
YEAR 2006 CASE SUMMARIES

By
The Honorable Pat Garza

Associate Judge
386th District Court
San Antonio, Texas

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Motion to Suppress fails for failure to establish a causal connection between stated unlawful police conduct and evidence sought to suppress.[Adams v. State](06-1-9)

On December 8, 2005, the Corpus Christi Court of Appeals affirmed denial of Motion to Suppress because the record did not demonstrate a causal connection between a *section 52.02(a)* violation and respondent's statement nor did the respondent show a causal connection between the complained of unnecessary delay and evidence sought to be suppress.

¶ 06-1-9. **Adams v. State**, ___ S.W.3d ___, No. 13-04-028-CR, 2005 Tex.App.Lexis 10253 (Tex.App. — Corpus Christi) 12/8/05.

Background: After the juvenile court waived and then transferred jurisdiction to the district court, appellant Megan Mae Adams, and co-defendants Frank Macias and Christopher Lozano were indicted for murder. n1 The trial court granted the State's motion for joinder of three co-defendants for trial. A jury convicted each of the three of murder and assessed punishment at a term of life imprisonment in the Texas Department of Criminal Justice-Institutional Division for Macias and Adams, and a term of fifteen years for Lozano. By six issues, Adams appeals the judgment. n2

n1 The indictment alleged that on or about March 5, 2003, Adams caused the death of Jan Barnum by strangling her with a ribbon. A person commits murder if she causes the death of an individual. *See TEX. PEN. CODE ANN. § 19.02* (Vernon 2003). The juvenile court waived and then transferred jurisdiction to the district court.

n2 Adams raises six issues on appeal. In her first issue, Adams asserts that the trial court lacked jurisdiction to prosecute Adams, a juvenile, because the juvenile court did not comply with *section 53.06(a) of the family code*. In her second issue, Adams maintains that the juvenile court failed to admonish her pursuant to title 3 of the family code generally, thereby invalidating transfer to the criminal district court. Adams asserts this violation of her due process and due course of law rights mandates reversal. Adams also claims that the trial court abused its discretion in denying her motion for severance (third issue) and the resulting reduction of her peremptory challenges from ten to six because multiple defendants were tried together (fourth issue) resulted in prejudice. Adams asserts in her fifth issue that the evidence was legally insufficient to support a conviction for murder because the State failed to show that Adams encouraged, directed, aided, or attempted to aid in the commission of the murder. In her sixth and final issue on appeal, Adams asserts that the trial court erred in denying her motion to suppress evidence.

Held: Affirmed

Facts: On or about March 5, 2003, at approximately 5:00 p.m., Adams and co-defendants Macias and Lozano, juveniles, were detained by juvenile investigator Miguel Hernandez for criminal trespass at a vacant house near Adams' residence. After being released, the three put into motion plans to run away to Louisiana where Adams had relatives. They initially intended to travel by bus, but then decided to use Jan Barnum's car. Barnum was Adams' maternal grandmother. n4 Their plan was to wait for Barnum to fall asleep before taking the car. When it took too long for Barnum to fall asleep, a plan developed to kill her. As Macias waited in the bathroom, Adams led Barnum through the hall of the apartment they shared. Adams was present while Macias used a ribbon to strangle Barnum. At some point, Lozano entered the apartment and observed Macias strangling Barnum. Neither Adams nor Lozano took any action nor attempted to prevent or stop Macias from strangling Barnum. With Adams driving, the three fled in Barnum's car and drove first to a truck stop, then to the residence of J.R., Macia's girlfriend, and then to a convenience store.

n4 Barnum and Adams moved into Barnum's apartment in January 2003; Adams having previously resided with her great-grandmother.

Bernardo Aguilar, an employee of the convenience store, was working the night shift. He reported to police officer John Vargas, who was at the scene, n5 that three juveniles at the store looked nervous and suspicious. Aguilar indicated the juveniles had come into the store for gas and an atlas. Officer Vargas recognized the juveniles from earlier in the day and suspected they were again runaways. He called dispatch to report three possible runaways and requested that another officer be sent to the location. Officer Javier Gallegos was dispatched to the location and confirmed that all three juveniles had been reported as runaways. Officer Gallegos placed the juveniles in the patrol car to take them to their residences. Macias was released to his stepfather. Lozano was released to his aunt. Adams attempted to stay with Lozano; however, Lozano's aunt refused because Adams had not been staying with Lozano as Adams stated to Officer Gallegos.

n5 Officer Vargas was off duty, in a civilian automobile and at the drive-through window of the store when Aguilar told him about the juveniles. Aguilar's concern was that the time was after curfew, the juveniles were underage, and "nervous." Meanwhile, Barnum's car stalled at the convenience store.

