

Year 2004 Case Summaries

By

Robert O. Dawson

Bryant Smith Chair in Law
University of Texas School of Law

[2004 Case Summaries](#)
[2003 Case Summaries](#)
[2002 Case Summaries](#)
[2001 Case Summaries](#)
[2000 Case Summaries](#)
[1999 Case Summaries](#)

The juvenile court denied the respondent's right to make a closing argument, but the error was waived by failure to object [In re M.A.] (04-3-05).

On June 10, 2004, the El Paso Court of Appeals held that the juvenile court had violated the respondent's constitutional right through counsel to make a closing argument, but that the error was waived by failure to object to the denial.

04-3-05. In the Matter of M.A., UNPUBLISHED, No. 08-02-00544-CV, 2004 WL 1284019, 2004 Tex.App.Lexis ____ (Tex.App.-El Paso 6/10/04) Texas Juvenile Law (5th Ed. 2000).

Facts: M.A., a juvenile, appeals from a disposition order committing her to the Texas Youth Commission. On appeal, M.A. raises two issues: (1) denial of her federal and state constitutional rights to effective assistance of counsel; and (2) denial of her federal and state constitutional rights to due process.

On September 22, 2001, M.A [FN1]. was detained at the Bridge of the Americas Port of Entry for possession of marijuana. The vehicle's tires M.A. was driving all contained marijuana. A total of 102.3 pounds of marijuana were recovered. On October 2, 2001, M.A. signed a Waiver, Stipulation, and Admission admitting to the offense. On the same day, the trial court signed the Order of Adjudication.

FN1. M.A. is a U.S. citizen, who prior to this incident, had not resided in the United States. Her English speaking abilities are limited. Prior to this incident, M.A. resided in Juarez, Mexico with her mother, a Mexican national.

On October 25, 2001, a disposition hearing was held in which M.A. was placed in out-of-home supervised probation until her eighteenth birthday. The juvenile court ordered M.A. to participate in the Challenge Boot Camp program. Upon completion of the Challenge Boot Camp program, the juvenile court held an Accelerated Review Hearing on April 3, 2002. The court issued an Accelerated Review Hearing Order in which M.A. was ordered to continue the out-of-home placement with the Bair Foundation until her eighteenth birthday. The Bair Foundation placed M.A. in a foster home.

On May 21, 2002, M.A. ran away from her foster home. A Juvenile Warrant of Arrest was issued by the juvenile court. Apparently, M.A. had gone to Juarez to live with her mother. On October 1, 2002, the State filed a Petition Based On Delinquent Conduct. The petition alleged that on September 26, 2002, M.A. knowingly and intentionally possessed a usable quantity of marijuana. Also on this date, the State filed a Motion to Modify Disposition alleging that M.A. violated the terms of her supervised probation out-of-home placement by possessing marijuana, failing to remain in El Paso County and traveling outside the county, violating the terms of her curfew, failing to attend school, operating a vehicle without a Texas driver's license, failing to perform ten hours per week in the Community Improvement Program, and leaving the custody and control of the Bair Foundation.

On November 14, 2002, the juvenile court granted the State's motion to dismiss petition filed on October 1, 2002. On this same day, the trial court entered its Modification Order and found that M .A. had violated the terms of her probation as set out in the October 1, 2002 petition, except the possession of marijuana allegation. In a modification-disposition report prepared by Probation Officer Patricia Soto, it was recommended that M.A. be placed with the Texas Youth Commission.

On November 27, 2002, the trial court held a disposition hearing at the end of which M.A. was committed to the Texas Youth Commission until her eighteenth birthday. A Judgment of Commitment and an Order of Commitment were filed on the same day. M.A. filed a motion for new trial alleging that the evidence presented by the State at the trial was insufficient to convict the juvenile. The

motion for new trial was overruled by operation of law. M.A. now timely brings this appeal.

On appeal, M.A. raises two issues revolving around the trial court's denial of M.A.'s opportunity to make a closing argument. In Issue One, M.A. contends that the trial court denied M.A. her federal and state constitutional rights, and her right under Article 1.051 of the Texas Code of Criminal Procedure to effective assistance of counsel when it refused to allow her, through her counsel, to make a final argument. In Issue Two, M.A. argues that the trial court denied M.A. her federal and state constitutional rights, and her right under Article 1.04 of the Texas Code of Criminal Procedure to due process when it refused to allow her, through her counsel, to make a final argument. The State in this case did not respond to M.A. contentions but rather filed a Notice of Intent To Waive the Filing of Its Brief on September 12, 2003.

After all the testimony was presented at the disposition hearing, the following exchange took place:

Defense Counsel: Nothing further, Judge.

The Court: Juvenile wishes to say nothing?

The Juvenile: No Sir.

The Court: Based on the testimony presented here today, the Court will make the following findings and enter the following orders. The juvenile was present with her attorney, her parent.

Defense Counsel: Judge, if I may, may a[sic] make a brief argument?

The Court: Not necessary. The Court finds that the juvenile is in need of rehabilitation, that the protection of the public requires that a disposition be made.

Held: Affirmed.

Opinion Text: The right to effective assistance of counsel is guaranteed under both the federal and state constitutions. U.S. Const. amend. VI; Tex. Const. art. I, § 10. A complete denial of a defendant's opportunity to make a closing argument in bench or a jury trial deprives an accused of his right to assistance of counsel under the Sixth and Fourteenth Amendments to the United State Constitution. See *Herring v. New York*, 422 U.S. 853, 858, 95 S.Ct. 2550, 2553, 45 L.Ed.2d 593 (1975). Denial of proper jury argument also violates a defendant's right to be heard by himself or counsel or both under Article 1, section 10 of the Texas Constitution. See *Ruedas v. State*, 586 S.W.2d 520, 522 23 (Tex.Crim.App.1979). However, a right to be heard and thus to make a closing argument can be waived. See *id.*

In order to preserve a complaint for appellate review, a party must present to the trial court a timely request, objection, or motion stating the specific grounds for the ruling he desires the court to make. Tex.R.App.P. 33.1(a). In this case, M.A.'s counsel did not object to the trial court's denial to allow her to make closing argument nor did she file a motion complaining to the trial court that she was denied an opportunity to make a closing argument. As the record indicates, M.A.'s counsel requested the opportunity to make a closing argument, however, when she was denied the opportunity rather than object to the trial court's decision, M.A.'s counsel remained silent. Given the particular circumstances in this case, M.A.'s complaint regarding the denial of her opportunity to make a closing argument was not presented to the trial court and thus is not preserved for our review. Accordingly, we overrule Issues One and Two.

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