Court of Criminal Appeals

April 9, 2014

Yazdchi v. Texas
Nos. PD-0007-13 & PD-0008-13
Case summary by Caleb Segrest

Alcala, J., delivered the opinion of the Court, in which Keller, P.J., Meyers, Keasler, Hervey, and Cochran, J.J., joined. Price, J., filed a concurring opinion. Womack, J., concurred. Johnson, J., filed a dissenting opinion.

In November of 2000, the appellant, Ali Yazdchi, pleaded guilty to aggregate theft. The judge assessed the punishment at ten years' imprisonment but suspended his sentence and placed him on straight probation (probation and community supervision are used interchangeably). After the two-and-a-half years of probationary period, the judge terminated the period and issued a discharge order. The order allowed Yazdchi to withdraw his plea of guilty, dismissed the indictment against him, and set aside the judgment of conviction.

About five years after Yazdchi complete his probation, he was indicted for two felonies that he committed in 2006. These felonies arose from his falsely representing himself as a lawyer to claimants and insurance companies. After writing demand letters to the insurance companies and collecting money from them, he deposited the money in his own accounts without paying anything to the claimants who sought his help. Yazdchi filed a pretrial motion seeking community supervision (probation). After both the trial court and court of appeals denied this motion on the ground that Yazdchi's past conviction was "resurrected" under the Texas Code of Criminal Procedure, the issue reached the Court of Criminal Appeals of Texas.

Issue: "Is a defendant eligible for felony community supervision from a jury when his prior community supervision, which he received under a straight probation and which was terminated by a discharge order that permitted him to withdraw his plea of guilty, dismissed the indictment, and set aside the verdict, becomes resurrected by the conviction in the present case."

Section 20(a)(1) of Article 42.12 of the Texas Code of Criminal Procedure states, in part, that "[t]he judge may set aside the verdict or permit the defendant to withdraw the defendant's plea, and shall dismiss the accusation . . . against the defendant, who shall thereafter be released from all penalties and disabilities resulting from the offense or crime of which the defendant has been convicted or to which the defendant has pleaded guilty[.]" This provision refers to the judge's discretionary termination of probationary periods.

Another part of the statute provides a limited exception to the above that applies when a defendant is again convicted of another offense. This

portion of the statute states, "[E]xcept that: (1) proof of the conviction or plea of guilty shall be made known to the judge should the defendant again be convicted of any criminal offense[.]" In other words, if a defendant is convicted again, this conviction that was set aside may be resurrected.

A reading of the "plain" and "unambiguous" language of the statute led the Court to hold that, "under the entire statutory scheme governing regular community supervision, the statutory language is plain in providing that appellant was ineligible for jury-recommended community supervision because, even though he received judicial clemency on an earlier community supervision, that conviction was resurrected for the limited purpose of probation ineligibility when he was convicted of the present offense."

The entire statutory scheme, the Court found, provides that an earlier judicial-clemency discharge is treated as a conviction for the limited purpose of probation ineligibility upon subsequent conviction of another offense.

The holding of the court of appeals was AFFIRMED.

Concurrence: Price, J., filed a concurring opinion.

The concurring opinion opined that the literal language of § 20(a) does not support the Court's conclusion because the statutory language is "manifestly ambiguous." However, despite the ambiguity in the statute's language, the concurrence reached exactly the same conclusion and for essentially the same reasons.

Dissent: Johnson, J., filed a dissenting opinion.

The dissenting opinion also found the language of the statute to be ambiguous due primarily to the seemingly haphazard use of permissive and mandatory language in the statute. This mixing of "shall" and "may" in the statute, the dissenting opinion suggested, makes an unambiguous reading of the statute impossible.

Pierson v. State
No. PD-0613-13
Case Summary written by Matt McKee, Staff Member.

Hervey, J., delivered the opinion of the Court in which Keller, P.J., Meyers, Price, Keasler, Cochran, and Alcala, JJ., joined. Price, J., filed a concurring opinion. Womack and Johnson, JJ., concurred.

