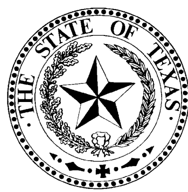

NUMBER 13-15-00173-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

RICHARD LEE LONGORIA, **Appellant,**

v.

THE STATE OF TEXAS, **Appellee.**

On appeal from the 156th District Court of Bee County, Texas.

MEMORANDUM OPINION

Before Chief Justice Valdez and Justices Rodriguez and Benavides
Memorandum Opinion by Justice Rodriguez

A jury convicted appellant Richard Lee Longoria of murder and possession of a firearm by a convicted felon. Longoria was sentenced to life in prison for the murder conviction and to ten years' confinement for the firearm offense. By seven issues on appeal, Longoria argues that the trial court reversibly erred: (1) in denying his motion to suppress a video recording of his interview with law enforcement; (2) by failing to enter

findings of fact; (3) by overruling his objection to testimony concerning an extraneous offense; and (4)–(7) by making various rulings related to evidence showing Longoria's prior conviction for purposes of the felon-in-possession charge. We affirm.

I. BACKGROUND

On August, 18, 2013, Alex Longoria (decedent) was shot and killed at Nopal Park in Beevillle, Texas. Various forms of evidence connected Longoria to the offense. It is undisputed that Longoria planned to fight the decedent at the park. The two men were not related but had been involved in a dispute over Malori Gonzales, a woman whom each had dated. Gonzales testified that she had recently separated from Longoria, but that on the morning of the shooting, she had awoken to find him in her home, uninvited, watching her sleep. She thereafter called the decedent to warn him not to fight Longoria because he was "maxed out on drugs, and he was not in the right state of mind." Multiple eyewitnesses—including the men who had driven Longoria and decedent to the park—testified that it was Longoria who shot the decedent soon after arriving at the park. Justin Estrada, a local business owner, testified that he saw Longoria after the shooting and that Longoria told Estrada that he had "f***ed some dude up at the park" and needed a ride quickly. A federal inmate testified that while Longoria was incarcerated awaiting trial, Longoria admitted to shooting the decedent. Investigating officers testified that forensics connected the decedent's cause of death to the .22 rifle which witnesses saw Longoria fire. The officers further testified that there were two calls placed to the decedent's phone shortly before the shooting from a number associated with Longoria. Longoria also participated in an interview with law enforcement the day after the shooting, and the State introduced the video recording of this interview at trial. Finally, the State introduced

jail records regarding a previous robbery conviction to show that Longoria was a convicted felon. The State argued that by possessing the .22 rifle, Longoria had committed an offense as a felon in possession of a firearm.

At trial, Longoria moved to suppress the video recording of his interview with police, arguing that it was inadmissible because he had not voluntarily waived his rights. The trial court denied the motion. Longoria also objected to Gonzales's testimony that Longoria was "maxed out on drugs," contending that it was inadmissible extraneous-offense evidence. The trial court overruled this objection. Finally, Longoria objected to jail records regarding a robbery conviction and a subsequent arrest on a separate warrant. Longoria claimed that these records were not properly authenticated or related to the robbery, and they were therefore inadmissible to show Longoria's connection to the robbery conviction. The trial court overruled these objections and made oral findings concerning the jail records, which Longoria also objected to as a comment on the evidence. After the close of evidence, the jury convicted Longoria of murder and felon in possession. This appeal followed.

II. MOTION TO SUPPRESS THE VIDEO RECORDING

By his first issue, Longoria argues that the trial court erred in denying his motion to suppress the video recording of his interview with law enforcement. Longoria does not dispute that he was apprised of his rights under *Miranda* and Texas law prior to his statement. *See* TEX. CODE CRIM. PROC. ANN. arts. 38.22–.23 (West, Westlaw through 2015 R.S.); *Miranda v. Arizona*, 384 U.S. 436, 479 (1966). Rather, according to Longoria, suppression should have been granted because he never expressly or impliedly waived his rights. In response, the State contends that a knowing, intelligent, and

voluntary waiver of rights was implied by Longoria's statements and conduct under the circumstances.

