

Review of Recent Juvenile Cases (2009)

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

Warrantless arrest was reasonable were respondent only addressed his constitutional complaints.[Rangel v. State](09-2-6A)

On March 4, 2009, the Waco Court of Appeals held that since trial counsel did not specifically mention Chapter 14 in his warrantless-arrest objection; he mentioned only state and federal constitutional provisions and [article 38.23](#), he failed to preserve his Chapter 14 complaint for appeal.

¶ 09-2-6A. **Rangel v. State**, MEMORANDUM, No. 10-07-00247-CR, 2009 WL 540780 (Tex.App.-Waco, 3/4/09).

Facts: A jury found Jerry Rangel guilty of aggravated sexual assault and assessed punishment at life in prison. Asserting four issues, Rangel appeals.

Rangel's first issue contends that the trial court abused its discretion by admitting evidence recovered during an unlawful warrantless arrest. Initially, we address the State's contention that Rangel failed to preserve part of this complaint for appellate review. As the State began to offer evidence about the apartment in which Rangel was arrested, Rangel's trial counsel objected based on the police officer's warrantless entry into the apartment and the warrantless arrest of Rangel. The trial court overruled that objection. Trial counsel then stated the grounds for his objection: "It's based on the Fourth and Fourteenth Amendments to the United States Constitution; [Article I, Section 9](#) and [10 of the Texas Constitution](#); and [Article 38.23 of the Texas Code of Criminal Procedure](#)."

Held: Affirmed

Memorandum Opinion: The Court of Criminal Appeals recently wrote:

In order to preserve an issue for appellate review, a timely and specific objection is required. [Tex.R.App. P. 33.1\(a\)\(1\)\(A\)](#); [Tex.R. Evid. 103\(a\)\(1\)](#); [Gillenwaters v. State, 205 S.W.3d 534, 537 \(Tex.Crim.App.2006\)](#). A specific objection is necessary to inform the trial judge of the issue and basis of the objection, and to allow the judge a chance to rule on the issue at hand. [Neal v. State, 150 S.W.3d 169, 178 \(Tex.Crim.App.2004\)](#), citing [Zillender v. State, 557 S.W.2d 515, 517 \(Tex.Crim.App.1977\)](#). As we stated in [Lankston v. State, 827 S.W.2d 907, 909 \(Tex.Crim.App.1992\)](#), "all the party has to do to avoid the forfeiture of a complaint on appeal is to let the trial judge know what he wants, why he thinks he is entitled to it, and to do so clearly enough for the judge to understand him at a time when the trial court is in a proper position to do something about it." Beyond this, there are no specific words or technical considerations required for an objection to ensure that the issue will be preserved for appeal. *Id.* If the correct ground of exclusion was apparent to the judge and opposing counsel, no waiver results from a "general or imprecise objection." *Id.* at 908, citing [Zillender, 557 S.W.2d at 517](#).

[Layton v. State, --- S.W.3d ----, ----, 2009 WL 250080, at *2-3 \(Tex.Crim.App. Feb. 4, 2009\).](#)

Chapter 14 of the Code of Criminal Procedure governs warrantless arrests in Texas. See [Tex.Code Crim. Proc. Ann. arts. 14.03, 14.05](#) (Vernon 2005 & Supp.2008). Rangel's trial counsel did not specifically mention Chapter 14 in his warrantless-arrest objection; he mentioned only state and federal constitutional provisions and [article 38.23](#), Texas' statutory exclusionary rule. *Id.* [art. 38.23](#) (Vernon 2005). In a nearly identical case involving a written motion to suppress, the Court of Criminal Appeals held that the defendant's suppression motion, which cited the same constitutional provisions and [article 38.23](#), failed to alert the trial court or opposing counsel that defense counsel was invoking Chapter 14 and that the defendant thus failed to preserve his Chapter 14 complaint for appeal. [Buchanan v. State, 207 S.W.3d 772 \(Tex.Crim.App.2006\)](#). Applying *Buchanan*, we hold that it was not obvious to the trial court that Rangel was also raising a Chapter 14 argument and that Rangel did not preserve it for appellate review. See *id.* We therefore will only address his constitutional complaint on the warrantless arrest.

We review a trial court's admission or exclusion of evidence for abuse of discretion. [McDonald v. State, 179 S.W.3d 571, 576 \(Tex.Crim.App.2005\)](#). We review a suppression ruling under an abuse-of-discretion standard. See [Montanez v. State, 195 S.W.3d 101, 108 \(Tex.Crim.App.2006\)](#). We afford almost total deference to the trial court's determination of historical facts but review de novo its ruling on mixed questions of law and fact that do not turn on the credibility and demeanor of witnesses. [Neal v. State, 256 S.W.3d 264, 281 \(Tex.Crim.App.2008\)](#). If the trial court does not make explicit findings of historical facts, we review the evidence in the light most favorable to the trial court's ruling. [Walter v. State, 28 S.W.3d 538, 540 \(Tex.Crim.App.2000\)](#). Because in this case the trial court did not make explicit findings, we review the evidence in the light most favorable to the trial court's ruling.

"Neither the United States Constitution, nor [Article I, Section 9](#) contains a requirement that an arrest be authorized by an arrest warrant. An arrest that is otherwise reasonable will not be found to be in violation of either provision because it was not authorized by an arrest warrant." [Buchanan v. State, 175 S.W.3d 868, 874 \(Tex.App.-Texarkana 2005\)](#), *rev'd on other grounds*, [207 S.W.3d 772 \(Tex.Crim.App.2006\)](#) (citing [Hulit v. State, 982 S.W.2d 431, 436 \(Tex.Crim.App.1998\)](#)).

Reviewing the evidence in the light most favorable to the trial court's ruling, we hold that Rangel's warrantless arrest was reasonable. Inez, the grandmother of 13-month-old E.A. and the person paying the apartment's rent, found her in the early afternoon on a bed naked, unconscious, and bleeding vaginally. Rangel, who stayed overnight in the apartment a couple of nights a week with E.A.'s mother, was asleep on the bedroom floor with his belt buckle undone after being out all night with E.A.'s mother, whom Inez had taken to work early that morning. Inez relayed that information to her employer, who relayed it to the police just before they entered the apartment and found Rangel still asleep. We overrule Rangel's first issue.

Conclusion: We affirm the trial court's judgment.