Juvenile Law Case Summaries

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Criminal defendant has no discovery right to juvenile records of state's witnesses without showing that the records exist [Dixon v. State] (02-4-10).

On October 3, 2002, the Austin Court of Appeals held that the defendant in a criminal case of sexual abuse against minors has no discovery right to the juvenile records of the State's complaining witnesses in the absence of evidence that any of them had records.

02-4-10. Dixon v. State, UNPUBLISHED, No. 03-01-00459-CR, 2002 WL 31206210, 2002 Tex.App.Lexis ____ (Tex.App.-Austin 10/3/02) [Texas Juvenile Law (5th Edition 2000)].

Facts: Appellant Bradley Wayne Dixon was a dormitory director at a San Marcos boarding school. Over the course of several months, he committed a number of sex and sex-related offenses against the boys in his charge. Based on this evidence, a jury found him guilty of two counts of aggravated sexual assault of a child, four counts of indecency with a child by contact, one count of sexual performance by a child, and two counts of assault. In four points of error, appellant contends the trial court erred by refusing to order the State to provide impeachment evidence to the defense, by denying the defense access to evidence in the court's possession, and by admitting at the punishment stage evidence that was unlawfully seized and of which proper notice had not been given.

Held: Affirmed.

Opinion Text: Juvenile records

In point of error two, appellant contends his due process and confrontation rights were violated when the court refused to order the State to "provide the juvenile records (if any) of the minor witnesses the State intended to call during trial." See U.S. Const. amends. V, VI, XIV. More specifically, appellant argues that the court should have granted his request for an order directing the State to search juvenile court records to determine if any of its intended witnesses had been found to have engaged in delinquent conduct involving acts of moral turpitude. The court refused this request, saying it was "not ordering the prosecutor to go seek and search out every record possession of the State of Texas." The court did order the prosecution to make available to the defense any evidence in its possession bearing on the credibility of its witnesses.

No Sixth Amendment violation is shown. The right to confrontation is a trial right implicated, for example, when a defendant's cross-examination of a prosecution witness is unduly limited by the trial court. See Pennsylvania v. Ritchie, 480 U.S. 39, 52 (1987) (plurality op.); Thomas v. State, 837 S.W.2d 106, 111 (Tex.Crim.App.1992). Appellant does not complain that he was denied the opportunity to use a witness's juvenile record for impeachment, but rather that he was denied the opportunity to learn if any such records exist. In effect, appellant urges that he did not receive a fair trial because he was denied discovery. This does not raise a Confrontation Clause issue, but rather a due process issue under the Fourteenth Amendment. Ritchie, 480 U.S. at 56; Thomas, 837 S.W.2d at 112.

Under the Due Process Clause, the State has an affirmative duty to disclose evidence in its possession that is favorable to the accused and material either to guilt or punishment. Brady v. Maryland, 373 U.S. 83, 87 (1963); Wyatt v. State, 23 S.W.3d 18, 27 (Tex.Crim.App.2000). Impeachment evidence is included within the scope of the Brady rule. United States v. Bagley, 473 U .S. 667, 676 (1985). Brady does not require disclosure of information that the State does not have in its possession and that is not known to exist. Hafdahl v. State, 805 S.W.2d 396, 399 n. 3 (Tex.Crim.App.1990); Thompson v. State, 612 S.W.2d 925, 928 (Tex .Crim.App.1981).

In this case, the prosecutor told the court that the State did not have any juvenile court records involving the complainant-witnesses. Appellant asserts that the prosecutor was merely claiming that she did not personally possess such records, and that the trial record demonstrates that the State's "prosecuting team" did have the records. See Giglio v. United States, 405 U.S. 150, 154 (1972); Ex

parte Adams, 768 S.W.2d 281, 291-92 (Tex.Crim.App.1989) (Brady applies to evidence possessed by any member of "prosecution team," including both investigators and prosecutors); see also Kyles v. Whitley, 514 U .S. 419, 438 (1995) (prosecutor's failure to disclose Brady material in possession of police not excused by lack of personal knowledge). Appellant does not refer us to any portion of the record supporting this assertion, and our review discloses no evidence that any investigator or prosecutor was in possession of any undisclosed juvenile court record of any witness.

Appellant relies on the opinion in Thomas. In that case, a capital murder defendant sought the production of crime stoppers information pertaining to the offense, including the names of informants and a tape recording of a telephone call. Thomas, 837 S.W.2d at 108. The trial court denied the request, citing statutes providing that crime stoppers reports are privileged and confidential. Id. at 108-09; see Tex. Gov't Code Ann. §§ 414.007, .008 (West Supp.2002). The court of criminal appeals, however, concluded that the defendant had a due process right to the production of the material he sought that was in the possession of the local crime stoppers program, the crime stoppers advisory counsel, or the district attorney's office. Thomas, 837 S.W.2d at 113-14. The court went on to prescribe a procedure by which the crime stoppers information was to be inspected by the trial court in camera to determine if it contained Brady material. Id. at 114.

Appellant urges that the procedure outlined in Thomas should have been employed by the trial court in this cause. There is, however, a crucial distinction between Thomas and the case before us. In Thomas, the information sought by the defendant was known to exist; it was a matter of record that crime stoppers tips had been received, and that one person in particular had spoken to a crime stoppers operator for fifteen minutes. Id. at 108. In this case, on the other hand, there was no showing that any potential State witness had been adjudicated delinquent. The court of criminal appeals did not hold in Thomas, as appellant would have us hold here, that the prosecutor was obligated to search for information not known to exist.

Brady does not require the State to seek out evidence for the defendant's use. Palmer v. State, 902 S.W.2d 561, 563 (Tex. App .- Houston [1st Dist.] 1995, no pet.). The district court did not violate appellant's due process rights by refusing to order a search for juvenile records that were not in the State's possession and were not shown to exist. Point of error two is overruled.

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