Juvenile Law Case Summaries

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Parental notification reuirement does not apply to the questioning of a juvenile at the station who is not in custody [In re E.M.R.] (01-4-17).

On August 31, 2001, the Corpus Christi Court of Appeals held that when a juvenile is taken to the station for interrogation but is not in police custody, the requirement of parental notification does not apply.

01-4-17. In the Matter of E.M.R., ___ S.W.3d ____, No. 13-00-100-CV, 2001 WL 1020914, 2001 Tex.App.Lexis _____ (Tex.App.-Corpus Christi 8/31/01)[Texas Juvenile Law (5th Edition 2000)].

Facts: A jury found E.M.R. guilty of delinquent conduct by committing the offense of murder. The trial court assessed a determinate sentence of twenty- two years with a possible transfer to the Texas Department of Criminal Justice- Institutional Division. E.M.R. was thirteen at the time of the offense and fourteen at the time of adjudication. In five points of error, appellant challenges the admissibility of two written statements, contends the trial court erred in failing to order a fitness hearing, and complains that his trial counsel rendered ineffective assistance of counsel.

Sometime around 1:00 a.m. on September 10, 1999, Benjamin Rojas was assaulted and beaten with a stick. [FN1] Later that morning, the police began an investigation by contacting neighbors in the vicinity. One neighbor told the police that he did not witness the assault, but saw E.M.R. and Nick Ortiz following Rojas, then heard some "loud banging," and saw the boys return.

FN1. Rojas died approximately a week later after his family made the decision to discontinue life support.

Sergeant Hugo Stimmler, a Corpus Christi police officer, testified at the suppression hearing that he and another officer, Ray Rivera, went to E.M.R.'s house on September 10th and spoke to E.M.R. and his mother. Stimmler testified they told E.M.R. they needed to talk to him and he agreed to go with them to the police station. Stimmler also testified that E.M.R.'s mother was told that E.M.R. was going to be taken to the police station to talk to him. Stimmler testified that E.M.R.'s mother agreed to the officers taking E.M.R. to the station, and he did not believe that she asked to go along. E.M.R. was taken to the station, and after being warned by a magistrate, gave a written statement implicating Nick Ortiz and denying participation in the assault. The police continued their investigation, including a photo-lineup in which Ortiz and E.M.R. were identified. A few days later, the police took Ortiz into custody and obtained a statement from him; the statement blamed E.M.R. for the assault.

On September 15, 1999, the officers returned to E.M. R.'s house and asked him to go with them to the station because they "needed to talk to him and resolve some things." Stimmler testified he "believe[s]" that Officer Rivera "might have said something to [E.M.R.'s mother] that, you know, we needed to talk a little bit more about the statement we had taken." E.M.R. was taken to the station, where he was again warned by a magistrate. E.M.R. gave a second statement, in which he admitted participating in the beating. Stimmler testified that both statements were given voluntarily. He also testified that the process of obtaining each of the statements took approximately one hour.

E.M.R was charged with capital murder and murder in the juvenile court. He filed a motion to suppress his two statements, arguing that the statements were made during "custodial interrogations" and without a knowing waiver of his right to remain silent under Miranda v. Arizona, 384 U.S. 436 (1966), and in violation of articles 1.05 and 38.22 of the Texas Code of Criminal Procedure. A pre-trial hearing on the motion to suppress was held on December 1, 1999.

At the suppression hearing, E.M. R.'s counsel also argued that the statements had not been "intelligently and knowingly given, pursuant to Section 51.095 of the Texas Family Code." At the conclusion of the hearing, the court stated, "[b]ut in the final analysis, 51.095 gives fairly simple criteria to evaluate this--the admissibility of these statements. And based, particularly, on the testimony of the two judges, [FN2] I'm gonna deny the motion to suppress the statements and deny the motion." The order denying the motion to suppress was signed the same day.

FN2. Two municipal court judges, Don Alex and Rudolfo Tamez, testified at the suppression hearing regarding their role in administering warnings to E.M.R.

E.M.R. pled "not true" and was tried by a jury. The jury found E.M.R. had committed delinquent conduct by committing the offense of murder. E.M.R. waived disposition by the jury and the trial court sentenced him to a determinate sentence of twenty-two years with a possible transfer to the Institutional Division of the Texas Department of Criminal Justice.

Held: Affirmed.

