Affirmed as modified; Opinion Filed December 28, 2017.

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-16-01066-CR

JOJO KWASI WILSON, Appellant
V.
THE STATE OF TEXAS, Appellee

On Appeal from the 265th Judicial District Court
Dallas County, Texas
Trial Court Cause No. F16-00418-R

MEMORANDUM OPINION

Before Justices Lang, Evans, and Schenck
Opinion by Justice Evans

JoJo Kwasi Wilson appeals his conviction for aggravated robbery. In several issues on appeal, appellant contends that: (1) the trial court abused its discretion in admitting the video surveillance tape; (2) the trial court erred in overruling his motion for mistrial regarding the admission of extraneous offense evidence; (3) defense counsel was ineffective for failing to object to the extraneous offense evidence contained in the State's exhibit; (4) the evidence is insufficient to prove that he committed the extraneous offense of murder admitted during the punishment hearing; (5) the evidence is insufficient to prove the deadly weapon element of aggravated robbery; (6) the evidence is insufficient to prove one of the enhancement paragraphs; and (7) the judgment should be modified to reflect that he plead not true to the enhancement paragraphs alleged in the indictment. We modify the trial court's judgment to reflect appellant

pleaded not true to the enhancement paragraphs. As modified, we affirm the trial court's judgment.

BACKGROUND

On December 13, 2014, Jose Osorio lived in an apartment complex in Pleasant Grove called Avenida Crossing. He had been visiting his sister and arrived home about 12:45 a.m. After he parked, a women approached his vehicle and offered her services as a prostitute. The two agreed on a price and then got into the back of Osorio's vehicle. A short time later, a man opened the door of the vehicle and began beating Osorio in the face and head with his hand and fist to the point of unconsciousness. When Osorio woke up, his wallet and cell phone were missing. He suffered numerous injuries to his face and head from the beating. His eye was swollen shut and his teeth were loose. He felt pain in his head, his face and his mouth. He missed three days of work due to his injuries and his face remained swollen for a month. Two years later, Osorio still felt pain on the top of his head, his jaw, and around his eyes.

The attack was seen on the live surveillance cameras at the Avenida Crossing apartments and the police were immediately dispatched to a priority-one robbery in progress. The dispatch described the suspects as a black male and female, and described the suspects' vehicle as a gold GMC SUV with a California license plate. Several officers responded to the dispatch, including Officer McPherson. While driving through the parking lot looking for the suspects, Officer McPherson saw an SUV matching the description of the suspects' vehicle heading towards the front of the apartment complex and initiated a traffic stop. The occupants of the vehicle matched the description of the robbery suspects. Officer McPherson noticed a wallet on the back floorboard of the SUV with identification that belonged to Osorio. He also recovered a cell phone from the SUV. Officer McPherson identified appellant as the driver of the vehicle and Telicia Bell as the black female passenger. Both appellant and Bell were arrested at the scene.

Officer McPherson first made contact with Osorio as he was being treated by paramedics near his vehicle. He testified that Osorio seemed very groggy, and "out of it" and had noticeable injuries on his face and to his head. Osorio could only provide the officers with limited information about what had occurred. He declined being taken to the hospital. The wallet and cell phone recovered from the SUV were returned to him.

Detective Adames interviewed appellant shortly after he was arrested. The interview was admitted into evidence and shown to the jury. Appellant initially claimed that there were two other people in the vehicle who had committed the offense, but eventually admitted to hitting the victim once with his fist.

The surveillance video of the offense was also admitted into evidence and shown to the jury. The video showed that appellant hit Osorio approximately seven times with his hand and fist, with several of those blows being administered after Osorio was knocked out.

During the punishment phase of trial, the State presented evidence of appellant's numerous prior convictions, as well as a 2007 capital murder, in which an indictment against appellant was still pending. The jury found the enhancement paragraphs to be true and assessed punishment at sixty-one years' imprisonment.

