Did 12-year-old earn murderer label fairly?

Boy challenging confession in high court

**CATHY FRYE ARKANSAS DEMOCRAT-GAZETTE**

    Thomas Cogdell, 12, struck many residents in small-town Camden as quiet and well-mannered, the small possessor of a considerable intelligence that often startled his teachers.

    He lived in a little gray house on Waco Street with his single mother and 11-year-old sister, Kaylee.

    Neighbors say Thomas spent much of his time reading or playing video games. He sometimes offered to do yardwork, hoping to earn a little money. And he was protective of Kaylee, who acted younger than her age.

    Neighborhood mothers often saw kids take advantage of Kaylee or make fun of her.

    Once, Thomas launched himself at a bigger girl who had pushed Kaylee.

    “Get your hands off my sister!” he yelled.

    In response, the girl hit Kaylee. Thomas hit the attacker back.

    So when Thomas was accused of smothering his sister on Aug. 7, 2006, many who knew the family had trouble believing it. But less than 12 hours after police found Kaylee’s body — her hands and feet bound — her brother had been arrested.

    Thomas, police said, had confessed.

    Within 20 months, Thomas was convicted of seconddegree murder and sent to a juvenile-detention facility in Texarkana. The judge stipulated that if Thomas obtained early release, he remain on probation until his 18th birthday, when his sentence would end.

    Thomas, who turns 17 in August, could have been released by now. But he remains locked up.

    Family members blame a condition for release set by the trial judge — that Thomas admit responsibility for what he did.

    Thomas won’t do it. He contends his confession was coerced and false.

    Thursday the Arkansas Supreme Court will consider challenges to that confession.

    Law experts say the case raises several issues about how police interpret and enforce juvenile law:

    Whether a child can truly understand his rights and act accordingly.

    Whether police should be permitted to mislead a child in eliciting a confession, especially when the child may already be confused.

    Whether a parent who is also a suspect is capable of protecting a child’s rights.

**‘IT’S YOUR MOTHER OR YOU’**In an amicus brief filed in Thomas’ case by the Northwestern University School of Law’s Center on Wrongful Convictions of Youth, attorneys question the behavior of police and prosecutors in the boy’s interrogation and arrest.

    The center’s court filing says Thomas didn’t understand his Miranda rights — the rights to remain silent and/or to have an attorney present — and therefore couldn’t knowingly waive them. When he asked for an explanation of a waiver, a police officer inaccurately defined the term, the filing asserts.

    Thomas’ confession — obtained after five hours of “relentless and intense questioning,” most of which police didn’t record — was not voluntary and came only after Thomas suffered a mental and emotional breakdown, the court papers allege.

    The brief further questions the reliability of the confession by noting that no forensic evidence corroborated it and that police ignored DNA evidence and witness statements pointing to other possible suspects — an unknown man and Thomas’ mother.

    According to its mission statement, the Center on Wrongful Convictions of Youth acts on behalf of young people who its staff believes have credible claims of innocence, and advocates for changes in juvenile justice. The center, co-founded by Northwestern law professors Bernardine Dohrn and Steven Drizin, has also filed amicus briefs in efforts by Damien Echols and two other men to win new trials for their murder convictions in the deaths of three West Memphis boys in 1993.

    The Arkansas attorney general’s office, which will represent the state in Thursday’s Supreme Court arguments, has declined to comment. Prosecutors from the 13th Judicial District, where the case was tried, said the law prevents them from talking.

    In aff irming the trial court’s ruling, the Arkansas Court of Appeals said police aren’t required to read Miranda warnings to every person they question, even if the person is a suspect.

    The opinion, issued in September, states: “Miranda warnings are required only when there has been such restrictions placed on a person’s freedom as to render the person in custody. Here, [Thomas] was not ordered to go to the police station, he was not handcuffed or otherwise restrained while there, he was not prevented from leaving, and officers testified that he was not in custody.”

    Thomas and his mother had ridden with a relative to the police station after officers asked them to do so.

    Beth Levi, a professor at UALR William H. Bowen School of Law who specializes in juvenile law, looked over the amicus brief and the appeals court’s ruling at the

Arkansas Democrat-Gazette’s

request. (Thomas’ defense attorneys didn’t return calls for comment. The law also prevents them from talking.)

    Levi didn’t have access to any evidence presented during the trial. Still, she takes issue with the appeals court’s assertion that Thomas wasn’t in custody.

    “A 12-year-old cannot drive, and the police clearly wanted him there so they could question him, too,” she says. “In these circumstances, how can it credibly be claimed that he was free to go?”

