

Review of Recent Juvenile Cases (2011)

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

Appellant's statements were not induced from either the medications she had received or from the effects of her withdrawal symptoms, and as a result voluntarily waived her rights. [Paolilla v. State](11-3-3)

On March 11, 2011, the Houston Court of Appeals (14 Dist) held that although appellant received potent dosages of each drug, no one testified that either the morphine or the methadone she ingested would have rendered her incapable of understanding her rights or overcome her free will in giving her statement.

¶ 11-3-3. Paolilla v. State, No. 14-08-00963-CR, --- S.W.3d ----, 2011 WL 2042761 (Tex.App.-Hous. (14 Dist.) 5/26/11). Substituted opinion for ¶ 11-2-1.

Facts: Four people were murdered in a Clear Lake home during the afternoon of July 18, 2003. The home belonged to Tiffany Rowell, who was counted among the four complainants. The other three were her friends Rachel Koloroutis, Marcus Precella, and Adelbert Sanchez.

Nearly three years after the offense, police received a tip through Crime Stoppers linking the homicides to appellant and her then-boyfriend, Christopher Lee Snider. A warrant was secured for appellant's arrest in San Antonio, where she had been staying in a hotel with her husband, Stanley Justin Rott.

The warrant was executed at 11:55 a.m. on July 19, 2006. When police entered the hotel room, they were met with evidence that the occupants had been using substantial amounts of heroin. Hundreds of used syringes littered the room. Appellant was wearing a t-shirt stained with blood, and several needle marks could be found over her body.

Appellant was escorted to the San Antonio Police Department, where she agreed to a video-taped interview at 2:45 p.m. During the interrogation, appellant admitted to driving Snider to Rowell's house on the day of the offense. She said they originally went there to purchase drugs, but they made a return trip when Snider complained of forgetting something. Appellant insisted that Snider went into the house by himself on both occasions while she remained in the car. When Snider returned the second time, she saw him running with a gun in his hands. She denied ever hearing any gunshots.

The interrogation ended at approximately 3:50 p.m. Appellant, however, remained alone in the interview room as the recorder continued to tape. In the ensuing minutes, her condition clearly began to deteriorate. She grew visibly tired, appearing weak and sick. The recording ended just after 3:58 p.m., when appellant requested to see a nurse, claiming she was bleeding.

Appellant was transported to Santa Rosa Hospital in San Antonio at approximately 4:12 p.m. Medical records indicate she was currently menstruating, but no other signs of bleeding were reported. Appellant did present, though, with a chief complaint of heroin withdrawal. She informed doctors that she was accustomed to taking heroin every ten to fifteen minutes, and that her last injection was roughly 10:00 a.m. that morning. At 5:30 p.m., appellant was administered six milligrams of morphine and twenty milligrams of Methadone.

Using only an audio recorder, interrogators continued their interview inside the hospital at 6:15 p.m. During this session, appellant again denied ever entering the home. She stated, however, that a fight erupted inside, with Snider admitting to shooting all four complainants. The interview concluded at 7:15 p.m. At approximately 9:00 p.m., just before her discharge, appellant received additional dosages of morphine and Methadone.

Appellant was flown to Houston later that evening. She slept on the flight and through part of the next day after being placed in a jail cell. Following an unrecorded interview during the afternoon of July 20, appellant complained of illness and requested to see a doctor. She was taken to Ben Taub Hospital at 6:50 p.m. and again treated for heroin withdrawal, this time receiving twenty-five milligrams of Librium at 10:07 p.m. Appellant was discharged at 11:00 p.m. and escorted back to police headquarters in downtown Houston.

A final video-taped interrogation commenced at 11:38 p.m. During this interview, appellant stated that Snider forced her into the house on the return trip, making her hold one of his two guns. Although she denied aiming at any of the complainants, she stated that Snider pulled the trigger a number of times while she held the gun in her hand. The interrogation ended at 1:39 a.m. on July 21. Appellant was then returned to her jail cell. The record does not show that she complained of illness following the interview.

In a pretrial hearing, appellant moved to suppress all three recorded statements. Although advised of her Fifth Amendment rights before each interview, appellant complained that her statements were rendered involuntary because of medications she ingested and because she was suffering from acute opioid withdrawal.

