

## Review of Recent Juvenile Cases (2008)

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

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**For admission of juvenile confession, notification within one and one-half hours satisfies the section 52.02(b) requirement of prompt notice.[Weir v. State](08-3-8)**

**On June 11, 2008, the Tyler Court of Appeals upheld a motion to suppress. In obtaining a juvenile confession, prompt notice to parent of arrest and the taking of the confession, not directly related.**

¶ 08-3-8. **Weir v. State**, MEMORANDUM, No. 12-06-00408-CR, 2008 WL 2358219 (Tex.App.-Tyler,6/11/08).

**Facts:** Appellant was fifteen years of age at the time of James Kelly's murder. Witnesses described him as "socially immature," "of below average intelligence," and "easily led" but intensely loyal to his friends. In the months leading up to James Kelly's murder, Appellant was befriended by James Kelly's stepdaughter, Shaina Sepulvado, age sixteen, and her boyfriend, Dallas Christian, age twenty-three. Shaina was "wild," "out of control," and "running the roads." At fifteen, she had already been the live-in girlfriend of another man before Dallas Christian. Shaina fiercely resented her stepfather's attempts to restrain her. Her mother, Marcia Kelly, shared that resentment. Instead of supporting James Kelly's efforts to discipline Shaina, Marcia Kelly rewarded her misbehavior by giving her a car.

Appellant was moved by Shaina's accounts of how her stepfather mistreated her, had her arrested, and had beaten his son. A few weeks before the murder, Shaina told a group that included Appellant that her mother would give someone money and a truck to kill James Kelly. Approximately three weeks before the murder, Appellant, in separate conversations with his uncle and cousin, said that Marcia Kelly had promised him \$10,000 and a dually pickup to kill James Kelly. Appellant asked his uncle to take care of his mother if something went wrong. At that time, Appellant's uncle returned Appellant's 30-30 rifle to him.

On the night of the murder, Dallas Christian, Shaina, Appellant, and two others drove to James Kelly's house. Shaina and Appellant got out and went to the back of the car where Appellant apparently got his rifle. Shaina and Appellant disappeared in the darkness walking toward the house. The three who remained in the car heard a noise like a gunshot. Shaina returned to the car followed by Appellant. They put the gun in the trunk and got into the car. Appellant said, "Go, go, we just killed James." Dallas Christian drove to the Goodman Bridge where Appellant threw the rifle in the middle of the Angelina River.

James Kelly's body was discovered very early the next morning. Almost immediately Appellant became a suspect. Late that afternoon Appellant was picked up for questioning. Chief Deputy Douglas Richardson took Appellant before Judge Donna Clayton who administered to him the warnings mandated by [Texas Family Code section 51.095](#). Juvenile Probation Officer Nicole Boyles was present throughout Deputy Richardson's subsequent interrogation of Appellant. Appellant made a written statement, which he signed in the presence of Judge Donna Clayton who examined him independently from any enforcement officer or prosecutor to determine if he had voluntarily waived his rights and understood the nature and contents of the statement.

The juvenile court approved the State's motion for discretionary transfer to the district court for criminal proceedings.

In his first issue, Appellant contends the trial court erred in admitting his statement in evidence.

**Held:** Affirmed

**Memorandum Opinion:** The Family Code requires that "[a] person taking a child into custody shall 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\(b\)\(1\)](#) (Vernon Supp.2007). However, unlike [section 51.095](#), [section 52.02\(b\)](#) is not an independent exclusionary statute. [Gonzales v. State, 67 S.W.3d 910, 912 \(Tex.Crim.App.2002\)](#). If evidence is to be excluded because of a violation of [section 52.02\(b\)](#), it must be excluded through the operation of [Texas Code of Criminal Procedure article 38.23\(a\)](#), which prohibits the admission of evidence obtained in violation of the constitution or laws of the State of Texas. *Id.*; see also [Tex. Code Crim. Proc. Ann. art. 38.23\(a\)](#) (Vernon 2005). However, evidence is not obtained in violation of the law if there is no causal connection between the illegal conduct and the acquisition of the evidence. [Gonzales, 67 S.W.3d at 912](#). Therefore, before a juvenile's statement can be excluded because of a violation of [section 52.02\(b\)](#), there must be a causal connection shown between the violation and the acquisition of the statement. *Id.* In a motion to suppress evidence obtained in violation of the law, the defendant, as moving party, bears the burden of producing evidence of such a causal connection. [Pham v. State, 175 S.W.3d 767, 774 \(Tex.Crim.App.2005\)](#).

