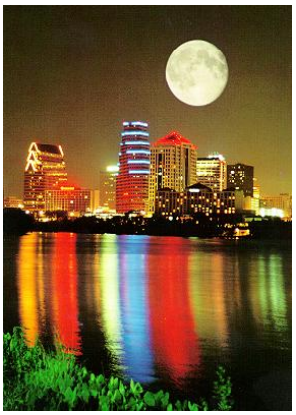

One Fabulous Skyline

TIBA TEXAS INDEPENDENT BAR ASSOCIATION

Post Office Box 783
Austin, Texas 78767
Tel. 512-354-7823
Fax: 512-532-6282

Web Site: www.texindbar.org

Vol. 9, No. 38 - September 24, 2001

Case Name: Bennett Weise v. The State of Texas

- OFFENSE: Pre-Trial Habeas Corpus (Illegal Dumping)
- COURT OF APPEALS: Houston [1st] 2000
- C/A CITATION: 23 S.W.3d 449
- C/A RESULT: Trial Court's Denial of Relief Reversed
- COUNTY: Harris
- C.C.A. CASE No. 1425-00
- DATE OF OPINION: September 19, 2001
- JUDGE: Keasler, J.
- DISPOSITION: Court of Appeals Reversed

114 Habeas Corpus at Trial Court Level / Cognizibility of Issues: Appellant was charged with illegal dumping in an information that did not allege any culpable mental state. He filed an application for writ of pre-trial habeas corpus, claiming that, because the information did not allege a culpable mental state, the statute was unconstitutional as to him. The trial court issued the writ but denied the requested relief. The Court of Appeals reversed, holding that a culpable mental state is required, thus as charged, the statute is constitutionally defective (see Greenwood & Schulman, Vol. 8, No. 16; April 24, 2000. The State's PDR was refused, but the Court granted review on its own motion.

Holding: We have long held that when there is a valid statute or ordinance under which a prosecution may be brought, habeas corpus is generally not available before trial to test the sufficiency of the complaint, information, or indictment. But we have recognized certain exceptions to this rule. One exception is when the applicant alleges that the statute under which he or she is prosecuted is unconstitutional on its face; consequently, there is no valid statute and the charging instrument is void. Another exception is when the pleading, on its face, shows that the offense charged is barred by limitations. With both of these exceptions, the applicant is challenging the trial court's power to proceed. But [Appellant]'s challenge is distinguishable. [Appellant] is not claiming that the statute itself is unconstitutional. He is not claiming that the trial court lacked the power to proceed. Rather, he is claiming that the statute as applied via the information is unconstitutional because it fails to allege a mens rea. This is, in reality simply an attack on the charging instrument. We have held that the failure to allege a culpable mental state when one is required does not render the charging instrument void. If a culpable mental state is required and the information fails to allege one, then the charging instrument is subject to a motion to quash. [Appellant] has not claimed that the illegal dumping statue is unconstitutional on its face. Nor has [Appellant] alleged any deficiencies in the information that we have

recognized as cognizable on a pretrial writ for habeas corpus. We find that the issue of whether the illegal dumping statute requires a culpable mental state is not yet ripe for review.

Notes: Judge Johnson concurred without note.

Comments: (David A. Schulman) Appellant's claim was that the statute was unconstitutional as applied to him because the information didn't allege a culpable mental state. After a quasi-lengthy discussion about what's writ cognizable and what's not, the opinion decides that the issue isn't ripe yet. It's not ripe because the case was pled wrong, not because the issue isn't cognizable. Had Appellant claimed that the statute was unconstitutional on its face because it doesn't require a culpable mental state (and it doesn't appear to require a culpable mental state), the issue would be both ripe and cognizable. So, what happens now? I guess the case will go back to the trial court, where Appellant will either move to quash the information doesn't allege a culpable mental state, the judge will grant the motion and the State will appeal, because the statute doesn't require a culpable mental state, or, maybe, Appellant will figure out the proper claim (the statute is unconstitutional on its face) and will file another habeas corpus application. I'm not sure what the Court wanted to accomplish. Maybe it wanted to reiterate what's cognizable in pre-trial habeas corpus and what's not, but this wasn't the case to do it in, simply because the application wasn't well drafted, or at least not well thought out.