Affirmed and Memorandum Opinion filed September 30, 2010.

In The

Fourteenth Court of Appeals

NO. 14-09-00318-CR

JERMAINE LAJUANE WOMACK, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 82nd District Court
Falls County, Texas
Trial Court Cause No. 8579

M E M O R A N D U M O P I N I O N

A jury convicted appellant, Jermaine LaJuane Womack, of deadly conduct, sentenced him to twenty years' confinement in the Institutional Division of the Texas Department of Criminal Justice, and imposed a fine of ten thousand dollars. On appeal, he contends the trial court erroneously submitted incorrect limiting instructions at the guilt-innocence phase of trial. We affirm.

I. BACKGROUND

The underlying criminal proceeding arose from a series of confrontations between appellant and several other persons.[1] Those encounters ultimately resulted in appellant's brandishing a gun and firing several bullets at the complainants, grazing two of them. For those actions, appellant was arrested for, charged with, and convicted of, the offense of deadly conduct. *See* Tex. Penal Code Ann. § 22.05 (Vernon 2003).

The confrontations began outside a motel room. On March 24, 2008, one of the complainants, D'Angelo Wright, drove to the motel to pick up his cousin, Meyaka. When Wright arrived, he heard shouting coming from inside the motel room Meyaka shared with her mother, Latanya, and sixteen-year-old brother, Rodney. Rodney exited the room with a bloody nose. Appellant followed. Appellant confronted Wright, among others, but the situation was defused by the arrival of police officers at the motel.

However, later that day, appellant pulled a gun and fired shots at a car in which Wright and some of his friends were riding. Two of the passengers were grazed by bullets. Appellant was arrested and charged with deadly conduct.

During trial, Latanya testified that, on the day of the shooting, appellant had also scuffled with her son, Rodney, at least twice. During one of those fights, Rodney suffered the nosebleed that Wright witnessed upon his arrival at the motel.

Apparently in response to Latanya's testimony, the court, *sua sponte*, gave the jury an instruction limiting its consideration of extraneous offenses. The jury instruction read:

> You are instructed that if there is any testimony before you in this case regarding the Defendant's having committed offenses other than the offense alleged against him in the indictment in this case, you cannot consider said testimony for any purpose unless you find and believe beyond a reasonable doubt that the Defendant committed such other offenses, if any were committed, and even then you may only consider the same in determining the intent and identity of the Defendant, if any, in connection

[1] The facts are well-known to the parties, and we discuss them only to the limited extent necessary to address the issues raised in this appeal. *See* Tex. R. App. P. 47.4.

> with the offense, if any, alleged against him in the indictment in this case, and for no other purpose.

Appellant made no objection to the supplemental charge. The jury convicted him as charged.

Appellant now contends the limiting instruction given by the trial court was erroneous. That is, he apparently argues that the trial court should not have issued the instruction quoted above because issues of identity and intent – which might justify the admission of testimony about extraneous offenses – were not raised by the evidence. Stated differently, appellant does not complain about the *admission* of the extraneous-offense evidence; instead, for reasons that are unclear, appellant challenges only the trial court's actions in *limiting* the purposes for which the jury could consider such testimony.

II. DISCUSSION

Appellant fails to direct our attention to any extraneous-offense testimony in the record.[2] Giving his complaint a liberal construction, we read his argument as one apparently taking issue with the testimony regarding his two scuffles with Rodney.

A. Standard of Review

We review allegations of jury-charge error under Article 36.19 of the Code of Criminal Procedure. *Guevara v. State*, 152 S.W.3d 45, 54 (Tex. Crim. App. 2004). We first determine whether error exists in the charge. *Ngo v. State*, 175 S.W.3d 738, 743 (Tex. Crim. App. 2005). If the charge is erroneous, we next consider whether the error caused sufficient harm to require reversal. *Id.* The degree of harm necessary for reversal depends on whether the defendant preserved error. *Id.* Where, as here, appellant did not preserve error at trial, he must show the error was so egregious and created such harm that he did not have a fair and impartial trial. *See id.* at 743–44.

B. Propriety of Jury Instruction

[2] In his brief, appellant describes only one of his two scuffles with Rodney. Appellant complains of no other extraneous offense.

In this case, however, we need not decide whether the jury charge was erroneous. Even were we to presume error, appellant could not prevail on appeal because he has not shown that he was harmed by the trial court's efforts to *limit* the jury's use of the extrinsic-offense evidence.

Notably, Latanya's testimony was elicited by *appellant's counsel*. Appellant neither objected to, nor moved for a limiting instruction as to, the testimony adduced by his own attorney. Rather, the court, on its own motion, supplemented its charge with a limiting instruction to protect the rights of appellant.[3] Thus, appellant cannot show any harm, much less "egregious harm." *See Ngo*, 175 S.W.3d at 743–44. Accordingly, we overrule appellant's sole issue. *See id.*

III. CONCLUSION

We find no merit in the issue presented. Therefore, we overrule appellant's sole issue on appeal, and we affirm the judgment of conviction.

/s/ Kent C. Sullivan
Justice

Panel consists of Justices Frost, Boyce, and Sullivan.
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[3] There was also testimony that appellant had previously been issued trespass warnings for being on motel property. However, appellant does not reference these warnings in his brief. We note testimony of these warnings was provided by appellant's witness and appellant's counsel posed no objection to it.