

Review of Recent Juvenile Cases (2011)

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

A discretionary transfer order may convey jurisdiction in the criminal district court even though it lacks a date and printed name of a judge.[DeLaCerde v. State](11-3-13)

On July 21, 2011, the Houston Court of Appeals (1 Dist.) held that as long as a discretionary transfer order unequivocally provides for the assumption of jurisdiction by the criminal district court, the lack of a date and printed name of the judge will not affect it.

¶ 11-3-13. DeLaCerde v. State, No. 01-09-00972-CR, --- S.W.3d ----, 2011 WL 2931189, (Tex.App.-Hous. (1 Dist.) 7/21/11).

Facts: On January 21, 1997, the complainant, seventeen year old Jesus "Robert" Contreras, was walking home from Stephen F. Austin High School in southeast Houston with his twin brother, Albert, and their friends, Gene Cantu, Raul Rodriguez, Chris Aviles, and Julio Lara. As the group walked home on Dumble Street, a newer-model navy blue truck drove past. Albert Contreras testified that he saw three people inside the truck--a male driver, a male passenger, and a female sitting in between--and one person lying in the truck bed, who kept "popping his head up." Albert stated that he recognized the person in the back of the truck as someone whom he had seen around school two or three times, but he did not know his name. Albert testified that no one in his group said anything to the truck's occupants as they drove past, but the truck stopped and the passenger looked at the boys after the truck had driven by. Albert did not recognize the passenger as a fellow student.

The truck continued down Dumble and turned right onto Polk Street. As the boys crossed the intersection of Dumble and Polk, Albert saw that the truck had stopped and the person in the back of the truck was speaking to the people in the truck's cab. Albert testified that the truck made a U-turn and turned back onto Dumble, driving in the same direction that the boys were walking, and passed the boys as they reached a tire shop. At the tire shop, the passenger pulled out a gun and shot approximately five or six times at the group. After the passenger stopped shooting and the truck drove away, Albert looked for his brother and found him underneath a piece of plywood, leaning against the wall of the tire shop. Robert had a gunshot wound to his left lower back and died later that night at the hospital.

At the punishment phase, the State called Harris County Sheriff's Department Deputy M. Squyres as an expert on criminal street gangs. Before Deputy Squyres testified, defense counsel objected to any testimony regarding the national criminal activities of the Latin Kings unless the State could specifically connect such activity to appellant. The trial court overruled the objection, agreeing with the State that the nature of the Latin Kings and the kinds of activities for which they are known was "highly relevant" to appellant's character. Deputy Squyres testified that the Latin Kings are known for engaging in criminal activity, specifically narcotics distribution, "random assaultive behavior against other gang members," and murder. Deputy Squyres also

testified that he examined and photographed appellant's tattoos, and two of them shared characteristics with common Latin Kings gang symbols. Deputy Squyres noted that one of those tattoos was dated March 1, 2002.

The jury convicted appellant of murder and assessed punishment at thirty-five years' confinement and a \$10,000 fine.

In his first issue, appellant, who was sixteen at the time of the shooting, contends that the trial court lacked jurisdiction to hear this case because the order purportedly assuming jurisdiction from the juvenile court was defective and invalid, and, therefore, jurisdiction remained in the juvenile court. Specifically, appellant contends that the order does not meet Code of Criminal Procedure article 42.01's requirements for judgments because (1) the order is not dated, (2) the order reflects only the date on which the juvenile court waived jurisdiction, (3) the order is not file-stamped by the district clerk's office, and (4) the district court judge's signature is illegible and there is no printed name of the judge on the order.

Held: Affirmed

Opinion: The juvenile court may waive its exclusive original jurisdiction and transfer a child to the district court for criminal proceedings if (1) the child is alleged to have committed a felony; (2) the child was fourteen years of age or older at the time of the alleged offense if the offense is a felony of the first degree; and (3) after a full investigation and a hearing, "the juvenile court determines that there is probable cause to believe that the child before the court committed the offense alleged and that because of the seriousness of the offense alleged or the background of the child the welfare of the community requires criminal proceedings." TEX. FAM.CODE ANN. § 54.02(a) (Vernon Supp.2010); see id. § 54.02(i) ("A waiver under this section is a waiver of jurisdiction over the child and the criminal court may not remand the child to the jurisdiction of the juvenile court."); see also *Ex parte Waggoner*, 61 S.W.3d 429, 431 (Tex.Crim.App.2001) ("In the absence of a transfer [to the district court], the district court was, at the time of the offense, without jurisdiction, and any resulting conviction is void.").

