Affirmed and Opinion filed November 18, 1999.

In The

Fourteenth Court of Appeals

NO. 14-97-01045-CR

LARRY ELLISON SHEFFIELD, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 411th District Court
Trinity County, Texas
Trial Court Cause No. 8105

O P I N I O N

A jury found Larry Ellison Sheffield, appellant, guilty of capital murder, and the trial court assessed his punishment at life imprisonment. In seven issues, appellant contends: (1) & (2) the evidence is legally and factually insufficient to sustain his conviction; (3) he received ineffective assistance of counsel; (4) the trial court erred in admitting evidence of unadjudicated extraneous offenses; (5) the trial court erred in admitting DNA evidence; (6) the trial court erred in admitting bloodstain evidence because there was a break in the chain of custody of the evidence; and (7) the trial court erred in admitting testimony of John Shields, co-defendant, who was granted immunity in exchange for his testimony. We affirm.

I. FACTUAL BACKGROUND.

On March 13, 1996, appellant drove a stolen 1995 Dodge flatbed truck to Moscow, Texas, to visit with James Duncan (James, Sr.) and his son, James Rayburn Duncan (James, Jr.). Appellant was driving, and John Shields was his only passenger. On arriving in Moscow, appellant borrowed $5.00 and an MK-3 military knife in a canvas scabbard from James, Jr. Appellant and Shields then drove toward Leggett and picked up the victim, Ralph Eddie Rose (Rose). Shortly thereafter, appellant stopped at Linda's liquor store beside the Neches river. While appellant and Shields waited for Rose in the truck, Rose went in and bought a fifth and a pint of whiskey. Rose paid the store clerk, Tammy Mayberry, for the whiskey with a twenty-dollar bill, and then put the change in his sock. Rose told Ms. Mayberry that if "they" wanted to take it, they would have to "hunt for it." After Rose bought the whiskey, he returned to the truck, and the trio headed down a dirt road beside the liquor store to an area by the Neches River to drink. Although it was not a designated camping/picnic area, the area was generally used for camping, fishing, and car parking.

Appellant, Shields, and Rose were sitting on bed of the truck drinking beer and whiskey when Eric Herrell (Eric) and David Hubbard (David) walked up, and joined them. Eric and David had been camping out, and saw appellant drive into the area. The five men drank and smoked marijuana for a while, and David's brother, Spencer Hubbard (Spencer), arrived in another truck driven by his father. Spencer's father left, and he and his brother, David, and Eric then drove off to get some groceries and beer. On the way back to the camping area, the trio stopped at Linda's liquor store. Eric got out and walked down the road to the camping area, and observed a Dodge truck parked with the brake lights on. Shields was sitting in the driver's seat, and Eric walked up to the passenger side of the truck and briefly talked to Shields. About this time, Eric observed appellant coming out of the woods, and running toward the truck at "about a half trot." Eric observed that appellant had a military type knife in his hand that appeared wet. Eric said appellant had a "real crazy

look to him." At about this time, Spencer and David were driving back down the hill from Linda's liquor store toward the camping area. Spencer parked the truck and also observed appellant walking fast toward the Dodge truck. Spencer could only see appellant's chest, and did not know if appellant had a knife. Appellant told Eric that he and Shields had to go, and Shields drove the Dodge truck from the camping area.

After appellant and Shields left, Eric went down toward the river and found Rose. Rose had three penetration wounds in his back, one in his side, and his throat was cut. Eric called out to Spencer and David and told them to call 911. Eric dragged Rose toward the road, and attempted CPR because Rose was still alive. Rose died at the scene without saying anything to Eric.

On the way out of the camping area, appellant and Shields stopped at Linda's liquor store and bought a case of beer. Ms. Mayberry waited on them, and noticed that Rose was not with them when they bought the beer at the drive-through window. Shields was driving, and paid for the beer with a twenty-dollar bill. About five minutes later, Spencer and David arrived and told Ms. Mayberry to call 911 because there had been a stabbing. Ms. Mayberry immediately called the sheriff's department and reported the incident.

