Review of Recent Juvenile Cases (2011)

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

A trial judge may take judicial notice of evidence from a previous trial on the merits or a previous revocation hearing.[Morales v. State](11-1-3)

On December 20, 2010, the Dallas Court of Appeals held that a trial court can take judicial notice of its own orders, records, and judgments rendered in cases involving the same parties.

¶ 11-1-3. Morales v. State, No. 05-09-00412-CR, --- S.W.3d ----, 2010 WL 5141838 (Tex.App.-Dallas, 12/20/10).

Facts: Edgar Jesus Morales appeals following the revocation of his probation for the offense of aggravated assault with a deadly weapon.

During the punishment stage of the hearing, the State called Andy Nation, a probation officer with the Collin County Community Supervision Corrections Department, as its first witness. The State asked the trial court to take judicial notice of appellant's two prior juvenile adjudications and commitments to Texas Youth Commission (TYC) for the offenses of aggravated assault with a deadly weapon and burglary of a habitation. The adjudications were from the 417th district court, and the trial court's file containing those adjudications was in court and referenced by the prosecutor during the revocation hearing. Appellant's trial counsel objected that the State had not established the proper predicate. The trial court sustained the objection.

The prosecutor continued to question Nation, who testified regarding appellant's criminal history and immigration status. Nation explained that the present case arose from appellant's shooting of another man in November 2006. In two unrelated cases, appellant was adjudicated and committed to the TYC for the felony offenses of aggravated assault with a deadly weapon and burglary of a habitation. Both of these offenses involved firearms. After being released from TYC in July 2008, appellant was voluntarily returned to Mexico by Immigration and Customs Enforcement. By September 2008 appellant had returned to Texas. In that same month, appellant was arrested while in possession of a weapon in a motor vehicle that also contained stolen property. The State initially filed a petition to enter final adjudication of appellant's guilt in September 2008 before filing the motion to revoke in December 2008. On December 18, 2008, appellant pleaded guilty to the offense of unlawful carrying of a weapon. Nation also testified that their records showed that appellant had "disclosed numerous prior criminal activities."

The State's second and final witness, Gerald Rutledge, a detective with the McKinney Police Department who encountered appellant both as a juvenile and an adult, testified that appellant had a reputation for being violent and was associated with firearms. In Rutledge's opinion, appellant was able to move back and forth between Mexico and Texas "[v]ery easily." Based on his experience with appellant and knowledge of appellant's reputation, he believed appellant posed a continuing threat to the community.
At the close of the State's evidence, the prosecutor again asked the trial court to take judicial notice of the two juvenile cases. The prosecutor offered to call herself "as a witness to identify [appellant] as the same person

who was adjudicated for these two offenses." Defense counsel stipulated that this would have been the prosecutor's testimony. Appellant did not call any witnesses at the revocation hearing. The trial court revoked appellant's probation and sentenced him to ten years in prison.

Held: Affirmed

Opinion: A trial judge may take judicial notice of the orders, records, and judgments rendered in his court in cases involving the same parties. See Tex.R. Evid. 201(b); Wilson v. State, 677 S.W.2d 518, 523 (Tex.Crim.App.1984); Brown v. State, No. 05-92-02146-CR, 1997 WL 211478, at *7 (Tex.App.--Dallas Apr. 30, 1997, no pet.) (not designated for publication); Bagley v. State, No. 05- 93-01539-CR, 1994 WL 718520, at *2 (Tex.App.--Dallas Dec. 22, 1994, pet. ref'd) (not designated for publication). A trial judge may also take judicial notice of evidence from a previous trial on the merits or a previous revocation hearing. See Bradley v. State, 608 S.W.2d 652, 656 (Tex.Crim.App.1980); Barrientez v. State, 500 S.W.2d 474, 475 (Tex.Crim.App.1973); Akbar v. State, 190 S.W.3d 119, 123 (Tex.App.--Houston [1st Dist.] 2005, no pet.); Brown, 1997 WL 211478, at *7.

In this case, the record does not show why counsel did not continue to object to the trial court taking judicial notice of appellant's two prior adjudications. Since the prior adjudications were from the same court and involved the same defendant, appellant's continued objection to the judicial notice would most likely have been futile.

Conclusion: In upholding the trial court's decision, the court of criminal appeals concluded:
Certainly, [the trial court] could take judicial notice of the evidence introduced in that prior proceeding. We reach this conclusion despite appellant's contention that the two prior adjudications were inadmissible under rules of evidence 403, 802, and 803. Appellant failed to preserve these issues for appellate review because he did not make the necessary objections at the revocation hearing.