Juvenile Law Case Summaries

By
Robert O. Dawson
Bryant Smith Chair in Law
University of Texas School of Law

2002 Case Summaries 2001 Case Summaries 2000 Case Summaries 1999 Case Summaries

---

Three hour delay before transporting detained juvenile to station OK because he was not in custody until transported [Dang v. State] (02-4-16).

On October 31, 2002, the Houston Fourteenth District Court of Appeals held that a delay of almost three hours during which the juvenile was detained in a police car before being transported to a juvenile processing office was not unnecessary because the juvenile was not in custody until transported.

02-4-16. Dang v. State, ___ S.W.3d ___, No. 14-00-00560-CR, 2002 WL 31426674, 2002 Tex.App.Lexis ___ (Tex.App.-Houston [14th Dist.] 10/31/02) Texas Juvenile Law (5th Ed. 2000).

Facts: A juvenile court certified fifteen-year-old appellant Tuan Anh Dang as an adult. After the juvenile court transferred appellant to the trial court, he was indicted and tried for capital murder. The jury found appellant guilty, and the trial court assessed appellant's punishment at confinement in the state penitentiary for life. On appeal, appellant asserts the trial court erred: (1) in not suppressing his oral statement because it allegedly was taken in violation of the Texas Family Code; (2) in refusing requested jury instructions; and (3) in limiting closing argument to twenty minutes.

On January 5, 1999, Binh Nguyen, the complainant, was working a shift from 4:00 p.m. to midnight as a machinist at a business owned by Son Dang, appellant's father. Tan Pham, another machinist at Dang's business, was to begin his shift at midnight. Typically, the employee in the building kept the door locked from the inside and would unlock the door for the next arriving employee. Pham arrived at work at 11:45 p.m. and knocked on the door. Binh did not answer. Pham noticed the doorknob had holes around it. Peering through a hole in the door, Pham saw Binh lying on the floor with his head toward the door. Pham went home, called Dang (the shop owner), and asked him to come to his house. When Dang arrived, Pham told him what he had seen. Dang called the police and then the two of them went to the shop.

Officer Kerr Richards of the Houston Police Department received a call from the police dispatcher at 12:11 a.m. on January 6, 1999, to go to the machine shop. When he approached the building, he saw that a side door was open. As he maneuvered through the yard, Richards noticed a body lying inside the front section of the building. Richards immediately advised the dispatcher to send an ambulance. Through the same open doorway, Richards also observed an Asian female walking from the location of the body toward the east side of the building, and two Asian males in the back section ransacking some desks. Richards was not able to see into the front section of the building. Concerned that a fourth person might be in the front part of the building, Richards returned to his police car to call for help. As he retreated, Richards heard three gun shots coming from inside the building. Believing he was under fire, Richards dove behind his police car. Richards then saw an Asian male come to the side door and pull it shut.

Unaware of the danger, Son Dang, the shop owner, and Tan Pham pulled into the shop parking lot. Officer Richards immediately advised them to move across the street because the scene was not secure. Other police officers arrived within a few minutes and set up a perimeter around the building. Shortly thereafter, SWAT officers arrived and took charge of the scene.

Police later apprehended appellant and Linda Nguyen outside the building. Officers recovered a semiautomatic cartridge from appellant's front pants pocket and ten empty nine-millimeter shell casings from his back pocket. The police placed appellant and Linda in separate police cars. This occurred sometime between 1:30 a.m. and 1:50 a.m. Shortly thereafter, the police captured Quynh Tran and Kenneth Tran and placed them in separate police cars.

Homicide investigators, Sergeant G.J. Novak and Officer Henry Chisolm, arrived at the crime scene at 3:00 a.m. and 3:30 a.m., respectively. No one had access to the building until 3:10 a.m., when SWAT officers relinquished control of the crime scene. Novak interviewed Linda, Quynh, Kenneth, and appellant separately as each sat in a separate police car. Novak interviewed appellant last at

3:45 a.m. At approximately 4:00 a.m., Novak had these four individuals transported to the homicide office at 1200 Travis in downtown Houston.

