

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant and Cross-
Appellee,

v

LAWRENCE LAMAR TOWNSEND,

Defendant-Appellee and Cross-
Appellant.

UNPUBLISHED

May 28, 1999

No. 210371

Kent Circuit Court

LC No. 97-005634 FC

Before: Sawyer, P.J., and Murphy and Talbot, JJ.

PER CURIAM.

Plaintiff appeals by leave granted the trial court's order granting defendant's motion to suppress his statement. Defendant cross-appeals. We reverse and remand.

Defendant is charged with assault with intent to murder, MCL 750.83; MSA 28.278, and armed robbery, MCL 750.529; MSA 28.797. Defendant was fourteen years of age at the time he was charged. The victim identified defendant as one of her assailants after seeing him on a television broadcast. Over defendant's objection, the victim's identification of him was admitted at the preliminary examination.

In the trial court, defendant moved to suppress the statement he had given to the police. The trial court granted the motion, finding that while the statement was given voluntarily, suppression was required because defendant was in custody at the time the statement was made, and the police failed to give *Miranda*¹ warnings to defendant before questioning him.

Miranda warnings are not required unless an accused is subject to custodial interrogation. *People v Zahn*, __ Mich App __; __ NW2d __ (No. 209176, issued 3/12/99). Custodial interrogation is questioning initiated by a law enforcement officer after an accused has been taken into custody or otherwise deprived of freedom of action in a significant way. *Id.* Whether a person was in custody and thus entitled to *Miranda* warnings is a mixed question of fact and law that must be answered independently by the reviewing court after a de novo review of the record. *Id.*

Plaintiff argues that the trial court erred by suppressing defendant's statement. We agree and reverse. With regard to custody, the critical question is whether the accused reasonably believed that he was free to leave. *People v McElhaney*, 215 Mich App 269, 278; 545 NW2d 18 (1996). Here, the record supports that defendant voluntarily accompanied the police to the station for questioning about this case, in which defendant was a suspect, and another case, in which defendant was a possible witness. The mere fact that defendant was driven to the station by the police does not mandate a conclusion that he was in custody. This is especially true in light of the fact that while at the station, the police specifically told defendant that he was not under arrest and that he was free to leave, and defendant acknowledged that he understood that he was not in custody. The record also reflects that this was not defendant's first exposure to law enforcement. In fact, one of the officers who questioned defendant testified that defendant actually laughed during police questioning. Further, the record does not give any indication that defendant thought he could not leave if he wished to do so. Although defendant was questioned behind closed doors, the police specifically asked defendant whether he wanted the door to the interrogation room left open, and defendant replied that the door could remain closed. Under the totality of the circumstances, we conclude that it cannot be said that defendant was in custody at the time he made his statement.

Defendant's issues raised on cross appeal are without merit. Defendant was not taken into custody before making the statement; therefore, MCL 712A.14; MSA 27.3178(598.14) is inapplicable to this case. With respect to defendant's claim that the district court erred in admitting the victim's in-court identification of defendant at the preliminary examination, defendant has failed to provide this Court with a copy of the preliminary examination transcript, so it is impossible for us to discern the basis upon which the district court ruled against defendant's motion to exclude the in-court identification, thus precluding our ability to review this issue. Finally, the trial court did not err in denying defendant's request to suppress the items of clothing seized from him at the station. Because we have concluded that there was no violation of *Miranda*, the clothes seized from defendant could not have been the unlawful fruit of a *Miranda* violation.

Reversed and remanded. We do not retain jurisdiction.

/s/ David H. Sawyer
/s/ William B. Murphy
/s/ Michael J. Talbot

¹ *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966)