AFFIRMED and Opinion Filed July 23, 2020

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-18-01506-CR

ROYNECO HARRIS, Appellant
V.
THE STATE OF TEXAS, Appellee

On Appeal from the Criminal District Court No. 7
Dallas County, Texas
Trial Court Cause No. F-1676148-Y

MEMORANDUM OPINION

Before Justices Bridges, Molberg, and Partida-Kipness
Opinion by Justice Bridges

Royneco Harris appeals his aggravated robbery conviction. A jury convicted appellant and sentenced him to forty-five years' confinement and a $10,000 fine. In five issues, appellant argues the evidence was legally insufficient to support his conviction, and the trial court erred in overruling his objection to the prosecutor's questioning during voir dire, allowing the State to present evidence of an extraneous offense, overruling his objection to evidence of an extraneous robbery, and overruling his objection to the proffer of a video from his conviction in juvenile court. We affirm the trial court's judgment.

In September 2016, appellant was charged by indictment with aggravated robbery. At appellant's subsequent trial, Marisa Carpenter testified that, on August 2, 2016, she and her boyfriend, Jackson McKinney, went to downtown Dallas on a double date with another couple. After the group ate dinner, the two couples split up, and Carpenter and McKinney "were kind of walking around" before trying to get a DART train home and discovering "they're not open that late." Carpenter and McKinney walked around some more and ended up on Good Latimer, where "it was pretty deserted." At approximately 2:00 a.m., three men walked around a building and "spread out." The man on the left was "thin with no shirt and had a blue jacket around his waist"; the man in the middle "had a white shirt, jeans and a silver handgun"; and the man on the far right "had a white shirt and blue jean, kind of like shorts." The man with the gun pointed the gun at McKinney's chest and said, "Give me everything you got" and threatened to "shoot." Carpenter looked at the man with the gun and the man next to her and, "while they were kind of distracted," she took pepper spray out of her pocket and sprayed "the left guy and then the guy in the middle and then the guy on the right side." Carpenter sprayed all three men in the face, and they "started screaming and ran off the other direction." Carpenter saw that the men "headed off towards the area where the 7-Eleven was," but she grabbed McKinney and went in the opposite direction toward Baylor hospital where she knew there would be police.

At the hospital, Carpenter and McKinney spoke with police, told them what happened, and gave them a description of the men. Police drove Carpenter and McKinney back to the scene of the crime and then to Café Brazil where they waited until DART started running again. Carpenter testified the man in the middle had the gun, and the other two men stood on either side blocking in Carpenter and McKinney. Carpenter felt all three of the men were a threat.

McKinney testified similarly to Carpenter, but McKinney testified the three men came around the corner of the building one at a time five paces apart and "they weren't like acknowledging each other or anything, but they were doing the same thing." McKinney testified Carpenter "never mentioned a gun until [McKinney] brought it up." McKinney testified that, if Carpenter had seen the gun, he "would have rather she not used [the mace]." McKinney testified "the gun being this big and pressed right up against my chest, I would hope [Carpenter] would have made a decision to – you know, without that knowledge."

Kristian Rios testified she was in a dating relationship with appellant on August 2, 2016. That evening, Rios and appellant were at Rios' mother's house when appellant's friend "Little Edward" called and said he needed a ride from South Dallas. Rios borrowed her mother's car and drove appellant to South Dallas where they picked up Little Edward and another man, Courtney Woods. Little Edward needed a ride to an apartment complex in Pleasant Grove, and Rios drove through Deep Ellum on the way. Appellant asked Rios to stop the car, and appellant, Little

Edward, and Woods got out of the car. Although it was after midnight and the area was deserted, Rios saw two other people on the street. Rios saw appellant and the other two men approach the people. Appellant and Little Edward both had guns in their hands. Rios pulled around the corner and waited; she "knew something bad was about to go down, but [she] didn't know exactly what." After "a few seconds," appellant, Little Edward, and Woods came back to the car, and appellant said "open the door." Appellant got in the front passenger seat and sat with a silver gun on his lap. Appellant said his eyes were burning and told Rios to "drive off." Appellant said he wanted some milk to wash his eyes out to stop the burning, and he told Rios to stop at a 7-Eleven as they were passing by.

