Juvenile Law Case Summaries

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Probable cause shown for murder arrest; after initial refusal, juvenile's decision to give a statement to police was voluntary [In re M.M.J.M.] (02-1-18)

On January 25, 2002, the El Paso Court of Appeals held that although the juvenile initially refused to give a statement to police in a murder investigation his change of mind was voluntary so the resulting statement was admissible.

02-1-18. In the Matter of M.M.J.M., UNPUBLISHED, No. 08-99-00167-CV, 2002 WL 102203, 2002 Tex.App.Lexis ____ (Tex.App.-El Paso 1/25/02) [Texas Juvenile Law (5th Edition 2000)].

Facts: This is an appeal from a juvenile proceeding. Appellant was adjudicated delinquent by a jury. At the close of the disposition hearing, the jury assessed punishment for a term not to exceed forty (40) years.

At the adjudication phase of trial, evidence was presented by the State that on January 15, 1998, three boys were walking home in East El Paso, Texas when they saw what appeared to be a female mannequin lying in a ditch. Closer examination revealed that the object was a female human body clothed in only a sports bra and socks. The police were promptly informed.

Detective Timothy Cook of the El Paso County Sheriff's Department responded to the call. The body was identified as being the body of a young woman named Amanda Howell. Examination of her personal items and the telephone records resulted in determining the names of her friends and acquaintances. Information was obtained that established that Appellant was seen with the victim during the evening of January 13, 1998.

On January 16, 1998, Detective James Reuter of the El Paso County Sheriff's Department contacted Appellant at his residence. He was in the company of his parents. Arrangements were made for Appellant to give a witness statement the following day. In this statement, Appellant confirmed that he had been with the victim, beginning at 6 p.m. on January 13, 1998. He related that at that time he went with the victim to a park to meet with one of her friends in order to obtain some cocaine and marijuana. While there, a dark blue Chevrolet Camaro arrived and the victim left in that vehicle ostensibly to obtain some drugs. The record shows that at 10:15 p.m ., she came to Appellant's home and they went to Nick Levey's house. At the time, she was driving her mother's two-door, white Cadillac. From the Levey residence, they went to a park and waited. At about midnight, the same Camaro arrived and the victim reportedly told Appellant to meet her at the Scenic Drive area in an hour. Once again, she left in the Camaro. Appellant then went to that location and waited for several hours, but the deceased did not arrive. He drove around the area looking for the deceased and then parked the car and went home to sleep. At ten o'clock the next morning, he got the Cadillac and again looked for the deceased. He then went to the east side of the city to visit a friend--Juan Mora. He went back to the west side of the city and picked up a girl named Crystal and her three friends. He then drove around in the car with various friends. He left the car with one of his friends and went home. Appellant related that he then learned of the deceased's death from his mother.

Detective Onecimo Esparza testified that he was assigned to assist Detective Cook with the investigation of Amanda Howell's murder. On February 12, 1998, Esparza detained Appellant and informed him he was being detained for the murder of Amanda Howell. Appellant was taken to his home and he called his mother. She was advised that Appellant was to be taken to the Juvenile Probation Department. Esparza was aware that Appellant had given the earlier affidavit. He took Appellant to the Juvenile Probation Department where a probation officer spoke to Appellant. Esparza then took Appellant to Magistrate Angelica Barill. Esparza obtained a statement from Appellant. Appellant was then taken to Judge Mike Herrera to have the statement reviewed with Appellant.

In Appellant's statement, he stated that the deceased arranged to meet him at his house on the evening of her death. She came by his house at approximately 10:30 p.m. She was driving her mother's white Cadillac El Dorado. An individual named Rene Ortiz and two other individuals he did not know were in the car. They drove to the house of an individual named Levey. The deceased got out of the

car and went to speak to him through a window of the house. She then returned to the car and they drove around until they got on the freeway and proceeded eastbound until they arrived at a reservoir near Del Valle High School. Appellant and the deceased then got out of the vehicle. The deceased grabbed a light blue blanket and they proceeded to a tunnel that was nearby. They engaged in sexual intercourse--Appellant did not use a condom. They returned to the car. They then proceeded to a road off of North Loop Drive which ended in a dead end. Appellant and the other two occupants of the car got out and the deceased got into the backseat with Ortiz. They sat on the curb directly behind the car. They heard some gagging noises like someone was choking. The noises appeared to be coming from the deceased. The three then walked away to try to find some marijuana. They obtained some marijuana at a house around the corner from where the car was parked. When they returned to the car, Ortiz stated that he had killed the deceased and had placed her body in the trunk of the car.

