

**Affirmed and Memorandum Opinion filed June 16, 2016.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-14-00874-CR**

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**CHARLES ROBERTS, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 177th District Court  
Harris County, Texas  
Trial Court Cause No. 1381559**

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**MEMORANDUM OPINION**

In this case, which comes to us on remand from the Court of Criminal Appeals, we address an issue that was left unaddressed in our previous opinion: whether the trial court abused its discretion by admitting evidence of a prior conviction over an objection that the evidence was more prejudicial than probative. *See Roberts v. State*, No. PD-1672-15, 2016 WL 1474425 (Tex. Crim. App. Apr. 13, 2016) (per curiam). We conclude that any error in the admission of the evidence was harmless. Therefore, we affirm the trial court's judgment.

## **BACKGROUND**

The complainant in this case died of a single gunshot wound to the abdomen. His body was found inside of his vehicle, parked just outside of a grocery store. The shooter left no physical evidence at the scene, and there were no eyewitnesses or surveillance footage of the shooting.

Police came to suspect that appellant may have been involved in the murder. Text messages revealed that the complainant had gone to the grocery store to sell appellant two ounces of hydroponic marijuana. Phone records also showed that appellant was within range of a cell phone tower next to the grocery store at the time of the shooting.

Appellant turned himself in to police when he learned that a warrant had been issued for his arrest. Before he was released on bond, appellant encountered a family acquaintance in jail. The acquaintance wrote a letter to his jailors, claiming that appellant had confessed to killing a man for two ounces of hydroponic marijuana.

At trial, appellant admitted that he had spoken with the acquaintance in jail, but he denied having made a confession of murder. Appellant further admitted that he had gone to the grocery store to purchase the hydroponic marijuana, but he testified that he left without completing the transaction because he did not trust the complainant. According to appellant, the complainant was not alone like he had said he would be, and the complainant was in a different vehicle than what he had previously described.

The jury rejected appellant's testimony and convicted him of murder. Punishment was assessed at fifty years' imprisonment.

## PRIOR CONVICTION

Before appellant took the stand, the trial court conducted a hearing outside the presence of the jury to determine if there were any “impeachable priors” at issue. Appellant stated that, although he had no felonies on his record, he did have two misdemeanor convictions for assault and another conviction for possession of marijuana. Because one of the assault convictions involved a family member, the State argued that it constituted a crime involving moral turpitude.

Appellant personally explained to the trial court that the assault was just a fight between him and his father. Appellant’s defense counsel then argued that, to whatever extent the evidence of the assault conviction was relevant, the trial court should exclude it because it was more prejudicial than probative. The trial court determined that the evidence of the assault conviction was admissible, and the State impeached appellant with that evidence at the end of appellant’s cross-examination. The State did not impeach appellant with evidence of his other convictions.

Appellant argues that the trial court abused its discretion by admitting the evidence of his assault conviction. Assuming for the sake of argument that the evidence was inadmissible, we conclude that any error in the admission of the evidence would be subject to a harm analysis for nonconstitutional error, and under that standard, the error was harmless.

Nonconstitutional error must be disregarded unless it affects a defendant’s substantial rights. *See* Tex. R. App. P. 44.2(b). An error affects a defendant’s substantial rights when the error has a substantial and injurious effect or influence on the jury’s verdict. *See King v. State*, 953 S.W.2d 266, 271 (Tex. Crim. App. 1997). If the error had no or only a slight influence on the verdict, the error is harmless. *See Johnson v. State*, 967 S.W.2d 410, 417 (Tex. Crim. App. 1998).

When assessing harm, we consider “everything in the record, including any testimony or physical evidence admitted for the jury’s consideration, the nature of the evidence supporting the verdict, the character of the alleged error and how it might be considered in connection with other evidence in the case.” *See Morales v. State*, 32 S.W.2d 862, 867 (Tex. Crim. App. 2000). We also consider the jury instructions given by the trial court, the State’s theory and any defensive theories, closing arguments, and even voir dire, if material to the defendant’s claim. *Id.*

We first note that the State presented a strong case for conviction, even though the evidence against appellant was mostly circumstantial. Phone records established that appellant had arranged a meeting with the complainant to purchase two ounces of hydroponic marijuana. The records also established that appellant was near the scene when the complainant was shot. After the shooting, a search revealed that there were no drugs on the complainant or in his car, but police were able to find the lid to the mason jar that had once stored the hydroponic marijuana. This evidence permitted a reasonable inference that the complainant was shot over a drug deal gone bad.

That inference was further supported by the testimony of the family acquaintance, who said that appellant admitted to killing the complainant for the hydroponic marijuana. At trial, appellant tried to discredit the acquaintance by suggesting that the acquaintance was biased and that the acquaintance could have read about the murder in an online newspaper article. However, there was no evidence that the acquaintance had seen the article, and in his letter to the jailors, the acquaintance specifically mentioned that appellant had shot the complainant over marijuana of the hydroponic variety, a detail that had not been mentioned in the article.

Appellant argues that the evidence of the prior conviction was harmful because it increased the likelihood that the jury convicted him based on a pattern of past conduct, rather than on the facts of the case. We disagree. There was only a brief mention of the prior conviction during the guilt phase of trial. Appellant testified that he had assaulted his father several years before the murder. No other details of the assault were elicited, and the parties did not mention or emphasize the prior conviction during closing arguments. Also, the acquaintance's testimony was far more prejudicial than the evidence of the prior conviction. Given the strength of the acquaintance's testimony and all of the other evidence placing appellant at the scene of the shooting, the jury had a compelling reason to find appellant guilty.

We cannot say that any error in admitting evidence of the prior conviction had a substantial and injurious effect on the jury's decision. At best, the evidence had only a slight influence. Therefore, we conclude that any error in the admission of the evidence was harmless. *See Hankins v. State*, 180 S.W.3d 177, 182–83 (Tex. App.—Austin 2005, pet. ref'd) (the erroneous admission of evidence of a prior conviction was harmless where the evidence supporting the charged offense was strong, no details of the prior conviction were elicited, and the State only made two brief mentions of the prior conviction).

## CONCLUSION

The trial court's judgment is affirmed.

/s/ Tracy Christopher  
Justice

Panel consists of Chief Justice Frost and Justices Christopher and Donovan.  
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