the Jasuta / Schulman report

Volume 32, Number 44 ~ Monday, November 25th, 2024 (Report No. 1,539)

TIBA's Case of the Week

Court of Criminal Appeals

Case Name: ***Brian Dale Nixon v. The State of Texas***

- **OFFENSE**: Capital Murder
- **COUNTY**: Medina
- **COURT OF APPEALS**: San Antonio 2023
- **C/A CITATION**: 674 S.W.3d 384
- **C/A RESULT**: Conviction Reversed
- **CCA. CASE No**. PD-0556-23 **DATE OF OPINION**: November 20, 2024
- **DISPOSITION**: Court of Appeals Reversed
- **OPINION**: Judge Kevin Yeary **VOTE**: 6-2-1
- **TRIAL COURT**: 454th D/C; Hon. Sid Harle
- **LAWYERS**: Michael Gross (Defense); Stacey Soule (SPA)

(**Background Facts**): In the early hours of January 21, 2016, Appellant shot and killed Tylene Davis and Debra Echtle at Echtle's residence in Medina County. At trial, Appellant did not contest that he killed Davis and Echtle but argued instead that he acted in self-defense.

Ed Note (**The Jail Building**): After entering the building through a glass door and passing through an outer vestibule that provides access to restrooms and vending machines, visitors enter a main lobby either through another glass door or a metal detector. The main lobby includes: (1) a reception window for, and entrance to, the Sheriff's Department; (2) doors to two visitation rooms and a multi-purpose room; (3) a jail information window; (4) a door stating "Authorized Personnel Only[,]" which the witness identified as the entrance to the jail; and (5) a pair of double doors leading into the auxiliary courtroom where Appellant's trial was held. A placard on the entrance to the courtroom reads: "District Court in Session[.]" Along the way, visitors encounter multiple signs advising that cell phones, cameras, recording devices, food or drink, purses, packages, and openly carried handguns are prohibited. Appellant argued that this all proved that the auxiliary courtroom was located "in a correctional facility" and "not a neutral place to conduct business." According to Appellant, "[i]t is a place where people are incarcerated." He also argued that the State failed to show a "compelling need" to hold the trial in the auxiliary courtroom and that "[c]onvenience is really why we are here." The State responded that the auxiliary courtroom was not located in a building that was "wholly a correctional facility" but in a publicly accessible building that also housed a correctional facility.

Ed Note (**Facts Surrounding the Trial**): Appellant's case was scheduled for trial in an annex courtroom that is in the same building as the Medina County Jail ("the jail"). Prior to the trial, Appellant filed a motion to change the venue to the Medina County Courthouse and strenuously objected to holding trial in the courtroom housed in the jail ("the jail courtroom"). In his motion, Appellant argued that holding jury selection or a jury trial in the jail courtroom presents a fundamental challenge to the fairness of jury selection and subsequent trial proceedings. Specifically, Appellant contended a trial in the jail courtroom would undermine his presumption of innocence, violate due process, and impugn his right to a fair trial and an impartial jury. On January 31, 2020, the trial court held a pretrial non-evidentiary hearing to address several pending motions including Appellant's motion to change the venue to the Medina County Courthouse. In this initial hearing, the State argued voir dire and the jury trial should be held in the jail courtroom because it "has a much larger, more comfortable, and consistently climate[-]controlled jury room." The State continued, "the comfort level, the ability to hear, and the consistency that we have in [the jail courtroom]" as well as "more modern [technology in the] courtroom" and "the parking and interaction with the general public is more conducive to this kind of trial." According to the State, it would be difficult for law enforcement to protect the public and ensure the jury does not see Appellant in shackles or prison clothes should the trial take place at the Medina County Courthouse because there is insufficient space in the courthouse.

Ed Note (**Change of Venue Hearing**): On November 5, 2020, the trial court, presided by a visiting judge, held an evidentiary hearing on Appellant's motion to transfer venue to the Medina County Courthouse. At this hearing, Appellant proffered nineteen photos depicting what jurors would see when they reported for jury duty at the jail courtroom, which were admitted into evidence without objection. At the conclusion of the hearing, the trial court denied the motion and stated it based its decision on: (1) security issues; (2) concerns about Appellant commingling with the jurors in the limited space at the courthouse; (3) the lack of restroom facilities at the courthouse; and (4) the lack of technology at the courthouse.

