the Jasuta / Schulman report

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TIBA's Case of the Week

Corpus Christi Court of Appeals

Case Name: ***Deira Alan Glover v. The State of Texas***

- **OFFENSE**: Sexual Abuse and Online Solicitation of a Minor
- **COUNTY**: Cameron
- **C/A CASE No**. 13-23-00533-CR
- **DATE OF OPINION**: May 1, 2025 **OPINION**: Justice Ysmael Fonseca
- **DISPOSITION**: Conviction Affirmed
- **TRIAL COURT**: 357th D/C
- **LAWYERS**: Lawrence Rabb (Defense); Vanessa Gonzalez (State)

(**Background Facts**): On May 5, 2021, a grand jury indicted Appellant for continuous sexual abuse against two minors, M.G. and "Victim 1," for two or more acts that allegedly occurred between May 14, 2020, and October 11, 2020. Appellant was also indicted on multiple counts of online solicitation of a minor under fourteen, online solicitation of a minor with intent that the minor engage in sexual contact, and improper relationship between an educator and student. On January 24, 2022, the State filed its "First Amended Notice of Intent to Use Outcry Statement of Child Abuse Victim" notifying Appellant that it intended to use the outcry statement "Victim 1" made to her mother on October 11, 2020, as well as several other outcry statements from other alleged victims. On July 13, 2022, Appellant's counsel moved for a pretrial hearing, for discovery including Brady material, and for a list of trial witnesses. On August 4, 2022, the State provided discovery materials. Of relevance, this material included a Combes Police Department (CPD) "Criminal Case Report" identifying Appellant as a suspect for aggravated sexual assault of the minor child identified as "Victim 1" who was an eleven year-old white female when the alleged offense occurred. The discovery materials included investigation reports detailing that Appellant was suspected of sexual contact with "Victim 1" and sending sexually explicit messages online to her. Her mother's full name is identified, and the discovery materials included DNA testing showing the presence of Appellant's DNA on clothing belonging to "Victim 1."

[§§ 22 **Charging Instruments / Notice Requirements (Notice Not in Charging Instrument)**]: On August 1, 2023, Appellant filed his "Motion to Quash Indictment" on the basis that it was overly

vague because it failed to identify "Victim 1." The trial court held a pretrial hearing on the same day. At the hearing, Appellant's counsel argued that "Victim 1" was not a sufficient identifier for a victim under Article 21.07, C.Cr.P., and that the indictment should be quashed as a result. Appellant further argued that the identifier did not enable him to prepare a sufficient defense. The State replied that the identity of "Victim 1" was available to Appellant for at least a year in the discovery materials. The trial court agreed and denied Appellant's motion. On August 7, 2023, Appellant entered a guilty plea. Appellant pled guilty to aggravated sexual assault of a child, online solicitation of a minor, online solicitation of a minor with intent that the minor engage in sexual contact, and improper relationship between educator and student. On appeal, he argues the trial court erred by denying his motion to quash the indictment.

Holding: [Article 21.07, C.Cr.P.] states that as part of an indictment "it shall be sufficient to state one or more of the initials of the given name and the surname" when stating the name of a necessary person for the indictment. *** In evaluating the materiality of a complaint that a victim's name does not match the indictment, we consider whether the defendant had sufficient notice of his accuser's identity and whether the variation could subject the defendant to another prosecution for the same offense. ***Fuller v. State***, 73 S.W.3d 250 (Tex.Cr.App. 2002)(see 🙾, Vol. 10, No. 13; 04/01/2002). *** Notably, while an indictment is required to state the name of the accused, there is no explicit statutory requirement that a victim be named. While Appellant contends that the indictment must name "Victim 1" by her full name or initials, the statute [Art. 21.07] merely states that "it shall be sufficient" to state the initials of a "person necessary to be stated in the indictment." Even assuming the alleged victim is a "person necessary to be stated in the indictment," this does not impose a mandatory requirement that a victim be named by their full name but provides an option for the indictment to use initials. Moreover, nowhere does the statute forbid the use of a pseudonym such as "Victim 1" in place of a person's name. Absent a statutory mandate, Appellant's complaint can only be sustained if his substantial rights were prejudiced. Per the nature of Appellant's complaint, his substantial rights are only prejudiced if he did not have sufficient notice of the identity of "Victim 1" or if he could be subject to another prosecution for the same offense for conduct against "Victim 1." *** The record indicates Appellant had notice of the identity of "Victim 1" for over a year prior to his guilty plea. The true name of "Victim 1" was abundantly clear in the discovery materials that the State produced on August 4, 2022. Many documents from the CPD detailing their investigation identify "Victim 1" by her name, sex, age, and online usernames. Records also indicate that DNA testing was conducted on "Victim 1"'s clothing to find Appellant's DNA. "Victim 1"'s parents were also identified in the discovery materials provided. The State filed a notice of intent to use the outcry statement that "Victim 1" made to her mother. Moreover, Appellant's counsel identified "Victim 1"'s initials in an August 1, 2023 pretrial motion and conceded at the August 1, 2023 pretrial hearing that he had possession of the reports identifying "Victim 1" by her actual name. Therefore, Appellant's substantial rights were not prejudiced by using a pseudonym to identify the victim in the indictment. See ***Stevens v. State***, 891 S.W.2d 649 (Tex.Cr.App. 1995)(see 🙾, Vol. 3, No. 1; 01/30/1995).

(**John G. Jasuta**) With these facts it was an uphill battle.

(**David A. Schulman**) While I don't specifically recall writing the ***Stevens*** summary or discussing it at "Dave's Bar Association" meeting on Thursday 02/02/1995, I'm 99% certain that meeting would have been when I began telling defense lawyers to look at the **actual** notice they had received, **not** the notice they had received in the charging instrument. Thirty years on and my advice is the same. IMHO, the recent cases of ***Crawford v. State*** (No. PD-0243-23)(see ꝓ, Vol. 33, No. 12; 2025); ***State ex rel Newell*** (No. 03-25-00096-CV)(see ꝓ, Vol. 33, No. 16; 04/28/2025); and ***Gutierrez v. State*** (No. PD-0480-24)(see ꝓ, Vol. 33, No. 15; 04/21/2025), prove this point.