Opinion Text: E.M.R's first and second points of error challenge the admission and use of his written statements at the adjudication hearing. In his first point, E.M.R. contends the trial court erred in admitting the statements because: (1) the statements were inadmissible under section 51.095(a)(1)(C) of the family code because E.M. R.'s waiver of his constitutional and statutory rights was not done knowingly, intelligently, and voluntarily; and (2) admission of the statements also violated E.M.R's due process rights because his maturity level and reasoning ability rendered him incapable of voluntarily waiving his constitutional and statutory rights. [FN3] In his second point of error, E.M.R. argues the statements were inadmissible because they were obtained in violation of section 52.02(b) of the family code. E.M.R. contends he was in custody when his statements were given, and that the State failed to comply with section 52.02(b) by promptly notifying his mother that he was in custody and giving her a statement as to the reason he was in custody. The State argues E.M.R. was not in custody when his statements were taken. It also argues that even if he was in custody, the statements were taken in compliance with all requirements in the family code, were given voluntarily, and were therefore properly admitted. We hold that the trial court correctly admitted the statements.

FN3. E.M.R.'s special education teacher testified at the suppression hearing that E.M.R. reads at a second or third-grade level. A doctor also testified that he has treated E.M.R. over several years, and that E.M.R. suffers from impulse-control problems, attention deficit hyperactivity disorder, and is bipolar.

I.

In his first two points of error, appellant complains of the trial court overruling his motion to suppress his confessions. In that motion to suppress he alleges that "[t]he statements allegedly made by the juvenile/defendant are at issue and were made as a result of custodial interrogation and without a knowing, intelligent and affirmative waiver by the juvenile/defendant of his rights to remain silent...." Section 51.095 of the Family Code is entitled "Admissibility of a statement of a Child" and sets out in detail what is required for a statement of a juvenile to be admissible. The trial court conducted a hearing on appellant's motion to suppress, with a number of witnesses testifying, both for the state and appellant. At issue was whether he understood the warnings he was given. Two municipal judges testified in detail as to the warnings they administered to appellant, as did the police officer. The child's teacher testified that the juvenile was a poor reader and wouldn't understand anything above the third grade level. The child's physician testified that he has a number of disorders, including being bi-polar, and was on medication. At the conclusion of the evidence appellant's lawyer argued that the statements were "not intelligently and knowingly given, pursuant to Section 51.095 of the Texas Family Code."

The trial court recognized the issue to be whether § 51.095 was complied with and stated that the section gives fairly simple criteria to evaluate the admissibility of the statements. No where is § 52.02(b) mentioned as a potential basis to suppress the statements.

We hold that appellant waived his ability to complain on appeal that his statement should have been suppressed because it was taken in violation of section 52.02(b) of Texas Family Code. See Tex. Fam.Code Ann. § 52.02(b) (Vernon Supp.2001). During the hearing on his motion to suppress, appellant argued that his statement should be suppressed because (1) section 51.095 of the Texas Family Code was violated, and (2) his statement was not given knowingly and intelligently. See Tex. Fam.Code Ann. § 51.095 (Vernon Supp.2001). On appeal, however, appellant urges that his statement should have been suppressed because family code section 52.02(b) was violated. See Tex. Fam.Code Ann. § 52.02(b) (Vernon Supp.2001). Section 52.02(b) requires that a person who takes a child into custody promptly give notice of his action and a statement of the reason for taking the child into custody to both the

child's parent and a juvenile court official. See id. The appellant failed to preserve his complaint of a section 52.02(b) violation because he did not adequately notify the trial court of this complaint. See Tex.R.App. P. 33.1.

Rule 33.1 of the rules of appellate procedure states that as a prerequisite to making a complaint on appeal, the party complaining of error must make an objection to the trial court sufficiently specific to make the trial court aware of the complaint, unless the specific grounds were apparent from the context. See Tex.R.App. P. 33.1. That was not done in this case. The purpose of the preservation requirement is to ensure that the trial court has a fair opportunity to make the correct ruling. In this case, this was not done. Thus, we hold that appellant waived his complaint regarding section 52.02(b).

Appellant argues that In re C.O.S. requires that we address this issue regardless of whether it was properly preserved. However, In re C.O.S. presented a distinguishable situation. C.O.S., 988 S.W.2d 760 (Tex.1999). The holding there was "when a statute directs a juvenile court to take certain action, the failure of the juvenile court to do so may be raised for the first time on appeal unless the juvenile defendant expressly waived the statutory requirement." Id. at 767. There the trial court did not explain the juvenile's right to confront witnesses and that his juvenile record might be used in future proceedings as mandated by § 54.04(b) of the Family Code. The court followed the reasoning of the Court of Criminal Appeals in Marin v. State, 851 S.W.2d 275 (Tex.Crim.App.1993) in which that court divided rights of accused into three general categories: fundamental, forfeitable, and those that can be waived, but must be done so knowingly. Marin and C.O.S. both involved the failure of counsel to object to the trial court's actions, and questioned whether an objection was necessary to preserve error under the circumstances. The rule is not applicable here, where appellant moved to suppress his statements, but on a ground very different from the one urged on appeal.

II.

