

Juvenile Law Case Summaries

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Juvenile court did not err in certifying respondent for trial in criminal court [Price v. State] (02-2-15).

On April 24, 2002, the Dallas Court of Appeals held that the juvenile court did not err in certifying the respondent for trial in criminal court and that defense counsel did not render ineffective assistance at the certification hearing.

02-2-15. Price v. State, UNPUBLISHED, No. 05-01-00588-CR, 2002 WL 664129, 2002 Tex.App.Lexis ____ (Tex.App.-Dallas 4/24/02) [Texas Juvenile Law (5th Edition 2000)].

Facts: Following a transfer from juvenile to district court, appellant was indicted for aggravated robbery. A jury found appellant guilty and assessed punishment at fifty years' confinement and a \$10,000 fine. Appellant presents eighteen points of error on appeal. Appellant's first nine points attack the order certifying him an adult and transferring him to criminal court. Appellant asserts the juvenile court erred in: (1) waiving jurisdiction, (2) admitting hearsay, and (3) admitting his statement without a hearing as to admissibility. Appellant also asserts the evidence was factually insufficient to support the transfer order, he was denied due process, and he received ineffective assistance of counsel. In his final nine points of error, appellant contends he received ineffective assistance of counsel at his criminal trial.

On April 9, 2000, two young males robbed Mr. G at gunpoint near his apartment. After the robbery, the two males forced Mr. G into his apartment in an effort to obtain more money. When they entered, the two males found Mr. G's wife and young daughter home. The males locked Mr. G and his young daughter in the bathroom and then took turns sexually assaulting Mrs. G. After the assault, Mrs. G identified appellant from a photographic lineup as one of her assailants.

The State filed a petition for discretionary transfer alleging appellant, a fifteen-year-old, committed the offenses of aggravated sexual assault and aggravated robbery. After ordering the Dallas County Juvenile Department to prepare a complete diagnostic study, social evaluation, and full investigation of the child and the circumstances of the offense, the juvenile court held a hearing on the State's motion to transfer. The victims did not testify at the hearing. Instead, to show probable cause appellant committed the offenses, the State relied on the victims' out-of-court statements given to police. The State also presented evidence that appellant admitted being present when the other intruder sexually assaulted Mrs. G.

After considering the evidence presented at the hearing, as well as appellant's diagnostic study and social evaluation, the juvenile court concluded (1) a full investigation was performed, (2) probable cause existed to believe that appellant committed the offenses, and (3) because of the seriousness of the offenses alleged and the background of the child, the welfare of the community required criminal proceedings. See Tex. Fam.Code Ann. § 54.02(a)(3)(Vernon Supp.2002). Consequently, the juvenile court waived its jurisdiction and transferred the case to criminal court. In separate trials, appellant was found guilty of aggravated sexual assault and aggravated robbery. At issue in this appeal is appellant's conviction for aggravated robbery.

Held: Affirmed.

Opinion Text: TRANSFER HEARING

In his first point of error, appellant contends the juvenile court erred in transferring him to criminal court without a "full investigation" as mandated by the Texas Family Code. Under section 54.02 of the family code, a juvenile court must conduct a full investigation before deciding whether to waive its exclusive original jurisdiction. See Tex. Fam.Code Ann. § 54.02(a)(3)(Vernon Supp.2002). The requirements of section 54.02 are mandatory and must be strictly followed. Turner v. State, 796 S.W.2d 492, 497 (Tex.App.-Dallas 1990, no writ). However, the course and scope of an investigation will vary according to the circumstances and surrounding events. Id. (citing In re I.B., 619 S.W.2d 584, 586 (Tex.Civ.App.-Amarillo 1981, no writ). The juvenile court initially determines whether the

investigation was sufficient. See *id.* This Court then determines whether the juvenile court abused its discretion in concluding a full investigation was performed. See *In re C.C.*, 930 S.W.2d 929, 934 (Tex.App.-Austin 1996, no writ).

In this point, appellant asserts no "full investigation" was performed because the probation officer that prepared the social evaluation and investigative report did not personally interview the victims of the offense and the report did not include appellant's version of the offense. We disagree.

The social evaluation and investigative report and the psychological evaluation and diagnostic study contain information regarding (1) appellant's prior referrals, (2) the circumstances of the instant offenses, (3) appellant's school, and (4) his academic performance. Additionally, the documents contained information on appellant's living situation, his family, and his sophistication and maturity. After reviewing the record, we cannot conclude the juvenile court abused its discretion in concluding a full investigation was performed. In reaching this conclusion, we reject appellant's suggestion that to perform a full investigation, the probation officer was required to either personally interview the victims or to include appellant's version of the offense in her report. We overrule appellant's first point of error.

