Affirmed and Memorandum Opinion filed November 14, 2017.

In The

Fourteenth Court of Appeals

NO. 14-16-00581-CR

JHONTAE LEMARK HUDSON, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 208th District Court
Harris County, Texas
Trial Court Cause No. 1416770

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

A jury convicted appellant Jhontae Lemark Hudson of the felony offense of aggravated robbery with a deadly weapon, and sentenced him to confinement in the Institutional Division of the Texas Department of Criminal Justice for twenty-five years. From that conviction, appellant brings this appeal claiming the trial court erred in its ruling on the admissibility of (1) two surveillance videos, (2) an in-court

demonstration, and (3) two extraneous robberies. For the reasons stated below, we affirm.

I. Background

On the evening of October 25, 2013, Natasha Thomas-Strauss was working as a customer service representative at the money center for the Walmart located at Cutten Road and 1960. That evening, a tall, heavyset black man with dreadlocks, a white hard hat, sunglasses, black shirt, and yellow construction jacket approached Natasha at the money center counter. He handed her a note which read: "Just keep calm and give me all the fucking money ASAP and you won't get hurt. I have a gun. Don't make me use it," and a sad face was drawn at the bottom of the note. When Natasha explained that she did not know how to open the cash register, the man told her to "open the fucking register," and flashed a small silver and black gun at her from within a case. Natasha explained that she could not open the register without the help of a manager, so the man escorted Natasha around the store until they found someone who could help. The assistant manager on duty that night was Myra Johnson.

When Natasha found Myra, Natasha told her that she had a problem, and that she needed Myra to follow her back to her register. When they all got back to the register, Myra asked Natasha how she could help. Natasha then handed Myra the man's note, and Myra understood that they were being robbed. When Myra finished reading the note, she looked up at the man. The man then opened the container in his hand, showed her the gun, and told her, "I am not playing." Myra opened the cash register and the man gave her a Burger King bag to put the money inside. The man exited the store with approximately $3,800.

A few months later, Natasha met with the police at the office of the Federal Bureau of Investigation ("FBI") to identify the suspect from a photographic lineup.

She identified appellant from a photo array lineup. Myra also was shown a photo array and she identified appellant.

Appellant was charged with committing aggravated robbery with a deadly weapon on October 25, 2013. On July 11, 2016, a jury found appellant guilty of aggravated robbery with a deadly weapon and sentenced him to twenty-five years' confinement.

II. Analysis

A. Standard of Review

We review a trial court's evidentiary ruling for an abuse of discretion. *See Powell v. State*, 63 S.W.3d 435, 438 (Tex. Crim. App. 2001). We will not disturb the ruling if it is within the zone of reasonable disagreement. *See Winegarner v. State*, 235 S.W.3d 787, 790 (Tex. Crim. App. 2007). Instead, we will uphold the ruling if it is reasonably supported by the record and correct on any theory of law applicable to the case. *Willover v. State*, 70 S.W.3d 841, 845 (Tex. Crim. App. 2002).

B. Admissibility of the Surveillance Videos

In his first issue, appellant contends the trial court abused its discretion by admitting into evidence, over his objection, two surveillance videos. Appellant asserts the trial court erred because the videos were not sufficiently authenticated. For the reasons set forth below, we disagree.

Texas Rule of Evidence 901(a) governs the authentication requirement for the admissibility of evidence, including videotapes. *See* Tex. R. Evid. 901(a); *Angleton v. State*, 971 S.W.2d 65, 67 (Tex. Crim. App. 1998). Rule 901 provides in pertinent part:

> (a) General Provision. The requirement of authentication or identification as a condition precedent to admissibility is satisfied by

> evidence sufficient to support a finding that the matter in question is what its proponent claims. (b) Illustrations. By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this rule:
>
> (1) Testimony of witness with knowledge. Testimony that a matter is what it is claimed to be.

Tex. R. Evid. 901(a), (b)(1). We review the trial court's ruling on authentication issues under an abuse of discretion standard. *Angleton*, 971 S.W.2d at 67. The standard requires an appellate court to uphold an admissibility decision made by a trial court when the decision is within the zone of reasonable disagreement. *Powell*, 63 S.W.3d at 438.

