JUVENILE PROCEEDINGS

IN AFFIRMING THE DENIAL OF THE MOTION TO SUPPRESS AND THEN STIPULATION TO 20 YEARS DETERMINATE SENTENCE AND AFFIRMING THE DENIAL OF THE MOTION TO SUPPRESS.

In the Matter of J.J., No: 01-19-00712CV
1st Court of Appeals, Texas June 17, 2021

Facts: The Appellant appealed the denial of the Motion to Suppress by the trial court as the sole issue on appeal. After the denial of the Motion to Suppress the Appellant stipulated to the Capital Murder and was sentenced to 20 years on the Determinate Petition.

Background:
Acting on information that appellant, a 14-year-old middle school student, might be involved in the murder of Tuyen Nguyen, Houston Police Department Detective J.T. Roscoe and his partner, Sergeant Holbrook, went to appellant's school to interview him. Houston Independent School District ("HISD") Officer Lofton retrieved appellant from his classroom and escorted him to meet with the police officers. Roscoe and Holbrook met Lofton and appellant near Lofton's office, and Lofton escorted them to nearby room for the interview. Roscoe testified that he and Sergeant Holbrook were never separated, and Sergeant Holbrook did not meet appellant in the hall without Roscoe before the interview started. The officer told the Appellant that after the interview he would be taken back to class because there was no warrant for his arrest. Appellant responded, "Yes, sir." Appellant appeared relaxed and calm during the interview, which the officers recorded. The officers explained that they wanted to talk with appellant and get his side of the story because other witnesses they had interviewed were "putting [appellant] in something." Appellant asked what the officer meant by "putting [him] in stuff," and Holbrook began discussing the shooting of an Asian woman during a robbery. Appellant admitted that he intended to rob the woman, but claimed that:
We were riding around that night. Shooting. It was an accident. Like the gun went off. Like the trigger wasn't even pulled. Like it was a faulty gun or something. The trigger wasn't even pulled. I didn't even know the gun was loaded. At the conclusion of the interview, which lasted approximately 18 minutes, the officers did not handcuff or arrest appellant. The officers told appellant to go back to class, but to make sure that he checked in with Officer Lofton before returning to class so that he would not get in trouble for wandering in the halls. At Trial the Appellant testified that the door was blocked to the room.
Held: The Trial Court's Order denying the Motion to Suppress is affirmed
Opinion: The Appellate Court discussed custodial interrogation and stated" A juvenile's oral statement made as a result of custodial interrogation without the benefit of a magistrate's warning is inadmissible at trial. *See* TEX. FAM. CODE § 7

51.095(a)(5), (b)(1); *see also* TEX. CODE CRIM. PROC. art. 38.22 § 3. But, section 51.095 does not preclude admission of a juvenile'statement if the statement does not stem from custodial interrogation. *See* TEX. FAM. CODE § 51.095(b), (d); *Matthews v. State*, 513 S.W.3d 45, 62 (Tex. App.—Houston [14th Dist.] 2016, pet. ref'd); *see also Laird v. State*, 933 S.W.2d 707, 713 (Tex. App.—Houston [14th Dist.] 1996, pet. ref'd) (discussing prior version of statute and explaining that it "allows an oral statement to be admitted if it is not in response to custodial interrogation").

"[C]ustodial interrogation The Court of Criminal Appeals has established four general situations that may constitute custody: (1) if the suspect is physically deprived of his freedom in any significant way; (2) if a law-enforcement officer tells the suspect not to leave; (3) if a law-enforcement officer creates a situation that would lead a reasonable person to believe that his freedom of movement has been significantly restricted; and (4) there is probable cause to arrest the suspect and the law-enforcement officer did not tell the suspect he is free to leave. *Gardner v. State*, 306 S.W.3d 274, 293–94 (Tex. Crim. App. 2009); *Dowthitt*, 931 S.W.2d at 255. In the fourth *Dowthitt* situation, the officer's knowledge of probable cause must be manifested to the suspect, or by the suspect to the officer. *Id.*, 931 S.W.2d at 255. In all four situations, including the fourth *Dowthitt* situation, there must be a restriction of freedom of movement that is tantamount to an arrest. *See id.* We consider the totality of circumstances surrounding an interrogation to determine whether the suspect was in custody during the interrogation. *See id.* We conclude that, under the circumstances presented in this case, the trial court did not err by concluding that a reasonable 14-year-old child would not have believed his freedom of movement was restrained to the degree associated with a formal arrest. Appellant was never restrained or handcuffed. The door to the room in which appellant was question was unlocked. Appellant was nearest the door, and his access to the door was not restricted. The officers told appellant "*if you want to* sit and talk to us that would be great." Such language indicated that appellant could choose whether he wanted to sit and talk or not. Appellant was told that he was not under arrest, there was no warrant for his arrest, and he would return to his classroom after the interview. The interview lasted only 18 minutes, after which appellant was allowed, as promised, to return to class. Appellant never asked to speak to his mother4 or an attorney, nor did he indicate that he did not wish to talk to the officers. In fact, appellant asked questions of the officers about what the other witnesses had said about the shooting. In short, appellant's freedom of movement was not restrained to the degree associated with a formal arrest. *See Delacerda*, 425 S.W.3d at 386–88; *Nickerson*, 312 S.W.3d at 256..

Conclusion:

Under these circumstances, the trial court did not err in denying appellant's motion to suppress. We Affirm.

Dissent: The dissent stated that the Appellant was in custody and that the Motion to Suppress should have been granted and stated" The ways in which these cases are distinguishable are more important thanthe ways in which they are similar. Extending the reasoning of *Martinez* and *In re J.W.* here is a bridge too far. J.J. was younger than the juveniles in those cases. And he was interviewed under more coercive circumstances. The line needs to be drawn somewhere—and this case is a good starting point. What parent wouldn't be outraged to learn that his or her child confessed to a crime at school after being involuntarily removed from class by a uniformed law enforcement officer, escorted to the closed office of a school administrator, and then introduced to and urged to speak with two police officers, neither of whom asked

whether the child wanted to call a parent or advised the child of his rights to refuse to speak with them and to terminate the interview and leave at any time? And what parent wouldn't be outraged to learn his or her child wasn't considered to be in "custody" in this situation? This opinion will not inspire confidence in our juvenile justice system's ability to do justice. I respectfully dissent. Gordon Goodman