Review of Recent Juvenile Cases (2011)

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

Criminal District Court's review of Juvenile Court's transfer order upheld, but only with respect to quashing indictment.[State v. Rhinehart](11-2-2)

On March 9, 2011, the Court of Criminal Appeals held that a mislabeled motion to quash (should have been Motion to Set Aside Transfer Order) was properly granted, and that the State, could not raise for the first time on appeal claims that the criminal district court was without jurisdiction of juvenile court's decision to transfer the case to criminal district court.

¶ 11-2-2. State v. Rhinehart, No. PD-0002-10, --- S.W.3d ----, 2011 WL 798650 (Tex.Crim.App., 3/9/2011).

Facts: Appellee was born on April 13, 1989. He was charged in juvenile court with an aggravated robbery that was committed on February 28, 2006, forty-four days before appellee's seventeenth birthday. On April 16, 2007, three days after appellee's eighteenth birthday, the State filed a petition in the juvenile court to transfer appellee's case to a criminal district court where appellee would be tried as an adult. Appellee claimed at an April 30, 2007 transfer hearing that the juvenile court should deny this petition because the State did not use due diligence in proceeding with his case in juvenile court before appellee's eighteenth birthday. The State claimed at this hearing that it had used due diligence. On May 2, 2007, the juvenile court signed an order waiving its jurisdiction and transferring appellee to criminal district court, after which appellee was indicted for aggravated robbery.

Appellee raised the due-diligence issue again in the criminal district court in a motion that he labeled a "MOTION TO QUASH INDICTMENT." Attached to this motion was a proposed order indicating that the motion was either "Granted" or "Denied." The criminal district court held a hearing on this motion, during which the parties relitigated the due-diligence issue that had been litigated in the juvenile court. The State's only argument at the hearing in the criminal district court was that it had used due diligence. Appellee relied on six exhibits that covered matters that were covered at the transfer hearing in the juvenile court. One of these exhibits (Defendant's Exhibit 5) is the reporter's record of the transfer hearing in the juvenile court. The criminal district court "Granted" appellee's "MOTION TO QUASH INDICTMENT."

The State appealed to the court of appeals, claiming for the first time on appeal that: (1) the criminal court was without jurisdiction to review "the evidence underlying the juvenile court's decision to transfer this case" because appellee "had no statutory right to appeal the sufficiency of the evidence in the juvenile court's transfer proceedings prior to being finally convicted in the criminal district court" (emphasis supplied), and (2) the criminal district court erred to grant appellee's motion to quash the indictment on a ground not authorized by law because the sufficiency of the evidence supporting a juvenile court's order to transfer a case to criminal district court is not a valid ground for granting a motion to quash an indictment as a matter of statutory law. Appellee responded by arguing, among other things, that the State had waived these issues by failing to raise

them in the criminal district court and that he did not "appeal" but only "challenged" the juvenile court's transfer order (as opposed to the indictment) in the criminal district court.

The court of appeals sustained the State's second issue, found it unnecessary to address its first issue, reversed the criminal district court's order quashing the indictment, and remanded the case to the criminal district court for further proceedings consistent with its opinion. The court of appeals further stated that "issues relating to the [juvenile-court] transfer proceedings are properly raised in an appeal from a conviction after transfer." See Rhinehart, slip op. at 4. It also stated:
Appellee acknowledges that a party may only appeal a transfer order in conjunction with a conviction or an order of deferred adjudication. See TEX.CODE CRIM. PROC. ANN. Art. 44.47(b) (Vernon 2006). Nonetheless, appellee contends that an "appeal" differs from a "challenge," and insists the statute does not restrict a defendant's rights to challenge a transfer order. Although we note that the construction appellee seeks to advance would effectively allow a defendant two bites at the proverbial apple, we need not decide the issue here. Appellee's motion did not seek to set aside the transfer order; it sought to quash the indictment. Moreover, even if the statute afforded different treatment for a "challenge" than an "appeal," the distinction is without a difference in the present case. Appellee's motion concerned the sufficiency of the evidence in the transfer proceeding. And in the absence of a conviction or other order of deferred adjudication, we have no jurisdiction to determine the propriety of a transfer. See TEX.CODE CRIM. PROC. ANN. Art. 44.47(b) (Vernon 2006).
See Rhinehart, slip op. at 5.

