Juvenile Law Case Summaries

By
Robert O. Dawson
Bryant Smith Chair in Law
University of Texas School of Law

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Error, but harmless, to admit a delinquency adjudication at the penalty phase of a criminal trial when the State did not provide notice requested by the defense [Johnson v. State] (02-3-26).

On August 1, 2002, the Houston First District Court of Appeals held that the State did not respond to defendant's request for notice with respect to a prior juvenile delinquency adjudication and therefore that the trial court erred in permitting the adjudication to be received into evidence at the penalty phase of a criminal prosecution. However, considering the punishment assessed, the error was harmless.

02-3-26. Johnson v. State, ____ S.W.3d _____, No. _____, 2002 WL 1764861, 2002 Tex.App.Lexis ____ (Tex.App.-Houston [1st Dist.] 8/1/02) [Texas Juvenile Law (5th Edition 2000)].

Facts: Appellant was charged with aggravated robbery, enhanced by a prior burglary of a habitation conviction. The jury found the appellant guilty, the enhancement allegation true, and assessed punishment at 25 years imprisonment.

On February 27, 2000, the complainant borrowed her parents' car, a black Oldsmobile. Another car swerved in front of her, and appellant jumped out of the passenger side. Appellant put a gun to the window and told the complainant, "We want the car ... get out of the car." The complainant immediately got out of the car and called the police. When officers arrived at the scene, the complainant gave a description of appellant and her parents' Oldsmobile.

Two days later, Officer Jason Robles was observing cars for expired registration and inspection stickers. He ran a license plate check on a black Oldsmobile, which indicated that the car was stolen. Appellant, the driver, had no documentation to prove he owned the car. Appellant told the officer that he had bought the car a few days earlier from a man named LaBrandt. Appellant did not have a receipt, title to the car, or any way to contact LaBrandt. Appellant was arrested for unauthorized use of a motor vehicle.

Shortly thereafter, the complainant identified appellant in a line-up as the man who pointed a gun at her and stole her parents' car. Appellant then told the police that he had purchased the car from a man named Byrd, a friend of his cousin, but he did not know how to contact Byrd or his cousin.

Held: Affirmed.

Opinion text: Extraneous Offense

In his first point of error, appellant contends that the trial court erred in allowing the State to introduce extraneous offense evidence at the punishment stage without giving appellant proper notice.

Appellant sent a request to the State to provide notice of extraneous offenses or convictions that the State intended to introduce during trial. At the punishment stage, appellant urged an oral motion in limine to preclude the State from presenting evidence of extraneous offenses. Appellant objected under Article 37.07 of the Texas Code of Criminal Procedure, arguing that the State did not provide proper notice. The trial court overruled appellant's motion in limine. During the punishment stage, the State introduced two exhibits regarding appellant's prior convictions: (1) a burglary of a habitation and (2) juvenile adjudication of delinquency. When these exhibits were offered in evidence, appellant asked the trial court to recognize his prior objection regarding lack of notice. The trial court overruled appellant's objection.

Code of Criminal Procedure article 37.07 provides that State may offer evidence of a defendant's prior criminal record during the punishment phase of trial after a finding of guilty. Tex.Code Crim. Proc. Ann. art. 37.07 § 3 (Vernon Supp.2002). Section 3(g) requires

the State, on timely request, to give the defendant notice:

(g) On timely request of the defendant, notice of intent to introduce evidence under this article shall be given in the same manner required by Rule 404(b), Texas Rules of Criminal Evidence. If the attorney representing the State intends to introduce an extraneous crime or bad act that has not resulted in a final conviction in a court of record or a probated or suspended sentence, notice of that intent is reasonable only if the notice includes the date on which and the county in which the alleged crime or bad act occurred and the name of the alleged victim of the crime or bad act. The requirement under this subsection that the attorney representing the State give notice applies only if the defendant makes a timely request to the attorney representing the State for the notice.

Tex.Code Crim. Proc. Ann. art. 37.07 § 3(g) (Vernon Supp.2002).

1. Burglary of a Habitation

The enhancement paragraph of the indictment specifically alleged appellant's prior burglary of a habitation conviction by date, cause number, court, county, state, and offense. No motion to quash was filed. An enhancement paragraph provides the defendant with written notice of the prior conviction on which the State will rely to enhance his punishment. Coleman v. State, 577 S.W.2d 486, 488 (Tex.Crim.App.1979). Based on the indictment, we hold that appellant had sufficient written notice that the State would rely on the prior burglary of a habitation conviction to enhance punishment.

