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COURT OF CRIMINAL APPEALS
AUSTIN, TEXAS
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NO. _____

IN THE COURT OF CRIMINAL APPEALS OF TEXAS

FILED
COURT OF CRIMINAL APPEALS
10/22/2020
DEANA WILLIAMSON, CLERK

JUSTIN KING,
Appellant

v.

THE STATE OF TEXAS,
Appellee

From the Tenth Court of Appeals
Cause No. 10-19-00354-CR

APPELLANT'S PETITION FOR DISCRETIONARY REVIEW

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Identity of Judge, Parties and Counsel

Appellant, pursuant to Rule of Appellate Procedure 68.4(a), provides the following list of the trial court judge, all parties to the trial court's judgment, and the names and addresses of all trial and appellate counsel.

THE TRIAL COURT:

Hon. Patrick H. Simmons — Trial Court Judge
87th District Court, Freestone County
118 E. Commerce, Rm. 406
Fairfield, Texas 75840

THE DEFENSE:

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Statement Regarding Oral Argument

Appellant believes oral argument will be helpful to allow for a full discussion and consideration about whether or how an appropriate harm analysis can be performed when the error in part arises from an unrecorded bench conference held without the defendant even being in the courtroom.

Statement of the Case

Appellant pleaded guilty to evading arrest or detention in a vehicle without a plea recommendation. A jury assessed his punishment at 20 years' imprisonment and a $10,000 fine. A majority of the court of appeals affirmed, holding that Appellant was not harmed by the trial court holding a pretrial proceeding in his absence.

Statement of Procedural History

The Tenth Court of Appeals affirmed in a 2-1 decision authored by Justice Neill that was handed down September 23, 2020. *King v. State*, No. 10-19-00354-CR, 2020 WL 5667148 (Tex. App.—Waco Sept. 23, 2020, pet. filed). Chief Justice Gray issued a dissenting opinion. No motion for rehearing was filed.

Grounds for Review

1. Can harmlessness be presumed from a silent record when a defendant has been denied his constitutional and statutory rights to be present during a pretrial proceeding?

Summary of Argument

A trial court violates a defendant's constitutional and statutory rights by conducting pretrial proceedings in the defendant's absence. Here, the trial court did just that by conducting a lengthy pretrial proceeding in Appellant's absence. During this hearing sans Appellant, the court addressed and ruled on Appellant's motion in limine, discussed at length with the attorneys Appellant's decision to plead guilty without a recommendation and allow the jury to assess his punishment, and heard defense counsel's statement that Appellant wanted another attorney then immediately informed the attorneys that that would not happen.

Most importantly however, the trial court conducted an unrecorded bench conference that lasted one and one-half to two minutes. The record does not disclose what occurred during this bench conference.

The Waco Court majority found the error harmless because Appellant's absence did not impact the ruling on his motion in limine or his ultimate decision to plead guilty. Chief Justice Gray dissented because no one knows what transpired during the unrecorded bench conference and so it cannot be said with any confidence (or certainly beyond a reasonable

doubt) that the trial court's error in conducting a pretrial proceeding in Appellant's absence was harmless.

This Court has held on several occasions that a harm analysis is inappropriate in a very small number of cases where "the data is insufficient to conduct a meaningful harmless error analysis."

This is such a case.

Argument

1. Can harmlessness be presumed from a silent record when a defendant has been denied his constitutional and statutory rights to be present during a pretrial proceeding?

The trial court conducted a pretrial hearing on Appellant's unopposed motion in limine in Appellant's absence. The attorneys then engaged in a brief discussion with the court on the record before participating in a "bench discussion" off the record regarding a topic or topics unknown. The parties resumed their on-record discussions for a few more moments before Appellant was finally brought into the courtroom.

The justices of the court below agreed that it was error for the trial court to conduct any pretrial proceeding in Appellant's absence. The justices diverged on whether this error was harmless because Appellant's participation would not have impacted the ruling on the motion in limine or his decision to plead guilty. Chief Justice Gray dissented because it is unknown what occurred at the bench hearing conducted off the record.

The marjority erred in finding the error harmless because this is one of those rare instances when "the error involved defies analysis by harmless error standards or the data is insufficient to conduct a meaningful harmless error analysis." *See Cain v. State*, 947 S.W.2d 262, 264 (Tex. Crim. App. 1997).

