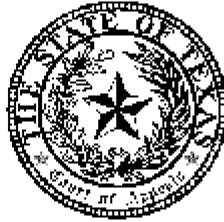
Affirmed and Opinion filed August 17, 2000.



In The

Fourteenth Court of Appeals

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NO. 14-99-00376-CR

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HANI ABURUB, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 180th District Court
Harris County, Texas
Trial Court Cause No. 779,794

O P I N I O N

Appellant, Hani Aburub, was convicted of aggravated robbery and sentenced to confinement in the state penitentiary for seventeen years. On appeal, he argues the trial court erred in refusing to instruct the jury to disregard evidence of an extraneous offense introduced in the punishment phase of the trial. We affirm.

Appellant entered the Bayshore National Bank with a gun, handed a white cloth bag to a teller, and demanded that she "fill it up." The teller placed several thousand dollars in the bag. As appellant left, he warned the bank employees not to call the police. One of the employees, nevertheless, pushed an alarm button. Appellant fled and several employees saw

him speeding away in a green van. Police officers spotted the van in a matter of minutes. When officers attempted to pull the van over, it accelerated – precipitating a lengthy high-speed chase at speeds approaching 100 miles an hour. After almost half an hour, the police were able to box in the van, stop it, and arrest appellant.

Appellant pled guilty and elected to have the jury assess his punishment. Appellant's points of error center around evidence the State introduced regarding an unadjudicated extraneous offense. The State introduced evidence that appellant had been charged with felony theft for emptying several bank accounts of an elderly woman in Galveston by writing checks to himself drawn on her account for nonexistent home repairs. The jury also heard evidence that appellant convinced the elderly woman to give him $7000.00 in cash to pay her property taxes, but which he actually deposited in his own account. On appeal, he argues the trial court erred in not instructing the jury to disregard evidence of the extraneous theft on the theory the State's evidence in proof thereof was factually insufficient.

Appellant has not preserved the error, if any, for review. Appellant concedes he did not object to the evidence during the punishment phase of the trial. *See Thompson v. State*, 4 S.W.3d 884, 886 (Tex. App.–Houston[1 Dist.] 1999, pet. filed) (construing a challenge to the sufficiency of the evidence of an extraneous offense during the punishment phase to be a challenge to the admissibility of the evidence). However, because evidence of extraneous crimes or bad acts in the punishment phase may be admissible *after* it is shown beyond a reasonable doubt that the defendant committed the acts or could be held criminally responsible,[1] appellant contends he was obliged to wait until the conclusion of the trial before objecting. Although he did not make an objection to the admissibility of the evidence, he argues that his written objection to the jury charge adequately presented the issue to the trial court.

Appellant's written objection to the charge, however, did not suggest or imply the evidence regarding the extraneous offense was insufficient. Rather, the objection to the jury

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[1] *See* TEX. CODE CRIM. PROC. ANN. Art. 37.07 §3(a) (Vernon 1999).

charge complained only that Section 37.07 of the Code of Criminal Procedure was unconstitutional and that he had not received notice of the State's intent to use such evidence. Because appellant never brought the alleged error to the trial court's attention, he has waived any error on appeal. *See* TEX. R. APP. P. 33.1.

Accordingly, we overrule appellant's points of error and affirm the judgment of the trial court.

/s/ J. Harvey Hudson
Justice

Judgment rendered and Opinion filed August 17, 2000.

Panel consists of Chief Justice Murphy and Justices Hudson and Wittig.

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