Review of Recent Juvenile Cases (2007)

by
The Honorable Pat Garza
Associate Judge
386th District Court
San Antonio, Texas

Terry stop was proper where juveniles appeared to be underage, out after the city's curfew, and in a stalled vehicle. [Macias v. State](07-4-2)

On August 9, 2007, the Corpus Christi – Edinburg, Court of Appeals held that teen arrest was proper where teen had not only violated the city's curfew, but was engaged in conduct indicating a need for supervision -- running away from home.

¶ 07-4-2. **Macias v. State**, MEMORANDUM, No. 13-04-00027-CR, 2007 Tex.App.Lexis 6307 (Tex.App.— Corpus Christi – Edinburg, 8/9/07).

Facts: Francisco Macias, Megan Adams, and Christopher Lozano ("the defendants") were convicted for the murder of Jan Barnum, Adams's maternal grandmother. The defendants were fifteen years old when the murder occurred, but were tried together as adults. A jury convicted all three and sentenced Macias to life in prison. The trial court entered a judgment of conviction and punishment effectuating the jury's verdict and sentence. By two points of error, Macias appeals the trial court's judgment.

Held: Affirmed.

Memorandum Opinion: By his first point of error, Macias contends that the trial court lacked jurisdiction to prosecute him as an adult because the juvenile court failed to admonish him according to *section 54.03 of the family code* prior to transfer and such failure constitutes a violation of his (1) due process, (2) due course of law, and (3) equal protection rights. *See TEX. FAM. CODE ANN. § 54.03* (Vernon Supp. 2006). The State responds that the family code provisions relied on by Macias are inapplicable because no juvenile adjudication hearing took place. We agree.

Macias's reliance on *section 54.03 of the family code* is misplaced because the juvenile court never conducted an adjudication hearing. *Section 54.03(b)* provides that "*[a]t the beginning of the adjudication hearing*, the juvenile court judge shall explain to the child and his parent, guardian, or guardian ad litem (1) the allegations made against the child; (2) the nature and possible consequences of the proceedings . . . and (6) the child's right to trial by jury." *Id. § 54.03(b)* (emphasis added). Instead of conducting an adjudication hearing on whether Macias engaged in delinquent conduct, the juvenile court waived its exclusive jurisdiction and transferred Macias's case to district court. *See id. § 54.02* (Vernon 2002). A proceeding to declare a juvenile a delinquent and a proceeding to waive jurisdiction and certify the juvenile as an adult for criminal prosecution are separate and distinct proceedings. [2] *Grayless v. State, 567 S.W.2d 216, 219 (Tex. Crim. App. 1978)*. Therefore, *section 54.03 of the family code* is inapplicable.

2 Even if the transfer hearing could be construed as an adjudication hearing, a direct appeal of the juvenile court's failure to admonish Macias is also precluded because no objection was lodged, as required by the family code.

In order to preserve for appellate or collateral review the failure of the court to provide the child the explanation required by Subsection (b), the attorney for the child must comply with *Rule 33.1, Texas Rules of Appellate Procedure*, before testimony begins or, if the adjudication is uncontested, before the child pleads to the petition or agrees to a stipulation of evidence.

TEX. FAM. CODE ANN. § 54.03(i) (Vernon Supp. 2006).

Macias also contends that the juvenile court's failure to admonish him constitutes constitutional error. The State claims any constitutional violations stemming from a failure to admonish Macias were not preserved for appellate review. *TEX. R. APP. P. 33.1*; *see Blue v. State, 41 S.W.3d 129, 131 (Tex. Crim. App. 2000)*. Because Macias fails to articulate an argument and does not cite appropriate authority, we find his "constitutional argument" inadequately briefed. *TEX. R. APP. P. 38.1(h)* (providing that the brief must contain a clear and concise argument for the contentions made, with appropriate citations to authorities and to the record). Macias's first point of error is overruled.

