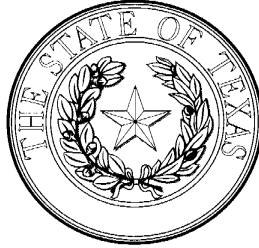


Opinion issued October 28, 2021



In The
Court of Appeals
For The
First District of Texas

NO. 01-20-00010-CR

ISAAC LEE WELLS, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 119th District Court*
Tom Green County, Texas
Trial Court Case No. B-17-0698-SB

* Pursuant to its docket equalization authority, the Supreme Court of Texas transferred this appeal from the Court of Appeals for the Third District of Texas to this Court. *See* TEX. GOV'T CODE § 73.001 (authorizing transfer of cases). We are unaware of any conflict between precedent of that court and that of this court on any relevant issue. *See* TEX. R. APP. P. 41.3.

MEMORANDUM OPINION

A jury found Isaac Lee Wells guilty of two counts of harassment of a public servant by causing police officers to contact his blood. TEX. PENAL CODE § 22.11(a)(3). Wells pleaded not true to an enhancement allegation for each count. The court found the enhancement true and assessed punishment at 8 years' imprisonment. On appeal, Wells contends that the trial court erred by admitting certain evidence. We hold that even assuming the admission was erroneous, the error does not require reversal. We affirm.

Background

On the same day in May 2017, San Angelo police responded to two dispatch calls at the same house. First, officers responded to a call of a domestic dispute. They responded to the house, owned by Wells's mother, who reported that Wells and another woman had been in an argument. The officers separated Wells and the woman. They discovered that Wells had outstanding warrants for his arrest, but when they went back in the house to find him, he had fled the scene. A short time later, officers responded to a second call that someone was suicidal at the residence. On the call, Well's mother told dispatch that her son was suicidal and had access to weapons in his room. She asked that police hurry because Wells was threatening to hang himself.

Officer K. Lane responded to the call. He confronted Wells in a small bedroom and attempted to handcuff him. Wells resisted. Officer Lane punched Wells several times, causing Wells to bleed from his mouth and nose. Multiple officers eventually arrived and assisted in handcuffing Wells. The officers carried Wells out of the house. During the altercation, Wells was in and out of consciousness. Wells was charged with two counts of harassing a public servant by causing a public servant to come in contact with his blood. *See* TEX. PENAL CODE § 22.11(a)(3). He pleaded not guilty to both counts.

At trial, the jury heard an audio recording of the 911 call that led police to return to Well's house for a second time. In the recording, Wells's mother stated that the police had just left her house where they had been looking for her son. She told the dispatcher that her son had returned to the house and was threatening to hang himself in a back room. She asked that the police hurry and stated that Wells had several weapons in the back bedroom.

Officer B. James testified that he responded to the second dispatch call. He had heard that a man wanted on warrants for his arrest had jumped out of the back window of the house. Officer James parked on the block behind the house. He ran through the front and back yards of the house behind Wells's to approach the back window of Wells's house. As he jumped the fence, he heard Officer Lane radio that he had someone fighting with him. Officer Lane's tone seemed like he needed help.

Officer James saw a step ladder next to an open window at the back of the house, and he used the ladder to go in the window to assist Officer Lane.

When he went through the window, Officer James found Officer Lane and Wells fighting on the bed. Officer James saw a hay hook hanging on the bed frame. He immediately became concerned for Officer Lane's safety and tried to assist in subduing Wells. Wells was bleeding and attempting to get his hands free from Officer Lane. The two officers grabbed Wells's hands and handcuffed him. Wells "went limp" for a few seconds, and the officers carried him out of the small bedroom. When Wells woke up, he began fighting against the officers while handcuffed. Three officers carried Wells out of the house with his body facing the ground and back toward the officers. Wells kicked as they carried him outside. Eventually, medics arrived and tended to Wells. Officer James testified that Wells's mother seemed depressed and worried as they carried Wells out of the house. Officer James testified that Wells wiped his face on the officer's pant leg while they were carrying him out of the house. He also testified that Wells spit blood on him. The jury saw photographs of Officer Lane's pants with blood saturating the area below his knee.

