# In the
# Court of Appeals
# Sixth Appellate District of Texas at Texarkana

No. 06-23-00062-CR

ROELANDUS DAMAS CARR, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 115th District Court
Marion County, Texas
Trial Court No. F15316

Before Stevens, C.J., van Cleef and Rambin, JJ.
Memorandum Opinion by Chief Justice Stevens

# MEMORANDUM OPINION

After Quinton Logan's body was found in the home of Roelandus Damas Carr, a Marion County jury found Carr guilty of murder and assessed a sentence of life imprisonment. On appeal, Carr challenges the sufficiency of the evidence supporting his conviction and asserts that the trial court erred by failing to include an accomplice-witness instruction in the guilt/innocence jury charge, failing to include an extraneous-offense instruction in the punishment charge, and violating Article 36.27 of the Texas Code of Criminal Procedure.[1] For the reasons below, we affirm the trial court's judgment.

## I. Sufficient Evidence Supports the Conviction

Carr contends that there is legally insufficient evidence to support his conviction. Specifically, Carr contends that the evidence does not show, beyond a reasonable doubt, that he is the person who killed Logan.

### A. Standard of Review

"In evaluating legal sufficiency, we review all the evidence in the light most favorable to the trial court's judgment to determine whether any rational jury could have found the essential elements of the offense beyond a reasonable doubt." *Williamson v. State*, 589 S.W.3d 292, 297 (Tex. App.—Texarkana 2019, pet. ref'd) (citing *Brooks v. State*, 323 S.W.3d 893, 912 (Tex. Crim. App. 2010) (plurality op.)). "Our rigorous review focuses on the quality of the evidence presented." *Id.* (citing *Brooks*, 323 S.W.3d at 917–18 (Cochran, J., concurring)). "We examine legal sufficiency under the direction of the *Brooks* opinion, while giving deference to the

[1] *See* TEX. CODE CRIM. PROC. ANN. art 36.27.

responsibility of the jury 'to fairly resolve conflicts in testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.'" *Id.* (quoting *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007)).

"Legal sufficiency of the evidence is measured by the elements of the offense as defined by a hypothetically correct jury charge." *Id.* at 298 (citing *Malik v. State*, 953 S.W.2d 234, 240 (Tex. Crim. App. 1997)). "The 'hypothetically correct' jury charge is 'one that accurately sets out the law, is authorized by the indictment, does not unnecessarily increase the State's burden of proof or unnecessarily restrict the State's theories of liability, and adequately describes the particular offense for which the defendant was tried.'" *Id.* (quoting *Malik*, 953 S.W.2d at 240).

In our review, we consider "events occurring before, during and after the commission of the offense and may rely on actions of the defendant which show an understanding and common design to do the prohibited act." *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007) (quoting *Cordova v. State*, 698 S.W.2d 107, 111 (Tex. Crim. App. 1985)). It is not required that each fact "point directly and independently to the guilt of the appellant, as long as the cumulative force of all the incriminating circumstances is sufficient to support the conviction." *Id.* "Circumstantial evidence and direct evidence are equally probative in establishing the guilt of a defendant, and guilt can be established by circumstantial evidence alone." *Paroline v. State*, 532 S.W.3d 491, 498 (Tex. App.—Texarkana 2017, no pet.) (citing *Ramsey v. State*, 473 S.W.3d 805, 809 (Tex. Crim. App. 2015); *Hooper*, 214 S.W.3d at 13). "Further, 'we must consider all of the evidence admitted at trial, even if that evidence was improperly admitted.'" *Williamson*, 589

S.W.3d at 297–98 (quoting *Fowler v. State*, 517 S.W.3d 167, 176 (Tex. App.—Texarkana 2017), *rev'd in part by* 544 S.W.3d 844 (Tex. Crim. App. 2018)).

The jury, as "the sole judge of the credibility of the witnesses and the weight to be given their testimony[, could] 'believe all of [the] witnesses' testimony, portions of it, or none of it.'" *Id.* at 297 (second alteration in original) (quoting *Thomas v. State*, 444 S.W.3d 4, 10 (Tex. Crim. App. 2014)). "We give 'almost complete deference to a jury's decision when that decision is based upon an evaluation of credibility.'" *Id.* (quoting *Lancon v. State*, 253 S.W.3d 699, 705 (Tex. Crim. App. 2008)).

