Review of Recent Juvenile Cases (2008)

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

Lack of causal connection nullifies failure to notify parent of juvenile's arrest.[Hartmangruber v. State](08-2-10)

On March 19, 2008, the San Antonio Court of Appeals held that because there was no causal connection between the failure to notify juvenile's father of arrest in accordance with *section 52.02(b) of the Family Code* and juvenile's decision to give his statement to police, no error was shown.

¶ 08-2-10. **Hartmangruber v. State**, Memorandum, No. 04-07-00213-CR, 2008 Tex.App.Lexis 1956 (Tex.App.---San Antonio, 3/19/08).

Facts: On September 22, 2004, Hartmangruber and David Childress, then juveniles, strangled and killed Childress's mother, Meda Childress. Both boys, at the urging of Hartmangruber's grandparents, turned themselves into police investigators following the murder. Hartmangruber and Childress were taken to a juvenile processing office around 9:30 p.m. that evening, where they were placed under arrest for murder. Officers located a magistrate judge, who gave the boys the warnings required by the Texas Family Code. Officers then proceeded to take written statements from the boys.

At around 11:45 p.m., before the boys had completed their statements, officers received a call from Hartmangruber's father, who was advised that his son was in custody and under arrest for murder. Officers further advised Hartmangruber's father that his son was providing a statement and that he would be processed and placed in a juvenile detention facility in San Antonio, Texas following his statement.

After the boys had completed their statements, in which they confessed to killing Childress's mother and revealed their plan to kill Childress's father, the magistrate judge began his determination as to whether Hartmangruber had knowingly and voluntarily given his written statement to police. The judge concluded Hartmangruber had knowingly and voluntarily given his statement and witnessed the execution of Hartmangruber's statement.

Hartmangruber was subsequently indicted for murder. Hartmangruber's attorney filed a motion to suppress Hartmangruber's confession, which raised issues relating to the voluntariness of the confession and compliance with the parental notification requirement of *section 52.02(b) of the Texas Family Code*. The trial court, after a hearing on the motion to suppress, denied Hartmangruber's motion. Sometime after the trial court denied Hartmangruber's motion, the State dismissed Hartmangruber's indictment.

Hartmangruber was subsequently reindicted by the State on capital murder charges. Hartmangruber's new attorney filed several pretrial motions, including three motions to suppress relating to Hartmangruber's confession: (1) a motion to suppress Hartmangruber's confession; (2) a *Jackson v. Denno* motion for hearing on

the voluntariness of Hartmangruber's confession; and (3) a motion to determine the admissibility of Hartmangruber's written statement outside the presence of the jury. The trial court denied Hartmangruber's motions without a hearing on the ground that Hartmangruber had already litigated these matters at the prior suppression hearing.

Hartmangruber's counsel also filed a motion to suppress the physical evidence police seized from Hartmangruber's bedroom because Hartmangruber's father did not voluntarily consent to the search of the room. The trial court conducted an evidentiary hearing on this motion, and denied Hartmangruber's motion following the hearing. Hartmangruber proceeded to plead nolo contendere to the reduced charge of murder, and the trial court sentenced him to 40 years in prison pursuant to the terms of Hartmangruber's plea bargain agreement. The trial court granted Hartmangruber permission to appeal the court's rulings on his pretrial motions, and Hartmangruber brought this appeal.

Held: Affirmed

Memorandum Opinion: In his first issue, Hartmangruber argues the trial court erred in refusing to reopen the evidence on his motion to suppress his confession. The decision to reopen the evidence on a motion to suppress is left to the sound discretion of the trial court. *Gilbert v. State, 874 S.W.2d 290, 293 (Tex. App.--Houston [1st Dist.] 1994, pet. ref'd)*; *Montalvo v. State, 846 S.W.2d 133, 137 (Tex. App.--Austin 1992, no pet.)*. We thus review a trial court's decision to reopen the evidence on a motion to suppress under an abuse of discretion standard. *Montalvo, 846 S.W.2d at 137*.

When Hartmangruber was indicated on murder charges, Hartmangruber's initial trial counsel, Charles Rubiola, filed a motion to suppress Hartmangruber's confession. The trial court conducted an evidentiary hearing on the motion and denied Hartmangruber's motion. After the State dismissed the first indictment, it reindicted Hartmangruber on capital murder charges. Hartmangruber's subsequent counsel, Michael Sawyer, filed three interrelated motions to suppress upon his reindictment. The trial court denied Hartmangruber a hearing on his motions and overruled the motions on the ground that Hartmangruber had already litigated the matters raised by the motions at the previous suppression hearing. Hartmangruber's counsel complained that the trial court should reopen the evidence because prior counsel did not proffer all of the evidence available to him at the time of the first suppression hearing. Counsel claimed Hartmangruber's first attorney failed to adequately question Hartmangruber's father during the previous hearing and should have called Hartmangruber to testify in his own defense. According to defense counsel, had attorney Rubiola properly questioned Hartmangruber's father and called Hartmangruber to testify, these witnesses would have informed the court that Hartmangruber was only 14 years old at the time he gave his confession and had no family members present to support him when he was questioned by the police. Hartmangruber's father would have also relayed to the court that he wanted to speak with his son before his questioning, but was "turned away and rebuffed" by the authorities.

