# In The
# Court of Appeals
# Seventh District of Texas at Amarillo

No. 07-19-00048-CR

MATTHEW JAMES BAKER, APPELLANT

V.

STATE OF TEXAS, APPELLEE

On Appeal from the 84th District Court of
Hutchinson County, Texas
Trial Court No. 11,991, Honorable William D. Smith, Presiding

June 12, 2020

## MEMORANDUM OPINION

Before QUINN, CJ., and PARKER and DOSS, JJ.

Appellant Matthew James Baker appeals the trial court's judgment by which he was convicted of capital murder and sentenced to life imprisonment. On appeal, he presents to this Court four issues. In his first three issues, he challenges various aspects of the trial court's supplemental jury instructions on the issue of deadly force in defense of property as it relates to the conduct of a third party. Finally, he contends the trial court abused its discretion by failing to declare a mistrial or strike testimony following the revelation that the lead detective gave false or misleading testimony concerning the

source of blood outside the apartment and that she and another detective violated the Rule concerning sequestering witnesses. We affirm.

*Background*

A love triangle ended in gunshots on the evening of March 3, 2017. Corrie Baker had been married to appellant since 2010 and the two shared two daughters. The relationship deteriorated, resulting in Corrie filing for divorce twice but remaining legally married to appellant when she began a relationship with her co-worker, Blake Thorvaldsen. The record suggests that Corrie contemplated reuniting with appellant but also maintained her relationship with Blake. The two men were seemingly somewhat aware of Corrie's relationship with the other, though it is not entirely clear to what degree. The looming disaster came to pass after appellant, who had custody of the daughters for the night, called Corrie, who was spending the night with Blake. Corrie got out of bed and purportedly prepared to meet the distraught appellant. As she neared the door, appellant called again, apparently not alerting Corrie to the fact that he was outside the apartment door.

The details of what happened next are in dispute. Appellant maintains that Corrie came outside to pull him away from the door when Blake shot him in the arm as Blake stood inside the apartment. Appellant then claims to have turned around and opened fire in Blake's direction, ultimately shooting him several times and killing him. Corrie's version was different; she explained that appellant tried to force his way into the door as soon as she opened it. She and Blake tried to close the door to deny him entry but, as soon as appellant was able to get his upper body through the door, he began shooting toward Blake. When appellant fully entered the apartment, he shot Blake in the face three more

times. Though Corrie did not specifically remember Blake shooting a gun, it appears he did.

According to the forensic evidence, Blake shot appellant in the arm at some point during the altercation. Evidence that a bullet from Blake's gun was found in the attic of the apartment building, seemingly having passed through the apartment's ceiling, supports Corrie's account of the respective locations of the involved parties.

Appellant was charged with and tried for capital murder. A Hutchinson County jury was charged with considering the evidence presented during the ten-day trial. After approximately seven hours of deliberation, the jury sent out its first note alerting the trial court that it appeared the jury would not be able to come to a unanimous verdict and asking how long to continue deliberations. The trial court responded that the jury should refer to its prior instructions and continue deliberations. Two and a half hours later, the jury sent out another note indicating it remained deadlocked. The trial court again directed the jury to continue its deliberations. It did so late into the night before they were retired in sequestration.

At approximately 11:00 am on the second day of deliberations, the jury sent out "Jury Inquiry No. 3," in which it asked about the "the legality surrounding 'unlawful deadly force.' Particularly regarding one's legal ability to protect their home." It asked if there was "law [the jury] could have specific information on." The trial court responded that it was "not permitted to answer the question" and directed the jury to "consider only the instructions which have already been given you, and the evidence admitted before you during the trial of this cause, and continue your deliberations." The jury sent out two more notes asking about unanimity, to which the trial court responded.