Rios pulled in to the 7-Eleven, and appellant and the other men got out of the car, but Rios did not get out of the car at first because she "was mad." However, Rios eventually got out of the car and followed the men inside the 7-Eleven where she asked appellant "why did he do it." Little Edward got some milk, and the men went to the restroom and poured the milk on their faces. Appellant took his shirt off to "wipe the mace off his face." As they were all walking out, the store clerk told appellant and the other men that they "need[ed] to pay for the milk and clean up the restroom," but "nobody paid for it." During her testimony, Rios identified three photographs taken at the 7-Eleven on the night of the offense showing (1) Rios herself, (2) appellant with his shirt off, and (3) appellant with his shirt on accompanied by Little Edward. Little Edward told Rios to "drive around the corner

and pick them up," so Rios left in the car and stopped when she saw appellant and the others running towards her. The men got in the car, and Rios drove to Little Edward's house where Little Edward and Woods got out of the car. Rios drove back to her mother's house with appellant, picked up her daughter, and went to the apartment she shared with appellant "like nothing ever happened."

About a week later, Rios' mother saw on television some surveillance footage from the 7-Eleven and called Rios asking "what was it about." At first, Rios told her mother she "didn't know what it was about," but then her mother "sent it to [her], the pictures, the screenshot of what it was." Rios saw the pictures on Facebook and then on the news. Rios testified the photographs aired on the news were the same photographs introduced at trial, including a photograph of her and a photograph of appellant wiping off his eyes. Rios testified she and appellant and Little Edward and Woods communicated via group text about the situation. After the photographs appeared on the news, Rios was arrested and charged with aggravated robbery. Rios testified she pled guilty in April 2018 and admitted she drove the vehicle that took appellant and the others to commit the underlying offense. Rios was placed on felony probation for eight years. In response to questioning by the prosecutor, Rios admitted she was not honest when she initially spoke with police about the offense, and she felt "some loyalty" to appellant "at first" and wanted to protect him.

Dallas police detective Carlos Cardenas testified he was involved in the case against appellant, and he identified appellant in court. Cardenas testified he was

assigned to the case and spoke to Carpenter and McKinney and got a description of the suspects and what they were wearing. Cardenas retrieved surveillance video from the 7-Eleven and determined it showed the suspects a few minutes after the robbery. The suspects' clothing matched the description he had, and they were "in and out of the bathroom" and "using milk to pour on their face and wipe the mace off." Cardenas took some still photos of the suspects from the video and put the photos out on the Dallas Police Department web page. Cardenas "got some Crime Stoppers information" and was able to identify the people in the video, locate them, and arrest them, including appellant.

Rios was re-called by the defense and testified that she ended up cooperating with the police and told them everything she knew about Little Edward. Rios went to jail in August 2016 charged with aggravated robbery and, at that time, gave the police a fake story that she maced appellant and was offered a plea bargain of life confinement and then offered thirty years. It was "made clear to [Rios] that if [she] cooperated with the State and testified against [appellant], that the offer would get better." In July 2017, Rios met with someone from the district attorney's office and agreed to testify against appellant. Rios' "bond went from a hundred thousand to a [personal recognizance] bond" and she "got out three days after talking to the DA." After testifying in a "previous hearing," Rios was "set up for eight years[']probation." Rios testified she loves appellant but "had to do what's best for [her] because [she has] a daughter" and was "not spending the rest of [her] life in jail."

Appellant did not testify on his own behalf. The jury convicted appellant of aggravated robbery.

After the trial judge read the jury's verdict, she released the jury for the day and conducted a hearing on the admissibility of two extraneous offenses. Defense counsel argued that the robbery of Jordan Corona was alleged to have happened within ten to fifteen minutes of the charged offense. Counsel asked that the Corona robbery be excluded because (1) "the identification hearing is part of it, and I would like to develop testimony of what identification has actually been done"; and (2) Rios gave a statement that appellant was with her at the time of the Corona robbery, and their only stop was the stop during which he committed the underlying offense. Defense counsel argued the State did not have a good faith basis to prove every element of the Corona robbery beyond a reasonable doubt, and it was therefore "bad faith to put it before the jury." Defense counsel requested "the opportunity to develop the testimony of what identification was actually done."

