**Court of Criminal Appeals**

**February 4, 2015**

***Riles v. State***

No. PD-1757-13

Case Summary written by Shelby Hall, Staff Member.

Judge Meyers delivered the opinion of the Court, joined by Judge Keller, Keasler, Hervey, Alcala, Richardson, Yeary, and Newell. Presiding Judge Keller filed a concurring opinion, joined by Judge Hervey. Judge Alcala also filed a concurring opinion. Judge Johnson filed a dissenting opinion.

Appellant, Tawona Riles, was charged with possession of a controlled substance. After the trial court found her indigent, she was appointed counsel. Riles took a plea deal on March 3, 2010 and was granted community supervision. The application, which Riles signed, contained a provision that if she were granted community supervision, she would be required to reimburse the county for her court appointed attorney’s fees. Additionally, her Order of Deferred Adjudication said Riles must pay a $500 fine, along with all court costs and attorney fees. The judge that granted Riles deferred adjudication placed her on community supervision for eight and a half years. The next day on March 9, 2010, Riles’s attorney filed with the district clerk an “Attorney Fee Voucher” for $1,000, which was approved. The bill of costs issued by the district clerk on March 19, 2010 listed $1,000 for the attorney fee. In August 2011, the state moved to revoke Riles community supervision and proceed with adjudication. In August 2012, a judgment adjudicating guilt against Riles was signed. This judgment included a an order that Riles pay all fines, courts costs, and restitution as listed on the bill of costs. The following day, the district clerk issued a new bill of costs, including the $1,000 assessment of attorney’s fees.

Riles appealed, arguing to the court of appeals that the trial court erred in ordering her to pay the attorney’s fees when there was no evidence that she had the ability to do so. The court of appeals held that Riles had forfeited this claim by failing to raise it in an appeal to the order of deferred adjudication. Riles then appealed to the Court of Criminal Appeals, arguing that because at the time she was placed on community supervision she did not know the amount of the attorney’s fees, nor that they would even be assessed, that she did not forfeit her claim.

The Court held that because she has knowledge of the attorney fee, and thus had the ability to challenge it in a direct appeal concerning the initial order for deferred adjudication, she forfeited her claim. The facts point to numerous incidences where Riles acknowledged her obligation to pay her attorney fee. This clear evidence of knowledge lead the court to uphold the court of appeals, reasoning that the lack of knowledge of the exact amount of the fee is not enough to carry Riles’s case.

Presiding Judge Keller, concurring, joined by Judge Hervey:

This concurring opinion notes that the majority listed many documents where Riles acknowledged her obligation to pay fees, but all of them except for the bill of costs, only notified Riles that she was to pay the fee as a condition of probation. Those documents alone would not have placed Riles on notice that she was required to pay the attorney fees. But, because the bill of costs was expressly incorporated in the judgment because of the notation “see attached,” she did have notice that the fees were an independent obligation under the judgment.

Judge Alcala, concurring:

This concurring opinion agreed with the majority’s holding, adding that even though the trial court failed to inform Riles of the exact amount of her attorney fees, the record contained enough evidence to infer that she was aware of at least the approximate amount. Additionally, Alcala asserts that even if this case was heard on the merits, Riles would not have succeeded. Alcala reasoned that the record indicates that the trial court considered her ability to pay and that Riles represented to the trial court that she did have the ability to pay. Thus, even if the case were heard on the merits, Riles would not be successful.

Judge Johnson, dissenting:

The dissent argued that the majority’s holing was error. Johnson reasoned that because Riles was found indigent, and remained so because the trial court did not make an inquiry as to her ability to pay, the trial court did not have the authority to assess attorney fees. Johnson also cites Justice Pirtle’s dissent in the court of appeals, arguing that the majority had inappropriately broadened the majority’s relied upon precedent, finding that because Riles is appealing a factual determination—that she cannot pay the $1,000 fee—she did not have notice in order to obligate her to appeal directly from her initial order of deferred adjudication.

***Villarreal v. State***

No. PD-0332-13

Case Summary written by Rebekah Jacobson, Staff Member.

Justice Alcala delivered the opinion of the unanimous Court.

