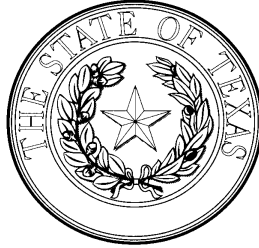


**Opinion issued August 4, 2020**



**In The  
Court of Appeals  
For The  
First District of Texas**

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**NO. 01-19-00279-CR**

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**JERRAD BABINAUX, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 262nd District Court  
Harris County, Texas  
Trial Court Case No. 1582254**

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**MEMORANDUM OPINION**

Jerrad Babinaux was convicted of burglary of a habitation and sentenced to 15 years' confinement. In a single issue, Babinaux contends the procedure the State used to make a pretrial amendment to his indictment was erroneous and deprived the trial court of jurisdiction.

We affirm.

### **Background**

Babinaux was arrested for burglary of a habitation while inside the home he was burglarizing. There is no issue about who owned the home, and thus no issue about who the complainant might be. Yet, the State's original indictment misspelled the complainant's first name. The March 2018 indictment spelled her five-letter first name with the letter "P" as the first letter.

Three months later, the State filed its witness list, which had the correct spelling of the complainant's name, beginning with a letter "T." It would take nine months for the State to realize the typographical error in the original indictment.

On March 1, 2019, the State filed a motion to amend the indictment. The motion stated that the complainant's name was misspelled due to a typographical error and sought to amend the indictment to correct the spelling by replacing the letter "P" with the letter "T" at the beginning of the complainant's first name. The motion contained a certificate of service, stating that Babinaux's counsel was served with a copy of the motion.

The record does not contain any response to the motion or objection.

The trial court issued an order on March 7, 2019, granting the State's motion to amend. The record contains an amended indictment, filed March 7, that correctly spells the complainant's first name, beginning with a letter "T."

Trial began on March 22. The trial court arraigned Babinaux, correctly identifying the complainant's name. Babinaux did not object or otherwise indicate there was a procedural or legal issue with the indictment. The State presented the indictment, correctly identifying the complainant's name. Again, Babinaux did not object or otherwise indicate an issue with the amended indictment.

There were five trial witnesses, including the complainant, who identified herself by her correct legal name. At the conclusion of trial, the jury found Babinaux guilty of burglary of a habitation, and the trial court sentenced him to 15 years' confinement. Babinaux appealed.

### **Non-jurisdictional Issue of Indictment Amendment is Waived**

Babinaux frames his sole appellate issue as a jurisdictional question. He argues the State was required to return his case to the grand jury for issuance of a new indictment to effectively correct the spelling of the complainant's name. According to Babinaux, by taking a "short cut" and amending through granted motion, the trial court lost jurisdiction over his criminal proceeding. Babinaux is incorrect. Nothing about the method used by the State to amend the indictment—a method Babinaux never objected to—affected the trial court's jurisdiction. *See Ex parte Rodgers*, 598 S.W.3d 262, 268 (Tex. Crim. App. 2020) (stating that presentment of indictment vests trial court with jurisdiction and, absent objection to the indictment, jurisdiction is not impacted); *Riney v. State*, 28 S.W.3d 561, 565–66

(Tex. Crim. App. 2000) (outlining procedure for amending indictment in which State moves for amendment, trial court approves amendment, and amended version of indictment is incorporated into record, and then stating that these “steps comply with all statutory requisites and faithfully preserve the functions of an indictment, i.e., the trial court retains its jurisdiction . . . ”); *see also* TEX. CONST. art. V §12(b) (“The practice and procedures relating to the use of indictments . . . including their contents, amendment, sufficiency, and requisites, are as provided by law. The presentment of an indictment or information to a court invests the court with jurisdiction of the cause.”); TEX. CODE CRIM. PROC. art. 28.10 (permitting pretrial amendment of indictment as to “a matter of form or substance”). Babinaux’s challenge does not raise a jurisdictional issue.

Nor is his issue preserved. There is no record of Babinaux’s objecting to the indictment or to the amendment procedure used. He did not file a response to the motion to amend. He did not object pretrial. Because Babinaux raised no objection to the indictment, any alleged deficiency in the indictment was waived and forfeited. *See* TEX. CODE CRIM. PROC. art. 1.14(b) (“If the defendant does not object to a defect, error, or irregularity of form or substance in an indictment . . . before the date on which the trial on the merits commences, he waives and forfeits the right to object to the defect, error, or irregularity and he may not raise the objection on appeal or in any other postconviction proceeding.”); *Jenkins v. State*, 592 S.W.3d 894, 902 (Tex.

Crim. App. 2018); *Teal v. State*, 230 S.W.3d 172, 178 (Tex. Crim. App. 2007) (stating that “all substantive defects in indictments are waivable under the statutes and these defects do not render the indictment ‘void’”); *Sanchez v. State*, 120 S.W.3d 359, 364 (Tex. Crim. App. 2003) (stating that “appellant had an affirmative duty to object to any defect in the indictment before trial, and a failure to do so would prevent him from raising a claim of a defect for the first time on appeal”); *cf. Valdez v. State*, No. 08-04-00104-CR, 2006 WL 663580, at \*9 (Tex. App.—El Paso Mar. 16, 2006) (overruling appellant’s challenge to trial court’s ruling that permitted State to amend indictment to correct spelling of complainant’s name, where appellant did object and issue was preserved for appeal, holding, it “is proper to amend an indictment to correct the name of a victim or complainant” and such amendment “does not implicate charging a new or additional offense” or “adversely affect[] the accused”), *aff’d*, 218 S.W.3d 82 (Tex. Crim. App. 2007).

### **Conclusion**

We overrule Babinaux’s sole issue and affirm.

Sarah Beth Landau  
Justice

Panel consists of Justices Keyes, Kelly, and Landau.

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