No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

BRIAN DALE NIXON,
PETITIONER,

v.

STATE OF TEXAS,
RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE COURT OF CRIMINAL APPEALS OF TEXAS

APPENDIX

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Nixon v. State, 2024 Tex. Crim. App. LEXIS 949

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2024 Tex. Crim. App. LEXIS 949 *

BRIAN DALE **NIXON**, Appellant v. THE STATE OF TEXAS

Notice: PUBLISH

Prior History: **[*1]** On State's Petition for Discretionary Review. From the Fourth Court of Appeals, Medina County.

Nixon v. State, 674 S.W.3d 384, 2023 Tex. App. LEXIS 5611 (Tex. App. San Antonio, July 31, 2023)

Core Terms

courtroom, jurors, jail, inherently prejudicial, courthouse, presumption of innocence, prison, auxiliary, unacceptable risk, court of appeals, county jail, guilt, inside, impermissible, jailhouse, housed, factors, guards, sheriff's department, culpable, inmate, sheriff's office, impartiality, proceedings, facilities, reminding, courts, posted, cases, erode

Case Summary

Appendix A

Overview

Key Legal Holdings

- Holding defendant's criminal trial in a courtroom located in the same building as a county jail and sheriff's department was not inherently prejudicial to the defendant's presumption of innocence.
- A challenged courtroom practice is inherently prejudicial to the presumption of innocence only if jurors must necessarily interpret it as a sign that the defendant is particularly dangerous or culpable.

Material Facts

- Appellant **Brian Nixon** was convicted of capital murder and sentenced to life imprisonment without parole.
- Nixon's jury trial was held in an auxiliary courtroom housed in the same building as the Medina County Jail and Sheriff's Department.
- The building was labeled on the outside as "Medina County Jail" and had signs prohibiting items like cell phones and purses.
- Nixon appeared at trial in civilian clothes without visible restraints.

Controlling Law

- U.S. Constitution, 14th Amendment (right to due process and fair trial).
- Estelle v. Williams, 425 U.S. 501 (1976) (presumption of innocence and "inherent prejudice" analysis).
- Holbrook v. Flynn, 475 U.S. 560 (1986) (courtroom practices and "wider range of inferences" test).

Court Rationale

The Court reasoned that jurors need not have necessarily interpreted the setting of Nixon's trial as a sign that he was culpable or dangerous. Jurors could have drawn other inferences, such as the courtroom being used for security, convenience, or technological reasons. The courtroom itself appeared distinct from the jail area, and Nixon's civilian attire suggested he was not an inmate. The Court distinguished this case from inherently prejudicial practices like compelling a defendant to wear jail clothing, finding the location did not brand Nixon with an "unmistakable mark of guilt" under the standards set by prior Supreme Court cases.

Outcome

Procedural Outcome

The Texas Court of Criminal Appeals reversed the judgment of the court of appeals, which had ordered a new trial for Nixon, and remanded the case for consideration of Nixon's remaining issues on appeal.

LexisNexis® Headnotes

Counsel: For **NIXON**, **BRIAN** DALE, Appellant: Michael C. Gross.

For STATE OF TEXAS, State: Stacey M. Soule.

Judges: YEARY, J., delivered the opinion of the Court in which KELLER, P.J., and HERVEY, RICHARDSON, KEEL, and SLAUGHTER, JJ., joined. NEWELL and MCCLURE, JJ., concurred. WALKER, J., filed a dissenting opinion.

Opinion

YEARY, J., delivered the opinion of the Court in which KELLER, P.J., and HERVEY, RICHARDSON, KEEL, and SLAUGHTER, JJ., joined. NEWELL and MCCLURE, JJ., concurred. WALKER, J., filed a dissenting opinion.

In the early hours of January 21, 2016, Appellant shot and killed Tylene Davis and Debra Echtle at Echtle's residence in Medina County.[1] Appellant was later indicted for capital murder by a grand jury and was put to trial in July of 2021. TEX. PENAL CODE § 19.03(a)(7)(A). Over his objection, Appellant's jury trial was held in an auxiliary courtroom housed in the same building as the Medina County Jail and Sheriff's Department. The jury found Appellant guilty, and he was sentenced to life imprisonment without parole. TEX. PENAL CODE § 12.31(a).[2]

The court of appeals reversed Appellant's conviction. It decided that "the trial court setting in the jail courtroom created **[*2]** an unacceptable risk that the presumption of innocence afforded to [Appellant] was eroded." *Nixon v. State*, 674 S.W.3d 384, 396 (Tex. App.—San Antonio 2023). The State then petitioned this Court to review the court of appeals' decision.

After considering the State's petition, the Court granted 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.[3] We conclude that the location of Appellant's trial was not inherently prejudicial to his presumption of innocence because the jurors need not have interpreted the setting of his trial as a sign that Appellant was either culpable or dangerous. As a result, we reverse the judgment of the court of appeals and remand the cause to that court to consider Appellant's remaining issues on appeal.

I. BACKGROUND

A. Appellant's Motion

Prior to trial, Appellant filed a motion to conduct any individual voir dire and the trial itself in the Medina County Courthouse.[4] In his motion, Appellant argued that holding his trial in a courtroom attached to the county jail would necessarily "undermine[] the presumption of innocence" analogous to forcing Appellant to appear before the jury in shackles. To support that assertion, Appellant relied upon *State v. Jaime*, 168 Wash. 2d 857, 864, 233 P.3d 554, 557 (2010), in which the Supreme Court for the State of Washington decided that "holding a trial in a jailhouse courtroom is inherently prejudicial" because the "setting is not in a courthouse" and "the setting that replaces the courthouse is . . . decidedly not neutral, routine, or commonplace."

At a later evidentiary hearing, Appellant also introduced a series of photographs intended to prove that the auxiliary courtroom was located inside a correctional facility. The photographs were admitted into evidence without objection. They are attached as an appendix to the court of appeals' opinion, and they may be seen there. *Nixon*, 674 S.W.3d at 400-07.

Appellant called as a witness an investigator with the regional public defender's office who took the photos. According to that witness, the building where the auxiliary courtroom is housed is located on the outskirts of the City of Hondo, approximately twelve blocks from the Medina County Courthouse. The photos show that a sign posted above the entrance to the building read "Medina County Jail[.]" 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 **[*5]** 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. In support **[*6]** of its argument, the State called the Sheriff's chief deputy, who testified that the public regularly visits the building in which the auxiliary courtroom is located. He also testified that the facility at times "host[s] meetings [for] Crime Stoppers and other civic organizations." And he noted that other trials had been held in the auxiliary courtroom.

Second, the State argued that, if the trial were held in the Medina County Courthouse, there would be "no good way to keep the jurors from seeing the deputies walk [Appellant] in and out of the building with a deputy at either side of him with shackles on his legs." Addressing similar security concerns, the sheriff's deputy noted "[t]he lack of space" and the difficulty of keeping the jury and Appellant separated in the County Courthouse. He also noted that there was only one men's restroom on the courtroom level of that building.

At the conclusion of the hearing the judge denied Appellant's motion. He expressed essentially three reasons for denying the motion and holding Appellant's trial in the auxiliary courtroom: (1) security issues; (2) the risk of commingling between the jurors and Appellant, especially given the availability of **[*7]** only one men's room on the courtroom floor of the courthouse; and (3) the lack of technology in the courthouse.[5]

B. Trial

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.[6] According to the record, Appellant appeared at voir dire in civilian clothes and without visible restraints.[7] 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.

After swearing in the jury, the trial court judge noted that **[*8]** proceedings would resume the next morning "in the regular courtroom." He added that others would "give[] . . . instructions about where to

come, but it[']s 9:30 tomorrow." The trial court judge did not otherwise comment on the location of the trial, and any other instructions the jurors might have been given about the courtroom's location do not appear in the record. Appellant's trial commenced the following day in the auxiliary courtroom. At the conclusion of a five-day trial, the jury found Appellant guilty of capital murder.

C. Appeal

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.[8] In his fourth point of error Appellant also argued that African Americans were under-represented on the venire, in denial of his Sixth Amendment right to have a fair cross-section of the community on the jury panel.

The court of appeals resolved the case on Appellant's first two issues, deciding that: (1) "the trial court setting in the jail courtroom created an unacceptable risk that the presumption of innocence afforded to **[*9]** [Appellant] was eroded[;]" and (2) conducting the trial in that setting was not justified by an essential state interest. *Nixon*, 674 S.W.3d at 396, 399. While the court of appeals first acknowledged that "a trial setting in a building that houses a courtroom and a correctional facility" will not always erode the presumption of innocence, it concluded 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 [Appellant] [was] too dangerous to transport and must be isolated from society." *Id.* at 396. It further explained that the reasons the trial judge articulated—security, the risk of commingling Appellant and the jury, and lack of technology—failed to "support the furtherance of an essential state interest [sufficient] to justify holding [Appellant's] trial in the Medina County Jail building." *Id.* at 399. Accordingly, the court of appeals reversed Appellant's conviction and remanded the case for a new trial. The State then petitioned this Court for discretionary review of the court of appeals' decision. We granted review.

II. Applicable Law

HN1 The Fourteenth Amendment provides, in relevant part, that "[n]o State **[*10]** shall deprive . . . any person of life, liberty, or property, without due process of law[.]" U.S. CONST. amend. XIV, § 1. 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, 581 (Tex. Crim. App. 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, 503, 96 S. Ct. 1691, 48 L. Ed. 2d 126 (1976).

HN2 To protect the presumption of innocence, the Supreme Court said, "courts must be alert to factors that may undermine the fairness of the fact-finding process" and "carefully guard against the dilution of the principle that guilt is to be established by probative evidence and beyond a reasonable doubt." *Id.* Although trial judges have broad discretion over courtroom practices, the Supreme Court declared that a practice that is challenged as threatening to the "fairness of the fact-finding process" must be subjected to "close judicial scrutiny." *Id.* at 504. In applying this scrutiny, the Supreme Court also explained, courts must "do the best they can to evaluate the likely effects of a particular procedure, based on reason, principle, and common human experience." *Id.*

In *Estelle* ***[*11]*** *v. Williams*, for example, the Supreme Court decided that compelling a defendant to appear before a jury in a jail uniform violated the Fourteenth Amendment because "the constant reminder of the accused's condition implicit in such distinctive, identifiable attire may affect a juror's judgment." *Id.* at 504-05. 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." *Id.*[9] 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." *Id.* at 505.

In contrast, ten years later, in *Holbrook v. Flynn*, 475 U.S. 560, 106 S. Ct. 1340, 89 L. Ed. 2d 525 (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. Justice Thurgood Marshall, writing for the Court, noted that "[t]he chief feature"

distinguishing the presence of uniformed security officers from other potentially troublesome courtroom practices was "the wider range of inferences that a juror might **[*12]** reasonably draw from the officers' presence." *Id.* at 569. The Court explained that, although jurors might have interpreted the presence of the troopers as a sign of Flynn's culpability or dangerousness, they "might just as easily [have] believe[d] that the officers [were] there to guard against disruptions" from outside the courtroom or "to ensure that tense courtroom exchanges d[id] not erupt into violence." *Id.*

In fact, the Supreme Court said in *Flynn*, "it is entirely possible that jurors [did] not infer anything at all from the presence of the guards." *Id.* Accordingly, the Court concluded that the use of the four troopers did not tend to brand that defendant in the jurors' eyes "with an unmistakable mark of guilt." *Id.* at 571 (quoting *Williams*, 425 U.S. at 518 (Brennan, J., dissenting)).10 The Court also explained that, ***HN3*** in assessing a claim like the one presented there, courts should "look at the scene presented to jurors and determine whether what they saw was so inherently prejudicial as to pose an unacceptable threat to [the] defendant's right to a fair trial; if the challenged practice is not found [to be] inherently prejudicial and if the defendant fails to show actual prejudice, the inquiry is over." *Id.* at 572.

