

## Court of Criminal Appeals

November 6, 2013

### ***Bland v. State***

No. PD-1441-13

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

Presiding Judge Keller delivered the opinion of the Court.

Bland was charged with possession of cocaine. During the proceedings, Bland moved to suppress evidence (S motion) and to disclose the identity of a confidential informant (CI motion). The latter motion was filed so that the CI could testify at either the motion to suppress hearing, necessary to show officers lacked probable cause, or at the guilt phase of trial as a material witness to Bland's guilt or innocence. During arguments to the judge following the motion to suppress hearing, Bland re-urged the CI motion based on new evidence, but the prosecution remarked that the parties had agreed that the S motion's would be dispositive (the judge's ruling either results in the defendant pleading or the State dismissing the case) as part of a plea agreement and that this would render the CI motion as moot. Bland reiterated arguments that CI disclosure was critical for both the S motion and to the defense's case. The trial judge denied both motions and Bland subsequently pled guilty in accordance with the agreement. Bland appealed the trial judge's rulings on both motions, but the court of appeals rejected both motions on the merits, adding that Bland, by accepting the S motion as dispositive, rendered any CI knowledge moot with respect to guilt or innocence.

Issue: Did the court of appeals err in rejecting Bland's claim that the trial court should have granted his motion to disclose on the basis that the confidential informant's testimony was necessary to a fair determination of guilt?

The court answered, no. Because Bland not only failed to contradict, but also agreed with, the prosecution's statements, the court concludes that the parties contemplated that the dispositive nature of the motion to suppress was a term of the plea agreement. Citing *State v. Moore*, the court reaffirmed that a term of the plea agreement can be at least partially implemented even before sentencing. Even then, Bland had an absolute right to withdraw from the plea agreement after the trial judge ruled on the CI motion but before ruling on the dispositive S motion, but plead guilty in accordance with the agreement. The trial judge accepted the plea agreement, thereby binding Bland to the bargain. While the State indeed has a duty to reveal exculpatory evidence, Bland did not adequately demonstrate that the CI would exculpate him. Lastly, Bland failed to preserve error in this case because it was Bland's duty to correct the trial judge on the dispositive nature of the S motion, but Bland failed to act.

## Judge Price Dissenting

The dissent argues that, pursuant to Texas Rules of Appellate Procedure 25.2, Bland had a right to appeal matters raised by written motion and ruled on before trial regardless of the significance of “dispositive.” Bland neither adopted nor contested the prosecution’s statements, but only insisted that CI information was necessary for probable cause and guilt/innocence. Nothing in the record indicates that the plea agreement necessitated Bland to forgo his right to appeal. Thus, the dissent would reverse the judgment of the court of appeals.

### ***Cornet v. State***

No. PD-02025-13

Case Summary written by Jamie Vaughan, Staff Member.

Judge Alcala delivered the opinion for a unanimous Court.

Defendant Cornet was charged with three counts of aggravated sexual assault of his eight-year-old stepdaughter. Cornet contended that, suspecting the complainant had been sexually abused by one of her brothers, he investigated the issue by having the complainant lie on her stomach and spread her labia apart with his fingers to see if her hymen was intact. Cornet was convicted of two of the three charges—digitally penetrating the complainant’s genitals and making contact orally with her anus. On appeal, Cornet contended that the court’s denial of his request for a jury instruction on the medical-care defense amounted to harmful error. The appellate court held that the trial court’s exclusion of the instruction was proper and affirmed the trial court’s decision. However, the Court of Criminal Appeals remanded the case back to the appellate court for a harm analysis, and on remand, the appellate court held that the exclusion was harmless because the jury implicitly rejected Cornet’s defense and the jury had reviewed sufficient evidence to disbelieve Cornet’s defense.

Issue: Did the omission of Cornet’s medical-care defense instruction amount to harmful error such that his convictions should be overturned?

The court, considering the jury charge in its entirety, as well as the state of the evidence and the arguments of counsel, determined that the omission of Cornet’s medical-care defense instruction was harmless error and affirmed Cornet’s convictions. Cornet argued that he was left without a defense because the statute did not explicitly require mens rea, and not being able to assert his defense amounted to an admission of all the elements of the crime. The court stated, however, that the jury implicitly found that Cornet had mens rea in finding him guilty of the crime, and the medical-care defense would not have negated mens rea, but merely would have been a justification.