Appellant called a single expert witness, Dr. George S. Glass, a physician board certified in psychiatry and addiction medicine. Dr. Glass testified that appellant was a heroin addict with a very high tolerance for narcotics. He stated that heroin has a short half-life, meaning that it breaks down in the body relatively quickly. If the addiction is not sustained, an abuser can suffer from withdrawal between four and eight hours after her last injection. The physical symptoms of withdrawal, he said, include chills, fever, shaking, nausea, vomiting, and seizing.

Dr. Glass assumed that appellant's last use of the drug prior to her arrest occurred between 10:00 a.m. and 12:00 p.m. on July 19. Based on that time frame, he supposed that appellant would have entered serious opioid withdrawal between 4:00 p.m. and 8:00 p.m. that evening. Dr. Glass observed the first video-taped interrogation, which ended just before 4:00 p.m., and opined that appellant was in acute withdrawal because she was wrapped in a thin blanket and shaking.

Dr. Glass also described the drug treatment appellant received following her arrest. He said that six milligrams of morphine was a significant dosage normally reserved for intense pain, similar to the type of pain experienced by an adult male during a heart attack. Methadone, however, is commonly used when treating opioid dependence. The drug has a much longer half-life than heroin, and patients who take Methadone will not usually enter maximum withdrawal until twenty-four hours after it was last ingested. Dr. Glass also stated that the high dosage of Methadone demonstrated the extent of appellant's heroin addiction--the average person would have been comatose on that dosage if not similarly tolerant to the drug.

Dr. Glass explained that Librium is a minor tranquilizer also used in treating addictions. The drug removes the anxiety of withdrawal, but it does nothing for the cravings or for certain physiological symptoms, such as vomiting, nausea, diarrhea, and bone aches. According to Dr. Glass, appellant's dosage of Librium was the equivalent of consuming three to five shots of alcohol.

Dr. Glass testified that appellant was not intoxicated during her third interview in Houston. However, he opined that she did exhibit certain withdrawal symptoms, referencing a moment where she mentioned a desire to throw up. Dr. Glass observed shaking and anxiety, testifying that appellant's posture was "a little bizarre," as though her muscles were in spasm. Because appellant received her last dosage of Methadone more than twenty-six hours before this interview, Dr. Glass found her symptoms consistent with a person entering the peak of withdrawal.

The State produced testimony from three police officers. Sergeant Brian Harris executed the arrest warrant and conducted the two recorded interviews in San Antonio. He testified that he has been a certified peace officer for twenty-one years. During his tenure on the police force, he personally observed the effects of heroin on users, which he claimed are typically marked by irrational behavior and slurred and incoherent speech. He has also observed the physical breakdown of a person entering withdrawal.

According to Sergeant Harris, appellant did not appear to be under the influence of narcotics at the time of her arrest. During the first recorded interview, he stated that appellant was clear and calm, and her tone suggested an inquisitive demeanor. He testified that appellant did shake occasionally, but only when she was crying, which occurred during the interview's more sensitive discussion of the complainants, who appellant revealed were her friends and classmates. Sergeant Harris denied seeing any signs of intoxication. When questioned whether appellant deliberated before giving her answers, he described her responses as "calculated."

Sergeant Harris accompanied appellant on her transfer to Santa Rosa Hospital. He testified that appellant was relaxed and conversational during the hospital interview. He described her answers as clear and concise. Despite her treatments of morphine and Methadone, Sergeant Harris testified that appellant did not appear to be under the influence of any sort of intoxicant. Rather, he stated she was conscious and alert, and she made appropriate hand gestures when communicating her story.

Officer Connie Park managed the intake desk at the Houston Police Department on the night of July 20, 2006. Officer Park testified to having twelve years of experience with the police department, four of which were spent on the Gang Task Force. During those four years, she encountered a number of people who were impaired by the influence of drugs.

Sometime between 5:30 p.m. and 6:30 p.m. on July 20, Officer Park was asked to escort appellant to the bathroom, where they had a casual conversation. Officer Park testified that during their brief discussion, she observed none of the signs of impairment that typically accompany drug abuse. Officer Park described appellant's speech as "clearly coherent" and "matter of fact." In her view, appellant appeared to be oriented to time and place, and neither upset nor distraught. She also testified that appellant made no complaints about withdrawing from heroin.

