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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

G&S Vol. 23, No. 2 - January 12, 2015

Case Name: [The State of Texas v. Cynthia Ambrose](#)

- ! OFFENSE: Official Oppression
- ! COUNTY: Bexar
- ! C/A CASE No. 04-13-00788-CR
- ! DATE OF OPINION: January 7, 2015
- ! DISPOSITION: Trial Court Reversed OPINION: [Chapa, J.](#)
- ! TRIAL COURT: 226th D/C; Hon. Sid Harle
- ! LAWYERS: Dana L. Jones (Defense); [Patrick Ballantyne](#) (State)

(Background Facts) Barbara Ramirez, a kindergarten teacher at Salinas Elementary in the Judson Independent School District, testified that she and Appellant each taught a separate kindergarten class at the school. Salinas Elementary had a "buddy system," which Ramirez explained was used by teachers to correct a child's behavioral problem before sending the child to the principal's office and to minimize the loss of a child's instructional time. Ramirez also testified that Judson ISD prohibited the use of corporal punishment to discipline students. Ramirez further testified that in early May 2012, a student in her class ("AN") had aggressively hit another child's back and "couldn't keep his hands to himself." She decided to use the buddy system and walked AN to the classroom of Appellant, another kindergarten teacher. Ramirez told Appellant about AN bullying and hitting other students. Appellant instructed AN to sit in a chair beside her desk and asked him why he was bullying other students. According to Ramirez, when AN did not respond, Appellant said to the students in her class, "Come on, boys and girls, let's line up and let's bully [AN]." Ramirez stated that several students stood up and Appellant again said, "Come on, let's hit him." The first few students rubbed or patted AN on the back, and according to Ramirez, Appellant said, "Well, let's hit him harder." Ramirez testified that about seven students lined up and struck AN Ramirez stated that she left AN in Appellant's classroom and later sent another student to bring AN back to her classroom. Ramirez testified that about two weeks later she decided to report the incident when she heard Appellant instruct a child to pinch another student. Ramirez reported both incidents to the school's administration, specifically to Principal Jeffrey Large and Vice Principal Gerrie Spellmann.

G&S 325 Court's Charge / Accomplice Witnesses: Ramirez related the story to the jury, casting Appellant as the instigator. During cross-examination, Ramirez admitted that she was given immunity to testify truthfully, and that her failure to timely report the incident was a criminal offense. She also admitted that she heard Appellant tell the last student who struck AN, "Okay, that's too hard, not that hard." Appellant testified on her own behalf and denied instructing other students to hit AN. There was no objection to the absence of an accomplice-witness instruction in the court's charge, but, Appellant's new lawyer filed a motion for new trial, arguing that Appellant suffered egregious harm because the trial court failed to sua sponte instruct the jury on the accomplice-witness rule. The trial court granted the motion solely on the ground of charge error and denied the motion on the other grounds. In its findings of fact and conclusions of law, the trial court concluded that Ramirez was an accomplice as a matter of law (and alternatively there was at least a fact issue regarding her status as an accomplice) and that the omission of an accomplice-witness instruction egregiously harmed Appellant.

Holding: The sum of the non-accomplice corroboration from Principal Large and Vice Principal Spellmann, viewed together with [Appellant]'s admissions that she wanted to teach AN not to be a bully and had said something to her class that caused AN to be struck by other students, was not exceedingly weak in tending to connect [Appellant]'s actual intent to the requisite intent of subjecting AN to mistreatment. The inclusion of an accomplice-witness instruction would not have rendered the State's case clearly and significantly less persuasive so as to deprive [Appellant] of a fair and impartial trial. Therefore, we conclude [Appellant] did not suffer egregious harm and hold the trial court erred in granting [Appellant]'s motion for new trial. Accordingly, we reverse the trial court's order granting a new trial, and we remand this case for further proceedings.

Concurring / Dissenting Opinions: Justice Barnard filed a concurring opinion in which she argued that, because the egregious standard requires the evidence to be "exceedingly weak," "inherently unreliable," "unbelievable," or "so unconvincing" as to render the case for conviction "clearly and significantly less persuasive," it would be almost impossible for a trial court to ever grant a motion for new trial which would be upheld on appeal.