The court reasoned that the court did not harm Cornet by omitting a justification defense because “it is inconceivable that the jury would have found appellant guilty of causing the anus of the complainant to contact his mouth, a claim entirely denied by appellant, had it believed his claim that he was providing medical care to the complainant during the same event.” Cornet also argued that the appellate court conducted a sufficiency of the evidence review instead of a harm analysis; however, the court determined that, while the appellate court may have mistakenly described its review as a sufficiency of the evidence review, it did indeed conduct a harm analysis because it properly examined the quality of the evidence and whether it would have made a difference to the jury. Additionally, the court considered the closing arguments of counsel, noting that Cornet’s counsel focused mainly on the state’s failure of proof and admitted that Cornet’s behavior was inappropriate, and that the state suggested the jury should reject the medical-care defense. Both of these arguments suggest that the jury considered and rejected such a defense. Additionally, the court concluded that the medical-care defense was clearly not Cornet’s main defensive theory but was a mere afterthought because Cornet’s counsel did not ask about medical care in voir dire. The omission of such instruction, therefore, could not have been harmful. For these reasons, the court unanimously affirmed Cornet’s convictions.

***Villa v. State***

No. PD-0792-12

Case Summary written by Mayra Varela, Staff Member.

Judge Meyers delivered the opinion of the Court, joined by Judges Price, Johnson, Cochran, and Alcala.

Appellant was charged with aggravated sexual assault and indecency with a child. In his testimony, Appellant admitted that he touched the child’s female sexual organ, but only to place medication on her diaper rash. During an interview, the child stated that Appellant touched her female sexual organ while her mother and aunt were present in the room. Trial counsel did not raise the medical-care defense. The jury found Appellant guilty of aggravated sexual assault but not guilty of indecency with a child. The court of appeals reversed and remanded, stating that Appellant was entitled to a jury instruction on the medical-care defense. The Court of Criminal Appeals of Texas granted Appellant’s petition for discretionary review.

The Court addressed two issues. First, whether Appellant was entitled to a jury instruction on the medical-care defense. Second, whether Appellant received ineffective assistance of counsel when trial counsel did not raise the medical-care defense.

Regarding the first issue, the Court held Appellant was entitled to an instruction on the medical-care defense. The court reasoned that Appellant's contact with the child's genital area could reasonably be considered a penetration within the meaning of the Texas Penal Code, rendering him guilty of aggravated assault. At trial, Appellant presented evidence that raised the medical-care defense. Although Appellant denied the offense, the Court reasoned that because all of the elements of an aggravated sexual assault offense were established and because evidence properly raised the medical-care defense, Appellant was entitled to a jury instruction on the medical-care defense.

As to the second issue, the court held that Appellant received ineffective assistance of counsel when trial counsel failed to raise the medical-care defense. The Court used a two-prong analysis requiring Appellant to show (1) "that counsel's representation fell below an objective standard of reasonableness" and (2) that there "is a reasonable probability that the result of the proceeding would have been different but for counsel's deficient performance." The Court reasoned that because trial counsel structured Appellant's case in a way that revolved around the medical-care defense, there was "no imaginable strategic motivation" for trial counsel to not request the medical-care defense. Thus, the first prong was satisfied.

Regarding the second prong, the Court looked to the jury's finding that there was no sexual intent to Appellant's conduct and therefore, found him not guilty of indecency with a child. The Court reasoned that the outcome of the aggravated sexual assault charge likely "would have been different had the jury been provided with a vehicle to give effect to Appellant's medical-care defense." Thus, the second prong was also satisfied. As such, Appellant received ineffective assistance of counsel.

Presiding Judge Keller, Dissenting, joined by Judges Keasler and Hervey.

Presiding Judge Keller disagrees with the Court's reasoning that there was no sexual intent behind Appellant's actions. Simply because the jury did not find Appellant guilty on the indecency charge does not mean that the jury did not find sexual intent on Appellant's behalf. The fact that the jury imposed a fifty-year sentence regarding Appellant's aggravated sexual assault conviction, as opposed to a twenty-five year sentence, shows that there probably was sexual intent. It is possible that the jury had different reasons for acquitting Appellant on the indecency charge. In regards to showing prejudice, the burden is on the Appellant. According to Keller, Appellant has failed to prove his burden.