Evidence Jeopardy – Juvenile Law Edition


JEOPARDY!


What Were
We Thinking?

Basics

School ~~Lunches~~ Searches

Statements
Schmatements

Plain Old Evidence

Potpourri

Basics

What type of proceeding is a juvenile delinquency proceeding?

What type of proceeding is a juvenile delinquency proceeding?

A. A civil proceeding
B. A criminal proceeding
C. A quasi-criminal proceeding
D. A proceeding that makes you question some of your parenting choices

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Answer: C. A quasi-criminal proceeding.

***See, e.g., Matter of M.A.F.*, 966 S.W.2d 448 (Tex. 1998) and Tex. Fam. Code § 51.17**

What happens if you fail to serve the juvenile with summons in a juvenile proceeding?

What happens if you fail to serve a juvenile with a summons in a juvenile proceedings?

A. You die . . . of embarrassment
B. Someone gets fired
C. Nothing if the juvenile still appears at trial
D. You lose jurisdiction

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Answer: D. You lose jurisdiction

***See, e.g., In re D.W.M.*, 562 S.W.2d 851 (Tex. 1978) and Tex. Fam. Code § 53.06**

What rules of evidence apply to juvenile proceedings?

What rules of evidence apply to juvenile proceedings?

A. The Rules of Acquisition
B. The rules of evidence applicable to criminal cases
C. The rules of evidence applicable to civil cases
D. Who cares, everything comes in anyway

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Answer: B. The rules of evidence applicable to criminal cases. *See* Tex. Family Code § 51.17 (c)

"Except as otherwise provided by this title, the Texas Rules of Evidence applicable to criminal cases and Articles 33.03 and 37.07 and Chapter 38, Code of Criminal Procedure, apply in a judicial proceeding under this title."

School ~~Lunches~~ Searches

- Assistant Principal receives tip that a student is high
- Student looks high (red eyes, big pupils)
- Assistant Principal searches student's belongings backpack, person, and pockets – no drugs
- Student admits to having brass knuckles in her locker
- Can the school official search the locker?

Can the school official search the locker?

A. Yes, the search was justified at inception and reasonable
B. No, student has an expectation of privacy in school locker
C. No, the lack of drugs shows the tip was unreliable
D. Yes, brass knuckles are dangerous

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Preview

Answer: A. The search was justified at inception and reasonable

***See, e.g., In re S.M.C.*, 338 S.W.3d 161 (Tex. App.—El Paso 2011). Tip about drugs and observations that student looked high justified the search at inception. Reasonable to believe contraband was in the locker. *See also New Jersey v. T.L.O.*, 469 U.S. 325 (1985)**

- Assistant Principal receives tip that a student is selling drugs
- Pat down of student reveals $300 cash and the admission that he doesn't sell drugs "on campus"
- Several days later – student tries to skip school and is caught heading to her car
- Pat down reveals no drugs, just $197
- Can the on-campus police officer search the car?

Can the on-campus police officer search the car?

A. Yes, the search was justified at inception and reasonable
B. No, a search can't be based on a violation of school rules
C. No, the search of the car wasn't related to the justification of the search
D. Yes, drugs are bad.

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Preview

Answer: C. The search of the car wasn't related to the justification for the search

***See, e.g., Coronado v. State*, 835 S.W.2d 636 (Tex. Crim. App. 1992).**

Police could search the student based upon possible school violation, but car search was unrelated to the initial search or the pat downs.

What standard of proof must an on-campus police officer satisfy to search a student?

What standard of proof must an on-campus police officer satisfy to search a student?

A. Probable cause
B. Reasonable suspicion
C. Depends upon who initiated the search
D. The “I’ll get you Greg Pikitis!” standard

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Preview

Answer: C. Depends upon who initiated the search

***See, e.g., Russell v. State*, 74 S.W.3d 887 (Tex. App.—Waco 2002). If the school official initiates it or the officer's involvement is minimal it's reasonable suspicion. If outside police officer directs search by officials it's probable cause.**

Do you need a warrant to search a student's cell phone?

Do you need a warrant to search a student's cell phone?