**B. The Evidence at Trial**

The evidence at trial showed that around 9:00 on the evening of October 3, 2020, Carr went to the home of Debbie Hilburn looking for his girlfriend, L'Erica Reece.[2] Although it was cold outside, Carr was in shorts, shirtless, and sweating. Carr barged into the house uninvited but left when he was told she was not there. He then went to Hilburn's daughter's house, where Reece was babysitting. At that house, he had a heated argument with Reece because she refused to leave with him. Hilburn and her daughter contacted law enforcement.

Around 9:30 that evening, Brett Smith with the Jefferson Police Department was dispatched to Hilburn's residence and determined that Hilburn and her daughter wanted Carr banned from their properties. After talking with them, Smith made contact with Carr and issued criminal trespass warnings to him for Hilburn and her daughter. Hilburn, Reece, and Smith all testified that Carr was intoxicated, and Reece and Smith believed it was due to PCP or "wet."

[2]Reece resided with Hilburn.

Sometime between 12:45 and 2:00 a.m. on October 4, Nita Irving, who lived near Carr's home, heard two gunshots. Later that morning, Reece walked to Carr's house to check on him, but no one answered when she knocked on the door. She returned sometime later, she bumped the front door with her shoulder, and it opened. Inside she saw a male lying on the floor and realized he was dead because the body was cold.

Reece testified that she initially thought Carr had killed J.R. Warren, because on the evening of October 2, Carr had told her that he would shoot Warren if Warren came to his door. Reece removed a firearm from the side of the body and $419.00 from the side of the entertainment center, and she hid them at Hilburn's house. When Hilburn got home that afternoon, Reece told her that she found Warren's body at Carr's house. Hilburn called the police.

Sergeant Cynthia Simmons and Investigator Dustin Hayes of the Jefferson Police Department were dispatched to Carr's residence that afternoon and determined that there was a deceased person at the residence. While they were conducting their investigation, Carr arrived at the residence in a car driven by Timothy Young. Carr spoke with Hayes outside of his house and immediately stated that he had let Logan come to his house the evening before to spend the night. Carr claimed that he had left at 7:30 p.m. before Logan came over but that he talked to him on the phone at 8:00 p.m. and Logan said he was at the house. Carr also claimed that he went "out to the country"[3] around 8:30 or 9:00 p.m. the night before and that he had been there ever since. A short while later, Carr claimed that he met his cousin at 12:30 a.m., who took him

[3]"[G]oing to the country" and "out to the country" meant to Carr's family place of residence outside of Jefferson.

to the country. Hayes testified that the first time he heard that the victim was Logan was when Carr told him. He also noted that it was unusual for a person to immediately offer an alibi without being asked. Hayes asked Carr for consent to search his residence, but Carr refused consent. After speaking with Hayes, Carr left in a car driven by Timothy Brown.

Hayes and Greg Wilson, a Texas Ranger with the Texas Department of Public Safety, conducted a search of Carr's residence after they obtained a search warrant. In addition to Logan's body, they found bloody shoe prints that had been transferred throughout the floor surface, a spent shotgun shell, and a box of Winchester 20-gauge shotgun shells that contained slugs rather than birdshot.[4] Wilson and Hayes also testified that a baggie of pills, suspected narcotics, suspected marihuana, a white powdery substance, and paraphernalia were recovered from the scene. However, none of those substances were analyzed. No firearm was found at the scene.

Hayes and Wilson interviewed Reece, Brown, and Irving later that day. Afterwards, Hayes and Wilson obtained an arrest warrant for Carr. Even though they obtained the arrest warrant, Hayes and Wilson could not find Carr locally. Based on information received from Reece,[5] Hayes requested the assistance of the U.S. Marshall's Task Force in locating Carr. Carr was located and arrested on October 9 in Savannah, Georgia, and returned to Texas.

Wilson testified that the shoe prints found at the scene were consistent with the pattern on the bottom of the shoes worn by Carr when he was arrested. Also, DNA analysis of a spot of

[4]A slug is a single, large projectile designed to be fired from a shotgun that goes straight to a target and makes a solid hole, rather than a spray pattern associated with birdshot.

