

Cause No.26,178-XXX

STATE OF TEXAS	§	IN THE DISTRICT COURT
	§	
V.	§	422 nd JUDICIAL DISTRICT
	§	
JOE CLIENT	§	KAUFMAN COUNTY, TEXAS

DEFENDANT'S WRITTEN OBJECTION TO ADMISSIBILITY OF EXTRANEOUS OFFENSES, REQUEST FOR PROCEDURAL DETERMINATION BY TRIAL COURT WITH FINDINGS OF FACTS AND CONCLUSIONS OF LAW AND FOR LIMITING INSTRUCTION

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now , the Defendant herein, by and through Counsel, and files this his Written Objection to Admissibility of Extraneous Offenses, Request for Procedural Determination by Trial Court with Findings of Fact and Conclusions of Law, and for Limiting Instruction, and in support thereof would show the Court as follows:

I.

The State of Texas is seeking the admission of extraneous offenses. Such evidence may be admissible where it makes "the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401, Texas Rules of Evidence. "Evidence which is not relevant is inadmissible." Rule 402, Texas Rules of Evidence. Although evidence may be deemed relevant, such evidence is still not admissible if "its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, or needless presentation of cumulative evidence." Rule 403,

Texas Rules of Evidence.

II.

The Defendant objects to the admission of such extraneous offense evidence under Rules 401, 402, 403, and 404(b) and requests the State prove such evidence has relevance other than proving the character of the Defendant, or suggesting that he acted in conformance with a criminal propensity. *Montgomery vs. State*, 810 S.W.2d 372 (Tex. Crim. App. 1991).

III.

If the Court overrules the objection in paragraph II above, the Defendant hereby requests that the Court make findings of fact and conclusions of law supporting its determination that the evidence (1) establishes an elemental fact, (2) establishes an evidentiary fact that inferentially leads to an elemental fact, (3) rebuts a defensive theory, or (4) has some other logical relevance, and that the need for the evidence outweighs reasons for exclusion under Rule 403. See *Montgomery*, supra.

IV.

Further, the Defendant requests that the Court properly instruct the jury to confine and limit its consideration of such evidence to the purpose articulated by the State, under the authority of Rule 105, Texas Rules of Evidence.

V.

In support of the foregoing, Defendant makes these requests to preserve his rights to the effective assistance of counsel, due process and due course of law, in accordance with the Fifth, Sixth and Fourteenth Amendments to the United States Constitution, Article I, Sections 10, 13 and 19 of the Texas Constitution, and Articles 1.04, 1.05, and 1.051 of the Texas Code of Criminal Procedure.

WHEREFORE, PREMISES CONSIDERED, Defendant requests this Honorable Court grant to

Defendant all relief requested herein and such other relief to which he may be entitled.

Respectfully Submitted,

Matthew Arnold
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ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Defendant's Written Objection to Admissibility of Extraneous Offenses, Request for Procedural Determination by Trial Court with Findings of Facts and Conclusions of Law and for Limiting Instruction was served upon the attorney for the State on _____, 200__.

Attorney for Defendant

Cause No.26,178-XXX

STATE OF TEXAS

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IN THE DISTRICT COURT

V.

422nd JUDICIAL DISTRICT

JOE CLIENT

KAUFMAN COUNTY, TEXAS

**ORDER ON DEFENDANT’S WRITTEN OBJECTION TO ADMISSIBILITY OF
EXTRANEOUS OFFENSES, REQUEST FOR PROCEDURAL DETERMINATION BY
TRIAL COURT WITH FINDINGS OF FACTS AND CONCLUSIONS OF LAW AND FOR
LIMITING INSTRUCTION**

BE IT REMEMBERED, that on the ____ day of _____, 200____, came to be considered the above and foregoing Motion by Defendant. After consideration of the same, it is the opinion of the Court that Defendant's Motion be:

_____ GRANTED as to paragraph(s) _____.

_____ DENIED as to paragraph(s) _____, to which ruling the

Defendant timely excepts.

_____ SET FOR HEARING ON THE ____ day of _____,
200____, at _____ o'clock _____.

SIGNED on _____, 200____.

JUDGE PRESIDING