

NO. 07-11-00067-CR
IN THE COURT OF APPEALS
FOR THE SEVENTH DISTRICT OF TEXAS
AT AMARILLO
PANEL A
JANUARY 31, 2012

HEATHER THOMAS, APPELLANT

v.

THE STATE OF TEXAS, APPELLEE

FROM THE 47TH DISTRICT COURT OF POTTER COUNTY;

NO. 59,706-A; HONORABLE DAN L. SCHAAP, JUDGE

Before CAMPBELL and HANCOCK and PIRTLE, JJ.

ORDER

Pending before the Court is Appellant's Advisory to the Court. The Court has construed appellant's advisory as a motion for leave to supplement the record and for leave to supplement appellant's brief. See TEX. R. APP. P. 34.6(d), 38.7. We will deny his motion in part and grant it in part.

With respect to appellant's motion to supplement the record with a copy of the VHS tape introduced at trial, the Court has reviewed the copy tendered with the motion and has determined that it is a copy of the original State's Pretrial Exhibit #1, which was made part of the appellate record on October 13, 2011. Because the record contains

the operable original exhibit, the Court finds no need to supplement the record with the copy tendered by appellant. See TEX. R. APP. P. 34.6(d). Therefore, the Court hereby DENIES that portion of appellant's motion seeking leave from this Court to supplement the record.

However, with respect to the portion of appellant's motion construed as a motion to supplement briefing, the Court finds said motion well-taken. Appellant explains that his first issue is rendered moot upon the availability of the VHS tape, and he further develops arguments related to his third issue based on the contents of the VHS tape. The Court concludes that "justice requires" its leave for appellant to supplement her briefing. See TEX. R. APP. P. 38.7. Having concluded that appellant has shown that supplementation of her brief would facilitate disposition of this case, the Court GRANTS the portion of her motion seeking leave to supplement briefing. The State may respond to appellant's supplemental briefing within twenty days of the date of this order. See TEX. R. APP. P. 38.7.

Further, having granted leave to supplement briefing and having considered appellant's supplemental briefing, the Court hereby DENIES appellant's motion seeking remand filed concurrently with appellant's original brief and initially carried with the case. Appellant has acknowledged and represented to this Court that her first point of error—in which she sought remand to determine the availability of the VHS tape—is now moot. Having concluded that there are, now, at least two copies of the VHS tape, the Court agrees that the basis for appellant's motion for remand has been rendered moot.

For that reason, the Court now DENIES the previously carried motion for remand as moot.

Per Curiam

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