Affirmed and Opinion filed July 21, 2020.

In The

Fourteenth Court of Appeals

NO. 14-19-00029-CR

DONNIE RAY WESLEY, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 66th District Court
Hill County, Texas
Trial Court Cause No. F059-18

OPINION

Appellant Donnie Ray Wesley appeals his conviction for violation of a protective order two or more times within twelve months. Tex. Penal Code Ann. §§ 25.07 & 25.072. In a single issue, appellant argues he was egregiously harmed by jury charge error. Concluding appellant was not egregiously harmed, we affirm.

BACKGROUND

Appellant was convicted in 2003 of an aggravated sexual assault that occurred

in 2002. The complainant identified appellant as the person who sexually assaulted her. The complainant first saw appellant again in April 2016 when she was working at a Murphy USA service station. Appellant visited the service station once or twice a week. During one visit to the service station appellant interacted with the complainant, asking if she remembered him. Appellant's interaction frightened the complainant causing her to seek a protective order.

At the complainant's request, the Hill County Attorney applied for a protective order pursuant to Chapter 7A of the Texas Code of Criminal Procedure.[1] The county court at law held a hearing on the application. At the conclusion of the hearing, which appellant attended, the court found that the complainant was the victim of sexual assault, and issued a protective order for the complainant's lifetime. *See* Tex. Code Crim. Proc. Ann. art. 7A.07 (providing for protective order lasting the lifetime of the victim in sexual assault case). The order, dated January 23, 2017, prohibited appellant, among other things, from "[g]oing to or near the employment and residences of [the complainant]." Appellant attended the hearing at which the order was issued and was served in person with a copy of the protective order in court.

At the time the protective order was issued, the complainant worked at Murphy USA service station. The complainant left that location and began working at another service station operated at the time by Gulf. On November 20, 2017, appellant visited the Gulf service station where the complainant was working, which prompted the complainant to fill out a change-of-employment-address form. The

[1] The Texas Code of Criminal Procedure gives a trial court the authority to issue a protective order "without regard to the relationship between the applicant and the alleged offender" if, after holding a hearing, the court determines "there are reasonable grounds" to believe the applicant is the victim of certain specified Penal Code offenses, including the offense of aggravated sexual assault. Tex. Code Crim. Proc. Ann. arts. 7A.01(a)(1), 74.03.

complainant filled out the form the next day on November 21, 2017; the form listed the complainant's new employment address as 1221 N. Pecan Street, Abbott, Texas. Appellant was notified through certified mail of the change of address. A copy of the protective order was included with the notification of the complainant's change of address. The county attorney received return receipts on the certified mail notice with appellant's signature indicating he received the change of address on December 2, 2017.

The complainant testified that on November 20, 2017, appellant entered the complainant's new workplace at the Gulf service station. The complainant reported appellant's visit to the police and updated her employment address for the protective order. Appellant returned to the complainant's workplace on December 4, 2017 two days after receiving the updated address form. The complainant was disposing of the store's garbage when she saw appellant at the gas pump at 6:00 that morning. On January 3, 2018, appellant came to the store a third time. The complainant saw appellant drive up to the store and called for the store manager to come to the front counter. The store manager came to the counter and instructed the complainant to call the police from the store's office.

Kimberly Dudik, the store manager, testified that the service station was located at 1221 North Pecan in Abbott, Texas. Although that was the official address for the service station, occasionally mail would be addressed to I-35 and FM 1304 as the address. The closest intersection to the store was I-35 and FM 1304.

Appellant admitted to Sheriff's Deputy Scott Rowe that he visited the complainant's place of employment on December 4, 2017 and January 3, 2018. Appellant also admitted that his signature was on the return receipt for the change-of-address form and protective order, received December 2, 2017.