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. 987 S.W.3d at 581-82. The Court observed that the trial court instructed the jury that the procedure was "authorized by statute 'in these types of cases.'" *Id.* at 581. But the Court also noted that, even without such an instruction, the procedure was not inherently prejudicial because the jury could have just as well inferred that the children in that case were generally afraid of testifying "in the courtroom setting" as that they were "fearful of testifying while looking at the defendant." *Id.* (quoting W. LaFave & J. Israel, *Criminal Procedure* § 24.3 at 1015 (2nd ed. 1992)) (internal quotation marks omitted). The Court concluded that the practice did not "tend[] to brand appellant with an unmistakable mark of guilt." *Id.* at 582.

HN4 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 **[*14]** presumption of innocence, a court must first decide whether the practice is inherently prejudicial to the defendant's right to the presumption. *Nixon*, 674 S.W.3d at 390. 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[,]"11 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." *Nixon*, 674 S.W. 3d at 390; see *also Bell*, 415 S.W.3d at 281.

III. Analysis

A. The Court of Appeals' Conclusion

Before analyzing the first question—whether the practice complained of was inherently prejudicial to the defendant's presumption of innocence—the court of appeals examined three cases from other jurisdictions which, it said, had concluded that holding a trial in a "Jailhouse Courtroom" is inherently prejudicial. *See id.* at 391-93 **[*15]** (examining *Jaime*, 168 Wash.2d at 864, 233 P.3d at 557; *State v. Cavan*, 337 Or. 433, 449, 98 P.3d 381, 389 (2004) ("[C]onducting defendant's criminal jury trial in [the Snake River Correctional Institution] violated defendant's . . . guarantee to an impartial jury."); and *State v. Lane*, 60 Ohio St.2d 112, 115, 397 N.E.2d 1338, 1340 (1979) ("By holding a trial within a prison for an offense committed within that same institution, the constitutional right to a fair trial is abridged in three ways: (1) The presumption of innocence which must attach to the criminal defendant is eroded; (2) there is a major interference with the jury's ability to remain impartial; and (3) the right of the defendant to obtain witnesses is chilled.")). It then examined four cases from other jurisdictions which, it said, had concluded that holding a trial in a "Jailhouse Courtroom" was not inherently prejudicial. *See id.* at 393-95 (examining *Harper v. State*, 887 So.2d 817, 826-27 (Miss. Ct. App. 2004) ("[T]he trial judge did not abuse his discretion in ordering that the trials of these defendants be moved from the courthouse to the Administrative Building at Parchman."); *State v. Daniels*, 2002 UT 2, 40 P.3d 611, 620 (Utah 2002) ("[W]e conclude that the practice challenged in this case was not inherently prejudicial[.]"); *California v. England*, 83 Cal.App.4th 772, 781, 100 Cal.Rptr.2d 63, 69 (2000) ("There simply is no comparison to be made between shackling a defendant and holding trial on prison grounds in accordance with established

standards."); and *Howard v. Virginia*, 6 Va. App. 132, 140, 367 S.E.2d 527, 532, 4 Va. Law Rep. 2273 (1988) ("[W]e conclude that the location of Howard's trial did not impermissibly suggest that he was guilty of the offense for which he was being tried or otherwise operate to inherently prejudice him.")). After examining the arguments made in these cases from other jurisdictions—some approving of, and some disapproving of—trials in what the court of appeals in this case called a "Jailhouse Courtroom[,]" the court of appeals concluded that holding Appellant's trial in the courtroom at issue here *was* inherently prejudicial to his presumption of innocence. But we do not agree.

B. The Building that Housed the Courtroom

There is no disagreement in this case that the government building at issue here housed more than one government facility. One of those facilities was a jail, another was the Sheriff's Department, and a third was the auxiliary courtroom. All of these distinct facilities were located within the same building and under the same roof. And, as the photographs present in the record and reproduced as an appendix to the court of appeals' opinion also indicate, the building that contained these three distinct facilities was labeled on the outside with the words: "Medina County Jail[.]"

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. *Id.* at 395. It noted that there was no indication that the building was an "annex building" which was used for purposes other than to house inmates. *Id.* It expressed concern that the glass doors to the building had signs posted stating that "cell phones, cameras, recording devices, purses **[*16]** and packages" were banned. *Id.* 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." *Id.* at 396. But we conclude, in contrast, that these considerations would not have led the jury to necessarily conclude that Applicant must be guilty or dangerous.

C. 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 **[*17]** 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.[12] 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. *See, e.g.*, *Jaime*, 168 Wash.2d at 873, 233 P.3d at 562 (Fairhurst, J., dissenting) ("A courtroom is a location, **[*18]** not an accoutrement. Because a courtroom does not serve as an identifier, it does not possess the inherently prejudicial power of a shackle or prison uniform.").

Jurors would also have observed Appellant in civilian clothes and without visible restraints throughout his trial—which, if anything, would have suggested to them that Appellant was *not* an inmate.[13] If jurors had seen Appellant in jail clothing or visible shackles, that might have been an indelible reminder of a defendant's confinement. But Appellant's appearance in civilian clothing would have been likely to dispel any initial confusion jurors might have had because of the location of the courtroom.

This distinction is well illustrated by a simple comparison of *Williams* and *Flynn*. In *Williams*, the Supreme Court focused on the inherent prejudice of compelling a defendant to appear before the jury in a jail uniform and explained that such clothing would constitute a "constant reminder of the accused's condition implicit in such distinctive, identifiable attire[.]" 425 U.S. at 504-05. But in *Flynn*, the presence of additional uniformed guards, even seated directly behind the defendant, did not brand the defendant in the eyes of the court with an unmistakable **[*19]** mark of guilt. 475 U.S. at 571; *accord Marx*, 987 S.W.2d at 581-82. 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.

D. 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. *See Nixon*, 674 S.W.3d at 387 (describing the courtroom at issue in this case as "the jail courtroom"). In failing to recognize the distinction, it concluded that "[t]he jailhouse venue vitiates the 'aura of neutrality and judicial impartiality [that] contributes to and fosters the public's belief in . . impartiality in judicial proceedings.'" *Id.* at 396 (quoting *Cavan*, 337 Or. at 448, 98 P.3d at 389). But contrary to the court of appeals' conclusion, and even though it was housed inside the same building where the jail and the sheriff's department were located, the courtroom itself appears to have been a separate facility.

The courtroom does not appear to be within, or even necessarily a part of, **[*20]** 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.

Moreover, no photos of the inside of the courtroom are included in the record. And we can find nothing to suggest that the courtroom itself appeared to be anything other than an ordinary courtroom, once inside. 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.

E. Other Factors Did Not Suggest Appellant's Guilt

The court of appeals also expressed concern about the **[*21]** 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." *See id.* at 395 ("[J]urors . . . are immediately confronted with glass doors with posted signs stating cell phones, cameras, recording devices, purses, and packages are banned."); *id.* at 396 ("[U]nder 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."). In our view, however, the presence of the various signs—indicating prohibitions on (1) possession of certain items that might present a security risk, (2) cell phones, (3) recording devices, and (4) other items such as purses and packages—has become so ubiquitous on government buildings with a justice system purpose that those measures would have been taken for granted by ordinary jurors. **[*22]** They would not have had any necessary tendency to suggest to the jury the guilt of Appellant. Similarly, the presence of the device designed to facilitate deposits into inmate accounts would not have necessarily been associated with the courtroom or with Appellant, any more than would the presence of the sign outside the building that said "Medina County Jail[.]"

HN5 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." 475 U.S. at 569. 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.

F. 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 **[*23]** inmates were housed, was likely to be a "continuing influence" throughout Appellant's trial. *Williams*, 435 U.S. at 505. In *Williams*, the Supreme Court noted that the prejudice inherent in compelling a defendant to appear in jail attire before a jury was a "continuing influence throughout the trial" and that the attire was "not unlike placing a jury in the custody of deputy sheriffs who were also witnesses for the prosecution[.]" *Id.* (citing *Turner v. Louisiana*, 379 U.S. 466, 473, 85 S. Ct. 546, 13 L. Ed. 2d 424 (1965)). According to the Supreme Court, the jail clothing presented an "unacceptable risk . . . of impermissible factors coming into play." *Id.* But here, Appellant was dressed in civilian clothing, and we have seen nothing that would have otherwise indelibly suggested some other connection between Appellant and either the nearby jail facilities or the sheriff's department.

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*. 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. *Id.* at 469. The Court explained there that it would be **[*24]** "blinking reality not to recognize the extreme prejudice inherent" in those circumstances since "the relationship was one which could not but foster the jurors' confidence in those who were their official guardians during the entire period of trial." *Id.* at 473-74.

The record in this case suggests nothing like the continuing nature of the prejudice present in either *Williams* or *Turner*. In *Williams*, the defendant appeared before the jury in jail attire throughout the trial. Similarly, in *Turner*, the familiarity between the jurors and the bailiffs/prosecution-witnesses increased the longer the trial went on. But any confusion or distraction caused by the location of Appellant's trial likely decreased as the auxiliary courtroom became more of a familiar space to which the jurors, the judge, the attorneys, and Appellant (dressed in civilian clothing and without visible restraints), returned daily.

G. A Wide Range of Inferences Unrelated to Guilt or Dangerousness Were Available

The Supreme Court's determination in *Flynn*—that the presence of four uniformed troopers behind the defendant was not inherently prejudicial to the presumption of his innocence—rested on the "wider range of inferences" jurors might reasonably **[*25]** have drawn from the troopers' presence. 475 U.S. at 569. Those possible inferences included that: (1) "the officers [were] there to guard against disruptions emanating from outside the courtroom"; (2) their presence was "to ensure that tense courtroom exchanges [did] not erupt into violence"; (3) that they were simply "elements of an impressive drama"; or even, the Court concluded, (4) the "jurors [may] not [have] infer[red] any[thing] at all from the presence of the guards." *Id.* An equally wide range of inferences was open to the jurors in this case as well.

For instance, a juror in this case might reasonably have believed that holding Appellant's trial in a courtroom located in the same building as the county jail and sheriff's office: (1) was necessary to ensure courtroom security in a high-profile capital murder trial; (2) that it was a result of COVID-19 pandemic restrictions; (3) that it was the only courtroom space available, given that the trial judge was a visiting judge from out of town;[14] (4) that it was simply preferable to hold trial in a more modern courtroom for the sake of the available technology it provided or consistent climate-control in the summer months; or, finally (5) a juror **[*26]** may have inferred nothing at all from the location of the courtroom.

