

CAUSE NO. **01-24-00575-CR**

FILED IN
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DEBORAH M. YOUNG
Clerk of The Court

IN THE COURT OF APPEALS
FOR THE FIRST SUPREME JUDICIAL DISTRICT
AT HOUSTON

JOURDAN ELLISON

Appellant,

Vs.

STATE OF TEXAS,

Appellee

Appealed from the 262ND District Court
Of Harris County, Texas
Cause Number 1646923

APPELLANT'S BRIEF

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ORAL ARGUMENT NOT REQUESTED

IDENTITIES OF PARTIES AND COUNSEL

APPELLANT:	JOURDAN ELLISON
PRESIDING JUDGE:	HON. LORI CHAMBERS 262ND DISTRICT COURT
PROSECUTOR(S):	REBECCA MARSHALL SBOT:24095371 MEGAN LONG SBOT:24091571 HARRIS COUNTY DISTRICT ATTORNEY'S OFFICE
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APPELLANT'S BRIEF

TO THE HONORABLE FIRST COURT OF APPEALS:

NOW COMES, JOURDAN ELLISON, Appellant in the above entitled and numbered cause, files this Appellant's Brief, and would respectfully show the following:

STATEMENT OF THE CASE

This is an appeal from the Trial Court's JUDGMENT OF CONVICTION BY JURY finding Appellant GUILTY of the offense of CAPITAL MURDER and sentencing him to LIFE without the possibility of parole. (CLRK. REC. – 218). Appellant timely filed a NOTICE OF APPEAL. (CLRK.REC. – 223). The Notice was accepted, and the case was given the above referenced appellate cause number. Appellant has not filed a MOTION FOR NEW TRIAL, an APPLICATION FOR WRIT OF HABEAS CORPUS, or any other original appellate or collateral proceeding in this cause.

STATEMENT OF THE FACTS

Appellant was charged by indictment with the offense of, while committing a robbery, intentionally causing the death of Christian Lezama by shooting him with a firearm. (CLRK. REC. – 26). After hearing evidence from both sides, the jury was instructed to find appellant guilty of capital murder under either a theory of appellant as the primary actor and as a party to the robbery who was not a gunman. (CLRK. REC. – 208). Based on the evidence offered by the state, the jury found the appellant guilty as alleged in the indictment. (CLRK. REC. – 218).

STATEMENT REGARDING ORAL ARGUMENT

Appellant does not request oral argument on the basis that the facts and the legal arguments are adequately presented in this brief and in the record. Moreover, the decisional process would not be significantly aided by oral argument. However, should the State of Texas or the Court request oral argument, Appellant requests the opportunity to participate in oral argument.

ISSUES PRESENTED

ISSUES FOR REVIEW

The trial court erred by denying Appellant's request for a mistrial.

SUMMARY OF THE ARGUMENT

The trial court erred by denying Appellant's request for a mistrial. In the middle of trial, the state's designated next-of-kin witness suddenly remembered finding an additional shell case at the scene after the completion of law enforcement's investigation. He then discarded the casing, telling no one until his memory was jogged by the testimony of the CSI expert and the defense's cross. Although this witness had been excluded from the Rule, appellant asserts that the mistrial should have been granted as this witness presented information contradictory to the CSI expert's findings only after that expert testified.

ARGUMENT AND AUTHORITIES

ISSUE FOR REVIEW

The trial court erred by denying Appellant's request for a mistrial.

The Standard of Review

The denial of a motion for mistrial is reviewed under an abuse-of-discretion standard. *Archie v. State*, 221 S.W.3d 695, 699 (Tex. Crim. App. 2007). Under this standard, we uphold the trial court's ruling as long as the ruling is within the zone of reasonable disagreement. *Id.* "A mistrial is a device used to halt trial proceedings when error is so prejudicial that expenditure of further time and expense would be wasteful and futile." *Wood v. State*, 18 S.W.3d 642, 648 (Tex. Crim. App. 2000) (quoting *Ladd v. State*, 3 S.W.3d 547, 567 (Tex. Crim. App. 1999)). It is appropriate only for "a narrow class of highly prejudicial and incurable errors." *Id.*; see *Hawkins v. State*, 135 S.W.3d 72, 77 (Tex. Crim. App. 2004). Therefore, a trial court properly exercises its discretion to declare a mistrial when, due to the error, "an impartial verdict cannot be reached" or a conviction would have to be reversed on appeal due to "an obvious procedural error." *Wood*, 18 S.W.3d at 648; see *Ladd*, 3 S.W.3d at 567.

TRE 614

Texas Rule of Evidence 614, otherwise referred to as "the Rule," provides for the exclusion of witnesses from the courtroom during trial. Tex. R. Evid. 614. The purpose of Rule 614 is to prevent the testimony of one witness from influencing the testimony of another. *Russell v. State*, 155 S.W.3d 176, 179 (Tex. Crim. App. 2005). Once Rule 614 is invoked, witnesses are instructed by the trial court that they cannot converse with one another or with any other person about the case, except by permission from the court, and the trial court must exclude witnesses from the courtroom during the testimony of other witnesses. Tex. R. Evid. 614; see Tex. Code Crim. Proc. art. 36.06.

