

**Court of Criminal Appeals**  
**October 23, 2013**

***Chambless v. State***

No. PD-0769-12

Case Summary written by Leonardo De La Garza, Staff Member.

Keasler, J., delivered the unanimous opinion of the Court.

Chambless was charged with second-degree manslaughter and the lesser-included state-jail felony of criminally negligent homicide for the death of Brian Berg after discharging his firearm multiple times into the dark without determining whether anyone was in the line of fire. The jury acquitted Chambless of manslaughter, but convicted him of criminally negligent homicide and assessed an eight-year term of confinement pursuant to Texas Penal Code (TPC) § 12.35(c)(1) (criminally negligent homicide with a deadly weapon) rather than TPC § 12.35(a) (unenhanced state-jail felonies). Chambless appealed and argued that the trial court erred in applying the punishment range because § 12.35(c)(1) and § 19.05(b) conflict and therefore, § 19.01(b) should control per the *in pari materia* doctrine.

The court addressed two issues: (1) whether the court of appeals erred in holding that the deadly-weapon enhancement found in TPC § 12.35(c)(1) applied to the offense of criminally negligent homicide; and (2) whether the court of appeals erred in holding that not all criminally negligent homicides include the use of a deadly weapon.

For the first issue, the court held that § 19.05(b) and § 12.35(c)(1) do not conflict because the statutes were not *in pari materia* nor did the plain language of the statutes reveal any conflict. § 12.35(c)'s punishable range elevation to the level of a third degree felony, when a criminally negligent homicide involves a deadly weapon, does not actually change the classification. In reality, the statutes do not share the same purpose or subjects and are therefore no *in pari materia*. In rejecting Chambless's argument that every criminally negligent homicide is automatically punishable as a third degree felony contrary to the Legislature's intent that it be punished as a state-jail felony, the court pointed to the possibility of criminally negligent homicide by omission, which may involve no deadly weapon at all. Finally, the court affirmed the judgment of the court of appeals.

**Zamora v. State**

No. PD-1395-12

Case Summary written by Mayra Varela, Staff Member.

Alcala, J., delivered the opinion of a unanimous Court.

Appellant sought assistance from Rosales to find Salinas in order to recover money from a narcotics transaction. Though Rosales was aware of Appellant's intent to kill Salinas, Rosales had no knowledge that Appellant had already hired Chapa to kill Salinas. Unfortunately, Chapa's team killed the wrong man. At trial, Rosales and Chapa's team testified against Appellant. The jury received instructions setting out three different theories under which Appellant could be convicted. The accomplice-witness instructions, however, laid out only one theory under which accomplices could be convicted, and Rosales was excluded from all of the instructions. Appellant objected and requested an accomplice-witness instruction for Rosales on the basis that he was instructed "to collect money, kidnap, or kill Salinas."

The trial court denied Appellant's request stating that Rosales' involvement in the murder was limited. On appeal, Appellant argued the trial court erred in not providing the jury with accomplice-witness instructions as to Rosales based on both a direct-party theory and a party-conspirator theory. As to the direct-party theory, the court of appeals agreed with the trial court's decision. Regarding the party-conspirator theory, the court of appeals declined to address Appellant's complaint on the grounds that Appellant failed to request an accomplice-witness instruction. The Court of Criminal Appeals of Texas granted Appellant's petition for discretionary review.

Issue: "Must a trial court *sua sponte* give an accomplice-witness instruction when the evidence raises the issue under the theory that the witness was a party as a co-conspirator?" Further, did the court of appeals err when it refused to review Appellant's charge-error complaint under the *Almanza* analysis on the grounds that Appellant failed to request an accomplice-witness instruction?

The Court held the party-conspirator theory requires an accomplice-witness instruction when evidence raises the issue of whether a witness is an accomplice. The Court also determined the court of appeals erred in failing to apply the *Almanza* analysis in its review of the trial court's decision.

*Almanza* requires trial courts to *sua sponte* provide the jury with instructions setting forth the law applicable to the case. Whether or not *Almanza* applies to a case turns on whether Appellant's complaint is based on law applicable to his case or whether his complaint is a defense issue he failed to raise at trial. The Court reasoned that because the plain language of the accomplice-witness statute reveals an accomplice-witness instruction is "the law applicable to the case rather than a defense," an accomplice-witness

instruction must be given regardless of whether Appellant requested an accomplice-witness instruction at trial. Thus, *Almanza* is applicable to this case and the court of appeals erred when it failed to address the merits of Appellant's charge-error complaint. The Court reversed and remanded judgment.

***Rivas v. Texas***

Nos. PD-0490-13 & PD-0491-13

Case Summary written by Megan Kateff, Staff Member.

Per curiam.

