Review of Recent Juvenile Cases (2009)

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

Violations of Family Code requirements regarding police interactions with juvenile, including non compliance with juvenile processing office and parental presence requirements deemed juvenile statement inadmissible.[In the Matter of D.J.C.](09-4-5B)

On September 24, 2009, the Houston (1 Dist.) Court of Appeals held that appellant's electronically recorded custodial statement was taken in violation of sections 52.02(a), 52.025(a), (b)(5), and (c), and 51.095(a)(1)(A) and (a)(5) of the Family Code, and thus violated appellant's substantial rights, and as a result was inadmissible in his adjudication hearing under section 54.03 of the Code.

¶ 09-4-5B. **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 custodial statement was inadmissible because it failed to fulfill several requirements of the Family Code. *See* Tex. Fam.Code Ann. § 54.03(e). Specifically, appellant contends that (1) his statement was not taken in a designated juvenile processing center, as required by sections 52.02(a) and 52.025(a) of the Family Code; (2) his grandmother was excluded from the interview room despite her request to be present, in violation of section 52.025(c) of the Code; and (3) his video-recorded statement did not comply with section 52.025(b)(5) of the Code, which requires that an electronically recorded statement of a juvenile received in a designated juvenile processing center comply with Family Code sections 51.095(a)(1), (2), (3) or (5), because it did not comply with sections 51.095(a)(1)(A) and (a)(5), governing the warnings to be given a juvenile prior to the taking of his statement.

1. Violation of Family Code Sections 52.02(a) and 52.025(a) by Failure to Take Statement in a Designated Juvenile Processing Center

Appellant first contends that his statement was not taken in a designated juvenile processing center, as required by sections 52.02(a) and 52.025(a) of the Family Code.

a. Procedures for taking a child into custody under Family Code section 52.02(a)

Section 52.02(a) of the Texas Family Code governs procedures that must be followed when a juvenile is taken into custody. *In re D.Z.*, 869 S.W.2d 561, 564 (Tex.App.-Corpus Christi 1994, writ denied). The Court of Criminal Appeals has "established a policy of strict compliance with the Family Code, especially section 52.02(a)." *Roquemore*, 60 S.W.3d at 868; *Baptist Vie Le v. State*, 993 S.W.2d 650, 655-56 (Tex.Crim.App.1999); *Comer v. State*, 776 S.W.2d 191, 196-97 (Tex.Crim.App.1991).

Section 52.02(a) provides in relevant part:

> (a) [*A*] *person taking a child into custody,* without unnecessary delay and *without first taking the child to any place other than a juvenile processing office designated under Section* 52.025, shall do one of the following:
>
> (1) release the child to a parent, guardian, custodian of the child, or other responsible adult upon that person's promise to bring the child before the juvenile court as requested by the court.
>
> (2) bring the child before the office or official designated by the juvenile board if there is probable cause to believe that the child engaged in delinquent conduct, conduct indicating a need for supervision, or conduct that violates a condition of probation imposed by the juvenile court;
>
> (3) bring the child to a detention facility designated by the juvenile board;

(4) bring the child to a secure detention facility as provided by Section 51.12(j); [FN2]

FN2. Section 51.12(j) provides that, except under circumstances not relevant here, a child may be detained only in a juvenile processing office in compliance with Section 52.025. *See* Tex. Fam.Code Ann. § 51.12(j) (Vernon 2008).

(5) bring the child to a medical facility if the child is believed to suffer from a serious physical condition or illness that requires prompt treatment;

(6) dispose of the case under Section 52.03 [FN3];

FN3. Section 52.03 provides that "[a] law-enforcement officer authorized by [the Family Code] to take a child into custody may dispose of the case without referral to juvenile court" under certain circumstances, but that "[n]o disposition authorized by this section may involve "keeping the child in law-enforcement custody." *See* Tex. Fam.Code Ann. § 52.03 (Vernon 2008).

See Tex. Fam.Code. Ann. § 52.02(a) (emphasis added); Baptist Vie Le, 993 S.W.2d at 652-53.