The jury had been deliberating for approximately eighteen hours when, at approximately 6:00 p.m. and in response to the jury's third inquiry regarding "unlawful deadly force," the trial court delivered to the jury the following supplemental jury instruction over the objection of defense counsel:

> The Court, in response to your Jury Inquiry No. 3, will submit to you the following supplemental instruction.
>
> Deadly force to protect property. A person is justified in using deadly force against another if:
>
> 1. The person is in lawful possession of the land;
>
> 2. He reasonably believes the force is immediately necessary to prevent or terminate the other's trespass on the land; and
>
> 3. When and to the degree he reasonably believes the deadly force is immediately necessary to prevent the other's imminent commission of burglary, and he reasonably believes that the use of force other than deadly force to protect or recover the land or property would expose the actor or another to a substantial risk of death or serious bodily injury.

About an hour and a half later, the jury returned a verdict of guilty and the trial court imposed the mandatory life sentence.

Appellant perfected appeal to this Court and complains of the trial court's delivery of the challenged supplemental jury instructions concerning the defense of property as it related to Blake. He also complains that the trial court refused to strike or declare a mistrial based on perjured testimony and implicated by a violation of the rule sequestering witnesses. We first address the purported charge error.

*Issues One through Three: Charge Error on Unlawful Force*

*Supplemental Charge*

Again, over appellant's objection, the trial court provided the jury with supplemental jury instruction on the definition or description of "unlawful deadly force" as it related to

Blake's conduct. Appellant maintains, *inter alia*, that the inclusion of such an instruction was not "the law applicable to the case" and was, instead, an improper comment on the weight of the evidence. Having objected to the instruction, appellant urges that he need only show some harm. That the jury was able to reach a guilty verdict within an hour and forty minutes after being deadlocked for 18 hours illustrated harm, or so he alleged.

Article 36.14 of the Code of Criminal Procedure requires the trial judge to give the jury "a written charge distinctly setting forth the law applicable to the case; not expressing any opinion as to the weight of the evidence, not summing up the testimony, discussing the facts or using any argument in his charge calculated to arouse the sympathy or excite the passions of the jury." TEX. CODE CRIM. PROC. ANN. art. 36.14 (West 2007); *Brown v. State*, 122 S.W.3d 794, 797 (Tex. Crim. App. 2003). In assessing if that occurred here, we find guidance from *Bennett v. State*, 726 S.W.2d 32 (Tex. Crim. App. 1986) (en banc).

In *Bennett*, our high court was asked to review the trial court's charge in which the jury was given instructions addressing the justification of defense of a third person. *Id.* at 34–35. At issue in that case was whether Bennett was acting in self-defense when he fatally shot a third person who had also wielded a gun in response to Bennett's placing a gun in the face of a young man who was dating Bennett's daughter. *Id.* at 34. The deceased, DeRushia, was a family friend of the young man and had twice insisted that Bennett take the gun out of the young man's face. *Id.* Bennett turned the gun toward DeRushia and fired, killing him. *Id.* The parties agreed that the trial court gave a proper jury instruction on the law of self-defense. *See id.* However, the trial court next proceeded to give, over Bennett's objection, the following instruction:

> A person is justified in using deadly force against another to protect a third person if: (1) under the circumstances as the actor reasonably believes

> them to be, the actor would be justified under the preceding sections of this charge dealing with the law of self-defense in using deadly force to protect himself against unlawful deadly force which he reasonably believes to be threatening the third person he seeks to protect; and (2) the actor further reasonably believes that his intervention is immediately necessary to protect the third person.

*Id.*

In holding that the jury instruction properly charged the jury on the relevant issues of the case, the Court of Criminal Appeals rejected the intermediate court of appeals' conclusion that the charge improperly raised the lawfulness of actions undertaken by a third party in the criminal action against the defendant. *See id.* at 36.[1] According to the court, "[w]here the evidence raises some question whether the deceased's conduct was justified, as it did in this cause, the deceased becomes 'a person whose criminal responsibility is in issue' in the case." *Id.*[2] Careful to reiterate that self-defense should ultimately remain focused on the defendant's point of view, the *Bennett* court noted that

