Year 2004 Case Summaries

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No evidence respondent did not understand warnings from magistrate prior to making confession [Jeffery v. State] (04-2-32).

On May 20, 2004, the Texarkana Court of Appeals held that there was no evidence that the respondent did not understand warnings from the magistrate prior to making her confession; any error was harmless because her trial testimony confirmed the details of her confession.

04-2-32. Jeffery v. State, UNPUBLISHED, No. 06-03-00126-CR, 2004 WL 1116331, 2004 Tex.App.Lexis ___ (Tex.App.-Texarkana 5/20/04) Texas Juvenile Law (5th Ed. 2000).

Facts: On August 14, 2002, sixteen-year-old Barbara Elaine Jeffery entered a Gladewater convenience store, emptied the cash register, confiscated the store's surveillance tape, and shot the clerk, Wendy McDonald, four times. As McDonald lay dying from her wounds, she was able to describe Jeffery to the first law enforcement officer on the scene and to recount what had happened during the course of the robbery. By the time officers caught up with Jeffery the next day and found her cowering under a bed in a relative's home, Jeffery had robbed two other stores, wounding one clerk and killing another.

Certified to stand trial as an adult, Jeffery was indicted for the offense of capital murder. A Gregg County jury found Jeffery guilty as charged, and the trial court, as required, automatically assessed punishment at life imprisonment. Jeffery now appeals, contending (1) her statement to law enforcement officials was inadmissible because they failed to comply with Sections 51.095, 52.02, and 52.025 of the Texas Family Code; (2) the trial court abused its discretion by refusing to instruct the jury on the affirmative defense of duress; and (3) she was denied an effective appeal by the court reporter's failure to include certain exhibits in the appellate record.

Held: Affirmed.

Opinion Text: Juvenile Statement

In her first and second points of error, Jeffery argues her rights were violated when the State allegedly failed to comply with Sections 51.095, 52.02, and 52.025 of the Texas Family Code, thereby rendering inadmissible her written statement to law enforcement officials. Although Jeffery admits that a magistrate did provide the warnings laid out in Section 51.095 and otherwise complied with the statute, she contends the magistrate never tested her understanding of the warnings and could not, therefore, have determined that she knowingly, intelligently, and voluntarily waived her rights. Also, because Jeffery was allegedly taken to the area of the Camp County Sheriff's Department used for booking adults before she was taken to the designated juvenile processing office located in the same building, she argues that the trial court erred in determining her statement admissible.

When reviewing a ruling on a motion to suppress, an appellate court gives great deference to a trial court's determination of historical facts. Roquemore v. State, 60 S.W.3d 862, 866 (Tex.Crim.App.2001). The evidence is viewed in the light most favorable to the trial court's ruling and, although mixed questions of law and fact that do not turn on witness credibility are reviewed de novo, those questions of law and fact that do turn on witness credibility and demeanor are reviewed under a standard of almost total deference, id., because "the trial court is the sole trier of fact and judge of the credibility of the witnesses and the weight to be given their testimony," State v. Ross, 32 S.W.3d 853, 855 (Tex.Crim.App.2000). If the trial court's ruling is correct under any theory of law applicable to the case, it will be sustained. Id. at 855 56.

Under Section 51.095, the statement of a child is admissible if it is made in writing, while the child is confined, in custody, or in possession of the Department of Protective and Regulatory Services, 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 makes 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) if 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;
(B) and:
(i) the statement must be signed in the presence of a magistrate by the child with no law enforcement officer or prosecuting attorney present, except that a magistrate may require a bailiff or a law enforcement officer if a bailiff is not available to be present if the magistrate determines that the presence of the bailiff or law enforcement officer is necessary for the personal safety of the magistrate or other court personnel, provided that the bailiff or law enforcement officer may not carry a weapon in the presence of the child; and
(ii) the magistrate must be fully convinced that the child understands the nature and contents of the statement and that the child is signing the same voluntarily, and if a statement is taken, the magistrate must sign a written statement verifying the foregoing requisites have been met;
(C) the child knowingly, intelligently, and voluntarily waives these rights before and during the making of the statement and signs the statement in the presence of a magistrate; and
(D) the magistrate certifies that the magistrate has examined the child independent of any law enforcement officer or prosecuting attorney, except as required to ensure the personal safety of the magistrate or other court personnel, and has determined that the child understands the nature and contents of the statement and has knowingly, intelligently, and voluntarily waived these rights....

Tex. Fam.Code Ann. § 51.095(a)(1), (d) (Vernon 2002).

