



VIC FEAZELL
DISTRICT ATTORNEY

OFFICE OF
THE DISTRICT ATTORNEY
MCLENNAN COUNTY
WACO, TEXAS

817 756-7171 ext. 350

MEMORANDUM

TO: Vic Feazell
FROM: Ken R. Bennett
DATE: July 23, 1985
RE: Dwight Olsen

STATEMENT OF THE CASE

Dwight Olsen was an employee of McKinney and James Co. in Waco, Texas. As an employee he had access to company checks and the company automatic teller card, and during his tenure, apparently managed to embezzle certain sums from the petty cash account of the company. On August 16, 1984, acting on information from Mr. Hunter Brown of McKinney and James Co., Detective Murphy of the Waco Police Department arrested Dwight Olsen for the offense of Theft of \$750 or more but less than \$20,000. Detective Murphy's report states the theft to have occurred over a period of time from September, 1982 until May, 1984.

Mr. Olsen gave statements to Detective Murphy and to an insurance company investigator, Ben DeVries of Highlands Insurance Co., in which he admitted to the theft. It is unclear from the statements how much he claims to have taken, however, in the statement to Mr. DeVries, the amount is estimated at \$25,000.

A subsequent audit of the petty cash account of McKinney and James Co., by the accounting firm of Patillo, Brown and Hill, put the loss at \$93,319.12. This audit was dated October 4, 1984. On October 24, 1984, the same accounting firm revised the estimate down to \$88,874.67. I find no mention anywhere in the file of the figure \$125,000.

The case was sent to our office in September, 1984.

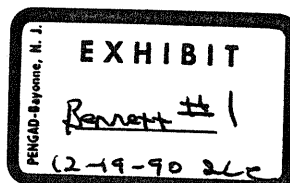


EXHIBIT 1

DISPOSITION

The defendant was at first represented by Michael Null, who approached me about the case. We agreed that a plea of guilty with the defendant being placed on probation and ordered to pay restitution would be appropriate. No agreement, however, could be reached on the amount of restitution. That is, I wanted a figure close to \$88,000 and Null wanted something closer to \$25,000.

On November 27, 1984, I retired the charges and dismissed the J.P. complaint to stop speedy trial from running. This was done to give us more time to work out an agreement. It is my view that this procedure is authorized by Art. 32A.02, Sec. 4(7). A copy is attached.

Ken Ables later replaced Mr. Null as attorney for the defendant. He indicated that we would eventually be able to reach an agreement in the case.

In March, I received a letter dated March 25, 1985 from Russell Hunt, attorney for the insurers of McKinney and James, in which he put the total loss at "approximately \$87,000". He informed me therein that a total of \$77,950.79 was paid by the insurers to McKinney and James Co. The total deductible was \$10,000.

I was later informed by Mr. Ables that he and Mr. Hunt were negotiating an agreed judgment for the amount owed to the insurers. Mr. Ables and I agreed that when this was done, that the defendant would enter a plea of guilty with the recommendation that he be placed on probation and ordered to pay restitution to McKinney and James of \$10,000.

This is where affairs now stand.

KRB:db

* Note: Mr. Brown were made aware of this.

KB

7-23-85
Hunter Brown states that \$125,000 represents the amount they thought (and still think) was missing - and taken by the defendants. However, the accounting firm could only document some \$88,000. He says Chas. Duncan talked to them and to the insurance people.

delivery to the sheriff thereof before the next succeeding term of the court of the county to which the case is to be taken, and he shall be delivered by the sheriff as directed in the order.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 31.07. Witness Need Not Again be Summoned

When the venue in a criminal action has been changed, it shall not be necessary to have the witnesses therein again subpoenaed, attached or bailed, but all the witnesses who have been subpoenaed, attached or bailed to appear and testify in the cause shall be held bound to appear before the court to which the cause has been transferred, as if there had been no such transfer.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

TRIAL AND ITS INCIDENTS

CHAPTER THIRTY-TWO. DISMISSING PROSECUTIONS

Art.

32.01. Defendant in Custody and No Indictment Presented

32.02. Dismissal by State's Attorney

Art. 32.01. Defendant in Custody and No Indictment Presented

When a defendant has been detained in custody or held to bail for his appearance to answer any criminal accusation before the district court, the prosecution, unless otherwise ordered by the court, for good cause shown, supported by affidavit, shall be dismissed and the bail discharged, if indictment or information be not presented against such defendant at the next term of the court which is held after his commitment or admission to bail.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 32.02. Dismissal by State's Attorney

The attorney representing the State may, by permission of the court, dismiss a criminal action at any time upon filing a written statement with the papers in the case setting out his reasons for such dismissal, which shall be incorporated in the judgment of dismissal. No case shall be dismissed without the consent of the presiding judge.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

CHAPTER THIRTY-TWO A. SPEEDY TRIAL

Art.

32A.01. Trial Priorities.

32A.02. Time Limitations.

Art. 32A.01. Trial Priorities

Insofar as it is practicable, the trial of a criminal action shall be given preference over trials of civil cases, and the trial of a criminal action against a defendant who is detained in jail pending trial of the action shall be given preference over trials of other criminal actions.

[Act 1967, 65th Leg., p. 1370, ch. 297, § 1, eff. July 7, 1978.]

