YEAR 2004 CASE SUMMARIES

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Administrative regulation on use of force in school not relevant to assault case; reasons for striking panelist were race-neutral [In re D.C.S.] (04-4-15).

On October 27, 2004, the Waco Court of Appeals in an assault on a teacher case held that administrative regulations dealing with the use of force in school were not relevant to the case and that the prosecutor's explanations for strikes were race-neutral.

04-4-15. In the Matter of D.C.S., UNPUBLISHED, No. 10-03-00393-CV, 2004 WL 2406763, 2004 Tex.App.Lexis ___ (Tex.App.-Waco 10/27/04) Texas Juvenile Law (6th Ed. 2004).

Facts: A jury found D.C.S. committed delinquent conduct. The juvenile court adjudicated him delinquent and ordered him to participate in intensive supervision probation. D.C.S. appeals only the court's decision to adjudicate him.

D.C.S., an adaptive behavior student, was disrupting his class. The teacher called the principal's office. The assistant principal, Roberto Garcia, arrived in the classroom, spoke with D.C.S. and escorted him into the hall. Garcia returned to the class to reinforce the advantages of good behavior in the classroom. D.C.S. entered the room and became irate. Garcia warned D.C.S. to calm down and leave the room. When D.C.S. would not comply, Garcia escorted him, with his arms around D.C.S., into the hall. As Garcia started to release D.C.S, the child attempted to dart back into the classroom. Garcia held D.C.S. who began to struggle. One teacher who witnessed the actions in the hall stated that the force D.C.S. applied to his struggles caused both he and Garcia to fall. Garcia hit his head on the lockers and sustained a gash on the side of his head.

Held: Affirmed.

Opinion Text: In his first issue, D.C.S. argues that the trial court erred in failing to instruct the jury regarding the Texas Administrative Code provisions on the use of restraints on students. The Administrative Code provides that a restraint may be used in an emergency. Tex. Admin. Code tit. 19, § 89.1053(c). An emergency is defined by the Code as a situation where a student's behavior poses a threat of imminent, serious physical harm to the student or others or imminent, serious property destruction. Id. (b). D.C.S. requested an instruction on those provisions. The juvenile court denied the requested instruction.

The State argues that D.C.S.'s requested jury instruction was nothing more than a non-statutory defense and served only to negate elements of the State's case. Such instruction is not required. Moore v. State, No. 10-02-00076-CR, 2004 Tex.App. LEXIS 6612, *58 (Tex.App.-Waco July 21, 2004, no pet.)(Gray, C.J., concurring and dissenting). D.C.S. argues that Moore is inapplicable because it is a criminal case, and, citing A.A.B., the rules of civil procedure govern jury charges in juvenile proceedings. In the Matter of A.A.B., 110 S.W.3d 553, 558 (Tex.App.-Waco 2003, no pet.). The only issue in A.A.B. that is applicable in this case was whether the civil or criminal rules applied to the preservation of jury charge error in juvenile cases. Any indication that the case stands for more than the preservation of jury charge error is dicta. As it was, the court in A.A.B. assumed without deciding there was error in the jury charge.

The question we address in this case is whether the court erred in refusing the requested jury charge. Although D.C.S. argues otherwise, the holding in A.A.B. did not encompass a review of whether there was error in the jury charge. D.C.S. was charged with a criminal offense. It is within this context that the instruction was requested. It is within this context that we review whether the juvenile court erred in refusing the requested instruction. Evaluating the substance of a criminal jury charge under the body of law to review a civil jury charge does not work.

We agree with the State. D.C.S.'s requested instruction was a defensive instruction and was not required. Moore, at *58; see also Hall v. State, No. 10-02-00156-CR, 2004 Tex.App. Lexis 944, *10-11 (Tex.App.-Waco Jan. 28, 2004, pet. granted)(lesser included instruction not required because a violation of TDCJ policy would not mean officer was not performing an official duty as a public servant). Thus, the trial court did not err in refusing the instruction. Issue one is overruled.

