

Court of Criminal Appeals
April 16, 2014

State v. Thomas

No. PD-0121-13

Case Summary written by Jessica Rugeley, Online Edition Editor.

Presiding Judge Keller delivered the opinion of the unanimous Court.

Thomas was convicted of murder after a jury trial. His trial counsel failed to call a witness who claimed that another person murdered the victim. The witness's statement was available to defense counsel months before the trial. Thomas filed a motion for new trial "in the interest of justice," but did not assert ineffective assistance of counsel. At the hearing on the motion for new trial, defense counsel asserted attorney client privilege when asked why he did not call this witness at trial. The trial court granted the new trial, noting that it felt it had sentenced Thomas too harshly. The court of appeals reversed, holding that there was no legal basis for a new trial.

Issue: May a new trial be granted in the interest of justice upon a claim that defense counsel failed to call an exculpatory witness who was known to him and available at trial, if the claim is not based on ineffective assistance of counsel?

The Court held that the trial court abused its discretion in granting a new trial. A trial court abuses its discretion when it "grants a new trial for a non-legal or legally invalid reason." The Court first notes that the "interest of justice" is not a reason listed to grant a new trial in Texas Rule of Appellate Procedure 21.3; however, the list in 21.3 is not exclusive. A defendant does not have to assert a reason under 21.3 but must assert that he is entitled to a new trial under the law by showing that his substantial rights were affected. In this case, exculpatory evidence not presented at trial is not a legally valid for a new trial because the evidence was known to the defense at trial and Thomas did not claim ineffective assistance of counsel. The Court also refused to grant a new trial on punishment because a trial judge's opinion that he sentenced a defendant too harshly is not a legally valid reason for a new trial. Thus, the Court affirmed the court of appeals.

Gipson v. State

No. PD-0377-13

Case Summary written by Jessica Rugeley, Online Edition Editor.

Presiding Judge Keller delivered the opinion of the Court, joined by Judges Meyers, Price, Womack, Keasler, Hervey, Cochran, and Alcala.

The trial judge revoked appellant's probation for failure to pay his fines and various court-assessed fees. The court of appeals reversed, holding

that the State failed to satisfy its burden, under Texas Code of Criminal Procedure article 42.12 §21(c), to show that appellant was able to pay. §21(c) only requires proof that the defendant can pay the costs for his appointed counsel, community supervision fees, or court costs. The statute does not require a showing that the defendant can pay punitive fines. Thus, the Court reversed the court of appeals and affirmed the judgment of the trial court.

Johnson, J., Concurring

Judge Johnson concurred, stating that §21(c) only applies when failure to pay is the only allegation at a revocation hearing; thus, it does not apply here because there was another non-monetary allegation. Instead, the Court should look to §21(b), which does not require an analysis on appellant's ability to pay.

Alcala, J., concurring, joined by Judge Cochran

Judge Alcala concurred to point out that if appellant had preserved error on the fact that the federal Constitution requires the trial court to inquire into a defendant's reason for his failure to pay a fine and consider alternatives to incarceration, the outcome could be different. The trial court failed to conduct this analysis. Thus, it is important for defendants to assert objections under the Constitution regarding this required analysis.

Campbell v. State

No. PD-0854-13

Case Summary written by Jessica Rugeley, Online Edition Editor.

Judge Hervey delivered the opinion of the Court, joined by Presiding Judge Keller and Judges Meyers, Price, Womack, Keasler, Cochran, and Alcala. Judge Johnson concurred.

Appellant and a friend burned down an Arby's in Haltom City. Appellant was convicted of arson and criminal mischief with pecuniary loss in excess of \$200,000. The property owner testified at trial that the insurance company considered the total loss to be \$400,000. He further testified that it would cost \$1,000,000 to rebuild the Arby's restaurant. On appeal, Appellant claimed that the owner's testimony was insufficient to support that the pecuniary loss was more than \$200,000. The court of appeals acquitted Appellant on the criminal mischief conviction.

Issues: (1) Is the amount of money an owner received from an insurance claim for destroyed or damaged property sufficient to prove pecuniary loss?

(2) Is an owner's testimony that it would cost him \$1,000,000 to replace an Arby's restaurant sufficient to prove the cost of replacement of the property?

