

Opinion filed June 25, 2020



In The

Eleventh Court of Appeals

Nos. 11-18-00158-CR & 11-18-00159-CR

JOANGEL CHACON RANGEL, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 385th District Court
Midland County, Texas
Trial Court Cause Nos. CR48917 & CR48921**

MEMORANDUM OPINION

In two separate indictments, the grand jury indicted JoAngel Chacon Rangel with aggravated assault with a deadly weapon. In the case from which the appeal in our cause number 11-18-00158-CR is taken, the victim was Kreselda Payan. In the case from which the appeal in our cause number 11-18-00159-CR is taken, the victim was Anthony Thornburg. The trial court granted the State's motion to

consolidate the two cases, and they were tried together. In each case, the jury found Appellant guilty as charged in the indictments. Appellant elected for the trial court to assess his punishment. The trial court assessed punishment at confinement for eighty years in each case and sentenced him accordingly. The trial court ordered that the sentences were to run concurrently. We affirm.

In his sole issue on appeal in each case, Appellant argues that the photo lineup that was presented to both victims was unduly suggestive and tainted their later in-court identifications of Appellant.

Appellant does not complain of the sufficiency of the evidence to support his conviction in either case. Therefore, we will relate only those facts that are necessary to provide context.

Payan was Shannon James's roommate. Payan was also Thornburg's girlfriend. On the date of the offenses, Thornburg and Payan were in James's apartment. James's sixteen-year-old son Tony was also there. Thornburg was staying at the apartment because someone had threatened James, and the two women were afraid to stay in the apartment with only themselves and Tony there. Later in the day, two of James's relatives, Buddy Gorman and Appellant, came to the apartment. Thornburg and Payan were introduced to Appellant; they already knew Gorman. Thornburg testified that Appellant and Gorman were at the apartment "[o]ff and on through the day."

Sometime after midnight, Thornburg opened a window to the bedroom that he shared with Payan. Later, when he and Payan went into the kitchen to discard some trash, they encountered Appellant and Gorman coming into the apartment from the backyard. Appellant and Gorman said that they had gone to investigate a noise that Tony told them that he had heard. Thornburg told Appellant and Gorman that

he had opened his window and that he would have heard a noise. Thornburg testified, “I guess I smirked or said something the wrong way, just went the wrong way, you know.” Appellant became upset; Gorman pulled out a pocketknife.

Appellant then began to yell, “Where’s the gun? Where’s the gun?” At this point, Payan pulled Thornburg back into their room. Thornburg moved Payan away from the door, and Appellant opened it and immediately shot Thornburg in the face. Thornburg also suffered gunshot wounds to the wrist, chest, lungs, back, and leg. Although Appellant also threatened to harm Payan, she was able to call the police. Appellant and Gorman took the gun and ran out of the apartment through the back door. Appellant and Gorman were found and arrested the next day.

Payan subsequently viewed a photo lineup provided by the police. She “hesitated” over Appellant’s photo and identified “this guy” as the person who shot Thornburg. In court, Payan identified “this guy” as Appellant. Similarly, Thornburg viewed a photo lineup while in the hospital, and he identified Appellant as the person who shot him. The trial court admitted evidence as to both photo lineups without objection from Appellant.

In Appellant’s sole issue on appeal in both cases, he argues that the photo lineups were unduly suggestive and tainted the in-court identifications of Appellant. However, for a party to complain on appeal about a ruling to admit evidence, the record must show that a timely and specific objection was made to its admission. TEX. R. APP. P. 33.1(a)(1); TEX. R. EVID. 103(a)(1). In this case, Appellant did not object either to the admission of the photo lineups or to the in-court identifications made by both victims. Thus, Appellant has not preserved these issues for appellate review. TEX. R. APP. P. 33.1(a)(1); TEX. R. EVID. 103(a)(1); *see Mason v. State*, 416 S.W.3d 720, 737–38 (Tex. App.—Houston [14th Dist.] 2013, pet. ref’d) (relating to

preservation of complaints about pretrial identification and in-court identification).
We overrule Appellant's sole issue in each appeal.

We affirm the judgments of the trial court.

JIM R. WRIGHT
SENIOR CHIEF JUSTICE

June 25, 2020

Do not publish. *See* TEX. R. APP. P. 47.2(b).

Panel consists of: Bailey, C.J.,
Stretcher, J., and Wright, S.C.J.¹

Willson, J., not participating.

¹Jim R. Wright, Senior Chief Justice (Retired), Court of Appeals, 11th District of Texas at Eastland, sitting by assignment.