Holding Appellant's trial in the auxiliary courtroom was not *inherently* prejudicial to his presumption of innocence. *Id.*; *Marx*, 987 S.W.2d at 581. **HN6** 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. *Flynn*, 475 U.S. at 569; *accord Marx*, 987 S.W.2d at 581. 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. *See Flynn*, 475 U.S. at 572 (noting that the reviewing court's role is not to determine whether alternative procedures were possible but to "look at

the scene presented to the jurors and determine whether what they saw was so inherently prejudicial as to pose an unacceptable threat to defendant's right to a fair trial"); *accord* *Howard v. State*, 941 S.W.2d 102, 117 (op. on orig. subm.) (Tex. Crim. App. 1996), *overruled on other grounds by* *Easley v. State*, 424 S.W.3d 535, 538 n.23 (Tex. Crim. App. 2014); *see also* *Daniels*, 40 P.3d at 619-20 (holding that conducting a jury trial for the murder of a fellow inmate in a courtroom inside the prison where Daniels was incarcerated was not inherently prejudicial under *Flynn*'s wider-range-of-inferences test).

H. We Decline to Follow *State v. Jaime*

Appellant relies heavily on **[*27]** the decision of the Washington State Supreme Court in *State v. Jaime*, contending that it was "both analogous [to this case] and persuasive." But for many of the reasons we have already articulated, we decline to follow that decision. In that case, the defendant's jury trial had been held "in a courtroom located in the county jail[,]" which Jaime challenged as inherently prejudicial. 168 Wash.2d at 859, 233 P.3d at 555. ***HN7*** In analyzing the question presented there, the court noted that "[w]hen a courtroom arrangement is challenged as inherently prejudicial, the question to be answered is whether an unacceptable risk is presented of impermissible factors coming into play." *Id.*, 168 Wash.2d at 862, 233 P.3d at 556 (quoting *In re Pers. Restraint of Woods*, 154 Wash.2d 400, 417, 114 P.3d 607 (2005)) (internal quotations omitted). It then stated that "[a] courtroom practice might present an unacceptable risk of impermissible factors coming into play *because of* 'the wider range of inferences that a juror might reasonably draw' from the practice." *Id.* (quoting *Flynn*, 475 U.S. at 569) (emphasis added).

But *Jaime* turns the *Flynn* analysis on its head. Indeed, one of the dissenting justices in *Jaime* observed that, "[w]hile the majority uses [*Flynn*] to support its contention, a closer analysis of the case compels the opposite **[*28]** conclusion." *Id.*, 168 Wash.2d at 873, 233 P.3d at 562-63 (Fairhurst, J., dissenting). ***HN8*** The entire purpose of considering whether there is a wider range of inferences that a juror might reasonably draw from a practice is to determine if it "need not be interpreted as a sign that [a defendant] is particularly dangerous or culpable"—because if it need not, then the practice cannot be *inherently* prejudicial. *Flynn*, 475 U.S. at 569.

HN9 In *Flynn*, the Supreme Court explained that "'reason, principle, and common human experience,' *Williams*, [425 U.S. at 504], counsel against a presumption that any use of identifiable security guards in the courtroom is inherently prejudicial." 475 U.S. at 569. It observed that, "[i]n view of the variety of ways in which such guards can be deployed, we believe that a case-by-case approach is more appropriate." *Id.* And it concluded that, "[e]ven had the jurors [in that case] been aware that the deployment of troopers was not common practice in Rhode Island, we cannot believe that the use of the four troopers tended to brand respondent in their eyes 'with an unmistakable mark of guilt.'" *Id.* at 571. We believe the same conclusion is appropriate here.

IV. Conclusion

We conclude that holding Appellant's trial in the auxiliary courtroom located **[*29]** 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.

DELIVERED: November 20, 2024

PUBLISH

Dissent by: WALKER

Dissent

Walker, J., filed a dissenting opinion.

DISSENTING OPINION

This is the Medina County Jail. It boldly declares to all the world—in big letters on the front of the building right above the door—that it is a "JAIL":

2

It is not a courthouse that happens to have jail facilities inside of it. Nor is it a structure in which a courtroom shares "the same building where the jail and the sheriff's department were located," such that they are all separate facilities.[1] The building does not call itself the "Medina County Government Center," or the "Medina County Criminal Justice Center." It is a jail.

Jurors are not indifferent to their surroundings. If they were, why do we bother with the rules of evidence and the rules of trial practice? Jurors, walking into a courthouse, are well aware that they are walking into a courthouse, the building where trials take place. **[*30]** Indeed, "[c]ourthouses are often monuments of public life, adorned with architectural flourishes and historical exhibits that make them inviting to members of the public." *State v. Jaime*, 168 Wn.2d 857, 233 P.3d 554, 557 (Wash. 2010).

And monuments they are:

> the courtroom in Anglo-American jurisprudence is more than a location with seats for a judge, jury, witnesses, defendant, prosecutor, defense counsel and public observers; the setting that the courtroom provides is itself an important element in the constitutional conception of trial, contributing a dignity essential to "the integrity of the trial" process.

Estes v. Texas, 381 U.S. 532, 561, 85 S. Ct. 1628, 14 L. Ed. 2d 543 (1965) (Warren, C.J., concurring)

(quoting *Craig v. Harney*, 331 U.S. 367, 377, 67 S. Ct. 1249, 91 L. Ed. 1546 (1947)).

As our peers at the Supreme Court of Oregon explained:

> Courts ordinarily hold criminal trials in courtrooms located within a public courthouse; that location is familiar to, or readily ascertainable by the public, and is a place where the public conducts a variety of governmental business. The public courthouse, and, by extension, the

> courtroom within, is an important component of the American adversarial tradition. The aura of neutrality that is inherent in the public courthouse is due in large part to the public's perception that the proceedings conducted there are under the control of an independent **[*31]** and impartial judiciary. That aura of neutrality and judicial impartiality contributes to and fosters the public's belief in, and, similarly, the public's own commitment to, impartiality in judicial proceedings.

State v. Cavan, 337 Ore. 433, 98 P.3d 381, 388-89 (Or. 2004).

In contrast, jurors walking into a building called "JAIL" are well aware that they are walking into a jail, a place where trials *do not* normally take place. They are immediately put on notice that something is different because they are not at the usual place—the courthouse. Turning again to the Supreme Court of Oregon, that court agreed with the concern that:

> Holding a trial within the walls of a facility designed to segregate violent or dangerous persons from the public at large implies that there is some need for security measures beyond those of a normal trial. . . . [T]he jurors could have inferred that the court elected to hold the trial at the prison for administrative rather than safety reasons. But the decision to hold a trial at a prison is such a departure from the ordinary course, and the risk of singling a defendant out in some impermissible way is sufficiently great[.]

Id. at 388 (quoting *State v. Cavan*, 185 Ore. App. 367, 59 P.3d 553 (Or. Ct. App. 2002)). It further explained:

> Unlike the public courthouse, prisons are . . . places that **[*32]** the public, as a general matter, is unlikely to visit. A jury's perception of the neutrality of the proceedings that attend a trial in the public courthouse obviously is diminished when the court convenes a trial within the environs of a prison[.]

Id. at 389. "[C]onvening a trial in a prison . . . and not in a courthouse forcefully conveys to a jury the overriding impression of a defendant's dangerousness and . . . by extension, his or her guilt." *Id.*

The Supreme Court of Washington followed suit, explaining the differences between courthouses and jails:

> "Reason, principle, and common human experience" tell us that the average juror does not take for granted a visit to a jail. The average juror does not frequent the jailhouse for the very reason that a jailhouse is not meant to be a public space. Unlike a courthouse, in which the public is welcome to—and in some instances is required to—conduct all manner of business, a jail serves a specific purpose not generally applicable to the public at large.
>
> . . . A jail . . . is singularly utilitarian. Its purpose is to isolate from the public a segment of the population whose actions have been judged grievous enough to warrant confinement. Jail buildings **[*33]** are typically austere in character, and entrance is subject to heightened security. . . .
>
> Given the character of a jail, a juror would not take a visit to the jailhouse for granted, nor would he or she be inured to the experience. A juror's experience with jail is very likely limited to what our societal discourse tells us of jails: they are high-security places that house individuals who need to be in custody. That the average juror would draw a corresponding inference from that experience is reasonable to surmise.

Jaime, 233 P.3d at 557 (internal citations removed).

Unsurprisingly, from their recognition of the effect holding a trial in a jailhouse or prison would have on a juror, both Oregon and Washington held that such a practice is inherently prejudicial and erodes a defendant's presumption of innocence. *Cavan*, 98 P.3d at 389; *Jaime*, 233 P.3d at 559; *see also State v. Lane*, 60 Ohio St. 2d 112, 397 N.E.2d 1338, 1340-41 (Ohio 1979) ("The prison environment which is laden with a sense of punishment of the guilty within transmits too great an impression of guilt[.]").

To be fair, other courts have determined the presumption of innocence was not undermined where trials were held in jailhouses. *See Howard v. Commonwealth*, 6 Va. App. 132, 367 S.E.2d 527, 531, 4 Va. Law Rep. 2273 (Va. Ct. App. 1988); *State v. Daniels*, 2002 UT 2, 40 P.3d 611, 620 (Utah 2002); *State v. Kell*, 2002 UT 106, 61 P.3d 1019, 1026 (Utah 2002); *Walley v. State*, 353 Ark. 586, 112 S.W.3d 349, 356 (Ark. 2003). But those courts did not simply conclude that having a trial in a jailhouse was simply not

prejudicial. In *Howard* **[*34]** , although the trial took place away from the courthouse, it was not in the jail, either. It was held in an administrative building next to, but outside of, the prison compound. *Howard*, 367 S.E.2d at 532. Furthermore, the offense on trial was committed inside of the jail, so the jury would necessarily be told that the defendant was an inmate of the jail. *Id.* And the jury could have reasonably concluded that the trial's location was due to efficiency and convenience to the defendant's specific trial, since the witnesses would be coming from the jail next door. *Id.*

In *Daniels*, in addition to considering several possible inferences that the jurors could have reached about why the trial was taking place in the jail aside from the impermissible inference that the defendant was dangerous or culpable (such as the fact that the offense took place inside the jail itself, and thus many of the witnesses and the crime scene, which the jury toured, were located there), the Utah Supreme Court emphasized the fact that the trial judge instructed the jury to not consider the trial's location as affecting the defendant's presumption of innocence. *Id.* at 619 n.3. It was also important to the court's ruling that the defendant was charged with committing a crime, while being imprisoned at the very prison the trial was being held at. In holding that the jailhouse trial did not undermine the defendant's presumption of innocence, the *Daniels* court was careful to limit its holding:

> In some cases it may be prejudicial to hold a trial in a prison courtroom; but to try an inmate in a prison courtroom for **[*35]** a violent crime alleged to have been committed inside a prison by a person incarcerated for a previous conviction does not per se present an unacceptable risk of bringing into play impermissible factors which might erode the presumption of innocence. However, we also point out that to hold a criminal trial in a courtroom located inside a prison or other correctional facility simply because a defendant is already incarcerated, or because to do so would be more safe or convenient, would also be error, absent adequate findings and compelling reasons. A case-by-case evaluation is necessary.

Id. at 620.