II. Point of Error 2

Macias's Motion to Suppress

By his second point of error, Macias argues that the trial court erred in denying his motion to suppress a written statement he made during his detention after Barnum's murder was discovered by authorities. He argues that the officers (1) had no reasonable suspicion that he engaged in delinquent conduct to detain him at the convenience store, (2) had no probable cause to take him into custody at the convenience store, and (3) lacked probable cause to take him back into custody after he had been dropped off at his parents' house. He also argues that his statements were taken without the benefit of statutory and constitutional rights and that family code violations occurred. The State contends that both reasonable suspicion and probable cause existed in each instance, that he was given appropriate warnings, and that no family code violations occurred.

A. Standard of Review

A bifurcated standard of review is applied to a trial court's ruling on a motion to suppress evidence. *See Randolph v. State, 152 S.W.3d 764, 769 (Tex. App.--Dallas 2004, no pet.)*. This standard of review gives almost total deference to a trial court's determination of historical facts and applies a de novo review of a trial court's application of the law to those facts. *See Guzman v. State, 955 S.W.2d 85, 89 (Tex. Crim. App. 1997)*; *Smith v. State, 176 S.W.3d 907, 913 (Tex. App.--Dallas 2005, pet. ref'd)*; *Randolph, 152 S.W.3d at 769*. A trial court is the sole trier of fact, the judge of witness credibility, and the determiner of the weight given to witness testimony. *State v. Ross, 32 S.W.3d 853, 855 (Tex. Crim. App. 2000)*; *Randolph, 152 S.W.3d at 769*.

B. Terry-Stop & Detention at the Convenience Store

Presumably Macias's reasonable suspicion argument refers to his initial detention at the convenience store. He argues that at the time Officer Javier Gallegos approached him there were no reasonable and articulable facts to warrant an intrusion and thus his detention was unjustified. Macias also articulates an argument regarding lack of probable cause to take him into custody and return him to his parents' house.

A police officer may detain a person for a brief time for questioning when the officer has reasonable suspicion to believe that criminal activity may be afoot. *Terry v. Ohio, 392 U.S. 1, 24-25, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968)*; *Woods v. State, 956 S.W.2d 33, 35 (Tex. Crim. App. 1997)*. To justify an investigative detention, the officer must have a reasonable suspicion that "some activity out of the ordinary is occurring or had occurred, some suggestion to connect the detained person with the unusual activity, and some indication that the activity is related to a crime." *Terry, 392 U.S. at 21-22*. The officer must have specific and articulable facts which, in light of his experience and personal knowledge, together with inferences from those facts, would reasonably warrant the intrusion on the freedom of the person detained for investigation. *Id. at 30*; *Woods, 956 S.W.2d at 38*; *Roy v. State, 55 S.W.3d 153, 157 (Tex. App.--Corpus Christi 2001)*, *pet. dism'd, improvidently granted*, *90 S.W.3d 720 (Tex. Crim. App. 2002)*.

Macias's detention argument fails because the circumstances surrounding his detention provided for reasonable suspicion. Juvenile Investigator Santiago Solis and Officer Gallegos testified at the suppression hearing regarding the events surrounding Macias's detention. On the evening of March 5, 2003, Officer Gallegos, the detaining officer, was dispatched to the convenience store after Officer John Vargas, an off-duty officer, requested an on-duty officer. When Officer Gallegos arrived, Macias, Adams, and Lozano appeared to be underage, out after the city's curfew, and in possession of a stalled car; none had a driver's license, much less formal identification. From what Officer Gallegos encountered, there was reasonable suspicion to believe that criminal activity might be afoot -- namely a violation of the city's curfew.

The probable cause argument against taking Macias into custody at the convenience store also fails. The family code provides that a child may be taken into custody by a law enforcement officer if there is probable cause to believe that the child has engaged in (1) conduct that violates a penal law of this state or a penal ordinance of any political subdivision of this state, or (2) delinquent conduct or conduct indicating a need for supervision. *TEX. FAM. CODE ANN. § 51.01(a)(3)* (Vernon Supp. 2006). Officers have probable cause when "the facts and circumstances within their knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the [suspect] had committed or was committing an offense." *Beck v. Ohio, 379 U.S. 89, 91, 85 S. Ct. 223, 13 L. Ed. 2d 142 (1964)*; *Muniz v. State, 851 S.W.2d 238, 251 (Tex. Crim. App. 1993)*.