Under section 52.02(a), an officer who has taken a child into custody may only bring the child to a "designated juvenile processing office under section 52.025," or, alternatively: (1) release the child to a parent; (2) bring the child before the office or official designated by the juvenile court; (3) bring him to a detention facility designated by the juvenile board; (4) bring him to a juvenile detention facility; (5) bring him to a medical facility; or (6) dispose of the case. *Baptist Vie Le,* 993 S.W.2d at 652-53. When a law enforcement officer deems it necessary to take a juvenile into custody, the Family Code requires that without unnecessary delay and without first taking him anywhere else except a juvenile processing office, the officer must bring the juvenile before the office designated by the juvenile court or bring him to a detention facility designated by the juvenile court. *In re D.Z.,* 869 S.W.2d at 564; *Comer,* 776 S.W.2d at 194. Once the officer has found cause initially to take the juvenile into custody and makes a decision to refer him to the intake officer or other designated authority, he relinquishes ultimate control over the investigative function of the case. *See Baptist Vie Le.* 993 S.W.2d at 654; *In re D.Z.,* 869 S.W.2d at 564. Thus, with each of the options in section 52.02(a), except the option of taking the child to a designated juvenile processing office, the officer's involvement in the case ceases. *Baptist Vie Le,* 993 S.W.2d at 654; *see In re D.Z.,* 869 S.W.2d at 564.

When police officers fail to comply with the requirements of Family Code section 52.02(a), 52.12, and 52.025, governing the taking of a child into custody and the taking of the statement of a child in a juvenile processing office, a statement obtained from a juvenile by the investigating officer may violate his rights as a juvenile under the Family Code and thus be inadmissible at trial. *See* Tex. Fam.Code Ann. § 54.03(e); *In re U.G.,* 128 S.W .3d at 799 (holding juvenile's statement inadmissible when, after being placed in custody, police took juvenile to police station and held juvenile in area where adult suspects were held instead of taking juvenile "to a juvenile processing office or any of the places listed as an alternative" in section 52.02 and placing juvenile in specifically designated office for juveniles). This is so even if the statement would otherwise be admissible as a custodial statement of a child under section 51.095 of the Family Code, governing the admissibility of a statement of a child. *See* Tex. Fam.Code Ann. § 51.095; *Roquemore,* 60 S.W.3d at 868; *Comer,* 776 S.W.2d at 195-96; *Marsh v. State,* 140 S.W.3d 901, 907 (Tex.App.-Houston [14th Dist.] 2005, pet. ref'd).

Here, Officer Garcia did not exercise any of the options provided by Family Code subsections 52.02(a)(1)-(6) that would have terminated his involvement in appellant's case. Therefore, he was authorized by section 52.02(a) only to take appellant to a "designated juvenile processing office" in compliance with Family Code section 52.025. *See* Tex. Fam.Code. Ann. § 52.02(a); *Baptist Vie Le,* 993 S.W.2d at 654.

b. Procedures for taking the statement of a juvenile in a designated juvenile processing office under Family Code section 52.025(a)

Section 52.025, governing juvenile processing offices, provides, in relevant part:

> (a) *The juvenile court may designate an office or a room,* which may be located in a police facility or sheriff's offices, *as the juvenile processing office for the temporary detention of a child taken into custody under Section 52.01 [FN4]. The office may not be a cell or holding facility used for detentions other than detentions under this section.* The juvenile board by written order may prescribe the conditions of the designation and limit the activities that may occur in the office during the temporary detention.
>
> > FN4. *See* Tex. Fam.Code Ann. § 52.01(a)(3)(A) (Vernon 2008) (providing circumstances under which "a child may be taken into custody," including "by a law enforcement officer ... if there is probable cause to believe that the child has engaged in ... (A) conduct that violates a penal law of this state or (B) delinquent conduct necessitating supervision").
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> *(b) A child may be detained in a juvenile processing office only for:*
>
> (1) the return of the child to the custody of a [parent or guardian] ...;
>
> (2) the completion of essential forms and records required by the juvenile court or this title;
>
> (3) the photographing and fingerprinting of the child ...;
>
> *(4) the issuance of warnings to the child as required or permitted by this title; or*
>
> *(5) the receipt of a statement by the child under Section 51.095(a)(1), (2), (3), or (5).*
>
> *(c) A child may not be left unattended in a juvenile processing office and is entitled to be accompanied by the child's parent, guardian or by the child's attorney.*
>
> (d) A child may not be detained in a juvenile processing office for longer than six hours.