Appellant then indicated in his statement that they sped away with Ortiz driving the vehicle. At this time, it was approximately 1:30 a.m. They drove to a road near a canal where Ortiz dropped the deceased's body into the canal. She was wearing a sports bra and socks. As they drove away from the canal, Appellant found a cellular phone under the front seat of the car. He called a friend named Mora who lived in the area by Del Valle High School. He called several times and Mora's father finally answered and stated that his son was asleep. They then drove back to the reservoir and smoked some marijuana. After an hour, Appellant drove the car back to the west side of El Paso. As he was dropping off the other three, Appellant called a radio station to request a song. The other three were let off at a restaurant on Redd Road and Ortiz threatened Appellant not to tell what happened. Appellant then drove back to the east side of El Paso and met with a friend, Mora. Appellant told Mora that his mother had given him the cell phone. He let Mora borrow the cell phone and then Appellant drove the Cadillac back to the west side and he picked up three friends--Chris Anderson, David Hernandez, and an individual named Julio. At about 11 a.m., they returned to the east side to retrieve the cellular phone from Mora. They gave him a ride to school and they returned to Mora's house. They then went to a mall and Appellant called Julio Cesar Baron using the cellular phone. After arranging to pick up Baron, they cruised around. At 2:15 p.m., he let the other three off, and he picked up his ex-girlfriend and her three friends. After driving them home he noticed that one of them had taken the cellular phone. At 4 p.m. he drove to Julio's house and then returned to his own house so that Julio could take the car. He then told Julio, Hernandez, and Anderson that he had stolen the car from the deceased's house. He did not tell them about the killing.

He then visited Juventino Gonzalez and told him about the killing. Gonzalez wanted to drive the car so they contacted Julio who told them the car was parked up the street. When they got to that location, they saw the car being towed off. Appellant related in his statement that he did not tell the police of the killing because he was afraid of Ortiz. He admitted that he had sex with the deceased but stated that Ortiz also had engaged in sexual intercourse that evening. Karen Scalise testified that she was a DNA analyst for the Texas Department of Public Safety. Her primary area of expertise was in the analysis of body fluids. She was given blood and hair samples from Appellant, Ortiz, and the deceased. She performed tests on the samples and determined that the DNA of Rene Ortiz was not present in the samples taken from the deceased; however, Appellant's DNA was present in the samples.

The State then proceeded to put on the testimony of a number of friends and acquaintances of Appellant and the deceased. Levey testified that the deceased came by his house at approximately 11 p.m. on January 13, 1998. Appellant was with her in the car along with Ortiz and two other individuals who he did not know.

Julio Cesar Baron stated that Appellant picked him up in a white Cadillac around noon on January 14, 1998. He asked Appellant how he had obtained the car and Appellant replied that he had stolen it from the decedent's home while her mother was taking a shower. Appellant, Baron, and two other young men then drove around in the car. Later that afternoon, Appellant asked Baron to take the car and he agreed. However, he ultimately left the car on a street and called the deceased's mother to tell her the situation regarding the car. Appellant and Gonzalez returned and asked about the car. Baron told them where it was and they saw the car being towed off. Both Gonzalez and Appellant told Baron not to say anything about the car.

Approximately two weeks later, Baron and Appellant were riding in a car with Tony Perea when Baron asked Appellant in a joking manner why he had killed the deceased. After a moment of quiet, Appellant replied that they were both high on cocaine and, "... he had somehow hit her in the throat or strangled her." Appellant stated that he intended to place the blame on someone else in a blue Camaro and cautioned Baron not to tell anyone else. During cross-examination, Baron stated that he was not good friends with Ortiz but he was on friendly terms with him. The witness stated that he did not hang around Appellant and he did not care to be in his company.

