IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. PD-0587-08

THE STATE OF TEXAS

v.

THOMAS VARKONYI, Appellee

ON APPELLEE'S PETITION FOR DISCRETIONARY REVIEW FROM THE EIGHTH COURT OF APPEALS EL PASO COUNTY

PER CURIAM.

Appellee was convicted of criminal solicitation of a child. The trial court granted appellee's motion for new trial "in the interest of justice." The court of appeals reversed, holding that the trial court abused its discretion in granting the motion.[1] We granted discretionary review on the following grounds:

> 1. The court of appeals erroneously concluded that the granting of a new trial was an abuse of discretion because the petitioner did not list sufficient grounds to support the motion for new trial, alleging only that the motion was brought "in the interest

[1] *State v. Varkonyi*, No. 08-06-00262-CR (Tex. App.–El Paso March 27, 2008)(not designated for publication).

of justice."

2. The court of appeals erroneously concluded that the granting of a new trial was an abuse of discretion because the trial court's in-court, oral recollection of the jury's misconduct and the trial attorneys' ineffectiveness was incompetent evidence.

Having examined the record and briefs and considered the arguments in the case, we have determined that our decision to grant review was improvident. Appellee's petition for discretionary review is dismissed.

Delivered: March 18, 2009
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