Affirmed and Opinion filed January 27, 2000.

In The

Fourteenth Court of Appeals

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NO. 14-99-00012-CR

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ANGEL RIVERA, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 182nd Judicial District Court
Harris County, Texas
Trial Court Cause No. 774,204

O P I N I O N

Appellant, Angel Rivera (Rivera), was convicted of aggravated robbery and sentenced to life imprisonment in the Texas Department of Criminal Justice, Institutional Division.[1] On appeal, he challenges his conviction in five points of error, claiming: (1) the trial court erred when it refused to allow him to question a witness concerning alleged outstanding warrants and criminal charges; (2) the evidence was legally insufficient to convict him as a principal or a

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[1] Rivera's sentence was enhanced when the jury answered "true" to two enhancement paragraphs.

party; and (3) his due process rights were violated because the evidence was insufficient to support the jury charge. We affirm.

I.
Factual Background

The appellant and another man went to the complainant's house on a Friday evening. The complainant went to Mexico every Friday evening, taking with him letters, money, and packages sent by people in Houston to their friends and relatives living in Mexico. The appellant said he also wanted to send money to someone in Mexico, and gave the complainant $100. The appellant then asked the man accompanying him if a man waiting in the car outside wanted to send anything. His accomplice said he did not know, so the appellant left, returning seconds later with a black, semi-automatic gun. Pointing the gun at the family, he ordered the complainant, his wife, and their son to give him the money intended for recipients in Mexico, as well as their own money and valuables. At trial, the complainant, his wife, and their son testified regarding appellant's conduct during the course of the robbery.

II.
Impeachment Evidence

In his first two points of error, appellant claims the trial court erred by not allowing his trial counsel to impeach Guadalupe Gonzalez, the complainant's son, with questions concerning alleged outstanding warrants against him and alleged "criminal child support matters" in Illinois. When appellant's trial counsel attempted to question Gonzalez about these matters, the State objected on relevancy grounds, and the court sustained the State's objections. Appellant's trial counsel never attempted to explain the relevancy of this line of questioning to the trial court. On appeal, appellant argues the trial court's refusal to allow this evidence denied him his rights of confrontation and cross-examination in violation of the Sixth Amendment.

We begin by noting that exposing a witness' motivation to testify for or against the accused or the State is a proper and important purpose of cross-examination. *See* TEX. R. EVID.

607 ("The credibility of a witness may be attacked by any party, including the party calling the witness."). Parties are allowed great latitude to show "any fact which would or might tend to establish ill feeling, bias, motive and animus on the part of the witness." *London v. State*, 739 S.W.2d 842, 846 (Tex. Crim. App.1987). The trial judge, however, has some discretion in limiting cross-examination of witnesses. *See Hurd v. State*, 725 S.W.2d 249 (Tex.Crim.App.1987); *see also Miller v. State*, 741 S.W.2d 382, 389 (Tex.Crim.App.1987), *cert. denied* 486 U.S. 1061, 108 S.Ct. 2835, 100 L.Ed.2d 935 (1988). A trial judge may limit cross-examination as inappropriate for a number of reasons. *See Carroll v. State,* 916 S.W.2d 494, 498 (Tex. Crim. App. 1996) (citing *Delaware v. Van Arsdall*, 475 U.S. 673, 679, 106 S.Ct. 1431, 89 L.Ed.2d 674 (1986) (for example, trial judge may exercise discretion to prevent harassment, prejudice, confusion of the issues, and marginally relevant interrogation)).

In order to impeach a witness with evidence of outstanding warrants and child support violations, the proponent of the evidence must establish that the evidence is relevant. *See Carroll*, 916 S.W.2d at 494; *see also London*, 739 S.W.2d at 846-48. Appellant wished to introduce evidence that, at the time of trial, Gonzales had outstanding warrants and child support violations, in an attempt to show bias or prejudice towards the State due to a "vulnerable relationship." For the evidence to be admissible, the proponent must establish some causal connection or logical relationship between the warrants and support violations and the witness' "vulnerable relationship" or potential bias or prejudice for the State, or testimony at trial. *See Carpenter v. State*, 979 S.W.2d 633, 634-35 (Tex. Crim. App. 1998). The proponent of the evidence is not required to show actual bias. *Id.* at 634, n. 4. What is required is that the proponent make a showing of the witness' potential for bias. *Id.*

Here, appellant failed to establish the requisite causal connection at trial by not responding to the State's objection. When the State objected, the burden was on the appellant as the proponent of the evidence to show the logical relationship between the alleged outstanding warrants and child support violations and Gonzalez's "vulnerable relationship" with the State, thus constituting a showing of his potential for bias. *See id.* Appellant simply did not provide any indication that the alleged warrants and child support violations were relevant to

potential bias or prejudice. Thus, his "naked allegations" of bias on appeal are not sufficient to meet his burden. *See id.* at 634 n.4 ("Naked allegations which do no more than establish the fact that unrelated [warrants and other violations may be] pending do not, in and of themselves, show a potential for bias."). Accordingly, we overrule appellant's first and second points of error.

