

Affirmed and Opinion Filed August 31, 2023



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-22-00248-CR

**WALTER LEE JACOBS, Appellant
V.
THE STATE OF TEXAS, Appellee**

**On Appeal from the Criminal District Court No. 5
Dallas County, Texas
Trial Court Cause No. F-1776682-L**

MEMORANDUM OPINION

Before Justices Partida-Kipness, Reichek, and Miskel
Opinion by Justice Miskel

Walter Jacobs appeals the trial court's judgment convicting him of murder. The jury found him guilty and assessed his punishment at twenty-five years of imprisonment.

Jacobs raises two issues on appeal. First, Jacobs argues that the trial court committed fundamental error by permitting a detective to testify that he charged Jacobs with murder after considering evidence of self-defense. Second, Jacobs argues that the trial court committed fundamental error during voir dire by failing to sua sponte exclude a prosecutor's statement that Jacobs was guilty beyond a

reasonable doubt. We conclude that the trial court did not err. The trial court's judgment is affirmed.

I. FACTUAL AND PROCEDURAL BACKGROUND

In October 2017, Jacobs and Shane Webb both lived in the JB Jackson apartment complex in Dallas. Jacobs was employed as a machine operator for a tile manufacturing plant and had lived in the complex for about two years.

Webb began renting an apartment at the complex in 2016. He was previously convicted and imprisoned for murders in 1990 and in 2007. Webb bragged about his criminal background, at times carrying a newspaper article about his murder conviction as if it were a trophy. He had a reputation for being aggressive and violent. Jacobs and other residents of the apartment complex had witnessed Webb assault at least two people. They believed he was a bully and feared him. Some, including Jacobs, checked to see if he was around before leaving their apartments. Webb purportedly sold crack cocaine out of his apartment.

Tamika Foreman was Jacobs's hair stylist. Webb was the father of two of Foreman's children.¹ She did not live at the apartment complex. It was rumored that Jacobs and Foreman had a relationship, but Jacobs denied this rumor.

In October 2017, Aurora Garcia-Espinosa, a maintenance worker, went to Webb's apartment to do repairs. Webb was in the apartment on the sofa at the time. Garcia-Espinosa placed her phone, which was in a case with her driver's license,

¹ Testimony conflicted as to whether Webb and Foreman were married.

credit cards, and \$80 in cash, on the kitchen counter and went outside to help her husband unload the truck. She came back inside to get her phone from the counter and shortly afterwards realized that \$80 in cash was missing from the phone case. She returned to the apartment and asked Webb about the missing money. Webb became extremely angry, following her out of the apartment, cursing, pacing in front of her, and threatening, “I’m going to kill you. . . . I’m going to kill you for this.” Garcia-Espinosa immediately called the landlord and left the complex.

Richard Coates lived in the apartment above Jacobs. He was a friend of both Jacobs and Webb but agreed that Webb was a bully. Coates witnessed the confrontation between Garcia-Espinosa and Webb. As Garcia-Espinosa was telling Coates what happened, Webb walked up and started cursing at her and “calling her all kind of bitches and everything.”

Shortly after this altercation, another resident named Patricia Pharms went to Webb with a false story, telling him that Jacobs hated Webb and would testify against Webb if charges were filed against Webb for stealing the money. Webb began to behave aggressively towards Jacobs and tried to intimidate him, threatening Jacobs numerous times and saying “[Jacobs] was going to get the business,” and “I know you got a gun, but you gone get it. You ain’t gone get it when you want it, but you gone get it.” Coates attempted to mediate a resolution of the conflict several times, but Webb was not interested. Webb continued to give Jacobs evil looks and threaten him.

Coates did not know Jacobs to carry a gun, but he knew that Jacobs owned one. Coates had not seen Webb with a gun but knew he had a shotgun because Webb had tried to pawn it to Coates.

Around this time, Webb was told that he was being evicted, and his last day at the complex would be approximately three weeks later.² Webb told some residents that Webb was going to do some “gangsta shit” before he left the apartment.

On November 2, 2017, Coates and Jacobs were sitting outside in the breezeway in front of Jacobs’s apartment. Webb drove up and stopped in front of the vacant lot across the street from where they were sitting, “mean-mugging” Jacobs. He then took off fast, went around the block, drove up slowly and parked, and repeated this cycle several times. Webb then got out of his car, holding his crotch, and “C-walked” across the street towards them.³

Coates asked Webb, “What’s up?” Jacobs did not hear the reply and thought Webb had said something to him, and Webb approached Jacobs threateningly and cursed at him, telling Jacobs that he didn’t say anything to him. Webb was larger than Jacobs, who is five feet, six inches tall. According to Jacobs, he was scared. Jacobs stood up, and the men began to argue, cursing at each other. When Webb

² Testimony at trial conflicted as to the specific timing of Webb’s eviction.