Appellant was on trial for indecency with a child and aggravated sexual assault of a child. During the victim's testimony on cross-examination, Appellant's counsel asked the victim, "Did you also make an allegation that [Appellant] did these same things to his own daughter?" Before the victim answered the question, the State objected. After dismissing the jury, the court conducted a hearing on the issue. Because Appellant's daughter denied being molested, the court determined defense offered the question to impeach

victim's credibility. Finding no basis for the statement—and that it could not lead to credible evidence—the court found the statement was unduly prejudicial and could potentially confuse the jury, granting the State's motion for a mistrial. Appellant subsequently filed a motion for habeas corpus relief on the basis of double jeopardy, arguing "the mistrial was caused by the prosecutor's objection to defense counsel's attempt to elicit whether the alleged victim had made other allegations against [Appellant,]" and that the statement was not harmful to the State. Finding the statement was harmful to the State and could not be cured through a jury instruction, and that the State would have no right to appeal upon Appellant's acquittal, the court denied Appellant's requested relief.

Following his conviction at a second trial, Appellant appealed on the basis of double jeopardy. The Texarkana Court of Appeals upheld the district court's decision, finding "[t]he trial court explicitly considered and rejected the alternative of giving an instruction to disregard, and the record provides some support for the trial court's conclusion that the intent of the question was to prejudice the jury, rather than a realistic attempt to solicit admissible evidence." The Court of Criminal Appeals granted review to evaluate the court of appeals' holding that there was a "manifest necessity to grant a mistrial."

At the outset, the Court noted two exceptions under which a defendant's subsequent trial following a mistrial does not violate double jeopardy: "(1) if the criminal defendant consents to retrial or (2) there was a manifest necessity to grant a mistrial." Finding no contention that Appellant consented to the mistrial, the Court sought to determine whether there was a "manifest necessity to grant a mistrial." Finding Appellant failed to establish the statement's admissibility, that the record did not make the nature of the statement clear, and that it is not permissible to impeach a witness on a collateral issue, the Court held that Appellant failed to carry his burden, upholding the trial court and court of appeals' decisions.

Turning to Appellant's argument that the court of appeals erred in giving the trial court's discretion "great deference," the Court first noted that Appellant provided no basis for his assertion. Describing a trial judge's unique role, allowing him to evaluate the effect that a particular statement or piece of evidence has on a jury, and whether a limiting instruction can cure that evidence or statement's effect on the jury, the Court held "that when a trial judge's decision to grant a mistrial is based on the risk of juror bias, that ruling is entitled to 'great deference,' regardless of whether the complained of conduct took place during opening arguments or took the form of a question on cross-examination."

Addressing Appellant's final contention that a limiting instruction would have cured the error, the Court held that a trial judge's broad discretion extends to a limiting instruction's effect in the same way it applies to the judge's discretion to evaluate a statement's impact on a jury. Finding

the trial court considered the effects of its decision to grant a mistrial, ruling out other alternatives to a mistrial—including a limiting instruction—the Court upheld the court of appeals' finding that the trial court's ruling that a limiting instruction would not cure the error was not an abuse of discretion.

Price, J., filed a concurring opinion.

While he ultimately agreed with the majority opinion, Justice Price filed this concurring opinion to emphasize two points. First, though he agrees that Appellant did not lay a proper foundation to make the question admissible, Justice Price points out "that the Confrontation Clause requires that a defendant be permitted to develop evidence of prior false accusations by the complaining witness, at least in sex offense prosecutions, as general evidence of the complaining witness's lack of credibility, notwithstanding Rule 608(b) of the Rules of Evidence."

Turning to his second point—first explaining that he did not believe the trial court erred in declaring mistrial—Justice Price explained his contention that a jury instruction to disregard may have been an appropriate remedy in this case. Though he believed the trial acted properly, and the appellate courts applied appropriate deference to the trial court's decision, he emphasized the proper role of limiting instructions, encouraging trial judges to strongly consider the practicality of a limiting instruction before declaring a mistrial.