In his third point of error, appellant contends the juvenile court erred in admitting hearsay evidence at the transfer hearing. Specifically, he complains of a police officer, Detective Shinn's, testimony concerning what the victims told her about the offense. Hearsay is an out-of-court statement offered for the proof of the matter asserted. See Tex.R.Crim. Evid. 801(d). The issue to be decided at a transfer hearing is not the guilt or innocence of the accused. See *In re Honsaker*, 539 S.W.2d 198, 201 (Tex.Civ.App.-Dallas 1976, writ ref'd n.r.e.). Rather, the issue is whether probable cause exists to believe the child committed the offense. See Tex. Fam.Code Ann. § 54.02(a)(3) (Vernon Supp.2001). In deciding probable cause, the juvenile court determines whether sufficient facts and circumstances exist to warrant a prudent man to believe the child committed the offense alleged. See *In re D.L.N.*, 930 S.W.2d 253, 255 (Tex.App.-Houston [14th Dist.] 1996, no writ).

Here, the juvenile court admitted evidence concerning what the victims told police about the offense. The evidence was admitted to show the statements were made and thus to support a finding of probable cause. See *Honsaker*, 539 S.W.2d at 201. We conclude the victims' out-of-court statements were not offered for the proof of the matter asserted and were therefore not hearsay. See *Id.* We overrule appellant's third point of error.

In his fifth and sixth points of error, appellant contends the juvenile court erred in admitting his prior statement into evidence. He asserts admission of the statement without a prior determination as to its admissibility violated his right to due process and his rights under section 51.095 of the family code. At the transfer hearing, Detective Shinn testified appellant admitted robbing Mr. G. and being present when the other male sexually assaulted Mrs. G. Appellant objected to Shinn's testimony asserting he had filed a motion to suppress any statements he may have made. The juvenile court responded that he had not had a hearing on any motion, but since the transfer hearing was not adjudicatory, it was not a proper motion at that time. Appellant responded "Thank you."

To preserve a complaint for appellate review, the record must show the defendant raised his complaint by a timely request, objection, or motion stating the grounds for the ruling sought with sufficient specificity to make the trial court aware of the complaint, unless the specific grounds were apparent from the context. See Tex.R.App. P. 33.1(a)(1). The record must also show the trial court either (1) ruled on the request, objection, or motion, either expressly or implicitly, or (2) refused to rule and the complaining party objected to the refusal. See Tex.R.App. P. 33.1(a)(2); *E.V.R. II Assoc., Ltd. v. Brundige*, 813 S.W.2d 552, 555 (Tex.App.-Dallas 1991, no writ). Here, appellant objected to Shinn's testimony and referred to his previously filed motion to suppress. The juvenile court, however, refused to rule on appellant's objection or to hear the suppression motion. Because appellant did not object to the juvenile court's refusal to rule, appellant did not preserve error. See *Brundige*, 813 S.W.2d at 555; see also *In re T.R.S.*, 931 S.W.2d 756, 758-59 (Tex.App.-Waco 1996, no writ) (juvenile must preserve error to complain of admission of confession); *Hill v. State*, 12-00-00172-CR, 2001 WL 493275, *6 (Tex.App.-Tyler 2001, pet. ref'd) (same). We overrule appellant's fifth and sixth points of error.

In his eighth point of error, appellant contends the evidence is factually insufficient to support the transfer order. In its transfer order, the juvenile court found there was probable cause to believe appellant committed the offense and that, because of the seriousness of the offense alleged and the background of the child, the welfare of the community required criminal proceedings. See Tex. Fam.Code Ann. § 54.02(a)(3)(Vernon Supp.2002).

Appellant first asserts the evidence is factually insufficient to show probable cause existed that he committed the offense. Appeals from discretionary transfer orders are generally treated the same as other civil appeals. *In re J.J.*, 916 S.W.2d 532, 535 (Tex.App.-Dallas 1995, no writ). Thus, the evidentiary standards applicable to civil cases apply. *Id.* In reviewing the factual sufficiency of the evidence, we review all the evidence including any evidence contrary to the finding. *Id.* We set aside a finding only if we determine the evidence is so weak or so against the great weight and preponderance of the evidence that is manifestly unjust. *Id.*

After reviewing the record, we conclude the evidence is factually sufficient to support the juvenile court's probable cause determination. To prove probable cause, the State was required to show only that sufficient facts and circumstances existed to

warrant a prudent man to believe appellant committed the offense. See D.L .N., 930 S.W.2d at 253. At the transfer hearing, the State presented evidence that Mr. G told authorities that two males robbed him at gunpoint, then forced themselves into his home where they raped his wife. Mrs. G also told police the two intruders raped her. Mrs. G. identified appellant as one of her assailants from a photographic lineup. The State also presented evidence that appellant admitted participating in the robbery. We conclude the evidence is factually sufficient to support the trial court's probable cause determination.