And in *Kell*, the Utah Supreme Court followed its *Daniels* decision, and found that there was no inherent prejudice in the defendant's prison trial because the jurors were asked in their juror questionnaires whether their ability to sit as a juror would be affected by having the trial in the prison. *Kell*, 61 P.3d at 1026. No juror that expressed reservations about the prison were selected to sit on the jury. *Id.*

In *Walley*, the Arkansas Supreme Court considered whether there was actual prejudice from holding the trial at the jail.[2] It found no actual prejudice, because Walley was acquitted of one of the charges against him, **[*36]** he was convicted of a lesser-included offense, he did not receive the maximum sentence, and, notably, the trial court gave a curative instruction to the jury, telling the jury, "[u]nder no circumstances shall this be considered by you in arriving at your verdict or considered by you as evidence in this case." *Walley*, 353 Ark. at 599.

In this case, the trial court did not explain to the jury why the trial was being held at the jail, and the trial court gave no instructions to the jury to refrain from drawing the wrong inferences from it. Without any guidance to the jury explaining why the move from the courthouse was warranted, they were placed in an *unusual, uncommon experience*. It should go without saying that they would have noticed the difference, and they reasonably would have entertained several inferences about why things were different.

I believe our peers in Oregon and in Washington got it right,[3] and the court of appeals was right to follow their lead. The majority, however, declines to follow at least *Jaime*, because in the Court's view the Washington Supreme Court had misapplied *Holbrook v. Flynn*, 475 U.S. 560, 106 S. Ct. 1340, 89 L. Ed. 2d 525 (1986).[4] But as the majority explains, when *Flynn* upheld the posting of additional uniformed state troopers in the courtroom, the **[*37]** Supreme Court considered "reason, principle, and common human experience," and believed that a case-by-case approach was appropriate to determine whether Flynn's presumption of innocence was undermined. *Id.* at 569.

The specific facts of *Flynn* show why the Supreme Court found no violation there. Flynn's trial involved six defendants on trial for armed bank robbery, and he took issue with the posting of four additional state troopers who were simply sitting quietly in the front row of the gallery section behind the defendants, on top of *six officers and two deputy sheriffs* that were *already* posted in the courtroom. *Id.* at 562, 570.

And importantly, the Supreme Court in *Flynn* emphasized that "the question must not be whether jurors actually articulated a consciousness of some prejudicial effect, but rather whether 'an unacceptable risk is presented of impermissible factors coming into play.'" *Id.* at 570 (quoting *Estelle v. Williams*, 425 U.S. 501, 505, 96 S. Ct. 1691, 48 L. Ed. 2d 126 (1976)). The question asks: what is the risk? Assessing the "risk" necessarily means that it is not an all-or-nothing deal. There is a chance; there are, among the wide range of inferences a juror might reasonably draw, both prejudicial and non-prejudicial inferences.

What a court must do is evaluate the odds and determine **[*38]** whether the risk is unacceptable, rather than find whether the jury could draw innocent or benign conclusions and therefore find the practice acceptable. This is illustrated in *Flynn* itself: the Supreme Court considered the risk and made a judgment call about the odds of an unacceptable result, "Four troopers are *unlikely* to have been taken as a sign of anything other than a normal official concern for the safety and order of the proceedings." *Id.* at 571 (emphasis added).

Consequently, the fact that the Washington Supreme Court in *Jaime* found an unacceptable risk of an improper inference does not mean that court misapplied *Flynn*. To the contrary, that court followed the script laid out by *Flynn* in considering a starkly different situation: holding a trial in a jail, rather than the posting of additional law enforcement in Flynn's specific courtroom.

In my view, holding Appellant's trial in the Medina County Jail carried an unacceptable risk to Appellant's presumption of innocence. It was obvious to the jurors that Appellant was being held and not transported to the regular courthouse. The court of appeals was right to conclude that "the various markings reminding the jury that the building at **[*39]** 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." *Nixon v. State*, 674 S.W.3d 384, 396 (Tex. App.—San Antonio 2023). That is the same implication as visible shackles or jail clothes, and I would find the same constitutional harm.

I would uphold the judgment of the court of appeals. Because this Court chooses to reverse, I respectfully dissent.

Filed: November 20, 2024

Publish

Footnotes

1 At trial, Appellant did not contest that he killed Davis and Echtle but argued instead that he acted in self-defense.

2 Section 12.31(a) of the Texas Penal Code provides in relevant part: "An individual adjudged guilty of a capital felony in a case in which the state does not seek the death penalty shall be punished by imprisonment in the Texas Department of Criminal Justice for: . . . life without parole, if the individual committed the offense when 18 years of age or older." Tex. Penal Code § 12.31(a)(2).

3 Specifically, the Court granted review of the following two grounds from the State's petition:

> 1. Is holding a jury trial in the county's designated auxiliary courtroom located in the same public building as the county jail and Sheriff's Department inherently prejudicial to the presumption of innocence?
>
> and:
>
> 2. Was the use of the auxiliary courtroom justified when the trial judge's findings support the determination that he sought **[*3]** to: (1) prevent exposing jurors to Appellant in shackles and jail attire, (2) alleviate security concerns, and (3) provide adequate trial facilities?

Because we resolve this case on the State's first ground for review, we need not address the questions presented by its second ground for review.

4 Appellant's motion stated:

> Counsel for Mr. Nixon have learned that the individual voir dire proceedings in this case may be conducted in the courtroom attached to the Medina County Jail, rather than the Medina County Courthouse Courtroom. If this is true, then conducting any such proceedings, regardless of whether it is jury selection, or actual **[*4]** trial on the merits presents a fundamental challenge to the fairness of the jury selection and subsequent trial proceedings by, at a minimum, undermining the presumption of innocence[.]

5 The trial court judge's full remarks were:

> I'm going to deny the motion to move [trial] from the courtroom that you are currently sitting in, [defense counsel], along with the defendant. You've made your record and frankly, we'll let somebody upstairs determine whether that's correct or not[.] [B]ut in addition to the security issues and [in] addition to mingling with the jurors, the lack of bathroom facilities, [and] I think we put on the record previously the lack of technology in the old courthouse when we've had the initial argument on this. So for all of those reasons I'm denying it.

6 The trial court judge noted on the record that "[w]e are selecting this jury at the fairgrounds because of COVID issues and size issues of the courtroom space available to us."

7 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.

8 At the evidentiary hearing where the photographs of the building in which the courtroom was located were introduced, Appellant argued, for the first time, that holding Appellant's trial in the auxiliary courtroom would violate Section 24.012(e) of the Texas Government Code. Tex. Gov't Code § 24.012(e). According to that statutory provision, which Appellant read into the record: "A district judge *may* hear a nonjury matter relating to a civil or criminal case at a correctional

facility in the county in which the case is filed or prosecuted if a party to the case or the criminal defendant is confined in the correctional facility." *Id.* (emphasis added). Appellant argued that, by negative implication, Section 24.012(e) prohibits a district judge from hearing jury matters inside a correctional facility. The applicability of that provision is not before us today.

9 *See also Bell v. State*, 415 S.W.3d 278, 281 (Tex. Crim. App. 2013) (explaining that visible shackling of a defendant at trial is inherently prejudicial to the presumption of innocence and is permissible only if justified by "essential state interests such as physical security, escape prevention, or courtroom decorum") (quoting *Deck v. Missouri*, 544 U.S. 622, 628, 125 S. Ct. 2007, 161 L. Ed. 2d 953 (2005)) (internal quotation marks omitted); *Randle v. State*, 826 S.W.2d 943, 944-45 (Tex. Crim. App. 1992) (explaining that "[i]f a defendant timely objects to being put to trial while dressed in prison clothes, he should not be compelled to stand trial in that attire. Such compulsion would violate the defendant's right to a fair trial and his right to be presumed innocent").

10 *See also Compton v. State*, 666 S.W.3d 685, 726 (Tex. Crim. App. 2023) (deciding that the presence of uniformed Texas Department of Criminal Justice employees that "comprised up to one-fourth of the gallery" during the punishment phase of Compton's trial for capital murder did not inherently prejudice his right to a fair trial); *Sterling v. State*, 830 S.W.2d 114, 118 (Tex. Crim. App. 1992) (explaining that the presence of seven uniformed deputies in the courtroom at a jury trial was not inherently prejudicial); *Howard v. State*, 941 S.W.2d 102, 118 (op. on orig. subm.) (Tex. Crim. App. 1996), *overruled* ***[*13]*** *on other grounds by Easley v. State*, 424 S.W.3d 535, 538 n.23 (Tex. Crim. App. 2014) ("[T]his Court cannot hold that the mute and distant presence of twenty peace officers—comprising roughly one-fifth of the spectator gallery—is prejudicial, per se, without some other indication of prejudice.").

11 *Williams*, 425 U.S. at 504.

12 Indeed, in this very case, the voir dire of the jury was conducted at the Medina County fairground because of Covid-19 concerns.

13 The record reflects that Appellant was identified in court by his civilian clothing throughout his trial. For example, on the first day of the State's presentation of the evidence, a witness identified Appellant as wearing a green jacket and cream-colored shirt.

14 According to the record, at the outset of jury selection the trial court judge introduced himself to the venire panel by saying, "[M]y name is Sid Harle. I'm a visiting judge from San

Antonio."

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1 Majority op. at 18.

2 The appellant Walley did not provide authority in his briefing to support his inherent prejudice argument. *Walley*, 353 Ark. at 599.

3 And of the courts that upheld the use of jailhouse courtrooms, those cases are distinguishable. They turned upon the specific facts of those cases, such as the fact that the offense occurred at the jail or prison itself, and the fact that the trial court gave curative instructions to the jury.

4 Majority op. at 24.

APPENDIX B - Decision of the Fourth Court of Appeals, San Antonio, Texas

Nixon v. State, 674 S.W.3d 384

Copy Citation

Court of Appeals of Texas, Fourth District, San Antonio

July 31, 2023, Delivered; July 31, 2023, Filed

No. 04-21-00295-CR

Reporter

674 S.W.3d 384 * | 2023 Tex. App. LEXIS 5611 **

Brian Dale **NIXON**, Appellant v. The STATE of Texas, Appellee

Notice: PUBLISH

Subsequent History: Petition for discretionary review granted by In re Nixon, 2023 Tex. Crim. App. LEXIS 749 (Tex. Crim. App., Nov. 1, 2023)
Reversed by, Remanded by Nixon v. State, 2024 Tex. Crim. App. LEXIS 949 (Tex. Crim. App., Nov. 20, 2024)

Prior History: [**1] From the 454th Judicial District Court, Medina County, Texas. Trial Court No. 16-04-11937-CR. Honorable Sid L. Harle, Judge Presiding.

Disposition: REVERSED AND REMANDED.

Core Terms

courtroom, jail, prison, jurors, courthouse, trial court, presumption of innocence, inherently prejudicial, jury trial, state interest, fair trial, shackles, jailhouse, clothes, inmate, county court, eroded, unacceptable risk, argues, impermissible, convenience, transport, correctional facility, county jail,

impartiality, witnesses, reasons, guilt, impartial jury, proceedings

Case Summary

Overview

HOLDINGS: [1]-Holding appellant's jury trial in the jail courtroom created an unacceptable risk that the presumption of innocence would be eroded and so appellant's U.S. Const. amend. XIV rights were violated. The various markings reminded the jury that the building at issue had a primary purpose as a jail and created an unacceptable risk that the jury would conclude, before hearing any evidence, that appellant was too dangerous to transport and had to be isolated from society; [2]-The record was devoid of evidence that the jail courtroom setting furthered an essential state interest that would justify the unacceptable risk jeopardizing appellant's presumption of innocence. The trial court only made general findings and did not consider alternative means to accommodate the purported essential state interests proffered by the State.

