

Review of Recent Juvenile Cases (2008)

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

Failure to determine whether child understands the nature and content of his statement by magistrate warrants reversal.[Reta v. State](08-3-7).

On June 4, 2008, the San Antonio Court of Appeals reversed a case because the magistrate failed to examine respondent after he made his statement, or make any inquiry to determine that he understood the nature and contents of his statement.

¶ 08-3-7. **Reta v. State**, MEMORANDUM, No. 04-07-00564-CR, 2008 WL 2260726 (Tex.App.- San Antonio, 6/4/08).

Facts: Reta was sixteen at the time he gave his written statement inculcating him in a murder. Prior to giving his statement, Reta was given the warnings required by [section 51.095 of the Texas Family Code](#) by a magistrate at the Webb County Jail. [\[FN2\]](#) Reta was then transported to the Laredo Police Department, where he gave his written statement. A video recording of Reta's second encounter with the magistrate was introduced into evidence. This video recording demonstrates that the magistrate did not make any inquiry or examine Reta with regard to the nature and content of his statement.

[FN2.](#) These warnings are similar to the *Miranda* warnings required to be given to adults.

Rosalio Reta was convicted of murder pursuant to a plea bargain agreement. Reta appeals the trial court's denial of his motion to suppress.

Held: Reversed and remanded

Memorandum Opinion: [Section 51.095 of the Texas Family Code](#) sets forth the requirements that must be met in order for a juvenile's statement to be admissible. [Tex. Fam. Code Ann. § 51.095](#) (Vernon Supp.2007). [Section 51.095\(a\)\(1\)\(B\)\(ii\)](#) requires that "the magistrate must be fully convinced that the child understands the nature and contents of the statement." [Id. at § 51.095\(a\)\(B\)\(ii\)](#). In addition, [section 51.095\(a\)\(1\)\(D\)](#) requires that the magistrate certify "that the magistrate has examined the child ... and has determined that the child understands the nature and contents of the statement." [Id. at § 51.095\(a\)\(1\)\(D\)](#).

In this case, the video recording reveals that the magistrate did not undertake any inquiry or examination to ensure that Reta understood the nature and contents of the statement. "It would be impossible for [a] magistrate to be fully convinced that [a juvenile] understood the nature and contents of the statement if there [was] no examination or inquiry." [Carter v. State, 650 S.W.2d 843, 850 \(Tex.App.-Houston \[14th Dist.\] 1982\), aff'd, 650 S.W.2d 793 \(Tex.Crim.App.1983\)](#). Although the State appears to argue that the inquiry the magistrate made while giving Reta his warnings before his statement was given should be sufficient, the statute itself "contemplates that the child be again brought before a magistrate for determination that the

child 'understands the nature and contents of the statement' he has given." *Carter*, 650 S.W.3d at 798-99 (Clinton, J., concurring) (discussing amendment to statute that added this requirement); see also [Griffin v. State, 765 S.W.2d 422, 425 \(Tex.Crim.App.1989\)](#) (noting magistrate reviewed juvenile's statement with her in detail); [Carter, 650 S.W.2d at 794](#) (noting juvenile was examined by magistrate after confession was typed but before signing the confession); [Ramos v. State, Nos. 04-04-00824 & 04-04-00825-CR, 2006 WL 397881, at *2 \(Tex.App.-San Antonio Feb. 22, 2006, no pet.\)](#) (noting magistrate read statement "word by word" with juvenile after he had given his written statement) (not designated for publication); [In re J.M.S., No. 06-04-00008-CV, 2004 WL 1968644, at *2 \(Tex.App.-Texarkana Sept. 8, 2004, no pet.\)](#) (noting magistrate reviewed written statement with juvenile asking whether juvenile made statement, whether it was correct, and whether it contained the information he wished to convey) (not designated for publication); [Franklin v. State, 774 S.W.2d 794, 796 \(Tex.App.-Dallas 1989, pet. ref'd\)](#) (noting magistrate gave juvenile opportunity to make changes to statement after asking whether the written statement was what juvenile intended). Because the magistrate did not examine Reta after he made his statement, or make any inquiry to determine that Reta understood the nature and contents of his statement, the trial court erred in denying Reta's motion to suppress.

With regard to harm, "[t]he denial of a motion to suppress undoubtedly contributed in some measure to the State's leverage in the plea bargaining process and may well have contributed to [Reta's] decision to relinquish his constitutional rights of trial and confrontation in exchange for a favorable punishment recommendation." [Castleberry v. State, 100 S.W.3d 400, 404 \(Tex.App.-San Antonio 2002, no pet.\)](#). This is especially true given that the plea negotiations did not result in a bargain and plea until after the confession was introduced into evidence at trial. Speculating on whether Reta "would have been convicted in any event at trial [encroaches] upon [Reta's] prerogative to assess the relative strength of his own case." [McKenna v. State, 780 S.W.2d 797, 799 \(Tex.Crim.App.1989\)](#). "Such encroachment could only frustrate the legislative purpose [of] encourag[ing] guilty pleas." *Id.* Because Reta's written statement, which should have been suppressed, would inculpate him, this court must presume that the trial court's denial of his motion to suppress influenced his decision to plead guilty; therefore, the trial court's denial of the motion to suppress is reversible error. [Resendez v. State, No. 14-05-00098-CR, 2007 WL 2447256, at *10 \(Tex.App.-Houston \[14th Dist.\] Aug. 30, 2007, no pet.\)](#) (not designated for publication); [Castleberry, 100 S.W.3d at 404](#).

Conclusion: The trial court's judgment is reversed, and the cause is remanded to the trial court for further proceedings.