After the State rested, appellant called Coy West, a private investigator, to

testify about the location of the Gulf service station where the complainant worked. West testified that the service station was located at the intersection of FM 1304 and I-35 in Hillsboro, Texas. West testified that when he used a navigation program to access 1221 North Pecan Street, it took him to a different business, which was approximately half a mile from the service station. West testified that no address was posted outside the service station, but there was a certificate from the Department of Agriculture, which listed the address as I-35 and FM 1304. West also testified that the "legal address" for the service station was 1221 North Pecan Street. In appellant's closing argument he argued that the address listed on the protective order was not sufficiently descriptive of the address for the Gulf service station where the complainant worked.

ANALYSIS[2]

In a single issue on appeal, appellant argues the trial court failed to properly charge the jury regarding the offense alleged in the indictment. Specifically, appellant argues the charge failed to (1) properly state the offense charged; (2) properly instruct the jury regarding the culpable mental states; (3) define the term "in violation of a protective order"; and (4) include an element of the offense in the application paragraph. Appellant acknowledges he did not object to the jury charge at trial.

I. Standard of Review

In a criminal case, we review complaints of jury charge error in two steps.

[2] The Texas Supreme Court ordered the Tenth Court of Appeals to transfer this case to our court. Under the Texas Rules of Appellate Procedure, "the court of appeals to which the case is transferred must decide the case in accordance with the precedent of the transferor court under principles of stare decisis if the transferee court's decision otherwise would have been inconsistent with the precedent of the transferor court." Tex. R. App. P. 41.3.

Cortez v. State, 469 S.W.3d 593, 598 (Tex. Crim. App. 2015). First, we determine whether error exists in the charge. *Ngo v. State*, 175 S.W.3d 738, 743–44 (Tex. Crim. App. 2005). Second, we review the record to determine whether sufficient harm was caused by the error to require reversal of the conviction. *Id*.

The degree of harm necessary for reversal depends on whether the appellant preserved error by objecting to the charge. *Almanza v. State*, 686 S.W.2d 157, 171 (Tex. Crim. App. 1984) (op. on reh'g). When charge error is not preserved, as in this case, reversal is not required unless the resulting harm is egregious. *Id*.; *see also* Tex. Code Crim. Proc. Ann. art. 36.19.

Charge error is egregiously harmful when it affects the very basis of the case, deprives the defendant of a valuable right, or vitally affects a defensive theory. *Sanchez v. State*, 209 S.W.3d 117, 121 (Tex. Crim. App. 2006). That is, the error must have been so harmful that the defendant was effectively denied a fair and impartial trial. *Almanza*, 686 S.W.2d at 172. Egregious harm is a difficult standard to prove and must be determined on a case-by-case basis. *Hutch v. State*, 922 S.W.2d 166, 171 (Tex. Crim. App. 1996). Under *Almanza*, the record must show that the charge error caused the defendant actual, rather than merely theoretical, harm. *Ngo*, 175 S.W.3d at 750. Neither party has the burden to show harm. *Reeves v. State*, 420 S.W.3d 812, 816 (Tex. Crim. App. 2013).

II. Error in the abstract portion of the charge did not result in egregious harm to appellant.

A. Omission of "two or more times" from first paragraph

In the abstract portion of the court's charge to the jury the court defined the offense as follows:

> A person commits an offense if, during a period that is twelve months or less in duration, the person intentionally and knowingly goes near

> the place of employment or business of a protected individual.
>
> *****
>
> You are instructed that members of the jury must agree unanimously that the Defendant, during a period that is 12 months or less in duration, two or more times engaged in conduct that violated the terms of a protective order issued, if any.

The application paragraph instructed the jury as follows:

> NOW, THEREFORE, if you find and believe from the evidence beyond a reasonable doubt that during a continuous period that was 12 months or less in duration, namely, from on or about November 19, 2017, through January 5, 2018, in Hill County, Texas, the Defendant, DONNIE RAY WESLEY, did then and there, two or more times violate the terms of an order issued by Judge Matt Crain of the County Court at Law of Hill County, Texas, under authority of 7A of the Texas Code of Criminal Procedure, by intentionally or knowingly going to or near the place of employment of [the complainant], a protected individual in the protective order, to wit: 1221 N. Pecan St. Abbott, Texas, then you will find the Defendant guilty of Violation of a Protective Order Two or More Times within 12 Months as charged in the indictment.