When Sheriff Brent Phillips arrived at the scene, Rose was dead, and Eric was holding Rose's head in his lap. After taking statements from Eric, Spencer, and David, the sheriff sent the description of the Dodge truck, appellant, and Shields to other police agencies asking their assistance in detaining appellant and Shields as possible suspects in Rose's murder. Officer Mike Farrar, Corrigan Police Department, received the dispatch and apprehended appellant and Shields at a truck stop.

Shields was granted immunity from prosecution for capital murder in exchange for his testimony. He stated that Rose told them that Rose's brother had given him (Rose) $100.00 that morning. After the three men stopped in the camping area, David and Eric came up to the Dodge truck, and all five of them drank, visited, and smoked marijuana.

After David and Eric left with Spencer, Shields fell asleep in the Dodge truck. Shields stated that the next thing he remembered was appellant handing him the knife and telling him to put it in the glove box. He stated the knife appeared to have a sticky substance on it.

II. LEGAL AND FACTUAL SUFFICIENCY OF THE EVIDENCE.

In issues one and two, appellant contends the evidence is legally and factually insufficient to sustain his conviction. Appellant argues the evidence fails to establish the commission of a robbery at the time of the murder, and the DNA evidence was inadmissible. He argues that without the DNA evidence, the remaining evidence is insufficient to prove all the elements of capital murder.

As to the use of the DNA evidence in assessing the sufficiency of the evidence to support conviction, a reviewing court must consider all evidence which the jury was permitted, whether rightly or wrongly, to consider. *Thomas v. State,* 753 S.W.2d 688, 695 (Tex.Crim.App. 1988); *Beltran v. State,* 728 S.W.2d 382, 389 (Tex.Crim.App.1987); *Porier v. State,* 662 S.W.2d 602, 605-606 (Tex.Crim.App.1984). In the event a portion of this evidence was erroneously admitted, the accused may complain on appeal of such error. *Thomas,* 753 S.W.2d at 695. If his complaint has merit and the error is reversible, a new trial should be ordered. *Id.* But jurors do not act irrationally taking such evidence into account, since they are bound to receive the law from the trial judge. *Id.* All evidence which the trial judge has ruled admissible may therefore be weighed and considered by the jury, and a reviewing court is obliged to assess the jury's factual findings from this perspective. *Id.*

In reviewing the legal sufficiency of the evidence, we consider all the evidence, both State and defense, in the light most favorable to the verdict. *Houston v. State*, 663 S.W.2d 455, 456 (Tex. Crim. App. 1984); *Garrett v. State*, 851 S.W.2d 853, 857 (Tex. Crim. App. 1993). In reviewing the sufficiency of the evidence in the light most favorable to the verdict

or judgment, the appellate court is to determine whether any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979); *Ransom v. State*, 789 S.W.2d 572, 577 (Tex. Crim. App. 1989), *cert. denied*, 110 S.Ct. 3255 (1990). This standard is applied to both direct and circumstantial evidence cases. *Chambers v. State*, 711 S.W.2d 240, 245 (Tex. Crim. App. 1986). The jury is the exclusive judge of the facts, credibility of the witnesses, and the weight to be given to the evidence. *Chambers v. State*, 805 S.W.2d 459, 462 (Tex. Crim. App. 1991). In conducting this review, the appellate court is not to re-evaluate the weight and credibility of the evidence, but acts only to ensure the jury reached a rational decision. *Muniz v. State*, 851 S.W.2d 238, 246 (Tex. Crim. App. 1993); *Moreno v. State*, 755 S.W.2d 866, 867 (Tex. Crim. App. 1988). In making this determination, the jury can infer knowledge and intent from the acts, words, and conduct of the accused. *Dues v. State*, 634 S.W.2d 304, 305 (Tex. Crim. App. 1982).

