

## Review of Recent Juvenile Cases (2007)

by  
The Honorable Pat Garza  
Associate Judge  
386th District Court  
San Antonio, Texas

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### **Juvenile TYC felony convictions committed prior to January 1, 1996, cannot be considered for enhancement purposes in adult court.[Jackson v. State](07-4-10)**

**On September 19, 2007, the San Antonio Court of Appeals held that while TYC juvenile felony convictions cannot be considered for enhancement purposes in adult court if the offense was committed prior to January 1, 1996, here, the trial court's error did not cause "egregious harm."**

¶ 07-4-10. **Jackson v. State**, No. 04-07-00083-CR, 2007 Tex.App.Lexis 7550 (Tex.App.— San Antonio, 9/19/07).

**Facts:** Jackson was indicted for murder, a first-degree felony with a punishment range of between five and ninety-nine years or life in prison. The indictment listed two previous felony convictions that were available for enhancement purposes: (1) a 1994 juvenile conviction for arson; and (2) a 1998 conviction for aggravated assault with a deadly weapon. During the punishment phase of trial, Jackson pleaded "not true" to both of the enhancement allegations. Pursuant to the Texas Penal Code, the trial court instructed the jury that it was to enhance Jackson's punishment range to between fifteen and ninety-nine years or life if it found that one of the enhancement allegations was true and to between twenty-five and ninety-nine years or life if it found that both enhancement allegations were true. The jury found both enhancement allegations true and assessed punishment at life in prison. This appeal followed.

**Held:** Affirmed

**Opinion:** Jackson contends that the trial court erred in including his 1994 juvenile conviction for enhancement purposes in the charge on punishment. When reviewing charge errors, we first determine whether error exists in the charge and then determine whether sufficient harm resulted from the error to require reversal. *Abdnor v. State*, 871 S.W.2d 726, 731-32 (Tex. Crim. App. 1994). Here, the State concedes that Jackson's 1994 juvenile conviction could not be used for enhancement purposes. Juvenile felony convictions can be considered for enhancement purposes only if the offense was committed on or after January 1, 1996. See *TEX. FAM. CODE ANN. § 51.13(d)* (Vernon Supp. 2007). Because Jackson's juvenile conviction occurred in 1994, the trial court erred in including the conviction as an enhancement in the charge.

We turn now to an analysis of the harm caused by the error. If the defendant made a timely objection at trial, he need only prove that he suffered "some harm" from the error in order to obtain a reversal. See *Almanza v. State*, 686 S.W.2d 157, 171 (Tex. Crim. App. 1984). On the other hand, if the defendant did not make a proper objection, he must prove that the error caused him to suffer "egregious harm." See *id.* Because Jackson did not object to the trial court's inclusion of his 1994 conviction in the charge on punishment, we must determine whether the error caused "egregious harm." See *id.* To demonstrate "egregious harm," a defendant must show that the trial court's error affects the very basis of the case, deprives the defendant of a valuable right, or vitally affects a defensive theory. See *Hutch v. State*, 922 S.W.2d 166, 171 (Tex. Crim. App. 1996). In

determining the degree of harm caused by the error, we consider: (1) the entire jury charge; (2) the state of the evidence, including the contested issues and weight of probative evidence; (3) the argument of counsel; and (4) any other relevant information in the record. *Almanza, 686 S.W.2d at 171.*

In reviewing the jury charge, we note that even without the erroneous enhancement paragraph, a proper enhancement paragraph still remained in the charge. That is, even without the instruction as to Jackson's 1994 arson conviction, the jury could still properly consider Jackson's 1998 felony conviction for aggravated assault with a deadly weapon, which if found true would raise the minimum prison sentence from five to fifteen years. We also note that a murder conviction by itself authorized the jury to sentence Jackson to life in prison. *See TEX. PENAL CODE ANN. § 12.32* (Vernon 2003). Regarding the state of the evidence, the record shows that the murder at issue was violent and gruesome. The victim, a twenty-six-year-old mother of three, was stabbed fifty-four times. The record also shows considerable evidence of Jackson's guilt. Shortly before the victim died of her wounds, she told a neighbor and a police officer that "Tracy" stabbed her. In addition, the victim's blood was found on a bracelet and pair of shoes that Jackson was wearing when he was detained by police two days after the murder. Jackson did not provide any evidence to contradict the evidence against him. Regarding the State's closing arguments during the punishment phase of trial, the record shows that the prosecutor began her argument by stating:

We know how violent the murder was. We know that he struck her fifty-four times. Thirty-five deep stab wounds. Seven penetrating the lungs. We know that one of the wounds resulted in the knife staying in her body. How much time is enough time for that. Just that alone, the gruesome nature of this murder, that alone is worth life.

Although the prosecutor then added that Jackson had a prior history of crime and that twenty-five years was the minimum sentence for a habitual offender, the record shows that she did not overly emphasize the minimum sentence and that she instead focused on the "horrendous" nature of the murder and the impact of the murder on the victim's three children, one of whom witnessed the victim dying.

Considering the entire record, we hold that the trial court's error in including an instruction as to Jackson's 1994 conviction did not cause "egregious harm." *See Almanza, 686 S.W.2d at 171.* Accordingly, we overrule Jackson's sole issue.

**Conclusion:** We affirm the trial court's judgment.