Even were we to hold that appellant's complaints regarding the alleged section 52.02(b) violations were not waived, we would still affirm the trial court's actions. Appellant argues that the trial court erred in refusing to suppress his statement because it was taken under circumstances contravening section 52.02(b). That is, appellant contends that the officers failed to promptly notify his mother of the reasons for taking him into custody. However, we would hold that E.M.R. was not in custody for purposes of that section when he gave his statement so that the provisions of section 52.02(b) were not implicated.

Section 52.02(b) states:

A person taking a child into custody shall promptly give notice of his action and a statement of the reason for taking the child into custody, to: (1) the child's parent, guardian, or custodian; and (2) the office or official designated by the juvenile court.

Id. That subsection should not be read in isolation from its surroundings. The section quoted is contained in the chapter of the family code relating to proceedings before and including referral to juvenile court. See Tex. Fam.Code Ann. ch. 52 et seq.

Section 52.01 of that chapter outlines the circumstances in which taking a child into custody is allowed. See id. at § 52.01(a). A child may be taken into custody (1) pursuant to an order of the juvenile court, (2) pursuant to the laws of arrest; (3) by a law-enforcement officer, if there is probable cause to believe that the child has either engaged in the violation of a penal law or engaged in delinquent conduct; (4) by a probation officer if there is probable cause the juvenile violated a condition of his probation; or (5) pursuant to a "directive to apprehend" issued under section 52.015 (similar to an arrest warrant). Id. Section 52.01 also contains a provision expressly recognizing that "in custody" under this chapter is not an arrest for all purposes. See id. at 52.01(b). Subsection (b) of 52.01 states:

The taking of a child into custody is not an arrest except for the purpose of determining the validity of taking him into custody or the validity of a search under the laws and constitution of this state or of the United States.

Id.

In this case, the police officers testified that they did not have probable cause to arrest E.M.R. until he made the statement on September 15th implicating himself. They testified that only after taking that statement did they take E.M.R. into custody. They testified that all E.M.R.'s statements up until that point were given freely and voluntarily, and that prior to that time, he had not been detained or restrained in any way. We hold that the officers had no duty to notify E.M.R.'s parent until after he gave the incriminating statement and they placed him into custody.

Moreover, we do not agree that section 52.02 should be applied every time a police officer takes a juvenile to the police station for questioning regarding a crime. Cf. Roquemore v. State, 11 S .W.3d 395, 399-400 (Tex.App.--Houston [1st Dist.] 2000, pet. granted Sept. 13, 2000) (holding that statement taken without first complying with section 52.02 admissible because even though suspect was "in custody" at time statement was given, statement was not a result of police interrogation). The purpose of chapter 52 is to prevent a juvenile from being wrongfully taken into police custody and to prevent the juvenile from being wrongfully held in custody for long periods of time. See Tex. Fam.Code Ann. § 52.01-52.03 (Vernon Supp.2001). Under that chapter, a person taking a child into custody, must "without unnecessary delay and without first taking the child to any place other than a juvenile processing office," either (1) release the child to a parent, (2) bring the child before a juvenile court official if there is probable cause the child engaged in delinquent conduct, (3) bring the child to a juvenile detention facility, (4) bring the child to a secure detention facility complying with other sections of the juvenile code, (5) bring the child to a medical facility (if indicated), or (6) dispose of the case. Tex. Fam.Code Ann. § 52.02(a) (Vernon 2001). That section also contains the parental notification requirement that the majority contends was violated in this case, requiring suppression of E.M.J.'s statement. See id.

Appellant relies on a case from the Austin Court of Appeals, In re C.R., for the proposition that a police officer taking a child into custody must advise the parent that the child is being taken into custody, and not merely advise the parent that the officer is taking the child for questioning. See In re C.R., 995 S.W.2d 778, 783 (Tex.App.--Austin 1999, pet. denied). Additionally, that case holds that the officer must advise the parents of the reasons for taking the child. Id. However, the Austin court did not rule on the question of whether the child was taken into custody when he was initially picked up, or only after he had implicated himself during questioning. Id. at 782. We would hold that merely taking a child to the station for questioning does not amount to taking a child into custody for purposes of section 52.02.

Practical reasons dictate that 52.02(b) should not be strictly applied to situations where police officers take a child to the station for questioning. When an officer takes a juvenile to the station for questioning, the officer does not have probable cause to believe that the juvenile has committed in a crime. At that point, what is the officer to tell the child's parent? Here, the officers testified that they told the child's parent they were taking him to the station for questioning. That was the truth. They did not charge him until he gave a statement implicating himself in the crime. We would hold that the mandate of section 52.02(b) was satisfied in this case.

Likewise, because we have held that appellant was not in custody at the time he made the statements for purposes of section 52.02, we also hold that the statements were not taken in contravention of section 51.095(a)(1)(C) because appellant was not in custody at the time they were taken. We overrule appellant's first and second points of error.

Dissenting opinion by Justice YANEZ.

Concurring opinion by Justice CASTILLO.
