Body

Year 2004 Case Summaries

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Juvenile adjudication was improperly admitted in criminal trial to correct a false impression but was admissible to rebut a claim of self-defense [Carter v. State] (04-2-13).

On April 6, 2004, the Texarkana Court of Appeals held that juvenile adjudications were not admissible in a criminal trial to correct a false impression but one was admissible to rebut a claim of self-defense and admission of the other, while error, was harmless.

04-2-13. Carter v. State, UNPUBLISHED, No. 06-02-00174-CR, 2004 WL 726252, 2004 Tex. App.Lexis ___ (Tex.App.-Texarkana 4/6/04) Texas Juvenile Law (5th Ed. 2000).

Facts: A Harris County jury convicted Jeb Travis Carter of aggravated assault. The indictment alleged Carter did intentionally and knowingly threaten Richard Sydenstricker with imminent bodily injury by using and exhibiting a deadly weapon, namely, a metal pipe. The jury assessed Carter's punishment at five years' community supervision. The issue presented concerns of whether the trial court erred in allowing into evidence Carter's prior juvenile delinquency adjudications.

According to the State's evidence, the following events occurred in March of 2002, leading to Carter's indictment for aggravated assault. Carter was living in an apartment with complainant Sydenstricker and Luke Myer. The three roommates were joined on one occasion by Mark Diogu, Chase Hall, and Jimmy Huval. Myer became upset that Diogu, Hall, and Huval were visiting so frequently, and due to his frustration, an argument ensued. A physical altercation broke out between Myer and Diogu, and Huval also became involved. At some point, Diogu ended up on top of Huval, threatening to stab him. Carter approached Sydenstricker in order to prevent him from acting for the benefit of Huval. Carter swung at Sydenstricker, but missed. Sydenstricker then struck Carter, breaking his nose. Carter left the apartment, returning later that evening to get some clothes. He did not continue to reside there.

On April 28, 2002, Sydenstricker and two coworkers, Hall and Daniel Stout, were driving their employer's moving truck and stopped at a Texaco station to get something to drink. While Sydenstricker visited with a friend outside the station, he saw Carter, Diogu, and Dedrick Moore drive up in Carter's car. Carter, Diogu (both carrying metal pipes) and Moore got out of the vehicle and started running toward Sydenstricker.

Sydenstricker went back to the truck, and the three men left the station. Carter and company pursued the truck which Sydenstricker was driving. Sydenstricker drove past the men's place of employment, but did not stop since no one else appeared to be on the premises. Eventually, he returned to the Texaco station, parked near the front door, and, along with the other two men, got out of the truck. Sydenstricker carried a pipe wrench, and Hall ran away from the station. Sydenstricker and Stout went into the station and asked someone to call the police. When the two looked outside, Carter and Moore had caught and were hitting Hall. When Sydenstricker and Stout went outside to help Hall, Carter and Diogu came after Sydenstricker. Sydenstricker threw the wrench he had been carrying, but did not hit anyone. Carter and Diogu struck Sydenstricker with the pipes, and Sydenstricker went back inside the store; Carter and Diogu followed. After striking Sydenstricker several more times, Carter and Diogu left the store, went to the moving truck, and broke a window. Sydenstricker and Stout called the police from inside the store. A customer at the service station had made note of Carter's license plate number and gave the number to Stout.

Officer Bryan Bennett of the Houston Police Department arrived at the station, met with the three men and the clerk at the store, and witnessed Sydenstricker's and Hall's injuries on their torsos, chests, and backs. Bennett also viewed the store videotape of the incident, in which it appeared to him that the victims were retreating from the assailants, who appeared to be carrying some type of weapon. Bennett drove to the location where the vehicle was registered and was able to talk to Carter's father. While Bennett talked with Carter's father, Carter and the two other men drove into the driveway. Bennett ordered the men to get out of the vehicle and to

place their hands on the patrol car. Moore complied with the request, but Carter and Diogu became hostile and began cursing. While Bennett was putting Diogu and Moore in the patrol car, Carter ran into his house. Eventually, Bennett removed a kicking and screaming Carter from the house and placed him under arrest.

Carter's version of events varied drastically from the State's evidence, putting Sydenstricker, Hall, and Stout as the aggressors and asserting he acted in self-defense. At trial, the following exchange occurred during direct examination of Carter:

[Defense Counsel:] We're going to get to the point where you guys lived in an apartment; you, Rich and Luke. Prior to that had you ever had a-prior to-other than playing on a basketball court or a football field ever had any altercations with pipes or weapons or anything like that?
[Carter:] No.

Later, on cross examination, the State was allowed to question Carter concerning a juvenile offense involving reckless injury to an elderly individual and a juvenile offense for assault. [FN2]

FN2. In its charge to the jury, the trial court instructed the jury to consider this evidence only for the purpose of weighing Carter's testimony. No objection was made to this limiting instruction.

