Review of Recent Juvenile Cases (2012)

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

Once certified as an adult, the Family Code protections for the taking a confession by a juvenile no longer applies.[Dominquez v. State](12-3-11)

On July 26, 2012, the Corpus Christi Court of Appeals held that juvenile who had been certified to adult court was no longer a juvenile, and as a result, was free to give a confession under the rules of the code of criminal procedure.

¶ 12-3-11. **Dominguez v. State,** MEMORANDUM, No. 13-10-00493-CR, 2012 WL 3043072 (Tex.App.-Corpus Christi, 7/26/12).

Facts: After failing to arrive for work at the high school where he taught, John Edward Farr, the murder victim, was found dead in his apartment. There was no sign of forced entry and nothing in the apartment appeared to be out of order. Farr was lying in his bed on his back, dead. Farr was wearing pajamas and had been stabbed over twenty times. Farr died of severe stab wounds to the left and right internal jugular. There were no definitive defensive wounds on his body. A toxicology report revealed that Farr was intoxicated at the time of his death.

Police who arrived at the murder scene noticed that Farr's cellular phone and a laptop computer were missing. Farr's car was also missing from outside the apartment. Texas Rangers attempted to determine the location of Farr's phone in the hope that the phone would lead them to the person who killed Farr.

In the meantime, appellant's aunt contacted the Harlingen Police Department and reported that appellant admitted to killing someone. Police were dispatched to speak with appellant's aunt. When they arrived, appellant was with his aunt, and he told one of the officers, “You're going to find out anyway. I was stopped and arrested driving Mr. Farr's car.”The officer confirmed with the Texas Department of Public Safety that one of its troopers stopped appellant while he was driving Farr's car. Shortly thereafter, appellant was arrested on suspicion of murder.

The police learned from appellant's aunt that Farr was one of appellant's teachers and that Farr would give appellant money. At the time of his arrest on June 16, 2008, appellant was sixteen years old. Appellant was placed in a juvenile-detention facility until August 2008, when at age seventeen, he was certified to stand trial as an adult and transferred to an adult-detention facility. After being transferred, he gave law-enforcement officers a written statement in which he admitted to killing Farr.

A. The Relevant Contents of Appellant's Written Statement

Appellant's statement was admitted into evidence at trial. The beginning of appellant's statement includes a written warning and waiver of both his Miranda rights and his rights under

article 38.22, section 2 of the Texas Code of Criminal Procedure. In his statement, appellant explained that he was giving his statement “voluntarily, without fear of duress or threat, and without promise of leniency.”He also explained that prior to making the statement, he was advised that he was “suspected of or charged with the offense of capital murder.”

Appellant described Farr's murder and the surrounding circumstances. Appellant explained that in January 2008, he started the second semester of his freshman year at Harlingen High School South. Farr was his speech teacher. About a week into the semester, Farr arranged for appellant to be in his “Theatre Tech” class. Farr would ask him if he worked out, and he would ask him to flex his muscles. Farr said appellant could be a model or a stripper. Appellant stated that some time before spring break 2008, Farr called him on his cellular phone and told him to skip school to meet a friend of his who was a male stripper. According to his statement, appellant did so. Appellant visited Farr's apartment about ten times, and Farr would give appellant alcohol and money.

On the night of June 16, 2008, appellant called Farr and asked to borrow twenty dollars. Farr answered “yes” and told appellant to come to his apartment. After appellant drank about four mixed drinks and eight beers, Farr made multiple overt sexual advances to appellant while appellant was lifting weights. Appellant declined the advances and Farr offered him cocaine. After consuming the cocaine, appellant asked Farr if he was going to give him the twenty dollars. Farr told appellant to wait in his bedroom for the money and appellant did so. According to appellant, Farr then entered the bedroom holding a pointed object with a brown handle. Farr then attempted to molest appellant and during a struggle, appellant stabbed Farr with the pointed object. Appellant then stole some liquor from the apartment and fled in Farr's car.

Appellant attached to his written statement a drawing he made of the pointed object. It looks like an ice pick, though appellant did not use this term. On his drawing, appellant identified the “brown handle” and noted that the pointed portion measured four inches in length. Appellant signed beneath the drawing and wrote the date and time, “8–11–08 10:42 p.m.”

B. The Circumstances Surrounding Appellant's Written Statement

The transcript of the hearing on appellant's motion to suppress his written statement shows that law-enforcement officers did not attempt to interrogate appellant after his arrest on June 16, 2008, because an attorney arrived at the Harlingen Police Station, stated he represented appellant, and stated no one could speak to appellant .FN3On August 11, 2008, Lieutenant Rolando Castañeda of the Texas Rangers was informed that appellant had been certified to stand trial as an adult and was not represented by counsel.FN4He traveled to the adult-detention facility and asked appellant if he would give a statement. Detective Frank Rolph of the Harlingen Police Department and Lieutenant Victor Escalon, Jr. of the Texas Rangers accompanied Lieutenant Castañeda when he interviewed appellant. They were present during the entire interview.

