Review of Recent Juvenile Cases (2007)

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

Failure to properly explain the potential use of a juvenile record by the trial court was considered harmless.[In the Matter of E.C.D.,Jr.](07-2-8)

On February 21, 2007, the San Antonio Court of Appeals held that failure to properly admonish a child on how the adjudication would effect him in adult court, was harmless, absence a showing of how he was harmed by the error.

¶ 07-2-8. **In the Matter of E.C.D., Jr.,** No. 04-05-00391, 2007 Tex.App.Lexis 1270 (Tex.App.— San Antonio, 2/21/07).

Facts: On the night of September 21, 1991, taxicab driver Curtis Edwards was found dead in his cab. He had been shot once in the head, and his cab had crashed into a house on Onslow Street. A revolver and a black tennis shoe were recovered from the cab. Floyd Thomas testified that later that same night, he called EMS when E.C.D., his twelve year-old stepson, arrived home n1 in a dazed and incoherent state. He was wearing one tennis shoe and a bloody t-shirt and smelled of alcohol. E.C.D. was transported to Southeast Baptist Hospital, where he was admitted for a few days. While at the hospital, E.C.D. made statements to nurses, security guards, and a chaplain that raised suspicion regarding his involvement in Edwards' murder. Shortly thereafter, the State filed its petition alleging delinquent conduct based on E.C.D.'s commission of Edwards' murder. At trial, the defense claimed that E.C.D. acted at the direction of Floyd Hardeman, E.C.D.'s uncle and a convicted felon on parole, who had asked E.C.D. if he wanted to make some money by robbing a taxicab driver. n2

> n1 EMS was dispatched to 419 Dorie Street. San Antonio Police Officer Adrian Miller testified that the distance between Onslow and Dorie Streets is "probably four miles at the most." It also appears that police officers brought E.C.D. home because he was found wandering the street, "dazed and incoherent."
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> n2 Floyd Hardeman was also charged with the murder of Curtis Edwards.

After finding that E.C.D. engaged in delinquent conduct as alleged in the petition, which included a deadly weapon finding, the jury assessed a 27-year determinate sentence. On March 5, 1992, the trial court rendered judgment on the jury's verdict and imposed a 27-year determinate sentence, ordering E.C.D. committed to the Texas Youth Commission (TYC) until the age of 18 years with a transfer to the Texas Department of Criminal Justice (TDCJ) to serve the remainder of his sentence. E.C.D. requested, and was granted, an out-of-time appeal.

E.C.D. contends that the trial court erred in failing to give him the required admonishments at the beginning of his adjudication hearing in accordance with *section 54.03(b) of the Texas Family Code*. n5 *Section 54.03(b)* provides:

> (b) At the beginning of the adjudication hearing, the juvenile court judge shall explain to the child and his parent, guardian, or guardian ad litem:

(1) the allegations made against the child;

(2) the nature and possible consequences of the proceedings, including the law relating to the admissibility of the record of a juvenile court adjudication in a criminal proceeding;

(3) the child's privilege against self-incrimination;

(4) the child's right to trial and to confrontation of witnesses;

(5) the child's right to representation by an attorney if he is not already represented; and

(6) the child's right to trial by jury.

> n5 E.C.D. did not object to the trial court's failure to properly admonish him under *section 54.03(b)*, but in *In re C.O.S., 988 S.W.2d 760, 763, 42 Tex. Sup. Ct. J. 461 (Tex. 1999)*, the Texas Supreme Court held that under the law in effect prior to September 1, 1997, a juvenile appellant is not required to preserve error in the trial court regarding the explanations required under *section 54.03(b) of the Texas Family Code*. The State also concedes that E.C.D.'s complaint is properly before this court. TEX. FAM. CODE ANN. § 54.03(b) (Vernon Supp. 2006). n6

These admonishments are mandatory. *In re C.O.S., 988 S.W.2d 760, 764, 42 Tex. Sup. Ct. J. 461 (Tex. 1999)*; *In re J.D.C., 917 S.W.2d 385, 386 (Tex. App.--Houston [14th Dist.] 1996, no writ)* (explaining public policy considerations for mandatory admonishments in juvenile proceedings). Additionally, failure to give the required admonishments is error. *In re D.I.B., 988 S.W.2d 753, 755, 42 Tex. Sup. Ct. J. 467 (Tex. 1999)*. Errors under *section 54.03* are, however, subject to a harm analysis. *Id. at 759*; *In re C.O.S., 988 S.W.2d at 767* (holding statutory rights under *section 54.03* are waivable rights whose violation may be harmless).

