**Affirmed and Opinion filed November 18, 1999.**

**In The**

# Fourteenth Court of Appeals

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**NO. 14-98-00092-CR**

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**CHARLES FELIX BEAN, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 183rd District Court**
**Harris County, Texas**
**Trial Court Cause No. 699,028**

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## O P I N I O N

A jury found Charles Felix Bean guilty of the offense of aggravated robbery, enhanced by two prior felony convictions, and assessed punishment at sixty-one years confinement. In one point of error, appellant claims the trial court erred in admitting, over timely objection, a videotape.

### Statement of Facts

On July 21, 1995, in Harris County, Matt Okemati was working as a manager of

Little Caesar's restaurant. Dedra Nelson was working at the front cash register. She noticed appellant walking back and forth in front of the store, became concerned, and dropped the money from the register into the floor safe. At about six o'clock p.m., appellant came in, jumped over the counter, put a gun in Nelson's face and ordered everybody against the wall. He then pointed the gun at another employee, Aisha Knox, and ordered her to empty the money from the register into a bag. She complied and he then told her to open the safe. Matt Okemati opened the safe and put the money in the bag. A security guard walked past the window and because the employees in the store did not wave to him, he felt something was wrong. Appellant saw the security guard, took his bag, and ran out of the door. As appellant ran out of the door, Matt and the security guard pursued him. Appellant ran into Everhe Williams as he left the store, and Williams also pursued him. Williams saw appellant throw a gun from his brief case as he was running. Deputy Kimberly Mason, on patrol, joined the chase. Appellant was apprehended, handcuffed, and taken into custody.

In his only point of error, appellant claims the trial court erred in admitting a videotape into evidence over his objection. He contends the State failed to lay the proper predicate by failing to prove that the video camera was in good working condition and that there were no alterations, deletions, or omissions in the tape.

Bala Abucakar, an employee of Little Caesar's at the time of the incident, testified that Little Caesar's has a surveillance camera. The camera records events as they occur in the store. The camera is turned on in the normal course of business. He stated that on July 21, 1995, the video camera was in proper working order and capable of recording events as they occurred. He stated that he had seen the videotape from July 21, 1995, and that the videotape, which had been marked State's Exhibit No. 3, fairly and accurately recorded the events as they occurred on July 21, 1995. He testified that the camera tapes one continuous sequence of events as opposed to moving from site to site. On voir dire, defense counsel asked if Abucaker had checked the camera that morning and he said that he had not.

Abucakar testified that when he opens the store in the morning, he checks the video camera. On the day of the robbery, Abucakar did not open the store, so he did not check the video camera. Defense counsel objected as follows:

> MR. MONCRIFFE: Your Honor, I object to that tape coming in through this witness. He cannot verify from his own personal testimony that the camera was in [sic].

The court sustained the objection. The State then continued direct examination as follows:

> Q. (By MS. WILLIFORD) You have had an opportunity to look at State's Exhibit No. 3, the video of the events that occurred, right?
>
> A. Yes, ma'am.
>
> Q. That is the events as you saw them happen in the store, isn't it?
>
> A. Uh-huh.
>
> Q. It's the same thing as a picture, except it's on a videotape?
>
> A. Yes, ma'am.
>
> Q. And is what's depicted on State's Exhibit No. 3 what you saw as it occurred?
>
> A. Yes, ma'am.
>
> MS. WILLIFORD; Your Honor, I will re-offer State's Exhibit No. 3.
>
> (STATE'S EXHIBIT(S) NO. 3 OFFERED)
>
> THE COURT: Objection?
>
> MR. MONCRIFFE: I renew my objection, Your Honor.
>
> THE COURT; On that objection, that's overruled. It will be admitted.

Defense counsel's objection was that the witness could not verify "--from his own personal testimony that the camera was in." He did not object on the basis that there was no testimony that there were no alterations, deletions, or omissions in the tape. Therefore,

he has waived this portion of his complaint. *Barnes v State,* 876 S. W.2d. 316, 325 (Tex. Crim. App. 1990), *cert. denied*, 115 S. Ct. 174 (1994); *Johnson v State*, 803 S. W .2d 272, 293 (Tex. Crim. App. 1990), *cert. denied*, 111 S. Ct. 2914 (1991).

In his second contention, appellant claims the witness "could not verify from his own personal testimony that the camera was in." Giving appellant the benefit of the doubt and assuming, after a careful examination of the record, that appellant's complaint is that the witness could not personally verify that the camera was in good working condition, we will address this portion of appellant's argument.

Appellant cites *Stapleton v. State,* 868 S.W.2d 781, 786 (Tex. Crim. App. 1993), for the proposition that the Rules of Evidence have incorporated the seven-pronged test of *Edwards v. State,* 551 S.W.2d 731 (Tex. Crim. App. 1977). For authentication, pre-rules case law required a party to offer the testimony of a witness with knowledge or to satisfy a seven-pronged test set out in *Edwards,* 551 S.W.2d at 731. *See Kephart v. State,* 875 S.W.2d 319, 320 (Tex. Crim. App. 1994). In *Angleton v. State,* 971 S.W.2d 65, 66 (Tex. Crim. App. 1998), the Court of Criminal Appeals overruled *Kephart*, stating that Rule 901 is straightforward and is the standard by which the court measures authentication.

Texas Rule of Evidence 901(a) provides as follows:

> (a) General Provisions. The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

Although Texas Rules of Evidence 901 and 902 require the testimony of an identifying witness to authenticate a document that is not self-authenticating, Rule 901 does not limit the types of extrinsic evidence that can be used to authenticate a document. *Gibson v State,* 952 S. W.2d 569, 517 (Tex. App.—Fort Worth 1997, pet. ref'd). A

document may be authenticated under either rules 901 or 902, and it need not be authenticated under both. *Spaulding v State*, 896 S. W. 2d. 587, 590 (Tex. App.—Houston [1st Dist.] 1995, no pet.). The requirement of authentication may be satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

The standard of review for a trial court's ruling under one of the rules of evidence is abuse of discretion. *Angleton*, 971 S. W.2d at 67. The trial court did not abuse its discretion under the present record.

The State offered the videotape as an accurate depiction of what took place in the Little Caesar's restaurant the day of the robbery. The authentication requirements of Rule 901 are satisfied by evidence sufficient to support a finding to that effect. Thus, in this case, the authentication question is satisfied by Abucakar's testimony that what was depicted on the videotape was what actually occurred and that the depiction on the tape was a continuous sequence of events (i.e., the events on the tape were not the result of splicing or some other alteration). We hold that in light of this testimony, the trial court did not abuse its discretion in admitting the videotape. Appellant's only point of error is overruled.

The judgment of the trial court is affirmed.

/s/ D. Camille Hutson-Dunn
Justice

Judgment rendered and Opinion filed November 18, 1999.

Panel consists of Justices Yates, Fowler, and Hutson-Dunn.[1]

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[1] Senior Justice D. Camille Hutson-Dunn sitting by assignment.

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