YEAR 2005 CASE SUMMARIES

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Delay in notifying parent of arrest was justified; confession admissible [Ray v. State] (05-1-10).

On December 23, 2004, the Houston First District Court of Appeals, on appellant's motion for rehearing, held that delays in notifying a parent of the appellant's arrest were justified, making the confession admissible.

¶ 05-1-10. Ray v. State, ____ S.W.3d _____, No. 01-03-01011-CR, 2004 WL 2966253, 2004 Tex.App.Lexis ___ (Tex.App.--Houston [1st Dist.] 12/23/04) *Texas Juvenile Law* (6th Ed. 2004).

On November 18, 2004, we issued an opinion affirming the trial court's judgment [Juvenile Law Newsletter ¶ 04-4-21]. On December 6, 2004, appellant, Patricia Ann Ray, filed a motion for rehearing. We overrule appellant's motion for rehearing and substitute this opinion for our previous opinion. Our November 18, 2004 judgment, affirming appellant's conviction, remains unchanged.

Appellant was certified to stand trial as an adult for capital murder, found guilty by a jury, and given a mandatory life sentence. In two issues, appellant contends that the trial court erred in denying her motion to suppress and in admitting into evidence an excerpt from her co-defendant's custodial statement.

At around four a.m. on August 24, 2002, appellant, who was then 16 years old, and her fifteen-year-old boyfriend, Thomas Vargas, entered the home of eighty-one-year-old Veda Marie Sutton under the pretext of using Sutton's telephone for an emergency. Soon after entering the home, Vargas violently attacked and killed Sutton. As appellant stood by, Vargas repeatedly hit Sutton with a piece of metal. Vargas then stabbed Sutton with a knife and an ice pick. The teenagers then took numerous items belonging to Sutton, set the house on fire, and drove away in Sutton's car. Later in the morning, officers with the Alvin Community College Police Department arrested Vargas and appellant for unauthorized use of a motor vehicle and evading arrest. Because Sutton's murder had occurred in Pearland, Detective H. Hunter of that city's police department arrived at the scene of the teens' arrest. After the officers from the two jurisdictions conferred to determine how the investigation would proceed, appellant and Vargas were transported to the Brazoria County Juvenile Detention Center. After arriving at the detention center at approximately 10:00 a.m., Detective Hunt tried, without success, to obtain from appellant a telephone number for her mother. Appellant did not provide the authorities with a number until 12:00 p.m. Efforts were then made to notify appellant's mother of her daughter's arrest and whereabouts. Although continuing attempts were made to call the mother, the authorities did not reach her until 4:30 p.m.

Between 1:42 p.m. and 2:33 p.m., appellant received the statutorily required warnings from a magistrate and gave a tape-recorded statement to police. Based on the Texas exclusionary rule, [FN2] appellant filed a motion to suppress the taped statement. Appellant asserted, *inter alia,* that the statement was taken in contravention of the parental-notification requirements of Family Code section 52.02(b). In particular, appellant asserted that the officers "took little action to find one of [appellant's] parents" before taking the statement. *See* Tex. Fam.Code Ann. § 52.02(b) (Vernon Supp.2004-2005). Following an evidentiary hearing, the trial court denied appellant's motion to suppress. In support of its ruling, the court orally stated on the record that the requirements of the parental notification statute had been met.

FN2. *See* Tex.Code Crim. Proc. Ann. art. 38.23(a) (Vernon Supp.2004-2005).

Held: Affirmed.

Opinion Text: MOTION TO SUPPRES

In her first point of error, appellant contends that the trial court erred by denying her motion to suppress the taped statement.

STANDARD AND SCOPE OF REVIEW

We review a trial court's ruling on a motion to suppress for an abuse of discretion. *Balentine v. State,* 71 S.W.3d 763, 768 (Tex.Crim.App.2002).

Applying this standard, we afford deference to the trial court's determination of the historical facts but decide de novo whether the trial court erred by misapplying the law to the facts. *See Guzman v. State,* 955 S.W.2d 85, 89 (Tex.Crim.App.1997). If no fact findings are filed, we presume that the trial court made implicit findings of fact that support its ruling, provided these facts are supported by the record. *See Carmouche v. State,* 10 S.W.3d 323, 328 (Tex.Crim.App.2000). We review de novo application-of-law-to-fact questions that do not turn on an evaluation of credibility and demeanor. *See Guzman,* 955 S.W.2d at 89.

