Juvenile statement taken in Mississippi in violation of Family Code ruled admissible. [In the Matter of X.J.T.](14-2-1A)

On February 27, 2014, the Fort Worth Court of Appeals held that juvenile failed to meet his burden to show a causal connection between any violation of Texas or Mississippi law and his statement.

¶ 14-2-1A. **In the Matter of X.J.T.**, MEMORANDUM, No. 02-13-00176-CV, 2014 WL 787832 (Tex.App.—Fort Worth, 2/27/14).

Facts: At a hearing outside the jury's presence, Detective Edward Raynsford from the Fort Worth police department testified that he and Detective K.D. Koralewski interviewed appellant in Mississippi in January 2013 at the Leflore County Correctional Facility. An officer from the Greenwood, Mississippi police department, Sergeant Byars, was also present. They recorded a statement from appellant that was about an hour long.

Before the officers obtained the statement, a deputy brought appellant to them from the secured part of the correctional facility. Detectives Raynsford and Koralewski, and Sergeant Byars, walked with appellant into a courtroom and sat in the jury box while appellant appeared before the judge. The judge asked them to approach; Detective Raynsford showed his paperwork and placed a recorder between the judge and appellant. According to Detective Raynsford, everything that took place in the courtroom was recorded. The judge read appellant his rights. The detectives were then "shown out of the back of the courtroom" and went into an interview room. Detective Raynsford testified that the officers had taken their guns off before entering the courtroom, did not have them in the interview room, and were never armed in front of appellant.

Detective Raynsford denied threatening appellant, depriving him of anything he asked for, or making promises to elicit a statement. But he did admit that he told appellant that his brother had made some statements that Detective Raynsford believed "were true at that time" to see how appellant would react. Detective Raynsford explained that he had told appellant truthfully what he had been hearing from other people. Detective Raynsford did not remember appellant's asking for a lawyer or a parent, nor asking to terminate the interview.

Judge Palmer, the justice court judge of Leflore County, testified that his understanding when the detectives visited him was that they were in Mississippi to extradite appellant and transport him back to Texas. Judge Palmer confirmed that appellant would have been considered a juvenile under Mississippi law but that a juvenile charged with armed robbery—the Mississippi equivalent of aggravated robbery—would be treated as an adult. He testified about the initial appearance a person charged with armed robbery would face:

> And at that initial appearance, they are read the charge or charges against them, whatever the matter—it may be one or several counts. And they also go through basically a checklist of rights that have to be read to that person who is charged with that felony. The judge makes sure they understand those rights.
> They are asked whether or not they can afford an attorney. If they cannot afford an attorney, one is provided with—for them through the public defender's office. And also the bond is also set at that particular proceeding.

He characterized appellant's appearance before him with Detectives Raynsford and Koralewski as such an initial appearance. Judge Palmer confirmed that he read appellant his rights as set forth in exhibits 75 and 76 and that appellant initialed each box, indicating "that he understood his rights ... based upon the form."

Judge Palmer testified that neither detective made "any moves toward" appellant or threatened him while in the courtroom. He verified that the conversation was recorded. The judge did not remember the officers being in the jury box; he said he thought they were nearby but did not barricade appellant. He also did not remember whether the officers had their weapons, but he said law enforcement officers were allowed to carry weapons in the courtroom.

Judge Palmer did not recall setting a bond and thought appellant was before him only to read him his rights. It was the judge's understanding that Texas had a hold on appellant at the time. Judge Palmer also testified that it was possible appellant was being held without bond because of the hold, but he did not know if that was the case. He said during cross-examination that "based upon this situation, it was not requested a bond be set due to the fact that this young person was being extradited." However, Judge Palmer also testified that, regardless, whether appellant was being held without bond did not bear upon the voluntariness of the statement.

Appellant testified that he had been held in a holding cell with "the other grown people" and that he was transported before the judge in handcuffs and shackles. Although Detective Raynsford had denied talking to appellant outside the courtroom other than to say hello, appellant testified that the officers told him how to respond to the judge, that they needed him to sign some papers, and that they needed a statement from him. According to appellant, one of the detectives was armed in the courtroom, the other took out his gun when they came out of the courtroom, and they were both armed in the interview room. Appellant said they had a conversation outside the interview room about what appellant had been involved in and who the officers believed had been involved.

Appellant testified that he felt that he had to talk to the detectives because he had to ride all the way back to Texas with them and they had a "Class A" warrant out for him, which appellant explained meant that he was not supposed to be apprehended and that if he "moved a certain way or flinched or made an attempt to flee," the officers were supposed to shoot him for the purpose of killing him. He said his uncle had told him he heard on the police scanner that Texas had issued a shoot-to-kill warrant for him and his brother. Appellant said he initialed the forms, but he did not understand what the judge read to him. He said Detective Raynsford told him outside the interrogation room that others had told him appellant was involved "so don't BS him." These conversations were not recorded.

Appellant denied that the detectives verbally threatened him, but he also said one of the detectives unclipped his gun holster when appellant said he did not know someone in a photo the detective showed him.

After appellant testified, the State called Detective Raynsford to testify again. Detective Raynsford again denied having a weapon and testified that none of the three officers had a

weapon. He did not remember appellant's being handcuffed and shackled. He denied telling appellant what to say or telling him he needed a statement from him. He stated that neither he nor the other officers unsnapped a holster and said that his own holster at the time did not have a snap. He did not know about Detective Koralewski's however. Detective Raynsford denied talking to appellant about returning to Texas, said that he would not have been the one to transport him, and stated that he had never heard of a shoot-to-kill warrant. He denied threatening appellant at any time.

