YEAR 2006 CASE SUMMARIES

By
The Honorable Pat Garza
Associate Judge
386th District Court
San Antonio, Texas

In determinate sentence transfer hearing, Confrontation Clause was not violated by trial court admitting State's exhibits offered by Texas Youth Commission's court liaison, Leonard Cucolo. [In the Matter of L.D.T.](06-1-20)

On February 8, 2006, the Waco Court of Appeals held that when an exhibit contains both admissible and inadmissible evidence, the party objecting must apprise the trial court which material or documents contained within each exhibit is objectionable.

¶ 06-1-20. **In the Matter of L.D.T.**, No. 10-05-00016-CV, 2006 Tex.App.Lexis 1082 (Tex.App.—Waco, 2/8/06).

Facts: L.D.T. was found to have engaged in delinquent conduct, aggravated robbery, and committed to the Texas Youth Commission for a determinant sentence of 15 years. After a release/transfer hearing, the juvenile court ordered L.D.T. transferred to prison. L.D.T. appeals the juvenile court's transfer order.

Held: Affirmed

Opinion: In his first issue, L.D.T. contends that the trial court erred in admitting State's exhibits 1-3 because the records contained in those exhibits violate the *Confrontation Clause*. *See U.S. CONST. amend VI*. The State argues that L.D.T. forfeited his complaint because he did not specify which of the numerous documents contained within each exhibit violated the *Confrontation Clause*. We agree with the State.

When an exhibit contains both admissible and inadmissible evidence, the objection must specifically refer to the challenged material to apprise the trial court of the precise objection. *Sonnier v. State, 913 S.W.2d 511, 518 (Tex. Crim. App. 1995)*. The trial court should never be required to sift through challenged evidenced to segregate admissible evidence from excludable evidence. *Jones v. State, 843 S.W.2d 487, 492 (Tex. Crim. App. 1992)*, *abrogated on other grounds by Maxwell v. State, 48 S.W.3d 196 (Tex. Crim. App. 2001)*. In those instances where an exhibit contains both admissible and inadmissible evidence, a trial court may "safely admit it all or exclude it all, and the losing party, no matter who he is, will be made to suffer on appeal the consequences of his insufficiently specific offer or objection." *Id.*; *cf. In re D.S., 921 S.W.2d 383, 387-388 (Tex. App.--Corpus Christi 1996, writ dism'd w.o.j.)*.

Each of the three volumes of exhibits is at least 1 1/2 inches thick. Some of the documents are only reports that L.D.T.'s case plan was mailed to his parent. L.D.T.'s objection was insufficient to make the court aware of which statements in or portions of the documents he believed violated the *Confrontation Clause*. Thus, his complaint on appeal is forfeited. *TEX. R. APP. 33.1*; *Mendez v. State, 138 S.W.3d 334,*

342 (Tex. Crim. App. 2004).

In his second issue, L.D.T. contends that the trial court erred in allowing the Texas Youth Commission's court liaison, Leonard Cucolo, to testify based on documents contained in State's Exhibits 1-3 because the documents violated the *Confrontation Clause*. This issue is predicated on our resolution that the documents violated the *Confrontation Clause*. We did not make that determination. Thus, we need not address L.D.T.'s second issue.

Conclusion: The juvenile court's "Order of Transfer to the Institutional Division of the Texas Department of Criminal Justice" is affirmed.