Held: Affirmed.

Opinion Text: To Correct a False Impression

The State argues that evidence of the assault and reckless injury to an elderly individual adjudications are admissible to correct the false impression left by Carter's direct testimony that he had never been in a violent altercation before this incident.

A witness cannot be impeached with a prior offense unless the offense resulted in a final conviction for either a felony or a crime involving moral turpitude and the conviction is not too remote in time. [FN3] Tex.R. Evid. 609; Ochoa v. State, 481 S.W.2d 847, 850 (Tex.Crim.App.1972). An exception to this general rule arises when a defendant, during direct examination, leaves a false impression as to the extent of either his or her (1) arrests, (2) convictions, (3) charges, or (4) "trouble" with the police. Turner v. State, 4 S.W.3d 74, 79 (Tex.App. Waco 1999, no pet.). When the accused leaves a false impression during direct examination, he or she "opens the door" for the State to inquire into the veracity of his or her testimony. Id. In doing so, the State may introduce evidence of specific incidents of bad acts for which he or she is not on trial, evidence which is otherwise generally inadmissible. [FN4] Id.

FN3. We recognize that Tex.R. Evid. 609(d) states that impeachment evidence regarding prior juvenile adjudications is inadmissible absent limited circumstances. Also, the Texas Family Code addresses admissibility of juvenile offenses, stating that juvenile adjudications are not to be treated as convictions. See Tex. Fam.Code Ann. § 51.13 (Vernon Supp.2004). The State argues that, since its cross-examination was designed to rebut specific testimony elicited from Carter on direct examination, Rule 609 does not apply. See Hudson v. State, 112 S.W.3d 794, 799-800 (Tex.App.-Houston [14th Dist.] 2003, pet. filed) (holding that, if the contested evidence is being offered for a reason other than impeachment, Rules 608 and 609 do not come into play).
Here, we treat the juvenile adjudications as potentially admissible to correct a false impression. This approach is consistent with that taken by sister courts. See Cavazos v. State, 703 S.W.2d 710, 712-13 (Tex.App.-Corpus Christi 1985), remanded on other grounds, 780 S.W.2d 281 (Tex.Crim.App.1989) (holding that State's evidence regarding juvenile adjudications was inadmissible to correct a false impression because the appellant had not created a false impression; implying had Cavazos created a false impression, the State could have corrected that impression with evidence of Cavazos' prior juvenile adjudications); see also Andrews v. State, No. 11-02-00334-CR, 2003 Tex.App. LEXIS 9955, at *5-6 (Tex.App.-Eastland Nov. 20, 2003, no pet.) (not designated for publication) (holding evidence of appellant's juvenile record was admissible to correct the false impression created by appellant's statement that he had never been in trouble before this); Franklin v. State, No. 04-02-00726-CR, 2003 Tex.App. LEXIS 7663, at *5-6 (Tex.App.-San Antonio Sept. 3, 2003, no pet.) (not designated for publication) (holding appellant created false impression that he had not committed any crimes in the past and, thus, exception that Rule 609 applied to make evidence of juvenile conduct admissible to correct the impression).

FN4. We note also that the qualification "with pipes and weapons or anything like that" also has a bearing on the issue of whether Carter's testimony opened the door. Testimony admitted into evidence about a specific bad act must be related to the issue on which the door has been opened. Here, the statement may be made narrow enough by such a qualification that it failed to leave the false impression that Carter had never been involved in a violent altercation. See Powell v. State, 673 S.W.2d 403, 405 (Tex.App.-Houston [1st Dist.] 1984, pet. ref'd) (holding appellant's testimony that his arrest was "not something that happened every day" did not leave the impression that he had never been arrested and, thus, was insufficient to open the door to the State's evidence regarding Powell's prior arrests). The testimony may well have created the true impression that Carter had never been involved in an altercation with pipes or weapons or the like. We need not reach the question, however, whether the door was opened wide enough to allow the State to bring in evidence of Carter's juvenile adjudications for assault and for reckless injury since we conclude for other reasons that

Carter's testimony did not create the false impression which the State contends. In other words, we conclude Carter's testimony did not open the door at all.

Cases which have held that the State's evidence was admissible because the accused opened the door by creating a false impression indicate that the false impression must be much clearer than the testimony we have here. For example, an appellant's specific denial of ever having committed an armed robbery rendered police testimony concerning a previous robbery admissible. Gilmore v. State, 493 S.W.2d 163, 164 (Tex.Crim.App.1973). A defendant's testimony also opened the door for the State's impeachment evidence to correct the false impression when he testified that he "had not been in trouble before." Alexander v. State, 476 S.W.2d 10, 11 (Tex.Crim.App.1972). On cross examination, the State was allowed to question Alexander about a specific instance in which he was arrested for theft. Id. When a defendant answered "no" to defense counsel's question whether he had ever "been convicted of a felony or a misdemeanor or paid a fine or anything of that nature?" he, too, opened the door for the State to introduce evidence of a prior fine and jail sentence imposed on the appellant. Orozco v. State, 164 Tex.Crim. 630, 301 S.W.2d 634, 635 (1957).

