Written statement held admissible where video recorded statement taken at the same time was not. [Gentry v. State](16-2-1B)

On January 21, 2016, the Houston Court of Appeals (1st Dist.) held that a written statement was admissible, even though a video recorded statement, taken at the same time, but not taken in compliance with section 51.095, had been suppressed by the trial court, because unlike the oral recorded statement, the written statement was taken in compliance with section 51.095 and the magistrate who took the statement indicated that she was “fully convinced” that the juvenile had “knowingly, voluntarily, and intelligently” waived his statutory rights and she signed the form certifying and verifying that the requisites of Section 51.095 had been met.

¶ 16-2-1B. **Gentry v. State**, MEMORANDUM, No. 01-14-00335-CR, NO. 01-14-00336-CR, 2016 WL 269985, [Tex.App.—Houston (1st Dist.), 1/21/16].

**Facts:** Around 3:00 a.m. on January 19, 2012, Masario Garza was driving to work on Highway 90 in Fort Bend County. Highway 90 has four lanes, with two on each side of the road. Garza was in the outside lane. As he approached the intersection with FM359, Garza slowed down for a red light. Garza noticed that a gray truck was to his left in the inside lane. The truck was being driven by 22–year–old Daniel Desantiago–Caraza. Fourteen-year-old Damion Gentry was in the passenger seat. The truck stopped at the intersection, and Gentry got out of the passenger side.

Initially, Garza thought that Gentry had gotten out of the truck to ask him directions or to check something in the back of the truck. But then, Garza saw that Gentry was holding gun in his right hand. When he saw the gun, Garza immediately stepped on the gas to get away from the scene. Garza later testified that he fled because he thought that Gentry was “going to rob me or something.”

As Garza left the scene, Gentry shot into the driver’s side window of Garza’s car, shattering the glass. The glass cut Garza’s cheek and hand.

Traveling at a high rate of speed, Garza continued down Highway 90 in the outside lane. When he looked in his rearview mirror, Garza saw that the truck was in the inside lane and was getting closer. After a couple of miles, the truck, still in the inside lane, caught up to Garza and passed him. As the truck passed, Garza heard two more gunshots. The truck then made a U-turn through the grassy median and headed in the opposite direction on the highway. As the truck passed him heading in the other direction, Garza heard two more gunshots.

Garza pulled into a restaurant’s parking lot at the direction of the 9–1–1 operator, with whom Garza had been speaking during the incident. The police soon arrived, and Garza told them what had occurred.

At that same time, Nelson Alberto Mejia Escobar was performing his job of cleaning the parking lot of an Academy store in the Brazos Shopping Center. Around 3:30 a.m., Desantiago–Caraza and Gentry pulled into the Academy parking lot in the gray truck and approached Escobar. While still in the truck, Gentry spoke to Escobar in English. Escobar told Gentry in Spanish that he did not speak English. Gentry then got out of the truck and pointed a gun at Escobar’s head. In Spanish, Gentry told Escobar to give him $150. When Escobar indicated that he did not have any money, Gentry told him to empty his pockets. The only item that Escobar had in his pockets was the keys to his truck. Gentry demanded Escobar’s keys, and Escobar gave him the keys. While he was emptying his pockets, Gentry continued to point the gun at different parts of Escobar’s body. During this time, Escobar repeatedly begged Gentry not to shoot him and asked Gentry “[to] have mercy on me” and “[to] have pity on me.”

Gentry then lowered the gun, but Desantiago–Caraza told Gentry to shoot Escobar. Gentry turned the gun around with the grip facing outward. Gentry raised his arm to strike Escobar with the gun, but Escobar lifted his arm to deflect the blow. Escobar hit Gentry’s hand holding the gun, pushing the gun to the side.

Escobar turned and ran, and Gentry ran after him. As he chased Escobar, Gentry shot at Escobar’s back. Escobar continued to run, and Gentry continued to shoot at him. Gentry shot at Escobar three or four times. As he ran, Escobar tripped and fell to the ground. Gentry stopped shooting. Escobar heard Gentry say to Desantiago–Caraza, “I already killed him.” Gentry and Desantiago–Caraza then left the parking lot in the gray truck.

