

## **Court of Criminal Appeals**

### **June 3, 2015**

#### ***Ex Parte Thomas Edward Castillo***

No. PD-0545-14

Case Summary written by Sarah Ellison, Articles Editor.

JUDGE HERVEY delivered the opinion of the Court.

In 2000, the appellant married Carol Sanchez. Following their separation ten years later, the appellant snuck into Sanchez's bedroom and murdered her new boyfriend, Rogelio "Ray" Nava, and inflicted stab injuries to Sanchez, which she survived. The appellant was charged in two separate indictments for capital murder and aggravated assault and burglary.

Prior to the capital-murder trial, the appellant moved to consolidate the two indictments and requested that the State specify how the burglary prior to the capital murder was committed. The trial court denied both motions. The appellant then asked for instructions to be given on murder and manslaughter instead of the full capital murder offense, a request that was also denied by the trial court. The appellant was acquitted of capital murder and subsequently filed a pretrial writ application claiming double jeopardy barred the second prosecution for the aggravated assault and burglary indictments. The trial court denied the application and the appellant appealed to the San Antonio Court of Appeals. The San Antonio Court of Appeals reversed the trial court's decision and ordered the trial court to dismiss the second indictment for aggravated assault and burglary. In response, the State filed a petition for discretionary review arguing the court of appeals erred in barring the second prosecution.

ISSUE: Whether appellant's successive prosecutions for burglary and aggravated assault was jeopardy barred as a result of his prior acquittal for capital murder.

Here, the Court of Criminal Appeals turned to the Double Jeopardy Clause, which "protects an accused from impermissible multiple punishments or successive prosecutions for the same offense after an acquittal or conviction." To understand the meaning of the word "same," the court used a test established in *United States v. Dixon*, 509 U.S. 688, 697 (1993) which explained that a lesser-included offense

is legally the same as a greater offense unless the lesser-included offense requires proof of a fact that is not required to establish the greater offense. After determining the offenses are legally the same, the court must analyze if they are also factually the same.

The State argued that burglary and capital murder were not the same because each offense requires proof of a fact the other does not. Under similar facts, the court in *Littrell v. State*, 271 S.W.3d 273 (Tex. Crim. App. 2008) previously held that the offenses of aggravated robbery and felony murder were legally the same as pled in the case. Applying *Littrell* here, the court determined that to establish capital murder, the State needed to “prove no more than the [burglary] (or attempted [burglary]) . . . plus additional facts.” As a result, the court of appeal’s decision as to the burglary charge was affirmed and the appellant’s prosecution for burglary was barred by double jeopardy.

Similarly, the State next argued that the aggravated assault claim should not be barred because the offense offered proof of a fact that capital murder does not. The court determined that “aggravated assault [was] within the proof necessary for the State to establish capital murder as charged in this case and both offenses [were] legally the same.” However, when determining if they were factually equal, the court found that the victims alleged in the capital murder and aggravated assault charges were two different units of prosecution. As a result, the court of appeal’s decision as to the aggravated assault prosecution was reversed, not barring prosecution on the aggravated assault indictment.

### ***Paredes v. State***

No. PD-1043-14

Case Summary written by Sarah Ellison, Articles Editor.

JUDGE NEWELL delivered the opinion of the unanimous Court. The appellant, a member of a Houston-area gang, killed two men in the commission of a robbery. He then gave the t-shirt he wore during the commission of the crime to a fellow gang member and requested that she wash it. Instead of washing it, the gang member turned the t-shirt over to police and the t-shirt was sent to a private forensic laboratory, Identigene, for DNA testing. The blood on the clothing matched that of the victims.

At trial, Robin Freeman, the forensic-laboratory director for Identigene, testified that although she had not personally conducted the physical aspects of the test, she had supervised the process. While testifying, Freeman ensured that safety protocols were in place and that she had conducted the final interpretation of the data results. Moreover, the three analysts who physically completed the analysis did not testify, documents containing the raw data were not introduced, and Freeman did not testify as to someone else's opinions. Appellant objected on the grounds he was entitled to cross-examine the three analysts who conducted the examination and the trial judge overruled the objection. The trial court's decision was affirmed by the Fourteenth Court of Appeals. Subsequent to this decision, this court held in *Burch v. State*, 401 S.W.3d 634, 637 (Tex. Crim. App. 2013) that the admission of a lab report containing drug test results was a Confrontation Clause violation. As a result, this court granted appellant's petition for discretionary review and the case was remanded to determine if the rationale of the *Burch* decision should apply in this case. Issue: Does a violation of the Confrontation Clause result from the admission of a supervising DNA analyst's opinion, when it is based on computer-generated data gathered through batch DNA testing?

On remand, this court distinguished the facts of appellant's case from that of *Burch* and *Bullcoming v. New Mexico*, 131 S. Ct. 2705 (2011). In *Burch* and *Bullcoming*, the testifying analysts lacked personal knowledge and had neither conducted nor observed the testing processes at their laboratories. The facts of this case proved different given Freeman's hands-on analysis as well as the fact that raw DNA data was not admitted into evidence.

In making its decision, this court further distinguished a set of cases including *Pointer v. Texas*, 380 U.S. 400 (1965), *Crawford v. Washington*, 541 U.S. 36 (2004), *Melendez-Diaz v. Massachusetts*, 557 U.S. 305 (2009), and *Williams v. Illinois*, 132 S. Ct. 2221 (2012). Freeman's performance of the crucial data analysis swayed the court. Because Freeman testified to her own conclusions, and not just to a non-testifying experts analysis, the court determined this was not an attempt by the State to introduce a testimonial lab report through a surrogate. The court of appeals decision was affirmed.