

Court of Criminal Appeals
September 18, 2013

Ex parte Raul Parra

No. AP-76,871

Case Summary written by Jessica Rugeley, Online Edition Editor.

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

Parra received a life sentence for aggravated sexual assault of a child. The El Paso Court of Appeals affirmed his conviction and the Court of Criminal Appeals denied his petition for discretionary review. During the trial, the jury sent a note to the judge, stating that two jurors wanted to talk to the judge and planned to “walk out” and wanted to know the consequences for doing so. The judge spoke to the jury in the presence of the defendant and attorneys and informed them that the jury could be given a break for the day but the consequence for walking out would be a night in the county jail and that they would be brought back to court to render the verdict the next day. The jury returned a guilty verdict thirty minutes later. Parra sought habeas relief, claiming that his trial counsel was ineffective because trial counsel failed to object to the trial judge’s response to the note from the jury and for failing to sufficiently question the jury to discover one juror’s background as a domestic violence and sexual assault victim.

The Court of Criminal Appeals considered the following issues:

1. Whether Applicant was denied effective assistance of trial counsel when trial counsel: (a) did not object to the trial court’s response to a jury note as violating the mandates of Article 36.27 of the Code of Criminal Procedure; and (b) did not object to the contents of the trial court’s response as threatening to the jury and resulting in the deprivation of a fair and impartial jury.
2. Whether the actions of Applicant’s trial counsel denied him a fair and impartial jury when trial counsel, allegedly, did not adequately question the venire panel during voir dire to reveal that one of the venire members who later served on the jury had been a victim of crimes in the past even though the juror had indicated on a questionnaire that the juror had not been such a victim.

The Court held that trial counsel was not ineffective for failing to object to the judge’s response to the note because the judge’s statement to the jury was not coercive. Judges have broad discretion to conduct courtroom proceedings, which includes the ability to find individuals in contempt. The judge’s response did not mention the verdict but simply informed the jury of the consequence for walking out. Furthermore, the judge’s response did not

violate Texas Code of Criminal Procedure Article 36.27 because the defendant and his counsel were present during the judge's admonishment and never objected, though Parra's trial counsel had the opportunity to object. Parra has also failed to show that the judge's action prejudiced him.

The Court also held that Parra failed to demonstrate that his trial counsel was ineffective because, even if the juror was a crime victim, Parra has failed to show that she was biased as a matter of law against him. Furthermore, the record showed that Parra's attorney asked the venire panel about past experiences that would bias them and the juror in question did not respond. Furthermore, the Court held that Parra failed to establish that he was prejudiced by his counsel's voir dire performance.

Meyers, J., Dissenting, joined by Judge Price

Judge Meyers dissented because he would hold that the judge violated Article 36.27 by failing to submit the jury question to the defense counsel before answering and that the judge's threat to put the jurors in jail was error and trial counsel's failure to object deprived Parra of a fair and impartial jury.

Bell v. State

No. PD-0087-12

Case Summary written by Jessica Rugeley, Online Edition Editor.

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

A Fannin County jury convicted Vaughn Bell of possession of a controlled substance and sentenced him to twenty years of confinement. During a lunch break during the guilt phase of the trial, the judge ordered Bell shackled at the ankles. Bell argued that the shackling violated his constitutional right to a fair trial and presumption of innocence. The bailiff verified that the shackles could not be seen from the jury box and the judge overruled Bell's objection. The court of appeals held that the trial judge erred in overruling Bell's objection but refused to apply the United States Supreme Court's analysis in *Deck v. Missouri*, which held that the State must prove beyond a reasonable doubt that the shackling error did not contribute to the guilty verdict, because the shackles in this case were not visible and thus found the error harmless.

In determining whether to apply the Deck standard, the Court of Criminal Appeals stated that a shackling error may rise to the constitutional level if the record reflects "a reasonable probability that the jury was aware of the defendant's shackles." The Court defined a reasonable probability as "a substantial basis supporting a conclusion that the jury perceived the defendant's restraints."

The Court held that the trial judge erred by forcing Bell to wear shackles without a particularized finding of why the shackles were necessary; however, the error was harmless because the record did not reflect that the jury was aware of the shackles and Bell never claimed that the shackles interfered with his ability to communicate with his attorney.

Meyers, J., Dissenting

Judge Meyers would hold that the error was not harmless because Bell was shackled without cause and because the Court could not find beyond a reasonable doubt that the shackling did not influence the jury's verdict.

Arguellez v. State

Nos. PD-0997-12 and PD-0998-12

Case Summary written by Jessica Rugeley, Online Edition Editor.

