No issue was preserved for appellate review where trial attorney failed to explain to the trial court why the hearsay rule did not apply. [In the mtter of A.V.](17-3-6A)

On June 8, 2017, the Eastland Court of Appeals held that when making an offer of proof, “the party must specify the purpose for which the evidence is offered and give the trial judge reasons why the evidence is admissible” and the reasons must comport with the arguments asserted on appeal.

¶ 17-3-6A. **In the Matter of A.V.**, MEMORANDUM, No. 11-16-00078-CV, 2017 WL 2484348 (Tex. App.—Eastland, 6/8/2017).

**Facts:** This is an appeal from a judgment of disposition in a juvenile delinquency matter involving determinate-sentence offenses. See TEX. FAM. CODE ANN. §§ 53.045(a), 54.04 (West Supp. 2016). After the grand jury approved the juvenile court petition, A.V. pleaded true to allegations that he had engaged in delinquent conduct by engaging in organized criminal activity and by committing the offenses of aggravated robbery, and the trial court adjudicated A.V. See id. § 53.045. Several weeks later, a jury was empaneled for the disposition hearing. The jury found that A.V. was in need of rehabilitation or that disposition was required to protect either A.V. or the public. See id. § 54.04(a), (c). The jury sentenced A.V. to commitment in the Texas Juvenile Justice Department with a possible transfer to the Texas Department of Criminal Justice for a term of thirty years, and the trial court entered a judgment of disposition based on the jury’s verdict. See id. § 54.04(d)(3). We affirm.

In his first issue, A.V. complains that the trial court erred when it sustained the State’s objection and refused to admit an expert report into evidence.

**Held:** Affirmed

**Memorandum Opinion:** During A.V.’s disposition hearing, A.V. offered into evidence a letter prepared by a psychiatrist who was appointed by the trial court as an expert to assist in the preparation of A.V.’s defense. A.V. did not call the psychiatrist to testify at trial but, instead, offered the psychiatrist’s letter into evidence during the testimony of the chief juvenile probation officer. The letter, which was addressed to A.V.’s attorney, contained the psychiatrist’s findings based upon his initial consultation with A.V. The trial court sustained the State’s hearsay objection, and A.V. later made an informal bill of exception or offer of proof as to the excluded exhibit. A.V. explained to the trial court that the exhibit was admissible because it was authenticated by the probation officer and because she had a copy of it in her file.

A.V. argues on appeal that the letter constitutes an expert report of a professional consultant under Section 54.04(b) and that, therefore, the hearsay rules do not apply.3 As a prerequisite to presenting a complaint for appellate review, the record must show that the appealing party “stated the grounds for the ruling that [he] sought from the trial court with sufficient specificity to make the trial court aware of the complaint.” TEX. R. APP. P. 33.1(a)(1)(A). To complain on appeal about the trial court’s exclusion of evidence, the proponent “must have told the judge why the evidence was admissible” and must have brought to the trial court’s attention the same complaint that is being made on appeal. Reyna v. State, 168 S.W.3d 173, 177 (Tex. Crim. App. 2005). To have evidence admitted under a hearsay exception, the proponent of the evidence must specify at trial the exception upon which he is relying. Willover v. State, 70 S.W.3d 841, 845 (Tex. Crim. App. 2002). Additionally, to properly preserve an issue, the arguments asserted by the proponent of the evidence at trial must comport with the arguments asserted on appeal. In re C.Q.T.M., 25 S.W.3d 730, 738 (Tex. App.–Waco 2000, pet. denied). And, when making an offer of proof, “the party must specify the purpose for which the evidence is offered and give the trial judge reasons why the evidence is admissible.” Id. at 737 (quoting Cont’l Coffee Prods. Co. v. Cazarez, 903 S.W.2d 70, 80 (Tex. App.–Houston [14th Dist.] 1995), rev’d in part on other grounds, 937 S.W.2d 444 (Tex. 1996)).

**Conclusion:** Because A.V. did not at any point explain to the trial court why the hearsay rule did not apply in this case or state that it was A.V.’s position that the exhibit was admissible under Section 54.04(b), he has not preserved this issue for review. We overrule A.V.’s first issue.