



**COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH**

NO. 02-16-00147-CR

EX PARTE RILEY LEE CHRISTY

FROM THE 431ST DISTRICT COURT OF DENTON COUNTY
TRIAL COURT NO. F-2014-1450-F

MEMORANDUM OPINION¹

Appellant Riley Lee Christy is awaiting trial in the 431st District Court in Denton County on a third-degree felony charge of assault involving family violence by impeding breath or circulation. See Tex. Penal Code Ann. § 22.01(a)(1), (b)(2) (West Supp. 2016). He filed a pretrial application for writ of

¹See Tex. R. App. P. 47.4.

habeas corpus in the trial court alleging that the double jeopardy protections of the federal and state constitutions bar his trial, which the trial court denied. In a single issue, Christy brought this interlocutory appeal from that order. We affirm.

I. BACKGROUND

The State alleges that on March 29, 2014, Christy and C.A., a person with whom Christy was in a dating relationship, were involved in a physical altercation at C.A.'s home during which Christy used his hands to choke C.A.² In the midst of this altercation, the State alleges that C.A. used her cell phone to send a text message to her son, C.G., asking him to return home. The State further alleges that the altercation between Christy and C.A. ended, and a few minutes after it did, C.G. returned to the home, only to fall prey himself to a physical altercation with Christy.

In separate causes, Christy was charged with one third-degree felony count of assault involving family violence by impeding breath or circulation stemming from the alleged altercation with C.A. (Cause No. F-2014-1450-F) and with one misdemeanor count of assault involving family violence stemming from the alleged altercation with C.G. (Cause No. CR-2014-03132-A). See Tex. Penal Code Ann. § 22.01(a)(1), (b)(2). This appeal involves Cause No. F-2014-1450-F—the assault-by-impeding charge—which is pending trial in the 431st District Court in Denton County. Trial on Cause No. CR-2014-03132-A—the

²Because a minor is involved in this case, we will use the initials employed by the State to protect the minor's identity. See Tex. R. App. P. 9.10(a)(3).

misdemeanor-assault charge—was previously held in County Criminal Court No. 1 in Denton County and resulted in an acquittal.

During the misdemeanor-assault trial, the State called C.A. to testify about the assault that Christy allegedly committed against her prior to his alleged assault against C.G. The State also called other witnesses who testified to various facts concerning Christy’s alleged assault against C.A. and injuries she sustained. The jury ultimately returned a verdict of not guilty on the misdemeanor-assault charge. Because of the manner in which the misdemeanor-assault trial was conducted, Christy filed a pretrial application for writ of habeas corpus in Cause No. F-2014-1450-F, arguing that trial of the assault-by-impeding charge would subject him to double jeopardy. The trial court denied relief, and Christy brought this interlocutory appeal.

II. STANDARD OF REVIEW

We generally review a trial court’s ruling on a writ application for an abuse of discretion. See *Ex parte Mann*, 34 S.W.3d 716, 718 (Tex. App.—Fort Worth 2000, no pet.); see also *Ex parte Peralta*, 87 S.W.3d 642, 645 (Tex. App.—San Antonio 2002, no pet.). However, an abuse-of-discretion review of a trial court’s decision is not necessarily appropriate in the context of application of law to facts when the decision does not turn on the credibility or demeanor of witnesses. *Ex parte Martin*, 6 S.W.3d 524, 526 (Tex. Crim. App. 1999); *Ex parte Peralta*, 87 S.W.3d at 645. Instead, an appellate court must conduct a de novo review when “the trial judge is not in an appreciably better position than the reviewing

court to make that determination.” See *Guzman v. State*, 955 S.W.2d 85, 87 (Tex. Crim. App. 1997). No testimony was taken at the habeas hearing, and thus the trial court’s resolution of Christy’s application for writ of habeas corpus did not turn on the credibility or demeanor of witnesses. Therefore, our review is de novo. See *Ex parte Peralta*, 87 S.W.3d at 645.