The case before us most resembles that presented to the Texas Court of Criminal Appeals in Prescott v. State, 744 S.W.2d 128 (Tex.Crim.App.1988). In Prescott, the court confirms that the statement in question must be read within the context of the testimony: "When attempting to determine the meaning of a response, the predicate question is a determinative interpretive tool." Id . at 131. Defense counsel posed the question, "Do you find anything unusual that the lawyer decided to work on your case took two statements one day?" Prescott responded, "Well, I'm-this is my first time of going through this. Hopefully my last. In other words, I don't-I'm not sure about the legal lawyer (pause) whatever," ... "procedures." Id. The court held that Prescott's response was not a deliberate attempt to portray himself as one ignorant of the criminal justice process. At most, the statement could be considered ambiguous, the meaning of "this" being uncertain. Id. Ambiguity, concluded the court, was insufficient to open the door to impeachment. Id. at 132-33.

Here, Carter's testimony, like Prescott's, did not create a false impression that Carter had never participated in any violent altercation. A reasonable reading of the testimony in its proper context reveals that the testimony centers around a description of the relationship among the young men involved in this controversy rather than Carter's entire history of violent or criminal activity. Before the statement in question, Carter explained he had known Sydenstricker since he was thirteen or fourteen. He testified they "hung out" together and played basketball. Then defense counsel stated, "We're going to get to the point where you guys lived in an apartment; you, Rich and Luke," and then asked "had you ever had a-prior to-other than playing on a basketball court or a football field ever had any altercations with pipes or weapons or anything like that?" Immediately following the answer, Carter described his relationship with Sydenstricker as really good and he trusted him. Carter further stated that he moved into Luke's apartment in March or April 2002; that he, Moore and Myer lived there; that they smoked marihuana, drank beer, worked, and played ball. Sydenstricker moved in a week after Moore.

The question referred to "you guys" and then specifically to "you, Rich and Luke." When viewed in its context, the answer to the specific question "had you ever had a-prior to-other than playing on a basketball court or a football field ever had any altercations with pipes or weapons or anything like that?" does not appear to leave the false impression that Carter had never committed a violent act or been arrested, but that this group of young men had never gotten into a violent altercation among themselves. [FN5]

FN5. The word "you" can be used in both the singular and plural. "You-the one or ones being addressed-used as the pronoun of the second person singular or plural in any grammatical relation except that of a possessive...." MERRIAM WEBSTER COLLEGIATE DICTIONARY, pp. 1373-74 (10th ed.1993). While there may be some value in our southern idiom "y'all," it is not grammatically required to express the plural number.

After examining the context within which the question was asked, we hold that Carter did not open the door by having left a false impression. The question concerned his relationship with the others ultimately involved in this altercation. Thus, the State's impeachment evidence was inadmissible under this theory.

To Refute a Defensive Theory

However, a portion of the State's evidence is admissible to refute the defense's theory of self-defense. [FN6] As a general rule, "one on trial is to be tried for the offense charged and not for remote or disconnected crimes or for being a criminal generally." Halliburton v. State, 528 S.W.2d 216, 218 (Tex.Crim.App.1975). This means that evidence of extraneous bad acts are inadmissible for the purpose of showing that a defendant acted in conformity therewith. Robbins v. State, 88 S.W.3d 256, 259 (Tex.Crim.App.2002). However, the State may introduce evidence of an extraneous offense to refute a defensive theory raised by the accused. Halliburton, 528 S.W.2d at 218.

FN6. We reiterate our previous discussion involving the fact that the State's evidence concerned juvenile adjudications, not as impeachment evidence, but rather to correct a false impression left by the appellant. Here, we will address the State's evidence of Carter's juvenile conduct as a means to rebut his theory of self-defense. This approach is consistent with the general approach in

Texas caselaw. See Foster v. State, 25 S.W.3d 792, 797 (Tex.App.-Waco 2000, pet. ref'd) (holding State's jury argument in which it referred to appellant's juvenile adjudication was proper as a rebuttal to Foster's self-defense theory).

More specifically, when an accused claims self-defense, as did Carter, the State may show the accused's intent by showing other violent acts in which the accused was the aggressor. Id.; Johnson v. State, 963 S.W.2d 140, 144 (Tex.App. Texarkana 1998, pet. ref'd). Carter argues that other parties, especially Sydenstricker, were the aggressors in the matter, that Carter only wanted to talk, had tried to walk away, and was put in fear by Sydenstricker's actions. The State, as a result, was free to introduce evidence that demonstrated prior violent episodes in which Carter acted as the aggressor.