Under *Clewis v. State*, 922 S.W.2d 126, 133 (Tex. Crim. App. 1996), a court of appeals reviews the factual sufficiency of the evidence when properly raised after a determination that the evidence is legally sufficient. *Id.* In conducting a factual sufficiency review, the court of appeals views all the evidence without the prism of "in the light most favorable to the prosecution" and sets aside the verdict only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. *Id.* In conducting a factual sufficiency review, the court of appeals reviews the fact finder's weighing of the evidence and is authorized to disagree with the fact finder's determination. *Id.* This review, however, must be appropriately deferential so as to avoid an appellate court's substituting its judgment for that of the jury. *Id.* If the court of appeals reverses on factual sufficiency grounds, it must detail the evidence relevant to the issue in consideration and clearly state why the jury's finding is factually insufficient. *Id.* The appropriate remedy on reversal is a remand for a new trial. *Id.*

As to appellant's claim that the evidence fails to establish the commission of a robbery at the time of the murder, the record reveals that Rose's brother, Buford, testified that he put a $100.00 bill in the victim's billfold before he dropped him off on the highway to hitchhike toward Lufkin. Buford Rose said his brother had a few one-dollar bills in his wallet. Texas Ranger Don Morris testified as to the money received by appellant and money spent, and his chart demonstrating appellant's receipts and expenditures was placed in evidence. The evidence showed that appellant received $50.00 from James Duncan, Sr., out of which he gave $25.00 to James, Jr., on March 12. On March 13, appellant received $5.00 from James, Jr., and Rose gave him $5.00 for liquor. Out of the $35.00 appellant had received, he spent $36.10 on liquor and tobacco, putting him $1.10 "in the hole." When appellant was arrested, the officers found $61.77 on his person. Ranger Morris concluded that appellant could not account for a total of $64.87. Ranger Morris calculated that $76.00 of Rose's money was never found.

Deputy Steptoe was in charge of investigating the scene, and he testified that Rose's wallet was found in Rose's left rear pocket. Upon examination, the wallet contained no money. $5.30 in two, one-dollar bills and change, was found in the area. Also recovered at the scene was the canvas knife scabbard that fit the murder weapon. Steptoe stated that Rose only had one shoe on, and one of his pockets had been pulled inside out.

The evidence further shows that immediately after appellant came out of the woods, he got in the truck and told Eric they had to leave. On the way out of the camping area, appellant and Shields stopped at Linda's liquor store and bought a case of beer. Shields gave Ms. Mayberry a twenty-dollar bill to pay for the beer.

When he observed appellant coming out of the woods, Eric stated appellant had a knife in his hand that appeared wet. Appellant gave the knife to Shields to put in the glove compartment. Shields stated the knife had a sticky substance on it. The DNA testimony

of the experts and the reports placed into evidence, proved that Rose's blood was on appellant's knife and his jeans.

Appellant argues that there are numerous conflicts and inconsistencies in the record. The jury may resolve conflicts in the evidence, accept one version of the facts, disbelieve a party's evidence, and resolve any inconsistencies in favor of either party. *McIntosh v. State*, 855 S.W.2d 753, 763 (Tex.App.--Dallas 1993, pet. ref'd). The jurors are also entitled "to draw reasonable inferences from basic facts to ultimate facts." *Id.* The jury may use common sense and apply common knowledge, observation, and experience gained in the ordinary affairs of life when giving effect to the inferences that may reasonably be drawn from the evidence. *Wawrykow v. State*, 866 S.W.2d 87, 88-89 (Tex.App.--Beaumont 1993, pet. ref'd). If conflicting inferences exist, we must presume the trier of fact resolved any conflict in favor of the prosecution. *Turro v. State*, 867 S.W.2d 43, 47(Tex.Crim.App.1993). *See also Griffith v. State*, 976 S.W.2d 686, 690(Tex.App.-Tyler 1997, no pet.).

Based on the record before us, we find that the evidence considered in the light most favorable to the verdict, is legally sufficient to sustain appellant's conviction beyond a reasonable doubt. We further find that the evidence is factually sufficient and not so "contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust." *Clewis*, 922 S.W.2d at 129. Appellant's first and second issues are overruled.

III. THE DNA EVIDENCE

In issue five, appellant contends that the trial court erred in admitting the DNA evidence. He argues that the expert's testimony as to the DNA evidence should not have been admitted because it was not proven to be relevant and reliable.

