JUVENILE CASELAW UPDATE 2018

Pat Garza
Associate Judge
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In the Matter of A.A.R.
Tex.App—El Paso, 4/28/2017

NO ABUSE OF DISCRETION SHOWN WHERE THE RECORD SHOWS THAT JUVENILE WAS ADMONISHED, AND HE WAS AWARE AND UNDERSTOOD THE CONSEQUENCES OF ENTERING A PLEA OF TRUE.

In the Matter of D.W.
Tex.App.—Ft. Worth, 10/26/2017

APPOINTED COUNSEL CONTINUES TO REPRESENT THE CHILD "UNTIL THE CASE IS TERMINATED, THE FAMILY RETAINS AN ATTORNEY, OR A NEW ATTORNEY IS APPOINTED BY THE JUVENILE COURT.*

Family Code
Sec. 51.101
APPOINTMENT OF ATTORNEY AND CONTINUATION OF REPRESENTATION.

(a) If an attorney is appointed under Section 54.01(b-1) or (d) to represent a child at the initial detention hearing and the child is detained, the attorney shall continue to represent the child until the case is terminated, the family retains an attorney, or a new attorney is appointed by the juvenile court. Release of the child from detention does not terminate the attorney's representation.

In re J.B.H.
Tex.App.—Houston (14th Dist.), 8/17/2017

IN A CASE WHERE THE DEFENDANT HAS BEEN CERTIFIED AND TRANSFERRED TO ADULT COURT, ORIGINAL JURISDICTION TO GRANT WRITS OF HABEAS CORPUS IS VESTED IN THE TEXAS COURT OF CRIMINAL APPEALS, THE DISTRICT COURTS, THE COUNTY COURTS, OR A JUDGE IN THOSE COURTS, BUT NOT IN THE TEXAS COURTS OF APPEAL.

In re Bell
Tex.App.—Houston (1st. Dist) 6/13/17

ONCE A JUVENILE CERTIFICATION AND TRANSFER CASE IS REINSTATED BY THE COURT OF CRIMINAL APPEALS, ARTICLE 44.04(B) TCCP REQUIRES THE IMMEDIATE ARREST OF THE JUVENILE.

In re J.A.
Tex. App.—Houston (1st Dist.), 12/12/2017

TRIAL JUDGE ABUSED HIS DISCRETION IN SIGNING THE "NUNC PRO TUNC ORDER TO CORRECT JUDGMENT" AND THE "ORDER ON MOTION TO DISMISS FOR LACK OF JURISDICTION AND MOTION FOR ENTRY NUNC PRO TUNC."

Boyd v. State
Tex.App.—Dallas, 8/18/2017

AN EXPRESS WAIVER OF MIRANDA IS NOT REQUIRED IN A MOTION TO SUPPRESS A CONFESSION, ONLY THAT THE TRIAL COURT'S CUSTODY ANALYSIS INCLUDES REVIEW OF ALL RELEVANT CIRCUMSTANCES, INCLUDING THE SUSPECT'S AGE.

Agers v. State
Tex. App.—Dallas, 1/22/2018

AGGRAVATED SEXUAL ASSAULT COMMITTED BY A JUVENILE DOES NOT QUALIFY AS SEXUALLY VIOLENT OFFENSE FOR AFFIRMATIVE FINDINGS PURPOSES IN ADULT COURT.

TCCP Art. 42.015. FINDING OF AGE OF VICTIM

(b) In the trial of a sexually violent offense, as defined by Article 62.001, the judge shall make an affirmative finding of fact and enter the affirmative finding in the judgment in the case if the judge determines that the victim or intended victim was younger than 14 years of age at the time of the offense.

TCCP Art. 62.001

(6) "Sexually violent offense" means any of the following offenses committed by a person 17 years of age or older:

(A) an offense under Section 21.02 (Continuous sexual abuse of young child or children), 21.11(a)(1) (Indecency with a child), *22.011 (Sexual assault)*, or 22.021 (Aggravated sexual assault), Penal Code;

Eguade v. State
Tex.App.—El Paso, 7/31/2017

IN TRIAL AFTER DISCRETIONARY TRANSFER TO ADULT COURT, NO ERROR COMMITTED BY FAILING TO INSTRUCT THE JURY THAT JUVENILE COULD NOT BE CONVICTED FOR CONDUCT COMMITTED BEFORE HIS FOURTEENTH BIRTHDAY.

