

# the Jasuta / Schulman report

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## TIBA's Case of the Week Fourth (San Antonio) Court of Appeals

**Case Name:** [Juan Antonio Rivera v. The State of Texas](#)

- **OFFENSE:** Aggravated Assault - Deadly Weapon
- **COUNTY:** Bexar
- **C/A CASE No.** 04-22-00391-CR
- **DATE OF OPINION:** July 24, 2024      **OPINION:** [Justice Beth Watkins](#)
- **DISPOSITION:** Conviction Affirmed
- **TRIAL COURT:** 379th D/C; Hon. Ron Rangel
- **LAWYERS:** [John Michael Lamerson](#) (Defense); [Eric R. Rodriguez](#) (State)

**(Background Facts):** On August 17, 2019, dispatchers sent paramedics and police to a residential address after receiving a report that a vehicle had hit a pedestrian. Inside the residence, paramedics found Sharee Valadez lying on a couch with bruises on her head, face, and body and a laceration on her leg. Valadez's boyfriend, Appellant, was also present. While Valadez initially told first responders she had been hit by a car, she eventually told a paramedic and a police officer that her boyfriend had hit her with a bat. San Antonio police officers arrested Appellant, and in October of 2019, a Bexar County grand jury indicted him for aggravated assault with a deadly weapon.

**[§ 550.14 Sufficiency of the Evidence / Trial Court Rulings / Motion for Continuance]:** Trial began on March 24, 2022, and the parties began presenting evidence to the jury the next day. Valadez did not appear at trial. The first witness, paramedic Geoff Stebbings, testified that he treated Valadez and did not believe her injuries were consistent with a car accident. Stebbings further testified that his EMS report indicated Valadez had told him her boyfriend hit her "numerous times" with a baseball bat. Both Stebbings and police officer Ann Garcia testified that they had not seen any signs of a collision near the residence or in the surrounding streets. Additionally, Garcia testified without objection that she "had received information that -- that it possibly wasn't an accident, that [Valadez] had been assaulted with a bat." At that point, neither Stebbings nor Garcia had specifically identified Appellant as Valadez's boyfriend/assailant, and the trial court had not heard any evidence or argument on the issue of forfeiture by wrongdoing. On the morning of March 28, 2022, Appellant filed a motion to suppress and a motion for continuance of the hearing on forfeiture by wrongdoing. In both motions, he contended the State first notified

him of the hearing on forfeiture by wrongdoing after jury selection on March 24, 2022, and he requested additional time to subpoena witnesses. The State objected to the motion for continuance, and the trial court deferred ruling on it until after it heard the State's evidence on forfeiture by wrongdoing. After hearing the State's evidence and Appellant's proffer of what his witnesses would have testified to, the trial court denied Appellant's requested continuance. On appeal, Appellant challenges the trial court's denial of his motion for a continuance for the hearing on the State's motion for forfeiture by wrongdoing.

**Holding:** [Appellant] argued below that he did not have adequate time to subpoena witnesses to testify at the March 28, 2022 forfeiture by wrongdoing hearing because the State did not notify him of the hearing until the afternoon of March 24, 2022 and did not provide him with a copy of its motion until the morning of March 25, 2022. On appeal, he argues the trial court abused its discretion and violated his right to due process by denying his motion for continuance. The State argues [Appellant] waived this issue because he did not raise a due process argument below. \*\*\* We will assume, without deciding, that [Appellant] preserved this issue for our review. The State first filed a motion seeking a hearing on forfeiture by wrongdoing on June 25, 2021, nearly nine months before the hearing took place. While [Appellant]'s counsel argued he was not aware of the motion until a few days before the hearing, the trial court could have reasonably concluded the motion was not an "unexpected occurrence" that developed after the trial began and "which no reasonable diligence could have anticipated[.]" \*\*\* Furthermore, "a bare assertion" that counsel did not have adequate time to prepare "does not alone establish prejudice." Heiselbetz v. State, 906 S.W.2d 500 (Tex.Cr.App. 1995)(see ¶¶, Vol. 3, No. 24;07/03/1995). Here, while it is true [Appellant] did not present witnesses during the forfeiture by wrongdoing hearing, the trial court allowed his counsel to explain that his witnesses would have testified that Valadez executed multiple waivers of prosecution "under her own steam, under no threats[.]" The court expressly considered that proffer when it ruled on both [Appellant]'s motion for continuance and the State's motion for forfeiture by wrongdoing. However, it also considered the State's evidence, which -- as explained more fully below -- consisted of recorded phone calls and a letter in which [Appellant] specifically asked Valadez to sign a waiver of prosecution. On this record, we cannot say [Appellant] has shown the denial of his motion for continuance resulted in actual prejudice to his defense. \*\*\* For these reasons, the trial court did not abuse its discretion by denying [Appellant]'s requested continuance.