In this case, the State offered two surveillance videos into evidence. The first video, *i.e.*, State's exhibit 5, depicts the suspect entering the Walmart on the evening of October 25, 2013. Natasha, the customer service representative working that evening at the money center, testified that she had viewed the video prior to trial, to the best of her knowledge it had not been altered in any way, it depicted the evening of October 25, 2013, and showed the suspect in this case entering the Walmart store. Appellant objected to the admission of State's exhibit 5, asserting that it was unauthenticated. Appellant argued that Natasha is not the custodian of record for Walmart and there was no business records affidavit on file indicating that it was an actual video from Walmart. At the request of the trial court, the State asked Natasha the following additional questions about her knowledge of the video:

> Q: In regards to State's Exhibit No. 5, prior to your testimony, did you review the video file on this DVD?
>
> A: Yes.
>
> Q: Is this video file a video of the evening of October 25th, 2013?
>
> A: Yes.
>
> Q: On this video, do you see the suspect that was dressed as you say as a City of Houston employee per se?

A: Yes.

Q: And on this file, were you able to see the entrance to the money center where you were working?

A: Yes.

Q: And on this file, do you also see the entrance and the exit to the Walmart?

A: Yes.

Q: The Walmart that you worked for, correct?

A: Yes.

Q: Is that the Walmart that you were an employee of?

A: Yes.

Q: And to the best of your knowledge, was it edited in any way?

A: No.

After receiving the additional testimony, the trial court overruled appellant's objection and admitted State's exhibit 5.

The second video, State's exhibit 27, shows an occurrence that happened on December 23, 2013, in the Woodforest National Bank located in the Walmart store off FM 1960 and Cutten Road. Kimberly Domingue, the branch manager of the bank at that location, testified prior to the admission of the State's exhibit 27 as follows:

Q: Have you previously had an opportunity to review the video file that is located on this DVD?

A: Yes.

Q: And does it fairly and accurately depict the occurrence that happened on December 23, 2013?

A: Yes.

Q: In fact, did you see yourself on this DVD?

A: Yes.

Q: Did you see the suspect or the defendant in this case on this DVD?

A: Yes.

Q: To the best of your knowledge, has it been altered in any way?

A: No.

Appellant objected to the second video based on authentication, asserting there was neither a business records affidavit from Walmart in the file nor a loss prevention officer there to testify. The trial court overruled the objection and admitted State's exhibit 27.

In his brief, appellant asserts that both videos were not sufficiently authenticated because Natasha and Kimberly are both just "regular employee(s)" who lack "technical experience" to be able to testify to the operation of the video. Contrary to appellant's assertion, the State's two witnesses both have personal knowledge of the respective robberies. Natasha and Kimberly both personally observed the scene the video portrays and each witnesses confirmed the video is an accurate representation of the scene. As such, their testimony clearly satisfies the authentication requirement imposed by Rule 901; thus, the trial court did not err in admitting the surveillance videos. *See Angleton*, 971 S.W.2d at 6; *see Stevens v. State*, No. 14-00-00705-CR, 2001 WL 1289102, at *1 (Tex. App.—Houston [14th Dist.] Oct., 25, 2001, no pet.) (not designated for publication); *Bean v. State*, 14-98-00092-CR, 1999 WL 1041358, at *3 (Tex. App.—Houston [14th Dist.] Nov. 18, 1999, pet. ref'd) (not designated for publication). Appellant's first issue is overruled.

C. Admissibility of In-Court Demonstration

In his second issue, appellant contends that the trial court abused its discretion by admitting an in-court demonstration by the State's witness, FBI Special Agent Katz, as to how the weapon used during the robbery was concealed within a container. Specifically, appellant argues that the trial court's decision was erroneous because: (1) the State's witness testifying in support of the demonstration lacked personal knowledge of the events about which he testified, and (2) the State failed

to show that the demonstration was substantially similar to the events it sought to portray. Appellant claims that both of these problems violated Rule 602 of the Texas Rules of Evidence. We disagree.

We review the trial court's ruling on the admissibility of an in-court demonstration for an abuse of discretion. *Valdez v. State*, 776 S.W.2d 162, 168 (Tex. Crim. App. 1989) (en banc); *Wright v. State*, 178 S.W.3d 905, 920 (Tex. App.—Houston [14th Dist.] 2005, pet. ref'd).

Appellant objected to an in-court demonstration by Agent Katz as to how the weapon used during the robbery was concealed within a container.