We granted appellee's discretionary-review petition to review the court of appeals's decision. The grounds upon which we granted review are:
1. The court of appeals erred in failing to address the "waiver" issue.
2. The court of appeals erred in re-framing the issue and failing to address the true issue at hand, namely: whether the Criminal District Court had the authority to set aside the transfer order.
3. The [court of appeals] erred in implicitly ruling that the trial court lacked the authority to set aside the transfer order.
(Emphasis in original).

Held: Court of Criminal Appeals reversed the judgment of the court of appeals and affirmed the criminal district court's ruling quashing the indictment.

Opinion: Appellee asserts that the criminal district court "set aside the transfer order because the State failed to proceed in the juvenile court with due diligence before Rhinehart's eighteenth birthday" and that the "issue in this case is whether the [criminal district] court had the judicial authority to set aside a transfer order." And, in support of his second ground for review, appellee argues, "Some of the confusion in this case apparently has resulted from the fact that Rhinehart mislabeled the motion as being a 'Motion to Quash Indictment.' The motion was, in fact, a motion challenging the validity of the transfer order. A review of the contents of the motion itself and the arguments made during the pre-trial hearing clearly established that fact."

Though the record does reflect that the basis of appellee's "MOTION TO QUASH INDICTMENT" was the validity of the juvenile court's transfer order, we must disagree with appellee that the effect of the criminal district court granting this motion to quash was to set aside the transfer order. Appellee's motion requested that the indictment be quashed, not that the transfer order be set aside. On the record presented to the court of appeals, the procedural posture of this case was that the juvenile court's transfer order was still in force and that, in granting appellee's "MOTION TO QUASH INDICTMENT," the criminal district court had merely set aside the indictment. See State v. Eaves, 800 S.W.2d 220, 221-22 n. 5 (Tex.Cr.App.1990) ("quash" and "set aside" are synonymous). We, therefore, disagree with the claim in appellee's second ground for review that the court of appeals re-framed the issue and failed to address the true issue, namely: whether the criminal district court

"had the authority to set aside the transfer order." This issue is not presented in this case since the criminal district court did not set aside the juvenile court's transfer order, and the court of appeals would have erred even to address this issue.

We also understand appellee to argue that a juvenile court's erroneous transfer order does not divest the juvenile court of its exclusive jurisdiction over the case, thus permitting the criminal district court to review the validity of the transfer order to determine whether it has jurisdiction over the case. Appellee argues, "Accordingly, Rhinehart would urge that, without a valid transfer proceeding, the [criminal district] court would not have acquired jurisdiction. Consequently, the validity of the transfer order is and must be subject to judicial review in the [criminal district] court." We do not believe that the criminal district court's quashing of appellee's indictment, based on the State's lack of "due diligence," is necessarily a determination by the criminal district court that it lacks jurisdiction over the case. In addition, the legislative provision in Article 44.47(b) that a defendant may appeal a juvenile court's transfer order "only in conjunction with the appeal of a conviction ... for which the defendant was transferred to criminal court" is some indication that a juvenile court's erroneous transfer order does not divest the criminal district court of jurisdiction over the case. We do not believe that the issue of whether the criminal district court could set aside the juvenile court's transfer order would be presented in this case unless the criminal district court set aside the transfer order and attempted to remand the case to the juvenile court.

