

IN THE UTAH COURT OF APPEALS

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| State of Utah, in the interest | ) | MEMORANDUM DECISION            |
| of E.G., a person under        | ) | (Not For Official Publication) |
| eighteen years of age.         | ) |                                |
| _____                          | ) | Case No. 20061069-CA           |
|                                | ) |                                |
| E.G.,                          | ) | F I L E D                      |
|                                | ) | (August 21, 2008)              |
| Appellant,                     | ) |                                |
|                                | ) | 2008 UT App 308                |
| v.                             | ) |                                |
|                                | ) |                                |
| State of Utah,                 | ) |                                |
|                                | ) |                                |
| Appellee.                      | ) |                                |

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Third District Juvenile, Salt Lake Department, 505273  
The Honorable Kimberly K. Hornak

Attorneys: Kristine M. Rogers, Salt Lake City, for Appellant  
Mark L. Shurtleff and Marian Decker, Salt Lake City,  
for Appellee

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Before Judges Thorne, Bench, and Billings.

THORNE, Associate Presiding Judge:

Appellant E.G. appeals from her adjudication for possession of marijuana and paraphernalia on school grounds. She asserts that the juvenile court erred in admitting certain statements into evidence at the adjudication hearing, alleging that the statements were taken in violation of her Miranda rights. "The court of appeals applies an abuse of discretion standard of review in determining whether a trial court has properly admitted evidence . . . ." Eqgett v. Wasatch Energy Corp., 2004 UT 28, ¶ 10, 94 P.3d 193.

The admissibility of statements allegedly taken in violation of E.G.'s Miranda rights was first raised during defense counsel's cross-examination of the vice principal of E.G.'s school. The State objected to defense counsel's line of questioning, arguing that E.G.'s Miranda rights were not relevant because defense counsel did not raise the issue in advance of trial as required by Utah Rule of Criminal Procedure 12(c)(1).

Defense counsel responded that pursuant to rule 26(e) of the Utah Rules of Juvenile Procedure, E.G.'s Miranda violation objection was timely and E.G.'s statements should be ruled inadmissible. The juvenile court determined that rule 26(e) was inapplicable to the questioning in this case and that defense counsel's objections to the admissibility of E.G.'s statements were untimely.<sup>1</sup> Consequently, the juvenile court admitted the statements into evidence.

On appeal, E.G. does not argue that the juvenile court erred in ruling that her Miranda violation objection to the admissibility of her statements was untimely. Instead, E.G. argues, first, that the court erred in admitting into evidence the statements she made to the vice principal of her school because she was never advised of her Miranda rights and, second, that pursuant to Utah Rule of Juvenile Procedure 27A she should not have been questioned outside of the presence of a parent or guardian. Because E.G.'s rule 27A argument was raised for the first time on appeal, the claim is deemed waived and we do not consider it. See Gardner v. Board of County Comm'rs, 2008 UT 6, ¶ 32, 178 P.3d 893 ("Issues not raised before the district court are normally waived and cannot be raised for the first time on appeal.").

We first consider the State's argument, which if meritorious is dispositive of this case. The State argues that the juvenile court correctly determined that Utah Rule of Criminal Procedure 12(c)(1) required E.G. to raise her Miranda violation objection five days in advance of trial. Application of the Utah Rules of Criminal Procedure to juvenile court proceedings involving a crime is mandated by Utah Rules of Juvenile Procedure 2(b) and 19(1). Rule 2(b) provides that "[w]hen the proceeding involves an offense which would be a criminal act if committed by an adult, only the Utah Rules of Criminal Procedure which have been

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<sup>1</sup>Regarding E.G.'s rule 26(e) argument, the court ruled, in pertinent part:

I think that [r]ule 26, as it reads, applies to minors who are the subject of a delinquency petition that is filed. At the time that [the vice principal] talked with [E.G.], a delinquency petition had not been filed. If you read all of [r]ule 26, it talks about that the person--or minor must be advised that they have the right to appear in person, a right to receive a copy of the petition, a right to testify in the minor's own behalf, to be confronted by witnesses, to be represented by counsel.

specifically adopted by these rules shall apply." Utah R. Juv. P. 2(b). Utah Rule of Juvenile Procedure 19(1) specifically adopts criminal rule 12(c)(1) because it relates to motion practice. See id. R. 19(1) ("In delinquency, traffic and criminal matters, motion practice shall be governed by the Utah Rules of Criminal Procedure.").

