COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

BETHANY ALLISON MEADE,		§	No. 08-19-00019-CR
	Appellant,	§	Appeal from the
v.		§	235th Judicial District Court
THE STATE OF TEXAS,		§	of Cooke County, Texas
	Appellee.	§	(TC# CR18-00045)

O P I N I O N

Appellant Bethany Allison Meade was convicted by a jury of one count of theft of property with two or more prior convictions, and was sentenced to a ten-year prison term, along with a $5,000 fine. Appellant raises two issues on appeal. In her first issue, which has multiple subparts, she contends that the trial court erred by: (1) admitting evidence of an extraneous offense; and (2) failing to sua sponte instruct the jury that it was required to find the commission of the extraneous offense beyond a reasonable doubt before considering it in their deliberations. In her second issue, Appellant contends that the State's prosecutor engaged in an improper jury argument by referring to facts that were outside the record. We affirm.[1]

[1] This case was transferred from the Fort Worth Court of Appeals, and we apply the precedent of that Court to the extent required by TEX.R.APP.P. 41.3.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. The Charged Offense

On November 22, 2017, a Walmart asset protection associate, who was tasked with locating and apprehending shoplifters in the store, observed Appellant and an unidentified male enter the store together. As discussed in more detail below, the associate recognized the two individuals from an incident that had occurred ten days to two weeks earlier, in which he believed they had attempted to leave the store with unpaid merchandise. Concerned that they might attempt to do so again, the associate followed the two as they shopped in the store. The associate observed that they used the same shopping cart, which they took turns pushing, and that they both placed items into the cart. In addition, the associate observed that Appellant was "furtively" looking around the store in a manner suggesting that she was acting as a "lookout," to determine if they were being watched which, in his experience, was consistent with individuals who were acting as a shoplifting "team."

The associate observed that the two individuals separated as they approached the cash registers, and that the unidentified male passed the last point of sale, heading toward an exit door, with the cart full of unbagged merchandise, while Appellant lingered behind.[2] When the associate approached the male at the exit door and asked for a receipt, he observed Appellant watching them, and then saw her exit the store through a different door. After the unidentified male failed to produce a receipt, he left the cart behind and walked away through the parking lot, while Appellant walked through the parking lot in the opposite direction. The associate immediately contacted law enforcement and provided a description of both individuals. Shortly thereafter, law

[2] The associate noted that it is common for individuals working as a team to separate as they approach the cash registers, so that one can serve as a lookout. He acknowledged, however, that Appellant did not give any "hand signals" or other "warning" to the unidentified male as he attempted to exit the store with the unpaid merchandise.

enforcement found Appellant inside a nearby store, but the unidentified male was never apprehended. The associate later calculated that the value of the items left behind in the shopping cart totaled $238.55.

The associate also testified that the store has approximately 40 to 50 security cameras, and that they captured the activities of Appellant and the unidentified male on the day of the charged offense. Without objection, the State played seven clips from the security cameras depicting their activities that day, beginning from when they entered the store through the time that Appellant and the unidentified male walked away through the parking lot.

B. The Prior Incident

Throughout the trial, Appellant's counsel acknowledged that Appellant had entered the store with the unidentified male and had shopped with him on the day of the charged offense but contended that he was solely responsible for committing the theft. She was in effect, an innocent bystander, who was in the "wrong place at the wrong time." According to defense counsel, Appellant intentionally separated from the male as he exited the store with the unpaid merchandise, as she did not want to be part of his offense. He claimed that, at most, Appellant was guilty of demonstrating poor judgment in selecting her friends, and that she could not be found guilty of theft merely based on her "association" with the unidentified male.

In order to rebut those claims, the State sought to introduce two video clips taken from the store's security cameras from the prior incident that occurred ten days to two weeks before the charged offense. The State argued the video showed Appellant trying to leave the store with the same unidentified male with unpaid merchandise. Specifically, in the first clip, a Walmart "greeter" is seen speaking with the two individuals at the exit door, apparently asking for a receipt for the unbagged merchandise in their cart. In the second clip, the associate is seen speaking with

the two individuals, after which they walked away together through the parking lot, leaving the cart behind. The associate testified that the items left behind in the cart that day, as depicted on the two clips, were similar to those that were found in the shopping cart on the day of the charged offense.

