# TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

**NO. 03-17-00328-CR**

**Rogelio Noel Jones, Appellant**

**v.**

**The State of Texas, Appellee**

**FROM THE DISTRICT COURT OF BELL COUNTY, 426TH JUDICIAL DISTRICT**
**NO. 74319, HONORABLE FANCY H. JEZEK, JUDGE PRESIDING**

## M E M O R A N D U M  O P I N I O N

Rogelio Noel Jones was charged with "intentionally or knowingly caus[ing] the death of . . . Jonathan Bridges[] by shooting him with a firearm." *See* Tex. Penal Code § 19.02(b), (c) (setting out elements of offense of murder and providing that, in general, offense is first-degree felony). In addition, the State later alleged as enhancement allegations that Jones had previously been convicted of felony offenses for driving while intoxicated and for aggravated assault. *See id.* §§ 22.01(a) (listing elements of offense of assault), .02(a), (b) (governing aggravated assault and explaining that aggravated assault is first- or second-degree felony), 49.04 (setting out elements of offense of driving while intoxicated and providing that offense is misdemeanor offense), .09 (enhancing offense level if defendant has been previously convicted of driving while intoxicated or other similar offenses). At the end of the guilt-or-innocence phase, the jury found Jones guilty of the charged offense. Following the jury reaching its verdict, Jones entered pleas of true to both

enhancement allegations. Jones elected to have his punishment assessed by the district court, and at the end of the punishment hearing, the district court sentenced Jones to fifty years' imprisonment. *See id.* § 12.32 (listing permissible punishment range for first-degree felony), .42(d) (enhancing punishment range for individuals who have "previously been finally convicted of two felony offenses"). On appeal, Jones contends that the district court erred by determining that testimony from Officer Lacy Bobbitt and two audio and visual recordings made by cameras in Officer Bobbitt's patrol car were admissible under an exception to the general rule prohibiting the admission of hearsay and that the admission of the evidence did not violate his confrontation rights. We will affirm the district court's judgment of conviction.

## BACKGROUND

After Jones was charged with murdering Bridges, *see* Tex. Penal Code § 19.02(b), a trial was convened. During the trial, the State called various witnesses to the stand, including Brenita Bridges Jones,[1] who was Bridges's mother, and Officer Bobbitt, who found Bridges after responding to a 911 call.

During her testimony, Brenita explained that Bridges was taken to the hospital after he was shot, that Bridges's heart stopped on the way to the hospital, that the treating physicians were able to temporarily revive him, that the treating physicians performed surgery on Bridges "to try to repair the blood vessels," and that Bridges died later that same day. When describing the extent of Bridges's injuries, Brenita stated that the bullet "shredded his blood vessels on the inside."

[1] Because Jones and the victim's mother share identical surnames, we will refer to the victim's mother by her first name.

After Brenita finished testifying, the State called Officer Bobbitt to the stand. In her testimony, Officer Bobbitt related that she responded to a 911 call regarding a shooting at an apartment complex. In addition, Officer Bobbitt recalled that when she arrived at the complex, she noticed Bridges "laying in the parking lot" with a gun shot "wound to his stomach" that was bleeding. Further, Officer Bobbitt testified that when she first arrived, Bridges was conscious and able to communicate and that she told Bridges to "put pressure on the wound," but Officer Bobbitt also explained that she was trying to keep Bridges alert because he looked like he was "going to go unconscious."

When Officer Bobbitt started to answer a question regarding statements that Bridges made to her during their encounter, Jones objected, and the district court convened a hearing outside the presence of the jury to determine if Officer Bobbitt's testimony could be admitted as an exception to the hearsay rule. During the hearing, Officer Bobbitt stated that Bridges was "partially responsive" and was responding to her questions when she first arrived. In fact, Officer Bobbitt recalled that Bridges stated that he did not know who shot him but was able to describe the shooter, was able to describe the car that the shooter left the scene in, and was able to identify the driver of the car. However, Officer Bobbitt later testified that Bridges "g[o]t worse" throughout her encounter with him, that Bridges "appeared as if he was going to be going unconscious at any point in time from the—the wound to his stomach," that Bridges's "eyes would roll back," that Bridges "was breathing heavy," that Bridges "was very labored in his speaking," that EMS arrived after her and determined that they "need[ed] to transport him immediately," and that Bridges stopped being able "to respond to questions" before he was transported to the hospital.

