

COURT OF APPEALS OF TEXAS, SECOND APPELLATE DISTRICT AT FORT WORTH

Jason Wayne Carlile v. The State of Texas

No. 02-19-00468-CR · No. No. 02-19-00468-CR · Decided November 24, 2021

SUMMARY

The Texas Court of Appeals, Second District, Fort Worth, affirmed Jason Wayne Carlile’s convictions for aggravated sexual assault and sexual assault. The court held that Carlile failed to preserve his claims concerning belated discovery disclosures, that the trial court did not abuse its discretion in denying a continuance, and that his attorneys’ intentional nonparticipation in the trial did not warrant relief under ineffective-assistance principles.

CASE DETAILS

COURT	Court of Appeals of Texas, Second Appellate District at Fort Worth
WRITING FOR THE COURT	Wade Birdwell; Bassel; Womack
JURISDICTION	Texas
DECIDED	November 24, 2021
DOCKET	No. 02-19-00468-CR
DISPOSITION	affirmed
PROCEDURAL POSTURE	Direct appeal from convictions for two counts of aggravated sexual assault of a minor and six counts of sexual assault of a minor.
STANDARD OF REVIEW	Preservation of error requires a timely and specific objection or request. A ruling on a motion for continuance is reviewed for abuse of discretion, viewing the evidence in the light most favorable to the trial court's ruling and generally deferring to supported historical findings, while reviewing legal questions and non-credibility-dependent mixed questions de novo. Reversible error from denial of a continuance requires both an abuse of discretion and harm. Ineffective-assistance claims ordinarily require deficient performance and prejudice, although prejudice may be presumed under Cronin when counsel entirely fails to subject the prosecution's case to meaningful adversarial testing.
PRECEDENTIAL VALUE	unpublished_nonprecedential

PARTIES

Jason Wayne Carlile v. The State of Texas

TOPICS

criminal procedure

appellate procedure

right to counsel

ineffective assistance

discovery criminal

PRACTICE AREAS

criminal procedure

constitutional law

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evidence

QUESTIONS PRESENTED

1. Whether Carlile preserved complaints that the State's belated production of FBI and clinic records violated *Brady v. Maryland*, the Michael Morton Act, due process, and the prosecutor's statutory duty.
2. Whether the trial court abused its discretion by denying Carlile's motion for a continuance based on recently produced discovery.
3. Whether Carlile was denied effective assistance of counsel and a fair trial when his attorneys intentionally refused to participate in the trial, and whether prejudice should be presumed under *United States v. Cronin*.

HOLDINGS

1. Carlile's claims that the State violated *Brady*, the Michael Morton Act, due process, and the prosecutor's duty were not preserved because he did not make a timely, specific objection or request identifying those grounds in the trial court.
2. The trial court did not abuse its discretion by denying Carlile's motion for a continuance based on the late-produced FBI and Rose Street records.
3. Carlile was not entitled to relief for ineffective assistance or an unfair trial because he and his attorneys intentionally and knowingly engineered counsel's nonparticipation to create reversible error, and Carlile acquiesced in that strategy. The *Cronic* presumption of prejudice therefore did not provide relief.

KEY QUOTATIONS

"To show prejudice, the appellant should show "with considerable specificity how the defendant was harmed by the absence of more preparation time than he actually had," such as by demonstrating "what additional information, evidence[,] or witnesses the defense would have had available if the motion for delay had been granted."" (12)

"However, if an appellant can demonstrate that defense counsel 'entirely failed to subject the prosecution's case to meaningful adversarial testing,' so that there was a constructive denial of the assistance of counsel altogether, then prejudice, because it is 'so likely,' is legally presumed." (16)

"Because Carlile knew of and acquiesced in the deliberate fabrication of the error that he complains of on appeal, any error was invited, and his claims of ineffective assistance and an unfair trial are rejected." (22)

FACTUAL BACKGROUND

The State produced potentially exculpatory discovery in batches, including an FBI file and clinical records, shortly before trial. Carlile had already received two continuances, had over a year to prepare, and had retained three attorneys and four mental-health experts. After the trial court denied another continuance and mandamus relief was denied, Carlile and his attorneys deliberately abstained from participating in the trial, having stated in mandamus filings that they intended to create an ineffective-assistance violation.

