Juvenile Law Case Summaries

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Private journal properly seized and read as a valid school search [Goldberg v. State] (02-4-01).

On August 22, 2002, the Houston First District Court of Appeals held that campus police lawfully seized and read a private journal kept by the defendant. It was seized as a valid school search.

02-4-01. Goldberg v. State, UNPUBLISHED, No. 01-00-00628-CR, 2002 WL 1932502, 2002 Tex.App.Lexis ____ (Tex.App.-Houston [1st Dist.] 8/22/02) [Texas Juvenile Law (5th Edition 2000).

Facts: A jury convicted appellant, Dror Haim Goldberg, of murder and assessed punishment at 45 years confinement and a $10,000 fine. We affirm. In 51 points of error, appellant contends the trial court erred by: (1) denying his motion to suppress evidence because he was illegally arrested; (2) admitting evidence that was both irrelevant and unduly prejudicial; (3) admitting evidence obtained as a result of a school search that took place three years before the offense; (4) admitting irrelevant letters that appellant wrote to a friend two years before the offense; (5) permitting witnesses to identify appellant at trial after they had viewed impermissibly suggestive line-ups; (6) admitting statements that appellant made to German police officers when he was taken into custody; (7) allowing the State to use its peremptory strikes to exclude women from the jury; (8) violating the rule of "optional completeness" by not allowing appellant to introduce the entire statement he made to police after the State introduced other portions of the same conversation; and (9) permitting the State to comment on appellant's decision not to testify.

In the late morning or early afternoon of November 27, 1998, a young, white male entered a wig shop at the Weslayan Plaza Shopping Center in Houston, Texas. He walked in, looked around, and left without talking to either Manuela Silverio or Roberta Ingrando, both of whom were working there that day.

At just before 4 p.m. the same day, the same man returned to the wig shop. Mrs. Ingrando saw the man walk up to Ms. Silverio and "punch" her in the neck, so Mrs. Ingrando ran to call the police. The man cut Mrs. Ingrando's wrist, knocking the phone from her hands. He then stabbed her several times, asking her, "Do you like it?" He also told her that he was going to cut her nose and ears and make her pretty. Mrs. Ingrando's husband, Roland, who was working in the back of the store, ran to the front when he heard his wife screaming. Mr. Ingrando threw a tray of hair rollers at the assailant, and then wrestled with the assailant briefly, sustaining several cuts during the struggle. The assailant fled the store.

At the same time, Dr. Randall Beckman was leaving a pet store across the parking lot after purchasing dog food. Dr. Beckman saw the assailant running across the parking lot. Thinking that someone might need assistance, Dr. Beckman got into his car and followed the man across the parking lot. Dr. Beckman saw the man get into a dark Lincoln Navigator and back out of a parking space. Dr. Beckman then passed the Navigator in the parking lot and was able to clearly see the driver, as the two vehicles passed driver's side window to driver's side window. After passing the Navigator, Dr. Beckman turned around and wrote down the license plate of the Navigator.

Dr. Beckman then parked in front of the wig shop and went inside to see if anyone needed his help. He found Manuela Silverio lying in a pool of blood on the floor and Mr. and Mrs. Ingrando hysterically trying to telephone the police. Dr. Beckman tried to revive Silverio, but she was dead. Mr. and Mrs. Ingrando were taken to the hospital. Mr. Ingrando's injuries were minor, and he was soon released. However, Mrs. Ingrando required surgery and was hospitalized for at least a week.

Dr. Beckman was interviewed at the scene of the crime, and he gave the police the paper upon which he had written the license plate number of the Navigator. He also described the assailant as a white male, approximately six feet tall, 18-19 years old, 165 pounds, with short-to-medium sandy blonde hair.

The police ran the license plate number provided by Dr. Beckman and discovered that it was registered to Loren Nelson, who lived nearby at 2202 Dunstan. Loren Nelson, now Loren Goldberg, lived with appellant's father at that address.

Several officers drove to the 2202 Dunstan address and located the Navigator in a covered parking area behind the house. One of the officers touched the hood of the Navigator and it was still warm, but no one was at home at the residence except the housekeeper, Marleny Vilorio. Ms. Vilorio told the officers that Dr. Goldberg and Loren Nelson were out of town and that appellant, Dror Goldberg, had been left in charge of the house. The keys to the Navigator were in the house.

