

Affirmed and Opinion filed May 3, 2001.



In The

Fourteenth Court of Appeals

NO. 14-98-01439-CR

BRYAN MCKEITH BUSH, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 185th District Court
Harris County, Texas
Trial Court Cause No. 744,376**

O P I N I O N

A jury found appellant, Bryan McKeith Bush, guilty of aggravated robbery, and the trial court assessed punishment at seventy-five years' imprisonment. Bush appeals in two points of error, contending that (1) the trial court erred in overruling his objection to venire member John Thomas Duke; and (2) the trial court erred in permitting evidence of extraneous offenses.

BACKGROUND

A grocery shopper left a Houston supermarket one night and noticed Bush standing next to a Nissan car. As the shopper loaded his pickup truck with his groceries, Bush approached him and forced him into the pickup truck at gunpoint. They drove approximately a mile away,

where Bush instructed the shopper to leave his wallet on the passenger seat and to get out of pickup truck. After the shopper complied, Bush drove away, and the shopper ran to a nearby gasoline station for help.

The shopper described Bush to the police and also told him that he believed Bush's Nissan car was parked at the supermarket. The police located the car, which had Louisiana license plates, and towed it. Two or three months later, police in Louisiana confirmed that the Nissan car in Houston police custody had been stolen. Inside the Nissan was a cellular telephone, and its usage records showed that the night the car had been stolen, it was used to call a Ms. Tina Lensey in Houston. Ms. Lensey, who was Bush's girlfriend, confirmed that he called her several times as he drove home from Louisiana.

Although police recovered the shopper's stripped pickup truck from a ditch near Bush's house just two weeks after the robbery, they did not show him a photographic lineup until after they received the information from Ms. Lensey. The shopper picked Bush's picture from the photographic lineup.

VENIRE MEMBER

In his first point of error, Bush contends that the trial court erred in overruling his objection that a venire member be struck for cause. During voir dire, venire member John Thomas Duke revealed that he knew the prosecutor for the State. At the bench, Mr. Duke revealed that his son and the prosecutor's brother were best friends. The lawyers for both sides then questioned him further:

DEFENSE COUNSEL: Do you think that relationship would cause you to believe her and her side more just because of the relationship?

MR. DUKE: Honestly, I don't know.

DEFENSE COUNSEL: You think you could be fair or are you not sure?

THE COURT: We need a definite answer.

MR. DUKE: I would say it possibly wouldn't. When you're sitting there and watching drama and stuff, things do change.

.....

PROSECUTOR: If I don't prove to you my case beyond a reasonable doubt, you are not going to find him guilty just because it's me up here, are you?

MR. DUKE: No.

THE COURT: You can be fair and listen to the evidence and base your verdict wholly and solely on the evidence you see and the law that the Court is going to give you?

MR. DUKE: Correct.

The court then overruled Bush's objection for cause to Mr. Duke, and Bush used a peremptory challenge to strike him.

To preserve error regarding failure to strike a venire member for cause, Bush must demonstrate on the record that: (1) he asserted a clear and specific challenge for cause, clearly articulating the grounds therefor; (2) he used a peremptory challenge on that juror; (3) he exhausted all his peremptory challenges; (4) the court denied a request for additional strikes; and (5) that an objectionable juror sat on the case. *Hughes v. State*, 878 S.W.2d 142, 151 (Tex. Crim. App. 1992). Bush failed to meet all these requirements. Accordingly, he has waived any error.

EXTRANEOUS OFFENSE EVIDENCE

In his second point of error, Bush argues that trial court erred in permitting the State to offer evidence of an extraneous offense because it was not part of an indivisible criminal transaction. The State offered the testimony of Bush's girlfriend, Tina Lensey, that he called her numerous times on a cellular telephone en route from Louisiana the night before this aggravated robbery. He told her that he was returning from picking up his car. The State also offered the testimony of Suzanne Walker, the Louisiana owner of the Nissan car that Houston police had towed from the supermarket's parking lot. She said that her car, with her cellular telephone inside, had been stolen. The telephone had been used numerous times to call Ms. Lensey's number in Houston.

Before the State called either of these women as witnesses, Bush objected that he had

not been given proper notice of the State's intent to use evidence of an extraneous offense. He also objected that the testimony would be highly inflammatory and prejudicial. However, Bush did not argue on the record that the evidence should be excluded under Texas Rule of Evidence 404, which addresses evidence of other crimes, wrongs, or acts. His argument on appeal is that the evidence of the extraneous offense was not admissible under Rule 404 as part of the same criminal transaction as this aggravated robbery. An objection on appeal must comport with the legal objection made at trial to preserve error for our review. *Penry v. State*, 903 S.W.2d 715, 729 (Tex. Crim. App. 1995). Because Bush's objections at trial differ from his objection on appeal, we cannot address the merits of his second point of error.

Because neither of Bush's points of error have been preserved for appeal, we affirm the trial court's judgment.

/s/ Ross A. Sears
 Justice

Judgment rendered and Opinion filed May 3, 2001.

Panel consists of Justices Sears, Draughn, and Hutson-Dunn.*

Do Not Publish — TEX. R. APP. P. 47.3(b).

* Senior Justices Ross A. Sears, Joe L. Draughn, and D. Camille Hutson-Dunn sitting by assignment.