At 5:45 a.m., Sergeant Ted Bloyd met appellant at the homicide office. Bloyd left appellant in the homicide office's family room to attend the interviews of Linda and Quynh. Based on information he learned in those interviews, Bloyd considered appellant a suspect. At 7:20 a.m., Bloyd returned to the family room and found appellant asleep on a couch. Bloyd woke appellant and informed him that he was now considered a suspect. Bloyd then took appellant to a magistrate for the administration of his legal warnings. Very soon thereafter, Bloyd and appellant returned to the homicide office, where, at 8:36 a.m., Bloyd reminded appellant of his legal warnings and recorded appellant's oral statement. The interview ended ten minutes later.

At appellant's trial, the State offered appellant's confession and the testimony of other witnesses to show that on the night of the murder, appellant and his friend, Quynh Tran, went to appellant's father's machine shop to steal money believed to be on the premises. Quynh, armed with a nine-millimeter pistol, and appellant attempted to enter through a side door routinely used by employees, but soon discovered the door was locked. However, Binh Nguyen was working in the shop. Recognizing appellant as the owner's son, Binh unlocked the door and permitted the youths to enter the building.

As Binh returned to his duties, Quynh told appellant to kill Binh because Binh would tell appellant's father they had been at the shop. Quynh handed the pistol to appellant. Appellant claims he could not bring himself to shoot the machinist, so he engaged the safety on the gun, pulled the trigger, and told Quynh the gun had jammed. Although ballistics tests indicated Binh was shot with two different pistols, appellant stated in his confession that Quynh alone shot Binh. In any event, Binh was shot several times.

Appellant claims that, immediately after the murder, Quynh and he quickly searched the premises. They discovered and took a nine-millimeter pistol appellant's father kept at the shop, but could find no money. While leaving the premises, Quynh fired several rounds at the side door in an attempt to make it appear the murder and robbery had been initiated by a forced entry. Appellant said that when he saw Quynh shooting holes in the door, he thought, "This is fun ... I wonder if I can hit it." Appellant then used his father's gun to shoot at the door.

After an unsuccessful search for money, appellant and Quynh went back to their apartment to get a crowbar. Once at the apartment, they told Linda Nguyen what they had done and called in another friend, Kenneth Tran. Quynh told Kenneth, "We shot and killed somebody. We need to go back to the shop." Kenneth noticed that Linda was crying and appellant was calmly wiping down a pistol with a towel. Believing his friends would reward him with a fair share of the money, Kenneth agreed to return to the shop and act as a lookout while appellant, Quynh, and Linda searched the premises for the elusive cache of money. It was while Linda, Quynh, and appellant were at the shop for the second time that evening that Officer Richards arrived on the scene.

The trial court denied appellant's motion to suppress the oral statement that he made at 8:36 a.m. on January 6, 1999. The State introduced that statement as evidence during appellant's trial for capital murder. Appellant requested jury instructions regarding the voluntariness of his oral statement and regarding alleged violations of the Texas Family Code by the police. The trial court charged the jury regarding the voluntariness of appellant's oral statement but refused appellant's other proposed jury instructions. The jury convicted appellant of capital murder, and the trial court assessed appellant's punishment at confinement in the state penitentiary for life.

II. ISSUES PRESENTED

Challenging his conviction for capital murder, appellant asserts the following issues on appeal:

(1) Did the trial court abuse its discretion by denying appellant's motion to suppress his oral statement, allegedly obtained in violation of sections 52.02 and 52.025 of the Texas Family Code? (first, second, and third issues);
(2) Did the trial court err in refusing appellant's requested jury instructions concerning compliance with sections 52.02(a), 52.02(b)(1), and 52.025(d) of the Texas Family Code? (fourth issue); and
(3) Did the trial court abuse its discretion in limiting closing argument to twenty minutes? (fifth issue)

Held: Affirmed.

