

Affirmed and Opinion filed September 9, 1999.



In The
Fourteenth Court of Appeals

NO. 14-97-00441-CR

ELLIOTT PAYNE RILEY, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 232nd District Court
Harris County, Texas
Trial Court Cause No. 737473**

OPINION

Charged by indictment with aggravated assault, enhanced by two prior offenses of robbery, the appellant, Elliott Payne Riley pleaded not guilty to aggravated assault and pleaded true to the two enhancement paragraphs. After the jury found the appellant guilty, the trial court assessed punishment at twenty-five years confinement. We affirm.

FACTUAL BACKGROUND

On the morning of November 10, 1996, the complainant, Charlene Robinson, went to the laundry room in her apartment complex to wash some clothes. The day before, she

had come home from the hospital with her newborn daughter. When Ms. Robinson arrived at the laundry room, she encountered the appellant and his brother, who were there doing their laundry. A dispute arose over the use of one of the dryers and the appellant's brother demanded that Ms. Robinson reimburse him for seventy-five cents that he had earlier put in the dryer. When Ms. Robinson refused, the appellant's brother pushed her away from the dryer. At that point, Ms. Robinson saw a friend passing by the laundry room and called out for her to get Ms. Robinson's boyfriend, who was in their nearby apartment.

When Ms. Robinson's boyfriend, Barron Hornsberry, arrived in the laundry room a short time later, he and the appellant's brother began arguing. The argument escalated and a fight broke out. The appellant left the room for a few minutes and returned with a knife. Ms. Robinson attempted to stop the appellant from injuring her boyfriend by standing between the two of them. The appellant stabbed Ms. Robinson, causing her to fall to the floor. The appellant then stabbed Mr. Hornsberry. Both the appellant and his brother ran from the laundry room, with Mr. Hornsberry in pursuit. Some time later, Mr. Hornsberry shot the appellant in retaliation for the assault.

On appeal, the appellant presents two issues for review. First, he asserts that the trial court committed reversible error by refusing to allow him to cross-examine Ms. Robinson about Mr. Hornsberry's shooting of the appellant, on the grounds that this ruling deprived him the right to expose a possible bias on the part of Ms. Robinson to the jury. Second, the appellant asserts that the trial court erred in allowing an investigator from the state to testify that he was unsuccessful in his attempts to locate additional witnesses.

**ISSUE ONE: TRIAL COURT'S REFUSAL TO ADMIT EVIDENCE CLAIMED TO SHOW
COMPLAINANT'S BIAS**

Prior to trial, the court granted the state's motion in limine, prohibiting the appellant from mentioning the fact that Mr. Hornsberry shot the appellant following the altercation in the laundry room. During the cross-examination of Ms. Robinson, however, the appellant

requested the court to allow him to ask questions about the shooting. According to the appellant, the fact that Ms. Robinson's boyfriend was facing criminal charges for shooting the appellant created "both a bias and a motive to lie." Outside the presence of the jury, the trial court heard the testimony that the appellant wished to elicit from Ms. Robinson and denied the appellant's request to present the testimony about the shooting to the jury. The appellant now asserts that by refusing this request, the trial court committed reversible error. We disagree.

The trial court has wide discretion in determining the admissibility of evidence. *See Johnson v. State*, 698 S.W.2d 154, 160 (Tex. Crim. App. 1985), *cert. denied*, 479 U.S. 871, 107 S.Ct. 239 (1986). To warrant a reversal, the appellant must show that the trial court clearly abused its discretion in excluding relevant testimony. *See id.* at 160. The record reflects that the trial court conducted an extensive evaluation of the testimony the appellant claims should have been presented to the jury, and considered not only the testimony the appellant desired to elicit, but also defense counsel's argument that the testimony was essential to show bias on the part of Ms. Robinson. The court ruled that the desired testimony was inadmissible because: (1) the fact that Ms. Robinson's boyfriend (Hornsberry) was facing criminal charges for shooting the appellant did not create any additional bias against the appellant greater than that which already existed; and (2) the testimony would confuse the jury. The trial court did not otherwise limit the cross-examination of Ms. Robinson. After reviewing the record, we see nothing to suggest that the trial court clearly abused its discretion in excluding the disputed testimony. Issue one is overruled.

ISSUE TWO: SIXTH AMENDMENT RIGHT OF CONFRONTATION

In his second issue for review, the appellant complains that the trial court violated his Sixth Amendment right of confrontation. At trial, the state called Johnny Bonds, an investigator for the Harris County District Attorney's office for the limited purpose of

informing the jury that two of the witnesses that the state had intended to call would not testify because they could not be located. On cross-examination, counsel for the appellant asked Mr. Bonds several questions regarding the reasons the witnesses could not be found, implying that the witnesses would not testify because they may have lied to the police and did not want to perjure themselves by telling the same story in court. In response, the state asked Mr. Bonds on re-direct examination whether he had any idea why the witnesses had disappeared. Mr. Bonds responded that they might have done so out of fear of retaliation from the appellant. The appellant now asserts that by allowing Mr. Bonds to testify, the trial court denied him the right to confront the two missing witnesses. The appellant, however, failed to preserve error as to this complaint.

It is well settled that in order to present an issue for appellate review, the complaint on appeal must be the same as that presented in the trial court. *See Banda v. Garcia*, 955 S.W.2d 270, 272 (Tex.1997). At trial, the appellant's counsel objected to Mr. Bonds' testimony only on the grounds that it was irrelevant. At no time did he ever present an objection to the trial court that he was being denied his right to cross-examine the missing witnesses or that his Sixth Amendment rights were being abridged in any fashion. Only now on appeal does he raise a complaint that his Sixth Amendment rights were violated. Thus, the appellant, having failed to properly preserve error, presents nothing for us to review.

The judgment is affirmed.

/s/ Kem Thompson Frost
 Justice

Judgment rendered and Opinion filed September 9, 1999.

Panel consists of Justices Yates, Fowler and Frost.

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