

Review of Recent Juvenile Cases (2007)

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

A trial court may revoke a juvenile's probation based on uncorroborated testimony of an accomplice witness.[In the Matter of D.G.III](07-1-5)

On November 16, 2006, the Beaumont Court of Appeals held that 54.03(e) of the Family Code does not apply to the modification of a juvenile's disposition, and as a result, testimony of an accomplice witness does not require corroboration.

¶ 07-1-5. **In the Matter of D.G., III**, MEMORANDUM, No. 09-05-510-CV, 2006 Tex.App.Lexis 10008 (Tex.App.—Beaumont, 11/16/06).

Facts: D.G. was serving probation until age eighteen for engaging in delinquent conduct by committing two counts of aggravated robbery. The terms and conditions of his probation required that he obey all federal, state, and municipal laws, and not use, sell, or possess any firearm or other deadly weapon or be in the company of those who do. The State filed a motion to modify the juvenile court's previous disposition, alleging D.G. violated the terms of his probation by committing aggravated robbery with a deadly weapon, possessing a handgun, and being in the company of R.H., who possessed a handgun. See *Tex. Fam. Code Ann. § 54.05(a),(d)* (Vernon Supp. 2006). The violations were alleged to have occurred on the same day.

The juvenile court held a hearing on the motion in accordance with *Tex. Fam. Code Ann. § 54.05*. Based on the evidence, the court found by a preponderance of the evidence that D.G. violated the terms of his probation as to all three allegations. The trial court then heard further evidence and committed D.G. to the Texas Youth Commission for an indeterminate period of time, not to exceed his twenty-first birthday.

Held: Affirmed

Memorandum Opinion: In D.G.'s first three issues on appeal, he argues the evidence at the hearing on the motion to modify did not support the court's finding that he violated his probation as to all three allegations, because the State failed to meet its burden under *Tex. Code Crim. Proc. art. 38.14* to provide sufficient evidence to corroborate the accomplice testimony of R.H. *Article 38.14* provides that "a conviction cannot be had upon the testimony of an accomplice unless corroborated by other evidence tending to connect the defendant with the offense committed; and the corroboration is not sufficient if it merely shows the commission of the offense." *Tex. Code Crim. Proc. Ann. art. 38.14* (Vernon 2005). The Texas Family Code provides a similar provision relating to a juvenile adjudication hearing:

An adjudication of delinquent conduct or conduct indicating a need for supervision cannot be had upon the testimony of an accomplice unless corroborated by other evidence tending to connect the child with the alleged delinquent conduct or conduct indicating a need for supervision; and the corroboration is not sufficient if it merely shows the commission of the alleged conduct. *Tex. Fam. Code Ann. § 54.03(e)* (Vernon Supp. 2006).

In *In re L.T., III*, the Tyler Court of Appeals, held that neither *article 38.14* nor *section 54.03(e)* applies to the modification hearing of a juvenile's disposition. *In re L.T., III, No. 12-05-00048-CV, 2006 Tex. App. LEXIS 826, at *7 (Tex. App.--Tyler Jan. 31, 2006, no pet.)*. The Texas Family Code provisions regarding the modification of a juvenile's disposition are similar to the Texas Code of Criminal Procedure provisions regarding revocation of an adult's probation. See *In the Matter of J.A.D., 31 S.W.3d 668, 670 (Tex. App.--Waco 2000, no pet.)*. The burden of proof requirement in a hearing on an adult's probation revocation, similar to a hearing on modification of a juvenile's disposition, is a preponderance of the evidence standard. See *Cobb v. State, 851 S.W.2d 871, 874 (Tex. Crim. App. 1993)*; *Cardona v. State, 665 S.W.2d 492, 493 (Tex. Crim. App. 1984)*. Because of the similarity of the provisions, appellate courts reviewing procedures for modification of a juvenile's disposition have been guided by case-law concerning adult revocation. *In re J.A.D., 31 S.W.3d 668, 670 (Tex. App.--Waco 2000, no pet.)*. *Article 38.14* does not apply in an adult's probation revocation hearing. *Moreno v. State, 476 S.W.2d 684, 685 (Tex. Crim. App. 1972)*; *Soliz v. State, 171 Tex. Crim. 376, 350 S.W.2d 566, 567 (1961)* ("The result of such hearing is not a 'conviction' but a finding upon which the trial court may exercise his discretion by revoking or continuing the probation."). A trial court may revoke an adult's probation based on uncorroborated testimony of an accomplice witness. *Howery v. State, 528 S.W.2d 230, 233 (Tex. Crim. App. 1975)*; *Hulsey v. State, 447 S.W.2d 165, 167 (Tex. Crim. App. 1969)*.

Based on the similarity of the adult probation revocation provisions and the modification of a juvenile's disposition provisions, we agree with the Tyler Court of Appeals' decision in *In the Matter of L.T., III* holding that neither *article 38.14* nor *54.03(e)* apply to the modification of a juvenile's disposition. R.H.'s testimony as an accomplice witness did not require corroboration.

D.G. did not directly challenge the sufficiency of the evidence supporting the court's findings that he violated a reasonable and lawful order of the court, only the sufficiency of the evidence corroborating R.H.'s testimony pursuant to *Tex. Code Crim. Proc. art. 38.14*. R.H. testified D.G. planned the robbery, instructed him on how to carry out the robbery, and gave R.H. a gun to use during the robbery shortly before the robbery occurred. D.G. told R.H. to put on a mask provided by one of D.G.'s friends. R.H. also stated D.G. was in possession of a gun a few days prior to the robbery and when D.G.'s probation officer visited D.G.'s home, D.G. handed the gun over to R.H.

J.H. testified he witnessed D.G. in possession of a handgun. Three witnesses testified they observed D.G. watching the store, counting seconds out loud, and then fleeing the scene after the robbery. Even if corroborating testimony were required, sufficient evidence exists in this record.

Conclusion: The evidence in the record supports the trial court's determination that commitment to the Texas Youth Commission was in D.G.'s best interest and that reasonable efforts had been made to eliminate the need to remove D.G. from the home. The trial court did not abuse its discretion in modifying D.G.'s juvenile disposition and committing him to the Texas Youth Commission.

D.G.'s issues are overruled. The trial court's order is affirmed.