Testimony about crimes of other juveniles made relevant by juvenile council opening the door.[Garcia v. State](17-3-8)

On June 23, 2017, the Dallas Court of Appeals held that 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.

¶ 17-3-8. **Garcia v. State**, MEMORANDUM, NO. 05-16-00920-CR, 2017 WL 2705673 (Tex.App.—Dallas, 6/23/2017).

**Facts:** On October 11, 2015, Garcia, who was fifteen years old at the time, and two other individuals robbed a Dollar General store in Mesquite, Texas. One of the other robbers had a gun and fired one shot during the course of the robbery and another shot as the robbers were fleeing the Dollar General. After Garcia was certified to stand trial as an adult, he pleaded guilty to aggravated robbery and requested that a jury determine the punishment.

The jury heard evidence that, approximately two weeks before the robbery of the Dollar General, Garcia participated in a robbery of the Dennis Water, Beer, and Wine store in Dallas, Texas. During this robbery, Garcia threw items at the store clerk and hit the clerk in the face with his hand, breaking the clerk’s glasses and cutting his face. The jury also heard evidence of Garcia’s membership in the Sureños 13 gang in Wichita, Kansas, and of his adjudication in Kansas as a juvenile for burglary and criminal damage to property. The jury was shown photographs, Facebook postings, and a video in which Garcia demonstrated his affiliation with the Sureños 13 gang.

Garcia testified he had been a member of the Sureños 13 gang since he was eleven years old. He believed he was “seeking a father figure type of love” from the older members of the gang and was accorded “respect” as a result of his gang membership. After he completed his probation on the juvenile offenses, two friends convinced him to drive from Wichita to Dallas to take another friend to the home of the friend’s older brother. Garcia believed they were going to immediately return to Kansas, but they stayed with his friend’s brother, who paid for their food and other expenses. The brother ultimately told them that, if they wanted to continue to stay with him, they were going to have to “make some money.” The brother provided them with a gun.

Garcia and his three friends robbed the Dennis Water, Beer, and Wine store while the brother remained outside in a truck. Garcia received approximately $200 of the money stolen from the store. The brother held the money for Garcia and spent it on food. Garcia declined to participate in a second robbery of an individual, but agreed to rob the Dollar General after he was told he did not have any money remaining. Garcia testified he did not expect his friend to fire the gun during the robbery and did not know why his friend did so. After the Dollar General robbery, Garcia was given a bus ticket by a woman living with the brother and returned to Kansas.

According to Garcia, prior to the two robberies in Dallas and Mesquite, he had “never done anything this serious,” and he had “learned his lesson.” He was sorry for his actions and would never do “anything like that again.” Garcia was being held in the juvenile detention center in Dallas and was “rated” on his daily behavior in the facility. According to Garcia, he had received high ratings on his behavior. He requested the jury recommend that he be placed on community supervision.

After closing arguments, the trial court instructed the jury to find Garcia guilty and to assess punishment anywhere within the range of punishment contained in the court’s charge. The jury returned a guilty verdict and assessed punishment of twenty years’ imprisonment.

Admission of Evidence

In one issue, Garcia argues the trial court erred by overruling his relevance objection and admitting testimony from Marritta Claudio, Garcia’s juvenile supervision officer in Wichita, Kansas, regarding other juvenile offenders.

Applicable Facts

Claudio testified Garcia was adjudicated as a juvenile for burglary and criminal damage to property and was on probation from January 22, 2013, until March 9, 2015. Garcia was originally placed on probation for a period of one year and was required to comply with certain conditions, including attending school, remaining drug-free, following a curfew, not engaging in gang activity, reporting for office visits, and participating in “groups” that were offered for cognitive behavior. His probation was extended due to noncompliance with these conditions.