We review a trial court's ruling on a motion to suppress for an abuse of discretion. *Ex Parte Moore*, 395 S.W.3d 152, 158 (Tex. Crim. App. 2013). At a hearing on the motion, the trial court is the sole judge of the credibility of the witnesses and the weight to be given their testimony. *Id.* An appellate court must view the record of the hearing on the motion in the light most favorable to the trial court's ruling and must sustain the trial court's ruling if it is reasonably supported by the record and is correct on any theory of law applicable to the case. *Id.* In our review, we afford almost total deference to the trial court's rulings on questions of historical fact and on mixed questions of law and fact that turn upon credibility and demeanor. *Pecina v. State*, 361 S.W.3d 68, 79 (Tex. Crim. App. 2012). We review de novo the trial court's rulings on mixed questions that do not turn upon credibility and demeanor. *Id.*

Article 38.22 of the Texas Code of Criminal Procedure establishes procedural safeguards for securing the privilege against self-incrimination. *Joseph v. State*, 309 S.W.3d 20, 23 (Tex. Crim. App. 2010). Among its requirements, Article 38.22 provides that no oral statement of an accused made as a result of custodial interrogation shall be admissible against the accused in a criminal proceeding unless: (1) the statement was recorded and (2) prior to the statement but during the recording, the accused was warned of his rights and knowingly, intelligently, and voluntarily waived those rights. *Id.* at 23–24. The State has the burden of proving a proper waiver by a preponderance of the evidence. *Id.* at 24.

The trial court concluded that Longoria expressly waived his rights. Longoria

contests this conclusion, stressing that he did not provide an explicit written or oral waiver of his rights. "But appellant's objection to the absence of a written or articulated waiver runs contrary to the general rule that neither a written nor an oral express waiver is required." *See id.* (internal quotations and editorial marks omitted). "As a general proposition, the law can presume that an individual who, with a full understanding of his or her rights, acts in a manner inconsistent with their exercise has made a deliberate choice to relinquish the protection those rights afford." *Berghuis v. Thompkins*, 560 U.S. 370, 385 (2010). It is within a trial court's discretion to rely upon an implied waiver whenever the totality of the circumstances, as reflected by the recording of the oral statement, supports it. *Leza v. State*, 351 S.W.3d 344, 353 (Tex. Crim. App. 2011); *Umana v. State*, 447 S.W.3d 346, 356 (Tex. App.—Houston [14th Dist.] 2014, pet. ref'd).

In *Leza*, the Texas Court of Criminal Appeals noted, as undisputed, that a suspect had impliedly waived his rights "by signing a written form to indicate that he understood his *Miranda* rights and then responding to police questioning anyway." 351 S.W.3d at 348. Here, the video recording and the trial court's finding show that interrogating officers read the prescribed statutory rights to Longoria, and Longoria responded that he understood. As with the defendant in *Leza*, Longoria then answered several hours' worth of questions from the officers. *See id.*

Nonetheless, Longoria argues that a waiver is not shown because, immediately after investigating officers finished the article 38.22 recitation, Longoria expressed that he had reservations about speaking with police. When Longoria was asked if he wished to waive his rights, Longoria said, "Okay, I got just two questions okay?" He then offered a lengthy and unclear response which did not include any questions, in which he stated the

following: that it was well known that he was not a murderer; that he would not "hang around" guns given his status as a felon; that he did not want to go to jail that night, did not want to have his probation for a prior offense revoked, and that he did not want to be taken for a lie detector test the next day. However, Longoria then noted that he had come in voluntarily and stated multiple times that he was willing to cooperate and to take such a lie detector test. When Longoria finished his response, the investigating officers began asking Longoria questions.

On appeal, Longoria contends that by stating his desire not to be taken to jail that night, he indicated his desire not to waive his right to remain silent. According to Longoria, law enforcement was required to stop speaking with him unless they intended to comply with his conditions.