A. The trial court violated Appellant's absolute and un-waivable constitutional and statutory rights to be present

The justices on the court below agreed that the trial court erred by conducting a pretrial proceeding in Appellant's absence. They likewise agreed that this constituted a violation of Appellant's constitutional and statutory rights.

A criminal defendant has the absolute right to be physically present at all proceedings against him, including pretrial proceedings. This right exists under both the Confrontation Clause of the federal constitution and as a matter of statutory law. The right is un-waivable at least as a matter of statutory law.

The Confrontation Clause of the Sixth Amendment confers "the absolute requirement that a criminal defendant who is threatened with loss of liberty be physically present at all phases of proceedings against him." *Jasper v. State*, 61 S.W.3d 413, 423 (Tex. Crim. App. 2001); *Baltierra v. State*, 586 S.W.2d 553, 556 (Tex. Crim. App. 1979).

This right of presence guarantees, among other things, the right to consult with counsel and the right to give advice or suggestions to counsel.

See Snyder v. Massachusetts, 291 U.S. 97, 106 (1934); *Baltierra*, 586 S.W.2d at 556.

In addition to this absolute constitutional requirement, article 28.01, section 1, establishes a statutory requirement that a defendant be present "during any pre-trial proceeding." TEX. CODE CRIM. PROC. art. 28.01, § 1.[1] This statutory right of presence is un-waivable until after the jury has been selected or after the defendant's plea has been entered to the charging instrument in a bench trial. *Miller v. State*, 692 S.W.2d 88, 91 (Tex. Crim. App. 1985); *see* TEX. CODE CRIM. PROC. art. 33.03.

For purposes of article 28.01, a proceeding where (1) the attorneys are present, (2) the court considers and rules on a motion, and (3) the proceeding is transcribed by the court reporter and included in the appellate record is a "pre-trial proceeding" within the meaning of the statute. *Adanandus v. State*, 866 S.W.2d 210, 219 (Tex. Crim. App. 1993).

---

[1] Article 33.03 requires that a defendant "be personally present at the trial" unless he "voluntarily absents himself" after the jury is selected (or after he enters his plea to the charging instrument in a bench trial). TEX. CODE CRIM. PROC. art. 33.03.

B. A harm analysis must be conducted unless the record provides no meaningful basis for assessing harm

Rule of Appellate Procedure 44.2 establishes distinct harm analyses for constitutional and statutory errors. And appellate courts must apply these harm analyses to each error presented with very rare exceptions.

Thus, with the exception of a narrow category of federal constitutional errors labeled as structural, all errors are subject to a harmless error analysis. *Cain*, 947 S.W.2d at 264. Instead of identifying categories of error that are immune from a harm analysis, "appellate courts should more appropriately determine whether, for any particular case, a meaningful harm analysis is possible." *VanNortrick v. State*, 227 S.W.3d 706, 709 (Tex. Crim. App. 2007).

But in a very small subset of cases, "the error involved defies analysis by harmless error standards or the data is insufficient to conduct a meaningful harmless error analysis." *Cain*, 947 S.W.2d at 264; *see VanNortrick*, 227 S.W.3d at 714.

This is such a case.

C. The court below conducted a harm analysis without sufficient data

But as Chief Justice Gray noted in his dissent, no one knows what occurred during the hearing conducted off the record *after* the trial court granted the motion in limine.

As the majority observed, several things were happening in the courtroom during the relevant time period. The trial court had qualified the venire panel then excused them to a waiting area. (2RR5-8) Next the court took up Appellant's motion in limine in his absence. (2RR8-9) The court and the attorneys also discussed how they were going to conduct a punishment-only voir dire, understanding that Appellant intended to plead guilty. (2RR8-9)

Then the court asked defense counsel if there was anything else that needed to be addressed.

> Counsel: Other than the fact that he believes he can fire me and get another attorney and delay this trial.
>
> The Court: No, I'm not going to delay it—
>
> Counsel: Oh, I agree.

(2RR10)

The record next reflects that the trial court conducted a "bench discussion, off the record." Based on the chronological record in the margin

of the record, this unrecorded bench conference lasted approximately one and one-half to two minutes. (2RR10)

And then the court continued to discuss the case with the attorneys without Appellant present. (2RR10-11)

As Chief Justice Gray noted in his dissent, "I do not know what occurred during the hearing off the record; and neither do you." *King*, 2020 WL 5667148, at *4 (Gray, C.J., dissenting).

