

**Affirmed and Memorandum Opinion filed June 10, 2010.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-09-00769-CR**

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**JOHN ANDY JONES, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 183rd District Court  
Harris County, Texas  
Trial Court Cause No. 1121936**

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**MEMORANDUM OPINION**

A jury convicted appellant of murder and sentenced him to confinement for life in the Texas Department of Criminal Justice, Institutional Division. Appellant raises two issues on appeal.

The victim, Corkney Lee, was in a car at a red light when a truck containing two men, Jimmie Gross and appellant, stopped on the passenger side of Lee's car. Jasmine Thomas was a passenger in Lee's car. Lee and Gross exchanged words. Lee pulled into a gas station and parked; Gross parked beside him. Gross and appellant then exited the vehicle with appellant holding a shotgun. Lee turned and ran away from appellant, toward

the store, and appellant fired. Lee fell forward and subsequently died. Gross and appellant drove away.

In his first issue, appellant claims the alternate juror was allowed to deliberate with the twelve members of the jury panel during the guilt-innocence phase of the trial. Appellant bases his claim on the fact that when the jury was polled after rendering its verdict, the alternate juror's name was called and she responded. The record reflects the alternate juror responded, "I was an alternate." The alternate juror's response does not indicate she deliberated with the jury. There is nothing in the record that demonstrates, or even suggests, the alternate juror was part of deliberations. Appellant's first issue is overruled.

Appellant argues in his second issue that the trial court erred in not allowing him to impeach Jasmine Thomas and in denying him the opportunity to make a bill of exception. The record reflects appellant was allowed to make a bill of exception so we reject that claim. Regarding appellant's other assertion, the record indicates Thomas, a witness for the State, had been placed on community supervision pursuant to deferred adjudication for possession with intent to deliver. When appellant attempted to question Thomas regarding her deferred adjudication, the trial court refused to permit it.

The Texas Court of Criminal Appeals in *Maxwell v. State*, 48 S.W.3d 196, 200 (Tex. Crim. App. 2001), held "a defendant is permitted to cross-examine a State's witness on the status of his deferred adjudication probation in order to show a potential motive, bias or interest to testify for State." More recently, in *Woods v. State*, 152 S.W.2d 105, 111 (Tex. Crim. App. 2004), the Texas Court of Criminal Appeals cited *Maxwell* for the proposition that there is a nexus between the witness's testimony and the witness's potential motive to testify in favor of the other party when a witness is serving a period of community supervision. The court stated, "[i]n such cases, the witness is placed in a vulnerable position and may have a motive to testify in favor of the State." *Id.*

Accordingly, we find the trial court erred in refusing to permit appellant to cross-examine Thomas on the status of her deferred adjudication. *See Drew v. State*, 76 S.W.3d 436, 451 (Tex. App. – Houston [14th Dist.] 2002, pet. ref'd).

Appellant's brief does not identify any harm from the trial court's error, and we determine there was none. Thomas only testified to the events immediately surrounding the shooting. She did not identify appellant as the shooter. Thomas' testimony was echoed by Jimmie Gross, Oddie Bryant and Vetrice Smith. Therefore, we find the trial court's error was harmless. *See Shelby v. State*, 819 S.W.2d 544, 547 (Tex. Crim. App. 1991); *Drew*, 76 S.W.3d at 451; Tex. R. App. P. 44.2(a). Appellant's second issue is overruled.

Having overruled both of appellant's issues, we affirm the trial court's judgment.

PER CURIAM

Panel consists of Justices Brown, Sullivan, and Christopher.

Do Not Publish — TEX. R. APP. P. 47.2(b).