³ Coates testified that C-walking means Crip walking, which is “[j]ust an expression people say.”

began to walk away, Jacobs followed him through the breezeway towards the parking lot, while the men were cursing at each other. Then Webb turned around, pulled up his pants, and marched toward Jacobs.⁴ Although Webb did not touch Jacobs or show him a gun, Jacobs testified that he feared for his life, pulled out the gun he was carrying in his back pocket and fired it. Coates did not see the shooting.

Another witness parked across from the apartment complex also heard the shot and saw Webb running fast and then heard another gunshot. Jacobs testified that he ran after Webb because he believed that “I was going to be dead, if I didn’t.” He thought Webb would come after him and shoot him in the back. Webb fell to the ground, and Jacobs approached Webb and stood over him, firing several additional shots into his head. Jacobs walked back to Coates, said something to him, and went into his apartment.⁵ He drove off in his car about five minutes later.

Webb died from multiple gunshot wounds to the head and neck. Jacobs was indicted for murder while using a deadly weapon, enhanced by two prior convictions. During the trial, Jacobs testified in his own defense. The jury convicted Jacobs of murder, found both enhancements to be true, and assessed his punishment at twenty-five years of imprisonment.

⁴ Coates and Jacobs had conflicting testimony as to whether Webb turned around. Coates did not see him turn around.

⁵ The substance of what Jacobs said to Coates was disputed at trial.

II. APPLICABLE LAW ON PROCEDURAL DEFAULT

Texas Rule of Appellate Procedure 33.1 sets forth the general requirement that a contemporaneous objection must be made in the trial court to preserve error for appeal. TEX. R. APP. P. 33.1; *Grado v. State*, 445 S.W.3d 736, 738–39 (Tex. Crim. App. 2014). However, the Court of Criminal Appeals has held that the rule is not absolute and turns on the nature of the right allegedly infringed. *Id.* at 739. The court identified three categories of rights involved in our judicial system:

- The first category of rights are those that are “widely considered so fundamental to the proper functioning of our adjudicatory process . . . that they cannot be forfeited . . . by inaction alone.” These are considered “absolute rights.”
- The second category of rights is comprised of rights that are “not forfeitable”—they cannot be surrendered by mere inaction, but are “waivable” if the waiver is affirmatively, plainly, freely, and intelligently made. The trial judge has an independent duty to implement these rights absent any request unless there is an effective express waiver.
- Finally, the third category of rights are “forfeitable” and must be requested by the litigant. Many rights of the criminal defendant, including some constitutional rights, are in this category and can be forfeited by inaction.

Id. (quoting *Marin v. State*, 851 S.W.2d 275, 278–79 (Tex. Crim. App. 1993), *overruled on other grounds by Cain v. State*, 947 S.W.2d 262, 264 (Tex. Crim. App. 1997)).

Absolute rights include matters such as jurisdiction over the subject or person, and waivable rights include rights such as the right to counsel or a jury trial. *See Neal v. State*, 150 S.W.3d 169, 175 (Tex. Crim. App. 2004). Rule 33.1’s error

preservation requirements do not apply to absolute rights and waivable rights. *Grado*, 445 S.W.3d at 739. The Court of Criminal Appeals has used the term “fundamental” to identify complaints that may be raised for the first time on appeal. *Mendez v. State*, 138 S.W.3d 334, 341 (Tex. Crim. App. 2004).

“Barring these two narrow exceptions, all errors—even constitutional errors—may be forfeited on appeal if an appellant failed to object at trial.” *Grado*, 445 S.W.3d at 739. The third category, forfeitable rights, primarily includes evidentiary and procedurally based rights. *See id.* at 741 & n.29 (citing cases where the following rights were forfeited by failure to properly preserve error for appeal: Fifth Amendment privilege against self-incrimination, confrontation and compulsory process rights, statute of limitations defense, and improper jury argument).