ANALYSIS

I. Surveillance Video

In his first issue, appellant contends that the trial court erred in admitting into evidence the surveillance video from the Avenida Crossing Apartments because it was not properly authenticated due to the fact that the sponsoring witness did not state that he viewed the video live or within a reasonable time after the offense occurred. We conclude that appellant failed to preserve his complaint for our review.

As an appellate court, we generally review a trial court's ruling or an objection to its refusal to rule. *See* TEX. R. APP. P. 33.1(a)(2); *Mendez v. State*, 138 S.W.3d 334, 341 (Tex. Crim. App. 2004). "The two main purposes of requiring a specific objection are to inform the trial judge of the basis of the objection so that he has an opportunity to rule on it and to allow opposing counsel to remedy the error." *Clark v. State*, 365 S.W.3d 333, 339 (Tex. Crim. App. 2012). This is called preservation of error and "is a systemic requirement on appeal." *Ford v. State*, 305 S.W.3d 530, 532 (Tex. Crim. App. 2009) (footnote omitted). To preserve a complaint for our review, a party must have presented to the trial court a timely request, objection, or motion that states the specific grounds for the desired ruling if they are not apparent from the context. *See* TEX. R. APP. P. 33.1(a)(1). We are not hyper-technical in examination of whether error was preserved, but a complaint on appeal must comport with the complaint made at trial. *See Bekendam v. State*, 441 S.W.3d 295, 300 (Tex. Crim. App. 2014). If an issue has not been preserved for appeal, we should not address it. *Clark*, 365 S.W.3d at 339. This is because if an appellant fails to preserve a complaint nothing is presented for our review. *See Sterling v. State*, 800 S.W.2d 513, 521 (Tex. Crim. App. 1990) ("Generally, error must be presented at trial with a timely and specific objection, and any objection at trial which differs from the complaint on appeal preserves nothing for review.").

In this case, the witness presented to sponsor the video was Joseph Wyly, in-house counsel for Stealth Monitoring. Wyly testified in detail about the company's protocol whenever suspicious activity is recorded on video. He testified that whenever there is an incident where the police are dispatched, the footage is pulled from the on-site network video recorder ("NVR"), brought in-house and retained for review by the client, or as in this case, law enforcement. Before the video is pulled from the NVR, the video review team will make a determination as to how much of the footage needs to be saved in their records for future use based upon when the

video shows something questionable and at what point the action stops. Following Wyly's direct-examination, appellant's counsel took Wyly on voir dire and questioned him about who monitored the surveillance video in this case and who pulled it from the NVR. Wyly testified that he did not know who the monitor was but believed it was an employee named Liz Mathis who pulled the footage because she was the person who worked in video review at that time. The following exchange then occurred:

> Q. Okay. For the technology challenged like myself, I guess -- Are you saying that when it was recorded it stayed on whatever mechanism recorded it until Liz Mathis pulled it?
>
> A. It stays on the NVR and then it is pulled from the NVR, yes, by -- presumably by Liz Mathis, yes.
>
> Q. But you don't know who did?
>
> A. I don't know for a fact who pulled it, but I know that it was on the NVR and we have full access to all of our customers' NVRs for this purpose.
>
> [APPELLANT'S COUNSEL]: Your Honor, I'm going to object based on proper predicate.
>
> THE COURT: Okay. Your objection is noted and overruled. State's 1 is admitted into evidence.

While defense counsel did not state how the predicate was deficient, from the context of his questioning, it appears counsel was objecting on the ground that Wyly did not know who had pulled the video from the NVR at the Avenida Apartments. Appellant's complaint on appeal is that the video was not properly authenticated because the sponsoring witness did not state that he viewed the video live or within a reasonable time after the offense occurred. At trial, defense counsel never objected on this basis. We conclude that appellant's complaint on appeal was not preserved for appellate review because it does not comport with his objection at trial so it presents nothing for us to review.

