

Affirmed and Memorandum Opinion filed February 3, 2011.



In The

Fourteenth Court of Appeals

NO. 14-10-00269-CR

TRONTE SIMPSON, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 183rd District Court
Harris County, Texas
Trial Court Cause No. 1143788**

M E M O R A N D U M O P I N I O N

Appellant Tronte Simpson appeals his conviction for aggravated robbery. In a single issue he contends the trial court erred in admitting evidence of an adjudicated extraneous offense. We affirm.

The complainant, Carnelius Ates, and his brother, Coree Jameson, were washing their cars at a self-service car wash when a driver of another vehicle drove up and attempted to block the complainant's vehicle. The complainant noticed that the passenger in the vehicle was carrying a gun. When the complainant saw the gun he put

his car in reverse and attempted to drive away. Before he could back out of the car wash stall he was shot through the window of his car. He attempted to open the door and get out of his car, but fell on the floor with the door open. The complainant was shot a second time through the open car door. Hoping the gunman just wanted his car, the complainant crawled out of the car and tried to run away. At that time he was shot a third time in the back. After the third shot the complainant was able to hide in a grassy area as the men drove away in the complainant's car. The complainant's brother witnessed the shooting and chased the car. He finally caught up with the car and identified appellant as the gunman.

In his defense, appellant presented evidence of an alibi and denied that he shot the complainant or stole the complainant's car.

The State called Julius Crosby as a rebuttal witness. Crosby testified that several weeks after the complainant was shot, Crosby saw appellant at the Haverstock apartments. While Crosby was at the apartments he heard his car alarm. He looked out the window and saw an individual walking away from his car. Crosby went outside to confront the person whom he identified as appellant. As Crosby approached appellant, appellant pulled out a gun, and said, "You know what it is." Crosby threw appellant his car keys and began to run away. As he was running, appellant shot Crosby in the leg. While Crosby was lying on the ground, appellant walked up to Crosby and pointed the gun at him. Crosby grabbed the gun and began to fight with appellant in an attempt to take the gun. After fighting with appellant Crosby was able to get away and began to flee. As he was running away, appellant shot him twice in the back.

On redirect examination, the prosecutor asked Crosby how long it took to fully recuperate from his gunshot wounds. Appellant objected at that time to the "line of questioning" as having been "about an extraneous offense that's not about proving up the whole case against Mr. Simpson at this time." The trial court sustained appellant's objection and the State passed the witness. Appellant did not request that the jury be instructed to disregard evidence of the extraneous offense, nor did he request a mistrial

after the trial court sustained his objection.

On cross-examination following his objection, appellant's attorney questioned Crosby about prior adjudicated offenses, his residence at the time of the offense, and whether he knew the complainant and his brother.

In a single issue, appellant contends the trial court erred in admitting Crosby's testimony about the extraneous offense. Appellant, however, failed to preserve error for review.

To preserve error for appellate review, a party must make a timely and specific objection or motion at trial and there must be an adverse ruling by the trial court. Tex. R. App. P. 33.1(a); *Fuller v. State*, 253 S.W.3d 220, 232 (Tex. Crim. App. 2008). Failure to preserve error at trial forfeits the later assertion of that error on appeal. *Ibarra v. State*, 11 S.W.3d 189, 197 (Tex. Crim. App. 1999).

After Crosby testified, appellant objected to the evidence as improper extraneous offense evidence and the trial court sustained the objection. Because appellant did not pursue his objection to an adverse ruling, he has not preserved the issue for review. *See Turner v. State*, 805 S.W.2d 423, 431–32 (Tex. Crim. App. 1991); *Wooten v. State*, 267 S.W.3d 289, 309 (Tex. App.—Houston [14th Dist.] 2008, pet. ref'd). Appellant's sole issue is overruled.

The judgment of the trial court is affirmed.

PER CURIAM

Panel consists of Justices Anderson, Frost, and Brown.

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