On January 14, 1998, Mora testified that Appellant contacted him at about seven o'clock in the morning. Appellant drove the Cadillac to Mora's house and informed him that his mother had married and he was able to obtain the car and the cell phone. They used the cell phone that Appellant had in his possession. Mora stated that Appellant looked tired and told him that he had been driving around the night before.

Hernandez testified that Appellant picked him and Anderson up on January 14. Appellant stated that he had borrowed the car but later told Hernandez that he had broken into the deceased's house and had stolen the keys. Hernandez testified that Appellant looked tired and he told them he was tired.

Anthony Perea testified that in mid-February 1998, he was in a car with Julio Baron and Appellant. All three were drinking alcohol. Baron jokingly asked Appellant, "Why did you do it Matt?" Appellant responded, "Because she deserved it." The following exchange then appears in the record:

STATE: Did he say how he killed her?
WITNESS: No, he didn't. He said something about strangling, put his hands around her neck.
STATE: Now, where were you in the vehicle?
WITNESS: Passenger's seat.
STATE: And did you turn around and actually see him do this?
WITNESS: No, I didn't.
STATE: Did he just say he strangled her?
WITNESS: He said he put pressure on her neck.

Perea stated that Ortiz was a very good friend of his and they talked together a lot. He characterized Appellant as being an acquaintance.

Paul Trahan stated that Appellant told him that he had taken the car by going through the garage using the remote control. Appellant told Trahan that he had strangled the deceased because she stole some cocaine from him. During an occasion when he was driving around with Appellant, Appellant stated that there were several kids saying that Ortiz had killed the deceased and that Appellant was going to go along with that and say that Ortiz had done the killing. Trahan stated that both Appellant and Ortiz were friends of his.

Dr. Juan Contin, the coroner, stated that the cause of death was asphyxia due to the compression of the neck. He stated that it was not possible to determine the instrument used in causing the death as there was no imprint of hands on the deceased's neck. Contin speculated the compression, "... was caused by something very applicable like a piece of cloth most likely." A drug screening on the deceased revealed a positive result for marijuana but was negative with regard to cocaine.

During Appellant's presentation of his defense, he utilized the testimony of Dr. Paul Goldstein. Goldstein testified that he was a professor of genetics at the University of Texas at El Paso. He reviewed the tests performed by Scalise and he sat in on her testimony at trial. He questioned the validity of the tests performed by Scalise and questioned the interpretation of the results that were obtained. He also stated that based on the findings issued in her report, that Ortiz could not be excluded as a donor of DNA in the samples provided from the deceased. Appellant utilized the grand jury testimony of Ortiz by reading it to the jury as Ortiz had invoked his Fifth Amendment right to not incriminate himself. His grand jury testimony stated that he did not know Appellant and he did not know Levey. The testimony read that Ortiz was never in the car with the deceased the night she was murdered. Ortiz admitted to having had sex with the deceased on a prior occasion. He used two condoms on that occasion.

At the disposition stage of the trial, the court received all of the evidence admitted during the adjudication phase of trial for the jury's consideration for punishment. The State presented the testimony of Janell Howell, the deceased's mother. She testified regarding her daughter and the family situation and relationships. At the close of her testimony, the following exchange occurred:

STATE: Now, Ms. Howell, let me ask you: This jury has already adjudicated this boy of your daughter's murder. Would you please tell the jury what you want done to this juvenile?
DEFENSE: I objection (sic), Your Honor, relevance.
COURT: Overruled.
WITNESS: I want him to be made an example of because for every one that is brought to trial, there are 50 more in that school that are preying on our daughters and, believe me, it is insane when you have--if you have a friend that hurt you, you know? I wish that all of them--but that wouldn't do any good. I hope this never ever--any parent goes through what I did. And one little girl or one boy is saved, then it will be worth it. But they can't be let go for a long, long time.

