NUMBER 13-16-00038-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

NELSON PARNELL, JR. **Appellant,**

v.

THE STATE OF TEXAS, **Appellee.**

On appeal from the 85th District Court of Brazos County, Texas.

MEMORANDUM OPINION[1]

Before Chief Justice Valdez and Justices Longoria and Hinojosa
Memorandum Opinion by Justice Hinojosa

Appellant Nelson Parnell Jr. appeals his conviction for retaliation, enhanced to a first-degree felony by appellant's status as a habitual felony offender. *See* TEX. PENAL

[1] This case is before this Court on transfer from the Tenth Court of Appeals in Waco pursuant to an order issued by the Texas Supreme Court. *See* TEX. GOV'T CODE ANN. § 73.001 (West, Westlaw through 2017 R.S.).

CODE ANN. §§ 12.42, 36.06 (West, Westlaw through 2017 R.S.). A jury found appellant guilty and assessed punishment at life imprisonment in the Texas Department of Criminal Justice–Institutional Division. The trial court sentenced appellant accordingly.

By seven issues, which we have renumbered, appellant argues: (1) the trial court abused its discretion in admitting the details of an extraneous offense; (2) appellant was entitled to a limiting instruction concerning extraneous-offense evidence; (3) the trial court abused its discretion in admitting evidence of a prior felony conviction; (4) appellant's right to be present at trial was violated; (5) the trial court abused its discretion by denying a challenge for cause to a disqualified juror; and appellant suffered egregious harm because the charge did not require a unanimous jury verdict regarding (6) the status of the complainant under the retaliation statute and (7) the manner in which appellant threatened the complainant. We affirm.

I. BACKGROUND[2]

Parnell was indicted for committing the offense of retaliation by

> intentionally or knowingly threaten[ing] to harm another, to-wit: Julia Gooding, by an unlawful act, to-wit: by threatening to kill her or telling her to watch her life, in retaliation for or on account of the service or status of Julia Gooding as a witness, prospective witness or a person who had reported the occurrence of a crime.

When viewed in the light most favorable to the verdict, the relevant evidence at trial reflects the following.

[2] Because this is a memorandum opinion and the parties are familiar with the facts, we will not recite them here except as necessary to advise the parties of the Court's decision and the basic reasons for it. *See* TEX. R. APP. P. 47.4.

Julia Gooding lived next door to appellant in Bryan, Texas. Gooding testified that she arrived home one evening to hear "loud noises, arguing" coming from the area of appellant's residence. Approximately thirty minutes later, Gooding heard someone knock on her front door. Gooding opened her door and a nude woman, who was later identified as appellant's girlfriend Tierany Collins, fell into the house. Collins "was disturbed; she was hurt; she was crying, asking for help." Collins ran away from Gooding's house when she heard a man yelling. Gooding then saw appellant chasing Collins while shouting obscenities. Gooding observed appellant grab Collins by her hair and pull her away. She subsequently called 911 to report the incident. Gooding's 911 call was admitted into evidence and published to the jury.

According to Gooding, appellant approached her the next day, asking her "did you do this?" Appellant approached her numerous times over the next week. Gooding testified that appellant told her "if he had to do time I would die. He would kill me if he did time." Gooding clarified on cross-examination that appellant told her "[i]f he does the 40, I better watch my life."

Officer Ruth Torres with the Bryan Police Department testified that she responded to a call of a "disturbance." When Officer Torres arrived at appellant's residence, she observed blood outside the door. She then went inside and saw blood on the walls and floor. Appellant and an unclothed Collins were present at the residence. Two other officers questioned appellant, while Officer Torres met with Collins in a separate room. Officer Torres observed numerous injuries on Collins. Over appellant's objection, the trial court admitted various photographs of appellant's residence and Collins's injuries.

The jury returned a guilty verdict. This appeal followed.

II. EVIDENTIARY RULINGS

By his first, second, and third issues, appellant complains of the trial court's evidentiary rulings.

