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68 Vol. 9, No. 7, February 19, 2001

Case Name: [Ex parte Eva Dianna Tamez](#)

- OFFENSE: Pre-Trial Habeas Corpus
- COURT OF APPEALS: Houston [1st] 1999
- C/A CITATION: 4 S.W.3d 854
- C/A RESULT: Denial of Relief Affirmed
- COUNTY: Ft. Bend
- CRIM. APPEALS No. 1857-99 through 1862-99
- DATE OF OPINION: February 14, 2001
- JUDGE: Johnson, J.
- DISPOSITION: Court of Appeals Affirmed

68 63 Challenges to Prosecution / Statute of Limitations - Appellant filed pre-trial habeas corpus applications, claiming that the instant prosecutions were barred by the statute of limitations. The trial court denied relief. On appeal, Appellant argued that Penal Code § 37.06 requires the state to show inconsistent statements, made under oath, without proving which statement is actually false. She further argued that her first statement of December 5, 1995, which she claims to have been the false statement, was outside the two-year statute of limitations, thus preventing it from being an element of the prosecution for the second statement made December 2, 1997. The Court of Appeals determined that the applicable limitations period for aggravated perjury was two years, and found that the charges of aggravated perjury based on inconsistent statements were within the limitations period, even if the first inconsistent statement was not. The Court of Appeals then affirmed the denial of relief (see [Greenwood & Schulman, Vol. 7, No. 39](#); October 4, 1999; and [Vol. 7, No. 40](#); October 11, 1999).

Holding: Once the Court of Appeals determined that the applicable statute of limitations for aggravated perjury is two years and that the second, charged date was within the statute, it was proper to go no further. Under the above exception, only the face of the pleading is considered when determining whether relief is warranted. The various indictments specify the “date of offense” as December 2, 1997. Because the indictment was issued on September 14, 1998, a date less than two years after the alleged date of the offense, the pleading, on its face, does not show that the offense charged is barred by limitations. Therefore, Appellant was not entitled to pre-trial habeas corpus relief.