

Year 2003 Case Summaries

By

Robert O. Dawson

Bryant Smith Chair in Law
University of Texas School of Law

[2003 Case Summaries](#) [2002 Case Summaries](#) [2001 Case Summaries](#) [2000 Case Summaries](#) [1999 Case Summaries](#)

Unadjudicated juvenile offenses are admissible at the penalty phase of a criminal trial [Dawson v. State] (04-1-13).

On December 31, 2003, the Waco Court of Appeals held that testimony at the penalty phase of a criminal trial by a juvenile probation officer that the criminal defendant received deferred prosecution as a juvenile is admissible as an unadjudicated juvenile offense.

04-1-013. Dawson v. State, UNPUBLISHED, No. 10-01-202-CR, 2003 WL 23120062, 2003 Tex.App.Lexis ____ (Tex.App.-Waco 12/31/03) Texas Juvenile Law (5th Ed. 2000).

Facts: A jury convicted Anthony Laroy Dawson of aggravated assault and assessed his punishment at ten years' imprisonment and a \$7,500 fine. Dawson presents five issues in which he contends: (1) the evidence is factually insufficient to prove the allegations of the indictment; (2) the trial court erred by permitting the State to amend the indictment at trial over his objection; (3) he received ineffective assistance of counsel because trial counsel failed to object to evidence and argument by the State regarding his post arrest silence; (4) the court erred by entering a deadly weapon finding in the judgment; and (5) the court erred by admitting evidence of his juvenile record during the punishment phase of trial.

The record shows that Dawson and the complainant Andrew Davis got into a verbal altercation on the date in question. According to Davis, Dawson began to walk away then turned "quickly" and began shooting at him with a .25 caliber pistol. As Davis ran away, he recalled that Dawson fired about five shots. Davis was hit in the genital area. Dawson's witnesses on the other hand testified that Dawson shot Davis only after Davis threatened to hit him with a liquor bottle. The jury rejected Dawson's self defense claim and convicted him of shooting Davis.

Held: Affirmed.

Opinion Text: JUVENILE RECORD

Dawson claims in his fifth issue that the court abused its discretion by admitting evidence during the punishment phase that he had received deferred prosecution for four offenses as a juvenile.

A juvenile probation officer testified over objection that Dawson received deferred prosecution for the offenses of resisting arrest, evading arrest, and manufacture and/or delivery of cocaine. He was never adjudicated on any of these offenses.

Article 37.07, section 3(a)(1) provides:

Regardless of the plea and whether the punishment be assessed by the judge or the jury, evidence may be offered by the state and the defendant as to any matter the court deems relevant to sentencing, including but not limited to the prior criminal record of the defendant, his general reputation, his character, an opinion regarding his character, the circumstances of the offense for which he is being tried, and, notwithstanding Rules 404 and 405, Texas Rules of Evidence, any other evidence of an extraneous crime or bad act that is shown beyond a reasonable doubt by evidence to have been committed by the defendant or for which he could be held criminally responsible, regardless of whether he has previously been charged with or finally convicted of the crime or act. A court may consider as a factor in mitigating punishment the conduct of a defendant while participating in a program under Chapter 17 as a condition of release on bail. Additionally, notwithstanding Rule 609(d), Texas Rules of Evidence, and subject to Subsection (h), evidence may be offered by the state and the defendant of an adjudication of delinquency based on a violation by the defendant of a penal law of the grade of:

- (A) a felony; or
- (B) a misdemeanor punishable by confinement in jail.

Tex.Code Crim. Proc. Ann. art. 37.07, § 3(a)(1) (Vernon Supp.2003).

The language of the statute may lead one to conclude that only juvenile adjudications involving a felony or jailable misdemeanor are admissible at punishment. Nevertheless, Texas courts have consistently held that unadjudicated crimes or bad acts committed by the defendant as a juvenile are admissible during the punishment phase of an adult criminal trial. See *Strasser v. State*, 81 S.W.3d 468, 469 70 (Tex.App. Eastland 2002, no pet.); *Rodriguez v. State*, 975 S.W.2d 667, 687 (Tex.App. Texarkana 1998, pet. ref'd); see also *Pitts v. State*, 560 S.W.2d 691, 692 (Tex.Crim.App. [Panel Op.] 1978); *Lindsay v. State*, 102 S.W.3d 223, 227 (Tex.App. Houston [14th Dist.] 2003, pet. filed). Other commentators agree with this interpretation of the statute. E.g., Robert O. Dawson, *Texas Juvenile Law*, 250 51 (5th ed., Tex. Juv. Probation Commn.2000).

[2003 Case Summaries](#)[2002 Case Summaries](#)[2001 Case Summaries](#)[2000 Case Summaries](#)[1999 Case Summaries](#)