At 6:07 p.m., appellant drove up to 2202 Dunstan in his white pick-up truck. Officer M.L. Sampson approached appellant and asked if he were Dror Goldberg. Appellant said that he was, and Officer Sampson handcuffed him, performed a pat-down search, and informed appellant of his rights. Appellant indicated that he understood his rights and indicated that he would be willing to talk with the officer.

Appellant was later uncuffed, and he talked with the police about his whereabouts that day. He also executed consent forms for the police to search: (1) his father's residence at 2202 Dunstan, (2) appellant's own white pick-up truck; and (3) appellant's apartment at 4301 Bissonnet. While at 2202 Dunstan, police noticed blood on appellant's shirt and a red mark on his chest. They also seized the Navigator and had it towed to the police station, where it was later searched pursuant to a warrant. Before searching 2202 Dunstan, the police took a Polaroid photo of appellant.

At 8:07 p.m., the police completed their search at 2202 Dunstan and transported appellant to the police station. During the ride to the police station, appellant told the police officer that the Navigator had been stolen in the past, but that every time it was stolen, the thief always just returned it. At the police station, appellant gave police his finger and palm prints. He also executed a waiver of the presence of an attorney and participated in a videotaped line-up. At approximately 11:00 p.m., appellant was released and went home with his mother.

Meanwhile, at 8:30 p.m., Dr. Beckman looked at a photo array containing the Polaroid taken of appellant and indicated he was 80% certain that appellant was the man he had seen running from the wig shop. Dr. Beckman and Mrs. Ingrando were later shown the videotaped line-up and both identified appellant as the assailant.

Appellant was indicted on February 17, 1999, but efforts to arrest him were fruitless because he had left the country. A federal warrant was issued for his arrest, and he was arrested at the Frankfurt Airport in Germany on June 21, 1999.

Held: Affirmed.

Opinion Text: C. Admission of Journal Confiscated at School in 1995 and Letters from 1996

In points of error 17-26, appellant contends the trial court erred by denying his motion to suppress evidence that was recovered as a result of a school search that occurred in 1995, three years before the murder. A brief recitation of the pertinent facts is appropriate.

1. Background

On April 10, 1995, appellant threw a beer can out of his car window as he drove into the Bellaire High School parking lot at 10:30 in the morning. The can almost hit Houston Independent School District (HISD) Officer Duggan, who, along with HISD Officer-in-Training Griest, approached appellant and asked if he had been drinking. Appellant told Duggan that he had been drinking, and that he had some beer left over from a party the night before. He volunteered to show the officers the beer in his trunk. Before beginning the search appellant's of trunk, Duggan radioed Bellaire Police Officer Bartlett for help. The police found the beer in a cooler in appellant's trunk and told appellant that, if he would pour it out, he would not be charged as being a minor in possession of alcohol. Appellant poured out the beer. The officers, with appellant's consent, searched appellant's car and found three marihuana cigarettes in the ashtray. The police also discovered a small novelty knife on appellant's keychain, which was illegal because it was double-edged.

Appellant was taken to the assistant principal's office and his parents were notified. At the principal's office, appellant's backpack was searched to see if it contained any other weapons or contraband. During the search, Officer Griest opened a spiral notebook to look for drugs. She testified that they sometimes find smashed marihuana, cocaine, and LSD in books. As she flipped through the pages of the notebook, Officer Griest noticed a drawing of the devil with blood "all over it and blood everywhere and it was just--it was striking." On the very next page was a title "How to Kill a Woman." Officer Griest testified about what was written under that title as follows:

[Griest]: I remember that I read thoughts. It wasn't a poem, it wasn't a letter and it took you from beginning to end. It took you--talked about abducting. Talked about using a knife to make several cuts so that when she bled, the body would be covered, I mean, in red.

Talked about her begging for her life. You could feel it. I mean, it was disturbing. Talked about her begging for her life and then the joy when she looked into his eyes and he realized they were dead and that he had no use for the bitch.
[The prosecutor]: Do you remember the notebook saying anything about words that he used?

[Griest]: Yes.

[The prosecutor]: What?

[Griest]: Say things to her, Do you like it? Want me to do it some more? I'm going to do this. Just really talking. It was very talkative to the victim while she was being stabbed. Very tormenting. [The notebook described] how she would sweat, how her eyes would look, just the terror. You could--it was like reading the best novel you've ever read in your life.