Opinion Text: Generally, we review a trial court's ruling on a motion to suppress under an abuse-of-discretion standard of review. Oles v. State, 993 S.W.2d 103, 106 (Tex.Crim.App.1999). However, in this case, the resolution of the suppression issues does not turn on an evaluation of credibility and demeanor, and the facts relating to the suppression issues are not disputed. Therefore, we apply a de novo review. See Guzman v. State, 955 S.W.2d 85, 89 (Tex.Crim.App.1997); Jeffley v. State, 38 S.W.3d 847, 853 (Tex.App.--Houston [14th Dist.] 2001, pet. ref'd). In determining whether the trial court's ruling on a motion to suppress is supported by the record, we generally consider only the evidence adduced at the hearing on that motion unless the suppression issues have been consensually relitigated by the parties during the trial on the merits. Rachal v. State, 917 S.W.2d 799, 809 (Tex.Crim.App.1996).

Because the parties in this case consensually relitigated the suppression issues at trial, we will examine the trial evidence as well as the evidence from the suppression hearing.

Did the trial court abuse its discretion by denying appellant's motion to suppress based on an alleged unnecessary delay under section 52.02(a) of the Texas Family Code?

In his first issue, appellant claims the trial court abused its discretion in overruling his motion to suppress his oral statement because it was obtained in violation of section 52.02(a) of the Texas Family Code. Under this section, once children are in police custody, the police must take them without unnecessary delay to a juvenile processing office. See Tex. Fam.Code § 52.02(a). Appellant, who was fifteen years old at the time, argues the police unnecessarily delayed taking him to a juvenile processing office based on the length of time they detained him in the police car at the scene of the murder.

We begin by observing that the legislature has designed special procedures and created a specific nomenclature for dealing with juvenile suspects. A juvenile, for example, technically cannot be "arrested," but he "may be taken into custody ... pursuant to the laws of arrest." Tex. Fam.Code § 52.01(a)(2). Thus, "[t]he 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." Tex. Fam.Code § 52.01(b). Moreover, the police do not process a child taken into custodial detention through a "booking room," but rather through a "juvenile processing office." See Tex. Fam.Code § 52.025. Finally, in most circumstances, the police do not confine a child in a "jail," but in a "certified juvenile detention facility." See Tex. Fam.Code § 51.12.

Though we recognize that a child can only be "taken into custody" or "detained," but never "arrested," the use of this terminology can be confusing, particularly when we must evaluate the validity of a juvenile's custody by applying the laws and constitutional provisions relating to the arrest of adult suspects. Accordingly, in our analysis, for the sake of clarity, hereafter we will refer to appellant's "temporary detention" and/or "arrest," though we recognize those terms are technically inappropriate when used with respect to a juvenile.

When the police take a suspect into custody, they either "arrest" or "temporarily detain" him. "A person is arrested when he has been actually placed under restraint or taken into custody by an officer or person executing a warrant of arrest, or by an officer or person arresting without a warrant." Tex.Code Crim. Proc. Ann. art. 15.22 (Vernon 1977). However, this "restraint of liberty" standard is not adequate when distinguishing between an arrest and a detention because it is a characteristic common to both. See Francis v. State, 896 S.W.2d 406, 410 (Tex.App.--Houston [1st Dist.] 1995, pet. dism'd). Whether a particular seizure of a person is an arrest or merely a temporary detention is a matter of degree and depends upon the length of the detention, the amount of force employed, and whether the officer actually conducts an investigation. See Woods v. State, 970 S.W.2d 770, 775 (Tex.App.--Austin 1998, pet. ref'd).

A "temporary detention," sometimes known as an "investigative detention," must be temporary and last no longer than is necessary to effectuate the purpose of the stop. Balentine v. State, 71 S.W.3d 763, 770-71 (Tex.Crim.App.2002). To temporarily detain a person for investigative purposes, an officer need have only "specific and articulable facts which, in light of a police officer's experience and personal knowledge taken together with rational inferences from those facts, would reasonably warrant the intrusion upon a citizen's freedom." Hawkins v. State, 758 S.W.2d 255, 259 (Tex.Crim.App.1988). For a temporary investigative detention to be valid, the following factors must be present: (1) an unusual activity must be occurring or have occurred; (2) the accused must be connected with the suspicious activity; and (3) the suspicious activity must be connected with crime. Davis v. State, 829 S.W.2d 218, 219 n.2 (Tex.Crim.App.1992). Moreover, the investigative methods employed should be the least intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time. Davis v. State, 947 S.W.2d 240, 245 (Tex.Crim.App.1997). Finally, an investigative detention may be founded upon a reasonable, articulable suspicion while an arrest must be supported by probable cause to be constitutionally valid. Morris v. State, 50 S.W.3d 89, 94 (Tex.App.--Fort Worth 2001, no pet.).