Detective Koralewski testified that appellant was not shackled and handcuffed when he was brought to the officers, which surprised him. Detective Koralewski remembered the officers securing their weapons after having been in the courtroom and before going into the interview room. According to Detective Koralewski, the officers were not sitting in the jury box when the judge read appellant his rights but were about five feet away from appellant.

Detective Koralewski testified that Sergeant Byars did not accompany them into the interview room. He also did not recall anyone having a conversation with appellant before they entered the interview room. According to Detective Koralewski, appellant was not handcuffed and shackled in the interview room. He testified that none of the three unsnapped a holster and that he did not have a snap on his holster. He denied that any of the officers threatened appellant or told him it would be a long ride back to Texas.

In his first issue, appellant, who was a sixteen-year-old eleventh-grader at the time of the offenses, contends that the trial court erred by denying his motion to suppress statements he made to Texas law enforcement officers while he was in Mississippi. Appellant argues that the statements were inadmissible because they were taken in violation of section 51.095 of the Texas family code and the State did not introduce any alternative evidence that the statements were taken in compliance with Mississippi law.

Held: Affirmed

Memorandum Opinion: Section 51.095 of the family code provides that a juvenile's statement to officers during a custodial interrogation is admissible only if it complies with a laundry list of safeguards. Tex. Fam.Code Ann. § 51.095(a), (d) (West Supp.2013). However, section 51.095(b)(2)(B)(i) provides that a statement may otherwise be admissible if it was recorded by an electronic recording device in another state in compliance with that state's laws. Id. § 51.095(b)(2)(B)(i). The State does not dispute that appellant was in custody when he made the statement at issue and that the statement was not taken in compliance with section 51.095(a). However, the State contends that appellant has pointed to no evidence showing that the statement was not taken in compliance with Mississippi law.

At the conclusion of the hearing, appellant's counsel argued that, to be admissible, appellant's recorded statement either had to be in compliance with Texas law or Mississippi law, and it complied with neither. Based on Judge Palmer's testimony that a juvenile defendant in Mississippi is treated like an adult on an aggravated robbery charge and that he usually sets a bond at an initial appearance, counsel argued that appellant should have been given a chance to

have an extradition bond set and that because he did not, the evidence shows appellant's statement was not taken in compliance with Mississippi law.

The State contended that it briefed sufficient Mississippi law and that it was sufficiently complied with. The State also argued that there was no competent testimony about extradition bonds, and even if there had been, the setting of a bond would not affect the voluntariness of appellant's statement or whether it was taken under a proper procedure. The State also pointed out that the totality of the evidence shows that appellant's statement was voluntary. The trial court did not give its reasons for denying the motion to suppress.

At the hearing, both appellant and the State agreed that the recorded statement did not fully comply with section 51.095(a) of the family code. Thus, they also both agreed that if it was otherwise taken in compliance with Mississippi law, then it was procedurally valid and admissible.

On appeal, the State contends that appellant's complaint was not preserved because before the jury, his counsel stated that he had no objection when the statement was introduced. We disagree. "[T]he rule that a later statement of 'no objection' will forfeit earlier-preserved error is context-dependent." Thomas v. State, 408 S.W.3d 877, 885 (Tex.Crim.App.2013); see also Tex.R. Evid. 103(a)(1) (providing that when judge hears objection to evidence offered outside presence of jury and rules evidence admissible, objection need not be repeated when evidence is admitted before jury). Here, the parties litigated the voluntariness of the statement before the jury, including the issue of Judge Palmer's normal procedures in an initial appearance. Additionally, appellant's counsel asked for and received an instruction in the jury charge regarding the admissibility of the statement and argued to the jury that it should consider whether the statement was voluntary in reaching its verdict. Thus, the record as a whole indicates an understanding by the judge and counsel that appellant's counsel did not intend to forfeit the issue of admissibility of the statement by stating, "no objection," when it was offered at trial. See Thomas, 408 S.W.3d at 885 ("If the record as a whole plainly demonstrates that the defendant did not intend, nor did the trial court construe, his 'no objection' statement to constitute an abandonment of a claim of error that he had earlier preserved for appeal, then the appellate court should not regard the claim as 'waived,' but should resolve it on the merits."). Thus, we will consider the merits of the issue.

It is settled law that the burden is initially on the defendant to raise an issue regarding the exclusion of proferred evidence by producing evidence of a statutory violation, which then shifts to the State to prove compliance. Pham v. State, 175 S.W.3d 767, 772 (Tex.Crim.App.) (reviewing juvenile conviction), cert. denied, 546 U.S. 961 (2005). Here, it is doubtful whether appellant met his initial burden. He introduced no evidence that Mississippi law required the consideration or setting of a bond, and Judge Palmer did not testify that appellant would have been entitled to a bond; he just testified generally that consideration of a bond would normally be part of an initial appearance. But even if appellant had introduced evidence showing that Mississippi law would have entitled him to a bond, he nevertheless also had the burden of proving a causal connection between any violation of section 51.095(a) and the statement. See id. at 772–74.

Appellant argues on appeal that if he had been able to obtain a bond, he would not have felt it necessary to talk to the detectives. But appellant did not testify to this at the hearing, nor did he argue it before the trial court. The trial court was entitled to believe the testimony of Judge Palmer and the detectives and to resolve any inconsistencies in favor of the voluntariness of the statement.

Conclusion: After reviewing all of the evidence presented at the hearing, we hold that appellant failed to meet his burden to show a causal connection between any violation of Texas or Mississippi law and his statement. We overrule his first issue.