> n6 While E.C.D.'s adjudication was governed by *section 54.03(b)* as it existed before its amendment in 1997, the required admonishments remain unchanged. *In re C.O.S., 988 S.W.2d at 762*. Therefore, we cite the current version of *section 54.03*.

Specifically, E.C.D. argues that the trial court: (1) wholly failed to admonish him regarding the admissibility of the record of a juvenile court adjudication in a later criminal proceeding; (2) failed to have his parent present in the courtroom while the prosecution read the allegations against him; and (3) failed to admonish him as to the meaning or the consequences of a "deadly weapon" finding. Furthermore, he argues that the other admonishments given to him were inadequately explained.

Held: AFFIRMED IN PART; REVERSED AND REMANDED IN PART

Some Issues Omitted by editor.

Opinion: We first address E.C.D.'s argument that the trial court erred by not having his mother present in the courtroom while the prosecution read the allegations against him. The State had already read the petition containing the charges against E.C.D., n7 and was beginning to explain the consequences of the proceedings, when the court asked whether E.C.D.'s parents were present. His mother was then brought in to the courtroom, and the court stated to her:

> I'm sorry if they held you outside. That was my mistake ... What we're doing here, though, before we bring a jury panel in, is just making sure that the allegations are on record and that your son knows the nature and the consequences of these proceedings. ... What the State has done, the State has read the allegations against your son. What he's doing now, he's telling the Court and all of us the consequences of the proceedings if the allegations are found to be true, okay[?]
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> n7 *Section 54.03(b)* states that "the juvenile court judge" shall make the required explanations to the child and his parent. *See In re K.L.C., 990 S.W.2d 242, 243-44, 42 Tex. Sup. Ct. J. 475 (Tex. 1999)* (trial court's statutory duty to explain to child allegations against him cannot be delegated to the prosecutor by reading petition in open court). However, such error is not harmful where the "petition is read at the direction of and in the presence of the trial court and is sufficiently clear and direct to explain the allegations against the juvenile." *Id. at 244.* E.C.D. did not raise this particular issue on appeal, and we believe that any such error was not harmful in this case. *See id*.

The State then proceeded to explain the possible consequences of the proceeding, including the range of punishment. Clearly, the court realized its mistake in failing to have E.C.D.'s mother in the courtroom at the beginning of the admonishments, but in light of the court's subsequent explanation to E.C.D.'s mother, we cannot say that E.C.D. was harmed by the fact that his mother was not present when the allegations against him were read. Moreover, E.C.D. does not state how he was harmed by the absence of his mother during the reading of the allegations, and there is nothing in the record to suggest that E.C.D., or his mother, did not know or understand the allegations against him.

While the State recited the possible consequences of the proceedings, neither it nor the trial court explained the law relating to the admissibility of E.C.D.'s juvenile record in a later criminal proceeding as required by *section 54.03(b)(2)*. On appeal, the State concedes that the explanation was not given, but argues that the error was harmless. *See In re D.I.B., 988 S.W.2d at 759* (error under *section 54.03(b)(2)* is subject to a harm analysis). We agree. With respect to the trial court's failure to explain the potential use of a juvenile record, harm may be shown by proof that "the juvenile could and would have entered into a plea agreement with the State based on a lesser offense if he . . . had been properly admonished." *In re C.O.S., 988 S.W.2d at 767-68* (explanation under *54.03(b)(2)* is required because a judge or jury may consider the range and severity of the defendant's prior criminal conduct during the punishment phase of a later criminal trial, and "[a]rmed with [that] knowledge . . . a juvenile might agree to plead true to a lesser offense"). The record here does not reflect any harm to E.C.D. There is no indication that had E.C.D. been advised that his juvenile record might be used in the future, he could have avoided an adjudication of delinquency, or could or would have pled true to a lesser offense than murder as the basis for adjudication. *See id.* Absent a showing that the trial court's failure to give the required explanation may have affected the adjudication or the basis for it, the error was harmless.

