No. _____

IN THE SUPREME COURT OF THE UNITED STATES

CEDRIC ALLEN RICKS
Petitioner,

v.

THE STATE OF TEXAS
Respondent

(DEATH PENALTY CASE)

PETITIONER'S APPLICATION FOR EXTENSION OF TIME TO FILE PETITION FOR WRIT OF CERTIORARI

Directed to the Honorable Samuel A. Alito, Jr.
Associate Justice of the United States

WES BALL
BALL & HASE, P.C.
4025 Woodland Park Blvd.
Suite 100
Arlington, Texas 76013
(817)860-5000
Wes@ballhase.com

Counsel for Petitioner
Cedric Allen Ricks

To the Honorable Justice Alito:

Petitioner Cedric Allen Ricks respectfully requests that the time to file a Petition for Writ of Certiorari in this matter be extended for sixty days to and including March 5, 2018. The Texas Court of Criminal Appeals issued its opinion on October 4, 2017[1] (see App. A, *infra*). Absent an extension of time, the Petition would be due on January 3, 2018. Petitioner is filing this Application at least ten days before that date. See S. Ct. R. 13.5. The judgment in the trial court resulted in a sentence of DEATH by lethal injection. This Court would have jurisdiction over the judgment under 28 U.S.C. § 1257.

Procedural History and Reasons for Extension

Petitioner was tried before a jury in a Texas District Court for the felony offense of Capital Murder. The State sought the death penalty. After hearing evidence, a jury found Petitioner guilty of the offense of Capital Murder and following a separate evidentiary punishment hearing rendered a verdict that Petitioner be sentenced to death by lethal injection. The trial concluded on May 16, 2014.

Petitioner pursued his direct appeal to the Texas Court of Criminal Appeals. The Texas Court of Criminal Appeals issued its decision affirming the judgment of conviction and the sentence of death on October 4, 2017. Up to this point, Petitioner was represented by his court appointed counsel, the Honorable Mary Thornton. Petitioner is indigent.

---

[1] Ricks v. State, No. AP-77,040, 2017 WL 4401589 (Tex. Crim. App. Oct. 4, 2017)

On November 1, 2017 undersigned counsel was contacted by the Honorable Charles P. Reynolds, Chief Judicial Staff Counsel and Post-Conviction Magistrate for Tarrant County, Texas. Magistrate Reynolds advised that he was seeking to appoint new appellate counsel to continue Petitioner's appellate remedies on direct appeal as Ms. Thornton is not admitted to appear before the United States Supreme Court and advised Magistrate Reynolds that she sought to withdraw from further representation. Undersigned counsel is admitted to the Supreme Court effective April 22, 1991. On November 16, 2017, the Honorable Mollee Westfall, presiding Judge of the 371st District Court of Tarrant County, Texas (the trial court) formally appointed undersigned counsel to represent Petitioner to continue his direct appeals including a Petition for Writ of Certiorari. (see App. B, *infra*).

Undersigned counsel at this point had no knowledge of the facts or history of this case and sought to obtain earlier pleadings before the Texas appellate court and a copy of the trial record. In the jurisdiction of the trial court, the appellate record is maintained by the Tarrant County District Clerk and is released to appellate attorneys on loan, much like a library book. Upon contact, the District Clerk did not possess a copy of the appellate record and was under the belief that the appellate record was in the possession of Petitioner's previous attorney. It was later determined that the trial record was in the possession of the State of Texas and had not been returned to the District Clerk. Accordingly, undersigned counsel did not obtain the trial record until December 13, 2017.

Upon examination of the trial record, it is voluminous consisting of at least forty-six (46) volumes. Due to the recent appointment of undersigned counsel, his lack of familiarity with the trial record and legal issues in the case, he cannot accomplish a factual and legal review sufficient to provide effective assistance of counsel and to draft and file an adequate Petition for Writ of Certiorari. The delays that have occurred are not attributable to Petitioner who is under a sentence of death.

PRAYER

WHEREFORE, PREMISES CONSIDERED, PETITIONER prays that the time to file a Petition for a Writ of Certiorari in this matter be extended to and including March 8, 2018.

Respectfully submitted,

WES BALL
State Bar No. 01643100
4025 Woodland Park Blvd., Suite 100
Arlington, Texas 76013
Email: Wes@ballhase.com
Telephone: (817)860-5000
Fax No.: (817)860-6645

ATTORNEY FOR PETITIONER

CERTIFICATE OF CONFERENCE

On the 18th day of December, 2017, Malinda Davis, assistant to Petitioner's counsel contacted Debra Windsor, Chief of Post-Conviction, of the Tarrant County District Attorney's Office regarding the foregoing and has been advised that the state does not oppose this application.

Wes Ball

WES BALL
Attorney for Petitioner

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

CEDRIC ALLEN RICKS
Petitioner,

v.

THE STATE OF TEXAS
Respondent

(DEATH PENALTY CASE)

APPENDIX A

IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. AP-77,040

CEDRIC ALLEN RICKS, Appellant

v.

THE STATE OF TEXAS

ON DIRECT APPEAL
FROM CAUSE NO. 1361004R IN THE 371ST DISTRICT COURT
TARRANT COUNTY

RICHARDSON, J., delivered the opinion of the Court in which KELLER, P.J., and KEASLER, HERVEY, YEARY, NEWELL, KEEL, and WALKER, JJ. joined. ALCALA, J. concurred in the result.

OPINION

In May 2014, a jury convicted Appellant of capital murder for the May 1, 2013 murders of Anthony Figueroa and Roxann Sanchez during the same criminal transaction.[1] Pursuant to the jury's answers to the special issues set forth in Texas Code of Criminal Procedure Article 37.071, sections 2(b) and 2(e), the trial judge sentenced Appellant to

[1] *See* TEX. PENAL CODE § 19.03(a)(7)(A).

death.[2] Direct appeal to this Court is automatic.[3] Appellant raised twenty points of error. After reviewing Appellant's points of error, we find them to be without merit. Consequently, we affirm the trial court's judgment and sentence of death.

BACKGROUND

The evidence at trial showed that Appellant and Roxann Sanchez lived together at the Colonial Village Apartments in Bedford, Texas. Appellant and Sanchez had a child together, nine-month-old Isaiah. Sanchez's two sons from a previous marriage also lived with them: eight-year-old Anthony Figueroa and twelve-year-old Marcus Figueroa.

Shortly after 7:00 p.m. on May 1, 2013, Sanchez and her three sons arrived home from the grocery store. Sanchez carried Isaiah and some of the groceries upstairs to their third floor apartment, leaving some of the groceries in the car. Anthony, Marcus, and Isaiah went to their bedroom to play while Sanchez cooked dinner.

Between 7:10 and 7:20 p.m., a neighbor heard Appellant yelling expletives and stating something to the effect of, "Don't have me fucking come down here and waste my mother-fucking time on this bullshit." Appellant had stopped yelling once the neighbor passed Appellant and Sanchez on the stairwell. Sanchez, who was carrying two bags of groceries, appeared distraught.

While the boys remained in their bedroom, Appellant and Sanchez began arguing in

---

[2] TEX. CODE CRIM. PROC. art. 37.071 § 2(g). Unless otherwise indicated, all future references to Articles refer to the Code of Criminal Procedure.

[3] TEX. CODE CRIM. PROC. art. 37.071 § 3(h).

the apartment. When the yelling turned into screaming, Anthony and Marcus ran to the living room. Appellant and Sanchez were hitting each other, and Appellant pushed Sanchez to the floor. Anthony and Marcus tried to get between them to break up the fight, but Appellant pushed Marcus down and continued hitting Sanchez with his fists. Appellant then got a knife from a kitchen drawer and stabbed Sanchez multiple times while she tried to protect herself. Marcus ran to his bedroom closet and tried to call the police, but Appellant followed him and pulled the closet door open. Marcus dropped the phone, and in an effort to protect himself, grabbed the knife that Appellant was holding, but the knife cut his hand.

