

COURT OF APPEALS FOR THE FIRST DISTRICT OF TEXAS

Latharian Devante Merritt v. State

No. 01-18-00607-CR (Tex. App.—Houston [1st Dist.] Apr. 14, 2020) (mem. op.) · No. 01-18-00607-CR ·

Decided April 14, 2020

SUMMARY

The Court of Appeals for the First District of Texas affirmed Latharian Devante Merritt’s capital-murder conviction and life-without-parole sentence. The court held that Merritt failed to preserve his challenge to the probable-cause affidavit and, alternatively, that the affidavit did not contain material omissions under a Franks analysis. The court also held that the jury instruction distinguishing reasonable doubt from all possible doubt was not erroneous.

CASE DETAILS

COURT	Court of Appeals for the First District of Texas
WRITING FOR THE COURT	Peter Kelly; Chief Justice Radack; Justice Lloyd; Justice Kelly
JURISDICTION	Texas
DECIDED	April 14, 2020
DOCKET	01-18-00607-CR
DISPOSITION	affirmed
PROCEDURAL POSTURE	Merritt appealed his capital-murder conviction and life-without-parole sentence, challenging the denial of his motion to suppress post-arrest statements and the reasonable-doubt instruction in the jury charge.
STANDARD OF REVIEW	Motions to suppress are generally reviewed under a bifurcated standard, with almost total deference to the trial court's factual findings and de novo review of the application of law to those facts. When probable cause is challenged based on a warrant affidavit, the reviewing court considers the four corners of the affidavit, interprets it in a common-sense and reasonable manner, and determines whether it provides a substantial basis for the magistrate's probable-cause finding.
PRECEDENTIAL VALUE	Unpublished memorandum opinion; not designated for publication and of limited precedential value.
PARTIES	Latharian Devante Merritt v. The State of Texas

TOPICS

suppression of evidence

probable cause

preservation of error

jury instructions

reasonable doubt

PRACTICE AREAS

criminal procedure

appellate procedure

constitutional law

QUESTIONS PRESENTED

1. Whether Merritt preserved a challenge under *Franks v. Delaware* that the arrest-warrant affidavit omitted material information about M.S.'s untruthfulness.
2. Whether, even if considered on the merits, the alleged omissions from the arrest-warrant affidavit were material and made intentionally, knowingly, or with reckless disregard for the truth so as to invalidate the warrant.
3. Whether the trial court erred by instructing the jury that the State was not required to prove guilt beyond all possible doubt but was required to exclude all reasonable doubt.

HOLDINGS

1. Merritt did not preserve his appellate argument that the arrest-warrant affidavit was invalid because it omitted information about M.S.'s repeated lies. His trial objection challenged the sufficiency of the facts within the affidavit, whereas his appellate argument relied on Detective Knotts's outside-the-affidavit testimony and a *Franks* omission theory.
2. Even if Merritt's omission argument were considered under *Franks*, he did not establish that the affidavit contained material omissions made intentionally, knowingly, or with reckless disregard for the truth. The disclosed lie about how M.S. got home did not undermine probable cause because that fact was immaterial to her ability to observe and identify the participants.
3. The trial court did not err by instructing the jury that the prosecution need not prove guilt beyond all possible doubt and must exclude all reasonable doubt.

KEY QUOTATIONS

“To preserve error for appellate review, the complaining party must make a specific objection and obtain a ruling on the objection.” (at 6)

“Because this argument was not raised in the trial court, it does not comport with the trial objection, and it is not preserved for our review.” (at 7)

“When a governmental affiant knowingly, intentionally, or with reckless disregard for the truth includes a false statement in the warrant affidavit, and the remainder of the affidavit’s content is insufficient to establish probable cause, the warrant is invalid under the Fourth Amendment, and evidence obtained as a consequence of the warrant should be excluded.” (at 8)

“The affidavit itself shows that M.S. planned and participated in the robbery and that she had personal knowledge that Merritt also participated.” (at 10)

FACTUAL BACKGROUND

Merritt participated in a planned robbery at a house in Tarrant County during which Ethan Walker was shot and later died. Information from a participant, M.S., and corroboration from Holt connected Merritt, who was identified by the nickname "Larry," to the robbery and shooting. A magistrate issued an arrest warrant based on Detective Knotts's affidavit, and Merritt gave two post-arrest statements admitting that he shot Walker. The affidavit disclosed that M.S. had lied about how she got home but did not recount every instance in which she had lied during police interviews.

PROCEDURAL HISTORY

A jury convicted Merritt of capital murder, and the Criminal District Court No. 2 of Tarrant County sentenced him to life imprisonment without the possibility of parole because the State did not seek the death penalty. The trial court denied Merritt's pretrial motion to suppress statements made after his arrest and included the challenged reasonable-doubt language in the jury charge. Merritt appealed, and the Supreme Court of Texas transferred the appeal to the First Court of Appeals under its docket-equalization authority.

DISPOSITION

affirmed

CASES CITED

- State v. Elrod, 538 S.W.3d 551, 556-57 (Tex. Crim. App. 2017)
- Wilson v. State, 71 S.W.3d 346, 349 (Tex. Crim. App. 2002)
- Rodriguez v. State, 232 S.W.3d 55, 62, 64 (Tex. Crim. App. 2007)
- Montgomery v. State, No. 02-03-425-CR, 2005 WL 1048707, at *2 (Tex. App.—Fort Worth May 5, 2005, pet. ref'd) (mem. op.; not designated for publication)
- Amador v. State, 221 S.W.3d 666, 673 (Tex. Crim. App. 2007)
- Lagrone v. State, 742 S.W.2d 659, 661 (Tex. Crim. App. 1987)
- Whitemon v. State, 460 S.W.3d 170, 174 (Tex. App.—Fort Worth 2015, pet. ref'd)
- Franks v. Delaware, 438 U.S. 154, 155-56 (1978)
- Darby v. State, 145 S.W.3d 714, 721-22 (Tex. App.—Fort Worth 2004, pet. ref'd)
- Massey v. State, 933 S.W.2d 141, 146 (Tex. Crim. App. 1996)
- Blake v. State, 125 S.W.3d 717, 724 (Tex. App.—Houston [1st Dist.] 2003, no pet.)
- Mays v. State, 318 S.W.3d 368, 389 (Tex. Crim. App. 2010)
- Woods v. State, 152 S.W.3d 105, 115 (Tex. Crim. App. 2004)
- Burrows v. State, 492 S.W.3d 398, 408 (Tex. App.—Houston [1st Dist.] 2016, pet. ref'd)
- Frank v. State, 183 S.W.3d 63, 79 (Tex. App.—Fort Worth 2005, pet. ref'd)

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