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## YEAR 2005 CASE SUMMARIES

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***Evidence of defendant's juvenile court prior disposition is admissible at criminal sentencing upon a finding of relevancy to sentencing [Millican v. State] (05-1-12).***

On December 22, 2004, the Tyler Court of Appeals held that evidence of a defendant's prior juvenile disposition is admissible at criminal sentencing if the criminal court finds that it is relevant to sentencing.

¶ 05-1-12. *Millican v. State*, UNPUBLISHED, No. 12-03-00230-CR, 2004 WL 2958371, 2004 Tex.App.Lexis \_\_\_\_ (Tex.App.—Tyler 12.22.04) *Texas Juvenile Law* (6<sup>th</sup> Ed. 2004).

Facts: A jury convicted Appellant Terry Jack Millican of aggravated robbery as charged in the indictment and affirmatively found that Appellant used a deadly weapon. The jury also assessed Appellant's punishment at imprisonment for sixty years and a ten thousand dollar fine. In five issues, Appellant complains of the admission of certain evidence, the trial court's response to a note from the jury during its deliberations, and the sufficiency of the evidence.

Tito Contreras left work at the Sonic drive-in restaurant in Nocona, Texas and started walking to a local liquor store to cash his paycheck. Before Contreras arrived at the liquor store, Brad Coleman pulled up in his pickup and offered him a ride. Appellant was a passenger in Coleman's pickup. Contreras knew Appellant from around town and accepted the ride. After Contreras cashed his paycheck, Coleman drove away from Nocona, explaining that they were going to get some marijuana. At some point, Appellant pulled a pistol, pointed it at Contreras's neck, and said that he wanted Contreras's money. Appellant and Contreras began to struggle. When Contreras began to prevail in the struggle, Coleman joined in, hitting Contreras. Appellant then shot Contreras twice in the stomach. Contreras opened the pickup door and fell into the road. Appellant got out of the pickup and hit and kicked Contreras for about five minutes. He then searched Contreras's pockets, looking for his wallet and the money from the cashed paycheck. However, Contreras had thrown his wallet as he fell out of the pickup, and Appellant could not find it. Coleman called to Appellant to leave, and Appellant rejoined Coleman in the pickup. They drove away, leaving Contreras in the roadway where he was eventually picked up and taken to the hospital.

At the hospital, Contreras identified Coleman and Appellant from a photographic lineup. He identified Coleman as the driver of the pickup and also identified Appellant as the person who scuffled with him and shot him. The pickup in which the three men were riding belonged to Coleman's father and was found parked in front of Coleman's apartment. Law enforcement officers discovered several bullet holes in the cab compartment of the pickup along with broken glass and blood stains. They also discovered a shoe beneath the pickup. At the scene of the robbery, officers found a shoe that matched the one found beneath the pickup, broken glass, blood stains, Contreras's work shirt with the "Sonic" logo, and Contreras's wallet. DNA test results identified Contreras's blood on Appellant's pants.

At trial, Coleman testified that Appellant had pulled the gun on Contreras and shot him. Appellant's half sister, Coleman's live-in girl friend at the time of the robbery, testified that Coleman said he shot Contreras. Appellant's half brother testified that Coleman had told him that Coleman shot Contreras. Appellant's half brother also testified that he was present when Contreras told his supervisor at Sonic that he, Contreras, did not know who shot him. Both Appellant's half sister and half brother admitted they had not told anyone of these admissions by Coleman and Contreras until they came to testify for Appellant at trial.

The jury found Appellant guilty of aggravated robbery and made an affirmative deadly weapon finding. The jury also assessed punishment at imprisonment for sixty years and a ten thousand dollar fine. This appeal followed.

Held: Affirmed.

Opinion Text: ADMISSION OF JUVENILE DISPOSITION EVIDENCE

In his third issue, Appellant contends the trial court erred in admitting evidence of Appellant's juvenile record, including the adjudication, disposition, and disposition following modification, during the punishment phase of Appellant's trial. Appellant acknowledges that article 37.07, section 3(a)(1) of the Texas Code of Criminal Procedure provides for the admission of a prior juvenile adjudication, but contends the disposition of that adjudication is not admissible.

Article 37.07, section 3(a)(1) provides, in pertinent part, that

evidence may be offered ... as to any matter the court deems relevant to sentencing, including but not limited to the prior criminal record of the defendant.... Additionally, ... evidence may be offered by the state and the defendant of an adjudication of delinquency based on a violation by the defendant of a penal law of the grade of:

(A) a felony; or

(B) a misdemeanor punishable by confinement in jail.

Tex.Code Crim. Proc. Ann. art. 37.07 § 3(a)(1) (Vernon Pamph. Supp.2004-2005). Prior versions of article 37.07, section 3(a) prohibited introduction during the punishment phase of the details about a prior criminal act resulting in a final conviction. See *Haney v. State*, 951 S.W.2d 551, 554 (Tex.App.—Waco 1997, no pet.) (citations omitted). However, the legislature amended the article after the Texas Court of Criminal Appeals held that an extraneous unadjudicated offense could not be admitted as relevant evidence during the punishment phase of a trial. *Id.*; see *Grunsfeld v. State*, 843 S.W.2d 521, 523 (Tex.Crim.App.1992). The current version permits the admission of evidence of "any matter the court deems relevant to sentencing." Tex.Code Crim. Proc. Ann. art. 37.07 § 3(a)(1); *Haney*, 951 S.W.2d at 554. As the court noted in *Haney*, "[t]he statute does not limit what evidence a trial court might consider relevant, [footnote omitted] but specifies that relevant evidence at sentencing includes, *inter alia*, the defendant's prior criminal record and evidence of an extraneous crime or bad act proven beyond a reasonable doubt." *Id.*

Building on the *Haney* court's analysis, the Texarkana Court of Appeals, in a case involving admission of a defendant's juvenile adjudication, wrote that article 37.07, section 3(a) provides the avenue for the admission of juvenile court adjudications at later criminal proceedings. *Barletta v. State*, 994 S.W.2d 708, 713 (Tex.App.—Texarkana 1999, pet. ref'd). The court also noted that the trial court's decision to admit such evidence is reviewed for an abuse of discretion and will not be disturbed unless the trial court's ruling was beyond the zone of reasonable disagreement. *Id.* (citing *Montgomery v. State*, 810 S.W.2d 372, 391 (Tex.Crim.App.1990)(op. on reh'g)).

Further, the San Antonio Court of Appeals has noted that, although article 37.07, section 3(a) refers only to admission of evidence of an adjudication, and not the disposition of a delinquency case, "it does not forbid [the use of a disposition] when the trial court deems the evidence to be relevant to sentencing ." *Santoya v. State*, 04-94-00761-CR, 1996 WL 14073, at \*8 (Tex.App.—San Antonio Jan.17, 1996, pet. ref'd) (not designated for publication).

Based upon the foregoing authorities, we hold that the trial court did not abuse its discretion in admitting evidence of the disposition and order modifying disposition of Appellant's prior adjudication. Thus, the admission of the evidence was not error. Appellant's third issue is overruled.