

Court of Criminal Appeals
December 18, 2013

Ex Parte Villegas

No. WR-78,260-01

Case Summary written by Jessica Rugeley, Online Edition Editor.

Per curiam.

Villegas was convicted of capital murder and sentenced to life imprisonment. He filed an application for a writ of habeas corpus, alleging that he received ineffective assistance of counsel and that he is actually innocent. The trial court held multiple hearings and determined that counsel was ineffective and Villegas is actually innocent.

The Court held that Applicant did suffer ineffective assistance of counsel due to trial counsel's failure to present evidence of potential alternative perpetrators and because counsel failed to present evidence that would have allowed the jury to give effect to the voluntary confession jury instruction. However, the Court found that Applicant failed to show that new facts unquestionably established his innocence, as required for an actual innocence claim. The Court granted relief and the judgment was set aside.

Nava and Mendez v. State

Nos. PD-1283-12, PD-1582-12, PD-1583-12

Case Summary written by Jessica Rugeley, Online Edition Editor.

Presiding Judge Keller delivered the opinion of the Court, joined by Judges Meyers, Price, Keasler, and Hervey. Judge Cochran joined as to part II. Judge Cochran filed a concurring opinion in which Judge Alcalá joined. Judges Womack and Johnson concurred.

Part I: Jury Charge—Law of Parties

Nava and Mendez were each convicted of felony murder and organized criminal activity. An undercover police officer posed as someone wanting to sell stolen televisions and contacted Mendez. Mendez, Nava, Carrillo, and a minor female met the police officer in a parking lot. They agreed to purchase the televisions from the officer. The conversation was recorded. The officer gave the signal to the other police officers to move in for the arrest but there was a misunderstanding. Carrillo became suspicious and Nava may have said, "shoot him" in Spanish. Carrillo shot the officer and the officer returned fire. Both died from their injuries. Nava and Mendez were arrested and tried for felony murder. The jury charge listed two theories for party liability: (1) a person is criminally responsible for the act of another if the person acted with

intent to promote or assist the commission of the offense, or (2) if, in an attempt to carry out a conspiracy to commit one felony, another felony is committed, all conspirators are guilty if the offense was committed in furtherance of the unlawful purpose and was one that should have been anticipated as a result of carrying out the conspiracy. In explaining these theories, the jury charge, which charged Appellants with both felony theft and felony murder, generically referred to “the offense,” without explaining whether “the offense” was the felony theft or the felony murder. Appellants argue the jury charge was ambiguous and created reversible error. The court of appeals affirmed.

Issue: Whether the appellants suffered egregious harm as a result of an error in the jury instructions on the law of parties and whether their appeals were prejudiced due to a missing portion of the voir dire record.

No, Appellants failed to demonstrate egregious harm, as required because they did not object to the jury instructions. The jury must have found that Appellants intended to promote or assist in the commission of felony murder, not just felony theft, to find them guilty under the first theory. Nothing in the jury paragraph suggested that the jury could simply have found intent to commit felony theft in order to commit felony murder and such a reading would go against common sense. Furthermore, the attorneys’ arguments at trial indicated that Appellants must have intended to promote the commission of felony murder or should have anticipated that it could have happened under the circumstances. Considering the evidence as a whole, Appellants did not suffer egregious harm.

Part II: Jury Selection—Missing Record

Due to a mechanical malfunction, the portion of the record containing the voir dire bench conference concerning for-cause and peremptory challenges was lost. As such, over defense objection, the trial judge related her recollections of the hearing. The judge recalled that she denied one defense challenge for cause because the juror had been asked an improper commitment question. The judge also recalled that the defense made no objections and thus failed to preserve error. Appellants claimed ineffective assistance of counsel on appeal. The court of appeals held that the missing portion of the record was not necessary for the appeal because the defense never identified an objectionable prospective juror that made it onto the jury.

Issue: Was the missing voir-dire bench conference necessary to the resolution of the appeals? May a trial judge rely upon her personal recollection of something that happened or did not happen in the unrecorded proceeding to establish that a record of that proceeding is not necessary to the resolution of the appeal?

The trial judge may rely on personal recollection if it is clear. The judge clearly remembered that the defense never identified an objectionable person who sat on the jury. As such, the record was not necessary for appeal.

Furthermore, counsel was not ineffective because the defendant would have to produce the objectionable juror to the trial court and counsel may have declined to do so for many valid reasons. Therefore, the Court affirmed the court of appeals.

Judge Cochran, concurring, joined by Judge Alcala

Judge Cochran concurred to point out that the jury charge should have stated that Appellants acted with the “intent to promote or assist the commission of *murder*,” not *felony murder* because there is no such thing as intent to commit felony murder. Under the intent to promote or assist in the commission of murder theory, the State was required to prove that Appellants intended for Carrillo to murder the officer and they assisted in that murder, even though Appellants were charged with felony murder, not murder.