Sergeant Breck C. McDaniel conducted the video-taped interview in Houston. He testified to having thirteen years of experience with the Houston Police Department. In that time, his work has involved some exposure with heroin addicts. He stated that heroin is a depressant, and addicts tend to appear tired or lethargic. He also testified that he has witnessed the symptoms of withdrawal, which primarily include vomiting, seizing, sweating, and visible illness.

Sergeant McDaniel testified that appellant displayed none of these symptoms during her interview. Occasionally, appellant did seem upset. When she recounted the shootings, for instance, her hands shook and she began to cry. Sergeant McDaniel allowed her frequent breaks to compose herself, even permitting her to smoke and drink a soda. According to him, she appeared physically fine and lucid throughout the interview.

The trial court denied appellant's motion to suppress. The court later issued findings of facts, which stated that the testimony from Sergeant Harris, Officer Park, and Sergeant McDaniel was credible and reliable. In the findings, the court also concluded that appellant was not intoxicated or suffering from withdrawal symptoms, and that during all three interviews, she was "lucid and capable of understanding the warnings given to her and the nature of her statements." Furthermore, the court specifically found that Dr. Glass's opinions were "not supported by the evidence and therefore not reliable." Because the court determined that appellant voluntarily waived her rights in supplying her statements, all three recordings were later published for the jury's consideration.

Held: Affirmed

Opinion: The recording of an interrogation may not be introduced into evidence unless the defendant knowingly, intelligently, and voluntarily waives her Fifth Amendment rights. Tex.Code Crim. Proc. Ann. art. 38.22, § 3(a) (West 2005); *Miranda v. Arizona*, 384 U.S. 436, 444, 474-75, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966). Appellant argues that waiver was involuntary in this case because her recorded statements were procured as she was either withdrawing from heroin or under the influence of morphine, Methadone, and Librium.

We examine a trial court's ruling on a motion to suppress using a bifurcated standard of review. *Wilson v. State*, 311 S.W.3d 452, 457-58 (Tex.Crim.App.2010). We afford "almost total deference to a trial court's determination of historical facts," especially when the trial court's findings are based on an evaluation of the credibility and demeanor of the witnesses. *Guzman v. State*, 955 S.W.2d 85, 89 (Tex.Crim.App.1997). If supported by the record, the trial court's ruling will not be disturbed. *Romero v. State*, 800 S.W.2d 539 (Tex.Crim.App.1990). The only question we review de novo is whether the trial court properly applied the law to the facts presented. *Carmouche v. State*, 10 S.W.3d 323, 327 (Tex.Crim.App.2000).

The voluntariness of a statement is assessed by considering the totality of the circumstances under which the statement was obtained. *Creager v. State*, 952 S.W.2d 852, 855 (Tex.Crim.App.1997). Of principal concern are the characteristics of the accused and the details of the interrogation. *Davis v. State*, 313 S.W.3d 317, 337 (Tex.Crim.App.2010). Although relevant, evidence of intoxication does not necessarily render a statement involuntary. *Jones v. State*, 944 S.W.2d 642, 651 (Tex.Crim.App.1996); *King v. State*, 585 S.W.2d 720, 722 (Tex.Crim.App. [Panel Op.] 1979). When the record reflects evidence of narcotics, medications, or other mind-altering agents, the question becomes whether those intoxicants prevented the defendant from making an informed and independent decision to waive her rights. See *Jones*, 944 S.W.2d at 651; see also *Nichols v. State*, 754 S.W.2d 185, 190 (Tex.Crim.App.1988) ("The central question is the extent to which appellant was deprived of his faculties due to the intoxication."), overruled on other grounds by *Green v. State*, 764 S.W.2d 242 (Tex.Crim.App.1989).