Meanwhile, around 3:30 a.m., Rosenberg Police Officer J. Thompson had gone to the Summer Lakes Subdivision to assist the fire department with a car fire. Officer Thompson was not needed at the scene of the fire but was asked by an arson investigator to check on a suspicious vehicle that had been seen at a nearby apartment complex that was under construction. The apartment complex was behind the Brazos Shopping Center where the Academy was located. Officer Thompson determined that the suspicious vehicle was the construction crew working at the building site. While at the construction site, Officer Thompson heard three or four gunshots coming from the parking lot in front of the Academy. He also heard tires squealing. Officer Thompson saw the gray pickup truck, being driven by Desantiago–Caraza, leaving the Academy parking lot. He then saw the truck run through a stop sign and turn into the Summer Lakes Subdivision.

Officer Thompson followed the truck into the subdivision. As the truck was stopping in front of a residence, Officer Thompson activated his emergency lights to initiate a stop, which also activated the patrol car’s video-recording equipment.

The truck stopped in front of a house. Officer Thompson instructed Desantiago–Caraza to get out of the truck. Officer Thompson was talking to Desantiago–Caraza when he heard over the police radio that there had been a shooting at Academy. Officer Thompson then ordered Gentry out of the truck, and he made both Gentry and Desantiago–Caraza lie on the ground. Officer Thompson drew his duty weapon and decided that he would wait for backup officers to arrive. Desantiago–Caraza and Gentry began conversing in Spanish. Officer Thompson told them to be quiet. Gentry suddenly stood up, ran to the front of the truck, and then fled the scene.

Rosenberg Police Detective R. Leonhardt then arrived at the scene. He viewed the video taken from Officer Thompson’s patrol car, showing the stop of truck, the detention of Desantiago–Caraza and Gentry, and Gentry’s flight from Officer Thompson. When he saw the video, Detective Leonhardt recognized Gentry.2 The police searched their records and determined Gentry’s last known address. Detective Leonhardt and other officers went to the address and found that Gentry still lived there.

Gentry’s step-father gave his consent to search the home. The officers searched the home for the gun that had been used in the robberies but did not find it. Gentry overheard the officers talking about the gun and told them that the gun had been thrown from the truck at the front of the subdivision.

The officers took Gentry to a juvenile processing office where he was read his statutory Miranda-style rights by Justice of the Peace Mary Ward, acting as a magistrate. Gentry then gave both an oral, recorded statement and a written statement to the police. Gentry reviewed the written statement with Judge Ward and signed it in her presence.

In the written statement, Gentry acknowledged that he been present during the incidents with Garza and Escobar; however, Gentry minimized his involvement, indicating that Desantiago–Caraza had been the primary actor with regard to each. Gentry claimed that it had been Desantiago–Caraza who had fired the gun at Garza. He also claimed that it had been Desantiago–Caraza who had struck Escobar and had first fired the gun at Escobar. Gentry admitted that, after Desantiago–Caraza had fired the gun one time, he also had fired it; but Gentry claimed that he had fired the gun only at the ground.

In his written statement, Gentry also admitted involvement in the car fire in the Summer Lakes Subdivision, which Officer Thompson had been dispatched to investigate. Gentry claimed that Desantiago–Caraza had set the fire with a lighter and that they stayed to watch the car bum. Gentry stated this had been before “the other events occurred.”

The State filed a petition for waiver of the juvenile court’s jurisdiction and discretionary transfer to criminal court for the aggravated-robbery offenses committed against Garza and Escobar. In November 2012, the juvenile court conducted a transfer hearing to determine whether it should waive its jurisdiction and transfer Gentry to criminal district court for prosecution as an adult.

During the three-day transfer hearing, the State presented the testimony of 11 witnesses. Shane Marvin, the court-liaison officer from the Fort Bend County Juvenile Probation Department, testified regarding Gentry’s history in the juvenile system. Marvin had been assigned to supervise Gentry since February 2012. Over the months, Marvin had met with Gentry one or two times a week. Marvin also conducted a social history and home study evaluation for Gentry, ordered by the juvenile court and filed in the record.

