

**Affirmed and Opinion filed January 13, 2000.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-98-00535-CR**  
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**HUMBERTO MESA, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 174<sup>th</sup> District Court  
Harris County, Texas  
Trial Court Cause No. 755,626**

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**OPINION**

Appellant, Humberto Mesa, was convicted of murder and sentenced to forty years' confinement. He presents one issue on appeal, complaining of error by the trial court in allowing testimony that certain witnesses withheld information from the police as they were "afraid." We find no error and affirm.

The underlying facts of the offense are not relevant to disposition of this appeal; suffice it to say that appellant and the deceased were involved in a barroom argument, which ended with appellant shooting and killing the deceased.

At trial, two witnesses to the event testified that they had delayed cooperating with the police investigation out of fear; one witness testified he did not talk to the police "because of

fear,” the other one testified it was “because of the same reason as many people. I was afraid.” Appellant’s issue on appeal, however, argues that the trial court erred in admitting testimony of the witnesses being afraid *of appellant*.

A trial court’s evidentiary ruling cannot be disturbed on appeal absent a clear abuse of discretion. *Montgomery v. State*, 810 S.W.2d 372, 390-91 (Tex. Crim. App. 1991) (opinion on reh’g). Here, neither of the witnesses testified to having been afraid of *appellant*. As noted by the State in its brief, witnesses to a crime can be fearful of many things – police, the criminal process, possible incrimination, as well as of retaliation by the defendant or others involved in the crime. Simply put, the complained-of testimony here does not factually support appellant’s contention. If any definite correlation was placed before the jury regarding the witnesses’ fears and appellant, it was by defense counsel’s own objection: “If I go into it, it’s something else. . . *She was afraid of my client*. She didn’t know my client. There’s no reason to feel afraid. It’s prejudicial of him.”

Even assuming the testimony itself had established that the witnesses were afraid of appellant, it would not have been error for the trial court to allow such testimony into evidence, and, even assuming error, we fail to see how it could have contributed to appellant’s conviction beyond a reasonable doubt, given the fact that the State produced eyewitnesses to appellant’s shooting of the deceased. TEX. R. APP. P. Rule 44.2(a).

We find no abuse of discretion or error by the trial court. Appellant’s sole issue on appeal is overruled, and the conviction is affirmed.

/s/ Bill Cannon  
Justice

Judgment rendered and Opinion filed January 13, 2000.

Panel consists of Justices Draughn, Cannon and Lee.\*

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

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\* Senior Justices Joe L. Draughn, Bill Cannon and Norman Lee, sitting by assignment.