Outcome

Judgment reversed and remanded.

LexisNexis® Headnotes

Counsel: For The State of Texas, Criminal - State of Texas: Mark Haby, Edward F. Shaughnessy, III, Scott Simpson.

For **Brian** Dale **Nixon**, Appellant: Michael C. Gross.

Judges: Opinion by: Irene Rios, Justice. Sitting: Rebeca C. Martinez, Chief Justice, Irene Rios, Justice, Liza A. Rodriguez, Justice.

Opinion by: Irene Rios

Opinion

[*386] REVERSED AND REMANDED

Appellant **Brian** Dale **Nixon** appeals his conviction for capital murder. In his first three issues, Nixon argues conducting his trial in an annex courtroom within the Medina County Jail building violated: (1) the presumption of innocence afforded to an accused; (2) his constitutional right to an impartial jury and due process right to a fair trial; and (3) section 24.012(e) of the Texas Government Code.[1] In his fourth issue, Nixon argues the venire panel did not fairly represent the demographics of Medina County because it was comprised of an underrepresentation of African Americans. We reverse the judgment of conviction and remand the cause for a new trial consistent with this opinion.

Background

Nixon's trial was held in an annex courtroom that is in the same building as the [**2] Medina County Jail ("the jail"). Prior to **[*387]** the trial, Nixon 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, Nixon 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, Nixon 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 Nixon'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 [**3] 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 Nixon in shackles or prison clothes should the trial take place at the Medina County Courthouse because there is insufficient space in the courthouse.

Nixon responded that having a trial in the jail courtroom will imply to the jury that he is too dangerous to transport safely to the Medina County Courthouse. Nixon further argued that the implication of trying him in the jail courtroom would be equivalent to the impermissible implications drawn by a jury if he were tried in prison clothes and visible shackles. Nixon acknowledged "it's going to be more difficult to have [the trial] at the courthouse" but argued "the State has decided to try [him] for his life" and his fundamental rights to a fair trial, a fair and impartial jury, and the presumption of innocence should not be abridged by the implication that he is too dangerous to transport to the courthouse or that he deserves to be isolated in the jail facility before he is convicted of the crime for which he is charged.

After hearing arguments [**4] from Nixon and the State, the trial court—presided by a visiting judge—held the motion in abeyance stating it had "some concern about this" and needed more time to research the issues with the county courthouse and review caselaw on the matter.

On November 5, 2020, the trial court held an evidentiary hearing on Nixon's motion to transfer venue to the Medina County Courthouse. At this hearing, Nixon 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.[2]

At this evidentiary hearing, Nixon argued that holding the trial at the jail eroded the presumption of innocence thereby violating his right to an impartial jury and due process right to a fair trial. The gravamen of Nixon's argument before the trial court was as follows:

> [H]aving a trial in a jail is prejudicial . . . . You wouldn't try Mr. Nixon in jail clothing. You wouldn't try [him] visibly shackled. Because it would be prejudicial[.] Jurors are going to come in this **[*388]** courtroom and they are going to presume that this individual is probably guilty and he's dangerous. . . . [T]his facility here is not a neutral place to conduct [**5] business.

Nixon went on to argue that the State's justification—convenience—is not a compelling state interest to justify the prejudicial venue.

In response, the State argued the jail courtroom would not be prejudicial because the building was not wholly a jail. Instead, the State argued, it is an annex building housing the Sheriff's office, the Medina County Jail, and the annex courtroom. The State proffered a witness who stated the public uses the

facility for other things. However, when pressed on the issue, the witness could only testify the building was used for "Crime Stoppers" meetings and as an emergency command center during county emergencies and disasters.

The State's witness also testified (1) the Medina County Courthouse has only one male restroom on the courtroom floor and jurors would have to be cleared out every time Nixon needed to use the restroom, and (2) it would be difficult to transport Nixon without jurors seeing him in shackles.

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 Nixon commingling with the jurors in the limited space at the courthouse; (3) the [**6] 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, Nixon renewed his objection to the trial on the merits being held in the jail courtroom. The trial court again denied Nixon's objection and permitted Nixon to have a running objection to holding trial in the jail courtroom.

On July 7, 2021, Nixon's jury trial commenced in the jail courtroom. The trial court did not address the jury regarding the location of the trial or the reasons for holding the trial in the jail courtroom. The jury found Nixon guilty of capital murder, and the trial court sentenced him to life in prison without the possiblity of parole. Nixon appeals.

Discussion

In his first two issues, Nixon 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. In his third issue, Nixon argues the building housing the jail courtroom fits within the definition of a correctional facility, and section 24.012(e) of the Texas Government Code prohibits a jury trial from taking place in a correctional [**7] facility. In his fourth issue, Nixon argues African Americans were underrepresented in the venire panel and this underrepresentation denied him the right to select a jury that accurately reflects the community.

Because his first two issues are dispositive, we need not address Nixon's third and fourth issues. *See* Tex. R. App. P. 47.1 ("The court of appeals must hand down a written opinion that is as brief as practicable but that addresses every issue raised and necessary to final disposition of the appeal.").

Trial in A Jail Facility

On appeal, Nixon 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, 96 S. Ct. 1691, 48 L. Ed. 2d 126 (1976). Consequently, Nixon argues, holding **[*389]** the jury trial in the jail courtroom inherently prejudiced him because it implied to the jury that he is either guilty or too dangerous or detached from society to appear in the Medina County Courthouse. According to Nixon, this arrangement—and the implication thereof—created an unacceptable risk that this setting eroded his presumption of innocence. Nixon further argues that the reasons cited by the trial court for holding the trial at the jail did not serve an essential state interest. Rather, [**8] Nixon argues, it served a purpose of convenience, and convenience does not further an essential state interest justifying the risk.

The State, citing *Holbrook v. Flynn*, 475 U.S. 560, 106 S. Ct. 1340, 89 L. Ed. 2d 525 (1986), argues this case is more akin to a jury trial where the presence of additional armed guards in the courtroom was held not to be inherently prejudicial. Consequently, the State argues Nixon must show actual prejudice. Because the record is devoid of actual prejudice, the State continues, Nixon's rights to an impartial jury and a fair trial were not violated.

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. We find guidance from the United States Supreme Court and the Texas Court of Criminal Appeals while addressing analogous issues. We also find instructive persuasive authority from other jurisdictions addressing this issue.

A. Applicable Law

HN1 The United States Constitution provides that, "[i]n all criminal [**9] prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed." U.S. Const. amend. VI. Furthermore, the Fourteenth Amendment commands that no State shall "deprive any person of life, liberty, or property, without due process of law . . . ." U.S. Const. amend. XIV.

"The right to due process of law includes within it the right to a fair trial, and basic to a fair trial is the presumption of the defendant's innocence." *Marx v. State*, 987 S.W.2d 577, 581 (Tex. Crim. App. 1999); *see also Flynn*, 475 U.S. at 567 ("***HN2*** Central to the right to a fair trial, guaranteed by the Sixth and Fourteenth Amendments, is the principle that 'one accused of a crime is entitled to have his guilt or innocence determined solely on the basis of the evidence introduced at trial, and not on grounds of official suspicion, indictment, continued custody, *or other circumstances not adduced as proof at trial*.'" (quoting *Taylor v. Kentucky*, 436 U.S. 478, 485, 98 S. Ct. 1930, 56 L. Ed. 2d 468 (1978)) (emphasis added)); *Simpson v. State*, 447 S.W.3d 264, 265-66 (Tex. Crim. App. 2014) (mem. op.) ("The presumption of innocence is a basic component of a fair trial under our system of criminal justice.") (alteration omitted). "To implement [the presumption of innocence], courts must be alert to factors that may undermine the fairness of the fact-finding process and 'guard against dilution of the principle that guilt is to be [**10] established by probative evidence and beyond a reasonable doubt.'" *Simpson*, 447 S.W.3d at 266 (quoting *Williams*, 425 U.S. at 503); *see also State v. Jaime*, 168 Wn.2d 857, 233 P.3d 554, 556 (Wash. 2010) ("In order to preserve a defendant's presumption of innocence before a jury, the defendant is entitled to the physical indicia of innocence which includes the right of the **[*390]** defendant to be brought before the court with the appearance, dignity, and self-respect of a free and innocent man.") (internal quotation marks omitted).

HN3 Quoting *Williams*, the Texas Court of Criminal Appeals has held:

> The actual impact of a particular practice on the judgment of jurors cannot always be fully determined. But this Court has left no doubt that the probability of deleterious effects on fundamental rights calls for close judicial scrutiny. Courts must do the best they can to evaluate the likely effects of a particular practice, based on reason, principle, and common human experience.

Marx, 987 S.W.2d at 581 (quoting *Williams*, 425 U.S. at 504). However, "a trial judge has broad discretion to control the business of the court and in how he preserves proper order and decorum." *Simpson*, 447 S.W.3d at 266.

"In *Estelle v. Williams*, the Supreme Court [held] that making a defendant wear identifiable prison clothing at his jury trial denies him due process and equal protection because 'of the impossible impairment of the presumption [**11] of innocence so basic to the adversary system.'" *Id.* (quoting *Williams*, 425 U.S. at 503-04). "On the other hand, in *Holbrook v. Flynn*, the Supreme Court [held] that the presence of four uniformed state troopers sitting in the spectators' gallery, directly behind the accused, was not so inherently prejudicial that it denied the defendant a fair trial." *Simpson*, 447 S.W.3d at 266 (citing *Flynn*, 475 U.S. at 569). "This was because of 'the wider range of inferences' that a juror might reasonably draw from [the state troopers'] presence." *Simpson*, 447 S.W.3d at 266 (quoting *Flynn*, 475 U.S. at 569).

HN4 When a courtroom practice is challenged as inherently prejudicial, *Williams* and *Flynn* 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].

Simpson, 447 S.W.3d at 266; *see also Flynn*, 475 U.S. at 570 ("Whenever a courtroom arrangement is challenged as inherently prejudicial, therefore, the question must be not whether jurors actually articulated a consciousness of some prejudicial effect, but rather whether an unacceptable risk is presented of impermissible factors coming into play.") (internal quotation marks omitted).

HN5 Thus, when a courtroom practice creates an unacceptable risk that the presumption of innocence will [**12] be jeopardized, then the courtroom practice is inherently prejudicial. *See Simpson*, 447 S.W.3d at 266; *see also Flynn*, 475 U.S. at 568. And, an inherently prejudicial practice "should be permitted only where justified by an essential state interest specific to each trial." *Flynn*, 475 U.S. at 568-69.

HN6 "If a particular practice tends to brand the defendant with an unmistakable mark of guilt, it impairs the presumption of innocence and violates the Fourteenth Amendment's guarantee of due process of law, unless it furthers an essential state interest." *Marx*, 987 S.W.2d at 581. "If, on the other hand, the challenged practice need not be interpreted by jurors as a sign that the defendant is particularly dangerous or culpable, it is not inherently prejudicial and does not deny due process." *Id.* The Texas Court of Criminal Appeals has cautioned "that inherent prejudice rarely occurs and is reserved for extreme situations." **[*391]** *Simpson*, 447 S.W.3d at 266 (internal quotation marks omitted).