Appellant chased Marcus back into the living room. Anthony was standing next to the couch with blood on his face and asking Marcus to get help. Appellant pushed Marcus to the ground, held his head down, and stabbed him multiple times in the back of his neck. Appellant then pushed Anthony to the ground next to Marcus and Appellant stabbed Anthony while Marcus watched. Appellant stopped stabbing Anthony after Anthony made a "gargling noise." When Marcus tried to get up, Appellant got on top of him and began stabbing him again. Appellant finally stopped stabbing Marcus after Marcus played dead by imitating the gargling noise Anthony had made.

Appellant then put the knife in the kitchen and washed his hands before going to the master bedroom and taking a shower. Appellant made a telephone call, packed his clothes, placed Isaiah in his crib, and eventually left the apartment. Although Marcus was bleeding badly, he remained still because he was afraid that Appellant would stab him again if he got

up. Marcus stayed on the floor until he was confident that Appellant would not return. When Marcus finally got up and looked out the window, his mother's car was gone.

After leaving the apartment, Appellant called his cousin, Tamara Butts, who lived with her parents in Mansfield, Texas. He told Butts that he "did something bad" and asked to speak to her father, Joseph Sanders. Appellant told Sanders that he "messed up" and that he "killed [Sanchez] and the boys." Appellant asked Sanders to get Isaiah from the Bedford apartment. When Appellant spoke with Butts again, he told her that he killed Sanchez, Anthony, and Marcus and that his hands were injured and cut. Appellant refused to tell Butts how he killed them or where he was. He insisted that Butts go to the Bedford apartment to get Isaiah. When Butts urged Appellant to turn himself in, Appellant stated that he would die before he went to jail.

After Appellant hung up, Butts called 911 and then headed with her parents to the Bedford apartment to get Isaiah. As they drove to Bedford, the police called and asked them to go to the police station instead. At the station, Butts and Sanders told the police about their telephone conversations with Appellant. Butts gave the police Appellant's cellular telephone number, and she continued to text Appellant in an attempt to help the officers locate him.

Meanwhile, in response to Butts' 911 call, Bedford Police officers Clayton Baxley, Brian Meaders, Brett Bowen, Noel Scott, and Crowell[4] were dispatched to Appellant's

---

[4] The reporter's record does not include Officer Crowell's first name.

apartment at 8:42 p.m. on a welfare check. Baxley arrived first and heard a baby screaming inside the apartment, but he was instructed over his radio not to enter until a back-up officer arrived at the scene. During this time, Marcus called 911 from inside the apartment and told the operator that his "mom's boyfriend killed [his] mom and [his] other brother," that he stabbed them, and that he "took [Sanchez's] car" and left. The 911 operator relayed this information to Baxley at the scene while she talked to Marcus. Marcus was unable to open the apartment door for Baxley due to the injuries to his hands, but he gave the operator permission for Baxley to open the door. When Baxley opened the door, he found Marcus covered in blood from head to toe. Baxley called to Marcus to exit the apartment. When Marcus came through the door, Baxley saw that the back of Marcus's head, neck, and shoulders were severely lacerated and that he was bleeding profusely. Marcus was unable to sit down because he was in shock.

When Meaders arrived at the scene, he and Baxley entered the apartment to make a quick sweep for additional victims or suspects and to locate the baby. There was blood on the linoleum tile just inside the doorway. Sanchez's and Anthony's bodies were lying on the floor in copious amounts of blood. The officers found Isaiah crying in a crib in the back bedroom. Having determined the apartment was safe, they left Isaiah there because he appeared uninjured and they were more concerned about getting medical attention for Marcus.

Meaders and Baxley cared for Marcus until the paramedics and other officers arrived.

Due to the severity of Marcus's injuries, he was flown by helicopter to Cook Children's Medical Center. He later recovered physically from his injuries. Isaiah was also taken to Cook Children's Medical Center as a precautionary measure, but was found to be unharmed.

Autopsies were conducted on Sanchez and Anthony. Sanchez had suffered an instantly fatal stab wound to her neck that transected her upper cervical spinal column at the brain stem, and a potentially fatal stab wound to her neck that transected her right carotid artery. She had suffered multiple other stab wounds and defensive wounds, and there was evidence of blunt force injuries and manual strangulation. Her cause of death was "stab wounds of the neck, blunt force injuries of the head, and asphyxia as a combination." Anthony had suffered several potentially fatal stab wounds: a head wound penetrated Anthony's skull into the temporal lobe of his brain; a neck wound injured his external jugular vein and part of his carotid artery, and penetrated his larynx; and a second head wound penetrated the left side of his nose down through the cartilage of his septum into the oral cavity toward the base of his tongue and the back of his throat. Anthony had suffered numerous other non-fatal stab wounds and various contusions. His cause of death was "[s]tab wound[s] to the head and neck."

MOTION TO SUPPRESS EVIDENCE

In Appellant's first through fourth points of error, he contends that the trial court erred in denying his motion to suppress all evidence seized by law enforcement subsequent to his

warrantless detention and arrest and pursuant to the warrantless search of his apartment in violation of the Fourth and Fourteenth Amendments to the United States Constitution; Article I, section 9 of the Texas Constitution; and Articles 1.06, 18.02, and 38.23 of the Texas Code of Criminal Procedure. In points of error five through seven, Appellant argues that the trial court erred in denying his motion to suppress all evidence seized by law enforcement because he was denied his right to counsel in violation of the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution; Article I, section 10 of the Texas Constitution; Articles 1.05, 15.17, and 38.23 of the Texas Code of Criminal Procedure; and Oklahoma statutes.

Factual Background

The trial court held a hearing on Appellant's pre-trial motion to suppress evidence. The evidence showed that Bedford police officers were dispatched to the apartment at 8:42 p.m. on May 1, 2013, in response to Butts' 911 call reporting that Appellant claimed to have killed Sanchez and two of her sons. Bedford police officers were familiar with the couple due to a November 12, 2012 assault complaint, and they were aware that the couple lived at the apartment and had a child together. Also, following Butts' call, Marcus called 911 from inside the apartment and told the dispatcher that two people in the apartment were dead and that his little brother was crying. Marcus identified Appellant as the perpetrator, and he said that he believed that Appellant had left. He also stated that his mother's car was missing.

When Officer Baxley arrived at the scene, he was instructed not to enter the apartment

alone, but to call Marcus to the doorway. When Officer Meaders arrived, Baxley was standing on the apartment landing with Marcus who was covered in blood. Officers Bowen, Crowell, and Scott were also dispatched to the scene. The officers could hear Isaiah crying inside. Bowen, Crowell, and Scott entered the apartment to perform a protective sweep to look for suspects and victims, and to make sure that the area was safe.[5] Scott testified that they saw in plain view two bodies on the floor, blood on the walls, and a bloody knife in the kitchen sink. They also found Isaiah in a crib in the master bedroom.

When emergency medical personnel arrived to check the status of Sanchez and Anthony, officers remained in the apartment in order to preserve any evidence that might be in plain view. After the emergency medical personnel left at approximately 9:00 p.m., an officer secured the apartment until members of the Criminal Investigation Division and the Medical Examiners' Office arrived.