The Legislature has declared that when the police take a juvenile into "custody," he first must be taken, "without unnecessary delay," to a "juvenile processing office." See Tex. Fam.Code § 52.02(a). Thus, the question presented is whether a juvenile, like an adult, may ever be "temporarily detained" in the field. In other words, if a police officer seizes a juvenile while conducting an investigative detention, must the officer immediately transport the juvenile to a juvenile processing office, or may the officer conduct a preliminary investigation in the field before deciding whether to "arrest" the suspect? Appellant contends section 52.02(a) becomes operative anytime the police take a juvenile into "custody."

Section 52.02(a) of the Family Code lists six specific procedures that police may perform at a juvenile processing office. All of these functions are consistent with what are generally regarded as "booking procedures"; none relate to a continuing police investigation of the underlying offense. Thus, we find that when, in section 52.02(a), the Legislature refers to the taking of a child into "custody," it means custody resulting from an arrest, not a temporary detention. Accordingly, the police may detain a juvenile temporarily during an investigation in the field in the same manner as they detain an adult. Only when a juvenile has been "arrested" must he be transported to a juvenile processing office.

Next, we must decide at what point appellant was arrested because, once arrested, the police were obliged to transport him without unnecessary delay to a juvenile processing office. The record indicates the police apprehended appellant, patted him down, and placed him in the back of a police car between 1:30 a.m. and 1:50 a.m. The police did not transport appellant from the crime scene to the homicide office until approximately 4:00 a.m. Thus, the police held appellant at the scene for approximately two-and-a-half hours.

In determining whether a juvenile was under arrest, we consider whether, based on the objective circumstances, a reasonable child of the same age would believe his freedom of movement was significantly restricted. See Jeffley, 38 S.W.3d at 855. In each situation, the determination of custody is based entirely on objective circumstances. State v. Stevenson, 958 S.W.2d 824, 829 & n.7 (Tex.Crim.App.1997).

In its findings of fact and conclusions of law, the trial court determined that appellant "would have been arrested at the scene of the offense and placed into custody sometime after 1:00 a.m. on January 6, 1999". However, as previously stated, we conduct a de novo review in this case because the resolution of the suppression issues does not turn on an evaluation of credibility and demeanor, and the facts surrounding appellant's detention or arrest are not disputed. See Guzman, 955 S.W.2d at 89.

Appellant agrees this court should determine de novo whether he was under arrest when first placed in the police car; however, appellant claims the undisputed evidence proved the police had arrested appellant at that time. Appellant relies on the testimony of Officer Chisolm, who arrived at the scene at 3:30 a.m., after the police had placed appellant in the police car. Officer Chisolm testified that, when he arrived, appellant was in the custody of Officer Taylor and that it is Officer Chisolm's understanding that appellant "was placed in custody somewhere around 1:30[sic] to 1:50[sic]." This testimony does not specify whether Officer Chisolm meant that the police had arrested appellant or whether they had detained him temporarily. In any event, there was no evidence Officer Chisolm's understanding concerning when appellant "was placed in custody" was manifested to appellant. Therefore, Officer Chisolm's subjective belief that appellant was "in custody"--whatever he meant by that--is irrelevant to our de novo determination of whether the police had arrested appellant or temporarily detained him. See Stevenson, 958 S.W.2d at 829 & n.7 (subjective beliefs of the police not relevant unless they were manifested to suspect). Instead, we must analyze the objective circumstances. See id.