[1] Finding the evidence did not raise the issue of whether appellant acted in defense of a third person, the intermediate court of appeals concluded that the challenged instruction "was misleading to the jury and improperly limited [appellant's] right of self-defense by hinging it upon what [the deceased] believed and the reasonableness of his conduct rather than that of [appellant]." *Bennett v. State*, 673 S.W.2d 396 (Tex. App.—Texarkana 1984), *rev'd*, 726 S.W.2d 32 (Tex. Crim. App. 1986) (en banc). We see that appellant's position mirrors those same concerns. Indeed, a more recent opinion from a sister court also expressed concerns based on similar rationale to hold that a charge on the lawfulness of a third party in the trial of another was not the law applicable to the case and, that being so, the jury charge was improper. *See Marpoe v. State*, No. 03-17-00748-CR, 2019 Tex. App. LEXIS 8955, at *26–30 (Tex. App.—Austin Oct. 10, 2019, no pet.) (mem. op., not designated for publication) (in response to appellant's contention "that the trial court erred by failing to define 'unlawful force' as used in the self-defense instruction," observing that the requested "instruction to define 'unlawful force' . . . was not part of the law applicable to the case," was "not grounded in the Penal Code," and "would have impinged on the jury's fact-finding authority" to conclude that appellant was not entitled to such an instruction). Though the converse of the well-developed opinion in *Marpoe* would suggest that the supplemental charge in the instant case was harmful error, we are bound by our interpretation of the Texas Court of Criminal Appeals' opinion in *Bennett*. *See Sierra v. State*, 157 S.W.3d 52, 60 (Tex. App.—Fort Worth 2004), *aff'd*, 218 S.W.3d 85 (Tex. Crim. App. 2007) (noting that an intermediate appellate court "is bound by the precedent of the Texas Court of Criminal Appeals and has no authority to disregard or overrule" it).

[2] Appellant attempts to demonstrate how the State's view of *Bennett* is unnecessarily narrow. However, given this rather broad principle, which seems to include a case such as we have at bar, we fail to see how the language of *Bennett* would not apply to the instant case.

in fully evaluating Bennett's claim "the jury necessarily had to evaluate the reasonableness of DeRushia's belief that appellant was using or attempting to use deadly force against [the young man], and that the force he used to repel appellant's attack against [the young man] was immediately necessary." *Id.* at 38. However, the jury was properly required to determine "whether appellant, viewed strictly from *his* standpoint, reasonably believed that DeRushia was acting lawfully," keeping the jury focused on the proper vantage point. *Id.*

Here, the record suggests that appellant's defense centered on self-defense and that self-defense claim centered on whether Blake was using unlawful deadly force in the defense of his home at the time Blake shot appellant in the arm. The jury, as is obvious from its third note, focused on whether Blake's use of deadly force was unlawful, which is a consideration relevant to appellant's self-defense claim. So, the viability of appellant's defense depended to some degree on whether Blake's use of force was lawful or unlawful and, to be consistent with another of *Bennett*'s principles, must be judged solely from appellant's vantage point as to its lawfulness. By way of evidence detailing the events of that night Blake became "a person whose criminal responsibility [was] in issue" in the case. The trial court's supplemental charge to the jury so recognized, consistent with *Bennett*.[3]

In other words, in much the same way the charge in *Bennett* provided the jury a means of determining the lawfulness of the deceased's attempted use of deadly force in defense of a third person, here the trial court's supplemental charge provided the jury a

[3] We note that *Bennett* also specifically rejected the intermediate court's position that the supplemental jury charge on defense of a third person lowered the State's burden of proof, another contention advanced by appellant.

framework for determining the lawfulness of Blake's use of deadly force in defense of his property in light of the evidence presented at trial. When appellant raised the issue of self-defense, he brought into question whether Blake's use of force was justified, thereby making Blake "a person whose criminal responsibility was in issue" in the case. *See id.* at 36. Therefore, under *Bennett*, whether Blake's conduct was justified as defense of property was "the law applicable to the case" such that the jury was properly charged on whether such conduct was lawful as evaluated from appellant's perspective.[4] Accordingly, in charging the jury on the law of defense of property vis-a-vis Blake, the trial court provided the jury with a framework for determining the lawfulness of Blake's use or attempted use of deadly force against appellant. *See id.*

Regarding appellant's contention that the trial court erred in failing to accompany its supplemental charge with an application paragraph, we find any purported error harmless.

