of his inadequate training and insufficient investigation. But a ruling on a motion in limine does not preserve error. *See Boulle v. Boulle*, 254 S.W.3d 701, 709 (Tex. App.—Dallas 2008, no pet.).

The preservation issue arises from two bench conferences during Robinson's cross-examination of Mayo. Midway through Robinson's cross examination of Mayo, Robinson's counsel asked to approach the court. The trial court then conducted an unrecorded bench conference. After the first bench conference, Robinson asked Mayo to read from and explain the "Investigator's Narrative" in his report, which stated that Garza failed to maintain a safe following distance, struck Robinson, and caused damage to both cars. Garza did not object to any of these questions by Robinson's counsel. At the conclusion of Mayo's testimony, the trial court recessed the jury and a second, transcribed conference occurred.

There, Robinson's counsel referred to the court's "prior instruction" that the last sentence of the narrative in Mayo's accident report should be redacted. Robinson's counsel also argued, "as far as the issues we've previously discussed, this record itself is an exception to the hearsay rule, it is admissible, he was qualified to give his opinions in the narrative, and he has now testified as to the information in this report so the jury heard." In addition, the trial judge noted on the record that "[Garza's] "[c]ounsel has specifically argued that he believes that testimony that's been elicited indicates a lack of trustworthiness such that he believes he's met a burden to preclude the admission of the report under 803." The trial judge also remarked that she "wanted to make a full record, mainly because we had those arguments in the sidebar which was not on the record and so I'm trying to make the record of our conversations next door on the sidebar." At the conclusion of the second conference, the court reaffirmed that the narrative would be admitted with the last sentence redacted.

Although objections made during an unrecorded bench conference ordinarily do not preserve error, the record of the second conference incorporates and reflects the objections raised and ruled upon in the first. *See Warrantech Corp. v. Computer Adapters Services, Inc.*, 134 S.W.3d 516, 529 (Tex. App.—Fort Worth 2004, pet. dism'd); TEX. R. APP. P. 33.1(a)(1); TEX. R. EVID. 103(a)(1). Specifically, it shows Garza objected to Mayo's qualifications and to the reliability and trustworthiness of his opinions, and that the trial court overruled those objections.

Accordingly, we conclude that Garza's objections to Mayo's opinion testimony and report were sufficiently preserved for appellate review.

B. Standard of Review

We review a trial court's rulings on the admissibility of evidence, including rulings on the reliability of expert testimony, for an abuse of discretion. *Gharda USA, Inc. v. Control Sols., Inc.*, 464 S.W.3d 338, 347 (Tex. 2015). A trial court has extensive discretion in evidentiary rulings, and we will uphold decisions within the zone of reasonable disagreement. *Diamond Offshore Servs., Ltd. v. Williams*, 542 S.W.3d 539, 545 (Tex. 2018). In an abuse of discretion review, "close calls go to the trial court," and "[t]hus, trial courts are given wide latitude on their rulings on the reliability of expert testimony." *Club Vista Dev. II, Inc. v. Oncor Elec. Delivery Co., LLC*, No. 05–12–01727–CV, 2014 WL 4057434, at *8 (Tex. App.—Dallas Aug. 15, 2014, pet. denied) (mem. op.) (citations and internal quotation marks omitted).

C. Applicable Law

Once a party opposing expert testimony objects, the proponent of the testimony bears the burden of showing its admissibility. *See E.I. du Pont de Nemours & Co. v. Robinson*, 923 S.W.2d 549, 557 (Tex. 1995). "A two-part test governs whether expert testimony is admissible: (1) the expert must be qualified; and (2) the testimony must be relevant and be based on a reliable foundation." *Helena Chemical*

Co. v. Wilkins, 47 S.W.3d 486, 499 (Tex. 2001) (citing *Robinson*, 923 S.W.2d at 556).