Appellant objected to the admission of the video clips on the ground that they contained evidence of an extraneous offense that was "not relevant" to Appellant's guilt, and that the evidence was more prejudicial than probative. The State countered that the evidence was admissible for the purpose of demonstrating Appellant's intent, and further asserted that Appellant had waived any objection she may have had to the admission of the evidence, as she had failed to object when the associate had earlier testified about the incident. The trial court overruled the objection, finding that the evidence was admissible "to prove motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or lack of accident," and that the incident had been "previously testified to" by the associate.

C. Judgment and Sentencing

The jury found Appellant guilty of the charged offense of theft, and further found that she had been convicted of two prior theft offenses, as alleged by the State.[3] The jury sentenced Appellant to a ten-year prison term, and assessed a $5,000 fine.

II. Evidence of the Prior Extraneous Offense

In her first issue on appeal, Appellant contends that the trial court erred in admitting the video clips from the store's security cameras, which depicted the prior theft offense. First, she contends that the clips were inadmissible under Rule 404 of the Texas Rules of Evidence, as the

[3] During the punishment phase, the State also presented evidence that Appellant had several other prior judgments of conviction for various theft offenses and possession of marijuana, beginning in 1998.

evidence of the prior offense constituted impermissible character evidence. Second, she contends that the evidence was inadmissible under Rule 403, as its probative value was outweighed by its prejudicial effect. And third, she contends that the evidence was inadmissible, as the State failed to demonstrate "beyond a reasonable doubt" that she had committed the extraneous offense. In addition, Appellant contends that the trial court erred by failing to instruct the jury that it was required to find beyond a reasonable doubt that she had committed the extraneous offense before it could consider the prior offense for any purpose.

A. Waiver Issues

As a preliminary matter, the State contends that Appellant did not properly preserve this issue for our review. As the State points out, to preserve error for appellate review, in the absence of a running objection, a party must object each time the opposing party attempts to admit inadmissible evidence. *See* TEX.R.APP.P. 33.1(a)(1); *Valle v. State*, 109 S.W.3d 500, 509 (Tex.Crim.App. 2003). Therefore, when the evidence about which a defendant complains has been admitted elsewhere during a trial without objection, a defendant forfeits that complaint about the admission of the evidence on appeal. *See Lane v. State*, 151 S.W.3d 188, 193 (Tex.Crim.App. 2004); *see also Clay v. State*, 361 S.W.3d 762, 766 (Tex.App.--Fort Worth 2012, no pet.) (trial court's admission of evidence will not require reversal when other such evidence was received at trial without objection, either before or after complained-of ruling).

The State correctly points out that before the complained-of video clips of the prior offense were introduced into evidence, the Walmart associate had already testified about the prior incident without objection from Appellant. However, the associate's earlier testimony about the prior incident was initially introduced for a different purpose; specifically, it was introduced as contextual background evidence to explain how he recognized the couple when they entered the

store on the day of the charged offense, and why he made the decision to follow them through the store.[4] In contrast, the State switched its focus when it later sought to introduce the clips of the prior incident into evidence, seeking to use the clips as evidence to rebut Appellant's claim that she lacked the intent to commit the charged offense. At that time, defense counsel made a specific and timely objection to the admission of the evidence for this purpose, and further argued that the prejudice caused by the introduction of the video clips would outweigh any probative value that they might have. We therefore conclude that Appellant properly preserved these two issues for our review.

B. Standard of Review

We review a trial court's ruling on the admission of evidence under the abuse of discretion standard. *See Jordy v. State*, 413 S.W.3d 227, 231 (Tex.App.--Fort Worth 2013, no pet.), *citing Tillman v. State*, 354 S.W.3d 425, 435 (Tex.Crim.App. 2011). A trial court does not abuse its discretion by admitting evidence unless its determination lies outside the zone of reasonable disagreement. *Id*. The trial court's ruling will be upheld if it is reasonably supported by the record and is correct under any theory of law applicable to the case. *Jordy*, 413 S.W.3d at 231 *citing Ramos v. State*, 245 S.W.3d 410, 418 (Tex.Crim.App. 2008).