Assuming *arguendo* that an application paragraph was required, appellant did not object to the omission. In such situations, the purported charge error is reversible only when it is so egregious and creates such harm that the party was denied a fair and impartial trial. *See Almanza v. State*, 686 S.W.2d 157, 171 (Tex. Crim. App. 1984) (en banc) (op. on reh'g); *see also Mendez v. State*, 545 S.W.3d 548, 553 (Tex. Crim. App. 2018) (holding that "'when a trial judge instructs on a defensive issue' on his own motion, 'he must do so correctly'" and noting that "[a]ny 'error in the charge actually given' is therefore 'subject to review under *Almanza*'"). With this in mind, we turn to the purpose underlying an application paragraph in a criminal jury charge. It serves to properly apply

[4] And, as *Bennett* also recognized, "all persons are presumed to know the law." *Id.* at 38.

the law to the facts. *Wilburn v. State*, No. 2-03-266-CR, 2005 Tex. App. LEXIS 1157, at *23 (Tex. App.—Fort Worth Feb. 10, 2005, pet. ref'd) (not designated for publication) (quoting *Bedford v. State*, 666 S.W.2d 574, 576 (Tex. App.—Houston [1st Dist.] 1984, pet. ref'd)). It gives the law context and removes it from the realm of abstract proposition. Pertinent issues are clarified for the jury, *Bedford*, 666 S.W.2d at 576 (stating that "[i]f the application paragraph is properly constructed, the issues will be clear to the jury"), while it is also being informed of the circumstances under which it should convict or acquit. *See Gray v. State*, 152 S.W.3d 125, 127–28 (Tex. Crim. App. 2004) (quoting *Ex parte Chandler*, 719 S.W.2d 602 (Tex. Crim. App. 1986) (en banc) (Clinton, J., dissenting), for the principle that the "jury must be instructed 'under what circumstances they should convict, or under what circumstances they should acquit'").

Here, the jury was asked to determine whether appellant committed one of two crimes, either capital murder or murder. Furthermore, his guilt for either was dependent upon whether the State disproved his claim of self-defense. Indeed, the trial court appended the following instruction to each category of crime for which his guilt was being assessed:

> You have heard evidence that, when the defendant shot Blake Mathew Thorvaldsen, he believed his use of deadly force was necessary to defend himself against Blake Mathew Thorvaldsen's use or attempted use of unlawful deadly force.
>
> To decide the issue of self-defense, you must determine whether the state has proved, beyond a reasonable doubt, that the defendant did not have a reasonable belief that his conduct was immediately necessary to protect himself against Blake Mathew Thorvaldsen's use or attempted use of unlawful deadly force.

Upon retiring to assess appellant's guilt for either, the jury asked about the "legality surrounding 'unlawful deadly force' . . . regarding one's legal ability to protect their home."

So, asking indicates that it was focusing on that portion of the court's self-defense instruction which touched upon whether the appellant reasonably believed deadly force was needed to counteract another's use of "unlawful deadly force." In effect, the jury pondered the lawfulness of Blake's use of deadly force under the circumstances and its effect on the legitimacy of appellant attempting to defend himself. That conundrum and its ensuing query from the jury resulted in the trial court submitting the instruction at issue explaining the elements of defense of property.

If nothing else, these circumstances denote an understanding by the jury of the issues involved, their respective factual context, and their interrelationship with each other and the law. The jury was not swimming in the sea of abstraction from which an application paragraph normally serves to remove them. One can reasonably deduce from its question (when placed in the context of the entire jury charge and evidence presented by the parties) that the jury (1) was aware of the interplay between the decedent's potential right, if any, to defend his home and appellant's right, if any, to defend himself and (2) would know of the circumstances under which it should convict or acquit appellant once given the supplemental charge. Given this, we cannot say that a missing application paragraph caused appellant egregious harm.