1. Expert Qualifications

"A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue." TEX. R. EVID. 702. An expert's opinion may be based on inadmissible evidence or hearsay, if the evidence is of a type reasonably relied upon by experts in the field. *See* TEX. R. EVID. 703; *see also Robinson*, 923 S.W.2d at 563 (Cornyn, J., dissenting).

Whether a police officer is qualified to render an expert opinion on an accident depends on the facts of each case. *See Lopez-Juarez v. Kelly*, 348 S.W.3d 10, 21 (Tex. App.—Texarkana 2011, pet. denied); *see also id*. at 20–21 nn. 16–17 (listing cases in which Texas courts have, and have not, permitted polices officers to testify concerning accident reconstruction). There are no "definite" or "per se" guidelines in making this determination. *Id.* at 21. Instead, "[t]he expert's expertise must be measured against the particular opinion the expert is offering." *Id.* For example, a police officer may possess sufficient experience to reconstruct a simple accident. *See id*. at 22. However, when the accident is sufficiently complex, mathematical modeling is required, and such a case requires a greater degree of expertise. *Id.*

Three decisions by this Court illustrate that, depending on the facts of the case, a police officer may possess sufficient qualifications to testify as an expert witness regarding causation:

- *Ter-Vartanyan v. R & R Freight, Inc.,* 111 S.W.3d 779 (Tex. App.—Dallas 2003, pet. denied) — An eighteen-wheeler turned in front of a van, and the vehicles collided. The court held the officer was qualified to testify as an expert regarding accident causation because he had been a police officer for eight years, received academy and in-service accident investigation training, was certified by the department as an accident investigator, and had investigated hundreds of motor vehicle accidents.

- *Hutton v. AER Mfg. II, Inc.*, 224 S.W.3d 459 (Tex. App.—Dallas 2007, pet. denied) — A products liability case arose out of a one-vehicle rollover accident. The officer was deemed qualified to testify as an expert on causation because he had served as a state trooper for nearly four years, had official responsibility for investigating highway accidents, had investigated seventy-five to one hundred accidents, and had completed a two-week police academy course on accident investigation, including training in interpreting physical evidence such as tire and gouge marks.

- *Schultz v. Lester*, No. 05-09-01549-CV, 2011 WL 3211271 (Tex. App.—Dallas July 29, 2011, no pet.) — A car passed an eighteen-wheeler and collided with another, resulting in a three-vehicle accident with a fatality. The officer was considered qualified to testify as an expert on causation because he held basic certification, intermediate certification (one-week class covering traffic investigation), advanced certification (two-week class covering traffic investigation and logistics), and reconstructive certification (two-week school) where he was trained in taking measurements and calculating speeds and distances of the vehicles involved. He was assigned to the traffic unit with responsibility for investigating collisions and was routinely called to accident scenes.

In contrast, Garza cites other automobile accident cases in which our sister courts held, based on the specific facts before them, that a trial court abused its discretion in admitting police officer opinion testimony:

- *Lopez-Juarez v. Kelly*, 348 S.W.3d 10 (Tex. App.—Texarkana 2011, pet. denied) — Multiple vehicles and multiple collisions required reconstruction expertise beyond the training of most police officers. The officer had only a "Level II" certification covering diagramming and measuring, disclaimed expertise, had never testified as an expert, admitted his skills were limited to measuring and diagramming, and acknowledged he had no training in physics and disliked math. The court held that, although he could testify about his measurements and diagrams, it was error to treat him as an expert in accident reconstruction.

- *Gainsco Cnty. Mut. Ins. Co. v. Martinez*, 27 S.W.3d 97 (Tex. App.—San Antonio 2000, pet. granted, judgm't vacated w.r.m.) — A pickup truck rear-ended a small car, pushing it into another vehicle and causing a fatal accident. The officer was not qualified to testify as an expert because he had no accident reconstruction training, had been on the force only four months and was still in training, had never investigated a fatal accident, and based his conclusions about vehicle speed and force on observations, assumptions, and witness statements rather than specialized knowledge.