Adams asked to be taken to the home of her "uncle," Andrew Narvaez, who informed officer Gallegos that Adams was staying with her grandmother and that he knew where her apartment was located. n6 Officer Gallegos followed Narvaez to Adams' grandmother's apartment. En route, Adams repeatedly insisted that she needed to speak with Narvaez privately, which Officer Gallegos permitted when they arrived at the apartments where Barnum lived. Adams whispered to Narvaez that an intruder had broken into the apartment and strangled Barnum. Narvaez then told this to Officer Gallegos who then requested an ambulance, a supervisor and backup. He obtained a key to the residence from a security guard on duty because the windows and doors were locked. Once inside the apartment, officer Gallegos found Barnum's body facedown in a bedroom. It appeared that she had been strangled. When juvenile investigator Santiago Solis arrived at the scene, he found, among other things, four to five strands of brown hair about two inches long, grasped in Barnum's right hand. n7

n6 Narvaez is not Adams' uncle.

n7 Forensic testing showed that the hairs could not be excluded as Adams' head hair.

Officer Michael Mata was also dispatched and arrived at Barnum's apartment where he found Adams inside Officer Gallegos' patrol car. Mata read Adams her Miranda n8 warnings. Adams volunteered that an intruder strangled her grandmother. Officer Mata transported Adams to the police department. Adams

was taken before the juvenile magistrate and then returned to the police station where she gave a statement to police. Macias and Lozano also appeared before the magistrate and gave statements regarding the events of that evening, up to and including Barnum's death. The three statements were admitted in evidence.

n8 When an individual is taken into custody and subjected to questioning, the *U.S. Constitution amendment V* privilege against self-incrimination is jeopardized. To protect the privilege, procedural safeguards are required called "*Miranda* warnings." *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

In his statement, Macias admitted he murdered Barnum but explained that he did so at Adams' request. Macias stated that Adams gave him the ribbon he used to kill Barnum. In her statement, Adams admitted she was present during the attack but stated that the decision to kill Barnum was solely Macias' decision. Lozano admitted in his statement that he walked in during the attack and although he told Macias to stop, he did nothing to attempt to stop Macias. He admitted that, prior to the attack, as the two waited for Adams outside the apartment, Macias told him that Adams wanted Macias to kill Barnum. Lozano did not believe Macias had the courage to kill Barnum and did nothing.

At trial, Macias testified in his defense. He admitted he killed Barnum. He testified that, while Lozano and he waited for Adams outside Barnum's apartment, Adams gave him a ribbon with an attached medal, to use in the assault. Macias removed the medal, threw it on the lawn, entered the apartment, and waited in the bathroom. Adams walked through the hall and Barnum followed her as the two argued. Macias sprung from the bathroom and, using both hands and the ribbon, strangled Barnum until "her hands stopped moving." He testified that, at one point, he momentarily stopped, but Adams threatened to call the police and accuse Macias of attempting to kill Adams if Macias did not finish what he started.

B. Prior Confrontations Between Adams and Barnum

In addition to the evidence concerning the strangulation of Barnum, the record contains evidence of prior confrontations and ill will between Adams and Barnum. The testimony of J.R., Macias' girlfriend and Adams' friend, relates an earlier plan of Adams and J.R. to murder Barnum by putting cockroach poison and Nyquil in Barnum's drinking water. J.R. testified that, on February 28, 2003, she was present when Adams and Barnum argued and Adams said that she "hated [Barnum] and she wanted her to die." J.R. asked "Why not kill her?" and Adams agreed. Macias and Lozano were present in the apartment at the time. n9 Adams put the poison in Barnum's Sprite but did not give it to Barnum. At 3:00 a.m. the following morning, Narvaez drove the four of them to a store where Adams stole Nyquil pills. At the apartment, Adams made holes in the pills with a needle and put the medicine in a glass of water that Adams told Barnum to drink. A.G., another friend of Adams corroborated the testimony of J.R.

n9 Evidence showed that Barnum disapproved of the presence of Macias and Lozano in the apartment, requesting that they leave. When Adams insisted that they stay, Barnum left to her room.

The resident who lived in the apartment above Barnum's testified that he heard arguments every day between Adams and Barnum. On the night of the murder, he heard the two arguing again. The apartment complex manager testified she was aware of Barnum's problems with Adams.

Opinion:

Issues 1-5 omitted by editor.