We recognize that appellant's drug abuse was significant, and her medical treatment considerable. Nevertheless, the record supports the trial court's ruling that appellant was capable of making an informed decision to waive her rights. Appellant did not appear intoxicated at any stage of her three recorded interrogations. Sergeant Harris testified that appellant spoke clearly and concisely during both interviews in San Antonio. During her first interview, appellant's responses were described as "calculated." At the hospital, Sergeant Harris said she was conscious and alert. Officer Park testified that appellant was oriented to her surroundings, and Sergeant McDaniel testified that she was physically fine and lucid during her Houston interview. All three officers testified to having experience dealing with heroin addicts, and each denied

witnessing any signs that appellant was withdrawing from heroin or under the influence of any sort of intoxicant. The court, as trier of fact during the suppression hearing, was free to believe the officers over the testimony of the expert. See *McGilliard v. Kuhlmann*, 722 S.W.2d 694, 697 (Tex.1986).

Although we defer to the trial court's finding that Dr. Glass's opinions were not credible, *Guzman*, 955 S.W.2d at 89, we do observe that Dr. Glass similarly testified that appellant was not intoxicated from any of the drugs she received. Even if appellant was further suffering from the effects of withdrawal, as Dr. Glass claimed, the evidence does not support appellant's argument that she was unable to make an informed decision to waive her rights. Cf. *Davis*, 313 S.W.3d at 337-38 (finding waiver voluntary despite confessor's testimony that he was "coming off" drugs where confessor was calm and exhibiting a rational understanding of the questioning); *United States v. Kelley*, 953 F.2d 562, 565 (9th Cir.1992) (finding waiver voluntary despite symptoms of withdrawal where confessor was coherent, responsive, and displaying an ability to think rationally), disapproved on other grounds by *United States v. Kim*, 105 F.3d 1579 (9th Cir.1997). We find support for the testimony of the officers in our own review of the recordings. We therefore conclude that the record supports the trial court's conclusion that appellant voluntarily waived her rights.

Appellant still argues that her statements should have been suppressed under the authority of *Townsend v. Sain*, 372 U.S. 293, 83 S.Ct. 745, 9 L.Ed.2d 770 (1963), overruled on other grounds by *Keeney v. Tamayo-Reyes*, 504 U.S. 1, 112 S.Ct. 1715, 118 L.Ed.2d 318 (1992). In *Townsend*, a heroin addict confessed to murder after receiving treatment with a drug having the properties of a "truth serum." *Id.* at 297-98. The drug was administered because the addict was entering opioid withdrawal. *Id.* The Supreme Court held that a "coherency" standard was not the appropriate test for determining whether a drug-induced statement was voluntarily made. *Id.* at 320. Rather, the appropriate inquiry is whether the individual's will was overborne, or whether his statement was the product of a rational intellect and a free will. *Id.* at 307. Appellant argues that the trial judge's findings should be disregarded because he used the wrong standard.

We do not find that appellant's recorded statements were admitted in violation of *Townsend*. Appellant may have very likely been under the influence of heroin during her first interrogation, yet no one, including Dr. Glass, actually testified that she appeared intoxicated. Moreover, Dr. Glass never testified that heroin by itself was sufficient to abrogate appellant's free will. See *King*, 585 S.W.2d at 722 (holding that heroin taken on day of confessing did not render confession involuntary).

Dr. Glass also failed to explain how any of the medications appellant received acted in the nature of a "truth serum." He merely testified that appellant was treated with morphine and Methadone to begin her detox and to stabilize her condition before her transfer to Houston. Although appellant received potent dosages of each drug, no one testified that either morphine or Methadone would render appellant incapable of understanding her rights. After receiving this treatment, appellant did not slur her words during the second interview. She did not pause inappropriately before answering a question, nor did she seem confused. Nothing on the audio recording indicated that appellant was incompetent to testify. Likewise, there was no testimony that the combined effect of morphine and Methadone had overcome appellant's free will, making her appear competent when, in fact, she was not.

Before her third recorded interview in Houston, appellant received Librium to treat the anxiety associated with her heroin withdrawal. Dr. Glass testified that the amount of Librium administered was the equivalent of several shots of alcohol, and that it did nothing for the physical symptoms of withdrawal. Dr. Glass agreed with the officers, however, that appellant was not intoxicated when she offered her statements. Moreover, Dr. Glass never testified that Librium would prevent appellant from waiving her rights freely and knowingly.

The record supports the trial court's finding that appellant's statements were not induced from either the medications she received or the effects of withdrawal. Because her recorded statements were not admitted in violation of Townsend, we overrule issues three through six.