### Sidebars

([David A. Schulman](#)) This holding is correct. It's not enough to show that a late filing was a surprise. You also have to show harm and simply saying your client was harmed won't cut it. There has to be something to back up the argument.

**¶¶ 294.11 Hearsay & Confrontation / Forfeiture by Wrongdoing**: After the trial court granted the State's motion for forfeiture by wrongdoing, Garcia subsequently testified that Valadez told her Appellant had hit her with both a bat and a belt. Other police officers testified that Valadez's

statements to Garcia were consistent with their review of the evidence in this case. On appeal, Appellant challenges the trial court's ruling on the State's motion for forfeiture by wrongdoing. Appellant does not dispute that Valadez was unavailable to testify. He argues only that the State did not establish he "committed any wrongdoing" or "deprived the trier of fact of relevant evidence and testimony."

**Holding:** The State was not required to show that [Appellant]'s sole intent was to cause Valadez's unavailability or that his conduct in procuring her unavailability constituted a criminal offense. "Wrongful conduct need not be violent or explicitly threaten physical harm . . . it may also include intimidation, harassment, offering a bribe, encouraging or pressuring an individual not to testify, leveraging financial dependence, threatening to report a prospective witness to CPS, or instructing a witness on how to avoid service." *Mohsin v. State*, No. 03-22-00175-CR (Tex.App. - Austin; 04/30/2024)(see [§§](#), [Vol. 32, No. 18](#); 05/13/2024). \*\*\* [Appellant] does not dispute that Valadez was unavailable to testify. He argues only that the State did not establish he "committed any wrongdoing" or "deprived the trier of fact of relevant evidence and testimony." \*\*\* During the forfeiture by wrongdoing hearing, the State presented a letter [Appellant] wrote to Valadez in which he urged her to sign an affidavit of non-prosecution and told her, "Remember, everything that belongs to me is yours!" The State also presented several recorded phone calls [Appellant] made to Valadez and others from the Bexar County Jail. In a November 13, 2019 call to his sister, [Appellant] said, "I'm gonna hope that she doesn't go to court. If she don't go to court, you know, I got this. . . . There's really no witnesses. . . . And it's her word against mine. And I don't think she's gonna show up, either [sic]." In a January 21, 2020 call, [Appellant] instructed another individual to call Valadez and ask her to sign a waiver of prosecution, stating, "Tell her I need it as soon as possible. Tell her that I'm gonna write to her and I'm gonna tell her what to say [sic]." In calls to Valadez herself, [Appellant] repeatedly urged her not to appear at trial and to refuse or block the State's attempts to obtain her testimony. \*\*\* Throughout these phone calls, Valadez repeatedly responded to [Appellant]'s instructions with, "Yes, sir." \*\*\* Based on this evidence, the trial court did not abuse its discretion by granting the State's motion for forfeiture by wrongdoing.

#### Sidebars

([David A. Schulman](#)) Those damn phone calls from the jail will get ya' every time.

([John G. Jasuta](#)) He was warned they were being recorded.

**§ 531 Sufficiency of the Evidence / Aggravated Assault:** Appellant argues the evidence was insufficient to support the jury's findings that he: (1) intentionally, knowingly, or recklessly caused bodily injury to Valadez; (2) struck Valadez with a bat; and (3) used a bat as a deadly weapon.

