

Affirmed and Opinion filed February 10, 2000.



In The

Fourteenth Court of Appeals

NO. 14-98-00656-CR

WILLIE GOODWIN, JR., Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from 182nd District Court
Harris County, Texas
Trial Court Cause No. 769,413**

OPINION

Willie Goodwin, Jr., appeals a conviction for aggravated robbery on the grounds that the trial court erred in: (1) accepting his plea of guilty without admonishing him as to the possibility of deportation; and (2) overruling his objection to punishment testimony concerning an extraneous offense because the evidence was not relevant and unfairly prejudicial. We affirm.

Background

Appellant was charged with aggravated robbery of a bank teller. Appellant pled guilty and a jury assessed punishment at ten years confinement.

Plea Admonishment

The first of appellant's three points of error argues that the trial court erred in accepting his plea of guilty without admonishing him of the possibility of deportation. Prior to accepting a plea of guilty or nolo contendere, a court must admonish a defendant of the fact that if he is not a United States citizen, a plea of guilty or nolo contendere for the charged offense may result in deportation, exclusion from admission to the country, or denial of naturalization under federal law. *See* TEX. CODE CRIM. PROC. ANN. art. 26.13(a)(4) (Vernon 1989). If there is no indication in the record that the court admonished a defendant of this fact, it is error subject to a rule 44.2 non-constitutional error harm analysis.¹ *See Carranza v. State*, 980 S.W.2d 653, 656-57 (Tex. Crim. App. 1998). If there is evidence in the record that the defendant is a United States citizen, the error is harmless beyond a reasonable doubt. *See Cain v. State*, 947 S.W.2d 262, 264 (Tex. Crim. App. 1997).

In this case, there is nothing in the record to reflect that appellant was properly admonished regarding the possibility of deportation; however, the record does reflect that appellant is a United States citizen.² Because the record indicates that appellant is not subject to deportation, the court's failure to admonish him of that possibility could not have affected a substantial right and is therefore harmless error. Accordingly, appellant's first point of error is overruled.

Extraneous Offense

Appellant's second and third points of error contend that the trial court erred in overruling his objection to the testimony of Larry Guynes regarding an extraneous offense because the evidence was not relevant and its probative value was substantially outweighed by its danger of unfair prejudice. During the punishment phase, appellant admitted that he had been *charged* with robbing Guynes, but denied actually committing that robbery. The State

¹ A non-constitutional error that does not affect the substantial rights of a defendant is not reversible. *See* TEX. R. APP. P. 44.2(b); *Carranza v. State*, 980 S.W.2d 653, 656-57 (Tex. Crim. App. 1998).

² Both appellant and his uncle testified that appellant had been born in Indiana.

then called Guynes as a witness, and appellant objected, stating that the facts of the extraneous offense would be highly prejudicial and the inflammatory nature of the testimony would far outweigh its probative value. After determining that Guynes had specifically identified appellant, the trial court overruled the objection and Guynes testified as to the circumstances of the robbery.

A trial court's ruling on the admissibility of extraneous offense evidence is reviewed for abuse of discretion. *See Mitchell v. State*, 931 S.W.2d 950, 953 (Tex. Crim. App. 1996). At the punishment phase of trial, evidence may be offered of any matter the court deems relevant to sentencing, including the prior criminal record of the defendant and any extraneous crime or bad act regardless of whether he has previously been charged with or finally convicted of the crime or act, notwithstanding Rules 404 and 405 of the Texas Rules of Evidence. *See TEX. CODE CRIM. PROC. ANN. art. 37.07 § 3(a)* (Vernon Supp. 1999). Moreover, whereas extraneous offense evidence is used during the guilt/innocence phase to prove motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, it is offered during the punishment phase to assist the trial court or the jury in determining punishment. *See Mitchell*, 931 S.W.2d at 954. By allowing the State to present extraneous offense evidence, jurors learn information which is useful in deciding the most appropriate punishment under the circumstances. *See Haney v. State*, 951 S.W.2d 551, 555 (Tex. App.--Waco 1997, no pet.). Evidence may be excluded, however, if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. *See TEX. R. EVID. 403*.

In this case, Guynes' testimony was plainly relevant. The fact that appellant had been charged with another, similar, aggravated robbery would assist the jury in determining the appropriate punishment, particularly because appellant was seeking probation. Guynes identified appellant as the individual who had robbed him, and the similarity of the offenses tended to show that appellant's actions in robbing him were not an isolated incident.

Guynes' testimony was also clearly prejudicial in that it could be calculated to make a jury less sympathetic to appellant's request for probation. Importantly, however, *unfair* prejudice does not mean the tendency to adversely affect the opponent's case, but refers instead to an undue tendency to suggest a decision on an *improper* basis, especially an emotional one. *See* FED. R. EVID. 403 advisory committee's note.

In this case, appellant argues that the testimony is unfairly prejudicial because the "complainant was dating the appellant" and because of the similarity of the offenses. However, appellant fails to demonstrate how this renders the extraneous offense evidence unfairly prejudicial, confusing, or misleading for purposes of determining his punishment.³ Because appellant's second and third points of error thus fail to demonstrate an abuse of discretion in overruling appellant's objections to Guynes' testimony, they are overruled, and the judgment of the trial court is affirmed.

/s/ Richard H. Edelman
Justice

Judgment rendered and Opinion filed February 10, 2000.

Panel consists of Justices Yates, Fowler, and Edelman.

Do not publish — TEX. R. APP. P. 47.3(b).

³ It is an opponent's burden to demonstrate the negative attributes of the objected to evidence and to show that these attributes *substantially outweigh* its probative value. *See Montgomery v. State*, 810 S.W.2d 372, 377 (Tex. Crim. App. 1990); *see also Smith v. State*, 899 S.W.2d 31, 34 (Tex. App.-- Austin 1995, pet. ref'd) (concluding that the appellant had failed to establish the evidence was so unfairly prejudicial).