Garcia v. State
No. PD-0646-13
Case Summary written by Jamie Vaughan, Staff Member.

Presiding Judge Keller delivered the opinion of the court, in which Judges Meyers, Price, Womack, Keasler, and Hervey joined. Judge Alcala filed a dissenting opinion, in which Judges Johnson and Cochran joined.

Garcia, who was on trial for murder, was a Spanish speaker who did not understand English. His bilingual trial counsel told him he did not want an interpreter because he thought it would distract the jury and make it more difficult for the attorney to concentrate. Garcia's trial counsel also promised to provide summaries of the witnesses' testimonies. Garcia then replied in Spanish, "Whatever you want." Garcia never expressly waived his right to an interpreter in a colloquy with his attorney in front of the judge, but Garcia's trial counsel did tell the judge that Garcia did not want an interpreter in an off-the-record bench conference. The trial court found Garcia had waived his right to an interpreter. Garcia was convicted of murder. He then appealed, citing ineffective assistance of counsel and claiming the court should have appointed an interpreter *sua sponte*.

Issue: Must a trial record include a colloquy wherein the defendant expressly waives his right to an interpreter in front of the judge in order for such a waiver to be found?

The court held that a waiver colloquy was not necessary to find a defendant had waived his right to an interpreter at trial, as long as such a waiver is otherwise affirmatively reflected in the record. Finding that such a waiver was present, the court affirmed Garcia's conviction. The court first pointed out that the right to an interpreter is one that "must be implemented unless expressly waived," and then it turned to the issue of whether the record in this case contained an express waiver. For an express waiver to be found, it must be "on the record." However, the court determined that "on the record" does not necessarily mean there must be a colloquy. According to precedent, all that is required is that the record sufficiently show the defendant was aware of the dangers and disadvantages of waiver and intelligently chose to waive his rights. Because Garcia's trial counsel informed him that he had the right to an interpreter, Garcia agreed with his trial counsel not to use an interpreter, and that desire was communicated to the judge, the court held that Garcia had waived his right to an interpreter, and it affirmed his conviction.

Alcala, J., dissenting

Although Judge Alcala agreed with the court's decision that an express on-the-record waiver was not necessary to find Garcia had waived his right to an interpreter, he argued that the record in this case was insufficient to show that Garcia had voluntarily relinquished that right. The trial judge asked only one question: whether Garcia wanted an interpreter. He did not ask for any reasoning or whether his decision was made knowingly and voluntarily. Judge Alcala argued that Garcia was not given any meaningful choice because he was forced to choose between his right to confrontation and his right to affective counsel. Garcia's choice to proceed without an interpreter was thus involuntary, and it was therefore irrelevant whether the choice was related to trial strategy. As such, Alcala argued that the case should have been reversed and remanded.

Hanna v. Texas
No. PD-0876-13
Case Summary written by Megan Kateff, Staff Member.

Judge Cochran delivered the opinion of the court in which Judges Meyers, Price, Johnson, Hervey, and Alcala joined.

The appellant in this case was charged with driving while intoxicated. Before the appellant entered his guilty plea, the trial judge held a restitution hearing. At that hearing, the prosecutor introduced a damage repair invoice

totaling the cost of repair to a telephone pole that belonged to Lubbock Power and Light (LP&L) in the amount of $7,767.88. The appellant objected on the grounds that the prosecution failed to prove causation for the damage. At the second restitution hearing, the prosecution called the responding officer. The officer testified that when he arrived, power lines were all over the road and the appellant's vehicle was crashed into a telephone poll. He further testified that he believed the appellant caused the damage while driving his vehicle. Appellant again objected, arguing that Article 42.037 of the Code of Criminal Procedure limits restitution payment to victims of the offense; because LP&L was not a victim, restitution was inappropriate in this case. The trial judge sided with the prosecution and ordered the appellant to pay the repair costs for the telephone pole.