> Q: And what was that description that was given?
>
> A: It was a small handgun that fit inside of an [sic] I believe they described it as a kind of like a handbook-type item. I don't know how to describe that, but like what you are holding, that it could fit inside that type of container I guess.
>
> Q: I am going to show you now what is marked as State's Exhibits 33 and 32. If you could demonstrate what you are trying to explain to the ladies and gentlemen of the jury?
>
> Objection, Your Honor. This is speculation. Also it is relevance since he was not at the scene of the alleged robbery.
>
> Overruled.
>
> Q: You may continue.
>
> A: Well, during the course of that particular robbery what I had learned was that the weapon was concealed inside of a small container like this; and that it was displayed by opening the container, itself, and displaying the weapon to the victim.

As an initial matter, Rule 602 does not bar the demonstration. Agent Katz had personal knowledge of a great many of the details about which he testified, and the remaining details he could reasonably deduce based on his investigation of the robbery, his experience working for the FBI for over eighteen years, and his experience as the coordinator of the bank robbery task force for the Houston division

of the FBI. In addition, Rule 602 is not the primary guidepost courts use to determine if a demonstration was appropriately admitted. Rather, case law sets out the requirements for the admission of demonstrations.

Case law generally focuses on whether the demonstration was substantially similar to the event it seeks to illustrate. *See Valdez*, 776 S.W.2d at 168; *Cantu v. State*, 738 S.W.2d 249, 255 (Tex. Crim. App. 1987); *Wright*, 178 S.W.3d at 919. The conditions of the demonstration should be sufficiently similar to the event in question, but need not be identical, and dissimilarities go to weight and not to admissibility. *Valdez*, 776 S.W.2d at 168; *Cantu*, 738 S.W.2d at 255; *Wright*, 178 S.W.3d at 919. Nothing in our records shows the demonstration fails this standard. The record reflects that the conditions under which Agent Katz's demonstration was conducted was substantially similar to the event in question. Under these circumstances, the trial court did not abuse its discretion in allowing Agent Katz's in-court demonstration.

Moreover, prior to the in-court demonstration by Agent Katz, the State conducted two other unchallenged in-court demonstrations depicting the same event. Both Natasha and Myra demonstrated for the jury, without objection, how appellant flashed the gun. Myra testified that appellant had a "notebook-type thing," and that he opened it and showed her the gun. A black gun case was admitted without objection as a demonstrative exhibit, State's exhibit 33. The prosecutor conducted with Myra a demonstration of how appellant flashed the gun from within the case. The gun that was used in the demonstration, a .380 caliber Taurus, matched the description of the weapon used during the robbery; this weapon was recovered from appellant's home, and was admitted into evidence for all purposes. Thus, even if there was an error in admitting Agent Katz's demonstration it would be harmless because the same evidence had previously been admitted without objection. *Leday*

v. State, 983 S.W.2d 713, 722 (Tex. Crim. App. 1998); *Chapman v. State*, 150 S.W.3d 809, 814 (Tex. App.–Houston [14th Dist.] 2004, pet. ref'd).

For these reasons, appellant's second issue is overruled.

D. Admissibility of Extraneous Offenses

In his last issue, appellant complains the trial court abused its discretion by admitting evidence of two other bank robberies committed near the time and place of the charged offense with similar *modus operandi*. Appellant argues that evidence of these extraneous robberies should have been excluded under Rule 404(b) and 403. The State argues that the extraneous offense evidence was admissible to prove appellant's identity and the probative value of the evidence outweighed any danger of unfair prejudice.

We review a trial court's ruling on the admissibility of extraneous offenses under an abuse of discretion standard. *De La Paz v. State*, 279 S.W.3d 336, 343 (Tex. Crim. App. 2009); *see also Harrell v. State*, 884 S.W.2d 154, 158 (Tex. Crim. App. 1994). As long as the trial court's ruling is within the zone of reasonable disagreement, there is no abuse of discretion, and we will uphold the trial court's ruling. *De La Paz*, 279 S.W.3d at 343–44. A trial court's ruling generally is within this zone if the evidence shows that (1) an extraneous transaction is relevant to a material, non-propensity issue; and (2) the probative value of that evidence is not substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading of the jury. *Id*. at 344. Furthermore, if the trial court's evidentiary ruling is correct on any theory of law applicable to that ruling, it will not be disturbed even if the trial court gave the wrong reason for its right ruling. *Id*.

