

## Review of Recent Juvenile Cases (2011)

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

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**By giving minor full access to and control over a lockbox and its contents before leaving the country, defendant gave up any standing to challenge its search and seizure.[Castleberry v. State](11-3-9)**

**On April 28, 2011, the Houston Court of Appeals held that even though he never gave anyone authority, permission, or consent to open or view the contents of the lockbox, defendant gave up standing to challenge search and seizure when he left lockbox and key with minor.**

¶ 11-3-9. Castleberry v. State, (NO. 01-10-00158-CR, 01-10-00249-CR, 01-10-00159-CR, 01-10-00248-CR), --- S.W.3d---, 2011 WL 1598841 (Tex.App.-Hous. (1 Dist.), 4/28/11).

Facts: Castleberry started sexually assaulting his stepdaughter, P., when she was eight years old. When P. and a fourth-grade classmate, A., became close friends, A. began to spend the night at P.'s house on weekends and holidays. Within a couple of years, Castleberry sexually assaulted A. as well as P. During some incidents, Castleberry would photograph the girls while they engaged in sexual conduct, plying them with alcohol and instructing them on what to wear and how to pose.

The abuse of both girls continued until 2003, when Castleberry took a job overseas. By then, P. and her mother had moved to live with P.'s grandfather, and Castleberry no longer lived with them. Before leaving, Castleberry gave P. a lockbox and key to keep for him while he was gone. He did not tell her what was inside the lockbox, but instructed her to destroy it and its contents if anything happened to him. P., who was seventeen years old at the time, agreed, and stored the lockbox in the closet of the room she had in her grandfather's house.

Castleberry remained overseas for several years. In late December 2005, when P. was nineteen years old, she finally told her mother about the sexual abuse. Her mother called the police, who told P. to stop all contact with Castleberry. P., fearing that Castleberry would return to kill her, quit her job in Houston and moved to her uncle's home in Dallas a few days later. While traveling there, P. called her mother, told her about the lockbox, and asked her to give it to the police.

P.'s mother retrieved the lockbox. Before bringing it to the police, she opened it to find computer disks, floppy disks, printed photographs, and other materials. On one of the disks, Castleberry had written "For My Eyes Only." P.'s mother opened it on a computer and saw that it contained over 300 pornographic images of P. and A.

In the meantime, P. contacted Castleberry's girlfriend overseas and sent her an Internet link to the local news story on the police investigation. When Castleberry learned that criminal charges were pending against him in Texas, he quit his job in Kuwait and became a fugitive. Approximately three years later, in January 2009, the

authorities located Castleberry in Thailand, arrested him, and returned him to the United States to face the charges.

Held: Affirmed

Opinion: Castleberry contends that the warrantless seizure of the lockbox violated his privacy rights under the state and federal constitutions. See U.S. Const. amend. IV; TEX. CONST. Art. 1, § 9. “A ‘seizure’ of property occurs when there is some meaningful interference with an individual's possessory interests in that property.” *United States v. Jacobsen*, 466 U.S. 109, 113, 104 S.Ct. 1652, 1656, 80 L.Ed.2d 85 (1984). An accused has standing to contest the seizure of personal property under the Fourth Amendment only if he has a possessory interest and a legitimate expectation of privacy in the property. See *id.* at 121–22, 104 S.Ct. at 1661–62; *Rakas v. Illinois*, 439 U.S. 128, 143, 99 S.Ct. 421, 430, 58 L.Ed.2d 387 (1978) (holding that “capacity to claim the protection of the Fourth Amendment depends upon whether the person who claims the protection of the Amendment has a legitimate expectation of privacy in the invaded place”); *Villarreal v. State*, 935 S.W.2d 134, 138 (Tex.Crim.App.1996) (“An accused has standing, under both constitutional provisions, to challenge the admission of evidence obtained by a governmental intrusion only if he had a legitimate expectation of privacy in the place invaded.” (citing *Rakas*, 439 U.S. at 143, 99 S.Ct. at 430)). In claiming that he had a reasonable expectation of privacy in the lockbox at the time it was seized, Castleberry relies on evidence that: (1) he never intended to abandon the lockbox; (2) he wanted P. to keep the lockbox safe for him while he was overseas; and (3) he never gave anyone authority, permission, or consent to open or view the contents of the lockbox, except for his instruction to P. that she destroy the lockbox and its contents if anything should happen to him. Castleberry likens his agreement with P. to a bailment agreement. Under well-settled Texas law, however, a minor is bound by an agreement only if she chooses to be. *Dairyland Cnty. Mut. Ins. Co. v. Roman*, 498 S.W.2d 154, 158 (Tex.1973); *Swain v. Wiley College*, 74 S.W.3d 143, 146–47 (Tex.App.-Texarkana 2002, no pet.); see TEX. CIV. PRAC. & REM CODE ANN. § 129.001 (West 2005) (“The age of majority in this state is 18 years.”); see also *Youngblood v. State*, 658 S.W.2d 598, 599 (Tex.Crim.App.1983) (“[I]t is risky business for an adult to knowingly enter into a contract with a person under the age of 18 ... because the adult is on notice that as a matter of law the minor can during his minority avoid and disaffirm the contract.”). As a result, Castleberry could not reasonably rely on his agreement with seventeen-year-old P. to protect his privacy in the lockbox and its contents.

Further, the relevant question is not whether an effective bailment existed, but whether P. had mutual access to and control over the lockbox. See *Welch v. State*, 93 S.W.3d 50, 55 (Tex.Crim.App.2002). The record shows that Castleberry gave P. both the lockbox and its key before he went overseas. Castleberry thus made no effort to secure the privacy of the lockbox's contents as against P., giving P. mutual, if not superior, access to and control over them. See *id.*; see also *United States v. Osunegbu*, 822 F.2d 472, 480 (5th Cir.1987) (manager of private mailbox facility had authority to consent to search of defendant's mailbox where front of box was locked but back was open to access by employees sorting and arranging mail).

The record also shows that Castleberry never forbade P. from accessing the contents of the lockbox. The circumstances indicate that Castleberry assumed the risk that P. would consent to its seizure. See *Welch*, 93 S.W.3d at 57. After giving P. full access to and control over the lockbox and its contents, Castleberry could not have a reasonable expectation of privacy in them. We therefore hold that Castleberry lacked standing to challenge the seizure, and the trial court correctly denied his motion to suppress.

Conclusion: We hold that the trial court did not abuse its discretion in denying Castleberry's motion to suppress. We therefore affirm the judgment of the trial court.