Juvenile Law Case Summaries

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Conflicting evidence whether witness in criminal trial testified because of deal with State in juvenile case means capital murder verdict stands [Barron v. State] (01-1-16).

On February 7, 2001, the Dallas Court of Appeals upheld the criminal court's denial of a motion for new trial on a claim that a State's witness testified under an undisclosed deal with the State in an unrelated juvenile prosecution. The Court of Appeals held that there was insufficient evidence of the deal to require a new trial.

¶ 01-1-16. Barron v. State, UNPUBLISHED, No. 05-99-01177-CR, 2001 WL 100204, 2001 Tex.App.Lexis ___ (Tex.App.—Dallas 2/7/01)[Texas Juvenile Law (5th Edition 2000)].

Facts: The jury convicted appellant of capital murder and the trial court assessed a life sentence. In two points of error, appellant appeals the trial court's denying his motion for new trial. We affirm the trial court's order.

While the complainant was in a liquor store, appellant came into the store, bought a bottle of wine and a bottle of beer, and left. Appellant, a young girl, and another man, Javier Camacho, waited outside in the store's parking lot. All three approached complainant as he stood next to his truck. Both appellant and Camacho scuffled with complainant. Camacho struck complainant with a bottle, then appellant shot the complainant. Appellant, Camacho, and the young girl left the scene together.

Held: Affirmed.

Opinion Text: In his first point of error, appellant argues the trial court abused its discretion in denying Appellant's motion for new trial. Specifically, appellant contends the State failed to reveal a plea bargain between the State and its main witness (the Witness). Appellant contends the State through the district attorney assigned to the juvenile section entered into an agreement by which the Witness would testify in appellant's murder trial in exchange for immunity from prosecution and this impeachment evidence was both favorable and material. Appellant relies on the juvenile court's docket sheet to show the agreement between the State and the Witness.

1. Standard of Review

We do not disturb a trial court's decision to grant or deny a motion for new trial absent an abuse of discretion. State v. Gonzalez, 820 S.W.2d 9 (Tex.App.--Dallas 1991), aff'd 855 S.W.2d 692, 696 (Tex.Crim.App.1993). Nor do we substitute our judgment for that of the trial court, rather we decide whether the trial court's decision was arbitrary and unreasonable. Lewis v. State, 911 S.W.2d 1, 7 (Tex.Crim.App.1995). A trial court abuses its discretion when its decision is so clearly wrong as to lie outside the zone within which reasonable persons can disagree. Melton v. State, 987 S.W.2d 72, 75 (Tex.App.--Dallas 1998) (citing Cantu v. State, 842 S.W.2d 667, 682 (Tex.Crim.App.1992)). In ruling on a motion for new trial, the trial court possesses broad discretion in assessing the witnesses' credibility and weighing the evidence. Lewis v. State, 911 S.W.2d at 7. The trial court does not abuse its discretion in overruling a motion for new trial when conflicting evidence exists. See Keady v. State, 687 S.W.2d 787, 760 (Tex.Crim.App.1985); Santacruz v. State, 963 S.W.2d 194, 196 (Tex.App.-- Amarillo 1998, no writ).

2. Application of Facts to Law

The felony prosecutor, the juvenile district attorney, appellant's trial attorney, and the attorney for the Witness testified at the motion for new trial. Both the felony prosecuting attorney and the juvenile district attorney denied

making an agreement with the Witness to testify. Appellant's trial attorney testified that she was never told of an agreement between the State and the Witness before or during appellant's trial. She only learned of the agreement from testimony during Camacho's trial.

The felony prosecutor testified that not only did he not enter into an agreement with the Witness, he refused to give her immunity. When he spoke with the juvenile district attorney, she told him that she neither made any special deals with the Witness nor ever had a murder case in which to prosecute her. He did not review the juvenile court's docket statement until the motion for new trial hearing. After reviewing the docket statement, the felony prosecuting attorney believed there was an agreement between the juvenile district attorney and the Witness. The juvenile court's entries on the docketing statement state "Re Ct IV--R will cooperate in the prosecution of the adult's case. She will also speak to Det re murder she witnessed .... no other charges will be filed agnst her w/re to murder & robbery." [FN2]

> FN2. Count IV listed Asefa Beyene as the complaining witness. Additionally, nothing in the record indicates that an adult was involved in Count IV.

