

Review of Recent Juvenile Cases (2008)

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

Not every right set out by the magistrate need be waived by the juvenile to validate a confession.[In the Matter of J.L.](08-1-1)

Section 51.095(a)(5)(A) does not require that every right be individually waived either in writing or verbally, but only that the juvenile knowingly, intelligently and voluntarily waive each right.

¶ 08-1-1. **In the Matter of J.L.**, MEMORANDUM, No. 10-06-00246-CV, 2007 Tex.App.Lexis 8908 (Tex.App.—Waco, 11/7/07).

Facts: On the early morning of June 19, 2005, fifteen-year-old J.L. and two other young men were approached by police officers after the officers received information that an assault and stabbing had occurred in the area. The officers noticed specks of blood on J.L.'s pants and shoes and, upon a search, found a knife in J.L.'s pocket. They arrested and transported him to the Brazos County Juvenile Detention Center.

J.L. was booked into the detention center at 6:15 a.m. on the charge of unlawfully carrying a weapon. District Judge Rick Davis was telephoned at home and was asked to come to the detention center to apprise J.L. of his rights. When Judge Davis arrived, no pre-printed warning forms were available, so he typed up a warning sheet that included his conclusions as to probable cause of the crime of aggravated assault and a list of J.L.'s rights as enumerated in *section 51.095 of the Texas Family Code*.¹ At the detention center, Judge Davis introduced himself to J.L. as "Judge Davis" and told him that he was there to explain his rights. Judge Davis began a tape recorder, determined that J.L. spoke English, and then read to him the appropriate warnings. Judge Davis asked J.L. whether he would like to make a statement, to which he responded, "I don't know." Judge Davis reiterated that J.L. did not have to make a statement, and J.L. then circled "I DO" want to make a statement and signed the form. After signing the form, J.L. was questioned, and during the interview he admitted stabbing the complainant with the knife.

¹ *Section 51.095(a)* provides in pertinent part:

(a) Notwithstanding Section 51.09, the statement of a child is admissible in evidence in any future proceeding concerning the matter about which the statement was given if:

(1) the statement is made in writing under a circumstance described by Subsection (d) and:

(A) the statement shows that the child has at some time before the making of the statement received from a magistrate a warning that:

(I) the child may remain silent and not make any statement at all and that any statement that the child makes may be used in evidence against the child;

(ii) the child has the right to have an attorney present to advise the child either prior to any questioning or during the questioning;

(iii) if the child is unable to employ an attorney, the child has the right to have an attorney appointed to counsel with the child before or during any interviews with peace officers or attorneys representing the state; and

(iv) the child has the right to terminate the interview at any time;

TEX. FAM. CODE ANN. § 51.095(a) (Vernon 2002).

J.L. filed a pretrial motion to suppress the recorded statement. At the suppression hearing, Judge Davis testified that it was clear to him that J.L. understood the warnings and he was convinced that J.L. knowingly, intelligently and voluntarily waived his rights before giving his statement to the detective. Juvenile probation officer Angela Anders testified that J.L. had previously been adjudicated for misdemeanor offenses two times and on both occasions he was represented by an attorney. Detective Agnew testified that at no time during the interview did he threaten J.L. or make any promises, nor did J.L. request to have an attorney present or stop the interview. Dr. Saunders, a clinical psychologist, gave expert testimony for J.L. Dr. Saunders testified that after meeting with J.L., she determined that he "didn't understand his rights -- especially related to the legal implications." Specifically, she said that he did not understand the concept of "legal counsel" to mean attorney representation.

The trial court denied the motion to suppress, finding that the confession was voluntary and legally obtained. This appeal was abated so the trial court could issue findings of fact and conclusions of law supporting its denial of the motion to suppress.

J.L.'s sole issue contends that his statement was not voluntary under the *Fifth and Fourteenth Amendments*. Specifically, he asserts that the statement was involuntary because of (1) the circumstances related to his age and the capacity in which the warnings were given; and (2) he did not understand his right to have a lawyer present.

Held: Affirmed

Memorandum Opinion: The record does not support J.L.'s contention that he did not have a full understanding of the proceedings and of the possible consequences of confessing. The totality of the circumstances reflects that although J.L. was fifteen at the time of the offense charged, he was of normal intelligence and was familiar with the juvenile adjudication process through his two previous arrests. Furthermore, the recorded statement reveals that although the duration of the reading of rights was only three minutes and thirty-five seconds, J.L. could hear and understand his rights as read by Judge Davis. In addition, after J.L. was read his rights, he was asked by Judge Davis whether he would like to submit a statement. His initial response was "I don't know." Judge Davis reassured J.L. that he was not required to make a statement, and it was at this time J.L. agreed to give a statement. Converse to the appellant's argument, J.L.'s age, the manner and means by which the warnings were given, and his intellectual capacity (which would include his ability to understand the juvenile process because of his previous experiences) all appear to have positively aided in his decision to voluntarily make a statement.

J.L.'s claim that he erroneously believed that Judge Davis was a police officer and that he may not have understood that "counsel" meant "attorney" are not supported by the record. Judge Davis said that he introduced himself to J.L. as "Judge" and it is not required by law that the juvenile defendant understand that his warnings are being read by a judge, but only that a magistrate be present. *See TEX. FAM. CODE ANN. §*

51.095(a)(1)(B)(I) (Vernon 2002). Additionally, when J.L.'s rights were read to him from the form drafted by Judge Davis, the word "counsel" is only used once. Judge Davis used the statutory term "attorney" to state that J.L. had a right to an "attorney" and that if he were unable to employ an "attorney," one would be appointed for him. The word counsel is only used once and is used, not as a noun to refer to legal representation, but as a verb to mean advise or consult.

