

Review of Recent Juvenile Cases (2009)

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

Under the law of parties, presence at the scene along with other actions made the evidence legally sufficient to prove the offense of deadly conduct. [In the Matter of I.A.G.](09-4-7B)

On October 1, 2009, the Beaumont Court of Appeals concluded that under the law of parties, respondent's presence and actions tend to show his agreement to commit the offense of deadly conduct while engaged in organized criminal activity as a member of a criminal street gang.

¶ 09-4-7B. **In the Matter of I.A.G.**, No. 09-08-00430-CV, ___ S.W.3d ___, 2009 WL 3126241 (Tex.App.-Beaumont, 10/01/09).

Facts: On the afternoon of May 7, 2008, I.A.G., and others, were involved in an altercation that occurred in the front yard of the complaining witness's home (hereinafter referred to as "the homeowner"). While attempting to stop the altercation, the homeowner, who had not initially been involved in the fight, and I.A.G., who had been a party in the fight, exchanged blows. During the altercation, the homeowner heard I.A.G. say "North Side" several times, which the homeowner explained he understood to be gang-related. According to the homeowner, "North Side" [\[FN2\]](#) is a gang in Port Arthur, and the homeowner had seen that name written on walls throughout the city. Ultimately, the homeowner told the group to leave, and they left. The homeowner called the police, who then sent an officer.

Later that day, the homeowner, while away from his home, was notified that some individuals had thrown rocks and tire irons in his yard. The homeowner returned to his house and called the police. Before the police arrived, an Explorer stopped in front of the home. I.A.G., along with three others got out. I.A.G. and one of the others held tire irons while standing near the Explorer. The homeowner explained that under the circumstances, including the earlier altercation, he felt threatened and he feared serious bodily injury. The homeowner also stated that despite the fact that I.A.G. and the other person only displayed the tire irons, he felt threatened.

Shortly after exiting the Explorer, the driver asked the homeowner, "Why you hitting little kids?" While standing behind the Explorer, the driver then pointed a pistol at the homeowner. At that point, the homeowner instructed his father to go inside, after which the gunman said, "I'm going to kill you. I'm going to kill you." The homeowner testified that this also caused him to fear imminent danger of serious bodily injury and to believe that the gunman was going to kill him. After he was threatened with being killed, the homeowner turned around, entered his house, and heard I.A.G. say, "Go, go, go, go, he's going to get his gun." I.A.G. and the others then left. The homeowner, once again, called the police.

The homeowner testified that he felt the two youths holding the tire irons acted in concert with the gunman. With respect to whether any gang was specifically mentioned during the confrontation involving the gun, the homeowner acknowledged that the gunman never mentioned any gang.

A Port Arthur police officer with the "street crimes unit with a specialty in gangs, street gangs" also testified at trial. The officer indicated that I.A.G. and the other minor that participated in the gunman's confrontation with the homeowner had previously been wounded in a drive-by shooting while at a known Norte 14 gang hangout. Additionally, the officer testified that I.A.G. told him that he was a member of the North Side 14 gang. The officer stated that the gunman, who owned the Explorer, was also a member of the Norte 14 gang. The officer added that the other minor who participated in the confrontation that involved the gunman also held membership in the Norte 14 gang, which he based on the minor's admission as well as tattoos on that minor's wrists that together read "North Side 14." The officer expressed his opinion that on May 7, 2008, the gunman and two minors had acted in concert as members of their gang in threatening the homeowner.

A second Port Arthur police officer that also investigated the confrontation testified at trial. According to the second officer, the homeowner told him that he felt threatened and feared being shot. The second officer confirmed that he was familiar with the participants in the confrontation, and he knew them all to be members of the Norte 14 gang.

