

Review of Recent Juvenile Cases (2010)

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

Restitution allowed where damage of vehicle occurred while child engaged in offense of evading arrest.[In the Matter of E.A.R., IV](10-1-2)

On November 20, 2009, the Austin Court of Appeals held that damage caused by juvenile committing the offense of evading arrest was damage for which the juvenile was criminally responsible.

¶ 10-1-2. **In the Matter of E.A.R., IV**, MEMORANDUM, No. 03-09-00021-CV, 2009 WL 3906909 (Tex.App.-Austin, 11/20/09).

Facts: On July 3, 2008, E.A.R. intentionally fled from George Silvio, an Austin police officer who E.A.R. knew was attempting to arrest and detain him, and that he used a motor vehicle in his flight from the officer. The evidence shows that the pursuit ended when E.A.R. drove the vehicle into a fire hydrant. The vehicle's frame had been bent and the front axle broken.

Held: Affirmed

Opinion: E.A.R. contends that the damage to the car was not caused by his evading arrest. He emphasizes that he was not accused of unlawfully using the vehicle. He urges that if there was a victim of the offense he was found to have committed, it was the officer from whom he fled and not the owner of the vehicle he was driving.

E.A.R. argues by analogy to [In re D.S., 921 S.W.2d 860 \(Tex.App.-San Antonio 1996, no writ\)](#). In that case, a juvenile pleaded true to the allegation that he committed criminal trespass, was adjudicated delinquent, and ordered to pay restitution to the property owner. [Id. at 861](#). The court vacated the restitution order because there was no evidence that D.S.'s unlawful entry caused or resulted in the damage for which restitution was ordered. *Id.* The court of appeals held that restitution may be ordered only for property damage or loss that occurs in the commission of the offense for which the accused is convicted. *Id.* D.S. is distinguishable from the cause before us because the evidence shows that E.A.R. damaged the car he was driving while evading arrest.

E.A.R. also refers us to the opinion in [Gordon v. State, 707 S.W.2d 626 \(Tex.Crim.App.1986\)](#). In that case, a police officer was prosecuted for violating the civil rights of a prisoner in his custody. [Id. at 627](#). The indictment accused the officer of a first degree felony because the prisoner died, but the jury found him guilty of a third degree felony based on the officer pulling the prisoner's hair. [Id. at 627-28](#). The court of criminal appeals held that the trial court erred by ordering the officer to reimburse the victim's family for his funeral expenses because the jury had found that the defendant was not guilty of causing the victim's death. *Id.* at 630. *Gordon*

is also distinguishable from the cause before us. In this case, the evidence shows that E.A.R. damaged the vehicle he was driving during his flight, and the trial court did not find to the contrary.

This case is more closely analogous to [In re C.T., 43 S.W.3d 600 \(Tex.App.-Corpus Christi 2001, no pet.\)](#). C.T. was adjudicated delinquent for having failed to stop and leave information after she was involved in a multi-vehicle accident, and she was ordered to pay restitution for the damage to one of the vehicles. [Id. at 601](#). Citing *D.S.*, C.T. argued that the damages were the result of the accident, not of her failure to stop and leave information. [Id. at 602-03](#). The court of appeals rejected this argument, noting that both her involvement in the accident and the damages to the other vehicle were elements of the offense of failing to stop and leave information. [Id. at 603](#). Therefore, the damages to the other vehicle were occasioned by and arose out of the offense for which C.T. was adjudicated delinquent. *Id.*

The petition accused E.A.R. of evading arrest and using a vehicle while in flight. The allegation regarding the use of a vehicle elevated the underlying offense from a class B misdemeanor to a state jail felony. See [Tex. Penal Code Ann. § 38.04\(b\)\(1\)\(B\)](#) (West Supp.2009). E.A.R. admitted the truth of the allegation.

Conclusion: The evidence otherwise shows that E.A.R. damaged the vehicle while in flight by driving it into a fire hydrant. The evidence supports the court's finding that the damage to Burrell's car occurred during and as a result of E.A.R.'s evading arrest in the vehicle. Point of error one is overruled.