

Court Advisory

Fourth Court of Appeals
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Fourth Court of Appeals to Hear Oral Argument

The Fourth Court of Appeals will hear oral arguments in one appeal on Thursday, April 26, 2018, beginning at 9:00 a.m., before the following panel of justices: Justice Karen Angelini, Justice Marialyn Barnard, and Justice Patricia O. Alvarez.

The following case will be presented:

Ex Parte Noah Espada - This case stems from a capital murder conviction that was subsequently affirmed by the Court of Criminal Appeals. In a post-conviction writ of habeas corpus, the Court of Criminal Appeals found that one of the State's punishment witnesses committed perjury and the court granted Espada a new punishment hearing. *See Ex parte Espada*, No. WR-78,108-01 (Tex. Crim. App. July 1, 2015). On remand, Espada filed a pre-trial writ of habeas corpus raising a double jeopardy claim.

The witness in question was a former guard at the Bexar County Jail during the time Espada was held pending trial for capital murder. The jail guard testified to three disciplinary reports involving Espada: drugs found in Espada's cell, a fight between Espada and another inmate, and overhearing Espada bragging about the murders to his cellmate. The fight was used by the State's expert as evidence of Espada's future dangerousness. The State, however, never determined the facts surrounding either the fight or the drug possession and never called other individuals present at the jail as witnesses. During the post-conviction habeas, the evidence revealed the jail guard resigned from the Sheriff's Department because he was facing allegations of providing controlled substances to detainees; and that a month before the disciplinary offenses, the jail guard confronted and threatened Espada. Evidence also surfaced that the jail guard also potentially set up the fight between Espada and the other inmate and that he planted the drugs in Espada's cell. The trial court denied relief.

On appeal, Espada contends that whether the prosecutor knew about the allegations, the evidence was in the State's possession, the evidence was favorable to Espada and material to punishment—a clear Brady violation. The trial court also determined the “incident where [Espada] attacked a fellow inmate—was more likely than not the tipping point that persuaded the jury to find that [Espada] was a