The State's evidence of Carter's juvenile case involving assault, thus, was properly admitted. A person commits the offense of assault if he or she (1) intentionally, knowingly, or recklessly causes bodily injury to another, including the person's spouse; (2) intentionally or knowingly threatens another with imminent bodily injury, including the person's spouse; or (3) intentionally or knowingly causes physical contact with another when the person knows or should reasonably believe that the other will regard the contact as offensive or provocative. Tex. Pen.Code Ann. § 22.01 (Vernon Supp.2004). Therefore, by its very definition, an adjudication of delinquency for assault would have to include an aggressive act by Carter. Evidence of such conduct can be used to refute Carter's theory that the other men were the aggressors and that he acted in self-defense.

The State's evidence regarding reckless injury to an elderly individual, however, is another matter. This offense can involve an act of aggression or violence. Tex. Pen.Code Ann. § 22.04(a) (Vernon 2003). One can also commit the offense through an omission. Tex. Pen.Code. Ann. § 22.04(b) (Vernon 2003). The record before us does not include a copy of the judgment, and the testimony does not reveal any details of the offense. Therefore, we cannot say that the adjudication for reckless injury to an elderly individual would fall under the exception allowing evidence of an accused's prior violent acts to refute his theory of self-defense. We simply cannot say that Carter acted violently with respect to the offense; it may be that the offense arose from a failure to act.

That being said, the State's evidence as to Carter's adjudication of guilt with respect to the reckless injury to the elderly individual was not admissible. For reasons set forth below, however, the error in admitting the evidence was harmless error.

Error in admitting prior convictions under the "false impression" doctrine without regard to the limitation imposed by Tex.R. Evid. 609 is a nonconstitutional error governed by Tex.R.App. P. 44.2(b). Lopez v. State, 990 S.W.2d 770, 777 (Tex.App.-Austin 1999, no pet.). In considering harm, the entire record must be reviewed to determine whether the error had more than a slight influence on the verdict. King v. State, 953 S.W.2d 266, 271 (Tex.Crim.App.1997).

The record in this case consists of a substantial amount of properly admitted evidence weighing in favor of guilt. One unusual feature of this case is that the jury had a videotape recording of the altercation to review in determining the issues. Further, we have found that admission of the assault was proper in rebuttal of the self-defense theory. No documentary evidence was offered as to either prior conviction, and the State did not emphasize this evidence in its jury argument.

We conclude that error in admitting the State's evidence did not affect substantial rights and find it to be harmless.

Conclusion

Having concluded that the State's evidence of Carter's assault was admissible to refute Carter's assertion of self-defense and that admission of the evidence regarding Carter's reckless injury to an elderly individual was harmless error, we overrule Carter's sole point of error. Accordingly, we affirm the trial court's judgment.

Dissenting Opinion by Justice ROSS.

The majority concludes, and I agree, the juvenile adjudications were not admissible to correct a false impression after Carter had "opened the door." Yet, this is precisely the basis on which this evidence was offered and admitted, as shown by: 1) the discussion between counsel and the court at the extensive hearing held on this matter outside the presence of the jury; 2) the State's predicate questions leading to the admission of this evidence; and 3) the court's limiting instruction to the jury that such evidence was "admitted before you for the purpose of aiding you, if it does aid you, in passing upon the weight you will give [Carter's] testimony,...."

At no time was this evidence tendered or received "to refute the defense's theory of self-defense," which is the basis on which the majority concludes the juvenile adjudication for assault was admissible. In so concluding, the majority ignores the trial court's additional instruction to the jury that "[s]uch evidence [the juvenile adjudications] cannot be considered by you against the defendant as any evidence of guilt in this case" and that the jury was not to consider such evidence for any purpose other than weighing the credibility of Carter's testimony.

Admission of the juvenile adjudication "to refute the defense's theory of self-defense" certainly bears on Carter's guilt, and the trial

court specifically and unequivocally instructed the jury not to consider this evidence for that purpose. We generally presume the jury follows the trial court's instructions. Colburn v. State, 966 S.W.2d 511, 520 (Tex.Crim.App.1998); Graham v. State, 96 S.W.3d 658, 661 (Tex.App.-Texarkana 2003, pet. ref'd).

The majority concludes, and I agree, it was error for the trial court to admit evidence of the juvenile adjudication for reckless injury to an elderly individual. The majority concludes, however, that the error was harmless. For the reasons stated above, I would hold that the jury did not properly hear that Carter had a juvenile adjudication for assault and that the admission of both these prior juvenile adjudications had more than a slight influence on the verdict.

I respectfully dissent.

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