The State also presented the testimony of Arnold Martinez, a parole officer for the Texas Youth Commission. He testified that the Texas Youth Commission was responsible for rehabilitating youthful offenders who have been adjudicated and are in need of supervision. He also related what facilities and programs were available in the juvenile justice system.

During the defense portion of the disposition phase, two of Appellant's teachers testified. Victor Reveles, a teacher and coach at Franklin High School testified that he taught Appellant at the alternative program at the high school. Appellant had not caused any problems and he participated in the program and took advantage of the opportunities offered by the program.

Heather Ann Cawley testified that she was a math teacher at the Raymond Telles Academy. She stated that Appellant improved in her class and became more confident regarding his academic studies. She had a generally good opinion of Appellant.

Dr. James Schutte, a forensic psychologist, conducted various psychological tests on Appellant. Schutte testified that the results of an

intelligence test reflected that Appellant was borderline mentally retarded. The Carlson Psychological Survey & MACI (Milan Adolescent Clinical Inventory) test results indicated that Appellant was introverted and socially withdrawn. The witness stated that Appellant did not show psychopathic, antisocial, or delinquent tendencies. He defined a psychopath as an individual who is chronically violent, tends to commit a wide range of offenses, and shows no remorse for the exhibited behavior. On cross-examination, the witness stated that a psychopath could be a person who committed a heinous offense and then bragged about committing the offense to others.

Debra Diane Morales, Appellant's mother, was the last defense witness. She requested leniency for Appellant because she stated that he was innocent of the offense. She asked the jury to place Appellant on probation. She characterized Appellant as being quiet, respectful, and of a non-violent nature. She stated that Appellant was not capable of committing the act for which he was adjudicated.

Held: Affirmed.

Opinion Text: In Point of Error Nos. Three and Four, Appellant contends that the court erred in admitting Appellant's statement given to Detective Esparza because Appellant was illegally detained and the statement was involuntary.

The pre-trial hearings on Appellant's motion to suppress his statement were held on August 7, 1998 and December 16, 1998. Detective Onesimo Esparza testified that he took a statement from Appellant on February 12, 1998. He located Appellant a block and a half from his house and took him into custody. They went to Appellant's house and found his mother's phone number where she could be located. Appellant's mother was called and Esparza told her that her son was being detained. Appellant was then transported to the Juvenile Probation Department where they contacted an intake officer. Appellant was questioned outside the presence of the officers regarding his desire to make a statement. He stated he did want to make a statement and he signed a form to that effect. Appellant was then taken to the municipal court offices and Judge Barill took Appellant alone into her office and closed the door. Judge Barill emerged from her office and told the officers that Appellant stated that he had already given a statement to the officers. On the way out to their vehicle, Appellant stated to Esparza that he had already given a statement. Esparza responded that he had given a witness affidavit but now he was a suspect and would he be willing to give a statement. Appellant responded affirmatively. Esparza testified that neither he nor any other officer acted in an angry manner when Appellant first stated that he did not want to give a second statement. They advised Judge Barill that Appellant wanted to give a statement and she took him back into her office. Later Judge Barill came out of her office and advised Esparza that Appellant wanted to give a statement and he signed a form to that effect.

They then went to the Juvenile Investigations Services Office of the El Paso Police Department where the statement was taken. Appellant was warned of his Miranda rights and Appellant signed a form indicating he was aware of his rights. Appellant then gave his statement.

Judge Angelica Juarez Barill, a municipal court judge, testified that she was working on February 12, 1998 and she gave Appellant his warnings. She had closed the door to her office and she inquired if Appellant wanted to give a statement. He stated that he had already given a statement and he did not want to give another one. She opened the door and told the officers that Appellant did not want to give a statement. After a short while the detectives came back with Appellant and she and Appellant went back into the office. She asked Appellant why he now wanted to give a statement given his prior decision and he stated that he wanted to give his side of what happened. She advised Appellant of his rights. She asked Appellant if he had been threatened or coerced and if his decision to give a statement was voluntary. He replied that his decision was voluntary.