Further, even if the alleged error had been properly preserved for review, the trial court did not abuse its discretion in admitting the video. The requirement of authentication is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims. *Butler v. State*, 459 S.W.3d 595, 600 (Tex. Crim. App. 2015). The rule provides several nonexclusive, illustrative examples of sufficient authentication or identification, including testimony of a witness with knowledge that a matter is what it is claimed to be. TEX. R. EVID. 901(b)(1); *Page v. State*, 125 S.W.3d 640, 648 (Tex. App.—Houston [1st Dist.] 2003, pet. ref'd). In this case, Wyly testified that the surveillance cameras record footage from the property as it occurs and that someone monitors the live surveillance. When there is an incident where the police are dispatched, the footage is pulled from the on-site network video recorder ("NVR"), brought in-house and retained for review by the client, or as in this case, law enforcement. He testified that before the video is pulled from the NVR, the video review team will make a determination as to how much of the footage needs to be saved in their records for future use based upon when the video shows something questionable and at what point the action stops. He testified that video was the same footage that was taken from the Avenida apartment complex and transferred to the Dallas Police Department and verified that there were no alterations, additions, or deletions to the footage. Finally, the footage itself has a date and time stamp that corresponds to the time of the alleged robbery, and the jury could have reasonably determined that appellant and Bell were clearly depicted in the video. *See Page*, 125 S.W.3d at 648; *Reavis v. State*, 84 S.W.3d 716, 720 (Tex. App.—Fort Worth 2002, no pet.); *Crivello v. State*, 4 S.W.3d 792, 802 (Tex. App.—Texarkana 1999, no pet.); *Walls v. State*, No. 03-12-00055-CR, 2014 WL 1208017, *6 (Tex. App.—Austin 2014, no pet.) (mem. op.) (not designated for publication).

We overrule appellant's first issue.

II. Admission of Extraneous Capital Murder Offense During Punishment Hearing

At the time of this trial, appellant was under indictment for the 2007 capital murder of Elizar Flores. During the punishment hearing, the State presented extensive evidence pertaining to the circumstances of the murder and the investigation which ultimately led to the 2013 charges against appellant for capital murder. In his second issue, appellant contends that the evidence is insufficient to prove that he committed the capital murder offense.

Article 37.07 of the Code of Criminal Procedure governs the admissibility of evidence at punishment. Under article 37.07 § 3(a), the trial may admit evidence of an extraneous crime that the trial court determines has been shown beyond a reasonable doubt to have been committed by the defendant or for which he could be held criminally responsible. TEX. CODE CRIM. PROC. ANN. art. 37.07 § 3(a)(1) (West Supp. 2017); *Haley v. State*, 173 S.W.3d 510, 514 (Tex. Crim. App. 2005). Although the same reasonable doubt standard required for conviction also applies at the punishment stage to proof of the accused's extraneous acts of misconduct, Texas courts have never applied a legal sufficiency review under the standard of *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) to the adequacy of evidence proving an unadjudicated extraneous offense beyond a reasonable doubt. *See Malpica v. State*, 108 S.W.3d 374, 378–79 (Tex. App.—Tyler 2003, pet. ref'd); *Wilson v. State*, 15 S.W.3d 544, 548 (Tex. App.—Dallas 1999, pet. ref'd). 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 515. "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.* Since the verdict in a non-capital case is a general verdict, an appellate court cannot determine if the jury considered evidence of the extraneous offense or if it affected their verdict. *Malpica*, 108 S.W.3d at 378–79; *Thompson v. State*, 4 S.W.3d 884, 886

(Tex. App.—Houston [1st Dist.] 1999, pet. ref'd). Thus, the only review possible of the sufficiency of the proof of an extraneous offense introduced at the punishment stage is a review under an abuse of discretion standard of the trial judge's threshold ruling on admissibility. *Malpica*, 108 S.W.3d at 79; *Jones v. State*, No. 02-10-00035-CR, 2011 WL 4916396, *3 (Tex. App.—Fort Worth Oct. 13, 2011, no pet.) (mem. op., not designated for publication); *Garcia v. State*, Nos. 05-05-00926-CR, 05-05-00927-CR, 2006 WL 1738303, at *3 (Tex. App.—Dallas June 27, 2006, no pet.) (not designated for publication).