Tex. Fam.Code. Ann. § 52.025 (emphasis added); *see Baptist Vie Le,* 993 S.W.2d at 653.

A "juvenile processing office" is "little more that a temporary stop for completing necessary paperwork pursuant to the arrest." *Baptist Vie Le,* 993 S.W.2d at 654. Under the plain language of section 52.025(b), it may be used only for (1) the return of the child to a parent or guardian; (2) the completion of forms or records; (3) photographing and fingerprinting if the child; (4) the issuance of warnings; and (5) the receipt of a statement in compliance with section 51.095(a)(1), (2), (3), or (5) of the Family Code. Tex. Fam.Code. Ann. § 52.025(b).

Moreover, under the plain language of section 52.025(a), while a "designated juvenile processing office" may be a room located in a police station, it may not be a room that is "used for detentions other than detentions under this section." Tex. Fam.Code. Ann. § 52.025(a); *Baptist Vie Le,* 993 S.W.2d at 653-54 (taking juvenile arrested for murder to homicide division of police department violated Family Code requirements for handling child taken into custody). If, after taking a juvenile into custody, authorities do not take him to either a juvenile processing office or a statutorily designated alternative for questioning, but rather obtain a statement from

the juvenile in an area used to interview adult suspects, that statement is inadmissible. *Baptist Vie Le,* 993 S.W.2d at 654-56; *In re U.G.,* 128 S.W.3d at 799; *see* Tex. Fam.Code Ann. § 52.02(a); *Salas v. State,* 756 S.W.2d 832, 834-35 (Tex.App.-Corpus Christi 1988, no pet.) (holding statement inadmissible when, instead of following section 52.02, officers took juvenile first to police station where they obtained signed, written statement from him before taking him to appropriate juvenile detention center); *see also Roquemore,* 60 S.W.3d at 868; *Marsh,* 140 S.W.3d at 907 (holding that statement of child that meets admissibility requirements of section 51.095 "may be nonetheless inadmissible" when provisions in sections of Family Code "dictating the necessary procedures for taking the child's statement, are violated," specifically section 52.025(b)); *In re D.Z.,* 869 S.W.2d at 564 (holding that statement illegally seized or obtained in violation of Family Code provisions governing custodial interrogation is inadmissible in adjudication hearing under section 54.03(e) of Family Code).

Here, Officer Garcia took appellant into custody and interrogated him in an interview room used to interrogate both adult and juvenile subjects. Officer Garcia testified that the room was "used routinely to interview all criminal suspects," and that "adults get interviewed in this room as well." 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. Officer Garcia testified that he did not know what constituted a juvenile processing office and that he did not "routinely investigate juvenile crimes," but that his supervisor "advised me [that the interview room] was mandated as a juvenile interview room." We conclude that the evidence shows that the State violated sections 52.02(a) and 52.025(a) by not taking appellant's custodial statement in a designated juvenile processing office.

Once a defendant produces evidence of a section 52.02(a) or (b) violation, the burden shifts to the State to prove compliance with that section. *Roquemore,* 60 S.W.3d at 869; *see also* Tex. Fam.Code Ann. §§ 51.17(a), 54.03(f) (Vernon 2008) (providing that State bears burden of proving requirements for finding of delinquency in adjudication proceedings by competent evidence). Here, the State failed to carry its burden. The evidence shows that the interview room used by Officer Garcia was "used routinely to interview all criminal subjects," and there is no more than a scintilla of evidence in the record that the interview room was a designated juvenile processing office, as provided in section 52.02(a).

We conclude that, in taking appellant's custodial statement, the State violated the statutory requirements in Texas Family Code sections 52.02(a) and 52.025(a) requiring that a juvenile's custodial statement be taken only in a proper place. *See* Tex. Fam.Code. Ann. §§ 52.02(a), 52.025(a); Baptist Vie Le, 993 S.W.2d at 654-55.

2. Exclusion of Appellant's Legal Guardian in Violation of Section 52.025(c) of the Family Code

Appellant next contends that his legal guardian, his grandmother, was excluded from the locked interview room in which Officer Garcia interrogated appellant, despite her express request to be present, in violation of section 52.025 ( ) of the Family Code, which states, "A child may not be left unattended in a juvenile processing office and is entitled to be accompanied by the child's parent, guardian, or the child's attorney." Tex. Fam.Code Ann. § 52.025(c).