[5]Reece told law enforcement that, when Carr talked about killing Warren on October 2, he also said that he was going to Georgia.

presumptive blood on the side of one of Carr's shoes showed that the probability that the DNA came from Logan was 1.88 octillion times greater than the probability that it came from an unrelated, unknown person.

An autopsy showed that Logan suffered two gunshot wounds that caused his death. One projectile entered through his left temple, went through his facial bones, fracturing the cheekbones, went through the neck and right carotid artery, and came out the right side of his neck. It then entered the right shoulder and lodged in the armpit. The projectile and some of the wadding were recovered and retained as evidence. The other projectile entered straight into his mouth, fracturing his jaw, went through his tongue, his cervical vertebrae, and his left carotid artery, and then lodged behind the left second rib. That projectile and some of its wadding were also recovered.

The evidence also showed that the spent shotgun shell found in Carr's residence was the same gauge and had the same manufacturer, markings, and primer composition as the unfired Winchester 20-gauge shotgun shells found at the scene. Although one of the slugs recovered from Logan's body was not suitable for comparison, the wads recovered with it, as well as the other slug and wads recovered from his body, were consistent with the wads and slugs of the unfired Winchester 20-gauge shotgun shells found at the scene.

In his recorded interview, which he gave to Wilson after his return to Texas, Carr stated that Logan had called him at 7:35 on the evening of October 3 to inform Carr that he was going to come "holler at" Carr. Carr said that he left his house at 8:00 p.m. and called Logan, who said he was at Carr's house. Carr explained that he went to talk to Reece, then took a walk and tried

to get a ride to the country. Eventually, he went to McDonald's at 12:30 a.m. and got in touch with his cousin, who gave him a ride to the country. Carr maintained that he spent the night and was there until he got a call from someone the next morning who said there was a dead person in his house. Carr also stated that he did not return to his house after he left the evening of October 3 and that he did not return until the next morning. He explained that Logan was at his house because they have orgies, smoke weed, drink, and "chill" there. He also admitted that he owned a Remington 20-gauge pump shotgun that he kept loaded with slugs. Carr claimed that he went to Savannah to see a girlfriend but that she was no longer there. He also claimed that he traveled there by taxicab.

Brown testified that, after Carr talked to the police at the scene, Carr asked him for a ride to the country, and Brown gave him one. When they were on Highway 59 in front of the Dairy Queen, Carr let out a loud laugh or cry. Brown asked him what he was doing, and Carr replied, "I killed him." After they turned onto another road, Brown stopped and told him to get out of the car. Brown said he went to Carr's father and told him that Carr had killed Logan.

Cecil Carr testified that, on October 4, Brown told him that Carr "shot Logan and staged the scene with drugs." Cecil also acknowledged that he told Wilson that Carr told him he shot Logan. Jules Seals, who was a cellmate of Carr's for some months, testified that Carr told him that Logan tried to rob him and that he killed him. Seals said that Carr also told him that he killed Logan because Logan was selling the same kind of drugs as Carr and because Carr found out that Logan was having sexual relations with Reece.

### C. Analysis

"A person commits murder 'if he intentionally or knowingly causes the death of an individual.'" *Matthews v. State*, No. 06-19-00039-CR, 2020 WL 238717, at *6 (Tex. App.—Texarkana Jan. 16, 2020, pet. ref'd) (mem. op., not designated for publication) (quoting TEX. PENAL CODE ANN. § 19.02(b)(1)). The indictment alleged that Carr intentionally or knowingly caused the death of Logan by shooting him with a firearm. On appeal, Carr argues only that the evidence does not show beyond a reasonable doubt that he is the person who killed Logan.

Identity may be shown "by either direct or circumstantial evidence, along with reasonable inferences from that evidence." *Id.* (citing *Earls v. State*, 707 S.W.2d 82, 85 (Tex. Crim. App. 1986)). "Juries are permitted to make reasonable inferences from the evidence presented at trial, and [because] circumstantial evidence is as probative as direct evidence in establishing the guilt of an actor[, c]ircumstantial evidence alone can be sufficient to establish guilt." *Hooper*, 214 S.W.3d at 14–15 (citing *Guevara v. State*, 152 S.W.3d 45, 49 (Tex. Crim. App. 2004)). Because "juries are permitted to draw multiple reasonable inferences from the evidence," *id.* at 16, in our review, we "determine whether the necessary inferences are reasonable based upon the combined and cumulative force of all the evidence when viewed in the light most favorable to the verdict," *id.* at 16–17.