According to Claudio, Kansas has (1) juvenile detention centers, which are locked facilities, and (2) residential facilities, which are not locked facilities. A juvenile detention center may be used only as a holding facility for a juvenile pending a placement in a residential facility. Because a residential facility is not a locked facility, the juvenile has the ability to leave the residential facility, but is not permitted to do so. The purpose of a residential facility is to allow a juvenile who is not successfully complying with the terms of his probation while at home to take a “step out” and be placed into a more structured environment. At a residential facility, the juvenile can receive treatment for substance abuse and assistance with anger management. The juvenile will also attend school at the facility. Garcia was placed into the juvenile detention center a total of four times and “did not have problems” while he was in detention.

Due to some “issues” while he was on probation, Garcia was placed at the Lakeside Academy residential facility in May 2013. Garcia’s behavior was monitored at this facility and he was “written up” for both positive and negative behavior. Between May 2013 and October 2013, when he was returned to his home, Garcia was “written up” over fifty times. Garcia failed to comply with the terms of his probation following his release from the Lakeside Academy and was suspended from school based on writing “gang stuff” on his “agenda,” disrespecting teachers, and not following directions. After Claudio was notified that Garcia had gone onto the premises of a school he did not attend and instigated a fight, Garcia was again removed from his home.

Garcia was placed at the Salvation Army residential facility. After approximately one month, the facility requested his removal. Generally, a facility will request the removal of a juvenile for noncompliant behavior, such as failing to adhere to the rules of the program. Garcia was next placed at the Clarence Kelly residential facility, but ran away the same day he arrived. After Garcia was “picked up on his warrants,” he was again placed at the Lakeside Academy in June 2014. During his second stay at the Lakeside Academy, Garcia was “written up” approximately forty times. Two of the “write ups” were positive; the others were for infractions ranging from aggression to noncompliance. At Lakeside Academy, Garcia completed anger management and substance abuse treatment. He was returned to his home on October 31, 2014, and released from probation on March 9, 2015.

Garcia was charged with a new offense of misdemeanor possession of marijuana in August 2015. In Claudio’s opinion, a person who is committing new offenses within a year of completing probation “did not gain from our services.” Claudio indicated it was “very frustrating” when a juvenile commits a robbery and an aggravated robbery in another state after completing probation “because we invest a lot of time, effort, and money from the state to provide every kind of program we have available to rehabilitate someone.”

On cross-examination, Claudio testified that Garcia was not the “worst kid” she had supervised in her eleven years as a juvenile probation officer. Although Garcia did not comply with the terms of his probation, he was always respectful to her, and she did not encounter the issues that he had with authority in a school or residential placement setting. Claudio agreed with Garcia’s counsel that it was not unusual for a juvenile to complete a residential facility placement and then get into trouble after being returned to the home. Claudio also agreed with Garcia’s counsel that “you have some kids that are just bad,” who could not “make a full session in a placement” and could not “follow the rules in the detention center.”

On redirect examination, the prosecutor asked Claudio about the number of other juveniles she had supervised who committed aggravated robbery within six months after being released from probation. Garcia’s counsel objected the evidence was not relevant. The prosecutor indicated he was seeking to respond to the information elicited on cross-examination that Garcia was not one of the worst juveniles supervised by Claudio. The prosecutor stated he was “trying to get into more on – into more of where on the spectrum [Garcia] falls.” The trial court overruled the objection, and Claudio responded that “one or maybe two possibly” of the juveniles she had supervised had committed aggravated robbery within six months of completing probation. She was not aware of any juvenile she had supervised, other than Garcia, who committed “these crimes” in another state.

**Held:** Affirmed.

**Memorandum Opinion:** We review the trial court’s decision to admit evidence for an abuse of discretion. Henley v. State, 493 S.W.3d 77, 82–83 (Tex. Crim. App. 2016). Questions of relevance should be left largely to the trial court, relying on its own observations and experience, and will not be reversed absent an abuse of discretion. Moreno v. State, 858 S.W.2d 453, 463 (Tex. Crim. App. 1993). The trial court abuses its discretion when its decision lies outside the zone of reasonable disagreement. Henley, 493 S.W.3d at 83.

