



**In The
Court of Appeals
Seventh District of Texas at Amarillo**

No. 07-17-00105-CR

MARVIN RAY SHILLING, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 54th District Court
McLennan County, Texas
Trial Court No. 2015-599-C2, Counts I - V; Honorable Matt Johnson, Presiding

August 30, 2017

ABATEMENT AND REMAND

Before QUINN, C.J., and CAMPBELL and PIRTLE, JJ.

Pending before this court is appellant Marvin Ray Shilling's motion to abate the appeal and remand the cause to the trial court to resolve an alleged inaccuracy in the reporter's record.¹ Pursuant to appellate rule 34.6(e)(3), we grant the motion.

Appellant appeals his convictions for three counts of aggravated sexual assault of a child and two counts of indecency with a child. The appellate record has been filed and appellant's brief is due on September 5, 2017. Appellant now seeks to supplement

¹ This appeal was transferred to this court from the Tenth Court of Appeals by order of the Texas Supreme Court.

the reporter's record with the police interrogation video shown to the jury by the State during trial. The interrogation video was admitted into evidence without objection as State's exhibit 7. When the State published the video to the jury, however, appellant's counsel made an unspecified objection. The trial court sustained the objection and instructed the jury to disregard the last statement made in the video. Appellant's counsel also moved for a mistrial, stating "this is a direct violation of what we agreed to earlier." The motion was denied. After the close of evidence, the trial court allowed the State and appellant to substitute a different DVD for the DVD shown to the jury as State's exhibit 7. According to appellant's motion, State's exhibit 7 was substituted "with a redacted disk, blacking out the questioned area." Appellant asserts that the State is in possession of the unredacted DVD shown to the jury, but has not agreed to supplement the record with this DVD. The State did not file a response to appellant's motion.

The appellate rules allow a party to unilaterally direct the reporter to supplement the reporter's record if anything relevant is omitted. TEX. R. APP. P. 34.6(d). However, if there is an inaccuracy in the reporter's record, including an exhibit, the parties may agree to correct the inaccuracy. TEX. R. APP. P. 34.6(e)(1). When the parties cannot agree on whether or how to correct the reporter's record so that the text and exhibits are accurate, the trial court must settle the dispute. TEX. R. APP. P. 34.6(e)(2). An appellate court may remand the case to the trial court to resolve such a dispute when it arises after the reporter's record has been filed. TEX. R. APP. P. 34.6(e)(3); see *Amador v. State*, 221 S.W.3d 666, 677 (Tex. Crim. App. 2007).

Accordingly, we abate this appeal and remand the cause to the 54th District Court of McLennan County (trial court) to determine, after notice and hearing, whether State's exhibit 7 in the reporter's record accurately reflects the video shown to the jury during trial. See TEX. R. APP. P. 34.6(e)(2). If the trial court determines that State's exhibit 7 is inaccurate, it shall direct the reporter to conform the reporter's record to what occurred during trial, by whatever orders necessary, and to file a certified correction in a supplemental record with this court. See *id.* The trial court is also directed to enter such orders necessary to address the aforementioned questions. So too shall it include its findings regarding the accuracy or inaccuracy of the initial State's exhibit 7 in a supplemental record and cause that record to be filed with this court by September 29, 2017. Should further time be needed to perform these tasks, then same must be requested before September 29, 2017.

It is so ordered.

Per Curiam

Do not publish.