IV. MOTION TO SUPPRESS JUVENILE'S ORAL STATEMENTS

By her sixth issue, Adams maintains the trial court reversibly erred by denying her motion to suppress on two bases. First, Adams asserts that the trial court should have suppressed any statement she made or any evidence gathered at the time of her illegal detention because Officer Gallegos did not comply with *section 52.02(a) of the family code. TEX. FAM. CODE ANN. § 52.02(a)* (Vernon Supp. 2004-05). *Section 52.02(a) of the family code* governs the procedures for "taking a child into custody." n27 Adams maintains that, based on *section 52.02*, any decision as to whether further detention of the child was warranted should have been made by an authorized officer of the juvenile court and not law enforcement. n28 She argues that, because Officer Gallegos usurped a function vested only in an officer designated by the juvenile court, her statements were illegally obtained and thus inadmissible under *article 38.23 of the code of criminal procedure. See TEX. CODE CRIM. PROC. ANN. art. 38.23.* (Vernon Supp. 2004-05).

n27 *Section 52.02(a) of the Texas Family Code* provides the following options to a person taking a child into custody:

- (1) release the child to a parent, guardian, custodian of the child, or other responsible adult upon that person's promise to bring the child before the juvenile court as requested by the court;
- (2) bring the child before the office or official designated by the juvenile court if there is probable cause to believe that the child engaged in delinquent conduct or conduct indicating a need for supervision;
- (3) bring the child to a detention facility designated by the juvenile court;
- (4) bring the child to a secure detention facility as provided by Section 51.12(j);
- (5) bring the child to a medical facility if the child is believed to suffer from a serious physical condition or illness that requires prompt treatment; or
- (6) dispose of the case under Section 52.03.

TEX. FAM. CODE ANN. § 52.02(a) (Vernon Supp. 2004-05).

Because Adams was a juvenile at the time of her arrest, the provisions of the family code control issues involving the appellant's substantive rights. *Roquemore v. State*, 60 S.W.3d 862, 866 (Tex. Crim. App. 2001) (citing *Comer v. State*, 776 S.W.2d 191, 196 (Tex. Crim. App. 1989)(holding that issues involving the substantive rights of pre-transfer juveniles are governed by the family code)). *Section 52.02(a) of the family code* reads in relevant part: "A person taking a child into custody, without unnecessary delay and without first taking the child to any place other than a juvenile processing office designated under *section 52.025* of this code, shall do one of the following [enumerated acts]." *TEX. FAM. CODE ANN. § 52.02(a)* (Vernon Supp. 2004-05). This section does "not preclude the admission of a statement made by the child if: . . . the statement does not stem from custodial interrogation." *TEX. FAM. CODE ANN. § 51.095(b)(1)* (Vernon 2002).

n28 Adams directs us to *sections 52.04* (governing referral to juvenile court), *53.01* (governing preliminary juvenile investigation and determinations), *53.02* (governing release from detention), and *54.01* (governing juvenile detention hearings) of the family code. *TEX. FAM. CODE ANN. §§ 52.04, 53.01, and 54.01* (Vernon Supp. 2004-05); *id.* § *53.02* (Vernon 2002).

Second, Adams asserts that, because Narvaez was an agent of Officer Gallegos, her statements to

Narvaez, who subsequently repeated them to Gallegos, were illegally obtained and inadmissible. Without particulars, Adams further asserts that any "other evidence" was illegally obtained and should also have been suppressed. The State responds that (1) Adams preserved error only with respect to her oral statements to Narvaez and, even so, (2) Adams' statutory rights were not violated.

A. Preservation of Error

We must initially address whether Adams preserved error. *Kombudo v. State*, No.1832-04, 171 S.W.3d 888, 2005 Tex. Crim. App. LEXIS 1345, at *3-4 (Tex. Crim. App. September 14, 2005) (en banc) (holding that a reviewing court must address an appellee's reply as to preservation of error and an alternative argument in an appellee's reply) (per curiam) (citations omitted). In short, Adams essentially argues that her oral statements (1) made at the time of her initial detention or custody at the convenience store to Officer Gallegos and (2) to her "uncle Andy" Narvaez "as an agent of Officer Gallegos" at the apartment complex should have been suppressed because Gallegos did not comply with *section 52.02(a) of the family code*. She sought suppression of all statements and evidence Officer Gallegos obtained because he was usurping the duties of a duly authorized juvenile officer.

The trial court convened a pretrial evidentiary hearing on Adams' and Macias' separate motions to suppress. In her motion, Adams requested the trial court suppress evidence of any and all statements (whether oral, recorded, or written) taken from her by any law enforcement official or anyone acting on their behalf at any time following her initial arrest by any officer. She further requested the trial court suppress any and all evidence obtained in an "unlawful manner." However, at the suppression hearing, Adams testified that she was waiving her challenge as to suppression of her written statement. Later in the hearing, Adams' defense counsel argued as follows:

Your Honor, I just wanted to clarify one more thing. There was an oral statement that was made allegedly by Ms. Adams to an individual who we are alleging at the time was acting as an agent of the State. That statement, oral statement, we are going to be urging our Motion to Suppress. The only waiver that we had was to the written statement.