Appellant argues the trial court erred because the phrase "two or more times" was omitted from the first paragraph of the abstract portion of the jury charge.

A criminal defendant is entitled to fair notice of the specific charged offense. U.S. Const. amend. VI; Tex. Const. art. I § 10. The jury charge must set forth the law applicable to the case. Tex. Code Crim. Proc. art. 36.14. The State is bound by the allegations in the charging instrument. *Crenshaw v. State*, 378 S.W.3d 460, 465 (Tex. Crim. App. 2012).

An indictment or information that pleads the offense of repeated violation of a protective order provides adequate notice when it sets out the elements of the offense as provided in sections 25.07 and 25.072 of the Texas Penal Code. A person commits an offense if, during a period that is 12 months or less in duration, the

person two or more times engages in conduct that constitutes an offense under section 25.07. Tex. Penal Code Ann. § 25.072(a). As charged in this case a person commits an offense under section 25.07 if he, in violation of an order issued under Chapter 7A of the Code of Criminal Procedure, knowingly or intentionally goes to or near the protected person's place of employment or business. Tex. Penal Code Ann. § 25.07(a)(3)(A). Under section 25.072, an element of the offense is that the defendant engaged in conduct two or more times in less than 12 months. *Id.* § 25.072. Section 25.072 further requires jury unanimity on the elements of two or more times within less than 12 months. *Id.*

Here, in the first portion of the charge, the trial court erred by omitting the phrase, "two or more times." The court, however, properly included that phrase in the paragraph in the abstract portion of the charge that instructed the jury on unanimity on that element and properly included that element in the application paragraph.

The Court of Criminal Appeals has held that "[w]here the application paragraph correctly instructs the jury, an error in the abstract instruction is not egregious." *Medina v. State*, 7 S.W.3d 633, 640 (Tex. Crim. App. 1999); *see Plata v. State*, 926 S.W.2d 300, 302–03 (Tex. Crim. App. 1996), *overruled on other grounds by Malik v. State*, 953 S.W.2d 234 (Tex. Crim. App. 1997) (holding that the inclusion of a merely superfluous abstraction never produces reversible error in the court's charge because it has no effect on the jury's ability to implement fairly and accurately the commands of the application paragraph or paragraphs).

The trial court erred in omitting the phrase "two or more times" from the first paragraph in the abstract portion of the charge. We cannot conclude, however, that the error was egregious because the unanimity instruction and the application paragraph correctly tracked the indictment and contained the omitted language. *See*

Medina, 7 S.W.3d at 640. As such, the error in the abstract portion of the charge was not calculated to injure appellant's rights or deprive him of a fair and impartial trial. *See Almanza*, 686 S.W.2d at 171.

B. Culpable mental states

Appellant next contends that the charge failed to properly instruct the jury regarding the culpable mental states. Appellant argues the trial court erred by including the complete definitions of "intentionally" and "knowingly" rather than tailoring those definitions to limit them to the nature of appellant's conduct. Specifically, appellant argues the trial court erred in including the result-oriented portion of the definitions in the charge.

In this case, the abstract portion of the court's charge defined "intentionally" and "knowingly" according to Texas Penal Code section 6.03:

> A person acts intentionally, or with intent, with respect to the nature of his conduct or to a result of his conduct when it is his conscious objective or desire to engage in the conduct or cause the result.
>
> A person acts knowingly, or with knowledge, with respect to the nature of his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or that the circumstances exist. A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result.