Appellant contends that there is no direct evidence that his mother was notified that he was taken into custody or the reason for his arrest. Appellant points to the evidence of his below average intellect, lack of responsibility and social skills, and the devastating effect on him of the recent deaths of his father and grandfather. These circumstances, he argues, when considered with the absence of his surviving parent and his distraught state during the interview, demonstrate that he lacked the capacity to make a voluntary statement. The State, he contends, did not meet its burden of showing that the statement was not the product of psychological disadvantage.

Appellant was taken into custody on Sunday afternoon. Appellant's mother was at work at Wal-Mart at that time. Nicole Boyles, the probation officer, testified that she believed several efforts were made to contact Appellant's parent, but there is no testimony that those efforts succeeded. Nevertheless, according to Boyles, Appellant's mother arrived at the location where he was being detained within one and one-half hours after Appellant was taken into custody. Boyles told the court that she informed all the parents "what was going on." Appellant's interrogation lasted approximately forty-five minutes. Appellant never asked to see his mother or speak with her during the interview. It is Appellant's burden to show a violation of [section 52.02\(b\)](#) and that, but for that violation, he would have chosen not to make a statement. Appellant has failed to show such a violation. Viewed in the light most favorable to the trial court's ruling, the record shows that an effort was made to contact Appellant's mother. Appellant's cousin told her that Appellant had been taken into custody and she appeared at the place of his detention approximately one and one-half hours after he was detained. Notification within one and one-half hours satisfies the [section 52.02\(b\)](#) requirement of prompt notice. See, e.g., [Vann v. State, 93 S.W.3d 182, 185 \(Tex.App.-Houston \[14th Dist.\] 2002, pet. ref'd\)](#) (two and one-half hours not unnecessary delay and complied with [section 52.02\(b\)](#)). The juvenile probation officer explained "what was going on" to her. It is reasonable to assume that this included the reason for taking Appellant into custody. We conclude that there was no [section 52.02\(b\)](#) violation.

However, even assuming such a violation, Appellant has failed to show a causal connection between the violation and his decision to make a statement. In [Simpson v. State, 51 S.W.3d 633 \(Tex.App.-Tyler 2003\)](#), judgment vacated and remanded on other grounds, [74 S.W.3d 408, 408-09 \(Tex.Crim.App.2002\)](#), we held that

a seven and one-half hour interrogation coupled with the failure to notify the defendant's mother for forty-eight hours indicated coercive conduct by the officers taking his statement. [Id. at 636-37](#). In the case at bar, however, Appellant's interrogation lasted only approximately forty-five minutes. Appellant never asked to see his mother or speak with her during the interview. Although Appellant was emotionally upset during the questioning, there is no evidence of coercive conduct by the officer conducting the interrogation.

Appellant also maintains that the State failed to comply with [section 51.095\(a\)\(1\)\(A\)](#) because Judge Clayton neglected to obtain Appellant's initials on the Magistrate's Juvenile Warning beside each of the warnings required. However, Appellant signed and circled "yes" at the bottom of the warning acknowledging that he had "listened carefully to and understood each of the above rights as they were read and explained to me." The Family Code does not mandate the individual acknowledgment of each right by the child. It need only show that, before the making of a statement, the magistrate warned the child regarding each of the rights. [Tex. Fam. Code Ann. § 51.095\(a\)\(1\)](#). The magistrate also certified that "the foregoing statutory rights were read and explained to the said juvenile." There was no failure to comply with [section 51.095](#).

**Conclusion:** The trial court did not err in denying Appellant's motion to suppress.