Ed Note (**Jury Selection**): Jury selection for Appellant's trial began on July 6, 2021, at the Medina County fairgrounds to accommodate a large jury panel under COVID-19 restrictions. According to the record, Appellant appeared at voir dire in civilian clothes and without visible restraints. When introducing the parties to the venire, the trial court judge acknowledged Appellant's presence by asking, "Mr. Nixon, could you please stand for us, please?" and stating, "This is Brian Nixon." Prior to trial, the judge had granted Appellant's "*Motion to Appear in Street Clothes at All Pretrial and Trial Proceedings in Open Court*." The trial court judge had likewise granted Appellant's "*Motion to Preclude Mr. Nixon from Being Shackled in Public*" and ordered that "*The Medina County Sheriff shall ensure that Mr. Nixon does not appear in shackles in open court hearings wherein the public or media may attend. If restraints are ever deemed necessary by the Court in any public hearing, such restraints shall be employed under clothing in a fashion that is not visible*." Nothing in the record suggests that law enforcement failed to comply with these orders at voir dire or throughout trial. At the conclusion of voir dire, Appellant renewed his objection to being tried in

the county's auxiliary courtroom. The trial court judge again denied Appellant's motion and granted him a running objection.

[209 **Trial Proceedings / Fair Trial (Trial in the Same Building as the County Jail)**]: Appellant raised four issues on appeal. In his first three points of error, Appellant argued that holding his trial "in the Medina County Jail" violated: (1) his presumption of innocence; (2) his right to due process under the Fourteenth Amendment; and (3) Section 24.012(e) of the Texas Government Code, which was raised for the first time on appeal. The Court of Appeals reversed Appellant's conviction. It decided that "the trial court setting in the jail courtroom created an unacceptable risk that the presumption of innocence afforded to [Appellant] was eroded." ***Nixon v. State***, 674 S.W.3d 384 (Tex.App. - San Antonio 2023)(see , Vol. 31, No. 26; 08/07/2023; Vol. 31, No. 39; 11/06/2023). The Court of Criminal Appeals granted discretionary review to consider: (1) whether the location of the courtroom where Appellant's trial was held was inherently prejudicial to his presumption of innocence; and, if so, (2) whether use of that courtroom was justified by an essential state interest.

Holding: The Fourteenth Amendment provides, in relevant part, that "[n]o State shall deprive . . . any person of life, liberty, or property, without due process of law[.]" *** This Court has also recognized that "[t]he right to due process of law includes within it the right to a fair trial[.]" ***Marx v. State***, 987 S.W.2d 577 (Tex.Cr.App. 1999)(see , Vol. 7, No. 5; 02/08/1999). And the Supreme Court of the United States has said that "[t]he presumption of innocence, although not articulated in the Constitution, is a basic component of a fair trial under our system of criminal justice." ***Estelle v. Williams***, 425 U.S. 501 (1976). *** The Court acknowledged that sometimes visible restraints may be necessary to "control a contumacious defendant[,]" but it explained that "compelling an accused to wear jail clothing furthers no essential state policy." In the Court's view, the defendant's clothing was likely to be "a continuing influence throughout the trial[,]" and it posed an "unacceptable risk" of "impermissible factors coming to play." *** In contrast, ten years later, in ***Holbrook v. Flynn***, 475 U.S. 560 (1986), the Supreme Court decided that the presence of four uniformed state troopers seated directly behind a defendant in the first row of spectators at his trial did not inherently prejudice his presumption of innocence. *** Considering these cases later, in ***Marx v. State***, this Court similarly concluded that allowing a thirteen-year-old victim and a six-year-old witness to testify via closed circuit television in the defendant's trial for aggravated sexual assault of a child was not inherently prejudicial to the defendant's presumption of innocence. *** In light of the principles discussed in these cases, we conclude, as did the Court of Appeals, that when a particular courtroom practice is challenged as having the potential to erode a defendant's presumption of innocence, a court must first decide whether the practice is inherently prejudicial to the defendant's right to the presumption. Also, the court should conclude that the setting was inherently prejudicial to the presumption of innocence only if, after exercising "reason, principle, and common human experience[,]" the court determines that the challenged practice would necessarily be interpreted by the jury as a sign that the defendant is particularly culpable or dangerous. And if the court draws the conclusion that the challenged practice is inherently prejudicial because it will necessarily be interpreted by the jury as a signal that the defendant is

culpable or dangerous, the court should then go on to inquire whether the practice was nevertheless justified by an "essential state interest."

