

Affirmed as Reformed and Memorandum Opinion filed December 8, 2016.



In The

Fourteenth Court of Appeals

NO. 14-15-00753-CR

JOSE ADOLPHO CASTILLO, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from 228th District Court
Harris County, Texas
Trial Court Cause No. 1301318**

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

A jury convicted Jose Adolpho Castillo of capital murder and the trial court sentenced him to confinement for life without the possibility of parole. Appellant brings this appeal claiming the trial court erred in admitting evidence and requesting reformation of the judgment. As reformed, we affirm the trial court's judgment.

The evidence at trial showed three masked and armed men entered a convenience store. The complainant was in the store and put his hands in the air but was shot by one of

the masked men. The three men returned to their truck where the driver was waiting. The driver testified appellant said, "I shot that dude." Corporal Jason Boughter arrived at the scene and found the complainant on the sidewalk in front of the store. Boughter was wearing a body camera which videotaped his encounter with the complainant. The complainant was transported to the hospital but died from the gunshot wound.

In his first issue, appellant argues the body-camera video was more prejudicial than probative and should have been excluded. *See* Tex. R. Evid. 403. The record reflects the State sought to introduce into evidence the video taken from Boughter's body camera showing the complainant's wounds. Appellant objected pursuant to Rule 403 and the trial court overruled the objection.

The decision to admit or exclude such evidence is generally left to the sound discretion of the trial court. *Prible v. State*, 175 S.W.3d 724, 734 (Tex. Crim. App. 2005). In deciding whether the video was unfairly prejudicial, we consider the length of the video, whether it is color or black and white, whether it is gruesome, whether any bodies are clothed or naked, and whether the body has been altered. *See id.*

The portion of the video played was approximately four minutes in length and is in color. The body is clothed and has not been altered. The video depicts the complainant's body as it appeared at the crime scene. Photographs depicting the location of a body at the crime scene and the complainant's injuries are relevant. *Shuffield v. State*, 189 S.W.3d 782, 787 (Tex. Crim. App. 2006). "A visual image of the injuries appellant inflicted on the victim is evidence that is relevant to the jury's determination. The fact that the jury also heard testimony regarding the injuries depicted does not reduce the relevance of the visual depiction." *Gallo v. State*, 239 S.W.3d 757, 762 (Tex. Crim. App. 2007).

Even if a video is gruesome, its probative value is not substantially outweighed by the danger of unfair prejudice under Rule 403 if it is "no more gruesome than the crime scene itself as it was found by the police." *Shuffield*, 189 S.W.3d at 787. Videos of a complainant's injuries are admissible under Rule 403 if they "show only the injuries that the victim received and are no more gruesome than would be expected." *Id.* at 787–88.

The exhibit added to the probative value of the State’s case by assisting the jury in understanding the testimony presented regarding the injuries sustained by the complainant. Although the exhibits are disturbing and graphic, they were “no more gruesome than would be expected in this sort of crime.” *Gallo*, 239 S.W.3d at 763.

Considering the requisite factors, we cannot conclude that the prejudicial effect of the disputed video substantially outweighed its probative value. *See Morales v. State*, 450 S.W.3d 553, 568–69 (Tex. App.—Houston [14th Dist.] 2014, pet. ref’d) (holding photographs and DVD recording of discovery of complainant’s body which had been doused with gasoline and set on fire were not more prejudicial than probative). Accordingly, we hold the trial court did not abuse its discretion in admitting the video. Appellant’s first issue is overruled.

In his second issue, appellant requests we reform the judgment to reflect the date of offense was “12/31/2010.” The record reflects the trial court granted leave to amend the indictment to allege the offense occurred on December 31, 2010, and the testimony adduced at trial reflects the offense occurred that date. The judgment recites the date of offense was “12/21/2010.” The State does not oppose reformation of the judgment.

Accordingly, we sustain appellant’s second issue and reform the judgment to reflect the date of offense was “12/31/2010.” As reformed, we affirm the trial court’s judgment.

/s/ John Donovan
Justice

Panel consists of Justices Busby, Donovan and Brown.
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