To preserve a complaint for our review, a party must have presented to the trial court a timely request, objection, or motion that states the specific grounds for the desired ruling if they are not apparent from the context. TEX. R. APP. P. 33.1(a)(1). Further, there must be a ruling by the trial court, or an objection to the trial court's refusal to rule. TEX. R. APP. P. 33.1(a)(2); *Mendez v. State*, 138 S.W.3d at 341. Here, appellant did not object to the admission of evidence of the capital murder offense. Therefore, appellant has failed to preserve his complaint for review. We overrule appellant's second issue.

III. Motion for Mistrial

In appellant's third issue, he contends that the trial court erred in denying his motion for mistrial after his recorded interview containing appellant's statement that he and a friend "served time together" was admitted and published to the jury. We conclude that appellant failed to preserve his complaint for our review.

During trial, Detective Adames testified regarding his interview of appellant following his arrest. Shortly after the start of the interview, appellant claimed that there were two other people in the vehicle who committed the robbery. He explained that on the night of the offense, he was riding around with a friend of his and the friend's girlfriend who saw an opportunity to rob someone and decided to take advantage of the opportunity. He told the detective that he was

just the person who drove them to where the victim was and then acted as a lookout. Appellant also told the detective that his friend's name was Isaiah Thompson and when asked how he knew him, stated "I've been knowing him for a long time, we did time together and everything." The interview continued for another seventeen minutes during which the detective obtained more specific information from appellant regarding the circumstances of the offense and appellant's role in it. The interview ended shortly after appellant admitted that he was the aggressor and had punched the victim.

After the interview was shown to the jury, the prosecutor asked Detective Adames one more question about appellant's statements during the interview and then spent the rest of his direct examination questioning the detective about the decision to upgrade the charge against appellant from robbery to aggravated robbery. Appellant's counsel then cross-examined the detective extensively on why the charges were upgraded to aggravated robbery and the process leading to the upgraded charges. On redirect, the prosecutor again focused on the upgrade in the charge from robbery to aggravated robbery. After the witness was excused and the jury released for lunch, the prosecutor indicated his intention to rest. Following a short discussion regarding the court's previous rulings regarding admission of any evidence pertaining to the capital murder charges pending against appellant, appellant's counsel mentioned the statement made by appellant during the interview and moved for a mistrial, explaining that he felt that admonishing the jury at this time would only highlight the statement. After the trial court denied the motion for mistrial, appellant's counsel requested that the trial court include the general admonishment regarding extraneous offenses in the written jury charge, to which the trial court agreed.[1]

[1] A general extraneous offense instruction was included in the charge admonishing the jury that it cannot consider any testimony regarding the defendant having committed other acts or participated in other transactions unless they first find and believe beyond a reasonable doubt that the defendant committed such other acts or participated in such transactions.

In accordance with Rule 33.1 of the Texas Rules of Appellate Procedure, a motion for mistrial must be both timely and specific. *Griggs v. State,* 213 S.W.3d 923, 927 (Tex. Crim. App. 2007) (citing *Young v. State,* 137 S.W.3d 65, 65–66 (Tex. Crim. App. 2004). A motion for mistrial is timely only if it is made as soon as the grounds for it become apparent. *Id.* Here, the grounds for appellant's motion for mistrial first became apparent during Detective Adames direct examination when appellant's interview was shown to the jury. However, appellant failed to move for a mistrial until after the parties had concluded their examination of the detective through cross and redirect examination, the witness was excused, and the jury released for lunch. Under these circumstances, appellant's motion for mistrial was untimely and failed to preserve his complaint for review.