And also I would join with [Macias'] motion and with respect to the suppression of the arrest our Motion to Suppress Evidence covers that evidence that [the prosecutor] had talked about, that which was taken from Ms. Adams without a search warrant. And also the arrest which would fall under Chapter 14 of the Texas Code of Criminal Procedure.

Other than her oral statement to Narvaez, Adams neither directs us to the record nor addresses in her brief what evidence she sought to suppress. The record demonstrates that Macias' defense counsel argued suppression of evidence on grounds that *section 52.02 of the family code* was violated and there was no probable cause for the arrest. We conclude that Adams preserved error as to suppression of her oral statement to Narvaez.

We agree with the State's position that Adams has not preserved error as to physical evidence admitted at trial. *Kombudo*, 171 S.W.3d 888, 2005 Tex. Crim. App. LEXIS 1345, at *3-4; *Haley v. State*, 173 S.W.3d 510, 2005 Tex. Crim. App. LEXIS 1621, at *11 (Tex. Crim. App. 2005) ("preservation of error is a systemic requirement that must be reviewed by the courts of appeals regardless of whether the issue is raised by the parties") (citations omitted). However, as the following record excerpt demonstrates, Adams did not object when the complained-of evidence was adduced through similar testimony from another police officer who was at the crime scene. n29

n29 When a trial court overrules a suppression motion before trial, the accused need not object during trial to the same evidence to preserve error on appeal. *Wilson v. State*, 857

S.W.2d 90, 93 (Tex. App.-Corpus Christi 1993, pet. denied) (citing *Moraguez v. State*, 701 *S.W.2d 902, 904 (Tex. Crim. App. 1986)*). However, the accused waives any error caused by admission of the evidence, despite the pretrial ruling, by affirmatively asserting during trial "no objection" to admission of the evidence. *Moraguez*, 701 *S.W.2d at 904*.

Officer Gallegos testified as to Adams' request to speak with Narvaez upon arrival at the apartment. On the prosecutor's direct examination, Gallegos testified before the jury as follows:

Q: At that point when you get to the apartment does [Adams] say anything to you in the patrol car between Mr. Narvaez['s] house and the apartments?

A. That she wants to talk to [Narvaez], she has something to tell him and I said why don't you tell me and she said, I want to talk to [Narvaez].

Q. What happens when you-where do you pull into the apartments?

A. We pull into the east side of the apartment complex, where the apartment is right next to the parking lot of Palm Street.

Q. And where does Andy Narvaez pull up to?

A. He pulls in-as soon as he pulls into the apartment complex he parks in the first parking space and I park right behind him.

Q. What happens next?

A. [Adams] said I want to talk to [Narvaez]. I want to tell him something. I said, okay, fine. I called [Narvaez] over and then I said, [Narvaez], will you come over here, [Adams] wants to tell you something real bad. And he says, okay. And so I just stood there right by the driver's side door and, well, I said, whisper in his ear. And he opened the door for her and she reaches out. And then he had this worried look like he was going to go to the apartment. And I stopped him, and I said, You need to tell me what she said. And he-and he said that [Adams] told him that someone broke into the apartment and strangled her grandmother. . . .

Q. Where did [Adams] remain?

A. I had her get back in the patrol car and wait for another officer to standby and while she's in the car, I didn't want to leave her by herself. . . . She kept on repeating someone broke in and strangled her grandmother.

Similarly, Officer Michael Mata testified that, when he arrived at the apartment complex, he observed Adams inside a police unit shouting and screaming. He did not question her. Adams told him that her grandmother was by herself and Adams feared that "she might have been killed or something." In response, he read her *Miranda* warnings but denied asking her questions. Adams told him that somebody had gone into the apartment and began to strangle her grandmother, adding that she "just tried getting him off and she couldn't do anything about it." Adams "blurted out that her grandmother was dead," and she "had no one else." Mata further testified that Adams said she wanted the subject who killed her grandmother in front of her so that she could kill him, stating she would "stuff paper down his throat and kill him with her bare hands."

At trial, Narvaez testified he knew Barnum because they attended the same church. When Officer Gallegos asked to leave Adams with Narvaez, Narvaez responded that he needed to contact Barnum first

because Barnum had previously requested Narvaez contact her regarding Adams. Regarding the events that occurred at the crime scene, Narvaez testified that Officer Gallegos told him Adams could not get out of the police unit because she was under arrest. Narvaez could not, however, recall what Adams told him at the scene because of the effects of medication he had previously taken that night.