Section 3(a)(1) of article 37.07 of the code of criminal procedure allows evidence during the punishment phase of a criminal trial about “any matter the court deems relevant to sentencing.” TEX. CODE CRIM. PROC. ANN. art. 37.07, § 3(a)(1) (West Supp. 2016).2 However, “the trial judge must still restrict the admission of evidence to that which is ‘relevant to sentencing’—in other words, a trial judge must operate within the bounds of Texas Rules of Evidence 401, 402, and 403.” Ellison v. State, 201 S.W.3d 714, 722 (Tex. Crim. App. 2006).

Although rule of evidence 4013 is “helpful” in determining relevancy under section 3(a)(1), id. at 718, it is not a perfect fit in the punishment context. Ex parte Lane, 303 S.W.3d 702, 714 (Tex. Crim. App. 2009); Sunbury v. State, 88 S.W.3d 229, 233 (Tex. Crim. App. 2002). Rather, “determining what evidence should be admitted at the punishment phase of a non-capital felony offense is a function of policy rather than a question of logical relevance.” Sunbury, 88 S.W.3d at 233. The issue is whether the evidence would be “helpful to the jury in determining the appropriate sentence for a particular defendant in a particular case.” Ex parte Lane, 303 S.W.3d at 714 (quoting Rogers v. State, 991 S.W.2d 263, 265 (Tex. Crim. App. 1999)). “Some of the policy reasons that should be considered when determining whether to admit punishment evidence include, but are not limited to: giving complete information for the jury to tailor an appropriate sentence for a defendant; the policy of optional completeness; and admitting the truth in sentencing.” Sunbury, 88 S.W.3d at 233–34.

Further, “[e]vidence that is otherwise inadmissible may become admissible when a party opens the door to such evidence.” Williams v. State, 301 S.W.3d 675, 687 (Tex. Crim. App. 2009); see also Fuentes v. State, 991 S.W.2d 267 (Tex. Crim. App. 1999) (“It is well established that the evidence which is used to fully explain a matter opened up by the other party need not ordinarily be admissible.” (quoting STEVEN GOODE, OLIN GUY WELBORN, II, & M. MICHAEL SHARLOT, 1 TEXAS PRACTICE GUIDE TO THE TEXAS RULES OF EVIDENCE: CIVIL AND CRIMINAL § 107.1 at 41 (West 1993))). “A party opens the door by leaving a false impression with the jury that invites the other side to respond.” Hayden v. State, 296 S.W.3d 549, 554 (Tex. Crim. App. 2009).

Garcia asserts the trial court erred by allowing Claudio to testify about the number of other juveniles she had supervised who committed robbery or aggravated robbery within six months after completing their probation. However, Garcia requested the jury recommend that he be placed on community supervision. To establish community supervision was not the appropriate punishment, the State offered evidence that Garcia had difficulty complying with the terms of his juvenile probation in Kansas. Garcia’s counsel then questioned Claudio about whether Garcia was the “worst kid” she ever supervised, whether it was unusual for a juvenile to complete a residential facility placement and then get into trouble after being returned to the home, and whether “you have some kids that are just bad,” who could not “make a full session in a placement” and could not “follow the rules in the detention center.” The State sought to respond to this testimony by questioning Claudio about any other juveniles she had supervised who committed robbery or aggravated robbery within six months after completing probation.

**Conclusion:** Claudio’s testimony about the small number of juveniles she had supervised who had subsequently committed robbery or aggravated robbery was relevant for the jury to have a complete understanding of whether Garcia was a good candidate to receive probation for the aggravated robbery of the Dollar General. Further, even if we assume the evidence about other individuals Claudio supervised was not relevant in this case, Garcia opened the door by deliberately choosing to question Claudio about comparisons between Garcia and other juveniles Claudio had supervised. Accordingly, the trial court did not abuse its discretion by admitting the complained-about testimony. We resolve Garcia’s sole issue against him and affirm the trial court’s judgment.