

Juvenile Law Case Summaries

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Volunteered, non-custodial statement given at crime scene was admissible [In re R.G.] (02-2-18).

On May 8, 2002, the San Antonio Court of Appeals held that a confession to marijuana use made by the juvenile respondent on the street was admissible because it was non-custodial and voluntary.

02-2-18. In the Matter of R.G., UNPUBLISHED, No. 04-01-00317-CV, 2002 WL 872293, 2002 Tex.App.Lexis ____ (Tex.App.-San Antonio 5/8/02) [Texas Juvenile Law (5th Edition 2000)].

Facts: Appellant R.G. pled true to possession of marijuana, preserving his right to appeal the denial of his motion to suppress evidence and oral statements. In his sole point of error, R.G. claims the trial court erred in denying his motion to suppress because his statements to police were made without the benefit of Miranda warnings and were thus not voluntarily made.

On January 25, 2001, acting on an anonymous tip that two individuals were smoking marijuana in a shed behind a vacant house, Police Officers Jaime and Diaz drove to the reported location and observed two youths in school uniforms walking in front of the vacant house. As Officer Jaime approached the two, he smelled marijuana coming from the students and observed they had red, bloodshot eyes. Officer Jaime testified R.G. spoke spontaneously, saying he knew why the police were there. The officer did not interrupt R.G., nor did he inform R.G. of his constitutional rights, but allowed him to keep talking. R.G. told the officer he had been smoking marijuana with his friend in the shed behind the vacant house and offered to show the officer where it was located. R.G. then led the officer to the shed and retrieved two hidden marijuana cigars, one of which was still smoldering. At that time, the officer handcuffed both youths.

R.G. disputes that he made a voluntary statement, claiming his confession was made in response to the officer's threat to arrest him on several violations rather than just one. However, R.G. admitted his memory of the events is unclear because he was high at the time.

Held: Affirmed.

Opinion Text: STANDARD OF REVIEW

We review the trial court's denial of a motion to suppress for abuse of discretion, giving deference to the trial court's findings on factual issues. *Guzman v. State*, 955 S.W.2d 85, 89 (Tex.Crim.App.1997); *Monterrubio v. State*, 941 S.W.2d 322, 324 (Tex.App.Corporis Christi 1997, pet. ref'd). We consider the historical facts and any application of the law to fact questions that turn on an evaluation of credibility and demeanor in the light most favorable to the trial court's ruling. *Martinez v. State*, 17 S.W.3d 677, 683 (Tex.Crim.App.2000). We conduct a de novo review of application of law to fact questions that do not turn upon an evaluation of credibility and demeanor. *Id.*

CUSTODIAL INTERROGATION

Issues involving the confession of a juvenile are controlled by the applicable provisions of the Texas Family Code. Tex. Fam.Code Ann. § 51.095 (Vernon Supp.2000); *Griffin v. State*, 765 S.W.2d 422, 427 (Tex.Crim.App.1989). Section 51.095 of the Family Code provides that a juvenile's confession, if given pursuant to custodial interrogation without benefit of the Family Code admonishments, cannot be admitted against him in a subsequent criminal trial, consistent with Tex.Crim. Proc. Ann. § 38.23 (Vernon Supp.2002) and *Miranda v. Arizona*, 384 U.S. 436 (1966). *Comer v. State*, 776 S.W.2d 191, 196 (Tex.Crim.App.1989). Conversely, if a statement does not stem from custodial interrogation, the statement is admissible. Tex. Fam.Code § 51.095(b)(1); *Roquemore v. State*, 60 S.W.3d 862, 868 (Tex.Crim.App.2001); *Melendez v. State*, 873 S.W.2d 723, 725 (Tex.App.-San Antonio 1994, no pet.).

Custodial interrogation occurs when a defendant is in custody and is exposed "to any words or actions on the part of the police ... that [the police] should know are reasonably likely to elicit an incriminating response." *Rocquemore*, 60 S.W.3d at 868 (citing *Rhode Island v. Innis*, 446 U.S. 291, 300-01 (1980)). Any police interview of a crime suspect will have coercive aspects to it, but will not necessarily be considered custodial. *Parra v. State*, 743 S.W.2d 281, 285 (Tex.App.-San Antonio 1987, pet. ref'd). Accordingly, being the focus of criminal investigation does not amount to being in custody. *Meek v. State*, 790 S.W.2d 618, 621 (Tex.Crim.App.1990). Rather, a person is considered in custody only if, based upon the objective circumstances, a reasonable person would believe she was restrained to the degree associated with a formal arrest. *Stansbury v. California*, 511 U.S. 318, 322-24 (1994); *Dowthitt v. State*, 931 S.W.2d 244, 254 (Tex.Crim.App.1996).

Based on the police officers' testimony, the trial court could have found that R.G.'s statements were not the result of custodial interrogation. R.G. was never handcuffed or otherwise restrained before the statement. The exchange took place not at a police station, but on a residential street. According to the officer, he used no show of force in talking to R.G. nor did he ask R.G. any questions; therefore, R.G.'s statement was admissible. *Rocquemore*, 60 S.W.3d at 868.

VOLUNTARINESS

Even in the absence of custody, due process may be violated if a confession is not voluntarily given. *Wolfe v. State*, 917 S.W.2d 270, 282 (Tex.Crim.App.1996). A statement is not voluntary if there was "official, coercive conduct of such a nature that any statement obtained thereby was unlikely to have been the product of an essentially free and unconstrained choice by its maker." *Alvarado v. State*, 912 S.W.2d 199, 211 (Tex.Crim.App.1995). In judging whether a juvenile confession is voluntary, the trial court must look to the totality of circumstances. *Griffin*, 765 S.W.2d at 429.

In light of the testimony presented at the hearing, the evidence supports a finding that R.G.'s statement was voluntary. We conclude the trial court did not abuse its discretion in overruling R.G.'s motion to suppress and in admitting the statement into evidence. R.G.'s issue is overruled.

CONCLUSION

Because we hold the trial court did not abuse its discretion in denying R.G.'s motion to suppress, we affirm the trial court's judgment.

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