A proper objection is one that is specific and timely. *Geuder v. State*, 115 S.W.3d 11, 13 (Tex. Crim. App. 2003); *Martinez v. State*, 98 S.W.3d 189, 193 (Tex. Crim. App. 2003). Further, with two exceptions, the law in Texas requires a party to continue to object each time inadmissible evidence is offered. *Martinez* 98 S.W.3d at 193. Two exceptions exist where counsel either (1) obtains a running objection, or (2) requests a hearing outside the presence of the jury. *Id.* Therefore, while Adams preserved error as to the statements to Narvaez, she did not preserve error as to all similar evidence of statements she made to Officer Mata at the scene. *Id.*

Even assuming error was preserved, we consider the State's alternate theory in response to Adams' sixth issue presented. *Kombudo*, 171 S.W.3d 888, 2005 Tex. Crim. App. LEXIS 1345, at *3-4. The State maintains that the trial court properly denied the motion to suppress on grounds that she has not shown improper police conduct.

B. Motion to Suppress Standard of Review

We uphold a trial court's ruling on a suppression motion if it is reasonably supported by the record and is correct on any theory of law applicable to the case. *Villarreal v. State*, 935 S.W.2d 134, 138 (Tex. Crim. App. 1996) (en banc); *Perales v. State*, 117 S.W.3d 434, 438 (Tex. App.-Corpus Christi 2003, pet. ref'd). This is true even if the decision is correct for reasons [*43] different from those espoused by the trial court. *Romero v. State*, 800 S.W.2d 539, 543 (Tex. Crim. App. 1990). For the following reasons, we conclude that, even if Adams preserved error as to her argument on appeal, the trial court did not abuse its discretion in denying the motion to suppress on grounds that her statutory rights were not violated, as the State asserts in its reply.

C. The Record

The parties do not dispute that Adams was detained, together with Macias and Lozano, at the convenience store on suspicion that they were runaways because they had a runaway incident earlier in the day and because of their statements to the convenience store employee. Off-duty police investigator John Vargas testified that he was at the drive-through at a convenience store at about 11:00 to 11:15 on the night in question. He recognized Adams from a runaway incident earlier that day. The convenience store employee related his concerns regarding the juveniles traveling to Louisiana to Officer Vargas. Vargas radioed for assistance and Officer Gallegos was dispatched to the scene. Vargas testified he asked the juveniles if they were runaways. One of the males responded, "Yeah, again," but Vargas could not identify which one of them answered. According to his report, the three said, "Yeah again." Meanwhile, Vargas observed in plain view in the back of the car clothes and a hamster in a cage, n30 indicating to him that the three were running away. Vargas testified that the vehicle was registered to Barnum. Vargas further testified that Adams, Macias, and Lozano were put in Officer Gallegos' unit so that they would not run away. Vargas testified that he told Gallegos, "they probably killed the grandmother." Gallegos responded that "you never know."

n30 Evidence at trial showed that, prior to leaving the apartment, Adams told Lozano to go to Barnum's bedroom and retrieve Barnum's purse. He complied. She then asked him to retrieve her pet hamster from her bedroom. Again, Lozano complied.

Gallegos testified that he observed Adams sitting on the driver's side of the vehicle. He observed Macias

attempt to enter a pickup truck but the driver waved Macias off and drove away. While Gallegos spoke with Vargas, the three juveniles were in the store looking in his direction. Gallegos entered the store and asked what they were doing and for their identification. They had none. Initially, Adams was non-cooperative with identifying information. Concerned that they might flee, he asked them to step in his unit and left the door open. He confirmed that Macias and Lozano were reported as runaways and there was no report as to Adams. Aware that the juveniles' vehicle was stalled, Gallegos asked Adams for the keys so that he could move the car from the pumps. Adams complied. When he moved the car, he observed a backpack and clothes in plain view. He opined that the juveniles were "going somewhere." Gallegos testified that the three were not handcuffed and the sole purpose for the detention was to release them to a parent or guardian.

Later, after securing identifying information and making numerous telephone calls to the juveniles' respective residences without answer, Gallegos released Macias to his stepfather at his home and then left Lozano with his aunt. Adams requested and attempted to remain with Lozano, indicating to Gallegos that she was staying with Lozano. Lozano's aunt refused to allow Adams to stay. Attempting to take Adams home, Gallegos asked her address. Adams responded that her grandmother was not home because she was visiting a friend. When Gallegos sought another family resource, Adams requested that Gallegos take her to her "uncle Andy" Narvaez's house. Gallegos complied. En route, Adams requested to speak privately with Narvaez, and Gallegos agreed. Gallegos told Narvaez that Adams said her grandmother was with a friend. Narvaez said he would get dressed so they could check. Narvaez drove past Gallegos' unit. Adams again said she wanted to talk to Narvaez.