With respect to forfeitable rights, as a prerequisite to presenting a complaint on appeal, the record must demonstrate that (1) the complaining party made a timely and specific request, objection, or motion; and (2) the trial judge either ruled on the request, objection, or motion, or refused to rule and the complaining party objected to that refusal. *See* TEX. R. APP. P. 33.1(a); *Haley v. State*, 173 S.W.3d 510, 516 (Tex. Crim. App. 2005). The objection must be made each time inadmissible evidence is offered unless one of the following two exceptions applies: counsel either (1) obtains a running objection or (2) requests a hearing outside the presence

of the jury. *Haley*, 173 S.W.3d at 516–17; *see also* TEX. R. APP. P. 33.1(a); TEX. R. EVID. 103(b).

III. ANY ERROR REGARDING THE DETECTIVE’S TESTIMONY WAS FORFEITABLE AND NOT PRESERVED FOR REVIEW AND, IN THE ALTERNATIVE, WAS HARMLESS

Jacobs asserts that the detective’s testimony that he filed the charge as murder after considering self-defense denied Jacobs his due process right to a jury trial. Jacobs argues that his objection was sufficient to preserve the issue for appeal and, in the alternative, that this right is either an absolute or waivable right that may be raised for the first time on appeal. Jacobs contends that the court must reverse the conviction because the purported error is constitutional error that contributed to Jacobs’s conviction under a harm analysis. The State responds that Jacobs failed to timely object with respect to this forfeitable right, that the trial court did not err in failing to exclude the testimony, and that any possible error was harmless.

A. Jacobs’s claim regarding the detective’s testimony on self-defense was forfeitable error and not preserved.

1. Detective’s Testimony At Issue

At trial, the detective investigating the case gave the following testimony upon direct examination by the prosecutor (emphasis added):

[THE STATE]: When making that determination about whether you’ll charge somebody with murder, do you take self-defense into account?

[DETECTIVE]: You do.

[THE STATE]: Is that also through talking to witnesses and all of that?

[DETECTIVE]: Yes, ma'am.

[THE STATE]: Okay. Have you had death cases, I should say, where you ended up not filing charges for murder because it was self-defense, in your view?

[DETECTIVE]: Yes, ma'am.

[THE STATE]: But, in this case, you did decide to file a charge?

[DETECTIVE]: Yes, ma'am.

The detective then testified that his investigation did not reveal that Webb had a gun or other weapon or had been making physical contact with Jacobs at that time.

Defense counsel did not object to this testimony, and the court adjourned for the day after a very brief cross-examination by Jacob's counsel confirming that phone records from the phone company show the location of the phone and not necessarily the defendant.

The next day the detective's testimony resumed and the following exchange occurred on re-direct (emphasis added):

[THE STATE]: Detective Chaney, yesterday, you told us that you have death cases that you investigate as murders, but later you found out and you came to the conclusion that a particular suspect acted in self-defense, right?

[DETECTIVE]: Yes, ma'am.

[THE STATE]: And you don't file murder charges on that person, do you?

[DETECTIVE]: We refer it to the grand jury.

[THE STATE]: Okay. And do you—in this case, did you come to the conclusion that this was not a self-defense case?

[DETECTIVE]: That's correct.

[DEFENSE COUNSEL]: **Judge, I'm going to object that this is a legal question, with a legal answer, that is the sole issue that the jury is going to be here to decide. I would object to this witness testifying that that was his belief. He filed a warrant in this case. The jury can decide whether or not they agree with that decision.**

[THE STATE]: Can I rephrase, Judge?

[THE COURT]: Yep. That's a good start.

[THE STATE]: Okay.

[THE STATE]: Detective, in this case, why did you decide to file a case for murder?

[DETECTIVE]: Dealing with this investigation, collecting all the—I will say “evidence.” Evidence is from the physical to the witness statement, the totality of the investigation, led me to file a warrant.

[THE STATE]: Okay. And the totality of your investigation, did you investigate whether or not this was self-defense as well?

[DETECTIVE]: Yes, ma'am.

The prosecutor then proceeded to confirm that the detective had heard about Webb's character and reputation in that community, that he was a bully, that he and Jacobs had a conflict about a rumor, that they exchanged words, that Webb didn't like Jacobs, and that Webb had a violent criminal history.

[THE STATE]: **And, given all that, you still decided to file this case as a murder, correct?**

[DETECTIVE]: **Yes, ma'am.**

[THE STATE]: Pass the witness.

[DEFENSE COUNSEL]: I have no questions for this witness.

2. *Detective Testimony Concerning Self-Defense Relates to a Forfeitable Right and Was Not Preserved*

Jacobs asserts that the last question and answer of the detective's testimony was an impermissible comment that effectively deprived Jacobs of his right to have the jury decide whether he was entitled to the justification of self-defense. He argues that this due process right to a jury trial is either an absolute right or a waivable right under *Marin* and that the trial court's purported error in permitting the testimony did not have to be preserved for appeal.

