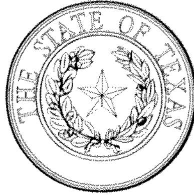
Affirmed as Modified; Opinion Filed March 5, 2013.



In The

Court of Appeals

Fifth District of Texas at Dallas

No. 05-11-01318-CR

TERRILL MIDDLETON, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 282nd Judicial District Court
Dallas County, Texas
Trial Court Cause No. F10-72351-S

MEMORANDM OPINION

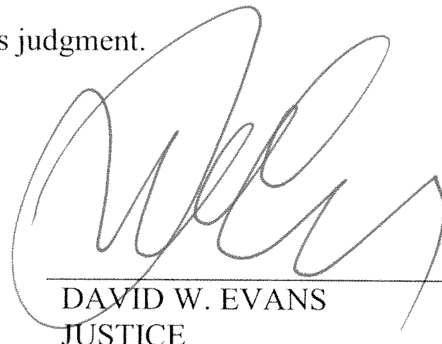
Before Justices FitzGerald, Fillmore, and Evans
Opinion by Justice Evans

Abandoning his initial plea of not guilty, Terrill Middleton pleaded no contest to the charge of aggravated assault with a deadly weapon. As fact finder in the case, the trial court convicted appellant and sentenced him to ten years' confinement. Appellant complains in two issues that the trial court erred in considering extraneous offense evidence at punishment and the judgment incorrectly reflects his plea. We modify the judgment to reflect appellant's plea of no contest. As modified, we affirm the trial court's judgment. The background of the case and the evidence adduced at trial are well known to the parties, and therefore we limit recitation of the facts. We issue this memorandum opinion pursuant to Texas Rule of Appellate Procedure 47.4 because the law to be applied in the case is well settled.

In his first issue, appellant complains the trial court erred when it considered extraneous offense evidence at punishment that had not been proved beyond a reasonable doubt. Because appellant never objected to the trial court's admission or consideration of evidence pertaining to the offenses, however, he has forfeited his right to complain about them on appeal. *See* TEX. R. APP. P. 33.1(a). Once the evidence was admitted without objection, it could be considered for all purposes. *See Zamora v. State*, 375 S.W.3d 382, 396 (Tex. App.—Houston [14th Dist.] 2012, pet. struck). We resolve appellant's first issue against him.

Appellant next complains the judgment in his case incorrectly states that his plea was not guilty, rather than no contest. The State agrees that the judgment should be modified to accurately reflect appellant's plea. We modify the judgment to reflect that appellant entered a plea of no contest. *See* TEX. R. APP. P. 43.2; *Asberry v. State*, 813 S.W.2d 526, 529–30 (Tex. App.—Dallas 1991, pet. ref'd).

As modified, we affirm the trial court's judgment.



DAVID W. EVANS
JUSTICE

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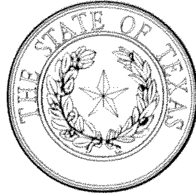

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

MIDDLETON, TERRILL, Appellant

No. 05-11-01318-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the 282nd Judicial District Court, Dallas County, Texas
Trial Court Cause No. F10-72351-S.
Opinion delivered by Justice Evans.
Justices FitzGerald and Fillmore participating.

Based on the Court's opinion of this date, the judgment of the trial court is **MODIFIED** to reflect appellant entered a plea of no contest.

As **MODIFIED**, the judgment is **AFFIRMED**.

Judgment entered this 5th day of March, 2013.

DAVID W. EVANS
JUSTICE