Section 6.03 of the Texas Penal Code sets out four culpable mental states—intentionally, knowingly, recklessly, and criminally negligently; two possible conduct elements—nature of the conduct and result of the conduct; and the effect of the circumstances surrounding the conduct. In a jury charge, the language in regard to the culpable mental state must be tailored to the conduct elements of the offense. *Price v. State*, 457 S.W.3d 437, 441 (Tex. Crim. App. 2015). When "specific acts are criminalized because of their very nature, a culpable mental state must apply to

committing the act itself." *McQueen v. State*, 781 S.W.2d 600, 603 (Tex. Crim. App. 1989). "On the other hand, unspecified conduct that is criminalized because of its result requires culpability as to that result." *Id*. A trial court errs when it fails to limit the language in regard to the applicable culpable mental states to the appropriate conduct element. *See Cook v. State*, 884 S.W.2d 485, 491 (Tex.Crim.App.1994).

We use the gravamen of the offense to decide which conduct elements should be included in the culpable-mental-state language. *Price*, 457 S.W.3d at 441. If the gravamen of an offense is the result of conduct, the jury charge on culpable mental state should be tailored to the result of conduct and likewise for nature-of-conduct offenses. *See, e.g.*, *Alvarado v. State*, 704 S.W.2d 36, 38–40 (Tex. Crim. App. 1985) (holding that the trial court erred in failing to tailor the culpable mental states to the result of conduct for the result-oriented offense of injury to a child). If the offense has multiple gravamina, and one gravamen is the result of conduct and the other is the nature of conduct, the jury charge on culpable mental state must be tailored to both the result of conduct and the nature of conduct. *Hughes v. State*, 897 S.W.2d 285, 295 (Tex. Crim. App. 1994) (recognizing, based on *Cook*, "that in a capital murder case involving more than one conduct element it would not be error for the definitions to include more than the result of conduct element").

Generally, the statutory language determines whether a crime is a "result of conduct," "nature of conduct," or "circumstances of conduct" offense. *Young v. State*, 341 S.W.3d 417, 423 (Tex. Crim. App. 2011). A "result of conduct" offense generally requires a direct object for the verb to act upon: in the statutory language punishing murder, "causes" is the verb, and "death"—the result—is the direct object. *See* Tex. Penal Code Ann. § 19.02(b)(1). "Nature of conduct" offenses, on the other hand, generally use different verbs in different subsections, an indication that the Legislature intended to punish distinct types of conduct. For example, the credit-

card-abuse statute criminalizes a wide range of different acts—stealing a credit card, receiving a stolen credit card, using a stolen credit card, and so forth. *See Ngo*, 175 S.W.3d at 744–45 (the subsections of Texas Penal Code section 32.31(b) punish distinctly different acts as indicated by the use of distinctly different verbs, such as "receives," "steals," and "presents"). No matter which category an offense falls into, the key concept remains the same. One looks to the gravamen or focus of the offense: Is it the result of the act, the nature of the act itself, or the circumstances surrounding that act? *Young*, 341 S.W.3d at 424.

Appellant argues the offense for which he was charged, violation of a protective order, focuses on the nature of the actor's conduct but does not focus on the result of the actor's conduct. Thus, appellant argues, the trial court's inclusion of the result-of-conduct language in the definition was error.

As charged in this case, a person commits the offense of violation of a protective order if, in violation of an order issued under the applicable statute, the person knowingly and intentionally goes to or near the residence or place of employment or business of a protected individual. *See* Tex. Penal Code Ann. § 25.07.