Further, even if appellant's motion for mistrial was made timely, "when a party's first action is to move for mistrial, as appellant's counsel did in this case, the scope of appellate review is limited to the question whether the trial court erred in not taking the most serious action of ending the trial; in other words, an event that could have been prevented by timely objection or cured by instruction to the jury will not lead an appellate court to reverse a judgment on an appeal by the party who did not request these lesser remedies in the trial court." *Young*, 137 S.W.3d at 70. *See also Unkart v. State*, 400 S.W.3d 94, 99 (Tex. Crim. App. 2013).[2] Testimony referring to or implying extraneous offenses allegedly committed by the defendant may be rendered harmless by an instruction from the trial court to disregard. *See Campos v. State*, 589 S.W.2d 424, 428 (Tex. Crim. App. 1979); *Phillips v. State*, 130 S.W.3d 343, 348 (Tex. App.—Houston [14th Dist.] 2005) *aff'd,* 193 S.W.3d 904 (Tex. Crim. App. 2006); *Asberry v.*

[2] "The 'traditional and preferred procedure' for seeking relief at trial for a complaint that must be preserved is '(1) to object when it is possible, (2) to request an instruction to disregard if the prejudicial event has occurred, and (3) to move for a mistrial if a party thinks an instruction to disregard was not sufficient.' A party may skip the first two steps and request a mistrial, but he will be entitled to one only if a timely objection would not have prevented, and an instruction to disregard would not have cured, the harm flowing from the error." *Unkart*, 400 S.W.3d at 99.

State, 813 S.W.2d 526, 528 (Tex. App.—Dallas 1991, pet. ref'd). In this case, the remark made by appellant, "we served time together and everything," was vague and isolated. We conclude that any error in allowing the jury to hear the statement would have been cured by an instruction to disregard by the trial court. We overrule appellant's third issue.

IV. Ineffective Assistance of Counsel

In his fourth issue, appellant contends that counsel was ineffective for failing to timely object to the admission of his statement about having previously served time. We disagree.

To prove a claim of ineffective assistance of counsel, appellant must show that (1) his trial counsel's performance fell below an objective standard of reasonableness and (2) there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668, 687–88 (1984); *Lopez v. State*, 343 S.W.3d 137, 142 (Tex. Crim. App. 2011). Appellant has the burden to establish both prongs by a preponderance of the evidence. *Jackson v. State*, 973 S.W.2d 954, 956 (Tex. Crim. App. 1998). "An appellant's failure to satisfy one prong of the *Strickland* test negates a court's need to consider the other prong." *Williams v. State*, 301 S.W.3d 675, 687 (Tex. Crim. App. 2009); *see also Strickland*, 466 U.S. at 697.

On this record, appellant cannot show how the result of the trial would have been different had the jury not heard appellant's statement about having "served time" with his friend. As defense counsel argued to the jury, "what this case basically comes down to is whether this was a robbery or aggravated robbery." The issue at trial was whether appellant used his hand and fist as a deadly weapon when he beat Osorio on the head and face before stealing his wallet and cell phone. The fact that the jury could have been left with the impression that appellant had previously committed some crime because he had "served time" does nothing to resolve the issue of whether or not his hand or fist were used as a deadly weapon. That question would be

answered by the jury based on the surveillance video showing appellant beating the victim with his hand and fist on the head and face, the injuries sustained by the victim, and the testimony of Detective Adames. We overrule appellant's fourth issue.

V. Sufficiency of Evidence

In appellant's fifth issue, he contends that the evidence is insufficient to prove that he committed aggravated robbery because the State failed to prove that appellant used a deadly weapon during the theft. The State argues that the evidence supports the jury's finding that appellant used his hand and fist as a deadly weapon. We agree with the State.