The prosecutor responded that Corona could list many factors that make the assailants from the charged offense the same as the assailants in the offense against Corona. The prosecutor stated Corona "testified to that in the Cortney [sic] Woods trial." Specifically, the prosecutor cited the physical locations being very close, the time of the offenses being very close, the offenses occurring in the same area of town, there being the same number of people using the same black car, and the

people being of the same ethnicity and age. Further, Corona recognized his assailant when he saw the surveillance video on the news.

Corona testified that, on August 2, 2016, he returned to his apartment in East Dallas between 1:00 and 2:00 in the morning. Corona parked his car and saw three African-American men under a tree outside the main entrance. All of the men were aged "19 to 25." Corona believed one of the men was a new resident, so he held the door for the man as he entered the apartment. Corona and the man ascended the staircase together while Corona was on the phone. About halfway up the stairs, the man ran downstairs, opened the door, and the two other men "came up and cordoned [Corona] against a wall." Two of the men pointed guns at Corona's chest and head and said they would shoot or kill him if he yelled. One gun was silver and the other one was "darker." One of the men was taller than Corona, one was about Corona's height, and one was "a little shorter." The men took Corona's wallet, cellphone, and a hot dog he was holding and then ran away. Corona messaged his girlfriend with his laptop, and she called police. Although he did not remember at the time of trial, Corona testified he was able to describe the clothing the men were wearing closer to the time of the incident. Corona remembered "blue shorts and white shorts."

About a week after the robbery, Corona received an email from a reporter who asked if he recognized the three people in an attached surveillance video still. The photo showed the three men who robbed him. The men's clothing matched the

clothing description Corona had given to police. Corona testified he was "very certain" the men were the same ones who robbed him. Corona testified the "7-Eleven that they were at" was less than a quarter mile from his apartment.

Defense counsel re-called Rios and asked her if police questioned her about a robbery that occurred "right before this DART station robbery." Rios testified she did not know anything about it. Rios testified she and appellant were together at her mother's house from 5:00 p.m. until they went to pick up Little Edward and Woods, and they only stopped one time "where he told [her] to stop." Rios testified appellant and the others were only out of the car for "a minute or two" before they ran back to the car and Rios took them to the 7-Eleven. On cross-examination, Rios admitted she initially had "a whole elaborate lie" to tell the police. Rios conceded it was possible that appellant and his friends "could have gone off on their own for some portion of the night," and Rios was not with them. At the conclusion of the hearing, the trial court found that the State had a "good faith basis to put this evidence forward in punishment, that they may be able to prove it beyond a reasonable doubt."

The next day, Corona testified before the jury. Appellant asked for and was granted a running objection to Corona's testimony. Rios did not testify at punishment. In the trial court's charge to the jury at punishment, the following limiting instruction was included:

> The State has introduced evidence of extraneous crimes or bad acts other than the one charged in the indictment in this case. This evidence was admitted only for the purpose of assisting you, if it does, in

> determining the proper punishment for the offense for which you have found the defendant guilty. You cannot consider the testimony for any purpose unless you find and believe beyond a reasonable doubt that the defendant committed such other acts, if any, were committed.

The jury sentenced appellant to forty-five years' confinement and a $10,000 fine. This appeal followed.

In his first issue, appellant argues the evidence is legally insufficient to support his conviction. When reviewing the legal sufficiency of the evidence, we examine all of the evidence in the light most favorable to the verdict and determine whether a rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *See Temple v. State*, 390 S.W.3d 341, 360 (Tex. Crim. App. 2013). Although we consider everything presented at trial, we do not reevaluate the weight and credibility of the evidence or substitute our judgment for that of the fact finder. *See Williams v. State*, 235 S.W.3d 742, 750 (Tex. Crim. App. 2007). Because the jury is the sole judge of the credibility of witnesses and of the weight given to their testimony, any conflicts or inconsistencies in the evidence are resolved in favor of the verdict. *See Wesbrook v. State*, 29 S.W.3d 103, 111 (Tex. Crim. App. 2000). Our review includes both properly and improperly admitted evidence. *See Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007). We also consider both direct and circumstantial evidence, as well as any reasonable inferences that may be drawn from the evidence. *Id.*