Bedford Police Detective Joey Gauger and Crime Scene Technician Brittany Grice arrived at the crime scene at 11:18 p.m. The officer who had secured the apartment informed them of the items of evidence the responding officers had seen in plain view during their protective sweep of the apartment. The pair entered the apartment and photographed and videotaped the scene. After the Medical Examiner's team arrived, Gauger and Grice collected the items that the responding officers had observed, including the knife in the

---

[5] There are discrepancies between the trial-on-the-merits record and the hearing record pertaining to who entered the apartment for the protective sweep as the same officers did not testify at both. Which particular officers entered during the initial protective sweep has no bearing on the merits of the suppression issue.

kitchen sink. They also took swabs of the blood found throughout the apartment. A member of the Medical Examiners' team informed Gauger that he could see a knife that appeared to have blood on it in an open kitchen drawer. Grice documented and collected the bloody knife. Gauger testified that he and Grice collected the following evidence in the master bedroom that was not observed in plain view: bandage wrappers from under a bed cover; and a wallet, a photograph, and paperwork from inside the nightstand. Some of the paperwork had Appellant's name on it. Gauger, Grice, and the Medical Examiner's team left the apartment at 4:38 a.m. A search warrant for the apartment was issued at 10:13 a.m. that same morning.

Meanwhile, Butts and Sanders (Appellant's cousin and uncle) arrived at the Bedford Police Department where they provided information implicating Appellant in the murders and assisted in locating him. Butts told police that Appellant had called her that evening and told her that he had killed Sanchez and her sons, and that he would die before turning himself in. Based on the information that Appellant was driving Sanchez's 2011 Nissan Altima without permission, Detective Joey Gauger input into NCIC[6] and TCIC[7] that the vehicle was stolen. Using Appellant's cellular phone number provided by his family, Gauger and a Sprint employee "pinged" Appellant's phone and determined that he was in Ardmore, Oklahoma, heading north on I-35. Gauger believed that Appellant was fleeing the scene, so he asked

---

[6] National Crime Information Center.

[7] Texas Crime Information Center.

the Bedford dispatcher to contact the Ardmore authorities to assist in locating Appellant.

At approximately 10:30 p.m., Oklahoma State Troopers Tracy Laxton and Heath Green were at a gas station off of I-35 when they received a broadcast that Appellant, who was wanted for a stabbing in Bedford, Texas, was driving north on I-35 in a silver or gray Nissan Altima with a specific license plate number. Laxton and Green quickly located the vehicle and confirmed with local dispatch that the Bedford Police Department wanted them to stop the car. Upon receiving an affirmative response, the troopers initiated a traffic stop. Appellant immediately pulled over. Neither trooper observed Appellant commit any traffic violation. The name that Appellant gave the troopers matched the name in the original broadcast, so they placed Appellant in custody and put him in Green's patrol car. After confirming that the Bedford authorities wanted them to preserve the car for evidence, Oklahoma authorities called a wrecker to tow the car. Appellant was transported to the Garvin County Detention Center in Oklahoma. At midnight, a Bedford municipal judge signed arrest warrants for Appellant for the murders of Sanchez and Anthony and for the attempted murder of Marcus.

Laxton confirmed during the hearing that it is a felony in Oklahoma to stab someone or to drive a stolen car. Laxton testified that, as an Oklahoma police officer, he is authorized to make a warrantless arrest of someone who has committed a felony even if it is not committed in his presence. He testified that an Oklahoma officer may detain someone if there is reason to believe he committed a felony. He further testified that an officer may rely

on information supplied by other officers in forming the basis of reasonable grounds to believe a law has been violated.

Bedford Police Detectives William Mack and Tony Shelley arrived at the Garvin County Detention Center at 3:06 a.m. on May 2, 2013, three hours after the Texas arrest warrants issued. The detectives photographed Appellant and his belongings and collected his clothing. Laxton then transported Appellant to a local hospital because his hands were badly cut and needed care.

At 8:16 a.m., Mack and Shelley met with Appellant in a Garvin County Sheriff's Department audio/video-equipped interview room. Appellant almost immediately invoked his right to counsel, so the detectives concluded the interview after they advised him of his *Miranda*[8] rights. Later that same day, in two separate court appearances in an Oklahoma district court before Judge Trisha Misak, Appellant refused to waive extradition to Texas and was arraigned on an information filed by the Garvin County District Attorney's Office charging Appellant with being a fugitive from justice. There is no evidence in the record that Appellant requested counsel on the Oklahoma charge.[9] Appellant was then placed, per his own request, in general population at the Garvin County Detention Center. At 12:07 p.m. on May 2, an Oklahoma judge signed a search warrant for Sanchez's car. The warrant was

---

[8] *Miranda v. Arizona*, 384 U.S. 436 (1966).

[9] The Oklahoma court's minutes reflect that Appellant was to appear on May 24, 2013, "with proof of retained counsel; or with a completed 'Application for Appointed Counsel' file stamped by the Court Clerk."

executed at 2:40 p.m. that same day.

At 3:00 p.m., Appellant was transported from the detention center to a local hospital for treatment of injuries he received during a fight with his cellmates.[10] The next morning, on May 3, after Appellant returned to the detention center, Mack was informed that Appellant wanted to initiate contact and to waive his extradition rights. At 11:42 a.m., Mack and Shelley met with Appellant in an audio/video-equipped interview room to record any statement that Appellant might make. They again read Appellant the *Miranda* warnings and presented him with written warnings. Appellant confirmed that he understood the warnings, he waived them freely and voluntarily without compulsion or persuasion, and he agreed to speak to the detectives. Appellant also confirmed that he had initiated the contact with the detectives and wanted to speak to them. Appellant then asked for a pen and piece of paper so that he could write a list of things he wanted, including: a phone call, a shower and underwear, "isolation," a debit card, and an "[a]ttorney present when I do my interview in Texas." He also wrote: "I, Cedric Allen Ricks, will tell the truth with my attorney present and maybe strike a plea and see what happens from there." Appellant then proceeded to speak with the detectives. Appellant told the detectives that he would not disclose certain information until an was attorney present. Appellant never requested to terminate the interview.

At 2:00 p.m., Appellant returned to court and waived extradition after the judge

---

[10] Mack testified that a cellmate reported that the fight started after Appellant informed his cellmates that he had killed his girlfriend and her child.

advised Appellant of his rights, and he confirmed that the waiver was his free and voluntary decision. Mack and Shelley took custody of Appellant at 2:41 p.m. and transported him back to Texas.

Sanchez's vehicle was also returned to Texas and stored at the Bedford Police Department. On June 10, 2013, a search warrant was signed by a Tarrant County magistrate to retrieve evidentiary items from Sanchez's vehicle that had not been collected when Oklahoma authorities processed the car under the Oklahoma warrant.

Following the hearing, the trial court granted the motion to suppress as to the photograph and papers from the nightstand and as to the bandage wrappers collected from under the comforter. As to all other evidence, the trial court denied the motion. The trial court did not make written findings.[11]

Standard of Review

When, as in this case, the trial court has not issued written findings of fact, we assume that "the trial court implicitly resolved all issues of historical fact and witness credibility in the light most favorable to its ultimate ruling."[12] We give "almost total deference" to those implied findings of fact and credibility determinations.[13] We then review *de novo* the trial court's application of the law to those facts to determine whether the trial court correctly

---

[11] On a motion to suppress evidence, a trial court must state its findings of fact and conclusions of law upon the losing party's request. *State v. Cullen*, 195 S.W.3d 696, 699 (Tex. Crim. App. 2006). However, neither the State nor Appellant made any such request.

[12] *State v. Saenz*, 411 S.W.3d 488, 495 n.4 (Tex. Crim. App. 2013).

[13] *State v. Mazuca*, 375 S.W.3d 294, 307 (Tex. Crim. App. 2012).

assessed the legal significance of the facts it found.[14] The trial court's ruling will be upheld if it is correct under any theory of the law applicable to the case.[15]

Warrantless Arrest

In his first point of error, Appellant argues that his warrantless detention and arrest violated the Fourth and Fourteenth Amendments to the United States Constitution because the arresting officers lacked reasonable suspicion and probable cause to believe that he had committed any type of crime in any jurisdiction. Therefore, he contends that the trial court erred by failing to suppress evidence seized *subsequent to* his warrantless detention and arrest.