C. Admissibility under Rule 404

Rule 404 provides that evidence of a defendant's extraneous offenses, including other crimes, wrongs, or acts committed by the defendant, is generally not admissible unless it has some

[4] Although we express no opinion on whether the extraneous-offense evidence was admissible for this purpose, in general, courts have recognized two types of contextual evidence: (1) "same transaction evidence," which refers to other offenses connected with the primary offense, and (2) "background evidence," which includes all general background evidence. *See Mayes v. State*, 816 S.W.2d 79, 86-87 (Tex.Crim.App. 1991) (en banc). Although background contextual evidence is generally inadmissible when it includes an impermissible character component, such evidence is admissible when it is helpful to a jury's understanding of an event. *See Moore v. State*, 165 S.W.3d 118, 122 (Tex.App.--Fort Worth 2005, no pet.), *citing Mayes*, 816 S.W.2d at 86.

relevance apart from character conformity, such as to prove identity or intent, to establish motive, or to show opportunity or preparation. TEX.R.EVID. 404(a)(b); *see also Moses v. State*, 105 S.W.3d 622, 626 (Tex.Crim.App. 2003). Under Rule 404, evidence of a defendant's extraneous offense is not admissible if its only purpose is to show that the defendant had a bad character, and that he acted in conformity with that character at the time of the charged offense. *See Devoe v. State*, 354 S.W.3d 457, 469 (Tex.Crim.App. 2011); *see also Couret v. State*, 792 S.W.2d 106, 107 (Tex.Crim.App. 1990) (en banc) ("The general rule is that an accused is entitled to be tried for the offense for which he is charged and not for some collateral crime or for being a criminal generally."). However, when a defendant claims that they lacked the requisite intent to commit a charged offense, evidence that they committed an extraneous offense in a similar manner is relevant to rebut that claim. In that case, it has "noncharacter-conformity relevance" making it admissible under Rule 404. See *Wenger v. State*, 292 S.W.3d 191, 203 (Tex.App.--Fort Worth 2009, no pet.); *see generally Bass v. State*, 270 S.W.3d 557, 563 (Tex.Crim.App. 2008) (recognizing that extraneous-offense evidence that tends to rebut a defensive theory is relevant beyond its character-conformity value.).

In addition, such evidence can be analyzed under Section 31.03 of the Texas Penal Code, which expressly provides that when a defendant pleads not guilty to the offense of theft, which requires a specific "intent to deprive the owner of property," evidence that the defendant "has previously participated in recent transactions other than, but similar to, that which the prosecution is based is admissible for the purpose of showing knowledge or intent and the issues of knowledge or intent." TEX.PENAL CODE ANN. § 31.03(c)(1); *see also Tanash v. State*, 468 S.W.3d 772, 774-75 (Tex.App.--Houston [14th Dist.] 2015, no pet.). Therefore, in a theft case, extraneous-offense

evidence may be admissible under the Penal Code, even if it is otherwise inadmissible under Rule 404. *Id.*

In the present case, the trial court could have reasonably found the extraneous-offense evidence was admissible under either Rule 404 or Section 31.03 for the purpose of establishing Appellant's intent to commit the charged offense. Appellant placed her intent at issue not only when she pled not guilty to the theft offense, but also did so at trial, when her defense counsel repeatedly argued that she lacked the requisite intent to commit the charged offense and was merely an innocent bystander. Moreover, the evidence of the prior incident was probative of Appellant's intent under either or both Rule 404 and Section 31.03, as the prior incident was both "recent" in time and "similar" to the charged offense. As set forth above, the prior incident occurred only ten days to two weeks before the charged offense, and was committed in a substantially similar manner.[5] In both instances, Appellant was seen in the same Walmart store, shopping with the same unidentified male, under circumstances indicating that they were acting as a "team" in attempting to leave the store with unpaid merchandise on both occasions. And although Appellant and the unidentified male tried a slightly different approach on the day of the charged offense--splitting up at the last minute before passing the last point of sale--we do not find this to be a substantive difference. Unlike situations in which extraneous-offense evidence is being admitted on the issue of "identity," where the law requires a high degree of similarity between the prior offense and the charged offense, when such evidence is admitted on the issue of

[5] Although the Penal Code does not define what is meant by the term "recent," Texas courts have generally held that events occurring a little more than two years prior to the offense in question fall within the category of recent events, whereas events occurring six years prior to the offense cannot be considered recent. *See Cappiello v. State*, No. 06-17-00110-CR, 2017 WL 5894323, at *9 (Tex.App.--Texarkana Nov. 30, 2017, pet. ref'd) (mem. op., not designated for publication), *citing Benson v. State*, 240 S.W.3d 478, 484 (Tex.App.--Eastland 2007, pet. ref'd); *Ballard v. State*, 945 S.W.2d 902, 905 (Tex.App.--Beaumont 1997, no pet.).

intent, "the law does not require exacting similarity between the extraneous and charged offenses." *See Mendoza v. State*, No. 02-11-00197-CR, 2012 WL 43172, at *7 (Tex.App.--Fort Worth Jan. 5, 2012, no pet.) (mem. op., not designated for publication), *citing Bishop v. State*, 869 S.W.2d 342, 346 (Tex.Crim.App. 1993) (en banc).