The court of appeals agreed with the appellant, reasoning first that the DWI statute does not foresee specific victims; it requires neither injury to anyone nor the destruction or loss of property, and therefore LP&L was disqualified as a victim of the DWI offense. The court then reasoned that despite the narrow holding in *Martin v. State*, because neither LP&L nor the damage to the telephone pole was mentioned in the charging instrument, LP&L could not be a victim of the offense.

Issue: When evidence clearly establishes property damage resulting from a DWI offense, does Article 42.037 of the Code of Criminal Procedure permit the payment of restitution by the offender to any victim of the offense, even if neither the victim nor the damage is mentioned in the charging instrument?

Looking first to the plain language of Article 42.037, the Court of Criminal Appeals attempted to answer the preliminary question of "who is a victim" for the purposes of the restitution statute. The court concluded that the statute itself does not define the term "victim." Undefined words, then, should be construed and understood according to their everyday meaning. Black's Law Dictionary defines "victim" as a person who is the object of a crime. But still, the dictionary definition leaves two questions unanswered: (1) Whether for the purposes of restitution, there can be a victim of a victimless crime; and (2) Whether that victim must be named in the charging instrument.

As to the first unanswered question, the court held that, for the purposes of the Texas restitution statute, a "victim" is any person who suffered loss as a direct result of the criminal offense, and the State must prove by a preponderance of the evidence that the loss was a "but for" result of the criminal offense and resulted proximately from the criminal offense. The court relied mainly on the language of its previous decision in *Cabla v. State*, interpreted to mean that restitution orders are limited to individuals alleged and proven to be victims of the criminal offense at the restitution hearing, either named as a victim in the indictment or shown to be a victim at trial. Despite the language in *Bruni v. State* and *Lemos v. State*—the two

cases on which the court of appeals relied—the court found that restitution is not limited only to "statutorily-recognized victims," because "statutorily-recognized victims" are not defined in the statute, nor is restitution limited only to criminal offenses that foresee harm to specific victims. This holding is consistent with public policy in that the purpose of criminalizing driving while intoxicated is to prevent the unfortunate results of drunk driving—deaths, injuries, and property damage.

As to the second question, the court stated that nothing in the Code of Criminal Procedure requires that a victim be alleged in the charging instrument in order for that victim to receive restitution payment. Rather, the Code states that a defendant may be ordered to pay restitution to "any victim of the offense." Because the language of the statute does not specifically require that a victim be named, the court held that that was not the intent of the legislature. The court looked to previous language from *Martin v. State*, in which it indicated specifically that "the named complainant may not always be the only victim of the crime adjudicated." To interpret the statute otherwise, the court held, may lead to bizarre results not intended by the legislature.

In sum, the Court of Criminal Appeals held that a person who suffers property damage or personal injuries as the direct result of a defendant's DWI crime may be entitled to restitution even though that victim is not named in the charging instrument. Ultimately, though the court affirmed the holding of the court of appeals regarding the improper restitution order, because the evidence introduced by the State was insufficient to show that the appellant's offense itself—his intoxicated driving—caused the damage to the pole. Specifically, the officer's testimony regarding the cause of damage to the pole made no mention whatsoever of the appellant's intoxication, and therefore the State failed to prove that but for the appellant's intoxication, the damage to the pole would not have occurred.

Presiding Judge Keller, dissenting, joined by Judge Keasler

The dissent agreed with the majority's analysis of Article 42.037 of the Code of Criminal Procedure, but disagreed with its application. Presiding Judge Keller looked to language from *Kuciemba v. State*, which stated that "[b]eing intoxicated at the scene of a traffic accident in which the actor was a driver is some circumstantial evidence that the actor's intoxication caused the accident, and the inference of causation is even stronger when the accident is a one-car collision with an inanimate object." If the evidence in this case was sufficient to support a DWI conviction beyond a reasonable doubt, it should have supported the restitution inquiry by a preponderance of the evidence—a lesser standard of proof. The evidence presented by the State was sufficient circumstantial evidence of causation—that the appellant's crime of driving while intoxicated caused the damage to the utility pole.