FN3. Lieutenant Castañeda testified that in June 2008 an attorney named Trey Garza appeared at the police station and made that statement. Trey Garza, however, did not represent appellant in the trial court.

FN4. The appellate record does not include a copy of any motion to withdraw as counsel or any order permitting counsel to withdraw from representing appellant immediately following his certification to stand trial as an adult. After filing appellant's notice of appeal, appellant's trial counsel, Anthony P. Troiani, filed a motion to withdraw as counsel which the trial court granted before appointing appellate counsel.

Lieutenant Castañeda testified that appellant said he wanted to talk to the law-enforcement officers the night he was arrested, but that his attorney would not let him. After being read his Miranda warnings and the warnings required under Texas Code of Criminal Procedure article 38.22, appellant spoke with the officers and gave his written statement. The record shows appellant also initialed and signed a written copy of both sets of rights. Appellant was interviewed and gave his written statement in a law library and appellant, though handcuffed, was advised he was free to take a break any time during his three to three-and-a-half hour conversation with the officers. Appellant was very talkative and remained calm, though not emotionless, during the conversation.

Lieutenant Castañeda testified that if appellant had told him he did not want to speak, he would not have continued the conversation. Lieutenant Castañeda admitted that at one point in the conversation he probably did tell appellant he would “talk to the District Attorney's Office without promising anything and see what happens because of his cooperation.”But when asked whether he told appellant this at the outset of the conversation, Lieutenant Castañeda responded that he could not recall at what point during the interview he made this statement. In response to questioning from defense counsel about when he made the statement, Lieutenant Castañeda clarified that the start of his conversation with appellant consisted of Lieutenant Castañeda introducing himself, telling appellant he was present to hear appellant's side of the story, and reading appellant his rights after appellant said he had wanted to give a statement from the “get-go.” Lieutenant Castañeda testified that he did not promise appellant a reduced sentence in exchange for his statement, and that appellant was not threatened or coerced in any way to make a statement.

Detective Rolph testified that there was no conversation with appellant about how his confession would affect his case. Lieutenant Escalon testified that he did not remember anyone telling appellant that the officers would talk to the district attorney about his cooperation.

Appellant testified at the suppression hearing and, in several respects, gave a different account of the events that preceded his statement. Appellant testified that on the day of his arrest, June 16, 2008, he told law enforcement and a magistrate judge that he did not want to talk to any of them. He was not interrogated at that time. Appellant testified that no law-enforcement officer attempted to talk to him again until August 11, 2008, after he was certified to stand trial as an adult. When asked whether he had an attorney at the time he was certified to stand trial as an adult, appellant testified, “No, sir. Well, at that time it was a juvenile court-appointed attorney.”

Appellant testified that when the law-enforcement officers came to talk to him on the night of August 11, 2008, the officers told him that they wanted to know the truth and that if he spoke to them, they would tell the district attorney to give him “less time” or “help” him “out.”

Appellant testified that he initially told the officers he did not want to speak, but because of their offer, he “just told them what happened from the beginning.”

C. The Trial Court's Ruling on Appellant's Motion to Suppress

At the end of the suppression hearing, the trial court denied appellant's motion to suppress his written statement. The trial court found in open court that the statement was obtained in compliance with Texas Code of Criminal Procedure article 38.22, and its findings are included in the reporter's record. SeeTEX.CODE CRIM. PROC. ANN. art. 38.22, § 6 (West 2011) (requiring the trial court to enter the specific findings of fact that support its conclusion that the written statement made by an accused as a result of custodial interrogation was voluntarily made); Drake v. State, 123 S.W.3d 596, 601–02 (Tex.App.-Houston [14th Dist.] 2003, pet. ref'd) (holding trial court's oral findings that were dictated to a court reporter and made part of the record satisfied the article 38.22 requirement that the trial court enter findings); Garza v. State, 915 S.W.2d 204, 211 (Tex.App.-Corpus Christi 1996, pet. ref'd) (explaining it is mandatory for the trial court to file findings under article 38.22, section 6). The court also found appellant was read his warnings, made a voluntary statement, and understood the consequences of giving his statement. See e.g., Drake, 123 S.W.3d at 601–02.

In the trial court, the focus of appellant's motion to suppress was that he lacked the intelligence to validly waive his rights and give a knowing, voluntary statement to the law-enforcement officers. Appellant also argued in his motion to suppress that: (1) his written statement was inadmissible because it was obtained in violation of his rights under the Fifth and Sixth Amendments to the United States Constitution; and (2) the statement was induced by an improper promise from a law-enforcement officer.

Held: Affirmed

Memorandum Opinion: By his first issue, appellant argues that the trial court erred by admitting his written statement into evidence because it was obtained in violation of his rights under the Fifth and Sixth Amendments to the United States Constitution. SeeU.S. CONST. amends. V, VI. Specifically, appellant argues that his statement was inadmissible under Michigan v. Jackson and Edwards v. Arizona because he was represented by counsel when he gave the statement, counsel had previously advised law enforcement that no one was to speak to appellant, and counsel was not present when appellant was taken from his cell just after 10:00 p.m. and interrogated for over three hours. See Michigan v. Jackson, 475 U.S. 625, 636 (1986), overruled by Montejo v. Louisiana, 556 U.S. 778 (2009); Edwards v. Arizona, 451 U.S. 477, 485 (1981).