Longoria's argument fails for several reasons. First, any invocation of the right to remain silent must be made unambiguously in order to require law enforcement to cease questioning. *Berghuis*, 560 U.S. at 381. When asked if he wished to waive his rights and speak with police, Longoria did not unambiguously invoke his right to remain silent. Instead, he offered an unclear and lengthy response. "If an ambiguous act, omission, or statement could require police to end the interrogation, police would be required to make difficult decisions about an accused's unclear intent and face the consequence of suppression if they guess wrong." *Id.* at 382 (internal quotations omitted). Second, rather than asserting his right to remain silent, the trial court found that the thrust of this response appeared to be that Longoria "was willing to cooperate but did not want to go to jail." Given the context, a willingness to "cooperate" with the investigation implies a willingness to speak and answer questions rather than remain silent. *See*, *e.g.*, *Andrews*

v. State, 744 S.W.2d 40, 44 (Tex. Crim. App. 1987) (en banc) ("At first, White declined to *cooperate* with the police about what she knew about the robbery-murders, but later she did." (emphasis added)). Third, Longoria then willingly answered questions for several hours, a course of conduct which the *Leza* court found to be an implied waiver of rights. *See* 351 S.W.3d at 348. Fourth, even assuming that the investigating officers were required to honor Longoria's concerns about going to jail, the trial court found that the primary investigator "knew Longoria was a suspect but did not know if Longoria was going to be arrested," and the evidence supports this finding. The investigating officers did not intimate otherwise in an effort to coerce Longoria into confessing, such as by falsely assuring Longoria that he would not be taken to prison based on his responses. *See Martinez v. State*, 127 S.W.3d 792, 794 (Tex. Crim. App. 2004).

Based on these considerations, we conclude that the State carried its burden to show that Longoria knowingly, intelligently, and voluntarily waived his rights. *See Joseph*, 309 S.W.3d at 24. The trial court did not abuse its discretion in denying Longoria's motion to suppress the recording of his conversation with investigating officers. *See Moore*, 395 S.W.3d at 158. We overrule Longoria's first issue.

III. Findings and Conclusions

In his second issue, Longoria contends that the trial court erred in failing to file written findings of fact and conclusions of law. We abated and remanded the case to allow for the entry of such findings and conclusions. Pursuant to our remand order, the trial court filed written findings of fact and conclusions of law regarding appellant's motion to suppress his confession. *See Rocha v. State*, 16 S.W.3d 1, 10 (Tex. Crim. App. 2000). Issue two is overruled as moot. *See id.*

IV. OBJECTION TO TESTIMONY REGARDING EXTRANEOUS BAD ACTS

At trial, Malori Gonzales testified that on the morning of the killing, she woke to find Longoria in her bedroom, uninvited, watching her sleep. Based on this encounter, she later told the decedent not to fight Longoria because he "was maxed out on drugs, and he was not in the right state of mind." Longoria objected to this testimony as evidence of extraneous bad acts or offenses. The trial court overruled the objection.

By his third issue, Longoria argues that the trial court abused its discretion in overruling this objection. In response, the State argues that Gonzales's testimony referring to Longoria's drug use offered multiple forms of probative value that outweighed its prejudicial effect. Alternatively, the State argued that this testimony was contextual evidence concerning other offenses in the same criminal transaction.

We review a trial judge's decision on the admissibility of evidence under an abuse of discretion standard. *Tillman v. State*, 354 S.W.3d 425, 435 (Tex. Crim. App. 2011). A trial judge abuses his discretion when his decision falls outside the zone of reasonable disagreement. *Martinez v. State*, 327 S.W.3d 727, 736 (Tex. Crim. App. 2010). If the trial court's evidentiary ruling is correct under any applicable theory of law, it will not be disturbed even if the trial court gave a wrong or insufficient reason for the ruling. *De La Paz v. State*, 279 S.W.3d 336, 344 (Tex. Crim. App. 2009).