The record reflects-and the trial court explicitly found-that Jeffery was transported directly to the Camp County juvenile processing office within twenty minutes of her arrest and, fifteen minutes later, met alone with a magistrate who advised her of her rights under Section 51.095(a)(1)(A). When asked if she understood the warnings and whether she wanted to waive her rights and voluntarily give a statement, Jeffery answered affirmatively. The magistrate thereafter allowed law enforcement officials to enter the office to question Jeffery, resulting in her dictating a three-page, single-spaced statement, confessing her involvement in robbing the store and shooting McDonald. The unsigned statement was turned over to the magistrate who, once again alone with Jeffery, read the statement aloud, asked Jeffery to verify the correctness of the information, and asked whether she wanted to sign the statement. Jeffery again answered affirmatively and, in the magistrate's presence, signed the statement at the bottom of each page, adopting it as her own. Jeffery argued at the suppression hearing, and continues arguing in this appeal, that she may have told the magistrate she understood the Section 51.095 admonishments at the time of their meeting, but she did so only to "get it over with." Jeffery explained that she simply did not understand some of the terms used in the warnings or how they applied to her situation and that, had the magistrate tested her understanding, the need for further explanation would have been apparent. To the contrary, however, the magistrate testified that this was not the first time she had advised Jeffery of her rights and that Jeffery not only did not ask any questions, but also indicated she understood the admonishments and wished to waive her rights anyway. The magistrate also testified that, while she did not question Jeffery as to the meaning of specific warnings, she did explain in greater detail those points she thought Jeffery might not have understood.

Weighing these conflicting points of view, the trial court found the magistrate's testimony more credible than Jeffery's and determined that Jeffery knowingly, intelligently, and voluntarily waived her rights before speaking with investigators and confessing her involvement in the crime. This the court was entitled to do. Viewing the evidence in the light most favorable to its ruling, we determine the evidence reasonably supports this conclusion. See Roquemore, 60 S.W.3d at 866. Therefore, we defer to the trial court's judgment and hold that there was no violation of Section 51.095 that would require Jeffery's statement to be suppressed.

Although Jeffery further contends the State violated Sections 52.02 and 52.025 by allegedly taking her to the area of the Camp County Sheriff's Department used for booking adults before she was taken to the designated juvenile processing office, [FN1] this complaint appears for the first time on appeal. It was not raised in Jeffery's motion to suppress and was not addressed at either the pretrial hearing or at the trial itself. In fact, Jeffery's own trial testimony indicates just the opposite. She testified she was taken to the jailer and booked only after she had met with the magistrate, talked with the investigators, and signed her statement. To preserve error for appellate review, the complaining party must not only make and obtain a ruling on a timely and specific objection, but the point of error on appeal must also comport with the objection made at trial. Tex.R.App. P. 33.1; Geuder v. State, 115 S.W.3d 11, 13 (Tex.Crim.App.2003); Wilson v. State, 71 S.W.3d 346, 349 (Tex.Crim.App.2002). Having failed to meet these requirements, Jeffery has preserved nothing for our review, effectively waiving her complaint regarding Sections 52.02 and 52.025 of the Texas Family Code.

FN1. The Texas Court of Criminal Appeals has described the requirements of these two statutes as mandatory and directed that they should be strictly construed.

Section 52.02(a) commands the officer taking the child into custody to "do one of the following" "without unnecessary delay" and "without first taking the child to any place." The statute provides only one exception. The officer may first take the child to "a juvenile processing office designated under Section 52.025." That is an option, but it is not a requirement. If the officer elects to take the child to a juvenile processing office, § 52.025 limits what may occur there. Only five things may occur, one of which is obtaining a statement from the child.

Reading the two statutes in concert, the plain language reveals that a statement may be obtained at a juvenile processing office, but there is no requirement that this occur. Indeed, there is no requirement that the child be taken to a juvenile processing office at all. Rather, a juvenile processing office is the only place an officer can take the child other than the five options presented in § 52.02(a). It is, in essence, a sixth option. The taking of a juvenile to a juvenile processing office, however, does not dispense with the requirement that, subsequently, the officer, "without unnecessary delay," do one of the five possibilities listed in § 52.02(a).

Le v. State, 993 S.W.2d 650, 653 (Tex.Crim.App.1999). See Tex. Fam.Code Ann. § 52.02 (Vernon Supp.2004), § 52.025 (Vernon 2002).

Even if we were to determine that the Texas Family Code provisions discussed above had been violated and the trial court erred by admitting Jeffery's statement, we would still hold any such error to be harmless because Jeffery's trial testimony only confirmed the facts detailed in the statement. [FN2] See Jones v. State, 843 S.W.2d 487, 493 (Tex.Crim.App.1992); Amunson v. State, 928 S.W.2d 601, 608 (Tex.App.-San Antonio 1996, pet. ref'd) ("When the defendant offers the same evidence to which he earlier objected, he is not in a position to complain on appeal.") Jeffery detailed her involvement in the robbery and killing of McDonald and even admitted to having committed extraneous crimes, including the murder of another store clerk the same evening. Specific to the charges in this case, the State asked: "On August 14th of 2002, did you intentionally or knowingly, while in the course of committing theft of property of Wendy McDonald and in the process of committing a robbery, shoot and kill her?" To which Jeffery simply responded: "Yes, sir." Jeffery readily admitted all the elements of the charged offense, leaving no room to complain on appeal that her statement was erroneously admitted at trial.

FN2. The only portions of Jeffery's statement contradicted by her testimony dealt with the implication of her alleged accomplice, Roderick Luster. Jeffery maintained at trial that Luster knew nothing about the crimes to which she confessed.
