

Year 2004 Case Summaries

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Evidence is sufficient to support adjudications for unauthorized use, burglary of a vehicle, and evading arrest [In re J.T.] (04-2-06).

On March 10, 2004, the San Antonio Court of Appeals held that the evidence was sufficient to support an adjudication that respondent operated the motor vehicle of the owner without his consent, burglarized another vehicle as a party, and evaded arrest.

04-2-06. In the Matter of J.T., UNPUBLISHED, No. 04-03-00450-CV, 2004 WL 431479, 2004 Tex.App.Lexis ____ (Tex.App.-San Antonio 3/10/04) Texas Juvenile Law (5th Ed. 2000).

Facts: J.T., a juvenile, was charged with unauthorized use of a motor vehicle, evading arrest, and six counts of burglary of a vehicle. J.T. plead "not true" to all the charges and waived a jury trial. The trial court found the charges of unauthorized use of a motor vehicle, evading arrest, and one count of burglary of a vehicle to be "true" and ordered J.T. to TYC. J.T. appeals the trial court's adjudication and disposition. J.T. contends that the evidence is insufficient to support the judgment and that the trial court abused its discretion by committing him to TYC.

Held: Affirmed.

Opinion Text: In three points of error, J.T. asserts that the evidence is legally and factually insufficient to support the adjudication that he committed the offenses of: (1) unauthorized use of a motor vehicle, (2) burglary of a vehicle, and (3) evading arrest. We disagree.

Standard of Review

Findings in a bench trial "are entitled to the same weight as the verdict of a jury" and are reviewed under the same standards. *McGalliard v. Kuhlmann*, 722 S.W.2d 694, 696 (Tex.1986). To determine the legal sufficiency of the evidence to support the adjudication, we view all the evidence in the light most favorable to the trial court's finding and ask if any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. See *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *In re K.T.*, 107 S.W.3d 65, 71 (Tex.App. San Antonio 2003, no pet.). For a factual sufficiency review, we consider all the evidence in a neutral light to determine whether it is so weak as to make the trial court's finding clearly wrong and manifestly unjust or whether the adverse finding is against the great weight and preponderance of the available evidence. See *Johnson v. State*, 23 S.W.3d 1, 11 (Tex.Crim.App.2000); *In re K.T.*, 107 S.W.3d at 71.

Unauthorized Use of a Motor Vehicle

In his first point of error, J.T. contends that the evidence is legally and factually insufficient to support the finding that he committed the offense of unauthorized use of a motor vehicle. J.T. contends that the testimony of the complainant, Ruben Ramirez, shows that Ramirez was not the owner of the motor vehicle; therefore, the State failed to prove that J.T. "knowingly or intentionally operate[d]" the motor vehicle "without the effective consent of the owner." Tex. Penal Code Ann. § 31.07 (Vernon 2003) (emphasis added). Additionally, J.T. contends that Ramirez's testimony supports his assertion that he did not commit the offense since Ramirez did not see J.T. take or operate the motor vehicle. The State counters that Ramirez's testimony shows that he was an "owner" under the Penal Code.

Section 1.07 of the Penal Code defines "owner," in part, as a person who "has title to the property, possession of the property, whether lawful or not, or a greater right to possession of the property than the actor." Tex. Penal Code Ann. § 1.07(35) (Vernon 2003).

Any person with a greater right to actual care, custody, control, or management of property than the defendant can be alleged the "owner." *Alexander v. State*, 753 S.W.2d 390, 392 (Tex.Crim.App.1988). According to Ramirez's testimony, he purchased the car from its former owner. Although title had not been formally transferred to Ramirez, he had possession of the car for a month before it was stolen. Furthermore, Ramirez testified that he reported the car stolen, identified the car when it was recovered, and paid \$200 to have the car repaired from damage caused when the car was stolen. Ramirez testified that he did not give anyone permission to take his car the day of the incident. Thus, the evidence shows that Ramirez was the "owner" of the car and had a greater right to actual care, custody, control, or management of the property than J.T. *Alexander*, 753 S.W.2d at 392.

Still, J.T. contends that Ramirez's testimony supports his assertion that he did not commit this offense. Ramirez testified that he did not see J.T. take or operate the vehicle. However, Officer Alonzo testified that J.T. was the driver of the car that he pursued on the night of the theft and that Ramirez identified that same car to be his. Thus, the evidence shows that J.T. operated Ramirez's vehicle without Ramirez's consent.

Reviewing the evidence in both the light most favorable to the judgment and in a neutral light, we conclude that the evidence is both legally and factually sufficient to support the trial court's finding that J.T. engaged in delinquent conduct by committing the offense of unauthorized use of a motor vehicle. J.T.'s first point of error is overruled.

