

Juvenile Law Case Summaries

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Failure to disclose pending charges against juvenile state's witness not a violation of due process [Lora v. State] (02-3-20).

On July 11, 2002, the Houston First District Court of Appeals held that it was not a violation of due process for the State not to disclose that one of its witnesses has pending juvenile charges. The evidence of guilt was overwhelming.

02-3-20. Loza v. State, UNPUBLISHED, No. 01-00-00504-CR, 2002 WL 1481264, 2002 Tex.App.Lexis ____ (Tex.App.-Houston [1st Dist.] 7/11/02) [Texas Juvenile Law (5th Edition 2000)].

Facts: A jury found appellant, Alejandro Davalos Loza, guilty of murder and assessed punishment at 60 years in prison and a \$5,000 fine. Appellant claims he is entitled to a new trial because (1) the State failed to disclose favorable evidence, and (2) his counsel was ineffective.

Enrique Villalobos, the complainant, was killed on March 7, 1999, in Houston. He was shot in the back with a sawed-off shotgun at close range. Appellant conceded that he fired a shot into the complainant's car, but argued this was done in self-defense or in the defense of his friend.

Villalobos left a "La Primera" gang party along with seven other people in his car. Another person drove because Villalobos was too drunk to drive. After a brief visit to the Galleria waterwall, the group went and cruised along the Richmond Avenue night club strip until about 4:30 a.m. They eventually left the Richmond strip to take Villalobos to his apartment in southwest Houston. When they reached the apartment complex, a minivan was blocking the entrance, and a passenger was being dropped off. Someone in the complainant's car made some gang-related hand gestures towards the minivan. Although disputed by the State's witnesses, appellant testified that someone in the car pointed a gun at his friend Nieto. Nieto became angry, and he and appellant began to chase the car in the minivan. Appellant was in the front passenger seat of the minivan, and Nieto was driving. Both appellant and Nieto were members of the Cholos, a gang in violent conflict with La Primera.

During the chase, appellant leaned out the window with a sawed-off 12-gauge shotgun in his hands. He fired at the car and missed, but the car's driver lost control and crashed into a ditch while trying to make a lefthand turn. The minivan parked behind the crashed car to prevent it from leaving.

Exactly what happened after the crash was disputed at trial. According to the State's witnesses, Nieto got out and began beating on the car windows commanding the occupants to roll down the windows. The driver of the car locked the doors and windows. Appellant was standing behind Nieto pointing the sawed-off shotgun at the disabled car and the people inside it. Appellant and Nieto then went around to the passenger side of the car. Because the driver's side door was damaged in the wreck and could not be opened properly, the driver crawled over Villalobos and another passenger and got out through the front passenger door. He tried to calm the two men, but Nieto punched him in the face and began to beat him. Appellant pumped the sawed-off shotgun one time, pointed it at the driver of the car, and then went over to the car. The driver of the car managed to run away. Nieto turned his attention to the remaining passengers inside the car, threatened to kill them, and attempted to pull one of the girls out by her hair. Nieto then began to beat Villalobos with his fists. Villalobos hit the driver with a flashlight. Appellant asked a bloody Nieto who had hit him and then leaned in through the car window and shot Villalobos in the back. Nieto and appellant then ran back to the minivan and drove off. The remaining occupants of the car pushed it out of the ditch and drove Villalobos to a hospital, where he was later pronounced dead.

Appellant, on the other hand, testified he was in the minivan when Nieto approached the car. Someone from the car punched Nieto in the nose and was holding a handgun. Appellant then left the minivan with the shotgun. Nieto was still fighting with someone and yelled at appellant to shoot. Appellant admitted he fired the shotgun once into the crowded car at close range. He testified he was not aiming and did not know if he had hit anyone. Appellant and Nieto then drove away from the scene. They went to a bar that was their

gang's hangout. There, Nieto waved the gun around outside and bragged about what the two had done.

Held: Affirmed.

Opinion Text: Failure to Disclose Impeachment Evidence

In his first point of error, appellant contends that his Due Process and Confrontation Clause rights under the United States Constitution and the Texas Constitution were violated when the State failed to disclose that one of its material witnesses had juvenile theft charges pending against her. The State has an affirmative duty to disclose evidence favorable and material to a defendant's guilt or punishment under the Due Process Clause of the Fourteenth Amendment. *Thomas v. State*, 841 S.W.2d 399, 407 (Tex.Crim.App.1992) (citing *Brady v. Maryland*, 373 U.S. 83, 87-88, 83 S.Ct. 1194, 1197 (1963)). Such rights are equally applicable under the due course of law provision in Article I, § 19 of the Texas Constitution. *Ex parte Adams*, 768 S.W.2d 281, 293 (Tex.Crim.App.1989).

