

## Review of Recent Juvenile Cases (2010)

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

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### **By failing to argue Confrontation Clause in trial, juvenile waived those objections on appeal.[Robinson v. State](10-1-4)**

**On January 28, 2010, the Houston Court of Appeals (14<sup>th</sup> Dist.), stated that when a party's argument for admitting evidence could refer to either the Rules of Evidence or the Confrontation Clause, he must specifically articulate that the Confrontation Clause demands admission of the evidence to preserve error on this ground.**

¶ 10-1-4. **Robinson v. State**, MEMORANDUM, No. 14-08-00913-CR, 2010 WL 307920 (Tex.App.-Hous. (14 Dist.), 1/28/10).

**Facts:** Appellant and David Mason were both charged with murder of a game-room manager in connection with their unsuccessful attempt to rob the business. At appellant's trial, the State presented the testimony of Mason, who implicated appellant in the offense. During direct examination, Mason confirmed he pleaded guilty to aggravated robbery relative to the offense and received a ten-year prison sentence plus dismissal of a misdemeanor marijuana charge.

During cross-examination, despite the State's objections under Rules of Evidence 609 and 403, the trial court allowed appellant to elicit testimony that Mason had a previous juvenile conviction for robbery. See [Tex.R. Evid. 609](#) (prescribing circumstances under which witness may be impeached by evidence of prior criminal conviction but providing, "Evidence of juvenile adjudications is not admissible, except for proceedings conducted pursuant to Title III, Family Code, in which the witness is a party, under this rule unless required to be admitted by the Constitution of the United States or Texas."); [Tex.R. Evid. 403](#) (providing relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, or needless presentation of cumulative evidence.").

Appellant then asked Mason, "What were the facts of that case?" The State again objected on relevancy, [Rule 609](#), and [Rule 403](#) grounds. Appellant argued that the facts of the juvenile offense were admissible to impeach Mason by showing bias and prejudice. Specifically, appellant suggested Mason testified against appellant only because Mason received a favorable plea agreement relative to the offense at issue; thus, the facts of the juvenile offense, which might have enhanced Mason's punishment if he had been tried for murder, were probative to show why he pleaded guilty to aggravated robbery and testified against appellant. The trial court sustained the State's objection.

**Held:** Affirmed

**Memorandum Opinion:** Appellant contends the trial court violated his constitutional right to confrontation by excluding the proffered testimony; thus, we should conduct a *de novo* review of its ruling. However, appellant failed to preserve error on this complaint. To preserve an issue for appellate review, a party must make a timely objection or request to the trial court, sufficiently stating the specific grounds for the requested ruling, unless apparent from the context, and obtain an adverse ruling. See [Tex.R.App. P. 33.1\(a\)](#); [Wilson v. State, 71 S.W.3d 346, 349 \(Tex.Crim.App.2002\)](#). Moreover, the objection or request at trial must comport with the complaint presented on appeal. [Wilson, 71 S.W.3d at 349](#). Even constitutional errors may be waived by failure to object at trial. [Broxton v. State, 909 S.W.2d 912, 918 \(Tex.Crim.App.1995\)](#). When a party's argument for admitting evidence could refer to either the Rules of Evidence or the Confrontation Clause, he must specifically articulate that the Confrontation Clause demands admission of the evidence to preserve error on this ground. See [Reyna v. State, 168 S.W.3d 173, 179 \(Tex.Crim.App.2005\)](#).

In this case, appellant's argument at trial could have encompassed grounds for admission of the proffered testimony under the Rules of Evidence or the Confrontation Clause. In fact, the State's objections, to which appellant responded, were all based on the Rules of Evidence. Appellant's complaint on appeal is based entirely on an alleged violation of the Confrontation Clause; he makes no argument for admission of the testimony under the Rules of Evidence. However, appellant did not inform the trial court that the Confrontation Clause demanded admission of the proffered testimony or present any constitutional arguments. Therefore, appellant waived his Confrontation Clause complaint. *See id.* (holding defendant waived error on appellate complaint that exclusion of proffered testimony violated Confrontation Clause because his suggestion to trial court testimony was not hearsay, was relevant, and was offered to challenge witness's credibility could refer to Rules of Evidence or Confrontation Clause and he failed to argue that Confrontation Clause demanded admission).

**Conclusion:** Accordingly, we overrule appellant's sole issue and affirm the trial court's judgment.