We therefore conclude that the trial court did not abuse its discretion when it determined that video clips of Appellant's prior extraneous offense were relevant to demonstrate her intent to commit the charged offense.

D. Admissibility Under Rule 403

We next consider Appellant's argument that the trial court abused its discretion in admitting the video clips on the ground that they were inadmissible under Rule 403 of the Texas Rules of Evidence. Rule 403 provides that the "court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, or needlessly presenting cumulative evidence." TEX.R.EVID. 403. In determining whether a trial court properly found that evidence of an extraneous offense was more probative than it was prejudicial:

> [We] must balance (1) the inherent probative force of the proffered item of evidence along with (2) the proponent's need for that evidence against (3) any tendency of the evidence to suggest decision on an improper basis, (4) any tendency of the evidence to confuse or distract the jury from the main issues, (5) any tendency of the evidence to be given undue weight by a jury that has not been equipped to evaluate the probative force of the evidence, and (6) the likelihood that presentation of the evidence will consume an inordinate amount of time or merely repeat evidence already admitted.

Gigliobianco v. State, 210 S.W.3d 637, 641-42 (Tex.Crim.App. 2006) (also noting that these factors may blend together).

Applying the first two factors, we conclude, for the reasons discussed above, that the extraneous-offense evidence was inherently probative of Appellant's intent to commit the charged

offense, and that it was needed by the State, as it had no direct evidence to rebut Appellant's claim that she was simply an innocent bystander who did not intend to commit the theft. *See Gauch v. State*, No. 02-18-00454-CR, 2019 WL 4010347, at *2-3 (Tex.App.--Fort Worth Aug. 26, 2019, no pet.) (mem. op., not designated for publication) (recognizing the State's need for extraneous-offense evidence where the State had no direct evidence of defendant's intent); *see also Ludwig v. State*, 969 S.W.2d 22, 30 (Tex.App.--Fort Worth 1998, pet. ref'd) (recognizing the State's need to admit evidence of a defendant's "other crimes, wrongs, or acts" when the defendant claims a lack of intent).

In balancing these two factors against the possible prejudicial effect that may have resulted from admitting the evidence, we note that the State did not take an inordinate amount of time to develop the evidence, nor would the evidence otherwise distract the jury from the main issues at trial. Our only concern is that the jury may have been confused about the purpose for which the evidence was admitted, as the jury received no limiting instruction regarding the proper use of the evidence. *See Abdnor v. State*, 871 S.W.2d 726, 741 (Tex.Crim.App. 1994) (en banc) (recognizing that without an instruction limiting the jury's consideration of an appellant's extraneous offenses, the jury is generally without the necessary guidance to accurately decide the facts of appellant's case). A limiting instruction of this nature would have minimized the possible prejudice resulting from the admission of the extraneous-offense evidence, as it would have cautioned the jury not to make an "impermissible inference of character conformity" in considering the evidence. *See Lane v. State*, 933 S.W.2d 504, 520 (Tex.Crim.App. 1996) (en banc); *see also Karnes v. State*, 127 S.W.3d 184, 193 (Tex.App.--Fort Worth 2003, pet. ref'd). Appellant, however, did not request a limiting instruction, nor does she complain on appeal about the trial court's failure to provide such an instruction. And the trial court was under no obligation to sua

sponte provide the jury with a limiting instruction of this nature. *See Delgado v. State*, 235 S.W.3d 244, 251 (Tex.Crim.App. 2007). Moreover, the trial court did expressly state in the jury's presence when overruling Appellant's objection, that it was admitting the clips for the purpose, among others, of demonstrating Appellant's intent to commit the charged offense. Given Appellant's failure to request a more formal limiting instruction on this subject, we conclude that this factor militates against a finding of prejudice. *See Beam v. State*, 447 S.W.3d 401, 405 (Tex.App.--Houston [14th Dist.] 2014, no pet.) (finding defendant's failure to request a limiting instruction to be a factor in determining that defendant was not prejudiced by the admission of extraneous-offense evidence).

