Affirmed and Opinion filed April 5, 2001.

In The

Fourteenth Court of Appeals

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NO. 14-99-00864-CR

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ABRAM R. ARBRY, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 176th District Court
Harris County, Texas
Trial Court Cause No. 799,508

M E M O R A N D U M O P I N I O N

The parties are already familiar with the background of the case and the evidence adduced at trial; therefore, we limit recitation of the facts. We issue this memorandum opinion pursuant to Texas Rule of Appellate Procedure 47.1 because the law to be applied in the case is well settled.

Background

Appellant was arrested for sale of crack cocaine to an undercover officer. Appellant was charged with delivery of a controlled substance, less than one gram. During a routine jail

search, a crack pipe was found in appellant's possession. At trial, over appellant's objection, the court admitted evidence of the crack pipe. On appeal, appellant claims the trial court erred in admitting evidence of the crack pipe because it was irrelevant and its probative value was substantially outweighed by the danger of unfair prejudice. Appellant also contends he was denied the right to an impartial judge in that the judge assisted the prosecutor by reminding her to offer exhibits into evidence. We affirm.

Evidence of Crack Pipe

In two issues, appellant argues that testimony about the crack pipe found on his person was irrelevant to the charged offense of delivery of a controlled substance. The first time the evidence was introduced, appellant stated, "I want to lodge my objection to any extraneous conduct evidence specifically." He also objected that the probative value of the evidence was "outweighed" by its prejudicial effect. However, later, without objection by appellant, at least two other witnesses testified about appellant's possession of the crack pipe. Assuming, then, that the evidence was inadmissible under either of the grounds urged earlier, appellant has waived his earlier objection.[1] *Massey v. State*, 933 S.W.2d 141, 149 (Tex. Crim. App. 1996) (holding that if a defendant objects to the admission of evidence but the same evidence is subsequently introduced from another source without objection, the defendant waives his earlier objection). Therefore, any error that might have occurred in initially admitting evidence of the crack pipe was waived when appellant failed to object to the subsequent admission of the same evidence. Appellant's evidence issues are overruled.

[1] Appellant claims, without support, that he had a running objection to this testimony. We see no place in the record where appellant was granted a running objection. Still, a running objection does not preserve error when, as here, another witness testifies to the same matter without objection. *Sattiewhite v. State*, 786 S.W.2d 271, 283 n. 4 (Tex. Crim. App. 1989); *Goodman v. State*, 701 S.W.2d 850, 863 (Tex. Crim. App. 1985).

Impartial Judge

Next, appellant claims he was denied his right to an impartial judge when, near the beginning of the punishment hearing, the court asked the state, "You want to present some evidence? You have some stipulations?" The state then offered evidence of appellant's prior convictions. Appellant made no mention at the time that he believed the judge was not being impartial. Instead, without voicing any type of objection to the comment or the evidence, appellant stipulated to the convictions and agreed to their admission. The state argues that because appellant failed to complain to the trial court, his complaint is waived. We agree. It was incumbent on appellant, at the time of the court's alleged misstep, to have asked the court to correct itself, ask for a mistrial, or seek some other appropriate ruling. Because he did not, appellant's issue is not preserved for review. TEX. R. APP. P. 33.1. We therefore overrule this issue.[2]

The judgment of the trial court is affirmed.

/s/ Don Wittig
Justice

Judgment rendered and Opinion filed April 5, 2001.

Panel consists of Justices Yates, Wittig, and Frost.

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[2] We should note that the trial court is required to exercise reasonable control over the mode and order of presenting evidence. TEX. R. EVID. 611. The court's comment was made well within that prescribed duty and there is nothing to indicate the comment was directed toward anything other than that end. *See Billings v. State*, 725 S.W.2d 757, 763 (Tex. App.—Houston [14th Dist.] 1987, no pet.) (to constitute reversible error, a comment by the trial judge must be calculated to injure the rights of the accused or it must appear from the record that the accused has not had a fair and impartial trial); *cf. Rodela v. State*, 829 S.W.2d 845, 850 (Tex. App.—Houston [1st Dist.] 1992, pet. ref'd) (comment that "I don't know if you need to do that anymore for appellate purposes" did not benefit state or prejudice defendant).