YEAR 2005 CASE SUMMARIES

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

The trial court did not abuse its discretion in finding appellant's statement admissible. [Vargas v. State](05-2-23A)

On March 31, 2005, the Houston Court of Appeals (1st Dist.) held that defendant's statement "I don't want to do this," was ambiguous (regarding termination of interview) and therefore his statement was admissible.

05-2-23A. Vargas v. State, No. 01-03-00870-CR, 2005 Tex.App.Lexis 2417 [Tex.App.– Houston (1st Dist.) 3/31/05].

Facts: A jury found appellant, Thomas Vargas, guilty of capital murder, and the trial court sentenced him to life in prison, the only possible sentence for a juvenile certified to be tried as an adult. In six points of error, appellant contends that the trial court erred (1) in admitting his statements that were involuntarily made, (2) in admitting unduly prejudicial photographs of the complainant, (3) in allowing a jury charge that commented on the weight of the evidence, and (4) in denying his request for lesser included offenses. We affirm.

Background

In the early morning hours of August 25, 2002, volunteer firefighter Lance Taylor responded to a fire in the Pearland area. As Taylor conducted a search for victims in the burning residence, he discovered Veda Marie Sutton, age 81, face down in the kitchen. Taylor testified that it became apparent [*2] that he was dealing with more than just a fire scene when he noticed "two handles" sticking out of the victim's back as well as "a large amount of blood." Fearing that the roof would collapse, Taylor and the members of the Pearland Volunteer Fire Department removed Sutton's body from the house. They placed Sutton's body in an ambulance, where several pictures were taken to show its condition immediately after removal from the home.

Officer Little, a Pearland patrolman at the scene, discovered that Sutton's car was missing from her garage and called dispatch with its description. Shortly thereafter, the Alvin police located Sutton's car, but appellant, who was driving the car, fled and was ultimately apprehended after he and his girlfriend, Patricia Ray, crashed the car, got out, ran from the police, and fell in a bayou. Ray had Sutton's credit card and jewelry, as well as $ 232 cash. In appellant's pockets, the officers discovered more than five dollars in coins, a small lock and key, two pendants, and several necklaces. Several items were found in Sutton's car, including additional jewelry, a white t-shirt smelling of accelerants, n1 a camera, and a rifle. Most of the recovered jewelry [*3] was identified by the complainant's daughter as belonging to her mother.

n1 "Accelerants" are used to start fires.

Appellant, who was 15 years old, and Ray, who was 16 years old, were placed in custody and taken to a juvenile detention facility in Brazoria County. A magistrate gave appellant his juvenile statutory warnings, n2 and appellant stated that he did not understand his "right to terminate the interview." The magistrate explained that, if at any time during his interrogation appellant did not want to talk to police, appellant had the right to remain silent. Detective Garza and Sergeant Moncrief of the Pearland Police Department (PPD) then questioned appellant for approximately two hours in a tape-recorded interview.

> n2 Police officers and other law enforcement personnel involved in handling juveniles are "bound to comply with the detailed and explicit procedures" of Title 3 of the Family Code. *Contreras v. State, 67 S.W.3d 181, 184 (Tex. Crim. App. 2001)*.

[*4]

In his tape-recorded statement, appellant stated that he was 15 years old and had been drinking and smoking marijuana the previous night. The crime spree began when appellant and Ray were stranded by his brother on the way home from a fishing trip; the two decided to steal a car so that they could drive the rest of the way home. Appellant recounted the events that took place at Sutton's home, stating that he forced his way into the house after Sutton let Ray in to use the telephone, and then appellant brutally beat, stabbed, and robbed the elderly woman. The two handles Firefighter Taylor saw in Sutton's body were the knife and ice pick appellant used as weapons. In an effort to destroy any evidence of their crime, appellant and Ray then ignited the paint thinner and other flammable liquids with which they had soaked Sutton's body and home. Appellant and Ray used Sutton's car to flee the burning home with the stolen items, passing emergency personnel responding to the fire on their way out of the neighborhood.

