

COURT OF APPEALS FOR THE FOURTEENTH DISTRICT OF TEXAS AT
HOUSTON

Barfield v. State

No. 14-13-00518-CR, 2015 Tex. App. LEXIS 3251 (Tex. App.—Houston [14th Dist.] Apr. 2, 2015) (mem. op.) ·
No. 14-13-00518-CR · Decided June 17, 2015

SUMMARY

This document is a Petition for Discretionary Review filed by Lisa Ann Barfield in the Texas Court of Criminal Appeals following affirmance of her DWI conviction by the Fourteenth Court of Appeals. It challenges the denial of a continuance based on trial counsel's head injury, admission of evidence referencing prior offenses, references to a prior trial, display of a MADD plaque, alleged judicial bias, and the definition of reasonable doubt in the jury charge.

CASE DETAILS

COURT	Court of Appeals for the Fourteenth District of Texas at Houston
WRITING FOR THE COURT	Martha Hill Jamison; William J. Boyce; Jeffrey V. Donovan
JURISDICTION	Texas
DECIDED	June 17, 2015
DOCKET	14-13-00518-CR
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a misdemeanor DWI conviction following a second jury trial. The Fourteenth Court of Appeals considered nine issues, including ineffective assistance of counsel, denial of a continuance, judicial impartiality, the display of a MADD plaque, the reasonable-doubt instruction, and the judgment's blood-alcohol-content notation.
STANDARD OF REVIEW	Ineffective-assistance claims are reviewed under Strickland v. Washington, requiring deficient performance and affirmative proof of prejudice. Denial of a continuance is reviewed for abuse of discretion, and the defendant must show actual prejudice. Judicial-bias claims require a clear showing of judicial impropriety and probable prejudice; absent a clear showing of bias, the court presumes the trial court acted properly. Preservation issues are reviewed under Texas Rule of Appellate Procedure 33.1. A properly preserved jury-charge error is reviewed for some harm under Almanza and related authority. A

	judgment modification is authorized under Texas Rule of Appellate Procedure 43.2(b) when necessary to make the record speak the truth.
PRECEDENTIAL VALUE	Unpublished memorandum opinion; not designated for publication
PARTIES	Lisa Ann Barfield v. The State of Texas

TOPICS

appellate procedure criminal procedure ineffective assistance due process reasonable doubt

PRACTICE AREAS

criminal procedure appellate procedure ineffective assistance of counsel evidence constitutional law

QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by denying a continuance requested because defense counsel had recently suffered injuries and was taking medication.
2. Whether trial counsel was ineffective for failing to timely object to dispatcher notes containing references to prior DWI and evading-arrest incidents.
3. Whether trial counsel was ineffective for introducing or failing to object to evidence of Barfield's invocation of her right to counsel.
4. Whether trial counsel was ineffective for failing to object to references to Barfield's prior trial.
5. Whether displaying a MADD plaque in the courtroom constituted reversible fundamental error or demonstrated judicial bias.
6. Whether the trial judge's other alleged actions demonstrated bias and denied Barfield a fair trial.
7. Whether the trial court erred by defining reasonable doubt in the jury charge and, if so, whether the error caused actual harm.
8. Whether the judgment should be modified to remove a notation of a .08 blood-alcohol content that was unsupported by the evidence.

HOLDINGS

1. The trial court did not abuse its discretion in denying the motion for continuance because Barfield failed to show specific actual prejudice to her defense or that she was substantially deprived of counsel.
2. Barfield failed to establish prejudice from counsel's failure to object to dispatcher notes referring to prior arrests and evading arrest because the record did not show that the jury actually saw or considered the notes.
3. Barfield failed to establish ineffective assistance because counsel had a reasonable defensive strategy for introducing and using the evidence of her repeated requests for counsel.
4. Barfield failed to show that counsel was ineffective for not objecting to the reference to the prior trial because she did not demonstrate that the trial court would have committed harmful error by overruling

an objection to the mere reference.

5. The visible MADD plaque did not constitute fundamental error requiring reversal, and the record did not establish that the trial judge was biased or that judicial impropriety probably prejudiced Barfield.
6. The trial court erred by including the definition of reasonable doubt stating that reasonable doubt is a doubt based on reason and common sense after careful and impartial consideration of the evidence, but the preserved error caused no actual harm.
7. The court of appeals had authority to modify the judgment to remove the notation "BAC .08" because no evidence established a specific blood-alcohol content.

KEY QUOTATIONS

"To reverse a judgment based on improper comments or conduct by the judge, we must find (1) that judicial impropriety occurred and (2) prejudice probably resulted." (2015 Tex. App. LEXIS 3251, at *32)

"We modify the trial court's judgment to remove the notation regarding appellant's blood-alcohol content. Having overruled all of appellant's other issues, we affirm the judgment as so modified." (2015 Tex. App. LEXIS 3251, at *41)

FACTUAL BACKGROUND

Multiple motorists reported that Barfield was driving erratically, and responding officers observed signs of intoxication, including red or glassy eyes, an odor of alcohol, confusion, and poor performance on field-sobriety tests. Barfield denied intoxication and attributed her conduct to medication, stress, and other circumstances; she refused breath and sobriety testing at the police station and repeatedly requested an attorney. At the second trial, defense counsel sought a continuance because he had recently suffered head and other injuries and was taking medication, but the trial court denied the request. The court also permitted a MADD plaque to remain visible behind the judge's bench and included a definition of reasonable doubt in the jury charge.

PROCEDURAL HISTORY

Barfield was arrested for DWI and convicted at an initial trial, after which the trial court granted a new trial. At the second trial, a jury again convicted her, and the trial court assessed ninety days' confinement and a \$1,000 fine, both probated for one year. The Fourteenth Court of Appeals overruled Barfield's challenges to the conviction but modified the judgment to remove the notation "BAC .08" because no specific blood-alcohol content had been proven.

DISPOSITION

affirmed

CASES CITED

- Strickland v. Washington, 466 U.S. 668 (1984)
- Thompson v. State, 9 S.W.3d 808 (Tex. Crim. App. 1999)
- Janecka v. State, 937 S.W.2d 456 (Tex. Crim. App. 1996)

- Jimenez v. State, 717 S.W.2d 1 (Tex. Crim. App. 1986)
- DeLeon v. State, 322 S.W.3d 375 (Tex. App.—Houston [14th Dist.] 2010, pet. ref'd)
- Brumit v. State, 206 S.W.3d 639 (Tex. Crim. App. 2006)
- Blue v. State, 41 S.W.3d 129 (Tex. Crim. App. 2000)
- Simpson v. State, 447 S.W.3d 264 (Tex. Crim. App. 2014)
- Adkins v. State, 418 S.W.3d 856 (Tex. App.—Houston [14th Dist.] 2013, pet. ref'd)
- Paulson v. State, 28 S.W.3d 570 (Tex. Crim. App. 2000)
- Almanza v. State, 686 S.W.2d 157 (Tex. Crim. App. 1985)
- Ngo v. State, 175 S.W.3d 738 (Tex. Crim. App. 2005)
- Bigley v. State, 865 S.W.2d 26 (Tex. Crim. App. 1993)
- French v. State, 830 S.W.2d 607 (Tex. Crim. App. 1992)
- Crawford v. Washington, 541 U.S. 36 (2004)
- Griffith v. State, 55 S.W.3d 598 (Tex. Crim. App. 2001)
- Hardie v. State, 807 S.W.2d 319 (Tex. Crim. App. 1991)
- Bartlett v. State, 270 S.W.3d 147 (Tex. Crim. App. 2008)