Appellant does not specify what evidence he believes should have been suppressed, but we will assume that he is referring to the evidence seized from the Bedford apartment, the evidence seized from Sanchez's car, Appellant's recorded interview made in Oklahoma, any items Texas officers took from Appellant's person, and the photographs taken at the Garvin County Detention Center. Without deciding whether Appellant's arrest violated the Fourth Amendment, we hold that the trial court did not err in denying Appellant's motion to suppress evidence seized from the apartment and the car, or his recorded interview, based upon a warrantless arrest.

The items from the Bedford apartment were seized after being discovered in plain

---

[14] *Id.*

[15] *Elizondo v. State*, 382 S.W.3d 389, 393-94 (Tex. Crim. App. 2012).

view during the responding officers' emergency entry and not as a result of Appellant's warrantless arrest in Oklahoma.[16] Regarding the items seized from Sanchez's car, Appellant fails to demonstrate that he has standing to contest the search in light of the unchallenged evidence that he had no ownership interest in the vehicle and that he took it without permission when he fled after murdering the vehicle's owner.[17] Finally, Appellant's recorded interview was not offered into evidence during either phase of the trial. Therefore, he could not have been harmed by it. When objectionable evidence is not offered at trial, it is as if the objection has been sustained because the objecting party receives all the relief sought—the exclusion of that evidence. Therefore, we review only the propriety of the admission of the evidence collected from Appellant and the photographs of Appellant. The answer to that issue depends on whether reasonable suspicion supported Appellant's warrantless detention.

"Under the Fourth Amendment, a warrantless detention that amounts to less than a full-blown custodial arrest must be justified by at least reasonable suspicion." A police officer has reasonable suspicion to detain if he has specific, articulable facts which, combined with rational inferences from those facts, would lead the officer to reasonably

---

[16] *See Wehrenberg v. State*, 416 S.W.3d 458, 468 (Tex. Crim. App. 2013) (holding that evidence is obtained in violation of the law only if there is some causal connection between the illegal conduct and the acquisition of the evidence); *see also Gonzales v. State*, 67 S.W.3d 910, 912 (Tex. Crim. App. 2002) (same).

[17] *See Walbey v. State*, 926 S.W.2d 307, 312 (Tex. Crim. App. 1996) (finding that an "appellant has no standing to contest seizure of items from a stolen vehicle"); *Hughes v. State*, 897 S.W.2d 285, 305 (Tex. Crim. App. 1994) (holding any expectation of privacy defendant might claim in a stolen vehicle is "not one society is prepared to recognize as 'reasonable'").

conclude that the person detained is, has been, or will be engaged in criminal activity.[18] "Reasonableness" under the Fourth Amendment is a fact-specific inquiry measured in objective terms by examining the totality of the circumstances.[19]

The detaining officer does not need to personally be aware of every fact that objectively establishes reasonable suspicion to detain for a detention.[20] It is "the cumulative information known to the cooperating officers at the time of the stop" that may be considered in making the reasonable suspicion determination.[21] When one law enforcement officer directs another officer to do something, the court must look at the first officer's knowledge in determining whether the second officer's actions were proper.[22] A police dispatcher is ordinarily regarded as a "cooperating officer" for purposes of making a reasonable suspicion determination.[23]

Oklahoma State Troopers Laxton and Green stopped and ultimately arrested Appellant based solely on the request of the Bedford Police Department as communicated to them by the Ardmore police dispatch and Bedford officers. Appellant does not contend that the

---

[18] *Id.*

[19] *Kothe v. State*, 152 S.W.3d 54, 63 (Tex. Crim. App. 2004).

[20] *Arguellez v. State*, 409 S.W.3d 657, 663 (Tex. Crim. App. 2013); *Derichsweiler v. State*, 348 S.W.3d 906, 914 (Tex. Crim. App. 2011).

[21] *Arguellez*, 409 S.W.3d at 663 (quoting *Derichsweiler*, 348 S.W.3d at 914).

[22] *See United States v. Hensley*, 469 U.S. 221, 233 (1985) (holding that evidence recovered in the course of a stop made in reliance on an official bulletin is admissible if the police department that issued the bulletin possessed reasonable suspicion justifying the stop).

[23] *Arguellez*, 409 S.W.3d at 662; *Derichsweiler*, 348 S.W.3d at 914.

Bedford officers lacked reasonable suspicion or probable cause.

The totality of the circumstances, including the cumulative information known to the cooperating officers collectively at the time of the stop, was that: (1) Appellant was witnessed stabbing Sanchez, Anthony, and Marcus; (2) Sanchez and Anthony were dead; (3) Appellant stole Sanchez's vehicle; (4) authorities confirmed the make and model of Sanchez's car and its specific license plate number; (5) Appellant called his relatives and confessed to the killing; and (6) Appellant was fleeing from police and was heading north through Oklahoma.

Laxton and Green were entitled to rely on the collective knowledge of the Bedford Police Department's officers when acting on the department's request, even if they were not personally privy to the facts giving rise to the department's reasonable suspicion.[24]

The cumulative knowledge of all officers involved also amounted to probable cause for the Oklahoma troopers to stop and arrest Appellant without a warrant.[25] Article 14.04 authorizes a warrantless arrest "[w]here it is shown by satisfactory proof to a peace officer, upon the representation of a credible person, that a felony has been committed, and that the

---

[24] *See Hensley*, 469 U.S. at 235 (holding that an officer could rely solely on a wanted poster from a neighboring state to make a stop); *Derichsweiler*, 348 S.W.3d at 914 (holding that the detaining officer need not be personally aware of every fact supporting reasonable suspicion to detain).

[25] *See Woodward v. State*, 668 S.W.2d 337, 344 (Tex. Crim. App. 1982) (holding that the sum of information known to cooperating agencies or officers at the time of the arrest should be considered in determining probable cause).

offender is about to escape, so that there is no time to procure a warrant."[26] The Bedford Police Department had satisfactory proof from credible sources that Appellant had murdered Sanchez and Anthony, had attempted to murder Marcus, had stolen Sanchez's car, and was fleeing in the stolen car. The car was entered into the NCIC and TCIC databases as stolen. The Bedford officers determined that Appellant was traveling north on I-35 in Oklahoma. Appellant had also told family members that he would die before he would turn himself in to the authorities. This information established probable cause that Appellant had committed a felony and was attempting to escape, leaving the authorities with no time to procure a warrant.[27]

Because Appellant's warrantless detention and arrest did not violate the Fourth Amendment, the trial court did not err in overruling Appellant's motion to suppress the complained-of evidence based on those grounds.[28] Point of error one is overruled.

---

[26] TEX. CODE CRIM. PROC. art. 14.04. Because Appellant offers no evidence regarding Oklahoma's laws pertaining to warrantless arrests, they are presumed to be the same as the laws of Texas. *Crane v. State*, 786 S.W.2d 338, 347, 347 n.1 (Tex. Crim. App. 1990). Laxton's testimony at the hearing also leads us to believe that Oklahoma's laws are similar to Texas laws. *See Satterlee v. State*, 549 P.2d 104, 109 (Okla. Crim. App. 1976) ("If a peace officer arrests a person without a warrant[,] the arrest is not unlawful if the officer, upon his own knowledge or upon facts communicated to him by others, has reasonable cause to believe the person arrested has committed a felony. . . . The test is whether, at the moment the arrest was made, the officers had probable cause to make it–whether at that moment the fact and circumstances within their knowledge and of which they had reasonably trustworthy information was sufficient to warrant a prudent man in believing that the petitioner (arrestee) had committed or was committing an offense." (internal quotations omitted)).

[27] *See Walbey*, 926 S.W.2d at 312 (holding that "when a vehicle is stolen and the owner is a murder victim, officers have probable cause to arrest the person in possession of the vehicle").

[28] The record shows that the Texas arrest warrants for Appellant had issued by the time

(continued...)

