

Motion for Rehearing Overruled and Opinion on Rehearing filed June 1, 2000.



In The

Fourteenth Court of Appeals

NO. 14-98-00548-CR

MICHAEL GREGORY ROBLES, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 263rd District Court
Harris County, Texas
Trial Court Cause No. 759,302**

OPINION ON REHEARING

The State has filed a motion for rehearing in this case, arguing we erred in holding this case was controlled by the decisions in *Tamez v. State*, 11 S.W.3d 198 (Tex. Crim. App. 2000) and *Old Chief v. United States*, 519 U.S. 172, 117 S. Ct. 644, 136 L. Ed.2d 574 (1997). The State contends that when a defendant enters a plea of guilty, the admission of prior offenses during punishment is controlled by article 37.07, § 3(a), *Texas Code of Criminal Procedure*, and not Evidence Rule 403. However, appellant's point of error was not addressed to the admission of evidence of prior DWI's at the punishment phase. Rather, appellant contended the trial court erred in denying his motion to suppress evidence at the

guilt/innocence phase of the trial. It was only *after* the trial court denied the motion that appellant pleaded guilty; he did so with the understanding he had the right to appeal the denial of the motion to suppress.

Since the point of error concerned the denial of the motion to suppress the evidence at the guilt/innocence phase of the trial, whether that evidence is admissible at the punishment phase is not in issue. As the Court of Criminal Appeals has explained, a defendant is not required to have evidence erroneously admitted at trial in order to appeal the denial of a motion to suppress. *See* TEX. R. APP. P. 25.2; *Gonzales v. State*, 966 S.W.2d 521, 523-24 (Tex. Crim. App. 1998); *McKenna v. State*, 780 S.W.2d 797, 800 (Tex. Crim. App. 1989).

Accordingly, we overrule the State's motion for rehearing.

/s/ Ross A. Sears
 Justice

Judgment rendered and Opinion filed June 1, 2000.

Panel consists of Justices Sears, Cannon, and Draughn.*

Do Not Publish — TEX.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

* Senior Justices Ross A. Sears, Bill Cannon, and Joe L. Draughn sitting by assignment.