Affirmed and Opinion filed October 26, 2000.

In The

Fourteenth Court of Appeals

———————————

NOS. 14-99-00640-CR & 14-99-00641-CR

———————————

CHRISTINA YVETTE WATSON, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the County Criminal Court at Law Number 12
Harris County, Texas
Trial Court Cause Nos. 98-44027 & 98-44028

O P I N I O N

Appellant, Christina Yvette Watson, appeals her convictions by a jury for public lewdness and violating the Houston sexually-oriented enterprise ordinance. In her sole point of error, appellant contends the trial court erred in denying her challenge for cause to a veniremember who allegedly stated he would require appellant to prove her innocence. We affirm.

Appellant was employed as a topless dancer at an adult night club in Houston. Mark Bedingfield, a Houston police officer assigned to the vice squad, received an anonymous complaint concerning possible illegal activity at appellant's place of employment. On October 28, 1998, Officer Bedingfield and another

officer, Kevin Jones, went to the night club in an undercover capacity. While in the night club, appellant approached the officers and offered to perform a table dance for Officer Bedingfield. Officer Bedingfield agreed and appellant disrobed, exposing her breasts. During the course of her performance, appellant simulated a sexual act by rubbing her buttocks on Officer Bedingfield's clothed genitals. On October 30, 1998, appellant was charged with the misdemeanor offenses of public lewdness and unlawfully acting as an entertainer at a sexually oriented enterprise.

In her sole point of error, appellant contends the trial court erred in refusing to sustain her challenge for cause of one veniremember. Error, if any, was preserved because: (1) the trial court denied appellant's challenge for cause of the veniremember in question; (2) appellant requested additional peremptory strikes; (3) appellant reiterated her objection to the veniremember; and (4) appellant was then forced to take the identified, objectionable juror whom she would not otherwise have accepted had the trial court granted her challenge for cause or her request for additional peremptory strikes. *See McFarland v. State*, 928 S.W.2d 482, 508 (Tex. Crim. App. 1996).

Appellant asserts that the objectionable juror, venireperson number 13, stated he would require appellant to prove her innocence. Appellant's contention is based on the following exchange:

> MR. NUGENT [appellant's trial counsel]: [Venireperson no. 13], do you think she must have done something or she wouldn't be here?
>
> VENIREPERSON NO. 13: I would assume she's done something to be here. Now, what, I don't know. Without evidence or proof, something I could read, I wouldn't have the slightest idea.
>
> MR. NUGENT: How about you, [Venireperson no. 12], do you think she must have done something or she wouldn't be here?
>
> VENIREPERSON NO. 12: I would have to agree with that.
>
> MR. NUGENT: And you'll require me to kind of show you she didn't do something?
>
> VENIREPERSON NO. 12: Right. You would have to convince me that she didn't do anything wrong.
>
> MR. NUGENT: And that's the way you feel, [Venireperson No.13]?
>
> VENIREPERSON NO. 13: Yes.

> MR. NUGENT: You would want me to show you she didn't do something wrong?
>
> VENIREPERSON NO. 13: You probably couldn't show me, but whoever have the evidence. Only thing you could do is what she brought you.

At no time during this exchange did venireperson number 13 unequivocally say he would require appellant to "prove her innocence." Furthermore, at the conclusion of appellant's voir dire examination, the venireperson asked for, and was given, the opportunity to make a statement:

> THE COURT: Mr. Charles, I'm going to let you make your statement. You had something you wanted to tell us.
>
> VENIREPERSON NO. 13: The only thing I was going to say is—only thing I was going to say is that location and the source brings about the situations people end up in. That's about it. The location and association put you in situations. If I'm in a part-time job, get a part-time job in something else where I won't be exploited by society. That's my personal opinion.
>
> THE COURT: Okay. I think I understand now. Is there anything about your thought on that that's going to prevent you from being fair to Ms. Watson in the trial?
>
> VENIREPERSON NO. 13: No, not at all. All I'm saying is that there won't be nothing unfair about this. But I have a daughter and, you know, my daughter work a part-time job, she can go to Compaq Computer, something like that.
>
> COURT: And I think Mr. Nugent talked about that with several people and said, "I wouldn't want my daughter to do it." But the issue is, can you be fair to this young lady?
>
> VENIREPERSON NO. 13: Sure.
>
> COURT: All right.
>
> VENIREPERSON NO. 13: When I have the information and complete detail, yes.

Moreover, the trial court began the voir dire examination by querying the venire on the presumption of innocence. Venireperson number 13 said, when asked by the court, that he could presume appellant's innocence.

The denial of a challenge for cause is within the discretion of the trial court and will not be overturned absent an abuse of that discretion. *See Ladd v. State*, 3 S.W.3d 547, 559 (Tex. Crim. App. 1999); *Banda v. State*, 890 S.W.2d 42, 53 (Tex. Crim. App. 1994). We are required to examine the record as a whole to determine whether it supports the trial court's decision. *See Ladd*, 3 S.W.3d at 559. We are also directed to give great deference to the trial court. *See id*. The trial court is able to consider factors such as demeanor and inflection that are not found in the record. *See id*. This deference is most appropriate when this Court is faced with a vacillating or equivocating venireperson. *See id*.

Here, the venireperson's statements are ambiguous. In fact, appellant's counsel admitted he did not understand the venireperson's position:

> MR. NUGENT: Judge, I would renew my challenge for cause. I'm not sure what he was saying. He was saying something about location and maybe I'm missing something, but I didn't understand. I understood the words he was using. I didn't understand what he was trying to say.

However, the venireperson did respond affirmatively when asked if he could properly apply the presumption of innocence. He also stated he could be fair to appellant. Although appellant's counsel had ample opportunity during voir dire to exact a clear statement of prejudice or predisposition from the prospective juror, he failed to do so.

On this record, the trial judge could have reasonably concluded the veniremember would faithfully apply the presumption of innocence to appellant. We defer to the trial court's judgment in overruling appellant's challenge for cause. Appellant's sole point of error is overruled.

/s/ J. Harvey Hudson
Justice

Judgment rendered and Opinion filed October 26, 2000.

Panel consists of Chief Justice Murphy and Justices Amidei and Hudson.

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