
YEAR 2006 CASE SUMMARIES

By
The Honorable Pat Garza

Associate Judge
386th District Court
San Antonio, Texas

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In a Motion to Modify Disposition the uncorroborated testimony of an accomplice witness is sufficient to authorize a modification.[In the Matter of L.T.III](06-1-17)

On January 31, 2006, the Tyler Court of Appeals concluded that neither *article 38.14 of the Texas Code of Criminal Procedure* nor *section 54.03(e) of the Texas Family Code* applies to the modification hearing of a juvenile's disposition, and as a result, the uncorroborated testimony of an accomplice witness is sufficient to authorize a modification of a juvenile's disposition.

¶ 06-1-17. **In the Matter of L.T. III**, ___ S.W.3d ___, MEMORANDUM, No. 12-05-00048-CV, 2006 Tex.App.Lexis 826 (Tex.App.—Tyler, 1/31/06).

Facts: On October 24, 2003, the juvenile court found beyond a reasonable doubt that, on or about October 3, 2003, L.T. engaged in delinquent conduct by committing the third degree felony offense of "places weapons prohibited," in violation of *section 46.03 of the Texas Penal Code*. See *TEX. PEN. CODE ANN. § 46.03* (Vernon 2003). The juvenile court ordered that L.T. be placed on juvenile probation for one year until October 24, 2004. The terms and conditions of his probation included the following:

1. Commit no offense against the laws of the State of Texas, or any subdivision thereof, or any other State, or of the United States, including traffic regulations. If you are detained, arrested or questioned by a law Enforcement Official, you must report to your Juvenile Probation officer, in person, within forty eight (48) hours and report such arrest or questioning.

10. Avoid carrying any weapons designed for offense or defense including, but not limited to a knife, club, rifle, pistol, shotgun, or chain.

On September 16, 2004, the State filed a motion to modify disposition alleging that L.T. violated conditions 1 and 10 of his court ordered probation. At the hearing on the State's motion, the State called Christopher Dancer as a witness. L.T. objected to his testimony, arguing that Dancer may be an accomplice witness. If so, L.T. contended that, without corroboration, Dancer's testimony was inadmissible pursuant to *article 38.14 of the Texas Code of Criminal Procedure*. Although the State did not consider Dancer an accomplice witness, it argued that the accomplice witness rule did not apply to a probation revocation. The juvenile court overruled L.T.'s objection and Dancer testified.

At the conclusion of the hearing, the juvenile court found, by a preponderance of the evidence, that L.T. violated a reasonable and lawful court order by violating conditions 1 and 10 of his court ordered probation. The juvenile court committed L.T. to the Texas Youth Commission indeterminately, not to exceed beyond the child's twenty-first birthday, and signed an order incorporating its ruling. This appeal

followed.

ACCOMPLICE WITNESS TESTIMONY

In his sole issue on appeal, L.T. argues that the juvenile court erred in allowing the uncorroborated testimony of an accomplice witness. More specifically, L.T. contends that, unlike a probation revocation hearing, a hearing on a motion to modify disposition is partially an adjudicatory proceeding and, thus, *article 38.14 of the Texas Code of Criminal Procedure* applies. The State disagrees, contending that *article 38.14* does not apply to revocation proceedings, either adult or juvenile.

Held: Affirmed

Opinion: A trial court's refusal to exclude witness testimony is reviewed under an abuse of discretion standard. *Matter of J.G.*, 112 S.W.3d 256, 259 (Tex. App.-Corpus Christi 2003, no pet.). The Texas Family Code contains provisions for the modification of a juvenile's disposition that are similar to the provisions in the Texas Code of Criminal Procedure pertaining to the revocation of an adult's probation. See *Matter of J.A.D.*, 31 S.W.3d 668, 670 [*5] (Tex. App.-Waco 2000, no pet.). For this reason, appellate courts reviewing the modification of a juvenile's disposition have looked to adult revocation cases for guidance in determining the appropriate procedures in juvenile cases. *Id.* Similar to *article 38.14 of the Texas Code of Criminal Procedure*, *n1 section 54.03(e) of the Texas Family Code* states as follows:

An adjudication of delinquent conduct or conduct indicating a need for supervision cannot be had upon the testimony of an accomplice witness unless corroborated by other evidence tending to connect the child with the alleged delinquent conduct or conduct indicating a need for supervision; and the corroboration is not sufficient if it merely shows the commission of the alleged conduct. *TEX. FAM. CODE ANN. § 54.03(e)* (Vernon 2002).

However, in an adult's probation revocation hearing, *article 38.14* does not apply. *Moreno v. State*, 476 S.W.2d 684, 685 (Tex. Crim. App. 1972). Thus, the uncorroborated testimony of an accomplice witness is sufficient to authorize a trial court to revoke an adult's probation. *Howery v. State*, 528 S.W.2d 230, 233 (Tex. Crim. App. 1975); *Hulsey v. State*, 447 S.W.2d 165, 167 (Tex. Crim. App. 1969). Similar to a hearing on modifying a juvenile's disposition, the burden of proof in an adult's revocation hearing is a preponderance of the evidence. See *Cobb*, 851 S.W.2d at 874; *Cardona*, 665 S.W.2d at 493.

n1 Article 38.14 of the Texas Code of Criminal Procedure states that "[a] conviction cannot be had upon the testimony of an accomplice unless corroborated by other evidence tending to connect the defendant with the offense committed; and the corroboration is not sufficient if it merely shows the commission of the offense." *TEX. CODE CRIM. PROC. ANN. art. 38.14* (Vernon 2005).

Conclusion: Looking to adult revocation cases for guidance and noting the similarity in substance between the adult and juvenile accomplice witness rules, we conclude that neither *article 38.14 of the Texas Code of Criminal Procedure* nor *section 54.03(e) of the Texas Family Code* applies to the modification hearing of a juvenile's disposition. See *In re J.A.D.*, 31 S.W.3d at 670. Thus, Dancer's testimony as an accomplice witness required no corroboration. Therefore, the trial court did not abuse its discretion in allowing Dancer to testify without corroboration. Accordingly, L.T.'s sole issue is overruled.

The judgment of the trial court is *affirmed*.