Officer A. Dietz testified that when he arrived, he went to the back bedroom to assist Officers Lane and James. He saw Officer Lane standing, holding up a handcuffed Wells by the arm. There was lots of blood, and the room was in disarray. Officer Lane's uniform was also in disarray, which was unusual, and his glasses

were in pieces. Officer Yarbrough arrived after Officer Dietz, and Officer Dietz watched as the three other officers carried Wells out of the house. Officer Dietz stayed behind in the bedroom. He then went to the front of the house to assist. He saw Wells outside on the ground in handcuffs appearing aggressive at times and withdrawn at other times. Wells had blood on his face, but Officer Dietz did not see Wells spit or throw blood on any officers.

Officer J. Yarbrough testified that he responded to Wells's house two times. The first time was earlier in the day, and he stayed outside of the house talking with a woman who had been in a dispute with Wells. Officer Yarbrough also responded to the second dispatch call that Wells was suicidal. He went straight to Wells's bedroom and found Wells lying on his side in handcuffs while Officers James and Lane talked to each other. Wells was bleeding, and both officers had blood on them. Due to the amount of blood, Officer Yarbrough requested an ambulance and a supervisor. Wells refused to walk so Officers Yarbrough, James, and Lane carried him out of the house. Wells remained agitated and struggled with the officers. He continually spit blood. Once they were outside the house, Officer Yarbrough asked Wells not to spit blood toward the officers. Officer Yarbrough testified that Wells responded that the officers needed to move if they did not want blood on them. Based on the amount of blood that was coming from Wells, Officer Yarbrough understood

that Wells needed to spit blood, but Wells could have chosen not to spit it on the officers.

Detective J. Chegwidden testified that he investigated the scene after Wells's arrest. His purpose was to investigate whether Wells intentionally splattered blood onto Officers Lane and James. He testified that the back bedroom was disheveled. He collected Officer Lane's uniform and broken sunglasses as evidence and brought them to court. He also brought a pair of brass knuckles that were collected from Wells's bedroom as evidence.

Officer Lane testified that he responded to Wells's house twice on the day in question. The first time he responded to a report of a domestic dispute. When he arrived, he met with Wells's mother who directed him to the bedroom. Once there, he saw Wells, who stated that he did not want to talk and shut the door. Officer Lane announced that he wanted to see how the woman in the room was doing, and she came out shortly after. When the woman came out, Officer Lane observed knocked-over furniture in the room. Officer Lane went outside with the woman to try to deescalate the situation. He learned Wells's name and also realized that Wells had several outstanding warrants. Officer Lane and another officer went back into the house to locate Wells and discovered that Wells was not in the back room. Inside the room, Officer Lane found some marijuana, a baggie with a white crystal substance, and some brass knuckles. He also observed a large knife and a baseball bat. He took

the brass knuckles because they are illegal, and he put the knife and bat under the bed.

As soon as he left, Officer Lane attempted to send a message out to other patrol officers to tell them to be cautious because Wells was a wanted subject with weapons inside his bedroom. He did not have time to do that before he heard a second dispatch call for a suicidal subject at the same house. He drove back to the house and went inside.

Officer Lane found Wells in the back bedroom with his mother, who was trying to calm him down. He attempted to handcuff Wells so that Wells could not grab weapons or harm himself. When Officer Lane touched Wells's wrist, Wells pulled away forcefully. Officer Lane attempted to take Wells down onto the bed, but Wells fought back. They fell onto the bed. Wells raked his fingers across Officer Lane's face, pulling off the officer's glasses and microphone. Wells put his fingers into the officer's eyes. Officer Lane testified that at that point, he realized Wells was attempting to injure him because he was trying to poke him in the eye to take away his sight.

