

Affirm and Opinion Filed November 19, 2021



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-19-00371-CR

**CLIFTON DEMONE OWENS, Appellant
V.
THE STATE OF TEXAS, Appellee**

**On Appeal from the Criminal District Court No. 2
Dallas County, Texas
Trial Court Cause No. F-1854331-I**

MEMORANDUM OPINION

Before Justices Molberg, Goldstein, and Smith
Opinion by Justice Molberg

Appellant Clifton Owens was found guilty of aggravated robbery and sentenced to twenty-five years' confinement. In his sole issue on appeal, appellant argues the trial court erred by denying his motion for continuance. Because we conclude that this issue was not preserved for our review, we affirm the trial court's judgment.

I. Background

At trial, the arresting officer testified about the handgun appellant allegedly used to commit the robbery. The officer discovered the firearm during an inventory search of appellant's vehicle. During cross-examination of the officer, defense

counsel examined the weapon, which had been admitted into evidence, and stated that the gun's "barrel is kind of doing some weird things." Defense counsel concluded, "This gun is not operable." He questioned the officer about whether the gun had a stick holding the barrel in place when it was recovered. The officer testified that he did not recall anything holding the barrel in place. Defense counsel questioned him further:

Q. You will agree with me that if the barrel won't stay in place, that's not a functional firearm.

A. If it's in the position it's in right now, no, it's not functional.

The parties then went back and forth questioning the officer about whether an inoperable firearm is a deadly weapon.

After the officer was excused, defense counsel asked the trial court for a continuance so he could hire an expert to examine the handgun:

I feel like I'm in a position to ask for a continuance for an expert. I didn't learn about any possible deficiency on that gun until ten minutes ago. Now I know. We can't seem to get past the impasse who can take the binders off the gun to prove one thing or another. I feel like I'm in a position where I have to ask for a continuance to have an expert examine this gun and testify as to whether or not it's functional. I have a good faith basis for asking this.

The trial court denied appellant's motion, noting that "a firearm is, per se, a deadly weapon." The record before us does not contain a written motion for continuance. And appellant does not contend that he filed a written motion for continuance with the trial court.

II. Analysis

Motions for continuance must be written and sworn. *See* TEX. CODE CRIM. PROC. arts. 29.03, 29.08. Consequently, “an unsworn oral motion preserves nothing for appeal.” *Blackshear v. State*, 385 S.W.3d 589, 591 (Tex. Crim. App. 2012). It is true that a trial court possesses discretion to grant an oral motion for continuance on equitable grounds. *Williams v. State*, 172 S.W.3d 730, 733 (Tex. App.—Fort Worth 2005, pet. ref’d). This Court has previously reviewed denials of such oral motions by construing them as non-statutory and addressed to the equitable powers of the trial court. *See O’Rarden v. State*, 777 S.W.2d 455, 459 (Tex. App.—Dallas 1989, pet. ref’d). But the court of criminal appeals subsequently made clear that there is no “due process” exception “to the preservation requirements governing continuance motions in Articles 29.03 and 29.08.” *Anderson v. State*, 301 S.W.3d 276, 280–81 (Tex. Crim. App. 2009).

Accordingly, we conclude appellant’s oral motion for continuance preserved nothing for our review. *See id.* Appellant’s sole issue is overruled.

III. Conclusion

We affirm the trial court's judgment.

/Ken Molberg/
KEN MOLBERG
JUSTICE

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**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

CLIFTON DEMONE OWENS,
Appellant

No. 05-19-00371-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the Criminal District
Court No. 2, Dallas County, Texas
Trial Court Cause No. F-1854331-I.
Opinion delivered by Justice
Molberg. Justices Goldstein and
Smith participating.

Based on the Court's opinion of this date, the judgment of the trial court is
AFFIRMED.

Judgment entered this 19th day of November, 2021.