

Court of Criminal Appeals Texas Penal Code Topics

Morgan v. Texas

No. PD-0758-15

Case Summary written by Ty Taylor, Staff Member.

PRESIDING JUDGE RICHARDSON delivered the opinion for a unanimous Court.

Dewan Morgan was sentenced to sixteen years' imprisonment after a conviction for burglary of a habitation. In 2012, Dewan Morgan moved in with his girlfriend, Regina Raglin, and although he was given a key to the apartment, Raglin paid the apartment's rent and the majority of the household bills. Raglin's name was the only name on the apartment lease as well.

In June 2013, an argument between Dewan Morgan and Raglin began and resulted in Raglin locking Dewan Morgan outside of Raglin's apartment. Dewan Morgan eventually kicked in the door to the apartment and struck Raglin multiple times. The police arrived and arrested Dewan Morgan, who was charged with burglary.

Dewan Morgan's guilt was decided in a jury trial, but was reversed by the Second Court of Appeals after it was decided that he was in fact a "covenant" of the apartment he had broken into. The Criminal Court of Appeals disagrees with the Second Court of Appeals' holding because it is contrary to the definition of an "owner" under the Texas Penal Code. Raglin was considered the "owner" of the habitation because she maintained a greater right to possession than Dewan Morgan. Because Dewan Morgan did not have Raglin's effective consent to enter at the time of the offense, the court reversed the judgment of the court of appeals.

At trial, Raglin stated that she did not want to permanently kick out Dewan Morgan, but she only wanted him out of the apartment to cool off. The trial court charged the jury with instructions that stated a burglary of a habitation had been committed if a person enters a habitation without the owner's effective consent and commits an assault. The instructions read that "effective consent" is express or apparent assent in fact, and is not effective if induced by threat, deception, force,

or fraud. The instructions also read that an “owner” is someone who has title, possession, or greater right to a property than the person charged.

On appeal, Dewan Morgan argued that the State did not prove beyond a reasonable doubt that he entered the domicile without Raglin’s effective consent. The court of appeals agreed, and relied on Article 21.08 of the Texas Code of Criminal Procedure to reason that Dewan Morgan, as a cotenant, also owned the apartment. Therefore, the court reversed the conviction.

The Texas Court of Criminal appeals asked whether the evidence presented supported a conclusion that Dewan Morgan committed burglary of a habitation. The court agreed with the trial court’s jury charge, and first determined who owned the apartment by looking at the Penal Code definition: “a person who (1) has title to the property, (2) possession of the property, or (3) a greater right to possession of the property than the actor.” The court found that Dewan Morgan clearly had some right to control the apartment, but less than Raglin. The Court looked to the facts of the case in making this determination, such as Raglin’s name on the lease and her payment of the majority of the bills.

The court then determined whether Raglin, as the owner, gave Dewan Morgan effective consent to enter the apartment. Dewan Morgan argued he was given effective consent because Raglin had not revoked his invitation to live with her. In *Freeman v. State*, this court determined that consent is measured at the time of the criminal act. The court found that when applied to the facts of this case, it was clear that Raglin had removed any prior effective consent to enter she had given to Dewan Morgan. It is through these determinations that the court decided the jury acted reasonably in its conviction of Dewan Morgan for burglary of a habitation.

Miles v. State

Nos. PD-0847-15, PD-0848-15

Case summary written by Julia Wisenberg, Staff Member.

JUDGE JOHNSON delivered the opinion of the Court, in which JUDGES MEYERS, HERVEY, ALCALÁ, and RICHARDSON joined.

Appellant brought a direct appeal to the Texas Court of Criminal Appeals on a statutory construction question regarding Texas Penal Code § 3.03(b). A jury convicted Appellant of sexual assault and compelled prostitution of a teenager. The jury assessed Appellant's punishment at seven years for the sexual assault and twenty-three years for the compelled prostitution. The trial court cumulated the sentences, allowing Appellant to serve the sentences at the same time.

However, the Fourteenth Court of Appeals reformed the trial court's judgment, holding that the trial court erred by cumulating the sentences. The appellate court instead ordered Appellant to serve his sentences consecutively. The court based this decision on the general cumulation statute, Section 3.03(b), which it contended does not authorize a court to stack sentences in this case. The appellate court reasoned that because the same criminal episode gave rise to a single criminal action, which resulted in two sentences, the statute did not allow the sentences to be stacked. Thus, the court deleted the cumulation order and modified the judgment of the trial court.

ISSUE: Did the Fourteenth Court of Appeals err when it held that Texas Penal Code § 3.03(b) does not allow sentences to be cumulated when a defendant is convicted of two offenses in different paragraphs of subsection (b)?

The Texas Court of Criminal Appeals issued a 5–4 decision, with the majority affirming the decision of the Fourteenth Court of Appeals to hold that Section 3.03(b) does not allow sentences for two offenses that are listed in different paragraphs within subsection (b) to be cumulated.

The majority of the Court agreed with the appellate court's holding that Section 3.03(b) is clear and unambiguous. Based on this conclusion and case precedent, the Court stated that it must assume the Legislature meant what is expressed in the statute. Therefore, the statute's meaning must only be derived from the actual words used by the Legislature in the statute.

Texas Penal Code § 3.03 provides that generally, when a defendant is convicted of multiple offenses that arise from the same criminal episode and are brought together in a single criminal action, the sentences will run concurrently. However, Section 3.03(b) provides exceptions in which the sentences may be cumulated instead.

