

the Jasuta / Schulman report

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TIBA's Case of the Week

Court of Criminal Appeals

[Case Name]: *Jemadari Chinua Williams v. The State of Texas*

- **OFFENSE:** Aggravated Promotion of Prostitution
- **COUNTY:** Kerr
- **COURT OF APPEALS:** San Antonio 2025
- **C/A CITATION:** 720 S.W.3d 454
- **C/A RESULT:** Trial Court Affirmed
- **CCA. CASE No.** PD-0692-25 **DATE OF OPINION:** August 20, 2026
- **DISPOSITION:** Court of Appeals Reversed
- **OPINION:** [Judge Lee Finley](#) **VOTE:** 3-4-2
- **TRIAL COURT:** 198th D/C; Hon.
- **LAWYERS:** [Mark Bennett](#) (Defense); [David Schulman](#) and [Stephen Harpold](#) (State)

[Ed. Note]: Mr. Schulman worked with the State in this case. As per TIBA's policy, the summary was prepared by Mr. Jasuta, who was not involved in the case.

[Background Facts]: Appellant was charged with aggravated promotion of prostitution in an indictment which alleged that he "did then and there knowingly own, invest in, finance, control, supervise, or manage a prostitution enterprise that used at least two prostitutes." Appellant filed a pre-trial motion to quash, which the trial court denied. After a jury trial, Appellant was convicted and was sentenced to 40 years' confinement.

[Procedural History]: On direct appeal, the Court of Appeals reversed. *Williams v. State*, 668 S.W.3d 59 (Tex.App. - San Antonio 2022) ("*Williams I*") [see 668, [Vol. 30, No. 15](#); 05/02/2022; and [Vol. 30, No. 39](#); 10/24/2022). The Court of Appeals reasoned that Appellant did not "receive[] pretrial notice of the State's theory against which he would have to defend." The Court of Criminal Appeals granted the State's petition for discretionary review and reversed the Court of Appeals, holding that the State was not required to elect between different statutory manners and means alleged in the indictment. *Williams v. State*, 685 S.W.3d 110 (Tex.Cr.App. 2024) ("*Williams II*") [see

§§, Vol. 32, No. 2; 01/15/2024]. On remand, the Court of Appeals granted Appellant permission to file a supplemental brief which argued that “[t]he trial court erred in denying [Appellant’s] motion to quash because the indictment used undefined terms of indeterminate or variable meaning, and more specific pleading was required” under State v. Mays, 967 S.W.2d 404 (Tex.Cr.App. 1998)[see §§, Vol. 6, No. 15; 04/20/1998]. The Court of Appeals agreed with Appellant and once again reversed his conviction. Williams v. State, 720 S.W.3d 454 (Tex.App. - San Antonio 2025)(“Williams III”)[see §§, Vol. 33, No. 27; 07/21/2025].

§§ 512.041 Procedures at Court of Appeals following Reversal at Court of Criminal Appeals]:

The State posits that Appellant’s Mays claim should not be framed as unassigned error for two reasons. First, relying on Granviel v. State, 723 S.W.2d 141 (Tex.Cr.App. 1986), the State argues that Appellant raised the Mays claim in Williams II and this Court’s opinion in Williams II resolved Appellant’s Mays claim. Second, the State argues that Appellant’s Mays claim “is a subsidiary question of an already addressed point of error based on the fact that Appellant had already raised an indictment notice claim.”

[Holding / Unassigned Error]: The State argues that Williams II resolved Appellant’s Mays claim. A review of this Court’s opinion in Williams II belies that assertion. *** [Nowhere] in the Court’s opinion in Williams II is any discussion of Mays or Appellant’s contention that Section 43.04(a)’s six statutory methods are undefined terms of indeterminate or variable meaning. There was nothing in Williams II that prevented the Court of Appeals from addressing Appellant’s Mays contention on remand. *** The State cites this Court’s decision in Ex parte Carter, 721 S.W.3d 341 (Tex.Cr.App. 2025)[see §§, Vol. 33, No. 29; 08/04/2025], for the proposition that “procedures on remand from the Court of Criminal Appeals, however, are limited by that dictated in the remand Order.” In Williams II, this Court remanded the present appeal to the Court of Appeals “to address Appellant’s remaining points of error.” But Ex parte Carter is a *habeas* case, which operates under a wholly distinguishable set of procedures. *** We decline the State’s invitation to extend Ex parte Carter beyond the realm of *habeas* jurisprudence.

