Juvenile Law Case Summaries

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

2002 Case Summaries 2001 Case Summaries 2000 Case Summaries 1999 Case Summaries

---

Evidence was sufficient to uphold an adjudication for aggravated sexual assault by contact committed by a 10 year old [In re R.R.] (02-3-32).

On August 14, 2002, the El Paso Court of Appeals held that a 10 year old is capable of forming the intent or knowledge necessary to commit the offense of aggravated sexual assault by contact.

02-3-21. In the Matter of R.R., UNPUBLISHED, No. 08-01-00245-CV, 2002 WL 1859101, 2002 Tex.App.Lexis ___ (Tex.App.-El Paso 8/14/02) [Texas Juvenile Law (5th Edition 2000).

Facts: R.R., a juvenile, appeals from an adjudication order. The juvenile court found that R.R. had engaged in delinquent conduct by committing aggravated sexual assault of a child as alleged in Count I of the petition. Stating reasons in the order for deviating from the sanction guidelines, the court placed R.R. on juvenile probation until he is eighteen years old. See Tex. Fam.Code Ann. § 59.003(e) (Vernon Supp.2002).

In June of 2000, Martha Diaz heard her two sons arguing about whose turn it was to play with a video game. When her nine-year-old son, Anthony, would not let his older brother play, Alan threatened to tell their mother what ten-year- old R.R. had done to Anthony. Diaz took Anthony outside and asked him what had happened. After telling her that he could not remain quiet any longer, Anthony told her that R.R. had stuck his birdie [FN1] in Anthony's butt or rectum while holding Anthony's hands behind his back. This hurt Anthony and he ran out of the house. Anthony told her that this occurred sometime in May of 2000 while they were visiting at R.R.'s house. Diaz recalled the occasion and remembered seeing Anthony run out of the house but she assumed the boys had just gotten into a fight.

FN1. Anthony actually used the Spanish word "pajarito" for birdie and he referred to his butt as "colita." Diaz explained that Anthony referred to penis as birdie or pajarito.

Anthony testified at trial that R.R. asked him to go inside of the house and listen to the radio. While Anthony listened to the radio in R.R.'s bedroom, R.R. went into the bathroom. R.R. came out of the bathroom and held both of Anthony's hands behind his back with one hand. R.R. pushed Anthony, face first, onto the bed. He pulled Anthony's pants and underwear down with the other hand, and stuck his birdie or penis in Anthony's butt, causing him pain. Struggling to get away, Anthony moved to the side and R.R. fell onto the bed. Anthony ran out of the bedroom while pulling up his pants, and ran out of the house.

At the conclusion of the evidence, the juvenile court found that R.R. committed aggravated sexual assault as alleged in Count I of the State's first amended petition, but the court found against the State on Count 3 of the petition which alleged unlawful restraint. [FN2] The State abandoned Count II which alleged indecency with a child.

FN2. See Tex. Pen.Code Ann. § 20.02 (Vernon Supp.2002).

Held: Affirmed.

Opinion Text: DISCUSSION

A. Admonishments

In Point of Error No. One, R.R. contends that the juvenile court failed to properly admonish him regarding the charges against him. Section 54.03(b) of the Family Code requires the juvenile court to explain to the child the allegations against him. Tex. Fam.Code

Ann. § 54.03(b)(1) (Vernon Supp.2002).

At the beginning of the adjudication hearing, the juvenile court referee told R.R. that the purpose of the adjudication hearing was to provide him with a trial on the charges against him. The court advised R.R. that he had been charged with aggravated sexual assault (Count I) and indecency with a child (Count II). After explaining to R.R. his rights, the court determined whether R.R. understood those rights. Realizing he had not admonished R.R. regarding the third count, the referee explained that R.R. had also been charged with unlawful restraint. The State then read each of the three counts aloud and R.R. entered his plea of "not true" to each allegation.

As pointed out by the State, the Family Code requires that the juvenile preserve his complaint regarding a failure by the juvenile court to comply with Section 54.03(b). Section 54.03(i) provides:

In order to preserve for appellate or collateral review the failure of the court to provide the child the explanation required by Subsection (b), the attorney for the child must comply with Rule 52(a), Texas Rules of Appellate Procedure, before testimony begins or, if the adjudication is uncontested, before the child pleads to the petition or agrees to a stipulation of evidence.

Tex. Fam.Code Ann. § 54.03(i) (Vernon Supp.2002).