III.
Sufficiency of the Evidence

In points of error three and four, appellant contends the evidence was legally insufficient to convict him as a principal or a party to the aggravated robbery. In reviewing legal sufficiency, we view the evidence in the light most favorable to the verdict, and ask whether any rational trier of fact could have found beyond a reasonable doubt all of the elements of the offense. *See Jackson v. Virginia*, 443 U.S. 307, 309, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); s*ee also Santellan v. State*, 939 S.W.2d 155, 160 (Tex. Crim. App. 1997). We will address appellant's challenge as a principal first.

A. Principal to the Offense

A person commits aggravated robbery if he: 1) intentionally and knowingly 2) threatens or places another in fear of imminent bodily injury or death 3) while in the course of committing theft 4) with intent to obtain or maintain control of property 5) while using or exhibiting a deadly weapon. *See* TEX. PEN. CODE ANN. § 29.02, §29.03 (Vernon 1994). Appellant argues the evidence is insufficient to convict him as a principal to this offense because the testimony elicited at trial demonstrates appellant threatened the complainant's son with a gun, rather than the complainant. Ergo, appellant reasons, he did not threaten the complainant with bodily injury; thus, the State failed to carry its burden of proof for this element. We disagree.

The essential element of aggravated robbery is the threat or engendered fear of imminent bodily injury or death generated simply by the presence of a deadly weapon, its use or exhibition being merely incidental to its presence. *See Davis v. State*, 796 S.W.2d 813, 817

(Tex. App.—Dallas 1990, pet. ref'd); *see also Maxwell v. State,* 756 S.W.2d 855, 858 (Tex. App.—Austin 1988, pet. ref'd). Here, the evidence is clear appellant used a gun during the commission of this robbery and aimed it at the entire family, including the complainant, thus placing all three members of the family in fear of death or bodily injury. Given this testimony, we hold any rational trier of fact could have found beyond a reasonable doubt that the appellant placed the complainant in fear of imminent bodily injury or death by his use of a gun during the commission of the offense. Therefore, the evidence was legally sufficient to convict the appellant as a principal to this offense.

B. Party to the Offense

Appellant also argues the evidence was legally insufficient to convict him as a party to aggravated robbery because the State failed to establish that another person unlawfully appropriated or attempted to appropriate the complainant's property. The State failed to carry its burden, appellant continues, because it was appellant, and not another, who took the complainant's money and other property. Therefore, appellant argues, he is not guilty of aggravated robbery because he only participated in the theft, while the other individual used deadly force against the complainant. Again, we disagree.

In determining whether a defendant has acted as a party in the commission of a criminal offense, the jury may look to events occurring before, during and after the offense, and reliance may be placed upon actions which show an understanding and common design to engage in the illegal act. *See Moore v. State,* 804 S.W.2d 165, 166 (Tex. App.—Houston [14th Dist.] 1991, no pet.). The record in this case demonstrates that by his acts before, during and after the offense, appellant acted with the intent to promote or assist the offense of aggravated robbery by soliciting, encouraging, directing, aiding, or attempting to aid his companions in the commission of the offense. *See* TEX. PEN. CODE ANN. § 7.02(a)(2) (Vernon 1994).

Here, the complainant, his wife, and his son testified that during the robbery, while he pointed a gun at the family, the appellant told the other party to take the money from the victims, to take the gun from the complainant, and to take the family into one of the back

rooms of the house. Thus, the evidence is clear that by his acts during the offense, the appellant directed his companion in the commission of the offense. *See id.*; *see also Tell v. State*, 908 S.W.2d 535 (Tex. App.—Fort Worth 1995, no pet.). Based on this evidence, we hold any rational trier of fact could have found beyond a reasonable doubt that the appellant acted as a party to the offense. Therefore, the evidence was legally sufficient to support appellant's conviction under the law of parties. Because the State introduced sufficient evidence of appellant's participation as a principal and as a party to the offense, we overrule appellant's third and fourth points of error.

IV.
Due Process

In his fifth and final point of error, appellant contends the evidence is insufficient to convict him either as a principal or a party, as these theories were submitted in the charge, and such failure constitutes a violation of due process of law. In support of his point, appellant cites the analysis of the Texas Court of Criminal Appeals in *Malik v. State*, 953 S.W.2d 234 (Tex. Crim. App. 1997).

Malik recognizes that due process prevents an appellate court from affirming a conviction based on legal and factual sufficiency grounds that were not submitted to the jury. *See* 953 S.W.2d at 238, n.3. The situation with which *Malik* was concerned, however, is not present in appellant's case. Here, the jury charge permitted conviction of appellant as either a principal or a party. We have held, in connection with points three and four above, that the evidence was legally sufficient to support appellant's conviction as either a principal or a party. Thus, because the evidence is sufficient here as measured by the actual jury charge which did not contain any extra, unnecessary elements, appellant was not denied due process of law. Therefore, we overrule appellant's fifth point of error.

Accordingly, we affirm the judgment of the trial court.

/s/ John S. Anderson
Justice

Judgment rendered and Opinion filed January 27, 2000.

Panel consists of Justices Amidei, Anderson, and Frost.

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