DeLaCruz v. State

Tex.App.—Corpus Christi-Edinburg, 6/22/2017

A FELONY JUVENILE ADJUDICATION WITH A COMMITMENT TO TJJD IS NOT CONSIDERED FINAL FELONY CONVICTION FOR HABITUAL FELONY OFFENDER. TPC §12.42(f)*

TEXAS PENAL CODE

§12.42(f)

(f) For the purposes of Subsections (a), (b), and (c)(1),* an *adjudication* by a juvenile court under Section 54.03, Family Code , that a child engaged in delinquent conduct on or after January 1, 1996, constituting a *felony offense* for which the child is *committed to the Texas Juvenile Justice Department*… …, is a final felony conviction.

Specifically excludes Subsection (d) (habitual offender provision in the Penal Code)

In the Matter of R.R.S.

Tex.App.—El Paso, 8/25/2017 (with dissent)

IT WAS ERROR FOR TRIAL COURT TO REFUSE TO ALLOW THIRTEEN YEAR OLD TO WITHDRAW HIS PLEA OF TRUE BECAUSE THE THIRTEEN YEAR OLD HAD NOT BEEN INFORMED OF THE POTENTIAL DEFENSE OF LACK OF CAPACITY TO CONSENT TO SEX AS A MATTER OF LAW. See *In re B.W.**

In the Matter of R.R.S.

Majority Opinion

To enable Appellant to make a voluntary, knowing, and informed waiver of his constitutional rights, Appellant should have been informed prior to the entry of his plea of true of the potential defense of lack of capacity to consent to sex as a matter of law, and other pertinent defensive theories applicable to his circumstances.

Withdrawal of Appellant's plea of true and stipulation of evidence, and a new trial, will enable the parties to address directly, in the first instance, the question of whether the holding of In re B.W. extends to the offense of aggravated sexual assault.

Sex Offenders and Social Media

A North Carolina law made it a felony for a registered sex offender "to access a commercial social networking Web site where the sex offender knows that the site permits minor children to become members or to create or maintain personal Web pages."

A registered sex offender, after having a traffic ticket dismissed, posted the following on Facebook:

"Man God is Good! How about I got so much favor they dismissed the ticket before court even started? No fine, no court cost, no nothing spent..... Praise be to GOD, WOW! Thanks JESUS!"

The registered sex offender was charged with a felony as per the statute!

N.C. Ct of App.: Struck down the conviction on constitutional grounds.
N.C. Sup Ct.: Reversed the lower court ruling, upholding the conviction.
On to the Supreme Court. *

In the Matter of J.C.C.

Tex. App.—El Paso, 1/5/2017

THE MANDATORY LANGUAGE OF SECTION 51.20(C), STANDING ALONE, MAY NOT PRECLUDE A COMMITMENT TO THE TEXAS JUVENILE JUSTICE DEPARTMENT.*

Texas Family Code

Sec. 51.20. PHYSICAL OR MENTAL EXAMINATION

(c) If, while a child is under deferred prosecution supervision or court-ordered probation, a qualified professional determines that the child has a mental illness or mental retardation or suffers from chemical dependency and the child is not currently receiving treatment services for the mental illness, mental retardation, or chemical dependency, the probation department *shall* refer the child to the local mental health or mental retardation authority or to another appropriate and legally authorized agency or provider for evaluation and services.

Packingham v. North Carolina

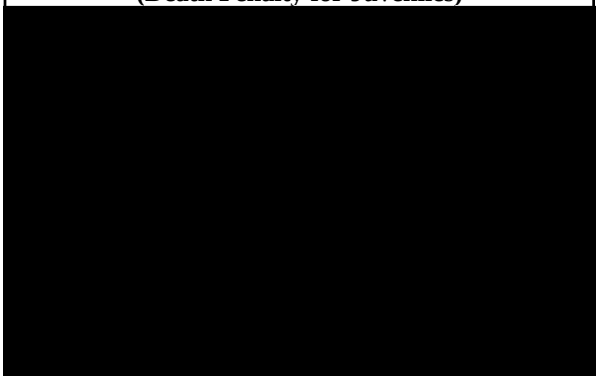
U.S. Sup. Ct., 2/27/2017

UNITED STATES SUPREME COURT HELD A NORTH CAROLINA STATUTE MAKING IT A FELONY FOR A REGISTERED SEX OFFENDER TO ACCESS A SOCIAL NETWORKING WEBSITES UNCONSTITUTIONAL, BECAUSE THE STATUTE FORECLOSED ACCESS TO SOCIAL MEDIA ALTOGETHER, PREVENTING THE USER FROM ENGAGING IN THE LEGITIMATE EXERCISE OF THEIR FIRST AMENDMENT RIGHTS.

