AFFIRMED and Opinion Filed July 31, 2020

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-18-00640-CR

QUINCY NATHANIEL JONES, Appellant
V.
THE STATE OF TEXAS, Appellee

On Appeal from the Criminal District Court No. 7
Dallas County, Texas
Trial Court Cause No. F-1645744-Y

MEMORANDUM OPINION

Before Justices Schenck, Osborne, and Reichek
Opinion by Justice Osborne

Quincy Nathaniel Jones appeals the trial court's final judgment convicting him of murder in the course of committing a felony (felony murder).[1] The jury found Jones guilty and assessed his punishment at eighty-four years of imprisonment. Jones raises three issues on appeal, arguing the trial court erred when it: (1) denied his motion to suppress; (2) overruled his objection to the admission of extraneous offense evidence because it was not relevant; and (3) overruled his objection to the

[1] *See* TEX. PEN. CODE ANN. § 19.02(b)(3).

admission of extraneous offense evidence because it was unfairly prejudicial. We conclude the trial court did not err. The final judgment is affirmed.

I. FACTUAL AND PROCEDURAL BACKGROUND

Jeffrey Brandon Youngblood and Ryan Towle had been friends and smoked marijuana together since they were fourteen years old. Youngblood was a graduate of Berkner High School where Towle, Jones, Eric Gray, Elijahwon King, LaJonathan Fulton, and Rob-Darius Clay also attended. According to Towle, it was a "pretty well-known fact" that Youngblood sold marijuana, and among the Berkner H.S. crowd he was known as the go-to guy for "weed."

At some point, Youngblood stopped working and began selling marijuana full-time and, according to Towle, he was bringing in hundreds of dollars a day. However, Youngblood had shared with his closest friends that he had been robbed of marijuana and money in January 2014.

On the night of April 1, 2014, Youngblood was at the house where he lived with his parents in Richardson, Texas. That evening, Youngblood texted Towle who agreed to come over and bring money he owed Youngblood for marijuana. At around 10:00 p.m., Towle arrived at Youngblood's home in a white Lexus where he found Youngblood sitting in his car in the driveway smoking marijuana and joined him.

Meanwhile, also at around 10:00 p.m., Jones, Gray, King, and Fulton got together that night to "go hit a lick"[2] because Jones's rent was due and he needed money. First, Gray drove to a house in Richardson where some people they knew lived. Jones and Fulton got out of the car but returned shortly afterward because someone was home. They did not have a gun at that point. When the four men discussed their desire for some weed, Youngblood was mentioned because he had sold Gray, King, and Fulton weed in the past. They drove by Youngblood's home and saw him sitting in his car smoking marijuana. Then, they drove back to the apartment complex where Jones lived. While Gray, King, and Fulton waited in the car, Jones went into his apartment and got a shotgun. According to Gray, the shotgun was intended to be used as a "scare tactic."

Youngblood and Towle had been smoking marijuana and listening to music in Youngblood's car for about an hour, when four men approached Youngblood's car saying "give me your shit." Three of the men wore bandanas over their faces and one man wore a hoodie. The three men with bandanas were later identified as Jones, Gray, and King, and the man wearing the hoodie was identified as Fulton. Towle saw that one of the men had his hand in his shirt like he was "toting a gun" and understood that they were being robbed, so he grabbed the jar of marijuana and got out of the vehicle. Towle also saw that one of the men wearing a bandana, who

[2] Testimony at trial shows that the phrase to "hit a lick" means to rob someone.

was later determined to be Jones, had a shotgun pointed at Youngblood's torso. Youngblood was not compliant and put his hand up to indicate the men should "chill out." According to Towle, Jones was irritated that Youngblood was not complying and pushed the shotgun past Youngblood's raised arm. At that point, there was a scuffle during which Youngblood was trying to push the barrel of the shotgun out of his face. As Towle was fleeing, he turned to see if anyone was chasing him and saw Jones shoot at Youngblood. However, Towle thought the shot missed Youngblood, who had appeared to push the gun away toward the front of his car at the time of the shotgun's discharge. As Towle ran home, he heard sirens in the distance and, by the time he arrived home, the police were already at his house.