1. Rule 404(b)

Texas Rule of Evidence 404(b) prohibits admission of extraneous offenses to prove a person's character or to show that the person acted in conformity with that character. *See* Tex. R. Evid. 404(b). Extraneous offenses may be admissible to show

motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. *See id*. This list is illustrative, rather than exhaustive, and extraneous offense evidence may be admissible when a defendant raises a defensive issue that negates one of the elements of the offense. *Martin v. State*, 173 S.W.3d 463, 466 (Tex. Crim. App. 2005).

An extraneous offense may be admissible to prove identity only if identity is at issue in the case. *Page v. State*, 213 S.W.3d 332, 336 (Tex. Crim. App. 2006). "The trial judge has considerable latitude in determining that identity is, in fact, disputed." *Segundo v. State*, 270 S.W.3d 79, 86 (Tex. Crim. App. 2008). Identity may be placed in dispute by the defendant's opening statement or cross-examination as well as by affirmative evidence offered by the defense. *Id*. Cross-examination places identity at issue if it implies the witness's identification of the defendant is not trustworthy. *Mason v. State*, 416 S.W.3d 720, 740 (Tex. App.—Houston [14th Dist.] 2013, pet. ref'd) (citing *Page*, 137 S.W.3d at 78). "That the impeachment was not particularly damaging or effective in light of all of the evidence presented is not the question." *Segundo*, 270 S.W.3d at 86. "The question is whether impeachment occurred that raised the issue of identity." *Id*. "If so, Rule 404(b) permits the introduction of extraneous offenses that are relevant to the issue of identity." *Id*.

Appellant's identity as the robber in this case was contested. Appellant raised the issue of identity as a defense in his defense counsel's opening statement (*i.e.*, appellant had an alibi on the night of the charged offense). Additionally, appellant continued during the State's case-in-chief to raise this defensive theory by vigorously cross-examining Natasha regarding the reliability of her identification of appellant as the robber. He cross-examined her regarding alleged inconsistent physical characteristics between himself and the surveillance videos (*e.g.*, whether she had observed any scars or tattoos on the suspect). He also attacked the credibility of her identification by questioning whether she was nervous during the robbery and

whether police had shown her appellant's photograph before she identified him from a photo array lineup. Finally, appellant does not dispute on appeal that identity was at issue in this case; instead, he broadly argues "the proposed evidence of extraneous offenses had no relevance apart from a tendency to prove character and propensity."

Raising the issue of identity does not automatically render evidence of an extraneous offense admissible. *Page*, 213 S.W.3d at 336. "When the extraneous offense is introduced to prove identity by comparing common characteristics, it must be so similar to the charged offense that the offenses illustrate the defendant's 'distinctive and idiosyncratic manner of committing criminal acts.' " *Id*. (quoting *Martin*, 173 S.W.3d at 468). "[T]he theory of relevancy is usually that of *modus operandi* in which the pattern and characteristics of the charged crime and the uncharged misconduct are so distinctively similar that they constitute a 'signature.' " *Segundo*, 270 S.W.3d at 88. "No rigid rules dictate what constitutes sufficient similarities; rather, the common characteristics may be proximity in time and place, mode of commission of the crimes, the person's dress, or any other elements which mark both crimes as having been committed by the same person." *Id*. "Usually, it is the accretion of small, sometimes individually insignificant, details that marks each crime as the handiwork or *modus operandi* of a single individual." *Id*. The extraneous offense and the charged offense can be different offenses, so long as the similarities between the two offenses are such that the evidence is relevant. *Mason*, 416 S.W.3d at 740–41.

A comparison between the charged offense in this case and the extraneous offenses show a sufficient degree of similarity. The record reveals that outside the presence of the jury, the trial court inquired about the similarities between the three cases, and the State explained:

> [The State]: The other two cases, Your Honor, would be a similar aggravated robbery. One that happened on October 4th less than 19

> days before. That one happened at a nearby Walmart that was an actual Woodforest Bank, Your Honor, that was robbed by a suspect who was a black male between six foot and six foot two, 250-300 pounds, wearing an actual construction vest and a hat, that was an attempted [aggravated robbery], Your Honor; and on that one, he approaches the actual counter, puts down a handwritten note and demands cash money. When the clerk kind of freaks out, she walks off and says, "Give me a second." Shortly after that, he then grabs the note; and he walks out. He [appellant] meets the description. It is the same MO [*modus operandi*], similar circumstances; and that was an aggravated robbery that happened nearby."