I.A.G. also argues that the evidence is legally insufficient to show that he committed or conspired to commit deadly conduct. As defined by statute, "[d]eadly conduct" occurs when one "recklessly engages in conduct that places another in imminent danger of serious bodily injury." [Tex. Pen.Code Ann. § 22.05\(a\)](#) (Vernon 2003). Under [section 22.05](#), "[r]ecklessness and danger are presumed if the actor knowingly pointed a firearm at or in the direction of another whether or not the actor believed the firearm to be loaded." [Tex. Pen.Code Ann. § 22.05\(c\)](#) (Vernon 2003).

Held: Affirmed

Opinion: In his brief, I.A.G. concedes that "[b]y pointing the gun in the direction of [the homeowner], [the gunman] satisfied the 'recklessness' and 'danger' elements of [section 22.05](#)." Nevertheless, I.A.G. contends that the gunman acted alone and that I.A.G.'s presence with the tire iron and his participation in the earlier altercation with the homeowner provides "no additional evidence to make the connection that [I.A.G.] intended to threaten [the homeowner] with a firearm."

Under Texas law, the law of parties enlarges upon a person's potential criminal responsibility for acts that involve others. See [Tex. Pen.Code Ann. §§ 7.01, 7.02](#) (Vernon 2003). Under the law of parties, a person is criminally responsible for the offense of another, and can be convicted as a party, if, acting with intent to promote or assist the commission of the offense, he solicits, encourages, directs, aids, or attempts to aid the other person committing the offense. [Tex. Pen.Code Ann. §§ 7.01, 7.02](#).

In applying the law of parties, the defendant's physical presence at the scene is a factor used in evaluating whether the defendant acted with the intent to promote or assist the commission of the offense. "Evidence is sufficient to convict under the law of parties where the defendant is physically present at the commission of the offense and encourages its commission by words or other agreement." [Ransom v. State, 920 S.W.2d 288, 302 \(Tex.Crim.App.1994\)](#) (op. on reh'g); [Davis v. State, 195 S.W.3d 311, 320 \(Tex.App.-Houston \[14th Dist.\] 2006, no pet.\)](#). Though mere presence does not automatically make one a party to a crime, it is a circumstance tending to prove party status and, when considered with other facts, may be sufficient to prove that the defendant was a participant. [Davis, 195 S.W.3d at 320](#).

In determining whether I.A.G. is responsible for the gunman's act of threatening the homeowner with a gun under the law of parties, we review events occurring before, during, and after the offense and may rely on actions of the defendant that show an understanding and common design to commit the offense. [Ransom, 920 S.W.2d at 302](#); [Davis, 195 S.W.3d at 320](#). While there is no question that the gunman, and not I.A.G., held the gun while it was pointed at the homeowner, the court's charge allowed the jury to consider I.A.G.'s responsibility for the gunman's act under the law of the parties instruction.

Relying on [Wooden v. State, 101 S.W.3d 542 \(Tex.App.-Fort Worth 2003, pet. ref'd\)](#), I.A.G. argues that his mere presence at the home is insufficient to support a finding that he committed deadly conduct. But here, the evidence shows more than I.A.G.'s mere presence at the scene. Hours before the confrontation, I.A.G. had been involved in a fight with the homeowner and then returned with others under circumstances tending to show the group anticipated and planned to again confront the homeowner in retaliation for the fight that had occurred earlier that day. While circumstantial, there is sufficient evidence that the three agreed to act in concert to threaten the homeowner. We conclude that I.A.G.'s presence and actions tend to show his agreement to commit the offense as well as encouragement of the gunman's acts. See [Ransom, 920 S.W.2d at 302](#). Therefore, we find the evidence sufficient to support a conviction under the law of parties. *Id.*

Conclusion: In summary, we find the evidence legally sufficient to prove that I.A.G., under the law of parties, committed deadly conduct while engaged in organized criminal activity as a member of a criminal street gang. See [Jackson, 443 U.S. at 319](#); [Evans, 202 S.W.3d at 161](#). Having addressed I.A.G.'s arguments, we overrule issue one.