The record reflects that at approximately 2:00 a.m., homicide detectives were awakened at their homes and instructed to report to the crime scene. In the meantime, SWAT officers were in control of the scene, as they were in the process of making certain the building and surrounding environs were safe for homicide detectives. The police did not know at that time whether more witnesses, victims, or suspects remained in the building. The SWAT team released the scene at 3:10 a.m., marking the first opportunity homicide detectives had to examine the victim, premises, and other physical evidence. Sergeant Novak began to interview Quynh, Linda, Kenneth, and appellant to determine the significance of their presence at the crime scene. After these individuals gave conflicting statements, Novak had them transported to a juvenile processing office--the homicide office at 1200 Travis. The act of detaining appellant in a police car while the scene was being cleared by SWAT officers does not necessarily show he was under arrest. See In the Matter of E.M.R., 55 S.W.3d 712, 717-18 (Tex.App.--Corpus Christi 2001, no pet.) (holding child not considered under arrest until he gave statement implicating himself). Instead, the record indicates police did not consider appellant a suspect until after they noticed inconsistencies in statements of the four individuals found near the crime scene. As late as 3:30 a.m., Lieutenant Maxey, who was in charge of the homicide investigation, advised Sergeant Bloyd that he was still trying to determine whether these four young people were witnesses or suspects. Thus, the record indicates the police temporarily detained appellant and his companions to preserve the status quo while the building was being cleared.

We are mindful, of course, that a temporary detention must be temporary, i.e., of as short a duration as possible to effectuate the purpose of the stop. See Davis, 947 S.W.2d at 245. However, there is no rigid, "bright-line" time limitation beyond which a temporary detention becomes a de facto arrest. See United States v. Sharpe, 470 U.S. 675, 685, 105 S.Ct. 1568, 1575, 84 L.Ed.2d 605 (1985). "Obviously, if an investigative stop continues indefinitely, at some point it can no longer be justified as an investigative stop." Id. In assessing whether a detention is too long in duration to be justified as an investigative stop, the United States Supreme Court has held that we are to consider:

... whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain the defendant. (citations omitted). A court making this assessment should take care to consider whether the police are acting in a swiftly developing situation, and in such cases the court should not indulge in unrealistic second-guessing. (citation omitted). A creative judge engaged in post hoc evaluation of police conduct can almost always imagine some alternative means by which the objectives of the police might have been accomplished. But "[t]he fact that the protection of the public might, in the abstract, have been accomplished by 'less intrusive' means does not, itself, render the search unreasonable." (citations omitted). The question is not simply whether some other alternative was available, but whether the police acted unreasonably in failing to recognize or to pursue it.

Id., 470 U.S. at 686-87, 105 S.Ct. at 1575-76.

When analyzing the facts of a particular case to determine whether the police acted reasonably in detaining a defendant for a

particular length of time, we may consider, for example, such factors as the seriousness of the offense under investigation; whether it was necessary to search a premises or vehicle as part of the investigative stop; whether it was necessary for officers to detain the suspect to maintain the status quo while interviewing witnesses; whether the police needed to interview multiple suspects to determine if there were discrepancies in their stories; whether the length of the detention seriously interrupted the suspect's travels; and whether it was necessary to effectuate reasonable safety precautions. In other words, "in evaluating whether an investigative detention is unreasonable, common sense and ordinary human experience must govern over rigid criteria." Sharpe, 470 U.S. at 685, 105 S.Ct. at 1575.

Here, the police had evidence that at least one homicide, possibly a capital murder, had been committed. Because shots had been fired from within the building when the first officer arrived, police had reason to believe that armed suspects remained in the building. Moreover, the building had several entrances and multiple rooms, making any search of the premises a highly dangerous exercise. Police also knew that Officer Richards had observed three Asian young people (two males and a female) inside the building moments after he arrived on the scene. After establishing a perimeter, the police eventually found four Asian young people (three males and a female) outside, but near, the building. A homicide detective, who had been awakened at his home and summoned to the scene, interviewed each of the young people separately to compare their stories and try to determine whether they were witnesses or suspects. The record does not suggest that, at the time of their detention, either appellant or his companions were driving an automobile, attempting to board a plane, walking to work, or otherwise "traveling." Finally, all of these events occurred in the dead of night, further slowing the pace of the police investigation and increasing the hazard of injury. Under these circumstances, we find the police did not arrest appellant until Sergeant Novak had him transported from the scene at approximately 4:00 a.m., after the four young people had given conflicting statements, indicating that appellant was a suspect. Accordingly, we conclude the police did not unnecessarily delay in transporting appellant to a juvenile processing office after arresting him at approximately 4:00 a.m. See In the Matter of E.M.R., 55 S.W.3d at 717-18.

