

## Review of Recent Juvenile Cases (2009)

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

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### Admission of uncertified TYC packet considered erroneous.[Rangel v. State](09-2-6B)

**On March 4, 2009, the Waco Court of Appeals held that where the custodian of the 'pen packet' is not the custodian of the original judgment, and cannot attest to the correctness of the original documents, and the records are not self-authenticating, the documents are not admissible.**

¶ 09-2-6B. **Rangel v. State**, MEMORANDUM, No. 10-07-00247-CR, 2009 WL 540780 (Tex.App.- Waco, 3/4/09).

**Facts:** A jury found Jerry Rangel guilty of aggravated sexual assault and assessed punishment at life in prison. Asserting four issues, Rangel appeals. We will affirm.

In his fourth and final issue, Rangel complains that, in the punishment phase, the trial court abused its discretion by admitting improperly authenticated evidence of Rangel's juvenile criminal history. The evidence at issue is a 56- page packet from the Texas Youth Commission (TYC) accompanied by a "business records" affidavit (from a TYC records custodian) comporting with [Rule of Evidence 902\(10\)](#). The documents are approximately twenty juvenile court records from Burleson County and Washington County, only two of which are certified. After Rangel's objection was overruled, the State was allowed to summarize the records for the jury. The prosecutor noted that the records revealed Rangel's juvenile adjudications for vehicle burglary, two criminal mischief offenses, two home burglaries, and penetration of the female sexual organ of a child younger than 14.

The affiant states that the "records are kept by TYC in the regular course of business, and it was the regular course of business of TYC for an employee or representative of TYC with knowledge of the act, event, condition, opinion, or diagnosis, recorded to make the record or to transmit information thereof to be included in such record; and the record was made at or near the time or reasonably soon thereafter. The records attached hereto are the original or exact duplicates of the original." The TYC custodian, however, is not the custodian of the original court documents; she cannot attest to the authenticity of the original court documents, but only that the TYC packet contains correct copies of documents that TYC received from other sources. See [Flowers v. State, 220 S.W.3d 919, 922 n. 14 \(Tex.Crim.App.2007\)](#) ("The compiler and custodian of the 'pen packet' is not the custodian of the original judgment or data compilation relating to a defendant's prior conviction. The pen packet custodian cannot attest to the correctness of the original documents, he can attest only that the pen packet contains correct copies of documents that he received from some other source.").

**Held:** Affirmed.

**Memorandum Opinion:** The TYC's self-authenticating business record affidavit does not authenticate the court records, and we disagree with *In re C.P.*, No. 14-98-01094-CV, 2000 Tex.App. LEXIS 3042, at \*5 (Tex.App.-

Houston [14th Dist.] 2000, no pet.) (not designated for publication), relied on by the State, to the extent that case is support for the contrary. And we agree with the State's concession in its brief (State's Brief at 32, n. 18) that the uncertified court records are not self-authenticating under [Rule of Evidence 902\(4\)](#) and that the trial court erroneously admitted the uncertified court records under that rule.

We thus proceed to a harm analysis on the improperly admitted uncertified records. Rangel says that he was harmed because he received the maximum sentence available when he was a first-time felon eligible for community supervision and that the erroneously admitted **juvenile** records influenced the jury's sentence.

Error in admitting evidence is nonconstitutional error governed by [Texas Rule of Appellate Procedure 44.2\(b\)](#). [Tex.R.App. P. 44.2\(b\)](#); [Tex.R. Evid. 103\(a\)](#); [Solomon v. State, 49 S.W.3d 356, 365 \(Tex.Crim.App.2001\)](#). [Rule 44.2\(b\)](#) provides that a nonconstitutional error "that does not affect substantial rights must be disregarded." Substantial rights are not affected by the erroneous admission of evidence if, after examining the record as a whole, we have fair assurance that the error did not influence the jury, or had but a slight effect. [Motilla v. State, 78 S.W.3d 352, 356 \(Tex.Crim.App.2002\)](#). In conducting a harm analysis under [Rule 44.2\(b\)](#), we decide "whether the error had a substantial or injurious effect on the jury verdict." [Morales v. State, 32 S.W.3d 866, 867 \(Tex.Crim.App.2000\)](#). We "consider everything in the record, including any testimony or physical evidence admitted for the jury's consideration, the nature of the evidence supporting the verdict, the character of the error and how it might be considered in connection with other evidence in the case[,] ... the jury instruction given by the trial judge, the State's theory and any defensive theories, closing arguments, and voir dire if material to appellant's claim." *Id.* We also consider overwhelming evidence of guilt, but that is only one factor in our harm analysis. [Motilla, 78 S.W.3d at 356- 58](#).

We first consider the offense. The jury heard that Inez found E.A. on the bed, bleeding and unconscious, with Rangel asleep on the floor with his belt unbuckled, zipper down, and the front of his pants wet. Blood on Rangel's pants belonged to E.A., and DNA on a diaper suspiciously discovered the next day in the same bedroom belonged to both E.A. and Rangel. E.A. suffered severe injuries, including multiple bruises and abrasions, multiple skull fractures, a fractured femur, and a vaginal laceration. In his post-arrest statement to Detective Loup, Rangel admitted to drinking beer and ingesting cocaine the night before. At the time of the offense, Rangel was out on bond for the aggravated assault of another girlfriend, who testified that Rangel grabbed her by the neck until she almost passed out, threatened to kill her, and then put a knife to her neck.

Another officer testified that Rangel was a sex offender, had failed to register after moving, and charges for failure to register had been filed. Rangel's father testified that Rangel had gotten in trouble at age 13 and was sent to TYC until he was 18. An acquaintance of Rangel testified that Rangel had admitted to committing a house and a vehicle burglary and to being a registered sex offender as a juvenile.

The State's theory at punishment was that the facts of the offense alone justified a life sentence, although it did mention Rangel's juvenile history in the punishment phase during its opening and closing.

**Conclusion:** After examining the circumstances of the offense, the evidence relating to the other pending charges against Rangel, and the similar properly admitted testimony about Rangel's juvenile criminal history, we have a fair assurance that the erroneous admission of the uncertified juvenile records did not influence the jury or had but a slight effect and was therefore harmless. *See, e.g.,* [Petruccelli v. State, 174 S.W.3d 761, 769 \(Tex.App.-Waco 2005, pet. ref'd\)](#). Rangel's fourth issue is overruled.

We affirm the trial court's judgment.