The record shows that appellant's grandmother, who was his legal guardian, accompanied appellant to the GPD station. When Officer Garcia took appellant into the interview room for questioning, she asked to be present with appellant, but Officer Garcia denied her request and excluded her from the interview room.

We hold that the State violated section 52.025(c)'s requirement that a child in custody in a juvenile processing center "is entitled to be accompanied by the child's parent, guardian, or the child's attorney." *See* Tex. Fam.Code Ann. § 52.025(c).

3. Failure to Warn that Statement of Juvenile May Be Used "In Evidence" Against Him in Violation of Sections 52.025(b)(5) and 51.095(a)(1)(A) and (a)(5) of the Family Code

Finally, appellant contends that the State violated section 52.025(b)(5) of the Family Code by failing to comply with sections 51.095(a)(1)(A) and (a)(5) in taking his statement after taking him into custody. *See* Tex. Fam.Code Ann. § 52.025(b)(5). Appellant contends that the magistrate who gave him his warnings prior to his electronically recorded statement failed to warn him that his statement could be used "in evidence" against him, in violation of sections 51.095(a)(1)(A) and (a)(5) of the Family Code, thereby violating section 52.025(b)(5) of the Code and rendering his statement inadmissible under section 53.04.

Section 51.095 of the Family Code provides means for assuring the voluntariness, hence the admissibility, of a juvenile's custodial statement. *See* Tex. Fam.Code Ann. § 51.095. It states, in relevant part:

> (a) Notwithstanding Section 51.09, [FN5] *the statement of a child is admissible in evidence in any future proceeding concerning the matter about which the statement was given if:*
>
> > FN5. Section 51.09 of the Family Code provides that, "[u]nless a contrary intent clearly appears elsewhere in this title," a child may waive any right granted by the Family Code "or by the constitution or laws of this state or the United States" in proceedings under the Family Code if:
> >
> > (1) the waiver is made by the child and the attorney for the child;
> >
> > (2) the child and the attorney waiving the right are informed of and understand the right and the possible consequences of waiving it;
> >
> > (3) the waiver is voluntary; and
> >
> > (4) the waiver is made in writing or in court proceedings that are recorded.
> >
> > Tex. Fam.Code Ann. § 51.09.
>
> (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 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) *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;*
>
> ....

(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 warnings described by Subsection (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;*

....

(d) *Subsections (a)(1) and (a)(5) apply to the statement of a child made:*

(1) while the child is in a detention facility or other place of confinement; [or]

(2) *while the child is in the custody of an officer* ... [.]

Tex. Fam.Code. Ann. § 51.095 (emphasis added). As stated above, any statement of a juvenile taken in violation of the provisions of the Family Code governing the substantial rights of a juvenile in custody is inadmissible under section 53.04(e) of the Family Code. *See* Tex. Fam.Code. Ann. § 53.04(e).

Appellant's statement was electronically recorded. The video recording shows that the municipal court judge whom Officer Garcia asked to read appellant his rights entered the interview room and warned appellant about his right to counsel, his right to remain silent during the interview, and his 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 that his statement could be used "*in evidence* " against him. Appellant contends that this omission is a direct violation of section 51.095(a)(1)(A), which must be followed if a statement is electronically recorded under section 51.095(a)(5). Specifically, section 51.095(a)(1)(A) provides that a statement made by a child is admissible only if, *inter alia,* "the child has at some time before the making of the statement received from the magistrate a warning that the child may remain silent and not make any statement at all and that any statement the child makes may be used in evidence against [him]." Tex. Fam.Code Ann. § 51.095(a)(1)(A) (emphasis added); *see also* § 51.095(a)(5).

