



**Fourth Court of Appeals**  
**San Antonio, Texas**

**MEMORANDUM OPINION**

No. 04-16-00677-CR

Joshua Isaiah **JOYNER**,  
Appellant

v.

The **STATE** of Texas,  
Appellee

From the 386th Judicial District Court, Bexar County, Texas  
Trial Court No. 2016CR3747  
Honorable Laura Parker, Judge Presiding

Opinion by: Karen Angelini, Justice

Sitting: Sandee Bryan Marion, Chief Justice  
Karen Angelini, Justice  
Luz Elena D. Chapa, Justice

Delivered and Filed: September 20, 2017

**AFFIRMED**

Joshua Isaiah Joyner, who was sixteen years-old at the time of the offense, was certified as an adult, and his case was transferred to criminal district court where he was charged with capital murder. After a jury trial, Joyner was found guilty and was sentenced to imprisonment for life. On appeal, he argues that the trial court erred in denying his motion to suppress statements made to police officers, arguing he was in custody and no officer informed him of his rights under the Fifth Amendment pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966). We affirm.

## BACKGROUND

Joyner was alleged to have caused the death of Albert Nelson by shooting Nelson with a firearm on July 24, 2015, while in the course of committing and attempting to commit a robbery against Nelson. Nineteen-year-old Nelson had been found dead in his mother's car in the driveway of his home. Inside the car were a firearm and illegal drugs. The State's theory of the case was that Joyner was angry about a "look" Nelson had given him and lured Nelson to an elementary school so that he could rob Nelson. According to the State, Joyner met his friends Quincy B., Elisha Paul E., Jaren C., and Justo D. at Elisha Paul E.'s house and told his friends that they were going to rob Nelson. Joyner told Justo D. to find Nelson's phone number and then told Elisha Paul E. to call Nelson in order to set up a marijuana buy at the elementary school. They then walked to the elementary school and waited for Nelson to arrive. According to the State, Joyner's plan was for Elisha Paul E. to ask Nelson if he could smell the marijuana, and then grab it and run away. The State's theory was that when Nelson arrived at the elementary school, Elisha Paul E. did as instructed, went to the passenger side of Nelson's car, and asked to smell the marijuana. According to the State, Nelson allowed Elisha Paul E. to smell it, and then Joyner, who was pointing a gun in Nelson's direction, walked up to the car. Nelson then reached for a gun inside his car, and Nelson and Joyner shot each other. Joyner, who was shot in the arm, ran away, while Nelson, who was shot multiple times, drove his car away to seek aid at his home.

The police received reports of shots fired at the elementary school. The police then received a report that Joyner was at the hospital being treated for a gunshot wound. Two detectives, Detective Easter and Detective Hodgkinson, arrived at the hospital to interview Joyner. Joyner made oral statements to the detectives at the hospital and later made a written statement at the police station.

After Joyner was charged with capital murder and certified as an adult, he filed a pretrial motion to suppress any statements he made to the police, arguing that he was in custody at the time he gave the statements and he was never given his *Miranda* rights. After an evidentiary hearing, the trial court denied the pretrial motion to suppress, finding that Joyner was not in custody when he made his statements to police. At trial, during Detective Hodgkinson's testimony, the State moved to introduce Joyner's written statement in evidence. Joyner reurged his objection to the admission of Joyner's statement. Joyner's objection was again overruled. Joyner was subsequently found guilty and sentenced to life imprisonment.

### DISCUSSION

Joyner argues that the trial court erred in denying his motion to suppress statements because the Fifth Amendment to the Constitution, as applied to the states under the Fourteenth Amendment,<sup>1</sup> prohibits the prosecution from using statements, whether exculpatory or inculpatory, stemming from custodial interrogation unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. *Miranda v. Arizona*, 384 U.S. 436, 444 (1966).<sup>2</sup> It is undisputed that Joyner was not given his rights pursuant to *Miranda*.

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<sup>1</sup> Joyner also cites article 1, section 10 of the Texas Constitution, but does not explain how the Texas Constitution would provide more protection than the U.S. Constitution. Thus, to the extent Joyner is bringing an issue under the Texas Constitution, he has inadequately briefed it. See TEX. R. APP. P. 38.1(i).