Officer Lane was afraid for his safety, and he punched Wells in the nose and left side of his face. Wells became unconscious. Officer Lane tried to pin Wells on his stomach to handcuff him, but he realized that during the scuffle he had lost his handcuffs. He attempted to radio for back up, but his microphone had been torn off.

Wells regained consciousness as Officer Lane attempted to radio for help. Wells rubbed his bloody nose with his free hand and looked at Officer Lane. Officer Lane testified that Wells said, "Take it, take it all," while rubbing the blood on his hand on Officer Lane's arms and short sleeve shirt. Officer Lane continued to attempt to control Wells. Officer James arrived to assist by climbing in through a small window. They eventually subdued Wells on his stomach and handcuffed him. Wells lost consciousness again, and the officers attempted to carry Wells out of the house. He regained consciousness and began spitting his blood and rubbing his face on Officer Lane's and Officer James's pant legs. After the incident, Officer Lane went to the hospital to complete blood exposure paperwork. Officer Lane had wiped some of the blood off before photographs were taken. He also completed an incident report. Wells was injured during the altercation. He had a broken nose, several knocked out teeth, and a crushed cheekbone.

The State published a photo of blood on Officer Lane's leg, and Officer Lane testified that Wells intentionally spit the blood on him by turning his head toward the officer's leg. Officer Lane also identified his uniform and broken sunglasses, brought to court by Detective Chegwidden, and they were admitted into evidence. The brass knuckles that Detective Chegwidden brought to court were also admitted into evidence over Wells's objection.

During Officer Lane's testimony, his in-car video was admitted into evidence and published. While his car remained outside during the encounter and the video shows the front yard and street, the audio from Officer Lane's microphone continued to record while he was inside. Officer Lane can be heard telling Wells that there is a warrant for his arrest. Officer Lane instructed Wells to put his hands behind his back. The audio indicated that a struggle occurred. Officer Lane can be heard punching Wells eight times. After the seventh punch, Officer Lane instructed Wells to stop resisting. Wells next appears in the video as he is carried out and deposited in the front yard between Officers Lane and James. Officer Yarbrough carried his feet. Wells is sitting in the yard with the officers around him. While Wells is in the yard, a voice can be heard saying "[W]hoa, watch your spitting bro. I don't want blood on me please." And Wells can be understood to respond, "I'm blind. Legally blind."

After deliberating, the jury found Wells guilty of both counts of harassment of a public servant. The court sentenced him to 8 years' imprisonment.

Admission of Evidence

In his sole issue on appeal, Wells contends that the trial court abused its discretion by admitting State's Exhibit 14A, a set of brass knuckles. Officer Lane collected the brass knuckles from Wells's bedroom when responding to the first dispatch call. They were admitted into evidence during Officer Lane's trial testimony.

Wells contends that the brass knuckles, an illegal item, were inadmissible as a prior bad act. *See* TEX. R. EVID. 404(b)(1) (evidence of other crimes, wrongs, or acts not admissible to prove person's character to show action in conformity therewith). The State responds that the brass knuckles were admissible under an exception to rule 404. *See Id.* at 404(b)(2) (listing exceptions). The State argues that they were admissible to rebut Wells's defensive theory that the officers fabricated the harassment charges to cover up for using excessive force against Wells. *See De La Paz v. State*, 279 S.W.3d 336, 342–43 (Tex. Crim. App. 2009) (stating prior bad acts may be admissible to show proof, motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.). The State also contends that the brass knuckles were admissible as same-transaction contextual evidence. *See Prible v. State*, 175 S.W.3d 724, 731–32 (Tex. Crim. App. 2005) (extraneous offense evidence may be admissible when several crimes are connected so that they form an indivisible criminal transaction).

We hold that even assuming the admission of the brass knuckles was erroneous, the error is not one that requires reversal.

