Review of Recent Juvenile Cases (2009)

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

Trial court's error in admitting appellant's illegally obtained statement was harmful error requiring reversal of his conviction.[In the Matter of D.J.C.](09-4-5C)

On September 24, 2009, the Houston (1 Dist) Court of Appeals held that they could not determine beyond a reasonable doubt that the erroneous admission of appellant's statement, in which he confessed to having sex with the complainant, did not contribute to his conviction.

¶ 09-4-5C. **In the Matter of D.J.C.**, No. 01-07-01092-CV, --- S.W.3d ----, 2009 WL 3050870 (Tex.App.-Hous. (1 Dist.)9/24/09).

Facts: On February 14, 2006, appellant D.J.C., a sixteen-year-old male, and the complainant, M.I.F., a thirteen-year-old female, had a sexual encounter in the complainant's home in Galveston, Texas. On March 31, 2006, the complainant told a case worker with Child Protective Services that she had had a sexual encounter with appellant. Galveston Police Department ("GPD") Officer C. Garcia was assigned to investigate M.I.F.'s complaint. On June 21, 2006, Officer Garcia went to appellant's home and talked to appellant and his grandmother. Officer Garcia told them that appellant was a suspect in a crime and the focus of an investigation. Officer Garcia requested that appellant's grandmother bring him to the GPD station and that "it would be best for him to cooperate." Officer Garcia left appellant's home.

In response to Officer Garcia's request, appellant and his grandmother later went to the police station. Officer Garcia led appellant to an interview room on the second floor of the police station. Officer Garcia testified that he knew very little about juvenile detention and did not know whether the interview room met the requirements of a designated juvenile detention center. He also testified that the police department had a designated juvenile section "but it wasn't equipped with the video equipment at the time," and so he did not use it. Therefore, Officer Garcia took appellant's statement in the interview room used for questioning both adult and juvenile subjects. Appellant's grandmother, who was his legal guardian, asked to be present with appellant in the interview room, but police denied her request. Officer Garcia turned on a video camera and left the interview room. A Galveston municipal court judge then entered the interview room and read appellant his rights, including his right to counsel, right to remain silent during the interview, and right to terminate the interview at any time. The magistrate also warned appellant that "you don't have to make this statement to anyone. And anything you say can be used against you." However, he did not warn appellant his statement could be used "in evidence" against him. Appellant's grandmother was not present when the magistrate read him these rights.

After the judge read appellant his rights, Officer Garcia returned to the interview room. Officer Garcia told appellant he was a suspect in an offense of having sex with a thirteen-year-old child. After Officer Garcia questioned appellant for fifteen to twenty minutes, appellant confessed to having sex with the complainant. Garcia arrested him immediately after the interview.

At trial, appellant moved to suppress his confession. The trial court excused the jury and convened a hearing on appellant's motion to suppress. At the hearing, Officer Garcia testified that he led appellant to the interview room "used routinely to interview all criminal suspects." He testified that he was armed and that the door was locked. He testified that he did not know what constituted a juvenile processing office and that he did not "routinely investigate juvenile crimes." He testified that his supervisor "advised me [the interview room] was mandated as a juvenile interview room." However, he also testified that the room was used for the interrogation of both adult and juvenile suspects and that he used that room because there was no videotape in the designated juvenile interview room at that time. The State played the video recording of Officer Garcia's interview with appellant. At the end of the hearing, the trial court ruled that appellant was not in custody at the time of his confession and denied appellant's motion to suppress.

Appellant testified that the judge told him at least twice that he could leave the interview room at any time. In addition, appellant testified that he told Officer Garcia that he was not afraid to leave the interview room at any time. Appellant also testified that he did not fully understand the warnings the judge gave him prior to his interview. He stated that he and his grandmother drove to the police station "[b]ecause the officer came to our house and told us that I need to give a statement." He further testified, in relevant part:

> [Counsel]: Okay. And when you were in the room when the Judge was telling you those warnings, did you feel like you could just get up and walk out the door?
>
> [Appellant]: Not really.
>
> [Counsel]: Did you understand that when he told you that the statement could be used against you, did you understand that that meant in court?
>
> [Appellant]: No.
>
> [Counsel]: Did you understand that that meant they were charging you with a crime as a result of the statement?
>
> [Appellant]: No, ma'am.
>
> [Counsel]: Did you even know that this was a crime at this point?
>
> [Appellant]: If I knew I was going to get in trouble for what I said, I wouldn't have went.
>
> [Counsel]: You didn't understand that you were waiving your right, did you?
>
> [Appellant]: No, ma'am.

The State also introduced testimony from the complainant. The complainant testified that she did not remember whether she had sex on February 14, 2006 with appellant. She testified that she "[didn't] know if it was 2005 or 2006." She also testified that she was thirteen years old and appellant was sixteen years old on February 14, 2006. She testified that she and appellant had sex at her house. She also testified that she told investigators that she and appellant had sex at his house but she did not know the address. She could not remember whether she or appellant brought a condom when they had sex. She also testified that she told investigators that she brought a condom for appellant when they had sex.

The jury found true that appellant had engaged in delinquent conduct by committing aggravated sexual assault against the complainant. On November 1, 2007, the trial court signed a disposition order placing appellant on one month's probation and seven hours of community service work.

Held: Reversed and remanded

Opinion: When the statement of a juvenile is obtained in violation of Family Code section 52.02(a)--much less in violation of multiple rights conferred by sections 52.02(a), 52.025, and 51.095--it must be suppressed and a harm analysis done. *See Roquemore,* 60 S.W.3d at 867-68; *Baptist Vie Le,* 993 S.W.2d at 656.

We use the criminal standard of reversible error in a juvenile delinquency proceeding, requiring the State to bear the burden of proving delinquent conduct under the more stringent beyond a reasonable doubt standard rather than under the civil standard. *See* Tex. Fam.Code Ann. § 51.17(a), (c); In re B.L.D., 113 S .W.3d at 351; *In re U.G.,* 128 S.W.3d at 799-800; *In re D.Z.,* 869 S.W.2d at 566. Because the improper admission of the statement of a juvenile in response to custodial interrogation implicates the constitutional right against self-incrimination, it is constitutional error to admit the statement into evidence. *Marsh,* 140 S.W.3d at 908; *see also In re U.G.,* 128 S.W.3d at 800. Under the standard for reviewing constitutional error in criminal cases, we reverse the trial court's ruling unless the record establishes beyond a reasonable doubt that the erroneous admission of the statement did not contribute to the defendant's conviction or punishment. Tex.R.App. P. 44.2(a); *Franklin v.. State,* 138 S.W.3d 351, 354-55 (Tex.Crim.App.2004); *Marsh,* 140 S.W.3d at 908; *In re U.G.,* 128 S.W.3d at 800.

Here, the only evidence against appellant other than his improperly admitted electronically recorded statement was the complainant's testimony. The complainant testified that she lied to appellant about her age. She testified that she did not remember whether she had sex on February 14, 2006 with appellant. She testified that she "[didn't] know if it was 2005 or 2006." She testified that she and appellant had sex at her house. She also testified that she told investigators that she and appellant had sex at his house, but she did not know the address of appellant's house. The State did not present any other evidence or testimony.

Conclusion: The complainant's testimony was inconsistent and contradictory. The State had no other proof. We cannot, therefore, determine beyond a reasonable doubt that the erroneous admission of appellant's statement, in which he confessed to having sex with the complainant, did not contribute to his conviction. *See* Tex.R.App. P. 44.2(a). We hold that the trial court's error in admitting appellant's illegally obtained statement was harmful error requiring reversal of his conviction.