Around 11:00 p.m., Youngblood's mother was awakened by yelling outside. When she went outside, she found Youngblood in the front seat of his car and unresponsive. She also saw an unfamiliar white car. She returned to the house and screamed for her husband to call 9-1-1. By that point, some of her neighbors had come over, and one neighbor said he had heard a gunshot. Youngblood died from a shotgun wound to his chest.

The four men returned to Jones's apartment. They decided to clean the shotgun and bury it. Gray suggested they bury it in "the maze."[3] After the shooting, Jones, Gray, King, and Fulton parted ways, although they still kept in contact.

[3] Testimony at trial described "the maze" as a "dirt hill" or a "little creek" located in Garland, Texas, near where Gray and King lived at the time.

Detective Jules Farmer investigated the case. However, fingerprints and DNA evidence collected at the scene, witness interviews, and a public plea for help did not result in any leads as to who had committed the murder. As a result, the case "stalled after a while."

Rob-Darius Clay was in jail when he heard of Youngblood's death. Clay had attended junior high school with Youngblood's younger sister. Later in 2014, after he was released from jail, Clay eventually got his own apartment. Clay worked with Jones and, at some point, Jones moved in with him. During one of their conversations, Jones told Clay about killing Youngblood. Jones stated he had needed money to pay his rent and Gray, Fulton, and King were helping him out. They decided to rob Youngblood because they believed he had a lot of money, so Gray drove them to Youngblood's house where they found him in his car. Jones said that he pointed the shotgun he had brought with him at Youngblood who "wrestled with it" when the trigger went off and, after they returned to Jones's house, they cleaned the shotgun and buried it in the "maze."

In March 2016, Jones visited Fulton and Thelemonaay Thompson, who had recently given birth to Fulton's baby. At some point, Fulton left to go to the store. During Fulton's absence, Jones was looking through Facebook and became upset because people on the internet were questioning who was responsible for Youngblood's murder. In response to questions from Thompson, Jones hesitantly told her about the murder but instructed her not to tell anyone. Jones told Thompson

he was looking for extra money, he met up with some people, and they went to "hit a lick on a dude he knew." He did not tell Thompson that Fulton was one of the people with him. Jones described an incident where they tried to go into a window of a house. Also, Jones told her they found Youngblood parked in his driveway and he pointed the shotgun towards Youngblood demanding all of his money and drugs. He stated that Youngblood did not comply with his demand and they tussled, resulting in Youngblood's getting shot. Jones told Thompson that he had buried the shotgun. After Fulton returned, Thompson mentioned what Jones had told her and Fulton responded "Don't worry about it, he trippin'." Thompson did not report the matter until Jones was "secure" in jail.

Approximately two-and-a-half years after Youngblood was murdered, Clay began having anxiety attacks. At some point, Clay told his supervisor about the murder, and she contacted the police. When the police spoke with Clay, he told Detective Farmer that Jones had admitted to killing Youngblood. Clay provided detailed information that the detectives were able to corroborate.

Within the week, Detective Farmer was able to interview Jones, who had been arrested on a traffic warrant. Detective Farmer read Jones the *Miranda* warnings[4] and, after indicating he understood them, Jones waived those rights and agreed to speak with the police. During his interview, Jones provided four different versions

[4] *See Miranda v. Arizona*, 384 U.S.436 (1966).

of the event. Ultimately, Jones stated that there were four people involved in the robbery, Youngblood did not cooperate, and he shot Youngblood with a shotgun that he had stolen during a previous "lick." He also stated that he bleached the shotgun and then buried it in a creek bed. A few days later, Jones showed the police where the shotgun was buried, but no gun was recovered. During a subsequent interview, Jones mentioned Fulton's being "dumb" that night, calling out people's names and walking around with a gun in plain view. Jones's comments sounded similar to a tip Detective Farmer had received regarding an attempted burglary that occurred just before and close to the location of Youngblood's murder.