At trial, testimony from several witnesses confirmed the details of appellant's statements. Ray confirmed the course of criminal events throughout the night, with little discrepancy [*5] between her testimony and appellant's statement. n3 Officer Morton of the PPD testified about the robbery and stated that he recovered Sutton's items both in the stolen car and on appellant's person. Officer Bort of the PPD testified that the smell of accelerants was strong when he photographed Sutton's body in the ambulance. Harris County Fire Marshall Petty confirmed that accelerants were detected at the scene. Assistant Harris County Medical Examiner Lopez testified, using numerous autopsy photographs, that Sutton suffered blunt and sharp force injuries as well as chemical burns consistent with the burning of flammable liquids.

> n3 Ray was prosecuted separately for her involvement in Sutton's death.

Held: Affirmed

Memorandum Opinion: In points of error one and two, appellant contends that the trial erred in denying his motion to suppress his tape-recorded statements. Appellant asserts that the statements were involuntarily given because (1) investigating officers continued to question him after [*6] he invoked his right to remain silent and (2) the statements were improperly induced.

The *Fifth Amendment* privilege against self-incrimination is protected during custodial interrogation by certain procedural safeguards [*7] delineated in *Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966)*. These "safeguards" have been codified in the Texas Code of Criminal Procedure and in the Texas Family Code as they pertain to the interrogation of children. *See TEX. CODE CRIM. PROC. ANN. art. 38.22* (Vernon 1979 & Supp. 2004); *TEX. FAMILY CODE ANN. 51.095* (Vernon 2002). Within these statutes, the "right to terminate a custodial interrogation" is a "critical safeguard" of

the right to remain silent. *See Michigan v. Mosley, 423 U.S. 96, 103, 96 S. Ct. 321, 326, 46 L. Ed. 2d 313 (1975)*. No formal invocation of this right is necessary. *Watson v. State, 762 S.W.2d 591, 597 (Tex. Crim. App. 1988)*. If the suspect indicates "in any manner" that he invokes the right to remain silent, the interrogation must stop. *Miranda, 384 U.S. at 473-474, 86 S. Ct. at 1627*. However, any indication that the suspect wishes to remain silent must be unambiguous, and interrogating officers are not required to clarify wishes that are ambiguous. *Dowthitt v. State, 931 S.W.2d 244, 257 (Tex. Crim. App. 1996)*. [*8] An officer's failure to stop custodial interrogation after an unambiguous invocation of the right to remain silent renders any subsequently obtained statements inadmissible. *Id*.

The issue presented in point of error one is whether appellant *unambiguously* invoked his right to remain silent and terminate the interview. In determining whether the right to remain silent was unambiguously invoked, courts must look to the totality of the circumstances. *Watson, 762 S.W.2d at 597*. An ambiguity exists where a statement or action is subject to more than one reasonable interpretation under the circumstances. *Cf. Dowthitt, 931 S.W.2d at 257* (holding that appellant's statement, "I can't say more than that. I need to rest," was ambiguous and indicated only that appellant believed that he was physically unable to continue) *But cf. Watson, 762 S.W.2d at 599* (holding that appellant's silence and refusal to speak during repeated rounds of questioning was conduct that unambiguously communicated appellant's desire to invoke his right to remain silent); *Cooper v. State, 961 S.W.2d 222, 226 (Tex. App.--Houston [1st Dist.] 1997,* [*9] *pet. ref'd)* (holding that "I'm not answering any questions" was an unambiguous invocation of the right to remain silent).

Here, during appellant's tape-recorded interrogation, the following exchange took place:

[Garza]: Tell the truth this lady did nothing to you Thomas.

[Appellant]: I didn't.

[Garza]: Why did you kill her?

[Appellant]: I did not kill anybody.

[Garza]: Why did you kill this lady?

[Appellant]: *I don't want to do this*.

[Garza]: She begged you.

[Appellant]: *I don't want to do this*, I didn't kill no lady.

[Garza]: *You don't want to do what? You don't want to tell the truth?*

[Appellant]: *I'm trying to tell the truth.*

[Garza]: No you're not! Tell us the truth Thomas.

[Appellant]: I didn't touch her.

(Emphasis added.)

Appellant argues that, when he twice stated "I don't want to do this," he unambiguously invoked his right to remain silent, at which point the interview should have ended. The interview continued, however, and, as a result, appellant complains that any subsequently obtained statements were in

violation of his right to remain [*10] silent.

