In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-21-00183-CR

ANGEL MUNGIA, APPELLANT

V.

THE STATE OF TEXAS

On Appeal from the 251st District Court
Potter County, Texas,
Trial Court No. 74,738-C-CR; Honorable Ana Estevez, Presiding

April 22, 2022

CONCURRING OPINION

Before QUINN, C.J., and PIRTLE and PARKER, JJ.

This appeal involves the computation of limitations in a felony prosecution and the construction of article 12.05 regarding the exclusion of time "during the pendency" of which an "indictment, information, or complaint is filed in a court of competent jurisdiction . . . ." *See* TEX. CODE CRIM. PROC. ANN. art. 12.05. While the majority opinion does a superlative job addressing the legal issue, I write separately to address a more practical problem—the way many prosecutors do business in this area of practice.

Now, some might say it is not the business of the appellate courts to criticize the way attorneys conduct the practice of law, so long as they do so in a professional and ethical manner; while others might say attorneys are merely doing what they were taught. While that may be true, it certainly does not mean that they have always been doing it correctly and the issue before the court today may just be another example of doing things "the way we've always done it." That being a pet peeve of mine—I offer the following advice.

From 1988 until 2006, I presided in the very trial court from which this appeal arises. During my term as presiding judge, it was not uncommon for a felony charge to arise initially as a complaint—just as it did in this case. Not until the defendant was in custody and subject to arraignment was the matter ever taken to the information or indictment stage. Relying on this court's earlier decision in *Bonner v. State*, 832 S.W.2d 134 (Tex. App.—Amarillo 1992, pet. ref'd), the State contends *stare decisis* dictates that the filing of a complaint is sufficient to stay the running of limitations. *See* TEX. CODE CRIM. PROC. ANN. art. 12.05.(b) (providing that "[t]he time during the pendency of an indictment, information, or complaint shall not be computed in the period of limitation). However, to stay limitations, the charging instrument must be filed "in a court of competent jurisdiction." *Id.* at art. 12.05(c) (defining "during the pendency" as meaning that period of time beginning with the day the indictment, information, or complaint is filed in a court of competent jurisdiction and ending with the day such accusation is, by an order of a trial court having jurisdiction thereof, determined to be invalid for any reason"). The State reasons that the filing of a complaint with the District Clerk is sufficient merely because it has always been done that way.

As Chief Justice Quinn states in the majority opinion, there are only two types of charging instruments that vest a district court with jurisdiction of a felony offense—informations and indictments. TEX. CONST. art. V, § 12(b) (stating "[t]he presentment of an indictment or information to a court invests the court with jurisdiction of the cause"). Even though they may "have always done it that way," there is no such thing as a felony complaint and the filing of a complaint does not vest the district court with felony jurisdiction. Likewise, it does not stay the running of limitations.

I believe this court was wrong in *Bonner*, and I believe the better practice has always been to return a felony information rather than a misdemeanor complaint (thereby avoiding the strained application of construing a complaint as an information as the Court of Criminal Appeals did in *State v. Drummond*, 501 S.W.3d 78, 84 (Tex. Crim App. 2016)). As the majority opinion has articulated in this case, the "complaint" filed herein manages to survive a motion to quash because it bears the requisite elements of an information. Rather than rely on appellate courts to construe a complaint as an information, the far better practice would be for the prosecution to file a felony information in the first place. Accordingly, I believe this court should caution prosecutors to STOP FILING COMPLAINTS IN FELONY CASES. If no one ever points this out to them—how can we ever expect them to change?

Being satisfied that the majority opinion otherwise correctly analyzes the issues before the court, I join in the decision to affirm.

Patrick A. Pirtle
Justice

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