Review of Recent Juvenile Cases (2009)

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

In light of all the circumstances, appellant was in custody at the time he made his statement and, therefore, the provisions in the Family Code governing the admissibility of the custodial statement of a juvenile apply.[In the Matter of D.J.C.](09-4-5A)

On September 24, 2009, the Houston (1 Dist.) Court of Appeals held that by excluding appellant's grandmother from the interview room, having the magistrate judge read appellant his rights, and then returning the child to the interview room and locking it, was a sufficient restraint of freedom of movement to be associated with formal arrest.

¶ 09-4-5A. **In the Matter of D.J.C.**, No. 01-07-01092-CV, --- S.W.3d ----, 2009 WL 3050870 (Tex.App.-Hous. (1 Dist.)9/24/09).

Facts: On February 14, 2006, appellant D.J.C., a sixteen-year-old male, and the complainant, M.I.F., a thirteen-year-old female, had a sexual encounter in the complainant's home in Galveston, Texas. On March 31, 2006, the complainant told a case worker with Child Protective Services that she had had a sexual encounter with appellant. Galveston Police Department ("GPD") Officer C. Garcia was assigned to investigate M.I.F.'s complaint. On June 21, 2006, Officer Garcia went to appellant's home and talked to appellant and his grandmother. Officer Garcia told them that appellant was a suspect in a crime and the focus of an investigation. Officer Garcia requested that appellant's grandmother bring him to the GPD station and that "it would be best for him to cooperate." Officer Garcia left appellant's home.

In response to Officer Garcia's request, appellant and his grandmother later went to the police station. Officer Garcia led appellant to an interview room on the second floor of the police station. Officer Garcia testified that he knew very little about juvenile detention and did not know whether the interview room met the requirements of a designated juvenile detention center. He also testified that the police department had a designated juvenile section "but it wasn't equipped with the video equipment at the time," and so he did not use it. Therefore, Officer Garcia took appellant's statement in the interview room used for questioning both adult and juvenile subjects. Appellant's grandmother, who was his legal guardian, asked to be present with appellant in the interview room, but police denied her request. Officer Garcia turned on a video camera and left the interview room. A Galveston municipal court judge then entered the interview room and read appellant his rights, including his right to counsel, right to remain silent during the interview, and right to terminate the interview at any time. The magistrate also warned appellant that "you don't have to make this statement to anyone. And anything you say can be used against you." However, he did not warn appellant his statement could be used "in evidence" against him. Appellant's grandmother was not present when the magistrate read him these rights.

After the judge read appellant his rights, Officer Garcia returned to the interview room. Officer Garcia told appellant he was a suspect in an offense of having sex with a thirteen-year-old child. After Officer Garcia questioned appellant for fifteen to twenty minutes, appellant confessed to having sex with the complainant. Garcia arrested him immediately after the interview.

At trial, appellant moved to suppress his confession. The trial court excused the jury and convened a hearing on appellant's motion to suppress. At the hearing, Officer Garcia testified that he led appellant to the interview room "used routinely to interview all criminal suspects." He testified that he was armed and that the door was locked. He testified that he did not know what constituted a juvenile processing office and that he did not "routinely investigate juvenile crimes." He testified that his supervisor "advised me [the interview room] was mandated as a juvenile interview room." However, he also testified that the room was used for the interrogation of both adult and juvenile suspects and that he used that room because there was no videotape in the designated juvenile interview room at that time. The State played the video recording of Officer Garcia's interview with appellant. At the end of the hearing, the trial court ruled that appellant was not in custody at the time of his confession and denied appellant's motion to suppress.