The Court held that the plain language of Section 3.03(b) only allows sentences to be cumulated if the defendant is convicted under the sections for human trafficking and compelling prostitution; Appellant was only convicted of one of those two offenses—compelling prostitution. His other conviction was for sexual assault. Therefore, the Court held that Section 3.03(b) prohibited Appellant’s sentences from being stacked. The Court affirmed the judgment of the appellate court, which held that Appellant’s sentences must run concurrently.

PRESIDING JUDGE KELLER filed a dissenting opinion, in which JUDGES KEASLER, YEARY, and NEWELL joined.

The dissenting opinion noted that this case is primarily about statutory interpretation. The dissent argued that the meaning of Section 3.03(b) is unclear and ambiguous, contrary to what the Fourteenth Court of Appeals and the majority of the Court held. The Court has previously held that a statute is ambiguous if it is reasonably susceptible to multiple understandings. *See Chase v. State*, 448 S.W.3d 6, 11 (Tex. Crim. App. 2014). In support of its argument that Section 3.03(b) is ambiguous, the dissent cited the Fourteenth Court of Appeals’ decision, which explained that the statute “can be interpreted in two ways” in at least one part. *See Miles v. State*, 468 S.W.3d 719, 734 (Tex. App.—Houston [14th Dist.] 2015, pet. granted).

Based on its conclusion that Section 3.03(b) is ambiguous, the dissent noted that the Court must look outside the plain language of the statute at pertinent extra-textual factors. The dissent examined the legislative history and its holding in a prior case to assert that the relevant subsections do not reveal that the Legislature intended a prohibition against stacking sentences for different offenses in Section 3.03(b). *See Nguyen v. State*, 359 S.W.3d 636, 645 (Tex. Crim. App. 2012). Rather, the dissent asserted that the legislative intent was to allow for stacked sentences even in cases where the conviction resulted from plea agreements.

The dissent similarly stated that because the Legislature added new offenses over the years to Section 3.03(b) in piecemeal fashion. This, the dissenting judges argued, demonstrated that Section 3.03(b) offenses from any part of the statute can be stacked.

In further support of this conclusion, the dissent cited the bill analysis of Section 3.03 from 2013. The dissent asserted that the bill analysis indicated that offenses in Section 3.03(b) may run consecutively. This report, together with the other evidence of legislative intent, formed the basis of the dissent's opinion that the Legislature did not contemplate a ban on stacking sentences for any two convictions except the combination of compelling prostitution and human trafficking.

Based on these reasons, Presiding Judge Keller and the other dissenting judges would have not have disturbed the trial court's cumulation order.

Guthrie-Nail v. State

NO. PD-0125-14

Case Summary written by James Tuck, Staff Member.

PER CURIAM.

The court initially granted the State's motion for rehearing. Then the court considered the case on its merits and determined the State's motion was improvidently granted. Thus, the court denied the State's motion and stated that it would not consider any other motions for rehearing.

JUDGE YEARY filed a dissenting opinion.

During trial, the appellant pled guilty to conspiracy to commit murder in exchange for having the capital murder charge waived and a 50-year sentence. The trial court did not make an oral pronouncement for a deadly weapon finding when it found the appellant guilty. The plea papers stated "N/A" in the space provided for "Finding on Deadly Weapon." Two months later, the trial court changed the "Finding on Deadly Weapon" to state "Yes, a Firearm" in a judgment *nunc pro tunc*. In addition, there was a special finding that stated the Appellant "used or exhibited a deadly weapon or was a party to the offense and knew that a deadly weapon would be used or exhibited." The court of appeals affirmed the judgment but did not address the appellant's third issue that the trial court denied her due process rights by not giving her notice of the judgment *nunc pro tunc*.

The Texas Court of Criminal Appeals almost unanimously agreed that the record supported a deadly weapon finding but disagreed over whether the trial court made an affirmative finding regarding the issue. Consequently, the court remanded the cause for a formal *nunc pro tunc* hearing. Judge Yeary disagreed with the majority and stated that the trial court had made an unequivocal deadly weapon finding and was authorized to enter it in a judgment *nunc pro tunc*. Therefore, the judgment of the court of appeals should be affirmed.

Judge Yeary pointed out that the indictment alleged in Count II that a co-conspirator of the appellant entered the home and killed her husband with a firearm. Furthermore, the appellant wrote a judicial confession and admitted to the charge in Count II of the charging instrument. The Court of Criminal Appeals has previously held that a court determines that a deadly weapon was used or exhibited when a defendant pleads guilty to an indictment that explicitly charges the use or exhibition of a deadly weapon.

In addition, the appellant was a party to the conspiracy because she agreed to enter the home with the party for the intent of committing homicide. In a prior case, the court held that it was necessary to find a deadly weapon was used for a verdict of homicide. The Texas Penal Code defines a deadly weapon in section 1.07(a)(17)(B) as “anything that in the manner of its use or intended use is capable of causing death.” In this case, the causing of death was the purpose of the conspiracy, and as a result—by participating—the appellant must have contemplated that a deadly weapon would be used. Thus, the trial court made a deadly weapon finding by accepting the Appellant’s confession to the count in the indictment for the charge of conspiracy to commit capital murder detailed in Count II of the charging instrument. In conclusion, there should be no reason to remand the case because the trial court made a clerical error in the original judgment when it entered “N/A” in the space provided for “Finding on Deadly Weapon.”