Holding (**The Building that Housed the Courtroom**): The Court of Appeals observed that "the first thing" that jurors would see as they approached the building where the trial was to take place was the sign that said "Medina County Jail" over the entrance. It noted that there was no indication that the building was an "annex building" which was used for purposes other than to house inmates. It expressed concern that the glass doors to the building had signs posted stating that "cell phones, cameras, recording devices, purses and packages" were banned. And it concluded that, "under the facts of this case, the various markings reminding the jury that the building at issue here has a primary purpose as a jail created an unacceptable risk that the jury would conclude, before hearing any evidence, that [Appellant] [was] too dangerous to transport and must be isolated from society." But we conclude, in contrast, that these considerations would not have led the jury to necessarily conclude that Applicant must be guilty or dangerous.

Holding (**No Necessary Personal Implication of Guilt to Appellant**): There is no doubt that a reasonably alert juror in this case would have been aware of the proximity of the jail and the sheriff's office to the courtroom. And we do not discount the possibility that a juror may have been initially confused upon arriving for trial at a building labeled outside as "Medina County Jail[.]" Indeed it is possible that a juror might have thought that the proximity of the auxiliary courtroom to the jail could suggest that Appellant was either culpable or dangerous. *** But jurors need not have necessarily drawn that inference. Indeed, we are persuaded that average jurors may have more likely understood that the government and the courts use whatever facilities they have available to get their work done, and that the facility where a trial is held ordinarily does not reflect inherently on the guilt or dangerousness of an accused. In this case, we are convinced that jurors would likely have concluded that, while the courtroom was located in a building labeled on the outside with the name "Medina County Jail," the courtroom itself was a separate government facility distinct from the jail. *** In addition, jurors would not have been likely to understand the location of the courtroom to necessarily reflect on Appellant's guilt or dangerousness. Neither the sign on the outside of the building, nor even the courtroom's proximity to the jail and the sheriff's office inside, had any inherent tendency to brand Appellant himself as unmistakably guilty. The challenged practice here -- conducting Appellant's trial in the auxiliary courtroom, which happened to have been housed under the same roof as the jail and the sheriff's office in Medina County -- did not necessarily brand Appellant personally with an unmistakable mark of guilt. *** Whatever the jurors may have thought about the location of the courtroom in this case, Appellant points to nothing that would have necessarily tied Appellant personally to that location, any more than the judge, the attorneys, and the jurors themselves were tied to it.

Holding (**The Courtroom was Distinguishable from the Jail and the Sheriff's Office**): The Court of Appeals also seems not to have recognized the natural distinction between the larger building complex, which also housed a jail and the sheriff's department, and the courtroom itself. *** The courtroom does not appear to be within, or even necessarily a part of, the portion of the building

dedicated to housing inmates. Nor does the courtroom seem to be indistinguishably connected to the county sheriff's office. And once the jurors were inside the courtroom, they would have encountered the same judge and attorneys they saw at the fairgrounds, where the voir dire proceedings had been conducted. Although the courtroom is housed in a building with a potentially misleading label on the outside, once the jurors were inside the building, the courtroom would appear to them to be separate and distinct from both the jail and the sheriff's office. *** Were there something about the inside of the courtroom that would have tied Appellant personally to the jail facility or to the sheriff's department, it would have behooved Appellant to make the record reflect as much for purposes of Appellate review. But we have seen nothing like that in this case.