But the majority found the statutory error harmless because Appellant's presence would not have impacted the trial court's decision to grant his motion in limine. *Id*., 2020 WL 5667148, at *3.

The majority found the constitutional error harmless by also considering the impact of Appellant's absence on his ultimate decision to plead "guilty"—which was a primary topic of conversation during the pretrial proceedings conducted in his absence. The majority observed that he did not formally enter this plea until the next day, had sufficient time to confer with counsel before doing so, and was sentenced within the applicable range. *Id.*

But as Chief Justice Gray noted, no one knows what was discussed during the off-record bench conference. Chief Justice Gray also noted that

the jury assessed the maximum punishment. *Id.*, 2020 WL 5667148, at *4 (Gray, C.J., dissenting).

Despite the majority's conclusion to the contrary, the record simply contains insufficient data for a meaningful harm analysis. *See VanNortrick*, 227 S.W.3d at 714; *Cain*, 947 S.W.2d at 264.

This is primarily because it is unknown and unknowable what occurred during the unrecorded bench conference. First, the record does not reflect what topic or topics were discussed. In context, the parties may have been discussing the motion in limine; they may have been discussing how to conduct the voir dire; they may have been discussing the reason(s) Appellant was considering seeking the appointment (or retention) of other counsel; or they may have been discussing something else.

If the court and the attorneys were discussing the reasons Appellant wanted a new attorney, Appellant should have been heard on this matter. It is possible that there was a valid legal basis for his appointed counsel to withdraw that the court discouraged counsel from pursuing and counsel obviously failed to pursue. But the record does not disclose what occurred during the unrecorded bench conference.

Rule 44.2(a) **requires** reversal for constitutional error "unless the court determines beyond a reasonable doubt that the error did not contribute to the conviction or punishment." TEX. R. APP. P. 44.2(a).

Without knowing the content of the unrecorded bench conference, no court can say beyond a reasonable doubt that Appellant's absence did not contribute to his decision to plead guilty or to his sentence. Stated differently, "the [available] data is insufficient to conduct a meaningful harmless error analysis." *Cain*, 947 S.W.2d at 264.

D. This Court should grant review

The Court should grant review for several reasons. *See* TEX. R. APP. P. 66.3.

The Waco Court majority decided an important question of state law — whether harmlessness can be presumed when there are gaps in the record that affirmatively demonstrate that improper proceedings were held in the defendant's absence. This question has not been, but should be, settled by this Court. *Id.* 66.3(b).

The decision of the Waco Court majority is inconsistent with the decisions of this Court in *Cain*, *VanNortrick*, and similar decisions holding

that a harm analysis is inappropriate when "the [available] data is insufficient to conduct a meaningful harmless error analysis." *Id.* 66.3(c).

The Waco Court majority has misconstrued and misapplied Rule of Appellate Procedure 44.2. *Id.* 66.3(d).

The justices of the Waco Court disagreed on a material question necessary to the court's decision. *Id.* 66.3(e).

Prayer

ACCORDINGLY, Appellant Justin King asks the Court to: (1) grant review on the issue presented in this petition for discretionary review; and (2) grant such other and further relief to which he may show himself justly entitled.

Respectfully submitted,

/s/ Alan Bennett
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Certificate of Compliance

The undersigned hereby certifies, pursuant to Rule of Appellate Procedure 9.4(i)(3), that this computer-generated document in its entirety contains 2,623 words.

/s/ Alan Bennett
E. Alan Bennett

Certificate of Service

The undersigned hereby certifies that a true and correct copy of this petition was served electronically on September 21, 2020 to: (1) counsel for the State, Brian Evans; and (2) the State Prosecuting Attorney.

/s/ Alan Bennett
E. Alan Bennett

Appendix

1. *King v. State*, No. 10-19-00354-CR, 2020 WL 5667148 (Tex. App.—Waco Sept. 23, 2020, pet. filed)

APPENDIX – TAB 1

2020 WL 5667148
Only the Westlaw citation is currently available.

SEE TX R RAP RULE 47.2 FOR
DESIGNATION AND SIGNING OF OPINIONS.

Publish
Court of Appeals of Texas, Waco.