The indictment in this case alleged appellant:

> did then and there intentionally and knowingly, while in the course of committing theft of property and with intent to obtain or maintain control of said property, threaten and place JACKSON MCKINNEY in fear of imminent bodily injury and death, and the defendant used and exhibited a deadly weapon, to-wit: A FIREARM

The court charged the jury in accordance with the indictment. In addition, the court charged the jury on criminal responsibility for the conduct of another as follows:

> A person is criminally responsible as a party to an offense if the offense is committed by his own conduct, by the conduct of another for which he is criminally responsible, or by both.
>
> A person is criminally responsible for an offense committed by the conduct of another if, acting with intent to promote or assist the commission of the offense, he solicits, encourages, directs, aids, or attempts to aid the other person in the commission of the offense. Mere presence alone is not sufficient to render one a party to an offense.

Appellant argues Carpenter testified she saw a small silver gun while McKinney testified Carpenter never mentioned a gun until he told her that a gun was pointed at him. In addition, Carpenter testified appellant and the other men came around the building together, while McKinney testified the men came around the corner one at a time, spaced five steps apart. As for Rios, appellant argues Rios "made up a story that allowed her to get out of jail," and she did not see appellant and the other men approach Carpenter and McKinney.

Appellant does not challenge the sufficiency of the evidence showing that he was one of the three men on the street with Carpenter and McKinney. Instead, appellant argues both Carpenter and McKinney described the gunman as having "scruffy facial hair" and, without citation to the record, "submits" that Little Edward

was the gunman "because he was the only person in the group who had facial hair." Appellant argues "the only thing the evidence showed was that he was walking with the other two men, walked past the two people standing on the sidewalk and then turned back to see what his friends were doing and why they didn't follow him."

Appellant dismisses Rios' testimony. However, the jury heard Rios testify appellant was the one who asked Rios to stop the car in Deep Ellum, and Rios saw two other people on the street. Rios saw appellant and the other two men approach the people. Appellant and Little Edward both had guns in their hands. Rios pulled around the corner and waited; she "knew something bad was about to go down, but [she] didn't know exactly what." After "a few seconds," appellant, Little Edward, and Woods came back to the car, and appellant said "open the door." Appellant got in the front passenger seat and sat with a silver gun on his lap. Appellant said his eyes were burning and told Rios to "drive off." Carpenter testified the man with a silver gun pointed the gun at McKinney's chest and said, "Give me everything you got" and threatened to "shoot." We conclude this evidence is legally sufficient to support appellant's aggravated robbery conviction. *See Temple*, 390 S.W.3d at 360. To the extent there were some arguable inconsistencies between Carpenter's and McKinney's descriptions of how the men came around the building and when Carpenter mentioned seeing a gun, any conflicts or inconsistencies in the evidence are resolved in favor of the verdict. *See Wesbrook*, 29 S.W.3d at 111. We overrule appellant's first issue.

In his second issue, appellant argues the trial court abused its discretion in overruling appellant's objection to the prosecutor's questioning of prospective jurors concerning whether appellant's age was going to be a very important consideration.

During voir dire trial, the prosecutor asked prospective jurors what they would "like to see when considering punishment." When more than one member of the venire said they would like to "see more," the following exchange occurred:

> PROSECUTOR: Okay. Very vague term, "I want to see more." Let me open it up to the group. Who in here – raise your hand if you do – feels like that in punishment–again, this is assuming that we get there if you find him guilty beyond a reasonable doubt, and so forth– that the age of the defendant is going to be a very important consideration for y'all?
>
> DEFENSE COUNSEL: Object to improper committal [sic].
>
> THE COURT: I'll overrule it. I don't think he's gotten there yet.
>
> PROSECUTOR: Yeah. Who–if it would be important, age?
>
> [Show of hands.]
>
> PROSECUTOR: All right. I see–
>
> DEFENSE COUNSEL: Again, Your Honor. Improper committal [sic].
>
> THE COURT: Can y'all approach real quick?
>
> [Bench conference held outside the hearing of the court reporter.]
>
> THE COURT: Your objection is overruled.
>
> PROSECUTOR: I saw one hand in the back. Again, the question is, who in here feels like if I'm sitting in punishment, the age of the defendant is really going to matter to me?
>
> UNIDENTIFIED VENIREPERSON: Is it an adult?