A. Standard of Review

We review the trial court's decision to admit or exclude evidence for an abuse of discretion. *Davis v. State*, 329 S.W.3d 798, 803 (Tex. Crim. App. 2010); *Martinez v. State*, 327 S.W.3d 727, 736 (Tex. Crim. App. 2010). Under this standard, we do not disturb the trial court's decision if the ruling was within the zone of reasonable disagreement. *Davis*, 329 S.W.3d at 803; *Bigon v. State*, 252 S.W.3d 360, 367 (Tex. Crim. App. 2008). We will uphold an evidentiary ruling on appeal if it is correct on any theory of law that finds support in the record. *Gonzalez v. State*, 195 S.W.3d 114, 126 (Tex. Crim. App. 2006).

B. Extraneous Offense

By his first issue, appellant argues "the trial court erred in admitting details of the extraneous offense of assault." Appellant's complaint relates to the admission of State's Exhibits 8, 10, and 12, which are pictures of his residence depicting blood on the floor, and the related testimony of Officer Torres. Appellant argues that this evidence "depicted things never seen by Gooding and . . . formed no part of her report to police." The State responds that the evidence was admissible as same-transaction contextual evidence.

1. Applicable Law

Evidence of extraneous offenses is not admissible at the guilt phase of a trial to prove that a defendant committed the charged offense in conformity with a bad character. TEX. R. EVID. 404(b); *see Devoe v. State*, 354 S.W.3d 457, 469 (Tex. Crim. App. 2011). However, extraneous offense evidence may be admissible when it has relevance apart from character conformity. *Devoe*, 354 S.W.3d at 469; *Moses v. State*, 105 S.W.3d 622, 626 (Tex. Crim. App. 2003). For example, it may be admissible to show proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. *Moses*, 105 S.W.3d at 626. Evidence of another crime, wrong, or act also may be admissible as same-transaction contextual evidence where "several crimes are intermixed, or blended with one another, or connected so that they form an indivisible criminal transaction, and full proof by testimony . . . of any one of them cannot be given without showing the others." *Wyatt v. State*, 23 S.W.3d 18, 25 (Tex. Crim. App. 2000) (quoting *Rogers v. State*, 853 S.W.2d 29, 33 (Tex. Crim. App. 1993)). The jury is entitled to know all relevant surrounding facts and circumstances of the charged offense. *Id*. "[E]vents do not occur in a vacuum, and the jury has a right to hear what occurred immediately prior to and subsequent to the commission of that act so that it may realistically evaluate the evidence." *Wesbrook v. State*, 29 S.W.3d 103, 115 (Tex. Crim. App. 2000). But, under Rule 404(b), same-transaction contextual evidence is admissible only when the offense would make little or no sense without also bringing in that evidence, and it is admissible "only to the extent that it is necessary to the jury's understanding of

the offense." *Wyatt*, 23 S.W.3d at 25 (quoting *Pondexter v. State*, 942 S.W.2d 577, 584 (Tex. Crim. App. 1996)).

Extraneous bad act or offense evidence may also be admitted under Rule 404(b) to prove motive. *See Crane v. State*, 786 S.W.2d 338, 349–50 (Tex. Crim. App. 1990); *see also Keen v. State*, 85 S.W.3d 405, 413–14 (Tex. App.—Tyler 2002, pet. ref'd) (concluding that the trial court could have reasonably decided that extraneous offense evidence had non-character conformity relevance where it rebutted defendant's defensive theory that he was framed and showed his motive to commit the offense). Although not an essential element of a criminal offense, evidence of motive is "always proper and relevant" to assist in proving the defendant committed the charged offense. *Booker v. State*, 929 S.W.2d 57, 63 (Tex. App.—Beaumont 1996, pet. ref'd); *see Porter v. State*, 623 S.W.2d 374, 386 (Tex. Crim. App. 1981) (holding that appellant's commission of a robbery eleven days before his murder of a police officer was admissible because the prior crime created an inference that his motive for murder was to avoid apprehension).

2. Analysis

We disagree that the evidence of appellant's extraneous assault should have been limited to what Gooding personally observed. The testimony and exhibits establishing the nature of the assault was necessary to explain appellant's subsequent threats to Gooding. Appellant's threats did not happen in a vacuum, and the jury was entitled "to hear what occurred immediately prior to and subsequent to the commission of [the offense] so that it may realistically evaluate the evidence." *Wesbrook*, 29 S.W.3d at 115.

