

Review of Recent Juvenile Cases (2011)

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

Punishment was reversed and remanded for using juvenile adjudications to enhance a sentence under the habitual offender statute. [Vaughns v. State](11-2-5)

On March 17, 2011, the San Antonio Court of Appeals reversed and remanded the punishment for a habitual offender, enhanced by two juvenile felony adjudications, because the Texas Legislature did not intend for juvenile adjudications to be final felony convictions in order to enhance a sentence for a habitual offender.

¶ 11-2-5. Vaughns v. State, No. 04-10-00364-CR, 2011 WL 915700 (Tex.App.-San Antonio, 3-17-2011).

Facts: Vaughns is an inmate in the Connally Unit of the Texas Department of Criminal Justice ("TDCJ"). Correctional officers testified that on August 8, 2008, Vaughns was being disruptive while officers were trying to count the inmates before allowing them to go to recreation. Because Vaughns was being disruptive, he was ordered to return to his cell. When Vaughns refused to return to his cell, Officer Vernetta Davis requested a video camera and two other officers for a "show of force," per TDCJ policy and procedure. [FN1] Officers then ordered Vaughns to submit to restraints.

FN1. The purpose of a show of force is to encourage the inmate to comply with orders.

The four guards who tried to subdue Vaughns all testified Vaughns initially turned around in order to submit to restraints, but when Officer Daniel Clark was placing the hand restraints on Vaughns, Vaughns turned around and struck Officer Clark. Vaughns also struck Officer Paul Chavarria in the eye. The recording of the incident was entered into evidence, but the taping did not begin until after the preamble. [FN2] The video shows three officers surrounding Vaughns while one of the officers pushes Vaughns. After the push, the video shows Vaughns hitting Officer Davis then Officer Chavarria. At the end of the video, Vaughns is sprayed with a chemical agent and submits to restraints.

FN2. Before "use of force" is employed, a preamble must be videotaped. The preamble explains to the inmate that if the inmate does not comply, force will be used. If the inmate does not comply, the use of force is recorded to document the events.

Vaughns's only witness, inmate Timothy Hernandez, testified that when the officers ordered Vaughns to submit to hand restraints, Vaughns put his hands at "eye level," but showed no signs of aggression. Hernandez testified it was not until the officers "pushed and man handled him" that Vaughns defended himself by pushing back. Once Vaughns pushed back, he and the officers got into a wrestling match "and that's when [Vaughns] started swinging." Hernandez stated Vaughns retreated when the officers sprayed a chemical agent, and thereafter Vaughns laid down on the floor and submitted to hand restraints. Hernandez testified that at no

time prior to Vaughns lying on the floor did it appear the officers had their hand restraints out to put them on Vaughns.

Officer Clark testified he was struck in the mouth and bled some, but he did not sustain any permanent damage. Officer Clark returned to work that same day. Due to his injury, Officer Chavarria testified he received stitches and missed eleven days of work.

At trial, Vaughns requested the court instruct the jury on self-defense and on the lesser-included offense of misdemeanor assault; the court refused to instruct the jury on either. The jury convicted Vaughns of two counts of assault on a public servant. Vaughns perfected this appeal.

Held: Affirmed conviction, reversed and remanded for re-sentencing.

Memorandum Opinion: Vaughns contends the evidence was legally insufficient to establish his prior convictions for enhancement purposes at the punishment phase. The State concedes error and we agree.

The State has the burden to prove, beyond a reasonable doubt, that any prior conviction used to enhance a sentence was final under the law. *Flowers v. State*, 220 S.W.3d 919, 922 (Tex.Crim.App.2007). Section 12.42 of the Penal Code allows a punishment to be enhanced, as a habitual offender, to a term of not more than ninety-nine years or less than twenty-five years if the defendant has previously been finally convicted of two felony offenses. TEX. PENALCODE ANN. § 12.42(d) (West Supp.2010). The Code also states that an adjudication by a juvenile court "that a child engaged in delinquent conduct on or after January 1, 1996, constituting a felony offense for which the child is committed to the Texas Youth Commission ... is a final felony conviction." Id. § 12.42(f). But, as the State points out in their brief, section (f) does not apply to section (d). Section (f) begins, "For the purposes of Subsections (a), (b), (c)(1), and (e)," but section (d) was intentionally omitted. Id. It is clear the Texas Legislature did not intend for juvenile adjudications to be final felony convictions in order to enhance a sentence under subsection (d) as a habitual offender.

Vaughns's sentence was enhanced under section (d) because he has two prior juvenile adjudications. But, as stated above, juvenile adjudications cannot be final for purposes of enhancement under section 12.42(d) of the Texas Penal Code. Therefore, we sustain Vaughns's third issue.

Conclusion: Based on the foregoing, we affirm the judgment of conviction, but reverse and remand for re-sentencing.