[Holding / Subsidiary Issues]: Appellant’s Mays claim is not a “subsidiary question” of Appellant’s challenge to the trial court’s denial of his motion to quash raised by Appellant on direct appeal and that this Court rejected in Williams II. [The election argument that this Court rejected in Williams II] is distinct from the question of whether the statutory language in Section 43.04 uses terms of indeterminate or variable meaning, the Mays claim that Appellant raised as unassigned error on remand from Williams II. Put another way, both Appellant’s Mays claim and the [Ferguson v. State, 622 S.W.2d 846 (Tex.Cr.App. 1981)] issue that this Court rejected in Williams II are “subsidiary question[s]” to a general defective notice claim on direct appeal. But Appellant did not raise such a claim on direct appeal. Rather, he raised a narrow claim based on the State’s alleged failure to elect between different means of committing the charged offense. This Court

rejected that challenge in [Williams II](#). Nothing in this Court's ruling in [Williams II](#) prevented the Court of Appeals from addressing another related defective notice challenge on remand.

[§§ 22.011 Charging Instruments / Notice Requirements / Alternative Methods of Committing the Offense]: The Court determined that, "What remains are two related questions on the merits." First, did the Court of Appeals err when it held that Section 43.04(a)'s six statutory methods -- "owns, invests in, finances, controls, supervises, or manages" -- are undefined terms of indeterminate or variable meaning? Second, if the statutory methods are undefined terms of indeterminate or variable meaning, was Appellant harmed?

[Holding]: We assume, without deciding, that the trial court erred by declining to quash Appellant's indictment and proceed to the question of harm. In [Williams III](#), the Court of Appeals concluded that Appellant was harmed by the defects in the indictment. We disagree. *** Article 21.19 of the Code of Criminal Procedure provides: "An indictment shall not be held insufficient, nor shall the trial, judgment, or other proceedings thereon be affected, by reason of any defect of form which does not prejudice the substantial rights of the defendant." *** This Court has previously explained the proper harm analysis under Article 21.19: "*The first step is to decide whether the charging instrument failed to convey some requisite item of "notice." If sufficient notice is given, this ends our inquiry. If not, the next step is to decide whether in the context of the case, this had an impact on the defendant's ability to prepare a defense, and, finally, how great an impact.*" [Sanchez v. State](#), 120 S.W.3d 359 (Tex.Cr.App. 2003)[see §§, [Vol. 11, No. 45](#); 11/24/2003], quoting [Adams v. State](#), 707 S.W.2d 900 (Tex.Cr.App. 1986). We consider the entire record in making the [Adams](#) determination. The "due process requirement may be satisfied by means other than the language in the charging instrument. When a motion to quash is overruled, a defendant suffers no harm unless he did not, in fact, receive notice of the State's theory against which he would have to defend." [Kellar v. State](#), 108 S.W.3d 311 (Tex.Cr.App. 2003)[see §§, [Vol. 11, No. 24](#); 06/23/2003]. *** On the question of whether the lack of notice affected Appellant's ability to prepare a defense, the Court of Appeals [In [Williams III](#)] reasoned: "*The record reflects that it was not until opening statement that the prosecution gave any indication how it intended to show [Appellant] committed the offense: 'So you are going to hear actual conversations with [the undercover investigators] talking about him operating and managing to get these prostitutes up to our county and to bring drugs with them at a cost, okay?'*" The Court of Appeals further reasoned that Appellant "*had no response to this accusation; his only defense was the women found in the car with him were not prostitutes.*" *** The Court of Appeals' analysis is not supported by the record. First, contrary to the Court of Appeals' assertion, the record supports the conclusion that the State complied with its obligations under Article 39.14 and the Michael Morton Act. *** We need not address whether [[Buchanan v. State](#), 911 S.W.2d 11 (Tex.Cr.App. 1995)]'s underpinnings apply here because the record shows that both the State's trial prosecutor and Appellant's own trial counsel confirmed that the State complied with its discovery obligations. *** Consequently, the record refutes the Court of Appeals' assertion that the State's discovery obligations under the Michael Morton Act and Code of Criminal Procedure 39.14 were not