<sup>2</sup> We note that the State argues Joyner has waived this issue because he never cites to or mentions section 51.095 of the Texas Family Code, but instead "cites several federal and state constitutional provisions and portions of the Code of Criminal Procedure, including article 38.22, which is the 'adult' counterpart to section 51.095 as it governs the prerequisites for admitting statements of the accused." The State argues that when a juvenile's statement is at issue, "the relevant portions of the Family Code govern their admissibility, not article 38.22." Thus, the State claims that "appellant should have made an argument under section 51.095, and failure to do so likely means that he has forfeited his claim regarding whether or not he was in custody." In other words, the State appears to be arguing that Joyner has no rights under the Fifth Amendment and the only issue he could bring relates to his rights under section 51.095 of the Texas Family Code. We disagree with the State's analysis. Joyner has argued his rights under the Fifth Amendment to the Constitution were violated pursuant to *Miranda* because he made statements while in custody and was not given his *Miranda* rights. We agree with the State that the validity of Joyner's statement is determined upon his rights as a juvenile and that his later certification and trial as an adult "has no retroactive impact" on his initial statement made prior to certification. *Lanes v. State*, 767 S.W.2d 789, 790 n.2 (Tex. Crim. App. 1989). However, as a juvenile, Joyner was entitled to his rights under the Fifth Amendment. See *In re Gault*, 387 U.S. 1 (1967) (holding that juveniles have the right to notice, counsel, confrontation, and protection against self-incrimination); *In re H.V.*, 252 S.W.3d 319, 325 (Tex. 2008) (explaining that rights under *Miranda* "apply to juveniles just as they do to adults"). Joyner filed a pretrial

The dispute in this case centers on whether Joyner was in custody during the time of his interview with police. Joyner argues he was entitled to be given his *Miranda* rights because he was in custody; the State argues that the officers did not need to read Joyner his *Miranda* rights because Joyner was not in custody.

In reviewing the trial court's determination of whether a person was in custody for purposes of *Miranda*, we apply a bifurcated standard of review. *State v. Saenz*, 411 S.W.3d 488, 494 (Tex. Crim. App. 2013). We give almost total deference to the trial court's assessment of historical facts and conclusions with respect to mixed questions of law and fact that turn on credibility and demeanor. *Id.* (citations omitted). We "review *de novo* mixed questions of law and fact that do not turn on credibility and demeanor." *Id.* The trial court in this case did not make findings of fact and conclusions of law because they were not requested. We therefore view the evidence "in the light most favorable to the trial court's ruling" and "assume that the trial court made implicit findings of fact that support its ruling as long as those findings are supported by the record." *Herrera v. State*, 241 S.W.3d 520, 527 (Tex. Crim. App. 2007).

A person is in "custody" only if, under the circumstances, a reasonable person would believe that his freedom of movement was restrained to the degree associated with a formal arrest. *Stansbury v. California*, 511 U.S. 318 (1994); *Saenz*, 411 S.W.3d at 496; *Dowthitt v. State*, 931 S.W.2d 244, 254 (Tex. Crim. App. 1996). We determine custody based on objective circumstances, and any subjective intent of law enforcement officials to arrest is irrelevant unless

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motion on this Fifth Amendment issue, obtained a pretrial ruling, objected again at trial, obtain a ruling at trial, and has filed an appellate brief on this issue. He has not waived any argument under the Fifth Amendment. Section 51.095 of the Texas Family Code grants more protection to juveniles than found under the Constitution. *See Lanes*, 767 S.W.2d at 791 n.5 ("While in many instances Texas law is merely coextensive with federal law, the Texas Legislature has made evident its intent to give greater protections to its juveniles through enactment of the Texas Family Code."). For example, section 51.095 requires the statement be in writing and that before the juvenile makes the statement, he receives what are in essence *Miranda* warnings from a magistrate. *See* TEX. FAM. CODE ANN. § 51.095(a) (West 2014). We agree with the State that Joyner has not on appeal raised a statutory violation under section 51.095. Joyner's argument on appeal relates only to his constitutional rights.