A. Standard of Review and Applicable Law

Under Texas Rule of Evidence 404(b), evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. TEX. R. EVID. 404(b)(1). The same evidence may be

admissible for another purpose, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. TEX. R. EVID. 404(b)(2); *De La Paz*, 279 S.W.3d at 342–43. The list of exceptions under Rule 404(b) is “neither mutually exclusive nor collectively exhaustive.” *Prible*, 175 S.W.3d at 731 (quoting *Montgomery v. State*, 810 S.W.2d 372, 388 (Tex. Crim. App. 1990) (op. on reh’g)). Rule 404(b) is a rule of inclusion rather than exclusion. *De La Paz*, 279 S.W.3d at 343. The rule excludes only that evidence that is offered solely for the purpose of proving bad character and conduct in conformity with that character. *Id.* Whether extraneous offense evidence has relevance apart from character conformity is a question for the trial court. *Id.* We review a trial court’s ruling on the admissibility of extraneous offenses under an abuse of discretion standard. *Id.* at 343–44. As long as the trial court’s ruling is within the “zone of reasonable disagreement,” it will be upheld. *Id.*

The erroneous admission of evidence is non-constitutional error. *Gonzalez v. State*, 544 S.W.3d 363, 373 (Tex. Crim. App. 2018). Non-constitutional errors are harmful and require reversal only if they affect an appellant’s substantial rights. *Id.* (citing TEX. R. APP. P. 44.2(b)). An error affects the appellant’s substantial rights if it had a substantial and injurious effect or influence in determining the jury’s verdict. *Gonzalez*, 544 S.W.3d at 373. If we have 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,

we will not overturn the conviction. *Id.* In making this determination, we consider: (1) the character of the alleged error and how it might be considered in connection with other evidence; (2) the nature of the evidence supporting the verdict; (3) the existence and degree of additional evidence indicating guilt; and (4) whether the State emphasized the complained-of error. *Id.* (citing *Motilla v. State*, 78 S.W.3d 352, 356–58 (Tex. Crim. App. 2002)).

B. Analysis

The alleged erroneous admission of the brass knuckles had little connection with the other evidence at trial, and the State did not emphasize the brass knuckles beyond introducing them into evidence. Officer Lane testified that during his first response to the house, he found weapons in Wells's room after Wells fled the scene. He testified that he found a bat, a large knife, marijuana, some small baggies of white crystal substance, and some brass knuckles. He seized the drugs and brass knuckles because they were illegal. He placed the large knife and bat underneath the bed because in his experience when someone leaves the scene, the person tends to come back. Officer Lane believed that Wells would return so he placed the bat and knife out of plain view. At the end of Officer Lane's testimony, several photographs were admitted into evidence. Officer Lane testified that these showed various parts of his body and uniform covered in Wells's blood. Officer Lane's uniform and broken sunglasses were admitted into evidence. The State then offered the brass knuckles

into evidence, and the court admitted them over Wells's objection. Officer Lane did not provide additional testimony about them, and the State did not ask him any questions after offering them. Aside from Detective Chegwiddden testifying that he had brought evidence to court that had been stored by the police, the State did not reference the brass knuckles again. The State did not reference them in closing argument.

We must view the brass knuckles in connection with the other evidence in the case. *See Gonzalez*, 544 S.W.3d at 374. The brass knuckles were briefly introduced and discussed. They were not the focus of the State's case. The brass knuckles also bore little relation to the sole contested issue in the case, whether Wells intentionally spit blood on the officers. *Motilla*, 78 S.W.3d at 359 (erroneously admitted evidence was brief and bore no relationship to question of intent). The main evidence for the jury to consider was the testimony of the four responding law enforcement officers, the photographs of the officers after their encounter with Wells, and the video and audio recordings of what transpired.

