Juvenile Law Case Summaries

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No improper extraneous offense evidence of drug dealing presented in adjudication hearing for drug possession [In re R.J.T.] (01-3-08).

On June 13, 2001, the San Antonio Court of Appeals held that there was no improper evidence of drug dealing in respondent's adjudication hearing for drug possession.

¶ 01-3-08. In the Matter of R.J.T., UNPUBLISHED, No. 04-00-00329-CV, 2000 WL 649458, 2001 Tex.App.Lexis ____ (Tex.App.--San Antonio 6/13/01) [Texas Juvenile Law (5th Ed. 2001)]

Facts: A jury found R.J.T. engaged in delinquent conduct by possession of a controlled substance. The court committed him to the Texas Youth Commission. On appeal, R.J.T. asserts the trial court erred by admitting evidence of extraneous offenses.

While talking on a pay phone, R.J.T. was approached by a uniformed police officer in a marked police car. The officer saw him toss an object away while he continued to talk on the phone. The officer picked up the object which was a matchbox containing rocks of cocaine. The officer placed R.J.T. under arrest along with another juvenile using a second pay phone near R.J.T. At trial, the defense called the other juvenile as a witness (the witness). In four issues, R.J.T. complains about the State's cross examination of the witness concerning R.J.T.'s extraneous offenses.

Held: Affirmed.

Opinion Text: STANDARD OF REVIEW

"A trial court's action as to the admissibility of extraneous offense evidence is reviewed under an abuse of discretion standard." Mitchell v. State, 931 S.W.2d 950, 953 (Tex.Crim.App.1996) (citing Saenz v. State, 843 S.W.2d 24, 26 (Tex.Crim.App.1992)). As long as the trial court's ruling is within the zone of reasonable disagreement, we will not intercede. Montgomery v. State, 810 S.W.2d 372, 391 (Tex.Crim.App.1990) (op. on reh'g).

DISCUSSION

The first question posed by the State to the witness of which R.J .T. complains is "Does the respondent [R.J.T.] distribute cocaine?" However, before the witness answered, defense counsel objected and the question was never answered. To constitute evidence of an extraneous offense, the evidence must show a crime or bad act and that the defendant was connected to it. See Lockhart v. State, 847 S.W.2d 568, 573 (Tex.Crim.App.1992), cert. denied, 510 U.S. 849 (1993); Harris v. State, 738 S.W.2d 207, 224 (Tex.Crim.App.1986), cert. denied, 484 U.S. 872 (1987). If the evidence fails to show that an offense was committed or that the accused was connected to the offense, then evidence of an extraneous offense is not established. McKay v. State, 707 S.W.2d 23, 31-32 (Tex.Crim.App.1985), cert. denied, 479 U.S. 871 (1986) (citations omitted). Because the question complained about was never answered, we find no extraneous offense evidence was admitted; therefore, no error is presented. The first issue is overruled.

In his third issue, R.J.T. complains about the State's question, "[Y]ou know he deals in cocaine sometimes?" Defense counsel objected; however, the witness responded, "No, I don't know." Again, no evidence was admitted that R.J.T. committed an extraneous offense. The third issue is overruled.

The fourth issue R.J.T. complains about similarly presents no error. The State asked the witness: "Did [R.J.T.] stay at a house that was seized for drug paraphernalia and drug trafficking?" The defense objected and the witness did not answer the question. The State later only inquired as to where the defendant lived and the witness did not know. There was no extraneous offense evidence introduced; thus, no error. The fourth issue is overruled.

R.J.T. complains in his second issue about the State's question: "[R.J.T.] is a drug dealer too, isn't he?" The witness answered "I don't know about his private business." While the State fails to argue this point, any error was waived as defense counsel did not object to this question. A prerequisite to complaining on appeal is a specific error complaint to the trial court in the form of a timely request, objection, or motion. Tex.R.App.P. 33.1(a)(1). An objection is required to preserve error concerning an extraneous offense claim. Medina v. State, 7 S.W.3d 633, 643 (Tex.Crim.App .1999). Even if an objection had been made, no evidence of an extraneous offense was admitted. The second issue is overruled.

Upon review of R.J.T.'s complaints, we note that although the bulk of his argument is framed to complain of the admission of extraneous offense evidence, he also makes reference to the bad faith of the State in asking improper questions. The State admits in its brief that the prosecutor's questions were improper. To show bad faith on the part of the State, R.J.T. bore the burden of showing a willful and calculated effort on the part of the State to deny him a fair and impartial trial. See Loyosa v. State, 636 S.W.2d 566, 570 (Tex.App.--San Antonio 1980, no writ). R.J.T. failed to make such a showing.

All four questions complained of did not result in the admission of extraneous evidence. Therefore, no error resulted. R.J.T. failed to preserve error on one of the questions because he offered no objection at trial. Furthermore, broadly interpreting R.J.T.'s argument to encompass a complaint against the propriety of the prosecutor's questioning, we find no error. For these reasons, the trial court's decision is affirmed.

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