that intent is somehow communicated or otherwise manifested to the suspect. *Stansbury*, 511 U.S. at 323-26; *State v. Ortiz*, 382 S.W.3d 367, 372 (Tex. Crim. App. 2012). Nor do we consider the subjective views harbored by the person being questioned. *Stansbury*, 511 U.S. at 323. The “determination of custody must be made on an ad hoc basis, after considering all of the (objective) circumstances.” *Dowthitt*, 931 S.W.2d at 255. Further, “[s]tationhouse questioning does not, in and of itself, constitute custody.” *Id.* “However, the mere fact that an interrogation begins as noncustodial does not prevent custody from arising later; police conduct during the encounter may cause a consensual inquiry to escalate into custodial interrogation.” *Id.*

The Texas Court of Criminal Appeals has identified four general situations that may constitute custody:

- (1) when the suspect is physically deprived of his freedom of action in any significant way;
- (2) when a law enforcement officer tells the suspect that he cannot leave;
- (3) when law enforcement officers create a situation that would lead a reasonable person to believe that his freedom of movement has been significantly restricted; and
- (4) when there is probable cause to arrest and law enforcement officers do not tell the suspect that he is free to leave.

*Saenz*, 411 S.W.3d at 496. “The first three situations require that the restriction on a suspect’s freedom of movement must reach ‘the degree associated with an arrest’ instead of an investigative detention.” *Id.* (quoting *Dowthitt*, 931 S.W.2d at 255). “The fourth situation requires an officer’s knowledge of probable cause to be manifested to the suspect.” *Id.* “Custody, however, is not established by the fourth situation unless the manifestation of probable cause ‘combined with other circumstances’ of the interview, such as duration or factors of ‘the exercise of police control over [a suspect],’ would lead a reasonable person to believe that he is under restraint to the degree associated with an arrest.” *Id.* (quoting *Dowthitt*, 931 S.W.2d at 255-57) (alteration in original). At trial, the defendant has the initial burden of proving that a statement was the product of custodial interrogation. *Herrera v. State*, 241 S.W.3d 520, 526 (Tex. Crim. App. 2007).

At the suppression hearing, Detective Derrick Wayne Easter with the Bexar County Sheriff's Office testified that he received information from his supervisor that a shooting had occurred at an elementary school and the victim, Joyner, was at the hospital. According to Detective Easter, when he and Detective Kevin Matthew Hodgkinson arrived at the emergency room, Joyner was being treated. Detective Easter testified that his purpose at that point was to determine what had happened: "We just knew that [Joyner] was shot and he was a victim and we wanted to try to catch the guy [who] shot him or persons [who] shot him." "We knew he was shot by a person at the school on the northeast side. That's pretty much all we knew at this time." "We truly, sincerely believed that he was a victim and he was going to help us find out who shot him."

Detective Easter testified that he and Detective Hodgkinson spoke with Joyner and asked him to tell them in chronological order what had happened. Joyner's father was present. According to Detective Easter,

When we began to question his son, he became a little defensive and he didn't like it. Detective Hodgkinson said, "We're here to help. We simply want to receive some information from your son, so he can help us track down the guy that shot him." . . . [Joyner's father said], "Don't speak to my son. Can you leave him alone?" [We replied,] "He's a victim. He's not under arrest. He's not a suspect at this time. We're simply trying to ascertain some information from him."

Joyner told the detectives he had been with some friends at the elementary school playing basketball when a black vehicle "rolled up to the property, shot some shots, [and] everybody took off running." Joyner was "hit in the process, . . . picked up and taken to the hospital for medical treatment." Detective Easter testified that while he was talking to Joyner, he and Detective Hodgkinson received information from a detective at the scene that there was a deceased "person not too far from the school" who had also been shot. Detective Easter explained that the story Joyner had told "didn't make sense" because he said he had been playing basketball when "a car

rolled by.” However, because of where the basketball court was located at the school, Joyner’s story “didn’t sound right.”

The more we began to talk to him, the more he began to give us more information to the story he was telling. But we were letting him know, “Look, it doesn’t make sense. Please tell us the truth.” So it raised some questions on [sic] if you’re a victim and you’re shot, why would you not tell me the truth?

Detective Easter explained that victims could be uncooperative for many reasons, but most of the time, they are uncooperative “because they want to hide something.”

