Review of Recent Juvenile Cases (2009)

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

If trial objection does not comport with objection on appeal, error has not been preserved.[Chaves v. State](09-1-5B)

On December 18, 2008, the Houston Court of Appeals (1 Dist), held that inculpatory statements made during an earlier writ of habeas corpus hearing were admissible at subsequent trial where objection at the time of the statement did not correspond with the objection made on appeal.

¶ 09-1-5B. **Chaves v. State**, No. 01-07-00563-CR, MEMORANDUM, 2008 WL 5263404 (Tex.App.-Hous. (1 Dist.) 12/18/08).

Facts: On May 13, 2002, appellant pleaded guilty to the offense of aggravated robbery and aggravated sexual assault and received a 35-year sentence. On April 5, 2006, appellant argued at a writ of habeas corpus hearing that his plea was involuntary due to erroneous advice from his attorney that he had to plead guilty or the sentences would be stacked. The Court of Criminal Appeals agreed, and the aggravated robbery case was remanded for a new trial. [FN3] On June 20, 2007, appellant's case went to trial, and on June 25 the jury found him guilty and assessed punishment at 35 years and a $10,000 fine.

In his second point of error, appellant contends that it was improper for the trial court to allow into evidence inculpatory statements made by appellant during an earlier writ of habeas corpus hearing.

Appellant challenged the voluntariness of his original plea at a July 14, 2005 writ of habeas corpus hearing. During this hearing, appellant admitted that he had put his penis in the complainant's mouth and forced her to perform oral sex. The only time testimony about the nature of the offense was objected to during this hearing was when appellant's trial lawyer was questioned about the offense, and that objection was overruled. Appellant's testimony from the habeas corpus hearing was admitted at the subsequent re-trial.

At trial, appellant objected to the State's use of appellant's habeas corpus testimony on the ground that the testimony was not an admission, but merely appellant's acknowledgment of the State's evidence. Appellant also objected that it would confuse the jury and, under Rule 403, [FN6] it would be more prejudicial than probative. Appellant likened the testimony given at the habeas hearing to testimony given at a suppression hearing for a limited purpose, which is inadmissible at trial. [FN7] The State responded that it did nothing wrong. The trial court noted that, at the habeas hearing, appellant's counsel had first asked appellant whether the details from the crime were correct, to which appellant responded, "Yes, sir." The trial court ruled that the State could read appellant's habeas testimony to the jury.

FN6. *See* TEX. R. EVID. R. 403.

FN7. When a defendant testifies in support of a motion to suppress evidence, his testimony may not thereafter be admitted against him at trial on the issue of guilt unless he makes no objection. *Riojas v. State,* 530 S.W.2d 298, 302 n.1 (Tex.Crim.App.1975) (quoting *Simmons v. United States,* 390 U.S. 377, 394, 88 S.Ct. 967, 976 (1968)).

Held: Affirmed.

Memorandum Opinion: On appeal, appellant argues that his Fifth Amendment right against self-incrimination was violated. Appellant's trial objection does not comport with his objection on appeal. Accordingly, we conclude that appellant has not preserved error, if any. *See* TEX. R. APP. P. 33.1; *Turner v. State,* 87 S.W.3d 111, 117 (Tex.Crim.App.2002).

Conclusion: We overrule appellant's second point of error.