Here, E.G. was charged with offenses which would be misdemeanor crimes if committed by an adult--one count of possession of marijuana on school grounds, see Utah Code Ann. §§ 58-37-8(2)(a)(i), (4)(a) (2007), and one count of possession of paraphernalia on school grounds, see id. §§ 58-37a-5 (2007), 58-37-8(4)(a) (2007). The juvenile court therefore correctly analyzed the admissibility issue using the timing requirements in rule 12(c)(1) of the Utah Rules of Criminal Procedure.

Rule 12(c)(1) requires that motions to suppress evidence be raised at least five days prior to trial, see Utah R. Crim. P. 12(c)(1)(B), and the failure to timely raise the issue constitutes waiver, see id. R. 12(f). Absent a showing of good cause by the waiving party, a trial court acts within its discretion when it declines to consider untimely objections. See id. ("Failure of the defendant to timely raise . . . objections or to make requests which must be made prior to trial or at the time set by the court shall constitute waiver thereof, but the court for cause shown may grant relief from such waiver."). E.G. did not argue good cause below or on appeal, and the juvenile court made no such finding.

In her reply brief, E.G. argues that the juvenile court waived any rule 12(c)(1) requirements when it considered the issue on the merits. In support of this argument, E.G. cites State v. Matsamas, 808 P.2d 1048 (Utah 1991), for the proposition that "[w]hen a trial court considers the issue on the merits it waives any time requirements." However, E.G. misinterprets Matsamas.

First, in Matsamas, the supreme court determined that the trial court waived the requirements of rule 12(b)(2) when it chose not to treat defendant's failure to raise the issue as a waiver and instead proceeded to consider the claim.<sup>2</sup> See id. at 1053. However, the supreme court did not state, as E.G. asserts, that any consideration of the merits acts as a waiver of the timing requirements of 12(b)(2). See id. Second, the trial court in Matsamas did not, as did the juvenile court in this case, base its admission of the evidence on a party's failure to

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<sup>2</sup>Former Utah Rule of Criminal Procedure 12(b)(2) is now numbered as rule 12(c)(1).

abide by the timing requirements in rule 12(c)(1). In this case the court ruled:

I'm going to allow [the vice principal] to testify [regarding statements E.G. made]. I do think, first of all, that a motion to suppress should have been filed and it wasn't. But in addition to that, I think that [r]ule 26, as it reads, applies to minors who are the subject of a delinquency petition that is filed. At the time that [the vice principal] talked with [E.G.], a delinquency petition had not been filed. If you read all of [r]ule 26, it talks about that the person--or minor must be advised that they have the right to appear in person, right to receive a copy of the petition, a right to testify in the minor's own behalf, to be confronted by witnesses, to be represented by counsel.

At the time that [the vice principal] was interviewing [E.G.], he was trying to obtain information. There was no delinquency petition that had been filed, [E.G.] hadn't been provided with a copy of anything. Additionally, [the vice principal] is not a government agent. And I'm also going to find that it was not a custodial interrogation at that time.

(Emphasis added.)

It is clear from the juvenile court's ruling that it did not waive any time requirements when it admitted E.G.'s statements based primarily on E.G.'s failure to timely object to the admittance of said evidence. Although the court did give alternate reasons, including a ruling on the merits, for overruling E.G.'s objection to the evidence, the primary basis for its decision was the untimeliness of E.G.'s objection. We therefore reject E.G.'s argument that the court waived the time requirements of rule 12(c)(1).

Since E.G. raised the issue of the admissibility of the statements for the first time during the adjudication hearing, we conclude that the trial court did not err in finding her objection untimely and admitting into evidence the statements E.G. sought to suppress. Because we dispose of this case based on our conclusion that E.G.'s objection to the evidence was indeed untimely, as the juvenile court determined, we do not

engage in a Miranda analysis. We affirm the court's ruling admitting E.G.'s statements into evidence.

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William A. Thorne Jr.,  
Associate Presiding Judge

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I CONCUR:

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Judith M. Billings, Judge

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I CONCUR IN THE RESULT:

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Russell W. Bench, Judge