

Affirmed and Opinion filed March 9, 2000.



In The

Fourteenth Court of Appeals

NO. 14-98-00196-CR

JOSE VILLEGAS PEREZ, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 263rd District Court
Harris County, Texas
Trial Court Cause No. 756,852**

OPINION

Appellant, Jose Villegas Perez, was convicted of murder and sentenced to fifteen years confinement in the Texas Department of Criminal Justice, Institutional Division. He presents two issues on appeal, complaining of the trial court's granting of a motion in limine and of the court's demeanor towards his trial counsel. We affirm.

A detailed discussion of the facts surrounding the case is not necessary to disposition of the appeal; suffice it to say that a confrontation broke out between several neighbors and friends which resulted in appellant shooting and killing one of the participants. The jury rejected appellant's self-defense argument and found him guilty of murder.

Appellant's first issue on appeal alleges error by the trial court in granting the State's motion in limine prohibiting appellant from establishing that the deceased and other State witnesses were gang members. Appellant's self-defense theory centered on showing that the deceased, or the friends he was with that evening, were members of the Central Park gang, and that appellant and others were afraid of the gang.

Appellant's first issue does not present anything for our review, as a trial court's ruling on a motion in limine, without more, does not preserve error for review. *See Draughon v. State*, 831 S.W.2d 331, 333-334, footnote 1 (Tex. Crim. App. 1992), *cert. denied*, 509 U.S. 926 (1993). Regardless, the record clearly shows that the trial court excluded appellant's proposed testimony regarding gang-membership on the basis of *hearsay*, which ruling appellant does not complain of on appeal. Moreover, the record reflects that when appellant did ask witnesses, without objection from the State, as to whether the deceased and his friends were members of the Central Park gang, the witnesses testified that they were not members. No error is shown.

By his second issue, appellant alleges that the trial court's "demeaning attitude" and comments towards his trial counsel denied appellant a fair trial. We have reviewed the trial record in its entirety and do not find that the trial court exhibited a "demeaning attitude" towards any party or counsel. All comments made by the court towards any witness, party or attorney were well-within the bounds of propriety, whether made within or outside the presence of the jury, and whether taken independently or cumulatively. To constitute reversible error, a comment by the trial judge must be calculated to injure the rights of the defendant or it must appear from the record that the defendant has not had a fair and impartial trial. *Billings v. State*, 725 S.W.2d 757, 763 (Tex. App.-- Houston [14th Dist.] 1987, no pet.). None of the trial court's comments rose to the level of reversible error here. *See Latson v. State*, 807 S.W.2d 372 (Tex. App. – Houston [14th Dist.] 1991, pet. ref'd).

Appellant's issues are overruled, and the judgment is affirmed.

Bill Cannon

Justice

Judgment rendered and Opinion filed March 9, 2000.

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

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

* Senior Justices Bill Cannon, Joe L. Draughn, and D. Camille Hutson-Dunn sitting by assignment.