In some cases, Texas courts have concluded that the gravamen of section 25.07 is the "result," rather than the "nature" of the actor's conduct. *See Harvey v. State*, 78 S.W.3d 368, 368–69 (Tex. Crim. App. 2002) ("A person commits the offense of violation of protective order if, in violation of an order issued under [one of the certain provisions of the Family Code or Code of Criminal Procedure], the person knowingly or intentionally commits family violence or performs another prohibited act." (internal quotations omitted)); *Avilez v. State*, 333 S.W.3d 661, 670 (Tex. App.—Houston [1st Dist.] 2010, pet. ref'd). ("A conviction for violation of a protective order requires proof of a protective order issued under Chapter 85 of the

Family Code and proof that the defendant (1) one time, (2) intentionally or knowingly violated that order, (3) by committing family violence or another specified action, by communicating with or threatening a protected person, or by going to or near the home or workplace of a protected person."). Those cases, unlike this case, required as an element of the offense that the defendant commit family violence, a result-oriented act. *See Harvey*, 78 S.W.3d at 368–69; *Avilez*, 333 S.W.3d at 669–70.

With a nature-of-conduct offense, it is the act or conduct that is punished, regardless of the result that might occur. *Young*, 341 S.W.3d at 423. In this case, the State was required to prove that appellant understood the nature of his conduct: that the conduct violated a protective order. As an element of the offense the State was required to prove that appellant visited the complainant's place of employment in violation of the protective order, a nature-of-conduct act. *See* Tex. Penal Code Ann. § 25.07. The gravamen of the offense in this case was the nature of appellant's conduct, i.e., going to the complainant's place of employment in violation of the protective order. The State was not required in this case to prove that appellant's conduct caused a result such as family violence. Therefore, it was error to include the "result-oriented" portion of the culpable mental state definitions in the abstract portion of the court's charge. *See Price*, 457 S.W.3d at 443.

However, the trial court's error in giving the full statutory definitions of "intentionally" and "knowingly" did not result in egregious harm to appellant. *See Almanza*, 686 S.W.2d at 171. In assessing the harm resulting from the inclusion of an improper conduct element in the definitions of culpable mental states, this court "may consider the degree, if any, to which the culpable mental states were limited by the application portions of the jury charge." *Cook*, 884 S.W.2d at 492, n.6; *see also Patrick v. State*, 906 S.W.2d 481, 492 (Tex. Crim. App. 1995). When the

application paragraph correctly instructs the jury on the law applicable to the case, this mitigates against a finding of egregious harm. *See Patrick*, 906 S.W.2d at 493; *Reed v. State*, 421 S.W.3d 24, 30 (Tex. App.—Waco 2013, pet. ref'd) (holding that inclusion of full statutory definitions of culpable mental states in the abstract portion of the charge in an aggravated sexual assault of a child case was not egregious error when application paragraph limited the scope of the definitions).

The application paragraph of the charge in this case properly instructed the jury it could convict appellant if it found that appellant committed the offense by "intentionally or knowingly going to or near the place of employment of" the complainant. This is consistent with the statutorily prohibited conduct. *See* Tex. Penal Code Ann. § 25.07. The charge did not authorize the jury to convict appellant on the results of his conduct, but on the nature of his conduct. In addition, as we discuss below, appellant admitted that he went to the complainant's place of employment; appellant alleged as his defense that the protective order contained an inaccurate address for the complainant's place of employment. The record further reflects that appellant knew the complainant worked at the service station because she waited on appellant the first time he visited the station. The facts, as applied to the law in the application paragraph, pointed the jury to the appropriate culpable mental state definitions. Reviewing the record as a whole, we conclude appellant was not egregiously harmed by the inclusion of the statutory definitions in the abstract portion of the charge.

III. Error in the application paragraph did not result in egregious harm to appellant.

In two related complaints appellant argues the trial court erred in failing to submit a definition of "in violation of a protective order" in the charge and in failing to include in the application paragraph a notation that appellant had some knowledge

of the protective order. For both arguments, appellant relies on the Court of Criminal Appeals' opinion in *Harvey v. State*, 78 S.W.3d at 368.

