Offense of prostitution where State alleged five prior convictions gives felony court jurisdiction of case.[Kuol v. State](16-1-3A)

On December 15, the Houston Court of Appeals (14th Dist.) held that the jurisdiction of prostitution case where five prior convictions are alleged may give felony trial court jurisdiction to hear the case.

¶ 16-1-3A. **Kuol v. State**, No. 14-14-01008-CR, --- S.W.3d ----, 2015 WL 9240885 [Tex.App.-Hou. (14th Dist.), 12/15/2015]

**Facts:** Appellant was arrested for prostitution by the Houston Metropolitan Transit Authority. She was charged by information—waiving her right to a grand jury indictment—with felony prostitution. The indictment alleged that she had previously been convicted of prostitution five times in Dallas County. After pleading guilty to the offense of felony prostitution, appellant was placed on deferred adjudication community supervision. Appellant violated numerous terms of her community supervision, and the State filed a motion to adjudicate her guilt. The trial court found appellant guilty of felony prostitution and sentenced her to three years’ confinement in the Texas Department of Criminal Justice, Institutional Division.

Within 30 days of judgment, appellant filed a “Motion in Arrest of Judgment/Motion for New Trial,” in which she alleged that her current felony prostitution charge was void for lack of subject matter jurisdiction. She asserted that the criminal district court lacked subject matter jurisdiction because all five of the prostitution convictions used to enhance her current felony prostitution charge were also void. She claimed that the five prior prostitution convictions involved judgments that were entered when she was a juvenile, and the county and district courts entering those judgments lacked jurisdiction over her. Specifically, she asserted that, of the five enhancing allegations, the three misdemeanor offenses occurred when she was 14 years old and that the two felony prostitution offenses relied on misdemeanor offenses that occurred when she was 14 and 16 years old. She urged that these prior convictions were void because all of them occurred in courts lacking subject matter jurisdiction, i.e., only a juvenile court had jurisdiction over her when she was that age.

The trial court conducted a hearing on her motion. She presented the trial court with all of the prior judgments, as well as a certified copy of her driver’s license to establish her current age. After hearing the arguments of counsel, the trial court overruled her motion. This appeal timely followed.

**Held:** Reversed and remanded.

**Opinion:** Appellant makes a two-fold argument about the trial court’s lack of subject matter jurisdiction in this case. First, she asserts that a district court only has jurisdiction over prostitution when the accused has been convicted three previous times of prostitution. Second, appellant asserts that, although she has been convicted five times previously for prostitution, those convictions are void because the trial courts convicting her lacked jurisdiction over the cases. According to appellant, the trial courts lacked jurisdiction to convict her of the enhancing offenses because appellant was either a juvenile at the time of the conviction or the conviction arose from prior juvenile convictions. First, we conclude that the trial court had subject matter jurisdiction over appellant’s case. We then determine that appellant was illegally sentenced and reverse for a new punishment determination.1

A. Subject Matter Jurisdiction

The Texas Constitution requires that the State must obtain a grand-jury indictment in a felony case, unless this requirement is waived by the defendant. Tex. Const. art. I, § 10. Absent an indictment or valid waiver, a district court does not have jurisdiction over the case. Teal v. State, 230 S.W.3d 172, 174–75 (Tex.Crim.App.2007); Martin v. State, 346 S.W.3d 229, 230–31 (Tex.App.—Houston [14th Dist.] 2011, no pet.). An indictment or information provides a defendant with notice of the offense and allows the defendant to prepare a defense. Teal, 230 S.W.3d at 175; Martin, 346 S.W.3d at 231.

Article 1.14 of the Texas Code of Criminal Procedure provides that:

**[i]f the defendant does not object to a defect, error, or irregularity of form or substance in an indictment or information before the date on which the trial on the merits commences, he waives and forfeits the right to object to the defect, error, or irregularity and he may not raise the objection on appeal or in any other postconviction proceeding.**Tex. Code Crim. Proc. art. 1.14(b).

Indictments—or informations—charging a person with committing an offense, once presented, invoke the jurisdiction of the trial court, and jurisdiction is not contingent on whether the charging instrument contains defects of form or substance. See Teal, 230 S.W.3d at 177. Thus, Texas law “requires the defendant to object to any error in the [charging instrument] before the day of trial and certainly before the jury is empaneled.” Id.

Nevertheless, for the trial court to have jurisdiction, there still must be a charging instrument. See Martin, 346 S.W.3d at 232. A charging instrument must allege that (1) a person (2) committed an offense. Teal, 230 S.W.3d at 179; see also Tex. Const. art. V, § 12(b) (defining “indictment” and “information” as written instruments presented to the court “charging a person with the commission of an offense”). Accordingly, a defendant may challenge for the first time on appeal an instrument that fails to charge the commission of an offense or does not charge a particular person with the crime. See Teal, 230 S.W.3d at 178–80.

When determining whether an instrument is so flawed that it does not constitute an actual charging instrument and thus does not vest the trial court with jurisdiction, the critical determination is whether the court and the defendant can identify what penal-code provision is alleged and whether that provision vests the trial court with jurisdiction. Kirkpatrick v. State, 279 S.W.3d 324, 328 (Tex.Crim.App.2009) (citing Teal, 230 S.W.3d at 180). We look to the charging instrument as a whole, not just to its specific formal requisites. Id. If we conclude that the trial court and the defendant can determine that the instrument intends to charge a felony or other offense for which the trial court has jurisdiction, then the instrument charges the commission of an offense, even if the instrument fails to allege an element of the offense or contains additional information indicating the person charged is innocent. Teal, 230 S.W.3d at 181–82; Martin, 346 S.W.3d at 232.

Here, examining the charging instrument at issue, the State alleged that appellant committed prostitution by agreeing to engage in sexual conduct for a fee on or about July 21, 2011. As noted above, the State alleged five prior convictions of appellant for prostitution in the charging instrument. Further, prostitution may be a misdemeanor or felony offense. See Tex. Penal Code Ann. § 43.02(c) (providing that prostitution is generally a Class B misdemeanor, unless enhanced by prior convictions, which may elevate the offense to a felony). Thus, based on the allegations in the information, both appellant and the trial court could determine that the instrument intended to charge a felony offense for which the trial court has jurisdiction. Teal, 230 S.W.3d at 181–82; Martin, 346 S.W.3d at 232.

**Conclusion:** Accordingly, we determine that the trial court had subject matter jurisdiction in this case. See, e.g., Pomier v. State, 326 S.W.3d 373, 382–84 (Tex.App.—Houston [14th Dist.] 2010, no pet.) (“However, even though the indictment included language that would have properly charged appellant with a misdemeanor rather than a felony, the trial court still had jurisdiction.”). Accordingly, we overrule appellant’s issue.