Rule 52(a) has been superseded by Rule 33.1, which requires a party to present to the trial court a timely request, objection, or motion, stating the specific grounds for the ruling he desired the court to make if the specific grounds were not apparent from the context. Tex.R.App. P. 33.1. Appellate cites several cases holding that a failure to admonish is fundamental error requiring no objection to preserve error. See e.g., In the Matter of L.T., 848 S.W.2d 769, 771-72 (Tex.App.-Corpus Christi 1993, no writ); In the Matter of O.L., 834 S.W.2d 415, 420 (Tex.App.-Corpus Christi 1992, no writ). The cases relied upon by Appellant pre-date the 1997 amendment of Section 54.03 which added the preservation requirement in subsection (i). Therefore, they are inapplicable. The record does not reflect that R.R.'s attorney made any objection in the trial court regarding any complaint about the admonishments. Consequently, he has failed to preserve error. In the Matter of C.C., 13 S.W.3d 854, 859-60 (Tex.App.-Austin 2000, no pet.). Point of Error No. One is overruled.

B. Legal Sufficiency of the Evidence

In Point of Error No. Two, R.R. challenges the legal sufficiency of the evidence to support the trial court's finding that he engaged in delinquent conduct by committing aggravated sexual assault. R.R. argues that because he was only ten-years-old when the offense occurred, he lacked the knowledge and maturity to possess the requisite mens rea. Thus, R.R. does not assert that the evidence is insufficient to show that he committed the acts alleged in the petition.

Standard of Review

When reviewing such a challenge by a juvenile, we apply the Jackson v. Virginia standard. In the Matter of A.S., 954 S.W.2d 855, 858 (Tex.App.-El Paso 1997, no pet.). This standard requires us to review all the evidence, both State and defense, in the light most favorable to the verdict to determine whether any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 318-19, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560, 573 (1979); Geesa v. State, 820 S.W.2d 154, 159 (Tex.Crim.App.1991). This familiar standard gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic to ultimate facts. Jackson, 443 U.S. at 319, 99 S.Ct. at 2789, 61 L.Ed.2d at 573. We do not resolve any conflict of fact or assign credibility to the witnesses, as it was the function of the trier of fact to do so. See Adelman v. State, 828 S.W.2d 418, 421 (Tex.Crim.App.1992); Matson v. State, 819 S.W.2d 839, 843 (Tex.Crim.App.1991). Instead, our duty is only to determine if both the explicit and implicit findings of the trier of fact are rational by viewing all of the evidence admitted at trial in a light most favorable to the verdict. Adelman, 828 S.W.2d at 422. In so doing, any inconsistencies in the evidence are resolved in favor of the verdict. Matson, 819 S.W.2d at 843. Further, the standard of review is the same for both direct evidence and circumstantial evidence cases. Geesa, 820 S.W.2d at 158.

Elements of the Underlying Offense

A person commits aggravated sexual assault if the person intentionally or knowingly causes the penetration of the anus of a child by any means. Tex. Pen.Code Ann. § 22.021(a)(1)(B)(i) (Vernon Supp.2002). The State's petition alleged that R.R. did:

[I]ntentionally and knowingly cause the contact of the anus of ANTONIO DIAZ, a child who was then and there younger than 14 years of age, by causing the sexual organ of [R.R.] to contact the anus of the said ANTONIO DIAZ, in violation of Section 22.021 of the Texas Penal Code.

A person acts intentionally, or with intent, with respect to the nature of his conduct or to a result of his conduct when it is his conscious objective or desire to engage in the conduct or cause the result. Tex. Pen.Code Ann. § 6.03(a) (Vernon 1994). A person acts

knowingly, or with knowledge, with respect to the nature of his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or that the circumstances exist. Tex. Pen.Code Ann. § 6.03(b) (Vernon 1994).

Intent is a fact question for the trier of fact, and it may be inferred from the acts, words, and conduct of the accused. Manrique v. State, 994 S.W.2d 640, 649 (Tex.Crim.App.1999); Wallace v. State, 52 S.W.3d 231, 234 (Tex.App.-El Paso 2001, no pet.). As a result of its nature, mental culpability must generally be inferred from the circumstances under which a prohibited act or omission occurs. Robles v. State, 664 S.W.2d 91, 94 (Tex.Crim.App.1984); Wallace, 52 S.W.3d at 235.

Although R.R. asserts that a ten-year-old child lacks the maturity to intentionally engage in this conduct, the Legislature has determined that juvenile proceedings may be brought against a ten-year-old child. See Tex. Fam.Code Ann. § 51.02(2)(A) (Vernon Supp.2002). Therefore, the only issue before us is whether the evidence is sufficient to show R.R. committed the conduct either intentionally or knowingly. We find that the evidence is sufficient to show beyond a reasonable doubt that R.R. intentionally engaged in the conduct. R.R. asked Anthony to go inside of his house purportedly to listen to the radio. Shortly after they went into R.R.'s bedroom, he forcibly engaged in sexual contact with Anthony. This evidence is sufficient to show that it was R.R.'s conscious objective or desire to engage in the conduct. Therefore, the evidence is legally sufficient to support the juvenile court's finding of delinquent conduct. Point of Error No. Two is overruled.

2001 Case Summaries 2000 Case Summaries 1999 Case Summaries