An extraneous offense is not admissible as character evidence to show the accused acted in conformity with his character and committed an offense. TEX. R. EVID. 404(b); *see also Hernandez v. State*, No. 13-01-804-CR, 2003 WL 22052570, at *4 (Tex. App.—Corpus Christi Sept. 4, 2003, pet. ref'd) (mem. op., not designated for publication). However, extraneous-offense evidence "may be admissible for another purpose, such as

proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident." TEX. R. EVID. 404(b)(2).

When a party attempts to adduce evidence of "other crimes, wrongs or acts," the opponent may generally object on two bases. *See Montgomery v. State*, 810 S.W.2d 372, 387 (Tex. Crim. App. 1990) (op. on reh'g) (en banc). First, the opponent may object on the basis that the evidence has no value other than showing propensity based on bad character under rule 404(b). *Id.*; *see Rankin v. State*, 974 S.W.2d 707, 718 (Tex. Crim. App. 1998) (op. on reh'g). Once that complaint is lodged, it is incumbent upon the proponent of the evidence to satisfy the trial court that the other crime, wrong, or act has relevance apart from its tendency to prove the character of a person in order to show that he acted in conformity therewith. *Almaguer v. State*, __S.W.3d__, __, No. 13-12-00605-CR, 2014 WL 5088386, at *11 (Tex. App.—Corpus Christi Oct. 9, 2014, pet. ref'd).

Second, the opponent may object to the extraneous-offense evidence under rule 403. *Id.*; *see* TEX. R. EVID. 403. Under rule 403, the trial court may exclude the evidence if its probative value is "substantially outweighed by the danger of unfair prejudice" or confusion of the issues—i.e., by its "tendency to suggest decision on an improper basis." *Almaguer*, 2014 WL 5088386, at *11; *see Montgomery*, 810 S.W.2d at 389. Courts consider several factors when determining whether the prejudicial effect of the evidence substantially outweighs its probative value: (1) whether evidence of the extraneous offense serves to make a fact of consequence more or less probable; (2) the potential of the extraneous-offense evidence to impress the jury in some improper or irrational way; (3) the trial time that the proponent will require to develop evidence of the extraneous misconduct; and (4) the proponent's need for the extraneous-offense evidence. *De La*

Paz, 279 S.W.3d at 349; *Wheeler v. State,* 67 S.W.3d 879, 888 (Tex. Crim. App. 2002) (en banc). We balance these factors to determine whether the trial court abused its discretion in admitting the evidence of the extraneous acts. *Hernandez*, 2003 WL 22052570, at *5; *see De La Paz*, 279 S.W.3d at 349. As long as the trial court's ruling is within the "zone of reasonable disagreement," there is no abuse of discretion, and the trial court's ruling will be upheld. *De La Paz*, 279 S.W.3d at 343–44.

Here, Gonzales's testimony referring to Longoria's drug use offered multiple forms of probative value. *See id.* at 344. For one, Gonzales's description of drug use was intertwined as part of a statement tending to show identity; Gonzales testified that she told the decedent not to go to the park because she feared for his safety given that Longoria was "maxed out on drugs, not in the right state of mind," suggesting that it was indeed Longoria who met and killed the decedent at the park. It was also relevant because it tended to show how the charged offenses "unfolded and progressed." *See Hernandez*, 2003 WL 22052570, at *5. Finally, the fact that Longoria's condition inspired fear in Gonzales also "tended to show appellant's state of mind" as it related to the decedent's safety. *See id.*; *see also Taylor v. State*, 263 S.W.3d 304, 314–15 (Tex. App.—Houston [1st Dist.] 2007), *aff'd*, 268 S.W.3d 571 (Tex. Crim. App. 2008) (upholding the admission of extraneous offense evidence, reasoning that the involvement of drug use may have lowered the "inhibitions" of those involved and may have contributed to causing the assaultive offense).[1] Based on the relevance of Gonzales's testimony to