complied with. *** Second, the “actual conversations” that the State referred to in opening statements as evidence of Appellant’s involvement in the prostitution enterprise were known to Appellant prior to trial. In fact, they were the subject of a motion to suppress hearing that was litigated the same day as the motion to quash hearing. Appellant filed a motion to suppress on October 29, 2019. In it, Appellant claimed that “statements obtained from” him “were obtained in violation of Article 38.22 of the Texas Code of Criminal Procedure.” *** Moreover, the rest of the evidence that the State was going to use to prove its case against Appellant was also known to Appellant at the time of trial. *** Lastly, even with all of this evidence provided to him, Appellant chose to deny the existence of prostitution enterprise rather than dispute his participation in the prostitution enterprise. Appellant’s notice claim that the Court of Appeals addressed on remand in [*Williams III*](#) centered on whether the statutory terms in the indictment sufficiently defined the possible actions by which Appellant was involved in the prostitution enterprise. Had Appellant admitted the existence of such an enterprise and instead attacked how he was involved in the enterprise as a defensive theory, this case may very well be different. But by disavowing the existence of prostitution enterprise entirely, any inadequacies in defining the statutory terms did not harm Appellant. *** On this record, assuming without deciding that the indictment failed to convey adequate notice, we conclude that Appellant was not harmed.

[Concurring / Dissenting Opinions]: [Judge Gina Parker](#) filed a concurring opinion in which **Judge Mary Lou Keel** joined. She agreed that the error, if any, was harmless, but articulated other reasons why “Appellant’s notice claim fails.” She opined that everything “Appellant did with the prostitution enterprise was all one offense anyway.” **Judge David Newell** and **Judge Jesse McClure** both dissented without note.

Sidebars

[Joseph Varela]: [*Adams v. State*](#), 707 S.W.2d 900 (Tex.Cr.App. 1986), implies that if the defense gets enough discovery from the State, that will obviate any claim that the charging instrument is defective for lack of notice. There are numerous cases that follow [*Adams*](#) but the bottom line is that it is almost impossible to win on lack of notice in a charging instrument. What’s interesting about this case is the defense lawyer conceding he had received “all the discovery.” The opinion treated this assertion as conclusive. In pretrial conferences when I’m asked that question, I’m careful not to say I’ve received “everything,” or words to that effect; I will concede only that whatever the State has made available, I have reviewed.

[John G. Jasuta] Joe, [*Adams*](#) didn’t just “imply” that sufficient discovery will render a defect in the charging instrument harmless, it flat out held it. Moreover, the Court in [*Kellar*](#), also cited in the Court’s opinion, announced it more specifically: “*When a motion to quash is overruled, a defendant suffers no harm unless he did not, in fact, receive notice of the State’s theory against which he would have to defend.*” Based on my experience, I believe the tenor of the case law on “notice” is that notice required by due process may be satisfied

by means other than the language in the charging instrument. It could be the charging instrument, the formal discovery process, or something as simple as an email from the prosecutor.

[\[Michael F. Stauffacher\]](#) Not surprised by the Court's reversal of the appellate court, backstopped by (as always) harmless error. I wish Judge Newell would have explained why he was dissenting. Perhaps the thin gruel of trial counsel's completely generic statement (P. 17) that he had received all required discovery under 39.14 supporting a complete refutation of any allegation of the State's non-compliance? Who knows?