# YEAR 2005 CASE SUMMARIES

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***A noncustodial statement by a juvenile in a capital murder case was voluntary and admissible [Avila v. State] (05-1-03).***

On December 8, 2004, the San Antonio Court of Appeals held that a written statement given by a juvenile to police was admissible without following Family Code procedures since the juvenile was not in custody at the time the statement was given.

05-1-03. Avila v. State, UNPUBLISHED, No. 04-03-00953-CR, 2004 WL 28903223, 2004 Tex.App.Lexis ___ (Tex.App.—San Antonio 12/8/04) Texas Juvenile Law (6th Ed. 2004).

Facts: A jury found defendant, Ediberto Avila, guilty of capital murder on two counts and assessed punishment at two concurrent life sentences in the Department of Criminal Justice

Held: Affirmed.

Opinion Text: A voluntary oral statement that does not stem from custodial interrogation is admissible evidence. See Tex. Fam.Code Ann. § 51.095(b), (d) (Vernon 2002); Melendez v. State, 873 S.W.2d 723, 725 (Tex.App.—San Antonio 1994, no pet.). Custodial interrogation is questioning initiated by law enforcement after a person has been taken into custody or otherwise deprived of their freedom in any significant way. Cannon v. State, 691 S.W.2d 664, 671 (Tex.Crim.App.1985); Martinez v. State, 131 S.W.3d 22, 32 (Tex.App.—San Antonio 2003, no pet.). We determine whether a juvenile was in custody based upon objective circumstances. Dowthitt v. State, 931 S.W.2d 244, 255 (Tex.Crim.App.1996). A juvenile is in custody if, under the objective circumstances, a reasonable child of the same age would believe his freedom of movement was restrained to the degree associated with a formal arrest. Martinez, 131 S.W.3d at 32. To determine whether an individual is in custody, courts first examine all the circumstances surrounding the interrogation to determine whether there was a formal arrest or restraint of freedom of movement to the degree associated with a formal arrest. Id. "This initial determination focuses on the objective circumstances of the interrogation, not on the subjective views harbored by either the interrogating officers or the individual being questioned." Id. Next, the court considers, in light of those circumstances, whether a reasonable person would have felt free to terminate the interrogation and leave. Id. Traditionally, four factors are considered in making this determination: (1) whether probable cause to arrest existed at the time of questioning; (2) the subjective intent of the police; (3) the focus of the investigation; and (4) the subjective belief of the defendant. Dowthitt, 931 S.W.2d at 254; Martinez, 131 S.W.3d at 32. However, the subjective intent of both the police and the defendant is irrelevant except to the extent that the intent may be manifested in the words or actions of law enforcement officials. Martinez, 131 S.W.3d at 32. The custody determination is based entirely upon objective circumstances. Id. When the circumstances show that the individual acts upon the invitation or request of the police and there are no threats, express or implied, that he will be forcibly taken, then that person is not in custody at that time. See Dancy v. State, 728 S.W.2d 772, 778-79 (Tex.Crim.App.1987).

The record establishes that two San Antonio Police Officers went to defendant's home and spoke to his mother, Mrs. Avila, who said defendant was not at home. The officers told Mrs. Avila they were investigating a robbery in which two people had been killed, and witnesses had identified her son as being present during the incident. Mrs. Avila told the officers she would contact them when her son returned. The next day, defendant's mother called the police to say her son was at home and they could speak with him. The two officers, both dressed in civilian clothes and driving an unmarked car, went to defendant's home. In his mother's presence and with her permission, the officers told defendant he was not under arrest but they wanted to speak with him at the police station about his involvement in the shootings. Defendant was told he was not required to speak with them if he chose not to do so. The officers told defendant his mother could accompany him to the station and that they would bring him home once the interview was over. Mrs. Avila declined to go to the station with her son. Defendant was driven to the station in the unmarked car, he was not handcuffed, and he sat in the front passenger seat. While in the car, defendant again was told he was not under arrest and he was not required to go with them to the station.

Once at the station, defendant was asked if he wanted anything to eat or drink, and he asked for water. For a third time, defendant was told he was not under arrest and he did not have to speak with the officers. The officers told defendant they knew he had been present at the crime scene, and they wanted a written statement from him, which he agreed to provide. An oral interview did not precede the written statement. Instead, defendant told the officers what happened and one of the officers typed the statement as defendant spoke. Defendant told the officers he could not read or write, and a female clerk was asked to read the statement to defendant. When the clerk finished reading his statement to him, defendant was asked if the statement was accurate, and he said it was. While the clerk read the statement, defendant ate a breakfast taco. The officers then took defendant back to either his home or his school.

Either that same afternoon or the next day, the officers again attempted to contact defendant because other witnesses had since been interviewed and the officers had additional questions to ask of defendant. The officers also wanted to show defendant a photo array. Mrs. Avila told the officers her son was not at home, but she gave them her permission to drive around the neighborhood to find him. The officers, both wearing plain clothes and driving an unmarked vehicle, found defendant a few blocks away. They told defendant he was not under arrest, but they had additional questions and a photo array for him to view. Defendant accompanied the officers back to the police station. At the station, a second written statement was taken from defendant, this time it was read back to him by a civilian dispatcher. After the statement was signed, defendant was taken to his home.

Mrs. Avila testified that her son voluntarily accompanied the officers to the station. Defendant did not testify at the suppression hearing.

On appeal, defendant argues that his youth, illiteracy, and lack of sophistication rendered his statements involuntary. We disagree, and conclude that under these objective circumstances, a reasonable sixteen-year-old would not believe his freedom of movement was restricted to the degree associated with a formal arrest. We hold the statements defendant gave to the police were voluntary and did not stem from a custodial interrogation. Therefore, the trial court did not abuse its discretion in denying the motion to suppress.