[1] In this way, Longoria's drug use may also be relevant to "motive" in the broader sense of that word: "something . . . that leads one to act." *See* BLACK'S LAW DICTIONARY, "Motive" (10th ed. 2014); *see also Rodriguez v. State*, 486 S.W.2d 355, 358 (Tex. Crim. App. 1972) (defining "motive" as the mental or emotional state "that would provoke or lead to the commission of a criminal offense"); *see*, *e.g.*, *Ex parte Martinez*, 195 S.W.3d 713, 723 (Tex. Crim. App. 2006) (recounting expert testimony that a defendant's use

these non-character purposes, we conclude that the trial court did not abuse its discretion in overruling Longoria's objection under rule 404(b). *See Almaguer*, 2014 WL 5088386, at *11.

The same considerations also guide our analysis of the first factor under the rule 403 balancing test: how evidence of the extraneous offense serves to make a fact of consequence more or less probable. *See De La Paz*, 279 S.W.3d at 349. The first factor thus favors the trial court's decision, given the relevance of this testimony to the non-character issues described above.

The second factor—any "undue tendency to suggest decision on an improper basis"—disfavors the trial court's decision. *See* Almaguer, 2014 WL 5088386, at *11; *Garrett v. State*, 998 S.W.2d 307, 316 (Tex. App.—Texarkana 1999, pet. ref'd, untimely filed). Evidence of drug use has a prejudicial effect based upon the stigma and criminal connotations associated with this activity. *See* TEX. HEALTH & SAFETY CODE ANN. § 481.115 (West, Westlaw through 2015 R.S.); *see*, *e.g.*, *Bd. of Law Exam'rs of State of Tex. v. Coulson*, 48 S.W.3d 841, 846 (Tex. App.—Austin 2001, pet. denied). A defendant is not to be tried for collateral crimes or for generally being a criminal. *Nobles v. State*, 843 S.W.2d 503, 514 (Tex. Crim. App. 1992).

Under the third factor, this testimony required virtually no "trial time . . . to develop[.]" *See De La Paz*, 279 S.W.3d at 349. Instead, it appears that the State was

---

of a rohypnol suggested the possibility of "drug induced disinhibition with associated rage and aggression as a contributory factor in the commission of acts of extreme violence which occurred in this case"); *Giles v. State*, No. 05-07-01346-CR, 2008 WL 4823226, at *4 (Tex. App.—Dallas Nov. 7, 2008, pet. ref'd) (not designated for publication) (noting that the stimulant drug methamphetamine connotes "a potential for aggression"); *Morgan v. State*, No. 14-01-00809-CR, 2002 WL 1438680, at *5 (Tex. App.—Houston [14th Dist.] July 3, 2002, pet. ref'd) (not designated for publication) (noting that the effect of cocaine and alcohol use on the appellant's state of mind "may have been the reason that the sexual abuse occurred").

not seeking to "develop" this extraneous evidence at all. The record shows that the State agreed to caution Gonzales, outside the presence of the jury, against mentioning any extraneous offenses when she took the stand. Gonzales nonetheless mentioned the offense in response to a seemingly benign question by the State:

[THE STATE]	[Did] you talk to [the decedent] that morning—
[GONZALES]	No.
[THE STATE]	—or that afternoon?
[GONZALES]	That afternoon.
[THE STATE]	Okay. And what did you tell [the decedent]?
[GONZALES]	To not go fight Richard, that it wasn't worth it, that he was on—he was maxed out on drugs, and he was not in the right state of mind—

In the colloquy which followed, the trial court overruled Longoria's objection to this evidence, but advised the State "to be cautious in your questions as you go forward." Because the only testimony concerning the extraneous offense was fleeting and apparently unintentional on the part of the State, the third factor stands in favor of the trial court's decision. *See id.*

Finally, under the fourth factor, the State had a need for the extraneous offense evidence, but this need was limited. *See id.* The State was able to introduce evidence as to identity, context, and mental state aside from the testimony concerning drug use; this evidence included multiple forms of eyewitness testimony, party-admissions, and criminal forensics. Thus, this limited need disfavors the admission of the evidence under the fourth *De La Paz* factor. *See id.*

