

## Juvenile Law Case Summaries

By

**Robert O. Dawson**

Bryant Smith Chair in Law  
University of Texas School of Law

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### ***Testimony about juvenile probation admissible at penalty phase of criminal trial [Horn v. State] (02-2-22)***

On May 15, 2002, the Beaumont Court of Appeals held that the trial court properly admitted at the penalty phase of a criminal trial the testimony of a juvenile probation officer about the defendant's juvenile probation.

02-2-22. Horn v. State, UNPUBLISHED, No. 09-00-483-CR, 2002 WL 999960, 2002 Tex.App.Lexis \_\_\_\_ (Tex.App.-Beaumont 5/15/02) [Texas Juvenile Law (5th Edition 2000)].

Facts: A jury convicted Clifford Horn of manslaughter. See Tex. Pen.Code Ann. § 19.04 (Vernon 1994). He was sentenced to fifteen years imprisonment. Horn challenges his conviction on the grounds that the evidence was legally and factually insufficient, that the jury was not sworn prior to voir dire, and that the trial court improperly admitted testimony concerning extraneous offenses.

Held: Affirmed.

Opinion Text: EXTRANEIOUS OFFENSES

The second incident took place during the punishment phase. A juvenile probation officer testified that Horn was placed on juvenile probation in November 1997 for aggravated assault. Asked about other grounds for probation, she replied that Horn's probation was extended in September 1998 for burglary of a habitation. Horn objected. At the bench, the trial court reprimanded the State for "interject[ing] an offense that shows no final conviction" and ordered the State to "get off" the topic of unadjudicated offenses, but refused Horn's request for a mistrial. The defense did not request an instruction for the jury to disregard the testimony. Horn argues that the refusal to grant a mistrial was reversible error.

Admissibility of punishment evidence is governed by the Texas Code of Criminal Procedure, specifically that part of art. 37.07 which allows for the admission of evidence relating to a defendant's adjudication of delinquency for felonies and for misdemeanors punishable by jail confinement. See Tex.Code Crim. Proc. Ann. art. 37.07 § 3(a)(1)(i) (Vernon Supp.2002). Clearly, the adjudication of delinquency order for the felony offense of aggravated assault falls within the language of art. 37.07(3)(a)(1)(i).

Horn claims the evidence should not be admitted because the State did not clearly prove he committed the acts. The trial court's threshold determination of admissibility is based on relevancy, not on a reasonable doubt determination, and is reviewed by this Court under an abuse of discretion standard. See *Mitchell v. State*, 931 S.W.2d 950, 952-53 (Tex.Crim.App.1996). In *Huizar v. State*, 12 S.W.3d 479, 482 (Tex.Crim.App.2000) (op. on reh'g), the Court of Criminal Appeals further explained that "[a]rticle 37.07's requirement that extraneous-offense and bad-act evidence must be proven beyond a reasonable doubt is an evidentiary rule; it has no constitutional underpinnings." Here the jury was properly instructed that it could not consider extraneous offenses in assessing punishment unless it first found the defendant did in fact commit the offense beyond a reasonable doubt. The jury is presumed to have followed the court's charge. See *Gaemz v. State*, 737 S.W.2d 315, 324 (Tex.Crim.App.1987).

Horn also argues that the admission of the extraneous acts is more prejudicial than probative. See Tex.R. Evid. 403. We disagree. The State offered the evidence to demonstrate that appellant, who had filed an application for probated sentence, was not a good candidate for probation. We find the evidence showing appellant had previously been on probation and was now before the court on another charge was probative of the issue of lack of suitability for probation, and not more prejudicial than probative. Issue two is overruled.

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