

## Review of Recent Juvenile Cases (2011)

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

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### **The State may use circumstantial evidence to prove that the defendant is the same person named in the alleged prior convictions.[Benton v. State](11-1-5)**

**On February 4, 2011, the Texarkana Court of Appeals held that a rational jury could have found beyond a reasonable doubt that the defendant was indeed the same person identified in the prior convictions.**

¶ 11-1-5. Benton v. State, No. 06-10-00063-CR, --- S.W.3d ----, 2011 WL 339179 (Tex.App.-Texarkana, 2/4/11).

Facts: In the process of pleading guilty to murder, Courtney Benton confessed that, in the early morning hours of September 17, 2008, he shot and killed Steven McCullough in Houston County. Benton elected to have the jury assess his punishment. Benton appeals on the sole basis that the admission of certain juvenile court judgments was improper because the State did not provide evidence that he was the person reflected in those judgments.

Held: Affirmed

Opinion: Benton contends there is insufficient evidence to link him to the prior convictions contained in State's Exhibits 82 and 83. We disagree. The prior convictions are linked to Benton via (1) his name, "Courtney Antoine Benton," (2) his birth date of April 11, 1987, (3) his mother's name--Joycelyn Alexander (Benton), and (4) Benton's signature, which appears on Exhibits 49 and 51, the authenticity of which has not been contested.

All pleadings filed in connection with Benton's prosecution for McCullough's murder were styled using the name, "Courtney Benton." However, Benton stated that his full name is Courtney Antoine Benton. The judgments and stipulations of evidence admitted at trial as State's Exhibits 82 and 83 are signed variously as "Courtney Benton" and as "Courtney Antoine Benton." Generally, a name alone is insufficient to connect a defendant to a prior judgment. See Beck, 719 S.W.2d at 210. Here, we are not confronted with a name commonly encountered, a partial name, or initials. We are provided with the appellant's full name, an individual who was indicted in Houston County, Texas, for a crime committed in Crockett, Texas. We take judicial notice that it is 115.95 miles from Crockett, Texas to Houston, Harris County, Texas, where the prior convictions were rendered. While the name alone is not the sole evidence connecting Benton to the prior convictions, it is quite unlikely that another by the name of Courtney Antoine Benton was convicted in Harris County, Texas, within the time frames listed in those prior convictions.

The second factor connecting Benton to the prior convictions is his date of birth. The prior convictions each list Benton's date of birth as April 11, 1987. Benton himself acknowledges his date of birth as April 11, 1987; this is substantiated by Jones' testimony as well. We take judicial notice of the fact that, given Benton's date of birth,

he would have been a juvenile at the time of the Harris County convictions in March and November 2003. Both prior convictions indicate that the Courtney Antoine Benton therein convicted was a juvenile.

In addition to his name and date of birth, the identity of Benton's mother connects Benton to the prior convictions admitted as State's Exhibit 82. The person identified as Benton's mother on the prior felony conviction is Joycelyn Alexander (Benton). The person Benton identified as his mother--in the video recording of his confession played to the jury--is Joycelyn Alexander.

Finally, the prior convictions and stipulations of evidence comprising State's Exhibits 82 and 83 are signed by the defendant variously as "Courtney Benton" or "Courtney Antoine Benton." Benton's signature appeared on State's Exhibits 49 and 51, the written statements Benton provided to Wagner. While the jury was not specifically requested to compare these signatures with those appearing on the prior convictions, it is nevertheless "competent to give evidence of handwriting by comparison, made by experts or by the jury." TEX.CODE CRIM. PROC. ANN. art. 38.27 (Vernon 2005); see *Zimmerman v. State*, 860 S.W.2d 89, 97 (Tex.Crim.App.1993) (authentication of handwriting may be established by comparison performed either by experts or by jury), vacated & remanded on other grounds, 510 U.S. 938 (1993). Exhibits 49 and 51 were admitted without objection and were available to the jury for signature comparison. The jury was therefore free to compare the signatures appearing on Exhibits 49 and 51 (which were never denied by Benton) with those appearing on the prior convictions to assist in the determination of whether or not Benton was indeed the same individual listed in the prior convictions.

As a practical matter--while Benton objected to the admission of the prior convictions due to claimed inadequate identification of the person so convicted--neither the State nor the defense argued the identity issue to the jury. In fact, when counsel for Benton did mention the prior felony conviction in closing argument, he stated, Now, the title to one of them is unanimous because it's engaging in organized criminal activity. But if you will look, Courtney and several other youths, again, several years ago stole a car. That was it. And he pled guilty and took his punishment. Moreover, in speaking of the prior misdemeanor conviction, counsel for Benton stated, "The other offense is a drug possession case, codeine. And he pled guilty to that." A judicial admission must be a clear, deliberate, and unequivocal statement. *Horizon/CMS Healthcare Corp. v. Auld*, 34 S.W.3d 887, 905 (Tex.2000); *Spradlin v. State*, 100 S.W.3d 372, 380 (Tex.App.-Houston [1st Dist.] 2002, no pet.). A judicial admission bars a party from disputing a fact and relieves his adversary from having to present proof of the fact. *Auld*, 34 S.W.3d at 905. While the State does not mention this argument in its brief, we find the foregoing statements on behalf of Benton to be judicial admissions.

Conclusion: Considering the totality of the evidence linking Benton to the prior convictions, even in the absence of the foregoing judicial admissions, a rational jury could have found beyond a reasonable doubt that Benton was indeed the same person identified in the prior convictions admitted via State's Exhibits 82 and 83.