RECENT FEDERAL AND STATE CASES
2018 El Paso Roadshow

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FEDERAL

U.S. Supreme Court holds trial court must consider affidavit from juror regarding deliberations when it indicates another juror expressed anti-Hispanic bias during deliberations *Peña-Rodriguez v. Colorado*, 137 S. Ct. 855 (2017).

- Normally, no court can inquiry into any jury deliberations
- When D approached by jurors who signed affidavit noting 1 juror expressed extreme racial bias
- Court held in such a situation, the court must consider the affidavit testimony, even though during deliberations

U.S. Supreme Court holds officers at scene were not required to believe innocent explanations of suspects.

- *District of Columbia, et al. v Wesby, et al,* 138 S.Ct. 577, — U.S. – (January 22, 2018).
- Officers Called out to vacant house from noise complaint
- Discovered makeshift strip-club going on inside
- All partygoers said “Peaches said we could do this”

Wesby

- Officers arrest EVERYONE
- Partygoers – officers should have known they were duped by
  Peaches
- US Supreme Court held – A lot of good stuff for LE and cities

Wesby

- The U.S. Constitution does not require the officers to believe the partygoers given the circumstances surrounding them.
- Probable cause “does not require officers to rule out a suspect’s innocent explanation for suspicious facts.”
- Totality of Circumstances controls – not individual explanations
- A factor viewed in isolation is often more “readily susceptible to an innocent explanation” than one viewed as part of a totality

U.S. Supreme Court holds statutory deadlines are jurisdictional, court rule deadlines are not

- *Hamer v. Neighborhood Hous. Services of Chicago*, 138 S. Ct. 13, 199 L. Ed. 2d 249 (2017)
- Employment dispute – but not the focus of case
- Trial court granted MSJ for employer
- Hamer's attorney filed for 60 day extension to appeal (then withdraw)
- Employer asserted he can only extent appeal 30 days under FRCP (but did not raise until at COA)

Hamer

- Section 2107 of Title 28 of the U. S. Code, allowed different extensions, but none applicable to situation
- US Supreme Court - Seventh Circuit failed to grasp the distinction between jurisdictional appeal filing deadlines (from Congress)
- Vs. deadlines stated only in mandatory claim-processing rules (FRCP).
- Legislative deadlines are jurisdictional, FRCP are not
- Employer failed to preserve error for FRCP

U.S. 5th Circuit holds disabled individual did not request accommodation from officers performing field sobriety test so cannot sue for disability discrimination

- *Windham v. Harris County* 875 F.3d 229 (5th Cir. 2017)
- Windham was arrested on suspicion of driving while impaired after he rear-ended another car.
- Windham gave Dr. note showing cervical stenosis (which causes his head to dip forward abnormally).
- Was prescribed pain killers

Windham

- The deputy called a certified drug recognition expert – said not impaired enough to justify arrest
- 5th Cir. - critical component of failure to accommodate is proof "the disability and its consequential limitations were known by the [entity providing public services]."
- Mere knowledge of the disability is not enough; the service provider must also have understood "the limitations [the plaintiff] experienced . . . as a result of that disability."

Argued violation for the field tests

- Windham never directly requested an accommodation.
- His vague references he could do the test "… does not constitute the kind of clear and definite request for accommodations that would trigger the duty to accommodate under the ADA."


TX-10
A TEXAN'S MAP
OF THE
UNITED STATES
WASH TIN
MOUNT ANNIE
NORTH COLDER
ALL GONE
HI-HO
COLOR RADO
THE COLD (SOUTH)
YOU SAW
WHY HOME IN
KNEE GRASS
NEVER ADD
ARID ZONE
CAN THIS
OKAY?
NEW MIX (HICCUP)
CALIFORNIA AT ABLE
EL PASO
AMARILLO
LUBBOCK
ABILENE
SAN ANGELO
AUSTIN
SAN ANTONIO
CORPUS CHRISTI
LAREDO
BROWNSVILLE
MINT SODA
OUTA-WAY
MISERY
WISE COUSIN
ILL NOISE
AGAIN
INDIAN ANNIE
OLD HIGH
ARCH INSULT
"DAMNED YANKEE" LAND
WICHITA FALLS
FT. WORTH
DALLAS
WACO
TEX-ARKANA
TYLER
CANNED TURKEY
TEN SEEDS
ALL HAMMY
JUDGY
BEAUMONT
PORT ARTHUR
HOUSTON
GALVESTON
SWAMP LAND
GULF OF TEXAS

Texas Supreme Court holds, in matter of first impression, that sovereign immunity only "implicates" subject matter jurisdiction and does not equate to jurisdiction in all things. *Engelman Irrigation Dist. v. Shields Bros., Inc., 514 S.W. 3d 746 (Tex. 2017).*

- District was sued and lost prior to Sp Ct clarification on extent of immunity
- After judgments were final, Sp. Ct. clarified in other cases that cause of action against District were precluded by immunity
- District refused to pay judgment asserting immunity
- Supreme Court held balance between jurisdiction and finality of judgment
- Held immunity is not absolute issue in all things. So finality of judgment wins out

Texas Supreme Court holds lawyers and courts should not use Wikipedia for important issues. *D Magazine Partners, L.P. v. Rosenthal, 15-0790, 2017 WL 1041234 (Tex. Mar. 17, 2017).*

- Slander case – trial and COA used Wikipedia definition of “welfare queen” to make decision
- Sp Ct held Wikipedia is improper to use as basis for judgment
- Justice Guzman wrote separately to emphasis importance of using credible sources for important legal issues and Wikipedia does NOT count!

