

## Review of Recent Juvenile Cases (2009)

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

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### **Statements by co-actor, which is against his self interest, may be used in probable cause determination to arrest respondent.[Chaves v. State](09-1-5A)**

**On December 18, 2008, the Houston Court of Appeals (1<sup>st</sup> Dist), conclude that co-actor's statement was a statement against his self-interest and therefore inherently credible and thus could be used to establish probable cause to take appellant into custody.**

¶ 09-1-5A. **Chaves v. State**, No. 01-07-00563-CR, MEMORANDUM, 2008 WL 5263404 (Tex.App.-Hous. (1 Dist.) 12/18/08)

**Facts:** On February 15, 2001, a black male and appellant went into a dry cleaners, where the complainant, Kimyen Tran, was working. The black male had a knife and appellant had a gun. After they stole \$100 from the complainant's cash register and her jewelry, appellant took her to the back restroom, forced her to remove her clothing, and sexually assaulted her. When the two men left the dry cleaners, the complainant went to a nearby Domino's Pizza to call the police.

Officer Wise Epps of the Houston Police Department went to the dry cleaners, where he was told by the complainant that one of the robbers was a black male and the other a Hispanic male.

When a black male came into the dry cleaners four days after the robbery and asked for change, the complainant recognized his voice as that of the black male from the robbery. The complainant activated the silent alarm, and Officer Brian Diettrich of the Houston Police Department responded to the call. Officer Diettrich located the black male, subsequently identified as Marvin Bates, across the street and arrested him. Bates admitted he was at the scene, but he told Officer Diettrich that he was not involved in the robbery, but was merely a witness. Bates identified appellant as the person responsible for both the robbery and "something else" he did not want to discuss (later determined to be the sexual assault). Bates described appellant for Officer Diettrich, saying that he was Hispanic and had a tattoo on his arm that said "ES." After Officer Diettrich determined that no warrant was required, he went to the school where Bates and appellant were classmates and took appellant into custody. [FN2] Officer Diettrich determined he had probable cause to arrest appellant based on an offense report, talking with the complainant, and talking with Bates. Following his arrest, appellant wrote a statement that admitted his involvement in the aggravated robbery and sexual assault.

FN2. Appellant was 15 years old when Bates took him into custody.

On May 13, 2002, appellant pleaded guilty to the offense of aggravated robbery and aggravated sexual assault and received a 35-year sentence. On April 5, 2006, appellant argued at a writ of habeas corpus hearing that his plea was involuntary due to erroneous advice from his attorney that he had to plead guilty or the sentences

would be stacked. The Court of Criminal Appeals agreed, and the aggravated robbery case was remanded for a new trial. On June 20, 2007, appellant's case went to trial, and on June 25 the jury found him guilty and assessed punishment at 35 years and a \$10,000 fine.

**Held:** Affirmed.

**Memorandum Opinion:** Probable cause has been defined as the existence of reasonably trustworthy information sufficient to warrant a reasonable person to believe that a particular person has committed an offense. [Ballard, 987 S.W.2d at 892](#). "Probable cause to arrest exists when the facts and circumstances within the knowledge of the arresting officer, and of which he has reasonably trustworthy information, are sufficient to warrant a reasonable and prudent man in believing that a particular person has committed or is committing a crime." [Cornealius v. State, 870 S.W.2d 169, 172 \(Tex.App.--Houston \[14th Dist.\] 1994\)](#), *aff'd*, [900 S.W.2d 731 \(Tex.Crim.App.1995\)](#). "A statement against penal interest is inherently credible and may be sufficient, in and of itself, to establish probable cause." *Id.* "In reviewing the sufficiency of probable cause, the appellate court will look to the facts and circumstances of each case." *Id.*

We must defer to the trial court's finding that Officer Diettrich was a credible witness. See [Torres v. State, 182 S.W.3d 899, 902 \(Tex.Crim.App.2005\)](#) (holding that trial court evaluates witnesses' credibility and demeanor). What we must determine is whether it was reasonable for Officer Diettrich to believe there was probable cause to take appellant into custody based on the information given to him. In *Cornealius*, in which a participant in a crime confessed and turned in two accomplices, the court of appeals held that a statement against one's own penal interest that implicates someone else is inherently credible and may be sufficient to establish probable cause for an arrest. [870 S.W.2d 169, 171-72 \(Tex.App.--Houston \[14th Dist.\] 1994\)](#), *affirmed*, [900 S.W.2d 731 \(Tex.Crim.App.1995\)](#). In *White v. State*, the court held that an informant's admission that he was with the defendant when she committed a robbery, was a declaration against his own penal interest. [746 S.W.2d 775, 777-78 \(Tex.App.--Dallas 1985, no pet.\)](#).

The State argues that Bates's statement to Officer Diettrich was against his own penal interest, and therefore inherently credible, so as to be sufficient as a basis for probable cause. The State argues that it was against Bates's own interest because he placed himself at the scene with appellant and he mentioned the sexual assault to the police, which only an accomplice with appellant could have known about. Appellant contends, however, that Bates's statement was not against Bates's own penal interest, but rather an opportunity for Bates to exculpate himself by implicating someone else. Appellant argues that this distinction discredits Bates's statement and negates probable cause to arrest appellant. Furthermore, appellant argues that Bates's statements were not against Bates's own interest because being at the scene and describing what happened could be a statement of a witness, not necessarily that of an accomplice.

The fact that Bates denied involvement when implicating appellant is a distinction between the instant case and the cases cited by the State. Additionally, unlike *White*, Bates did not say that he was "with" appellant, only that he was present during the commission of the crime, which is not necessarily self-implicating. However, by his statement, Bates indicated knowledge not only of the robbery but of "something else," namely the sexual assault, and he identified the assailant by name, described him as a Hispanic male along with other specific traits, and knew where he could be found. Only the black male identified as having accompanied the Hispanic male during the robbery could have known about the something else, and the complainant had already identified Bates as the black male who had robbed her when Bates identified appellant. We conclude that Bates's statement was a statement against his self-interest and inherently credible. Accordingly, we conclude that Bates's statements were sufficient to give Officer Diettrich probable cause to take appellant into custody.

Moreover, even if Bates's statements standing alone, were insufficient to support a finding of probable cause, we must look not just at Bates's statements to the officer, but at the totality of the circumstances to determine probable cause. See [Balentine, 71 S.W.3d at 768](#). This totality includes other facts that the State presents as providing support for a probable cause determination. Officer Dietrich testified that he had probable cause to arrest based not just on the information supplied by Bates but also the police report [FN5] and information supplied by Tran. The information supplied by Bates (such as appellant's being Hispanic, taller than Bates, having dark hair, being clean-shaven, and having the tattoo) was corroborated by information in the police report regarding the description of the Hispanic perpetrator and by Officer Dietrich when he took appellant into custody. These facts support a finding of probable cause.

FN5. The police report apparently said an Hispanic male committed the robbery.

**Conclusion:** We conclude that the information on which appellant was taken into custody was based was sufficiently trustworthy to allow a reasonable person to find probable cause. We conclude that the trial court did not abuse its discretion in denying appellant's motion to suppress. Thus, the trial court did not err in admitting appellant's inculpatory statement because Officer Dietrich's act of taking him into custody was not illegal due to lack of probable cause. We overrule appellant's point of error.