The severity of the assault and the potential for a lengthy prison sentence tended to explain appellant's motive for threatening that he would kill Gooding if he had to "do time." *Cf. Morales v. State*, 389 S.W.3d 915, 919 (Tex. App.—Houston [14th Dist.] 2013, no pet.) (concluding that defendant's prior threat that he would kill ex-girlfriend if defendant found her with another man constituted same-transaction contextual evidence in relation to later assault because it was necessary to the jury's understanding of defendant's motive). The trial court's ruling that details of the extraneous assault constituted same-transaction contextual evidence was not outside the zone of reasonable disagreement. Therefore, we conclude that the trial did not abuse its discretion in overruling appellant's objections to the evidence.

Relatedly, by his second issue, appellant contends that he was entitled to a contemporaneous limiting instruction concerning the extraneous assault. However, we have determined that the evidence was properly admitted as same-transaction contextual evidence. "[S]ame transaction contextual evidence is admissible without a limiting instruction." *Castaldo v. State*, 78 S.W.3d 345, 352 (Tex. Crim. App. 2002); *see Wesbrook*, 29 S.W.3d at 114–15. Therefore, the trial court did not err in failing to provide a contemporaneous limiting instruction.

We overrule appellant's first and second issues.

C. Impeachment with Prior Conviction

By appellant's third issue, he argues that "[t]he trial court abused its discretion by admitting evidence of [his] prior felony convictions during the State's cross-examination

of Latoya Wallace." The State responds that appellant's witness opened the door to rebuttal character evidence when she volunteered that appellant was not a violent person.

1. Applicable Law

A witness may "open the door" to rebuttal character evidence by placing the defendant's or the complainant's peaceable character at issue. *See* TEX. R. EVID. 404(a)(2); *Harrison v. State*, 241 S.W.3d 23, 25–28 (Tex. Crim. App. 2007) (concluding that the trial court did not abuse its discretion by allowing rebuttal character evidence from the State after a defense witness testified that defendant was a "good" and "sweet" person); *Allen v. State*, 473 S.W.3d 426, 454 (Tex. App.—Houston [14th Dist.] 2015, pet. dism'd). A witness who testifies to a defendant's good character may be cross-examined with relevant and specific instances of misconduct that might affect the opinion of the witness. TEX. R. EVID. 405(a); *Wilson v. State*, 71 S.W.3d 346, 350 (Tex. Crim. App. 2002). "There is no nonresponsiveness exception to this right." *Harrison*, 241 S.W.3d at 27. Accordingly, even if such evidence is volunteered, it still constitutes character evidence offered by a defense witness. *Id.*

"The purpose of permitting [character witness] cross-examination is not to discredit the person whose character is in issue, but rather to discredit the testimony of the character witness." *Id.* at 25. Cross-examination rebuttal evidence may be elicited in the form of "have you heard" or "were you aware" questions about specific instances of conduct inconsistent with the character trait brought into issue. *Id.*

2. Analysis

Appellant presented the testimony of his daughter-in-law Latoya Wallace. On direct examination, Wallace claimed she spoke to Gooding and Gooding told her appellant did not threaten her. During the State's cross-examination, the following exchange occurred:

PROSECUTOR: So how long have you known the defendant?

WALLACE: For—I've been knowing him a long time. I've been married in the family for six years.

PROSECUTOR: For six years. So obviously you don't want anything bad to happen to the defendant?

WALLACE: No.

PROSECUTOR: All right.

WALLACE: He's not a violent person that I've seen.

PROSECUTOR: Are—I'm sorry. Did you just testify that the defendant is not a violent person?

WALLACE: No. He's a good—he's a good person.

PROSECUTOR: Okay. And what is that opinion based on, Ms. Wallace?

WALLACE: Based on that you asked me if I wanted to see him go. No, I don't want to see him go. No.

PROSECUTOR: Yes, ma'am. My question was that you don't want anything bad to happen to your father-in-law; is that correct?

WALLACE: No. Unh-unh.

PROSECUTOR: And then you stated that he is a good person.

WALLACE: Yes.

PROSECUTOR: Okay. That he is a peaceful person?

WALLACE: Yes. He's a very good person.

PROSECUTOR: That he is not a violent person?

WALLACE: Not that I've seen.

Over appellant's objection, the trial court permitted the State to ask Wallace a series of "did you know" questions concerning appellant's prior convictions for aggravated assault, burglary, and criminal mischief.