Jones was indicted for the offense of capital murder. Before trial, Jones filed a motion to suppress his statement, contending that his statement was involuntary and coerced. On February 19, 2018, a hearing was held on Jones's motion to suppress and the trial judge orally denied the motion. However, no written findings of fact and conclusions of law were entered into the trial court's record. Before the jury trial commenced, the trial court also held a hearing on the admissibility of any reference to the attempted burglary that occurred before Youngblood's murder on the basis of Texas Rules of Evidence 401, 403, and 404(b). In response, the State argued that it was evidence of intent to kill because the men did not have the shotgun for the attempted burglary, but Jones obtained it before going to rob Youngblood. The trial judge overruled Jones's objection. The jury found Jones guilty of the lesser

included offense of felony murder and assessed his punishment at eighty-four years of imprisonment.

Jones appealed the final judgment. Because there were no written findings of fact and conclusions of law relating to the voluntariness of Jones's statement and the trial judge who presided over the February 19, 2018 hearing on the motion to suppress was no longer on the bench, this Court abated the appeal for a de novo hearing on Jones's motion to suppress. *See* TEX. CODE CRIM. PROC. ANN. art. 38.22 § 6. As a result, the new trial judge conducted a do novo suppression hearing on June 21, 2019, and signed written findings of fact and conclusions of law.

II. MOTION TO SUPPRESS

In issue one, Jones argues the trial court erred when it denied his motion to suppress his statement. He claims that his statement to the police was involuntary and he clearly and unequivocally invoked his right to counsel when he stated, "I don't want to answer that question without a lawyer," in response to a question about who was with him during the offense. Further, Jones maintains that he made no affirmative statement indicating he was willing to continue the police interview "despite his repeated statements that he was unwilling to answer any questions about the identity of his accomplices without a lawyer." The State responds that Jones did not make a clear and unequivocal request for counsel because Jones did not express that he was unwilling to continue speaking with Detective Farmer and it was

reasonable for Detective Farmer to understand Jones's statement as an unwillingness to name his codefendants rather than an assertion of his right to counsel.

A. Standard of Review

In reviewing a trial court's ruling on a motion to suppress, an appellate court applies a bifurcated standard of review. *See Wilson v. State*, 311 S.W.3d 452, 457–58 (Tex. Crim. App. 2010); *Carmouche v. State*, 10 S.W.3d 323, 327 (Tex. Crim. App. 2000). An appellate court gives almost total deference to the trial court's determination of historical facts but conducts a de novo review of the trial court's application of the law to those facts. *See Wilson*, 311 S.W.3d at 458; *Carmouche*, 10 S.W.3d at 327. As the sole trier of fact during a suppression hearing, a trial court may believe or disbelieve all or any part of a witness's testimony. *See Wilson*, 311 S.W.3d at 458; *State v. Ross*, 32 S.W.3d 853, 855 (Tex. Crim. App. 2000). An appellate court examines the evidence in the light most favorable to the trial court's ruling. *See Wilson*, 311 S.W.3d at 458; *State v. Ballard*, 987 S.W.2d 889, 891 (Tex. Crim. App. 1999). A trial court will abuse its discretion only if it refuses to suppress evidence that is obtained in violation of the law and that is inadmissible under Texas Code of Criminal Procedure article 38.23. *See Wilson*, 311 S.W.3d at 458.

Where the trial court has made express findings of fact, an appellate court views the evidence in the light most favorable to those findings and determines whether the evidence supports the fact findings. *See State v. Rodriguez*, 521 S.W.3d 1, 8 (Tex. Crim. App. 2017); *Valtierra v. State*, 310 S.W.3d 442, 447 (Tex. Crim.

App. 2010). An appellate court then proceeds to a de novo determination of the legal significance of the facts and will sustain the trial court's ruling if it is correct on any theory of law applicable to the case. *See Rodriguez*, 521 S.W.3d at 8; *Valtierra*, 310 S.W.3d at 447.

