Juvenile Law Case Summaries

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Error, but not reversible, to admit juvenile record in penalty phase of criminal trial [Counter v. State] (01-2-17).

On April 23, 2001, the Dallas Court of Appeals held that it was error to admit the defendant's juvenile record into evidence at the penalty phase of his criminal trial for aggravated robberies. However, in view of the circumstances of the offenses, the error was harmless in its effect on the punishments imposed.

¶ 01-2-17. Counter v. State, UNPUBLISHED, No. 05-99-01206-CR, 2001 WL 406576, 2001 Tex.App.Lexis _____ (Tex.App.—Dallas 4/23/01)[Texas Juvenile Law (5th Edition 2000)].

Facts: Larry Counter appeals his convictions for two counts of aggravated robbery and one count of possession with intent to deliver more than four grams but less than two hundred grams of cocaine. In two points of error, appellant contends we must reverse his convictions for aggravated robbery because the trial judge erred in failing to grant appellant's motion for mistrial and admitting appellant's juvenile record during punishment. In an additional point of error, appellant contends the trial judge erred in ordering his possession sentence to run consecutively to his aggravated robbery sentences.

Appellant was arrested and charged with possession with intent to deliver more than four grams but less than two hundred grams of cocaine. On July 10, 1998, he pleaded guilty pursuant to a plea agreement with the State. That same day, the trial judge accepted appellant's plea and set the case for a sentencing hearing on August 6, 1998. Despite the trial judge's admonition that it was "imperative" he return to court on August 6th, appellant failed to appear in court that day. Appellant's bond was revoked, and an arrest warrant issued. On November 17, 1998, appellant robbed a security guard and the manager of a retail clothing store. When he was subsequently arrested for two counts of aggravated robbery, the police also executed the arrest warrant in appellant's drug case.

In July 1999, a jury convicted appellant in both aggravated robbery cases and assessed punishment at forty-five and fifty-five years' confinement. Thereafter, appellant appeared before the trial judge who sentenced him to five years' confinement and a \$1000 fine in accordance with his July 1998 negotiated plea bargain. The trial judge then ordered appellant's possession with intent to deliver sentence to commence when the aggravated robbery sentences had been served. These appeals followed.

Held: Affirmed.

Opinion Text: In his first point of error, appellant contends the trial judge erred in admitting his juvenile record during punishment. Appellant claims the admission of this evidence was harmful and resulted in excessive punishments in the aggravated robbery cases. The State concedes the admission of appellant's juvenile record was error but maintains the error was harmless. After reviewing the record, we agree the error was harmless in these cases.

Under rule 44.2(b), we disregard any nonconstitutional error unless it affected a substantial right of appellant. See Tex.R.App.P. 44.2(b); Montez v. State, 975 S.W.2d 370, 373 (Tex.App.--Dallas 1998, no pet.); Hinds v. State, 970 S.W.2d 33, 35 (Tex.App.--Dallas 1998, no pet.). A substantial right is affected when the error (i) had a "substantial and injurious" effect or influence in determining the jury's verdict or (ii) leaves us in grave doubt whether it had such an effect. Montez, 975 S.W.2d at 373; see also King v. State, 953 S.W.2d 266, 271 (Tex.Crim.App.1997). An error is harmless if the reviewing court determines, after reviewing the entire record, that the error did not influence, or had only slight influence on, the verdict. See Hinds, 970 S.W.2d at 35; see also United States v. DeAngelo, 13 F.3d

1228, 1233 (8th Cir. 1994).

In the aggravated robbery cases, we must determine whether the error in admitting appellant's juvenile record had a substantial and injurious effect or influence in determining the jury's verdict. After examining the record before us, we conclude it did not. The jury had substantial evidence to support the conclusion that appellant was guilty of both aggravated robberies. During guilt/innocence, Rene Adley testified she was the manager of Simply Fashions, a clothing store in Lancaster. On the morning of November 17, 1998, appellant robbed the store while Adley was at work. Appellant, who was carrying a gun, ordered Adley to open the safe. During the time he was in the store, Adley saw appellant's face repeatedly. She testified in court she was "sure" appellant was the man who robbed the store that morning.

Shelly Walker testified she was a Wells Fargo security guard assigned to Simply Fashions in Lancaster on the morning of the robbery. Appellant entered the store and pointed his gun in Walker's face. After he took her gun, he put his gun in Walker's mouth and asked, "Are you supposed to be some motherfucking hero?" Walker testified she was afraid for her life. Appellant forced her to the rear of the store and ordered her to lie face down on the floor. He then ordered Adley to open the safe. Walker testified she saw appellant's face clearly and unequivocally identified him in court. She also testified she picked appellant's photograph out of a photographic line-up several days after the robbery.

During punishment, the jury learned appellant robbed five other people at gunpoint in the same store on November 16, 1998, the day before the robberies in these cases. During the November 16th robbery, appellant repeatedly threatened to kill the victims and hit the assistant manager, Irene Beavers, in the face with his gun. The jury also learned appellant had a prior felony conviction for possession of phencyclidine and had pleaded guilty to possession with intent to deliver cocaine shortly before these robberies. We conclude, after reviewing the record as a whole, that the admission of appellant's juvenile record, including that he shoplifted clothing, burglarized a coin- operated machine, and committed criminal trespass, did not influence or had only a very slight influence on the verdict in these cases. And, in light of the evidence presented at trial, it certainly did not "substantially sway" jurors in assessing punishment in the offenses in these cases. Accordingly, we conclude the error, if any, in overruling defense counsel's objection was harmless. See Tex.R.App.P. 44.2(b). We overrule appellant's first point of error.

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