We evaluate this argument in light of the totality of the circumstances surrounding appellant's interrogation. At the time, appellant was 15 years old, an average to good student in the ninth grade, with good communication skills and an IQ of over 100. Initially, appellant failed to understand his right to terminate the interview, but the magistrate further explained the right. In his testimony at the suppression hearing, appellant insisted that, pursuant to the magistrate's instructions, appellant's statement, "I don't want to do this," was intended to stop the interview. However, Detective Garza, an experienced investigator with more than 17 years of service to the department, testified that he understood the statement to mean only that appellant did not want to re-live the "gruesome details" of the complainant's death. Detective Garza, though not required to do so, even asked appellant to clarify what he did not want to "do," thereby demonstrating that the meaning of appellant's statement was unclear at the time.

Both appellant's and Detective Garza's interpretation of the statement's meaning are reasonable, and, therefore, the statement was ambiguous. *See Dowthitt, 931 S.W.2d at 257.* [*11] It is clear that resolution of the ambiguity hinged on the credibility and demeanor of both appellant and Detective Garza during their testimony at trial. We give almost total deference to the trial court's resolution of these facts. *See Guzman, 955 S.W.2d at 89*. The trial court did not abuse its discretion in finding that appellant's invocation of the right to remain silent was ambiguous and that his statement was therefore admissible.

Accordingly, we overrule point of error one.

Improper Inducement

In his second point of error, appellant contends that his statement was improperly induced by Detective Garza's alleged promise of a reduced sentence. Appellant's motion to suppress his statement is nothing more than a specialized objection to its admissibility, *see Holmberg v. State, 931 S.W.2d 3, 5 (Tex. App.--Houston [1st Dist.] 1996, pet. ref'd)*, and, as such, his right to appellate review in this Court extends only to objections made in accordance with the rules of appellate procedure. *Harris v. State, 827 S.W.2d 949, 958 (Tex. Crim. App. 1992)*. To preserve error for review, the record must show that [*12] a timely and specific objection was made in the trial court, and that the court either ruled or refused to rule on the objection. *TEX. R. APP. P. 33.1(a)*. "An objection stating one legal basis may not be used to support a different legal theory on appeal." *Rezac v. State, 782 S.W.2d 869, 870 (Tex. Crim. App. 1990)*. In situations where a point of error does not correspond to the objection made at trial, the trial court was not afforded the opportunity to rule on the legal theory that is the basis for the appeal. *Cook v. State, 858 S.W.2d 467, 474 (Tex. Crim. App. 1993)*. Consequently, nothing is preserved for appellate review. *Id*.

Appellant filed a written motion to suppress, *inter alia*, any written or oral statements made by appellant. The motion generally asserted that appellant did not understand his legal rights at the time any statement was taken and that the police acted in reckless disregard of his constitutional and statutory rights. Even though the written motion did not include "inducement" as a ground for suppression, the issue was presented at the suppression hearing. Appellant's counsel highlighted three statements [*13] made during the interrogation: first and second were Detective Garza's statements "Help yourself if you can," and, "They're not going to be in any trouble if you tell the truth," n4 and third was appellant's own statement, "I don't want to do this." The crux of appellant's argument was that these statements, when taken together, were evidence of the interrogation's coercive nature and rendered any statement made by appellant involuntary.

> n4 This statement refers to appellant's brother and cousin, whom appellant tried not to implicate in his interview with police. There is no evidence that appellant's brother and cousin were involved in the complainant's death, only that appellant saw both of them the

night the complainant died.

On appeal, however, appellant does not assert any of the three aforementioned statements as evidence of inducement. Instead, appellant contends that he was improperly induced when Detective Garza allegedly promised leniency, stating that "the only thing you can do now is, is to try to [*14] lessen how many years you are going to be in prison." Appellant's objections on appeal and at trial do not correspond. The trial court was never afforded the opportunity to rule, or to refuse to rule, on the issue of whether the alleged promise of a reduced sentence induced appellant's statements. Consequently, appellant waived his objection and nothing is presented for our review. *See TEX. R. APP. P. 33.1(a)*.

We overrule point of error two.

Conclusion: Statement held admissible.