Marvin stated that Gentry’s first referral to the juvenile system was for running away in 2007 when Gentry was only 10 years old. Over the next five years, Gentry had 11 other referrals to the juvenile system. One of the referrals, in 2009, was for assault on a public servant. Gentry was placed on formal probation for that referral. Marvin testified that Gentry successfully completed that probation, but, during the term of the probation, Gentry had two violations, including a threat by Gentry to blow up his school.

Marvin testified that another of Gentry’s referrals was for “Class C gang affiliation membership.” Gentry was placed on formal probation for six months for that referral. Gentry ultimately completed that probation, but Marvin testified that, during the probationary term, Gentry received three violations and “an additional Class C citation for destruction of school classes.”

With respect to Gentry’s gang affiliation, Marvin testified that “over the course of a little bit less than 300 days since I supervised his case and reading his files, I’ve come to learn he’s associated, affiliated, or a member of the Southwest Cholos.” When asked what indicated Gentry was in a gang, Marvin explained that, in the past, Gentry had been found to possess certain indicia of gang association. For example, while he was on probation for gang affiliation, Gentry wore certain gang-related items such as a black and white bandana and an extra-long belt. He was also caught tagging textbooks and flashing gang signs in school in front of his teachers. In addition, Gentry had been found to have other indicia of gang affiliation such as writings, taggings, and drawings on his backpack and the number 13 on his belt. Marvin stated that Gentry also has three dots tattooed on his knuckle, which Marvin believed indicated gang affiliation.

At the November 2012 hearing, Marvin indicated that Gentry had been in a juvenile detention facility since the occurrence of the instant offenses in January 2012. Marvin testified that Gentry had been written up for 14 separate infractions since he has been in detention. These include write-ups for fighting and for assault of another child in the facility. Marvin stated that, following the assault, Gentry had to be physically restrained.

In addition, Marvin testified regarding the numerous services that the juvenile system has provided Gentry over the years, prior to the commission of the instant aggravated-robbery offenses. These services included individual, group, and behavior-modification counseling, probation, substance abuse counseling, including inpatient treatment, mental health services, boot camp, and a mentorship program. Marvin agreed that Gentry has had “access to every type of rehabilitation program the [juvenile] department offers.” Marvin testified that “at this point, you know, I think, it’s fair to say that as a department, we have exhausted everything.”

Marvin indicated that, if the court found that Gentry should remain in the juvenile system, Gentry was “absolutely not” a candidate for probation. With respect to why probation was not a good option for Gentry, Marvin testified:

[Gentry’s] Being on probation two times, formal probation, having 12 referrals, having been placed by this department. You know, we talked about services, we talked about probably not even half of the services that he’s actually received.

This child received—he’s participated in the TCOOMMI turnaround program, male mentor program which I refer to as Ramp, acronym for that is Ramp. When he was at JJAEP, he was in life skills training. You know, where they pull kids and they try to give them simple, basic understanding of money, or balancing a checkbook.

JJAEP itself, you know, there’s a component there, for lack of a better word, watered-down boot camp. So you know, he’s been there. He’s participated, he’s had teachers, he’s had drill instructors, he’s had probation officers, he’s had individual counseling, he’s had family counseling, he’s had grief counseling.

He has had multiple alcohol/drug assessments. He has had multiple sessions with alcohol drug counselors. He has had psychiatric evaluations; he has had psychological evaluations.

We have tried in hopes of keeping him at the house and not violating his terms of probation, we’ve attempted to place an electronic monitor on his ankle to keep him there; which, obviously, does not keep a person physically at the house. We’ve done anger management.

So when you ask me in reference to him being a candidate for probation, my personal opinion—and, I think, that the department would support me 100 percent that he is nowhere near being a candidate for probation.

Marvin also testified that Gentry could not be placed in one of the juvenile system’s programs. He explained,

The child has been placed; and the child has been with us since 2007, age 10, up until 2012. That is a five-year span. One thing, and a really strong point is in regards to him being a candidate for placement, I want to go back to the protection of the public and the weapon being used in the commission of this alleged offense.