B. Jurisdictions Holding a Jury Trial in a Jailhouse Courtroom is Inherently Prejudicial.

1. State v. Jaime, 168 Wn.2d 857, 233 P.3d 554 (Wash. 2010).

Nixon relies on *Jaime* to support his position—a strikingly similar case to the case at bar. In *Jaime*, the trial court held a jury trial in a courtroom located in the county jail over defense counsel's objection. *Jaime*, 233 P.3d at 555. The State argued the trial should be held at [**13] the jail because Jaime presented a serious security concern, and it was less likely the jury would see Jaime transported in shackles. *Id.* In rendering its decision, the trial court "noted allegations concerning threats by Jaime or his friends against the witnesses and alluded to Jaime's history of violent behavior in jail and escape attempts, explaining that there was better security in the jailhouse courtroom." *Id.* The trial court "also considered the convenience of holding the trial in the jailhouse courtroom because it was much easier to usher the jury in and out of the jailhouse courtroom in a timely fashion because the jury room was just across the hall from the courtroom." *Id.* at 555-56. The trial court "explained that it agreed with the State that there was less chance the jury would see Jaime in handcuffs if the trial took place in the jail." *Id.* at 556. "Finally, the [trial] court noted the jailhouse courtroom was designed to accommodate jury trials and was in design comparable to other courtrooms." *Id.*

On appeal, the *Jaime* court held the jailhouse setting was inherently prejudicial. It distinguished the case from *Flynn* noting a jail is much different than a courthouse:

> ***HN8*** Given the character of a jail, a [**14] juror would not take a visit to a jailhouse for granted, nor would he or she be inured to the experience. *See* [*Flynn*, 475 U.S. at 569]. A juror's experience with jail is very likely limited to what our societal discourse tells us of jails: they are high-security places that house individuals who need to be in custody. That the average juror would draw a corresponding inference from that experience is reasonable to surmise.
>
> . . . .
>
> In short, under the analysis of [*Flynn*], holding a trial in a jailhouse courtroom is inherently prejudicial for two reasons. First, the setting is not in a courthouse, a public building whose purpose is to provide a neutral place to conduct the business of the law. Second, the setting that replaces the courthouse has a purpose and function that is decidedly not neutral, routine, or commonplace. Holding a criminal trial in a jailhouse building involves such a probability of prejudice that we must conclude it is inherently lacking in due process.

Id. at 557 (footnote omitted).

2. State v. Cavan, 337 Ore. 433, 98 P.3d 381 (Ore. 2004).

[*392] In *Cavan*, the charges arose from an incident within the prison and the courtroom in question was located in the visiting center of the prison. *Cavan*, 98 P.3d at 383-84. The *Cavan* court noted:

> Jurors must pass through metal detectors and have their hands stamped, [**15] and must store their personal effects in lockers. The doors are locked behind them. A juror wanting a smoking break must be escorted outside the main gate of the prison.

Id. at 383. "The [S]tate observed that the courtroom 'is in an area of the prison generally open to the public [which was] not materially different from any other courtroom." *Id.* (alterations in original).

Ultimately, the *Cavan* court held the prison courtroom setting was inherently prejudicial, stating:

> Holding a trial within the walls of a facility designed to segregate violent or dangerous persons from the public at large implies that there is some need for security measures above and beyond those of a normal trial. To be sure, the charges in this case arose out of an incident at the prison, and the jurors could have inferred that the court elected to hold the trial at the prison for administrative rather than safety reasons. But the decision to hold a trial at a prison is such a departure from the ordinary course, and the risk of singling defendant out in some impermissible way is sufficiently great, that we hold that the practice is inherently prejudicial.
>
> . . . Courts ordinarily hold criminal trials in courtrooms located within [**16] a public courthouse; that location is familiar to, or readily ascertainable by the public, and is a place where the public conducts a variety of governmental business. The public courthouse, and, by extension, the courtroom within, is an important component of the American adversarial tradition. The aura of neutrality that is inherent in the public courthouse is due in large part to the public's perception that the proceedings conducted there are under the control of an independent and impartial judiciary. That aura of neutrality and judicial impartiality contributes to and fosters the public's belief in, and, similarly, the public's own commitment to, impartiality in judicial proceedings.
>
> Unlike the public courthouse, prisons . . . are inherently dangerous places that the public, as a general matter, is unlikely to visit. A jury's perception of the neutrality of the proceedings that attend a trial in the public courthouse obviously is diminished when the court convenes a trial within the environs of a prison . . . . Gone is a jury's perception that the proceeding is in the firm control of the impartial and independent judiciary. Instead, the prison environment reminds the jury that [**17] the prison houses the most dangerous elements of society, many of whom are moving about within a few feet of the prison courtroom, and that the jury's physical safety, and to a large extent, the trial itself, are in the control of the prison administrators and corrections personnel. Finally, and perhaps more importantly, convening a trial in a prison . . . and not in a courthouse forcefully conveys to a jury the overriding impression of a defendant's dangerousness and we think, by extension, his or her guilt.

Id. at 388-89.

3. State v. Lane, 60 Ohio St. 2d 112, 397 N.E.2d 1338 (Ohio 1979).

The *Lane* court held that "a trial within a maximum[-]security penitentiary with 12-foot high double walls, armed guards, high guard towers and visible barred windows [does not] allow[] a jury to maintain **[*393]** the delicate posture of impartiality which is a mainstay of our judicial system." *Lane*, 397 N.E.2d at 1341. ***HN9*** "The prison environment which is laden with a sense of punishment of the guilty within transmits too great an impression of guilt on the part of the inmate who is on trial." *Id.* at 1340-41. "By holding a trial within a prison for an offense committed within that same institution, the constitutional right to a fair trial is abridged in three ways: (1) The presumption of innocence which must attach [**18] to the criminal defendant is eroded; (2) there is a major interference with the jury's ability to remain impartial; and (3) the right of the defendant to obtain witnesses is chilled." *Id.* at 1340.

C. Jurisdictions Holding a Jury Trial in a Jailhouse Courtroom was not Inherently Prejudicial.

1. Harper v. State, 887 So. 2d 817 (Miss. Ct. App. 2004).

The *Harper* court seemed to blur the lines between the right to a fair trial and the right to a public trial. In this case, the defendants were charged with burglary of a dwelling, grand larceny, and kidnapping committed while they were at large after escaping a maximum-security prison. *Harper*, 887 So. 2d at 819-20. The *Harper* court determined a trial within the prison was not inherently prejudicial because "[t]he jury would learn that the defendants escaped from the maximum[-]security unit at Parchman, a fact that was not contested." *Id.* at 826. It continued, "since the jury would learn these facts, there is no prejudice that can result from the jury seeing that which was already, or inevitably would be, known." *Id.*

The *Harper* court also held the State had shown an essential state interest would be furthered by a prison trial because "Harper and Woolard were dangerous, violent[,] and habitual offenders" who would "do anything to remain free." *Id.* Notably, the [**19] *Harper* court also upheld the trial court's decision to try the defendants in prison clothing and visible shackles because, according to an officer's testimony, the defendants were "extremely high-risk and to remove any restraints would be amiss due to their past escapes." *Id.* at 827-28.

2. State v. Daniels, 2002 UT 2, 40 P.3d 611 (Utah 2002).

In *Daniels*, the defendant was charged with a murder committed while he was an inmate in the prison where the trial was conducted. *Daniels*, 40 P.3d at 614. The *Daniels* court held:

> [J]urors could have drawn an equally wide range of alternative inferences from the fact that the trial was held inside the prison. The impact was not limited to an inference that the defendant was a dangerous or untrustworthy individual. The jurors could have just as easily inferred that (1) it was preferable to hold the trial inside the prison instead of transporting the inmate witnesses to a courthouse outside of the prison with the attendant financial cost and security risk; (2) holding the trial in the prison courtroom enabled prison officials to testify without requiring them all to travel to the courthouse . . . ; (3) it was necessary for the safety of those involved in the trial to hold the trial in a prison courtroom because many of the witnesses were inmates; (4) the [**20] jurors needed to be able to tour the crime scene, which they did, because the incident occurred at the prison; (5) it was simply preferable to hold the trial in a newer, more modern courtroom; (6) the prison courtroom was better equipped to handle spectators or potential security risks from outside groups that may arise from a racially-related homicide; or (7) the jury could have inferred nothing. **[*394]** Thus, it is equally likely that jurors may have inferred that the trial took place in a prison courtroom because of the circumstances surrounding the nature of the case, and that the location of the trial had nothing to do with the defendant's character. It is also probable, indeed our system depends on the assumption that, the jurors inferred nothing and followed their oath, adhering to the instructions given them and impartially applying the law given them to the facts they found in viewing the evidence presented at trial.

Id. at 619.

HN10 The *Daniels* court further held, however, "that to hold a criminal trial in a courtroom located inside a prison or other facility simply because a defendant is already incarcerated, or because to do so would be more safe or convenient, would also be error, absent adequate [**21] findings and compelling reasons." *Id.* at 620.

3. People v. England, 83 Cal. App. 4th 772, 100 Cal. Rptr. 2d 63 (Cal. Ct. App. 2000).

In *England*, the defendant was in prison when he resisted correctional officers' attempts to search his prison cell and stabbed two correctional officers with a sharp instrument. *England*, 100 Cal. Rptr.2d at 65. The defendant was tried in a courtroom on prison grounds where he was incarcerated, but outside the prison wires. *Id.* at 65-67. The *England* court held the trial in the prison setting was not inherently prejudicial for the following reasons:

> The courtroom [at the prison] was physically and visually remote from the facilities and activities of the prison as the courtroom was located in a building outside the prison wires. The only inmates that jurors might have seen were those working in gardens around the building.
>
> Juror travel to the courthouse did not present any problems. Again, the courtroom was not within the actual confines of the prison, and jurors could drive directly to the courtroom.
>
> The courtroom was accessible to the press and general public although, as the court explained, visitors would have to identify themselves at the gate. This security measure does not make the courtroom inaccessible.
>
> Finally, the court took additional measures to ensure the fairness of proceedings by asking prospective [**22] jurors whether they would be adversely affected by a trial held on prison grounds. . . . [T]he one juror who expressed serious reservations was excused from service.

Id. at 66-67.

The *England* court held, under the facts of this case, the trial location satisfied the standards of a California statute that "ensure[s] the fairness of judicial proceedings." *Id.* at 69. Consequently, the *England* court held "[t]he trial site did not prejudice the jury, affront anyone's dignity, cause disrespect for the judicial system, or impact defendant's decisions at trial in any way." *Id.*

4. Howard v. Commonwealth, 6 Va. App. 132, 367 S.E.2d 527, 4 Va. Law Rep. 2273 (Va. Ct. App. 1988).

In *Howard*, the defendant—who was in prison when the crime occurred—conspired with three other inmates to lock a fifth inmate in his cell and burn him alive. *Howard*, 367 S.E.2d at 529. The defendant was charged with conspiracy to commit capital murder. *Id.* at 528. After learning that twenty-two inmate witnesses had been subpoenaed, the trial court decided to conduct the trial in an administration building located immediately outside a correctional center compound. *Id.* at 529. The trial court based its decision on a factual finding that the courthouse personnel could not adequately provide for the safety **[*395]** of the inmates, witnesses, jurors, and the general public. *Id.* at 531.