In this case, the appellant was charged with two counts of possession of a controlled substance with intent to deliver. The means through which the substance was discovered was a drug-sniffing dog at the appellant's front door. The trial court denied the appellant's motion to suppress and sentenced the appellant to two consecutive seventeen-year prison terms. The court of appeals affirmed the conviction, holding that there was no error in the trial court's denial of the appellant's motion to suppress.

Issue: Taking into account the Supreme Court of the United States' decision in *Florida v. Jardines*, did the appellate court properly affirm the denial of the appellant's motion to suppress?

The Supreme Court of the United States handed down the *Florida v. Jardines* decision twelve days after the court of appeals rendered a decision in the appellant's case. *Jardines* held that a drug-sniffing dog used on a homeowner's porch to investigate the contents of the home qualified as a "search" pursuant to the Fourth Amendment. Because the *Jardines* decision was not yet available to the court of appeals in the appellant's case, the Court of Criminal Appeals of Texas vacated the appellate court's judgment and remanded with instructions to re-evaluate the case under the *Jardines* holding.

***State v. Saenz***

No. PD-0043-13

Case Summary written by Jamie Vaughan, Staff Member.

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

When Officer Bintliff was called to a fast-food restaurant for a disturbance, he found an intoxicated Saenz sitting in a truck with the engine running. Bintliff asked Saenz to turn the engine off but Saenz refused. Saenz eventually turned the engine off after being asked three times. Bintliff placed Saenz in the back of the police car without putting handcuffs on him or

saying anything. He then called for a specialist officer to investigate whether a DWI had been committed. Upon arriving, the DWI specialist questioned Saenz while he was in the back of the police car. During this conversation, the officers learned that Saenz had driven to the restaurant, had been to several bars, and had had about six beers in four hours. Saenz then failed several sobriety tests and was placed under arrest for DWI. Saenz later filed a motion to suppress his statements, claiming they were inadmissible because they were made while he was in custody and he had not been read his rights. The state argued the statements were admissible because Saenz was not in custody. The trial court granted the motion, holding that Saenz was under arrest at the time the statements were made. The court of appeals affirmed, finding that Saenz was in custody because the officers had probable cause for an arrest and did not inform Saenz that he could leave.

Issue: Was Saenz in custody without being read his rights when he made the statements regarding the officers' DWI investigation, thereby making his statements inadmissible at trial?

The court reversed the holding of the appellate court and remanded to the trial court, finding the trial court's factual findings were insufficient to determine the question of custody. First, the court addressed the issue of the standard of review, holding the appellate court erred in applying a deferential standard; because this question involves both law and fact and does not turn on credibility and demeanor of the witness, *de novo* review is required. The court then determined that the facts were inadequate to determine the question of custody. First, the court laid out four situations that may constitute custody: "(1) when the suspect is physically deprived of his freedom of action in any significant way, (2) when a law enforcement officer tells the suspect that he cannot leave, (3) when law enforcement officers create a situation that would lead a reasonable person to believe that his freedom of movement has been significantly restricted, and (4) when there is probable cause to arrest and law enforcement officers do not tell the suspect that he is free to leave." The court concluded that the second and fourth situations may have been present in this case, but it concluded that more factual determinations were necessary because it was unclear how long Saenz was in the police car or whether one of the officers told Saenz he could not leave. Thus, it remanded the case to the trial court for further factual findings.

***Vasquez v. State***

No. PD-0497-13

Case Summary written by Matt McKee, Staff Member.

Womack, J., delivered the unanimous opinion of the court.

Appellant appealed his conviction for capital murder, claiming the trial court committed reversible error by refusing to suppress his confession. Finding the Police's two-step interrogation techniques unconstitutional, the Court of Appeals reversed the trial court's holding.

Analyzing Appellant's Fifth Amendment right against self-incrimination, the Criminal Court of Appeals first emphasized that it is essential for law enforcement to inform a suspect of their legal rights in order for that suspect's subsequent statements to be voluntary. Citing *Missouri v. Siebert*, the Court explained that a "question first, warn later" approach "undermines Miranda's primary purpose: to guarantee that confessions are voluntary." See 542 U.S. 600, 600 (2004). The Court went on to note that courts should evaluate such situations using a "totality of the circumstances approach" to determine whether law enforcement used interrogation techniques to undermine *Miranda*. See *Miranda v. Arizona*, 384 U.S. 436, 436 (1966).

In the second prong of its analysis, the Court noted that trial courts are required to issue a statement as to its findings of whether a suspect's statements were voluntary. Because the trial court filed no such findings, the Court found reversible error. Accordingly, the court vacated the Court of Appeals' decision and remanded the case for a trial court to determine whether the initial interview was custodial; at what point the police officers *Mirandized* Appellant; whether police purposely incorporated the two-step interrogation technique; and, if so, whether they took curative measures before Appellant's second interrogation.