

Affirmed and Majority and Concurring Opinions filed January 20, 2022.



In The

Fourteenth Court of Appeals

NO. 14-19-00902-CR

WILLIAM HALL, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the 248th District Court
Harris County, Texas
Trial Court Cause No. 1587846**

C O N C U R R I N G O P I N I O N

Allowing a judge to testify as a fact witness in a case when he has facts directly relevant to the charged offense is accepted in Texas courts. *See, e.g., Jackson v. State*, No. 14-19-00739-CR, 2021 WL 3576151, at *1 (Tex. App.—Houston [14th Dist.] Aug. 12, 2021, no pet.) (mem. op., not designated for publication) (judge testified about incident where the defendant spit on him); *Brock v. State*, 495 S.W.3d 1, 4 (Tex. App.—Waco 2016, pet. ref'd) (judge testified about incident where the defendant threatened him). It is a clear abuse of discretion, however, to allow a judge to testify as an expert witness in a case. *See Joachim v.*

Chambers, 815 S.W.2d 234, 238 (Tex. 1991) (“A judge who testifies as an expert witness for a private litigant provides more than evidence; the judge also confers the prestige and credibility of judicial office to that litigant’s position, just as a judge who testifies to the litigant’s character.”); *see also id.* (allowing a judge to testify as an expert puts the cross-examining lawyer in an awkward position).

In this case, the judge was testifying as a quasi-expert — he had no direct knowledge of the facts underlying the criminal charge but had practiced for 20-plus years near the post office where the altercation happened and visited it twice a month. The testimony concerning the relative safety of this location was elicited on rebuttal by the State in an attempt to contradict Appellant’s testimony that he considered the area to be dangerous. Because the testifying judge had no unique knowledge concerning the facts of the case itself, allowing him to testify as a judge was an abuse of discretion. But Appellant did not specifically object to the witness identifying himself as a judge; therefore, the relevant issue on appeal was not preserved.

Further, the State’s case likely received a significant benefit by presenting this information through a judge (who identified himself as a judge on the stand in response to a question from the State). *See id.* at 238. Therefore, I cannot agree with the majority that the testimony was harmless.

However, because the relevant objection was not preserved, I concur with the majority that the judgment of the trial court should be affirmed.

/s/ Meagan Hassan
Justice

Panel consists of Chief Justice Christopher and Justices Wise and Hassan (Wise, J., majority).

Publish — Tex. R. App. P. 47.2(b).