Taken together, these factors come to a close balance, with two factors favoring

the trial court's decision and two militating against it. *See id.* at 343–44. However, "courts should favor admission in close cases, in keeping with the presumption of admissibility of relevant evidence." *See Almaguer*, 2014 WL 5088386, at *11. Finding this to be a "close case," we cannot conclude that the trial court clearly abused its discretion in overruling Longoria's objections to Gonzales's remark. *See De La Paz*, 279 S.W.3d at 343–44; *see also Montgomery*, 810 S.W.2d at 392; *Almaguer*, 2014 WL 5088386, at *11. Longoria's third issue is overruled.

V. POSSESSION OF A FIREARM BY A FELON

A. Admission of Jail Records

By his fourth issue, Longoria argues that the trial court erred in admitting certain jail records that were used to link Longoria to a prior robbery conviction. Longoria claims that the documents were inadmissible for two reasons: (1) they lacked proper authentication and (2) they did not directly show a link between Longoria and the robbery conviction. In response, the State contends that the jail records were self-authenticating public records and that evidence need not directly show the prior conviction in order to be admissible.

In order to prove the offense of possession of a firearm by a felon, the State sought to prove that Longoria was convicted of robbery by a Nueces County District Court in 2012. To this end, the State offered a card bearing Longoria's fingerprints, as well as a judgment from April 2012 showing that a "Richard Lee Longoria" was found guilty of a robbery which occurred in 2011; the judgment did not contain fingerprints. The trial court admitted these exhibits without objection. The trial court also admitted two jail records over Longoria's objection: a jail record from February 2012 which showed that "Richard

Lee Longoria" was arrested for robbery, and a jail record from December 2012 which showed that "Richard Lee Longoria" had been arrested on a warrant for participating in organized criminal activity. Both jail records were contained in a single exhibit, which bore the purported affidavit and seal of the "custodian of records of the Bureau of Identification and records for the Sheriff's Office situated in Nueces County, State of Texas." Both jail records contained fingerprints, a mugshot which closely resembled Longoria, and much of the same vital information as reported by the arrestee, including the same date of birth, address, tattoos, etc. The State sponsored the admission of these records through the testimony of Dan Caddell, an investigator with the Live Oak County Sheriff's Department, who testified that the fingerprints on the jail records matched the fingerprints that he collected from Longoria shortly before trial. Caddell testified that the arrests had led to a motion to revoke probation for Longoria, and that in his opinion, Longoria was the same man who had been convicted of robbery in Nueces County in 2012.

In a jury trial, it is the jury's role ultimately to determine whether an item of evidence is indeed what its proponent claims; the trial court need only make the preliminary determination that the proponent of the item has supplied facts sufficient to support a reasonable jury determination that the proffered evidence is authentic. *Butler v. State*, 459 S.W.3d 595, 600 (Tex. Crim. App. 2015). The trial court's determination of whether the proponent has met this threshold requirement is subject to appellate review for an abuse of discretion and should not be reversed so long as it is within the zone of reasonable disagreement. *Id.* "Only relevant evidence is admissible, and the trial court judge has the discretion to exclude irrelevant evidence." *Henley v. State*, __S.W.3d__,

__, No. PD-0257-15, 2016 WL 3564247, at *2 (Tex. Crim. App. June 29, 2016).

To establish that a defendant has been convicted of a prior offense, the State must prove beyond a reasonable doubt that (1) a prior conviction exists, and (2) the defendant is linked to that conviction. *Flowers v. State*, 220 S.W.3d 919, 921 (Tex. Crim. App. 2007). Under rule 902, a domestic public document is considered self-authenticating if: (A) it bears the signature of an officer or employee of a Texas political subdivision or any department or agency thereof; and (B) another public officer, who has a seal and official duties within that same entity, certifies under seal that the signer has the official capacity and that the signature is genuine. TEX. R. EVID. 902(2); *see id.* R. 902(4) (providing that copies of public documents are admissible under the same method described in 902(2)).