Once Officer Bobbitt finished her testimony at the hearing, Jones again argued that Officer Bobbitt's testimony should not be admitted. In response, the State argued that the testimony was admissible as an exception to the general hearsay rule because the statements by Bridges were dying declarations. *See* Tex. R. Evid. 804(b)(2). After considering the parties' arguments, the district court overruled Jones's objection.[2]

Following the district court's ruling, the jury was called back in, and Officer Bobbitt continued her testimony regarding statements that Bridges made to her about the shooting and about the shooter. In addition, the State admitted into evidence two audio and video recordings taken from cameras in Officer Bobbitt's patrol car chronicling her interaction with Bridges. After Officer Bobbitt finished her testimony, both parties called additional witnesses to the stand before the jury reached its verdict and before the district court rendered its judgment of conviction.

## STANDARD OF REVIEW

As set out above, in this appeal, Jones challenges the admission of Officer Bobbitt's testimony and the recordings made from cameras in her car and urges that the admission of the evidence violated his confrontation rights.

When reviewing a trial court's ruling on the admission of evidence, appellate courts use an abuse-of-discretion standard of review. *Davis v. State*, 329 S.W.3d 798, 803 (Tex. Crim.

[2] The State also argued that the statements were admissible under the excited-utterance exception to the hearsay rule. *See* Tex. R. Evid. 803(2) (providing that "[a] statement relating to a startling event or condition, made while the declarant was under the stress of excitement that it caused" is "not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness"). When making its ruling, the district court did not specify which exception served as the basis for its ruling. Given our ultimate resolution in this case, we need not consider whether the statements were admissible as excited utterances.

App. 2010). Under that standard, a trial court's ruling will only be deemed an abuse of discretion if it is so clearly wrong as to lie outside "the zone of reasonable disagreement," *Lopez v. State*, 86 S.W.3d 228, 230 (Tex. Crim. App. 2002), or is "arbitrary or unreasonable," *State v. Mechler*, 153 S.W.3d 435, 439 (Tex. Crim. App. 2005). Moreover, the ruling will be upheld provided that the trial court's decision "is reasonably supported by the record and is correct under any theory of law applicable to the case." *Carrasco v. State*, 154 S.W.3d 127, 129 (Tex. Crim. App. 2005). In addition, an appellate court reviews the trial court's ruling in light of the record before the court "at the time the ruling was made." *Khoshayand v. State*, 179 S.W.3d 779, 784 (Tex. App.—Dallas 2005, no pet.). When determining "[w]hether a court's admission of evidence violate[d] the Confrontation Clause," reviewing courts apply a de novo standard of review. *Curry v. State*, 228 S.W.3d 292, 298 (Tex. App.—Waco 2007, pet. ref'd).

**DISCUSSION**

In his first issue on appeal, Jones contends that the testimony by Officer Bobbitt and the recordings were inadmissible hearsay and that the district court erred by concluding that the testimony and recordings were admissible under the dying-declaration exception to the hearsay rule. In his second issue on appeal, Jones contends that the admission of the evidence "violated [his] constitutional right to confrontation" under the federal constitution.[3] Although Jones lists the issues

[3] In his brief, Jones does not present any argument regarding confrontation rights under the Texas Constitution or refer to any provision of the Texas Constitution. *See* Tex. Const. art. I, § 10 (stating that accused "shall be confronted by the witnesses against him").

separately, he argues both issues jointly in his brief. In resolving these issues on appeal, we will similarly address the issues together.[4]

