



One Fabulous Skyline

# TIBA TEXAS INDEPENDENT BAR ASSOCIATION

1801 East 51st Street, Suite 365-474  
Austin, Texas 78723  
Tel. 512-850-6544

Web Site: [www.texindbar.org](http://www.texindbar.org)



⚖ Vol. 12, No. 42; October 25, 2004

Case Name: [James George Guevara v. The State of Texas](#)

- OFFENSE: Murder
- COUNTY: Bexar
- COURT OF APPEALS: San Antonio 2003
- C/A CITATION: 103 S.W.3d 549
- C/A RESULT: Conviction Reversed
- CCA. CASE No. PD-0424-03
- DATE OF OPINION: October 20, 2004
- DISPOSITION: Court of Appeals Reversed                      VOTE: 8-0
- OPINION: Price, J.
- TRIAL COURT: 226th D/C; Hon. Sid Harle
- LAWYERS: Nancy Barohn (Defense); Michael Miklas (State)

⚖ 530.07 Sufficiency of the Evidence / Law of Parties: Appellant's mistress ("Salinas") shot and killed Appellant's wife, and Appellant had an iron clad alibi for the entire time period. The State's theory of prosecution was that Salinas and the Appellant together plotted to kill Appellant's wife.

**Holding:** In reviewing the sufficiency of the evidence, we should look at "events occurring before, during and after the commission of the offense and may rely on actions of the defendant which show an understanding and common design to do the prohibited act." Each fact need not point directly and independently to the guilt of the appellant, as long as the cumulative effect of all the incriminating facts are sufficient to support the conviction. Motive is a significant circumstance indicating guilt. Intent may also be inferred from circumstantial evidence such as acts, words, and the conduct of the appellant. The evidence demonstrated that Appellant had a motive to kill his wife. \* \* \* Attempts to conceal incriminating evidence, inconsistent statements, and implausible explanations to the police are probative of wrongful conduct and are also circumstances of guilt. Lies about an actor's relationship with an accomplice are probative of unlawful acts. Appellant made several false statements to the authorities. \* \* \* In addition to the evidence of motive and inconsistent statements, other evidence was presented that suggested Appellant's complicity in the crime. Based on the totality of the evidence, a jury could have reasonably concluded that the appellant was a participant in the murder of his wife and that he knew he was assisting in the offense. While each piece of evidence lacked sufficiency in isolation, the consistency of the evidence and the reasonable inferences drawn therefrom were sufficient to support the verdict. Therefore, after examining all the evidence in the case in the light most favorable to the prosecution, we conclude that a rational jury could have found all the elements proved, based on the aiding theory of party responsibility, beyond a reasonable doubt.

**Ed Note:** Appellant also argued that in order to be convicted as a party to the murder, there must be proof that he was assisting in the commission of the offense at the time it was actually committed. The CCA

pointed out that the Penal Code also does not require that a party to the crime be physically present at the commission of the offense. He also claimed that he had no legal duty to prevent his wife's murder. The Court held that, regardless of whether Appellant had or did not have a legal duty to prevent injury to his wife, the evidence was sufficient to support the State's other theory of the case (that Appellant aided Salinas), and "We have consistently held that, when multiple theories are submitted to the jury, the evidence is sufficient to support a conviction so long as the evidence is sufficient to support conviction for one of the theories submitted to the jury."

**§ 326.01 Court's Charge / Law Of Parties:** The Court's Charge on guilt-innocence contained an instruction that one can be a party to an offense if he has a legal duty to prevent the offense. The Court of Appeals originally affirmed the conviction, finding that it was error to include the instruction, but that it was harmless error (see [§, Vol. 10, No. 2](#); 01/14/2002). However, on Appellant's motion for rehearing, the en banc Court of Appeals held that the error was harmful based on its opinion in [Bagheri v. State](#), 87 S.W.3d 657 (Tex.App. - San Antonio 2002)(see [§, Vol. 10, No. 27](#); 07/08/2002). The Court of Appeals determined that the harm analysis should be conducted under Rule 44.2(b), TRAP, under which a non-constitutional error must be disregarded unless it affects a defendant's substantial rights. Using this analysis, the Court of Appeals determined that the submission of the legal-duty theory affected Appellant's substantial rights, and therefore remanded the case for a new trial (see [§, Vol. 11, No. 5](#); 02/10/2003).

**Holding:** The Court of Appeals in the instant case used the same harm analysis as it did in its [Bagheri](#) opinion. The harm analysis under Rule 44.2(b) was appropriate in [Bagheri](#) because the issue involved the erroneous admission of evidence and its effect on the jury's deliberations. This case is distinguishable from [Bagheri](#). The issue in Appellant's case is whether an erroneous theory in the jury charge affected the verdict, not whether the erroneous admission of evidence affected the verdict. It is settled law in Texas that error in a criminal jury charge is reviewed under Article 36.19 of the Code of Criminal Procedure as interpreted by this Court in [Almanza v. State](#). As a result, we hold that the Court of Appeals erred in assessing harm under the standard found in Rule 44.2(b). We reverse the judgment of the Court of Appeals and remand the case to that Court to conduct a harm analysis under Art. 36.19, C.Cr.P.