Here, multiple pieces of evidence lead to a rational conclusion that Carr was the person who murdered Logan. The shoe prints at the scene were consistent with the pattern on the bottom of the shoes Carr was wearing when he was arrested, and the DNA analysis of a spot of blood on the side of one of those shoes showed that the blood came from Logan. From this

evidence, the jury could reasonably infer that Carr was present when Logan was shot or that he was at his house sometime after Logan was shot and before Reece discovered the body. Nevertheless, in his statements to Hayes and Wilson, Carr insisted that he left his house before Logan arrived and did not return to the house until law enforcement was investigating the murder. Further, when Carr returned to the house during the investigation, he immediately identified the victim as Logan and provided an alibi without being questioned. From this evidence, the jury could reasonably infer that Carr was not truthful and that he attempted to cover up his involvement in the murder.

The jury could also reasonably infer that Carr had fled from his residence after the murder. Carr went to Georgia almost immediately after talking with the police, even though the dead body of Logan, whom he claimed was his cousin, was discovered in his house. "[A] defendant's flight is an action from which an inference of guilt may be drawn" because "flight 'goes to the very guilt of appellant,' and . . . 'shows a consciousness of guilt of the crime for which [the defendant] is on trial.'" *Glasscock v. State*, No. 06-19-00225-CR, 2020 WL 4589765, at *7 (Tex. App.—Texarkana Aug 11, 2020, pet. ref'd) (mem. op., not designated for publication) (quoting *Bigby v. State*, 892 S.W.2d 864, 884 (Tex. Crim. App. 1994)).

Further, the spent shotgun shell recovered at the scene had the same manufacturer, markings, and primer composition as the unfired Winchester 20-gauge shotgun shells found at the scene, and one of the slugs and the wads recovered from Logan's body were consistent with the slugs and wads of the unfired shotgun shells. This evidence, along with Carr's admission

that he owned a 20-gauge pump shotgun that he kept loaded with shotgun slugs, also supported an inference that Carr was the person who murdered Logan.

Finally, Carr's admissions to Brown and others that he killed Logan supports the jury's finding that he was the one who murdered Logan. Considering the evidence in the light most favorable to the verdict, we find that any rational jury could have found, beyond a reasonable doubt, that Carr was the person who murdered Logan. *See Williamson*, 589 S.W.3d at 297. We overrule this issue.

## II. An Accomplice-Witness Instruction Was Not Required

Carr also complains that the trial court erred when it did not include an accomplice-witness instruction concerning Reece in the jury charge. Carr argues that, because Reece gave conflicting statements to law enforcement, in one of which she implicated herself in the murder, the trial court was required to include an accomplice-witness instruction in the jury charge. Because the evidence clearly showed that she was not involved in the murder, we overrule this issue.

### A. Standard of Review

"We employ a two-step process in our review of alleged jury-charge error." *Murrieta v. State*, 578 S.W.3d 552, 554 (Tex. App.—Texarkana 2019, no pet.) (citing *Abdnor v. State*, 871 S.W.2d 726, 731 (Tex. Crim. App. 1994)). "Initially, we determine whether error occurred and then evaluate whether sufficient harm resulted from the error to require reversal." *Id.* (quoting *Wilson v. State*, 391 S.W.3d 131, 138 (Tex. App.—Texarkana 2012, no pet.)).

"[T]he jury is the exclusive judge of the facts, but it is bound to receive the law from the court and be governed thereby." *Id.* (alteration in original) (quoting TEX. CODE CRIM. PROC. ANN. art. 36.13). "A trial court must submit a charge setting forth the 'law applicable to the case.'" *Id.* (quoting *Lee v. State*, 415 S.W.3d 915, 917 (Tex. App.—Texarkana 2013, pet. ref'd)). "The purpose of the jury charge . . . is to inform the jury of the applicable law and guide them in its application. It is not the function of the charge merely to avoid misleading or confusing the jury: it is the function of the charge to lead and prevent confusion." *Id.* (quoting *Lee*, 415 S.W.3d at 917). "The level of harm necessary to require reversal due to jury charge error is dependent upon whether the appellant properly objected to the error." *Id.* at 555 (citing *Abdnor*, 871 S.W.2d at 732).