The appellant, Villarreal, and the victim, Martinez, both attended a party in September of 2010. During the party, a fight between the appellant and Martinez ensued and the appellant stabbed Martinez six times. As a result of the stab wounds, Martinez died. At the appellant’s trial, witnesses testified that Martinez was unarmed during the fight and that the appellant was the only aggressor. The State introduced into evidence the appellant’s statements to police immediately following the stabbing. In the statements, the appellant asserted that Martinez had attempted to cut him. Additionally, the appellant asserted that after disarming the victim, he stabbed him one time. These out-of court statements were the only evidence to support the appellant’s justification defense. At the close of trial, the court instructed the jury on the law of self-defense; however, in its instruction, the court did not include the provisions set forth in Texas Penal Code § 9.32(b). These provisions can, in some circumstances, create a presumption of reasonableness as to an actor’s belief that the use of deadly force was immediately necessary to protect himself. The appellant did not object to the omission of a presumption-of-reasonableness instruction, nor did he request a separate instruction describing the provisions set forth in § 9.32(b). The jury found the appellant guilty and sentenced him to ninety-nine years in prison. On appeal, the appellant asserted that the trial court erred by omitting the presumption-of-reasonableness instruction. The court of appeals agreed, and determined that there was some evidence to support the three-prongs of § 9.32(b). In light of this determination, the court of appeals concluded that the appellant had been egregiously harmed by the omission.

The issue in this case is whether the appellant suffered egregious harm from the omission of the jury instruction that would have required the jury to apply a presumption of reasonableness to the appellant’s belief that the use of deadly force was immediately necessary to protect himself.

Because the appellant did not raise a timely objection to the jury charge, the court first instructed that reversal was only required if there was fundamental error in the charge. Fundamental means that the error was so egregious that the appellant was deprived of a fair trial. To determine whether the error resulted in egregious harm, the court considered four factors: (1) the entirety of the jury charge, (2) the evidence, (3) the arguments of counsel, and (4) any other relevant information revealed by the record. As to the entirety of the jury charge, the Court of Criminal Appeals agreed with the court of appeals’ conclusion that the charge failed to comprehensively detail the applicable harm. However, the court disagreed with the court of appeals’ assignment of substantial weight to this factor, reasoning that the lower court’s analysis failed to take into account that a complete instruction would have also informed the jury that, in some circumstances, an actor is not entitled to the benefit of a presumption. Because the applicability of the presumption depended on the evidence introduced at trial, the court examined four portions of the evidence, including: (a) the witness testimony, (b) the appellant’s out-of-court statements, (c) the lack of evidence to indicate the statutory presumption would have applied, and (d) the weakness of the evidence indicating that the appellant acted in self-defense. The court highlighted the fact that the appellant’s version of events were not only in conflict with all other witnesses at trial, but were also inconsistent with the physical evidence. The court therefore stated it could not conclude that the addition of the presumption-of-reasonableness instruction would have altered the outcome as to the question of whether the appellant acted in self-defense.

Additionally, the court concluded that the omitted instruction would have allowed the jury to disregard the presumption if the jury concluded that the appellant had no reason to believe that the victim was attempting to commit murder or, alternatively, that the appellant was engaged in criminal activity at the time of the incident. The court determined that the record conclusively showed that at the time of the stabbing, the appellant had no reason to believe that Martinez was attempting to murder him. The court also determined that the appellant’s own statements indicating that he intended to start a fight with Martinez showed that the appellant was engaged in criminal activity at the time of the stabbing. This means that even if the jury had been properly instructed as to a presumption of reasonableness, the presumption was inapplicable to the facts of the case.

The court went on to point out that, at trial, appellant’s counsel relied on the theory of self-defense only as a secondary defense, which alleged that State had failed to prove the appellant’s culpability. The court of appeals’ conclusion that the appellant was deprived of his sole defense was therefore incorrect. Finally, the court considered the jury’s rejection of a sudden-passion special issue and concluded that the jury likely would have rejected the appellant’s contention that his use of deadly force was justified, regardless of receiving a presumption-of-reasonableness instruction. In sum, the Court of Criminal Appeals held that the court of appeals erred by concluding that the appellant was egregiously harmed by the omission of a presumption-of-reasonableness instruction. It therefore reversed the court of appeals’ judgment, and remanded the cause for further consideration.