Judge Price's dissenting opinion would decide that "the trial court necessarily ruled that the [juvenile court's] transfer order was invalid and that the lack of a valid transfer order deprived it of jurisdiction over the matter." See Dissenting op. at 2 (Price, J.) (emphasis in original). This dissenting opinion would then remand the case to the court of appeals to consider, "in the first instance: 1) whether the trial court had the authority to make such an implicit ruling on the validity of the transfer order; and/or, in the event that it should find that the trial court did have that authority (or, possibly, as an alternative to deciding whether the trial court had that authority), then 2) whether the State procedurally defaulted any complaint about the trial court's authority by failing specifically to question its authority during the proceedings at the motion to quash hearing." See Dissenting op. at 4-5 (Price, J.) (emphasis in original).

There would, however, be no point in doing this unless the Court were also to decide that, in quashing the indictment, the criminal district court also implicitly or necessarily set aside the juvenile court's transfer order. The juvenile court and the parties would, thus, have to read at least two implicit or necessarily implied rulings in the criminal district court's order granting appellee's motion to quash to learn that the juvenile court had jurisdiction over the case again.

And, it is not so clear to us that, in granting appellee's motion to quash, the criminal district court implicitly or even necessarily ruled that the juvenile court's ruling on the due-diligence issue deprived the criminal district court "of jurisdiction over the matter." It is not apparent to us that a juvenile court's erroneous ruling on a due-diligence issue deprives the criminal district court "of jurisdiction over the matter." See, e.g., Article 44.47(b) (defendant may appeal a transfer under Section 54.02 of the Family Code "only in conjunction with the appeal of a conviction of ... the offense for which the defendant was transferred to criminal court").

In addition, even if one could read these implicit rulings into the criminal district court's granting of appellee's motion to quash, this motion to quash still requested only that the indictment be quashed. Notwithstanding what the criminal district court may have implicitly decided, appellee's motion to quash may not have been clear and specific enough to put the State on notice that appellee might also have been seeking to set aside the juvenile court's transfer order so that the State would have an opportunity to challenge the criminal district court's authority to do this. The dissenting opinion apparently would leave open the possibility that the State procedurally defaulted this issue on appeal even though appellee's motion to quash may not have been specific enough to put the State on notice that it needed to raise this issue in the criminal district court.

At least in this case, we believe that appellee should have labeled his motion something other than a motion to quash (e.g., a motion to set aside the juvenile court's transfer order) if his intention was, as he claimed on appeal, to challenge the validity of the transfer order. Appellee has even acknowledged in this proceeding that "[s]ome of the confusion in this case apparently has resulted from the fact that Rhinehart mislabeled the motion as being a 'Motion to Quash Indictment.' " In this particular case, we believe it appropriate to put appellee back in the position that he was in after the juvenile court waived its jurisdiction and transferred his case to the criminal district court and before appellee filed his mislabeled motion to quash that may have confused the other party on exactly what it was that appellee was attempting to accomplish. Appellee's second ground for review is overruled.

This also means that, with the criminal district court having only set aside the indictment, which it clearly had the subject-matter jurisdiction and authority to do, the State, as the losing party in the trial court, failed to preserve the claims that it presented for the first time on appeal in the court of appeals. Compare Sanchez v. State, 120 S.W.3d 359, 366-67 (Tex.Cr.App.2003) (right to be charged by an instrument that is free of defects, errors, and omissions is neither a "systemic" requirement nor a "waivable" right, and any error in the charging instrument must be objected to in a timely and specific manner); Hailey, 87 S.W.3d at 121-22; State v. Boado, 55 S.W.3d 621, 622-24 (Tex.Cr.App.2001) (Johnson, J., dissenting to dismissing discretionary-review petition as improvidently granted) (court of appeals should not have reversed trial court's decision quashing indictment on theory not raised by the State in either the trial court or on appeal). The court of appeals, therefore, erred in not considering and sustaining appellee's waiver argument. See Kombudo v. State, 171 S.W.3d 888, 889 (Tex.Cr.App.2005) (Tex.R.App. P. 47.1 "requires a court of appeals to address an appellee's reply that the appellant's point was not preserved for review").
In arguing that the State, as the losing party in the criminal district court, should be permitted to argue for the first time on appeal that there was no valid basis for the criminal district court to have quashed the indictment, Presiding Judge Keller's dissenting opinion relies on this Court's prior decisions holding that the State can usually raise the issue of a defendant's standing to challenge a search or a seizure on Fourth Amendment grounds for the first time on appeal. See Dissenting op. at 2 (Keller, P.J.) (citing State v. Klima, 934 S.W.2d 109, 111 (Tex.Cr.App.1996)); see generally Wilson v. State, 692 S.W.2d 661, 666-71 (Tex.Cr.App.1984) (op. on reh'g) (discussing when State may raise issue of standing for the first time on appeal). We do not believe that these cases apply here since there is no question that appellee has standing to quash the indictment in this case. There is no claim in this case that appellee attempted to quash an indictment charging someone else with aggravated robbery. Nor does the dissent point to any case law that equates allowing the State to raise standing for the first time on appeal to allowing the State to ignore ordinary rules for preserving error.

