the Jasuta / Schulman report

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TIBA's Case of the Week

Court of Criminal Appeals

Case Name: ***Shawn Edward Crawford v. The State of Texas***

- **OFFENSE**: Assault on a Peace Officer
- **COUNTY**: Menard
- **COURT OF APPEALS**: San Antonio 2023
- **C/A CITATION**: 683 S.W.3d 793
- **C/A RESULT**: Conviction Affirmed
- **CCA. CASE No**. PD-0243-23 **DATE OF OPINION**: March 26, 2025
- **DISPOSITION**: Court of Appeals Reversed
- **OPINION**: Judge Gina Parker **VOTE**: 5-4
- **TRIAL COURT**: 452nd D/C; Hon. Robert Hofmann
- **LAWYERS**: J. W. Johnson (Defense); John Messinger (SPA)

(**Background Facts**)(**Ed Note**: **Gleened from the Opinion of the Court of Appeals**): Deputies William Hagler and Michael Smith responded to Appellant's home after his wife called 911 to report a domestic dispute between them. When the deputies entered the front room of the residence, they saw Appellant sitting on the floor in a corner. Deputy Smith noted that Appellant appeared intoxicated and was rocking back and forth. Appellant had two outstanding warrants for his arrest. Deputies Hagler and Smith announced to Appellant that they were there to arrest him for the warrants. Appellant became agitated and began yelling at the deputies that the warrants were fraudulent, that his charges had been dismissed, and that the FBI would arrest the deputies and the judge. The deputies then approached Appellant slowly and attempted to handcuff him, but Appellant continued to argue with them about his warrants. He kicked at the deputies and pushed their hands away. When Deputy Hagler grabbed Appellant's arm, Appellant jumped up and pushed Deputy Hagler across the room. Deputy Smith tased Appellant, but the taser had no apparent effect. Appellant ran to the back of the house, and the deputies chased him. Deputy Smith tased Appellant again, but the shock still had no apparent effect. Appellant then threw a ladder at Deputy Smith's chest and ran outside. Deputy Hagler tased Appellant again as he ran through the back door, but the tasing still showed no effect. Appellant ran to the front of the house where his pickup truck was parked. The deputies intercepted

Appellant at his truck as he jumped in and tried to start the engine. The deputies grabbed Appellant. Appellant kicked Deputy Hagler several times, including in the stomach and groin areas. Deputy Hagler caught Appellant's foot and pulled him out of his seat. Deputy Smith jumped on Appellant to hold him down and then called for backup Two backup deputies heard the radio call for assistance and responded to the scene. One of the deputies tried to talk to Appellant, but Appellant continued to insist there were no warrants for his arrest, and he continued to resist arrest. One deputy drew his firearm on Appellant while Appellant clung to the wheel of his truck. Finally, all four deputies used their weight against Appellant. Appellant was placed in handcuffs and leg shackles and then transported to jail. Appellant was charged with felony assault after attacking two deputies who tried to arrest him.

