

NO. 07-11-0305-CR
IN THE COURT OF APPEALS
FOR THE SEVENTH DISTRICT OF TEXAS
AT AMARILLO
PANEL A
MAY 15, 2012

RONALD COLEMAN, SR., APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

FROM THE 242ND DISTRICT COURT OF HALE COUNTY;
NO. B18708-1102; HONORABLE EDWARD LEE SELF, JUDGE

Before CAMPBELL and HANCOCK and PIRTLE, JJ.

DISSENTING OPINION

Appellant, Ronald Coleman, Sr., was charged by indictment with the third degree felony offense of tampering with physical evidence.¹ The indictment charged, in relevant part, that Appellant "did then and there, knowing that an investigation was in progress, *to-wit: a detention of the defendant*, intentionally or knowingly destroy a suspected controlled substance, to-wit: cocaine, with intent to impair its availability as evidence in the investigation." (Emphasis added.)

¹See TEX. PENAL CODE ANN. § 37.09(a)(1) (West 2011).

Here, the majority does not reach the issue of the legality of Appellant's *detention*, because it concludes that the offense of tampering with physical evidence was completed "after the detention." I fail to see how the question of Appellant's detention can be both an element of the offense and, at the same time, be an event occurring before the offense. Because I would address the legality of Appellant's detention, I respectfully dissent.

Patrick A. Pirtle
Justice

Do not publish.