We further conclude the evidence is factually sufficient to support the juvenile court's finding that because of the seriousness of the offenses and appellant's background, the welfare of the community required criminal prosecution. The offense, a first-degree felony, was allegedly committed under particularly egregious circumstances. Additionally, the State presented evidence of appellant's prior referrals for other offenses. Appellant's probation officer, Susan Criswell, testified appellant had not responded to supervision. Indeed, appellant committed the instant offenses while on "Pre- Adjudicative Intensive Supervision" for another offense. According to Criswell, because of the seriousness of the offenses and the background of the child, the welfare of the community required criminal proceedings. We conclude the evidence is factually sufficient to support the juvenile court's transfer order. We overrule appellant's eighth point of error.

In his second, fourth and seventh points of error, appellant contends he received ineffective assistance of counsel at the discretionary transfer hearing. A juvenile is entitled to the effective assistance of counsel at a transfer hearing. See *Kent v. United States*, 383 U.S. 541, 561-62 (1966); *In re K.J.O.*, 27 S.W.3d 340, 342 (Tex.App.-Dallas 2000, pet. denied). We evaluate the effectiveness of counsel under the Strickland standard. See *K.J.O.*, 27 S.W.3d at 343.

Under Strickland, to prevail on an ineffective assistance of counsel claim, appellant must prove by a preponderance of the evidence that (1) counsel's representation fell below an objective standard of reasonableness, and (2) there is a reasonable probability that but for counsel's unprofessional errors, the result of the proceeding would have been different. See *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *Hernandez v. State*, 988 S.W.2d 770, 772 (Tex.Crim.App.1999). We examine the totality of counsel's representation to determine whether appellant received effective assistance. See *Thompson v. State*, 9 S.W.3d 808, 813 (Tex.Crim.App.1999). We do not judge counsel's strategic decisions in hindsight, and we strongly presume counsel's competence. *Thompson*, 9 S.W.3d at 813. A full inquiry into the strategy or tactics of counsel should be made only if there is no plausible basis for counsel's actions. See *Johnston v. State*, 959 S.W.2d 230, 236 (Tex.App.- Dallas 1997, no pet.). Any allegation of ineffectiveness must be firmly founded in the record, and the record must affirmatively demonstrate the alleged ineffectiveness. *Thompson*, 9 S.W.3d at 813. In most cases, a silent record which provides no explanation for counsel's actions will not overcome the strong presumption of reasonable assistance. *Thompson*, 9 S.W.3d at 813-814.

Appellant first contends his counsel at the transfer hearing was ineffective for failing to object to an incomplete investigation. We have previously concluded a full investigation was performed. Consequently, counsel was not ineffective for failing to object to the adequacy of the investigation.

Appellant next contends his counsel was ineffective for failing to object to "hearsay" contained in his probation officer's report. Specifically, he complains the report contained statements the victims made to police. Initially, we note a trial court is expressly permitted to consider written reports from probation officers at the transfer hearing. See Tex. Fam.Code Ann. § 54.02(e) (Vernon Supp.2002); *In re E.D.M.*, 916 S.W.2d 9, 11 (Tex.App.-Houston [1st Dist.] 1995, no writ). Moreover, we have previously concluded the victims' out-of-court statements were not hearsay. Therefore, trial counsel was not ineffective for failing to lodge a hearsay objection.

Finally, appellant contends his trial counsel was ineffective for failing to preserve error with respect to admission of his confession. According to appellant, counsel should have properly preserved error to ensure the requirements of article 51.095 of the family code were met. See Tex. Fam.Code Ann. § 51.095 (Vernon Supp.2002). To show counsel was ineffective for failing to preserve error in the admission of the confession, appellant must show the juvenile court would have erred in admitting the confession. *Cardenas v. State*, 971 S.W.2d 645, 652 (Tex.App.-Dallas 1998, pet. ref'd).

Because the record in his case does not show appellant's statement was taken in violation of article 51.095 of the family code, appellant cannot show the juvenile court would have sustained a proper objection. [FN1] See *id.* Therefore, appellant has failed to show his trial counsel was ineffective for failing to preserve error in the admission of appellant's statement. See *id.* We overrule appellant's second, fourth, and seventh points of error.

FN1. Indeed, at appellant's subsequent criminal trial, the State presented evidence the requirements of article 51.095 were met.

In his ninth point of error, appellant asserts he was denied his "right" to be tried as a juvenile in violation of his right to due process. Appellant merely reiterates the complaints raised above. Appellant has not shown he was denied due process. We overrule appellant's ninth point of error.

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