

No 20-8134

ORIGINAL

In the Supreme Court of the United States

FILED

MAR 20 2021

OFFICE OF THE CLERK
SUPREME COURT, U.S.

Erik Jimenez, petitioner, pro se

-Vs-

The State of Texas, respondent

On Petition for Writ of Certiorari to the
Texas Court of Criminal Appeals

Petition for Writ of Certiorari

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Question Presented for Review

1) Whether the trial court admissability of evidence of a later date and not for what defendant was on trial was an abuse of discretion under Texas rule of evidence 404(b).

List of Parties

All parties appear in the caption of the case on the cover page.

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Prayer

Petitioner Erik Jimenez respectfully prays that a writ of certiorari be granted to review the judgment of the Texas 14th Court of Appeals issued Dec.31,2019.

Opinions

The Judgment and opinion of the 14th Court of Criminal Appeals is reported as Jimenez V. State No.14-18-00364-CR(Tex.App.Dec.31,2019)The Opinion of the 14th Texas Court of Criminal Appeals is incorporated into the Appendix herein.

Jurisdiction

Petitioner Erik Jimenez invokes this court jurisdiction under 28 U.S.C. § 1257, having timely filed this petition for writ of certiorari within 150 days of the Texas Court of Criminal Appeals Judgement.

Judgment was entered Oct. 21, 2020.

The basis for Federal Jurisdiction

This case raises questions about the due process and equal protection clauses about the 14th amendment to the United States constitution.

Constitutional and Statutory Provision Involved

This case involves the 14th Amendment to the United States Constitution, which provides:

Section 1. "All citizens of the United States are citizens of the states in which they reside. No state shall make or enforce any, law which shall abridge the privileges or immunities of citizens of the United State; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Section 5. “The congress shall have power to enforce by appropriate legislation the provisions of this article”.

STATEMENT OF THE CASE

A. Complaint

A complaint filed June 23, 2016 charged Jimenez with Aggravated promotion of prostitution.CR6. The “prostitution enterprise” was alleged to involve more than one prostitute “including Cindy Cartillo and Sonya Moreno”. The date of offense was specified as “June 22,2016”.

B. Jury Trial

Voir dire began April 23,2018.2RR

C. Verdict and Punishment

The state rested on April 26, 2018,5RR.143. On April 26,2018 The Jury returned a Guilty verdict and assess punishment at confinement in the Institutional Division of the Texas department of Criminal Justice for eight years and a 1,000 dollar Fine.

D. Appeal

On Appeal petitioner challenged (1) Whether the State Adduced sufficient evidence to predicate petitioners conviction.

(2) Whether the District Court reversibly erred in overruling Jimenez 404(B) objection to so-called “counter-surveillance” in Oct. 2016 when the indictment trained on events in June 2016

On Dec. 31, 2019 the 14th court of Appeals Affirmed petitioner’s conviction and release a memorandum opinion along with a concurring opinion.

Petitioner Filed a petition for discretionary review on May 29, 2020 which was refused on June 24, 2020.

On September 25, 2020 petitioner files for a rehearing in The Texas Courts of Criminal Appeals which was denied on Oct. 21, 2020

Reasons For Granting the Writ

In this case The State Court prosecutor impermissibly focused on the unrealized incident of October 2016 that was characterized as “counter-surveillance”, over a proper 404(b) objection, when the indictment focused on events in June 2016 some 4 months prior. The bad characterization of those events left the petitioner to defend himself over other crimes and bad acts which he was not on trial for and had no relevance beyond a tendency to show character conformity evidence.

In *Saenz V. State* , 843 S.W. 2D (TEX.CRIM.APP.1992) the Appeals Court Stated that evidence of other crimes , wrongs, or acts may create “unfair prejudice” if under the circumstances a jury would be more likely to draw an impermissible character conformity inference than the permissible inference for which the evidence is relevant, or

if it otherwise distracts the Jury from the specifically charged offense and invites them to convict on a moral or emotional basis rather than a reasoned response to the relevant evidence.

The Texas appeals court has also noted the evidence of a defendants bad character traits possess such a devastating impact on a Jury's rational disposition towards other evidence, and is such poor evidence of guilt , that an independent mandatory rule was created expressly for its exclusion, see rule 404(b); Mayes V. State, 816 S.W. 2d (Tex.Crim.App.1991)

During the state's direct examination of Officer Nichols, the prosecutor approached the bench and advised that the trial court and defense counsel that the state would like to develop testimony concerning the fact that the police conducted a second undercover. in-call investigation at the Hillcroft location on Oct. 19, 2016, wherein officers would

testified that they observed appellant at the scene, and that it appeared to officer Brian Nichols that appellant was conducting counter-surveillance, which they described as an effort to detect covert law enforcement operatives.

Defence counsel objected that appellant's identity was not an issue in the case, and providing up an extraneous on something that's not an issue, was highly prejudicial, and extremely misleading and confusing, to the jury, and so the state's proposed extraneous-offense evidence was irrelevant, and highly prejudicial.

The Trial court agreed that the state's desired line of inquiry was more prejudicial than probative at that point in trial and sustained defense counsel's objection.

The state again approached the bench and renewed its request to present evidence concerning the Oct. 19, 2016, counter-surveillance incident, on the basis that the defense counsel open the door thru Carillo's cross-examination over

defense counsel's objection, the trial court ruled that the state's proposed evidence was admissible to rebut the defensive theory implied by Carrillo's testimony that appellant was present at the day of the raid on June 2,2016, only because Carrillo summoned him to be there.

