
YEAR 2006 CASE SUMMARIES

By
The Honorable Pat Garza

Associate Judge
386th District Court
San Antonio, Texas

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A defendant may not be cross-examined regarding prior juvenile adjudications for general impeachment purposes. [Reynosa v. State](06-1-10)

On July 6, 2005, the San Antonio Court of Appeals held that the trial court did not err in denying Respondent's motion for mistrial where the trial court admonished jury to disregard question and answer regarding prior juvenile adjudication.

¶ 06-1-10. **Reynosa v. State**, No. 04-04-00810-CR, 2005 Tex.App.Lexis 10500 (Tex.App.— San Antonio, 7/6/05).

Facts: Samuel Reynosa appeals his conviction for aggravated robbery. After a jury found him guilty, the trial court sentenced Reynosa, a repeat offender, to twenty years confinement in the Texas Department of Criminal Justice-Institutional Division. Reynosa raises two issues on appeal. He contends the trial court abused its discretion by denying his motion for mistrial after the State was permitted to impeach Reynosa with an inadmissible juvenile adjudication. He also contends the trial court abused its discretion in overruling his objection to the prosecutor's personal opinion during closing arguments.

Held: Affirmed

Memorandum Opinion: In his first issue, Reynosa contends the trial court abused its discretion when it denied his motion for mistrial. Moments after the State was permitted over defense counsel's objection to impeach Reynosa with a prior juvenile adjudication for theft, the trial court interrupted:

Excuse me. I made a wrong ruling a while ago. A juvenile adjudication is not admissible to impeach a witness' testimony. It was error for her to ask the question. It was error for me to allow the question to be answered. I instruct you that you must disregard that testimony.

The trial court denied Reynosa's subsequent motion for mistrial. Reynosa's juvenile adjudication was not mentioned again. In the jury charge, the trial court again instructed the jury, "If there is evidence before you of an adjudication of delinquency of the defendant as a juvenile, such evidence was improperly received, is without probative value, and is to be entirely disregarded by you."

A defendant may not be cross-examined regarding prior juvenile adjudications for general impeachment purposes. *TEX. R. EVID. 609(d)*; *Carmona v. State*, 670 S.W.2d 695, 698 (Tex. App.-Texarkana 1984), *aff'd* 698 S.W.2d 100 (Tex. Crim. App. 1985). Therefore, we must determine whether the trial court erred in denying Reynosa's motion for mistrial.

The denial of a motion for mistrial is reviewed under an abuse of discretion standard. *Hawkins v. State*,

135 S.W.3d 72, 77 (Tex. Crim. App. 2004). Generally, any error associated with improper questioning will be cured by an instruction to disregard. *Id. at 84*. A mistrial should be granted only when an objectionable event is so emotionally inflammatory that a curative instruction is unlikely to prevent the jury from being unfairly prejudicial against the defendant. *Wesbrook v. State, 29 S.W.3d 103, 116 (Tex. Crim. App. 2000), cert. denied, 532 U.S. 944, 149 L. Ed. 2d 349 (2001)*.

Though the State's impeachment question was improper, the trial court issued an instruction to disregard, and we presume the jury followed the trial court's admonishment to disregard the improper evidence. *Colburn v. State, 966 S.W.2d 511, 520 (Tex. Crim. App. 1998)*. The trial court made it clear to the jury that it was error for the State to question Reynosa about his juvenile adjudication, and that they could not consider that evidence. The State did nothing to emphasize the error, and the trial court again admonished the jury to disregard the evidence in the jury charge. Under these circumstances, we conclude the trial court did not abuse its discretion in denying Reynosa's motion for mistrial. Reynosa's first issue is overruled.

[Other issues omitted]

Conclusion: The trial court's judgment is affirmed.