
YEAR 2006 CASE SUMMARIES

By
The Honorable Pat Garza

Associate Judge
386th District Court
San Antonio, Texas

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Although officer testified that respondent was not free to leave, under the totality of the circumstances, court concluded appellant was not in custody during questioning. [In the Matter of J.W.](06-3-6).

On June 12, 2006, the Dallas Court of Appeals concluded that, although officer testified that child was not free to leave, a reasonable sixteen-year-old in these circumstances would have felt able to end the questioning, particularly since the officers did nothing to restrain or restrict appellant's movement.

¶ 06-3-6. **In the Matter of J.W.**, No. 05-05-00675-CV, 2006 Tex.App.Lexis 5005 (Tex.App.— Dallas, 6/12/06).

Facts: Jim Villwok was a teacher at Poteet High School in Mesquite. J.W., who was sixteen years old at the time of the incident, was a student in Villwok's last class of the day. On the afternoon of October 29, 2004, Villwok found J.W. in his office, which is accessed through the classroom. Villwok asked J.W. what he was doing, and J.W. "really didn't say anything" but acted "like he shouldn't have been in there."

That night, Villwok was at the high school football game and saw J.W. He noticed that J. W. had a gray case on his belt that looked similar to one that Villwok used for his digital camera. Villwok kept the camera in his office under the computer. Suspicious, Villwok went to his office to check on his camera and found that it was missing. Villwok returned to the game and notified Mesquite Police Officer Darryl Simmons and school administrators.

Officer Simmons located J.W. in the stadium and asked about the case hanging on his belt. J.W. told him it was a camera. Officer Simmons asked to see the camera, and J.W. handed it to him. Officer Simmons asked where J.W. got the camera, and J.W. said he got it during the game from a "guy named Mike." J.W. said he did not know Mike's last name but described him for Officer Simmons. Officer Simmons told J.W. that the camera may be stolen and that he was going to keep it until he could verify his story.

The next week, Officer Simmons matched the serial number of Villwok's missing camera to the camera taken from J.W. Also, Officer Simmons talked to Mike Sanders, who he had determined was the "Mike" identified by J.W. Sanders had no knowledge of the camera. At trial, Sanders testified that he had a conversation with J.W. after Halloween in which J.W. asked for his help. According to Sanders, J.W. said he got a camera from a "retarded boy" and wanted Sanders, if asked by the police, to say that Sanders got the camera from a "retarded boy."

J.W. gave at least two other versions of where he obtained the camera. Villwok testified that he asked J.W. about the camera when J.W. returned to school, and J.W. told him that another student gave it to

him. Additionally, two witnesses, both friends of J.W., testified that they saw J.W. with the camera after school on October 29. Both testified that J.W. told them he got the camera from his mother. J.W. took pictures of his friends with the camera.

In his third issue, J.W. complains the trial court erred in admitting his oral statements to Officer Simmons at the football game. J.W. does not complain about any particular statement that he made but generally about the conversation he had with Officer Simmons. He argues the conversation was the result of "custodial interrogation," and its admission violated *section 51.095 of the Texas Family Code*.

Held: Affirmed

Opinion: Under section 51.095, certain requirements must be met for a juvenile's statement to be admissible. *See TEX. FAM. CODE ANN. § 51.095* (Vernon Supp. 2005). The statute does not, however, preclude admission of a voluntary oral statement by a juvenile that does not stem from custodial interrogation. *See TEX. FAM. CODE ANN. § 51.095(b)(1), (d)(2)*.

In determining whether a minor was in custody at the time of questioning, courts consider the age of the defendant and all the circumstances surrounding the interrogation to decide whether there was a formal arrest or a restraint of movement to the degree associated with formal arrest. *In re V.P.*, 55 S.W.3d 25, 31 (Tex. App.-Austin 2001, pet. denied). In other words, courts ask whether, based on the objective circumstances, a reasonable child of the same age would believe his or her freedom of movement was significantly restricted. *Id.* Factors relevant to the question of whether a child was in custody include whether there was probable cause to arrest, the focus of the investigation, the officer's subjective intent, and the child's subjective beliefs. *Id.*

The evidence showed that Villwok reported to Officer Simmons and school administrators that he believed J.W. had his digital camera. In response, Officer Simmons began looking for J.W. in the stands at the football game. When Officer Simmons spotted J.W., a second officer was near J.W., and Simmons asked the officer to bring J.W. to him. Both Simmons and the second officer were in full police uniform and had guns.

At the time of the questioning, J.W. was standing above Simmons on the walkway in the stands next to the second officer; Officer Simmons was standing below J.W. on the field with two school administrators. Although Officer Simmons testified that J.W. was not free to leave, he did not communicate that to J.W. Further, although he told J.W. he believed the camera might be stolen, he did not accuse J.W. of theft. Finally, because Officer Simmons had not determined whether the camera was stolen, he did not have probable cause to arrest J.W.

As for J.W., he was not arrested, handcuffed, or restrained in any way. He was not placed in a patrol car or taken to the police station for questioning. He never asked to go home or asked for his mother or an attorney. Rather, he answered Officer Simmons's questions and turned over the camera.

Considering all the circumstances objectively, we conclude a reasonable sixteen-year-old in J.W.'s circumstances would have felt able to end the questioning, particularly since the officers did nothing to restrain or restrict appellant's movement. Because we conclude appellant was not in custody during the questioning, the trial court did not err in admitting the challenged statements. Issue three is without merit.

Conclusion: We affirm the trial court's judgment.