However, the Court of Criminal Appeals has found that no broad "due process" exception to a procedural default rule exists. *Anderson v. State*, 301 S.W.3d 276, 279–80 (Tex. Crim. App. 2009). The court has stated that "that numerous constitutional rights, including those that implicate a defendant's due process rights, may be forfeited for purposes of appellate review unless properly preserved." *Id.* at 280.

Consistent with this approach, courts have held that similar complaints about the admission of detective testimony must be objected to at trial and properly preserved for appeal to avoid forfeiture of the complaint. *See Alavian v. State*, No. 05-15-01549-CR, 2017 WL 1245418, at *5 (Tex. App.—Dallas April 5, 2017, pet. ref'd) (mem. op., not designated for publication); *Rocha v. State*, No. 05-03-00808-CR, 2004 WL 516169, at *3 (Tex. App.—Dallas March 17, 2004, pet. ref'd) (mem.

op., not designated for publication); *Hiden v. State*, Nos. 04-18-00701-CR, 04-18-00702-CR, 2020 WL 214760, at *3 (Tex. App.—San Antonio Jan. 15, 2020, pet. ref'd), (mem. op., not designated for publication).

In *Alavian* the appellant claimed that his due process rights were violated when the detective was permitted to testify that she had determined that the appellant was guilty of the offense based on her investigation. 2017 WL 1245418, at *4. The appellant's trial counsel had failed to object to this testimony, but the appellant argued that preservation was not necessary because admission of this testimony constituted fundamental error. *Id.* This court disagreed and concluded that the appellant's due process claim relating to the admission of the detective's testimony had not been preserved for appellate review. *Id.* at *5.

In *Hiden* the court found that the defendant had not properly preserved his complaint that the trial court erred in allowing a detective to testify regarding whether he believed the defendant was acting in self-defense because the issue on appeal did not comport with the trial objection. 2020 WL 214760, at *3. This conclusion indicates that court viewed any right implicated by this testimony as a forfeitable right.

Similarly, in *Rocha*, the appellant contended that the trial court erred by admitting a detective's testimony that he did not believe self-defense was involved in the shooting. 2004 WL 516169 at *2. Although the appellant objected to the testimony, he had not objected to the opinion testimony of a prior witness regarding

self-defense. *Id.* Consequently, this court held that “a party may not successfully challenge evidence admitted elsewhere without objection.” *Id.* at *3.

In the present case, the trial court did not disregard an absolute requirement or prohibition and did not deny Jacobs a waivable-only right required to be expressly waived. Although Jacobs claims that the detective’s comment on self-defense effectively denied him the right to have a jury decide whether he was entitled to the justification of self-defense, Jacobs does not cite authority showing that this equates to a denial of the fundamental right to a jury trial.

We find that Jacobs’s complaint about improper testimony by the detective relates to a forfeitable right. Consequently, the issue is whether Jacobs made a timely, specific objection in compliance with Rule 33.1(a). *See Neal*, 150 S.W.3d at 175.

Jacobs’s counsel did not object to Detective Chaney’s initial testimony regarding his consideration of self-defense and decision to file a murder charge in this case. Counsel did not object to the testimony until it was repeated the following day. Jacobs thus forfeited his ability to challenge this evidence that was admitted the previous day without objection. *See, e.g., Rocha*, 2004 WL 516169, at *3. Moreover, as the testimony continued, counsel failed to renew the objection. We conclude that Jacobs forfeited his objection to the testimony.

B. In the alternative, even if preserved, any error did not affect Jacob’s substantial rights and was harmless.

Even if error had been preserved, any error was harmless.

1. *Applicable Law on Harm Analysis*

Rule 44.2 sets forth a bifurcated analysis for reviewing error in criminal cases based on whether the error is (a) constitutional error or (b) any other type of error, defect, irregularity or variance. *See* TEX. R. APP. P. 44.2.

The erroneous admission of evidence is non-constitutional error.⁶ *Gonzalez v. State*, 544 S.W.3d 363, 373 (Tex. Crim. App. 2018). Appellate courts have applied nonconstitutional error analysis in reviewing testimony by detectives and officers regarding whether a defendant’s self-defense claim makes sense to them. *See Madison v. State*, No. 05-15-00859-CR, 2016 WL 7163913, at *4 (Tex. App.—Dallas Nov. 8, 2016, pet. ref’d) (mem. op.) (not designated for publication); *James v. State*, 335 S.W.3d 719, 726 (Tex. App.—Fort Worth 2011, no pet.).