Under Rule of Criminal Evidence 702, the trial court's task is to determine whether proffered scientific evidence is sufficiently reliable and relevant to assist the jury. *Jordan v. State*, 928 S.W.2d 550, 553-554 (Tex.Crim.App.1996); *Kelly v. State*, 824 S.W.2d 568,

573 (Tex.Crim.App.1992). The proponent of scientific evidence proves its reliability by showing (1) the validity of the underlying scientific theory; (2) the validity of the technique applying the theory; and (3) proper application of the technique on the occasion in question. *Kelly,* 824 S.W.2d at 573. *Kelly* emphasized that these three criteria must be proven to the trial court outside the presence of the jury before the evidence in question is admissible. *Id*. The "overarching" concern under Rule 702 is the scientific validity of the evidence; its reliability depends upon whether it is rooted in sound scientific methodology. *Jordan*, at 554-55. The trial court is the sole judge of the weight and credibility of the evidence pertaining to the admissibility of scientific evidence, and we review the evidence in the light most favorable to the trial court's ruling. *Id.* at 574.

Out of the presence of the jury, the State conducted extensive examination of two DNA expert witnesses: Donna Stanley and Meghan Clement. Donna Stanley was the Department of Public Safety (DPS) serologist who made the initial DNA test on the blood samples from appellant's knife and jeans. She worked in this capacity with the DPS for eleven years. She testified generally as to the methodology of DNA analysis, and how blood was tested and analyzed. She stated that DNA testing is a highly accurate technique to determine the identity of the blood donor. She further testified that DNA theory and technique is widely accepted as being highly accurate by the scientific community. The basic theory of DNA is that each person's DNA is basically different from another person except possibly with regard to identical twins.

Meghan Clement, the technician for the company that conducted the DNA tests for the State, testified at length about the testing procedures employed, as well as the quality and security controls in place. She stated that she has made thousands of tests, and has never had a false match between a known DNA sample and an unknown DNA sample. She opined that the underlying scientific theory and the technique used in DNA testing is highly accurate and reliable. Appellant's trial counsel questioned that part of her DNA report which provided: "Although some of the additional activity fails to meet reporting standards,

Larry Sheffield, Item 19, cannot be excluded as a possible contributor of the additional genetic material in these samples." Ms. Clement stated that there was a "lot of DNA from one donor, and there was a very small amount from the second donor." She stated that samples from the knife and from the jeans showed characteristics which were consistent with characteristics from appellant's blood. Therefore, Ms. Clement concluded that he could not be excluded as a possible contributor of that "minor DNA concentration." Ms. Clement stated that they had no statistical estimates for the minor amount that could have been contributed by appellant. She stated that the statistical estimates reported were only for the major contributor, Rose.

Before the jury was brought in, appellant's trial counsel objected to the DNA testimony being given to jury because the State failed to establish that the scientific testimony was sufficiently reliable and relevant to help the jury in reaching an accurate result in this case. Appellant's trial counsel further objected that the State failed to show that the scientific theory was valid, the technique applied to the underlying DNA theory was valid, and the technique was not properly applied to appellant. He also objected on the grounds that the DNA evidence would tend to confuse or mislead the jury and would be prejudicial to appellant. The trial court overruled appellant's objections and denied his motion to exclude the DNA evidence and found "by clear and convincing evidence that the scientific area upon which the evidence is based is valid, that the technique applying the theory is valid, and the technique was properly applied in this instance." The trial court determined that the requirements of *Kelly* were met, and the DNA evidence should be admitted in evidence to the jury.

The jury was brought in, and the State called Donna Stanley who testified as to her DNA analysis as she did at the voir dire hearing before the trial court. Because Ms. Stanley no longer worked for DPS, Karen Lindell, her successor DPS technician, testified that she performed another DNA test on the knife. She testified that the blood on the knife was consistent with Rose's blood. She did not test the blood on appellant's jeans.

The State called Ms. Clements last who testified at length as to her DNA testing of the blood on the knife and appellant's jeans. She concluded that the major contributor to the blood on the knife and jeans was Rose. Her DNA report reflecting the results of her testing and the statistical probabilities of error (1 in 43,800,000) was placed into evidence. Appellant's trial counsel objected to the report on the grounds it was not reliable, which was overruled by the trial court.