In reviewing the sufficiency of the evidence, we view all the evidence in the light most favorable to the verdict, and determine whether any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 313 (1979); *Brooks v. State*, 323 S.W.3d 893, 899 (Tex. Crim. App. 2010). We assume the fact–finder resolved conflicts in the testimony, weighed the evidence, and drew reasonable inferences in a manner that supports the verdict. *Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007). We defer to the trier of fact's determinations of witness credibility and the weight to be given their testimony. *Brooks*, 323 S.W.3d at 899.

The indictment alleged that appellant used his hand and fist as a deadly weapon in the commission of the robbery. A hand or fist is not a deadly weapon per se, but may become a deadly weapon if used in a manner capable of causing death or serious bodily injury. TEX. PENAL CODE ANN. § 1.07(a)(17) (West Supp. 2017); *Turner v State*, 664 S.W.2d 86, 90 (Tex. Crim. App. 1983). Serious bodily injury means "bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ." *Id.* § 1.07(a)(46). The State does not have to

show that the hand or fist actually caused serious bodily injury. Rather, the State must show that the hand or fist was capable of serious bodily injury. *Jefferson v. State*, 974 S.W.2d 887, 892 (Tex. App.—Austin 1998, no pet.). The injuries inflicted on the victim are factors to be considered in determining whether a hand or a fist was used as a deadly weapon. *Lane v. State*, 151 S.W.3d 188, 191 (Tex. Crim. App. 2004); *Turner*, 664 S.W.2d at 90.

The record reflects Osorio was beaten unconscious and suffered numerous injuries to his face and head. His eye was swollen shut and his teeth were loose. He felt pain in his head, his face and his mouth. He missed three days of work due to his injuries and his face remained swollen for a month. Two years later, Osorio still felt pain on the top of his head, his jaw, and around his eyes. The record also reflects that appellant was much larger in stature than the victim, appellant being "six foot, 240, or so" while Osorio was "probably about . . . 5'3", 130." Further, Detective Adames agreed with the prosecutor that appellant used his hand and fist as a deadly weapon and testified that he reached that conclusion based on all the circumstances of the crime, i.e., the size difference between the two men; the significant force of the repeated punches to the head; the fact that the beating continued after the victim was unconscious; and the injuries suffered by the victim. The jury also had the benefit of watching a video that showed how appellant used his hand and fist in beating Osorio and shows that appellant continued beating him in the face and head even after he was knocked out. Viewed in the light most favorable to the verdict, a rational jury could have combined the evidence from the video and the testimony from Osorio and Detective Adames to conclude that appellant used his hand and fist as a deadly weapon. We conclude, therefore, that the evidence in this case is sufficient to sustain the jury's deadly–weapon finding. *See Lane*, 151 S.W.3d at 191–92 (injuries included a concussion, unconsciousness, bruising, nausea, vomiting, and dizziness); *Kennedy v. State*, 402 S.W.3d 796, 802 (Tex. App.—Fort Worth 2013, pet. ref'd) (injuries included a skull fracture and a brain

bruise with bleeding from being knocked to the floor by the defendant who was carrying a television set); *Baltazar v. State*, 331 S.W.3d 6, 8–9 (Tex. App.—Amarillo 2010, pet. ref'd) (injuries included unconsciousness, bloody nose, bruises, abrasions, numbness, headaches, double vision, and blurriness in left eye); *Jefferson, 974* S.W.2d at 891 (explaining that the complainant was stunned by the first blow, could not see after the second blow, and later suffered blurred vision, a scar on eyebrow, and jaw discomfort); *Brooks v. State*, 900 S.W.2d 468, 472–73 (Tex. App.—Texarkana 1995, no pet.) (injuries included abrasions and swelling to the face and forehead, bruising, and a traumatic contusion of the brain). We overrule appellant's fifth issue.

