

pellant's mistress. The theory of the state was that the act was a deliberate murder, induced by jealousy and revenge. The theory of the defense was an accidental homicide; that appellant was whirling the pistol in play when it accidentally fired. No one was present at the killing. One witness had only left them a minute or two before the pistol fired, and ran back, and found Minnie lying before the fire, her feet in the fire, and appellant gone. He was not arrested until August, 1893.

The charge of the court is an admirable presentation of the law of the case. The charge on the theory of the defense was clear, concise, and comprehensive. There was no necessity of instructing on the various grades and punishments of accidental homicide. If there was no murder in the case, the appellant should be acquitted, and the court so charged the jury. We cannot see how the appellant can complain of this omission. It was for his benefit. Green's Case, 27 Tex. App. 244, 11 S. W. 114. The evidence fully sustains the verdict that it was a cold-blooded murder.

2. As to the remarks of the district attorney, if they were objectionable, the counsel should have asked special instructions to the jury to disregard them. Hardy's Case, 31 Tex. Crim. R. 289, 20 S. W. 561; Jackson's Case, 31 Tex. Crim. R. 344, 20 S. W. 921. Judgment affirmed.

Ex parte JASEF.

(Court of Criminal Appeals of Texas. Dec. 13, 1893.)

HABEAS CORPUS TO OBTAIN BAIL—SUFFICIENCY OF EVIDENCE—APPEAL.

Where the testimony does not make it evident that a person accused of murder is the guilty party, he should be admitted to bail.

Appeal from district court, Hunt county; E. W. Turhume, Judge.

John Jasef was charged with murder, and appeals from the denial of his petition for a writ of habeas corpus to obtain bail. Reversed.

R. L. Henry, Asst. Atty. Gen., for the State.

DAVIDSON, J. The relator was charged with murder, and resorted to the writ of habeas corpus to obtain bail. The petition alleges that the complaint charges him with the murder of an infant child, and the evidence tends to show the child was the offspring of one Mary Nickulls, a Syrian woman. It is the settled rule of this court, in cases like the present, not to discuss the evidence in an opinion. After a careful investigation of the record before us, we are of opinion that, if a murder was committed, the testimony does not make it evident that

the relator was the guilty party; wherefore the judgment is reversed refusing him bail, and his bond fixed at \$5,000, which upon being executed in the terms of, and upon the conditions required by, law, he will be discharged from custody.

JAIMES v. STATE.

(Court of Criminal Appeals of Texas. Dec. 13, 1893.)

CRIMINAL LAW—APPEAL—AFFIRMANCE.

A conviction will be affirmed where the indictment is good in form and substance, the charge to the jury is sufficient, no statement of facts is incorporated into the record, no bill of exceptions is reserved to rulings, and the transcript shows a trial in conformity to law.

Appeal from district court, Hidalgo county; John C. Russell, Judge.

Manuel Jaimes was convicted of burglary, and appeals. Affirmed.

R. L. Henry, Asst. Atty. Gen., for the State.

DAVIDSON, J. The appellant appeals from a conviction of burglary. The indictment is good in form and substance; the charge conforms to the allegations set up in said indictment, and is sufficient; a statement of facts is not incorporated in the record, nor were any bills of exception reserved to the ruling of the court; and, in so far as we are informed by the transcript, the trial was in conformity to law,—wherefore the judgment is affirmed.

(33 Tex. Cr. R. 33.)

MAYES v. STATE.

(Court of Criminal Appeals of Texas. Dec. 16, 1893.)

HOMICIDE—WITNESSES—INSTRUCTIONS—PREJUDICE OF JUROR.

1. The state, after having called some of the eyewitnesses of the quarrel and resulting homicide, cannot be required to call others, who are friendly to defendant.

2. Where, after the court refused to require the state to call certain eyewitnesses of the homicide, who were friends of defendant, the defense refused to call them, it was proper for the district attorney to comment on the fact.

3. An exception to the entire charge as to murder as not required by the evidence does not support an assignment that in its charge on the first degree the court submitted the question whether there was a previous grudge between the parties, as to which there was no evidence.

4. Witnesses who have testified that another's reputation for truth is bad may be asked whether from that general reputation he is worthy of belief on oath.

5. A verdict will not be set aside for prejudice of a juror summoned on a special venire, and shown to be an honorable man, unacquainted with either defendant or deceased, or with the facts of the case, on evidence that he said to another venire man that he lived so far away that he hoped to be called on some case so as to pay expenses, and that defendant "ought to have his d—d neck broke," he testifying that he said "they would keep hauling him on the

jury until he would get a chance to help break some one's neck."

Appeal from district court, Bell county; W. A. Blackburn, Judge.

Joe Mayes was convicted of murder in the second degree, and appeals. Affirmed.

McMahon & McMahon, W. W. Hair, and Wimbourn Pierce, for appellant. R. L. Henry, Asst. Atty. Gen., and X. B. Sander, for the State.

SIMKINS, J. Appellant was convicted of murder in the second degree, and his punishment assessed at five years, from which he appeals.

1. Appellant complains that the court erred in not requiring the state to place three witnesses on the stand who were shown by the testimony to be present during the quarrel and subsequent homicide. There is nothing in the proposition, certainly, as applied to this case. In the first place, there were eye-witnesses placed on the witness stand by the state; and, in the next place, to require the state to put all such witnesses on the stand, and thereby vouch for their credibility without regard to their interest, bias, or character of testimony, would compel the state to offer testimony often utterly contradictory, and deprive her of the right of attacking the character of such witnesses, however notoriously bad. It appears that in this case the witnesses in question were the son-in-law and intimate friends of appellant. If their testimony was advantageous to appellant, we cannot see why he did not introduce them.