B. Applicable Law

The Texas Code of Criminal Procedure provides that a defendant's statement may be used against him only "if it appears that the same was freely and voluntarily made without compulsion or persuasion." CRIM. PROC. art. 38.21. The determination of whether a statement is voluntary is based on an examination of the totality of the circumstances surrounding its acquisition. *Delao v. State*, 235 S.W.3d 235, 239 (Tex. Crim. App. 2007); *Creager v. State*, 952 S.W.2d 852, 855 (Tex. Crim. App. 1997); *see also Arizona v. Fulminante*, 499 U.S. 279, 285–86 (1991).

A statement may be deemed "involuntary" under three different theories: (1) failure to comply with Texas Code of Criminal Procedure article 38.22 § 6; (2) failure to comply with the dictates of *Miranda* as codified and expanded in article 38.22 §§ 2 and 3; or (3) failure to comply with due process because the statement was not freely given as a result of coercion, improper influences, or incompetency. *See Oursbourn v. State*, 259 S.W.3d 159, 169 (Tex. Crim. App. 2008); *Wolfe v. State*, 917 S.W.2d 270, 282 (Tex. Crim. App. 1996). A statement may be deemed involuntary under one, two, or all three of these theories. *See Oursbourn*, 259 S.W.3d at 169.

Once a suspect invokes the Fifth Amendment right to counsel during questioning, interrogation must cease until counsel has been provided or the suspect reinitiates a dialogue. *Edwards v. Arizona*, 451 U.S. 477, 484 (1981); *State v. Gobert*, 275 S.W.3d 888, 892 (Tex. Crim. App. 2009). The right to counsel is invoked when a person indicates that he desires to speak to an attorney or to have an attorney present during questioning. *Dinkins v. State*, 894 S.W.2d 330, 351 (Tex. Crim. App. 1995).

Whether a particular mention of a lawyer constitutes a clear invocation depends upon the contents of the statement itself and the totality of the surrounding circumstances. *Gobert*, 275 S.W.3d at 892. The test is objective: the suspect "must articulate his desire to have counsel present sufficiently clearly that a reasonable police officer in the circumstances would understand the statement to be a request for an attorney." *Davis*, 512 U.S. at 458–9; *Pecina v. State*, 361 S.W.3d 68, 79 (Tex. Crim. App. 2012); *Gobert*, 275 S.W.3d at 892. While there are no "magical words" required to invoke an accused's right to counsel, at a minimum, a suspect must "express a definite desire to speak to someone, and that person be an attorney." *Dinkins*, 894 S.W.2d at 352.

However, not every mention of a lawyer constitutes an invocation of the right to counsel; an ambiguous or equivocal statement does not require officers to halt an interrogation or even seek clarification. *Gobert*, 275 S.W.3d at 892. Texas courts have uniformly held that conditional statements in which a suspect indicates that he

"might" want an attorney, as well as generalized questions asked by a suspect seeking to clarify his rights, are typically not considered an unambiguous expression invoking the right to counsel.[5]

Nevertheless, a conditional statement is not necessarily "equivocal, ambiguous, or otherwise unclear." *Id.* at 893; *see also Trejo v. State*, 594 S.W.3d 790, 797 (Tex. App.—Houston [14th Dist.] 2019, no pet.). When a suspect makes a clear, but limited, invocation of the right to counsel, the police must honor the limits that are thereby placed upon the interrogation, but they may question their suspect outside the presence of counsel to the extent that his clearly expressed limitations permit. *Gobert*, 275 S.W.3d at 893; *see also Trejo*, 594 S.W.3d at 797.