When they reached the apartment complex, Adams spoke privately with Narvaez. Gallegos testified that Narvaez looked worried. Gallegos told Narvaez "to speak," and Narvaez said that Adams "told him that someone broke into the apartment and strangled her grandmother." Gallegos opined the situation was an emergency. He told Adams "to get back in the car." Adams said aloud that someone broke in. Gallegos testified that Adams "kept saying" that someone broke in and strangled her grandmother. At one point, Adams began "hyperventilating" and medical attention was attempted at the scene, which she refused, requesting that medical personnel take care of her grandmother. Gallegos testified that Adams said someone broke into the apartment. However, Gallegos observed that the door was locked. A security guard for the apartment complex opened the apartment. The apartment showed no signs of forced entry. Following a trail of blood in the hallway of the apartment, Gallegos found Barnum's body behind a closed door in one of two bedrooms. Gallegos sought assistance "to go recover the two juveniles" he had "dropped off." As reasons for his police conduct, Gallegos testified that (1) he responded to a dispatch that three juveniles were at a convenience store past curfew, (2) they indicated they were planning to go to Louisiana, (3) they had clothes in the car and a hamster indicating they were "going somewhere," (4) the vehicle stalled at a convenience store and they were without transportation after curfew, (5) the vehicle belonged to Barnum, (6) Adams had no driver's license, (8) he observed Macias attempt to board another vehicle although rejected by the driver, (9) the juveniles were earlier that same day runaways and he confirmed that Macias and Lozano were again reported as runaways, and (10) Gallegos ultimately "found a body that no one was telling him what had happened until he got there." After he found Barnum's body, Gallegos determined that the three were "going to leave for a reason."

At the conclusion of the hearing, Adams' defense counsel further argued that Adams sought to suppress "the statements, specifically and only the statement that was given allegedly by Ms. Adams to Mr. Narvaez . . . and then Officer Gallegos." Further, "there were shoes that were taken from her We'll address those whenever she attempts to introduce those." Defense counsel adopted Macias' suppression arguments and requested suppression of the evidence on grounds that law enforcement did not comply with *section 52.02 of the family code*. n31 Without stating the grounds, the trial court denied the motion to suppress.

n31 Defense counsel requested the trial court to suppress "any evidence that the State is going to be attempting to introduce at the time of trial, any evidence that was taken from Ms. Adams, and specifically the statement that was made allegedly by her to Mr. Narvaez and then to Officer Gallegos."

Adams asserts that Officer Gallegos "wholly failed to comply" with *section 52.02(a) of the family code* by usurping a function vested solely in an officer designated by the juvenile court. She asserts that her statements, if illegally taken, could not have been admitted against her in her criminal trial under *article 38.23 of the code of criminal procedure*. She argues that Officer Gallegos' sole reason for noncompliance with *section 52.02 of the family code* was to obtain her statements and evidence.

D. Police Conduct

1. Reasonable Suspicion

An accused seeking to suppress evidence on the basis of illegal police conduct bears the burden of proof to rebut a presumption of proper police conduct. *Moreno v. State*, 124 S.W.3d 339, 344 (Tex. App.-Corpus Christi 2003, no pet.) (citing *McGee v. State*, 105 S.W.3d 609, 613 (Tex. Crim. App. 2003)). Reasonable suspicion exists if the officer has specific articulable facts that, when combined with rational inferences from those facts, would lead him to reasonably suspect that a particular person has engaged or is (or soon will be) engaging in criminal activity. *Garcia*, 43 S.W.3d 527, 530 (Tex. Crim. App. 2001); *Woods v. State*, 956 S.W.2d 33, 35 (Tex. Crim. App. 1997) (en banc). The articulated facts that support a temporary detention must be taken as a whole, and the reasonable suspicion formed must be based on the totality of the circumstances. *Woods*, 956 S.W.2d at 38. Where the initial detention is unlawful, any evidence seized subsequent to such a detention is inadmissible. *Gurrola v. State*, 877 S.W.2d 300, 302 (Tex. Crim. App. 1994) (en banc). The ultimate standard set forth in the *Fourth Amendment* is reasonableness. *Cady v. Dombrowski*, 413 U.S. 433, 439, 93 S. Ct. 2523, 37 L. Ed. 2d 706 (1973).

Absent a warrant, the State had the burden at the suppression hearing to show by a preponderance of the evidence that the officer had at least a reasonable suspicion that Adams either had committed an offense or was about to do so before he detained her. *See McGee*, 105 S.W.3d at 613; *see also Russell*, 717 S.W.2d 7 at 9-10. Giving almost total deference to the trial court in determining the historical facts, we believe those facts to be that the officer (1) observed Adams violating curfew, without operative transportation, and (2) had a reasonable suspicion that some activity out of the ordinary was occurring or had occurred that was related to a crime. This is because: (a) the juveniles were heading to Louisiana; (b) they appeared to be and admitted they were runaways; (c) the three had earlier that day been detained as runaways and released; (d) Macias and Lozano were once more reported as runaways; and (e) Adams was unlicensed to drive and seated behind the wheel of a vehicle registered to Barnum. We conclude that the evidence demonstrates that the officer had reasonable suspicion to briefly detain Adams.

