

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-10-00481-CR

DUVAN JOHNSON, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 284th District Court
Montgomery County, Texas
Trial Cause No. 10-02-01143 CR

MEMORANDUM OPINION

In February 2010, Duvan Johnson allegedly robbed and shot a female victim at The Woodlands Mall. Johnson pleaded guilty to aggravated robbery, and the trial court sentenced Johnson to twenty-five years in prison. In one issue, Johnson contends that the trial court abused its discretion by admitting evidence of three other offenses and gang-related activity. We affirm the trial court’s judgment.

During sentencing, Detective Mark Denham testified that Johnson was a “very strong suspect” in an offense that occurred in Shenandoah and that this offense bore similarities to the February Woodlands Mall offense. Detective John Schmitt testified to

another offense in The Woodlands, which occurred in January 2010 and involved a similar method of operation as the February offense. Dahlia Dean testified that, in January 2010, Johnson robbed her at gunpoint and stole her vehicle. On appeal, Johnson contends that the trial court abused its discretion by admitting testimony regarding these three offenses. However, the record does not indicate that Johnson objected to the complained-of testimony. For this reason, Johnson's complaint is not preserved for appellate review. *See* Tex. R. App. P. 33.1(a); *see also* Tex. R. Evid. 103(a)(1); *Ford v. State*, 305 S.W.3d 530, 533 (Tex. Crim. App. 2009); *Martinez v. State*, 22 S.W.3d 504, 507 (Tex. Crim. App. 2000).

Over Johnson's objection, the State also admitted several photographs, which Officer Robert Tagle subsequently testified depict individuals, including Johnson, making gang-related signs and wearing gang-related clothing. Tagle testified that Johnson is a gang member, associates with other gang members, and has a gang-related tattoo. Over Johnson's objection, Tagle testified that the gang in which Johnson is involved engages in criminal activity ranging from a Class C offense to "homicide, aggravated robbery, [and] aggravated assault." On appeal, Johnson contends that the trial court abused its discretion by admitting gang-related evidence. The record indicates that Johnson objected to some, but not all, of the gang-related evidence and did not obtain a running objection to the evidence. Under these circumstances, Johnson's complaint is not preserved for appellate review. *See* Tex. R. App. P. 33.1(a); *see also* Tex. R. Evid.

103(a)(1); *Martinez v. State*, 98 S.W.3d 189, 193 (Tex. Crim. App. 2003); *Rodriguez v. State*, 955 S.W.2d 171, 175 (Tex. App.—Amarillo 1997, no pet.).

We, therefore, overrule Johnson’s sole issue and affirm the trial court’s judgment.

AFFIRMED.

STEVE McKEITHEN
Chief Justice

Submitted on August 30, 2011
Opinion Delivered September 14, 2011
Do Not Publish

Before McKeithen, C.J., Gaultney and Kreger, JJ.