A. Yes
B. No
C. I have no earthly idea
D. Please tell me the answer because I have a case involving this very issue

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Preview

Answer: C. I have no earthly idea

- ***See Jackson v. McMurray***, 762 Fed. Appx. 919 (11th Cir. Mar. 12, 2019) – It's at least unclear for purposes of qualified immunity
- ***Riley v. California***, 573 U.S. 373 (2014)
- ***State v. Granville***, 423 S.W.3d 399 (Tex. Crim. App. 2014)

Statements
Schmatements

- 14-year-old brings gun to school and has friend hide it in his backpack
- Friend tells the officer assigned to the school
- Officer gets 14-year-old out of class
- Officer searches the 14-year-old
- Officer takes him to principal's office
- Officer leaves office during questioning
- Student tells the school officials his mother's and his lawyer's name
- Student admits to having gun
- Student feels he is in a serious situation
- Is the statement admissible?

Is the statement admissible?

A. I can't read all those facts, there are no prizes for this quiz, and I hate you
B. No, the assistant principal was an agent of the State
C. Yes, the child was not in custody
D. No, a reasonable child would not have felt free to leave

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Preview

Answer: C. Yes, the child was not in custody. *See In re V.P.*, 55 S.W.3d 25 (Tex. App—Austin 2001). We do look at custody through eye of a reasonable child, but this wasn't enough. School officials aren't "technically" agents of the State.

- Police investigating a brutal murder – get tip about a juvenile
- Get juvenile out of class as a suspect
- Take juvenile to Law Enforcement Center
- Not handcuffed, not nervous or agitated
- Juvenile is fingerprinted, read his rights
- Asked to tell his side of the story – he indicates some knowledge of the offense
- Taken before a judge, not told about his right to counsel in his magistrate warnings – agrees to give a statement
- Writes statement with help of officer
- Signs it in front of the judge only
- Is the statement admissible?

Is the statement admissible?

A. Yes
B. No, he was in custody and never received his warning about counsel
C. I'm glad this isn't for score
D. No, the police took the child into custody at the school and did not take the child to a juvenile processing center without unnecessary delay

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Answer: A. Yes. *See Martinez v. State*, 337 S.W.3d 446 (Tex. App.—Eastland 2011). Child was not in custody until he signed the statement in front of the magistrate, so deficient warnings did not invalidate the statement. Because the child was not in custody, there was no need to take the child to the juvenile processing center.

- Police stop car and place juvenile passenger in handcuffs after finding marijuana and stolen items in the car
- At station, handcuffs are removed, and parents are called
- Officer reads *Miranda* warnings and gets a written statement from juvenile – juvenile and his father sign it
- Juvenile admits to participation in burglary
- Juvenile and his father leave
- Several days later, juvenile calls police to change his written statement – takes sole responsibility for burglary
- Which statements are admissible?

Which statements are admissible?

A. Both. Neither was custodial
B. Neither. The first statement was bad and the cat was out of the bag for the second one.
C. The first one. It was not custodial. The second statement violated 54.03(e).
D. The second one. The failure to comply with 51.095(a)(1) in the first statement did not render the second statement involuntary

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Preview

Answer: D. The second one. The failure to comply with 51.095(a)(1) in the first statement did not render the second statement involuntary. *See In re R.J.H.*, 79 S.W.3d 1 (Tex. 2002). The written statement was bad because it was made to the officer not a magistrate. The second statement was still voluntary even though he made a prior statement that violated the Family Code. Further the "cat out of the bag" theory did not mean the statement was inadmissible under 54.03(e).

- Juvenile charged with aggravated robbery
- Given *Miranda* warnings by a magistrate
- Two armed police officers were present when the warnings were given
- After the warnings – juvenile confesses to the robbery
- Juvenile signs written statement in front of the magistrate alone
- Is the statement admissible?

Is the statement admissible?