Art. 32A.02. Time Limitations

Sec. 1. A court shall grant a motion to set aside an indictment, information, or complaint if the state is not ready for trial within

(1) 120 days of the commencement of a criminal action if the defendant is accused of a felony;

(2) 90 days of the commencement of a criminal action if the defendant is accused of a misdemeanor punishable by a sentence of imprisonment for more than 180 days; or

(3) 60 days of the commencement of a criminal action if the defendant is accused of a misdemeanor punishable by a sentence of imprisonment for 180 days or less, or punishable by a fine only.

Sec. 2. (a) Except as provided in Subsections (b) and (c) of this section, a criminal action commences for purposes of this article when an indictment, information, or complaint against the defendant is filed in court, unless prior to the filing the defendant is either detained in custody or released on bail or personal bond to answer for the same offense or any other offense arising out of the same transaction, in which event the criminal action commences when he is arrested.

(b) If a defendant is to be retried following a mistrial, an order granting a new trial, or an appeal or collateral attack, a criminal action commences for purposes of this article on the date of the mistrial, the order granting a new trial, or the remand.

(c) If an indictment, information, or complaint is dismissed on motion of the defendant, a criminal action commences for the purposes of the article when a new indictment, information, or complaint against the defendant is filed in court, unless the defendant is either detained in custody or released on bail or personal bond to answer for the same offense or any other offense arising out of the same transaction, in which event the criminal action commences when he is detained or released.

Sec. 3. The failure of a defendant to move for discharge under the provisions of this article prior to trial or the entry of a plea of guilty constitutes a waiver of the rights accorded by this article.

Sec. 4. In computing the time by which the state must be ready for trial, the following periods shall be excluded:

(1) a reasonable period of delay resulting from other proceedings involving the defendant, includ-

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ing but not limited to proceedings for the determination of competence to stand trial, hearing on pretrial motions, appeals, and trials of other charges;

(2) any period during which the defendant is incompetent to stand trial;

(3) a period of delay resulting from a continuance granted at the request or with the consent of the defendant or his counsel, except that a defendant without counsel is deemed not to have consented to a continuance unless the court advised him of his right to a speedy trial and of the effect of his consent;

(4) a period of delay resulting from the absence of the defendant because his location is unknown and:

(A) he is attempting to avoid apprehension or prosecution; or

(B) the state has been unable to determine his location by due diligence;

(5) a period of delay resulting from the unavailability of the defendant whose location is known to the state but whose presence cannot be obtained by due diligence or because he resists being returned to the state for trial;

(6) a reasonable period of delay resulting from a continuance granted at the request of the state if the continuance is granted:

(A) because of the unavailability of evidence that is material to the state's case, if the state has exercised due diligence to obtain the evidence and there are reasonable grounds to believe the evidence will be available within a reasonable time; or

(B) to allow the state additional time to prepare its case and the additional time is justified because of the exceptional circumstances of the case;

(7) if the charge is dismissed upon motion of the state or the charge is disposed of by a final judgment and the defendant is later charged with the same offense or another offense arising out of the same transaction, the period of delay from the date of dismissal or the date of the final judgment to the date the time limitation would commence running on the subsequent charge had there been no previous charge;

(8) a reasonable period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial has not run, if there is good cause for not granting a severance;

(9) a period of delay resulting from detention of the defendant in another jurisdiction, if the state is aware of the detention and exercises due diligence to obtain his presence for trial; and

(10) any other reasonable period of delay that is justified by exceptional circumstances.

[Acts 1977, 65th Leg., p. 1970, ch. 787, eff. July 1, 1978. Amended by Acts 1979, 66th Leg., p. 4, ch. 3, § 1, eff. Sept 1, 1979.]

Section 2 of the 1979 amendment act provided:

"This Act applies only to offenses committed on or after its effective date, and a criminal action for an offense committed before the Act's effective date is governed by the law existing before the effective date which law is contained in this Act for the purpose as if the Act were not in force. For purposes of this section, an offense is committed on or after the effective date of this Act if any element of the offense occurred on or after the effective date."

CHAPTER THIRTY-THREE. THE MODE OF TRIAL.

- Art.
33.01. Jury; When of Twelve, When of Six
33.011. Alternate Jurors; [New]
33.02. Failure to Register.
33.03. Presence of Defendant.
33.04. May Appeal by Counsel.
33.05. On Bail During Trial.
33.06. Sureties Bound in Case of Mistrial.
33.07. Criminal Docket.
33.08. To Fix Day for Criminal Docket.
33.09. Jury Drawn.

Art. 33.01. Jury; When of Twelve, When of Six

In the district court the jury shall consist of twelve qualified jurors; in the county court and inferior courts, the jury shall consist of six qualified jurors.

[Act 1963, 58th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966.]

Art. 33.011. Alternate Jurors

(a) In district courts, the judge may direct that not more than four jurors in addition to the regular jury be called and impaneled to sit as alternate jurors. In county courts, the judge may direct that not more than two jurors in addition to the regular jury be called and impaneled to sit as alternate jurors.

(b) Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury retires to consider its verdict, become or are found to be unable or disqualified to perform their duties. Alternate jurors shall be drawn and selected in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities, security, and privilege as regular jurors. An alternate juror who does not replace a regular juror shall be discharged after the jury retires to consider its verdict.

[Acts 1983, 68th Leg., p. 4294, ch. 775, § 2, eff. Aug. 29, 1983.]

Art. 33.02. Failure to Register

Failure to register to vote shall not disqualify any person from jury service.

[Acts 1965, 59th Leg., p. 317, ch. 722, § 1, eff. Jan. 1, 1966. Amended by Acts 1981, 67th Leg., p. 3143, ch. 827, § 6, eff. Aug. 31, 1981.]