In addition, our decisions in Klima and Wilson primarily relied on the Supreme Court's decision in Rakas v. Illinois for the proposition that the State can usually raise the issue of a defendant's standing to challenge a search or seizure on Fourth Amendment grounds for the first time on appeal. We do note, however, that the prosecution in Rakas did raise the standing issue in the trial court which, the Supreme Court stated, "gave petitioners notice that they were put to their proof on any issue as to which they had the burden...." See Rakas, 439 U .S. at 132 n. 1. Rakas, therefore, would not clearly support a decision here that the State should be permitted to argue for the first time on appeal that there was no valid basis for the criminal district court to have quashed the indictment.

We also do not agree with the broad assertion in the Presiding Judge's dissenting opinion that "the State need not preserve a complaint if the issue is one which the defendant had the burden to prove in order to obtain relief." In State v. Steelman, for example, the State was not permitted to raise for the first time on appeal a claim that a search was valid pursuant to a warrant even though the defendant had the burden on the motion to suppress. See State v. Steelman, 93 S.W.3d 102, 107 (Tex.Cr.App.2002) ("At the suppression hearing, the State specifically limited its argument to one theory of law: that there was probable cause to justify a

warrantless arrest and warrantless search. Because the State did not present its other theory (that even if the warrantless arrest was illegal, it did not taint the search pursuant to the warrant) to the trial court, the State cannot rely on that theory on appeal.") (emphasis in original).

This dissenting opinion claims that we misread Steelman because "it was the State that had the burden to prove the propriety of the warrantless police activity in that case." See Dissenting op. at 3-4 (Keller, P.J.) (emphasis supplied). There is no disagreement or misunderstanding as to when the burden shifts on a motion to suppress. The point is that, in Steelman, the State was not permitted to raise for the first time on appeal the theory that the search was justified pursuant to a warrant, an issue upon which the defendant had the initial burden of production. And the crucial focus is on the losing party's requirement to preserve error for purposes of appeal.

Conclusion: To summarize, in this case, we apply ordinary rules of procedural default to decide that the State, as the losing party in the criminal district court, could not raise for the first time on appeal a claim that there was no valid basis for the criminal district court to have quashed the indictment. We decline to apply, in this case, the Fourth Amendment standing rule of Rakas which, in any event, does not clearly support the proposition that the State should be permitted to raise this claim for the first time on appeal, particularly since the State chose to litigate only the due-diligence issue in the criminal district court thus, in effect, conceding that this might be a valid basis for quashing the indictment. See Steagald, 451 U.S. at 209-11. Appellee's first ground for review is sustained.

We reverse the judgment of the court of appeals and affirm the criminal district court's ruling quashing the indictment.

KELLER, P.J., filed a dissenting opinion.

PRICE, J., filed a dissenting opinion in which WOMACK, J., joined.

KELLER, P.J., filed a dissenting opinion.