the Jasuta / Schulman report

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TIBA's Case of the Week

First Court of Appeals

Case Name: ***Corey Terrell Mayweather v. The State of Texas***

- **OFFENSE**: Promotion of Prostitution
- **COUNTY**: Harris
- **C/A CASE No**. 01-23-00614-CR
- **DATE OF OPINION**: May 22, 2025 **OPINION**: Justice Clint Morgan
- **DISPOSITION**: Conviction Affirmed
- **TRIAL COURT**: 178th D/C; Hon. Kelli Johnson (Psych Eval), Vanessa Velasquez (***Faretta*** Hearing), Reagan Clarke (Voir Dire), & Marc Brown (Trial)
- **LAWYERS**: Daucie Schindler (Defense); Jessica Caird (State)

(**Background Facts**): An anonymous tipster told Houston police a woman was recruiting juveniles for a prostitution ring. The tipster gave police information about the woman and images of prostitution advertisements the woman had supposedly placed. An undercover detective texted the phone number on the advertisements and set up a meeting. At the meeting, the woman, A.H., agreed to an act of prostitution. Police arrested her and seized her phone. Police got a search warrant for the phone. Rather than finding evidence of A.H. running a juvenile prostitution ring, they found evidence A.H. was being pimped out by the Appellant. The State admitted hundreds of pages of text messages from the phone. The messages showed that A.H. reported her prostitution activities -- including how much she earned -- to the Appellant, the Appellant gave A.H. quotas for how much money she needed to earn from prostitution, and the Appellant would arrange meetings for A.H. and on at least some occasions give her rides to prostitution activities. In the text messages, the Appellant told A.H. he was not her boyfriend, rather they had a "p and ho" relationship. A member of the Houston Police Department's vice squad testified that was slang for a pimp and prostitute relationship.

[§§ **539.02 Sufficiency of the Evidence / Sexual Offenses / Promotion of Prostitution**]: Appellant claims the evidence is legally insufficient to support his conviction.

Holding: [The] Appellant claims the evidence is legally insufficient to support his conviction. The Appellant does not specify which element the evidence failed to prove or how the evidence failed to prove it. Instead, his point consists of stating the standard of review, describing the evidence --

most of which points toward his guilt -- then concluding that "[t]here was legally insufficient evidence that [the Appellant] committed the offense of promotion of prostitution because the evidence failed to establish that 'while acting other than as a prostitute receiving compensation for personally rendering prostitution services, he knowingly . . . solicit[ed] [A.H.] to engage in sexual conduct with another person for compensation.'" That's every element of the charged offense. *** We find this point was inadequately briefed. *** [If] an Appellant does not present an argument, "an Appellate court has no 'obligation to construct and compose [an] Appellant's issues, facts, and arguments with appropriate citations to authorities and to the record.'" ***Wolfe v. State***, 509 S.W.3d 325 (Tex.Cr.App. 2017)(see ֍, Vol. 25, No. 6; 02/20/2017). *** By claiming the evidence is insufficient without explaining how, the Appellant is inviting us to make arguments for him. Doing so would require abandoning our role as impartial arbiter, so we decline the invitation. *** In its brief, the State notes the vagueness of the Appellant's point but responds by arguing the sufficiency of the evidence to prove the elements of the offense. In his reply brief, the Appellant presents a short argument critiquing the State for not using its brief to argue the evidence was sufficient to identify him as the sender of the text messages. The Appellant's reply brief relies on a case from 1979 and a case from 1981 to claim that phone records connecting a defendant to a particular phone number are not enough to prove the defendant used the phone on a particular occasion. *** We need not address this argument because it was raised for the first time in a reply brief. ***Chambers v. State***, 580 S.W.3d 149 (Tex.Cr.App. 2019)(see ֍, Vol. 27, No. 24; 2019)(holding intermediate court should have addressed argument raised in reply brief that was "related" to argument in original brief, but contrasting that to situation where "the defendant raises a completely different sufficiency challenge for the first time in a reply brief"). *** In the interest of justice, we will note that the Appellant's argument fails. The cases relied on by the Appellant, ***Steinhauser v. State***, 577 S.W.2d 257 (Tex.Cr.App. 1979), and ***Wolfe v. State***, 620 S.W.2d 602 (Tex.Cr.App. 1981), were telephone harassment cases. As one would expect from their vintage, in those cases the phone records showed the harassing calls came from phone numbers associated with the defendants' homes, but did not show who made the phone calls. In contrast, the phone records here regarded a cell phone, which is more directly connected to an individual than is a landline. The State's evidence showed the cellular account for the phone was in the Appellant's name, the Appellant listed the phone number as his on a pawn receipt contemporaneous with the pimping text messages and on his bail bond after his arrest, A.H. had pictures of the Appellant in her phone, and A.H. used the Appellant's name at least once in the text messages. The Appellant's reply brief does not address this evidence or explain how it is insufficient.

[֍ **122.01 Right to Counsel / Waiver of Right to Counsel / Self Representation**]: [The] Appellant argues the trial court erred by allowing him to waive his right to counsel and exercise his right to self-representation.

Holding: The Appellant claims he was not made aware of the dangers and disadvantages of self-representation. As the State correctly notes, the record belies this claim. There's a volume of the reporter's record titled "Faretta Hearing" where the trial court gave the Appellant what are

commonly called "***Faretta*** warnings" and the Appellant acknowledged them. The trial court advised the Appellant he would be held to the same standard of conduct as a lawyer during trial, that he would have to "comply with the same technical rules of evidence and Appellate procedure" as a lawyer, that his lack of formal legal training could lead him to waive claims by failing to make proper objections and offers, and that he would be unable to raise an ineffective-assistance-of-counsel claim based on his own performance. *** The Appellant's brief seems to argue the Faretta hearing doesn't count because it was conducted months before trial by a judge who did not preside at trial. The Appellant cites no authority suggesting each judge to preside in a case must provide ***Faretta*** warnings and inquire into a *pro se* defendant's competence. The warnings ensure the defendant is aware of his rights and of the dangers of self-representation. Changing judges on a case should not alter the defendant's awareness of these things. *** The Appellant also claims he was not competent to assert his right to self-representation. The Appellant points to his "admission to being autistic and presenting as being paranoid" as evidence of incompetence. At the ***Faretta*** hearing the Appellant told the trial court he was home-schooled because he was autistic. The trial court noted it did not appear the Appellant had "any problems communicating." The Appellant said he was "able to perform out of it" "because of [his] mother's good skills." *** The record supports the trial court's finding that the Appellant's decision to exercise his right of self-representation was made competently, knowingly, intelligently, and voluntarily. The trial court did not err by allowing the Appellant to waive his right to counsel and exercise his right to self-representation.

Sidebars

(David A. Schulman) It's an old story. Very often, our clients are their own worst enemy. That certain appears to have been the case here. Moreover, as an aside, I know this office has an at least unwritten policy against filing motions to withdraw and briefs under ***Anders v. California***, 386 US 738 (1967). That policy should have been ignored in this case.

(John G. Jasuta) Probably had ineffective assistance of counsel but he asked to do it to himself. Moral: "Be careful what you ask for."