2. Reliability

All expert testimony must also be based on a reliable foundation to be admissible. *Robinson*, 923 S.W.2d at 556; *see also Gammill v. Jack Williams Chevrolet, Inc.*, 972 S.W.2d 713, 726 (Tex. 1998) ("All expert testimony should be shown to be reliable before it is admitted). The trial court, as gatekeeper, "'must determine how the reliability of particular testimony is to be assessed.'" *TXI Transp. Co. v. Hughes*, 306 S.W.3d 230, 235 (Tex. 2010) (quoting *Gammill*, 972 S.W.2d at 726). The trial court's "ultimate task . . . is not to determine whether the expert's

conclusions are correct, but rather whether the analysis the expert used to reach those conclusions is reliable and therefore admissible." *Id.* at 239.

When the reliability of an expert's testimony is challenged, courts consider whether the expert's opinion comports with applicable professional standards. *Id*. at 235. The inquiry focuses on the principles, research, and methodology underlying the expert's conclusions. *Exxon Pipeline Co. v. Zwahr*, 88 S.W.3d 623, 629 (Tex. 2002). Expert testimony is unreliable if it is no more than subjective belief or unsupported speculation, or if there is too great an analytical gap between the data the expert relies upon and the opinion offered. *Id*. Rule 703 discusses the permissible bases of an expert's opinion testimony. TEX. R. EVID. 703. In some cases, "[e]xperience alone may provide a sufficient basis for an expert's testimony." *Gammill*, 972 S.W.2d at 726. "Rather than focus entirely on the reliability of the underlying technique used to generate the challenged opinion," in vehicular accident cases involving reconstruction testimony, the Supreme Court has found it appropriate "to analyze whether the expert's opinion actually fits the facts of the case." *TXI Transp.*, 306 S.W.3d at 235.

Applying this principle, the Supreme Court held in *TXI Transportation* that that the testimony of the plaintiffs' accident reconstruction expert "was neither conclusory nor subjective." *Id.* at 240. According to the Court, the expert's testimony met the reliability requirement because "[h]is observations, measurements, and

calculations were . . . tied to the physical evidence in the case which likewise provided support for his conclusions and theory." *Id.*

Our court has applied the same principles in upholding the reliability of investigating officers' testimony:

- *Ter-Vartanyan*, 111 S.W.3d at 782–83 — The officer followed reasonable investigative procedures, examining the accident scene while the vehicles were still present, noting their positions and damage, reviewing traffic conditions, and documenting physical evidence on the roadway. He also interviewed one of the drivers and the only available eyewitness. Because there was "no analytical gap between the data [the officer] collected in his investigation and the opinions he proffered," the testimony was admissible. Any limitations in his investigation—for example, not fully interviewing a witness who was about to be transported to the hospital at length because she was in an ambulance ready to be transported to the hospital—went to the weight the jury was to give the officer's opinions, not to the opinion's admissibility.

- *Schultz*, 2011 WL 3211271, at *3 — The officer took multiple investigative steps, including visually inspecting the scene, walking it with the lead investigator, observing roadway debris, taking laser measurements, speaking with one driver at the scene, and meeting with the other driver and a witness the next day. The court concluded there was no analytical gap between the officer's investigation and his opinions. Again, omissions or limitations went to weight, not admissibility.

By contrast, the Texas Supreme Court has also held that an accident reconstructionist's testimony was unreliable and constituted no evidence of causation:

- *Volkswagen of Am., Inc. v. Ramirez*, 159 S.W.3d 897, 904–06 (Tex. 2004) — The expert assumed, without support, that a detached wheel remained tucked in a wheel well throughout a turbulent high-speed crash. Although he invoked the "laws of physics," he offered no analysis to bridge the analytical gap between his assumption and the actual behavior of the wheel, nor did he cite studies, publications, or

> peer review supporting his theory. The Supreme Court concluded the expert's testimony was unreliable because it was "not supported by objective scientific analysis" but was based solely upon the expert's "subjective interpretation of the facts."

