Review of Recent Juvenile Cases (2011)

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

Trial court did not abuse its discretion in admitting details of the MySpace pages.[Tienda v. State](11-1-4)

On December 17, 2010, the Dallas Court of Appeals concluded, after having reviewed the details of the MySpace pages admitted into evidence in this case, the trial court did not abuse its discretion in admitting the evidence.

¶ 11-1-4. Tienda v. State, No. 05-09-00553-CR, --- S.W.3d ----, 2010 WL 5129722 (Tex.App.-Dallas, 12/17/10).

Facts: A jury convicted Ronnie Tienda, Jr. of murder. In his second issue on appeal, appellant complained that the trial court erred in admitting facebook evidence.

The complainant's sister, Priscilla Palomo, testified that she found appellant's MySpace accounts based on "a lead." She found MySpace pages containing photos of appellant and comments allegedly made by him when she searched for him under "Smiley," his nickname. [FN1] The State produced no other witnesses to identify the MySpace pages. The district attorney's office subpoenaed records associated with ID user numbers from his MySpace accounts. The trial court admitted these records into evidence over appellant's objection. Several profiles were found for appellant on MySpace. His name was listed as "ron mr. t", "ron Mr.T" and "SMILEY FACE." His city was listed as "D TOWN," "D*Town," and "dallas." And his various email addresses incorporated the name Smiley or Ronnie Tienda, Jr.

FN1. Many of the witnesses testified they knew appellant by this nickname.

On one MySpace page, there was a photograph of appellant with the caption, "If you ain't blasting, you ain't lasting," and the notation, "Rest in peace, David Valadez [the complainant]." There was a bar near the notation that allowed MySpace users to play a song, which Palomo testified was the song that the complainant's family had used at his memorial service. Another MySpace page contained the statement, "Yeah, ... I keep it gangster, even after Hector shot at Nu-Nu at [the second club], we still didn't tell. And I know Jesse told him we was there, 'cause we saw them at the club, but it's cool if I get off, man." Another comment read, "Yeah, ... everyone was busting and they only told on me." Still other comments mentioned appellant's electronic monitor and "Hector snitching on me." The photographs of appellant on the MySpace pages also included one where he was displaying his electronic monitor and another captioned "str8 outta jail and n da club." Palomo admitted there was no way to verify who is the author of anything written on a MySpace page.

Daniel Torres, a gang unit officer with the Dallas Police Department, testified that the photographs of appellant posted on MySpace demonstrated his membership in the Dallas branch of the Tango Blast gang. He stated that members of the gang often stay in contact through MySpace. He noted that the number 18 tattooed on the back of appellant's head was a reference to the North Side 18th Street Gang. Torres explained that the phrase,

"If you ain't blasting, you ain't lasting" is a phrase they use against other gangs to let them know that if they are not part of their group, "you're not going to last."

In his second point of error, appellant complains the trial court erred in overruling his objection to the evidence taken from the MySpace pages. He argues that there was no proof the MySpace pages in question were created and maintained by him. In effect, he argues the MySpace pages were not authenticated. The requirement of authentication is a condition precedent to the admissibility of evidence and is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims. Tex.R. Evid. 901(a).

Held: Affirmed

Opinion: A trial court should admit evidence that is relevant based upon a conditional fact of authentication only if there is sufficient evidence to support a jury finding that the conditional fact is true. See Druery v. State, 225 S.W.3d 491, 502 (Tex.Crim.App.2007). The appearance, contents, substance, or other distinctive characteristics of the evidence, taken in consideration of the circumstances of the case, may be used to authenticate the evidence. See Tex.R. Evid. 901(b)(4). The trial court does not abuse its discretion in admitting evidence where it "reasonably believes that a reasonable juror could find that the evidence has been authenticated." See Druery, 255 S.W.3d at 502. We may not reverse the trial court's decision when that decision is within the zone of reasonable disagreement. See Powell v. State, 63 S.W.3d 435, 438 (Tex.Crim.App.2001).

The MySpace evidence complained of by appellant showed that the holder of the MySpace accounts identified himself as Smiley or Ron Tienda, Jr. in Dallas or D-town. There were photographs of appellant on the MySpace pages and references to the murder of the complainant, as well as appellant's being arrested and placed on electronic monitoring. The record shows that appellant was placed on the Electronic Monitoring Program as a condition of his bond on October 24, 2007. Comments on the pages referenced a Hector snitching on him and the fact that more than one person was involved in the shooting for which appellant was arrested.

Conclusion: The inherent nature of social networking websites encourages members who choose to use pseudonyms to identify themselves by posting profile pictures or descriptions of their physical appearances, personal backgrounds, and lifestyles. This type of individualization is significant in authenticating a particular profile page as having been created by the person depicted in it. The more particular and individualized the information, the greater the support for a reasonable juror's finding that the person depicted supplied the information. See Griffin v. Maryland, 995 A.2d 791, 806, cert. granted, 415 Md. 607 (September 17, 2010). Having reviewed the details of the MySpace pages admitted into evidence in this case, we conclude that the trial court did not abuse its discretion in admitting the evidence. We overrule appellant's second point of error.