I don’t think that a placement and let me just hit on that as far as not being a candidate for placement. Our placements have supervisors that have called around to the most severe, most restricted places that we have with regards to boot camp. He has called Grayson, he’s called Hayes County, and he’s called Nueces.

Based on the nature of this offense, based on the child’s now pending arson charges, they’re not going to accept a child into the facility like that. So that’s just not departmental. There’s not a placement that’s going to take him.

Marvin testified, “Our department’s recommendation is if [Gentry] remains in the juvenile system, that he be committed to the TJJD [Texas Juvenile Justice Department]” for confinement. With regard to how long Gentry would be committed to the TJJD, Marvin indicated that, given the nature of the instant offenses, the minimum amount of time Gentry would be committed to the TJJD was three years, though he could stay in the TJJD until he was 19 years old. Marvin testified that the TJJD, not the juvenile court, determined whether, after three years, Gentry could be released on parole. The juvenile court would not make that decision.

The State also offered the testimony and report of court-appointed forensic psychologist Dr. Karen Gollaher, who had interviewed and evaluated Gentry. Dr. Gollaher testified that testing showed Gentry’s IQ to be 107, which is in the average range. Dr. Gollaher indicated that Gentry had a history of depression. She opined that Gentry did not suffer from any mental deficit or psychosis that would have affected his ability to know right from wrong when he committed the instant offenses. Dr. Gollaher indicated that she had seen nothing to indicate that Gentry was under any type of duress or coercion when he committed the offenses.

Dr. Gollaher testified that she had diagnosed Gentry with conduct disorder. She explained that conduct disorder manifests itself by the individual “engaging in a pattern of defiance that’s usually a cross environment that can be at school, legal, and at home which is a precursor to antisocial personality disorder.” With regard to his behavior at home, Dr. Gollaher stated that Gentry had a history of running away.

Gentry had also displayed defiant behavior at school. Gentry told Dr. Gollaher that he had been suspended from school 10 to 15 times. At first, the suspensions were for acting out in class but later the suspensions were for fighting. Dr. Gollaher had learned that Gentry had been involved in numerous individual and gang-related fights. Dr. Gollaher testified that she had also learned that Gentry had been accused of choking a teacher, resulting in a referral to the juvenile system for assault on a public servant. Also taking the instant charges into consideration, Dr. Gollaher indicated that Gentry’s history demonstrated a pattern of increasingly violent, aggressive, and escalating behaviors, which were of concern. Dr. Gollaher testified, “[C]ertainly when you see someone who’s already engaged in a pattern of violent behavior, you’re wondering, okay, what’s next?”

Dr. Gollaher agreed that Gentry could benefit from rehabilitation, indicating that Gentry “needs help.” But she also indicated that probation or other treatmentbased programs, such as boot camp, would not be appropriate for Gentry. She stated that Gentry had done well in the past when placed in a structured environment.

With regard to the length of time Gentry should be removed from society, the following exchange occurred between the State and Dr. Gollaher:

[The State:] Knowing then that the minimum length of commitment for the offense of aggravated robbery, and there were two of them, that the minimum length of commitment is three years; and that after three years, he could be released back into society, but that’s the minimum.

What’s your opinion as to whether or not that is the kind of timeframe that is appropriate for him to be in a structured environment and not risk the public or risk the greater community with this [escalation] of violent behavior?

[Dr. Gollaher:] I would be concerned about just three years.

[The State:] Does his history suggest a need for structure, you know, unfortunately in an incarcerated setting much longer than that of a three-year period?

[Dr. Gollaher:] Yes, ma’am.

In addition to expert evidence, the State presented the testimony of the following witnesses at the transfer hearing: (1) the complainants, Garza and Escobar; (2) the investigating police officers, including Officer Thompson, the detectives involved in arresting Gentry and taking his statements, and the arson investigator who investigated the car fire in which Gentry was involved; and (3) Judge Mary Ward, the magistrate who informed Gentry of his statutory rights before he made his statements to the police. The State has offered the following tangible evidence at the transfer hearing: (1) Gentry’s written statement; (2) the video taken from Officer Thompson’s patrol car during Gentry’s and Desantiago- Caraza’s detention, showing Gentry fleeing from Officer Thompson; and (3) the security video from the Academy parking lot, depicting the events surrounding the robbery of Escobar.

