
YEAR 2006 CASE SUMMARIES

By
The Honorable Pat Garza

Associate Judge
386th District Court
San Antonio, Texas

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Only when a DPRS investigator (or other non-law enforcement state agent) is acting in tandem with police to investigate and gather evidence for a criminal prosecution are *[Miranda]* warnings required. [In the Matter of K.H.](06-1-21B)

On December 14, 2006, the San Antonio Court of Appeals held that DPRS investigator did not act in tandem with police to investigate and gather evidence and as a result no custodial interrogation occurred.

¶ 06-1-21B. **In the Matter of K.H.**, MEMORANDUM, No. 04-04-00924-CV, 2005 Tex.App.Lexis 10810 (Tex.App.— San Antonio, 12/14/05).

Facts: K.H. was adjudicated delinquent for committing four counts of aggravated sexual assault and one count of indecency with a child. The trial court sentenced K.H. to a determinate sentence of fifteen years.

Held: Affirmed

Memorandum Opinion: In his fifth, sixth, and seventh points of error, K.H. contends that the trial court erred in admitting the statement he gave to a sexual abuse investigator with the Texas Department of Family and Protective Services ("CPS") because it was a product of custodial interrogation. In *Wilkerson v. State*, the Texas Court of Criminal Appeals held that "only when a CPS investigator (or other non-law enforcement state agent) is acting in tandem with police to investigate and gather evidence for a criminal prosecution are *[Miranda]* warnings required" because only then has a custodial interrogation occurred. *173 S.W.3d 521, 523 (Tex. Crim. App. 2005)*. To determine if this type of tandem relationship exists, we consider: (1) information about the relationship between the police and the CPS worker; (2) the CPS worker's actions and perceptions; and (3) K.H.'s perceptions of the encounter. *Id. at 530-31*.

In this case, there is no evidence to support the existence of a tandem or consensual relationship. The CPS worker contacted K.H.'s mother and requested an interview. The CPS worker did not threaten K.H.'s mother in requesting the interview. K.H., his mother, and his sister drove themselves to the office for the interview. K.H.'s mother allowed the worker to interview K.H. while she watched the complainant's videotaped statement. The CPS worker testified that the purpose of K.H.'s visit to her office was to interview him regarding allegations of sexual abuse made against him, provide him with the opportunity to respond, and to determine if K.H. was possibly a victim of sexual abuse. The record contains no evidence that any relationship had developed between the police and the CPS worker with regard to the allegations against K.H. The record also does not contain any evidence that the CPS worker considered herself to be acting in tandem with the police or that K.H. held such perception. Furthermore, the CPS worker testified that she did not make any promises or threats to obtain K.H.'s statement, and

K.H. reviewed, corrected, and signed it.

Conclusion: Accordingly, the trial court did not abuse its discretion in admitting K.H.'s statement to the CPS worker. K.H.'s fifth, sixth, and seventh points of error are overruled.

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