

Trial court erred by ordering appellant and his grandmother to pay \$50 as DNA fees in injury to a child adjudication. [In the Matter of M.L.](13-5-8)

On September 20, 2013, the Dallas Court of Appeals held that a DNA sample and fee could not be ordered for the offense of injury to a child unless the conduct was committed intentionally and knowingly and was punishable as a first degree felony, or it was shown that the juvenile used or exhibited a deadly weapon during the commission of the offense.

¶ 13-5-8. **In the Matter of M.L.**, MEMORANDUM, No. 05-13-00568-CV, 2013 WL 5314816 (Tex.App.-Dallas, 9/20/13).

Facts: The State alleged, and the trial court found, that appellant was a child engaged in delinquent conduct by committing the offense of injury to a child, a violation of section 22.04 of the penal code. The trial court placed appellant on probation until his eighteenth birthday. Later, the State filed a motion to modify disposition alleging that appellant violated three conditions of his probation. Appellant pleaded true to the alleged probation violations, and the trial court ordered him committed to the Texas Juvenile Justice Department. The trial court also ordered appellant and his grandmother to pay \$50 to Dallas County for DNA fees. Appellant asserts that the trial court erred by ordering him and his grandmother to pay \$50 for DNA fees.

Held: Trial court's order is modified to delete the order to pay \$50 to Dallas County for DNA fees, and the order is affirmed as modified.

Memorandum Opinion: Under some circumstances, a trial court is required to order a juvenile adjudicated as a child engaged in delinquent conduct to provide a DNA sample as a condition of probation. TEX. FAM.CODE ANN. § 54.0409 (West Supp.2012). When the requirement applies, the trial court also must order the child and any parent or other person responsible for the child's support to pay a fee (either \$50 or \$34) to help defray the costs of any analysis that is performed on DNA samples provided by children. See id. § 54.0462(a)(1), (b).

The offense of injury to a child falls within the category of offenses for which a DNA sample and fee must be ordered (1) if the conduct was committed intentionally and knowingly and is punishable as a first degree felony, or (2) if it is shown that the juvenile used or exhibited a deadly weapon during the commission of the offense. See id. § 54.0409(a)(b); TEX.CODE CRIM. PROC. ANN. § 3g(a)(1)(I) (West Supp.2012). To be punishable as a first degree felony, the conduct must have caused serious bodily injury to the child victim. See TEX. PENAL CODE ANN. § 22.04(e).

In this case, the State alleged that the child victim suffered bodily injury, not serious bodily injury, as a result of appellant's conduct; the trial court did not make a finding that the child victim suffered serious bodily injury; and there is nothing in the record before us to show that appellant's conduct caused serious bodily injury to the child victim. Additionally, the trial court did not make a finding, and the record does not show, that appellant used or exhibited a

deadly weapon during the commission of the offense. Based on the record before us, we conclude that the offense for which appellant was adjudicated did not fall within the category of offenses requiring the trial court to order the child to submit a DNA sample. Consequently, the trial court erred by ordering appellant and his grandmother to pay \$50 to Dallas County as DNA fees.

Conclusion: We resolve appellant's first issue in his favor. Our resolution of this issue makes it unnecessary to address appellant's second issue. We modify the trial court's February 28, 2013 order modifying disposition with commitment to the Texas Juvenile Justice Department to delete the order to pay \$50 to Dallas County for DNA fees. We affirm the order as modified.