

Review of Recent Juvenile Cases (2008)

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

Extraneous offense evidence allowed to show state of mind of respondent or child complainant.[In the Matter of M.M.L.](08-2-3)

On July 31, 2006, the Amarillo Court of Appeals held that the Texas Code of Criminal Procedure Art. 38.37, applies to juvenile sexual assault adjudications where evidence bears on the state of mind of respondent or child complainant.

¶ 08-2-3. **In the Matter of M.M.L.**, No. 07-05-0240-CV, 241 S.W.3d, 2006 Tex.App. Lexis 6783 (Tex.App.—Amarillo, 7/31/06).

Facts: Hilda Sanchez, the mother of M.V., the complaining witness, employed appellant's mother, Juana Mejia, as a baby sitter. On July 22, 2004, Sanchez picked her daughter up at the Mejia apartment and found her daughter crying and Mejia not in the apartment. Sanchez was met at the door by appellant, whom she described as acting hurriedly. After leaving the apartment, Sanchez questioned M.V. about why she was crying. M.V. told her that appellant touched her in her private area with his private area. As a result of M.V.'s outcry to Sanchez, Sanchez notified the police in McKinney about appellant's actions.

Appellant appeals his conviction and sentence. Appellant raises eleven issues, however only one issue will be covered in this brief.

Held: Affirmed

Opinion: Extraneous offense

Appellant next contends that the trial court erred in allowing the admission of evidence of extraneous offenses before the jury. The record shows that the State filed a notice of intent to use evidence of other crimes and that the trial court held a hearing outside the presence of the jury on the issue before any such testimony was admitted. During this hearing, Hilda, M.V.'s mother, testified that M.V. had told her that appellant had touched her on more than one occasion. The trial court ruled that the testimony could come in with a limiting instruction as to the purposes for which it could be used. However, the record reflects that Hilda was never questioned about the statement from M.V. in front of the jury. Subsequently, witness Delawater testified that, during her examination of M.V., M.V. stated that appellant touched her "like he did before."

The admission of evidence is reviewed under an abuse of discretion standard. *See Weatherred, 15 S.W.3d at 542; Green, 934 S.W.2d at 101-02; Montgomery, 810 S.W.2d at 390.* A reviewing court should not reverse a trial judge's decision whose ruling was within the zone of reasonable disagreement. *Green, 934 S.W.2d at 102.*

Article 38.37 of the Texas Code of Criminal Procedure sets the parameters for the admission of evidence of other wrongs, crimes or acts committed by a defendant against a child victim. *TEX. CODE CRIM. PROC. ANN. art. 38.37* (Vernon Supp. 2005). The Texas Family Code specifically allows the use of evidence in accordance with Chapter 38 of the Texas Code of Criminal Procedure in the adjudication phase of a juvenile case. § *54.03(d)*. Pursuant to *article 38.37*, evidence that bears on relevant matters, including (1) the state of mind of the defendant and the child, and (2) the previous and subsequent relationship between the defendant and the child, is admissible. *TEX. CODE CRIM. PROC. ANN. art 38.37(2)(1)-(2)* (Vernon Supp. 2005).

At the hearing, held outside of the jury's presence, to determine the admissibility of this evidence, the State offered the evidence as highly probative of both appellant's intent to engage in the offense of indecency and the state of mind of both appellant and M.V. We note that the issue of appellant's intent to commit the offense of indecency was hotly contested throughout the trial. Additionally, on appeal, this same issue is the basis of appellant's contention that the evidence was factually and legally insufficient. Finally, appellant offered testimony that M.V. had hurt herself when she tripped over a scooter as a contradictory explanation for why M.V. was upset when her mother picked her up.

The evidence of appellant's touching M.V. "like he did before" clearly goes to the intent of appellant and to the state of mind of both appellant and M.V. and is admissible. *Ernst v. State, 971 S.W.2d 698, 700 (Tex.App. - Austin 1998, no pet.)*. Under the facts before the trial court, we cannot say that the admission of this evidence was an abuse of discretion. *Weatherred, 15S.W.3d at 542*. Appellant's issue is overruled.

Conclusion: Having overruled appellant's issues, the judgment of the trial court is affirmed.