Accordingly, on balance, we conclude that the trial court did not abuse its discretion in finding that the probative value of the extraneous-offense evidence outweighed its potential for prejudice.

E. Proof Beyond a Reasonable Doubt

Appellant also contends that the trial court erred in admitting the evidence of the extraneous offense on the ground that the State failed to demonstrate "beyond a reasonable doubt" that the extraneous offense occurred. In addition, Appellant contends that the trial court erred by failing to instruct the jury that it could not consider the extraneous-offense evidence unless if found beyond a reasonable doubt that the offense occurred. We consider these arguments separately.

1. Evidence that the prior offense occurred

Generally, when the State proffers evidence of an extraneous offense during the guilt/innocence phase of a trial, before admitting the evidence, the trial court must make an initial determination that the jury could reasonably find beyond a reasonable doubt that the defendant committed the extraneous offense. *See Fischer v. State*, 268 S.W.3d 552, 556-57 (Tex.Crim.App.

2008) (recognizing that a trial court cannot admit extraneous-offense evidence unless a jury could find beyond a reasonable doubt that the defendant committed the extraneous offense); *see also Harrell*, 884 S.W.2d 154, 160-161 (Tex.Crim.App. 1994) (en banc); *Plante*, 692 S.W.2d 487, 494-95 (Tex.Crim.App. 1985) (en banc). Appellant, however, failed to object to the admission of the evidence on this basis in the trial court, and she therefore did not properly preserve this issue for our review. *See Yazdchi v. State*, 428 S.W.3d 831, 844 (Tex.Crim.App. 2014) (in order to preserve error for appellate review, defendant's point of error on appeal must comport with his objection at trial). Moreover, even if we were to consider this issue, we would find it to be without merit.

Appellant argues that the evidence was not sufficient to allow the trial court to make an initial determination that the extraneous offense occurred, finding it significant that the Walmart associate testified at trial that he did not have sufficient "elements" to detain Appellant and the unidentified male on the prior occasion, as he was on a break while they were shopping, and therefore did not observe their activities before they tried to exit the store with the unpaid merchandise. The associate's decision not to detain them, however, appears to have been based primarily on store policy, rather than on any true lack of probable cause to believe that a theft had occurred. Theft is defined as "the unlawful appropriation of property without the effective consent of the owner with the intent to deprive the owner of property." *Johnson v. State*, 560 S.W.3d 224, 227 (Tex.Crim.App. 2018), *citing* TEX.PENAL CODE § 31.03(a). The associate's testimony, together with the video clips of the event, demonstrated that Appellant and the unidentified male walked past the last point of sale, and attempted to leave the store with a cart containing unbagged merchandise for which they had no receipt. Accordingly, regardless of the associate's testimony, the record contains sufficient evidence from which the trial court could have

made an initial determination that Appellant had committed an extraneous offense on the prior occasion.

2. The alleged jury charge error

And finally, in a similar vein, Appellant asserts that the trial court erred by failing to sua sponte instruct the jury that it could not consider the extraneous-offense evidence unless it found "beyond a reasonable doubt" that she had committed the prior offense. We conclude, however, that the trial court had no duty to sua sponte instruct the jury on this issue.

In general, a trial court has the primary duty to prepare a jury charge that accurately sets out the law applicable to the specific offense charged. *See Delgado*, 235 S.W.3d at 249-54. However, the court has no "similar sua sponte duty to instruct the jury on all potential defensive issues [or] evidentiary issues," and in particular, has no duty to sua sponte instruct the jury on issues pertaining to the use of extraneous offenses during the guilt-innocence phase of a trial. *Id.* at 251; *see also Gunter v. State*, 327 S.W.3d 797, 801 (Tex.App.--Fort Worth 2010, no pet.). To the contrary, the Court of Criminal Appeals has recognized that it would be inappropriate for a trial court to sua sponte give the jury a limiting instruction pertaining to the use of extraneous-offense evidence, as trial counsel may have decided, as a matter of strategy, to refrain from requesting any such instruction to avoid drawing attention to the offense. *See Delgado*, 235 S.W.3d at 250; *see also Villalva v. State*, No. 08-13-00219-CR, 2015 WL 4134531, at *6 (Tex.App.--El Paso July 8, 2015, no pet.) (not designated for publication) (recognizing that a trial attorney may reasonably decide, as part of her trial strategy, not to request a limiting instruction because "a limiting instruction may actually have the effect of bringing unwanted attention to the extraneous-offense evidence, and thereby have a negative impact on the defendant's case."). Therefore, to be entitled to a limiting instruction on the use of such evidence during the guilt-