**B. Accomplice Witness**

"Texas law requires that, before a conviction may rest upon an accomplice witness's testimony, that testimony must be corroborated by independent evidence tending to connect the accused with the crime." *Druery v. State*, 225 S.W.3d 491, 498 (Tex. 2007) (citing TEX. CODE CRIM. PROC. ANN. art. 38.14). "An accomplice is someone who participates with the defendant before, during, or after the commission of a crime and acts with the required culpable mental state." *Id.* (citing *Paredes v. State*, 129 S.W.3d 530, 536 (Tex. Crim. App. 2004)). "To be considered an accomplice witness, the witness's participation with the defendant must have involved some affirmative act that promotes the commission of the offense with which the defendant is charged." *Id.* (citing *Paredes*, 129 S.W.3d at 536). Even if a witness knew of the offense and did not disclose it, or even concealed it, she is not an accomplice witness. *Id.* Also,

merely because the witness is present at the scene of the crime does not make her an accomplice witness. *Id.* Further, a witness's complicity with the defendant in committing an offense other than the one charged does not render her an accomplice witness. *Id.* "In short, if the witness cannot be prosecuted for the offense with which the defendant is charged, or a lesser-included offense of that charge, the witness is not an accomplice witness as a matter of law." *Id.* (citing *Paredes*, 129 S.W.3d at 536).

As a result, the trial court "has no duty to instruct the jury that a witness is an accomplice witness as a matter of law unless there exists no doubt that the witness is an accomplice." *Id.* (citing *Paredes*, 129 S.W.3d at 536). But, "[i]f the evidence presented by the parties is conflicting and it remains unclear whether the witness is an accomplice, the trial judge should allow the jury to decide whether the inculpatory witness is an accomplice witness as a matter of fact under instructions defining the term 'accomplice.'" *Id.* at 498–99 (quoting *Paredes*, 129 S.W.3d at 536). However, "when the evidence clearly shows that a witness is not an accomplice, the trial judge is not obliged to instruct the jury on the accomplice witness rule—as a matter of law or fact." *Smith v. State*, 332 S.W.3d 425, 440 (Tex. Crim. App. 2011) (citing *Gamez v. State*, 737 S.W.2d 315, 322 (Tex. Crim. App. 1987)).

**C. Analysis**

At trial, Reece testified that, in her first statement to law enforcement on October 4, she told them, consistent with her trial testimony, that she went to Carr's house that morning, discovered the dead body, and took the firearm and money from the residence. She also acknowledged that, the next morning, she gave a second statement to Wilson in which she

claimed (1) that she was present at the shooting, (2) that Logan and Carr got into a fight, (3) that Carr shot Logan between the eyes with a black, mini pistol that belonged to Logan,[6] and (4) that the pistol was handed to her and she shot Logan twice in his chest with the same pistol. She also told them that two other men were there and that they all fled after the shooting. On the evening of October 5, Reece gave a third statement to law enforcement in which she retracted her second statement.

Carr argues, without further analysis, that "Logan's injuries did not make [Reece's second statement] completely unplausible" and that, as a result, she could have been indicted for murder. However, Logan's injuries showed that he was shot once in his temple with a slug fired from a 20-gauge shotgun and again in the front of his mouth with a slug fired from a 20-gauge shotgun. There is no evidence that Logan was shot between the eyes or in his chest, and there is no evidence that Logan was shot with a small-caliber firearm. Based on the location of Logan's injuries and the determination that those injuries were caused by 20-gauge shotgun slugs, Wilson testified that he knew what Reece told him in her second statement was untrue.

The physical evidence regarding Logan's injuries and the cause of those injuries clearly showed that Reece's second statement to Wilson was untrue, and there was no other evidence that indicated that Reece performed any affirmative act to assist in or promote the murder of Logan, or a lesser-included offense of murder. As a result, the evidence clearly showed that Reece was neither an accomplice as a matter of law nor as a matter of fact, and the trial court

[6]The pistol Reece took from Logan's body was recovered by law enforcement and determined to be a .380 caliber pistol.

was not required to include an accomplice-witness instruction in the jury charge. *See id.* For that reason, we find that the trial court did not err, and we overrule this issue.

