Juvenile Law Case Summaries

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2001 Case Summaries 2000 Case Summaries 1999 Case Summaries

Oral statements made to juvenile probation officer by juvenile while in detention are admissible because there was no interrogation [Rushing v. State] (01-3-20).

On July 11, 2001, the Waco Court of Appeals held that a juvenile's oral statements concerning a capital murder made to a juvenile probation officer while in detention are admissible in a criminal trial because the officer did not interrogate the juvenile.

¶ 01-3-20. Rushing v. State, ___ S.W.3d ____, No. 10-00-084-CR, 2001 WL 812651, 2001 Tex.App.Lexis ____ (Tex.App.—Waco 7/11/01) [Texas Juvenile Law (5th Edition 2000)].

Facts: When he was sixteen, Jonathan Daniel Rushing was living in a foster home. The home was near the residence of seventy-three-year-old Houston Burgess. Burgess's body was located after a search; he had been missing five days. He was found stabbed to death with his throat cut; his car had been stolen.

Rushing and another juvenile were soon implicated, and they were arrested for the crime. Because Rushing was under age seventeen, the case was initially referred to the juvenile court. That court waived its jurisdiction and transferred the matter to district court for trial as an adult. Rushing was indicted for capital murder, and the case was tried to a jury. The State was statutorily prohibited from seeking the death penalty because of Rushing's age. Tex.Pen.Code Ann. § 8.07(c) (Vernon Supp.2001). Rushing was convicted and sentenced automatically to life in prison.

Held: Affirmed

Opinion Text: On appeal Rushing brings the following complaints:

> * * *
> 6. Incriminating statements he made to a juvenile probation officer should have been suppressed.
> * * *

RUSHING'S STATEMENTS

David Salazar, a Juvenile Probation Officer, was assigned to Rushing at the McLennan County Juvenile Detention Center where Rushing was held. Part of Salazar's regular duties was to visit with the juveniles on his case load, almost on a daily basis, to inform them of the status of their cases such as upcoming court proceedings, and to deal with any disciplinary or other problems the juveniles might be having. Salazar testified at trial that during some of his conversations with Rushing, the juvenile volunteered highly incriminating statements describing the crime and Rushing's role in it. Rushing filed a motion to suppress these statements, which was denied. Rushing claimed that Salazar was acting as an agent of law enforcement, and that the conversations were "custodial interrogations" conducted without Rushing being given his Miranda rights.

At the pre-trial hearing on the motion to suppress, the State stipulated that Rushing was in custody during the conversations. Salazar testified that his responsibilities did not include investigating the offenses for which juveniles were being held, that he never asked Rushing any questions about his offense, and that any incriminating statements made by Rushing were voluntarily offered. He said that before Rushing made the first incriminating statements, he had been before a magistrate and received his warnings, which include Miranda warnings, and that

he had been appointed an attorney who had visited Rushing at the juvenile facility. Tex.Code Crim.Proc.Ann. arts. 14.06, 15.17 (Vernon Supp.2001).

Salazar testified that the conversations usually occurred in the late afternoon in the day-room of the juvenile detention center. The day room is an open area, and other detention center personnel are always present. Whenever Rushing began to describe details of the crime, Salazar would tell him: "Jonathan, you have an attorney. You need to tell your attorney this. I can't help you in this matter." Salazar said: "I took it at that point that he really didn't have anybody to talk to and he wanted to get things off his mind ... and he just needed somebody to vent to." Salazar also said: "I never make it a point to question anybody. Especially in a high profile case as this, I never solicited any information that would jeopardize the case. "Salazar said Rushing was adamant about getting to court as soon as possible; he said he would confess to the crime, and he wanted to "get his time done with." Salazar did not leave when Rushing began talking about the offense because "the whole thing was to get past that conversation so that I could get at the matter at hand which is his behavior in detention and what he needed to do to keep out of trouble and to make his stay in detention easier."

A trial court's denial of a motion to suppress is reviewed for abuse of discretion. Oles v. State, 993 S.W.2d 103, 106 (Tex.Crim.App.1999). The trial court's findings of fact are given "almost total deference," and in the absence of explicit findings, the appellate court assumes the trial court made implicit findings which were supported in the record. Carmouche v. State, 10 S.W.3d 323, 327-28 (Tex.Crim.App.2000); Guzman v. State, 955 S.W .2d 85, 89- 90 (Tex.Crim.App.1997). The application of the relevant law to the facts (including Fourth Amendment search and seizure law) is reviewed de novo. See Carmouche, 10 S.W.3d at 327.