Viewing the evidence in the light most favorable to the trial court's ruling, we hold the trial court did not abuse its discretion in overruling appellant's objections to the admission of the State's DNA evidence on grounds of unreliability and relevancy of the particular testing. The State's experts were qualified in the field, and described and compared the various DNA testing techniques in detail and with clarity. While challenged by appellant's trial counsel, the State's experts met each challenge with reasonable and coherent explanations as to why the test utilized and the results in the instant case should be viewed as reliable. *See Massey v. State*, 933 S.W.2d 141, 152-153(Tex.Crim.App. 1996). Appellant's contention in issue five that the DNA evidence should not have been admitted is overruled.

IV. THE CHAIN OF CUSTODY OF THE BLOOD-STAINED JEANS.

In issue six, appellant complains of the chain of custody pertaining to the blood-stained jeans. More specifically, he contends that the pants labeled as his did not show blood stains, and that the pants labeled as Shields' pants were blood stained. That the changing of the labeling of the pants resulted in undue prejudice to him.

At trial, the State's expert, Donna Stanley, explained that the pants with the blood on them was inadvertently labeled as Shields' pants, rather than appellant's pants on the DPS Physical Evidence Submission Form when they were first delivered to the DPS laboratory by Deputy Richard Steptoe. She confirmed that the DNA on the jeans indicated the blood came from Rose. Appellant's trial counsel stipulated that the jeans with the blood

stains on them belonged to appellant. Ms. Stanley's DNA analysis report and the DPS submission form were changed based on this stipulated testimony to show that appellant's jeans had the blood on them, not Shields' jeans. These reports, showing the corrections, were admitted into evidence by the trial court.

Appellant argues there was a break in the chain of custody, and the blue jeans were "commingled" with Shields' blue jeans which resulted in undue prejudice to the appellant. As stated above, there was some confusion due to the inadvertent mislabeling of appellant's jeans as belonging to Shields. Initially, Deputy Steptoe placed all of appellant's clothing, including his jeans with the blood on them, in a bag and labeled it with an evidence tag which was assigned "S.O. # 6," and later State's exhibit number 69. The tag described the contents as "1 pr Men's Wrangler Jeans, l pr white socks, 1 Black Denim Shirt, 1 Black T-Shirt" and shows that they were removed from appellant. Deputy Steptoe placed all of John Shields' clothes in another bag and labeled it with an evidence tag which was assigned "S.O. # 7," later State's exhibit number 68. The tag described the contents as "1 pr Wrangler 33 x 38 Denim Jeans, Maroon T-Shirt, Men's Blue Boxers, pr Socks, Denim Blue Jean Shirt, Black Cap." At trial, Steptoe testified that he delivered the two evidence bags to DPS for DNA testing. The DPS completed a "Physical Evidence Submission Form" which originally showed Shields' bag of clothing belonging to appellant, and appellant's bag of clothing belonging to Shields. Steptoe positively identified Shields jeans, without the blood, as being the jeans placed in the bag with the evidence tag number S.O. #7, later State's exhibit number 68. He stated that Shields jeans had a tag showing their size as 33 x 38, whereas appellant's jeans had no size tag. Steptoe further testified that the original submission form completed by the DPS was incorrect because the Shields' bag of clothes was shown as belonging to appellant, and appellant's bag of clothes was shown as belonging to Shields. Steptoe further testified that he kept custody of the bags of clothing when they were returned to him from the DPS until the trial.

The State asked John Shields if the size 33 x 38 jeans, without the blood, were his, and he positively identified these jeans as the ones he was wearing on the date of the offense. He also identified all the remaining clothing in S.O. 7, State's exhibit 68, as being his. Appellant presented no evidence at trial to refute the chain of custody. We find nothing in the record indicating any evidence tampering or "commingling." The record shows appellant's clothes remained in the same bag from the time they were put in the bag labeled S.O. # 6, State's exhibit number 69, delivered to DPS, returned to the sheriff's office, and introduced into evidence at trial. The only error was the mislabeling on the DPS submission form which was explained to the jury, and properly corrected. Appellant's complaint is without merit, and issue six is overruled.

V. INEFFECTIVE ASSISTANCE OF COUNSEL.

In issue three, appellant contends he received ineffective assistance of counsel for the following reasons:

1. Counsel failed to object to the State's motion to amend the indictment to delete the words "and knowingly."

2. Counsel failed to object to Sheriff Phillips' testimony regarding charging appellant with unauthorized use of a motor vehicle.

