

Year 2004 Case Summaries

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Evidence of juvenile "deferred adjudication" and violation properly admitted at penalty phase [Lamb v. State] (04-3-10).

On July 1, 2004, the Houston First District Court of Appeals held that evidence of the respondent's juvenile "deferred adjudication" and its violation were properly admitted in the penalty phase of his criminal trial for aggravated robbery.

04-3-10. Lamb v. State, ___ S.W.3d ___, No. 01-03-00587-CR, 2004 WL 1472114, 2004 Tex.App.Lexis ___ (Tex.App.--Houston [1st Dist.] 7/1/04) Texas Juvenile Law (5th Ed. 2000).

Facts: A jury convicted appellant, Sidney Lamb, of aggravated robbery and assessed punishment at confinement for 45 years. Appellant presents 14 points of error on appeal. In his first six points of error, appellant contends the trial court erred during the guilt-innocence stage of trial by admitting evidence that he committed aggravated robbery prior to and arson subsequent to the charged offense. In his seventh point of error, appellant contends the trial court erred during the punishment phase of trial by allowing a victim impact witness to testify that she was a state district court judge. In his eighth point of error, appellant contends the trial court erred during the punishment phase of trial by allowing the introduction of evidence as to appellant's juvenile adjudications for robbery, evading arrest, and probation violation. In his ninth, tenth and eleventh points of error, appellant contends the trial court erred during the punishment phase of trial by admitting evidence that appellant had previously committed the extraneous offenses of sexual assault, kidnapping, and robbery. In his twelfth and thirteenth points of error, appellant contends the trial court erred in denying his motion for mistrial. In his fourteenth point of error, appellant contends the trial court erred in denying his motion for new trial.

Around 3:00 a.m. on the morning of July 18, 2002, James Doku, a newspaper deliveryman, was delivering newspapers to customers on his route. As he drove his green Chevy Blazer into the Polo Club Apartments in Houston, Texas, Doku was followed by appellant and two other men in a white Toyota Corolla. When Doku exited his Blazer and began restocking a newspaper stand, appellant approached him, pointed a shotgun at him, and forced him to lie on the ground. While Doku lay on the ground, the two men with appellant drove away in Doku's Blazer. After appellant's companions left, appellant stole Doku's wallet and fled in the Corolla.

Around 5:00 a.m. the same morning, Rupert Carroll, complainant, arrived at his boot store to prepare for the day's business. As complainant walked from his car to the store, appellant and the two other men approached the store in Doku's Blazer. Appellant, who was driving, jumped a median and drove the Blazer into complainant, pinning complainant's lower body against a six-inch concrete filled pipe. Complainant, who was carrying a bag of donuts, heard one of the Blazer's occupants say "Get his moneybag."

Before the men could exit the vehicle, however, complainant reached into his pocket, pulled out a handgun, and fired the gun into the windshield and hood of the Blazer. Complainant continued to fire his gun until his ammunition was exhausted, hitting both appellant and the man sitting in the front passenger side of the Blazer.

After complainant quit shooting, appellant backed-up and sped away in the Blazer. The Blazer was found later that morning in a ditch; it had been burned as a result of arson. Much of the Blazer, including the windshield, had been destroyed by fire; however, bullet holes were found in the hood of the vehicle.

Held: Affirmed.

Opinion Text: The Juvenile Offenses

In his eighth point of error, appellant contends the trial court erred during the punishment phase of his trial by admitting evidence

concerning appellant's juvenile adjudications for robbery, evading arrest, and probation violation. Specifically, appellant contends the State failed to give him proper notice that it intended to introduce evidence of the offenses during the punishment proceedings in violation of Code of Criminal Procedure article 37.07 subsection 3(g) and Rule of Evidence 404(b).

After a finding of guilty, evidence may be offered by the State as to any matter the court deems relevant to sentencing, including but not limited to the prior criminal acts of the defendant, notwithstanding Rules of Evidence 404 and 405. Tex.Code Crim. Proc. art. 37.07 § 3(a)(1) (Vernon Supp.2004). However, if the State intends to introduce evidence of extraneous crimes that have not resulted in a final conviction in a court of record or a probated or suspended sentence, then notice must be given to the defendant of such intent. Tex.Code Crim. Proc. art. 37.07 § 3(g) (Vernon Supp.2004).

Appellant does not direct this Court to any portion of the record indicating that the State introduced extraneous-offense evidence of a juvenile adjudication for robbery. Upon our own inspection of the record, we find none. Moreover, although the record indicates that appellant was given deferred adjudication on his juvenile charge of evading arrest, it also indicates that he violated the terms of his probation, resulting in an adjudication of guilt. The State did not introduce evidence as to the specific allegations surrounding the probation violation. Instead, the evidence was limited to the existence of the probation violation and its consequence (viz., the final adjudication of the evading arrest charge).

We hold that appellant has failed to show that the State introduced evidence of a juvenile adjudication for robbery. We further hold that the trial court did not abuse its discretion in admitting evidence of appellant's juvenile adjudication for evading arrest and the existence of the probation violation that resulted in said adjudication. We overrule appellant's eighth point of error.

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