The Supreme Court of the United States has held that in deciding whether an accused actually invoked his right to counsel, reviewing courts must use an objective standard and determine whether an accused unambiguously requested counsel during custodial interrogation. See Pecina v. State, 361 S.W.3d 68, 79 (Tex.Crim .App.2012) (citing Davis v. U.S., 512 U.S. 452, 458–59 (1994)). This approach avoids difficulties of proof and provides officers guidance in conducting interrogations. Id. Thus, we review the totality of the circumstances from the viewpoint of the objectively reasonable police officer conducting a custodial interrogation.FN6Id.

FN6. This objective standard applies to a child's invocation of his constitutional right to have counsel present during custodial interrogation. In re H.V., 252 S.W.3d 319, 333 (Tex.2008) (citing Davis v. U.S., 512 U.S. 452, 459 (1994)). The federal Miranda rights "apply to juveniles just as they do to adults." Id. at 325.In Texas, a person who is seventeen at the time of making a statement to law enforcement is treated as an adult. See Ramos v. State, 961 S.W.2d 637, 639 (Tex.App.-San Antonio 1998, no pet.)(citing Griffin v. State, 765 S.W.2d 422, 427 (Tex.Crim .App.1989) and applying TEX. FAM.CODE ANN. § 51.095).

In Pecina v. State, the Texas Court of Criminal Appeals considered how the Fifth and Sixth Amendment rights to counsel are invoked and how they apply to custodial interrogation. See id. at 74–75.The Fifth Amendment prohibits the government from compelling a criminal suspect to incriminate himself. Id. (citing U.S. CONST. amend. V which states, "No person ... shall be compelled in any criminal case to be a witness against himself."). Before questioning a suspect who is in custody, police must give the suspect Miranda warnings.Id. at 75 (citing Miranda v. Arizona, 384 U.S. 436 (1966)). Only if the person voluntarily and intelligently waives his Miranda rights, including his right to have an attorney present during interrogation, may his statement be introduced into evidence against him at trial. Id. Under Edwards, once a person has invoked his right to have counsel present during custodial interrogation, police may not re-initiate interrogation; police may not badger a person into waiving his previously asserted Miranda rights. Id. (citing Edwards, 451 U.S. at 485). But Miranda rights can only be invoked within the context of custodial interrogation. Id. at 75–76.The Supreme Court of the United States has never accepted anticipatory invocation of Miranda rights (1) given by someone other than law-enforcement officers or other state agents; or (2) outside the context of custodial interrogation.Id. at 76 (citing McNeil v. Wisconsin, 501 U.S. 171, 182 n. 3 (1991)).

The Sixth Amendment right to counsel attaches once the adversary judicial process has been initiated, and it guarantees a defendant the right to have counsel present at all critical stages of the criminal proceedings, including custodial interrogation. Id. at 77 (citing Montejo, 556 U.S. at 786). Under Montejo, if an accused who requested counsel at an arraignment or other initial appearance also wishes to invoke his Sixth Amendment right to counsel during post-arraignment custodial interrogation, he may do so by invoking his Miranda rights at the outset of custodial interrogation. Id. at 78.A defendant's invocation of his right to counsel at the time of magistration says nothing about his possible invocation of his right to counsel during a subsequent police-initiated custodial interrogation. Id.

In Pecina, paramedics responded to a 911 call and found Pecina and his wife in their apartment bleeding from stab wounds. Id. at 71.Pecina's wife died before the paramedics arrived and police believed Pecina had killed his wife, then stabbed himself. Id. While Pecina was still in the hospital, an arrest warrant was obtained and a magistrate visited Pecina in his room. Id. The magistrate arraigned Pecina and then asked him if he wanted a court-appointed attorney and if he wanted to talk to the Arlington Police Department detectives who were waiting outside his hospital room. Id. at 72.Pecina stated he wanted a court-appointed attorney. Id. Pecina also responded that he wanted to speak with the detectives and never indicated to the magistrate that he wanted an attorney present when he spoke with the detectives. Id. The magistrate then exited the room. Id. The detectives entered Pecina's hospital room, and after Pecina received his

Miranda warnings and waived his Miranda rights, he gave the police a recorded statement. Id. Later, trial counsel was appointed to represent him. Id. at 73.The Court of Criminal Appeals concluded that because the defendant never invoked his right to counsel during the custodial interrogation, the trial court properly denied his motion to suppress the admission of his statement into evidence at trial.Id. at 81.