First, the Court held that the State does not need to present expert testimony as to the cost of repair in a damage case. While a witness's lay "off the wall" opinion as to damage will not suffice, the owner may testify as to the estimate given by the insurance company. Though that testimony was hearsay, the Appellant did not object at trial. Second, as to the criminal mischief by destruction claim, the Court presumed that the property owner's testimony "estimating the value of his property is either estimating the purchase price of the property or the cost to replace the property in terms of the fair market value, even though the owner may not use the specific terms 'market value,' 'replacement value,' or 'purchase price.'" Therefore, the Court held that the evidence at trial was sufficient to establish a pecuniary loss in excess of \$200,000.

Jelks v. State

No. PD-0381-13

Case Summary written by Jessica Rugeley, Online Edition Editor.

Per curiam.

Appellant was convicted of failure to comply with sex offender registration and sentenced to five years in prison. On appeal, he argued that the evidence was insufficient to support the \$275 in court costs assessed against him. The court of appeals reversed relying on its opinion in *Johnson v. State*, 389 S.W.3d 513 (Tex. App. –Houston [14 Dist.] 2012). The Court of Criminal Appeals reversed and remanded in light of *Johnson v. State*, No. PD-0193-13, 2014 Tex. Crim. App. LEXIS 240 (Tex. Crim. App. February 26, 2014), which was not available when the court of appeals handed down its opinion.

Handy v. State

No. PD-717-13

Case Summary written by Jessica Rugeley, Online Edition Editor.

Per curiam.

Appellant was convicted of burglary of a habitation and sentenced to 45 years in prison. On appeal, he argued, among other things, that the evidence was insufficient to support the \$289 in court costs assessed against him in the judgment. The court of appeals reversed relying on its opinion in *Johnson v. State*, 389 S.W.3d 513 (Tex. App. –Houston [14 Dist.] 2012). The Court of Criminal Appeals reversed and remanded in light of *Johnson v. State*, No. PD-0193-13, 2014 Tex. Crim. App. LEXIS 240 (Tex. Crim. App. February 26, 2014), which was not available when the court of appeals handed down its opinion.

Rogers v. State

No. PD-773-13

Case Summary written by Jessica Rugeley, Online Edition Editor.

Per curiam.

Appellant was convicted of murder and sentenced to 99 years in prison. On appeal, he argued, among other things, that the evidence was insufficient to support the \$594 in court costs assessed against him in the judgment. The court of appeals reversed relying on its opinion in *Johnson v. State*, 389 S.W.3d 513 (Tex. App. –Houston [14 Dist.] 2012). The Court of Criminal Appeals reversed and remanded in light of *Johnson v. State*, No. PD-0193-13, 2014 Tex. Crim. App. LEXIS 240 (Tex. Crim. App. February 26, 2014), which was not available when the court of appeals handed down its opinion.

Romero v. State

No. PD-1001-13

Per curiam.

Appellant was convicted of murder and sentenced to 20 years in prison. On appeal, he argued, among other things, that the evidence was insufficient to support the \$243.50 in court costs assessed against him in the judgment. The court of appeals reversed relying on its opinion in *Johnson v. State*, 389 S.W.3d 513 (Tex. App. –Houston [14 Dist.] 2012). The Court of Criminal Appeals reversed and remanded in light of *Johnson v. State*, No. PD-0193-13, 2014 Tex. Crim. App. LEXIS 240 (Tex. Crim. App. February 26, 2014), which was not available when the court of appeals handed down its opinion.

Flores v. State

No. PD-1459-13

Case Summary written by Jessica Rugeley, Online Edition Editor.

Per curiam.

Appellant was convicted of possession of a controlled substance and sentenced to 20 years in prison. On appeal, he argued, among other things, that the evidence was insufficient to support the \$905 in court costs assessed against him in the judgment. The court of appeals reversed, relying on its opinion in *Johnson v. State*, 389 S.W.3d 513 (Tex. App. –Houston [14 Dist.] 2012). The Court of Criminal Appeals reversed and remanded in light of *Johnson v. State*, No. PD-0193-13, 2014 Tex. Crim. App. LEXIS 240 (Tex. Crim. App. February 26, 2014), which was not available when the court of appeals handed down its opinion.