According to Detective Easter, he and Detective Hodgkinson were told by a nurse that Joyner was being released from the hospital. Detective Easter asked Joyner to come to the police station to make a formal statement. Joyner was transported by patrol car to the police station. Detective Easter was adamant that Joyner was still considered a victim and witness, was not under arrest, and was not handcuffed. Detective Easter testified that they also offered Joyner’s father a ride to the station, but his father opted to follow in his own vehicle.

When Joyner arrived at the station, he was placed in an interview room. Detective Easter testified that no one talked to Joyner until his father arrived. Joyner’s mother also arrived at the police station and was shown into the interview room. After Detective Easter and Detective Hodgkinson finished talking with Joyner and Joyner made his formal statement, Joyner left with his father. According to Detective Easter, Joyner was not considered a suspect during the course of giving his statement: “No, he was a victim. We were simply trying to just find out what happened.” Detective Easter explained that Joyner was one of several witnesses who were being interviewed. Detective Easter testified there were no threats, coercion, or promises of leniency made. He explained to Joyner that Joyner was not under arrest and was only a witness. Detective Easter noted that Joyner was even offered a snack and beverage. Detective Easter testified that if

Joyner had said that he wanted to leave, he would have been allowed to leave. Detective Easter testified he told Joyner, in the presence of his father, that he could leave.

Detective Easter admitted on cross-examination that Joyner's father had asked him to read Joyner his *Miranda* rights. Detective Easter told Joyner's father that Joyner did not need to be read his *Miranda* rights because he was a victim and not a suspect. Joyner "wasn't giving a statement because he was a suspect. He was giving a statement because he was there." Detective Easter testified that Joyner could have declined the offer to be transported for his statement.

At the suppression hearing, Detective Hodgkinson testified to the same facts as Detective Easter. Detective Hodgkinson testified that when they arrived at the hospital, a nurse told them that Joyner was going to be released. She explained the bullet was not going to be removed because it was lodged against bone and removal would cause more damage than allowing the bullet to remain. Detective Hodgkinson asked the nurse if Joyner could talk, and the nurse replied Joyner could answer questions. Detective Hodgkinson testified that he would not have spoken with Joyner if he "did not believe medically he could answer those questions."

Detective Hodgkinson noted that the police had concerns in this case because the shooting had occurred at an elementary school and that it is very important to talk to victims quickly:

The nature of us trying to get the information as quickly as possible is paramount. If we get that information, and it's shown through our history, we're able to get the suspect that's involved in the shooting quickly. But it is – it is very imperative that we get the information as quickly as possible and accurately.

Detective Hodgkinson testified that Joyner's father was initially very upset when they first began to question Joyner, but he calmed down when Detective Hodgkinson "explained to him that it is vital for us to speak to [Joyner], to figure out what's going on."

Detective Hodgkinson noted that Joyner "seemed to answer the questions very easily. And he didn't seem – for a person being shot, he was pretty calm." According to Detective Hodgkinson,



Joyner said “there was a black vehicle that had come by while they were playing basketball and it had shot out of the vehicle and he was hit. . . . [Joyner] and his friends had r[un] in different directions to get away from the shooter.” Detective Hodgkinson explained that at that point, they did not have any information to contradict Joyner.

Like Detective Easter, Detective Hodgkinson testified that Joyner was not handcuffed, was not under arrest, and was not forced, threatened, or coerced in any way. When Joyner arrived at the station to give his statement, he was placed in the interview room and given a bottle of water. Detective Hodgkinson testified Joyner did not say that he was in pain or that he did not want to speak to them. Joyner did not ask to go home. When Joyner’s father arrived, he was escorted to the interview room and also provided a beverage. Joyner’s mom arrived at the station and also visited with Joyner in the interview room. According to Detective Hodgkinson, Joyner was not arrested and, after giving his statement, left with his family.

On cross-examination, Detective Hodgkinson was questioned about whether at the time Joyner was being questioned, there was probable cause to believe he had been involved in the shooting. Like Detective Easter, Detective Hodgkinson testified that during Joyner’s interview, he and Detective Easter did not believe Joyner was a suspect. Detective Hodgkinson admitted that some of the information Joyner was giving them “did not make sense.” When asked about the information another detective had relayed from the scene, Detective Hodgkinson testified that a detective from the scene said “there was a possibility that narcotics had been involved” and that someone “was deceased.” Detective Hodgkinson said he was not told Joyner was a suspect. Detective Hodgkinson testified that he then received a call from Detective Arevalos. Detective Arevalos said he was bringing all witnesses to the station and “he needed [Joyner] to come down [to the station] and give a full statement.”