D. Mayo was Qualified and Met Standards for Reliability

Garza focuses on the portions of Mayo's testimony and report that discuss the cause of the accident. Mayo's testimony and report are consistent with Robinson's account of the accident. Mayo testified from his report that Garza was directly behind Robinson in the right lane, that Garza's automobile was "following too closely," and that Garza "failed to maintain a safe distance from [Robinson]." Garza contends that Mayo lacked the necessary experience, training, and competence to qualify him to opine regarding causation and fault. She also asserts that Mayo's opinions were unreliable because they "were wholly devoid of any proper foundation." Finally, she argues that Mayo's accident report narrative and diagram "was the product of inadmissible hearsay."

1. Mayo's qualifications

This case arose from a rear-end collision between two automobiles. In a simple accident, Mayo's lack of formal accident reconstruction training did not necessarily render him unqualified to testify as an expert, based on his investigation, regarding the cause of the accident. *See Lopez-Juarez*, 348 S.W.3d at 21 ("Whether a police officer is qualified depends on the facts of each case."); *see also id.* at 22 ("[M]ost police officers may have sufficient experience to reconstruct a simple accident[.]"). At the time of the accident, Mayo had served about thirteen years as a

police officer, completed more than 3,000 hours of training to earn master-level certification, and investigated thousands of accidents. Some of his training included on-the-job field training regarding investigating accidents. Based on Mayo's training and experience, we cannot say the trial court abused its discretion in determining that Mayo possessed sufficient qualifications to offer an expert opinion in this case regarding the cause of the accident. *See Ter-Vartanyan*, 111 S.W.3d at 781; *Hutton*, 224 S.W.3d at 465; *Schultz*, 2011 WL 3211271, at *2.

We conclude the trial court did not abuse its discretion in finding Mayo qualified.

2. The reliability of Mayo's opinion testimony

To be admissible, Mayo's opinion must have a basis showing it is reliable and "actually fits the facts of the case." *TXI Transp. Co.*, 306 S.W.3d at 235; s*ee also Gammill*, 972 S.W.2d at 726 (noting that "[e]xperience alone may provide a sufficient basis for an expert's testimony in some cases"). The record shows Mayo followed reasonable police procedures in investigating the accident. *Cf. Ter-Vartanyan*, 111 S.W.3d at 782; *Schultz*, 2011 WL 3211271, at *3. He interviewed the drivers and examined the location and severity of the damage to the vehicles: Garza's vehicle was damaged across the front, while Robinson's was damaged at the back right corner. Based on his observations and Robinson's account, Mayo concluded that Garza caused the accident by failing to maintain a safe distance.

Garza has not shown any significant analytical gap between the information that Mayo collected and his conclusion as to causation. *See TXI Transp.*, 306 S.W.3d at 239-40. While Garza testified she was too shaken to provide information and Mayo lacked precise data on the position, distance, and speed of the vehicles prior to the accident, these omissions affect the weight of his testimony, not its admissibility. *See Ter-Vartanyan*, 111 S.W.3d at 782–83; *Schultz*, 2011 WL 3211271, at *3.

Accordingly, the trial court did not abuse its discretion in concluding that Mayo's opinion is sufficiently reliable.

3. Hearsay objection

At trial, Garza objected that the narrative section of Mayo's accident report "came from hearsay." Robinson responded that "the record itself is an exception to the hearsay rule." The trial court acknowledged that Garza's counsel "has specifically argued that he believes that testimony that's been elicited indicates a lack of trustworthiness such that he believes he's met a burden to preclude the admission of the report under [Rule] 803."[4] Robinson responded, "[h]e was qualified to give opinions based on what he saw that day. . . [B]eyond that he had a typo in his report, I don't see how there was anything untrustworthy about his testimony." Garza did not "take issue with the code," but rather "the narrative," which "goes

[4] The trial court also noted that "we had these arguments in the sidebar which was not on the record," and the court was restating them "to make a record."

further" and says that Garza "failed to maintain a safe distance." Garza argued "[t]here's no evidence of that and there's no testimony to indicate that one or more of the vehicles were inside of a safe following distance," and that there was no evidence of the vehicles' speed before the accident. After considering the parties' arguments, the trial court admitted Mayo's report, with the final sentence of the narrative redacted.