Justin Shane KING, Appellant
v.
The STATE of Texas, Appellee

No. 10-19-00354-CR
|
Opinion delivered and filed September 23, 2020

From the 77th District Court, Freestone County, Texas, Trial Court No. 19-036-CR

Attorneys and Law Firms

Michael Brian Evans, for Appellee.

E. Alan Bennett, for Appellant.

Before Chief Justice Gray, Justice Davis, and Justice Neill

MEMORANDUM OPINION

JOHN E. NEILL, Justice

***1** In one issue, appellant, Justin King, challenges his conviction for evading arrest or detention with a motor vehicle.[1] *See* Tex. Penal Code Ann. § 38.04. Specifically, King contends that the trial court erred by conducting a pre-trial proceeding in his absence. We affirm.

I. Background

In the instant case, King was charged by indictment with evading arrest or detention with a motor vehicle. *See id.* The indictment also included an enhancement paragraph referencing King's prior conviction for aggravated robbery.

On the morning of trial, the trial court qualified the venire panel. After doing so, the trial court directed defense counsel to present the defense motion in limine pertaining to punishment evidence.[2] King was not present in the courtroom for the hearing.[3] The attorneys briefly discussed the motion with the trial court. The State did not oppose the motion in limine. The trial court then granted the motion.

While King remained outside of the courtroom, a discussion was had between defense counsel and the trial court wherein defense counsel questioned whether King would stipulate to each paragraph in the indictment, whether King would "want to agree to anything," and whether King might possibly be disruptive in the courtroom. Defense counsel also mentioned that King "believes he can fire me and get another attorney and delay this trial." The trial court advised that the proceedings would not be delayed any further.

The trial court and the attorneys then discussed how to handle voir dire, assuming that King would plead "guilty" to the charge. At the conclusion of this discussion, King was brought into the courtroom.[4]

The trial court discussed with King whether he intended to plead "guilty" or "not guilty," because defense counsel had indicated earlier in the morning that King intended to plead "not guilty" and insist on a jury trial. Allegedly without an opportunity to consult with counsel, King informed the trial court that he intended to plead "guilty" to the charged offense and that he desired to have a punishment hearing before the jury. Before the venire panel returned to the courtroom, the trial court again asked whether it was King's intention to plead "guilty." King confirmed that he intended to plead "guilty."

***2** It was not until the next morning that King formally entered his plea of "guilty" to the charged offense and "true" to the enhancement allegation contained in the indictment. The jury ultimately found King guilty and assessed punishment at twenty years' confinement in the Institutional Division of the Texas Department of Criminal Justice with a $10,000 fine. The trial court certified King's right of appeal, and this appeal followed.

II. Analysis

Article 28.01, section 1 of the Code of Criminal Procedure provides that a defendant must be present during "any pretrial proceeding." Tex. Code Crim. Proc. Ann. art. 28.01 § 1. It is undisputed that the hearing in question constituted a pre-

trial proceeding within the meaning on article 28.01. *See id.* ("The defendant must be present at the arraignment, and his presence is required during any pre-trial proceeding. The pre-trial hearing shall be to determine any of the following matters ... (2) Pleadings of the defendant...."); *see also Sanchez v. State*, 122 S.W.3d 347, 351-52 (Tex. App.—Texarkana 2003, pet. ref'd) (noting that a pre-trial hearing is a proceeding under article 28.01 of the Code of Criminal Procedure if it is adversarial in nature, recorded or resulted in a written order, included evidence or argument, and resulted in a conclusion by the court (citing *Adanandus v. State*, 866 S.W.2d 210, 218 (Tex. Crim. App. 1993))). Because King had a statutory right to be present at the pre-trial proceeding, it was error for the trial court to conduct the hearing without him. *See* Tex. Code Crim. Proc. Ann. art. 28.01 § 1.

In addition to his statutory right to be present at any pre-trial proceeding, King has a constitutional right, under the Sixth Amendment, to be present at all phases of proceedings against him when threatened with a loss of liberty. *See Fulmer v. State*, 401 S.W.3d 305, 314 (Tex. App.—San Antonio 2013, pet. ref'd) (citing *Baltierra v. State*, 586 S.W.2d 553, 556 (Tex. Crim. App. 1979)). This right guarantees the right to consult with counsel and to give advice or suggestions to counsel. *See Snyder v. Massachusetts*, 291 U.S. 87, 106, 54 S. Ct. 330, 335, 78 L. Ed. 674 (1934); *see also Baltierra*, 586 S.W.2d at 556. Again, it was error under the Sixth Amendment for the trial court to conduct the hearing without King. Therefore, we must now determine whether this error resulted in harm.