Detective Hodgkinson was asked if Joyner had said he was not going to the station, would Detective Hodgkinson “have left him alone.” Detective Hodgkinson replied, “No, I probably would have tried to get him to go because of the fact that he was a witness and we still needed more information.” Joyner points to this testimony by Detective Hogkinson as evidence that he was in custody. Similarly, Joyner points to the following trial testimony by Detective Hodgkinson:

Q: What if he didn’t want to go with you? What were you going to do?

A: At this point, we would still ask [Joyner] to give us a statement based on the information he had already given to us. And our job, especially in violent crime service, is for us to try to get as much information during the short period of time, so we can find these suspects.

Q: So you were going to let him go?

A: I beg your pardon?

Q: Would you have let him go?

Q: Probably not. I probably would have made attempts to get him down there or maybe do a statement in that room; somewhere in there.

Joyner interprets this testimony as evidence that Detective Hodgkinson would have prevented Joyner from leaving the hospital if Joyner so desired. According to Joyner, “[m]ix this with a young fifteen year-old child, in pain, on medication and the totality equals custodial interrogation.” Joyner claims he was in custody from the time the constable arrived at the hospital until after he finished giving his statement at the police station.

However, under our standard of review, the trial court could have interpreted Detective Hodgkinson’s testimony differently. *See Saenz*, 411 S.W.3d at 494 (explaining that appellate courts give almost total deference to trial court’s assessment of credibility of witnesses); *Herrera*, 241 S.W.3d at 527 (explaining that when the trial court does not make findings of fact, an appellate court views the evidence in the light most favorable to the trial court’s ruling, and assumes the trial court made implicit findings of fact supporting its ruling as long as those findings are supported

by the record). The trial court could have interpreted this testimony as Detective Hodgkinson stating he would have tried harder to persuade Joyner to give a statement at the police station or by making it easier for Joyner to make a statement by “do[ing] a statement in [the hospital] room.”

Moreover, as noted previously, the subjective intent of the police officers are irrelevant to the determination of custody except to the extent that they have been manifested in the words or actions of law enforcement officials. *Dowhitt*, 931 S.W.2d at 254 (citing *Stansbury v. California*, 511 U.S. 318 (1994)). What Detective Hodgkinson *would have done* had Joyner attempted to leave the hospital and not gone to the police station to make a statement is a hypothetical question. It is not evidence that the detective manifested his subjective intent in his acts or words. *See Stansbury*, 511 U.S. at 325 (“An officer’s knowledge or beliefs may bear upon the custody issue if they are conveyed, by word or deed, to the individual being questioned.”).

In considering all the objective circumstances in the light most favorable to the trial court’s ruling, the evidence showed that after determining from a nurse that Joyner was being released and could answer questions, Detective Easter and Detective Hodgkinson entered Joyner’s hospital room and asked Joyner how he had been shot. After Joyner’s father complained about the questioning, the detectives explained they needed to gather information quickly so that they could determine who had shot Joyner. When Joyner’s father asked that his son be read his *Miranda* rights, the detectives stated that Joyner was not a suspect, but a victim and that they were “simply trying to ascertain some information from him.” They asked Joyner to accompany them to the police station because they “needed a formal statement from everybody” who was present at the shooting. They again told Joyner he was a victim/witness and was not under arrest. Detective Easter testified that he told Joyner and Joyner’s father that if Joyner wanted to leave, he would be able to do so. According to the detectives, Joyner was communicative and able to answer questions, and did not at any point indicate that he was in too much pain or incapable of giving a statement.

Nor did Joyner ever indicate that he did not want to speak with the detectives or go home. Joyner “was pretty calm” and “seemed to answer the questions very easily.” Joyner was never handcuffed. He was given food and water at the police station, and his parents were able to come into the interview room with him. While Joyner points out that evidence technicians took his clothing, his photograph, and swabbed his hands for gunshot residue, viewing the totality of the circumstances in the light most favorable to the trial court’s ruling, we cannot conclude that the trial court erred in denying Joyner’s motion to suppress.

We therefore affirm the judgment of the trial court.

Karen Angelini, Justice

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