In this case, as in Pecina, there is no evidence appellant ever invoked his right to counsel in the context of a custodial interrogation. Neither appellant's own testimony (that in June 2008, he told law enforcement and the magistrate he did not want to talk) nor Lieutenant Castañeda's testimony (that an attorney arrived at the Harlingen police station and stated no one could speak to appellant) showed that appellant invoked his Miranda rights during a custodial interrogation. Therefore, the trial court properly denied appellant's motion to suppress his written statement because the record did not show that appellant's statement was obtained in violation of his rights under the Fifth and Sixth Amendments to the United States Constitution. See id. (citing Montejo);see also Montejo, 556 U.S. at 689 (explaining the Sixth Amendment does not categorically prohibit law-enforcement officers from approaching a defendant and asking him to consent to custodial interrogation solely because he is represented by counsel); Montelongo v. State, 681 S.W.2d 47, 53–54 (Tex.Crim.App.1984) (explaining the trial court may reject the accused's testimony at a suppression hearing and believe the police officers' testimony instead; holding that absent an accused's clear invocation of the right to counsel during custodial interrogation, an attorney's unsolicited advice to not give a statement is not an invocation of the right to have counsel present during custodial interrogation). Accordingly, we overrule appellant's first issue.

3. Admissibility of the Statement under the Code of Criminal Procedure

By his second issue, appellant argues that his written statement was inadmissible under article 38.21 of the Texas Code of Criminal Procedure because it was induced by Lieutenant Castañeda's alleged promise to help appellant if he made a statement to the law-enforcement officers.FN7SeeTEX.CODE CRIM. PROC. ANN. art. 38.21 (West 2005). We disagree.

FN7. In the trial court, appellant cited Texas Code of Criminal Procedure article 38.22 in support of his contention that a promise may have rendered his statement involuntary, but on appeal he cites article 38.21. SeeTEX.CODE CRIM. PROC. ANN. arts. 38.21, 38.22 (West 2005). Notwithstanding this discrepancy, we will address the merits of appellant's second issue because under both articles, the Texas Court of Criminal Appeals has used the same test in determining whether a promise rendered a confession involuntary. Compare Joseph v. State, 309 S.W.3d 20, 26 n. 8 (Tex.Crim.App.2010) (analyzing the voluntariness of a statement under article 38.22), with Martinez v. State, 127 S.W.3d 792, 794 (Tex.Crim.App.2004) (analyzing the voluntariness of a statement under article 38.21).

Article 38.21 provides that a statement of an accused may be used in evidence against him if it appears that the same was freely and voluntarily made without compulsion or persuasion. Id. To decide whether a statement meets this standard, a court of appeals must examine the totality of the circumstances surrounding the acquisition of the statement to determine whether it was given voluntarily. Delao v. State, 235 S.W.3d 235, 239 (Tex.Crim.App.2007); Creager v. State, 952 S.W.2d 852, 856–57 (Tex.Crim.App.1997). For a promise to render a confession invalid under article 38.21, the promise must be: (1) positive; (2) made or sanctioned by someone in

authority; and (3) of such an influential nature that it would cause a defendant to speak untruthfully. Martinez v. State, 127 S.W.3d 792, 794 (Tex.Crim.App.2004) (citing Henderson v. State, 962 S.W.2d 544, 564 (Tex.Crim.App.1997)). However, the relevant inquiry under state law is not whether the defendant spoke truthfully or not, but whether the officially sanctioned, positive promise would be likely to influence the defendant to speak untruthfully. Id. at 794–95.

In Masterson, the Court of Criminal Appeals held that a police officer's statement to a defendant that he would "pass along" information if the defendant admitted to owning certain drugs, did not amount to a positive promise. Masterson v. State, 155 S.W.3d 167, 171 (Tex.Crim.App.2005). Similarly, in Martinez, the Court of Criminal Appeals concluded that no positive promise was made when a police detective testified that he made no promises to the defendant, he told the defendant he needed to know who owned the drugs, and that the defendant "could have gathered" from that statement that his brother and father would not be charged if the defendant accepted responsibility for the drugs. Martinez, 127 S.W.3d at 793, 795.

In considering appellant's motion to suppress, the trial court was free to believe the law-enforcement officers' testimony and to disbelieve appellant's testimony. See Delao, 235 S.W.3d at 238; Masterson, 155 S.W.3d at 171. With regard to whether a promise was made, Lieutenant Castañeda testified that he did not promise appellant anything, but testified that he probably did tell appellant he would talk to the district attorney's office and see what happened based on appellant's cooperation. Lieutenant Castañeda's testimony also showed that while he could not recall the point in the conversation at which he would have made this statement to appellant, it was not at the beginning of the conversation or before appellant agreed to give a statement. Conversely, Lieutenant Escalon and Detective Rolph testified respectively that they did not recall any conversation about how the statement would affect appellant's case and that there was no such conversation with appellant. Considering the totality of the circumstances, the evidence supports the trial court's implied finding that no positive promise was made to induce appellant to give his statement. See Martinez, 127 S.W.3d at 795; Masterson, 155 S.W.3d at 170. We overrule appellant's second issue.