Accident reports are admissible under Rule 803(8)'s public records exception to the hearsay rule. *See Greenwood Motor Lines, Inc. v. Bush*, No. No. 05-14-01148-CV, 2017 WL 1550035, at *6 (Tex. App.—Dallas Apr. 28, 2017, pet. denied) (mem. op.); TEX. R. EVID. 803(8). This rule creates a presumption of admissibility, and the party opposing admission bears the burden of showing untrustworthiness. *See* TEX. R. EVID. 803(8)(B); *1001 McKinney Ltd. v. Credit Suisse First Boston Mortg. Capital*, 192 S.W.3d 20, 28 (Tex. App.—Houston [14th Dist.] 2005, pet. denied).

On appeal, Garza first asserts that the trial court erroneously admitted these statements as an "admission by party opponent" under Rule 801(e)(2). The record, however, shows that the trial court admitted Mayo's report under the public records exception in Rule 803(8), not as an admission by party opponent under Rule 801.

Garza next argues the narrative contained inadmissible hearsay-within-hearsay. *See* TEX. R. EVID. 801(d), 802, 805. But at trial her objection was only that the information "came from hearsay;" she did not identify specific objectionable statements or clearly raise a hearsay-within-hearsay objection. An objection must be

specific and timely and allow the trial court an opportunity to cure the alleged error, if any. *See* TEX. R. EVID. 103(a)(1)(B); TEX. R. APP. P. 33.1(a)(1). A blanket hearsay objection is insufficient to preserve error. *See In re Estate of Ward*, No. 0-11-00003-CV, 2011 WL 3720829, at *3 (Tex. App.—Waco Aug. 24, 2011, pet. denied) (mem. op.). Accordingly, she did not preserve the hearsay-within-hearsay objection for her appeal.

Finally, Garza contends the narrative was untrustworthy because it reflected opinion rather than fact finding, and because Mayo relied only on the fact that the accident was a rear-end collision. *See* TEX. R. EVID. 803(8)(B); *Credit Suisse*, 192 S.W.3d at 28. These arguments mirror her reliability challenge to Mayo's testimony. As discussed, Mayo's opinions were based on both interviews and physical observations. Garza has not demonstrated that the trial court abused its discretion in finding the report trustworthy under Rule 803(8).

In sum, we conclude that the trial court did not abuse its discretion in admitting Mayo's opinion testimony and the objected to portions of his accident report. We overrule Garza's first issue.

III. Factual Sufficiency Challenge

Garza's second issue asserts that, upon excluding Mayo's "improper expert testimony," the evidence was factually insufficient to support the jury's finding to question number one regarding liability. In her third issue, Garza argues that the jury's finding to question number one regarding liability was against the great weight

and preponderance of the evidence and was manifestly unjust. She specifically argues that "[a]bsent the improper expert opinion testimony of Officer Mayo making its way into evidence, the great weight and preponderance of the evidence established that there was no negligence on the part of Ms. Garza." We need not consider these issues given our determination that the trial court did not abuse its discretion in admitting Mayo's opinion testimony.

IV. Conclusion

We affirm the trial court' s judgment.

/Emily Miskel/
EMILY MISKEL
JUSTICE

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

ROSA GARZA, Appellant

No. 05-23-01147-CV V.

MARY ALICE ROBINSON, Appellee

On Appeal from the 116th Judicial District Court, Dallas County, Texas
Trial Court Cause No. DC-20-07834.
Opinion delivered by Justice Miskel.
Justices Garcia and Lee participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

It is **ORDERED** that appellee MARY ALICE ROBINSON recover her costs of this appeal from appellant ROSA GARZA.

Judgment entered this 8th day of October, 2025.