

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of Raffaele Michael Thomas, Minor.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellant,

v

RAFFAELE MICHAEL THOMAS,

Respondent-Appellee.

UNPUBLISHED

July 13, 2001

No. 232435

Kent Circuit Court

Juvenile Division

LC No. 98-002527-DL

Before: Saad, P.J., and Holbrook, Jr., and Murphy, JJ.

PER CURIAM.

Petitioner appeals by leave granted an order granting respondent's motion to suppress his confession. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Respondent moved to suppress statements he made to police in regard to a tire slashing incident. Respondent was nine years old, and in fourth grade at the time of the interview. At the motion hearing, the detective who took the statement testified that respondent was ordered in to talk to the police, but his appearance was voluntary. Respondent's grandmother did not go into the conference room with him. Although respondent was free to leave, the detective did not tell him that. The interview lasted between twenty and thirty minutes. Respondent had to pass through a locked door before he reached the conference room. Respondent was not advised of his rights.

Respondent's grandmother, his guardian, testified that she did not believe that defendant was under arrest when they went to the police station, but she did not know that respondent could choose not to come to the station. She was told to wait in the lobby while respondent was questioned. She did not know that she had the right to be present during the interview.

Respondent testified that he did not know he had a choice not to come to the police station, and he did not know that he did not have to answer the detective's questions. He was nervous and scared and did not feel free to leave. He had no prior experience with the police.

The court granted respondent's motion to suppress, concluding that under the totality of the circumstances, respondent's statement was involuntary.

The admissibility of a juvenile's statement depends upon whether, under the totality of the circumstances, the statement was voluntarily made. The test is whether the confession is the product of a free and unconstrained choice by the maker, or whether the accused's will has been overborne, and his capacity for self-determination critically impaired. *People v Givans*, 227 Mich App 113, 120-121; 575 NW2d 84 (1997).

The factors that must be considered in reviewing the totality of the circumstances include (1) whether the requirements of *Miranda*¹ have been met and the defendant clearly understands and waives those rights, (2) the degree of police compliance with MCL 764.27 and the juvenile court rules, (3) the presence of an adult parent, custodian, or guardian, (4) the juvenile defendant's personal background, (4) the accused's age, education, and intelligence level, (6) the extent of the defendant's prior experience with the police, (7) the length of the detention before the statement was made, (8) the repeated or prolonged nature of the questioning, and (9) whether the accused was injured, intoxicated, in ill health, physically abused or threatened with abuse, or deprived of food, sleep, or medical attention. *Id.*, 121. A lower court's decision should be affirmed, unless this Court is left with a definite and firm conviction that a mistake has been made. *People v Sexton (After Remand)*, 461 Mich 746, 752; 609 NW2d 822 (2000).

Considering the totality of the circumstances, we do not have a definite and firm conviction that the court erred in finding that the confession was involuntary. Respondent was not given *Miranda* warnings. While he was not under arrest, the court could reasonably conclude that respondent was subject to custodial interrogation. See *People v Hill*, 429 Mich 382; 415 NW2d 193 (1987). A nine-year-old special education student, who was ordered to come to the police station and taken alone into a secured room, was likely to feel that he was not free to leave.

Respondent was not under arrest, and there was no violation of the statute or court rules. He was accompanied by his guardian, but she was discouraged from sitting in on the interview, and she and respondent were unaware that he could insist on her presence. He was nine years old, and in fourth grade special education class. Respondent had no previous experience with the police. The detention was short, the questioning was not prolonged, and respondent was not injured, intoxicated, in poor health, threatened, or deprived of food, sleep, or medical attention.

The totality of the circumstances supports the trial court's decision. Respondent was never told that he was free to leave, and under the circumstances, he could reasonably believe that he was not free to leave. *People v Marsack*, 231 Mich App 364, 374; 586 NW2d 234 (1998). Respondent did not clearly understand his rights. His guardian was not present during the interview, and given respondent's age, educational level, and lack of prior contact with the

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

police, it is reasonable to believe that he lacked the capacity for self-determination. *Givans, supra.*

Affirmed.

/s/ Henry William Saad

/s/ Donald E. Holbrook, Jr.

/s/ William B. Murphy