

Affirmed and Opinion filed April 6, 2000.



In The

Fourteenth Court of Appeals

NO. 14-98-00542-CR

BRANDON KINTE HATTON, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 180th District Court
Harris County, Texas
Trial Court Cause No. 748,683**

O P I N I O N

A jury convicted appellant of aggravated robbery and sentenced him to confinement for sixty-seven years. The evidence revealed appellant murdered complainant's boyfriend during the robbery. Appellant objected to the charge on the ground it did not include a proper extraneous offense instruction. The trial judge overruled the objection. We find the trial judge did not err in refusing to give the instruction because the extraneous offense evidence was same transaction contextual evidence.

In his sole point of error, appellant contends the trial court erred by not giving a requested extraneous offense jury charge instruction during the guilt/innocence phase of the trial. Extraneous offense evidence, which is indivisibly connected to the charged offense, may be admissible to provide context for the offense. *See Lockhart v. State*, 847 S.W.2d 568, 571 (Tex. Crim. App. 1992); *Mayer v. State*, 816 S.W.2d 79, 86-87 n. 4 (Tex. Crim. App. 1991). Where an offense is one continuous transaction, or is closely interwoven

with the case on trial, proof of all such facts is proper. Evidence of these extraneous offenses is admissible to show the context in which the criminal act occurred. *See id.* This context permits the jury to realistically evaluate the evidence because “crimes do not occur in a vacuum.” *Wilkerson v. State*, 874 S.W.2d 127, 131 (Tex. App.–Houston [14th Dist.] 1994, pet. ref’d).

Because the murder was part of the same criminal transaction as the robbery of the complainant, the murder evidence was properly admitted as same transaction contextual evidence. *See Nelson v. State*, 864 S.W.2d 496, 498-99 (Tex. Crim. App. 1993); *Lockhart*, 847 S.W.2d at 571. When evidence is admitted as same transaction contextual evidence, no limiting instruction is required. *See Camacho v. State*, 864 S.W.2d 524, 532 (Tex. Crim. App. 1993). Thus, because the same transaction contextual evidence is offered simply to explain the context of the crime, a jury instruction, requiring extraneous offenses be proven beyond a reasonable doubt, is not required. *See Garza v. State*, 2 S.W.3d 331, 335 (Tex. App.–San Antonio 1999, pet. ref’d) (An extraneous offense instruction for same transaction contextual evidence is not required during the punishment phase of a trial.).

Accordingly, the trial court did not err in refusing to give the extraneous offense jury charge instruction. Having overruled appellant’s sole point of error, we affirm the trial court’s judgment.

/s/ Ross A. Sears
 Justice

Judgment rendered and Opinion filed April 6, 2000.

Panel consists of Justices Sears, Draughn, and Hutson-Dunn.*

Do Not Publish — TEX. R. APP. P. 47.3(b).

* Senior Justices Ross A. Sears, Joe L. Draughn, and D. Camille Hutson-Dunn sitting by assignment.