[**22.01 Charging Instruments / Requirements of Indictment or Information / Notice Requirements / Elements of the Offense**]: At trial, the State went forward on one count only: the assault of Deputy Hagler. Following jury selection and after the jury was impaneled, defense counsel complained that the State was erroneously attempting to prosecute Appellant for assaulting a peace officer, a second-degree felony. He argued that the indictment only charged Appellant with assaulting a public servant, a third-degree felony. On this basis, he also later objected to language in the jury charge that characterized his indicted offense as assaulting a peace officer. Appellant's objections were overruled. At trial and on appeal, the State argued that Appellant had sufficient notice from the indictment that he was being charged with assault on a peace officer. If he did not, the State argues Appellant waived his claim when he failed to object to the reading of the charge at voir dire. The Court of Appeals rejected the State's arguments and reversed, remanding the case for a new punishment hearing. ***Crawford v. State***, 683 S.W.3d 793 (Tex.App. - San Antonio 2023)(see , Vol. 31, No. 9; 04/03/2023). Citing ***Riney v. State***, 28 S.W.3d 561 (Tex.Cr.App. 2000)(see , Vol. 8, No. 40; 10/09/2000), and recognizing that "the convicted offense at issue in this case is assault on a peace officer, a second-degree felony," the Court of Appeals wrote "the critical determination is whether the trial court (and reviewing appellate courts) and the defendant can identify what penal-code provision is alleged." *** "And it is not sufficient to say that the accused knew with what offense he was charged. The inquiry must be whether the charge, in writing, furnished that information in plain and intelligible language." The Court of Appeals declined to draw any inferences from the record, "especially with no allegation of defect in the indictment," and, "[M]ost importantly, we cannot accept that 'assault on a public servant' and 'assault on a peace officer' will be used interchangeably, depending on the facts of the case, when these phrases now carry very different implications for defendants charged under Texas Penal Code section 22.01." The Court of Appeals also declined to rely on and/or extend the reasoning of more recent cases such as ***Teal v. State***, 230 S.W.3d 172 (Tex.Cr.App. 2007)(see , Vol. 15, No. 9; 03/12/2007), ***Kirkpatrick v. State***, 279 S.W.3d 324 (Tex.Cr.App. 2009)(see , Vol. 17, No. 9; 03/23/2009), and ***Jenkins v. State***, 592 S.W.3d 894 (Tex.Cr.App. 2018)(see , Vol. 26, No. 49; 12/10/2018), "that require a defendant to submit any questions he has about the indictment ahead of trial or waive his objections." Ultimately, the Court of Appeals rejected the idea that the case was simply about notice, acknowledging that Appellant waited until the jury

was impaneled to assert his belief that the indictment supported only a third-degree charge, but also finding that the defense strategy did not amount to "lying behind the log," since, ***Lugo v. State***, 299 S.W.3d 445 (Tex.App. - Fort Worth 2009)(see ☙, Vol. 17, No. 40; 10/12/2009), "he is not challenging the indictment's constitutional validity for the first time on appeal. The Court of Appeals held that the indictment was facially complete for assault on a public servant. On discretionary review (see ☙, Vol. 31, No. 29; 08/28/2023), the State asked whether "everything on the face of the charging instrument the grand jury had before it" should be considered and whether a defendant must "object pretrial when the charging instrument creates doubt about which of two related offenses is being charged?"

Holding (**Objections to Prosecuting for the Captioned Offense**): In ***Delarosa v. State***, 677 S.W.3d 668 (Tex.Cr.App. 2023)(see ☙, Vol. 31, No. 35; 10/09/2023), the issue was whether the indictment in that case alleged the offense of non-consensual sexual assault, the offense of sexual assault of a child, or both. The body of the indictment "completely alleged non-consensual sexual assault, omitting no element." As a consequence, the indictment body was "facially complete." By contrast, the body of the indictment did not allege the "child under 17" element needed to establish sexual assault of a child. Although the caption of the indictment contained the phrase "sexual assault of a child" and cited the Penal Code provision for sexual assault of a child, the Court held that this information in the caption did not constitute an "allegation" for purposes of alleging an offense. Consequently, the Court held that the indictment alleged only non-consensual sexual assault and did not allege sexual assault of a child. *** But in the present case, the body of the indictment does allege a fact that establishes the "peace officer" element of assault on a peace officer -- the victim being a "deputy sheriff." *** It is true that the indictment does not contain the words "peace officer." But a deputy sheriff is one of the definitions of peace officer, so all one has to do is look at the applicable statutes. Even when the State does not have to plead a definition of an element in the indictment, it can choose to do so. The fact that the definition appears without the term defined is immaterial. If the State had merely alleged that Appellant caused bodily injury to a deputy sheriff, without including "peace officer" or "public servant" language, there is little doubt that such an indictment would be construed as alleging an assault on a peace officer. *** One can think of it this way: Did the grand jurors who assented to this indictment find every fact needed to establish the offense of assault on a peace officer? The answer, obviously, is that they did, because every fact needed for that offense can be found in the body of the indictment -- including the allegation that the victim was a deputy sheriff, which, if proven, would establish that the victim was a peace officer. Although the body of the indictment facially alleges assault on a public servant, with that public servant being more specifically described as a "deputy sheriff," it is nevertheless true that the body of the indictment also includes every fact needed to convict of assault on a peace officer. *** The body of Appellant's indictment contains allegations that would support a prosecution for assault on a peace officer, so the State had the option to pursue that offense, and it did. The Court of Appeals was wrong to conclude otherwise. *** So, even if what occurred in the present case created some sort of notice problem for the defendant, the trial court could not have imposed the