Appellant also maintains the supplemental charge failed to comply with the requirements of Article 36.16 of the Texas Code of Criminal Procedure. The trial court is permitted, under that provision, to issue a supplemental charge to the jury after closing arguments only under three circumstances: (1) if there is improper jury argument, (2) if the jury requests such supplemental charge, or (3) if additional testimony is allowed. TEX. CODE CRIM. PROC. ANN. art. 36.16; *Willis v. State*, No. 07-10-00024-CR, 2010 Tex. App.

LEXIS 6974, at *12–13 (Tex. App.—Amarillo Aug. 25, 2010, pet. ref'd) (mem. op., not designated for publication). Indeed, "[a]lthough the trial court ordinarily provides instructions to the jury in their entirety before the jury retires to deliberate, the court may give further written instructions upon the jury's written request for additional guidance regarding applicable law. *Lucio v. State*, 353 S.W.3d 873, 875 (Tex. Crim. App. 2011).

Here, the jury inquired into the topic at hand. That resulted in the trial court directing the body to the original charge. Several hours later, it opted to provide a more substantive response to that question, over appellant's objection. Appellant maintains that the trial court was prohibited from revisiting the jury's third inquiry once it had referred the jury to the original charge. Our own authority holds otherwise. *See Willis*, 2010 Tex. App. LEXIS 6974, at *5–6, 13 (finding no error when the trial court revisited a prior answer that merely directed the jury to the court's original charge).

Appellant also contends that the evidence failed to raise the issue of defense of property by any person. To the contrary, evidence existed raising the issue of the lawfulness of Blake's use of deadly force. Such appears particularly in Corrie's account of the relative positions of the men during the confrontation and in the ballistic evidence suggesting Blake shot appellant while appellant was positioned inside the apartment. Appellant's claim that he shot Blake in self-defense put Blake's use of deadly force at issue.

Again, the trial court's charge provided the jury with the framework to assess the lawfulness of the use of force as it appeared to appellant at the time of the shooting. Under the principles outlined in *Bennett*, we discern no error in the trial court's supplemental instructions to the jury.

*Due Process*

Appellant also contends that submission of the instruction denied him due process. Allegedly, the "theory [regarding defense of property] was never discussed at trial" and "[b]y introducing [it] to the jury for the first time in a supplemental charge, the trial court violated Appellant's due process rights." It also "removed the State's burden of persuasion . . . [by] permit[ing] the jury to find Appellant guilty even if it believed he was acting in self-defense." We overrule the issue.

First, the record belies the contention that the theory was not broached at trial. One need only read the State's voir dire of the jury panel to realize. There, the prosecutor not only explained to the venire the elements underlying the defense of property but also asked its members if "anybody ha[s] any issue with this law." So too did the State broach the same defense during its closing. So, appellant's contention that "the defense must be on notice about the theories implicated in the case and have the opportunity to subject those theories to meaningful adversarial review" came to fruition.[5] Appellant was on notice.

[5] Throughout much of his brief, and within this particular issue, appellant alludes to agreements being made with the State during some charge conference and concerning inclusion of a defense of property instruction in the trial court's original jury charge. These purported agreements do not appear within the transcribed charge conference but, rather, in an affidavit appended to a motion for new trial. It purports to show what occurred in the untranscribed meeting with the court. The affidavit, though, is not evidence of what supposedly occurred. This is so because it was never offered or accepted into evidence at any hearing on the motion for new trial. Simply put, an affidavit attached to a motion for new trial is but a pleading that authorizes the introduction of supporting evidence; it is not evidence in itself. *See Stephenson v. State*, 494 S.W.2d 900, 909–10 (Tex. Crim. App. 1973); *Pinson v. State*, No. 11-17-00003-CR, 2018 Tex. App. LEXIS 10710, at 909–10 *12 (Tex. App.—Eastland Dec. 21, 2018, pet. ref'd) (mem. op., not designated for publication). To become evidence, it must be introduced as such at the hearing on the motion. *See Stephenson*, 494 S.W.2d 900, 909–10; *Pinson*, 2018 Tex. App. LEXIS, 10710 at *12. So, appellant is continually referring to matter as evidence when it is not evidence, and his allegations about some agreement between he and the State regarding a defense of property instruction lay beyond our legal purview.