A confession is illegal and must be suppressed if it is obtained pursuant to a "custodial interrogation" without the benefit of Miranda warnings. E.g., McCambridge v. State, 712 S.W.2d 499, 504-05 (Tex.Crim.App.1986); DeLeon v. State, 758 S.W.2d 621, 624-25 (Tex.App.--Houston [14th Dist.] 1988, no pet.). In addition to suppression under federal constitutional law, in Texas we have statutory suppression. Articles 38.21 and 38.22 of the Code of Criminal Procedure set forth requirements which must be met before a defendant's statements are admissible against him. Tex.Code Crim.Proc.Ann. arts. 38.21, 38.22 (Vernon Supp.2001). Similar provisions are contained in section 51.095 of the Family Code. Tex.Fam.Code Ann. § 51.095 (Vernon Supp.2001). If these requirements are violated, article 38.23(a) applies:

> No evidence obtained by an officer or other person in violation of any provisions of the Constitution or laws of the State of Texas, or of the Constitution or laws of the United States of America, shall be admitted in evidence against the accused on the trial of any criminal case.

Tex.Code Crim.Proc.Ann. art. 38.23(a) (Vernon Supp.2001).

In this case the State stipulated to "custody." Therefore the issue under common law or the Texas statutes is whether Rushing was being "interrogated" by Salazar when Rushing incriminated himself. If he was not, the issue of whether Rushing was given his Miranda rights is irrelevant. Likewise, if Salazar did not "interrogate" Rushing, whether or not Salazar was acting as an agent of law enforcement is irrelevant. Wicker v. State, 740 S.W .2d 779, 785 (Tex.Crim.App.1987) ("custodial interrogation" applies only to "questioning initiated by law enforcement officers" after being taken into custody).

There is nothing in the record to support a contention that Salazar expressly "interrogated" Rushing. The record shows that Rushing volunteered, against Salazar's advice, details about the crime during routine visits with his probation officer (Salazar).

Rushing's reliance on Henson v. State, 794 S.W.2d 385 (Tex.App.--Dallas 1990, pet. ref'd), is misplaced. There a citizen interrogated the defendant and obtained incriminating statements. The issue was whether the citizen was acting as an agent of law enforcement, because the interrogation was part of a "calculated practice which all agents of the State involved knew was reasonably likely to evoke an incriminating response from" the defendant. Id . However, unlike Rushing's case, in Henson there was an express "interrogation."

Rushing also relies on Wortham v. State, 704 S.W.2d 586 (Tex.App.--Austin 1986, no pet.). There the defendant was transported to jail in a patrol car by two sheriff's deputies. There was a conservation between the three during the trip, which consisted of small talk, questions by one of the officers about why the defendant committed the crime and whether the defendant "wanted to go ahead and talk to us," and a number of incriminating statements by the defendant. The court discussed the meaning of "interrogation." The court quoted Rhode Island v. Innis, 446 U.S. 291, 300-01, 100 S.Ct. 1682, 1689, 64 L.Ed.2d 297 (1980).

[T]he Miranda safeguards come into play whenever a person in custody is subjected to either express questioning or its functional equivalent. That is to say, the term "interrogation" under Miranda refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect.... A practice that the police should know is reasonably likely to evoke an incriminating response from a suspect thus amounts to interrogation.

Wortham, 704 S.W.2d at 589 (citing Innis, 446 U.S. at 300-01, 100 S.Ct. at 1689) (footnotes omitted). The court held that there had been an express "interrogation" of the defendant.

Rushing says that because of his age, the seriousness of the offense, and the daily visits by Salazar, the conversations were reasonably likely to cause Rushing to make an incriminating statement, and therefore the conversations were the functional equivalent of an interrogation. However, questioning which is "normally attendant to arrest and custody" is not interrogation. McCambridge, 712 S.W.2d at 505 (citing Innis, 446 U.S. at 300-01, 100 S.Ct. at 1689-90); DeLeon, 758 S.W.2d at 625. The record shows that any questions Salazar may have asked Rushing concerned routine custodial matters such as how Rushing was getting along in detention, or whether Rushing had any questions about the status of his case. These questions, "normally attendant to arrest and custody," are not an "interrogation."

We do not find that the court misapplied the law to the undisputed facts. Carmouche, 10 S.W.3d at 327. The issue is overruled.

2001 Case Summaries 2000 Case Summaries 1999 Case Summaries