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Case Name: [Eduardo Rivas Delgado \(aka Eduardo D. Rivas\) v. The State of Texas](#)

- OFFENSE: Possession of Controlled Substance w/ Intent to Deliver
- COUNTY: Tarrant
- COURT OF APPEALS: Ft. Worth 2006
- C/A CITATION: Unpublished
- C/A RESULT: Conviction Affirmed
- CCA. CASE No. PD-0203-07
- DATE OF OPINION: September 26, 2007
- DISPOSITION: Court of Appeals Affirmed
- OPINION: Judge Cochran VOTE: 7-2-0
- TRIAL COURT: Cr D/C 4; Hon. Michael Thomas
- LAWYERS: J.R. Molina (Defense);

 **321.05 Court's Charge / Application Paragraph / Reasonable Doubt:** Appellant was arrested when a man, caught by police selling cocaine, told the police that Appellant sold the cocaine to him and subsequent searches disclosed large amounts of cocaine in Appellant's possession. The State presented evidence at trial of the "extraneous offense" of Appellant selling cocaine to the man who lead the police to Appellant. Appellant's attorney at trial did not object to any of the testimony presented regarding the "extraneous offense," nor did he ask for limiting instructions at the time the evidence was offered. He also did not object to the jury instructions or request special instructions on extraneous offenses. In his sole issue on appeal, however, Appellant claims that the trial judge erred by not sua sponte including a reasonable-doubt instruction on extraneous offense evidence in the jury charge. The Court of Appeals, relying upon its prior opinion in [Allen v. State](#), 180 S.W.3d 260, 266 (Tex. App. - Fort Worth 2005), held that the trial judge did not err by failing to give such an instruction sua sponte.

**Holding:** We granted Appellant's petition for discretionary review to resolve a conflict between various Courts of Appeals. Some courts have held that a trial court must, sua sponte, include a reasonable doubt instruction in the jury charge when the State offers evidence of an extraneous offense at the guilt stage of a criminal trial. Others, including the Second Court of Appeals in this case, have held that a trial judge must include such an instruction only when requested by the defendant. We agree with the latter position, and thus affirm the Court of Appeals. Even if a limiting instruction on the use of an extraneous offense would have been appropriate here under Rule 404(b), the trial judge had no duty to include one in the jury charge for the guilt phase because Appellant failed to request one at the time the evidence was offered. Because the trial judge had no duty to give any limiting instruction concerning the use of an extraneous offense to the guilt-phase jury charge, it naturally follows that he had no duty to instruct the jury on the burden of proof concerning an extraneous offense. This case exemplifies the appropriateness of the general rule that a trial court is not required to instruct the jury sua sponte on the burden of proof to be used when considering evidence of an extraneous offense during the guilt phase. We therefore affirm the judgment of the Court of Appeals.

**Concurring / Dissenting Opinions:** Presiding Judge Keller concurred, “Because the trial judge had no duty to give a limiting instruction for that type of evidence, the Court concludes that he also had no duty to give a burden of proof instruction. That conclusion, however, does not depend upon whether Appellant requested the instruction: limiting instructions are never required for same transaction contextual evidence.” Judge Womack concurred without note.