To defend against the waiver of jurisdiction, Gentry presented the testimony and report of forensic psychiatrist Dr. A. David Axelrad, who had been appointed by the juvenile court to aid the defense. In forming his opinions, Dr. Axelrad had relied on a neuropsychological evaluation of Gentry conducted by Dr. Larry Pollock. Dr. Pollock’s report was included as part of Dr. Axelrad’s report.

Dr. Axelrad testified that, after he had met with Gentry, he had requested Dr. Pollock to conduct a neuro-psychic examination because he had noticed that Gentry “was exhibiting some cognitive difficulties.” In addition, Dr. Axelrad had learned that Gentry had a history of head injuries and substance abuse. Dr. Axelrad testified that this information was sufficient “to suggest to me that he might have some neuropsychological deficits that may be relevant for the Court to be aware of as it approaches this decision on adult certification.” Dr. Axelrad stated that Dr. Pollock had concluded from the evaluation that [Gentry] has significant neuropsychological deficits, and intelligence processing speed, and executive functioning. He also found that his executive functioning deficits would affect his information processing, and make it difficult for him to comprehend and respond quickly. [Dr. Pollock] also arrived at conclusions that these deficits would have added an impact on his behavior at the time of the commission of these offenses.

Dr. Pollock also stated in his report that he had concerns about Gentry’s “ability to survive in an adult prison because of neuropsychological deficits, and his psychiatric problems.” Dr. Axelrad testified that Dr. Pollock also “indicated that the kinds of cognitive difficulties that Damion Gentry is experiencing is amendable to cognitive rehabilitation,” which should be done in a “juvenile setting.” One of the programs that Dr. Pollock suggested in his report to rehabilitate Gentry was an outpatient program run by Dr. Pollock called “Project Reentry.” Dr. Axelrad testified that the program would provide Gentry the cognitive treatment that he needs.

Dr. Axelrad further testified that he had consulted with Gentry’s treating psychiatrist, Dr. Nithi, who, since Gentry had been in juvenile detention for the instant offenses, had diagnosed Gentry with bipolar disorder. Dr. Axelrad stated that bipolar disorder is a treatable condition. He testified that Dr. Nithi had placed Gentry on two medications for his bipolar disorder and that Gentry was doing well on the medications. Dr. Axelrad stated that Gentry’s behavior had improved.

Dr. Axelrad pointed out Gentry was not being treated for either his bipolar disorder or his neuropsychological deficits when the instant offenses were committed. Dr. Axelrad also pointed out that Gentry had “been abusing alcohol and marijuana at the time this occurred” and had history of abusing alcohol and marijuana.

With respect to Gentry’s “maturity and sophistication,” Dr. Axelrad testified as follows:

Damion Gentry is an adolescent who has a significant or relatively severe bipolar disorder. He has this disorder, and he has had this disorder probably for the past five to seven years, just based upon the history he shared with me. He has a history of several head injuries. And those head injuries may very well be the reason in part for the neuropsychological deficits that Dr. Pollock has diagnosed in this case, that he has incorporated in two reports to me and to the Court. So because of the problems that he’s experiencing neuropsychiatrically, he is impaired. He is psychiatrically and psychologically impaired. So if you’re going to utilize the word maturity and sophistication in a medical context or clinical context, he has a brain that has been injured, so he doesn’t have a mature brain because of that. And he certainly has problems involving his neuropsychological functioning. The evidence is very clear in that; and it’s in my report and Dr. Pollock’s report.

When asked his opinion regarding whether Gentry “fully understood the circumstances surrounding the incidents that he’s charged with” Dr. Axelrad testified as follows:

Upon the information that I have reviewed, as well as the psychological testing by Dr. Gollaher and Dr. Pollock, it is my opinion that Damion Gentry was impaired at the time of the commission of these alleged offenses. And that that impairment involved significant cognitive problems that he was experiencing that has been documented by Dr. Pollock’s neuro-physiological testing that he had an active bipolar disorder, bipolar-one disorder that significantly impaired his ability to control his behavior. In children and adolescents who experience bipolar disorder, whether it’s mixed hypomanic or manic, it does produce significant impairment in their behavioral control.