The State contends that appellant has waived his contention that jurisdiction remained in the juvenile court because Code of Criminal Procedure article 4.18(a) provides that objections to a district court's assumption of jurisdiction over a juvenile must be made before jury selection and appellant did not so object. Under these facts, we disagree.

Article 4.18(a) provides that:

A claim that a district court or criminal district court does not have jurisdiction over a person because jurisdiction is exclusively in the juvenile court and that the juvenile court could not waive jurisdiction under Section 8.07(a), Penal Code, or did not waive jurisdiction under Section 8.07(b), Penal Code, must be made by written motion in bar of prosecution filed with the court in which criminal charges against the person are filed. TEX.CODE CRIM. PROC. ANN. art. 4.18(a) (Vernon 2005).

If the defendant elects to have a jury trial on either guilt or punishment, the defendant must file and present his motion to the presiding judge of the court before jury selection begins. Id. art. 4.18(b)(2). If the defendant does not file his motion within the prescribed time limits, the defendant "may not contest the jurisdiction of the court on the ground that the juvenile court has exclusive jurisdiction." Id. art. 4.18(d)(1).

Here, appellant is not arguing that the district court lacks jurisdiction because jurisdiction was exclusively in the juvenile court and the juvenile court either could not waive jurisdiction under Penal Code section 8.07(a) or did not waive jurisdiction under Penal Code section 8.07(b). See id. art. 4.18(a). Instead, appellant contends that the district court lacks jurisdiction because its order assuming jurisdiction after transfer from the juvenile court was defective and invalid, and therefore void. This factual scenario is not covered by the plain language of

article 4.18(a). We therefore conclude that the State's interpretation of article 4.18(a), which would require the defendant to make a written motion before jury selection begins in order to preserve any claim that the district court lacks jurisdiction, is overly broad and not supported by the language of the statute. See *Alberty v. State*, 250 S.W.3d 115, 118 (Tex.Crim.App.2008) (holding that article 4.18 applies only when jurisdiction is exclusively in juvenile court; thus, when evidence supports jurisdiction in both juvenile and district courts, article 4.18 does not apply and defendant need not make a written motion to preserve the complaint). We hold that when a defendant challenges the district court's jurisdiction due to an allegedly defective order assuming jurisdiction the defendant need not object via written motion before jury selection begins to preserve his complaint for appellate review. We further hold that appellant did not waive his contention that jurisdiction remained in the juvenile court by failing to object to the transfer to the district court before jury selection.

Neither the Family Code nor the Code of Criminal Procedure specifies the required contents of the district court's order assuming jurisdiction, and neither code specifies that, if that order does not meet certain requirements, the trial court loses jurisdiction. See *Moss v. State*, 13 S.W.3d 877, 885-86 (Tex.App.-Fort Worth 2000, pet. ref'd) (holding no statutory requirement exists that transfer order be filed with district court and that, if not filed, district court deprived of jurisdiction); see also *Ellis v. State*, 543 S.W.2d 135, 137 (Tex.Crim.App.1976) ("Regardless of whether the order of the juvenile court was actually on file with the papers in the case, the record reflects that the juvenile court had waived jurisdiction over appellant and had transferred it to the district court in which all subsequent criminal proceedings were had, and that the district court had such order in its possession and acted on the waiver and transfer and assumed jurisdiction....").

Here, it is undisputed that the juvenile court signed an order waiving its exclusive jurisdiction and transferring jurisdiction "to the Criminal District Court of Harris County." Appellant does not contend that this order waiving jurisdiction is invalid or that the juvenile court improperly waived and transferred its jurisdiction. The order assuming jurisdiction in the district court is included within the clerk's record, indicating that it was duly filed in the district clerk's office with the other papers in the case. The caption of the order states "In the 174 District Court of Harris County, Texas," the order is signed, and the order includes a statement that: IT IS ACCORDINGLY CONSIDERED, ORDERED AND ADJUDGED THAT jurisdiction of this court of said ROGELIO DELACERDA for criminal proceedings be and the same are hereby assumed by this court; that this cause be filed and docketed and this order entered in the minutes of this court, and that a certified copy of same be certified to said Judicial District Court, sitting as a Juvenile Court, for observance. However, the order is not dated, nor does the printed name of the presiding judge appear on the order.

Conclusion: We conclude that, despite the lack of a date and printed name of the judge, this order unequivocally provides for the assumption of jurisdiction by the 174th District Court. See *Speer v. State*, 890 S.W.2d 87, 93 (Tex.App.- Houston [1st Dist.] 1994, pet. ref'd) (holding that, when discrepancy existed between district court number within order assuming jurisdiction, discrepancy was "no more than a typographical error or editing oversight," and district court named in caption properly assumed jurisdiction). We hold that the district court properly assumed and exercised jurisdiction over appellant in this case.