III. DISCUSSION

The Double Jeopardy Clause of the United States Constitution provides that no person shall be subjected to twice having life or limb in jeopardy for the same offense. U.S. Const. amend. V. Generally, this clause protects against (1) a second prosecution for the same offense after acquittal, (2) a second prosecution for the same offense after conviction, and (3) multiple punishments for the same offense. *Brown v. Ohio*, 432 U.S. 161, 165, 97 S. Ct. 2221, 2225 (1977); *Ex parte Cavazos*, 203 S.W.3d 333, 336 (Tex. Crim. App. 2006). Thus, the constitutional protection against double jeopardy applies only in cases where a defendant is subjected to a second prosecution for the same offense as that for which he has previously been in legal jeopardy. *Pomier v. State*, 326 S.W.3d 373, 385 (Tex. App.—Houston [14th Dist.] 2010, no pet.); *Milner v. State*, 263 S.W.3d 353, 356 (Tex. App.—Houston [1st Dist.] 2008, no pet.); see *Grotti v. State*, 209 S.W.3d 747, 779 (Tex. App.—Fort Worth 2006), *aff’d*, 273 S.W.3d 273 (Tex. Crim. App. 2008).

In his brief, Christy concedes that the assault-by-impeding charge and the misdemeanor-assault charge involve separate offenses against separate victims

and that the State could therefore try both of those charges in separate causes. His contention here is that the State already prosecuted him on the assault-by-impeding charge. Specifically, Christy contends that during the State's case-in-chief in the misdemeanor-assault trial, the State introduced specific evidence of each element necessary to prove that Christy had also committed the offense of assault by impeding against C.A. He further contends that during its closing argument, the State told the jury that if it believed Christy committed an assault by impeding against C.A., then it could use that offense in considering whether to convict him for the alleged misdemeanor assault against C.G. Additionally, Christy argues that the jury charge instructed the jury that it could not consider the evidence of Christy's alleged assault by impeding against C.A. unless it believed beyond a reasonable doubt that he committed that offense. Based upon these facts, Christy argues that in returning a not-guilty verdict in the misdemeanor-assault trial, the jury necessarily failed to find beyond a reasonable doubt that he committed the alleged assault by impeding against C.A.³ Thus, Christy concludes that although he was charged with the assaults of C.A. and C.G. in separate causes, the State effectively prosecuted both causes together,

³We cannot assume the jury concluded that Christy did not commit the alleged assault by impeding against C.A. beyond a reasonable doubt or that it reached the opposite conclusion. What the jury concluded about the alleged assault by impeding against C.A., or even whether it concluded anything at all about that alleged offense, is not reflected in any manner in this record.

and the Double Jeopardy Clause bars the State from now attempting to prosecute the assault-by-impeding charge.

The United States Supreme Court has rejected the notion that if the State “offers in evidence in one prosecution acts of misconduct that might ultimately be charged as criminal offenses in a second prosecution, the latter prosecution is barred under the Double Jeopardy Clause.” See *United States v. Felix*, 503 U.S. 378, 386, 112 S. Ct. 1377, 1382 (1992); accord *Milner*, 263 S.W.3d at 357–58. In so doing, it affirmed “the basic, yet important, principle that the introduction of relevant evidence of particular misconduct in a case is not the same thing as prosecution for that conduct.” *Felix*, 503 U.S. at 387, 112 S. Ct. at 1383; see *Milner*, 263 S.W.3d at 357–58. That is what happened here. Although the State certainly presented evidence of the assault-by-impeding offense during the misdemeanor-assault trial, it did not in any way prosecute Christy for the assault-by-impeding offense during that trial. See *Felix*, 503 U.S. at 387, 112 S. Ct. at 1383; *Milner*, 263 S.W.3d at 358. Thus, because the State did not prosecute Christy for the assault-by-impeding offense during the misdemeanor-assault trial, the Double Jeopardy Clause does not bar it from now prosecuting Christy for the assault-by-impeding offense. See *Felix*, 503 U.S. at 387, 112 S. Ct. at 1383; *Milner*, 263 S.W.3d at 358. We therefore overrule Christy’s sole issue.

IV. CONCLUSION

Having overruled Christy's sole issue, we affirm the trial court's ruling denying his application for writ of habeas corpus.

/s/ Lee Gabriel

LEE GABRIEL
JUSTICE

PANEL: LIVINGSTON, C.J.; WALKER and GABRIEL, JJ.

DO NOT PUBLISH
Tex. R. App. P. 47.2(b)

DELIVERED: December 8, 2016