Here, contrary to Longoria's assertion, the packet bears both a purported seal and signature under the meaning of rule 902, and the trial court properly relied upon this information in finding the packet authentic. *See id.*; *Reed*, 811 S.W.2d at 586. We conclude the trial court did not abuse its discretion in admitting the jail records as authentic. *See* TEX. R. EVID. 901–02; *Butler*, 459 S.W.3d at 600.[2]

Longoria next protests that because the jail records do not specifically show that he was convicted of robbery in April 2012 and that the records were therefore inadmissible. We disagree. The robbery judgment described how the defendant, "Richard Lee Longoria," committed a robbery offense in May of 2011. The jail records showed an arrest for robbery in February 2012 and another arrest in December 2012. Caddell testified that these arrests spurred a motion to revoke Longoria's probation for

[2] At trial, Longoria also objected to the admission of the jail records as hearsay. Longoria does not pursue his hearsay objection on appeal.

the 2011 robbery offense, which led to the entry of a conviction. Caddell testified that in his opinion, Longoria was the same man who had been convicted of robbery in 2012. Longoria did not object to Caddell's testimony, which helped link the jail records—and the identifying information they contained—with the robbery conviction. Thus, paired with Caddell's testimony, both jail records tended to link Longoria to the robbery conviction, albeit somewhat indirectly. *See Flowers*, 220 S.W.3d at 921. Rather than rendering the jail records inadmissible, this indirect relevance is a normal and permissible means of proving a prior conviction:

> Ordinarily the proof that is adduced to establish that the defendant on trial is one and the same person that is named in an alleged prior criminal conviction or convictions closely resembles a jigsaw puzzle. The pieces standing alone usually have little meaning. However, when the pieces are fitted together, they usually form the picture of the person who committed that alleged prior conviction or convictions.

Human v. State, 749 S.W.2d 832, 835–36 (Tex. Crim. App. 1988) (op. on reh'g); *see also Flowers*, 220 S.W.3d at 921 (providing that no "specific document or mode of proof is required to prove" a prior conviction and the defendant's link to it.). In light of the jail records' indirect probative value, the trial court did not abuse its discretion in admitting the jail records as relevant evidence. *See* TEX. R. EVID. 401–02; *Henley*, 2016 WL 3564247, at *2; *Human*, 749 S.W.2d at 835–36. We overrule Longoria's fourth issue.

B. Sufficiency of the Evidence

Longoria's sixth issue is closely related to the above argument, and we address it out of turn: he contends that because these jail records only relate indirectly to his conviction for robbery, the evidence was insufficient to support his connection to the robbery conviction.

In evaluating whether the evidence presented in a case is sufficient to support a conviction, we examine the evidence in the light most favorable to the verdict and determine whether any rational trier of fact could have found each essential element of the crime beyond a reasonable doubt. *Nowlin v. State*, 473 S.W.3d 312, 317 (Tex. Crim. App. 2015). It is possible to establish guilt beyond a reasonable doubt by the sole means of circumstantial evidence, and the standard of review for sufficiency of the evidence is the same whether the evidence is direct or circumstantial. *Id.*

Here, the State introduced several pieces of evidence tending to show that Longoria had been convicted of a felony, including: a conviction for robbery; a card containing Longoria's fingerprints; jail records concerning arrests for robbery which led to a conviction for robbery; testimony matching Longoria's fingerprints to the jail records; photographs present in the jail records which strongly resembled Longoria; and vital information throughout these documents which matched Longoria, including his full name, address, and date of birth. When viewing this evidence in the light most favorable to the jury's verdict, this evidence is sufficient to find beyond a reasonable doubt that Longoria was convicted of robbery in 2012. *See id.*; *see also Human*, 749 S.W.2d at 835–36. We overrule Longoria's sixth issue.

C. Comment on the Weight of the Evidence

By his fifth issue, Longoria argues that the trial court improperly "compounded" its error in admitting the jail records by commenting on the authenticity and weight of these records in the presence of the jury.