The notebook also contained a title "How to Rape a Woman," which Griest described as follows:

Talking about during penetration putting hands around her neck and her begging him stop, her begging him till she couldn't beg anymore because her air flow was getting cut off and getting erect when he let go right before her body--right before, I guess, he said lifeless and she would gasp for air and sexually turn him on.
* * * *
There were several references. I mean, talked about urge to kill, talked about having the--you know, the urge be [sic] so strong that he didn't think he could fight it anymore. It was getting harder and harder. Contemplating suicide.

Griest testified that she asked appellant why he would write such "sick shit" and he replied, "I have thoughts." Appellant was then released into the custody of his parents and the notebook was turned over to them. Appellant was charged with possession of an illegal weapon and placed on juvenile probation.

2. Reading Notebook an Illegal Search?

Appellant contends that reading the notebook was an illegal search under the article 18.02(10) of the Texas Code of Criminal Procedure, which provides:

A search warrant may be issued to search for and seize:

(10) property or items, except the personal writings by the accused, constituting evidence of an offense or constituting evidence tending to show that a particular person committed an offense[.]

Tex.Code Crim. Proc. Ann. art. 18.02(10) (Vernon Supp.2002).

However, no search warrant was issued in this case, thus, article 18.02(10) is not applicable. See Morton v. State, 761 S.W.2d 876, 879 (Tex.App.-Austin 1988, pet. ref'd). Furthermore, we note that no search warrant is needed to perform a school search of a student who is under the school's authority. See New Jersey v. T.L.O., 469 U.S. 325, 340, 105 S.Ct. 733, 742 (1985).

To determine whether a school search is reasonable we must first determine whether the search was justified at its inception. Coronado v. State, 835 S.W.2d 636, 640 (Tex.Crim.App.1992) (citing T.L.O., 469 U.S. at 341, 105 S.Ct. at 742-43). A search is justified at its inception when there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated, or is violating, either the law or the rules of the school. Id. Second, we must determine whether the search, as actually conducted, was reasonably related in scope to the circumstances that justified the initial interference. Id. A search is permissible in scope when the measures adopted and used are reasonably related to the objectives of the search and are not excessively intrusive in light of the age and sex of the student and the nature of the infraction. Id.

a. Justified at Inception?

In this case, the HISD officers were justified in detaining and searching appellant and his vehicle because Officer Duggan saw appellant throw a beer can out his car window. This was evidence that both the law and school rules had been violated. The further detention and search of appellant's backpack were likewise justified because marihuana cigarettes were found in appellant's ashtray, and it was reasonable for the officers to attempt to determine whether appellant was carrying marihuana onto school premises. Officer Griest testified that she was flipping through appellant's notebook because students often hid drugs in their books. Therefore, we conclude that the search of appellant's notebook was justified at its inception because the officers had a reasonable ground for suspecting that appellant was violating the law and school rules by carrying marihuana.

b. Excessive in Scope?

Appellant argues that, even if the HISD officers were justified in searching his backpack, they exceeded the necessary scope of the search by reading the notebook. Again, we disagree. In determining that a warrant requirement was unnecessary for school searches, the Supreme Court recognized "[t]he special need for an immediate response to behavior that threatens either the safety of schoolchildren and teachers or the educational process itself ..." T.L.O., 469 U.S. 325, 353, 105 S.Ct. 733, 749. As we have learned from unfortunate events such as the school shootings at Columbine High School in Littleton, Colorado, school officials must take seriously perceived threats to the safety and well-being of their students and faculty.

As we stated earlier, Officer Griest was conducting a reasonable search for drugs in appellant's notebook when she noticed a picture of a demon dripping blood and the title "How to Kill a Woman." We believe that the officer then had the right, if not the responsibility, to read the passage in the notebook to determine whether it constituted an immediate threat to a student or teacher at Bellaire High School.

We do not agree with appellant's assertion that private writings are always beyond the scope of a permissible school search. In fact, in T.L.O., the United States Supreme Court held that it was permissible for a school administrator to read letters found in a student's purse, which implicated her in drug-dealing. 469 U.S. at 347, 105 S.Ct. at 746.

Accordingly, we hold that appellant's notebook was seized and read pursuant to a valid school search. There was no violation of Texas law or the Fourth Amendment.

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