Rule 44.2(b) provides that we must disregard any nonconstitutional error that does not affect substantial rights. TEX. R. APP. P. 44.2(b); *see Haley*, 173 S.W.3d at 518. A defendant’s substantial rights are affected when the error has a substantial and injurious effect or influence in determining the jury’s verdict. *Cook v. State*, 665 S.W.3d 595, 599 (Tex. Crim. App. 2023). A court will not overturn the conviction if it has a fair assurance from an examination of the record as a whole that the error did not influence the jury, or had but a slight effect. *Gonzalez*, 544

⁶Jacobs’s brief acknowledges that trial court error regarding the admission of evidence is generally non-constitutional error, “except when the alleged error is for a *Crawford* violation” and argues this error should be considered “*Crawford* type constitutional error.” *See Crawford v. Washington*, 541 U.S. 36 (2004). However, *Crawford* held that the Sixth Amendment demands witness unavailability and a prior opportunity for cross-examination to admit testimonial hearsay evidence. *Id.* at 68–69. We find *Crawford* inapposite.

S.W.3d at 373. In making this determination, the following nonexclusive factors are considered: the character of the alleged error and how it might be considered in connection with other evidence, the nature of the evidence supporting the verdict, the existence and degree of additional evidence indicating guilt, whether the State emphasized the complained-of error, the trial court's instructions, the theory of the case, and relevant voir dire. *Cook*, 665 S.W.3d at 599.

2. *The error did not affect Jacobs's substantial rights.*

Even in the absence of the detective's testimony that his investigation led him to file a charge for murder after considering self-defense, the record shows that the jury could have reasonably concluded that Jacob's self-defense claim was not justified as a matter of law. For example, the jury heard the following additional testimony from various witnesses, including Jacobs:

- that Jacobs followed Webb and ultimately fired a gunshot as Webb ran away,
- that Jacobs ran after him, fired again, and after Webb fell to the ground, fired several additional shots at Webb's head after he fell down,
- that several of the shots were at a close range based on an autopsy,
- that Webb did not show Jacobs a gun at the time of the shooting,
- that Webb had not been making physical contact with Jacobs at the time of the shooting,
- that Jacobs had no visible injuries or gunshot wounds when apprehended five days later.

In addition, the State did not mention the detective's complained-of testimony in its closing argument or otherwise seek to inappropriately enflame the jury with this testimony. The jury instructions stated that the jury members were the exclusive judges of the facts proved and the weight given to witness testimony. Consequently, the influence of the detective's statements when compared with the nature, degree and existence of other evidence supports a finding of harmless error.

Upon reviewing the record as a whole, it appears that any error in failing to exclude this testimony had at most a slight effect on the jury. Even if Jacobs had timely objected to the detective's testimony, and assuming that the trial court erred in permitting this testimony, we find that any error did not affect Jacobs's substantial rights and is harmless. Issue one is decided against Jacobs.

IV. ANY ERROR REGARDING THE PROSECUTOR'S VOIR DIRE STATEMENT WAS FORFEITABLE AND NOT PRESERVED FOR REVIEW AND, IN THE ALTERNATIVE, WAS NOT IMPROPER

Jacobs's second issue asserts that the prosecutor impermissibly commented on Jacobs's guilt during voir dire. He contends that the statement, when added to the complained-of detective's testimony in Jacobs's first issue, effectively denied Jacobs his due process right to a trial by jury. Jacobs concedes that he did not object to this statement but argues that this right is either an absolute or waivable right that may be raised for the first time on appeal. The State responds that Jacobs failed to timely object with respect to this forfeitable right and that the prosecutor's statement was not improper.

A. Jacobs's claim regarding the prosecutor's statement that Jacobs was guilty beyond a reasonable doubt was forfeitable and not preserved for review.

Jacobs asserts that the trial court committed fundamental error when it permitted the prosecutor to make the following statement during voir dire:

We think the defendant is guilty beyond a reasonable doubt of the offense, the defense disagrees with us.

Jacobs argues that this statement is an expression of the prosecutor's personal opinion concerning the guilt of the accused that deprived him of due process. He asserts that this complaint involves either absolute or waivable rights.