3. Counsel failed to object to the admission of the blood stain evidence on appellant's jeans after the mislabeling was discovered.

4. Appellant further contends his trial counsel was ineffective for failing to get a ruling from the trial court on numerous pre-trial motions.

5. Appellant further complains of numerous "unobjected errors" by his trial counsel but does not cite to the record any instances of claimed ineffective assistance.

The U.S. Supreme Court established a two-prong test to determine whether counsel is ineffective at the guilt/innocence phase of a trial. First, appellant must demonstrate that counsel's performance was deficient and not reasonably effective. Second, appellant must demonstrate that the deficient performance prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052 (1984). Essentially, appellant must show (1) that his counsel's representation fell below an objective standard of reasonableness, based on prevailing professional norms, and (2) that there is a reasonable probability that, but for his counsel's unprofessional errors, the result of the proceeding would have been different. *Id*; *Hathorn v. State,* 848 S.W.2d 101, 118 (Tex. Crim. App. 1992), *cert. denied,* 113 S.Ct. 3062 (1993). A reasonable probability is defined as probability sufficient to undermine confidence in the outcome. *Miniel v. State*, 831 S.W.2d 310, 323 (Tex. Crim. App. 1992).

Judicial scrutiny of counsel's performance must be highly deferential. A court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance. *Strickland*, 466 U.S. at 689. An ineffectiveness claim cannot be demonstrated by isolating one portion of counsel's representation. *McFarland v. State*, 845 S.W.2d 824, 843 (Tex. Crim. App. 1993). Therefore, in determining whether the *Strickland* test has been met, counsel's performance must be judged on the totality of the representation. *Strickland*, 466 U.S. at 670. The defendant must prove ineffective assistance of counsel by a preponderance of the evidence. *Cannon v. State,* 668 S.W.2d 401, 403 (Tex. Crim. App. 1984).

In any case analyzing the effective assistance of counsel, we begin with the presumption that counsel was effective. *Jackson*, 877 S.W.2d at771. We assume counsel's actions and decisions were reasonably professional and that they were motivated by sound trial strategy. *Id.* Moreover, it is the appellant's burden to rebut this presumption via evidence illustrating why trial counsel did what he did. *Id.* In *Jackson,* the court of criminal appeals refused to hold counsel's performance deficient given the absence of evidence concerning counsel's reasons for choosing the course he did. *Id.* at 772. *See also*

Jackson v. State, 973 S.W.2d 954, 956-957 (Tex.Crim.App.1998) (inadequate record on direct appeal to evaluate that trial counsel provided ineffective assistance).

We address appellant's contentions, as follows:

1. Trial counsel's failure to file a motion to quash or object to the indictment does not constitute ineffective assistance because the indictment was legally sufficient with or without the inclusion of "and knowingly." *East v. State*, 702 S.W.2d 606, 616 (Tex.Crim.App. 1985); *Wilder v. State*, 583 S.W.2d 349, 361. Trial counsel is not ineffective for failure to make meritless objections. *See Tutt v. State*, 940 S.W.2d 114, 118 (Tex.App.--Tyler 1996, pet. ref'd).

2. Trial counsel's failure to object to Sheriff Phillip's testimony that appellant was driving a stolen vehicle is not ineffective assistance of counsel because evidence regarding the circumstances surrounding the arrest of a defendant are admissible. *Couret v. State*, 792 S.W.2d 106,107 (Tex.Crim.App. 1990; *Maddox v. State*, 682 S.W.2d 563 (Tex.Cr.App.1985). Trial counsel is not ineffective for failure to make meritless objections. *Tutt*, 940 S.W.2dat 118.

3. Counsel's failure to object to the admission of the blood stain evidence on the jeans after the mislabeling was discovered is not ineffective assistance of counsel. After Ms. Stanley testified that Shields' jeans had been inadvertently labeled as appellant's jeans, and appellant's jeans labeled as Shields, the trial court admitted the evidence because the confusion was cleared. Furthermore, the record is silent with respect to why trial counsel did not object and we will not speculate on what his trial strategy might have been by not objecting. Trial counsel is not ineffective for failure to make meritless objections. *Tutt*, 940 S.W.2d (1) at 118. *See Jackson v. State*, 877 S.W.2d 768, 771 (Tex.Crim.App.1994)(en banc).