When reviewing non-constitutional error, we disregard errors, defects, irregularities, or variances that do not affect the substantial rights of the accused. Tex. R. App. P. 44.2(b). A substantial right is affected when the error had a substantial and injurious effect or influence in determining the jury's verdict. *King v. State*, 953 S.W.2d 266, 271 (Tex. Crim. App. 1997). If, on the record as a whole, it appears the error did not influence the jury, or had but a slight effect, the court must conclude the error was not harmful and allow the conviction to stand. *Johnson v. State*, 967 S.W.2d 410, 417 (Tex. Crim. App. 1998).

In addition to the foregoing harm analysis, the Court of Criminal Appeals has also adopted the "reasonably substantial relationship" test to use when conducting a harm analysis for an article 28.01 violation. *Adanandus*, 866 S.W.2d at 219. The "reasonably substantial relationship" test focuses on the effect of the error on the advancement of the defendant's defense. *Id.* In applying this test, we must determine whether the defendant's presence bears a reasonably substantial relationship to the opportunity to defend. *Id.*

***3** This test is also used to determine if a defendant's right to be present under the Sixth Amendment to the United States Constitution has been violated. *Routier v. State*, 112 S.W.3d 554, 576 (Tex. Crim. App. 2003). If a constitutional violation has occurred, the case must be reversed unless the court determine beyond a reasonable doubt that the error did not contribute to the conviction or punishment. *See* Tex. R. App. P. 44.2(a).

The federal courts have stated:

> A defendant's constitutional right to be present during certain stages of criminal proceedings is rooted in the Confrontation Clause of the Sixth Amendment and in the Due Process Clause. *United States v. Gagnon*, 470 U.S. 522, 526, 84 L. Ed. 2d 486, 105 S. Ct. 1482 (1985) (per curiam). The Due Process Clause applies in lieu of the Sixth Amendment in situations where the defendant is not specifically confronting witnesses or evidence against him. *Id.* It requires a criminal defendant's presence "to the extent that a fair and just hearing would be thwarted by his absence, and to that extent only." *Snyder v. Massachusetts*, 291 U.S. 97, 108, 78 L. Ed. 674, 54 S. Ct. 330 (1934) (Cardozo, J.); *United States v. Rosario*, 111 F.3d 293, 298 (2d Cir. 1997).

United States v. Jones, 381 F.3d 112, 121-22 (2d Cir. 2004).

The Court of Criminal Appeals has also noted that a defendant's absence at a pre-trial proceeding does not bear a reasonably substantial relationship to the opportunity to defend where defendant's insight is not needed for the trial court to rule on the issues presented and where the defendant does not have any information, not available to the attorneys or the court, regarding any of the matters discussed at the proceeding. *Adanandus*, 866 S.W.2d at 220.

Similar to *Adanandus*, we cannot "envision how [the defendant's] presence [at the hearing on the motion in limine] could have furthered his defense," because there is "no evidence that appellant had any information, not available to the attorneys or the court, regarding any of the matters discussed at the meeting." *Id.* Indeed, King was represented during the hearing on the motion in limine, and defense counsel informed the trial court that King agreed to everything in the motion in limine. Further, the motion was granted without any objection from the State. Because

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King's presence could not have furthered his defense, his presence did not bear a reasonably substantial relationship to his opportunity to defend. *See id.*; *see also Lawton v. State*, 913 S.W.2d 542, 550 n.4 (Tex. Crim. App. 1995); *Sanchez*, 122 S.W.3d at 352-53. Therefore, although King's absence violated article 28.10 of the Code of Criminal Procedure and the Fourteenth Amendment to the United States Constitution, we conclude that the error did not have any more than a slight effect. *See* Tex. Code Crim. Proc. Ann. art. 28.10; *see also* Tex. R. App. P. 44.2(b); *Johnson*, 967 S.W.2d at 417.