Wallace opened the door to rebuttal character evidence when she volunteered that appellant was not a violent person and that he was a good person. It is clear from the record that the State did not purposefully elicit Wallace's opinion testimony. Rather, her testimony was nonresponsive. Because a defense witness volunteered her opinion as to appellant's good character, the trial court did not abuse its discretion in permitting the State to cross-examine the witness with specific instances of appellant's misconduct. *See Harrison*, 241 S.W.3d at 27–28.

We overrule appellant's third issue.

III. ABSENCE FROM PROCEEDINGS

By his fourth issue, appellant argues that his "right to be present at trial was violated when the trial court sua sponte granted a mistrial in [appellant's] absence." Appellant maintains that the trial court violated his "constitutional and statutory right to be physically present." The State argues that appellant's rights were not violated because trial had not yet commenced. The State further maintains that appellant is unable to show harm.

A. Standard of Review and Applicable Law

In all felony prosecutions, Texas law requires the defendant's personal presence at trial, except "when the defendant voluntarily absents himself after pleading to the indictment or information, or after the jury has been selected when trial is before a jury." TEX. CODE CRIM. PROC. ANN. art. 33.03 (West, Westlaw through 2017 R.S.). "[W]ithin the scope of the right of confrontation is the absolute requirement that a criminal defendant who is threatened with loss of liberty be physically present at all phases of proceedings against him, absent a waiver of that right through defendant's own conduct." *Baltierra v. State*, 586 S.W.2d 553, 556 (Tex. Crim. App. 1979) (citation omitted); *see* U.S. CONST. amend. VI; TEX. CONST. art. I, § 10.

Violations of the right to be present are subject to a harmless error analysis. *Routier v. State*, 112 S.W.3d 554, 577 (Tex. Crim. App. 2003). The Texas Court of Criminal Appeals has adopted the "reasonably substantial relationship" test in order to satisfy Fourteenth Amendment due process and Sixth Amendment concerns. *Id.* at 576; *Adanandus v. State*, 866 S.W.2d 210, 218–19 (Tex. Crim. App. 1993). The "reasonably substantial relationship" test focuses on the effect of the error on the advancement of the defendant's defense. *Adanandus*, 866 S.W.2d at 219. Under this test, the defendant's presence must bear a reasonably substantial relationship to the opportunity to defend. *Id*. If the defendant's presence would not have furthered the defense, his presence does not bear a reasonably substantial relationship to the opportunity to defend. *Id*. We consider a constitutional error harmful unless we conclude beyond a reasonable doubt that the error did not contribute to the conviction or punishment. TEX. R. APP. P. 44.2(a).

B. Analysis

During voir dire examination, the courthouse was evacuated due to a bomb threat. Appellant was returned to jail during the evacuation. When proceedings resumed, the trial court observed that ten to eleven panel members had not returned. The trial court, upon learning that a new panel of prospective jurors would be available in two days, sua sponte declared a mistrial. Appellant was not present at the time of the trial court's ruling, but his counsel later stated on the record that she "believe[d] that the mistrial was necessary."

Assuming, without deciding, that the trial court erred in declaring a mistrial in appellant's absence, we conclude that any error was harmless. Appellant offers no explanation how his presence would have furthered his defense. For instance, in light of his trial counsel's recognition that the mistrial was necessary, appellant does not explain how his presence would have impacted the trial court's sua sponte decision. When trial recommenced, appellant was able to fully participate in the voir dire examination of a new panel of prospective jurors. As the court of criminal appeals concluded in *Adanandus*, we cannot "envision how [appellant's] presence could have furthered his defense," because there is "no evidence that appellant had any information, not available to the attorneys or the court, regarding any of the matters discussed [in his absence]." *Adanandus*, 866 S.W.2d at 220. We conclude beyond a reasonable doubt that appellant's absence from the proceedings did not contribute to the conviction or punishment. *See* TEX. R. APP. P. 44.2(a).

We overrule appellant's fourth issue.

IV. JURY SELECTION

By his fifth issue, appellant argues the trial court abused its discretion "by denying [appellant's] challenge for cause to a disqualified juror." Specifically, appellant maintains that the prospective juror was not a resident of the county.