In ruling upon the admissibility of evidence, the judge shall not discuss or comment upon the weight of the same or its bearing in the case, but shall simply decide whether or

not it is admissible; nor shall he, at any stage of the proceeding previous to the return of the verdict, make any remark calculated to convey to the jury his opinion of the case. TEX. CRIM. PROC. CODE ANN. art. 38.05 (West, Westlaw through 2015 R.S.); *Madrigal v. State*, 347 S.W.3d 809, 814 (Tex. App.—Corpus Christi 2011, pet. ref'd). "To constitute reversible error, the trial court's comment to the jury must be such that it is reasonably calculated to benefit the State or to prejudice the rights of the defendant." *Madrigal*, 347 S.W.3d at 814; *Simon v. State*, 203 S.W.3d 581, 590 (Tex. App.—Houston [14th Dist.] 2006, no pet.); *Hoang v. State*, 997 S.W.2d 678, 681 (Tex. App.—Texarkana 1999, no pet.).

During cross-examination, Caddell explained that he was concerned about the fidelity of photocopies of the original jail records, stating that because the inscription of certain information may be "faint"—including the dates, the authenticating seal and signature, and the fingerprints—there was a potential that these inscriptions would be lost as the documents were photocopied for trial or reproduced in the appellate record. In response, the trial court made the following findings:

> I'm making a finding for the record that the State's Exhibit No. 28 does bear the original signature of Jacqueline Luckey, the purported custodian of the records for the Nueces County Sheriff's Office, and also bears the seal of that office.
>
> I'm also finding for the record that the State's Exhibit No. 27, the judgment in this case is a judgment from April 23rd, 2012; that the fingerprint cards, there are two of them in State's Exhibit No. 28, one of the fingerprint cards is from a booking dated—purported to be dated February 2nd, 2012, before the date of the judgment, and one is from—purports to be December 7th, 2012, after the date of the judgment.
>
> I just wanted that to be in the record since sometimes photocopies, as the witness just testified to, don't necessarily show everything.

Longoria contends that these findings were improper comments on the weight of the evidence.

In light of the context and content of the trial court's remarks, we disagree. The trial court was careful not to express an opinion or conclusion on the evidence's credibility, weight, or relation to any issue in the case. Instead, the court simply made note of the neutral, objective qualities of this evidence. These qualities were related to the determination of admissibility, which remains the province of the trial court based on its sound discretion. *See* TEX. R. EVID. 104; *Tillman*, 354 S.W.3d at 435. The trial court made clear that its purpose was to guard the record evidence from the risk of natural loss, and not a "calculated" effort "to benefit the State or to prejudice the rights of the defendant." *See Madrigal*, 347 S.W.3d at 814. The preservation of vulnerable authenticating evidence is, of course, a legitimate concern. *See*, *e.g.*, *Cuddy v. State*, 107 S.W.3d 92, 96 (Tex. App.—Texarkana 2003, no pet.) (considering whether the "faint" inscription of a seal could support authentication of a penitentiary packet under rule 902). Finally, the trial court used some form of the qualifying word "purport" three times in the course of its three sentences, making clear that it did not intend to express an opinion in favor of the State's evidence. *See Madrigal*, 347 S.W.3d at 814; *Simon*, 203 S.W.3d at 590. We conclude that the trial court did not improperly comment on the evidence. We overrule Longoria's fifth issue.

D. Admission of the Jail Records During Punishment Phase

By his seventh issue, Longoria reasserts the same authentication and relevance arguments as above, but this time protests the admission of the jail records at the punishment phase of trial. However, Longoria does not point to any factors that would

give his arguments greater traction than they had with regard to the guilt-innocence phase. We overrule Longoria's seventh issue for the reasons stated above.

VI. Conclusion

We affirm the judgment of the trial court.

NELDA V. RODRIGUEZ
Justice

Do not publish.
TEX. R. APP. P. 47.2(b).

Delivered and filed the
28th day of July, 2016.