2. Probable Cause

A child may be taken into custody if there is probable cause to believe that she has engaged in (1) conduct that violated a penal law of this state or a penal ordinance of any political subdivision of this state, or (2) conduct indicating a need for supervision. *TEX. FAM. CODE ANN. § 52.01(a)(3)* (Vernon 2004). We conclude that the officer had probable cause to believe that Adams violated curfew and engaged in conduct indicating a need for supervision as an admitted runaway with an out-of-state destination, having been in runaway detention earlier the same day, while accompanied by two reported runaways. *See TEX. FAM. CODE ANN. § 51.03(b)(3)* (Vernon Supp. 2004-05).

The question then becomes whether these facts, when viewed de novo, are sufficient to establish a

violation of the law. See *Morrison*, 71 S.W.3d 821 at 828; citing *Terry v. Ohio*, 392 U.S. 1, 21-22, 24-25, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968); *Woods v. State*, 956 S.W.2d 33, 35 (Tex. Crim. App. 1997); *Roy v. State*, 55 S.W.3d 153, 157 (Tex. App.--Corpus Christi 2001), *pet. dismiss'd, improvidently granted*, 90 S.W.3d 720 (Tex. Crim. App. 2002). We conclude that the officer provided sufficient objective facts to demonstrate that Adams was engaged in conduct indicating a need for supervision. We further conclude that the officer adduced specific articulable facts to support the right to investigate and, armed with these facts, the officer had probable cause and was authorized to detain Adams. See *McGee*, 105 S.W.3d at 614; *Stull v. State*, 772 S.W.2d 449, 451 (Tex. Crim. App. 1989) (en banc) ("The test for probable cause is whether at that moment the facts and circumstances within the officer's knowledge and of which [he] had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the [person] had committed or was committing an offense."). The officer's custodial detention was, therefore, proper. n32

n32 A taking of a child into custody is not an arrest except for purposes of determining the legal validity of the search and seizure itself. See *TEX. FAM. CODE ANN. § 52.01(b)* (Vernon Supp. 2004-05). *Section 51.095 of the family code* governs the admissibility of a child's statement. *TEX. FAM. CODE ANN. § 51.095* (Vernon 2002). *Section 51.095* does not preclude the admission of a child's statement if the statement does not stem from interrogation of the child while in the custody of an officer. *TEX. FAM. CODE ANN. § 51.095(b), (d)* (Vernon 2002). The family code contemplates that once a law enforcement officer has found cause initially to take a child into custody and makes the decision to refer her to the intake officer or other designated authority, a law enforcement officer relinquishes ultimate control over the investigative function of the case. See *TEX. FAM. CODE ANN. § § 52.02(a), 52.04(a), and 54.02(d)* (Vernon 2002); *Comer v. State*, 776 S.W.2d 191, 196 (Tex. Crim. App. 1989). The Legislature intended that the officer designated by the juvenile court make the initial decision whether to subject a child to custodial interrogation. *Id.*

3. Illegal Detention

After initially detaining Adams, the officer asked for her name, address and other pertinent information concerning her guardian/parent in order to deliver her to a location consistent with *section 52.02 of the family code*. See *TEX. FAM. CODE ANN. § 52.02(a)* (Vernon 2002). Adams refused to cooperate at first but eventually gave the address of her "uncle" Andy Narvaez. Upon arriving at the residence of Andy Narvaez, Adams insisted on speaking with Narvaez alone.

Adams' statements to Narvaez were not the result of custodial interrogation. n33 *Wilkerson v. State*, 173 S.W.3d 521, 2005 Tex. Crim. App. LEXIS 1619, at *10 (Tex. Crim. App. 2005) (citations omitted) (addressing alleged state agent conduct in the context of written statements). Adams requested to speak to Narvaez, not the police officer. Narvaez disclosed the information regarding Barnum to Officer Gallegos. While Gallegos acted on the information provided, evidence showed that Adams, unsolicited, repeated the same or similar statements. No right or privilege was violated by the officer's asking Narvaez what Adams had told [*55] him. n34

n33 "Custodial interrogation" is "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *Wilkerson v. State*, 173 S.W.3d 521, 2005 Tex. Crim. App. LEXIS 1619, at *8 (Tex. Crim. App. 2005) (citing *Miranda*, 384 U.S. 436 at 444).

n34 We observe that, after Narvaez told Officer Gallegos what Adams relayed regarding Barnum, the officer's decision to detain Adams was based on a superceding reason involving an offense against Barnum including victimization and absconding with her

vehicle. It seems the clear intent of the statutory scheme of the family code as a whole is that from this point on, the decision as to whether further detention is called for is to be made, not by law enforcement personnel, but by "the intake or other authorized officer of the court; see *TEX. FAM. CODE ANN. § 53.02* (Vernon 2002); see also § § 52.04 & 53.01 (Vernon 2002), with investigative aid of law enforcement officers when requested, see § 52.04(b), or by the juvenile court itself, see *TEX. FAM. CODE ANN. § 54.01* (Vernon 2002); *Comer, 776 S.W.2d at 194*.

