Affirmed and Opinion filed January 20, 2000.

In The

Fourteenth Court of Appeals

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NO. 14-98-00635-CR

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SEAN DEQUINCE BROWN, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 155th District Court
Austin County, Texas
Trial Court Cause No. 97R-065

O P I N I O N

A jury found Sean Dequince Brown guilty of aggravated robbery, found that he had committed the robbery with a deadly weapon, and assessed punishment at 80 years' confinement and a $10,000 fine. In one point of error, Brown appeals that the trial court erred in failing to include a definition of "reasonable doubt" in the jury charge in the punishment phase of trial. We find that because Brown failed to request such a definition, the trial court was not required to *sua sponte* submit it. Accordingly, we overrule Brown's point of error and affirm his conviction.

BACKGROUND

The crime that Brown committed in this case was an armed hold-up of a small jewelry store in Bellville, Texas. Brown, who had previously visited the store on the pretext of shopping for a ring for his girlfriend, returned the next day with a pistol-grip shotgun. He forced the employees to empty the jewelry vault and then forced them and a customer into the back office of the store. He stole $36,000 in jewelry, portions of which were recovered in pawn shops in Houston and Bastrop. The employees' description of the robbery was corroborated by Brown's brother and a friend. His brother told police that Brown had committed the jewelry store robbery with a black shotgun. Further, his friend testified that Brown had confided to him that he used a pistol-grip shotgun to commit the robbery. Lastly, testifying on his own behalf, Brown denied committing the robbery, but acknowledged owning a charcoal gray, pistol-grip, pump shotgun.

During the punishment phase of trial, the State also offered evidence of an extraneous offense, a bank robbery, committed by Brown in Carmine, Texas. Clarke Winfield, a sergeant in the U.S. Army Reserve, witnessed the bank robbery. He testified that he and another soldier traveled early one morning to Carmine, Texas to meet with their battalion commander, who was also the president of the Carmine Bank. When they arrived, Sergeant Winfield knocked on the front glass doors of the bank, which had not yet opened for the day. A female bank employee began to unlock the two sets of doors to allow them to enter, but suddenly started relocking the doors. Sergeant Winfield then noticed Brown lying in bushes about one foot away with a Tech-9 automatic weapon in his hands. Brown fired a round and knocked the glass out of the first set of bank doors. He then told the soldiers to step inside the foyer, where he fired a second round into the glass of the next set of bank doors. Once inside the bank, he forced the two soldiers to hop behind the counter and remove money from the bank drawer. During the fifteen minute robbery, Brown fired fifteen to twenty rounds from the automatic weapon. He finally escaped in the soldiers' car.

The charge to the jury in the punishment phase of trial explained that the jurors could not consider extraneous offense evidence unless they believed "beyond a reasonable doubt that the defendant committed such other offense." The charge also permitted the jury to enter a deadly weapon finding for the jewelry store robbery if it found beyond a reasonable doubt that Brown used or exhibited a deadly weapon. The

charge during punishment, unlike the charge during guilt/innocence, did not define "reasonable doubt." Nonetheless, the jury answered "true" to the deadly weapon special issue.

"REASONABLE DOUBT" IN CHARGE ON PUNISHMENT

In his sole point of error, Brown appeals that the trial court reversibly erred in failing to *sua sponte* define "reasonable doubt" in the punishment charge. Because the term "reasonable doubt" was used in an extraneous offense instruction and in a deadly weapon instruction, we analyze each portion separately.

A. Extraneous Offense Instruction

The Court of Criminal Appeals has recently addressed the failure of a trial court to *sua sponte* define "reasonable doubt" in the punishment charge regarding the commission of an extraneous offense. *See Fields v. State*, 1 S.W.3d 687, 688 (Tex. Crim. App. 1999). In *Fields*, the court held that a reasonable-doubt instruction in the jury charge is not necessary at the punishment phase, absent a request from the defendant. *See id.*; *see also Gholson v. State*, 5 S.W.3d 266 (Tex. App.–Houston [14th Dist.] 1999, no pet. h.); *Garcia v. State*, 901 S.W.2d 724, 731 (Tex. App.–Houston [14th Dist.] 1995, pet. ref'd). Here, Brown did not request a definition of reasonable doubt to assist the jury in its evaluation of the extraneous offense evidence. Accordingly, the trial court did not err in failing to define "reasonable doubt" in the punishment charge.

B. The Deadly Weapon Special Issue

We next address whether the trial court erred in failing to *sua sponte* include a definition of reasonable doubt in the punishment charge for the deadly weapon special issue. Brown cites *Geesa v. State*, 820 S.W.2d 154 (Tex. Crim. App. 1991) and *Reyes v. State*, 938 S.W.2d 718 (Tex. Crim. App. 1996) for the proposition that failure to include a definition of reasonable doubt is automatic, reversible error. These cases, however, only address the guilt/innocence phase of trial. Brown proposes to extend *Geesa* and *Reyes* so that such a definition must also be given in the punishment phase whenever the jury must determine an issue beyond a reasonable doubt. In support of such an extension of the law, Brown cites two courts of appeals' opinions, but both have been recently overturned by the Court of Criminal Appeals. *See Martinez v. State*, 969 S.W.2d 139 (Tex. App.–Fort Worth 1998), *rev'd*, 4 S.W.3d

758 (Tex. Crim. App. 1999); *Huizar v. State*, 966 S.W.2d 702 (Tex. App.–San Antonio 1998), *vacated*, 1999 WL 974272 (Tex. Crim. App. Oct. 27, 1999).

We think that the better practice, in submitting a deadly weapon special issue, is for a defendant to request a definition of reasonable doubt for the punishment charge. Such a practice is supported by the Court of Criminal Appeals in analogous cases. *See Fields*, 1 S.W.3d at 688 (addressing reasonable doubt instruction in punishment charge for extraneous offenses); *Martinez*, 4 S.W.3d at 759 (addressing reasonable doubt instruction in punishment charge for enhancement allegation); *see also Garza v. State*, 2 S.W.3d 331, 335-36 (Tex. App.–San Antonio 1999, pet. ref'd) (addressing reasonable doubt instruction in punishment charge for deadly weapon allegation). Here, Brown failed to request a definition of reasonable doubt for the deadly weapon special issue. As such, the trial court was not required to *sua sponte* submit it for him.

We thus conclude that, absent a request from Brown, the trial court was not required to submit a definition of reasonable doubt in the punishment charge for the jury's consideration of extraneous offense evidence and the deadly weapon special issue. Accordingly, we overrule Brown's sole point of error and affirm his conviction.

Norman Lee
Justice

Judgment rendered and Opinion filed January 20, 2000.

Panel consists of Justices Cannon, Draughn, and Lee*

* Senior Justices Bill Cannon, Joe L. Draughn, and Norman Lee sitting by assignment.

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