4. Failure to obtain ruling on pre-trial motions. The reasons for not obtaining a ruling are not apparent from the record. We will not speculate on trial counsel's reasons

for not obtaining rulings on the numerous pre-trial motions. *See Jackson*, 877 S.W.2d at 771.

5. Numerous "unobjected errors" of trial counsel. Appellant does not cite to the record any instances of claimed ineffective assistance, and this contention is inadequately briefed and presents nothing for review. TEX. R. APP. P. 38.1(h); *Lawton v. State*, 913 S.W.2d 542, 554 (Tex.Crim.App.1995).

For the reasons stated above under our discussion of appellant's five claims of ineffective assistance, and for lack of a record of trial counsel's reasons for choosing the course he did, we find the first prong of *Strickland* is not met in this case. *Jackson*, 877 S.W.2d at 771; *Jackson*, 973 S.W.2d at 957. We are unable to conclude that appellant's trial counsel's performance was deficient. *Id.* Appellant's contention in issue three is overruled.

VI. FAILURE TO RULE ON MOTION TO EXCLUDE EXTRANEOUS OFFENSES.

In his fourth issue, appellant contends the trial court erred in failing to rule on his motion to exclude extraneous offenses. Appellant's trial counsel filed numerous pretrial motions, one of which was labeled "Motion to Exclude Extraneous Offenses." In that motion, appellant's counsel did not identify what alleged extraneous offenses were the subject of the motion. No order was attached to the motion for the trial court to grant or deny the motion. Nothing in the record indicates appellant's counsel attempted to get any kind of a ruling on this motion. Appellant contends the failure of the trial court to rule on his motion caused extraneous offenses to be admitted into evidence, primarily evidence that he was driving a stolen Dodge truck. Because appellant failed to get any kind of adverse ruling from the trial court on this motion, nothing is preserved for error. TEX. R. APP. P. 33.1(a); *Martinez v. State*, 867 S.W.2d 30, 33 (Tex.Crim.App. 1993), *cert. denied*, 114 S.Ct. 2765(1994). Furthermore, appellant's trial counsel never objected to the admission

of evidence of the stolen Dodge truck, and he has waived error for this reason. TEX.R.APP.P. 33.1(a); *Fleming v. State,* 956 S.W.2d 620, 623 (Tex.App.–Eastland 1997, pet. ref'd).. Moreover, the evidence that appellant picked up Rose in the truck, drove Rose to the murder scene, then drove off in the truck after the murder was not evidence of "extraneous offenses." Those offenses were "contextual evidence" which was "indivisibly connected" to the offense for which appellant was being tried. *See Lockhart v. State,* 847 S.W.2d 568, 571 (Tex.Cr.App.1992; *Fleming,* 956 S.W.2d at 623. Appellant's contention in issue four that the trial court erred in failing to rule on this motion is overruled.

VI. TESTIMONY OF SHIELDS.

In issue seven, appellant contends that the State's grant of immunity from prosecution for capital murder to John Shields in exchange for his testimony somehow violates rule 3.04(b), Texas Rules of Professional Conduct, and/or 18 U.S.C.A. §201(c)(2) (West 1969 & Supp. 1999).

Appellant asks this court to determine if the State's offer of immunity to Shields somehow violates the State Bar Rules and the federal bribery of public officials statute. We decline. We find this point is inadequately briefed and presents nothing for our review. TEX. R. APP. P. 38.1(h); *Dunn v. State,* 951 S.W.2d 478, 480 (Tex.Crim.App.1997). We overrule appellant's contentions in issue seven.

We affirm the judgment of the trial court.

/s/ D. Camille Hutson-Dunn
Justice

Judgment rendered and Opinion filed November 18, 1999.

Panel consists of Justices Draughn, Lee, and Hutson-Dunn[1].

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[1] Senior Justices Joe L. Draughn, Norman Lee, and D. Camille Hutson-Dunn sitting by assignment.