

**The Texas Family Code does not require the absence of law enforcement when the statutory warnings are given to the juvenile by the magistrate prior to a confession. [Herring v. State] (12-1-2)**

**On February 2, 2012, the Texarkana Court of Appeals found that the Family Code requires that law enforcement be outside the presence of the juvenile and the judge when a statement is reviewed by the judge and when the juvenile actually signs the statement, but not when the warnings are given by the magistrate to the juvenile.**

¶ 12-1-2. **Herring v. State**, No. 06-11-00109-CR, --- S.W.3d ----, 2012 WL 333772 (Tex.App.-Texarkana, 2/2/12).

**Facts:** As Nigel Phillips and three friends sat in an automobile in front of Phillips' Texarkana home on May 24, 2010, eating a pizza and visiting with one another, one of the car doors was suddenly jerked open and the four friends were confronted with a young man with an AK-47 assault rifle with a bayonet affixed. The bearer of the assault rifle and two accomplices (who also brandished a pistol) commanded the four occupants of the car to exit the vehicle and lie on the ground. The three bandana-wearing assailants then robbed the prone Phillips and his friends of their valuables, including Phillips' cell phone, and fled.

Later on the same night that Phillips was robbed, Michael Ferguson (a Texas Department of Public Safety patrolman) saw a car approaching him that had its headlights turned off. The driver of the car turned its headlights on, then off, then on again. Because driving at night without the use of headlights is a traffic violation, Ferguson made a U-turn, turned on his overhead lights, and followed the vehicle into an E-Z Mart parking lot. He saw the car's two rear seat passengers exit the car and place an object wrapped in white cloth behind the vehicle's back tire. Both of these passengers, one of whom was Herring, began to walk away from the car. Ferguson picked up the object which had been placed behind the rear tire and unwrapped it from the white cloth, discovering that the object was an AK-47 assault rifle with a bayonet attached. At that time, Herring and the other passenger fled on foot. Ferguson gave chase, caught Herring, handcuffed him, and placed him in the patrol car. Without first having given Herring his Miranda warnings, Ferguson questioned him about the vehicle's other occupants and Herring identified them all. When searching Herring, the officer found some female jewelry and a cell phone that was later identified as belonging to a recently-robbed Hooks resident.

Herring was arrested and taken to the Hooks Police Department, a juvenile processing center. Herring was placed in an unlocked room with his mother present. Magistrate Pat James administered the magistrate warnings to Herring, after which officers then re-entered the room and interrogated Herring. After about an hour and a half, Herring was transported to the juvenile detention center in Texarkana, where his custody was turned over to juvenile officer Melissa Simpson, who then transported Herring to the juvenile detention center in Marshall, Harrison County.

Texarkana Police Detectives Matt Cashatt and Latriesha Grandy were dispatched to Marshall to obtain a statement from Herring. The detectives took Herring to the office of Kenneth Alford, a Harrison County Justice of the Peace. Alford testified that at 12:34 p.m., he

administered Herring the Miranda warnings which, Alford said, Herring appeared to understand and which he voluntarily waived. Alford then informed Herring that he was turning him over to the detectives so he could make a statement. The detectives interrogated Herring for about two and a half hours. Cashatt testified that Herring voluntarily waived his rights, never asked for an attorney, and spoke freely throughout the interview. Herring's typed statement was given to Alford, who testified that he reviewed it with Herring (outside the presence of the law enforcement officers), who signed it voluntarily. In the statement, Herring confessed to taking part in the charged armed robbery, as well as several other recent armed robberies and burglaries.

Before trial, Herring moved to suppress the confession, arguing, in relevant part, that the typed confession was inadmissible under Sections 51.095 and 52.02 of the Texas Family Code and that Herring neither knowingly nor voluntarily waived his rights. The trial court denied the motion and permitted the State to introduce the confession during its case-in-chief.

Michael Herring, who was certified to be tried as an adult, was convicted by a jury of the aggravated robbery of Phillips, receiving a sentence of twenty years' imprisonment.

Herring has appealed his conviction, centering his complaints on appeal around a confession given by him. Herring contends that the trial court erred by admitting that confession into evidence, maintaining that it was inadmissible because he avers that it was obtained from him in violation of the Texas Family Code and that it was not a voluntary confession.

**Held:** Affirmed

**Opinion:** Herring contends that the confession was inadmissible because the detectives were present when Alford administered the statutory warnings to him.

For a juvenile's confession to be admissible at trial, a magistrate is required to read the warnings listed in Section 51.095(a)(1)(A)(i)-(iv) to the juvenile before any interrogation by law enforcement. See L.M., 993 S.W.2d at 290–91. There is no requirement anywhere in Section 51.095 mandating that the magistrate be alone with the juvenile at the time the warnings are given. It is illustrative that subsection (a)(1)(B)(i) requires that no law enforcement officers or prosecuting attorney be present when the child's statement is signed and that subsection (a)(1)(D) requires the magistrate to certify that he examined the child independent of any law enforcement or prosecuting attorney.

In support of his argument, Herring points to the suppression hearing wherein Cashatt testified that both he and Detective Grandy were present when Alford gave Herring the statutory warnings. Herring cites the case of *Diaz v. State* for the proposition that “[n]o law enforcement personnel are allowed to be present during the warnings,....” 61 S.W.3d 525, 527 (Tex.App.-San Antonio 2001, no pet.). While we acknowledge that the statement quoted above is contained in the *Diaz* case and is not taken out of context, we read the statute as it is written and observe that there is no such requirement in the statute. See TEX. FAM.CODE ANN. § 51.095. In the applicable statute, it is important to distinguish between administration of the warnings enumerated in Section 51.095(a) (which are administered before a statement is taken from the juvenile), an examination of the juvenile by a magistrate after a statement has already been given

but has yet to be signed, and the signing of the statement. The statute requires the law enforcement officers to be outside the presence of the juvenile and the judge when the statement is reviewed by the judge with the juvenile (see TEX. FAM.CODE ANN. § 51.095(a)(1)(D)) and when the juvenile actually signs the statement (see TEX. FAM.CODE ANN. § 51.095(a)(1)(B)(i)). It does not require the absence of the police when the statutory warnings are given by the magistrate to the juvenile.

**Conclusion:** We choose to apply the statute as it is written, and therefore we overrule this point of error. We affirm the trial court's judgment.