With respect to the December robbery, the State argued it was at the same Walmart but not the money center; instead, at the Woodforest Bank about thirty feet to the right of it.

> The same modus operandi. In this one though he comes in with a baseball cap with dread on. He is wearing sunglasses indoors. . . .He approaches the actual bank teller with a written note . . . requesting money. Once again, the description is a black male, 250-300 pounds, six foot to six three, wearing sunglasses, dreads.

At the conclusion of the State's witness testimony regarding the charged offense, the trial court allowed the parties one more opportunity to present their arguments about the extraneous evidence:

> [The State]: Just to reiterate the similarities that were presented today by the state and not only the case that happened on October 4th, 2013 but also the case that happened on December 23rd, 201[3]. Previously the state listed there was more than eight similarities on each of those cases.
>
> The Court: Under identity, is that your purpose?
>
> [The State]: That is correct, under identity, Your Honor.
>
> [Defense counsel]: My response, Your Honor. The first witness in the photo array, she was not able to identify. She said that she narrowed it down. That is not good enough. They all described him as a dark complected [sic] black male which he is not. I would argue that is more prejudicial than probative they are using the other bank robberies to tie into this bank robbery.

> The Court: All right. First of all, as to your — you can have a seat — as to your proffer or request for admissibility under 404(b), I am going to rule that it is admissible under the purpose for which you have offered it, namely, identity. As for 404 or 403 — excuse me —I find that there is extreme similarity among the offenses and a least in one of the cases the strength of the extraneous is there. It is a stronger case. The other one is not as strong; but they all have some merit and substance to them in terms of the strength of their proof; and I don't find that it would mislead the jury in any way; and therefore, I find that both offenses are more probative than they are prejudicial; and so, I am going to as far as your 403 analysis, I am going to ultimately find that they are more probative than prejudicial; and I will admit them both in the case-in-chief.

As set forth above, the extraneous offenses were sufficiently similar to the charged offense, including close geographical and temporal proximity, the suspect wore construction clothing during two of the offenses, the suspect disguised his features with dreadlocks and sunglasses during all of the robberies, and the perpetrator committed each robbery by approaching a female employee and handing her a demand note.

We conclude that the trial court acted within its discretion in determining that the similarities between the charged offense and the extraneous offense are sufficient to show appellant's idiosyncratic or signature style of robbery; the trial court acted within its discretion in admitting the extraneous offenses to prove identity. *See Page*, 213 S.W.3d at 338 (stating that Texas law "does not require extraneous-offense evidence to be completely identical to the charged offense to be admissible to prove identity" and noting that, despite some differences, the similarities there showed a distinctive manner of committing a crime); *Burton v. State*, 230 S.W.3d 846, 850–51 (Tex. App.—Houston [14th Dist.] 2007, no pet.) (holding that charged bank robbery and extraneous bank robberies were sufficiently similar when banks all had no onsite security, the robbed tellers were young, and the robber made the robbery demand initially with a note).

2. Rule 403

We next address whether the trial court abused its discretion in failing to exclude the extraneous offense evidence under Rule 403, even if the evidence was relevant and admissible under rule 404(b).

Rule 403 provides that, "[a]lthough relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, or needless presentation of cumulative evidence." Tex. R. Evid. 403. But "Rule 403 favors the admission of relevant evidence and carries a presumption that relevant evidence will be more probative than prejudicial." *Young v. State*, 283 S.W.3d 854, 876 (Tex. Crim. App. 2009). Evidence should be excluded under Rule 403 only when there exists " 'a clear disparity between the degree of prejudice of the offered evidence and its probative value.' " *Hammer v. State*, 296 S.W.3d 555, 568 (Tex. Crim. App. 2009) (quoting *Conner v. State*, 67 S.W.3d 192, 202 (Tex. Crim. App. 2001)).