2. The appellant further complains of the remarks of the district attorney in his closing speech, who asked why appellant did not place the aforesaid witnesses on the stand, as one was the son-in-law and the others were intimate friends of appellant. It seems that after the court overruled the motion of appellant to compel the state to put the said witnesses on the stand the appellant also refused to put them on, and the district attorney commented on the fact. We may infer that they were the appellant's witnesses, summoned by him, and he refused to examine them, and the district attorney had the right to call attention to the fact; and, even if they were not summoned by appellant, we see no impropriety in the argument.

3. Appellant further complains that in his charge on murder in the first degree the court erred in submitting to the jury whether there was any previously existing grudge or enmity between the parties, as there was nothing in the evidence suggesting anything of the kind. The jury having found by their verdict that there was no express malice, and the lowest penalty inflicted, the charge was obviously harmless. Green's Case, (Tex.) 22 S. W. 1095. Again, while there was a general exception to the entire charge on murder in the first and second degrees as not required by the evidence, there was no special exception to the portion of the charge now com-

plained of as error. Quintand Case, 29 Tex. App. 401, 16 S. W. 258.

4. Appellant further complains that the court erred in not permitting him to ask certain witnesses, who had testified that the reputation of Frank Johnson for truth and veracity was bad, the further question: "From that general reputation, is he worthy of belief on oath?" In the impeachment of a witness the question to be ascertained is the general reputation of the witness for truth and veracity in his community, and this should be ascertained through impeaching witnesses, without eliciting their private opinions. What is the proper form of inquiry has been the subject of much discussion. This court has held, on the authority of Boon v. Weathered, 23 Tex. 686, that where the impeaching witness states that he knows the general reputation for truth and veracity of the person sought to be impeached, he may then be asked whether that reputation is good or bad, or he may be asked "whether that general reputation is such as to entitle the witness to credit on oath." Willson's Crim. St. § 2513; Griffin v. State, 26 Tex. App. 157, 9 S. W. 459. In the case of Johnson v. Brown, 51 Tex. 77, the supreme court, also on the authority of Boon v. Weathered, declare that the only proper questions to be propounded to the witness are "whether he knows the general character or reputation of the witness intended to be impeached in point of truth among his neighbors." If so, then what is that character,—good or bad? These questions were asked, and answered by the witness, and we think were sufficient, and were the proper questions.

5. Appellant asks a new trial on the ground of prejudice and bias on the part of R. A. Center, a juror that tried the case. The evidence shows that Center and one Burk were traveling to Belton; that Center was summoned as a special venire man in four cases, including the Mayes Case; and Burk was also a venire man. Some conversation ensued between the parties, in which Center said "he lived so far in the country that he would have to remain until all the venires were called, and he hoped he would be taken on some case to make expenses." But Burk said that Center further said, "Mayes ought to have his d—n neck broke." This Center denies, and says that his remark was "they would keep hauling him on the jury until he would get a chance to help break some one's neck." Without undertaking to settle what was said, it is uncontradicted that Center did not know appellant or deceased, nor the facts of the case, and his remarks were, no doubt, jocular or misunderstood. The juror is shown to be an upright and honorable man by the impeaching witness. Verdicts solemnly rendered under oath are not to be lightly set aside because of some casual remark made by one before being impaneled as a juror, where no prejudice is otherwise shown to exist.

6. While the evidence is conflicting, and many witnesses testified to inconsistent facts, yet we think there is sufficient testimony to sustain the conviction, and it is affirmed.

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SIMMONS v. STATE.

(Court of Criminal Appeals of Texas. Dec. 16, 1893.)

CRIMINAL LAW—ADMISSION OF EVIDENCE—REVIEW.

Admission of evidence cannot be reviewed in a criminal case, where there was no exception to the ruling admitting it.

Appeal from district court, Smith county; Felix J. McCord, Judge.

A. L. Simmons appeals from a conviction of forgery. Affirmed.

R. L. Henry, Asst. Atty. Gen., for the State.

DAVIDSON, J. Appellant was convicted of forgery, and prosecutes his appeal upon two grounds:

The first ground relates to the admission of certain testimony, set out in the motion for a new trial. This cannot be revised, because exception was not reserved to the ruling of the court admitting same.

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The second ground calls in question the sufficiency of the evidence to support the conviction. If the evidence for the state is true,—and the jury believed it to be true,—it amply sustains the verdict and judgment. The judgment is affirmed.

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SIMMONS v. STATE.

(Court of Criminal Appeals of Texas. Dec. 16, 1893.)

Appeal from district court, Smith county; Felix J. McCord, Judge.

A. L. Simmons appeals from a conviction of uttering a forged instrument. Affirmed.

R. L. Henry, Asst. Atty. Gen., for the State.

DAVIDSON, J. The appeal herein is prosecuted from a conviction of uttering a forged instrument. The only question presented for revision by this court is the alleged insufficiency of the evidence to support the verdict of the jury and judgment of the court. After a careful review of the testimony, we are of opinion it amply sustains the conviction, wherefore the judgment is affirmed.