
YEAR 2006 CASE SUMMARIES

By
The Honorable Pat Garza

Associate Judge
386th District Court
San Antonio, Texas

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The record supported the trial court's finding that the procedure for taking a juvenile's statement required by § 51.095(a) was complied with by the officers and the magistrate. [Ramos v. State](06-2-3)

On February 22, 2006, the San Antonio Court of Appeals found that the trial court did not abuse its discretion by believing the testimony of the magistrate and the detective with respect to the time the warnings were given and the time the statement was taken, as they differed from the times on the statement itself.

¶ 06-2-3. **Ramos v. State**, MEMORANDUM, Nos. 04-04-00824-CR & 04-04-00825-CR, 2006 Tex.App.Lexis 1385 (Tex.App.— San Antonio, 2/22/06).

Background: In two separate cases tried together, Gabriel Ramos was convicted of murder and sentenced to thirty-five years in the Texas Department of Criminal Justice, Institutional Division. n1 Ramos was 16 years old when the offenses were committed, but the juvenile court waived jurisdiction and certified Ramos to be tried as an adult. *See TEX. FAM. CODE ANN. § 54.02* (Vernon 2002). Ramos was subsequently indicted for capital murder-multiple persons; he pled guilty to the lesser included offense of murder in each case. On appeal, Ramos challenges the trial court's denial of his motion to suppress his written statement.

Held: Affirmed

Facts: The basis for all four of Ramos' issues alleging his statement was involuntary is that the face of the written statement shows it was begun at 12:26 a.m. on March 2, 2003, and the "Certificate of Magistrate" shows his rights were administered to him at 12:40 a.m. on March 2, 2003. Therefore, Ramos argues that, according to the face of both documents, it is clear that he gave his written statement before receiving and waiving his rights, and his statement should have been suppressed. Ramos, however, did not raise this ground for excluding his statement in his motion to suppress, or during the suppression hearing. The hearing was held on Ramos' "Motion to Determine Admissibility of Statement," which was filed in the juvenile court prior to the transfer of jurisdiction to the district court. His motion merely requested a determination of whether all the requirements of § 51.095 of the *Family Code* were met for admissibility of Ramos' written statement, without alleging any particular defect in the process or alleging his statement was involuntary. n3 *See TEX. FAM. CODE ANN. § 51.095(a)(1)* (requiring that a magistrate inform the juvenile of his *Miranda* rights prior to the making of a written statement, that the statement be signed in the presence of the magistrate with no law enforcement officers present, that the magistrate be convinced the juvenile is making the statement voluntarily, and has knowingly, intelligently and voluntarily waived his rights). At the conclusion of the suppression

hearing, Ramos argued his statement had been coerced and was involuntary, but did not raise the issue of whether the warnings were given before the written statement was begun.

n3 Ramos filed another motion to suppress any tangible evidence and statements after the transfer of jurisdiction from the juvenile court to the district court, but no hearing was held, and no ruling was made on that motion; therefore, the motion preserved nothing for review. *TEX. R. APP. P. 33.1(a)*.

Memorandum Opinion: By failing to raise the specific ground for exclusion of the statement in the trial court that he now raises on appeal, Ramos has failed to preserve the issue for appellate review. *TEX. R. APP. P. 33.1(a)*; *Routier v. State*, 112 S.W.3d 554, 586 (Tex. Crim. App. 2003), cert. denied, 541 U.S. 1040, 124 S. Ct. 2157, 158 L. Ed. 2d 728 (2004) (when the objection at trial does not comport with the complaint raised on appeal, the complaint is not preserved for appellate review).

Even if Ramos had preserved the issue of whether his statement was given prior to his receipt of the required warnings, the record shows that he did in fact receive the warnings from the magistrate before giving his written statement, in compliance with § 51.095(a) of the Family Code. Three witnesses testified at the suppression hearing: (1) Detective John David Slaughter, who took Ramos' statement; (2) Magistrate Juventino Guerra, Jr., who gave Ramos his warnings and certified his written statement; and (3) Ramos himself.

Detective Slaughter testified he was assigned to investigate a double homicide committed during a vehicle theft in which Ramos was a suspect. The detective first came in contact with Ramos during execution of a search warrant at Jose Mendoza's home, where Ramos had been staying. Ramos was transported to the juvenile detention center based on an outstanding warrant for possession of a prohibited weapon. At the detention center, Detective Slaughter told Ramos they had already talked to Jose Mendoza and his sister, and asked Ramos if he would like to give a statement about the double homicide; if so, the detective stated they would have to "start some paperwork to get him magistrated." Ramos said he wanted to make a statement. Another officer, Detective Angel, typed up the name, address and date heading on the forms for a juvenile statement and for the magistrate's warnings and waiver of rights by a juvenile. The detectives then took Ramos and the forms to the magistrate's office. Outside the presence of any law enforcement officers, Ramos was advised of his rights by the magistrate and proceeded to waive them. At that time, Ramos had not been questioned and had not made a statement. The detectives then transported Ramos back to the juvenile detention center, where Ramos gave his written statement at about 12:45 or 12:50 p.m. Ramos never asked for anybody to be present, and was not threatened or coerced. Ramos was then taken to the magistrate's office for a second time at about 2:45 or 2:55 a.m., where he reviewed and signed his statement in the presence of the magistrate and two witnesses. Finally, the detectives transported Ramos back to the juvenile detention center where he was booked for the warrant on the prohibited weapon.