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

Arguellez was seen taking photographs of women and children at a public swimming pool. An informant called the police and described Arguellez and his vehicle. A police officer stopped the defendant's vehicle and received consent to look at the photos on his digital camera. The camera had photos of the pool's patrons. After receiving *Miranda* warnings, Arguellez admitted to taking the photos but denied having any bad purpose in doing so. Arguellez plead *nolo contendere* to multiple offenses of improper photography after the trial court denied his motions to suppress. The trial court sentenced him to twenty months of confinement and a \$2,500 fine in each case. The court of appeals held that the officer had reasonable suspicion to stop and detain Arguellez under the totality of the circumstances.

The Court of Criminal Appeals granted review to consider whether crime is "afoot" when a person takes pictures at a public swimming pool permitting a police officer to conduct an investigative detention."

The Court held that crime was not afoot and reversed. The Court reasoned that taking photographs at a public pool is not unusual, suspicious, or criminal. The officer did not have reasonable suspicion that Arguellez was, had been, or would be engaged in criminal activity. Therefore, the Court held that Arguellez's detention was not supported by reasonable suspicion.

Keasler, J., dissenting, joined by Presiding Judge Keller and Judge Meyers

Judge Keasler would not have granted the petition for discretionary review because he believes the court of appeals was correct. The majority overlooked two aspects of Fourth Amendment law: (1) the facts supporting reasonable suspicion need not be criminal and (2) in forming reasonable suspicion, the officer can make rational inferences from the facts. Taking

photographs of people in bathing suits can be suspicious and the majority fails to consider that the officer made a rational inference based on common sense.

Cortez v. State

No. PD-1349-12

Case Summary written by Jessica Rugeley, Online Edition Editor.

Judge Johnson delivered the opinion of the unanimous Court.

Cortez was convicted of fraudulent possession of identification and received fifty years of confinement based on two enhancements. He timely filed his notice of appeal but the court of appeals dismissed his appeal because the record transmitted did not contain a certification of the defendant's right of appeal. Cortez filed a motion for rehearing, which the court of appeals denied.

The Court of Criminal Appeals held that the appellate court should have first exhausted all options provided by the Rules of Appellate Procedure. The court of appeals failed to issue an order to the trial court to provide the certification after the trial court failed to supplement the record. The rules do not permit dismissal as the appropriate response. As such, the Court of Criminal Appeals reversed and remanded to the court of appeals to order the trial court to file the required certification.

Paul Pawlak, Appellant v. The State of Texas

No. PD-1616-12

Case Summary written by Mayra Varela, Staff Member.

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

Appellant was charged and convicted of various sexual assault activities. The five complainants involved in the case provided testimony that corroborated the State's theory of Appellant's involvement in inappropriate sexual behavior. During trial, the lower court allowed over 9,900 images of pornography, including child pornography, to be admitted into evidence. The admission of the evidence suggested that Appellant was guilty of possession of child pornography, a crime for which Appellant was not on trial for. On appeal, Appellant argued that the images should have been excluded. The court of appeals affirmed the trial court's decision, holding that the images were properly admitted.

On granting Appellant's petition for review, the Court of Criminal Appeals addressed whether the trial court abused its discretion in allowing thousands of extraneous pornographic images to be admitted into evidence over Appellant's objection.

The Court of Criminal Appeals of Texas held that the court of appeals erred in determining that the trial court did not abuse its discretion when it admitted all 9,900 images of pornography in the form of extraneous-offense evidence. The Court reasoned that the admittance of such evidence was unfairly prejudicial. Further, the Court determined that the complainants' testimony should have been enough for the State to make its argument. While the evidence may have been permissible, the State did not use the evidence to further its argument that sexual assault was more likely to occur. Thus, the trial judge abused his discretion because the admission of the images into evidence was improper.

Reeves v. State

No. PD-1711-12

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

Judge Cochran delivered the opinion of the unanimous Court.

Appellant (Reeves) was charged and convicted for the murder of his friend, Jeromie Jackson. Though Reeves claimed self-defense at trial, the trial judge instructed the jury, over Reeves's objection, on provocation as a qualification for the self-defense issue. On appeal, the court of appeals reversed Reeves's conviction and ordered a new trial.

Issue: Did Reeves suffer actual harm when his self-defense claim was improperly limited by the inclusion of an unwarranted provocation instruction?

The Court held that Reeves did suffer from actual harm by first identifying the *Almanza v. State* jury-charge error analysis, maintaining that a defendant who objects at trial must show, citing the record, that he suffered "some harm." Utilizing the less-stringent four-prong test under *Almanza*, i.e., considering: (1) the jury charge as a whole; (2) counsel's arguments; (3) entirety of evidence; and (4) other relevant factors presented in the record, the Court focused particularly on the first, second, and fourth prongs. As such, the Court found the first, second, and fourth prongs weighed towards a finding of harm. Specifically, the Court highlighted the provocation instruction's error, and the prosecutor's emphasis of that instruction. The Court affirmed the ruling of the court of appeals.