At the conclusion of the transfer hearing, the juvenile court stated as follows on the record:

I’m going to make the following findings: That the offense was against the person. That you are sufficiently sophisticated and mature enough to be tried as an adult. You are sufficient and mature enough to help your attorney in your defense. That you have a record, and your previous history is such that you should be certified to stand trial as an adult. The public cannot be protected if you remain in the juvenile system. And there’s a likelihood that the juvenile system could rehabilitate you is very remote. I think juvenile has tried just about everything they could to help you.

The fact that the alleged offenses were felonies of the first degree, and that you were 14 years of age when you committed those felonies. There has been no adjudication of the two felonies. And because of the seriousness of the alleged offenses, the public cannot be protected if you remain in the juvenile system. Because of the background, the public cannot be protected if you remain here. What I find based on your social evaluation and investigative report, and your psychological evaluations, that you should be certified and stand trial as an adult.

Since the petition has multiple accounts [sic], I am certifying you on both counts of aggravated robbery; both with a deadly weapon, and one was a victim who was over 65 years of age.

In each case, the juvenile court signed a “Waiver of Jurisdiction and Order of Transfer to A Criminal District Court” in which the juvenile court waived its jurisdiction, and ordered that Gentry be transferred to criminal district “for proper criminal proceedings.” In its order, the juvenile court made findings to support the waiver of its jurisdiction and its transfer of Gentry to criminal district court for prosecution.

Once transferred, Gentry moved to suppress the oral and written statements he gave to police after he was taken into custody. Among Gentry’s assertions was that the statements had not been taken in compliance with Juvenile Justice Code Section 51.095 and Code of Criminal Procedure Article 38.22. Gentry asserted that both his audio-recorded statement and his written statement should be suppressed because the audio recording did not contain the warnings required by Juvenile Justice Code Section 51.095 and by Code of Criminal Procedure Article 38.22(3)(a)(2). The trial court granted Gentry’s request to suppress the oral statement but denied his request to suppress his written statement.

The two aggravated-robbery offenses were tried together in criminal district court. The jury found Gentry guilty in each case. It assessed Gentry’s punishment at 50 years in prison for each offense.

Gentry now appeals both judgments of conviction. In each appeal, Gentry challenges the juvenile court’s order waiving jurisdiction and transferring him to criminal court for prosecution as an adult. Also in each appeal, he contends that the trial court abused its discretion by denying his request to suppress his written statement. In his appeal involving the aggravated robbery of Escobar, Gentry contends that the evidence was insufficient to support the judgment of conviction.

**Held:** Affirmed

**Memorandum Opinion:** In his second issue raised in each appeal, Gentry asserts, “The trial court committed reversible error and abused its discretion in denying [Gentry’s] motion to suppress his written statement.” Gentry argues that, because his oral statement was suppressed for non-compliance with Family Code Section 51.095, his written statement likewise should have been suppressed.

Section 51.095 of the Juvenile Justice Code governs the admissibility of custodial statements made by a juvenile.6 See TEX. FAM.CODE ANN. § 51.095 (Vernon 2014). Section 51.095(a)(5) requires that a juvenile’s oral statement be recorded by an electronic recording device. Id. § 51.095(a)(5). This section also requires a magistrate to give the juvenile the warning described in Section 51.095(a)(1)(A) before the juvenile makes the statement.7 Id. The warning must be part of the recording, and the child must knowingly, intelligently, and voluntarily waive each right stated in the warning. Id.

The audio-recording of Gentry’s statement, admitted for purposes of the suppression hearing, did not contain the statutory warning. Judge Ward testified that she gave the required statutory warning to Gentry before he gave his oral statement. And Gentry’s written statement reflects that Judge Ward informed him of his statutory rights. Judge Ward acknowledged, however, that the statutory warning was not part of the recording of Gentry’s oral statement.