Judge Mike Herrera, also a municipal court judge, testified that on February 12, 1998, Appellant was brought to him after he had given his statement. He gave Appellant the requisite warnings and he reviewed the entire statement with Appellant and allowed him to make corrections. Appellant was present during this procedure. Judge Herrera inquired if Appellant had been coerced or threatened and if he was sober. Appellant replied that he had not been threatened and he was not intoxicated. Appellant then signed the statement.

Detective Timothy Allen Cook testified that the police did not have a warrant prior to Appellant's detention on February 12, 1998. He testified regarding the probable cause the police had gathered prior to that detention. Cook stated that after the body was discovered they began interviewing a number of people including Appellant. The police began to notice that some of the people interviewed had conflicting stories with regard to what Appellant stated in his witness statement. The police interviewed Baron, Hernandez, Anderson, Perea, and Levey, among others. From these interviews, the police found that Appellant had been driving the Cadillac on the 13th and 14th of January and had been using the phone that was in the car. Further, in interviewing the witnesses they discovered that he had been telling different accounts of how he got possession of the car. They discovered that there was evidence of hair fibers and indications of semen in the trunk of the car indicating that the body of the deceased had been in the trunk. One of the witnesses had stated that Appellant had been last seen with the deceased and was seen using the cellular phone. The phone records indicated that the first call made on the cellular phone in the Cadillac was made at 1:58 a.m. from the area where the body was discovered. This phone call was made to Mora's residence. He had admitted to one witness that he had been partying all night. He looked very tired.

He never mentioned the deceased being in the vehicle. He told varying stories regarding his possession of the car. One story was that the deceased had given him the car. Another story was that he had snuck into the house and stolen the keys to get the car. This differed from his initial statement concerning the blue Camaro. None of the witnesses who drove about with Appellant stated that they were looking for the deceased. He asked several witnesses not to say anything about his possession of the Cadillac.

Appellant testified at the hearing. He stated that on February 12, 1998, he was arrested by four detectives. He was taken to a judge and he told her he did not want to give a statement. Appellant testified that the police officers started harassing him and they handcuffed him. They stated that they were going to pin the murder on him unless he gave a statement. They called him bad names. After three or four minutes, he was taken back to the judge.

At a continuation of the hearing, James William Schutte, a forensic psychologist, testified for the defense. He evaluated Appellant on August 13, 1998. After administering various psychological tests, he determined that Appellant was borderline mentally retarded. The testing also indicated that Appellant was a passive individual lacking in ambition with no indications of antisocial or delinquent behavior. In reference to giving a statement, Schutte stated Appellant would be passive and compliant. The court denied the motion to suppress on December 29, 1998.

With regard to Point of Error No. Three, a trial court's ruling on a motion to suppress is generally reviewed for an abuse of discretion. Villarreal v. State, 935 S.W.2d 134, 138 (Tex.Crim.App.1996); Brewer v. State, 932 S.W.2d 161, 166 (Tex.App.-El Paso 1996, no pet.). Under this standard, an appellate court must defer to a trial court's determination of historical facts supported by the record, especially when the trial court's fact findings are based on an evaluation of credibility and demeanor. Guzman v. State, 955 S.W.2d 85, 89 (Tex.Crim.App.1997). These fact questions are viewed in the light most favorable to the trial court's ruling. Martinez v. State, 17 S.W.3d 677, 683 (Tex.Crim .App.2000). Although great weight should be given to the inferences drawn by trial judges and law enforcement officers, determinations of reasonable suspicion and probable cause are reviewed de novo on appeal. Guzman, 955 S.W.2d at 87 (citing Ornelas v. United States, 517 U.S. 690, 699, 116 S.Ct. 1657, 134 L.Ed.2d 911 (1996)); see Loesch v. State, 958 S.W.2d 830, 831-32 (Tex.Crim.App.1997). We will view the question of probable cause de novo.