A. No. Police aren't allowed to be present during any of the warnings
B. Yes. 51.095(a)(1) excludes officers from the signing of the statement not the warnings
C. No. Because a reasonable child would have felt coerced by the presence of armed officers
D. Yes. The juvenile wasn't in custody

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Preview

Answer: B. Yes. 51.095(a)(1) excludes officers from the signing of the statement not the warnings. *See Herring v. State*, 395 S.W.3d 161 (Tex. Crim. App. 2013). The statute is silent about officer presence during warnings and only requires the child be alone with the magistrate when the statement is signed. Therefore, the presence of the officers during the warnings did not render the statement inadmissible

Plain Old Evidence

- Two juveniles, A & B, rob an Outback and kill three people in the process
- The State calls one witness to testify about a conversation he had with robber A who was his friend
- According to the witness, robber A took partial responsibility for the robbery but blamed the murders on robber B
- What, if any, portions of the hearsay statement can be admitted?

What, if any, portions of the hearsay statement can be admitted?

A. I admit nothing.
B. The entire statement is admissible as a statement against penal interest
C. Only the part of the statement implicating the juvenile in the murder
D. Only the blame-sharing portion of the statement is admissible as a statement against penal interest

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Preview

Answer: D. Only the blame-sharing portion of the statement is admissible as a statement against penal interest. *See Walter v. State*, 267 S.W.3d 883 (Tex. Crim. App. 2008). Blame shifting statements are hearsay, blame sharing statements are truly against interest. Admit the gold, exclude the dross.

- Juvenile punches his girlfriend and chokes her
- She gets in her car and drives away
- Juvenile sends threatening text messages to her while she is driving
- Whole conversation references earlier fight
- Victim identified juvenile's phone number at trial
- Also stated juvenile was calling her in between texts
- Sufficient authentication of the text messages?

Sufficient authentication of the text messages?

A. Yes, no evidence that someone else had been using the defendant's phone
B. No, identifying the number doesn't identify the sender
C. Yes, a reasonable factfinder could infer from the context that the juvenile was texting
D. No, texting and driving is bad

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Preview

Answer: C. Yes, a reasonable factfinder could infer from the context that the juvenile was texting. *Butler v. State*, 459 S.W.3d 595 (Tex. Crim. 2015). While there was no evidence that someone else was using the phone, the authentication question is whether the facts presented are sufficient to allow a reasonable factfinder to determine the evidence is what it purports to be. Here, the testimony from the witness that she identified the number and had been talking to the juvenile on the phone was sufficient context

- R.T. commits murder as a result of a gang beef
- The victim's sister presented evidence to the State regarding two Facebook profiles she believed were authored by R.T.
- The profiles were for nicknames of R.T.
- The State introduced posts from these profiles around the time of the murder
- The posts referencd the victim's name and specific details of the crime
- Are screen captures from the social media pages sufficiency authenticated?

Are screen captures from the social media pages sufficiency authenticated?

A. No. These posts could have come from anyone
B. No. Testimony from the social media provider was necessary to link R.T. to the posts
C. Yes. The Internet is forever.
D. Yes. The State has made a prima facie case that these profiles and posts belong to R.T.

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Preview

Answer: D. Yes. The State made a prima facie case that these profiles belong to R.T. *See Tienda v. State*, 358 S.W.3d 633 (Tex. Crim. App. 2012). Tienda actually involved a number of MySpace profiles rather than Facebook pages. The State also offered in Tienda testimony regarding the practices of gangs in using social media to promote their gang. Ultimately, however, the context, content, and timing of the posts was sufficient to allow a reasonable factfinder to infer that the posts came from the defendant.

- Juvenile respondent sexually assaults another juvenile, H.H.
- During the time period of sexual assault, H.H. had been sexually abusing his younger sister
- He received counseling for this
- Respondent wants to cross-examine H.H. about receiving counseling as part of the H.H.'s state of mind
- Can the defense cross-examine H.H. about the sexual assault?

Can the defense cross-examine H.H. about the sexual assault?

