Juvenile Law Case Summaries

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Evidence supports respondent's guilty as party; criminal requirements for continuance motion applied [In re C.G.] (02-3-03).

On May 30, 2002, the El Paso Court of Appeals upheld the respondent's adjudication as a party to robbery; it also held that under criminal procedure rules a motion for continuance must be in writing to preserve error.

02-3-03. In the Matter of C.G., UNPUBLISHED, No. 08-01-00190-CV, 2001 WL 1161011, 2001 Tex.App.Lexis ___ (Tex.App.-El Paso 5/30/02) [Texas Juvenile Law (5th Edition 2000).

Facts: Appellant C.G. was found delinquent and placed on probation until her eighteenth birthday. C.G. brings three issues on appeal: (1) The evidence was legally insufficient; (2) the trial court erred in holding that State subpoenas do not insure to the benefit of the child; and (3) the trial court denied the child due process and constitutional right of compulsory process.

In the early morning of March 12, 2001, a gray or blue van pulled up next to Jose Rodriguez as he walked to work. The three males and one female occupants demanded money from him, saying, "Give us your money or your life." Mr. Rodriguez told them he had no money and kept walking. Two of the males got out of the van and again demanded money, with the female inside the van also yelling, "Give us the fucking money or your life." Afraid and trying to prevent any violence, Mr. Rodriguez turned to walk away but he was hit on the back of the head. His assailants grabbed his bag and drove off.

After Mr. Rodriguez reported the robbery to the police from a Circle K store, a police officer spotted a gray van with two males and a female about three to four miles away from the location of the assault. When Officer Xina Jurado stopped the vehicle, the three occupants left the van and ran away. The officer seized one of the occupants of the vehicle and alerted other officers in the area that a male and a female were headed in a certain direction and should be detained. Officer Alejandro Alvarez spotted two walkers who fit the description given by Officer Jurado and who also seemed exhausted, so he detained them for identification by the victim. Officer Jurado identified C.G. as the female who had fled from the van, and Mr. Rodriguez identified the van and the three people, including C.G ., as his assailants.

Held: Affirmed.

Opinion Text: C.G. argues in her first issue that evidence is legally insufficient to convict her because there is no evidence that she was present during the offense and threatened Mr. Rodriguez.

This Court examines all of the evidence in a light most favorable to the verdict, both admissible and inadmissible, in order to determine whether any rational trier of fact could find the essential elements of the crime as alleged beyond a reasonable doubt. Dewberry v. State, 4 S.W.3d 735, 740 (Tex.Crim.App.1999); Lyon v. State, 885 S.W.2d 506, 516 (Tex.App.-El Paso 1994, pet. ref'd). Our duty is not to reexamine the evidence and impose our own judgment as to whether the evidence establishes guilt beyond a reasonable doubt, but only to determine if the findings by the trier of fact are rational. Lyon, 885 S.W.2d at 516-17. Any inconsistencies in the evidence are resolved in favor of the verdict. Matson v. State, 819 S.W.2d 839, 843 (Tex.Crim.App.1991). This standard of review applies equally to both direct and circumstantial evidence cases. Geesa v. State, 820 S.W.2d 154, 161 (Tex.Crim.App.1991); Garcia v. State, 871 S.W.2d 279, 280 (Tex.App.-El Paso 1994, no pet.).

The State alleged that C.G. was guilty of delinquency by committing robbery, which the Penal Code defines as occurring when a person intentionally or knowingly threatens or places another in fear of imminent bodily injury or death in the course of committing theft with the intent to obtain or maintain control of the property. Tex.Pen.Code Ann. § 29.02(a)(2)(Vernon 1994). Where the defendant was not a principal in the offense, evidence may be sufficient to convict a person under the law of parties, if the defendant is physically present during and encourages the commission of an offense by words or other agreement. Tex.Pen.Code Ann. §§

7.01(a) & (b), 7.02(a)(2)(Vernon 1994); Cordova v. State, 698 S.W.2d 107, 111 (Tex.Crim.App.1985), cert. denied, 476 U.S. 1101, 106 S.Ct. 1942, 90 L.Ed.2d 352 (1986). Circumstantial evidence may be used to prove party status. Ransom v. State, 920 S.W.2d 288, 302 (Tex.Crim.App.1996)(Opin. on reh'g). To determine whether a person was a party, courts will look to the events occurring before, during, and after the commission of the offense which show there was an understanding and common design to do the prohibited act. Cordova, 698 S.W.2d at 111.

Mr. Rodriguez testified that a gray or blue van approached him. From inside the van, a female threatened him for his money. He saw four people inside, including a female sitting in the back, whom he identified as C.G. The female continued to threaten him very loudly as two of her companions alighted from the van demanding money. Mr. Rodriguez feared for his life, as it was very early in the morning, no one was around, and Mr. Rodriguez thought the two had guns by the way they were making movements in their pockets.

Officer Jurado found a gray van less than five miles from the scene of the crime. The three occupants of the van abandoned the van when the officer tried to stop them. One male was detained by the officer and she broadcast the other two suspects' direction of travel and a physical description that the two were a male and a female. Responding to the call, Officer Alvarez saw C.G. and a male who fit Officer Jurado's description, as they were traveling in the right direction, and they looked exhausted as if they had been running. All three detainees were identified by Mr. Rodriguez as his assailants.

At trial, Mr. Rodriguez testified that C.G. was the female inside the gray van. Officer Jurado identified C.G. as the female who had run away from her. Officer Alvarez identified C.G. as the person he arrested following Officer Jurado's radio call.

Looking at the evidence in the light favorable to the verdict, we find a fact finder could reasonably conclude that C.G. committed robbery as a party by threatening Mr. Rodriguez, putting him in fear of his safety, and taking his property without his consent. The evidence is legally sufficient to find C.G. was delinquent. We overrule C.G.'s first issue.

In her final two issues, it appears C.G. complains that the trial court erred in denying her motion for continuance and motion for a new trial when two police officers failed to appear in response to the State's subpoena, which prevented her from cross-examining and confronting those witnesses. However, C.G. failed to preserve error for review in both her second and third issues. Tex.R.App.P. 33 .1.

A motion for continuance must be in writing and sworn to. Tex.Code Crim.Proc.Ann. arts. 29.03, 29.08 (Vernon 1989); Montoya v. State, 810 S.W.2d 160, 176 (Tex.Crim.App.1989). Since C.G.'s motion for continuance was not in writing and not sworn to, we must find that nothing was preserved for error. We overrule C.G.'s second issue.

The Code of Criminal Procedure provides that when a witness who has been subpoenaed and fails to appear, the State or the defendant shall be entitled to have an attachment issued for the witness. Tex.Code Crim.Proc.Ann. art. 24.12 (Vernon 1989). When a subpoenaed witness does not appear, the party calling him must follow three steps to preserve error. First, the party must request a writ of attachment which must be denied by the trial court. Denney v. State, 558 S.W.2d 467, 470 (Tex.Crim.App.1977), cert. denied, 437 U.S. 911, 98 S.Ct. 3104, 57 L.Ed.2d 1142 (1978). Second, the party must show what the witness would have testified to. Rodriguez v. State, 513 S.W.2d 22, 27-8 (Tex.Crim.App.1974); Brito v. State, 459 S.W.2d 834, 837 (Tex.Crim.App.1970). Third, the testimony that the witness would have given must be relevant and material. Rodriguez, 513 S.W.2d at 27-8. C.G. did not request an attachment, and thus, did not preserve any error by the trial court for review. We overrule her third issue.

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