**III. No Extraneous-Offense Instruction Was Required in the Punishment Jury Charge**

Carr also asserts that the trial court erred when it failed to include an extraneous-offense instruction in its jury charge on punishment. As stated above, we first "determine whether error occurred." *Murrieta*, 578 S.W.3d at 554 (quoting *Wilson*, 391 S.W.3d at 138).

Article 37.07 of the Texas Code of Criminal Procedure provides,

> Regardless of the plea and whether the punishment be assessed by the judge or the jury, evidence may be offered by the state and the defendant as to any matter the court deems relevant to sentencing, including but not limited to the prior criminal record of the defendant, his general reputation, his character, an opinion regarding his character, the circumstances of the offense for which he is being tried, and, notwithstanding Rules 404 and 405, Texas Rules of Evidence, any other evidence of an extraneous crime or bad act that is shown beyond a reasonable doubt by evidence to have been committed by the defendant or for which he could be held criminally responsible, regardless of whether he has previously been charged with or finally convicted of the crime or act.

TEX. CODE CRIM. PROC. ANN. art. 37.07, § 3(a)(1) (Supp.). Because "Article 37.07 is 'the law applicable' to all non-capital punishment proceedings[,] . . . the trial judge must *sua sponte* instruct the jury at the punishment phase concerning that law, including the fact that the State must prove any extraneous offenses beyond a reasonable doubt." *Delgado v. State*, 235 S.W.3d 244, 252 (Tex. Crim. App. 2007) (*Huizar v. State*, 12 S.W.3d 479, 484 (Tex. Crim. App. 2000)).

During the punishment hearing, Carr and the State offered by agreement a certified order of adjudication and certified judgments that showed that Carr was previously adjudicated of delinquent conduct and that he was convicted of (1) possession of a controlled substance, (2) deadly conduct by discharge of a firearm, and (3) driving while intoxicated with a child

passenger under the age of fifteen. The State did not offer evidence of any other extraneous crime or bad act during the punishment hearing. However, during its final argument, the State informed the jury that it could consider all the evidence it heard during the trial in its assessment of punishment. It also reminded the jury of evidence introduced during the guilt/innocence phase in which Carr admitted that he did drugs, sold drugs, possessed drugs, and had orgies at his house. Finally, the State reminded the jury of Seals's testimony that Carr told him he had shot at Warren.

Carr argues that, because the State introduced his prior adjudication and convictions at the punishment hearing and reminded the jury of evidence introduced during the guilt/innocence phase during its final argument, the trial court was required to include an extraneous-offense instruction in its jury charge on punishment. We disagree.

Initially, we note that the requirements of Section 3(a)(1) of Article 37.07 only apply to evidence introduced in the punishment phase of a trial. *See id.* at 251–52 (contrasting different requirements for extraneous-offense instructions in the guilt/innocence phase and punishment phase). Regarding evidence of extraneous crimes and bad acts introduced during the guilt/innocence phase, the Texas Court of Criminal Appeals has held that, "if a defendant does not request a limiting instruction under Rule 105 at the time that evidence is admitted, then the trial judge has no obligation to limit the use of that evidence later in the jury charge." *Id.* at 251 (citing *Hammock v. State*, 46 S.W.3d 889, 894 (Tex. Crim. App. 2001)); *see* TEX. R. EVID. 105(b)(1). Further, "[o]nce evidence has been admitted without a limiting instruction, it is part of the general evidence and may be used for all purposes." *Id.* (citing *Hammock*, 46 S.W.3d at

895). The evidence that Carr did drugs, sold drugs, possessed drugs, had orgies at his house, and said he shot at Warren was introduced only in the guilt/innocence phase, without a request by Carr for a limiting instruction under Rule 105. As a result, this evidence could be considered for all purposes, and the trial court was not obligated to limit its use in its charge.

