

COURT OF APPEALS OF TEXAS, FOURTEENTH COURT OF APPEALS

Gorge Luis Olmos v. the State of Texas

No. 14-21-00461-CR · No. No. 14-21-00461-CR · Decided August 8, 2023

SUMMARY

This is a concurring opinion in an aggravated-assault appeal involving the defendant's use of a gay panic defense. Justice Charles A. Spain concurred in the judgment affirming the trial court but declined to join the majority opinion, criticizing its reframing of the appellate issues and its discussion of error preservation.

CASE DETAILS

COURT	Court of Appeals of Texas, Fourteenth Court of Appeals
WRITING FOR THE COURT	Charles A. Spain; Poissant; Wilson
JURISDICTION	Texas
DECIDED	August 8, 2023
DOCKET	No. 14-21-00461-CR
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an aggravated-assault judgment entered by the 239th District Court of Brazoria County, Texas.
PRECEDENTIAL VALUE	Published opinion; the supplied text is a concurring opinion.
PARTIES	Gorge Luis Olmos v. The State of Texas

TOPICS

- criminal procedure
- appellate procedure
- preservation of error
- self defense

PRACTICE AREAS

- criminal law
- criminal appellate procedure

QUESTIONS PRESENTED

- How the appellant's appellate issues should be characterized in light of his use of the gay panic defense.
- Whether the challenged trial-court judgment should be affirmed.

3. What requirements governed preservation of the appellant's appellate complaint under Texas Rule of Appellate Procedure 33.1(a).

KEY QUOTATIONS

“The defense strategy should be recognized for what it is.” (2)

“I do not join the majority opinion” (2)

FACTUAL BACKGROUND

The case arose from an aggravated assault involving a deceased complainant. At trial, the State directly addressed whether an alleged sexual advance by the complainant could justify the defendant's beating the complainant to death. The concurrence characterizes the defense strategy as a gay panic defense.

PROCEDURAL HISTORY

Olmos appealed the trial court's judgment in an aggravated assault case. In this concurrence, Justice Spain agreed with affirmance but declined to join the majority opinion because, in his view, it reframed the appellant's issues in a way that downplayed the gay panic defense and unnecessarily complicated the preservation analysis.

DISPOSITION

affirmed

CASES CITED

- People v. Rodriguez, 64 Cal. 253 Rptr. 255 (1967)
- Laws v. State, 640 S.W.3d 227, 229–31 (Tex. Crim. App. 2022)

OPINION

PER CURIAM.

Affirmed and Majority Opinion and Concurring Opinion filed August 8, 2023. In The Fourteenth Court of Appeals NO. 14-21-00461-CR GORGE LUIS OLMOS, Appellant V. THE STATE OF TEXAS, Appellee On Appeal from the 239th District Court Brazoria County, Texas Trial Court Cause No. 84354-CR CONCURRING OPINION This aggravated assault case is about the gay panic defense.¹ The State knew it and directly confronted it at trial: “If we assume that [deceased complainant] 1 See, e.g., People v. Rodriguez, 64 Cal. 253 Rptr.

255 (1967) (mentioning claim by defendant accused of murder that he “did not know the nature and quality of his act at the time of the attack and was acting as a result of an acute homosexual panic brought on him by the fear that the victim was molesting him sexually”); see generally Omar T. Russo, How to Get Away with Murder: The “Gay Panic” Defense, 35 TOURO L. REV. 811 (2019); David Alan Perkiss, A New Strategy For Neutralizing the Gay Panic Defense at Trial:

Lessons From The Lawrence King Case, 60 UCLA L. REV. 778 (2013); Cynthia Lee, The Gay Panic Defense, 42 U.C.

DAVIS L. REV. 471 (2008). came on to or made an advance on the defendant -- okay -- was there anything that you learned or saw be it from the defendant or the physical evidence that showed you that [defendant] had the right to beat [complainant] to death?" Unfortunately, the State and the majority have reframed the issues raised in appellant's brief, restating them in a manner that downplays appellant's use of the gay panic defense.

I see no reason to join the majority in doing that. The defense strategy should be recognized for what it is. I agree with affirming the trial court's judgment as challenged on appeal and concur in this court's judgment. I do not join the majority opinion, which in addition to my concern about reframing appellant's issues, also has an unnecessarily complicated discussion in issue one of the requirements to preserve a complaint for appellate review.

See Tex. R. App. P. 33.1(a); *Laws v. State*, 640 S.W.3d 227, 229–31 (Tex. Crim. App. 2022) (discussing Tex. R. App. P. 33.1(a)). /s/ Charles A. Spain Justice Panel consists of Justices Spain, Poissant, and Wilson (Wilson, J., majority). Publish — Tex. R. App. P. 47.2(b). 2