PROCEDURAL HISTORY

Carlile was indicted on two aggravated-sexual-assault counts and seven sexual-assault counts; the trial court dismissed one sexual-assault count. The trial court denied Carlile's third motion for continuance based on late-produced discovery and denied his attorneys' motion to withdraw. After mandamus relief was denied by the court of appeals and the Texas Court of Criminal Appeals, Carlile's attorneys deliberately declined to participate in the trial. A jury convicted him on all remaining counts and assessed consecutive sentences. The court of appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- *Ingerson v. State*, 559 S.W.3d 501, 503 n.3 (Tex. Crim. App. 2018)
- *Brady v. Maryland*, 373 U.S. 83, 87 (1963)
- *Spielbauer v. State*, 622 S.W.3d 314, 318 (Tex. Crim. App. 2021)
- *Dixon v. State*, 595 S.W.3d 216, 223 (Tex. Crim. App. 2020)
- *Gonzalez v. State*, 616 S.W.3d 585, 591, 594 (Tex. Crim. App. 2020), cert. denied, No. 21-5327, 2021 WL 5043646
- *Golliday v. State*, 560 S.W.3d 664, 670 (Tex. Crim. App. 2018)
- *Ahn v. State*, No. 02-17-00004-CR, 2017 WL 6047670, at *6 (Tex. App.—Fort Worth Dec. 7, 2017, no pet.)
- *Martinez v. State*, No. 08-14-00130-CR, 2016 WL 4447660, at *6 n.5 (Tex. App.—El Paso Aug. 24, 2016, pet. ref'd)
- *Gallo v. State*, 239 S.W.3d 757, 764 (Tex. Crim. App. 2007)
- *Rhomer v. State*, 569 S.W.3d 664, 669 (Tex. Crim. App. 2019)
- *Martinez v. State*, 327 S.W.3d 727, 736 (Tex. Crim. App. 2010)
- *State v. Thomas*, 428 S.W.3d 99, 104 (Tex. Crim. App. 2014)
- *Green v. State*, 374 S.W.3d 434, 441 (Tex. Crim. App. 2012)
- *Gonzales v. State*, 304 S.W.3d 838, 841-43 (Tex. Crim. App. 2010)
- *Nichols v. State*, No. 02-13-00566-CR, 2014 WL 7779272, at *1 (Tex. App.—Fort Worth Feb. 5, 2014, pet. ref'd)
- *Janecka v. State*, 937 S.W.2d 456, 468 (Tex. Crim. App. 1996)
- *Heiselbetz v. State*, 906 S.W.2d 500, 512 (Tex. Crim. App. 1995)

- Rosales v. State, 841 S.W.2d 368, 374 (Tex. Crim. App. 1992)
- Dotson v. State, 146 S.W.3d 285, 297 (Tex. App.—Fort Worth 2004, pet. ref'd)
- Cannon v. State, 252 S.W.3d 342, 348-52 (Tex. Crim. App. 2008) (op. on reh'g)
- United States v. Cronin, 466 U.S. 648, 658-59 (1984)
- Wenzly v. State, 855 S.W.2d 47, 50 (Tex. App.—Houston [14th Dist.] 1993, pet. ref'd)
- Little v. State, 819 N.E.2d 496, 503 (Ind. Ct. App. 2004)
- People v. Aiken, 380 N.E.2d 272, 275 (N.Y. 1978)
- Ortega v. State, 644 S.W.2d 912, 913 (Tex. App.—Fort Worth 1983, no pet.) (en banc)
- Beasley v. State, 634 S.W.2d 320, 321 (Tex. Crim. App. [Panel Op.] 1982)
- Prystash v. State, 3 S.W.3d 522, 531 (Tex. Crim. App. 1999)
- Woodall v. State, 336 S.W.3d 634, 644 (Tex. Crim. App. 2011)
- Love v. State, 600 S.W.3d 460, 481 & n.15 (Tex. App.—Fort Worth 2020, pet. ref'd)
- Moreno v. State, No. 04-01-00406-CR, 2002 WL 1573426, at *5 (Tex. App.—San Antonio July 17, 2002, no pet.)

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