A statement qualifies as hearsay if "the declarant does not make [it] while testifying at the current trial or hearing" and if "a party offers [the statement] in evidence to prove the truth of the matter asserted in the statement." Tex. R. Evid. 801(d). In general, "[h]earsay is not admissible unless" a statute or rule provides otherwise. *Id.* R. 802. The Texas Rules of Evidence contain several exceptions to the rule against hearsay that apply when "[a] declarant is considered to be unavailable as a witness," including when "the declarant . . . cannot be present or testify at the trial or hearing because of death." *Id.* R. 804. Under the dying-declaration exception, a statement by a declarant, "while believing the declarant's death to be imminent, made about its cause or circumstances" is admissible as an exception to the hearsay rule. *Id.* R. 804(b)(2). In other words, the statement "must meet the following three requirements: (1) the declarant must be unavailable; (2) the declarant, at the time she makes the statement, must believe her death is imminent; and (3) the statement must concern the cause or circumstances of the potential impending death." *See Taylor v. State*, No. 12-15-00299-CR, 2017 WL 2962988, at *1 (Tex. App.—Tyler July 12, 2017, no pet. h.) (mem. op., not designated for publication).

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[4] We note that although Jones argued at trial that the evidence should not be admitted because it constitutes hearsay, it is less clear whether Jones presented a Confrontation Clause objection when arguing that the evidence should not be admitted. *See Anderson v. State*, 301 S.W.3d 276, 280 (Tex. Crim. App. 2009) (explaining that right to confront witnesses is subject to procedural default); *Reyna v. State*, 168 S.W.3d 173, 179 (Tex. Crim. App. 2005) (providing that if defendant fails to make objection "on Confrontation Clause grounds," claim is "not preserve[d]" for appellate purposes). In the interests of justice, we will assume without deciding that the arguments that Jones makes in his brief concerning the Confrontation Clause have been preserved for appellate consideration.

Moreover, "[c]ontemplation of death may be inferred from surrounding circumstances; it is not necessary that the declarant specifically express her awareness of impending death." *Id.* "Under the modern-day Rule 804(b)(2)," more emphasis is placed on "the severity of the injuries than the declarant's explicit words indicating knowledge of imminent death." *See Gardner v. State*, 306 S.W.3d 274, 290 (Tex. Crim. App. 2009). Further, Rule 804(b)(2) only requires "sufficient evidence, direct or circumstantial, that demonstrates that the declarant must have realized that he was at death's door at the time that he spoke," *id.* at 290, and that "sense of impending death may be established in any satisfactory mode, including [the victim's] express words, [the victim's] conduct, the severity of [the victim's] wounds, the opinions of others stated to [the victim], *or* any other relevant circumstances," *id.* at 292 (emphasis added).

The Sixth Amendment states that "[i]n all criminal prosecutions, the accused shall enjoy the right to . . . be confronted with the witnesses against him." U.S. Const. amend. VI. "The central concern of the Confrontation Clause is to ensure the reliability of the evidence against a criminal defendant by subjecting it to rigorous testing in the context of an adversary proceeding before the trier of fact." *Maryland v. Craig*, 497 U.S. 836, 845 (1990). The right to confront witnesses allows for the admission of "[t]estimonial statements of witnesses absent from trial" if "the declarant is unavailable" and if "the defendant has had a prior opportunity to cross-examine." *Crawford v. Washington*, 541 U.S. 36, 59 (2004). In addition, the Supreme Court has explained that the Confrontation Clause "is most naturally read as a reference to the right of confrontation at common law, admitting only those exceptions established at the time of the founding." *Id.* at 54. Accordingly, the right is subject to "historic exception[s]." *Giles v. California*, 554 U.S. 353, 359

(2008). Of significance here, statements "made by a speaker who was both on the brink of death and aware that he was dying" are admissible "even though they [are] unconfronted." *Id.* at 358; *see Gardner*, 306 S.W.3d at 288 n.20 (noting that appellant conceded that if statement "qualified as a dying declaration," Confrontation Clause would not prohibit admission of statement, that concession was logical in light of relevant case law discussing unique nature of dying declaration that was part of common law before founding of United States, and that exception for dying declarations does not conflict with Sixth Amendment or requirements of *Crawford*); *see also Render v. State*, 347 S.W.3d 905, 918 (Tex. App.—Eastland 2011, pet. ref'd) (noting that "dying declarations" are "common-law exceptions to a defendant's right of confrontation").[5]

