



Case Summaries September 8, 2023

Case summaries are prepared by court staff as a courtesy. They are not a substitute for the actual opinions.

OPINIONS

JUVENILE JUSTICE

Mens Rea

In re T.V.T., ___ S.W.3d ___, 2023 WL ___, (Tex. Sept. 8, 2023) (per curiam) [[22-0388](#)]

This case concerns whether consent is relevant when a child under the age of fourteen is charged with aggravated sexual assault of another child under fourteen.

The State charged T.V.T. with aggravated sexual assault under the Texas Penal Code. At the time of the offense, T.V.T. was thirteen years old and the complainant was twelve. The trial court placed T.V.T. on probation and required that he receive sex-offender treatment. The court of appeals reversed and dismissed the case, holding that T.V.T. could not commit sexual assault because he lacked the legal capacity to consent to sex. Shortly thereafter, the Supreme Court held in *State v. R.R.S.*, 597 S.W.3d 835 (Tex. 2020), that juveniles under fourteen are capable of committing aggravated sexual assault.

In light of *R.R.S.*, the State moved for rehearing. The court of appeals denied the motion but issued a supplemental opinion, holding that consent, while not a defense, can still inform whether T.V.T. had the intent to commit aggravated sexual assault. The court also noted that when both the accused and complainant are close in age and under fourteen years old, it is difficult to distinguish between the victim and the offender.

The Supreme Court reversed. The Court first concluded that, even though T.V.T.'s probation had ended, the case was not moot because he still faced potential collateral consequences based on his adjudication as a sex offender. The Court then went on to hold that evidence of a victim's consent is not relevant to the accused's *mens rea*, reasoning that such a rule would circumvent the Legislature's exclusion of consent as a defense for engaging in the prohibited conduct with children under fourteen. The Court also found immaterial the fact that the T.V.T. and the victim were close in age, noting that the plain text of the statute covers conduct between children who are both under fourteen. The Court remanded the case to the court of appeals for consideration of T.V.T.'s constitutional arguments.