

Motion Denied and Order filed June 16, 2020.



**In The
Fourteenth Court of Appeals**

NO. 14-19-00937-CR

PRINCE WARREN STONE, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 179th District Court
Harris County, Texas
Trial Court Cause No. 1574465**

ORDER

Appellant has filed a motion to abate this appeal, from trial court cause number 1574465, and supplement the appellate record with the reporter's record from another case, trial court cause number 157615. The State has filed a response in opposition to the motion.

In trial court cause number 157615, appellant was tried for aggravated robbery and found not guilty. During that trial, Sully Lanza testified about an extraneous offense, also

an aggravated robbery. The record reflects that before trial, Judge Randy Roll signed an order granting appellant's motion to order the reporter to prepare the record in trial court cause number 1574465 for appellant's use. Trial then took place in October 2019, before Judge Denise Collins.

At trial, Lanza's testimony about the same extraneous offense was offered. Defense counsel objected on the grounds of (1) relevancy, (2) overly prejudicial, and (3) collateral estoppel. Defense counsel argued the State was collaterally estopped from introducing Lanza's testimony because had the jury found beyond a reasonable doubt that the extraneous offense occurred, appellant would not have been acquitted. The objection was overruled, and Lanza testified.

The record before this court does not reflect that the reporter's record of trial court cause number 157615 was submitted to the trial court. A defendant may not obtain appellate review of his collateral estoppel claim if he fails to introduce a record of the first proceeding in the second proceeding and to include that record on appeal. *Guajardo v. State*, 109 S.W.3d 456, 457 (Tex. Crim. App. 2003). The *Guajardo* court noted, "Without the complete record, no reviewing court can determine exactly what specific facts the first factfinder actually found." *Id.* Furthermore, "without that complete record, no reviewing court can address whether collateral estoppel might apply in a particular context or whether a trial court erred in rejecting that claim in a specific case." *Id.*

Appellant seeks to supplement the record on appeal with the record from the first proceeding, which was not made part of the record below. Because we cannot expand the record with evidence that was not before the trial court, we deny the motion to abate.

PER CURIAM

Panel consists of Chief Justice Frost and Justices Jewell and Spain.