

TEXAS COURT OF CRIMINAL APPEALS

Skief v. State

Skief · No. PD-0655-15 · Decided November 23, 2015

SUMMARY

This document is a pro se motion for rehearing filed by Tiwian Laquinn Skief in the Texas Court of Criminal Appeals in cause number PD-0655-15. It challenges the refusal of discretionary review and raises issues concerning the sufficiency of the evidence, the testimonial nature of a statement under the Confrontation Clause, and the excited-utterance exception.

CASE DETAILS

COURT	Texas Court of Criminal Appeals
JURISDICTION	Texas
DECIDED	November 23, 2015
DOCKET	PD-0655-15
DISPOSITION	other
PROCEDURAL POSTURE	Petitioner's motion for rehearing following the Texas Court of Criminal Appeals' refusal of his petition for discretionary review on November 4, 2015.
PRECEDENTIAL VALUE	Nonprecedential procedural filing; the supplied document is a petitioner's motion for rehearing rather than a court opinion.
PARTIES	Tiwian Laquinn Skief v. The State of Texas

TOPICS

appellate procedure criminal procedure hearsay sixth amendment evidence

PRACTICE AREAS

criminal appellate procedure criminal evidence constitutional criminal procedure

QUESTIONS PRESENTED

1. Whether the record contains evidence that the petitioner sought out or approached the complainant, as relevant to the petitioner's first appellate issue.

2. Whether Riketta Johnson's statement to Barbara Castro was testimonial notwithstanding its asserted qualification as an excited utterance.
3. Whether Texas courts may limit the constitutional definition of a testimonial statement to statements made to law-enforcement-based agencies.

KEY QUOTATIONS

“The Petitioner lacks this one main element.” (1)

“the fact that the statement also qualifies as an excited utterance, will not alter Riketta's testimonial nature!”
(2)

“The Petitioner contends that the State should not be allowed to limit the definition of Testimonial to law enforcement based agencies only.” (3)

FACTUAL BACKGROUND

The motion concerns the admissibility and testimonial character of statements by Riketta Johnson to Barbara Castro, a manager at a strip club. The petitioner contends that Johnson's statement was made while under stress but was nevertheless testimonial because Johnson understood the broader significance of her words. The motion also disputes an asserted finding that the petitioner sought out or approached the complainant.

PROCEDURAL HISTORY

The document seeks rehearing of the refusal of a petition for discretionary review in Texas Court of Criminal Appeals cause number PD-0655-15. The underlying matter included a Fifth District Court of Appeals case, cause number 05-12-00223-CR, and trial-court cause number F10-35936-L. The motion asks the court to grant rehearing and request briefing on the merits.

DISPOSITION

other

CASES CITED

- Lee v. State, 259 S.W.3d 785 (Tex. App.—Houston [1st Dist.] 2007)
- Fink v. State, 97 S.W.3d 739 (Tex. App.—Austin 2003)
- Bumguardner v. State, 963 S.W.2d 171 (Tex. App.—Waco 1998)
- United States v. Brito, 427 F.3d 53, 61–62 (1st Cir. 2005)
- Wall v. State, 184 S.W.3d 730, 742–43 (Tex. Crim. App. 2006)
- McCarty v. State, 227 S.W.3d 415, 418 (Tex. App.—Texarkana 2007)
- Crawford v. Washington

OPINION

PER CURIAM.

6S5-/5 NO. PD-0655-15 FILED IN IN THE COURT OF CRIMINAL APPEALS ORieINAL COURT OF CRIMINAL APPEALS OF TEXAS AT AUSTIN Abel Acosta, Cierk TIWIAN LAQUINN SKIEF PETITIONER THE STATE OF TEXAS RESPONDANT PETITIONER'S MOTION FOR REHEARING On Rehearing from a refusal of his Petition, for Discretionary Review in No. PD-0655-15 on November 4, 2015. RECEIVED IN Tiwian LaQuinn Skief COURTOF CRIMINAL APPEALS TDCJ #01769917 Coffield unit NOV 23 2015 2661 FM 2054 Tenn. Colony, Tx.

75884 Abel Aeosta, Clerk Pro se. NO. PD-0655-15 TIWIAN LAQUINN SKIEF § IN THE COURT OF CRIMINAL § V. § APPEALS OF TEXAS AT § THE STATE OF TEXAS § AUSTIN. MOTION FOR REHEARING COMES NOW Tiwian Skief, #01769917, Petitioner in the above - styled and -numbered cause and files his motion for rehearing, and shows this Honorable Court GOOD CAUSE to GRANT this motion as follows: PERTAINING TO QUESTION NUMBER ONE Within the Petitioner's question number one, the issue boils down to this question here: Is there evidence (facts) that shows the Petitioner sought an explanation from or discussion with the Complainant concerning their differences?

No! The Petitioner truly searched the entire record, and has found out that not one witness testified to the erroneous conclusion that "the Petitioner sought out and/or approached complainant." In other words, there is no evidence of the Petitioner seeking out for and/or approached Complainant. Their is one element in common when this Honorable Court looks in iLee v. State [259 S.W.3d 785 (Tex.App. --Houston, 1st Dist, 2007)], Fink v. State [97 S.W.3d 739 (Tex.App. --Austin, 2003)], and Bumguardner v. State [963 S.W.2d 171 (Tex.App. --Waco 1998)].

Truly, this one element is that Lee, Fink, and Bumguar- der all sought out for and/or approaced complainant in their cases. The Petitioner lacks this one main element. Therefore, the page 1 Petitioner argues that there is a substantial circumstance within the Petitioner's case that is in need to be re-addressed by this Honorable Court.

