

Review of Recent Juvenile Cases (2007)

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

Statements by appellant are admissible where there is no causal connection between statements and the officers' alleged failure to promptly notify appellant's parents of his arrest.[Cortez v. State](07-4-6A)

On August 21, 2007, the Austin Court of Appeals held that appellant was not denied the right to have his parents with him while he was being held in the juvenile processing office, moreover, there was no showing of a causal connection between the alleged violations and the spontaneous statements made, and finally, any error in the admission of these statements were harmless.

¶ 07-4-6A. **Cortez v. State**, ___S.W.3d ___, No. 03-06-00359-CR, 2007 Tex.App.Lexis 6800 (Tex.App.—Austin, 8/21/07).

Facts: On Friday afternoon, September 23, 2005, a group of Austin High School students had just gotten off the school bus when a Honda Accord pulled to the curb beside them. Witnesses to the shooting testified that the front passenger in the car said something to sixteen-year-old Christopher Briseno, who had just gotten off the bus. Then, several shots were fired from the car. Briseno was fatally shot in the head. His sixteen-year-old cousin, Adam Cantu, was shot in the legs.

As the investigation continued over the coming days and weeks, it was learned that six persons had been in the car when the shots were fired. In the front seat were Alan Ruiz, who was the driver, and appellant, who was the front passenger. In the back seat were Alan Ruiz's brother Humberto, his sister Pamela, Juan Soliz, and Victor Saramiento.

Saturday, September 24

Initially, the only occupant of the Accord identified to the police was Humberto Ruiz. The day after the shooting, Austin police officers went to the Ruiz residence, where they met Humberto, Alan, and appellant, who was sixteen years old. The three boys agreed to speak to the officers and were taken to the downtown police station, where they arrived between 1:30 and 2:00 p.m., according to the officer's testimony at the suppression hearing. The officers also testified that they were not then aware of appellant's involvement in the shooting. Appellant was not under arrest or restraint, and he was allowed to wait in the lobby while the Ruiz brothers were being questioned.

Later that afternoon, Pamela Ruiz was also brought to the police station, accompanied by her mother. At trial, a police officer testified that when Pamela walked past appellant, who was still sitting in the lobby, she did a "doubletake."

Shortly after 4:00 p.m., appellant left the police station and walked to a nearby convenience store, where he called a friend for a ride. Meanwhile, statements by the Ruiz siblings gave investigators reason to believe that appellant was the person who had fired the shots that killed Briseno and wounded Cantu.¹ Officers began to look for appellant and found him at the convenience store. Detective Armando Balderama testified that at 4:50 p.m., appellant was returned to the police station, advised that he was under arrest, and placed in an interview room that was designated as a juvenile processing office. *See Tex. Fam. Code Ann. § 52.025(a)* (West 2002).²

1 It is clear that the Ruizes not only incriminated appellant, but they also minimized their own involvement in the shooting. There is evidence that the police allowed the Ruizes to leave the station on Saturday because there was no probable cause to hold them. By the time the police learned that they had played a culpable role in the shooting, the Ruiz family had fled to Mexico. Some months later, the three siblings returned to Austin and were arrested. They were awaiting trial for Briseno's murder at the time of appellant's trial.

2 Appellant testified that he was taken to the police station at 12:30 p.m. and told that he was being detained because he "did not have a license." Appellant said that he asked to call his parents, but the officers would not allow it. Appellant also testified that he was not allowed to call his parents after he was returned to the police station and placed in the juvenile processing office.

Balderama testified that he asked appellant if he wanted his parents to be notified. Appellant said that he did. Balderama tried to call appellant's mother, but he got no answer. Balderama successfully called appellant's father and told him that appellant was about to be transferred to the Gardner-Betts juvenile detention facility. Appellant was then taken to another location to await transfer. While they were waiting, appellant asked Balderama "how long I thought he was going to have to . . . remain in jail." Balderama told appellant that "he was getting ahead of himself, that he needed to wait and see." Appellant's question to Balderama is the first of the three statements that appellant urges should have been suppressed.