remedy of forcing the State to pursue the offense of assault on a public servant instead of the offense of assault on a peace officer. The trial court did not have the authority to force the State to submit to the jury an offense other than the peace-officer offense the State wished to pursue.

Holding (**Failure to Object Before Trial**): To the extent Appellant's "objection to the indictment" could have been interpreted as an effort to have it quashed, the objection was untimely. To preserve error on a complaint that the indictment must be quashed, a defendant must object before the day trial begins. Appellant's objection after trial had begun was too late. *** Another conceivable remedy would be a mistrial based on the idea that the defense was misled by language in the indictment. But to preserve error, a party must "let the trial judge know what he wants" as well as giving a reason for being entitled to relief. Appellant never requested a mistrial. Moreover, preserving error requires that a party obtain a ruling or object to a refusal to rule. When the trial court finally ruled on Appellant's objection, it ruled that the question before it was whether the indictment was sufficient to allege the second-degree felony of assault on a peace officer or was sufficient to allege only the third-degree felony of assault on a public servant. The trial court's ruling appears to have embraced only which offense the trial court and the jury would proceed on, not whether the trial would continue at all. *** Moreover, it is at least arguable that a "misleading" indictment claim in this case would still be subject to the rule that an objection to an indictment must be raised prior to trial. After all, not only does the body of the indictment support a prosecution for assault on a peace officer, but the indictment's caption explicitly titles the offense as assault on a peace officer and cites the Penal Code subsection for assault on a peace officer. The caption would seem to seriously undercut any notion that the State was intending to charge assault on a public servant rather than assault on a peace officer. Our prior decisions in ***Jenkins*** and ***Kirkpatrick*** warned that the caption could be used in some situations to construe a charging instrument. Although ***Delarosa*** held that the caption could not be used to import allegations into a charging instrument when the body of the charging instrument alleged a facially complete offense, it is at least arguable that the caption could be used to clarify the State's intent for the purpose of conveying notice. Even if the caption cannot add content, it arguably might be able to clarify what the State intended by the content that is already present in the body of the charging instrument. If so, that clarification could arguably show an "irregularity" in the indictment that Appellant needed to object to. *** But assuming for the sake of argument that the caption did not place Appellant on notice that the State would construe the indictment the way it ultimately did, Appellant was placed on notice of the State's construction during voir dire. Between the State and the trial court, there were four references to the offense being assault on a peace officer, but counsel did not object to any of them. *** If counsel had really been confused about what offense was at issue, he would have wanted the jury to be questioned on the correct range of punishment. But immediately after Appellant pled guilty to the indictment, counsel raised his objection. Not only was the objection late, but its lateness appeared to be purposeful. *** Another conceivable remedy would have been a continuance. But Appellant never requested a continuance, much less do so in writing in accordance with statutory requirements.

Ed Note: The opinion mistakenly implies that Appellant entered a plea of guilty. Had he done so, there would have been a completely different discussion (i.e., to what offense did he plead). The first objection came after the jury had been sworn but before the State read the indictment. The trial court stated that the issue was a question of law and he would carry it forward. The State then read the indictment and Appellant pled "not guilty."