In this case, whether the requirements of Family Code section 52.02(b) were satisfied is an application-of-law-to-fact question. *See Vann v. State,* 93 S.W.3d 182, 184 (Tex.App.—Houston [14th Dist.] 2002, pet. ref'd) (applying de novo review to question of compliance with 52.02(b)). In making this determination, we will view the evidence at the suppression hearing in the light most favorable to the trial court's ruling and review de novo the trial court's resolution of the question. *See id.*

REQUIREMENT OF PROMPT NOTIFICATION

Family Code section 52.02(b) requires that a person taking a child into custody promptly give notice of the person's action, and a statement of the reason for taking the child into custody, to the child's parent, guardian, or custodian. Tex. Fam.Code Ann. § 52 .02(b). When a juvenile defendant seeks to suppress a statement allegedly obtained in violation of section Family Code 52.02(b), the burden of proof is initially on the defendant to show a violation of that section. *See Roquemore v. State,* 60 S.W.3d 862, 869 (Tex.Crim.App.2001). If the defendant demonstrates such violation, then the burden shifts to the State to prove compliance with section 52.02(b). *See id.*

On appeal, appellant first contends that her mother was not "promptly" notified when she was taken into custody, and, for that reason, her confession should have been suppressed. The Court of Criminal Appeals has repeatedly recognized the necessity of strict compliance with the Family Code provisions governing the handling of juvenile defendants. *See id.* at 870 (citing *Baptist Vie Le v. State,* 993 S.W.2d 650, 655 (Tex.Crim.App.1999) and *Comer v. State,* 776 S.W.2d 191, 196 (Tex.Crim.App.1989)). Undoubtedly, this strict-compliance requirement applies to section 52.02(b). *See In re J.B.J.,* 86 S.W.3d 810, 815 (Tex.App.—Beaumont 2002, no pet.). However, strict compliance with this provision has never been interpreted by a court to mean that a statement cannot be taken from a juvenile until notification has been given to the parent or guardian; rather, courts have striven to determine whether the notification was given "promptly," as the statute requires. *See, e.g., id.* Because the term "promptly" is not statutorily defined for purposes of section 52.02(b), courts have taken different approaches in determining whether parental notification was promptly given under the particular facts presented.

As recognized by the Fourteenth Court of Appeals, Texas appellate courts have considered the following factors in determining whether parental notification was "prompt": (1) the length of time the juvenile had been in custody before the police notified a parent, guardian, or custodian; (2) whether notification occurred after the police obtained a statement; (3) the ease with which the police were ultimately able to contact the appropriate adult; and (4) what the police did during the period of delay. *Vann,* 93 S.W.3d at 185 (citing *Gonzales v. State,* 67 S.W.3d 910, 911 (Tex.Crim.App.2002); *Hampton v. State,* 36 S.W.3d 921, 924 (Tex.App.-El Paso 2001), *rev'd, Hampton v. State,* 86 S.W.3d 603 (Tex.Crim.App.2002); *Hill v. State,* 78 S.W.3d 374, 382-84 (Tex.App.-Tyler 2001, pet. ref'd); *In re C.R.,* 995 S.W.2d 778, 783 (Tex.App.—Austin 1999, pet. denied)); *cf. J.B.J.,* 86 S.W.3d at 815 (applying "totality of the circumstances" approach to determine whether parental notification was promptly given). We find the factors listed in *Vann* to be both pragmatic and definitive. And, as an amalgam of the considerations that other courts have used, this approach has a solid basis in Texas jurisprudence. Thus, we apply the four factors listed in *Vann* to the evidence presented in this case to determine whether the notification was promptly given.

(1) Length of Time Appellant was in Custody Before Notification

At the suppression hearing, Detective Hunt confirmed that appellant was arrested by the Alvin Community College Police "a little before 8 a.m." Appellant's mother was notified that her daughter was in custody at 4:30 p.m. Thus, approximately eight and one-half hours passed between the time appellant was taken into custody and her

mother was notified.

(2) Whether Notification Occurred after the Police Obtained a Statement

Parental notification in this case occurred after the statement was taken.

(3) Ease with which Notification Was Ultimately Made

Detective Hunt testified that he and appellant arrived at the juvenile detention center at approximately 10:00 a.m. At that time, he asked appellant for her mother's telephone number. The detective stated that he wanted to contact appellant's mother to inform her of appellant's "situation" and whereabouts. Detective Hunt was unable to obtain the number from appellant. He described her demeanor as "distraught" and stated that she was crying. Detective Hunt confirmed that he would have contacted appellant's mother at that time if appellant had given him a telephone number.

Melissa Callaway, an employee of the Brazoria County Juvenile Probation Department, testified at the suppression hearing that she heard Detective Hunt ask appellant for her mother's telephone number, but appellant did not provide him with the number. She described appellant's demeanor as "very, very emotional."

