

Court of Criminal Appeals
September 24, 2014

Carsner v. State

No. PD-0153-14

Case Summary written by Nirav Patel, Staff Member.

Keller, P.J. delivered the opinion of the unanimous Court.

Appellant shot and killed her mother and stepfather after Appellant's mother filed a complaint with Child Protective Services (CPS) regarding Appellant's neglected care of her daughter. After Appellant's mother filed the complaint with CPS, Appellant informed CPS that she had been sexually abused as a child by her stepfather. Appellant asked that her daughter not be placed in the custody of Appellant's mother and stepfather. Although the outcome of the CPS hearing is unclear, the Appellant went to her mother and stepfather's house the next day, armed with a gun, to remove her daughter from the home. At trial, the State argued that Appellant intentionally killed her mother and stepfather. Appellant argued that she only fired her gun because she was afraid her mother and stepfather would take the gun away from her. During the trial, the State questioned the validity of Appellant's sexual abuse accusation against her stepfather because she waited to bring the accusation until after her mother filed a complaint with CPS.

After being convicted of capital murder, Appellant moved for a new trial, based on the testimony of a former boyfriend who came forward to corroborate Appellant's sexual abuse allegation against her stepfather. The trial court denied the motion because the four-pronged test for new trial based on newly discovered evidence was not met. The test, based on the Court of Criminal Appeals' decision in *Keeter v. State*, requires that (1) the newly discovered evidence was unknown or unavailable to the defendant at the time of trial; (2) the defendant's failure to discover or obtain the new evidence was not due to the defendant's lack of due diligence; (3) the new evidence is admissible and not merely cumulative, corroborative, collateral, or impeaching; and (4) the new evidence is probably true and will probably bring about a different result in a new trial. The trial court held the first two prongs had been satisfied, but that the third prong was lacking. It did not analyze the last prong of the *Keeter* test.

On appeal, the court did not analyze the first two prongs of the *Keeter* test. Rather, the court of appeals' analysis began with the third prong. The court found that both the third and fourth prongs had been satisfied and concluded that because all four prongs of the *Keeter* test had been established, the trial court was required to grant a new trial.

On appeal before the Court of Criminal Appeals, the State argued that the court of appeals erred because it failed to provide any legal analysis as to whether the trial court was correct in its legal conclusions regarding the first two prongs of the *Keeter* test. The court held that the court of appeals erred because it failed to address every issue necessary to properly dispose the appeal, as required by Rule

47.1 of the Texas Rules of Appellate Procedure. Because the State argued in its brief to the court of appeals that the first two prongs of the *Keeter* test were not satisfied, the court was required to address these two prongs before disposing of the appeal.

Thomas v. State

No. PD-1326-13

Case Summary written by Regan Pearson, Staff Member.

Judge Hervey delivered the majority opinion of the Court and was joined by Judges Keller, Meyers, Keasler, and Alcalá.

Thomas was convicted for aggravated sexual assault in 1987 and was required to register his personal information, including his address, with the local law enforcement agency under Chapter 62 of the Texas Code of Criminal Procedure. Thomas gave the Longview Police Department the address of an apartment which was leased by his girlfriend's daughter, who allowed Thomas and his girlfriend to live there. A police officer called the apartment manager to ask if the manager was aware that a registered sex offender was living on the premises. After the manager responded that she was unaware, the manager had the Longview Police Department issue Thomas a criminal-trespass warning. The manager also told Thomas' girlfriend's daughter that she would be evicted if Thomas continued to live at the apartment.

Thomas was eventually arrested on other outstanding warrants and gave officers a different address when being booked into county jail. A few months later, a member of the Longview Police Department went to the apartment building where Thomas had previously lived but was told by the apartment manager that Thomas no longer lived there. The police officer then went to the most recent address Thomas had given and found him residing there, which Thomas confirmed. After the officer asked Thomas whether he had updated his address with the Longview Police Department, Thomas replied that he had called in and updated it. Because the officer knew an update over the phone was impossible and his records showed that Thomas still lived at the apartment, the officer arrested Thomas for failure to comply with sex-offender registration requirements.

At trial, the jury convicted Thomas and he was given two years confinement. The Texarkana Court of Appeals reversed the trial court and ordered an acquittal. The Court of Appeals ruled that "there was a fatal variance between the indictment and the proof adduced at trial" and found that the State failed to prove that Thomas intended to move from the apartment to the new address and that Thomas had not given his new address to the Longview Police Department at least seven days before moving.

On appeal, the State argued that the correct day from which the seven-day notification period began was June 25, the date Thomas was arrested at the new address, as opposed to April 3, the date he was arrested at the apartment building.

Despite the fact that this would make the date of the crime shown on the indictment inaccurate, the State contended that case law allows the State to "prove a date different than the one alleged in the indictment so long as it was before the indictment was returned and the date was within the limitations period." The state also argued that the evidence was sufficient to support a conviction because a reasonable jury could have concluded that Thomas intended to move to the new address on June 25, when the Longview police officer found him living there. If the jury believed Thomas intended to move to the new address on June 25, then it could have also reasonably believed that Thomas had a duty to report his change of address no later than seven days before his move.

Thomas argued that the State's claims were not supported by the factual record. He pointed to the testimony given by himself, along with his witnesses stating that Thomas had lived at the apartment throughout the ordeal, after his criminal trespass warning and both arrests. Thomas stated that he had only told the officer that he lived elsewhere to protect his girlfriend's daughter from being evicted.

The Court of Criminal appeals agreed with the State and relied heavily on Thomas' statement to the Longview police officer that he had moved to the new address. The Court concluded that the jury was entitled to believe the officer's testimony and disregard other testimony, specifically Thomas' statement that he only lied to the officer about his address to protect his family. As a result, the jury could reasonably conclude that Thomas was guilty because he never reported his intended change of address in person, at least seven days before his move. The Court further concluded that the evidence was legally sufficient to support a conviction because of the indictment's "on or about" language when referencing the date of the crime. Because the date of the crime was before the date set out in the indictment and before the expiration of the statute of limitations, the Court found that there was not a variance between the allegations in the indictment and the evidence regarding the date of the crime. Despite the Court's conclusion to reverse the court of appeals' judgment, it remanded the case back to the court because it held the jury charge instructed the jury to consider manners not included in the indictment. The Court ordered the court of appeals to determine, on remand, whether Thomas has harmed by the incorrect jury charge.

Judge Cochran filed a dissenting opinion in which Judges Price and Johnson joined.

Judge Cochran began by noting that in his opinion, the state did not plead the correct case. While the State proved that Thomas had not reported his change of address within seven days *after* his move, the State had not proved that Thomas failed to provide an updated address within seven days *before* the move—the only charge the State plead. Because the move in Thomas' case was unanticipated, he could not have provided the authorities an update within seven days before an "anticipated" move because he did not ever anticipate a move to begin with. Judge Cochran noted that while Thomas clearly violated his duty to notify authorities

after the move, the State "also had a duty to indict him for the offense that he actually committed."