D. Response to Dissenting Memorandum Opinion

The dissent argues that because the juvenile court had not yet signed its order waiving jurisdiction and transferring appellant's case to the trial court when appellant gave his written statement, law-enforcement officers improperly obtained appellant's written statement and the trial court reversibly erred by failing to suppress the written statement sua sponte.We cannot agree with the dissent's analysis because it fails to explain why its transfer-order argument is not subject to waiver and because it does not adequately address either the legal significance of appellant's age (seventeen) when he gave his written statement to law enforcement or the legal significance of appellant's physical transfer to an adult-detention facility prior to giving his statement. In addition, the dissent's reliance on dicta from Vasquez v. State is misplaced because Vasquez is not about the signing or timing of a juvenile court's transfer order. See 739 S.W.2d 37, 43 (Tex.Crim.App.1987) (en banc).

Procedurally, we note that even if appellant's statement was improperly obtained because the juvenile court's transfer order was not signed before appellant gave the statement, the dissent fails to explain how this Court could consider the argument when it was not raised in the trial

court or on appeal. SeeTEX.R.APP. P. 33.1, 38.1. In the trial court, there was no dispute about whether appellant was an adult at the time he gave his written statement to law enforcement. Instead, appellant argued his motion to suppress his written statement on the premise that he was an adult at the time he gave the statement. At the outset of the suppression hearing, the State urged the trial court to dismiss appellant's motion because it was too vague. In response, appellant's counsel explained his suppression argument to the trial court, stating, among other things, that even though appellant had been certified to stand trial as an adult, had turned seventeen, and had been transferred to an adult-detention facility before giving his written statement, appellant lacked the intelligence to validly waive his rights and voluntarily give law-enforcement officers a statement.

On appeal, appellant has not changed his position concerning whether he was an adult when he gave his written statement. In other words, even assuming for the sake of argument only that appellant was entitled to the protections of Family Code section 51.095 when he gave his written statement, appellant waived this complaint by not raising it in the trial court and by not briefing it on appeal. See Ponce v. State, 985 S.W.2d 594, 595 (Tex. App .-Houston [1st Dist.] 1999, no pet.)(holding defendant failed to preserve for appellate review her claim that her statement was taken in violation of Family Code section 51.095 when she did not obtain a ruling on this claim in the trial court); see alsoTEX.R.APP. P. 33.1, 38.1; Geter v. State, No. 05–95–00775–CR, 1996 WL 459767, at *3 (Tex.App.-Dallas July 31, 1996, no pet.)(not designated for publication) (holding appellant failed to preserve for appellate review his complaint that his confession was inadmissible because it was not given in accordance with the Family Code requirements pertaining to admissibility of a child's statement).

We further note that there is no evidence in the record that law-enforcement officers attempted to interrogate appellant on June 16, 2008, after appellant's arrest. At the suppression hearing, appellant testified as follows about his interaction with law-enforcement officers at the time of his arrest. Appellant gave the following testimony on direct-examination:

Q. Okay. Back in June of 2008, how old were you?

A. I was 16.

Q. Okay. On June 16th, 2008, were you arrested?

A. Yes, sir.

Q. Okay. At that time, were you approached by officers of the—well, law enforcement officers?

A. Yes, sir, I was.

Q. Okay. Did you at that time agree to speak with law enforcement officers?

A. No, sir, I did not. I refused.

Q. Okay. Do you remember what the officers—did the officers speak to you at all?

A. No, sir.

Q. Okay.

A. They just asked me if I wanted to speak to them, and I said no, I did not.

Q. Okay. And where were you taken?

A. To Harlingen PD.

Q. Okay. And at Harlingen PD, were you placed in a cell?

A. No, sir. It was in, I believe it was like a little office.

Q. Okay.

A. It was in a room, yeah.

Q. Okay. And at that time what happened?

A. I was there for a while, about an hour, and they told me if I wanted to speak to anybody. I said, "No, I don't want to speak to anybody."And then I believe it was a, Judge Sallie Gonzalez, she came and told me that if I want to speak to her. I said no, I refused, and I signed the paper.

Q. Okay. And so when you spoke with the officers, you told them you didn't want to speak to them; and then when you spoke, when Judge Gonzalez asked you about it, you told her you didn't want to speak to the officers either?

A. No, sir.

Q. Okay. Between that time, between speaking with Judge Gonzalez and August 11th of 2008, did anyone attempt to speak with you or talk to you about this case?

A. No, sir.

Q. From law enforcement?

A. No, sir.

Lieutenant Castañeda testified that there was no attempt to interrogate appellant after his arrest on June 16, 2008, because an attorney arrived at the Harlingen Police Station, stated he represented appellant and no one could speak to appellant. As the sole fact finder at the suppression hearing, the trial court was free to believe Lieutenant Castañeda's testimony. See Wiede, 214 S.W.3d at 24.

The dissent would hold that section 54.02 of the Texas Family Code required the juvenile court to sign its transfer order before appellant made his statement in order for the statement to be admissible. Section 54.02 of the Family Code is titled "Waiver of Jurisdiction and Discretionary Transfer to Criminal Court."SeeTEX. FAM.CODE ANN. § 54.02 (West 2008).Section 54.02 addresses the circumstances under which a juvenile court is authorized or required to waive its jurisdiction and transfer a case to a criminal court. See id. § 54.02(a),(m); see also Miller v. State, 981 S.W.2d 447, 449 (Tex.App.-Texarkana 1998, pet. ref'd) (discussing section 54.02).Section 54.02 also sets forth certain required contents of an order waiving jurisdiction and transferring a person to the appropriate court for criminal proceedings. SeeTEX. FAM.CODE ANN. § 54.02(h). However, the Legislature has not made section 54.02 the legal standard for the admissibility of a statement given by a seventeen year old incarcerated in an adult-detention facility.

