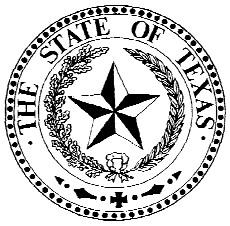
Affirmed and Opinion filed December 20, 2001.



In The

Fourteenth Court of Appeals

NO. 14-00-01291-CR

ROLANZO EUGENE WHEELER, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 174th District Court
Harris County, Texas
Trial Court Cause No. 835,228

O P I N I O N

Appellant Rolanzo Eugene Wheeler was charged by indictment with the state jail felony offense of theft from a person. The charge was enhanced by two prior felony convictions for burglary and robbery. Appellant pleaded not guilty to the offense. After finding appellant guilty as charged and finding the allegations in the enhancement paragraphs true, the jury assessed punishment at 15 years' confinement in the Institutional Division of the Texas Department of Criminal Justice and a $3,000.00 fine. We affirm.

In his only point of error, appellant contends that during the guilt/innocence phase of

trial, the court erred in admitting —over appellant's objection— letters he allegedly wrote to co-defendant Jessica Henderson. Appellant contends the letters were hearsay. Appellant further contends the letters were inadmissible under Texas Rule of Evidence 803(24).

The State called Henderson as a witness. She admitted driving the car used to flee the scene of the alleged theft. She also testified that appellant had the purse with him when he got into the car Henderson was driving. During direct examination, Henderson identified State's exhibits one through eight as letters appellant wrote to her. Appellant objected to admission of the letters as hearsay on the basis that appellant did not think the letters came from him and on the basis there was no testimony as to how Henderson could identify the handwriting.

Anticipating that the State would argue the letters were an exception to the hearsay rule, appellant's brief argues only that the letters were inadmissible under the statement against penal interest exception to the hearsay rule. *See* TEX. R. EVID. 803(24) ("A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, or to make the declarant an object of hatred, ridicule, or disgrace, that a reasonable person in declarant's position would not have made the statement unless believing it to be true. In criminal cases, a statement tending to expose the declarant to criminal liability is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement."). In its brief, however, the State did not argue that the 803(24) exception applied. Instead, the State argued that the letters were not hearsay. We agree.

Hearsay is a verbal or non-verbal statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. TEX. R. EVID. 801(d). A statement is not hearsay if the statement is offered against

a party and is his own statement. TEX. R. EVID. 801(e)(2)(A); *Trevino v. State*, 991 S.W.2d 849, 853 (Tex. Crim. App. 1999) (". . . Rule 801(e)(2)(A) plainly and unequivocally states that a criminal defendant's own statements, when being offered against him, are not hearsay."). To qualify as an admission by a party opponent, the witness testifying to the party admission must have firsthand knowledge of the party's admission; otherwise any testimony regarding the admission is hearsay. *Hughes v. State*, 4 S.W.3d 1, 6 (Tex. Crim. App. 1999).

Henderson testified that appellant wrote the letters, that she recognized his handwriting; that appellant signed them; and that she received them when she was in jail. Because an admission by a party opponent is not hearsay, the trial court did not err in overruling appellant's objection and admitting the letters into evidence at trial.

Accordingly, we overrule appellant's sole point of error and affirm the trial court's judgment.

/s/ Charles W. Seymore
Justice

Judgment rendered and Opinion filed December 20, 2001.
Panel consists of Chief Justice Brister and Justices Fowler and Seymore.
Do Not Publish — TEX. R. APP. P. 47.3(b).