VI. Enhancement Paragraph

In appellant's seventh issue, he contends that the evidence is insufficient to prove appellant's prior conviction for burglary of a habitation in cause number F-0448922 alleged as an enhancement paragraph in the indictment. Although appellant acknowledges that the certified pen packet for this conviction was admitted into evidence as State's Exhibit 58 and published to the jury, he states that the exhibit was not included in the record on appeal and therefore, there is no evidence proving appellant's conviction for this offense.

During the punishment stage of trial, Investigator Woods from the Dallas County District Attorney's Office testified that he had taken appellant's fingerprints that afternoon. That fingerprint card was admitted into evidence as State's Exhibit 57. Investigator Woods also testified that State's Exhibits 58 through 63 consisted of documents related to appellant's prior convictions. He testified that he compared the appellant's prints contained in Exhibit 57 and they matched the fingerprints associated with each of the prior convictions contained in State's Exhibits 58 through 63.

After appellant filed his brief, the court reporter filed a Supplemental Exhibit Volume containing, among other exhibits, State's Exhibits 57 and 58. State's Exhibit 57 is the fingerprint card made by Investigator Woods. State's Exhibit 58 is appellant's certified pen packet in cause number F-0448922. State's Exhibit 58 includes appellant's photograph from the Texas Department of Criminal Justice, a judgment on a plea of guilty or nolo contendere in cause number F-048922, the indictment in cause number F-0448922, and appellant's fingerprint card from the Texas Department of Criminal Justice. The judgment is dated 04/27/04 and reflects that appellant was convicted of the offense of burglary of a habitation and sentenced to three years' imprisonment and a $2,000 fine.[3] One easy method of proving a prior conviction for enhancement purposes is the introduction of certified copies of the judgment and sentence and the record of the Texas Department of Corrections including fingerprints supported by the testimony of an expert witness identifying those prints as identical with known prints of the accused. *Littles v. State*, 726 S.W.2d 26, 28 (Tex. Crim. App. 1984). Appellant does not contend that the judgment contained in State's Exhibit 58 is in any way deficient to prove the prior conviction, nor does he contend that the State failed to prove that the prior conviction was linked to him. We overrule appellant's seventh issue.

VI. Modification of Judgment

In his sixth issue, appellant requests that we modify the judgment to accurately reflect that appellant pled not true to the two enhancement paragraphs alleged in the indictment. The trial court's judgment reflects that appellant pleaded true to each enhancement paragraph. However, the record reflects appellant pleaded not true to the enhancement paragraphs. Accordingly, we modify the sections titled "Plea to 1st Enhancement Paragraph" and "Plea to 2nd

[3] Contrary to the State's assertion in its brief that the copy of the judgment in the supplemental reporter's record appears too faded to be legible, the copy filed with this Court, although somewhat faded, is legible.

Enhancement Paragraph" in the judgment to state "Not True." *See* TEX. R. APP. P. 43.2(b); *Bigley v. State*, 865 S.W.2d 26, 27 (Tex. Crim. App. 1993); *Asberry v. State*, 813 S.W.2d 526, 529 (Tex. App.—Dallas 1991, pet. ref'd.).

CONCLUSION

We modify the trial court's judgment to reflect appellant pleaded "not true" to the enhancement paragraphs of the indictment. As modified, we affirm the trial court's judgment.

/David Evans/
DAVID EVANS
JUSTICE

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TEX. R. APP. P. 47
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Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

JOJO KWASI WILSON, Appellant

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THE STATE OF TEXAS, Appellee

On Appeal from the 265th Judicial District Court, Dallas County, Texas
Trial Court Cause No. F16-00418-R.
Opinion delivered by Justice Evans, Justices Lang and Schenck participating.

Based on the Court's opinion of this date, the judgment of the trial court is **MODIFIED** to reflect JoJo Kwasi Wilson pleaded "Not True" to the enhancement paragraphs. As **REFORMED**, the judgment is **AFFIRMED**.

Judgment entered this 28th day of December, 2017.