The court in *Harvey* held that the State had to prove the defendant had "certain knowledge" of the protective order because the term "in violation of an order" in section 25.07(a) "necessarily includ[ed] certain knowledge that amount[ed] to a mental state." *Harvey*, 78 S.W.3d at 371. To determine what "certain knowledge" was required, the court looked to the specific statutory requirements that applied to each of the several orders referenced in Section 25.07(a). *See id*. at 371–73. The court held that section 25.07(a)'s term "in violation of an order" meant "in violation of an order that was issued under one of [the applicable] statutes at a proceeding that the defendant attended or at a hearing held after the defendant received service of the application for a protective order and notice of the hearing." *Id*. at 373. The court went on to say that the court's charge should include a definition of the term "in violation of an order" that is similar to what the court discussed.

In *Villarreal v. State*, 236 S.W.3d 321, 323, 327 (Tex. Crim. App. 2009), the Court of Criminal Appeals applied its holding in *Harvey* and expressly set forth how the hypothetically correct jury charge would state the elements of an offense under Section 25.07 including the *Harvey* court's definition of "in violation of a protective order." *See Villarreal*, 286 S.W.3d at 323, 327. In *Villarreal*, the order that the appellant had allegedly violated was an order issued under Article 17.292 of the Code of Criminal Procedure. *Id*. at 324–25. Thus, looking to the procedural requirements that applied to Article 17.292 orders, the court said that the hypothetically correct jury charge would define the elements of the offense as follows:

> (1) appellant (2) in violation of an order issued . . . under Article 17.292, Code of Criminal Procedure (3) at a proceeding that appellant attended (4) knowingly or intentionally (5) caused bodily injury to [complainant]

> by striking her with his hand or pushing her with his hand (6) and said act was intended to result in physical harm, bodily injury, or assault.

Id. at 327.

In this case, appellant was charged under Penal Code sections 25.07(a) and 25.072 for violating an order issued under Chapter 7A of the Code of Criminal Procedure. At the time *Harvey* was decided, Penal Code Section 25.07(a) did not, as it now does, include protective orders issued under Chapter 7A among the list of court orders whose violation constituted an offense. *See* Act of Jan. 27, 1997, 75th Leg., R.S., ch. 1, § 2, 1997 Tex. Gen. Laws 1, 1–2, amended by Act of June 1, 1997, 75th Leg., R.S., ch. 1193, § 21, 4596, 4602; *Harvey*, 78 S.W.3d at 368 n.1. But orders issued under Chapter 85 of the Family Code were included, and the *Harvey* court detailed the specific requirements that applied to cases in which the State prosecutes a defendant under Penal Code Section 25.07(a) based on the defendant's violation of a Chapter 85 order. *See Harvey*, 78 S.W.3d at 371–73. Article 7A.04 of the Code of Criminal Procedure generally makes the notice requirements that apply to orders issued under Chapter 85 of the Family Code applicable to orders issued under Chapter 7A of the Code of Criminal Procedure. *See* Tex. Code Crim. Proc. Ann. art. 7A.04 (providing that "[t]o the extent applicable, except as otherwise provided by this chapter, Title 4, Family Code, applies to a protective order issued under this chapter"). Accordingly, what the Court of Criminal Appeals said in *Harvey* concerning orders under Chapter 85 of the Family Code also applies to orders under Chapter 7A of the Code of Criminal Procedure.

Therefore, guided by *Harvey* and *Villarreal*, we conclude that the hypothetically correct jury charge in this case would define the elements of the charged offense as follows: (1) appellant (2) in violation of an order of the County Court at Law of Hill County issued on January 23, 2017, under the authority of Chapter 7A of the Texas Code of Criminal Procedure (3) *at a hearing held after*

appellant received service of the application for a protective order and notice of the hearing (4) intentionally or knowingly (5) went to or near the place of employment or business of the complainant (6) who was a protected individual. *See Villarreal*, 286 S.W.3d at 327; *Harvey*, 78 S.W.3d at 372–73.