Neither Family Code section 51.095 ("Admissibility of a Statement of a Child") nor section 54.02 ("Waiver of Jurisdiction and Discretionary Transfer to Criminal Court") makes the date the transfer order is signed dispositive of whether the admissibility of a statement is governed by Family Code Section 51.095. See id. §§ 51.095, 54.02. Section 51.02 of the Family Code defines a "child" as someone who is "ten years of age or older and under 17 years of age."See id. § 51.02. The protections of Family Code section 51.095, pertaining to the admissibility of statements, apply only to "the statement of a child." See id. § 51.095. Appellant was not a child when he made his written statement because he had already turned seventeen. See id.; see also Griffin v. State, 765 S.W.2d 422, 427 (Tex.Crim.App.1989) (explaining the admissibility of a statement made at age sixteen and before juvenile court relinquished jurisdiction was properly analyzed under the Family Code); Lovell v. State, 525 S.W.2d 511, 514 (Tex.Crim.App .1975) (same); Ramos v. State, 961 S.W.2d 637, 639 (Tex.App.-San Antonio 1998, no pet.)(citing Griffin, 765 S.W.2d at 427 and applying TEX. FAM.CODE ANN. § 51.095).

Our interpretation is supported by the following language in section 54.02 which the dissent did not include as pertinent to its analysis: "[o]n transfer of the person for criminal proceedings, the person shall be dealt with as an adult and in accordance with the Code of Criminal Procedure.... The transfer of custody is an arrest."TEX. FAM.CODE ANN. § 54.02(h). Appellant had been transferred to an adult-detention facility when he made his statement. Without ruling on the issue of the precise timing of a transfer order, the Court of Criminal Appeals has interpreted the arrest language in the statute to mean that once a person is transferred to adult custody from juvenile custody, he is arrested "as an adult suspect." See Vasquez, 739 S.W.2d at 40.FN9 While the Vasquez Court stated in dicta, "[u]ntil the moment transfer is ordered, the juvenile is cloaked with the trappings of a non-criminal proceeding with attendant safeguards such as greater protections in the areas of confession law and notice requirements[,]"Vasquez does not contemplate, in dicta or otherwise, the proper procedure and timing for signing a transfer order under section 54.02 of the Family Code. See id. at 44.Thus, the dissent's emphasis on Vasquez is misplaced.

FN9. The issue before the Court of Criminal Appeals in Vasquez v. State was whether a defendant arrested as a juvenile, but later certified to stand trial as an adult, was entitled to the protections of the adult-arrest statute in Texas Code of Criminal Procedure article 14.04 at the

time of his initial detention. 739 S .W.2d 37, 40 (Tex.Crim.App.1987) (en banc). The court held he was not. Id. at 43.

Conclusion: We affirm the trial court's judgment.

Dissenting Memorandum Opinion by Justice BENAVIDES.
A review of the record reveals the following timeline:

• On June 16, 2008, Dominguez was arrested under the juvenile justice code.

• That same day, as per Lieutenant Castañeda's testimony, attorney “Trey Garza” arrived at the Harlingen Police Department, declared himself attorney for Dominguez, and stated that no one was to talk to Dominguez.

• According to testimony, on June 16, 2008 Officers took Dominguez before Magistrate Sallie Gonzalez in an attempt to interrogate him, but Dominguez refused to speak with them. SeeTEX. FAM.CODE ANN. § 51.095 (West 2008).

• A hearing was held to determine whether Dominguez should be transferred to the criminal court system.FN1See id.§ 54.02 (West 2008). Dominguez testified in the motion to suppress hearing that he was declared an adult at this proceeding and was represented by a juvenile court-appointed attorney.

FN1. I am unable to the exact date of this hearing from the record. At the suppression hearing, defense counsel argued to the trial court that the transfer hearing was held on August 8, 2008, the State elicited testimony from Officer Rolph confirming that Dominguez had “waived his hearing on a discretionary transfer to become certified as an adult,” and Dominguez testified that his adult certification hearing was “on the 12th.”

• On August 11, 2008, Dominguez was transferred to the adult Carrizales–Rucker Detention Center.

• Lieutenant Castañeda received a call from an unidentified source advising him that Dominguez was certified as an adult and was being transferred to the Carrizales–Rucker facility.

• Lieutenant Castañeda and Officers Rolph and Escalon removed Dominguez from his cell after 10 p.m.

• Lieutenant Castañeda did not ask Dominguez if he was represented by an attorney because he was notified by an unnamed source that Dominguez was not represented. Lieutenant Castañeda proceeded to read Dominguez his Miranda rights and interrogate Dominguez along with the other officers.