Finally, this Honorable Court should grant the Petitioner's rehearing. PERTAINING TO QUESTION NUMBER TWO Since the Petitioner argees that Riketta's statement to ~ Barbara Castro was an excited utterance, this Honorable Court must look to the attendant circumstances and assess the likeli hood that a reasoanble person would have either retained or re gained the capacity to make a testimonial statement at the time of the utterance.

See U.S. v. Brito, 427 F.3d 53, 61-62 (1st Cir. 2005); Wall v. State, 184 S.W.3d 730, 742. (Tex.Crim.App. 2006). The Fifth District Court of Appeals simply did not do this. Therefore, This Honorable Court should rehear this question at hand. Furthermore, Riketta Johnson, being unde rhte stress of the phone call, was not in immediate danger and Riketta knew, and comprehended the larger significance of her words.

In basic terms the record fairly supports her statements to Castro, and the fact that the statement also qualifies as an excited utterance, will not alter Riketta's testimonial nature! Finally, the Fifth District Court of Appeals failed to properly use the two-pronged test set out in *Wall v. State* because they are bound to. *id.* 184 S.W.3d 730, 742-43 (Tex.Crim.App.

2006). The Petitioner implores this Honorable Court to rehear this Question for review at hand, and grant this motion for rehearing. page 2 PERTAINING TO QUESTION NUMBER THREE The Petitioner only seeks for an answer for the following two questions: (1) Did the United States Supreme Court intend for the State Courts to limit (or restrict) the term, or definition of "Testimonial" to solely relate a statement, declaration, or affirmation to law enforcement based agencies only?

And (2) Although the Texarkana District. Court of Appeals in *McCarty v. State*, provided some classic examples held in *Crawford*, does the Classic examples give the right for state court's to limit the testimonial analysis to law enforcement based agencies only? *id.* 227 S.W.3d 415, 418 (Tex.App.--Texarkana, 2007).

The Petitioner contends that the State should not be allowed to limit the definition of Testimonial to law enforcement based agencies only. When the courts in Texas have adopted the same view set out in *McCarty*, Axiomly, this Court never cited or relied in any authority while taking this upon themselves to limit (or restrict) the *Crawford*'s confrontational definition of the term Testimonial, *id.* 227 S.W.3d at 418.

Again and finally, the Petitioner believes, that the United States Supreme Court did not intend for their term, or definition to be limited or restricted to law enforcement based agencies only! Therefore, the Petitioner firmly stands on the fact that Riketta's statement to a manager in the strip club environment fits into the definition of testimonial.

The Petitioner implores this Honorable Court to rehear this question for review and grant this motion for rehearing at hand. page 3 PRAYER FOR RELIEF The Petitioner prays that this Honorable Court will grant rehearing, and request for briefs on the merits-, or as rendered, Tiwian Laquinn Skief #01769917-Coffield 2661 FM 2054 Tenn.Colony, Tx. 75884 Pro se.

INMATE DECLARATION I, Tiwian Laquinn Skief, #01769917, being incarcerated in the Coffield unit in Anderson County, Texas, declares that the foregoing is true and correct under the penalty of perjury. Executed this day of November.17, 2015. Tiwian 'iwian LaqiHrtfn LaqiHrnn Skj Sk #01769917-Coffield 2661 FM 2054 Tenn.Colony, Tx. 75884 Pro se. PROOF OF MAILING I, Tiwian Laquinn Skief, #01769917, have; placed this motion for rehearing in the internal mailing system of the Coffield unit in Anderson County, Texas, on November 17, 2015.

This is true and correct under the penalty of perjury. Executed this day of November 17, 2015. Tiwian Laquinn^Skief (y #01769917-Coffield 2661 FM 2054 Tenn.Colony, Tx. 75884 Pro se.

page 4 NO. PD-0655-15 TIWIAN LAQUINN SKIEF § IN THE COURT OF CRIMINAL § V. § APPEALS OE TEXAS AT § THE STATE OF TEXAS § AUSTIN. CERTIFICATION OF GOOD FAITH COMES NOW, Tiwian; ILaquinn Skief, #01769917, certifies that the foregoing motion for rehearing is done in good faith and not for any kind of delay becuase the foregoing motion is so grounded in the law, it requires for this Honorable Court to rehear Peti tioner's case.

This is true and correct under the penalty of perjury. Exe cuted on this day of November 17, 2015. Tiwian Laqi #01769917-Coffield 2661 FM 2054 Tenn.Colony, Tx. 75884 Pro se. Clerk of the Court of Criminal Appeals at Austin P.O. Box 12308, Capitol Station, Austin, Texas 78711 November 17, 2015 RE: Skief, Tiawian Laquinn; PD-0655-15; COA No. 05-12-00223-CR; tr.Ct.No.

F10-35936-L Dear clerk of the Court, Enclosed is a motion for rehearing on the above styled and numbered cause. The Court of Criminal Appeals granted me the ability to file a single copy on May 29, 2015. Please make and provide the necessary copies to go to the required parties at hkrid. Thank you for all your time and help within this matter! Respectfully Tiwian Laquinn #01769917-Coffield 2661 FM 2054 Tenn.Colony, Tx.

75884 Pro se. Cc: file •*»"" Tiwian L. Skief:;,*•>»•*->,, #01^7 699.17-Cof fie Id 2661 FM 2054 •DALLAS IX 750 •of""""*.*. ^°",1>"" Tenn.Colony, Tx. 75884. 39WOV2ai5:FM4 L LEGAL MAIL!! Clerk of the Court of Criminal Appeals in Austin Texas P.O. Box 12308, Capitol Station Austin, Tx. 78711 im..lii1!1i!Mill],|i.}..|.ii|i|il1'1'liii'illh'1','li"i'l' 37 i i 230S&8