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[5] *E.g. Davis v. State*, 313 S.W.3d 317, 341 (Tex. Crim. App. 2010) (concluding "I should have an attorney," was not a request or an express statement that the suspect wanted an attorney); *Dinkins*, 894 S.W.2d at 352 (suspect's question concerning what an attorney would tell him to do under the circumstances did not rise to an invocation of the right to counsel); *Robinson v. State*, 851 S.W.2d 216, 223–24 (Tex. Crim. App. 1991) (suspect's question asking, "Do I need to talk to a lawyer before I sign?" was equivocal and did not invoke the right to counsel); *Russell v. State*, 727 S.W.2d 573, 576 (Tex. Crim. App. 1987) (suspect's question to officers regarding "whether they thought the presence of an attorney was necessary" did not invoke right to counsel); *accord Davis v. United States*, 512 U.S. 452, 462 (1994) (holding "Maybe I should talk to a lawyer," was not a request for an attorney); *see also Mbugua v. State*, 312 S.W.3d 657, 665 (Tex. App.—Houston [1st Dist.] 2009, pet. ref'd) (suspect's question asking, "Can I wait until my lawyer gets here[?]" did not clearly state a firm, unambiguous, and unqualified condition that any further questioning must be conducted only with his attorney present); *Reed v. State*, 227 S.W.3d 111, 113, 116 (Tex. App.—Houston [1st Dist.] 2006, pet. ref'd) (suspect's question asking, "I can get a lawyer if I want one, right?" was not an unequivocal request for counsel); *Gutierrez v. State*, 150 S.W.3d 827, 832 (Tex. App.—Houston [14th Dist.] 2004, no pet.) (suspect's question asking, "Can I have [a lawyer] present now?" was ambiguous and did not clearly invoke the right to counsel); *Loredo v. State*, 130 S.W.3d 275, 284–85 (Tex. App.—Houston [14th Dist.] 2004, pet. ref'd) (suspect's question asking, "Can I ask for a lawyer now?" was not an unambiguous invocation of right to counsel); *Halbrook v. State*, 31 S.W.3d 301, 302 (Tex. App.—Fort Worth 2000, pet. ref'd) (suspect's question asking, "Do I get an opportunity to have my attorney present?" did not constitute clear and unambiguous invocation of counsel); *Flores v. State*, 30 S.W.3d 29, 33–34 (Tex. App.—San Antonio 2000, pet. ref'd) (suspect's question asking, "Will you allow me to speak to my attorney before?" was neither clear nor unequivocal about his desire to speak to an attorney); *Cooper v. State*, 961 S.W.2d 222, 226 (Tex. App.—Houston [1st Dist.] 1997, pet. ref'd) (suspect's question asking, "Where is my lawyer? Where is he?" was not an unequivocal assertion of the right to counsel).

C. Application of the Law to the Facts

Jones does not specify any findings of fact that he contends are not supported by the record. Specifically, the trial court found that Jones was given the warnings required by *Miranda* and article 38.22 of the Texas Code of Criminal Procedure, he waived his right to remain silent, he did not request an attorney to be present or that he be permitted to speak with an attorney before making his statement, he did not request to terminate the interview at any time or assert his right to remain silent, no force was used or promises made in order to persuade him to make his statement, it was reasonable for the detectives conducting the interview not to interpret Jones's statement about an attorney as a clear unequivocal invocation of his right to counsel or a request to terminate the interview, and Jones immediately picked up with his explanation of the events that night without any hesitancy or reluctance after stating he would not name his accomplices so there was no clear indication that he intended to terminate the interview by that statement. After reviewing the record under the applicable standard for review, we conclude that the evidence supports the trial court's factual rendition. *See Rodriguez*, 521 S.W.3d at 8 (trial court given almost total deference in determining facts and where trial court has made express findings of fact appellate court views evidence in light most favorable to those findings and upholds them as long as supported by record); *Valtierra*, 310 S.W.3d at 447 (same).

Jones contends that the trial court's conclusions of law are incorrect. In particular, he challenges the following conclusions of law:

> The Court [concludes] that [Jones's] statement [] was voluntarily made and admissible at trial.
>
> The Court [concludes] that [Jones's] statement "I can't answer that without a lawyer," was not a clear, unequivocal invocation of his right to counsel.
>
> The Court [concludes] that based on the statement itself and the totality of the circumstances [Jones] did not invoke his right to counsel or ask to terminate the interview.

