

## Juvenile Law Case Summaries

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### ***OK for prosecutor at penalty phase of criminal proceedings to question defendant's mother about the details of a juvenile offense [Romo v. State] (02-1-27).***

On February 14, 2000, the Houston Fourteenth District Court of Appeals held that the criminal court judge did not err in permitting the prosecutor at penalty to question the defendant's mother about the details of an aggravated robbery for which her son had received probation as a juvenile.

02-1-27. Romo v. State, UNPUBLISHED, No. 14-01-00474-CR, 2002 WL 220647, 2002 Tex.App.Lexis \_\_\_\_ (Tex.App.-Houston [14th Dist] 2/14/02) [Texas Juvenile Law (5th Edition 2000)].

Facts: In two issues, Michael Romo appeals his conviction and twenty-year sentence for robbery. First, appellant contends the introduction of evidence relating to an unadjudicated offense for crack cocaine possession was improper. Second, appellant argues the court erroneously permitted cross-examination of his mother regarding her knowledge of an aggravated robbery appellant committed as a juvenile.

Appellant was charged with aggravated robbery of Joseph Dark committed on August 12, 2000. While free on bond awaiting trial, appellant was arrested again and charged with crack cocaine possession. During sentencing, the State introduced evidence of this unadjudicated offense. Appellant argued the evidence was inadmissible because the cocaine had been seized illegally. The facts surrounding the seizure are described below under a separate heading.

As a juvenile, appellant was convicted of aggravated robbery. The complainant in that case was Marcelino Perez. On direct examination during sentencing, appellant's mother testified she knew her son had received probation in the robbery of Mr. Perez and that the probation had been revoked. She also indicated appellant told her he robbed Mr. Perez and that she knew "all about her son." Appellant's mother testified she had been to court with her son every time he had been "in trouble," though she did not know how many times she had been to court. Following this testimony, the prosecutor sought to impeach appellant's mother by quizzing her about her knowledge of her son's role in the robbery of Mr. Perez. The prosecutor's impeachment is set forth below in the body of our resolution of appellant's second issue. The jury convicted appellant of the lesser charge of robbery. Punishment was assessed at twenty years. No findings of fact were filed.

Held: Affirmed.

Opinion Text: In his second issue, appellant alleges the prosecutor committed reversible error by reading details of an extraneous offense from the offense report during the cross-examination of appellant's mother. The contested cross-examination is:

Q: And, Mrs. Romo, isn't it true that your son went up to the complaining witness, Mr. Marcelino Perez, and says, Give me your money or I'll kill you? Isn't that true?

... [witness never answers]

Q: Did your son tell you what he did in that aggravated robbery, Mrs. Romo?

A: No.

[objection sustained]

Q: Mrs. Romo, you're the mother of Michael Romo; and you're telling these twelve citizens when he was charged with aggravated robbery, a first degree felony, using a firearm, you did not ask him the facts and whether one of the complainants was hurt in that case? You didn't ask him anything about it? Is that what you're telling us?

A: No. whatever it was he told me, I believed him.

Q: All right. My question is, did he tell you that he walked up to Marcelino Perez and told him--

[series of objections overruled]

...

Q: Did he tell you, Mrs. Romo, that he said to the complainant, Mr. Marcelino Perez, Give me your money or I will kill you, while he pointed a firearm at Mr. Perez? Did he tell you that?

[objection overruled]

Q: Did he tell you that after he got Mr. Perez's wallet, he reached into his pockets to take additional money and an additional pager? Did he tell you that, Mrs. Romo?

A: No.

[objection overruled]

Q: Mrs. Romo, did he tell you his buddy, the co-defendant, then took a knife and cut the complaining witness's hands? Did he tell you that, Mrs. Romo?

[objection overruled]

A: No.

...

Q: Did he tell you that he was arrested with a gun and knife in the car with he and his friend, Mr. Perez, and the complainant's property? Did he tell you that?

A: No. He didn't.

Q: Did he tell you when he was arrested by the police officer, L .G. Gay, he lied about his name? Did he tell you that?

[objection overruled]

A: No, he didn't.

Q: But your son was very honest and up front with you, isn't he?

A: Yes.

While the prosecutor apparently based her questioning on the police report documenting the prior offense, the record does not support appellant's contention that the prosecutor either read directly from the report itself or offered the report into evidence.

Additionally, we note Texas law permits either party to offer evidence of a juvenile felony-offense, of a defendant's character, or of his criminal record. See Tex.Code Crim. Proc. Ann. art. 36.07(3) (Vernon 1994). Aggravated robbery is a felony. See Tex. Penal Code Ann. § 29.03(b) (Vernon 1994). It was therefore not error to allow the prosecutor's questioning of appellant's mother. We overrule appellant's second issue.

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