

Review of Recent Juvenile Cases (2012)

by

The Honorable Pat Garza

Associate Judge

386th District Court

San Antonio, Texas

Causal connection was not established where guardians were not allowed to speak with juvenile prior to giving his confession.[In the Matter of C.M.](12-3-8B)

On February 22, 2012, the Waco Court of Appeals found that guardian's testimony that if they had been able to speak with juvenile, they would have advised him not to make any statements prior to him speaking with an attorney, did not establish enough causal connection to grant Motion to Suppress confession.

¶ 12-3-8B. **In the Matter of C.M.**, MEMORANDUM, No. 10-10-00421-CV, 2012 WL 579540 (Tex.App.-Waco, 2/22/12)

Facts: An armed robbery of a convenience store committed with a shotgun took place a short distance from the place C.M. was residing with his cousin, Charles, and Charles's wife, Laura. At this time, C.M. was fifteen years old. Shortly after the robbery, a neighbor called the police to report a suspicious person attempting to enter Charles and Laura's residence through the back door. Multiple officers had been dispatched to the scene to attempt to locate the robber, some of whom were in uniform and some were not. An officer came to the residence and asked to search the residence because of the neighbor's report to make sure that no one had broken into the residence. Laura was the only person at home and gave consent.

At one point during the search for the robber, a suspect was spotted and chased, but that person escaped. A short time later, an officer spotted C.M. in an alley a short distance away peering around a corner of a building. When he saw an officer and a deputy constable, C.M. turned and tried to walk away. The officers took off running after C.M. and told him to stop, which he did. C.M. was frisked for weapons and walked back with the officers to the residence.

At the residence, C.M. was told not to leave and to wait next to Charles's vehicle. C.M. sat down on the back of Charles's truck and waited. Hines, a detective, and at least one other officer stood with CM. and had a conversation with CM. about what he had been doing that day and why he was not in school. During this time other officers were in the vicinity of CM. and were armed, although the officers testified that no weapon was pointed at CM. at any time and the weapons were unholstered only during the protective sweep of the residence. Additionally, some of the officers at the scene carried patrol rifles but the officers testified that they were pointed at the ground in a safety circle position and not at CM. While sitting on Charles's truck, the officers observed that CM. seemed to be very nervous and shaking. He was dressed in a t-shirt and shorts, which the officers believed was odd for the weather that day, which was cool. CM. was

not handcuffed at any time prior to the conclusion of the second statement made in the patrol car.

C.M.'s initial story regarding his whereabouts that day were shown to be untrue, and after a short conversation of approximately five to ten minutes, Hines confronted C.M. by telling him that they knew what had happened that morning and that CM. might as well be truthful with the officers. At this point, CM. admitted that he had robbed a store with a shotgun. He had stolen a shotgun from a friend in Dallas and had hidden it under his bed wrapped in a towel. CM. committed the robbery so he could get the money to return to Dallas, his hometown. CM. contended that he had thrown down the money and shotgun while he was being chased. This is the first statement of which C.M. complains.

Hines then took CM. to an unmarked police car so they could discuss what had happened in a quieter environment. Hines got into the driver's side and CM. got into the passenger side front seat. Another officer had already activated a recording device in the vehicle. Hines asked CM. similar questions except in more detail and CM. again confessed to stealing the shotgun and committing the robbery with the shotgun that was loaded. CM. stated that if the store clerk had resisted that he would have shot the clerk. CM. did not seem overly nervous or upset during this interview but was calm and matter-of-fact. After this discussion, Hines told CM. that he was under arrest and that he would be taken to juvenile detention. This was the second statement of which CM. complains. CM. was then left in the vehicle for a short time when another officer came and asked him to exit the vehicle, at which time he was then handcuffed.

Multiple officers spoke with Charles and Laura during this time. Laura consented to a search of C.M.'s room and the residence. Charles and Laura both testified that they asked to speak to C.M., but were not allowed to do so. Both stated that if they had been allowed to speak to CM. they would have advised him against making any statements until after speaking with an attorney and that they believed that CM. would have listened to their advice. Charles asked to accompany CM. to the police station but the officers told him no and that he could not speak with CM. until he was taken to juvenile detention. CM. did not have any prior adjudications as a juvenile; however, Charles testified that CM. had been in trouble before but had not been caught when he lived in Dallas.