At the suppression hearing, Gentry asserted that his oral statement should be suppressed because it did not comply with Juvenile Justice Code Section 51.095’s requirement that the statutory warning be part of the recording. Gentry also indicated that his recorded statement did not comply with Code of Criminal Procedure Article 38.22, Section 3(a)(2), which is similar to Juvenile Justice Code Section 51.095(a)(5). Under Article 38.22, Section 3(a)(2), before an oral recorded statement may be admitted into evidence, the State must show that “prior to the statement but during the recording the accused is given the warning in Subsection (a) of Section 2 above and the accused knowingly, intelligently, and voluntarily waives any rights set out in the warning.”8 TEX.CODE CRIM. PROC. ANN. art. 38.22 § 3(a)(2) (Vernon Supp.2014).

In addition, Gentry asserted at the hearing that his written statement was involuntary. He claimed that the audio recording revealed that the police officers taking his statement had directed him to write certain statements. Because it was involuntary, Gentry argued that the written statement should be excluded under Code of Criminal Procedure article 38.23(a), which prohibits the admission of evidence obtained in violation of the constitution or laws of the State of Texas. See TEX.CODE CRIM. PROC. ANN. art. 38.23(a) (Vernon 2005).

The trial court granted Gentry’s request to suppress his oral recorded statement. From the context of the record, it is clear that the trial court suppressed that statement because the oral recorded statement had not been taken in compliance with Section 51.095’s requirement that the magistrate provide the statutory warnings as part of the recording. See TEX. FAMILY CODE ANN. § 51.095(a)(5).

The trial court denied Gentry’s request to suppress his written statement and made the following findings of fact and conclusions of law: (1) “the written statement complied with Article 38.22”; (2) the written statement complied with Family Code section 51.095 “to the degree necessary”; and (3) Gentry, “prior to and during the making of the written statement[,] knowingly, intelligently and voluntarily waived the rights set out in the warning prescribed by Subsection A of Section 2 of Article 38.22.”

On appeal, Gentry argues that his written statement should have been suppressed because “[the] written statement derives from the illegally obtained audio recording which was suppressed during a motion to suppress hearing.” Gentry asserts that “testimony from the suppression hearing clearly shows that the written statement was taken simultaneously during the recording of the audio statement, which was suppressed. The audio recording was obtained in violation of Section 51.095 of the Texas Family Code.” Gentry argues that the written confession should be suppressed because it “was the fruit of the tainted oral, audio confession.” In other words, Gentry asserts that the written statement was not admissible because it was made at the same time he gave his oral, audio-recorded statement, which was suppressed due its non-compliance with Section 51.095.

On appeal, Gentry does not make an express argument that the written statement was involuntary due to any overreaching by the police. In his brief, he does point out that, in his audio recorded statement, “The police are [heard] talking with the Appellant ... for a lengthy period of time, discussing with Appellant what Appellant should include in his written statement. Appellant never had a period of time to reflect before providing his written statement.” Gentry makes this statement to support his assertion that his written statement should be suppressed because it was not made separately from his oral statement, which was not taken in compliance with Section 51.095.

We find the Court of Criminal Appeals’s opinion in Heiselbetz v. State, 906 S.W.2d 500, 512 (Tex.Crim.App.1995) to be instructive. There, the appellant signed a transcription of his oral, audio-recorded statement. Id. The signed transcription was introduced against the appellant at trial over his objection. Id. The appellant argued, “because the audio recording did not contain the warnings required by [Code of Criminal Procedure] Article 38.22(3)(a)(2), the transcription of that statement, even though it does contain the required written warning, is infirm and should have been suppressed.” Id.

Overruling the appellant’s claim, the Court of Criminal Appeals wrote:

We note that there are no allegations of involuntariness, or coercion, or of lack of warnings regarding either the original recorded statement or the signing of the transcribed statement; appellant alleges merely that the recording did not comply with statutory requirements. Under these facts, we agree with the State that the transcription of the oral statement stands on its own. As long as the confession is voluntary, law officers are currently permitted to reduce defendants’ oral statements into writing; they are even allowed to paraphrase the statements.... And as long as the warnings appear on the written statement, it is admissible. The trial court did not err in allowing appellant’s written statement into evidence. Id.

