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TIBA's Case of the Week Fourth Court of Appeals

Case Name: [Brian Dale Nixon v. The State of Texas](#)

- **OFFENSE:** Capital Murder
- **COUNTY:** Medina
- **C/A CASE No.** 04-21-00295-CR
- **DATE OF OPINION:** July 31, 2023 **OPINION:** [Justice Irene Rios](#)
- **DISPOSITION:** Conviction Reversed
- **TRIAL COURT:** 454th D/C; Hon. Sid Harle
- **LAWYERS:** [Michael Gross](#) (Defense); [Ed Shaughnessy](#) (State)

(Background Facts): 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.

¶ 20 9 Trial Proceedings / Fair Trial (Trial in the Jail): 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 bottom of the Court of Appeals’ opinion). At the conclusion of the evidentiary 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. On July 6, 2021, voir dire took place at the Medina County fairgrounds. After the jury was selected, Appellant renewed his objection to the trial on the merits being held in the jail courtroom. The trial court again denied Appellant’s objection and permitted Appellant to have a running objection to holding trial in the jail courtroom. On appeal, Appellant argues holding his trial in the jail courtroom eroded the presumption of innocence thereby violating his constitutional right to a fair and impartial jury and due process right to a fair trial. Specifically, he argues the jailhouse setting is akin to forcing a defendant to be tried in prison clothing or visible shackles as was the case in *Estelle v. Williams*, 425 U.S. 501 (1976).

Holding: In this appeal, we must decide an issue of first impression in Texas: Whether conducting a jury trial in a courtroom housed within a correctional facility, i.e., the Medina County Jail, is an inherently prejudicial practice that erodes the presumption of innocence afforded to a criminal defendant, thereby violating his right to an impartial jury and his due process right to a fair trial.”

Marx v. State, 987 S.W.2d 577 (Tex.Cr.App. 1999)(see ¶ 6, [Vol. 7, No. 5](#); 02/08/1999). *** When a courtroom practice is challenged as inherently prejudicial, *Williams* and *Holbrook v. Flynn*, 475 U.S. 560 (1986), require the following inquiries: (1) [whether the practice] creates an unacceptable risk that the presumption of innocence will be eroded; and (2) [if so, does the practice] further an “essential” state [interest specific to each trial]. **(Presumption of Innocence)** Thus, when a courtroom practice creates an unacceptable risk that the presumption of innocence will be jeopardized, then the courtroom practice is inherently prejudicial. *** And, an inherently prejudicial practice “should be permitted only where justified by an essential state interest specific to each trial.” *** We believe a jury trial setting in a building with markings that indicate to the public that the primary and substantial purpose of the building is to operate as a jail is more akin to the impermissible practice of trying a defendant in prison clothes and shackles rather than the permissible practice of allowing additional armed guards to sit in the courtroom. *** We do not suggest that a trial setting in a building that houses a courtroom and a correctional facility will always erode the presumption of innocence afforded to a defendant. However, 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] is too dangerous to transport and must be isolated from society. *** Accordingly, we hold the trial court setting in the jail courtroom created an unacceptable risk that the presumption of innocence afforded to [Appellant] was eroded. **(Essential State Interest)**. In *Lilly v. State*, 365 S.W.3d 321 (Tex.Cr.App. 2012)(see ¶ 6, [Vol. 20, No. 16](#); 04/23/2012), the defendant complained the trial court violated his constitutional right to a

public trial when it conducted the trial in a correctional facility. The **Lilly** court held the party seeking closure of the trial to the public must: (1) assert an overriding interest to justify the closure; (2) the closure must be no broader than necessary to protect the overriding interest; (3) the trial court must consider reasonable alternatives to closing the proceeding; and (4) the trial court must make adequate findings to support the closure. *** The record does not support the furtherance of an essential state interest to justify holding [Appellant]’s trial in the Medina County Jail building. Accordingly, we hold this trial setting was an inherently prejudicial practice, and the trial court erred when it conducted [Appellant]’s trial in the jail courtroom housed within the Medina County Jail building.

Sidebars

(Troy McKinney) What on earth were the prosecution and the trial court judge thinking? The defense taking and introducing pictures of the jail setting mattered -- an important reminder that evidence trumps statements and arguments of counsel. Interestingly, this trial occurred during COVID, but there was no mention of COVID considerations.

(John G. Jasuta) I hate to keep saying it, but this ain’t over, yet.

(David A. Schulman) I agree with Troy’s sentiments. I’m not sure how anyone could think it was going to be acceptable to have trial behind bars. The courthouse wasn’t condemned or closed, and the trial should have been in that building. Also, it should be noted that Appellant’s trial counsel did a very good job of properly preserving this difficult issue.

Ed Note: Because of its disposition of these two issues, the Court of Appeals didn’t reach Appellant’s third and fourth issues.