Jones's statement that he did not want to answer questions about his accomplices without an attorney did not indicate he wanted to speak to an attorney, have an attorney present during questioning, or halt the interrogation. Jones focuses on the absence of an affirmative statement indicating a willingness to continue despite his repeated requests not to answer questions about the identity of his accomplices without a lawyer. However, an ambiguous or equivocal statement does not require officers to halt an interrogation or even seek clarification. *See Gobert*, 275 S.W.3d at 892.

Further, we also note that Jones's statement with respect to an attorney was conditioned as it referred only to the naming of his accomplices. The record shows that, toward the beginning of the interview, the detective asked the following question, "You said they were going to go out and hit some more licks." To which Jones responded, "Yeah." Then, the detective asked "Who were they [his accomplices]?" Jones twice responded to the effect that he could not answer the question about his accomplices without a lawyer and the detective replied "Ok." After that, the detective resumed his questions and did not ask Jones for the names

of his accomplices until after Jones had acknowledged that he saw his friends at the police station, expressed concern that they were pinning the offense on him, and there was discussion about one of them bringing a gun to the robbery of Youngblood. At that point, the detective inquired as to who might have brought the gun and Jones stated, "You know who he is." Then, during the remaining portion of his interview, Jones volunteered the names of his accomplices and, toward the end of the interview, the detective stated that he wanted to ensure the accuracy of the persons involved, and Jones again provided their names.

We conclude the trial court did not err when it concluded that Jones's statement was voluntarily made and that Jones did not clearly and unequivocally invoke his right to counsel. Further, to the extent that his statement "I can't answer that [who was with him] without a lawyer" can be construed as a conditional request for a lawyer, Detective Farmer obeyed that condition.

The trial court did not err when it denied Jones's motion to suppress his statement. Issue one is decided against Jones.

III. EXTRANEOUS OFFENSE EVIDENCE

In issues two and three, Jones argues the trial court erred when it overruled his objection to the admission of extraneous offense evidence because it was not

relevant under Rule 401 and it was unfairly prejudicial under Rule 403.[6] With respect his Rule 401 objection as to relevance, Jones argues that there was no issue of identity, motive, intent, plan, knowledge, or lack of mistake or accident at trial so the State had no need for the evidence of the extraneous attempted burglary that occurred prior to Youngblood's murder. He claims that the evidence was not relevant to prove any "fact of consequence" in the case. As to his Rule 403 objection, Jones contends that the probative value of the extraneous offense evidence was unfairly prejudicial because it served only to show his propensity to commit crime or character conformity. The State responds that the extraneous attempted burglary, which was committed without a shotgun, was contextual and supported that, when Jones agreed to rob Youngblood, he was willing to commit murder because he got a shotgun just before that robbery. Neither Jones nor the State addresses whether the alleged error was harmful error.

A. Harm Analysis

Rule 44.2(b) of the Texas Rules of Appellate Procedure provides that any error, other than constitutional error, that does not affect substantial rights must be disregarded. TEX. R. APP. P. 44.2(b). A substantial right is affected when the error had a substantial and injurious effect or influence on the jury's verdict. *King v. State*,

[6] Although Jones also objected pursuant to Rule 404(b) at trial, he does not argue that point on appeal. *See* TEX. R. EVID. 404(b) (evidence of other crimes, wrongs, or bad acts inadmissible if offered to prove character of person to show action in conformity therewith, but evidence may be admissible for other purposes, such as proof of motive, opportunity, intent, absence of mistake, or accident, or to rebut defensive theory).

953 S.W.2d 266, 271 (Tex. Crim. App. 1997). The erroneous admission of an extraneous offense is non-constitutional error. *Johnson v. State*, 84 S.W.3d 726, 729 (Tex. App.—Houston [1st Dist.] 2002, pet. ref'd)

B. Application of the Law to the Facts

Even assuming the admission of the extraneous offense was error, it was not harmful error. Jones was indicted for the offense of capital murder. The State sought to introduce evidence of an extraneous offense, i.e., the attempted burglary that occurred just prior to Youngblood's murder. Before trial, Jones objected to the extraneous offense evidence based on Rules 401, 403, and 404(b). The State argued this uncharged, extraneous attempted burglary was key to their case because it demonstrated Jones's specific intent to kill in the charged offense. Specifically, the State maintained that the attempted burglary was committed without a shotgun, which showed that the robbery of Youngblood with the shotgun was different. The trial court overruled Jones's objection.