• Lieutenant Castañeda testified at the suppression hearing that Dominguez told them that he wanted to talk to them before, but his attorney would not allow it. However, Dominguez testified that he told law enforcement officers that he did not want to be questioned, but they persisted.

• According to Dominguez's testimony, he signed his self-incriminating statement approximately two to three hours after law enforcement officers arrived at the adult facility at 12:45 a.m.

• On August 27, 2008, the juvenile court signed an order waiving jurisdiction and transferring the cause to the criminal district court. See id.

Based on these facts, I would hold that the trial court committed harmful error in denying Dominguez's motion to suppress the August 12, 2008 statement because the officers obtained Dominguez's statement improperly under the juvenile justice code.

I. JURISDICTION AND WAIVER

As a matter of procedure, this Court is not precluded from addressing an issue not briefed or raised by Dominguez. When a defendant appeals his conviction, courts of appeals have the jurisdiction to address any error in that case. Pfeiffer v. State, 363 S.W.3d 594, 599 (Tex.Crim.App.2012). The jurisdiction of this Court is invoked by the timely filing of a notice of appeal. Id. Once our jurisdiction is invoked, our function to review is limited only by our own discretion or valid restrictive statute. See Carter v. State, 656 S.W.2d 468, 469 (Tex.Crim.App.1983) (en banc) (holding that "[a]fter jurisdiction attaches to a particular cause, a broad scope of review and revision has been asserted by appellate courts of this State—one that is still recognized, acknowledged and confirmed by the Legislature"). Furthermore, " '[t]here is a fundamental proposition pertaining to appellate functions of the [j]udicial [d]epartment: A constitutional grant of appellate jurisdiction treats a right of appeal in criminal cases 'as a remedy to revise the whole case upon the law and facts, as exhibited in the record[.]' " Pfeiffer, 363 S.W.3d at 599 (quoting Carter, 656 S.W.2d at 468). Therefore, when a defendant appeals his conviction, courts of appeals have the jurisdiction to address any error, see Pfeiffer, 363 S.W.3d at 599; even those which "prompt sua sponte appellate attention" because the error involved constitutes a violation of established rules. Pena v. State, 191 S.W.3d 133, 136 (Tex.Crim.App.2006). I would hold that the error in this case is one that our Court's discretion cannot ignore and one that we must address sua sponte, in light of the age of the defendant at the time, the facts of the case, the magnitude of the offense, and the potential harm that ignoring it may cause.FN2

FN2. The waiver cases cited by the majority from our sister courts in Houston and Dallas deal with unrelated issues and are thus unpersuasive. The Ponce case involved a child committing the crime of perjury, which does not preclude prosecution; and in Geter, the appellant challenged the manner and means of waiving his rights before a magistrate under section 51.09 of the family code. See Ponce v. State, 985 S.W.2d 594, 595 (Tex.App.-Houston [1st Dist.] 1999, no pet.); Geter v. State, No. 05–95–00775–CR, 1996 WL 459767, at *3 (Tex.App.-Dallas July 31, 1996, no pet.)(not designated for publication). Neither of these cases applies here.

II. ANALYSIS

Juveniles and adult criminal defendants are not treated equal in Texas "until the former is certified as an adult and comes within the purview of the adult criminal system." Vasquez v. State, 739 S.W.2d 37, 43 (Tex.Crim.App.1987) (en banc). For purposes of the juvenile code, a

“child” is a person who is older than ten, but younger than 17 years of age. TEX. FAM.CODE ANN. § 51.02(2) (West 2008).“Until the moment transfer is ordered, the juvenile is cloaked with the trappings of a non-criminal proceeding with attendant safeguards such as greater protections in the areas of confession law and notice requirements.” Vasquez, 739 S.W.2d at 43.FN3

FN3. The Vasquez decision by Judge McCormick is an interpretation of the juvenile justice code as well as rigorous analysis of pertinent case law and constitutional principles. References to Vasquez are hardly “dicta” as the majority contends.

Some of the governing statutory safeguards include the rules regarding waiver of rights and admissibility of a child's statement. SeeTEX. FAM.CODE ANN. §§ 51.09–.095 (West 2008). For example, a child may not waive any federal or state constitutional rights without the consent of the child and his attorney, unless he received proper warnings from a magistrate without the presence of law enforcement. Compare id. §§ 51.09–.095withTEX.CODE CRIM. PROC. ANN. art. 38.22 (West 2003).

Here, Dominguez's transfer order was not signed until August 27, 2008—two weeks after law enforcement obtained his written confession at the Carrizales–Rucker facility. Because a juvenile court holds exclusive original jurisdiction over these matters, I would hold that a written transfer order under section 54.02 is jurisdictionally mandatory because it effectively waives the juvenile court's jurisdiction and transfers it from a juvenile proceeding to an adult proceeding. But see Evans v. State, 61 S .W.3d 688, 690 (Tex.App.-Fort Worth 2001, no pet.)(holding that a lack of written transfer order between two adult criminal district courts was a procedural matter rather than a jurisdictional one).