Kennedy, delivered opinion, in which Ginsberg, Breyer, Sotomayor, and Kagan, joined. Alito, Roberts, and Thomas concurred in the judgement only. Gorsuch, took no part.

Supreme Court: Roper v. Simmons

(Death Penalty for Juveniles)



In the Matter of P.M.
Tex. App.—El Paso, 1/12/2018

JUVENILE'S CONFRONTATION RIGHTS UNDER THE SIXTH AMENDMENT WERE VIOLATED WHEN JUVENILE WAS REQUIRED TO CALL THE CHILD/COMPLAINANT TO TESTIFY BECAUSE THE STATE DID NOT CALL THE CHILD TO TESTIFY AFTER CALLING OUT-CRY WITNESSES TO TESTIFY.*

T.C.C.P. Art. 38.072
HEARSAY STATEMENT OF CERTAIN ABUSE VICTIMS

Sec. (a) This article applies only to statements that:

(2) were made by the child against whom the charged offense or extraneous crime, wrong, or act was allegedly committed; and

(3) were made to the first person, 18 years of age or older, other than the defendant, to whom the child made a statement about the offense or extraneous crime, wrong, or act.

(b) A statement that meets the requirements of Subsection (a) is not inadmissible because of the *hearsay rule* if:

(1) on or before the 14th day before the date the proceeding begins, the party intending to offer the statement:

(A) notifies the adverse party of its intention to do so;

(B) provides the adverse party with the name of the witness through whom it intends to offer the statement; and

(C) provides the adverse party with a written summary of the statement;

(2) the trial court finds, in a hearing conducted outside the presence of the jury, that the statement is reliable based on the time, content, and circumstances of the statement; and

(3) the child or person with a disability *testifies or is available to testify* at the proceeding in court or in any other manner provided by law.

When the State proffers the outcry statement under article 38.072 TCCP:

It is incumbent upon the accused to object on the basis of confrontation and/or due process (think *Crawford v. Washington*).

State has two choices:

1. Announce its intention to call the child declarant to the stand, or

2. make a showing both that 1) the out-of-court statement is one that is reliable under the totality of circumstances in which it was made, and 2) use of the out-of-court statement in lieu of the child's testimony at trial "is necessary to protect the welfare of the particular child witness" in that particular case. *In the Matter of M.P.**

In the Matter of P.M. cont'd

If the State follows either of these two courses, the accused's objection on confrontation grounds should be overruled. Otherwise, the confrontation objection is a valid one and should be sustained, irrespective of whether the State has satisfied all of the statutory predicate for admissibility of hearsay under Article 38.072…

Because the State did not call the child to testify nor showed that the outcry testimony was necessary to protect the welfare of the child, we conclude the trial court should have sustained the juvenile's confrontation objections as valid, regardless of the State's compliance with the article 38.072 predicates for the admissibility of hearsay, and erred in failing to do so.

Fact Situation
Professional Reports

During juvenile's disposition hearing, juvenile's attorney offers into evidence a letter prepared by a psychiatrist who was appointed by the trial court as an expert to assist in the preparation of the juvenile's defense. Juvenile's attorney did not call the psychiatrist to testify. The letter, which was addressed to the juvenile's attorney, contained the psychiatrist's findings based upon his initial consultation with the juvenile.

The trial court sustained the state's hearsay objection, and juvenile's attorney later made an informal bill of exception or offer of proof as to the excluded exhibit. Juvenile's attorney explained to the trial court that the exhibit was admissible because it was authenticated by the probation officer and because she had a copy of it in her file.

Is the psychiatrist's letter admissible?*

Texas Family Code
Sec. 54.04. Disposition Hearing

(b) At the disposition hearing, the juvenile court, notwithstanding the Texas Rules of Evidence or Chapter 37, Code of Criminal Procedure, may consider written reports from probation officers, professional court employees, or professional consultants in addition to the testimony of witnesses… *

In the Matter of A.V.
Tex. App.—Eastland, 6/8/2017

WHEN MAKING AN OFFER OF PROOF, "THE PARTY MUST SPECIFY THE PURPOSE FOR WHICH THE EVIDENCE IS OFFERED AND GIVE THE TRIAL JUDGE REASONS WHY THE EVIDENCE IS ADMISSIBLE" AND THE REASONS MUST COMPORT WITH THE ARGUMENTS ASSERTED ON APPEAL.

Redmond v. State
Tex. App.—Texarkana, 12-21-2017

JURISDICTION LIES IN ADULT COURT WHEN A DEFENDANT HAS TURNED 20 YEARS OF AGE BEFORE HE IS ARRESTED, INDICTED, AND TRIED.