The *Howard* court held the trial setting [**23] was not inherently prejudicial because Howard was tried in a courtroom outside the prison compound, there was no indication the jurors could see the prison from the courtroom, and the jurors did not have to pass through gates or other security devices. *Id.* at 532. The court noted the jury could have reasonably concluded the trial was being conducted in the administration building for efficiency and convenience because Howard was being tried for the murder of another inmate and many of the witnesses either worked at or were incarcerated in the adjacent correctional facility. *Id.* As such, the *Howard* court concluded "the location of Howard's trial did not impermissibly suggest that he was guilty of the offense for which he was being tried or otherwise operate to inherently prejudice him." *Id.*

D. Analysis

First, we must determine whether holding the jury trial in the jail courtroom in the case at bar creates an unacceptable risk that the presumption of innocence will be eroded. If we determine this question in the affirmative, then we must next determine whether the jail courtroom setting furthered an essential state interest to justify the risk.

*1. Whether a Jury Trial in the Jail Courtroom Creates an Unacceptable [**24] Risk that the Presumption of Innocence Will be Eroded*.

Here, the first thing jurors will see as they approach the building where the trial took place are large letters stating "MEDINA COUNTY JAIL" over the entrance. There is no indication this building is an annex

building that is used for purposes other than to house people that society has deemed necessary to isolate from the population at large. As jurors walk into the building, they are immediately confronted with glass doors with posted signs stating cell phones, cameras, recording devices, purses, and packages are banned. As jurors walk through the glass doors, they enter a small, windowless lobby that contains the jail information desk, the entrance to the confinement portion of the jail that states "AUTHORIZED PERSONNEL ONLY," jail visitation rooms, a security window that allows you to speak with a receptionist from the sheriff's office, and a machine to deposit money into an inmate's account. The machine is wrapped in a large image containing handcuffs. There is a sign posted by the jail administrator on one of the visitation room doors that states visitors will be banned from visitation indefinitely if they are caught with [**25] a cell phone.

"[T]he courtroom in Anglo-American jurisprudence is more than a location with seats for a judge, jury, witnesses, defendant, prosecutor, defense counsel[,] and public observers; the setting that the courtroom provides is itself an important element in the constitutional conception of trial, contributing a dignity essential to 'the integrity of the trial' process." *Estes v. Texas*, 381 U.S. 532, 561, 85 S. Ct. 1628, 14 L. Ed. 2d 543 (1965). The only indication that the Medina County Jail building is used for any other purpose than to house criminals segregated from the public at large is a small sign stating, "DISTRICT COURT IN SESSION" on one of two solid doors along-side a single, small wall-placard stating "COURTROOM."

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 **[*396]** and shackles rather than the permissible practice of allowing additional armed guards to sit in the courtroom. *Compare Williams*, 425 U.S. at 512 (holding "the State cannot, consistently with the Fourteenth Amendment, compel an accused to stand trial before a jury while dressed in identifiable prison clothes . . ."), *with Flynn*, 475 U.S. at 571 (holding [**26] the presence of four uniformed state troopers was not so inherently prejudicial that it denied the defendant a fair trial).

Much like a jury may draw impermissible inferences from a defendant wearing shackles or prison clothing, a jury will likewise draw impermissible inferences from a defendant being tried in a building branded with the markings of guilt. *See Marx*, 987 S.W.2d at 581. It is no leap of logic to think a jury will determine the defendant must be guilty because he or she is too dangerous or culpable to be tried in a courthouse. *See id.* The defendant is not being tried solely on the evidence and permissible inferences therefrom, but rather on the impermissible inferences drawn from the location of his trial. The jailhouse venue vitiates the "aura of neutrality and judicial impartiality [that] contributes to and fosters the public's belief in, and, similarly, the public's own commitment to, impartiality in judicial proceedings." *Cavan*, 98 P.3d at 389.

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 [**27] 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. *See Flynn*, 475 U.S. at 567 ("***HN11*** One accused of a crime is entitled to have his guilt or innocence determined solely on the basis of the evidence introduced at trial, and not on grounds of official suspicion, indictment, continued custody, or other circumstances not adduced as proof at trial."). This unacceptable risk undermined the fairness of the fact-finding process and diluted the principle that guilt is to be established by probative evidence and beyond a reasonable doubt, and thus created a substantial likelihood that the presumption of innocence that should have been afforded to Nixon would be eroded. *See Simpson*, 447 S.W.3d at 266 ("***HN12*** To implement [the presumption of innocence], courts must be alert to factors that may undermine the fairness of the fact-finding process and 'guard against dilution of the principle that guilt is to be established by probative evidence and beyond a reasonable doubt.'" (quoting *Williams*, 425 U.S. at 503)).

Accordingly, we hold the trial court setting in the jail courtroom created an unacceptable risk that the presumption [**28] of innocence afforded to Nixon was eroded.

2. Whether Holding the Jury Trial in the Jail Courtroom Furthered an Essential State Interest.

Having determined the jury trial in the jail courtroom created an unacceptable risk that the presumption of innocence afforded to Nixon was eroded, we next determine whether the record shows the setting furthered an essential state interest specific to this trial. *See Flynn*, 475 U.S. at 568-69 (***HN13*** holding

an inherently prejudicial practice "should be permitted only where justified by an essential state interest specific to each trial").

Because there is no Texas authority on whether conducting a jury trial in a jail courtroom is inherently prejudicial, **[*397]** there is likewise no Texas authority on what essential state interests may justify the jailhouse setting for a jury trial. Accordingly, we look to analogous cases where a prejudicial practice must be justified by essential state interests. In *Bell v. State*, 415 S.W.3d 278 (Tex. Crim. App. 2013)—a case addressing the inherently prejudicial effect when a defendant appears before the jury in shackles—the Court of Criminal Appeals listed "physical security, escape prevention, or courtroom decorum" as potential essential state interests justifying the defendant's appearance in shackles. [**29] *See Bell v. State*, 415 S.W.3d 278, 281 (Tex. Crim. App. 2013). However, the *Bell* court held the practice is only justified when it is necessary for a particular defendant in a particular proceeding. *Id.* Further, "the record must manifest the trial judge's reasons for restraining a defendant," and "[w]hen the record fails to detail the grounds for restraint, a trial judge errs in ordering a defendant shackled." *Id.*

In *Lilly v. State*, the defendant complained the trial court violated his constitutional right to a public trial when it conducted the trial in a correctional facility. 365 S.W.3d 321, 326 (Tex. Crim. App. 2012). 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. *Id.* at 328-29. "The findings must be on the record and specific." *Id.* at 329 (internal quotation marks omitted). Generic findings will not suffice because the findings must be specific enough that a reviewing court can determine whether the closure was justified. *Id.* "[A] reviewing court cannot 'satisfy the [**30] deficiencies in the trial court's record' by making post hoc assertions inferring an overriding interest[.]" *Id.* (quoting *Waller v. Georgia*, 467 U.S. 39, 49 n.8, 104 S. Ct. 2210, 81 L. Ed. 2d 31 (1984)) (footnote omitted). [I]t is reversible error when the record fails to show that a trial court considered all reasonable alternatives to closure." *Id.* (citing *Presley v. Georgia*, 558 U.S. 209, 215-16, 130 S. Ct. 721, 175 L. Ed. 2d 675 (2010)).

Applying these principles to the case at bar, the trial court must make adequate findings that the jailhouse setting is justified by an essential state interest specific to this trial and was required to consider reasonable alternatives to conducting the jury trial in the jail courtroom. The findings cannot be generic and must be on the record and specific.

The trial court cited four reasons for holding the jury trial in the jail courtroom: (1) security issues; (2) concerns about Nixon 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.

At the outset, we note the cases from other jurisdictions—holding a jury trial conducted in a correctional facility was justified—involved defendants who had either escaped from prison or were tried in the same correctional facility where they allegedly [**31] committed the crimes for which they were charged. *See Harper*, 887 So. 2d at 819-20 (crimes committed while defendants were at large following their escape from maximum-security prison); *see also Daniels*, 40 P.3d at 614 (crime committed while defendant was an inmate at the correctional facility he was tried in); *England*, 100 Cal. Rptr.2d at 65 (same); *Howard*, 367 S.E.2d at 529 (same). Those cases presented legitimate security concerns because the defendants were shown to be at **[*398]** high risk of escaping, particularly dangerous, or most of the witnesses were inmates or guards of the prison.

At the evidentiary hearing in this case, Gilberto Rodriguez, Chief Deputy for the Medina County Sheriff's Department, testified the security concerns with having the trial at the Medina County Courthouse rather than the jail courtroom included a "lack of space[.]" Chief Deputy Rodriguez further stated "the conference room . . . also serves as the jury room" and "it would be very difficult to separate the jury from the defendant . . . ." Chief Deputy Rodriguez also testified there is only one men's restroom "[o]n that floor" in the courthouse. Chief Deputy Rodriguez agreed with the State that the jail courtroom is convenient because it allows the Sheriff's Department to bring individuals from jail directly to [**32] the courtroom rather than transporting them downtown to the courthouse. The State argued the jury may see Nixon in prison clothes and shackles if he were transported to the courthouse every day. Though it did not present any evidence regarding the lack of technology in the courthouse, the State argued this was another reason for holding the trial in the jail courtroom.

HN14 "[C]ertain practices pose such a threat to the 'fairness of the factfinding process' that they must be subjected to 'close judicial scrutiny.'" *Flynn*, 475 U.S. at 568 (quoting *Williams*, 425 U.S. at 503-04). Here, the record is completely devoid of any evidence that the jail courtroom setting furthered an essential state interest that would justify the unacceptable risk jeopardizing Nixon's presumption of innocence. Moreover, the trial court only made general findings and did not consider alternative means to accommodate the purported essential state interests proffered by the State.

While Chief Deputy Rodriguez stated a lack of space and potential commingling of the jury could create a security concern, he did not elaborate on how this lack of space would create a security concern. In fact,

the trial judge stated on the record that he had previously "tried a week and [**33] a half jury trial" in the Medina County Courthouse.

For its second reason justifying holding the trial in the jail courtroom, the trial court cited concerns about Nixon commingling with the jurors in the limited space at the courthouse. The State argued the jurors might see Nixon in prison clothes and shackles while being transported to the Medina County Courthouse. However, this concern was also raised in a pretrial hearing while the parties discussed issues with holding voir dire at the Medina County fairgrounds. The trial court informed the bailiff to bring Nixon to the fairgrounds early before jurors arrived so they would not see him being transported. The trial court further ordered Nixon not be clothed or restrained in a manner "overtly showing that he's in custody." This indicates the same measures could have been taken to prevent jurors from seeing Nixon in prison clothes and shackles had the trial taken place at the courthouse. Moreover, there is no evidence from the record that suggests Nixon was ever a security threat.

Although Chief Deputy Rodriguez mentioned there was only one men's restroom on the floor of the courtroom, he did not explain why either Nixon or the jurors [**34] could not use the men's restroom on other floors of the county courthouse.

Finally, the availability of technology and the State's argument that the jail courtroom is "a more modern courtroom" for "modern jurors" are impermissible factors of convenience. *See Daniels*, 40 P.3d at 620 ("[***HN15*** T]o hold a criminal trial in a **[*399]** courtroom located inside a prison or other facility simply because a defendant is already incarcerated, or because to do so would be more safe or convenient, would also be error, absent adequate findings and compelling reasons."); *see also Jaime*, 233 P.3d at 558 ("[T]he trial court considered impermissible factors involving convenience in making its decision, as well as general concerns that would be applicable to any defendant who is in custody during trial . . . ."). ***HN16*** "That it may be more convenient [to employ an inherently prejudicial practice], provides no justification for the practice." *Williams*, 425 U.S. at 505.