Adams asserts that Narvaez was an agent of Officer Gallegos and Gallegos illegally obtained her oral statement to Narvaez. However, there are two types of "state agents": all those who are employed by any state agency are, by definition, "state agents," but only those who are working for or on behalf of police are law enforcement "state agents." *Wilkerson, 173 S.W.3d 521, 2005 Tex. Crim. App. LEXIS 1619 at *10* (*Tex. Crim. App. 2005*) (holding that CPS worker was not "in tandem" with police officers when interviewing the defendant).

The record demonstrates that Adams offered information regarding the whereabouts of the victim when she finally did speak with Narvaez upon arriving at the apartment complex. There is no evidence in the record to suggest that Narvaez was an agent of the officer as Adams suggests, or that Narvaez or Officer Gallegos initiated any questioning of Adams regarding the whereabouts of her grandmother prior to her oral statement to Narvaez. Rather, Adams, unsolicited, offered the information regarding Barnum first upon arriving at Narvaez's residence and, subsequently, upon arriving at the crime scene.

The record does not present the scenario where the police employ an informant to deliberately elicit incriminating statements from a defendant in custody, solely for the purpose of helping the police gather evidence against the defendant. *Escamilla v. State, 143 S.W.3d 814, 824* (*Tex. Crim. App. 2004*) (citing *State v. Hernandez, 842 S.W.2d 306, 312-16* (*Tex. App.-San Antonio 1992, pet. ref'd*), (discussing how non-law enforcement personnel can become state agents for *Sixth Amendment* purposes). Officer Gallegos did not ask Narvaez to act as a state agent nor convert an otherwise legal request of Narvaez to disclose Adams' information into an illegal one. *Id.* (citing *Hernandez, 842 S.W.2d at 314*, for the proposition that creation of an agency between law enforcement and non-law enforcement personnel depends upon the existence of an agreement between them at the time of the elicitation). Even if this were an offer by law enforcement to Narvaez to become a state agent, there is no evidence to support a finding that Narvaez accepted the offer. *See id.*

On this record, we cannot conclude that Narvaez was acting as a state agent when Adams spoke with him. *Id.*

4. No Causal Connection

By her motion to suppress evidence obtained in violation of the law under *article 38.23 of the code of criminal procedure*, Adams had the burden to produce evidence demonstrating the causal connection between a violation of *section 52.02(a) of the family code* and the complained of statements. *See Pham v. State, Nos. 12-04 & 72-04, 2005 Tex. Crim. App. LEXIS 832, at *17* (*Tex. Crim. App. June 8, 2005*) (designated for publication) (requiring a causal connection between a violation of *section 52.02(b)* and the complained-of statements). The record does not demonstrate nor does Adams direct us to evidence in the record that establishes a causal connection between a *section 52.02(a)* violation and the complained of statements. *Id.* The burden to produce evidence never shifted to the State to disprove Adams' evidence or to bring an attenuation of taint argument to demonstrate that the causal chain Adams asserted was in fact broken. *See id.*

5. Unnecessary Delay

Adams asserts that Officer Gallegos unnecessarily delayed complying within one of the statutorily enumerated actions in *section 52.02 of the family code*. *Section 52.02* expressly authorized Gallegos to release the juveniles to, among others, a parent, guardian, or other responsible adult. *TEX. FAM. CODE ANN. § 52.02(a)(1)* (Vernon 2002). As to Adams, the sole responsible adult she identified to Officer Gallegos was "uncle Andy," who, rather than accepting Adams, engaged Gallegos to confirm that Barnum was not home. More importantly, unknown to Gallegos, no runaway report was possible as to Adams because her guardian Barnum was murdered. Once more, Adams has not shown a causal connection between the complained of unnecessary delay and evidence she sought to suppress. *Pham, 2005 Tex. Crim. App. LEXIS 832, at *17*.

6. Disposition

After reviewing the evidence in the light most favorable to the trial court's ruling and with appropriate deference, we conclude that the trial court's ruling on the motion to suppress is reasonably supported by the record and is correct on the alternate theories articulated above. *Kombudo, 171 S.W.3d 888, 2005 Tex. Crim. App. LEXIS 1345, at *3-4; Villarreal, 935 S.W.2d at 138; Perales, 117 S.W.3d at 438*. We overrule Adams' sixth issue.

Conclusion: Having overruled all of Adams' issues, we affirm the judgment of the trial court.