Detective Frank Rodriguez testified that minutes after appellant was returned to the police station and placed in the interview room, he encountered appellant's mother and brother in the downstairs lobby. They asked the officer for appellant's whereabouts, and he told them that appellant had been detained for a crime that had been committed the day before. Appellant's mother responded that the police should also arrest Alan Ruiz because appellant had been with him all day on Friday. Rodriguez testified that he needed to go back upstairs where the interviews were taking place, so he excused himself but told appellant's mother that he would be "right back." Rodriguez said that when he later returned to the lobby, appellant's mother and brother were gone.

Appellant's mother testified that she went to the police station at 2:00 p.m. after receiving a telephone call from Alan Ruiz saying that appellant had been arrested. She said that Rodriguez told her that appellant was being questioned and that she could not see him. She testified that after she returned to her home, a police officer called her and told her that appellant was being charged with murder, that she could not see him, and that he was going to be taken to Gardner-Betts.³ She said that she made no effort to see appellant that day because she did not have permission to do so.

3 Appellant's mother testified that this call came from Rodriguez. The officer testified, however, that he had no further conversations on Saturday with members of appellant's family after appellant's mother left the police station.

Richard Bratton was the intake officer at Gardner-Betts on the evening of September 24, 2005. Bratton testified that upon appellant's arrival, he advised appellant of his rights while in detention and called his family. Bratton spoke to a person who he believed was appellant's brother, who was in turn speaking to appellant's mother in Spanish. Bratton told appellant's family some of the details of the offense for which appellant had been arrested, explained appellant's rights, and informed them of the visitation hours at the facility. Appellant's family was not able to visit him at Gardner-Betts that night because the intake process was not completed until after 9:00 p.m., when visitation ended.

Sunday, September 25

At 11:00 a.m. Sunday morning, Rodriguez and another officer, Hector Reveles, transported appellant from Gardner-Betts to the police station so that he could be advised of his rights by a magistrate. *See id.* § 51.095(a) (West Supp. 2006). Rodriguez and Reveles testified that appellant was not questioned during the drive, but that appellant asked Reveles if the police "wanted the gun" or wanted to know "where the gun was." Reveles said that he told appellant that they would "talk about that later." Appellant's question regarding the gun is the second statement that he sought to have suppressed.

After being advised of his rights by the magistrate, appellant was taken to the juvenile processing office. He refused to give the officers a statement and asked to speak to his parents. There was no telephone in the room, so Rodriguez dialed the number on his cell phone, gave the phone to appellant, and stepped outside. Through a microphone located in the room, Rodriguez heard appellant tell his mother that he had fired two shots but had not hit anyone, and that Alan Ruiz had fired the fatal shots. This is the last of the three challenged statements.

The trial

The juvenile court waived its jurisdiction and transferred appellant to district court for trial. *See id.* § 54.02 (West 2002). At the trial, Cantu identified appellant as the front passenger in the Accord and as the person who shot him and Briseno. Jose Ortiz, another student who witnessed the shooting, also identified appellant as the front passenger and shooter. Both Cantu and Ortiz were certain that the driver of the car had not fired the shots. Another bystander, Esteban Zuniga, did not identify appellant, but he did testify (with some equivocation during cross-examination) that the front passenger was the person who fired the shots.

Juan Soliz, one of the back seat passengers in the Accord, identified the other occupants of the vehicle. He said Humberto Ruiz told him that Pamela was having trouble with Briseno and Cantu at school. As the car approached the bus stop, Alan Ruiz took a pistol out of the console between the front seats and handed it to appellant. When the car stopped, appellant called out to Briseno, "Are you Bloods?" Briseno said, "No." Appellant then asked Alan Ruiz if he should "[g]ive it to them." Alan said that he should, and appellant began firing. Soliz testified that Alan did not threaten appellant or otherwise force him to shoot. Soliz said that he was certain that Alan Ruiz did not fire the gun, but he was not sure whether or not Humberto Ruiz had fired the weapon. Soliz also testified that on the day after the shooting, after learning that one of the victims had died, appellant said "it was good so they will not mess with them again."