From Heiselbetz, we learn that a written statement, taken in compliance with the requirements for its admissibility, will not be rendered inadmissible on the basis that it was derived from an oral, recorded statement that is inadmissible due to simple statutory noncompliance. See id.

Here, the State agrees that Gentry’s oral statement was inadmissible because it did not comply with Section 51.095’s provisions governing the admissibility of oral statements. At the same time, the State correctly points out that Section 51.095 has separate provisions governing the admissibility of written statements. The State asserts that Gentry’s written statement was taken in compliance with those provisions, as found by the trial court, and was therefore admissible. We agree.

With respect to written statements, as it applies in this case, Section 51.095(a)(1) provides that “the statement of a child is admissible in evidence in any future proceeding concerning the matter about which the statement was given if ... the statement is made in writing [while the child is in police custody] and

(A) the statement shows that the child has at some time before the making of the statement received from a magistrate a warning that:

(i) the child may remain silent and not make any statement at all and that any statement that the child makes may be used in evidence against the child;

(ii) the child has the right to have an attorney present to advise the child either prior to any questioning or during the questioning;

(iii) if the child is unable to employ an attorney, the child has the right to have an attorney appointed to counsel with the child before or during any interviews with peace officers or attorneys representing the state; and

(iv) the child has the right to terminate the interview at any time;

(B) and:

(i) the statement must be signed in the presence of a magistrate by the child with no law enforcement officer or prosecuting attorney present, except that a magistrate may require a bailiff or a law enforcement officer if a bailiff is not available to be present if the magistrate determines that the presence of the bailiff or law enforcement officer is necessary for the personal safety of the magistrate or other court personnel, provided that the bailiff or law enforcement officer may not carry a weapon in the presence of the child; and

(ii) the magistrate must be fully convinced that the child understands the nature and contents of the statement and that the child is signing the same voluntarily, and if a statement is taken, the magistrate must sign a written statement verifying the foregoing requisites have been met;

(C) the child knowingly, intelligently, and voluntarily waives these rights before and during the making of the statement and signs the statement in the presence of a magistrate; and

(D) the magistrate certifies that the magistrate has examined the child independent of any law enforcement officer or prosecuting attorney, except as required to ensure the personal safety of the magistrate or other court personnel, and has determined that the child understands the nature and contents of the statement and has knowingly, intelligently, and voluntarily waived these rights[.]

See TEX. FAMILY CODE ANN. § 51.095(a)(1).

Here, the record, including Judge Ward’s testimony and the form on which Gentry made his written statement, shows that the written statement was taken in compliance with these provisions, and Gentry does not contend otherwise. Of particular relevance, Judge Ward testified that, before Gentry gave his oral and written statements, she informed him of the statutory rights listed in Section 51.095(a)(1). The juvenile statement form on which Gentry made his written statement also contains the statutory warnings. Judge Ward testified that she placed a checkmark by each right as she read it to Gentry. She then had Gentry place his initials by each right when he indicated to her that he understood it. Judge Ward indicated that she told Gentry that he was not required to talk to the police, but Gentry indicated to Judge Ward that he wanted to give a statement.

**Conclusion:** When he had finished making his statements, Judge Ward read the written statement to Gentry. Gentry indicated to Judge Ward that it was his statement and that he had made it voluntarily. Judge Ward gave Gentry the opportunity to make any corrections or changes to his statement, but Gentry made no changes to it. In the form, Judge Ward indicated that she was “fully convinced” that Gentry had “knowingly, voluntarily, and intelligently” waived his statutory rights both before and during the making of his written statement. Judge Ward also indicated that Gentry voluntarily signed the statement in her presence with no law enforcement present. Judge Ward signed the form certifying and verifying that the requisites of Section 51.095 had been met. Based on the record, we hold that the trial court did not abuse its discretion when it denied Gentry’s request to suppress his written statement. We overrule Gentry’s second issue in each appeal.