In his second point of error, Appellant contends that the trial court erred in denying his motion to suppress all evidence seized by law enforcement subsequent to his warrantless detention and arrest in violation of Article I, section 9 of the Texas Constitution and Articles 1.06, 18.02, and 38.23 of the Texas Code of Criminal Procedure. Appellant argues that Article I, section 9 of the Texas Constitution provides him with greater individual protections than the Fourth Amendment. However, Appellant fails to explain how the protections under the federal and state constitutions differ. Therefore, we shall not address Appellant's contention regarding the Texas Constitution.[29] Further, Appellant provides no argument or authorities to support his contention that his rights were violated under Articles 1.06, 18.02, and 38.23. We will not construct Appellant's arguments for him.[30] Point of error two is overruled.

Warrantless Search

In his third and fourth points of error, Appellant argues that all evidence seized

---

(...continued)
Bedford Detectives Mack and Shelley collected his personal items and took photographs. However, because Appellant's warrantless detention and arrest did not violate the Fourth Amendment, we have no need to address whether there was a causal connection between the warrantless detention and arrest in Oklahoma and the issuance of the Texas arrest warrants.

[29] *See Shuffield v. State*, 189 S.W.3d 782, 788 (Tex. Crim. App. 2006) (holding that consideration of a point of error under the Texas Constitution was forfeited when Appellant provided argument and authority only under the federal Constitution); *Johnson v. State*, 853 S.W.2d 527, 533 (Tex. Crim. App. 1992) (declining to address a claimed violation of state constitutional rights because the Appellant made no distinction between the federal and state constitutions).

[30] *See* TEX. R. APP. P. 38.1(h); *Lucio v. State*, 351 S.W.3d 878, 896-97 (Tex. Crim. App. 2011); *Busby v. State*, 253 S.W.3d 661, 673 (Tex. Crim. App. 2008).

subsequent to the warrantless search of his apartment should have been suppressed because the search violated the Fourth and Fourteenth Amendments to the United States Constitution; Article I, section 9 of the Texas Constitution; and Articles 1.06, 18.02, and 38.23 of the Texas Code of Criminal Procedure. He contends that, once the initial responding officers completed their protective sweep[31] of the apartment, no other officers were permitted to enter without a warrant and collect evidence even if that evidence had been seen in plain view by the initial officers.

Appellant has again failed to provide any argument or authorities pertaining to the Texas Constitution or Articles 1.06 and 18.02. We will not make Appellant's arguments for him and decline to address those contentions.[32]

The Fourth Amendment protects against unreasonable searches and seizures by government officials. Article 38.23 bars the admission of evidence obtained in violation of the Fourth Amendment. A search of a residence without a judicially-authorized warrant is

---

[31] Appellant also argues that the officers' "protective sweep" was not authorized because it was not conducted incident to an arrest as defined in *Maryland v. Buie*, 494 U.S. 325, 327 (1990). In that case the United States Supreme Court defined "protective sweep" as a "quick and limited search of [a] premises, incident to an arrest and conducted to protect the safety of police officers [and] others." *Id.* However, an arrest is not a necessary precondition to a lawful protective sweep. *United States v. Miller*, 430 F.3d 93, 100 (2nd Cir. 2005). "[P]olice who have lawfully entered a residence possess the same right to conduct a protective sweep whether an arrest warrant, a search warrant, or the existence of exigent circumstances prompts their entry." *United States v. Martins*, 413 F.3d 139, 150 (1st Cir. 2005); *see also United States v. Gould*, 364 F.3d 578, 584–87 (5th Cir. 2004) (en banc) (stating that a protective sweep may be justified so long as police did not enter illegally). Although federal appellate opinions are not binding on the Court, we find them persuasive in this case.

[32] *See* TEX. R. APP. P. 38.1(h); *Johnson*, 853 S.W.2d at 533; *Lucio*, 351 S.W.3d at 896–97.

presumptively unreasonable unless it falls within a recognized exception to the warrant requirement, such as exigent circumstances.[33] The State bears the burden to prove, through a two-step process, that exigent circumstances existed.[34] First, the State must prove that the police had probable cause to enter or search a specific location.[35] Second, the State must show that the exigent circumstance required the police to make an immediate warrantless entry to a particular place.[36]

Exigent circumstances justify a warrantless entry and search when police officers reasonably believe that a person within is in need of aid.[37] The United States Supreme Court has held:

> We do not question the right of the police to respond to emergency situations. Numerous state and federal cases have recognized that the Fourth Amendment does not bar police officers from making warrantless entries and searches when they reasonably believe that a person within is in need of immediate aid. Similarly, when the police come upon a scene of a homicide they may make a prompt warrantless search of the area to see if there are other victims or if a killer is still on the premises. "The need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency." And the police may seize any evidence that is in

---

[33] *Gutierrez v. State*, 221 S.W.3d 680, 685 (Tex. Crim. App. 2007).

[34] *Id.*

[35] *Id.*

[36] *Id.*

[37] *Mincey v. Arizona*, 437 U.S. 385, 392 (1978); *Laney v. State*, 117 S.W.3d 854, 861 (Tex. Crim. App. 2003); *see also Gutierrez*, 221 S.W.3d at 685 (stating that one type of exigent circumstance that justifies a warrantless intrusion is when officers enter to provide assistance to persons the officers reasonably believe are in need of assistance).

plain view during the course of their legitimate emergency activities.[38]

When assessing whether exigent circumstances justified a warrantless search, this Court applies an objective standard based on the officers' conduct and the facts and circumstances known to the officers at the time of the search.[39] The State need only show that the facts and circumstances surrounding the entry were such that the officers reasonably believed that an emergency existed making search warrant acquisition impracticable.[40] Any such search must be "strictly circumscribed by the exigencies which justify its initiation."[41]

Officers may seize evidence in plain view during the course of their legitimate emergency activities.[42] The seizure of an object in plain view is lawful if three requirements are met.[43] First, officers must lawfully be where the object can be "plainly viewed."[44] Second, the "incriminating character" of the object in plain view must be "immediately

---

[38] *Mincey*, 437 U.S. at 392–93 (citations and footnotes omitted).

[39] *Laney,* 117 S.W.3d at 862.

[40] *Brimage v. State*, 918 S.W.2d 466, 482 (Tex. Crim. App. 1994).

[41] *Shepherd v. State*, 273 S.W.3d 681, 684 (Tex. Crim. App. 2008) (quoting *Mincey*, 437 U.S. at 393).

[42] *Mincey*, 437 U.S. at 393; *Laney*, 117 S.W.3d at 862.

[43] *Keehn v. State*, 279 S.W.3d 330, 334 (Tex. Crim. App. 2009).

[44] *Id.*

apparent."[45] Third, officers must have the right to access the object.[46]

Exigent circumstances justified the warrantless entry here. The record shows that the responding officers who arrived at the scene found Marcus covered in blood, in shock, and in need of immediate medical assistance. They also found two victims lying on the floor, and they heard a baby crying somewhere in the back of the apartment. Although Marcus believed that Appellant had left the premises, the officers were still entitled to verify that no suspects were present and to ensure that the area was safe. The facts and circumstances justified the officers' warrantless entry into the apartment. While checking the apartment, the officers saw, in plain view, blood on the walls and floors, bloody clothing, two homicide victims, and blood-covered knives in the kitchen. The incriminating character of these items was immediately apparent to the officers. Therefore, the officers were permitted to seize any evidence they discovered in plain view during the course of their legitimate emergency activities.[47]

Appellant argues, however, that the exigencies that justified the initial warrantless search ended prior to Gauger's and Grice's entry and search of the apartment. Thus, the question before us is whether a subsequent search that is no more intrusive or expansive than

---

[45] *Id.*

[46] *Id.*

[47] *Mincey*, 437 U.S. at 393; *Laney*, 117 S.W.3d at 862.

the initial search is unreasonable merely because the exigencies have ceased to exist.[48] We hold that it is not.