Appellant cites Buchanan v. State, 911 S.W.2d 11, 13 (Tex.Crim.App.1995), for the proposition that the State's "open file policy" is not sufficient to satisfy notice requirements. In Buchanan, the State introduced extraneous evidence during its case in chief, whereas here, the evidence was introduced during the punishment stage. Moreover, we do not agree with appellant's contention that the indictment's enhancement paragraph in this case is identical to Buchanan's open file policy of disclosing an offense report. Thus, Buchanan is distinguishable.

2. Juvenile Adjudication of Delinquency

The record does not indicate that the State gave appellant notice of its intent to introduce evidence at the punishment stage of appellant's juvenile delinquency adjudication. The State argues that appellant did not object to the same evidence presented through cross-examination of his stepfather. Appellant's stepfather testified as follows:

Q. Were you around when [appellant] was in juvenile trouble?
A. Yes, I was.
Q. Did you try to control him then?
A. Yes, I did.
Q. Couldn't do it, could you?
A. No.
Q. And actually the Judge had to send him to the Texas Youth Commission. They tried to control him, didn't they?
A. Yes, they did.
Q. Couldn't do it, could they?
A. No.
Q. Then a Judge in this Court, 208th District Court, Judge Collins, put him on probation for burglary of a habitation, right? ... And, again, [appellant] let that Judge down, right?
A. Yes.
Q. [Appellant] went to T.D.C. Then somebody let him out and he is back in our community, correct?
A. That's true.

To preserve error, a party must object every time allegedly inadmissible testimony is offered. Ethington v. State, 819 S.W.2d 854, 858 (Tex.Crim.App.1991). Any error in the admission of evidence is cured when the same evidence comes in elsewhere without objection. Id. Appellant did not object when his stepfather testified that appellant was in "juvenile trouble" and "the Judge had to send [appellant] to the Texas Youth Commission."

The stepfather's testimony merely referenced a juvenile conviction. In contrast, the State's exhibit outlined the specific offenses: (1) a juvenile probation for burglary of a habitation and (2) a revocation of the juvenile probation for committing assault and carrying a weapon. These specifics were not admitted through the stepfather's testimony. Nor were they admitted elsewhere during the punishment phase. The admission of the stepfather's testimony without objection did not cure any error in the State's failure to give notice of its intent to introduce the specifics surrounding appellant's juvenile conviction. We conclude that the trial court erroneously admitted the State's exhibit regarding appellant's juvenile delinquency adjudication.

We must determine whether such error was harmless. The erroneous admission of an extraneous offense does not constitute constitutional error. See Avila v. State, 18 S.W.3d 736, 741-42 (Tex.App.-San Antonio 2000, no pet.). Texas Rule of Appellate

Procedure 44.2(b) provides that any error, other than constitutional error, "that does not affect substantial rights must be disregarded ." Tex.R.App. P. 44.2(b). In other words, we disregard the erroneous admission of evidence if it did not adversely affect the jury's verdict, or had only a slight effect on the jury's verdict. See King v. State, 953 S.W.2d 266, 271 (Tex.Crim.App.1997).

The trial court's charge on punishment instructed the jury as follows:

If you find the allegations in the enhancement paragraph of the indictment are true, you will assess the punishment of the defendant at confinement ... for not less than fifteen years nor more than ninety-nine years or life. In addition thereto, you may assess a fine not to exceed $10,000.00.

If you find the allegations in the enhancement paragraph of the indictment are not true, you will assess the punishment of the defendant at confinement ... for not less than five years nor more than ninety-nine years or life. In addition thereto, you may assess a fine not to exceed $10,000.00.

If the jury found the enhancement true, the punishment range was 15 to 99 years. If the jury found the enhancement not true, the punishment range was 5 to 99 years. During closing argument, appellant's attorney requested the jury to assess the minimum punishment of 15 years--the minimum considering the enhancement true. The State requested "at least 30 years." The jury assessed 25 years. The jury had already found appellant guilty of aggravated robbery during the guilt/innocence stage. During the punishment stage, the jury properly considered the enhancement based on appellant's prior burglary of a habitation conviction. Additionally, the jury heard the stepfather's reference, without objection, to appellant's juvenile conviction. The 25-year punishment assessed was at the lower end of the range. We hold that any error during the punishment stage in admitting the State's exhibit containing the specifics of the juvenile offense was harmless. See Tex.R.App. P. 44.2(b).

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