> PROSECUTOR: Yes, we're in adult court. So there's two different criminal justice systems. We have children and you have adult court. We're in adult court.

During defense counsel's questioning during voir dire, the following exchange occurred:

> VENIREPERSON: I said that the youthfulness would be an issue with me because of a feeling that a long sentence would be–I would have a hard time if it were a younger person.
>
> DEFENSE COUNSEL: Okay. Let me just touch on that and address all of you. The State asked you about whether or not somebody's age was an important factor to you. Let me tell you that the law allows you to consider that. The law allows the 12 members of the jury to consider whatever they want. So if you want to consider that, then you get to. I think the State has a right to ask and they want to know what people are going to be sympathetic to my client, and they may end up striking you because of that. But the law allows you to consider that. If you want to consider that, you can.

Appellant argues the question from the prosecutor was an impermissible commitment question that "poisoned" the jury in this case.

We leave to the trial court's discretion the propriety of a particular question and the trial court's discretion will not be disturbed absent an abuse of discretion. *Barajas v. State*, 93 S.W.3d 36, 38 (Tex. Crim. App. 2002). A question is proper if it seeks to discover a juror's views on an issue applicable to the case. *Id.* An otherwise proper question is impermissible, however, if it attempts to commit the juror to a particular verdict based on particular facts. *Id.* The inquiry for improper commitment questions has two steps: (1) Is the question a commitment question, and (2) Does the question include facts—and only those facts—that lead to a valid

challenge for cause? If the answer to (1) is "yes" and the answer to (2) is "no," then the question is an improper commitment question, and the trial court should not allow the question. *Standefer v. State*, 59 S.W.3d 177, 182–83 (Tex. Crim. App. 2001).

Here, the prosecutor's question, whether the age of the defendant was going to be a very important consideration at punishment, did not attempt to commit jurors to a particular verdict based on particular facts. *See Barajas*, 93 S.W.3d at 38. Instead, the question was a proper one seeking to discover a juror's views on an issue applicable to the case, appellant's youth. *Id.* Accordingly, we conclude the trial court did not abuse its discretion in overruling appellant's objection to the question. *See Id.* We overrule appellant's second issue.

In his third issue, appellant argues the trial court abused its discretion in allowing the State to present evidence of an extraneous offense, an aggravated robbery, at the punishment hearing. In his fourth issue, appellant argues the trial court erred in overruling his objection to the admission of evidence of an extraneous robbery. Appellant argues these issues together, and both issues address the admission of Corona's testimony.

We review a trial court's decision to admit or exclude evidence of extraneous offenses under an abuse of discretion standard. *Devoe v. State*, 354 S.W.3d 457, 469 (Tex. Crim. App. 2011). As long as the trial court's decision was within the zone of reasonable disagreement and is correct under any theory of law applicable to the

case, it must be upheld. *Montgomery v. State*, 810 S.W.2d 372, 391 (Tex. Crim. App. 1990) (op. on reh'g). This is so because trial courts are usually in the best position to make the determination as to whether certain evidence should be admitted or excluded. *Winegarner v. State*, 235 S.W.3d 787, 790 (Tex. Crim. App. 2007).

Texas Code of Criminal Procedure article 37.07 § 3(a) is one of the guiding principles governing the admissibility of evidence at the punishment phase of a trial. *Haley v. State*, 173 S.W.3d 510, 513 (Tex. Crim. App. 2005). Article 37.07 § 3(a) states in relevant part:

> [E]vidence may be offered by the state and the defendant as to any matter the court deems relevant to sentencing, including but not limited to . . . evidence of an extraneous crime or bad act that is shown beyond a reasonable doubt by evidence to have been committed by the defendant or for which he could be held criminally responsible, regardless of whether he has previously been charged with or finally convicted of the crime or act.

TEX. CODE CRIM. PROC. ANN. art. 37.07.