Although this Court has not directly addressed the issue, the United States Supreme Court has held:

> [W]hen a police officer has [lawfully] observed an object in "plain view," the owner's remaining interests in the object are merely those of possession and ownership. Likewise, . . . requiring police to obtain a warrant once they have [lawfully] obtained a first-hand perception of contraband, stolen property, or incriminating evidence generally would be a "needless inconvenience," that might involve danger to the police and public. We have said previously that "the permissibility of a particular law enforcement practice is judged by balancing its intrusion on . . . . Fourth Amendment interests against its promotion of legitimate governmental interests."[49]

In addition, the right to be present is not necessarily limited to just the officer or officers who actually dealt with the exigency that permitted the initial entry, but may extend to officers who have a different function from the original entrants.

Further, several Texas courts of appeals have held similarly and we find their reasoning persuasive. "[O]nce the privacy of a residence has lawfully been invaded during an exigency, it makes no sense to require a warrant for other officers to enter and complete what officers on the scene could have properly done."[50]

---

[48] We note that the trial court granted Appellant's motion to suppress pertaining to items that had not been in plain view, but were discovered only after Gauger and Grice engaged in an intrusive search for items in a bedroom night stand and under the bedcovers.

[49] *Texas v. Brown*, 460 U.S. 730, 739 (1983) (citations omitted).

[50] *Johnson v. State*, 161 S.W.3d 176, 183 (Tex. App.—Texarkana 2005), *aff'd on other grounds*, 226 S.W.3d 439, 445 (Tex. Crim. App. 2007); *see also Rothstein v. State*, 267 S.W.3d

(continued...)

Because the subsequent search by Grice and Gauger merely documented what had already been observed in plain view during the initial, reasonable search, we conclude that the trial court properly overruled Appellant's motion to suppress these items. Points of error three and four are overruled.

Denial of Right to Counsel

In his fifth and sixth points of error, Appellant contends that the trial court erred in denying his motion to suppress all evidence seized because he was denied his right to counsel in violation of the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution; Article I, section 10 of the Texas Constitution; and Articles 1.05, 15.17, and 38.23. In his seventh point of error, he argues that the trial court erred in denying the motion because he was denied his right to counsel in violation of Oklahoma statutes.

Appellant does not allege that he was not timely arraigned or advised of his right to counsel. Rather, he appears to complain that his May 3, 2013, videotaped interview with Mack and Shelley in Oklahoma should have been suppressed because Judge Misak did not timely appoint counsel for him at his arraignment on the fugitive-from-justice charge filed by the Garvin County District Attorney's Office.[51]

(...continued)
366, 375–76 (Tex. App.—Houston [14th Dist.] 2008, pet. ref'd) (holding that the subsequent entry to view contraband that had already been seen in plain view during an initial search was "incidental to and a valid continuation of the initial exigent circumstances search"); *Shoaf v. State*, 706 S.W.2d 170, 175 (Tex. App.—Fort Worth 1986, pet. ref'd) (concluding that picking up, tagging, and preserving items was an administrative duty incidental to the original entry).

[51] Appellant also alleges that his waiver of extradition was coerced by the Garvin County
(continued...)

Appellant's argument has no merit. First, there is no evidence in the record that Appellant requested counsel on his fugitive-from-justice case. Second, even if Judge Misak were constitutionally or statutorily required to appoint counsel at the arraignment, the Sixth Amendment right to counsel is offense-specific so it would not apply to the capital murder charges.[52] Third, because his statement was never offered into evidence, Appellant received the relief he sought.[53]

To the extent Appellant argues that the denial of counsel in Oklahoma should have been grounds to suppress the evidence seized from the Bedford apartment or Sanchez's vehicle, his arguments also have no merit. The items from the Bedford apartment were seized after being seen in plain view during the responding officers' emergency entry and were not seized as a result of Appellant's alleged denial of counsel in Oklahoma. Regarding

---

(...continued)
Sheriff when the Sheriff deliberately put him into the general population to be beaten by other inmates. The record does not support this allegation. Jailor Arellano-Cardosa testified that Appellant was the one who specifically requested that he be placed with other inmates. She testified that she placed Appellant in the "tank" which is where she felt he would be the safest, and she warned him not to tell anyone why he was there so that he would remain safe. Appellant fails to explain how this issue relates to his denial of counsel claim. Therefore, this portion of Appellant's argument is inadequately briefed. TEX. R. APP. P. 38.1(h).

[52] *McNeil v. Wisconsin*, 501 U.S. 171, 175 (1991).

[53] *See Galitz*, 617 S.W.2d at 952 n.10 (equating the non-admission of evidence to the sustaining of an objection since the motion to suppress is a "specialized" form of objection).

In the hypothetical alternative, Article 38.22 section 8 states: "[A] statement of an accused made as a result of a custodial interrogation is admissible . . . if: (1) the statement was obtained in another state and was obtained in compliance with the laws of that state or this state . . . ." Here, there are no grounds for suppression even if the May 3 interview was admitted. Appellant initiated contact with Detective Mack for an interview, was properly provided written *Miranda* warnings prior to the interview, and voluntarily waived his rights while being audio/video recorded.

the items seized from Sanchez's car, Appellant does not demonstrate that he has standing to contest the search in light of the unchallenged evidence that he had no ownership interest in the vehicle and took it without permission when he fled after committing the instant crime.[54] Points of error five, six, and seven are overruled.

ADMISSION OF PHOTOGRAPHS

In points of error eight and nine, Appellant contends that the trial court erred in allowing the State to introduce State's Exhibits 225 and 226, autopsy photographs of an exposed portion of Anthony's brain and the interior of his skull. Appellant argues that the photographs' prejudicial effect greatly outweighed any probative value under Texas Rule of Evidence 403. Appellant does not challenge the relevancy of the photographs.

Dr. Tasha Greenberg, Deputy Medical Examiner for the Tarrant County Medical Examiner's Office, conducted Anthony's autopsy. During her testimony, the State sought to introduce photographs taken during the autopsy. Appellant objected to only two photographs as being more prejudicial than probative: State's Exhibit 225—a picture of the puncture wound to Anthony's brain, and State's Exhibit 226—a picture of the inside of Anthony's skull demonstrating the location and angle of the puncture wound. The State replied that the photographs were to "clarify observations and conclusions about the injuries, because they will show how they were received." The trial court agreed and overruled

---

[54] *See Walbey*, 926 S.W.2d at 312 (finding sufficient probable cause for both murder and auto theft against an accused found in possession of a vehicle reported to be stolen from the murder victim); *Hughes*, 897 S.W.2d at 305 (declaring a defendant to have no standing to contest a search because there is no reasonable privacy expectation in a stolen vehicle).

Appellant's objection. The State then said that it had informed defense counsel that, even though the photographs had been admitted into evidence, it did not plan on publishing any of the photographs to the jury.

The admissibility of photographs is within the sound discretion of the trial judge.[55] Generally, if verbal testimony as to a matter depicted in a photograph is admissible, the photograph is also admissible.[56] However, we do not reach whether the trial court abused its discretion in admitting State's Exhibits 225 and 226 because Appellant was not harmed by their admission.

Error in admitting photographs is non-constitutional error that requires reversal only if Appellant's substantial rights were affected.[57] "A substantial right is affected when the error had a substantial and injurious effect or influence in determining the jury's verdict."[58] Substantial rights are not affected if, based on the record as a whole, the reviewing court has a fair assurance that the error did not influence the jury, or influenced the jury only slightly.[59]

Here, the State never displayed or published to the jury any of the autopsy photographs admitted into evidence, including State's Exhibits 225 and 226. Although the jury would have access to the photographs during deliberations, the prosecutor stated during

---

[55] *Gallo v. State*, 239 S.W.3d 757, 762 (Tex. Crim. App. 2007).

[56] *Id.*

[57] TEX. R. APP. P. 44.2(b).