Additionally, appellant cites to *Davis v. Alaska* to assert that his constitutional right to effectively confront witnesses was violated. 415 U.S. 308, 94 S.Ct. 1105 (1974). In *Davis*, the United States Supreme Court faced the question of whether a defendant's rights under the Sixth Amendment's Confrontation Clause could trump a state's interest in keeping juvenile records confidential. *Davis*, 415 U.S. at 309, 94 S.Ct. at 1107. The Supreme Court held that, under the specific facts presented, *Davis*'s confrontation rights would be violated if he could not show the potential bias of the juvenile witness against him. *Davis*, 415 U.S. at 319, 94 S.Ct. at 1112; see *Carmona v. State*, 698 S.W.2d 100, 103-104 (Tex.Crim.App.1985) (discussing *Davis* and noting that the case was limited by its facts).

In both *Davis* and *Carmona*, a Court of Criminal Appeals case construing *Davis*, the trial courts had made specific rulings that prohibited the discussion of juvenile crimes. If the trial court here had made such a ruling, then a direct examination of *Davis* would be appropriate; however, no such ruling prohibiting the witness from being cross-examined about her pending juvenile charge was made. Thus, appellant solely presents an issue for our review regarding the failure to disclose *Brady* material.

A violation of due process occurs when a prosecutor (1) fails to disclose evidence (2) which is favorable to the accused (3) that creates a probability sufficient to undermine the confidence in the outcome of the proceeding. *Thomas*, 841 S.W.2d at 404. Favorable evidence under the second prong is any evidence that, if disclosed and used effectively, may make the difference between conviction and acquittal. *Id.* When analyzing the harm of the alleged error under the third prong, we must examine the entire record and consider the error in the context of the overall strength of the State's case. *Id.* at 404-405.

The first *Thomas* prong is met because it is undisputed that the defense was not alerted to the witness's pending juvenile charge. Yet, even assuming without deciding that the second prong can be satisfied, the evidence clearly fails under the third prong because of the State's very strong case against appellant, the cumulative nature of the witness's testimony, and the limited impeachment value of the pending charge.

The juvenile witness in question was one of the passengers in the victim's car. She testified as an eyewitness to the events of the night, as did the driver of the car, another passenger, and appellant himself. There was little variation among the State's witnesses, and, although he contradicted some aspects of the State's case, appellant himself testified that he fired a shot into the car at very close range, with his hands partially inside the car.

The defense argued that the killing was justified as self-defense or defense of a third person. The evidence to support self-defense or defense of a third person was weak because appellant testified that he fired into the car without aiming at anyone in particular rather than defending against a specific attacker. Conversely, the witness in question provided some of appellant's better evidence for the defense of a third person theory when she testified that the victim hit appellant's friend Nieto with a flashlight just before the shooting. The fact that the case against appellant was very strong and the witness's testimony was largely cumulative weighs against finding that a violation of due process has occurred. See *Thomas*, 841 S.W.2d at 405; *Saldivar v. State*, 980 S.W.2d 475, 486-87 (Tex.App.--Houston [14th Dist.] 1998, pet. ref'd).

Further, appellant could not have used the pending juvenile theft charge for general impeachment of the witness's credibility. See Tex.R. Evid. 609(d); Tex. Fam.Code Ann. § 51.13(b) (Vernon 1996); *Warren v. State*, 514 S.W.2d 458, 465 (Tex.Crim.App.1974) (holding that juvenile records could not be used for general impeachment). Had it been disclosed, the pending charge could have only been used for limited impeachment purposes, such as showing a motive to cooperate with the police. See *Carmona*, 698 S.W.2d at 102 (discussing *Davis* and holding that a witness could be confronted with pending juvenile charges to show motive and bias); *Foster v. State*, 25 S.W.3d 792, 795 (Tex.App.--Waco 2000, pet. ref'd) (noting pending juvenile charge may be admissible for limited purpose of showing motive to testify for the State); *Gilmore v. State*, 871 S.W.2d 848, 851 (Tex.App.--Houston [14th Dist.] 1994, no pet.) ("[U]nless the right of confrontation is violated as it was in *Davis*, the family code rule against admission of juvenile records prevails.").

In sum, given the very strong case against appellant, the cumulative nature of the witness's testimony, and the limited impeachment

value of the pending charge, we hold that the failure to disclose this evidence was not sufficient to undermine confidence in the jury's verdict.

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