Even if we were to conclude the police had arrested appellant when they first placed him in the police car, we still would find that any delay in taking appellant to the juvenile processing office was a necessary delay. Section 52.02(a) requires the police to transport an arrested juvenile to a designated juvenile processing office without unnecessary delay and therefore contemplates the possibility of a "necessary" delay. Contreras v. State, 67 S.W.3d 181, 185 (Tex.Crim.App.2001). Whether a delay is necessary is determined on a case- by-case basis. Id. The evidence in this case supports a finding that any delay was attributable to the police and SWAT team securing the crime scene. The evidence indicates that securing the building and perimeter was necessary to preserve the integrity of the crime scene and protect potential witnesses or victims.

Nonetheless, appellant argues a two-hour-and-45-minute delay is unnecessarily long. However, we do not judge the necessity of a delay solely by its length. Nor do we make a determination as to the necessity of a delay in a vacuum; rather, we consider the circumstances of each case and evaluate each scenario according to its own peculiar facts. In some cases, a detention of more than a few minutes might be unreasonable. Under most circumstances, a detention lasting approximately two-and-a-half hours would be a de facto arrest, but the situation the police found themselves facing here left them with few options. The evidence showed the crime occurred in the middle of the night and involved multiple suspects, an unsecured scene, and the possibility of multiple victims. Any delay was merely the result of a response to the demands of the particular situation. See In the Matter of J.D., 68 S.W.3d 775, 783 (Tex.App.--San Antonio 2001, pet. denied) (holding that two-and-a-half-hour delay was necessary for police to secure crime scene). In this context, we find nothing unreasonable about the pace of the police investigation or the length of the investigative detention. Accordingly, we find the police did not unnecessarily delay appellant's transportation to a juvenile processing office in violation of section 52.02(a) of the Texas Family Code. [FN10] We overrule appellant's first issue.

FN10. We note that when the police transported appellant, the journey from the crime scene to the juvenile processing office took approximately ninety minutes. Whether the police deviated from the most expeditious route or otherwise delayed appellant's arrival at the juvenile processing office, we cannot discern from the record before us. Appellant did not challenge this anomaly at the suppression hearing. Further, appellant did not accuse the police of stopping, deviating, or engaging in unreasonable conduct in driving him to the juvenile processing office, and thus, the record is silent in this regard.

Did the trial court abuse its discretion by denying appellant's motion to suppress based on the parental-notification requirement of section 52.02(b) of the Texas Family Code?

In his second issue, appellant claims his oral statement was not admissible because the police obtained it in violation of section 52.02(b) of the Family Code. Section 52.02(b) provides:

A person taking a child into custody shall promptly give notice of the person's 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 board.

Tex. Fam.Code § 52.02(b). Appellant does not complain of a failure to notify the office or official designated by the juvenile board, but claims his parents were not promptly notified that he was in custody or of the reason he was in custody.

The police placed appellant in the police car at the scene between 1:30 a.m. and 1:50 a.m. Appellant left the scene in a police car at approximately 4:00 a.m., and he arrived at the juvenile processing office at 5:45 a.m. At approximately 8:45 a.m., appellant gave a statement implicating himself in the capital murder. Appellant's parents were given formal notice that he was in custody later that day at approximately 3:00 p.m. Significantly, however, Son Dang, appellant's father, came to the crime scene shortly after the victim's body was discovered. At the crime scene, appellant's father identified his son to police and saw appellant sitting in the back of a police car. Appellant's father also saw his son being transported from the scene. When asked whether he received notification, Son Dang testified, "I was there. I didn't think no one need to call me. I was at the scene all the time, but I don't get any information about that." Appellant's father further testified he knew what had happened at the machine shop, but did not know any details or what he should do next. The trial court found that Son Dang was present when the police placed appellant in the police car and thus had actual knowledge that his son was in police custody and the circumstances surrounding that action. Section 52.02(b) does not require any more notice than what Dang received at the scene.