The record does not support the furtherance of an essential state interest to justify holding Nixon'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 Nixon's trial in the jail courtroom housed within the Medina [**35] County Jail building.

We sustain Nixon's first two issues.

Conclusion

We reverse the judgment of conviction and remand the cause for a new trial consistent with this opinion.

Irene Rios, Justice

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Appendix

Exhibit 1:

[*400]

Exhibit 4:

[*401]

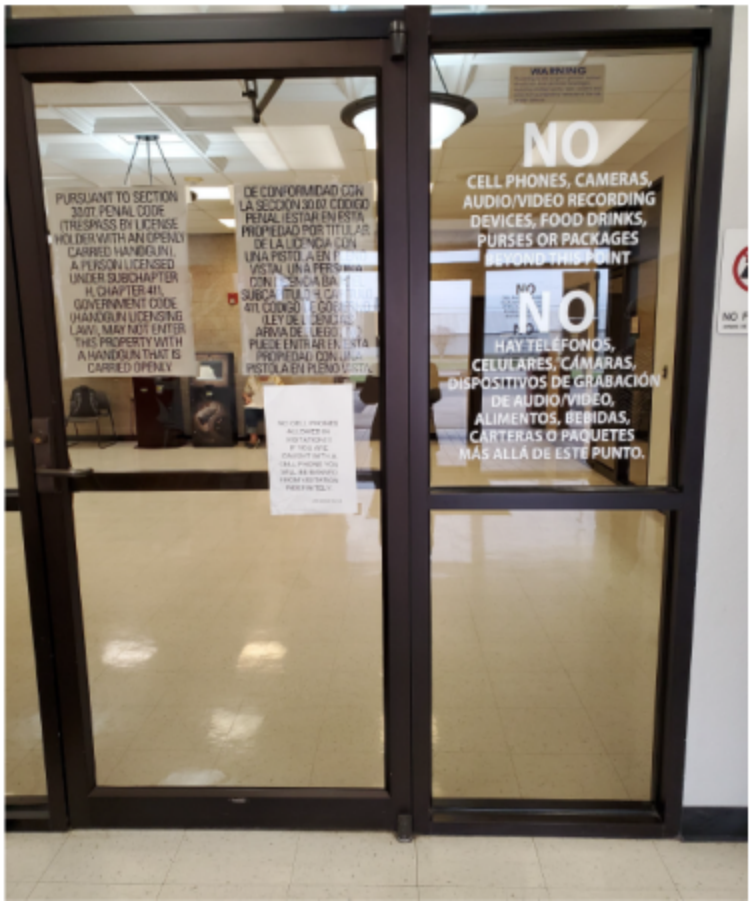

Exhibit 5:

[*402]

Exhibit 6:

[*403]

Exhibit 12:

[*404]

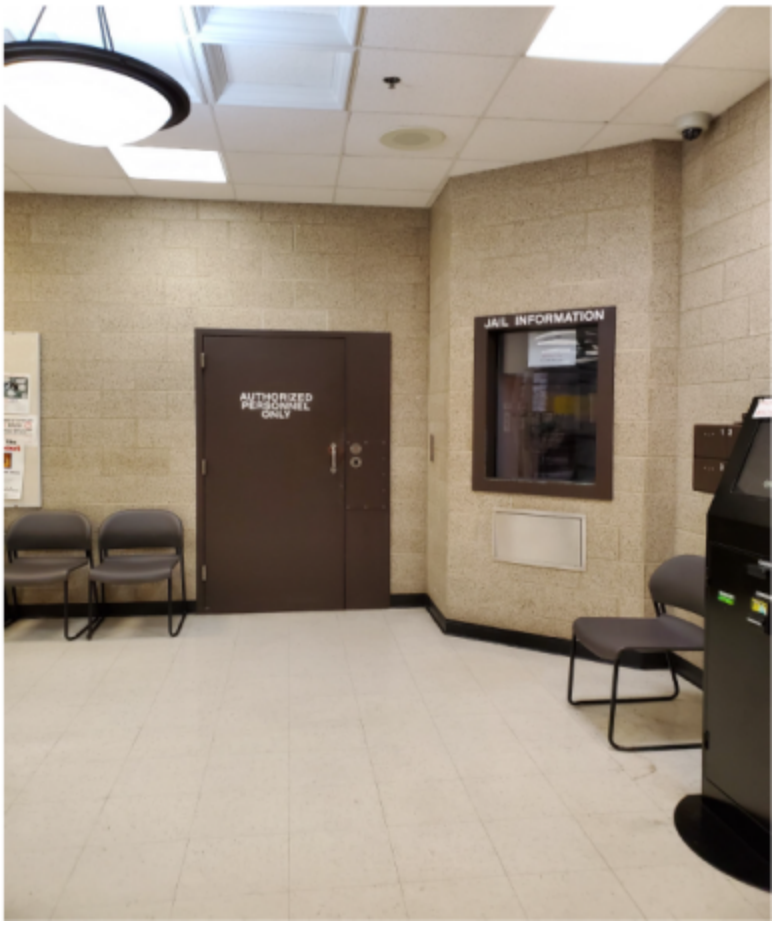

Exhibit 13:

[*405]

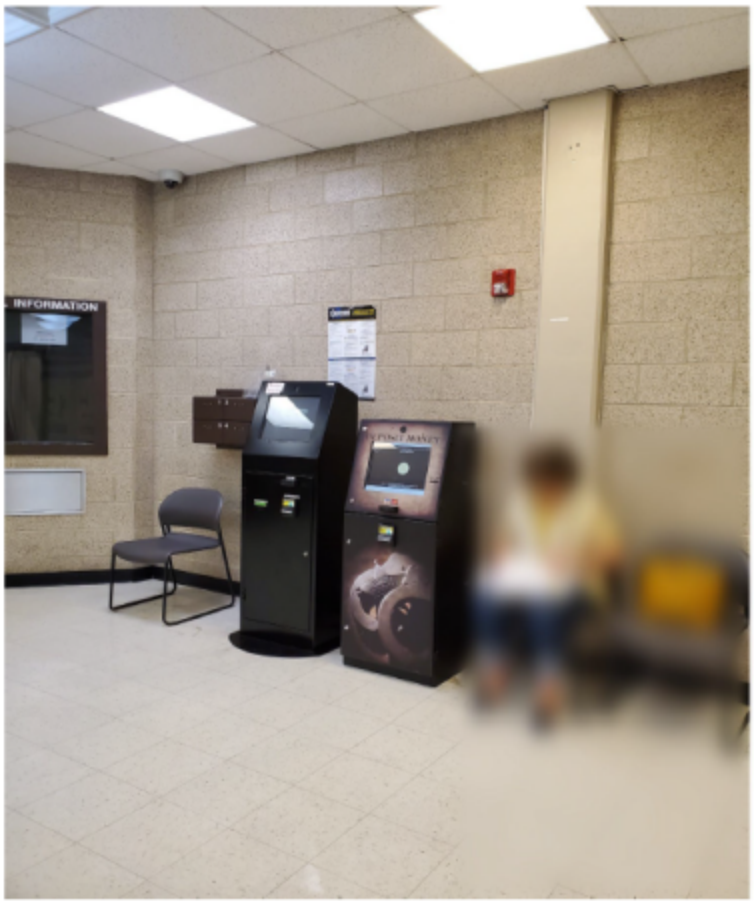

Exhibit 14:

[*406]

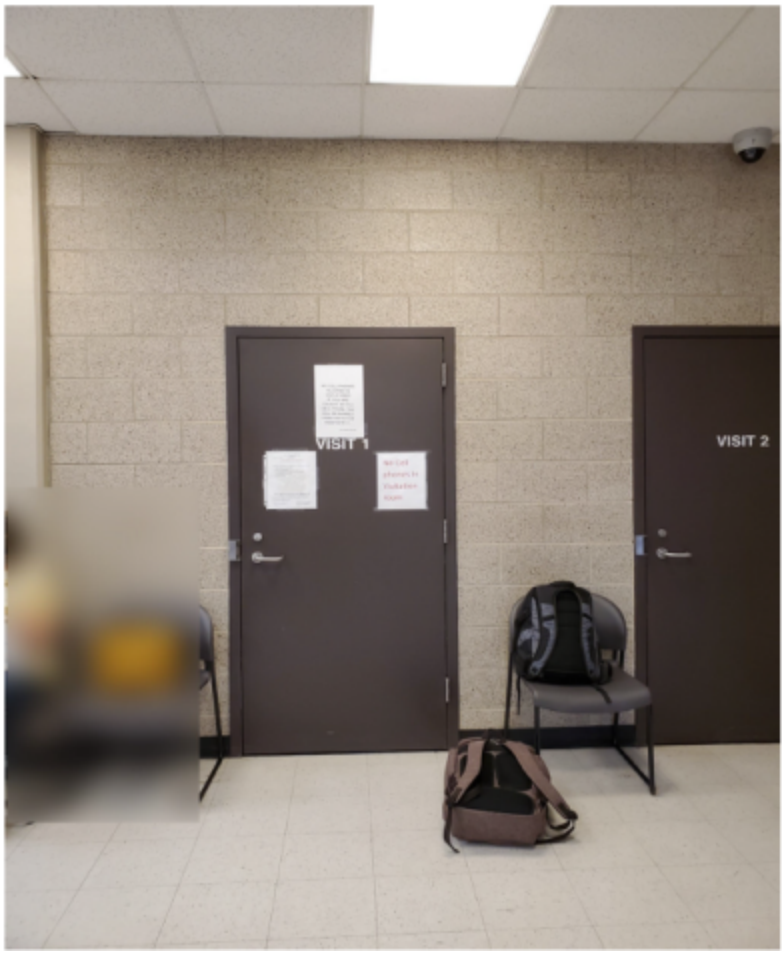

Exhibit 18:

[*407]

Footnotes

1 Section 24.012(e) of the Texas Government Code provides: A district judge may hear a nonjury matter relating to a civil or criminal case at a correctional facility in the county in which the case is filed or prosecuted if a party to the case or the criminal defendant is confined in the correctional facility.

TEX. GOV'T CODE ANN. § 24.012(e).

2 We have attached a representative sampling of these photographs as an appendix to this opinion.

3 HN7 "If a courtroom arrangement is not inherently prejudicial, then reviewing courts use a case-by-case approach to decide whether its use actually prejudiced the defendant." *Simpson*, 447 S.W.3d at 266-67. "The test to determine actual prejudice—the result of external juror influence—would be whether jurors actually articulated a consciousness of some prejudicial effect." *Id.* at 267 (internal quotation marks omitted). "In other words, the defendant must show a reasonable probability that the conduct or expression interfered with the jury's verdict." *Id.* Nixon does not point us to any evidence where the jurors actually articulated a consciousness of

some prejudicial effect due to the courtroom arrangement. Thus, Nixon's issue wholly depends on whether holding the jury trial in the jail courtroom was inherently prejudicial.

Content Type: Cases

Terms: brian w/5 nixon

Narrow By: Court: State Courts>Texas

Date and Time: Jan 16, 2025 03:24:28 p.m. EST