The juvenile district attorney testified that the Witness had been charged with theft of complaining witness Martinez, theft of complaining witness Kahn, theft of complaining witness Garza's motor vehicle, theft of complaining witness Blangaro's motor vehicle, and aggravated robbery of complaining witness Beyene. [FN3] The juvenile district attorney had nonsuited cases in which Kahn and Garza were complaining witnesses. The police did not file any robbery or murder case in which Gonzalas was the complaining witness. The police had already talked with the Witness before the juvenile hearing. The detective told the juvenile district attorney that the Witness had witnessed a murder. The juvenile district attorney reduced the aggravated robbery to robbery because the complainant Beyene would not testify. Until the motion for new trial, the juvenile attorney was unaware of the judge's notation on the docket sheet.

> FN3. The complainant in appellant's cause was named Gonzalas.

The above testimony shows that the witnesses testified that both an agreement existed and an agreement was never made. Because the testimony at the motion for new trial hearing was conflicting on whether or not the Witness and the State entered into an agreement in exchange for her testimony, the trial court could not have abused its discretion in denying appellant's motion for new trial. We overrule appellant's point of error number one.

NEWLY DISCOVERED EVIDENCE

In his second point of error, appellant argues the trial court erred in denying a new trial because of discovery of new evidence of a deal between the Witness and the State. Specifically, appellant argues he was not aware of the existence of an agreement between the State and the Witness in which the Witness would testify in exchange for a lighter sentence until after trial. Appellant further contends his lack of knowledge of the agreement was not due to his negligence or lack of diligence. Appellant argues the existence of an agreement is material not merely cumulative, collateral, corroborative, or impeaching.

1. Applicable Law

A new trial shall be granted an accused where material evidence favorable to the accused has been discovered since trial. Tex.Code Crim.Proc.Ann. art. 40.001 (Vernon Supp.2000). Appellant is not entitled to a new trial based on newly discovered evidence unless he can establish the evidence was unknown to the movant before trial, failure to discover the evidence was not the result of want of diligence on appellant's part, the evidence is material, and the evidence is not merely cumulative, corroborative, or impeaching. Van Byrd v. State, 605 S.W.2d 265, 267 (Tex.Crim .App.1980). To be material, evidence must be probably true and such that would probably produce a different result at another trial. See id. The determination of the materiality of the new evidence is within the sound discretion of the trial judge. See id. Newly discovered evidence that is merely impeaching is not likely to bring about a different result in a new trial. See Jones v. State, 711 S.W.2d 35, 37 (Tex.Crim.App.1986).

2. Application of the Facts to the Law

The trial court was faced with conflicting testimony in determining whether new evidence existed that was probably true. Appellant's attorney claimed she discovered the existence of an agreement for the Witness's testimony during the codefendant's trial. Both the felony prosecuting attorney and the juvenile district attorney contended they made no deal or agreement with the Witness. But, the prosecuting attorney examined the juvenile court's docket entries

and testified that the docket notations indicated an agreement existed between the State and the Witness. Although the court docketing statement made reference to a requirement that the Witness cooperate in the prosecution of the adult, the docket writings referred to a different case with a different complaining witness. The determination of whether the evidence was true was within the trial court's discretion.

The "new" evidence in this case is impeaching evidence on the Witness's motive to testify. When appellant's counsel cross-examined the Witness on whether she was charged with anything in connection with the murder, she freely told the jury she was not and did not expect to be charged. That charges were not filed allowed the jury to weigh the Witness's credibility. The motion for new trial testimony revealed no new impeachment evidence. We overrule appellant's second point of error.

We affirm the trial courts denial of a new trial.

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