> **Concurring / Dissenting Opinions**: Judge David Newell dissented. He was joined by Judge Bert Richardson, Judge Scott Walker, and Judge Jesse McClure and argued that the "factual description of public servant in this case as a deputy sheriff does not create a notice issue." He compared the instant case to ***Delarosa*** and asserted that the Court's holding in this case "is in conflict" with the Court's holding in ***Delarosa***. "The indictment alleged assault on a public servant and described a type of public servant. Contrary to the State's suggestion, there was no notice issue because the indictment contained sufficient allegations of the offense of assault on a public servant."He would hold that, under ***Delarosa***, "the indictment in this case charged the third-degree offense of assault on a public servant, and would affirm the Court of Appeals. Judge Scott Walker filed a separate dissent. He was joined by Judge David Newell and argued that, "the indictment says what it says," and "Appellant knew that the complainant was a public servant." He would also affirm the judgment of the Court of Appeals.

Sidebars

(**Rob Daniel**) When the Court of Appeals issued its opinion in this case, I commented, "*It's nice to see that charging instruments still matter. When it comes to charging instruments, the State has to say what it means, and mean what it says.*" What a quaint idea that turned out to be. As of March 26, 2025, the law allows the State to charge a person with a third degree felony and hide a surprise second degree felony somewhere in the body of the indictment. Charging instruments are supposed to ensure due process by providing notice, but prosecutors may now use them to lay a trap for the defendant instead! The logic used in this opinion is likely to lead to even worse results in the future. For example, the indictment in this case alleged the defendant assaulted Burl Hagler, who is a sheriff's deputy. If the words "Menard County Deputy Sheriff" in an assault against a public servant indictment can authorize a conviction for assault against a peace officer, it will not be long before a prosecutor argues that words like "Burl Hagler" have the same effect. I thought I knew how the Court of Criminal Appeals would dispose of such arguments, but it turns out I don't know much after all.

(**Richard Segura**) I enjoyed Judge Walker's recitation of facts, because Judge Parker coulda, shoulda, entertained us with the kafuffle in the fact pattern. I think she missed an entertaining opportunity. Judge Walker pointed out that during the arrest, amongst the cadre of deputies there was a Buck, a Hagler, a Bubba and just a regular ole' Michael Smith

on the gallantly drunk Mr. Crawford. The cynical, sarcastic yet very practical lawyer, Mr. John Jasuta, said it best: The Court of Criminal Apologies. This time the Court threw in a life raft with a motor for the State. To paraphrase Alfonso Bedoya: Elements? We don't need to show you no stinking elements. The Court now holds a descriptive averment fact along with a caption to be good enough to constitute an element of a crime. As usual, the CCA flips the State's faux pax and blames the defense attorney for not objecting soon nor precisely enough. Yeah, he laid behind the log and I think all of the dissenters would've approved of that action and tactic. The late great Stuart Kinard promulgated the rationale that governs the holding in the case.The doctrine of intellectual chicken-shitery is the law of the case in this matter. This is the new courts first published variance law case, as Rod Stewart sang: "The first cut is the deepest" I knew I was being duped by the author as this new judge took 20 pages of esoteric bovine excrement to accomplish what Judge Newell did convincingly in 4 pages.

[§§ 321 **Court's Charge / Instructions & Definitions**]: Appellant claimed that the jury charge and verdict forms authorized a conviction only on the offense of assault on a public servant. The Court of Appeals rejected Appellant's claim that errors in the jury charge caused egregious harm," finding that "No harm resulted from the error in the jury charge because the jury convicted [Appellant] of assault on a public servant."

Holding: We could conceivably remand this case to the Court of Appeals to reconsider that claim in light of our opinion today, but there is no need to do so because the answer is obvious. As we explained earlier, the abstract-elements list in the jury charge, the application section of the jury charge, and the jury verdict form all included the words "Menard County Sheriff's Deputy" along with the "public servant" language. So, in conformity with the indictment, the jury was always explicitly required to find that the victim was a deputy sheriff and that Appellant knew that fact. While the better practice, even with this indictment, would have been for the jury charge to explicitly track the language of the "peace officer" provision in the assault statute, the language actually used still required the jury to find facts that necessarily satisfied all the elements of the offense of assault on a peace officer.