Appellant testified that the judge told him at least twice that he could leave the interview room at any time. In addition, appellant testified that he told Officer Garcia that he was not afraid to leave the interview room at any time. Appellant also testified that he did not fully understand the warnings the judge gave him prior to his interview. He stated that he and his grandmother drove to the police station "[b]ecause the officer came to our house and told us that I need to give a statement." He further testified, in relevant part:

> [Counsel]: Okay. And when you were in the room when the Judge was telling you those warnings, did you feel like you could just get up and walk out the door?
>
> [Appellant]: Not really.
>
> [Counsel]: Did you understand that when he told you that the statement could be used against you, did you understand that that meant in court?
>
> [Appellant]: No.
>
> [Counsel]: Did you understand that that meant they were charging you with a crime as a result of the statement?
>
> [Appellant]: No, ma'am.
>
> [Counsel]: Did you even know that this was a crime at this point?
>
> [Appellant]: If I knew I was going to get in trouble for what I said, I wouldn't have went.
>
> [Counsel]: You didn't understand that you were waiving your right, did you?
>
> [Appellant]: No, ma'am.

The State also introduced testimony from the complainant. The complainant testified that she did not remember whether she had sex on February 14, 2006 with appellant. She testified that she "[didn't] know if it was 2005 or 2006." She also testified that she was thirteen years old and appellant was sixteen years old on February 14, 2006. She testified that she and appellant had sex at her house. She also testified that she told

investigators that she and appellant had sex at his house but she did not know the address. She could not remember whether she or appellant brought a condom when they had sex. She also testified that she told investigators that she brought a condom for appellant when they had sex.

The jury found true that appellant had engaged in delinquent conduct by committing aggravated sexual assault against the complainant. On November 1, 2007, the trial court signed a disposition order placing appellant on one month's probation and seven hours of community service work.

Held: Reversed and remanded

Opinion: Appellant contends that his interrogation by Officer Garcia constituted custodial interrogation in violation of the United States Constitution and Texas Family Code provisions governing the admissibility of statements made by juveniles and that his confession should have been suppressed under the Family Code. *See* Tex. Fam.Code Ann. § 51.095 (Vernon 2008) (governing "Admissibility of a Statement of a Child"); § 54.03(e). The State argues that appellant was not in custody when his confession was made, and therefore, the Texas Family Code sections governing juvenile confessions do not apply and the statement was admissible under article 38.23 of the Texas Code of Criminal Procedure. [FN1] We first determine, therefore, whether appellant was in custody when he made his statement to Officer Garcia.

> FN1. A statement of a juvenile that is not the product of custodial interrogation is not required to be suppressed by section 51.095 of the Family Code. *See* Tex. Fam.Code Ann. § 51.095(d)(2) (Vernon 2008); *Martinez v. State,* 131 S.W.3d 22, 32 (Tex.App.-San Antonio, no pet.). However, even in the absence of custody, due process may be violated by the admission of a confession that was not voluntarily given. *Martinez,* 131 S.W.3d at 35; *see Alvarado v. State,* 912 S.W.2d 199, 211 (Tex.Crim.App.1995).
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> Article 38.23 of the Texas Code of Criminal Procedure, governing "Evidence not to be used" in criminal actions provides:
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> (a) No evidence obtained by an officer or other person in violation of any provisions of the Constitution or laws of the State of Texas, or of the Constitution or laws of the United States of America, shall be admitted in evidence against the accused on the trial of any criminal case. In any case where the legal evidence raises an issue hereunder, the jury shall be instructed that if it believes, or has a reasonable doubt, that the evidence was obtained in violation of the provisions of this Article, then and in such event, the jury shall disregard any such evidence so obtained.
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> (b) It is an exception to the provisions of Subsection (a) of this Article that the evidence was obtained by a law enforcement officer acting in objective good faith reliance upon a warrant issued by a neutral magistrate based on probable cause.
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> Tex.Code Crim. Proc Ann. art. 38.23 (Vernon 2005).