innocence phase of the trial, the defendant must expressly request the instruction.[6] *See Delgado*, 235 S.W.3d at 251; *see also George v. State*, 890 S.W.2d 73, 76 (Tex.Crim.App. 1994) (en banc). In the present case, Appellant not only failed to request a limiting instruction on this issue, her attorney expressly stated at the charge conference that he had no objection to the jury charge--despite its omission of a limiting instruction in the charge. We therefore conclude that the trial court did not err by failing to sua sponte give the jury a limiting instruction of this nature.

Appellant's Issue One is overruled.

III. THE STATE'S JURY ARGUMENT

In Issue Two, Appellant contends that the State's prosecutor engaged in an improper jury argument when he referred to Walmart's policy of issuing a criminal trespass order when an individual has committed more than one theft from the store or when the individual acted in a "violent" manner at the time of a first offense. At trial, defense counsel objected to this statement, contending that the prosecutor was "arguing outside the record." The trial court responded by admonishing the jury as follows: "Okay. Ladies and gentlemen, this is the attorney's argument. If you remember the evidence differently, you go with what you remember the evidence to be. But I'm going to overrule. This is attorney's argument." Defense counsel then moved for a mistrial, but the trial court denied the request.

On appeal, Appellant continues to assert that the prosecutor's argument was improper, as it allegedly referred to facts that were outside the record and were prejudicial to her case. She

[6] The rule is somewhat different during the punishment phase of a non-capital case, as Article 37.07 of the Texas Code of Criminal Procedure expressly provides that during the punishment phase of a trial, evidence of any "extraneous crime or bad act," may be admitted for any relevant purpose, but only if it is shown "beyond a reasonable doubt" to have been committed by the defendant. TEX.CODE CRIM.PROC.ANN. art. 37.07(3)(a)(1). In light of this express provision in the Code, the Court of Criminal Appeals has held that the "reasonable doubt" requirement is the "law applicable" to the case in the punishment phase of a trial, thereby requiring the trial court to give an instruction of this nature sua sponte during that phase of the trial. *See Delgado*, 235 S.W.3d at 252-253.

contends that the trial court therefore erred by failing to provide adequate admonishments to the jury to cure the prejudice resulting from the argument, or by failing to grant her request for a mistrial. The State counters that the prosecutor's argument was proper, as it was based on a reasonable deduction from the evidence presented at trial. We agree with the State.

Proper jury argument includes four areas: (1) summary of the evidence presented at trial, (2) reasonable deductions drawn from that evidence, (3) answers to opposing counsel's arguments, and (4) pleas for law enforcement. *Jackson v. State*, 17 S.W.3d 664, 673 (Tex.Crim.App. 2000). In closing argument, a prosecuting attorney is permitted to draw from the facts in evidence all inferences which are reasonable, fair and legitimate, but "he may not use the jury argument to get before the jury, either directly or indirectly, evidence which is outside the record." *Borjan v. State*, 787 S.W.2d 53, 57 (Tex.Crim.App. 1990).

In this case, the prosecutor's comments were based directly on the Walmart associate's testimony. At trial, the associate testified, without objection, that Walmart has a policy of issuing criminal trespass notices to individuals who have committed more than one theft or were violent at the time of their first offense. The associate further testified, without objection, that when law enforcement brought Appellant back to the store on the day of the charged offense, he put her name into the store's database, and found that Appellant had received a criminal trespass notice in 2009, based on her previous shoplifting attempts. He further explained that the notice, which was introduced into evidence without objection, imposed a "lifetime ban" on Appellant from entering the store. In addition, Appellant's own counsel referred to the trespass notice in his opening statement, arguing the store associate improperly accused her of theft on the day of the charged offense, in part because of the existence of the prior trespass notice. Accordingly, we reject Appellant's contention that the prosecutor's argument referred to facts outside the record.

Appellant's Issue Two is overruled. Having overruled both of Appellant's issues, we affirm the conviction below.

JEFF ALLEY, Chief Justice

June 15, 2020

Before Alley, C.J., Rodriguez, and Palafox, JJ.

(Do Not Publish)