Magistrate Juventino "Tino" Guerra, Jr. testified that he remembered giving the juvenile warnings to Ramos on March 2, 2003. He identified State's exhibit 4 as the copy of the warnings he gave Ramos, along with the juvenile's statement and his magistrate's certification. Magistrate Guerra stated he followed his standard procedure for giving juvenile warnings with Ramos, engaging him in small talk before reading the warnings and rights line by line, asking him if he had any questions and whether he understood. He testified that Ramos signed the warnings form in his presence and that of two witnesses, without any law enforcement officers present. He then read Ramos the waiver of rights form in the same manner, and Ramos signed the waiver form before him and the witnesses. Ramos never stated that he wished to terminate the process or requested an attorney, and appeared to understand his rights and the waiver. The magistrate stated he informed Ramos that if he did make a statement, he would return to the magistrate's office so the magistrate could review the statement with him and ensure it was voluntarily

made. Magistrate Guerra testified that Ramos had knowingly, intelligently and voluntarily waived his rights. When the detectives brought Ramos back after he had given his written statement, the magistrate read the statement "word by word" with Ramos in the presence of the two witnesses, but outside the presence of any law enforcement officers. Ramos made one correction to his name, and then signed the statement in front of Magistrate Guerra and the witnesses at 2:55 a.m. on March 2, 2003. The magistrate then signed the "Certificate of Magistrate." Magistrate Guerra testified that he fully complied with the requirements of *Family Code* § 51.095, and that Ramos fully understood the waiver of his rights and the nature and contents of his statement.

Finally, Ramos testified at the suppression hearing that he told Detective Slaughter that he wanted to give a statement after the detective told him he already had statements from Jose Mendoza and his sister, and asked if Ramos wanted to make a statement. Ramos stated he wanted his statement to match Jose's because Jose had previously told him what to say about the vehicle theft and shooting. Ramos testified he remembered the magistrate reading him his rights and admitted signing the waiver of rights, although Ramos stated he did not understand his rights and did not understand he could be charged with capital murder. Ramos stated he never told the magistrate that he did not understand his rights and did not ask for an attorney. Ramos stated he had been in the juvenile system before, having pled true to previous charges of burglary of a vehicle and possession of a prohibited knife. He agreed that the magistrate read his statement to him line by line, he understood it and signed the statement. He was not threatened by any officer or the magistrate. The trial court found the requirements of § 51.095 were complied with and denied the motion to suppress Ramos' written statement.

As previously noted, we afford almost total deference to the trial court's determination of historical facts that the record supports, especially when the fact findings are based on an evaluation of the witnesses' credibility and demeanor. *In re R.J.H.*, 79 S.W.3d at 6-7; *Guzman*, 955 S.W.2d at 88-89. The trial court did not abuse its discretion by believing the testimony of Magistrate Guerra and Detective Slaughter that the written statement form merely reflects that the magistrating process was begun at 12:26 a.m., that Ramos had not been questioned and had given no statement at that time, and that Ramos' statement was not made until after he received the warnings from the magistrate and waived them at 12:40 a.m. The record supports the trial court's finding that the procedure for taking a juvenile's statement required by § 51.095(a) was complied with by the officers and the magistrate in this case; therefore, it did not abuse its discretion in denying the motion to suppress Ramos' statement. *TEX. FAM. CODE ANN. § 51.095(a)*.

Furthermore, because the record is clear that Ramos was 16 years old at the time he committed the offenses, and at the time he made his statement, the provisions of the Family Code rather than the Code of Criminal Procedure govern the admissibility of his statement. *Griffin v. State*, 765 S.W.2d 422, 427 (Tex. Crim. App. 1989); *Ramos v. State*, 961 S.W.2d 637, 639 (Tex. App.--San Antonio 1998, no pet.). Ramos' second issue alleging violations of the Texas Code of Criminal Procedure is overruled. Finally, the record not only establishes compliance with the greater measures of protection afforded to juveniles by § 51.095 of the Family Code, but also with the federal and state constitutional requirements for voluntariness of a confession. The record shows that, under the totality of the circumstances, Ramos made his statement knowingly and voluntarily, and not as the product of coercion. *See Griffin*, 765 S.W.2d at 429; *In re R.J.H.*, 79 S.W.3d at 6.

Conclusion: Accordingly, we overrule all of Ramos' issues and affirm the trial court's judgment.