A. Standard of Review and Applicable Law

We review a trial court's ruling on a challenge for cause with considerable deference because the trial judge is in the best position to evaluate a veniremember's demeanor and responses. *Gardner v. State*, 306 S.W.3d 274, 295–96 (Tex. Crim. App. 2009). A trial court's ruling on a challenge for cause may be reversed only for a clear abuse of discretion. *Id.* We give particular deference to the trial court's decision when a veniremember's answers are ambiguous, vacillating, unclear, or contradictory. *Id.*

A person is disqualified to serve as a juror unless the person is, among other requirements, a resident of "the county in which the person is to serve as a juror[.]" TEX. GOV'T CODE ANN. § 62.102 (West, Westlaw through 2017 R.S.). Either the State or the defense may challenge a juror for cause if "the juror is not a qualified voter in the state and county under the Constitution and laws of the state[.]" TEX. CODE CRIM. PROC. ANN. art. 35.16(a)(1) (West, Westlaw through 2017 R.S.). Article 35.16 of the code of criminal procedure "necessarily provides that a venireperson who does not live in the county is subject to challenge." *Mayo v. State*, 4 S.W.3d 9, 11 (Tex. Crim. App. 1999).

B. Analysis

The trial was held in Brazos County. A prospective juror informed the trial court that she was temporarily living in Fort Hood due to her husband's military obligations.

She explained that her permanent residence was in Brazos County and that she was registered to vote in Brazos County. A venireperson is not disqualified when she temporarily resides elsewhere but maintains a permanent residence in the county. *See Heiselbetz v. State*, 906 S.W.2d 500, 509 (Tex. Crim. App. 1995) (upholding the trial court's denial of a challenge for cause where prospective juror testified he maintained permanent residence in the county where he was a registered voter); *Hutson v. State*, 291 S.W. 903 (Tex. Crim. App.1927) (concluding that juror living out of county for four months was qualified as a resident because he had no intention of abandoning former residence). Based on this record, we cannot say that the trial court abused its discretion in determining that the veniremember was eligible to serve on the jury. *See Gardner*, 306 S.W.3d at 295.

V. JURY CHARGE

By his sixth and seventh issues, appellant argues that he suffered egregious harm because the jury charge did not require a unanimous jury verdict.

A. Standard of Review and Applicable Law

In analyzing a jury-charge issue, we first determine whether error exists. *See Almanza v. State*, 686 S.W.2d 157, 174 (Tex. Crim. App. 1984) (op. on reh'g); *Tottenham v. State*, 285 S.W.3d 19, 30 (Tex. App.—Houston [1st Dist.] 2009, pet. ref'd). "Under state law, the jury must be unanimous in finding every constituent element of the charged offense in all criminal cases." *Jourdan v. State*, 428 S.W.3d 86, 94 (Tex. Crim. App. 2014). However, the requirement of jury unanimity is not violated by a jury charge that presents the jury with the option of choosing among various alternative manner and

means of committing the same statutorily defined offense. *Id.* Different modes of commission of an offense may be presented in a jury instruction in the disjunctive. *Id.* In other words, the unanimity requirement is not violated by instructing the jury on alternative theories of committing the same offense, in contrast to instructing the jury on two separate offenses involving separate incidents. *Martinez v. State*, 129 S.W.3d 101, 103 (Tex. Crim. App. 2004).

> A person commits the offense of retaliation if:
>
> > the person intentionally or knowingly harms or threatens to harm another by an unlawful act . . . in retaliation for or on account of the service or status of another as a: (A) public servant, witness, prospective witness, or informant; or (B) person who has reported or who the actor knows intends to report the occurrence of a crime[.]

TEX. PENAL CODE ANN. § 36.06(a)(1).

B. Status of the Complainant

By his sixth issue, appellant argues that the jury charge did not require a unanimous jury verdict "on one of the two statutory offenses alleged in the indictment and set forth in the charge in the disjunctive." Appellant's complaint concerns the following emphasized language in the application portion of the charge:

> Now, if you find from the evidence beyond a reasonable doubt that . . . [appellant] did then and there intentionally or knowingly threaten to harm [Gooding] by an unlawful act . . . in retaliation for and on account of, *the service or status of [Gooding] as a witness, prospective witness, or a person who has reported the occurrence of a crime*, you will find [appellant] guilty of the offense of retaliation and say so by your verdict.