A. So the child victim admits to sexual assault of his sister and then lies about being sexually assaulted to distract from that? I'll say no.
B. No, H.H.'s sexual assault inadmissible under Rule 412
C. Yes, the cross-examination was relevant to the child victim's (H.H.'s) state of mind at the time of the outcry
D. Yes, the right of confrontation trumps all rules of evidence

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Answer: C. Yes, evidence was relevant to the child victim's (H.H.'s) state of mind at the time of outcry. *Johnson v. State*, 490 S.W.3d 895 (Tex. Crim. App. 2016). Evidence was admissible to show possible bias and did not violate Rule 412. *See also Jones v. State*, 571 S.W.3d 764 (Tex. Crim. App. 2019). In *Jones*, the Court held that parties could question about a CPS proceeding based upon the witness's desire to keep the child of the defendant safe. This was without showing factual proof of any causal or logical relationship between the criminal case and the CPS proceeding

- A juvenile sexually assaults another child with intellectual disabilities
- At trial, the State introduces testimony regarding the ability of those with intellectual disability to make up stories
- The expert testifies that intellectual disabled people are “painfully honest”
- Is this testimony admissible?

Is this testimony admissible?

A. Yes. Psychology is a "soft science" and the ability of intellectually disabled individuals to be deceptive falls within that field of study
B. No. Expert testimony that a particular class of persons is truthful is not expert testimony that will assist a jury
C. Yes. Because the expert has had the opportunity to speak with the victim and is the best person to judge the victim's credibility
D. No. I don't know why, but it feels inadmissible

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Preview

Answer: B. Expert testimony that a particular class of persons is truthful is not expert testimony that will assist a jury. *See Barshaw v. State*, 342 S.W.3d 91 (Tex. Crim. App. 2011)

- Five-year-old tells daycare director that Z.L.B "touched his privates"
- Z.L.B. later confesses
- The child tells the whole story to the prosecutor in preparation for trial
- State seeks to introduce statement to daycare director as outcry
- The daycare director also testifies that the child admitted he had told his mommy, but the child did not give any detail
- Who is the outcry witness?

Who is the outcry witness?

A. The mother, she was the first adult the child told
B. The daycare director, she was the first person to whom the child described the alleged offense in some discernible manner
C. The prosecutor, he was the first adult to get a detailed story
D. The mother, State failed to disprove that the mother was the first outcry witness

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Preview

Answer: B. The daycare director, she was the first person to whom the child described the alleged offense in some discernible manner. *See In re Z.L.B.*, 102 S.W.3d 120 (Tex. 2003). *See also* Tex. Fam. Code § 54.031(b)-(c). Here, the reference to the child's statement to the mother was no more than a "general allusion to abuse". Z.L.B. was required to produce evidence that the mother was the first outcry witness instead of the daycare director

Potpourri

- School officials get a tip that A.B. was smoking marijuana in the bathroom
- They get A.B. out of class
- A.B. smells like he just got kicked out of Coachella
- School officials search A.B.'s pockets and find a half smoked joint in A.B.'s pockets
- A.B. says, "It's hemp"
- A.B. happens to be wearing some hemp clothing, but does not have a hemp grower's license
- Can he be taken into custody?

Can he be taken into custody?

A. Yes, he's higher than Snoop Dog, I mean Snoop Lion
B. No, there is no chemical analysis that shows the contents of the cigarette is more than .03% THC
C. No, hemp smells like weed so no probable cause
D. You can't answer that can you?

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Answer: D. You can't answer that, can you? I can say that marijuana is defined as not including "hemp". Tex. Health & Safety Code § 481.002 (26)(F). "Hemp" is defined in the Agriculture code as marijuana having less than .03% of THC. Tex. Agri. Code § 121.001. And there's currently no chemical test to verify when pot has less than .03% of THC. Good luck.

- Juvenile D.C. undergoes sex offender treatment as part of his probation
- During his treatment he repeatedly fails multiple lie detector tests
- The therapist tells juvenile probation that D.C. has not complied with sex offender treatment based upon these polygraph results
- The State moves to revoke D.C.'s probation based upon the therapist's opinion that D.C. has not been truthful
- Is the therapist's testimony admissible?

Is the therapist's testimony admissible?

A. Neither the therapist's opinion nor the polygraph results are admissible
B. Both the polygraph and therapist's opinion are admissible as both are necessary to ensure that sex offender counseling is working
C. The therapist's opinion is admissible, but not the polygraph results
D. The therapist can't testify because I think he's lying

Question 19: Is the therapist's testimony admissible?