In *Sosa v. State,* the Court of Criminal Appeals held that a warning of rights made to any adult defendant that differs only slightly from the language of the statute governing the admissibility of evidence--in that case, article 38.22 of the Code of Criminal Procedure [FN6]--complies with the statute as long as it conveys its exact meaning. 769 S.W.2d 909, 915-16 (Tex.Crim.App.1989) (holding that defendant's written statement was voluntarily made when he was read his rights three times during course of evening in accordance with *Miranda* and article 38.22 and on each occasion defendant acknowledged that he understood his rights, that he wished to waive them, and that he wished to talk with FBI agents). Subsequent criminal cases, many unpublished and therefore of no precedential value, have defined the "substantial compliance" standard set in *Sosa* differently in different contexts, but none of them in the juvenile context. *See, e.g., Rutherford v. State,* 129 S.W.3d 221, 226 (Tex.App.-Dallas 2004, no pet.) (finding substantial compliance with article 38.22 where orally administered warnings added to beginning "if I am unable to hire a lawyer" instead of "if [I] am unable to employ a lawyer"); *Gonzalez v. State,* 967 S.W.2d 457, 459 (Tex.App.-Fort Worth 1998, no pet.) (finding substantial compliance where Spanish translation of statutory DUI warning substituted for "that refusal [to give a specimen] may be admissible in a subsequent prosecution," in Tex.Rev.Civ. Stat. Ann. art. 6701l-5 § 2(b) (Vernon 1977), the words "tÃ¡l acciÃ³n puede usarse en su contra en el futuro," which the parties translated as "[i]f you refuse the analysis that action can be used against you in the future"); *Williams v. State,* 883 S.W.2d 317, 320 (Tex.App.-Dallas, 1994, pet.ref'd) (holding that phrase "I know I have the right to remain silent"

together with phrase "and knowing that anything I say may be used against me" substantially complied with article 38.22 warnings even though warnings failed to advise accused that his statement could be used against him "at his trial" or "in court" because it advised him his statement could be used against him "in any type of context not just those mentioned in article 38.22, subsection 2(a)(1) and (2)").

> FN6. Article 38.22 requires warnings to the accused in a criminal trial that:
>
> (1) he has the right to remain silent and not make any statement at all and that any statement he makes may be used against him at this trial;
>
> (2) any statement he makes may be used as evidence against him in court;
>
> (3) he has the right to have a lawyer present to advise him prior to and during any questioning;
>
> (4) if he is unable to employ a lawyer, he has the right to have a lawyer appointed to advise him prior to and during any questioning; and
>
> (5) he has the right to terminate the interview at any time[.]
>
> Tex.Code Crim. Proc. Ann. art. 38.22 (Vernon 2005).

We find that the case closest to the instant case, however, is *State v. Subke,* 918 S.W.2d 11 (Tex.App.-Dallas 1995, pet. ref'd), decided the year after *Williams.* In Subke, the defendant was given the warning at the beginning of his video-recorded statement that "[y]ou have the right to remain silent and not make any statement at all and that any statement you make will be used against you at trial." *Id.* at 13. The court held that because article 38.22 specifically provided that the accused must be warned that "he has the right to remain silent and not to make a statement at all and that any statement he makes maybe used against him *at his trial* " and also provided that the accused must be warned that "any statement he makes maybe used as evidence against him *in court,* " the failure to give the accused both warnings rendered his statement inadmissible. *Id.* at 14-15 (emphasis added). The court held that "the Legislature deliberately placed both warnings ... in the statute to inform the accused of his rights." *Id.* at 15.

Here, the magistrate failed to warn appellant that his video-recorded statement could be used in evidence against him, and nothing else in the warnings alerted appellant that his statement could be used in a hearing to adjudicate juvenile delinquency. Moreover, the record shows that appellant did not understand that he could be charged with a crime as a result of his statement or that his statement could be used in evidence against him at a hearing to adjudicate juvenile delinquency. The State produced no evidence that appellant understood the warnings given him and their implications.

We hold that the warnings given appellant did not substantially comply with the warnings required to advise him of his rights. Thus appellant's statement was taken in violation of sections 51.095(a)(1)(A) and (a)(5) of the Family Code and, therefore, in violation of section 52.025(b)(5) of the Code. *See* Tex. Fam.Code Ann. § 52.025(b)(5).

Conclusion: Because appellant's electronically recorded custodial statement was taken in violation of sections 52.02(a), 52.025(a), (b)(5), and (c), and 51.095(a)(1)(A) and (a)(5) of the Family Code, and thus violated appellant's substantial rights, we hold that the statement was inadmissible in his juvenile adjudication hearing under section 54.03 of the Code. *See* Tex. Fam.Code Ann. § 54.03(e); *see also Roquemore,* 60 S.W.3d at 869; *Comer,* 776 S.W.2d at 195-96; *Marsh,* 140 S.W.3d at 907.

We sustain appellant's first point of error.