During Heith White Direct examination and over a proper 404(b) objection White testified that he seen a car with two males and two females in it. The two females got out the car and went inside suite 507. Then that car leaves and heads to the parking garage located next to that place,White also testified that a prositution arrest was made on the Oct.19th, 2016 investigation, and that he did not take responsibility for that arrest, but that H.P.D. did.

Afterwards the state calls Brian Nichols to testified again to the events of Oct.2016, and also about the so-called counter-surveillance that had previously been properly object to by appellant's attorney.

Officer Nichols testifie that he was between a thousand and 1500 feet away from suite 507 in a parking garage conducting surveillance.

He then observed a black cadillac pull up to suite 507 and two females exited the vehicle and went inside. Within a few minutes the black Cadillac pull in the same parking garage where Nichols was located and was able to identified the defendant in the passenger seat, but was unfamiliar with the driver of the car. Somewhere in that time frame of just a couple of minutes Nichols heard on the radio traffic that the U.C. was done making his case and arrest team was arriving at the time. He notice the black Cadillac fixing to leave be cause he can see the brake lights come on, reverse light came on. He then instructed the highway patrol trooper to move in.

Nichols testified based on his training and experience he believed appellant conducting counter surveillance on that day. He discribed counter surveillance as a person that

engaging in the contraband illegal activities efforts to detet police presence or covert police presence, “its their effort to avoid apprehension. This was clear violation of rule 404(b) for it left the petitioner to defend himself over other bad acts or crime for which he was not at trial for. The evidence of Jimenez sitting in the parking lot (pejoratively called counter surveillance) had no relevance and could not assist the jury in its determination of whether Jimenez committed the aggravated offense of running a prostitution enterprise, and had no relevance to any fact of consequence apart from its tendency to prove cinduct in conformity with character. The evidnce admitted at trial left devastatin impact on the Jury dispostion towards the specificallycharged offense of June 22, 2016 and insteqad lead the Jury to focus events of Oct. 2016 and never charge of any wrong doing associated with a prostitution enterprise. During the punishment phase Nicholes was called back to testify about events in Oct. 2016 he was

assisting H.P.D. Human Trafficking group with surveillance on the location Nichols testified that on Oct. 2016 they were unsuccessful in proving up the element of the offense of aggravated promotion of prostitution or a prostitution enterprise. After seeing Jimenez in the passenger seat of a car. He decided to detain him. Jimenez was then arrested for unlawful possession of firearm by felon. Nichols also testified that Jimenez was not arrested for the offense of aggravated promotion of prostitution on the Oct. 2016 event. The evidence put forth by the State and admitted by the trial court was not relevnt to the element of whether appellant was controlling, supervising, or managing a prostitution enterprise at the Hillcroft location. In Taylor V. State, 548 S.W.2d 723 (Tex.Cr.App.1977), they applied the foregoing rules of construction to section 43.04 and also defined “prostitution enterprise” as “a plan or design for venture or undrtaking in which two or more persons offer to, or engage

in sexual conduct in return for a fee payable to them.” I.d. at 723. Appellant shows tht on oct.2016 the evidence does not reflect the criteria of the element for a prostitution enterprise and so should had never been allowed in for it was highly prejudicial. In Montgomery V. State, 810 S.W. 2d 372,391 (Tex.Crim.App.1990) (on rehearing), appeals court held that the trial judge must conclude that the evidence challenged under Rule 404(b) tends in logic and common experience to serve some purpose other than character conformity to make the existence of a fact of consequence more or less probable that it would be without the evidence. In Montgomery, this court analyzed the newly enacted Rule 404(b) to determine when an extraneous offense is admissible. Id, Appeals Court has stated that extraneous offense is admissible in the state’s case-in-chiefs in the following instances:

That is a “party” may introduce evidence of other crimes, wrongs, or acts if such evidence logically servesto make more

or less probable an elemental fact. An evidentiary fact that inferentially leads to an elemental fact, or defensive evidence that undermines an elemental fact. Martin V. State, 173 S.W.3d.(Tex.Crim.App.1996). “Control, supervises, or manages a prostitution enterprise” is an elemental fact that the state is required to prove when they allege that a person is a party to the offense. tex. Penal code Sec. 43.04(a). The 14th Court of appeals in Prieto V. State, 879 S.W. 2d 295(Tex.App.Houston [14th Dist] 1994-writ ref'd n.r.e.)

Summarized nicely the laws as to the admissibility of extraneous offenses in the state's case-in-chief citing the courts decision in Montgomery: The test for the admssion of extraneous offenses required the determination of the issues: (1) whether the offense is relevant to a material issues in the case, other than the defendant's character, under Tex.R. Crim.Evid404(b): and (2) whether the probative valve of the

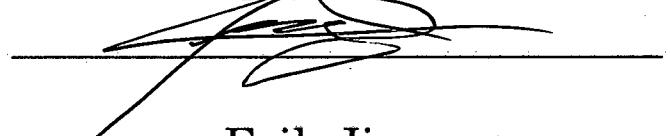
extraneous offense is substantially outweighed by the danger of unfair prejudice to the defendant. The erroneous admission of the extraneous evidence allowed the jury to consider prejudicial evidence in assessing appellants guilt. The extraneous evidence was misleading as to appellants involvement with a prostitution enterprise when indeed the evidence on record shows that appellant was merely present. It has also long been the law that mere presence at the scene of an offense is not a crime.

In Sum, The Fourteen Court of Appeals failed to address the negative implications of the extraneous offense evidence and instead reiterated its belief that the extraneous offense was relevant to the element of whether petitioner was controlling, supervising, or managing a prostitution enterprise.

Conclusion

For the foregoing reasons, the petition should be granted

Respectfully Submitted



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