**Holding:** [Appellant] argues the evidence is insufficient to support a finding that he intentionally, knowingly, or recklessly caused bodily injury to Valadez. He further contends that there is no evidence that Valadez was struck with a bat. We disagree. \*\*\* Although no bat was recovered or introduced as evidence, the jury saw pictures of bruises, bumps, and cuts on Valadez's body and

heard testimony that the injuries shown in the pictures were consistent with being struck by a bat. \*\*\* The jury also heard Stebbings's and Garcia's testimony that they did not see any signs indicating Valadez had been injured in a car accident and that Valadez told them her boyfriend hit her with a baseball bat. \*\*\* Additionally, the jury heard Garcia's testimony that Valadez identified [Appellant] as the boyfriend who had hit her with a bat. \*\*\* Garcia also testified that she performed a domestic violence assessment with Valadez consisting of "questions that ask about violence that has occurred in the past and in the present between the victim and the suspect." The assessment Garcia used results in a numerical score, and she explained that if the score is "22 or above, we [police] suggest highly that you go to a shelter[.]" \*\*\* Valadez's assessment of her relationship with [Appellant] resulted in a score of 85. Garcia testified that she would not have performed this assessment if she believed Valadez's original story that she had been hit by a car. \*\*\* Furthermore, Stebbings testified that before he transported Valadez to the hospital by ambulance, Valadez's boyfriend -- who Garcia later identified as [Appellant] -- was "very nervous, very diaphoretic, which is sweaty, and pacing back and forth, going from one room to the other, and we were just trying to keep our eyes on him, too. . . . [H]e was very jittery and all over the place. . . . We didn't feel comfortable in the house." The jury could have rationally inferred that this testimony about [Appellant]'s "unsettled demeanor" showed his consciousness of his own guilt. \*\*\* Moreover, the same jail phone calls the trial court considered during the forfeiture by wrongdoing hearing, plus several other similar calls, were admitted into evidence at trial. Based on those phone calls, the jury could have rationally inferred that [Appellant] engaged in "attempts to tamper with a witness" that showed his consciousness of his guilt. \*\*\* We note, moreover, that while Valadez herself did not testify at trial, two police officers testified it is common for domestic violence victims to refuse to cooperate with law enforcement and prosecutors. \*\*\* [Appellant] also argues there is no evidence to support a finding that a bat is a deadly weapon. \*\*\* Here, [Appellant] himself elicited testimony from a police officer that a bat can be used with sufficient force to "make it lethal." \*\*\* Furthermore, Stebbings testified that Valadez's injuries were "significant," she reported pain of ten out of ten, and her leg looked "deformed." \*\*\* Based on this evidence, the jury could have rationally found beyond a reasonable doubt that [Appellant] intentionally, knowingly, or recklessly caused bodily injury to Valadez, that he used a bat to do so, and that he used the bat in a manner that was capable of causing death or serious bodily injury.

**(68) 201 Trial Courts / Treatment of Defendant (Defendant not Present)**: Appellant argues the trial court abused its discretion by conducting a pre-trial hearing in his absence on June 30, 2021. On that day, the State informed the trial court that it "want[ed] to put . . . on the record" that it had subpoenaed Valadez; she had thus far failed to appear; and the State had filed a motion "requesting a forfeiture by wrongdoing hearing" because it believed Appellant had "procured" her absence. The State further represented that Appellant's counsel was "aware that there would be a motion for forfeiture by wrongdoing, that there would be jail calls that [the State] would be including, and he received a hard copy of the jail calls today." Neither Appellant nor his trial counsel were present during these statements. The State represented to the trial court that

Appellant’s counsel “said that we could proceed with just putting this on the record today,” and the trial court coordinator confirmed he had “verified that with” her.

**Holding:** We will assume, without deciding, that [Appellant]’s presence was required during the June 30, 2021 proceeding. \*\*\* The trial court did not hear evidence on the State’s forfeiture by wrongdoing motion on June 30, 2021. Accordingly, neither [Appellant]’s presence nor his counsel’s presence was necessary to defend against the motion on that date. \*\*\* Furthermore, the trial court did not rule on the State’s motion or make any other “binding decisions adverse to” [Appellant] during that hearing. As a result, we see nothing in the record to support a conclusion “that the discussions [that occurred that day] substantially influenced the jury’s decision.” \*\*\* Any error in proceeding without [Appellant] on June 30, 2021 was harmless.

**Ed Note:** The Court of Appeals also rejected Appellant’s claim that he was denied the effective assistance of counsel.