- ○ Neither the therapist's opinion nor the polygraph results are admissible
- ○ Both polygraph and therapist's opinion admissible as both necessary to ensure SO counseling working
- ○ The therapist's opinion is admissible, but not the polygraph results
- ○ The therapist can't testify because I think he's lying

Submit

Your response will be submitted anonymously.

Answer: A. Neither the therapist's opinion nor the polygraph results are admissible. *Leonard v. State*, 385 S.W.3d 570 (Tex. Crim. App. 2015). An expert may rely upon polygraph results to form an expert opinion, but it can't be the sole basis for that opinion. Further, the results themselves are inadmissible because they are scientifically unreliable. Here both are inadmissible because the expert's opinion is based solely upon the polygraph results

- At juvenile transfer hearing, State calls TJJD's court liaison
- Liaison offers report of incidents that occurred while the juvenile was in TJJD
- Juvenile objects based upon the Confrontation Clause
- Is the report admissible?

Is the report admissible?

A. Yes, transfer hearing is not a stage of a criminal prosecution so the Confrontation Clause doesn't apply
B. Yes, reports are admissible under the public records exception
C. No, the incident reports are testimonial in nature
D. Sure, it's not like he's going to appeal it.

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Preview

Answer: A. Yes, transfer hearing is not a stage of a criminal prosecution. *In re S.M.*, 207 S.W.3d 421 (Tex. App.—Fort Worth 2006). So the Confrontation Clause does not apply.

- Juvenile respondent beats up a smaller, weaker student
- Another student gives a statement regarding what she witnessed
- At the adjudication hearing, this student can't remember anything
- State seeks to introduce the statement under Rule 804(a)(3)
- Respondent objects based on the Confrontation Clause
- Is the statement admissible?

Is the statement admissible?

A. Yes, the Confrontation Clause does not apply to adjudication hearings because they are civil in nature
B. No, the witness statement is testimonial
C. Yes, memory loss does not render the witness unavailable
D. I forgot the question

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Preview

Answer: C. Yes, memory loss does not render the witness unavailable. *Woodall v. State*, 336 S.W.3d 634 (Tex. Crim. App. 2011). Note that the Confrontation Clause does appear to apply at least to adjudication proceeding. *In the Matter of M.H.V.-P.*, 341 S.W.3d 553 (Tex. App.—El Paso 2011).

- J.P. commits capital murder
- Police find one of J.T.'s shirts, it has blood on it
- Sample sent to DNA lab
- Three different technicians handle assembly line process for DNA "batch testing"
- Computer spits out raw data – improper handling would yield no data
- Supervisor gives her opinion about DNA match based on raw data
- State does not call the technicians to testify
- What DNA evidence comes in at adjudication?

What DNA evidence comes in at adjudication?

A. None of it. State must call everyone who took part in the testing process
B. The supervisor can testify about her opinion, but not about the underlying data
C. All of it. DNA is a witness to the truth
D. Only the data because you cannot cross-examine a computer

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Answer: B. The supervisor can testify about her opinion, but not about the underlying data. *See Paredes v. State*, 462 S.W.3d 510 (Tex. Crim. App. 2015). The supervisor who understand the testing process and uses the raw data to reach a conclusion can give an opinion without violating the confrontation clause. When the expert's opinion is used to sneak in the expert opinions of other scientists, that violates the Confrontation Clause


Video
DAILY
DOUBLE

- D.M. robbed a CVS by telling the cashier to give him all the money or he'd kill her
- He did not have a gun
- He has a number of prior adjudications based upon theft and other non-violent offenses
- During the disposition phase of his determinate sentencing hearing – the State argues for a lengthy term because of D.M.'s lengthy history
- He argues motive plus opportunity equals tragedy
- The State then shows the following viral video to illustrate his argument about D.M.

Is the video admissible?

A. Yes, if you can argue it you can show it
B. Yes, it amounts to a proper plea for law enforcement
C. No, it's too inflammatory
D. No, we know nothing about the lion's criminal history

Insert Web Page

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Answer: C. No, it is too inflammatory. *See Milton v. State*, 572 S.W.3d 234 (Tex. Crim. App. 2019). In *Milton* the Court of Criminal Appeals held that even though the argument was proper, the video carried too much potential to persuade the jury that the defendant's crime and criminal history were more brutal than they were.

Thank you.