If a witness violates Rule 614, the trial court still has discretion to allow the testimony from the witness. *Bell v. State*, 938 S.W.2d 35, 50 (Tex. Crim. App. 1996). The trial court's decision to allow testimony is reversible if the appellant was harmed or prejudiced by the violation. *Id.* Harm is established by showing: (1) that the witness actually conferred with or heard testimony of other witnesses; and (2) that the witness's testimony contradicted the testimony of a witness from the opposing side or corroborated testimony of a witness he or she had conferred with or heard. *Id.*

Analysis

The trial court erred by denying Appellant's request for a mistrial. In the middle of trial, the state's designated next-of-kin witness suddenly remembered finding an additional shell case at the scene after the completion of law enforcement's investigation. He then discarded the casing, telling no one until his memory was jogged by the testimony of the CSI expert and the defense's cross. Although this witness had been excluded from the Rule, appellant asserts that the mistrial should have been granted as this witness presented information contradictory to the CSI expert's findings only after that expert testified.

Facts Regarding the Request for Mistrial

The trial began on July 15, 2024. (RR.I – 1). On July 17, 2024, the state filed a Brady Notice outlining a conversation with Christian Lezama (Sr), next-of-kin to the decedent named in the indictment, that occurred that morning before testimony began. (CLRK. REC. – 200). According to that document, Lezama Sr. had heard nine shots in the video and had found a shell casing at the scene after the investigation was completed. He did not contact law enforcement or any other agency of the state prior to discarding the casing in the trash.

No discussion of the matter appears on the record on July 17, 2024. Instead, the trial was recessed, and jury was dismissed until Monday July 22, 2024 without being informed of the issue. (RR.IV – 4-5). Shortly before resuming trial on the 22nd,

the parties outlined the facts and their positions on the matter.

The state had planned to call Lezama Sr as the next-of-kin witness and the defense had agreed to excuse him from the rule for this purpose. (RR.V – 9). The state's second witness, the CSI expert, testified at the end of the first full day of trial. (RR.III – 53-150). During cross, the defense discussed apparent bullet defects in certain locations that had not been noted in the report and/or discussed on direct, such as a shell recovered from the refrigerator. (RR.III – 144-147). In response, the state elicited from the witness that a different CSI expert had been responsible for the sketching and measuring of the scene and that it was impossible to discern exactly what happened during the event in question solely based on evidence locations. (RR.III – 148-149).

After hearing this testimony, Lezama Sr then reviewed a Youtube video that was recorded contemporaneously with, and at the apartment complex where the alleged murder occurred, but otherwise unrelated to this case. (RR.V – 6). Based on his review, he was able to count nine shots that can be heard in the background. *Id.* He additionally disclosed that he had found an additional shell casing in the apartment underneath the television, but had discarded it without telling anyone for nearly five years. (RR.V – 7). Once the matter was disclosed, a recess was granted so that the defense could investigate the matter. (RR.V – 7-9). The defense's subsequent request for a mistrial was denied, but was not reurged after Lezama Sr

testified. (RR.V – 12; RR.VI – 145-171).

Argument

Appellant asserts that the request for a mistrial should have been granted as this witness presented information contradictory to the CSI expert's findings only after that expert testified. When the Rule has been properly invoked, the trial court may still allow a witness who violates it to testify. *Bell*, 938 S.W.2d at 50. An appellant is harmed by a witness's violation of 614 if it is shown that the witness heard the testimony of another witness and then contradicted that witness' statements in their own testimony. *Id.*

Appellant admits that his argument is diminished by the agreement with the state to exclude the witness from the Rule on the basis that they were not a fact witness. However, that agreement was prefaced on the understanding that the witness would not be testifying as to any factual matter. Appellant asserts that the witness should have at least been excluded due to their decision to meddle in the trial and evidence. It must be noted that this disclosure did not occur until after the witness watched the defense's cross of the CSI expert and therefore Lezama Sr's story of the undisclosed shell casing was nothing more than an attempt to undermine the defense. Therefore, appellant asserts that he is entitled to a new trial.

ACCORDINGLY, this Court should SUSTAIN Appellant's ISSUE FOR REVIEW; VACATE the Trial Court's JUDGMENT; and, REMAND the cause to the Trial Court below for a NEW TRIAL.

CONCLUSION AND PRAYER

For the foregoing reasons, the Appellant prays that this Honorable Court SUSTAIN Appellant's ISSUE FOR REVIEW; VACATE the Trial Court's JUDGMENT; and, REMAND the cause to the Trial Court below for a NEW TRIAL.

Appellant further prays for all relief to which he may be entitled.

Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that on the day of FEBRUARY 27, 2025 a true and correct copy of the above and foregoing Appellant's Brief was served on the HARRIS County District Attorney's Office, through the e-file service system.



TOM ABBATE

CERTIFICATE OF COMPLIANCE

This is to certify that the brief filed in case numbers **01-24-00575-CR** complies with requirement of Tex. R. App. P. Rule 9.4(i)(3). According to the computer program used to prepare the document, the entire brief has the following number words: 2,040 including footnotes.



TOM ABBATE

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