We next turn to E.C.D.'s contention that the trial court erred when it failed to admonish him as to the meaning or consequences of a "deadly weapon" finding. The reading of the allegations clearly informed E.C.D. that he was accused of intentionally and knowingly causing the death of Curtis Edwards by shooting him "with a firearm, to-wit: a handgun[.]" *Section 54.03(b)* requires the trial court to explain "the allegations," but does not specifically require that a deadly weapon allegation, or the consequences of a deadly weapon finding, be

separately explained to the juvenile. E.C.D. has cited no case law in support of his argument that an additional explanation is required. As discussed below, the allegations against E.C.D. were adequately explained to him, as were the nature and consequences of the proceedings. Accordingly, we cannot conclude that the trial court erred, or that any error was harmful. *See In re C.O.S., 988 S.W.2d at 767-68*.

Finally, E.C.D. contends the other admonishments were inadequate "to ascertain whether he understood the nature and gravity of the proceedings, his rights, or the consequences of a finding of delinquency under the determinate sentence statute" because they were not explained in language that a twelve year-old could understand. The record shows the trial court informed E.C.D. of his privilege against self-incrimination and explained it as follows: "Essentially what that means is you don't have ... to say anything to anybody if you don't want to. You understand?" E.C.D. responded in the affirmative, and the court continued to state, "You can remain silent, and nobody will hold that against you ... If you do talk ..., whatever you say can be used against you ... You need to talk to your lawyer about how to proceed with that." Next, the trial court explained E.C.D.'s right to trial and to confront witnesses. E.C.D. answered, "yes, sir," when asked whether he understood these rights. The trial court also stated that E.C.D. had the right to be represented by an attorney, and asked E.C.D. if he was satisfied with his lawyer, to which E.C.D. responded, "yes, sir." Finally, the trial court explained that E.C.D. had the right to a trial by jury, and that the jury would determine his punishment. The trial court asked whether E.C.D. understood "everything so far that we've said to you," to which E.C.D. replied, "yes, sir." At that point, E.C.D.'s attorney informed the trial court that while he did not believe E.C.D. was mentally incompetent, E.C.D. did not fully "comprehend on a regular basis all of the significance of this proceeding ... because of [his] age." The trial court replied, "And no doubt--and the Court understands the unusual nature of this case, not only in regard to determinative sentencing[,] but [also] the age of the child . . . [I]f at any point, Mr. Logan, you believe that the Court is not communicating itself in as simplistic a term as possible, please remind me and I'll do everything that I can to make sure that he understands that, okay[?]" Defense counsel, however, never asked the trial court to simplify or make additional explanations for E.C.D., and never raised any further concern about his failure to understand the proceedings and their consequences. Further, the record demonstrates that E.C.D. fully availed himself of his rights to a jury trial, to avoid self-incrimination, and to confront the witnesses against him, and received the assistance of an attorney; there is nothing in the record to indicate that he did not understand his rights; in fact, he acknowledged that he did. Under these facts, we hold that the trial court adequately explained the matters required by *section 54.03(b)*. Accordingly, E.C.D.'s sixth issue is overruled.

Conclusion: The court affirm the portion of the trial court's judgment adjudicating that E.C.D. engaged in delinquent conduct, but reversed the order of disposition (as a result of a lost court reporter's record on part of the disposition), and remanded the cause for a new disposition, *i.e.*, punishment, hearing. See *TEX. FAM. CODE ANN. § 56.01(i)* (Vernon 2002) (appellate court may remand an order that it reverses for further proceedings by the juvenile court).