Custodial interrogation is questioning initiated by law enforcement after a person has been taken into custody or otherwise deprived of his freedom in any significant way. *See Stansbury v. California,* 511 U.S. 318, 322, 114 S.Ct. 1526, 1528-30 (1994); *Cannon v. State,* 691 S.W.2d 664, 671 (Tex Crim.App.1985); *Martinez v. State,* 131 S.W.3d 22, 32 (Tex.App.-San Antonio 2003, no pet.). "A custodial interrogation occurs when a defendant is in custody and is exposed 'to any words or actions on the part of the police ... that [the police] should know are reasonably likely to elicit an incriminating response.' " *Roquemore v. State,* 60 S.W.3d at 868 (quoting *Rhode Island v. Innis,* 446 U.S. 291, 301, 100 S.Ct. 1682, 1689-90 (1980)). A child is in custody if, under the objective

circumstances, a reasonable child of the same age would believe his freedom of movement was significantly restricted. *In re U.G.,* 128 S.W.3d at 799; *Jeffley v. State,* 38 S.W.3d 847, 855 (Tex.App.-Houston [1st Dist.] 2001, pet. ref'd).

A two-step analysis is employed in a juvenile delinquency proceeding to determine whether an individual is in custody. *In re M.R.R.,* 2 S.W.3d 319, 323 (Tex.App.-San Antonio 1999, no pet.). First, the court examines all the circumstances surrounding the interrogation to determine whether there was a formal arrest or restraint of freedom of movement to the degree associated with a formal arrest. *Stansbury,* 511 U.S. at 322, 114 S.Ct. at 1528-29; *In re M.R.R.,* 2 S.W.3d at 323. This initial determination focuses on the objective circumstances of the interrogation, not on the subjective views harbored by either the interrogating officers or the person being questioned. *Stansbury,* 511 U.S. at 322, 114 S.Ct. at 1529; *In re M.R.R.,* 2 S.W.3d at 323. Second, the court considers whether, in light of the given circumstances, a reasonable person would have felt he or she was at liberty to terminate the interrogation and leave. *Thompson v. Keohane,* 516 U.S. 99, 112, 116 S.Ct. 457, 465 (1995); *In re M.R.R.,* 2 S.W.3d at 323. Factors relevant to a determination of custody include (1) probable cause to arrest; (2) focus of the investigation; (3) subjective intent of the police; and (4) subjective belief of the defendant. *Dowthitt v. State,* 931 S .W.2d 244, 254 (Tex.Crim.App.1996); *In re J.A.B.,* 281 S.W.3d at 65; *In re M.R.R.,* 2 S.W.3d at 323. Because the determination of custody is based on entirely objective circumstances, whether the law enforcement officials had the subjective intent to arrest is irrelevant unless that intent is somehow communicated to the suspect. *Stansbury,* 511 U.S. at 323,114 S.Ct. at 1529; *Dowthitt,* 931 S.W.2d at 254; *Jeffley,* 38 S.W.3d at 855; *In re M.R.R.,* 2 S.W.3d at 323.

The following situations generally constitute custody: (1) when the suspect is physically deprived of his freedom of action in any significant way; (2) when a law enforcement officer tells the suspect that he cannot leave; (3) when law enforcement officers create a situation that would lead a reasonable person to believe that his freedom of movement has been significantly restricted; or (4) when there is probable cause to arrest and law enforcement officers do not tell the suspect that he is free to leave. *Dowthitt,* 931 S.W.2d at 255; *Jeffley,* 38 S.W.3d at 855.

Being the focus of an investigation does not amount to being in custody. *Meek v. State,* 790 S.W.2d 618, 621 (Tex.Crim.App.1990); *Martinez,* 131 S.W.3d at 32. Station house questioning does not, in and of itself, constitute custody. *Dowthitt,* 931 S.W.2d at 255; *Jeffley,* 38 S.W.3d at 855. "Words or actions by the police that normally attend an arrest and custody, such as informing a defendant of his *Miranda* rights, do not constitute a custodial interrogation." *Roquemore,* 60 S.W.3d at 868. When the circumstances show that the individual acts upon the invitation or request of the police and there are no threats, express or implied, that he will be forcibly taken, then that person is not in custody at that time. *Dancy v. State,* 728 S.W.2d 772, 778- 79 (Tex.Crim.App.1987); *Martinez,* 131 S.W.3d at 32.