The admission of the brass knuckles, when viewed in context with the other evidence in the case, was not "so emotionally charged as to prevent the jury from rationally considering the rest of the evidence before it." *Gonzalez*, 544 S.W.3d at 374. Other evidence before the jury showed that Wells had weapons and contraband in his room. The jury heard the 911 call by Wells's mother. She told the operator

that she was concerned that Wells was attempting to hang himself and that he had weapons in his bedroom. The jury saw photographs and heard testimony that Wells had a baseball bat, a large knife, and drug paraphernalia in his room. This evidence was of the same tenor as the brass knuckles. The fact that the actual brass knuckles were admitted into evidence did little to change the nature of the testimony before the jury that Wells had access to weapons when Officer Lane responded to the second call. It also did little to change the jury's impression that he had illegal items in his room, as Officer Lane testified without objection that he recovered drugs and paraphernalia from the room during his first response to the house. The character of the alleged error had little connection to the jury's ultimate decision. *See Motilla*, 78 S.W.3d at 356–58.

The majority of the evidence relevant to the question of whether Wells intentionally caused Officers Lane and Wells to contact his blood came in through testimony from Officers Lane and Wells and testimony from the two additional responding officers, Officers Yarbrough and Dietz. Officer Lane initially encountered Wells and attempted to subdue him. Officer James was the second officer on the scene and responded to what he surmised was Officer Lane in distress. These officers testified that Wells intentionally put his blood on them.

Officer Yarbrough was the third officer to arrive. He encountered a subdued Wells in the bedroom with both Officers Lane and James. Officer Yarbrough

testified that Wells was bleeding and that he observed blood on both Officer Lane and Officer James. Officer Yarbrough requested an ambulance and supervisor due to the amount of blood. Officer Yarbrough testified that Wells refused to walk so he and the other two officers carried Wells out of the house. The officers who carried Wells out of the house testified that Wells continued to fight against them, even while being carried.

Once Wells was out of the house and seated on the lawn, Officer Yarbrough asked Wells not to spit blood on the officers. This can be seen and heard in the video testimony admitted into evidence. In the video, Wells responds to Officer Yarbrough's request by stating that he is legally blind. Officer Yarbrough testified that he understood that Wells needed to spit blood due to the severity of the bleeding, but that Wells could have chosen not to spit it on the officers.

While Officer Dietz testified that he did not see Wells spit or throw blood on the other officers, he arrived after Officers Lane and James had subdued Wells. He did not assist in carrying Wells out of the bedroom to the front of the house nor did he witness the process.

Considering the erroneous admission of the brass knuckles in connection with the other evidence at trial, we cannot say that the admission had a substantial or injurious effect on the jury's decision. *Gonzalez*, 544 S.W.3d at 373. The jury was tasked with deciding if Wells intentionally caused two officers to come in contact

with his blood. The existence of brass knuckles in his bedroom before Wells started bleeding does little to assist the jury in their ultimate decision. The jury heard testimony from multiple officers involved in the incident and saw video or heard audio of their interactions with Wells. The jury also had access to Officer Lane's uniform and sunglasses, which were admitted into evidence, along with photographs of Officer Lane after the incident. The jury could weigh and consider this evidence in making its credibility determinations and ultimate decision. The fact that there were weapons in Wells's room, that officers confiscated brass knuckles, or that those brass knuckles were admitted into evidence had little connection to the evidence that assisted the jury in deciding whether Wells had committed the crime.

After reviewing the record, we have fair assurance that even assuming the brass knuckles were erroneously admitted, the error does not require reversal because it did not affect Wells's substantial rights. TEX. R. APP. P. 44.2(b). We overrule Wells's first issue.

Reformation of Trial Court's Judgment

An appellate court may correct the trial court's judgment when we have the necessary information to do so. *See French v. State*, 830 S.W.2d 607, 609 (Tex. Crim. App. 1992) (recognizing appellate courts are authorized to reform a judgment to "make the record speak the truth"). Here, the judgment reflects that Wells pleaded true to the enhancement paragraph for each count, but the record establishes that

Wells made a plea of not true to the enhancement allegation. We reform the judgment to show that the “Plea to 1st Enhancement Paragraph” was not true.

Conclusion

As modified, we affirm the judgment of the trial court.

Peter Kelly
Justice

Panel consists of Justices Kelly, Guerra, and Farris.

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