As for the matter of shifting burdens, we find it inaccurate, as well. This is so due to the respective charges involved and the nature of the jury question. The question alluded to the original charge and an element of self-defense described therein, the element pertaining to the decedent's use of "unlawful deadly force."[6] Apparently the jury was attempting to decide if Blake was using deadly force in an unlawful manner, and an aspect of that entailed whether he sought to lawfully defend his home. The supplemental charge merely illustrated when one can lawfully defend his home. It said nothing of burdens of proof. More importantly, the State was well within its means to disprove appellant's claim of self-defense by proving that his victim was ***lawfully*** defending his home, and, because he was, appellant's belief about needing to use immediate force to defend against unlawful force was unreasonable. No burdens were shifted or rendered moot, as appellant seems to suggest in his quite conclusory argument on the matter.

*Right to Counsel*

As for appellant's contention that the supplemental charge denied him his Sixth Amendment right to effective legal counsel, we say the following. The foundation underlying it concerns the supposed inability to address the supplemental charge; that is, "[w]ithout having the opportunity to address the matters contained in the supplemental instruction, 'counsel could not fulfill his function of intelligently arguing the defenses actually available.'" Yet, as illustrated earlier, the "matters contained in the supplemental instruction" actually were broached at the very inception of trial. Furthermore, the record contains evidence of appellant entering the decedent's home uninvited and with a

[6] The trial court instructed the jury through the charge that it "must determine whether the state has proved beyond a reasonable doubt that the defendant did not have a reasonable belief that his conduct was immediately necessary to protect himself against Blake Mathew Thorvaldsen's use or attempted use of unlawful deadly force."

handgun before being shot at by the decedent. Assuming that such evidence may not *ipso facto* establish the defense of defending one's property, it surely reveals that the defense was in play, especially when coupled with the State's opening argument. Finally, when the State alluded to the decedent's right to defend his property during closing argument, appellant said nothing. These circumstances illustrate that "the matters contained in the supplemental instruction" were nothing new. They were before the jury from the inception of trial and susceptible to being addressed during appellant's closing argument, much like the State did in its own closing.

We are told by appellant that "[e]verything comes back to notice—both for purposes of due process . . . and the assistance of counsel. Lack of notice surprises both the defendant and his defender. The defense attorney must know what theories are going before the jury . . . so he or she can subject those theories to meaningful adversarial argument." Appellant and his counsel had such notice, according to the record at bar, and did not utilize it for whatever reason. Thus, we overrule issues one through three.

*Fourth Issue: Denial of Mistrial and Refusal to Strike Testimony*

Appellant's complaints regarding the trial court's rulings in this issue center on the testimony and conduct of the lead investigator Detective Jessica Kay. A photograph of the crime scene revealed some amount of blood outside the door of Blake's apartment. This blood was not collected or tested; no one knows its source. During her initial testimony, Kay testified that blood located outside of Blake's apartment was a result of Officer Wren having tracked blood from inside the apartment when he assisted in removing Blake's body from the apartment. She testified that she witnessed Officer Wren having done so. Appellant maintained that this information had never been disclosed by

the State and, on that basis, he moved that Kay's testimony be struck and the jury be instructed to disregard it. The trial court denied the motion. Appellant then moved for mistrial, again maintaining that the source of this blood had never been disclosed to defense counsel. The trial court denied that motion as well. It would be revealed the following day that Kay's testimony was false.

On the following day, the trial court learned from another detective, Stephanie Willoughby, that Kay had conferred with Willoughby the evening after Kay testified. One topic of conversation concerned the blood outside the apartment. Willoughby confessed that the two had spoken on the matter, a conversation during which Kay asked whether Willoughby recalled Kay having mentioned the blood during their pretrial meeting the preceding Saturday. The trial court denied appellant's motions to dismiss and to strike and instruct to disregard based on the apparent violation of the Rule.