Although they did not testify, there was evidence that two other witnesses to the shooting identified someone other than appellant as the shooter. Rodriguez testified that Victor Saramiento, another passenger in the Accord, gave a statement to the police that was consistent with what appellant told his mother; that is, that Alan Ruiz had fired the fatal shots. Rodriguez also testified that Elvia Hernandez, who lived near the scene of the shooting, told officers that she was sitting on her porch when the shooting occurred and that the "back passenger" had fired the shots.

In his own testimony, appellant acknowledged being the front passenger in the Accord. He said that after he accepted a ride from Alan Ruiz, Ruiz showed him a pistol in the console and told him that "he had to kill two students who were in school because they were messing with his sister." After picking up the other passengers at the school, Ruiz followed the bus. As they drove, Ruiz handed the pistol to appellant and told him, "You're going to kill him." When appellant protested, Ruiz said, "Okay. Well, just tell him--ask him some questions, things I want to know." When Briseno got off the bus, Pamela Ruiz pointed and said, "Look, it's him." At Alan Ruiz's insistence, appellant asked Briseno if he was a Blood. Briseno denied it. Pamela Ruiz said, "He's telling lies. He's the one that was messing with me." Then she said, "Kill him. Kill him." With that, Alan Ruiz reached across appellant and began firing. According to appellant, Ruiz then handed the pistol to him and ordered him to shoot. Appellant testified that he was afraid of Ruiz, and that he fired two shots into the air.

The court's jury charge included an instruction on the law of parties. *See Tex. Penal Code Ann. §§ 7.01, .02* (West 2003). The charge authorized appellant's conviction for murder if the jury found that appellant, acting alone or with others as a party, caused Briseno's death. Appellant does not challenge the sufficiency of the evidence to sustain the jury's verdict.

Statements to Officers

In point of error one, appellant contends that the officers who took him into custody on the afternoon of September 24 failed to promptly notify his parents. *See id. § 52.02(b)(1)* (West Supp. 2006) (providing that person taking child into custody shall promptly give notice of action and statement of reason to child's parent, guardian, or custodian). In point of error two, appellant further contends that he was not allowed to have his parents with him in the juvenile processing office. *See id. § 52.025(c)* (West 2002) (providing that child detained in juvenile processing office is entitled to be accompanied by parent, guardian, custodian, or attorney). Appellant argues that his question to Balderama about how long he would remain in jail was the inadmissible fruit of these violations. *See Tex. Code Crim. Proc. Ann. art. 38.23* (West 2005) (exclusionary rule). In point of error three, appellant contends that his remark to Reveles regarding the gun should also have been suppressed as the product of these juvenile code violations.

Held: Affirmed

Opinion: A child being held in a juvenile processing office may not be left unattended and is entitled to be accompanied by his parent. *Tex. Fam. Code Ann. § 52.025(c)*. The statute does not require that a parent be present, however. *See Leonard v. State, No. 01-93-01066-CR, 1997 Tex. App. LEXIS 51, at *3 (Tex. App.--Houston [1st Dist.] Jan. 9, 1997, no pet.)* (not designated for publication). The record before us supports a finding that appellant did not ask for his parents and that appellant's parents did not ask to be present.

Rodriguez testified that appellant was monitored for the entire time that he was held in the juvenile processing office and that he never asked to have his parents with him. Balderama testified to the same effect. Even appellant, who testified that he asked to speak to his parents, did not testify that he wanted one or both of them to be present with him in the processing office.⁵ The evidence supports the trial court's implied finding that appellant did not request the presence of his parents in the processing office.

5 Appellant testified that he was not told that he had a right to have his parents with him. He was not asked and did not say whether he would have invoked that right. Appellant does not contend that the police were obligated to advise him of his right to have his parents present, and we express no opinion regarding that issue.