Even if the trial court abused its discretion in denying Hartmangruber's motion to reopen the evidence, the error constituted harmless error. A trial court's erroneous refusal to reopen evidence is subject to non-constitutional harm analysis. *Kennerson v. State, 984 S.W.2d 705, 707 (Tex. App.--Houston [1st Dist.] 1998, pet. ref'd)*. "For claims of non-constitutional error, . . . 'a conviction should not be overturned unless, after examining the record as a whole, a court concludes that an error may have had 'substantial influence' on the outcome of the proceeding.'" *Burnett v. State, 88 S.W.3d 633, 637 (Tex. Crim. App. 2002)*.

As previously noted, the main theme of the proffered testimony from Hartmangruber and his father was that Hartmangruber was young and did not have any family members by his side to "back him up" while he was with the authorities. The record of the first suppression hearing, however, contains considerable evidence from various other witnesses who testified as to Hartmangruber's youth and absence of family support during

his questioning. The record of the first suppression hearing also shows Hartmangruber's father had an opportunity to testify regarding his desire to see his son prior to his questioning. Any error in excluding the additional testimony from Hartmangruber and his father, on the same issues about which considerable evidence had already been presented, was harmless. Hartmangruber's first issue is overruled.

SECTION 52.02(B) OF THE TEXAS FAMILY CODE

In his second issue, Hartmangruber contends the trial court should have suppressed his confession because authorities did not comply with the requirements of *section 52.02(b) of the Texas Family Code*. *Section 52.02(b) of the Family Code* 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 and to the office or official designated by the juvenile board. *TEX. FAM. CODE ANN. ' 52.02(b)* (Vernon Supp. 2007). Hartmangruber's complaint focuses on the failure to notify his father promptly.

The failure to comply with the *section 52.02(b)* notice requirement will render inadmissible any subsequent statement by the child that is obtained as a result of the statutory violation. *Cortez v. State, 240 S.W.3d 372, 378-79 (Tex. App.--Austin 2007, no pet.)*. When a juvenile seeks to suppress a confession given after a failure to notify his parents promptly in accordance with the dictates of the statute, the burden is initially upon the juvenile defendant to show a violation of the statute and a causal connection between that violation and the ensuing confession. *Pham v. State, 175 S.W.3d 767, 772-73 (Tex. Crim. App. 2005)*; *Adams v. State, 180 S.W.3d 386, 412 (Tex. App.--Corpus Christi 2005, no pet.)*. Once the juvenile defendant meets his burden, the State must then shoulder the burden of demonstrating attenuation of the taint. *Pham, 175 S.W.3d at 774*; *Adams, 180 S.W.3d at 412*.

Even if we assume Hartmangruber's father was not promptly notified of his son's arrest as required by *section 52.02(b) of the Family Code*, Hartmangruber points to no evidence in the record demonstrating a causal connection between the failure to notify his father and his decision to give a statement to the police. Hartmangruber claims that if his father had been promptly notified, his father "very likely . . . would have advised [him] not to talk" with the police. Nothing in the record, however, demonstrates that this advice would have deterred Hartmangruber from making his statement. Harmangruber never asked to speak with his father at any time while he was in custody. In addition, the record indicates that Hartmangruber was very eager to speak to the police about his crime, having had to be told by officers on multiple occasions to refrain from discussing his offense until the judge could magistrate him. Because there is no causal connection between the failure to notify Hartmangruber's father in accordance with *section 52.02(b) of the Family Code* and Hartmangruber's decision to give his statement to police, we must overrule Hartmangruber's second issue. *See Gonzales v. State, 67 S.W.3d 910, 913 (Tex. Crim. App. 2002)* (holding that suppression is required only when there is causal connection between the violation of the parental notice requirement and receipt of the child's statement); *Cortez, 240 S.W.3d at 380-81* (same).

CONSENT TO SEARCH

Lastly, Hartmangruber claims the trial court erroneously denied his motion to suppress the evidence seized from his bedroom because the State failed to prove, by clear and convincing evidence, that voluntary consent was given by his father to search the room. The State has the burden of proof by clear and convincing evidence that consent was freely and voluntarily given. *State v. Ibarra, 953 S.W.2d 242, 245 (Tex. Crim. App. 1997)*. Consent must be positive and unequivocal and must not be the product of duress or coercion, either express or implied. *Carmouche, 10 S.W.3d at 331*; *Allridge v. State, 850 S.W.2d 471, 493 (Tex. Crim. App. 1991)*. Whether consent was voluntary is determined from the totality of the circumstances. *Reasor v. State, 12 S.W.3d 813, 818 (Tex. Crim. App. 2000)*.

In this case, Hartmangruber's father signed a consent-to-search form. Hartmangruber alleges his father was "highly distraught" and "stressed out" when he signed the consent form, making his consent involuntary. The trial court, however, heard testimony to the contrary from several police officers during the suppression hearing. Officers testified that Hartmangruber's father was calm at the time they arrived at his residence. They stated they did not coerce Hartmangruber's father or make any threats or promises to him to secure his consent to search Hartmangruber's bedroom. The trial court was free to believe the testimony provided by law enforcement officials and disregard any contrary testimony provided at the hearing on the voluntariness issue. *See Ross, 32 S.W.3d at 855*; *Guzman v. State, 955 S.W.2d 85, 89 (Tex. Crim. App. 1997)*.

Conclusion: Based on the totality of the circumstances, the trial court did not abuse its discretion in finding that Hartmangruber's father's consent was given freely and voluntarily. *See Martinez v. State, 17 S.W.3d 677, 683 (Tex. Crim. App. 2000)* (holding an officer's testimony that consent was voluntarily given is sufficient evidence to prove the voluntariness of the consent). We therefore overrule Hartmangruber's third issue.