C.M. was taken to the Bryan Police Department to see a magistrate. C.M. was in an interview room for approximately an hour waiting for the magistrate to arrive. There is no dispute that C.M. was in custody at this time. Gore, a magistrate, arrived and met with C.M. in the interview room. She reviewed the required warnings and advised C.M. of his rights as required by section 51.095(a)(5)(A) of the Family Code. C.M. signed an acknowledgment that he had been read and had his rights explained to him by the magistrate, that he understood them, and had asked any questions he had regarding them. This was electronically recorded both visually and aurally. The magistrate asked C.M. if he still wanted to talk with the detectives and C.M. responded affirmatively. Gore also testified at the suppression hearing that she believed that C.M. understood his rights and that he voluntarily wanted to speak with the officers. C.M. was interviewed by Hines and another detective and made a statement similar to the statement recorded in the police vehi-

cle. This statement by C.M. is the third statement of which C.M. complains.

C.M. filed a motion to suppress each of these statements, which was denied after a hearing by the trial court. C.M. did not testify at the suppression hearing. After the motion was denied, C.M. pled true to the offenses of aggravated robbery and possession of a prohibited weapon, a sawed-off shotgun. In the disposition phase, the trial court accepted the disposition of a determinate sentence of fifteen years' confinement to be served in the custody of the Texas Youth Commission for the aggravated robbery which had been agreed-upon by the State and C.M.

Held: Affirmed

Memorandum Opinion: In his second issue, C.M. complains that the trial court abused its discretion by denying his motion to suppress his third statement made at the police department because Charles and Laura were not allowed to speak to him prior to his making the statement nor were they allowed to accompany C.M. to the police department. Rather, they were affirmatively told that they could not speak with C.M. or accompany him when they asked the officers, which C.M. contends is a violation of section 52.025(c) of the Family Code, which states that “[a] child ... is entitled to be accompanied by the child's parent, guardian, or other custodian or by the child's attorney.” Tex. Fam.Code Ann. § 52.025(c) (West 2008). However, there is no requirement that such a person be present. See *Cortex v. State*, 240 S.W.3d 372, 380 (Tex.App.-Austin 2007, no pet).

The burden of proof is on the child to establish a causal connection between a statutory violation of section 52.025 and his statement. See *Gonzales v. State*, 67 S.W.3d 910, 913 (Tex.Crim.App.2002) (holding that suppression required only when there is causal connection between violation of parental notice requirement and receipt of juvenile's statement). While the issue in *Gonzales* involved a violation of section 52.02(b) relating to prompt parental notification, the same causal connection is required to render a statement inadmissible for a statutory violation of section 52.025(c). See *Cortez*, 240 S.W.3d at 380–81.

Charles and Laura testified that if they had been able to speak with C.M. they would have advised him not to make any statements prior to him speaking with an attorney. Charles opined that C.M. would have heeded his advice because Charles had been in trouble with the law previously. However, when later recalled as a witness, Charles stated that he was unsure whether C.M. would have listened to his advice or not.

On the recording of C.M. at the police department, C.M. never requested the presence of Charles or Laura. C.M. had admitted that he committed the robbery because he was trying to get away from their residence because he was not happy there. C.M. is a distant cousin of Charles and had resided with Charles and Laura only for approximately two months prior to the robbery. Prior to that, he had lived in Dallas his entire life. In fact, when Charles reminded C.M. of his doctor's appointment scheduled that day, C.M. told Charles that he would not go, which could be construed as evidence of C.M.'s refusal to act in accordance with Charles's directions. Even if we

assume without deciding that section 52.025(c) was violated, when viewing the evidence in a light most favorable to the trial court's decision, C.M. did not establish a causal connection between the alleged violation and his third statement. We overrule issue two.

Conclusion: Having found no error in the trial court's denial of the motion to suppress the statements, we affirm the trial court's orders of adjudication and disposition.