Appellant cites to Hampton v. State, 36 S.W.3d 921 (Tex.App.--El Paso 2001), rev'd--S.W.3d--, 2002 WL 31116647, at *1-*5 (Tex.Crim.App. Sept. 25, 2002) and In the Matter of C.R., 995 S.W.2d 778 (Tex.App.--Austin 1999, pet. denied), for the proposition that, even when the parents of a juvenile are aware that their child is being taken to the police station, the Family Code nevertheless requires that police formally notify the parents as to the reason the juvenile has been taken into custody. Here, appellant's father not only had actual knowledge that his son was in police custody, but also testified he knew why his son had been taken into custody. Appellant's father knew that his son often took friends to his business to play pool on a billiards table located in the machine shop, that one of his employees had been murdered, and that his son and several of his son's companions were found near the scene shortly after the murder. Accordingly, appellant's father had actual knowledge of both the fact that his son was in police custody and the reason therefore, so there was no violation of section 52.02(b).

Even if we were to find that appellant's father's actual knowledge did not satisfy the requirements of the statute, appellant did not show a causal connection between the delayed formal notice and his oral statement. [FN11] See Gonzales v. State, 67 S.W.3d 910, 913 (Tex.Crim.App.2002). We overrule appellant's second issue.

FN11. We note in this regard that appellant's father was free to retain legal counsel for his son. However, even though appellant's father had actual knowledge that his son was in police custody, the record reflects that appellant's father did not visit him until appellant had been transported to the juvenile detention center and did not contact a lawyer for appellant until two days after the offense.

Did the trial court abuse its discretion by denying appellant's motion to suppress based on sections 52.025(c) and 52.025(d) of the Texas Family Code?

In his third issue, appellant claims his oral statement was inadmissible because the police violated sections 52.025(c) and (d) of the Family Code. Those statutes provide:

(c) A child may not be left unattended in a juvenile processing office and is entitled to be accompanied by the child's parent, guardian, or other custodian or by the child's attorney.
(d) A child may not be detained in a juvenile processing office for longer than six hours.

Tex. Fam.Code § 52.025(c),(d).

Appellant first contends he was left unattended in the family room at the juvenile processing office from 5:45 a.m. until 7:20 a.m. in violation of section 52.025(c). However, appellant did not assert this contention either in his written motion to suppress or at the hearing on his motion to suppress. Therefore, appellant did not preserve error on this complaint. See Jeffley, 38 S.W.3d at 853.

Even if appellant had preserved error, he could not prevail on his argument under section 52.025(c) of the Texas Family Code because it lacks merit. The record reflects that Officer Bloyd placed appellant in the family room at 5:45 a.m. and returned at 7:20 a.m. to find appellant asleep. At that time, Officer Bloyd woke appellant and took him to a magistrate so that appellant could be informed of his rights. Though there was evidence at trial that appellant was alone in the family room from 5:45 a.m. to 7:20 a.m., there was no evidence that the police failed to attend, watch, or guard appellant from outside the family room. Therefore, there was no evidence that appellant was left unattended while he was in the family room. In addition, appellant did not show a causal connection between allegedly being left unattended in the family room and his oral statement. See Gonzales, 67 S.W.3d at 913.

Appellant further contends the trial court should have suppressed his oral statement because the police held him in the juvenile processing office for more than six hours. The record reflects that appellant was in the juvenile processing office from 5:45 a.m. until

approximately 12:25 p.m., an interval slightly longer than six-and-a-half hours. From 5:45 a.m. to 7:20 a.m., appellant slept in the family room. At 7:30 a.m., he was taken to the magistrate and read his rights. At 8:00 a.m., he was returned to the juvenile processing office, where he gave his oral statement, which ended at 8:46 a.m. From 9:00 a.m. until 12:10 p.m., appellant remained in the family room. At 12:10 p.m., appellant telephoned his father, and at 12:25 p.m., appellant began his journey to the juvenile detention center.

Before appellant gave his statement, the police detained him in the juvenile processing office for less than two hours while he slept. After the statement, the police detained him for another three-and-a-half hours. Appellant finished giving his oral statement three hours after arriving at the juvenile processing office--halfway through the six-hour limit of section 52.025(d) of the Texas Family Code. Appellant did not show a causal connection between the length of his stay in the juvenile processing office and his oral statement. See Gonzales, 67 S.W.3d at 913. We overrule appellant's third issue.

2001 Case Summaries 2000 Case Summaries 1999 Case Summaries