[58] *Coble v. State*, 330 S.W.3d 253, 280 (Tex. Crim. App. 2010).

[59] *Barshaw v. State*, 342 S.W.3d 91, 93 (Tex. Crim. App. 2011).

jury argument that he did not think the jury needed to look at the autopsy photographs "[b]ecause they're horrible." Further, the record contains copious amounts of evidence of Appellant's guilt, including Marcus's graphic testimony and Appellant's admission to family members that he committed the murders. Therefore, we have a fair assurance that the jury's verdict was not affected in a substantial and injurious way by any alleged error in admitting the two autopsy photographs at issue. Points of error eight and nine are overruled.

CHALLENGES TO THE TEXAS DEATH PENALTY

In points of error ten through fourteen, Appellant raises several challenges pertaining to the Texas death penalty scheme. In point of error ten, Appellant asserts that the "10–12" rule is unconstitutional because it creates an impermissible risk of the arbitrary imposition of the death penalty. In point of error eleven, he posits that Article 37.071 of the Texas Code of Criminal Procedure is unconstitutional because it shifts the burden of proof on the mitigation special issue to Appellant. In point of error twelve, he complains that the indictment was constitutionally defective because it did not allege the existence of the statutory special issues and the supporting facts necessary to impose a death sentence. In point of error thirteen, Appellant asserts the application of the Texas death penalty scheme has been arbitrarily imposed in violation of the Eighth and Fourteenth Amendments to the United States Constitution. Finally, in point of error fourteen, Appellant contends that Article 37.071 violates "the jury trial guarantee of the Fourteenth Amendment, as interpreted

in *Apprendi v. New Jersey*,[60] *Ring v. Arizona*,[61] *Blakely v. Washington*,[62] *United States v. Booker*,[63] and *Cunningham v. California*[64] by failing to place upon the State the burden of proving beyond a reasonable doubt a negative answer to the mitigation special issue."

Appellant concedes that we have previously rejected these arguments. We decline to reconsider our holdings in these cases. Points of error ten through fourteen are overruled.

CONFRONTATION CLAUSE AND HEARSAY

In his fifteenth and sixteenth points of error, Appellant argues that his right to confront a witness was violated under the Sixth and Fourteenth Amendments to the United States Constitution and Article I, section 10 of the Texas Constitution, when Sanchez's mother, Diana McGrewe, testified regarding an extraneous offense during the punishment phase of trial. In his seventeenth point of error, Appellant contends that reversible error occurred when McGrewe testified regarding an extraneous offense during the punishment phase in violation of the hearsay rule. All three points of error are based on the same portion of the trial record.

During the punishment phase, McGrewe testified that Appellant had assaulted her daughter, Sanchez, approximately six months prior to the instant offense. After she

---

[60] 530 U.S. 466 (2000).

[61] 536 U.S. 584 (2002).

[62] 542 U.S. 296 (2004).

[63] 543 U.S. 220 (2005).

[64] 549 U.S. 270 (2007).

described Sanchez's injuries and her own attempts to assist her daughter at that time, McGrewe testified, in pertinent part:

> [STATE]: Did [Sanchez] get an emergency protective order?
>
> A. She did.
>
> Q. And what did that emergency protective order do?
>
> A. It kept [Appellant] from coming to [the] apartment or to school where the kids went to school, where I worked, or to our house. He couldn't come around us.
>
> Q. So was there – was there – was that an order issued by a court?
>
> A. Yes.
>
> Q. And was he ordered to stay away from [the] apartment?
>
> A. Yes. He was ordered to stay away from our house, our residence, the school, the boys, –
>
> Q. So he was ordered to stay away –
>
> A. – and her work. Also, he couldn't come to her work.
>
> Q. So he was ordered to stay away from her, from Anthony, from Marcus, and from Isaiah?
>
> A. Yes.
>
> Q. So he was ordered to stay away from [the] apartment?
>
> A. Yes.
>
> Q. And her place of business?
>
> A. Everywhere. Everywhere she went, he could not go.

Q. The kids' school?

A. Yes.

Q. And your house?

A. Yes.

Q. And that was in November of 2012?

A. Yes.

Q. And I guess, eventually [Appellant and Sanchez] got – they got back together; is that right?

A. Yes, because he kept bothering her. He kept talking to her, calling her and telling –

[Defense Counsel]: Excuse me. Excuse me.

I'm going to object to what somebody has told this lady. I understand it's hard, but she's been admonished by the Court. I'd ask that the – first of all, I'd object that it's nonresponsive and it's hearsay and it's confrontation.

THE COURT: Sustained.

[Defense Counsel]: I'd ask the jury to be instructed to disregard.

THE COURT: Jury will disregard the last statement of the witness.

[Defense Counsel]: And I'd respectfully ask for a mistrial.

THE COURT: Denied.

Even if McGrewe's response violated the Confrontation Clause or contained hearsay, the trial court sustained Appellant's objections and instructed the jury to disregard.

Therefore, the only question we consider is whether the trial court erred in denying Appellant's request for mistrial.

A mistrial is appropriate only in "extreme circumstances" for a narrow class of prejudicial and incurable errors.[65] Ordinarily, a prompt instruction to disregard is sufficient to cure error associated with an improper question and answer.[66] On appeal, we generally presume that the jury followed the trial court's instructions.[67] This presumption is refutable, but the Appellant must rebut the presumption by pointing to evidence in the record indicating that the jury failed to follow the trial court's instructions.[68]

Appellant fails to do so here. Therefore, we presume the jury did not consider McGrewe's complained-of testimony in answering the special issues. Points of error fifteen through seventeen are overruled.

In point of error eighteen, Appellant complains that the trial court improperly allowed Cynthia Crowe to testify to statements made by Sanchez regarding the November 2012 extraneous assault offense allegedly committed by Appellant. He contends that this violated his rights under the Confrontation Clause because Sanchez was not present at trial or subject to cross-examination.

---

[65] *Ocon v. State*, 284 S.W.3d 880, 884 (Tex. Crim. App. 2009).

[66] *Ovalle v. State*, 13 S.W.3d 774, 783 (Tex. Crim. App. 2000).

[67] *Thrift v. State*, 176 S.W.3d 221, 224 (Tex. Crim. App. 2005); *Williams v. State*, 937 S.W.2d 479, 490 (Tex. Crim. App. 1996).

[68] *Thrift*, 176 S.W.3d at 224; *Colburn v. State*, 966 S.W.2d 511, 520 (Tex. Crim. App. 1998).

The record shows that Crowe, a registered nurse in the emergency room at Texas Health Harris Methodist HEB in Bedford,[69] testified during the punishment phase of Appellant's trial. Crowe stated that on November 12, 2012, while she was on duty as a triage nurse, she saw a patient who identified herself as Sanchez. As a triage nurse, Crowe's duties were to "ask what brings you to the emergency room today," to take vital signs, to determine how high a priority the patient is, and to determine in what type of room to place the patient. She testified "absolutely" that the purpose of these questions was to elicit information from the patient that would assist in giving a proper medical diagnosis and treatment. She further stated that asking how the patient was injured or became ill was important to the patient's medical diagnosis or treatment.

Crowe testified that she asked Sanchez what brought her to the emergency room. When the State asked what Sanchez's answer was, Appellant requested to take Crowe on voir dire. Following a short voir dire, Appellant objected that Crowe had no independent recollection of Sanchez and that Crowe's testimony would relate Sanchez's inadmissible, testimonial statements in violation of his Sixth Amendment Confrontation Clause rights. The State responded that Sanchez's statements met an exception to the hearsay rule and were non-testimonial. The State further noted that Crowe was testifying from a business record that she created. Appellant argued that hospital employees should be subject to the Confrontation

---

[69] In his brief, Appellant repeatedly refers to Crowe as a "Sexual Assault Nurse Examiner" or "SANE." However, the record shows that she is a Registered Emergency Room Nurse, and she did not testify regarding any specialty in sexual assault examinations or that she conducted such an examination in this case.