A different rule applies to evidence introduced in the punishment phase because it is subject to Section 3(a)(1) of Article 37.07. *Id.* at 252. Generally, when evidence of extraneous offenses or bad acts are introduced in the punishment phase, the trial court "must *sua sponte* instruct the jury . . . that the State must prove any extraneous offenses beyond a reasonable doubt." *Id.* However, the only evidence of extraneous offenses introduced during the punishment phase in this case were the certified adjudication of delinquent conduct[7] and the judgments of conviction. Regarding whether those require an extraneous-offense instruction under Article 37.07, the Texas Court of Criminal Appeals explained, "In any final conviction, the evidence was subjected to judicial testing of guilt with a standard of proof of beyond a reasonable doubt, and the burden of proof was met." *Bluitt v. State*, 137 S.W.3d 51, 54 (Tex. Crim. App. 2004). Because "the burden of proof has been met[,] . . . no further proof of guilt is required." *Id.* As a result, a trial court does not err in not including an extraneous-offense instruction in its jury charge on punishment "when . . . all of the evidence as to appellant's criminal behavior was in the form of prior offenses which had been subjected to judicial testing under the proper burden and the burden had been met." *Id.* Therefore, we find that the trial

[7]In the order of adjudication, the trial court found beyond a reasonable doubt that Carr engaged in delinquent conduct.

court did not err in not including an extraneous-offense instruction in the jury charge on punishment. We overrule this issue.

## IV. Carr Forfeited His Complaints Under Article 36.27

Carr complains that the trial court violated Article 36.27 of the Texas Code of Criminal Procedure by orally communicating to a question posed by the jury during its deliberation.[8] He also complains that the trial court's response to that same question amounted to a comment on the weight of the evidence.

The record shows that, during the State's closing argument in the guilt/innocence phase, Carr stood up and made a comment in response to the State's argument. During its deliberations, the jury sent a note to the trial court and asked what Carr said in that outburst. After advising the State and Carr of the jury's request, the trial court and the parties discussed the response that should be provided. Both the State and Carr agreed that, while Carr's behavior in the proceedings could be considered by the jury, because his outburst was not made under oath, subject to cross-examination, and from the witness stand, what he said could not be considered

[8]Article 36.27 provides, in part,

> When the jury wishes to communicate with the court, it shall so notify the sheriff, who shall inform the court thereof. Any communication relative to the cause must be written, prepared by the foreman and shall be submitted to the court through the bailiff. The court shall answer any such communication in writing, and before giving such answer to the jury shall use reasonable diligence to secure the presence of the defendant and his counsel, and shall first submit the question and also submit his answer to the same to the defendant or his counsel or objections and exceptions, in the same manner as any other written instructions are submitted to such counsel, before the court gives such answer to the jury, but if he is unable to secure the presence of the defendant and his counsel, then he shall proceed to answer the same as he deems proper. The written instruction or answer to the communication shall be read in open court unless expressly waived by the defendant.

TEX. CODE CRIM. PROC. ANN. art. 36.27.

by the jury. The trial court then had the jury return to the courtroom and orally instructed them, without objection,

> Evidence in this case has to be received from witnesses on the witness stand or from exhibits that are entered into evidence. Oral outbursts are not admissible for your consideration however, a person's demeanor in the courtroom and their physical actions that you observe can be considered. Other than that, I will refer you to the charge and send you back to the jury room.

Although "oral instructions to the jury are not in compliance with Art. 36.27, . . . [the] failure of the defendant to object results in waiver of the error." *Edwards v. State*, 558 S.W.2d 452, 454 (Tex. Crim. App. 1977) (citing *Calicult v. State*, 503 S.W.2d 574, 575 n.1 (Tex. Crim. App. 1974)). Further, because Carr failed to object that the trial court's response was a comment on the weight of the evidence, "he presents nothing for review." *Green v. State*, 912 S.W.2d 189, 192 (Tex. Crim. App. 1995).[9] Because he has forfeited these complaints, we overrule these issues.

## V. Conclusion

For the reasons stated, we affirm the trial court's judgment.

Scott E. Stevens
Chief Justice

Date Submitted: December 7, 2023
Date Decided: February 2, 2024

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[9]Carr cites *Lucio v. State*, 353 S.W.3d 873 (Tex. Crim. App. 2011), in support of his fourth issue. Although the court in *Lucio* addressed the issue of whether the trial court's instruction pursuant to the jury's question was a comment on the weight of the evidence, that issue was preserved at trial by the appellant's timely objection. *Id.* at 874.