In evaluating a trial court's ruling under Rule 403, "a reviewing court is to reverse the trial court's judgment 'rarely and only after a clear abuse of discretion.' " *Mozon v. State*, 991 S.W.2d 841, 847 (Tex. Crim. App. 1999) (quoting *Montgomery v. State*, 810 S.W.2d 372, 389 (Tex. Crim. App. 1991) (op. on reh'g)). When undertaking a Rule 403 analysis, we must balance (1) how compellingly evidence of the extraneous offense serves to make a fact of consequence more or less probable; (2) the potential that the extraneous offense will impress the jury in some irrational but indelible way; (3) the trial time needed to develop the evidence; and (4) the proponent's need for the extraneous offense evidence. *Wheeler v. State*, 67 S.W.3d 879, 888 (Tex. Crim. App. 2002); *Checo v. State*, 402 S.W.3d 440, 452 (Tex. App.—Houston [14th Dist.] 2013, pet. ref'd).

The first factor requires us to consider the strength of the extraneous offense evidence to make a fact of consequence more or less probable. During cross-examination, appellant questioned, as set forth above, the reliability of Natasha's physical description of appellant. Further, appellant stated during opening and closing argument that he had an alibi on the night of the charged offense. Given the similarity of the characteristics of the charged offense and the extraneous offenses, (*e.g.*, close geographical and temporal proximity, the suspect wore construction clothing during two of the offenses, the suspect disguised his features with dreadlocks and sunglasses during all of the robberies, and the perpetrator committed each robbery by approaching a female employee and handing her a demand note), the extraneous offense evidence is compelling as to the issue of identity. This factor weighs in favor of admissibility. *See Mason*, 416 S.W.3d at 741; *Burton*, 230 S.W.3d at 851.

The second factor requires us to consider the extraneous offense evidence for its potential to impress the jury in some irrational but indelible way. When the extraneous offense is no more heinous than the charged offense, evidence concerning the extraneous offense is unlikely to cause unfair prejudice. *See Taylor v. State*, 920 S.W.2d 319, 323 (Tex. Crim. App. 1996). Moreover, any impermissible inference of character conformity can be minimized by the use of a limiting instruction. *Lane v. State*, 933 S.W.2d 504, 520 (Tex. Crim. App. 1996). Here, the trial court gave the jury a limiting instruction prior to the extraneous witness testifying and again in the jury charge regarding the extraneous offense evidence. This factor weighs in favor of admissibility. *See Jabari v. State*, 273 S.W.3d 745, 753 (Tex. App.—Houston [1st Dist.] 2008, no pet.).

The third factor requires us to examine the trial time needed to develop the extraneous offense evidence. The evidentiary portion of the trial lasted approximately a day and a half (*i.e.*, July 7-8, 2016). For the October 4, 2013,

extraneous robbery the State called two witnesses (*i.e.*, Helen Bagala and Dianna Castaneda) and for the December 23, 2013, extraneous robbery the State called one witness (*i.e.*, Kimberly Domingue) to testify at trial. Their testimony did not take up a significant portion of the trial, and the amount of time used for their testimony was reasonable and not excessive. This factor weighs in favor of admissibility. *See id*.

The fourth factor requires us to determine the need for the extraneous offense evidence in this case. The extraneous offense evidence was significant to the State's case. There was no physical evidence linking appellant to the robbery on October 25, 2013. During cross-examination, appellant vigorously attacked the reliability of the Natasha's description of the appellant as well as her identification of appellant in the photo array lineup. Additionally, during opening statement, defense counsel asserted appellant had an alibi on the night of the charged offense. Appellant called his wife as a witness and she testified he was at home watching movies on the night of the charged offense. Defense counsel repeated this during closing argument. Thus, the need for the extraneous evidence was strong. This factor also weighs in favor of admissibility. *See Johnson v. State*, 68 S.W.3d 644, 651–52 (Tex. Crim. App. 2002) (finding strong need for extraneous offenses to establish identity, even when State had many types of other identity evidence, when defendant challenged the probative value of that evidence).

We conclude that the trial court acted within its discretion when it determined that the probative value of the extraneous offense evidence was not substantially outweighed by the danger of unfair prejudice, and admitted the evidence under Rule 403. Accordingly, we overrule appellant's third issue.

III. Conclusion

The judgment of the trial court is affirmed.

/s/ John Donovan
Justice

Panel consists of Justices Boyce, Donovan, and Jewell.
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