

## Juvenile Law Case Summaries

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[2001 Case Summaries](#)   [2000 Case Summaries](#)   [1999 Case Summaries](#)

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### ***Police officer speaking to juvenile between written confessions did not invalidate the final statement [Moorhead v. State] (01-2-11).***

On April 4, 2001, the San Antonio Court of Appeals held that a police officer telling a juvenile that his written statement that simply said "I confess" was not detailed enough did not invalidate a subsequent detailed written confession.

¶ 01-2-11. Moorhead v. State, UNPUBLISHED, No. 04-00-00230-CR, 2001 WL 322166, 2001 Tex.App.Lexis \_\_\_\_ (Tex.App.—San Antonio 4/4/01)[Texas Juvenile Law (5th Edition 2000)].

Facts: Charles Travis Moorhead appeals his conviction for the offense of aggravated sexual assault on an elderly individual. Tex.Pen.Code Ann. § 22.021 (Vernon Supp.2001). Moorhead, a juvenile certified to stand trial as an adult, was tried before a jury on the issues of guilt and punishment. The jury returned a guilty verdict and sentenced him to serve fifteen years in prison. On appeal, Moorhead presents five issues.

Moorhead was a nurse's assistant at Country Care Manor nursing home in La Vernia, Texas where the offense occurred. Another employee at the home discovered Moorhead sexually assaulting an eighty-two year old resident who suffered from Alzheimer's disease. Moorhead unsuccessfully tried to keep the employee from reporting him. Upon notification of the occurrence, the director of nursing contacted the police. Deputy Ayala investigated the call. When he arrived at the nursing home, he was informed Moorhead was sixteen years old. Therefore, Officer Ayala did not speak with Moorhead but called a juvenile probation officer, Art Seguin, to meet him at the justice center. Officer Ayala transported Moorhead to the designated juvenile holding facility located at the Floresville justice center. Officer Ayala allowed the juvenile probation officer to take over upon his arrival. As required by the Family Code, Officer Ayala contacted Justice of the Peace Flores, a magistrate qualified to warn the juvenile of his rights and take his statements. Flores, alone with Moorhead, read him the juvenile warnings mandated by the Family Code. After assuring the magistrate he understood his rights, Moorhead told Flores he did not want to make a statement at that time. The magistrate informed the officers and left the justice center.

Later, Art Seguin spoke with Moorhead to complete the detention paperwork. Seguin read and explained his Miranda rights. Moorhead responded he understood them and had no questions. After the paperwork was completed, Moorhead indicated to Seguin he wanted to talk about the offense. Seguin then spoke to Moorhead's parents, who requested a drug test for their son. While Seguin left to attend to the request, Deputy Roemer remained with Moorhead.

When Seguin returned, he allowed Moorhead's father to speak with him. With Seguin in the room, Moorhead's father urged him to tell the truth. Moorhead hung his head and admitted he assaulted the victim. His father hugged him and told him to live up to his responsibilities. Seguin asked Moorhead at that point, if he wanted to give his statement to the judge.

Justice of the Peace Flores returned to the center and went into the room alone with Moorhead. He asked Moorhead what changed his mind and Moorhead responded what he did was wrong and he wanted to confess. Flores also asked Moorhead if the officers offered him coffee, allowed him to go to the bathroom or mistreated him. Moorhead responded that everything was okay. At first, Moorhead simply wrote a statement which said, "I confess." The magistrate gave the statement to Officer Ayala who explained the two words did not really classify as a statement as there was no real detail. Officer Ayala explained to Moorhead that the statement should be more like a school

essay, and then left the room. Thereafter, the magistrate came out of the room with Moorhead's detailed, written and signed statement which was admitted into evidence before the jury.

Held: Affirmed.

Opinion Text: Moorhead asserts his confession should have been suppressed since it was taken in violation of Texas Family Code, section 51.095. He asserts the Code requires a statement be signed in the presence of the magistrate with no law enforcement officer present. Because Officer Ayala explained that a statement required elements similar to a school essay, Moorhead contends this violated the cited Family Code section. We review this argument under the abuse of discretion standard explained earlier. Oles, 993 S.W.2d at 106.

We have found an abuse of discretion where there was failure to comply with the Family Code, but the facts in this case are distinguishable. See Anthony, 954 S.W.2d at 136. In Anthony, no juvenile officer had been contacted and the juvenile was not processed in a properly designated area. Id. The present case contrasts with Anthony on both those issues. A juvenile officer processed Moorhead in the designated juvenile area. In another case addressing suppression of a juvenile's statement, a confession was held to be inadmissible because the juvenile's parents had not been promptly notified of his arrest as required by the Family Code. Gonzales v. State, 9 S.W.3d 267, 270-71 (Tex.App.--Houston [1st Dist.] 1999, pet. granted). In this case, Moorhead's parents were promptly notified.

Moorhead wrote and signed his confession in the presence of the magistrate. No officer was present at the time. After Moorhead wrote the statement "I confess," Officer Ayala merely informed him the statement was inadequate and should be written more like a school essay. The officer left the room before Moorhead wrote anything. Moorhead fails to show a violation of the relevant Family Code provision or that the trial court abused its discretion in admitting Moorhead's statement. We overrule his second issue.

#### FAIR AND IMPARTIAL MAGISTRATE

Moorhead complains on appeal his confession should have been suppressed because the magistrate was not fair and impartial as required by the Texas Family Code, section 51.095. He asserts the magistrate acted as a law enforcement officer or prosecutor by interviewing him and taking his confession. We review this issue under the same abuse of discretion standard as previously discussed. We find Moorhead's argument is without merit.

Under the Texas Family Code, the magistrate's responsibility is to assure a juvenile makes a statement voluntarily, knowingly and uncoerced. Texas Family Code, section 51.095 requires a magistrate to be "fully convinced" that the juvenile "understands the nature and contents of the statement." Tex.Fam.Code Ann. § 51.095(a)(1)(B)(ii) (Vernon Supp.2001). The statement must be signed in the presence of the magistrate without the presence of a law enforcement officer or prosecuting attorney. Id. § 51.095(a)(1)(B)(i). Furthermore, the magistrate is required to determine the statement was given voluntarily. Id. § 51.095(a)(1)(B)(ii). The record reveals the magistrate complied with the Family Code mandates. The magistrate properly verified that Moorhead voluntarily made his statement and signed it outside the presence of any police officer. Moorhead fails to cite to any testimony or evidence indicating the magistrate acted as a law enforcement officer or prosecutor. Based on the record and lack of controverting evidence or arguments, we overrule Moorhead's third issue.

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[2001 Case Summaries](#)

[2000 Case Summaries](#)

[1999 Case Summaries](#)