YEAR 2006 CASE SUMMARIES

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

Statement by respondent given to arson investigators was considered voluntary.[In the Matter of F.C.W.](06-4-7B)

On September 26, 2006, the Houston Court of Appeals held that conduct by arson investigators was not so coercive to have caused respondent's statements to be derived from "official, coercive conduct of such a nature that any statement obtained thereby was unlikely to have been the product of an essentially free and unconstrained choice by its maker."

¶ 06-4-7B. **In the Matter of F.C.W.**, MEMORANDUM, No. 14-05-00556-CV, 2006 Tex.App.Lexis 8364 (Tex.App.— Houston, 9/26/06).

Facts: On the evening of August 20, 2004, fifteen-year-old F.C.W. and his friend J.N. visited the home of a mutual friend, K. Allard. At around 8:00 or 9:00 p.m., F.C.W. and J.N. left Allard's house and walked to the home of another friend, Priscilla, who lived nearby. After Priscilla's mother told the pair that Priscilla could not see them that night, F.C.W. and J.N. walked back to Allard's house, n1 passing the house where Stacey Hawileh lived with her father and younger siblings. A short time later, a passerby knocked on Mr. Hawileh's door and told him the truck in his driveway was on fire. n2 Mr. Hawileh extinguished the fire and called the police. A member of the Harris County Sheriff's Department arrived, assessed the situation, and called the fire marshal.

> n1 According to F.C.W.'s testimony at trial, he and J.N. were casually lighting pine needles with lighters and letting them burn. J.N. denied this.
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> n2 F.C.W. testified that he had picked up a newspaper in plastic wrapping, and that J.N. took the newspaper, shoved pine needles into it, lit the pine needles, and threw the package into the bed of Mr. Hawileh's truck. Although J.N.'s testimony agreed with F.C.W.'s testimony regarding the means used to start the fire, J.N. testified that F.C.W. ignited the pine needles and threw the newspaper into the truck.

About thirty minutes later, arson investigator Nathan Green arrived. He photographed the damage to the truck, examined the scene, and concluded that arson was the likely cause of the fire. Meanwhile, F.C.W. and J.N. returned to Allard's house and spent the night. According to Allard, the boys told him they had set a girl's red truck on fire. n3 The next day, Stacey Hawileh commented to Allard that her truck had been set on fire, and Allard told her about F.C.W.'s and J.N.'s involvement. Stacey gave this information to her father, who repeated it to Investigator Green.

> n3 Allard also testified that F.C.W. insulted J.N. for not helping him do it or fully participating.

On September 14, 2004, Green and a partner went to the disciplinary school F.C.W. attended to speak with him about the incident. F.C.W. was summoned to the principal's office where the two investigators were waiting with the school principal. The two investigators were wearing polo-style golf shirts with the word "Arson" on them, and their firearms were visible on their waistbands. Green sat behind the principal's desk and conducted most of the interview. F.C.W. sat in a chair opposite Green, and the principal stood behind Green, in front of a door to the office. There was conflicting testimony as to where Green's partner, Investigator Bolton, was located. F.C.W. testified that Bolton stood behind him, blocking the remaining door to the office, but Green testified that Bolton sat beside F.C.W. Finally, F.C.W. testified that the office doors locked automatically from the outside, but that he knew he could open the doors from the inside.

The interview lasted twenty or twenty-five minutes. It is undisputed that the arson investigators did not inform F.C.W. of his right to remain silent, consult an attorney, or have a parent or other adult present. According to Green, he told F.C.W. he was not under arrest and was free to leave; however, F.C.W. testified that Green never told him he was free to leave. At trial, F.C.W. stated he felt scared during the interview, and Green testified that F.C.W. cried briefly. F.C.W. made no attempt to leave the office or end the interview, and did not ask to speak to anyone or to have anyone else present. He admitted he was involved in the arson, but only in a joint capacity with J.N., saying he was not quite sure who exactly started the fire. n4 Green incorporated some of F.C.W.'s statements into his report. After the interview ended, F.C.W. returned to class.

> n4 This is based on the following exchange between appellant's attorney and Green:
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> Q: And your report just mentioned that you interviewed [F.C.W.] and that he said that he and [J.N.], from your statements today, he and [J.N.] placed pine needles and newspapers into the back of the truck; is that correct?
>
> A: Correct, yes, sir.
>
> Q: Did he mention who started the fire?
>
> A: No, he did not.
>
> Q: No?
>
> A: They just made reference to both of them being there.
>
> Q: Okay. Did he tell you that [J.N.] might have started the fire?
>
> A: Actually, I believe the comment was made that he wasn't quite sure or remembered who set that particular fire.

On January 26, 2005, F.C.W. was charged with arson. Following a bench trial on April 18, 2005, F.C.W. was adjudicated delinquent for arson, sentenced to probation until his eighteenth birthday, and ordered to pay restitution of $ 935.00 to Mr. Hawileh.

II. ISSUES PRESENTED

In two issues, F.C.W. contends the trial court erred by admitting statements he made to the arson investigators on September 14, 2004. F.C.W. argues in his first issue that his statements were the product of a custodial interrogation without the protections of *TEX. FAM. CODE ANN. § 51.095(b)* (Vernon Supp. 2005), and are therefore inadmissible. In his second issue, F.C.W. argues that even if the

interrogation is deemed non-custodial, the statements were involuntary, and thus, their admission violated his right to due process.

Held: Affirmed

Memorandum Opinion: For a statement to be involuntary, there must have been "'official, coercive conduct of such a nature that any statement obtained thereby was unlikely to have been the product of an essentially free and unconstrained choice by its maker.'" *In re R.J.H., 79 S.W.3d at 6* (quoting *Alvarado v. State, 912 S.W.2d 199, 211 (Tex. Crim. App. 1995)*). In this case, the conduct of the arson investigators was not so coercive to have caused F.C.W. to make statements that were not the product of free and unconstrained choice. F.C.W. identified no conduct or statements by the investigators that he considered threatening or intimidating, nor does F.C.W. contend he was promised anything in exchange for his cooperation. *See In re Z.L.B., 115 S.W.3d 188, 191 (Tex. App.--Dallas 2003, no pet.)* (citing the absence of a detective's promise in exchange for the appellant's written statement as a factor in determining the statement was voluntary). The interview took no longer than twenty-five minutes, and at no time did appellant indicate a desire to speak with his parents or an attorney. Although F.C.W. was not asked if he wished to speak to a parent or trusted adult or have such a person present, these protections were not required in a non-custodial interview such as this.

On the record before us, and presuming as we must that the trial court made all findings of fact consistent with its ruling, we cannot conclude that the trial court abused its discretion in admitting F.C.W.'s statements. Thus, we overrule appellant's second issue.

Conclusion: For the foregoing reasons, we hold the trial court did not abuse its discretion in denying the appellant's motion to suppress the statements he made to arson investigators. Accordingly, we affirm the judgment of the trial court.