Holding (**Other Factors Did Not Suggest Appellant's Guilt**): The Court of Appeals also expressed concern about the signs on the glass doors that jurors would encounter upon entering the building and before reaching the courtroom, as well as about the presence of a machine in the building lobby—the purpose of which seems to have been to "deposit money into an inmate's account" and which was "wrapped in a large image containing handcuffs. *** As the Supreme Court observed in ***Flynn*** with respect to the presence of additional guards seated behind a defendant: "Our society has become inured to the presence of armed guards in most public places; they are doubtless taken for granted so long as their numbers or weaponry do not suggest particular official concern or alarm." The security measures described in this case are no more, and perhaps even less, onerous than those required to enter many courthouses in this state, or even to attend oral arguments at this Court. Nothing about those measures seems to have necessarily cast an aura of guilt onto Appellant.

Holding (**No "Continuing Influence" or "Unacceptable Risk" of Influence by "Impermissible Factors"**): We also do not think that the labeling on the building in this case, or the proximity of the courtroom to the area in which inmates were housed, was likely to be a "continuing influence" throughout Appellant's trial. *** The courtroom utilized here also did not suggest the kind of "unacceptable risk" of influencing the jury with "impermissible factors" that the Supreme Court was concerned about in ***Turner v. Louisiana***, 397 U.S. 466 (1965). In ***Turner***, jurors were placed under the charge of, and were "continuously in the company of[,]" two deputy sheriffs who were also key witnesses for the prosecution in the defendant's trial.

Holding (**A Wide Range of Inferences Unrelated to Guilt or Dangerousness Were Available**): Holding Appellant's trial in the auxiliary courtroom was not inherently prejudicial to his presumption of innocence. A challenged procedure is inherently prejudicial to the presumption of innocence only if jurors must necessarily interpret it as a sign that a defendant is particularly dangerous or culpable. *** If jurors can reasonably draw a wider range of inferences, not reflecting at all on danger or culpability, then no unacceptable risk of impermissible factors comes into play.

Conclusion: We conclude that holding Appellant's trial in the auxiliary courtroom located in the same building as the Medina County Jail and Sheriff's Department was not inherently prejudicial

to Appellant's presumption of his innocence. We, therefore, reverse the judgment of the Court of Appeals and remand the cause to that court to consider Appellant's remaining points of error on appeal.

Ed Note: The Court declined to follow the decision of the Washington State Supreme Court in ***State v. Jaime***, 233 P.3d 554 (Wash. 2010), finding that "***Jaime*** turns the ***Flynn*** analysis on its head."

> **Concurring / Dissenting Opinions**: Judge David Newell and Judge Jesse McClure concurred, each without note. Judge Scott Walker filed a dissenting opinion in which he argued that, because the trial court did not explain to the jury why the trial was being held at the jail, gave no instructions to the jury to refrain from drawing the wrong inferences from the location of the trial, "they would have noticed the difference, and they reasonably would have entertained several inferences about why things were different." He also argued that "the Court of Appeals was right to conclude that "the various markings reminding the jury that the building at issue here has a primary purpose as a jail created an unacceptable risk that the jury would conclude, before hearing any evidence, that Nixon is too dangerous to transport and must be isolated from society."

Sidebars

(**Troy McKinney**) This decision is an abomination of constitutional substance disregarded over reframed factual form. As we reflected when the Court of Appeals decision was rendered in July 2023 (see §§, Vol. 31, No. 26; 08/07/2023). Much of what we commented on is absent, in substance, from the CCA opinion. Reaching a decision by reframing the facts does make the decision correct. This decision may yet be reviewed by a federal court.

(**John G. Jasuta**) The application of Rule # 1 is always the way out. We could ask the jurors if they were affected but that would also violate Rule # 1 . . . and Rule 606(b).

(**David A. Schulman**) I agree with Troy, **and** with Judge Walker. Medina County has a population of about 50,000 people and Hondo, the county seat is a small town, but the county jail is about a mile from the regular courthouse. Members of the jury would have known that a trial in the courtroom at the county jail would be very unusual. Consequently, the situation would have been much better if the trial judge had somehow explained to the venire and/or the jury that the auxiliary courtroom had to be used due to problems with the facilities at the county courthouse. Because they heard no explanation, however, no court could be certain that problems which existed are not be exactly the same as having the defendant appear in jail clothing.