Shortly thereafter, Kay was called to the stand outside the presence of the jury. She admitted to having consulted with Willoughby and earlier having discussed with Officer Wren the tracking of blood. The trial court held the two detectives in contempt of court. After the jury was returned to the courtroom and Willoughby concluded her testimony, Kay was recalled to the stand and testified in the presence of the jury that she had given false testimony as to the source of the blood in question. She admitted that she did *not* see Officer Wren track the blood but, instead, had assumed he had done so. She admitted that she, in fact, did not know how the blood got there or whose it was.

As to the matter of Kay's perjured testimony, we note that, if the prosecution presents a false picture of the facts by failing to correct its own testimony when it becomes apparent that the testimony was false, then the conviction must be reversed. *Losada v.*

*State*, 721 S.W.2d 305, 311 (Tex. Crim. App. 1986) (en banc) (citing, *inter alia*, *Napue v. Illinois*, 360 U.S. 264, 79 S. Ct. 1173, 3 L. Ed. 2d 1217 (1959)). The State tacitly concedes that Kay's initial testimony was false and was material. However, upon having learned that Kay testified falsely, the State thereafter acted precisely according to what the authority cited above requires; it corrected Kay's misstatement by recalling Kay to account for her false testimony before the jury. *See Marchbanks v. State*, 341 S.W.3d 559, 563 (Tex. App.—Fort Worth 2011, no pet.) (citing *Losada*, 721 S.W.2d at 311). Thus, we hold that the trial court did not abuse its discretion by denying appellant's earlier motion for mistrial on the basis of the State's alleged use of perjured testimony. *See id.*

Detectives Kay and Willoughby also confessed to having conferred on the topic of the blood on the front porch to, at least, some degree the evening after Kay's testimony. The purpose of placing witnesses in a proceeding under the sequestration rule is to prevent the testimony of one witness from influencing the testimony of another. *Bell v. State*, 938 S.W.2d 35, 50 (Tex. Crim. App. 1996) (en banc); *see* TEX. R. EVID. 614 (codification of what is commonly referred to as the Rule). While the trial court is obligated to exclude witnesses from the courtroom during other witnesses' testimony, the court's decision to allow testimony from a witness who has violated the Rule is discretionary. *Woodland v. State*, No. 05-19-00174-CR, 2020 Tex. App. LEXIS 3095, at *15 (Tex. App.—Dallas Apr. 14, 2020, no pet. h.) (mem. op., not designated for publication) (citing *Bell*, 938 S.W.2d at 50). Rule 614 does not specifically provide for what sanctions, if any, a trial court should impose for violations of the Rule. *Bell*, 938 S.W.2d at 50.

Through case law, two possible sanctions have developed as options that a trial court may use for violations of the Rule. One is holding a witness who violates the Rule

in contempt of court, and the other is refusing to allow the witness to testify. *Id.* Here, the trial court pursued the former. In reviewing the trial court's decision to allow the testimony and whether that was erroneous, we look at whether the defendant was harmed or prejudiced by the witness's violation. *Id.* Two criteria that have been suggested for determining injury or prejudice in this situation are (1) whether the witness actually conferred with or heard testimony of other witnesses, and (2) whether the witness's testimony contradicted testimony of a witness from the opposing side or corroborated testimony of a witness he had conferred with or heard. *Id.* (citing *Webb v. State*, 766 S.W.2d 236, 240 (Tex. Crim. App. 1989)).

Here, because (1) the violations were revealed to the jury, (2) Willoughby's testimony did not reiterate or corroborate Kay's testimony regarding knowledge of the source of the blood on the front porch, and (3) Kay admitted to the jury that she had given false testimony on the matter, we perceive no harm having come from admitting Detective Kay's testimony concerning the presence of blood on the front porch. *See id.* Ultimately, she admitted that she knew not whose it was or how it got there. Additionally, the jury was made aware of the violations and the detectives were held in contempt of court and assessed fines for their conduct. And, one cannot ignore the potential impact the revelation about law enforcement officials lying has on their credibility; that certainly bodes in the accused's favor. Given the circumstances of this case and the manner in which the violations were treated, the trial court did not abuse its discretion by admitting into evidence the testimony concerning the topic on which the detectives conferred in violation of the Rule. We overrule appellant's fourth and final issue.

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

Per Curiam

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