Jacobs points to no authority that statements of this nature by a prosecutor during voir dire implicate absolute rights or waivable-only rights such that error does not need to be preserved for appeal. The cases cited by Jacobs involving a prosecutor's clear injection of personal opinion are all cases in which the defense objected to the prosecutor's statements in the trial court. *See Elizondo v. State*, 545 S.W.2d 453, 455–56 (Tex. Crim. App. 1976); *Fowler v. State*, 500 S.W.2d 643, 644 (Tex. Crim. App. 1973); *Baldwin v. State*, 499 S.W.2d 7, 9 (Tex. Crim. App. 1973); *Clayton v. State*, 502 S.W.2d 755, 757 (Tex. Crim. App. 1973). Although these cases demonstrate that prosecutors may not give personal opinions of guilt and that judgments may be reversed in certain cases, they do not show that permitting a prosecutor's statement of personal opinion as to a defendant's guilt constitutes fundamental error exempt from error preservation requirements.

An improper comment by a prosecutor is forfeitable error. *See Beltran v. State*, 99 S.W.3d 807, 811–12 (Tex. App.—Houston [14th Dist.] 2003, pet. ref’d) (concluding that the prosecutor improperly stated her personal opinion on voir dire but that appellant had waived the issue by failing to object to this “non-fundamental error”). Consequently, in the present case, the failure to object to the statement forfeited any error.

B. The prosecutor’s statement was not an improper statement of his opinion.

Even if Jacobs had timely and specifically objected to the prosecutor’s statement, an examination of this statement in the context of the prosecutor’s surrounding statements to the jury indicates that the prosecutor was not injecting his personal opinion.

During the State’s portion of voir dire, the prosecutor began to explain to the venire the differences between the “guilt/innocence” phase of the trial and, if convicted, the punishment phase of the trial. The prosecutor discussed the statutory elements of murder and addressed the term “reasonable doubt.” He then stated:

The next part where we get to is we get to the guilt/innocence phase, and that's when you're going to hear the facts of the case. The State is going to put on evidence, and we're going to prove our case beyond a reasonable doubt, and we'll talk about [sic] that means in a minute.

....

All we're going to look at is the facts of this specific offense. Did the defendant commit the offense of murder? If you do find, beyond a reasonable doubt, that he did, that's when we get to the guilt/innocence—or excuse me, that's when we get to the punishment phase.

Later in voir dire, the prosecutor further stated:

So a lot of times, people will say it's a he said/she said case, you can't really make a decision, there's no way you can get beyond a reasonable doubt. But just because there's a conflict in testimony does not mean that there is reasonable doubt. Okay? That doesn't mean by default that that is what it means.

I'll tell you right off the bat that you guys are not here necessarily to solve any type of mystery. This is not going to be some sort of a murder mystery podcast for you to have to—to dig through the clues yourself and figure out. You're here to settle a dispute.

We think the defendant is guilty beyond a reasonable doubt of the offense, the defense disagrees with us. You are here to determine which one of us is correct in that assessment. That's all you're here to do today (emphasis added).

Even standing alone, the disputed sentence reads as a statement of the two opposing legal positions of the State and the defense in a criminal case rather than the opinion of a particular prosecutor. The sentences following that statement, read together with the disputed statement, lend additional support to this reading. Taken in context, we find that the statement regarding the defendant's guilt was part of a broader attempt to explain the jury's role in assessing whether the State has proven Jacobs's guilt beyond a reasonable doubt or whether the defense will prevail. Consequently, we find that the trial court did not err in failing to sua sponte exclude these statements by the prosecutor. Issue two is decided against Jacobs.

V. CONCLUSION

We conclude that Jacobs failed to preserve error with respect to the detective's testimony that he charged Jacobs with murder after investigating the issue of self-

defense. Even if preserved, we find that the error, if any, did not affect Jacob's substantial rights and was harmless. We further conclude that Jacobs failed to preserve error with respect to the prosecutor's complained-of voir dire statement. Even if preserved, the trial court did not err in failing to sua sponte exclude the statement. We affirm the judgment of the trial court.

220248f.u05

Do Not Publish
TEX. R. APP. P. 47

/Emily Miskel/
EMILY MISKEL
JUSTICE



**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

WALTER LEE JACOBS, Appellant

No. 05-22-00248-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the Criminal District
Court No. 5, Dallas County, Texas
Trial Court Cause No. F-1776682-L.
Opinion delivered by Justice Miskel.
Justices Partida-Kipness and Reichek
participating.

Based on the Court's opinion of this date, the judgment of the trial court is
AFFIRMED.

Judgment entered this 31st day of August, 2023.