"The mere fact that an interrogation begins as non-custodial, however, does not prevent it from later becoming custodial; police conduct during the encounter may cause a consensual inquiry to escalate into custodial interrogation." *Dowthitt,* 931 S.W.2d at 255; *Jeffley,* 38 S.W.3d at 856. A juvenile may be in custody when the juvenile is interrogated alone by an armed police officer in an enclosed office. *See In re D.A.R.,* 73 S.W.3d 505, 511- 12 (Tex.App.-El Paso 2002, no pet.).

Here, appellant came to the police station with his grandmother after Officer Garcia came to his home to request that he come to the police station. Officer Garcia testified that he told appellant's grandmother that appellant was a suspect in a crime and the focus of a police investigation. Officer Garcia also testified that he asked appellant "for his cooperation, if he would give a voluntary statement as to the allegations that were made against him." He also testified that he told appellant that "it would be best for him to cooperate" but that he made no representations as to why it would be best for appellant to cooperate.

Officer Garcia, while wearing his firearm, took appellant to an interview room used in interrogations of both adult and juvenile subjects. He denied appellant's grandmother's request to remain in the room during his interrogation of appellant. Officer Garcia then left the room and had a magistrate come in to issue appellant warnings about appellant's right to remain silent, right to counsel, and right to terminate the interview at any time in the absence of appellant's grandmother, who was appellant's legal guardian and an adult. After appellant received the magistrate's warnings, Officer Garcia returned to the room, which he testified was locked, and asked appellant about the aggravated sexual assault. Appellant was thus alone in a locked room used for the interrogation of adult, as well as juvenile, criminal defendants with an armed police officer at the time he made the statement to Officer Garcia. Appellant was arrested immediately after he gave his statement.

We conclude that by excluding appellant's grandmother from the interview room, despite her express request to be present, having the magistrate judge read appellant his rights, then returning to the interview room and locking it, Officer Garcia signaled a change in the nature of the interview. *See* *Jeffley*, 38 S.W.3d at 856; *Dowthitt*, 931 S.W.2d at 255 (stating that "mere fact that an interrogation begins as non-custodial does not prevent custody from arising later; police conduct during the encounter may cause a consensual inquiry to escalate into custodial interrogation"). Under the first step of the custody analysis, we hold that there was restraint of freedom of movement to the degree associated with a formal arrest. *See* *Stansbury*, 511 U.S. at 322, 114 S.Ct. at 1528-29; *see also* *In re M.R.R.*, 2 S.W.3d at 323; *see also* *In re D.A.R.*, 73 S.W.3d at 511.

We also conclude that, in light of the given circumstances, a juvenile of appellant's age could reasonably have felt he was not at liberty to terminate the interview and leave. *See* *Thompson*, 516 U.S. at 112, 116 S.Ct. 457; *In re M.R.R.*, 2 S.W.3d at 323. Appellant testified that the magistrate told him he could leave the interview room at any time. He also testified that he told Officer Garcia that he was unafraid to leave the interview room at any time. But he also testified that he did "not really" feel that he could leave. Furthermore, because the door was locked, appellant was not objectively "free" to leave. Appellant further testified that he did not understand that he could be charged with a crime as a result of his statement and that his statement could be used "in evidence" against him. *See* Tex. Fam. Code Ann. § 51.095(a)(1)(A) (Vernon 2008) (setting out warnings that must be given for admissibility of custodial statement of child, including statement that "the child may remain silent and not make any statement at all and that any statement that the child may be used in evidence against the child"). In light of all the circumstances, we hold that a reasonable child would not have felt he or she was at liberty to terminate the interrogation and leave. *See* *Keohane*, 516 U.S. at 112, 116 S.Ct. at 465; *Dowthitt*, 931 S.W.2d at 255; *Jeffley*, 38 S.W.3d at 855; *In re M.R.R.*, 2 S.W.3d at 323; *cf.* *Yarborough v. Alvarado*, 541 U.S. 652, 664, 124 S.Ct. 2140, 2150 (2004) (juvenile defendant's being allowed to leave at end of "non-Mirandized interview" was fact that "weigh[ed] against a finding that [defendant] was in custody").

Conclusion: We hold that appellant was in custody at the time he made his statement and, therefore, the provisions in the Family Code governing the admissibility of the custodial statement of a juvenile apply.