Clause. The trial court overruled Appellant's objection, but granted him a running objection.

Crowe then testified as follows, in pertinent part:

[STATE]: Okay. Ms. Crowe, I had asked you: You had asked Ms. Sanchez what brought her to the emergency room that day. What was her response?

A. Strangled last night and head was pounded on the floor.

Q. She said that she was strangled?

A. Uh-huh.

Q. Is that a yes?

A. Yes.

Q. Did she indicate to you who had done that?

A. I think, on the last page, it says, "Patient states boyfriend was arrested this morning, and it happened in Bedford."

Q. Did you ask, during the course of your triage of Ms. Sanchez, whether or not there was domestic violence involved?

A. Yes, I did.

Q. And what was her response?

A. She said yes.

Q. Was she accompanied by anyone that morning?

A. I documented that she was accompanied by a parent.

Q. And based upon her – her statements to you about what brought her to the emergency room, what type of – what type of action did you take with regard to her case?

A. Well, I triaged her, and I categorized her as a trauma, because

she was an injury instead of a sickness. And she reported she lost consciousness, so that was a priority two.

Q. When a patient reports that they lost consciousness, does that make it more serious to you as a triage nurse?

A. It means they need to see the doctor more quickly. So, yes, I guess it does.

* * *

Q. Where did she tell you she was hurting?

A. Head and neck.

Q. And do you, as a triage nurse, ask the patient to categorize their pain in any fashion?

A. Yes. One being minimal pain, ten being most possible pain, how much pain are you in now?

Q. And how did she categorize her pain?

A. I put ten, so she told me ten.

Q. You told us earlier how you asked about the mechanism of injury. Did she tell you what the mechanism of injury was?

A. I put down, "I was choked until I passed out."

Q. So she told you she was choked?

A. Uh-huh.

Q. Is that yes?

A. Yes.

In *Crawford v. Washington*, the United States Supreme Court held that a defendant's right to confrontation under the Sixth Amendment is violated when a witness is permitted to

relate out-of-court "testimonial" hearsay statements unless the declarant is unavailable and the defendant had a prior opportunity to cross-examine the declarant.[70] "It is the testimonial character of the statement that separates it from other hearsay that, while subject to traditional limitations upon hearsay evidence, is not subject to the Confrontation Clause." Only testimonial statements cause the "declarant" to be a "witness" within the meaning of the Confrontation Clause.[71] We review *de novo* the trial court's ruling admitting evidence over a confrontation objection.[72]

Testimonial statements are those "that were made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial."[73] When the primary purpose is something other than criminal investigation, "the Confrontation Clause does not require such statements to be subject to the crucible of cross-examination."[74] In determining if a hearsay statement is "testimonial," the primary focus is on the objective purpose of the interview or interrogation, not on the declarant's expectations.[75] Out-of-court statements made for the primary purpose of medical diagnosis

---

[70] 541 U.S. 36, 59 (2004); *De La Paz v. State*, 273 S.W.3d 671, 680 (Tex. Crim. App. 2008).

[71] *Id.*

[72] *De La Paz*, 273 S.W.3d at 680; *Wall v. State*, 184 S.W.3d 730, 742 (Tex. Crim. App. 2006).

[73] *Burch v. State*, 401 S.W.3d 634, 636 (Tex. Crim. App. 2013).

[74] *Michigan v. Bryant*, 562 U.S. 344, 361 (2011).

[75] *Davis*, 547 U.S. at 822–23; *De La Paz*, 273 S.W.3d at 680.

or treatment are generally considered non-testimonial because they have a primary purpose other than the pursuit of a criminal investigation.[76]

Here, Appellant had no prior opportunity to cross-examine Sanchez. Therefore, the admissibility of her statements to Crowe rests on whether her statements were testimonial in nature. The record shows that Crowe testified that she was the emergency room triage nurse who saw Sanchez on November 12, 2012. Crowe testified that her questions to emergency room patients were designed to elicit information pertinent to providing the proper medical diagnosis and treatment. Sanchez's statements in response to those questions were made for the purpose of, and were pertinent to, her medical diagnosis or treatment.[77] The record does not support Appellant's contention that Crowe's questions constituted "a custodial examination in preparation for possible testimony against Appellant in court."[78]

Sanchez's non-testimonial statements were not subject to the Confrontation Clause.[79] Therefore, the trial court did not err in overruling Appellant's Confrontation Clause objection. Point of error eighteen is overruled.

In point of error nineteen, Appellant contends that his right to confrontation under Article I, section 10 of the Texas Constitution was violated when the trial court allowed

---

[76] *Bryant,* 562 U.S. at 362 n.9; *see also Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 312 n.2 (2009) (stating that medical records created for treatment purposes are not testimonial).

[77] *Melendez-Diaz*, 557 U.S. at 312 n.2.

[78] Appellant's Br., *Ricks v. State*, No. AP-77,030, 2015 WL 5075594, at *115 (Tex. Crim. App. Aug. 4, 2015).

[79] *Melendez-Diaz*, 557 U.S. at 312.

Crowe to testify to statements made by Sanchez regarding the November 2012 assault. As Appellant's trial objection was based solely on his Sixth Amendment right to confrontation, Appellant has not preserved this argument for review.[80] Further, Appellant concedes that the confrontation clauses of the federal and Texas constitutions provide "similar" protections.[81] Point of error nineteen is overruled.

CUMULATIVE ERROR

In point of error twenty, Appellant claims that the previously alleged errors cumulatively harmed him and so his case should be reversed. While a number of errors may be harmful in their cumulative effect, "we have never found that 'non-errors may in their cumulative effect cause error.'"[82] Point of error twenty is overruled.

We affirm the judgment of the trial court.

DELIVERED: October 4, 2017

DO NOT PUBLISH

---

[80] TEX. R. APP. P. 33.1.

[81] *See, e.g.*, *Lagrone v. State*, 942 S.W.2d 602, 613–14 (Tex. Crim. App. 1997) (declining to address state constitutional claim separately when the defendant did not point out any meaningful distinctions between the federal and state confrontation clauses).

[82] *Gamboa v. State*, 296 S.W.3d 574, 585 (Tex. Crim. App. 2009) (citing *Chamberlain v. State*, 998 S.W.2d 230, 238 (Tex. Crim. App. 1999)); *see also Johnson v. State*, 68 S.W.3d 644, 657 (Tex. Crim. App. 2002).

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

CEDRIC ALLEN RICKS
Petitioner,

v.

THE STATE OF TEXAS
Respondent

(DEATH PENALTY CASE)

APPENDIX B

FILED
THOMAS A WILDER, DIST. CLERK
TARRANT COUNTY, TEXAS

NOV 16 2017

TIME 9:25

BY _____ DEPUTY

CAUSE NO. 1361004R

THE STATE OF TEXAS	§	IN THE 371ST
VS.	§	DISTRICT COURT OF
CEDRIC ALLEN RICKS	§	TARRANT COUNTY, TEXAS

Amended

FINDING ON APPOINTMENT OF ATTORNEY

The Court deviates from the public appointment system of rotation and appoints Wes Ball. The court finds that good cause exists for appointing the attorney.

_____ a language barrier exists between the defendant and the former attorney.

_____ the ~~offense~~ charged has increased from the original ~~charge~~ and the former attorney does not meet the qualifications for the ~~increased charge~~.

_____ the defendant has filed notice of appeal and requests counsel other than his trial attorney.

_____ a legal conflict exists between the defendant and his former attorney.

_____ Special knowledge of the law of post-conviction DNA testing is required.

_____ Exigent circumstances require the immediate appointment of an attorney who is present in court.

_____ The complexity of the case against the defendant requires counsel with more experience than currently possessed by former attorney. Defendant approves substitution of counsel.

SO ORDERED on this 16th day of November, 2017

Judge Presiding