

Juvenile Law Case Summaries

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In criminal trial, not error to preclude defense from cross-examining child complainant about pending juvenile case [Carrillo v. State] (01-4-04).

On August 21, 2001, the Amarillo Court of Appeals held that in a criminal trial for sexual assault of a child it was not error for the trial judge to preclude defense counsel from cross-examining the child about an unrelated juvenile case currently pending against her.

¶ 01-4-04. Carrillo v. State, UNPUBLISHED, No. 07-99-0185-CR, 2001 WL 1002384, 2001 Tex.App.Lexis ____ (Tex.App.—Amarillo 8/21/01) [*Texas Juvenile Law* (5th Edition 2000)].

Facts: Upon pleas of not guilty, appellant Eliazar Martin Carrillo was convicted by a jury of sexual assault of a child, enhanced, in cause numbers F- 9900565-NM and F-9900566-NM and punishment was assessed by the court at confinement for life in each cause. By his first four points of error, he contends the evidence is legally and factually insufficient to prove that he knowingly and intentionally caused his sexual organ to penetrate that of complainant's, and knowingly and intentionally caused his finger to penetrate the sexual organ of complainant. By his remaining four points, he contends the trial court erred in disallowing testimony that complainant was recently arrested for a juvenile offense; the trial court erred in disallowing testimony that complainant had accused an uncle of molestation; the trial court erred in overruling his objection to improper jury argument during the guilt/innocence phase; and he was denied effective assistance of counsel during the punishment phase of the trial because trial counsel failed to object to the assessed punishment.

On September 18, 1998, complainant's mother, Sylvia, became aware that her husband, complainant's stepfather, had been sexually abusing her daughter. [FN1] Complainant was 14 years old at the time of her outcry, but at trial recounted incidents of abuse relating back to when she was ten. On the morning of the 18th, Sylvia dropped complainant off at school, but before Sylvia drove away, complainant got back in the car and began crying and told her mother about the abuse. They returned home and notified law enforcement. An officer was dispatched to their home to investigate. According to his testimony, Sylvia was crying and complainant was apprehensive and her moods ranged from anger to sadness. Appellant was located at a phone booth in Dallas and arrested. He was indicted on two separate counts of sexual assault of a child.

FN1. At the time of trial Sylvia was divorced from appellant.

Held: Affirmed.

Opinion Text: [Points of error one through four, dealing with legal and factual sufficiency of the evidence, are omitted.]

By his fifth and sixth points of error, appellant contends the trial court erred in disallowing testimony that complainant was recently arrested for a juvenile offense and in disallowing testimony that she had accused an uncle of molestation. We disagree. The trial court has broad discretion in the admission or exclusion of evidence and its decision will not be disturbed on appeal absent an abuse of discretion. *Montgomery v. State*, 810 S.W.2d 372, 390-91 (Tex.Cr.App.1991) (opinion on reh'g). Before evidence is admissible, it must be relevant. See Tex.R. Evid. 401.

Outside the jury's presence appellant elicited testimony from complainant about a recent arrest for engaging

in organized criminal activity resulting from a fight she was involved in at school. No court date had been set regarding this arrest and complainant testified that the fight had nothing to do with the case against appellant. The defense argued that it should be permitted to cross-examine complainant about the charge to establish a motive to testify favorably for the State who would be prosecuting her on the juvenile case. The trial court ruled that the defense was prohibited from referring to the pending juvenile case against appellant. Generally, character evidence is inadmissible. Tex.R. Evid. 404(a). However, character evidence of a victim is admissible if proven by reputation or opinion testimony. Tex.R. Evid. 405(a). The fact that complainant was arrested for a fight that occurred at school and had nothing to do with the case against appellant did not constitute reputation or opinion testimony and thus, the trial court did not abuse its discretion in disallowing it. See, e.g., *Martinez v. State*, 17 S.W.3d 677, 687 (Tex.Cr.App.2000) (finding the trial court was within its discretion in excluding evidence that the victim had been suspended for three days for hitting a girl at school). Point of error five is overruled.

The State also questioned complainant outside the jury's presence regarding a prior accusation of molestation she allegedly made against her aunt's husband. The accusation also involved her cousin, whom she concluded had dropped the charges because nothing further developed on the case. Defense counsel argued that the prior accusation was necessary to impeach complainant's credibility. However, when there is no evidence that a prior accusation was falsely made, it is inadmissible. *Hughes v. State*, 850 S.W.2d 260, 262-63 (Tex.App.-Fort Worth 1993, pet. ref'd); see also *Lopez v. State*, 18 S.W.3d 220, 225-26 (Tex.Cr.App.2000) (holding that without prior proof that a prior accusation was false, the evidence had no probative value in impeaching credibility, and that the Confrontation Clause does not mandate the admissibility of a prior accusation in a case involving a sexual offense). The trial court did not abuse its discretion in disallowing evidence of complainant's prior accusation of molestation.

Point of error six is overruled.

[Remaining points of error omitted.]

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