Callaway informed Detective Hunt that she had previously dealt with appellant at the detention center. Callaway told Detective Hunt that she had a rapport with appellant and believed that she could obtain the mother's number. Detective Hunt turned custody of appellant over to Callaway at 11:30 a.m., after Callaway told him that she would attempt to obtain the contact number from appellant.

In her brief, appellant points to evidence indicating that Detective Hunt knew she had previously been processed at the juvenile detention center and that a file existed that possibly contained a contact number for appellant's mother. Appellant suggests that Detective Hunt should have made efforts to obtain these other files at the time of appellant's arrest in this case. When cross-examined on this point, Detective Hunt explained the reason that he did not attempt to obtain these files was because they were not his files and the files would have contained "old information."

Callaway testified that she had previously dealt with appellant in the juvenile system and believed that she could obtain the mother's number from appellant. After speaking with appellant for 20 or 30 minutes, Callaway obtained the mother's work and mobile telephone numbers from appellant. Callaway then telephoned appellant's mother but was unable to reach her. When asked whether she had continued to call appellant's mother until her shift ended, Callaway responded affirmatively. Callaway testified that her shift ended at 2:00 p.m. At that time, she gave the telephone numbers to a "Ms. Tyus" at the detention center, who ultimately reached appellant's mother at 4:30 p.m.

(4) What Law Enforcement Officials Did During Period of Delay

The following is a time-line constructed from the evidence presented at the suppression hearing:

Shortly before 8:00 a.m. Appellant and Vargas taken into custody by Alvin Community College Police for unauthorized use of a motor vehicle and evading arrest

8:00 a.m. to 9:30 a.m. Appellant and Vargas remain at arrest scene; City of Pearland investigators arrive at arrest scene; Pearland and Alvin Community College police confer to determine how investigation should proceed

9:30 to 10:00 a.m. Appellant and Vargas transported to juvenile detention center

10:00 a.m. Appellant arrives at juvenile detention center

10:00 a.m. to 11:30 a.m. Detective Hunt tries to obtain mother's telephone number from appellant; Detective Hunt books appellant and Vargas; authorities waiting for magistrate to arrive to give required warnings

11:30 a.m. Detective Hunt turns custody of appellant over to Callaway

11:30 a.m. to 12:00 p.m. Callaway speaks with appellant to obtain mother's telephone number

Around 12:00 p.m. Callaway obtains mother's work and mobile telephone numbers from appellant

12:00 p.m. to 2:00 p.m. Callaway telephones appellant's mother but is unable to reach her; Callaway completes the booking process; Callaway's shift ends at 2:00 p.m. and she gives mother's telephone numbers to Tyus

1:42 p.m. to 2:33 p.m. Appellant receives warnings from magistrate and provides tape-recorded statement

4:30 p.m. Appellant's mother contacted by Tyus

ANALYSIS UNDER VANN FACTORS

The evidence presented relevant to the third and fourth factors weigh strongly in favor of the State's position that the notification was "prompt." Although the second, and arguably the first, factors weigh in favor of a conclusion that the notification was not prompt, they are not alone compelling enough either to refute that the notification was prompt or to neutralize the effect of the evidence presented in relation to the third and fourth factors. Moreover, when viewed in the context of the evidence relating to the third and fourth factors—other than in isolation--the delay in notification highlighted by the first and second factors is explained; thus, the impact of the first and second factors is mitigated.

Of particular importance in this case is the evidence presented that demonstrates that the officers made diligent efforts to notify appellant's mother. The evidence shows that for the first one-and-one half hours that appellant was in custody, she remained at the scene of her arrest because it was uncertain where appellant would be transported due to the conflicting jurisdiction of the law enforcement agencies involved. The evidence further shows that, once at the juvenile detention center, Detective Hunt made efforts to procure the mother's telephone number from appellant, but through no fault of Detective Hunt, he could not obtain the number from her. The detective made clear in his testimony that he would have contacted the mother at that time if appellant had provided him with her number. Callaway confirmed that the detective tried to obtain the number from appellant. Detective Hunt offered a reasonable explanation why he did not attempt to obtain a telephone number that may have appeared in records from previous contacts that appellant had with the detention center.

The evidence further showed that, even though she had a rapport with appellant, it still took Callaway 20 to 30 minutes to obtain the mother's telephone numbers from appellant. Callaway then attempted to reach the mother for the next two hours without success. Callaway gave the numbers to the person on the next shift, who ultimately reached appellant's mother at 4:30 p.m.

Considering the factors enunciated in *Vann,* we conclude that the parental notification in this case was promptly given as required by section 52.02(b). We hold that the trial court properly denied appellant's motion to suppress.

We overrule appellant's first issue.