J.L. also argues that Judge Davis gave incorrect legal information that could be described as coercive, thus making the confession involuntary. On the warning form created by Judge Davis, he included a finding of probable cause for aggravated assault, but at that time, J.L. was being detained only for unlawfully carrying a weapon. J.L. relies on *Diaz v. State* for its holding that giving incorrect legal information can render a confession involuntary. *Diaz v. State*, 61 S.W.3d 525 (Tex. App. --San Antonio 2001, no pet.). There, a juvenile was arrested for aggravated assault with a deadly weapon, but before giving a confession he was told by a magistrate that for the offense charged, he "might get up to a year in confinement or up to a \$ 10,000 fine if he was tried as an adult." *Id.* at 527. However, the actual maximum prison term in the adult system was up to 99 years for aggravated assault with a deadly weapon. *Id.* *Diaz* was certified to stand trial as an adult, and the trial court denied his motion to suppress. *Id.* On appeal, the court held that the magistrate's additional incorrect legal information rendered the confession involuntary and therefore inadmissible. *Id.* at 528. We find *Diaz* to be distinguishable for two reasons. First, the court noted that the *Diaz* case was analogous to cases where a defendant is unable to appreciate the actual value of his plea bargain because the maximum punishment he risked without the bargain was overstated in the court's admonition, rendering the plea involuntarily entered. *Id.* In the case at hand, no pleas, promises, or sentences were ever discussed. Second, in *Diaz*, the court emphasized that the arrest was the juvenile's first time to be in such a situation. *Id.* Unlike *Diaz*, J.L. had previous experience with the juvenile detention system, having been supervised on juvenile probation twice. For these reasons, we reject J.L.'s argument.

Compliance with Section 51.095 Waiver of Rights

J.L. also argues that his confession was not obtained within the scope of the juvenile warning requirements articulated in section 51.095(a)(5)(A) of the Texas Family Code. He argues that each and every right must be waived individually by the juvenile. Section 51.095(a)(5)(A) reads:

(a) Notwithstanding Section 51.09, the statement of a child is admissible in evidence in any future proceeding concerning the matter about which the statement was given if:

...

(5) subject to Subsection (f), the statement is made orally under a circumstance described by Subsection (d) and the statement is recorded by an electronic recording device, including a device that records images, and:

(A) before making the statement, the child is given the warning described by Subdivision (1)(A) by a magistrate, the warning is a part of the recording, and the child knowingly, intelligently, and voluntarily waives each right stated in the warning.

TEX. FAM. CODE ANN. § 51.095(a)(5)(A) (Vernon 2002).

The confession of a juvenile is not admissible at trial unless it is obtained in compliance with the section 51.095 warnings. See *In re L.M.*, 993 S.W.2d 276, 291 (Tex. App. --Austin 1999, pet. denied). A magistrate is required to read the warnings listed in section 51.095(a)(1)(A) to the juvenile suspect before any interrogation by law enforcement. *Id.* at 290-91.

J.L. argues that although the warnings required by *51.095* were given, the waivers as detailed in *section 51.095(a)(5)(A)* were not secured in conformity with the statute. In support, J.L. points to Judge Davis's testimony regarding his self-drafted document:

[Q]: Okay. And when you drafted this form, you created a line down here. I don't know what you'd call that. Kind of a separated thing; right?

[A]: Yes.

[Q]: And then underneath it you created this statement that says, "Have had the above-listed rights read to me and I understand them, I. Do or do not, circle one, want to make a statement at this time"; is that correct?

[A]: Yes.

[Q]: Judge, is there any reason you didn't also include, "I do or I do not want an attorney at this time," so that he would have the opportunity to waive that right as well?

[A]: I cannot recall some specific reason for not writing that there.

[Q]: And is there any reason you also did not include the right that he had the right to terminate the interview at any time and that he understood that as well, specifically?

[A]: Well, no specific reason other than, you know, it was already set forth up here.

Section 51.17 of the Family Code provides that Chapter 38 of the Texas Code of Criminal Procedure applies to judicial proceeding in juvenile cases. *TEX. FAM. CODE ANN. § 51.17* (Vernon Supp. 2005). The Fourteenth Court of Appeals has construed *section 51.095* consistently with the language of *article 38.22 Code of Criminal Procedure*. See *Marsh v. State*, 140 S.W.3d 901, 912 (Tex. App.--Houston [14th Dist.] 2004, pet. ref'd). In *Marsh*, the juvenile defendant contended that the State failed to establish that he knowingly, intelligently, and voluntarily waived his rights, although a magistrate read the required warnings and the juvenile indicated he understood those warnings. *Id.* at 905. The court overruled that complaint, pointing out that *article 38.22* does not require an express waiver of rights. *Id.* (citing *Rocha v. State*, 16 S.W.3d 1 (Tex. Crim. App. 2000)).

Like the defendant in *Marsh*, J.L. made a written verification of his choice to give a statement and told Judge Davis that he understood the statutory warnings. *Section 51.095(a)(5)(A)* does not require that every right be individually waived either in writing or verbally, but only that the juvenile knowingly, intelligently and voluntarily waive each right. In viewing the manner in which the warnings were given to the appellant, we find that *section 51.095(a)(5)(A)* was complied with.

Conclusion: The record shows that, under the totality of the circumstances, J.L. made his statement knowingly and voluntarily, and not as the product of coercion. See *In re R.J.H.*, 79 S.W.3d at 6. In addition, the requirements of *section 51.095(a)(5)(A)* were met. The trial court did not err or abuse its discretion in denying the motion to suppress. Accordingly, we overrule J.L.'s issue and affirm the trial court's judgment.