Because Bridges died shortly after being shot and because his statements concerned the shooting, the only dying-declaration requirement at issue in this case is whether Bridges made those statements while under the belief that his death was imminent. When arguing that this requirement was not met, Jones asserts that "there is no evidence that when the statements were made Bridges believed his death was imminent so as to qualify those statements as dying declarations." More specifically, Jones argues that Bridges "was coherent and articulate," was able to describe the shooter and the car that he rode away in, and was able to provide the name of the person who drove the car. In addition, Jones notes that Officer Bobbitt asked Bridges to apply pressure to his own wound rather than attempt to slow the bleeding herself. Moreover, Jones points out that Officer Bobbitt did not testify that Bridges expressed any "concern for his injury" or

[5] In his brief, Jones agrees that a dying declaration is a common-law exception to the right of confrontation.

"comment on its severity," and Jones also observes that Officer Bobbitt did not testify that Bridges was in "acute distress (vomiting, spitting up blood, etc.)."[6]

Although Jones correctly points out that Bridges made no statements expressing an awareness of his impending death, an inference that Bridges was under the belief that his death was imminent could be made from the testimony establishing the severity of the injuries to Bridges's blood vessels resulting from being shot in the abdomen, explaining that Bridges's heart stopped in the ambulance on the way to the hospital shortly after he made the statements at issue and before being temporarily revived, describing how Bridges ultimately succumbed to his injuries on the same day that he was shot, stating that Bridges seemed on the brink of losing consciousness during his encounter with Officer Bobbitt, describing Bridges as having labored breathing and difficulty speaking, discussing how EMS personnel determined that Bridges needed to be transported to the hospital immediately, and relating how although Bridges was initially responsive to Officer Bobbitt's questions, Bridges's condition worsened during the encounter to the point to where Bridges was no longer able to answer any questions posed to him. *Cf. Gardner*, 306 S.W.3d at 291-92 (concluding that statement from victim that her husband shot her constituted dying declaration where evidence established, among other things, that bullet "entered [victim's] right temple," that victim's "voice

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[6] Jones also points to testimony from Detective Jonathan Mueller in which Detective Mueller stated that when he responded to the scene, he noticed a "[l]ittle bit of blood on the concrete" and in which he agreed that the scene had a minimal amount of blood. In addition, Jones refers to one of the photographs taken of the crime scene that was admitted into evidence as support for the idea that "[t]here was very little blood at the scene." However, the testimony and photograph were not admitted into evidence until after the district court made its ruling regarding the admission of Officer Bobbitt's testimony and of the recordings. Moreover, we note that after the district court made its ruling, Dr. Stephen Hastings was called to the stand and explained that he performed an autopsy on Bridges, that Bridges lost several liters of blood, and that the amount of blood loss was "[e]xtreme."

was very slurred and hard to understand," that 911 dispatcher heard "what sounded like [the victim] choking and vomiting," that responding officer found "blood-soaked bed," that victim was "mumbling incomprehensibly" when EMS arrived, and that victim went into "a vegetative state and died at the hospital two days later"). Accordingly, we cannot conclude that the district court abused its discretion by determining that Officer Bobbitt's testimony and the recordings of her interaction with Bridges were admissible under the dying-declaration exception. In light of that determination, we must also conclude that the district court did not err by determining that the admission of the evidence did not violate Jones's confrontation rights.

For these reasons, we overrule Jones's first and second issues on appeal.

**CONCLUSION**

Having overruled both of Jones's issues on appeal, we affirm the district court's judgment of conviction.

David Puryear, Justice

Before Justices Puryear, Field, and Bourland

Affirmed

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