Burglary of a Vehicle

In addition to being found to have engaged in delinquent conduct for committing the offense of unauthorized use of a motor vehicle, J.T. was also found to have engaged in delinquent conduct for committing the offense of burglary of a vehicle. In his second point of error, J.T. contends that the evidence is insufficient to support the finding that he committed the offense of burglary of a vehicle. J.T. contends that he was "never conclusively seen by anyone outside of the motor vehicle that he was driving" and that the complainant and owner of the burglarized vehicle, Matthew Anthony, did not positively identify him as the individual who broke into his car; therefore, J.T. argues that the State failed to prove that he intended to commit a theft and break into the vehicle. The State counters that J.T. was in possession of items stolen from Anthony's car and that J.T. could be convicted under the theory of parties.

Where there is independent evidence of a burglary, unexplained possession of the recently stolen goods may constitute sufficient evidence of guilt to support a conviction. *Harris v. State*, 656 S.W.2d 481, 483 (Tex.Crim.App.1983). Furthermore, in a bench trial, the trial court may utilize the law of parties if the evidence supports that theory despite the absence of such allegation in the indictment. In *re A.A.*, 929 S.W.2d 649, 654 (Tex.App. San Antonio 1996, no writ). Under the theory of parties, an individual may be guilty of burglary even though he did not personally enter the burglarized premises if he is acting together with another in the commission of the offense. *Clark v. State*, 543 S.W.2d 125, 127 (Tex.Crim.App.1976); *Wilkerson v. State*, 874 S.W.2d 127, 129 (Tex.App. Houston [14th Dist.] 1994, pet. ref'd). Thus, as long as J.T. was acting together with another in the commission of the burglary, the State did not have to prove that J.T. actually entered the burglarized vehicle. See *Wilkerson*, 874 S.W.2d at 129.

The evidence before the trial court shows that at approximately 4:30 a.m., while Anthony and his girlfriend were sitting on their front porch, Anthony and his girlfriend observed someone leaning into Anthony's car and "messing with stuff" inside the car. Anthony ran inside to get his keys and then ran toward the car yelling at the perpetrator. Anthony saw the perpetrator jump into the back seat of a white Pontiac Grand Am and drive off. Anthony's girlfriend called 911 to report the burglary. Officer Alonzo received the dispatch call regarding the burglary at 4:39 a.m. Officer Alonzo spotted the suspect vehicle, and a pursuit ensued. When J.T. was arrested driving the suspect vehicle, the police recovered Anthony's flashlight in the vehicle. Due to the darkness of the street, Anthony was unable to positively identify who had burglarized his vehicle, but he was able to identify the vehicle used by the perpetrators and his flashlight. Thus, the evidence shows that J.T. was in possession of the stolen goods shortly after the burglary and was driving the vehicle that carried the perpetrator away from the scene of the burglary. This evidence tends to show that J.T. was acting together with another in the commission of a burglary.

Reviewing the evidence in both the light most favorable to the judgment and in a neutral light, we conclude that the evidence is both legally and factually sufficient to support the trial court's finding that J.T. engaged in delinquent conduct by committing the offense of burglary of a vehicle. J.T.'s second point of error is overruled.

Evading Arrest

In his third point of error, J.T. contends that the evidence is insufficient to support the finding that he committed the offense of evading arrest. The testimony of Officer Alonzo was the only evidence presented with regard to this offense. J.T.'s argument strikes at the credibility of Officer Alonzo's testimony and suggests that a stop made during the pursuit shows that he did not intentionally flee from Officer Alonzo. The State counters that J.T.'s credibility argument is an improper argument before this court and that J.T. misstates Officer Alonzo's testimony.

With regard to the pursuit, Officer Alonzo testified that when he spotted the suspect vehicle, he turned his vehicle around and

activated his emergency overhead lights and sirens. He observed the vehicle take off at a high rate of speed-over the posted thirty miles per hour speed limit. Officer Alonzo testified that the pursuit began in the City of Kirby and came to a temporary stop one or two miles outside the city, during which the backseat passenger got out of the car. The vehicle continued on, and Officer Alonzo stayed with the vehicle. He then observed the vehicle jump the median, travel the wrong way down the street for a short time, jump back over the median, and run a couple of red lights. The vehicle then made a u-turn and came to a stop in a parking lot. Officer Alonzo estimated that the actual pursuit lasted three minutes and that during the pursuit he traveled more than two miles and reached a high speed of eighty or ninety miles per hour.

J.T. contends that Officer Alonzo's testimony regarding the pursuit is mathematically inconsistent and magnified what actually happened. J.T. contends that the alleged chase was not very long because, according to Officer Alonzo's testimony, the vehicle was stopped one mile down the road after traveling at an unknown speed. J.T. asserts that if the police car drove in a three minute chase, as alleged by Officer Alonzo, going eighty miles an hour, then both cars would have traveled and stopped at least four miles down the road. Therefore, J.T. contends that Officer Alonzo's testimony magnified the pursuit four times worse than it was, rendering his testimony concerning the pursuit insufficient to prove the charge of evading arrest.