Garcia v. State
Tex.App.—Dallas, 6/23/2017

JUVENILE PROBATION OFFICER'S TESTIMONY ABOUT CRIMES OF OTHER JUVENILE'S BECAME RELEVANT WHEN JUVENILE'S COUNCIL CHOOSE TO QUESTION HER ABOUT COMPARISONS BETWEEN THIS JUVENILE AND OTHER JUVENILES SHE HAD SUPERVISED.

In the Matter of A.V.
Tex. App.—Eastland, 6/8/2017

WHEN A PROSPECTIVE JUROR EXPRESSES BIAS OR PREJUDICE IN FAVOR OF OR AGAINST THE DEFENDANT (AS OPPOSED TO A BIAS OR PREJUDICE AGAINST THE LAW), IT IS NOT ORDINARILY DEEMED POSSIBLE FOR THE PROSPECTIVE JUROR TO BE QUALIFIED BY STATING THAT THEY CAN LAY ASIDE SUCH PREJUDICE OR BIAS.

In the Matter of D.M.
Tex. App.—Corpus Christi-Edinburg, 1/18/2018

IN A WAIVER AND DISCRETIONARY TRANSFER TO ADULT COURT HEARING, TAKING JUDICIAL NOTICE OF ALL OF THE DOCUMENTS IN THE TRIAL COURT'S FILE IS PERMITTED BY STATUTE.*

Texas Family Code
Sections 54.02(d) & 54.02(e)

Section 54.02(d):
prior to the hearing, the juvenile court shall *order and obtain* a complete diagnostic study, social evaluation, and full investigation of the child, his circumstances, and the circumstances of the alleged offense.

Section 54.02(e):
at the transfer hearing the court may consider written reports from probation officers, professional court employees, or professional consultants in addition to the testimony of witnesses.

DISCRETIONARY WAIVER TO ADULT COURT VS. DETERMINATE SENTENCE

THE STATE FILES A PETITION FOR DISCRETIONARY TRANSFER TO ADULT COURT.

THE STATE'S OWN WITNESSES AGREE THAT THE JUVENILE SYSTEM HAS PROGRAMS AVAILABLE THAT COULD APPROPRIATELY ADDRESS THE JUVENILE'S ALLEGED SEXUAL MISCONDUCT AND HIS ADMITTED SUBSTANCE ABUSE.

THE STATE DID NOT ARGUE THAT DETERMINATE SENTENCING WOULD BE INSUFFICIENT TO MEET THE NEEDS OF THE JUVENILE AND THE COMMUNITY. RATHER, THE STATE CONTENDS THAT THE PROSECUTOR HAS THE SOLE DISCRETION TO PURSUE A DETERMINATE SENTENCE AND SIMPLY CHOSE NOT TO DO SO.

IN THIS CASE THE DISCRETIONARY TRANSFER TO ADULT COURT WAS UPHELD. *In the Matter of E.H.

In the Matter of E.H.

Tex.App.—Houston (1st Dist.), 8/17/2017

SHOULD THE VIABILITY OF A DETERMINATE SENTENCE DISPOSITION BE A FACTOR IN A MOTION FOR DISCRETIONARY TRANSFER TO ADULT COURT?*

In the Matter of E.H.

Concurring Opinion

WHEN THE FACTS OF A CASE REFLECT THAT A DETERMINATE SENTENCE MAY BE FEASIBLE, THE POLICIES BEHIND PRESERVING JUVENILE COURT JURISDICTION OVER CHILDREN WHEN POSSIBLE ARE NOT SERVED BY ALLOWING A PROSECUTOR DISCRETION TO NOT AVAIL ITSELF OF A PROCEDURE AND OFFER NO EXPLANATION FOR THAT DECISION.

In the Matter of J.G.M.
Tex.App.—Houston (1st Dist.), 7/18/2017

IN A DISCRETIONARY TRANSFER HEARING, THE AGE OF JUVENILE AT THE TIME OF THE OFFENSE MAY BE DETERMINED THROUGH TESTIMONY OF VICTIM'S AGE AT THE TIME OF THE OFFENSE.

In the Matter of D.L.C.
Tex.App.—Texarkana, 3/21/2017

IN DISCRETIONARY TRANSFER PROCEEDING, THE APPLICATION OF TFC § 54.02(A) [UNDER 18 CERTIFICATION] OR §54.02(J) [OVER 18 CERTIFICATION] IS BASED ON A PERSON'S AGE AT THE TIME THE DISCRETIONARY TRANSFER HEARING BEGINS NOT WHEN IT IS FILED BY THE STATE.

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