

Law of Parties Memo

Question Presented

Whether a juvenile convicted under the law of parties has the mental capability to foresee future events or the foresight to predict what the adults present at the commission of a crime will do.

Brief Conclusion

Texas courts are split as to whether juveniles have the mental capability to foresee future events or the foresight to predict what the adults present at the commission of the crime will do. While Texas courts do not directly state that juveniles do not have the mental capability to foresee future events, they imply indirectly.

Rule

For a court to determine whether an individual is a party to an offense in which they are not the primary actor, a court may look to events before, during, and after the commission of the crime. *In re E.Y.*, No. 14-16-00475-CV, 2016 Tex. App. LEXIS 12871 (Tex. App.—Houston [14th Dist.] Dec. 6, 2016) To determine whether an individual is a party to an offense, there also must be sufficient evidence of an understanding of common design to commit the offense. *In re J.W.*, No. 14-12-00675-CV, 2014 Tex. App. LEXIS 1897 (Tex. App.—Houston [14th Dist.] Feb. 20, 2014) There is no legal basis for conviction under the law of parties under a legal duty theory. *In re M.S.*, No. 02-18-00099-CV, 2019 Tex. App. LEXIS 6980, at *2 (Tex. App.—Fort Worth Aug. 8, 2019)

Explanation

In determining whether the juvenile was a party to an offense, the court will look to events surrounding the commission of the crime. In the case, *In re E.Y.*, the appellant was a juvenile convicted for capital murder under the law of parties, although the primary actor was an adult. *In re E.Y.*, No. 14-16-00475-CV, 2016 Tex. App. LEXIS 12871 (Tex. App.—Houston [14th Dist.] Dec. 6, 2016) The adult, Coby, had an altercation with the victim earlier in the day and in the evening entered the vehicle of the victim and shot him. *Id.* at 6 The appellant was in a bush 40-50 feet away when the shooting took place. *Id.* Surveillance footage showed that the appellant entered the vehicle afterward, but it does not indicate that he took anything. *Id.* The appellant argued that it was an error for the court to waive its exclusive juvenile jurisdiction. During expert testimony, Chibueze, a psychologist, testified that the appellant is at a low risk of reoffending and has a low range of criminal and intellectual-based sophistication when the index offense was not included and was in the average range once it was factored into the assessment. *Id.* at 9-10.

The trial court used a balancing test and weighed four factors found in Tex. Fam. Code Section 54.02 (f), which the Court of Appeals reviewed. *Id.* at 22. The first prong was whether the offense was committed against a person or property. *Id.* The 14th District Texas Court of Appeals determined that because the appellant was part of a coordinated plan to murder and rob the victim before the event and attempted to steal from the victim after being shot, the factor

weighs in favor of a transfer. *Id.* at 24. The second prong reviewed by the court was the sophistication and maturity of the appellant. *Id.* at 24.

The court noted that during the commission of the crime, while the victim was bleeding profusely after being shot, the appellant placed most of his body in the vehicle in an attempt to steal from the victim. *Id.* at 26. This led the court to disregard the expert testimony of Chibueze, which determined a low range of intellectual-based sophistication when the index offense was included and an average range once it was factored in. *Id.* at 31. The court relied instead on experience and determined that the appellant had a high level of criminal sophistication and dangerousness. *Id.* at 31. The third prong was the appellant's record and history. *Id.* at 34 The court found that the appellant's lack of recorded delinquency did not outweigh the other factors. *Id.* In the fourth prong, protection of the public and likelihood of rehabilitation, the court again disregarded the expert testimony of Chibueze. It determined that the violent history, age of the appellant, and lack of empathy make the appellant not amenable to rehabilitation. *Id.* at 37-38.

For a juvenile to be a party to an offense, there must be an understanding of common design to commit the offense. In the case, *In re J.W.*, the appellant, a sixteen-year-old, was found delinquent by the trial court of aggravated robbery but appealed the conviction contending that the evidence was insufficient to support the trial court's adjudication. *J.W. In re J.W.*, (Tex. App.—Houston [14th Dist.] LEXIS 1897, at 2. Appellant was friends with the adults that robbed the victim at gunpoint and stole the vehicle. *Id.* at 3. Appellant contends that he only rode in the car and did not have knowledge that the vehicle was stolen before he entered the vehicle. *Id.* The court of appeals examined whether J.W. "performed any act to solicit, encourage, direct, aid, or attempt to aid in the aggravated robbery with the intent to promote or assist in the commission of the offense. *Id.* The State concedes that his "only act" was riding in the vehicle with his friends. *Id.* In addition, the court reviewed J.W.'s statement in which he states that he was present when the robbery took place and when the primary actor stated he was going to "get the mustang." The 14TH District Court of Appeals concluded that although J.W. was present when the robbery took place and that he knew that the primary actor would commit a robbery, that it is not evidence of a prior or contemporaneous plan between the primary actor and J.W. to commit the aggravated robbery. *Id.* The court of appeals dismissed the petition for delinquent conduct with prejudice. *Id.* at 21.

If a juvenile creates the harm or danger in which the primary actor can commit the offense, there is no legal duty for the juvenile to intervene and prevent the commission of the crime. In the 2019 case, *In re M.S.*, the 16-year-old appellant plotted with "friends" Ariana and Tramon to rob an individual she was romantically involved with and his roommate, both of whom were drug dealers. *In re M.S.*, No. 02-18-00099-CV, 2019 Tex. App. LEXIS 6980, at *2 (Tex. App.—Fort Worth Aug. 8, 2019) At trial, M.S. offered evidence that she was a victim of human trafficking and her participation in the robbery was a result of duress. *Id.* at 4. She had been befriended by Ariana, her groomer, when she was only 12 and Ariana was a senior. *Id.* Ariana later introduced M.S. to Tramon when she was 14. *Id.* Tramon later became her pimp. Ariana and Tramon would take M.S. to strip at clubs, and Tramon later forced her into prostitution. *Id.* M.S. testified that Ariana and Tramon assaulted her and threatened to harm her family. *Id.* Experts on human trafficking testified that she was a victim. *Id.* As a result of the planned robbery, both M.S.'s romantic partner and his roommate were shot. *Id.* at 3. The roommate died from the gunshot. *Id.*

The trial court convicted M.S. after giving the jury a “legal duty” law of parties instruction - since she had created the danger [made it possible for the robbery to occur], she was under a legal duty to prevent the commission of the crime by the third party [the robbery and the shooting]. *Id.* at 5. The 2nd District Court of Appeals in Texas remanded the case for a new trial stating that there was no legal duty for M.S. to prevent the offenses. The Court of Appeals decision suggests a lack of understanding or foresight on behalf of M.S. to understand that the robbery would lead to the shooting.

Conclusion

A court is more likely to convict a juvenile of an offense as a party when it is evident that the juvenile planned to commit the crime and that evidence suggests that they had a complete understanding of the situation. In cases where the juvenile did not quite understand or have the ability to foresee that a crime might occur, the court has found them not to be delinquent. Moreover, even if the legal harm was created by the juvenile to commit one crime, they are not under a legal duty to prevent the commission of the crime.