
YEAR 2006 CASE SUMMARIES

By
The Honorable Pat Garza

Associate Judge
386th District Court
San Antonio, Texas

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A violation of any one condition of probation is sufficient to support a trial court's order modifying a juvenile's disposition.[In the Matter of S.G.V.](06-2-10)

On April 5, 2006, the San Antonio Court of Appeals held that, while evidence may have been improperly excluded on one violation of probation, it had no barring on the other violation, and any one violation of a condition of probation is sufficient to support an order modifying a juvenile's disposition.

¶ 06-2-10. **In the Matter of S.G.V.**, MEMORANDUM, No. 04-05-00605-CV, 2006 Tex.App.Lexis 2688 (Tex.App.— San Antonio, 4/5/06).

Facts: In October of 2004, S.G.V. was found to have engaged in delinquent conduct by committing the offense of terroristic threat. Pursuant to a plea bargain, S.G.V. was placed on probation in his father's custody for nine months. In February of 2005, the State filed a motion to modify S.G.V.'s disposition, alleging that S.G.V. had violated the conditions of his probation. Pursuant to a plea bargain, S.G.V. pled true to the violations and was continued on probation in his father's custody for an extended period of twelve months from March 28, 2005. On June 10, 2005, the State filed a second motion to modify disposition, alleging that S.G.V. had violated the conditions of his probation by violating his curfew and by carrying or possessing a deadly weapon on June 2, 2005. The State later amended the motion to allege that S.G.V. also evaded detention by fleeing from a peace officer attempting to lawfully detain him. S.G.V. pled not true to the violations.

The trial court found that S.G.V. violated the conditions of his probation by being in possession of a deadly weapon and by evading detention. S.G.V. challenges the trial court's decision to exclude certain evidence with respect to his evading detention adjudication.

Held: Affirmed.

Memorandum Opinion: S.G.V. complains of the following ruling by the trial court during the cross-examination of Officer Cabriales:

Q. Okay. And did there come a time when you visited this house when you apprehended [S.G.V.'s] cousin and brother?

MS. BROWN: I would object to this line of questioning, Your Honor. It's not relevant at this point.

MR. DARLING: Your Honor, may I explain?

THE COURT: Yes, you may.

MR. DARLING: The reason it's relevant is because if evidence is introduced that [S.G.V.] had a reasonable fear for his safety, it could be justified [sic] the assertion that the evasion, if any, was not lawful because of the probation officer's conduct of earlier was -

THE COURT: The state of mind of the respondent can only be created by the respondent, not by some third party.

MR. DARLING: But it helps demonstrate that his state of mind is fearful of his safety based on some things that have[sic] happened earlier.

THE COURT: That has to be done by the respondent, not by some third party.

MR. DARLING: Okay.

THE COURT: Objection sustained.

S.G.V. argues that the evidence was admissible as facts from which an opinion regarding a mental state may be drawn, citing *Fairow v. State*, 943 S.W.2d 895, 899 (Tex. Crim. App. 1997). S.G.V. contends that the evidence was relevant as a perception of events that could cause S.G.V. to be fearful for his safety. *See id.* The State, citing *Young v. State*, 991 S.W.2d 835, 838-39 (Tex. Crim. App. 1999), responds that the contention that S.G.V. was fearful for his safety would only be relevant if S.G.V. was asserting the defense of necessity, and the defense of necessity would require S.G.V. to admit to the offense and to show that he reasonably believed his conduct was immediately necessary to avoid imminent harm.

S.G.V.'s defense of necessity would only relate to S.G.V.'s fleeing from Officer Ramos not from Officer Cabriales. S.G.V. did not admit that he fled from Officer Ramos or show how the May 28th event involving Officer Cabriales would make him fearful of his safety in relation to Officer Ramos. *See Young*, 991 S.W.2d 835 at 839. Instead, S.G.V. argued that he did not commit the offense of evading detention because he did not know that Officer Ramos was the officer who told him to stop. Furthermore, even assuming the evidence was erroneously excluded, S.G.V. could not demonstrate harm under either the civil or criminal harm standard. *See In re D. I. B.*, 988 S.W.2d 753, 756, 42 Tex. Sup. Ct. J. 467 (Tex. 1999) (not deciding which harm standard applies in juvenile cases); *TEX. R. APP. P. 44.1(a)* (civil standard requiring error to probably cause the rendition of an improper judgment); *TEX. R. APP. P. 44.2(b)* (criminal standard requiring error that does not affect a substantial right to be disregarded). Both S.G.V. and his father testified regarding the May 28th event although their versions of the event differed; therefore, evidence of the event was introduced into the record. Moreover, the evidence would only relate, if at all, to the evading detention offense and not to the possession of a deadly weapon offense. The violation of one condition of probation is sufficient to support a trial court's order modifying a juvenile's disposition. *See In re J.A.D.*, 31 S.W.3d 668, 671 (Tex. App.--Waco 2000, no pet.); *In re C.O.*, No. 04-01-00630-CV, 2002 Tex. App. LEXIS 2681, 2002 WL 562184, at *2 (Tex. App.--San Antonio Apr. 17, 2002, no pet.). S.G.V.'s first issue is overruled.

In his second issue, S.G.V. contends that the evidence is factually insufficient to support the trial court's finding that he violated the conditions of his probation. We review the trial court's modification of a juvenile disposition for an abuse of discretion. *In re H.G.*, 993 S.W.2d 211, 213 (Tex. App.--San Antonio 1999, no pet.). The trial court may modify its disposition if the court finds by a preponderance of the evidence that the juvenile violated a reasonable and lawful order of the court. *Id.* When reviewing a factual sufficiency challenge in a juvenile case, we consider the totality of the evidence to determine whether the evidence supporting the finding is so weak or the evidence contrary to the finding is so

overwhelming that it is clearly wrong and unjust. *Id.* The trier of fact is the exclusive judge of the credibility of the witnesses, and, as such, may believe or disbelieve any witness and may resolve any inconsistencies in the testimony of any witness. *Id.*

The testimony of Officer Cabriales established that S.G.V. was in possession of the knuckles. Although S.G.V. denied possessing the knuckles and his family testified they had never seen him in possession of knuckles, it was in the province of the trial judge to evaluate the credibility of the witnesses. *See id.* Furthermore, although S.G.V. somewhat inconsistently denied knowing that Officer Ramos was a uniformed officer, Officer Ramos stated that S.G.V. saw him and began fleeing in another direction. This evidence was factually sufficient to support the trial court's finding that S.G.V. knew he was fleeing from a peace officer. S.G.V.'s second issue is overruled.

Conclusion: The trial court's judgment is affirmed.