There is no evidence that appellant's father asked to speak to or be with his son while he was detained in the processing office. Appellant's mother testified that she asked to see appellant while she was at the police

station on the afternoon he was arrested, but this request was denied. Her testimony was contradicted by Rodriguez, who testified that appellant's mother did not ask to see her son before leaving the police station. The trial court, as trier of fact at the suppression hearing, could reasonably conclude from the officers' testimony that neither of appellant's parents asked to be with appellant while he was detained in the processing office.

Causal connection

Even if appellant's parents were not promptly notified of his arrest or appellant was denied the right to have his parents with him in the juvenile processing office on Saturday afternoon, no causal connection has been shown between these alleged violations and appellant's statements to the two officers. *See Gonzales, 67 S.W.3d at 913* (holding that suppression required only when there is causal connection between violation of parental notice requirement and receipt of juvenile's statement). Neither statement was made while appellant was in the juvenile processing office, and thus his parents would not have been present. This distinguishes the instant case from *State v. Simpson, 105 S.W.3d 238 (Tex. App.--Tyler 2003, no pet.)*, on which appellant relies. In *Simpson*, a juvenile was interrogated and gave a written confession to participating in a capital murder before his parents were notified, more than forty-eight hours following his arrest. *Id. at 240*. The court found a causal connection between the lack of notice and the statement, saying that there was "nothing in the record to indicate that either of [Simpson's] parents would have advised [him] to make or sign a statement implicating himself in the commission of capital murder" had they been present during the interrogation. *Id. at 243*.

Appellant hypothesizes that if his parents had come to the juvenile processing office, they would have advised him against making any statements or having any conversations with the police. Accepting this hypothesis as true, we are not persuaded that this advice would have deterred appellant from making the two statements at issue. The trial court found that the statements were not the products of interrogation, and the evidence supports this finding. In fact, the evidence reflects that on both occasions, appellant and the officers were not even engaged in conversation when he spontaneously made the challenged remarks. We find no causal connection between the two statements and the officers' alleged failure to promptly notify appellant's parents of his arrest and the alleged denial of appellant's right to have his parents with him in the juvenile processing office.

Harmless error

Even if appellant's rights under the juvenile code were violated and even if there were a causal connection between these violations and appellant's statements to the officers, we conclude that the admission of the statements did not affect appellant's substantial rights. *See Tex. R. App. P. 44.2(b)*. Appellant's question to Balderama inquiring how long he would have to remain in jail showed that appellant was curious about the seriousness of his situation. This curiosity is understandable and not particularly incriminating. The statement to Reveles regarding the gun was a more serious matter because it implicitly showed that appellant had some knowledge about the shooting and the weapon. Still, the statement does not necessarily compel the conclusion that appellant was guilty of the murder. Appellant could have been offering to disclose information he had learned from someone else, such as Alan Ruiz.

In any event, appellant's involvement in the shooting was not a contested issue at his trial; only the nature of that involvement was in question. In his own trial testimony, appellant admitted being in the car and firing two shots, albeit into the air. Even if the challenged statements had not been admitted, appellant would have had little choice but to admit his involvement in light of the eyewitness testimony identifying him as the front passenger and his mother's statement to the police that appellant had spent the day of the shooting with Alan Ruiz. In light of appellant's testimony, any error in the admission of appellant's question to Balderama regarding how much time he might spend in jail and his question to Reveles as to whether the police wanted

the gun may be disregarded as harmless. These remarks to the officers merely confirmed what appellant did not contest: that he was present in the car from which the shots were fired.

Conclusion: Viewing the record in the light most favorable to the trial court's rulings, we conclude that appellant's parents were promptly notified after he was taken into custody and that appellant was not denied the right to have his parents with him while he was being held in the juvenile processing office. Moreover, there is no showing of a causal connection between the alleged violations and the spontaneous statements appellant made to the officers. Finally, any error in the admission of these statements was harmless. Points of error one, two, and three are overruled.