Thus, in "defining" the phrase "in violation of a protective order," the Court of Criminal Appeals required that the application paragraph in the jury charge include as an element of the offense to be found by the jury, that appellant received service of the application of the protective order and notice of the hearing. While the specific language of section 25.07 does not require a finding that appellant attended the hearing on the protective order, this element in some form is required by the Court of Criminal Appeals to be included in the application paragraph of the jury charge. *See Harvey*, 78 S.W.3d at 372–73. As shown above, the application paragraph of the charge did not include the emphasized language regarding appellant's attendance at the hearing on the protective order. The failure to include this instruction was error. *Id.*

In determining whether jury-charge error is egregiously harmful, we consider not only the erroneous portion of the charge, but also other relevant aspects of the trial. *See Sanchez*, 209 S.W.3d at 121. These relevant aspects include: (1) the entirety of the charge itself; (2) the state of the evidence including contested issues and the weight of the probative evidence; (3) the arguments of counsel; and (4) any other relevant information revealed by the trial record as a whole. *See id*. Charge error is egregiously harmful if it affects the very basis of the case, deprives the defendant of a valuable right, or vitally affects a defensive theory. *Id*.

Entire charge. Above, we addressed appellant's complaints about the jury charge, concluding that the trial court's errors in the abstract portion of the charge did not cause appellant egregious harm. The trial court also erred in the application

paragraph by not including an instruction regarding appellant's attendance at the hearing on the protective order. We now turn to the remaining factors to determine whether that error prejudiced the jury's consideration of the evidence or substantially affected their deliberations. *See Bagheri v. State*, 119 S.W.3d 755, 763 (Tex. Crim. App. 2003).

State of the evidence. The State offered, and the trial court admitted, State's Exhibit 2, which was a copy of the January 23, 2017 protective order. The order included language indicating that appellant "appeared pro se and announced ready." The trial court also admitted State's Exhibit 3, which was a copy of the return of service indicating that appellant had been served with a copy of the protective order. The Assistant County Attorney who applied for the protective order testified that appellant was present at the January 23, 2017 hearing. In other words, there was no dispute that appellant attended the hearing and received service of the protective order.

Closing Arguments. At trial appellant did not assert lack of knowledge of the protective order as a defensive theory. Instead, appellant urged the issue of the address listed on the protective order and whether that address was the correct address for the service station where the complainant worked. During closing argument, the State explained to the jury that they could ask for the exhibits to be sent to the jury room, including the protective order. The State noted that the exhibits reflected that the protective order had been served on appellant. Appellant's closing argument focused on the change-of-address supplement to the protective order and appellant's lack of intent to violate the order when he visited the complainant's place of employment. Appellant's attorney argued that appellant did not know that he was prohibited from visiting the service station where the complainant worked because the address listed on the protective order was different from the commonly known

address for the service station. In fact, appellant's defense relied on the wording of the protective order.

Other Considerations. While appellant is not required to show egregious harm, he argues that we should take into consideration that there are numerous alleged errors in the trial court's charge in finding harm under this issue. Based on this record, we decline to do so. *See Riggs v. State*, 482 S.W.3d 270, 276 (Tex. App.—Waco 2015, pet. ref'd) quoting *United States v. Bell*, 367 F.3d 452, 471 (5th Cir. 2004) ("The cumulative error doctrine provides relief only when constitutional errors so 'fatally infect the trial' that they violated the trial's 'fundamental fairness.'"). Appellant has not alleged constitutional error, nor have the jury charge errors so fatally infected the trial that they deprived appellant of a fair trial.

Reviewing the entire charge, the state of the evidence, and the closing arguments, we conclude that the failure of the trial court to include an instruction in the charge regarding appellant's attendance at the hearing on the protective order did not cause egregious harm. *See Almanza*, 686 S.W.2d at 171. Accordingly, we overrule appellant's sole issue on appeal.

CONCLUSION

Having overruled appellant's sole issue on appeal we affirm the trial court's judgment of conviction.

/s/ Jerry Zimmerer
Justice

Panel consists of Justices Christopher, Wise, and Zimmerer.
Publish — Tex. R. App. P. 47.2(b).