    Thomas’ grandfather, Stephen Harris, went to the Police Department during the interrogation and demanded that Thomas have a lawyer or advocate present. But police told Harris that Thomas’ mother, Melody Jones, had given them permission to question her son. Then officers told him to leave, he said.

    Thomas also asked for an attorney during questioning, Harris says.

    “He said the police told him, ‘Your mom gave us permission to talk to you without a lawyer, so you can’t have one.’”

    Harris has a problem with that because, he says, Melody Jones also was a suspect at the time, which means she had a stake in the outcome of Thomas’ interrogation.

    The Democrat-Gazette tried to locate Melody Jones for comment but failed. Relatives say they don’t have an address or phone number for her.

    At trial, defense attorneys filed a motion to suppress Thomas’ confession, citing the parent-child conflict, but the judge denied the request.

    The appeals court affirmed that decision, citing parts of Arkansas Code Annotated 9-27-317.

    Levi disagrees with the appeals court’s opinion and cites a different section of the same law:

    “The agreement of the parent, guardian, custodian, or attorney shall be accepted by the court only if the court finds: (1) That the person has freely, voluntarily, and intelligently made the decision to agree with the juvenile’s waiver of the right to counsel; (2) That the person has no interest adverse to the juvenile; and (3) That the person has consulted with the juvenile in regard to the juvenile’s waiver of the right to counsel.”

    Levi contends it’s clear there was an adverse interest.

    “The ABA Juvenile Justice Standards urge appointment of a guardian ad litem if a conflict of interest appears between the juvenile and the parents. There would clearly be a problem if any rights had been waived after the commencement of the court case, but I believe that the problem still applies at the police station.”

    Shortly after his arrest, Thomas told his grandparents that police had used his mom’s suspect status against him, saying things like, “It’s your mother or you” or “Why don’t you stand up and be a man and admit what you did, and you can go home.”

    Thomas told Harris that he had feared getting his mother in trouble throughout his interrogation.

    These worries led to a false confession, the Northwestern attorneys argue. In their amicus brief, which refers to Thomas as “T.C.,” those attorneys describe what they deem a “disturbing” videotaped segment of Thomas’ interview:

    “After the police accuse T.C. of murdering his own sister, T.C. begins shaking, rocking back and forth, hugging himself and sobbing uncontrollably. When left alone, he spends nearly ten minutes muttering to himself in garbled gibberish. Only short

excerpts can be understood, but these segments reveal a desperate young mind sinking under the weight of the accusations against him and the threats against his mother:

    “‘Mom wouldn’t do it. Yes, she loves her daughter, doesn’t she? She loves me. (mumbling) (unintelligible) I didn’t do it. That’s the bottom line, but they won’t believe me ... help. (crying) I’m scared.’”

    Soon after this outburst, detectives turned off the recorder for 3 1 /2 hours.

    Police say Thomas first confessed during this period.

    According to court documents, Thomas was interviewed on video from about 5:30 p.m. to 6:45 p.m. Officers read him his Miranda rights 45 minutes into that session.

    When Thomas said he was hungry and thirsty, police turned off the recording equipment. As he ate, the deputy prosecutor sat with him. Officers also came and went.

    At some point, police said, Thomas admitted to tying up his sister and putting plastic grocery bags over her head.

    At 10:20 p.m., an officer turned on the video recorder and read Thomas his rights a second time.

    “If this really was a ‘break’ in the questioning,” Levi wonders, “why was the child not allowed to sit with his family while he ate instead of with the prosecutor? If the police wanted to continue to talk to him, as they did, they should have had the tape running. He was clearly already a suspect.”

    On tape, Thomas asked what a “waiver” meant.

    The defense contends the officer said. “It simply states what you are saying, you are doing of your own free will.” But the state says the officer offered a much more detailed explanation.

    Thomas signed the waiver, then repeated on tape what police say he had said earlier about the binding and bags.

    But just before doing so, he whispered to his mother that he hadn’t killed his sister.

**MURDER ON WACO STREET**Melody Jones’ screams echoed down Waco Street about 11:45 that Monday morning in August 2006.

    Neighbors rushed into their front yards. Jones stood in front of her house, gesturing wildly.

    When police arrived, she and Thomas were sitting in a relative’s car.

    Melody told officers she had gone into Kaylee’s room to give her a letter that had come in the mail. There, she said, she found her daughter, hands and feet bound, with a bag over her head. Melody added that she had removed the bag upon finding her daughter.

    In his confession, Thomas told police he had tied his sister’s hands and feet to slow her down when she got out of bed. He denied any intent to hurt Kaylee. He said he put a bag over her head, then went back and loosened it later so that air “could get in there,” the appeals court records state.

    At one point, Thomas said he put two bags over Kaylee’s head because the first one had a hole in it and that he held them there until she started twitching.