The record is unclear as to when Dominguez was certified as an adult. The majority assumes from testimony that Dominguez was certified prior to his self-incriminating statement. Without more details, I cannot join this assumption because dates are too critical to this issue. After his physical transfer to the Carrizales–Rucker facility on August 11, 2008, law enforcement visited Dominguez later that night into the early morning of the next day. The majority assumes, based on testimony, that a proper transfer order was in place on August 11, 2008, when Dominguez was moved to the adult facility. However, without being afforded the underlying juvenile record in this case, we must conclude that Dominguez's final transfer under section 54.02 was effective on August 27, 2008, not August 11, 2008.FN4The mere physical transfer of Dominguez from a juvenile facility to an adult facility, without a signed, corresponding written transfer order, is inadequate for me to conclude that the juvenile cloak had been lifted in this case at the time he made his statement.FN5 Vasquez, 739 S.W.2d at 43. I am baffled by the majority's position that Dominguez's physical transfer to an adult-detention facility without the proper, signed transfer order was enough to remove his “juvenile cloak,” particularly when it appears from the record that the officers who conducted Dominguez's interrogation were acting on information told to them from unknown or undisclosed sources. This assertion is unreasonable because it effectively skirts and defies the Legislature's intent to hold juvenile defendants under a more protected justice system separate and apart from adult criminals.FN6Therefore, I would hold, based on the record, that until August 27, 2008, Dominguez was (1) a child, seeTEX. FAM.CODE ANN. § 51.02(2)FN7; (2) represented by counsel, see id. § 51.10(b)(1); and (3) should have been afforded the procedural safeguards for juvenile defendants, seeTEX. FAM.CODE ANN. §§

51.09–095. Dominguez should not have been allowed to waive his Fifth Amendment right and sign his statement without his attorney or a magistrate present under the juvenile code. See id.

FN4. It is worth noting that the transfer order included in Dominguez's record is defective. The transfer order fails to comply with the statutory requisites of section 54.02. The pertinent statutes states that if a juvenile court waives jurisdiction:

> it shall state specifically in the order its reasons for waiver and certify its action, including the written order and findings of the court, and shall transfer the person to the appropriate court for criminal proceedings and cause the results of the diagnostic study of the person ordered under Subsection (d), including psychological information, to be transferred to the appropriate criminal prosecutor.

SeeTEX. FAM.CODE ANN. § 54.02(h).

FN5. I would hold that cases like Rushing v. State, 50 S.W.3d 715 (Tex.App.-Waco 2001), aff'd 85 S.W.3d 283 (Tex.Crim.App.2002), are inapplicable to the instant case because they deal with late filings of transfer orders and not the effective dates of the orders. Here, a transfer order was not effective until August 27, 2008. The filing date of the order is irrelevant in this case.

FN6. The majority's interpretation of section 54.02 would be nonsensical and would create inconsistencies in the law. See Molinet v. Kimbrell, 356 S.W.3d 407, 414–15 (Tex.2011) (holding that "it is the Legislature's prerogative to enact statutes; it is the judiciary's responsibility to interpret those statutes according to the language the Legislature used, absent a context indicating a different meaning or the result of the plain meaning of the language yielding absurd or nonsensical results").

FN7. Dominguez's age by itself does not automatically remove him from the enhanced protections of the juvenile justice code. See Vasquez, 739 S.W.2d at 43 (noting that a child is not "arrested" for purposes of criminal action until a juvenile transfer order is entered).

The juvenile justice code was enacted by our legislature to meet several public policy goals and "pervasive themes," such as (1) to provide for the protection of the public and public safety; and (2) to provide for the care, the protection, and the wholesome moral, mental, and physical development of children coming within its provisions. Id. § 51.01 (West 2008); Lanes v. State, 767 S.W.2d 789, 795 (Tex.Crim.App.1989) (en banc); see In re D.Z., 869 S.W.2d 561, 566–67 (Tex.App.-Corpus Christi 1993, writ denied). In order to further these intended goals and themes, law enforcement must comply with these statutes when dealing with juvenile defendants. That did not happen here. See generally id.

Accordingly, I conclude that law enforcement authorities in this case improperly obtained Dominguez's confession in the early morning hours of August 12, 2008, and in light of this impropriety, I would hold that the trial court committed error by denying Dominguez's pre-trial motion to suppress. See Shepherd v. State, 273 S.W.3d 681, 684 (Tex.Crim.App.2008). This error allowed the jury to place weight on Dominguez's improperly-obtained statement, and if I were to hold it harmless, it will encourage the State to repeat this impropriety with impunity.

SeeTEX.R.APP. P. 44.2(a); Wilson v. State, 938 S.W.2d 57, 61 (Tex.Crim.App.1996) (en banc). Because I cannot determine beyond a reasonable doubt that this erroneous admission of evidence did not contribute to Dominguez's conviction or punishment, I would reverse the conviction and remand for a new trial. SeeTEX.R.APP. P. 44.2(a); Hernandez v.. State, 60 S.W.3d 106, 108 (Tex.Crim.App.2001).

For the foregoing reasons, I respectfully dissent.