In his second and third issues, D.C.S. contends the evidence was both legally and factually insufficient to support the jury's verdict of "true."

We apply the Jackson standard for testing the legal sufficiency of the evidence in juvenile cases: that is, "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Jackson v. Virginia, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979); R.X.F. v. State, 921 S.W.2d 888, 889 (Tex.App.-Waco 1996, no pet.). D.C.S. raised this issue in a motion for instructed verdict.

D.C.S. generally contends the evidence was legally insufficient to support the jury's verdict even in the light most favorable to the prosecution. Viewing the evidence under the appropriate standard, the evidence is legally sufficient to support the jury's verdict of "true." Issue two is overruled.

Factual insufficiency issues on appeal in civil cases must be raised by a motion for new trial. Tex.R. Civ. P. 324(b). Juvenile proceedings are not exempt from this requirement. In the Matter of M.R., 858 S.W.2d 365, 366 (Tex.1993); see In the Matter of J.A.A., No. 10-03-012-CV, 2003 Tex.App. LEXIS 10880, *2-3 (Tex.App. Waco Dec. 31, 2003, no pet.)(memo op.). Contra In re J.L.H., 58 S.W.3d 242, 246 (Tex.App. El Paso 2001, no pet.).

D.C.S. failed to file a motion for new trial; thus, his complaint is not preserved for our review. He asks us to reconsider our position on this issue; however, his arguments do not persuade us to hold otherwise, especially when the Texas Supreme Court has already spoken on the issue. See In the Matter of M.R., 858 S.W.2d 365 (Tex.1993). Issue three is overruled.

In his fourth issue, D.C.S. complains that the trial court erred when it overruled his Batson/Edmonson [FN1] motion relating to the State's use of peremptory strikes against two minority veniremen, Mable and Richards. The same three step process is used in resolving a Batson/Edmonson claim in civil trials; however, we review civil trial claims under an abuse of discretion standard rather than the "clearly erroneous" standard used in criminal cases. Goode v. Shoukfeh, 943 S.W.2d 441, 445 446 (Tex.1997).

FN1. Batson v. Kentucky, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986); Edmonson v. Leesville Concrete Co., 500 U.S. 614, 111 S.Ct. 2077, 114 L.Ed.2d 660 (1991).

Because the trial court asked for, and the State provided, race neutral explanations for the strikes against the veniremen, the preliminary issue of whether D.C.S. established a prima facie case of discriminatory use is moot. Id. at 445.

The State offered five reasons to strike Mable. Those reasons are 1) she had a bad experience with the school system; 2) she disagreed with the use of corporal punishment; 3) she had no high school diploma; 4) she had a lower income; and 5) she had a 14-year old son and could identify with the mother of the juvenile. Each of these reasons is facially race-neutral. On appeal, D.C.S. raised no complaint with the reasons given by the State for striking Mable. D . C.S. still has the burden to prove purposeful racial discrimination, and he has not done so as to Mable. Id. at 446. The trial court did not abuse its discretion in accepting any of these reasons as race neutral reasons to strike Mable.

The State struck Richards because 1) he did not have eye contact, he kept his head down throughout the voir dire; 2) he did not believe in corporal punishment; 3) he stated that whether a teacher could properly touch a student depended on the circumstances; 4) he was very young; and 5) he wore a very large cross on the outside of his clothing. Each of these reasons is race-neutral on its face. On appeal, D.C.S. argued that a white juror, Stanislaw 1) was equally, if not more inattentive than Richards; 2) also stated that it would depend on the circumstances whether a teacher could put his hands on a student; and 3) was just as young as Richards. We need only determine whether the trial court abused its discretion in accepting one race neutral reason for striking Richards. R.X.F. v. State, 921 S.W.2d 888, 898 (Tex.App.-Waco 1996, no pet.).

The record reflects that Richards was 19 years old. Stanislaw was 22 years old. The State noted that there was another juror who was twenty years old and would have been struck but was not within the strike zone. The trial court did not abuse its discretion in accepting age as a race neutral reason for striking Richards. Issue four is overruled.