With regard to a legal sufficiency review, J.T.'s credibility argument is improper, as we may not re-evaluate the weight and credibility of the record evidence and thereby substitute our judgment for that of the fact finder. *Dewberry v. State*, 4 S.W.3d 735, 740 (Tex.Crim.App.1999). However, in reviewing the factual sufficiency of the evidence, we consider all the evidence in a neutral light. *Johnson v. State*, 23 S.W.3d 1, 11 (Tex.Crim.App.2000). Although we accord due deference to the fact finder's determinations, particularly those determinations concerning the weight and credibility of the evidence, we have the authority to disagree with the fact finder's determination when the record clearly indicates such a step is necessary to arrest the occurrence of a manifest injustice. *Johnson*, 23 S.W.3d at 11. Thus, we must consider whether the alleged inconsistencies in Officer Alonzo's testimony rendered the trial court's finding that J .T. committed the offense of evading arrest manifestly unjust.

Reviewing the entirety of Officer Alonzo's testimony, we do not conclude that his testimony magnified the event such that the trial court's finding is rendered manifestly unjust. J.T. selectively extracted portions of Officer Alonzo's testimony in an effort to support his contention that the alleged inconsistencies in Officer Alonzo's testimony showed that he magnified the pursuit. For example, the testimony does not indicate that Officer Alonzo was going eighty miles per hour during the entire pursuit or that the entire pursuit covered only one mile. Additionally, any inconsistencies in his testimony were weighed by the fact-finder-here the trial court. The record does not indicate the occurrence of a manifest injustice.

Additionally, in support of his contention that he did not flee, J.T. points to the fact that, during the pursuit and shortly before the car came to complete stop, the car came to an abrupt temporary stop, enabling an adult to jump out of the car. This fact, standing alone, does not show that J.T. lacked the requisite intent to flee from Officer Alonzo. Furthermore, J.T. does not contest that he was the driver of the vehicle and that the pursuit continued after the temporary stop.

Reviewing the evidence in both the light most favorable to the judgment and in a neutral light, we conclude that the evidence is both legally and factually sufficient to support the trial court's finding that J.T. engaged in delinquent conduct by committing the offense of evading arrest. J.T.'s third point of error is overruled.

DISPOSITION

In his fourth point of error, J.T. contends that the trial court abused its discretion by ordering him to the Texas Youth Commission because the record does not support the commitment in light of the purposes of the Texas Juvenile Justice Code.

Standard of Review

A juvenile judge has broad discretion in determining a suitable disposition for a juvenile that has been adjudicated delinquent. In re K.J.N., 103 S.W.3d 465, 465 66 (Tex.App. San Antonio 2003, no pet.); In re H.G., 993 S.W.2d 211, 213 (Tex.App. San Antonio 1999, no pet.). We review the trial court's juvenile disposition order under a criminal abuse of discretion standard-divorced from evidentiary standards of legal and factual sufficiency. In re K.T., 107 S.W.3d at 74 75. Accordingly, when reviewing a juvenile disposition order, we view the evidence in the light most favorable to the trial court's ruling, affording almost total deference to findings of historical fact that are supported by the record. In re K.T., 107 S.W.3d at 75. However, when the resolution of the factual issue does not turn upon an evaluation of credibility or demeanor, we review the trial court's determination of the applicable law, as well as its application of the appropriate law to the facts it has found, de novo. Id. Absent an abuse of discretion, a reviewing court will not disturb the juvenile court's determination. In re H.G., 993 S.W.2d at 213.

Analysis

Section 51.01(5) of the Texas Family Code provides that the purposes of the Juvenile Justice Code are to be achieved "in a family

environment whenever possible, separating a child from the child's parents only when necessary for the child's welfare or in the interest of public safety and when a child is removed from the child's family, to give the child the care that should be provided by parents." Tex. Fam.Code Ann. § 51.01(5) (Vernon 2002) (emphasis added). J.T. contends that removing him from his mother's home and placing him in TYC was not "necessary for the child's welfare or in the interest of the public safety."

However, there was evidence before the court showing that removal from the home was necessary for the child's welfare. J.T.'s probation officer testified that this was J.T.'s fourth court appearance and that J.T. had been previously adjudicated for two separate misdemeanors and several probation violations. He also testified that J.T. completed spotlight and numerous counseling programs for different types of issues. He testified that J.T. has a violent past and has demonstrated aggression to some authority figures. The probation officer's testimony also demonstrated that J.T. did not have adequate supervision in the home and that his behavior had not improved while under probation, spotlight, or counseling. [FN2] Additionally, when J.T.'s mother addressed the trial court, she did not address whether she could provide the adequate care and level of support and supervision J.T. needed to meet the conditions of probation.

FN2. The probation officer testified:

"With his mother he's had the run of the mill, so to speak. He would come and go as he pleased. When he got off of spotlight in January of this year, he didn't report on regular probation, but once he left home without permission. Mother reported him missing-on a missing case number. He came back days later and I made him come to my office April 2, if you will. I read him the-went over the conditions again. Approximately three days later he comes-he was referred for these charges and detained ever since April 7th, I believe, it was this year."

Considering the foregoing evidence, we hold that the trial court did not abuse its discretion in ordering J.T. to TYC. J.T.'s fourth point of error is overruled.

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