(Emphasis added). Appellant maintains that the jury charge alleged the offense of retaliation under distinct statutory theories by setting out different classifications for the status of the complainant Gooding.

As noted by the court of criminal appeals, the retaliation statute contains eight different elements, but several of those elements include distinct alternatives, which may or may not be included in a particular indictment and jury charge.[3] *Cada v. State*, 334 S.W.3d 766, 770 (Tex. Crim. App. 2011). Accordingly, the jury charge "may contain more than one alternative element" including the complainant's role in serving as a witness or reporting a crime. *Id*.

The unanimity requirement is not violated by instructing the jury on alternative theories of committing the same offense. *Martinez*, 129 S.W.3d at 103. The potential roles of Gooding as a witness, prospective witness, or person who has reported a crime constitute alternative theories for committing the same offense. *See Cada*, 334 S.W.3d at 770. Accordingly, the trial court's jury charge did not violate the unanimity requirement. *See Martinez*, 129 S.W.3d at 103; *see also Morales v. State,* No. 05-14-

[3] The court of criminal appeals has concluded that the retaliation statute provides for the following eight elements:

(1) The Defendant
(2) a. intentionally [or]
b. knowingly
(3) a. harms [or]
b. threatens to harm
(4) another person
(5) by an unlawful act
(6) a. in retaliation for [or]
b. on account of
(7) a. the service of another [or]
b. the status of another
(8) as a
a. public servant
b. witness
c. prospective witness [or]
d. informant.

Cada v. State, 334 S.W.3d 766, 770 (Tex. Crim. App. 2011) (citing TEX. PENAL CODE ANN. § 36.06(a)(1)(A) (West, Westlaw through 2017 R.S.)) (alterations in original).

01466-CR, 2016 WL 748535, at *3 (Tex. App.—Dallas Feb. 25, 2016, pet. ref'd) (mem. op., not designated for publication) (concluding that jury charge instructing the jury on multiple roles of the complainant in the retaliation statute did not violate unanimity requirement).

We overrule appellant's sixth issue.

C. Manner of Threats

Similarly, by his seventh issue, appellant argues that the jury charge did not "requir[e] a unanimous jury verdict on one of the two threats alleged in the indictment and set forth in the charge in the disjunctive."

The application portion of the charge provided in relevant part that appellant committed the offense of retaliation by "threatening to kill [Gooding] or telling her to watch her life[.]" Appellant maintains that the two threats constituted separate criminal acts; therefore "the jury should have been instructed that it could not return a guilty verdict unless it unanimously agreed upon the commission of any one of these criminal acts." We disagree.

"'If the focus of the offense is the result—that is, the offense is a 'result of conduct' crime—then different types of results are considered to be separate offenses, but different types of conduct are not.'" *Gonzales v. State*, 304 S.W.3d 838, 848 (Tex. Crim. App. 2010) (quoting *Huffman v. State*, 267 S.W.3d 902, 907 (Tex. Crim. App. 2008)). Retaliation is a result-oriented offense and the focus is on whether the conduct is done with an intent to effect the result specified in the statute. *See In re B.P.H.*, 83 S.W.3d 400, 407 (Tex. App.—Fort Worth 2002, no pet.); *Herrera v. State*, 915 S.W.2d 94, 97

(Tex. App.—San Antonio 1996, no writ); *see also Brock v. State,* 495 S.W.3d 1, 10 (Tex. App.—Waco 2016, pet. ref'd). Because it is a result-oriented offense, different types of conduct do not constitute separate offenses. *See Gonzales*, 304 S.W.3d at 848.

Appellant was indicted for a single offense of retaliation, and the State alleged he committed it in one of two alternative ways—by threatening to kill Gooding or telling her to watch her life. The jury was charged by the trial court in the disjunctive regarding these alternative manners and means. Appellant's action in threatening to kill Gooding or telling her to watch her life were simply alternative means of committing one offense. Accordingly, the trial court's charge did not violate the unanimity requirement on this basis.

We overrule appellant's seventh issue.

VI. CONCLUSION

We affirm the trial court's judgment. All pending motions are dismissed as moot.

LETICIA HINOJOSA
Justice

Do not publish.
TEX. R. APP. P. 47.2(b).

Delivered and filed the
31st day of August, 2017.