    The available court record provides no clear motive for Kaylee’s murder.

    Most other court documents in the case remain sealed, which is the norm for juvenile cases.

    At the Arkansas Court of Appeals, the defense argued that police ignored evidence, such as unknown male DNA found on the seamstress tape used to bind Kaylee. The defense filing also noted that Thomas’ DNA wasn’t on the tape.

    In an attempt to show that Thomas’ confession was “unreliable,” the appeal cited testimony from the medical examiner, who said fresh bruises on Kaylee’s head could have been caused by a hammer and that “evidence of a hammer” was found in Melody’s bedroom.

    The medical examiner also testified that Kaylee’s death was “consistent with a 286-pound person straddling the child and holding her face into a pillow.”

    Melody Jones weighed about 286 pounds at the time of the murder, the appeal states.

    The Court of Appeals rejected these arguments, stating, “The issue of whether the confession was credible was for the trial judge, and substantial evidence supports his determination.”

    Defense attorneys also accused the state of withholding evidence — a purported recording of a man who said Jones admitted killing her daughter.

    At Thomas’ trial, police testified that Chico Spink arrived drunk at the station and told them Melody had admitted in her sleep to killing Kaylee, along with details of the girl’s death.

    Spink was Melody Jones’ boyfriend at the time.

    A police captain testified that he “believed” that Spink’s statement had been taped, but that he never listened to it. Other officers said they couldn’t remember.

    The appeals court said the defense should have contacted Spink or called him to testify during the trial.

    Spink told the Democrat-Gazette on Monday that he’s “pretty sure” police recorded his statement.

    What he described to police, Spink says, wasn’t just a single night of bizarre behavior from Jones, but one of many in the five months they’d been together: “I thought maybe she had some sort of sleep disorder. I ain’t never in my life seen anything like that. It scared me s\*\*\*less.”

    Spink, who is a parent himself, says he went to police out of fear but felt guilty about it later. He apologized to Jones and tried to explain his motives: “The reason I told the law about it was I didn’t want nothing to happen to my kids.”

    **CHILDREN’S RIGHTS**Juvenile criminal cases are shrouded in secrecy, the intent being to protect children.

    But that same secrecy can harm a child as well, Thomas’ family says. Secrecy allows police and judges too much leeway with too little public accountability, they say.

    Thomas’ case didn’t require a jury trial. Circuit Judge Edwin Keaton decided the boy’s guilt.

    In denying a defense motion to dismiss the seconddegree murder charge, Keaton addressed concerns over the unrecorded 3 1 /2 hours of police interview.

    The defense team presented no evidence “about what happened off camera,” the judge said. “I can’t assume things occurred when there’s no evidence before the court,” he added.

    “All I had was people who were there who said, ‘This did not happen. This is what occurred.’”

    Keaton concluded the state’s witnesses were credible. The appeals court agreed, saying that the trial judge has the authority to determine witness credibility at hearings to suppress confessions.

    In the amicus filing to the Supreme Court, Northwestern attorneys say that when police turned off the video recorder, they prevented the creation of a record of what prompted Thomas to confess “and shrouded a full 3 1 /2 hours of T.C.’s interrogation in secrecy.”

    The brief notes that the recording equipment was turned off right after Thomas fell apart emotionally.

    “Notably, during this time of intense vulnerability, the police finally managed to induce T.C. to say he was guilty for the first time,” the brief states. “[The Arkansas Supreme Court] should seize the opportunity to discourage such interrogation tactics, particularly when they are used against a child.”

    During police interviews, children are entitled to the same rights as an adult, says Levi, the UALR juvenile-law expert.

    “In addition, there are some extra protections kids are given under the law. For example: If an adult asks for an attorney at any point, police must stop the questioning. If a child asks for a parent, the police also have got to stop.”

    The protections stem from society’s belief that it’s easier to get children to agree to something because they defer to adult authority, Levi says. “So an interrogation that might be deemed constitutional for an adult might not be for a child.”

    Thomas’ grandparents are thrilled that the Supreme Court will consider his case.

    Thomas already has earned his General Educational Development diploma and is now taking college courses online.

    If the court decides against him, he will be released at 18 and his record wiped clean.

    If the court rules in his favor, Thomas wants to move in with his grandparents and finish college, Harris says.

    “I just want to be an astronomer,” he’s told his grandparents. “And I want to go where people don’t know me.”

Arkansas Democrat-Gazette/BENJAMIN KRAIN Police found 11-year-old Kaylee Cogdell’s body inside this home on Waco Street in Camden in August 2006. The girl lived there with her mom and 12-year-old brother, Thomas, who was convicted in 2008 of Kaylee’s murder.