At trial, the defense did not deny that Jones caused the death of Youngblood during the course of committing a robbery. Instead, Jones claimed that the offense was felony murder, not capital murder, because he did not intentionally kill Youngblood. Specifically, in his opening statement, Jones's counsel stated:

> And I will tell you this, that at the end of these proceedings, []Jones will be held accountable. It's important that we hold him accountable for what he did and what the law says he did. We don't put everybody in prison for life without parole just because we can or just because we like it. We reserve that for a very special, specific purpose. Remember

> what we talked about yesterday in voir dire. What's the difference between felony murder and capital murder? It's intent. Period. And that's what we're going to talk about the next couple of days.
>
> . . . .
>
> When you have heard everything and seen all the evidence and heard from all the witnesses, I expect that you are going to know exactly why we're asking what we're asking for. Not guilty of capital murder and find him guilty on a lesser included. And that's what we're going to ask you to do. Thank you.

Similarly, during his closing argument, Jones's counsel argued:

> Like I told you yesterday morning when we started this case, when we look at the evidence, it's clear; this isn't a capital murder, it's a felony murder. This isn't a situation where there was any intent involved. It was an accident that happened in the middle of a felony. . . . What it means is it's just a situation where [Jones] didn't intend for a death to occur.
>
> . . . .
>
> It was a situation where he shouldn't have been out there robbing. Absolutely he deserves to pay for what he did, but there was no reason for him to shoot [Youngblood], until they started fighting over the [shot]gun, and that's what everybody told you.

In contrast, the State argued during its closing argument, the evidence of the prior attempted burglary was proof of intent for the offense of capital murder:

> Because the defendant had tried committing a lick earlier in the night without a weapon. He tried breaking into a house to make some money that way, right? And that's what this was all about; he needed to make some cash.
>
> So first they go without a gun to try to break into someone's house. But someone is home, they can't get away with it. They don't get any money, right? So they have to go try again. And this time Quincy Jones is going to make sure that he gets the cash he needs.

> So this time they're going to take a loaded shotgun with them because they're not walking away with nothing this time.

Further, the record shows that the trial court's jury charge instructed the jury that it was required to find beyond a reasonable doubt that Jones had committed the extraneous offense before it could consider that offense for any purpose. The trial court also instructed that, even then, the jury could consider the extraneous offense only in determining the intent, knowledge, design, scheme, or system of the defendant, if any, in connection with the offense on trial and for no other purpose.

The jury found Jones guilty of the lesser included offense of felony murder, not the charged offense of capital murder. The purpose of the extraneous offense evidence was to show Jones's specific intent to kill in support of the offense of capital murder. Because the jury did not find Jones guilty of capital murder, we cannot say that the extraneous offense evidence had a substantial and injurious effect or influence on the jury's verdict. Accordingly, assuming, without deciding, the trial court erred when it overruled Jones's objection to the extraneous offense evidence, we cannot say that the alleged error was harmful error.

Jones's second and third issues on appeal are decided against him.

III. CONCLUSION

The trial court did not err when it denied Jones's motion to suppress. Also, even if the trial court erred when it overruled Jones's objection to the admission of the extraneous offense evidence, that alleged error was not harmful error.

The trial court's final judgment is affirmed.

/Leslie Osborne/
LESLIE OSBORNE
JUSTICE

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TEX. R. APP. P. 47

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Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

QUINCY NATHANIEL JONES, Appellant	On Appeal from the Criminal District Court No. 7, Dallas County, Texas Trial Court Cause No. F-1645744-Y.
No. 05-18-00640-CR V.	Opinion delivered by Justice Osborne. Justices Schenck and
THE STATE OF TEXAS, Appellee	Reichek participating.

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

Judgment entered July 31, 2020