Texas Supreme Court holds attorney/client privilege, by itself, is a compelling reason not to release under the PIA even if an entity blows a deadline. *Paxton v. City of Dallas,* 509 S.W.3d 247 (Tex. 2017)

- Favorite Case of the Year
- Dallas got PIA, but failed to follow AG procedure timely. Missed deadline by 15 days
- Attorney/client privileged info involved
- AG said tough luck, Dallas waived it
- Supreme Court held attorney/client privilege is so important, it qualifies as a compelling justification for exemption, even if deadlines are blown

Justice Guzman

- “[r]obotic perfection by a governmental body’s public information officer is a statutory ideal, not an absolute requirement. To err is human, but to conduct a City’s legal affairs without the occasional error would require divinity.”

Texas Supreme Court changes the standards for terminating police officers under Chapter 614. *Colorado County, et al., v Marc Staff*, 510 S.W.3d 435 (Tex. 2017).

- Staff was indefinitely suspended after DA brought video of overly aggressive arrest with no justification to Chief's attention
- When given notice – Staff did not contest behavior but tried to point out noncompliance with Ch. 614 as basis
- Supreme Court changed application of Ch 614 in several areas

Texas Supreme Court Held

- 1) Staff was at-will so could be terminated with no notice unless written complaint filed – then Ch 614 applies
- 2) once written complaint filed – does not need to be written and signed by victim. Supervisor OK
- 3) Chief did not need to give 614 notice prior to investigation
- 4) Chief could act, then provide notice as long as mechanism existed to challenge
- 5) Ch 143 and 174 definition of “complaint” not applicable to Ch 614

City made a judicial admission by filing §101.106(e) motion to dismiss. Therefore, not entitled to jury question on course and scope.

- *Victor Ramos v. City of Laredo*, 04-17-00099-CV, 2018 WL 1511875 (Tex. App. – San Antonio, March 28, 2018, no pet. h).

- Ramos hit by another motorcyclist
- Said it was Guerra, PD motorcycle cop
- City first filed §101.106(e)
- Ramos dismissed Guerra

Ramos

- City got jury instruction Guerra was not in course and scope
- Guerra testified he was on leave
- Jury found no course and scope

Ramos

- By filing a §101.106(e) motion to dismiss, a governmental unit "effectively confirms the employee was acting within the scope of employment and that the government, not the employee, is the proper party."
- Justice Barnard wrote separately only to emphasize the 4th Court prognosticated this type of argument in 2011
- Warned not to flip/flop

Texarkana Court of Appeals holds county court at law has jurisdiction to hear PIA mandamus against city

- *Kenneth Craig Miller v. Gregg County*, , 06-17-00091-CV, 2018 WL 1386264 (Tex. App.—Texarkana Mar. 20, 2018, no pet. h.)
- Miller filed a suit under the PIA seeking a writ of mandamus in County Court at Law #2
- The PIA states "A suit filed by a requestor under this section must be filed in a district court for the county in which the main offices of the governmental body are located." TEX. GOV'T CODE ANN. § 552.321(b) (West 2017).
- After a statutory construction analysis, the Texarkana Court held §552.321(b) does not deprive a county court at law of its concurrent jurisdiction under §25.0003(a).

Filing a timely motion for new trial under the wrong cause number still invoked extended deadline for notice of appeal

- Fort Bend County v. Norsworthy, 14-17-00633-CV, 2018 WL 894050 (Tex. App.—Houston [14th Dist.] Feb. 15, 2018, no pet. h.)
- In a wrongful death/Texas Tort Claims Act case, Fort Bend County was sued by multiple plaintiffs.
- At least one plaintiff was severed and different orders were issued.
- County filed a motion for new trial with wrong cause number.
- Appeal attacked as untimely.

Norsworthy

- So as long as the appellant's efforts constituted a bona fide attempt to invoke appellate jurisdiction courts should construe them as successful.
- Record showed, at hearing, everyone knew correct case
- Filing a timely MFNT under the wrong cause number is bona fide attempt when no one is confused about the correct judgment

Get You Affidavits Correct

- *City of Dallas v. Lamb*, 05-16-01506-CV, 2017 WL 5987777 (Tex. App.—Dallas Dec. 4, 2017, no pet.)
  - Intersection near building

- *City of San Antonio v. Torres*, 04-17-00309-CV, 2017 WL 5472537 (Tex. App.—San Antonio Nov. 15, 2017, no pet.)
  - Looking both ways before entering intersection after STOP!

Not close enough to roadway for Special Defect

City of Arlington v. S.C., 02-17-00002-CV, 2017 WL 3910992 (Tex. App.—Fort Worth Sept. 7, 2017, no pet.)

The End…Well no…it never ends…

- TO BE CONTINUED…..