Unlike the guilt-innocence phase, the question at punishment is not whether the defendant has committed a crime, but instead what sentence should be assessed. *Haley*, 173 S.W.3d at 513. Whereas the guilt-innocence stage requires the jury to find the defendant guilty beyond a reasonable doubt of each element of the offense, the punishment phase requires the jury only find that these prior acts are attributable to the defendant beyond a reasonable doubt. *Id.*

Here, Corona testified that he was robbed at gunpoint by three men. When Corona saw the 7-Eleven video of appellant and the other men, Corona was "very

certain" they were the men who robbed him. Rios testified she and appellant were together at her mother's house from 5:00 p.m. until they went to pick up Little Edward and Woods, and they only stopped one time "where he told [her] to stop." However, on cross-examination, Rios conceded it was possible that appellant and his friends "could have gone off on their own for some portion of the night," and Rios was not with them. Under these circumstances, we conclude the trial court did not abuse its discretion in allowing the State to present Corona's testimony and did not err in overruling appellant's objection to Corona's testimony. *See Devoe*, 354 S.W.3d at 469. We overruled appellant's third and fourth issues.

In his fifth issue, appellant argues the trial court erred and abused its discretion in overruling appellant's objection to the proffer of a video from appellant's conviction in juvenile court.

Again, we review a trial court's decision to admit or exclude evidence of extraneous offenses under an abuse of discretion standard. *Id.* During the hearing outside the presence of the jury, defense counsel objected to the admission of a video from appellant's conviction in juvenile court for an aggravated robbery. Counsel argued that, under section 58.007 of the Family Code, the State was required to have the juvenile justice system's approval to use any evidence from appellant's juvenile conviction other than a certified conviction. In making this argument, counsel stated the "purpose of that is to protect the juveniles." Counsel stated she understood the State obtained the video at issue from DART but argued the State was "linking that

certified conviction to that video," and the video "is not a public document when used in that way."

In response, the prosecutor argued section 58.007 pertained only to "the sealed records from the juvenile case," and the video at issue was separate and apart from those records because it was obtained from the DART police department and was sponsored by a DART employee. The prosecutor later clarified that the video came from the Dallas Area Rapid Transit Authority and was "not from the police department; it's from DART." The prosecutor argued the fact that the video was also part of the juvenile record did not prevent her from obtaining the video from another source and offering it into evidence. Further, the prosecutor argued "the identity of [appellant] being associated with this juvenile case is no longer being protected, assuming this juvenile conviction is going to be part of this record." The trial court overruled defense counsel's objection.

In appellant's brief, he quotes the above exchange and "submits pursuant to defense counsel's argument to the trial court that the State may not use that which was part of a juvenile record, i.e. the video offered into evidence." Appellant also quotes section 58.007(g) of the family code as follows:

> (g) For the purpose of offering a record as evidence in the punishment phase of a criminal proceeding, a prosecuting attorney may obtain the record of a defendant's adjudication that is admissible under Section 3(a), Article 37.07, Code of Criminal Procedure, by submitting a request for the record to the juvenile court that made the adjudication. If a court receives a request from a prosecuting attorney under this subsection, the court shall, if the court possesses the requested record

> of adjudication, certify and provide the prosecuting attorney with a copy of the record. If a record has been sealed under this chapter, the juvenile court may not provide a copy of the record to a prosecuting attorney under this subsection.

TEX. FAM. CODE ANN. § 58.007(g).

Appellant cites no authority to support his argument that, because the video at issue was made part of the juvenile record, the State was required to obtain the video from the juvenile court even though it was available from another source. We conclude the trial court did not abuse its discretion in determining section 58.007 only applied to disclosure of juvenile court records, not to records or evidence from a third party such as DART, and overruling appellant's objections to the video. *See Devoe*, 354 S.W.3d at 469. We overrule appellant's fifth issue.

We affirm the trial court's judgment.

/David L. Bridges/
DAVID L. BRIDGES
JUSTICE

Do Not Publish
TEX. R. APP. P. 47.2(b)

181506F.U05

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

ROYNECO HARRIS, Appellant	On Appeal from the Criminal District Court No. 7, Dallas County, Texas
No. 05-18-01506-CR V.	Trial Court Cause No. F-1676148-Y.
	Opinion delivered by Justice Bridges.
THE STATE OF TEXAS, Appellee	Justices Molberg and Partida-Kipness participating.

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

Judgment entered July 23, 2020.