Upon detaining the teens, Officer Gallegos ascertained that their car had stalled at the gas pump and that they were planning to go to Louisiana. He also noticed that they had clothes, a backpack, and a hamster in a cage inside of the car. From this first-hand knowledge, a person of reasonable caution could have believed that the teens were planning on running away. Therefore, the teens had not only violated the city's curfew, but they were engaged in conduct indicating a need for supervision -- running away from home. *TEX. FAM. CODE ANN. § 51.03(b)(3)* (Vernon Supp. 2006) (conduct indicating a need for supervision is the voluntary absence of a child from the child's home without the consent of the child's parent). Probable cause existed at the convenience store to take Macias into custody and return him to his parents.

In light of the facts before it, we find no error with the trial court's denial of Macias's suppression motion based on his detention at the convenience store.

C. Custody after Barnum's Body is Discovered

Macias argues that there was no probable cause to take him into custody after he had been returned to his home. The State responds that the facts show probable cause. We agree.

As already noted, officers have probable cause when "the facts and circumstances within their knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the [suspect] had committed or was committing an offense." *Beck, 379 U.S. 89, 91, 85 S. Ct. 223, 13 L. Ed.*

2d 142 (1964). The record in this case is replete with facts and circumstances within the knowledge of Officer Gallegos and Sargent De la Tejera, Officer Gallegos's supervisor, and of which they had reasonably trustworthy information that were sufficient to warrant them to believe that Macias was involved in Barnum's murder. The record shows that at the time Macias was taken into custody from his home, the officers knew (1) that Macias, Lozano, and Adams were detained earlier that day for trespassing in a vacant house and as runaways; (2) that they had been apprehended earlier that night under circumstances indicating that they had violated the city's curfew and were attempting to run away again; (3) that they were in possession of Barnum's car; (4) that Adams attempted to stay with Lozano and then with Narvaez in order to prevent authorities from discovering Barnum's body in the apartment; (5) that Barnum was found strangled in an apartment with no signs of forced entry; and (6) that the blood at the crime scene was still fresh, indicating that the murder had been committed very recently. Therefore, the officers had probable cause to detain Macias in connection with Barnum's murder.

D. Failure to Provide Mandatory Warnings or Follow the Family Code

Macias's final two arguments on appeal are (1) that law enforcement officers interrogated him "without the benefit of his statutory and Constitutional prophylactic rights" and (2) that the interrogating officers failed to comply with *section 52.02 of the family code*.[3] *TEX. FAM. CODE ANN. § 52.02* (Vernon Supp. 2006) (providing for the release or delivery to a court of a child taken into custody).

3 Macias's family code violation argument reads:

Where an officer deems it necessary to take a child into custody, *§ 52.02* dictates what he must do "without unnecessary delay." See V.T.C.A. *Family Code, § 53.02*, see also *§§ 52.04* & *53.01*, and *§ 53.02* "with investigative aid of law enforcement officers when requested." *§ 52.04(b)*, or by the juvenile court itself, V.T.C.A. *Family Code, § 51.01*. The record is devoid of evidence indicating any compliance with *§ 52.02*.

The record does not support Macias's argument that he was interrogated without his statutory and constitutional warnings. At the suppression hearing Investigator Solis testified that the juveniles were magistrated -- in other words given statutory and constitutional warnings by a magistrate -- shortly after they arrived at the police station and before they made their statements. Additionally, Macias's written statement is certified by the magistrate that it was made in compliance with *Section 51.09 of the family code*. *See TEX. FAM. CODE ANN. § 51.09* (Vernon 2002), *§ 51.095* (Vernon Supp. 2006).

Finally, Macias's contention that the family code was violated presumably centers around an "unnecessary delay." *See generally TEX. FAM. CODE ANN. § 52.02* (Vernon Supp. 2006). However, he fails to specify how he was subject to an unnecessary delay and, thus we conclude this contention is inadequately briefed. *TEX. R. APP. P. 38.1(h)*. Macias's final two arguments fail to show the trial court error.

We hold that the trial court did not err in denying Macias's motion to suppress. Macias's second point of error is overruled.

Conclusion: The judgment of the trial court is affirmed. *TEX. R. APP. P. 43.2(a)*.