Tex. Fam.Code Ann. § 52.01(a) (Vernon Supp.2002) explains the limited circumstances of when a child may be taken into custody. There are five instances when this may happen: (1) by order of the juvenile court; (2) according to the laws of arrest; (3) by a law-enforcement officer if there is probable cause to believe the child has violated a penal law of the State or has engaged in delinquent conduct indicating a need for supervision; (4) by a probation officer if there is probable cause to believe the child has violated a condition of probation; or (5) by a directive to apprehend issued under Section 52.015 of the Family Code. See Tex. Fam.Code Ann. § 52.01(a) 1-5 (Vernon Supp.2002). An arrest warrant is not needed to arrest a juvenile under Tex. Fam.Code Ann. § 52.01(a) (Vernon Supp.2002). Blackmon v. State, 926 S.W.2d 399, 404 (Tex.App.-Waco 1996, pet. ref'd).

Appellant maintains that the police did not have probable cause to detain Appellant. [FN2] Regarding probable cause, the test is whether at the moment of arrest, the arresting officer has knowledge which is based on reasonable trustworthy information and which would warrant a reasonable and prudent person in believing that a particular person had committed or is committing an offense. Vasquez v. State, 739 S.W.2d 37, 44 (Tex.Crim.App.1987). Probable cause requires more than mere suspicion but far less evidence than that needed to support a conviction or even that needed to support a finding by a preponderance of the evidence. Hughes v. State, 24 S.W.3d 833, 838 (Tex.Crim.App.2000).

FN2. Appellant points to two detention orders. One is dated February 16, 1998 and there is a handwritten motion stating "no probable cause." The other detention order April 2, 1998 and states, "no probable cause on murder charge; probable cause only as to (1) unauthorized use of a motor vehicle (2) tampering with evidence." Appellant maintains that as the court found no probable cause on these occasions, it could not find probable cause on the hearing on the motion to suppress. However, there is no record before us concerning these proceedings and we will not speculate what evidence was or was not heard on those occasions.

In the present case, Appellant was last seen with the deceased on the night of her death. Witnesses indicated that he had partied all night-contradicting his prior statement concerning his search for the deceased. He gave conflicting accounts of how he came into possession of the Cadillac and requested that his friends not say anything about the vehicle. He was linked to using a cellular phone and making a call to his friend Mora early in the morning at a location near where the body was found. He was in possession of a vehicle that had fibers and semen in the truck leading to a reasonable conclusion that the body had been in the truck of the vehicle. We find that there was probable cause to detain Appellant. Point of Error No. Three is overruled.

As stated, in Point of Error No. Four, Appellant contests the voluntariness of his statement given after his detention. In this instance, de novo review is not appropriate because the issue of the voluntariness of his statement hinged on the credibility of Appellant as opposed to the police testimony. Borrego v. State, 966 S.W.2d 786, 792 (Tex.App.-Houston [1st Dist.] 1998, pet. ref'd). Accordingly, we give almost total deference to the trial court's resolution of the issues and view the evidence adduced at the suppression hearing in the light most favorable to the trial court's findings. Borrego v. State, 966 S.W.2d 786, 792 (Tex.App.-Houston [1st Dist.] 1998, pet. ref'd).

Appellant's assertion that his statement was involuntary is based solely upon his testimony at the hearing. The trial court is the sole judge of the credibility of the witnesses and the weight to be given their testimony at a suppression hearing. Villarreal, 935 S.W.2d at 138; Borrego, 966 S.W.2d at 792. The trial judge is free to believe or disbelieve all or any part of a witness's testimony. Id.

In the present case, the evidence showed that Appellant signed a statement indicating he was aware of his rights before he went before the magistrate. In the magistrate's office, when he returned the second time in a very brief period of time, he was asked why he had changed his mind and if his decision was voluntary. He stated that his decision was voluntary and he wished to give his side of the matter. He also indicated that he had not been threatened or coerced. He also stated to Judge Herrera that he had not been threatened. The trial court was free to discount Appellant's rendition of events and, as such, we find that the court did not use its discretion in finding that the statement was voluntary. Point of Error No. Four is overruled.

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