Because King's absence was also constitutional error, we must also conduct a constitutional-error harm analysis. We hold the error was harmless because we conclude, beyond a reasonable doubt, that it did not affect the outcome of the trial. Although there was discussion of whether King would plead guilty on the same day as the hearing on his motion in limine, it was not until the next day that King formally entered his plea. He had sufficient time to discuss the potential ramifications of such a plea with his attorney. The record further demonstrates that King voluntarily, knowingly, and intelligently pleaded "guilty" to the charged offense, was given the opportunity to confirm his plea, and it appears that he was properly sentenced based on the evidence presented and the applicable sentencing range. *See Adanandus*, 866 S.W.2d at 219-220; *Lawton*, 913 S.W.2d at 550 n.4; *see also* Tex. R. App. P. 44.2(a); *Routier*, 112 S.W.3d at 576. Accordingly, we overrule King's sole issue on appeal.

III. Conclusion

***4** We affirm the judgment of the trial court.

DISSENTING OPINION

TOM GRAY, Chief Justice

If it had been just the motion in limine presented and discussed while the defendant was not present, on this record, I could probably join the Court's decision. But it was not just the motion in limine. After the motion was discussed and decided, when it was clear that everyone knew the defendant was not in the courtroom, the attorneys and the trial court further discussed matters that, if nothing else, could have impacted the trial court's attitude towards the defendant when the defendant's trial counsel suggested the defendant might be disruptive. Why counsel felt compelled to bring it up at this time, when his client was not present, is not clear; but it is problematic. This problem morphed into an assertion by defense counsel that the defendant thought he could fire the attorney and delay the trial. This disclosure and discussion, a/k/a a hearing, outside the presence of the defendant presents a problem of constitutional dimension.

Moreover, it is what happened *in the record*, but not *on the record*, that is most troubling to me. The trial court had already twice suggested that Mr. King should be brought into the courtroom.[1] The following exchange then took place:

> THE COURT: Okay. Then I will grant them. Why don't we -- you want to go ahead and have Mr. King come on in? Is there anything else we need to take up?
>
> [DEFENSE COUNSEL]: Other than the fact that he believes he can fire me and get another attorney and delay this trial.
>
> THE COURT: No, I'm not going to delay it –
>
> [DEFENSE COUNSEL]: Oh, I agree.
>
> ***(Bench discussion, off the record.)***
>
> ***(Open court, defendant and jury panel not present.)*** [emphasis added]
>
> THE COURT: Let me say this: I'm going to do voir dire as if he's going to enter a plea of "not guilty." Okay? That way we will ask him and if [he] decides he wants to, hey, that's okay. You see what I'm saying? I don't want to get into this, then, all of a sudden, he changes his mind and we have to declare a mistrial.

This means that during the hearing, when the trial court and defense counsel knew the defendant was outside the courtroom but was readily available, a hearing occurred "off the record." I do not know what occurred during the hearing off the record; and neither do you. Under the applicable standard of review, because I do not know what happened, I cannot reach the necessary conclusion to hold the error harmless that "beyond a reasonable doubt, the error did not affect the outcome of the trial." This might be the time to note that the defendant was sentenced to the maximum punishment for the offense as enhanced. Thus, being unable to find that the constitutional error was harmless, I would reverse the judgment of the trial court and remand for a new trial. Because

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the Court affirms the trial court's judgment, I respectfully dissent.

All Citations

Not Reported in S.W. Rptr., 2020 WL 5667148

Footnotes

1 The State states in its brief that King has asserted two issues—the one noted above and an ineffective-assistance-of-counsel claim. A review of King's brief does not support this position, as King has not clearly identified a second issue involving ineffective assistance of counsel. We therefore analyze the sole issue King has briefed on appeal—whether the trial court erred by conducting a pre-trial proceeding in his absence.

2 King's motion in limine only applied to the punishment phase of trial and requested that the State and its witnesses refrain from making any direct or indirect reference before the jury to matters not within their personal knowledge. The motion also requested a pre-trial determination of the relevancy and reliability of any expert testimony.

3 It is not clear from this record as to the reason why King was not present for the hearing on his motion in limine.

4 The entirety of the discussions during the hearing comprise four pages of the Reporter's Record.

1 It is clear that the trial court did not want to proceed without the defendant present. Having done so, however, the only way to overcome the problem of a hearing off the record would have been to explain to the defendant on the record what had happened while he was out of the courtroom. This would, arguably, have allowed the defendant and this Court to know what happened during the time the proceedings continued while the defendant was not present.

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