

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellant,

UNPUBLISHED
October 20, 2015

v

ROKSANA GABRIELA SIKORSKI,
Defendant-Appellee.

No. 327393
Wayne Circuit Court
LC No. 15-001059-FJ

Before: GLEICHER, P.J., and SAWYER and MURPHY, JJ.

PER CURIAM.

The prosecutor appeals by leave granted a circuit court order granting the juvenile defendant’s motion to suppress her confession. The court found that defendant did not knowingly, voluntarily, and intelligently waive her constitutional rights. We affirm.

The prosecution charged defendant, who was 15 years old, with offenses related to her alleged attempt to kill her family members, including four counts of conspiracy to commit first-degree premeditated murder, MCL 750.157a and MCL 750.316(1)(a), assault with intent to commit murder, MCL 750.83, using a computer to commit a crime, MCL 752.796, and felonious assault, MCL 750.82. Defendant filed a motion to suppress her confession that was made during an interrogation by police after she had been taken into custody. The trial court granted the motion, finding that defendant did not knowingly, voluntarily, and intelligently waive her constitutional rights before making the confession.

I. STANDARD OF REVIEW

Although we engage in a de novo review of the whole record, this Court will not disturb the factual findings of the trial court concerning a knowing and intelligent waiver of *Miranda*¹ rights unless a finding is clearly erroneous. *People v Daoud*, 462 Mich 621, 629; 614 NW2d 152 (2000). “[T]he reviewing court is not free to simply substitute its view for that of the trial court, but must be careful to respect the trial court’s role in determining factual issues and issues of credibility.” *People v Williams*, 470 Mich 634, 641; 683 NW2d 597 (2004). “Although we

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

review for clear error the trial court's factual findings regarding a defendant's knowing and intelligent waiver of *Miranda* rights, . . . the meaning of 'knowing and intelligent' is a question of law" subject to de novo review. *Daoud*, 462 Mich at 629-630. " 'We review de novo a trial court's determination that a waiver was knowing, intelligent, and voluntary.' " *People v Eliason*, 300 Mich App 293, 304; 833 NW2d 357 (2013), quoting *People v Gipson*, 287 Mich App 261, 264; 787 NW2d 126 (2010). " 'To the extent that a trial court's ruling on a motion to suppress involves an interpretation of the law or the application of a constitutional standard to uncontested facts, our review is de novo.' " *People v Tanner*, 496 Mich 199, 206; 853 NW2d 653 (2014) (citation omitted).

We note that the sole evidence submitted to and considered by the trial court in ruling on defendant's motion to suppress was a videotape of defendant's interrogation by police.

II. REQUIREMENT OF A VOLUNTARY, KNOWING, AND INTELLIGENT WAIVER

A. APPLICABLE LEGAL PRINCIPLES

In *Tanner*, 496 Mich at 206-209, our Supreme Court explained:

The Fifth Amendment of the United States Constitution provides that "[n]o person . . . shall be compelled in any criminal case to be a witness against himself." This federal constitutional guarantee was made applicable to the states through the Fourteenth Amendment. Prior to 1966, a suspect's confession was constitutionally admissible if a court determined that it was made "voluntarily." Despite the apparent textual emphasis on the voluntariness of a suspect's confession ("no person shall be compelled"), the United States Supreme Court held in *Miranda v Arizona*, 384 US at 444-445, 477-479; 86 S Ct 1602; 16 L Ed 2d 694 (1966), that the accused must be given a series of warnings before being subjected to "custodial interrogation" in order to protect his constitutional privilege against self-incrimination.

* * *

[W]hen a suspect has been afforded *Miranda* warnings and affirmatively waives his *Miranda* rights, subsequent incriminating statements may be used against him. A suspect's waiver of his *Miranda* rights must be made "voluntarily, knowingly, and intelligently." The United States Supreme Court has articulated a two-part inquiry to determine whether a waiver is valid:

"First, the relinquishment of the right must have been 'voluntary,' in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion or deception. Second, the waiver must have been made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it. Only if the 'totality of the circumstances surrounding the interrogation' reveal both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the *Miranda* rights have been waived." [Citations omitted.]

As indicated above, the analysis is bifurcated, requiring consideration of (1) whether the waiver was voluntary and (2) whether the waiver was knowing and intelligent. *Eliason*, 300 Mich App at 304. Again, with respect to voluntariness, a defendant must waive his or her rights absent police coercion or intimidation, and the waiver must be the defendant's own free and deliberate choice. *Id.* Whether a waiver is knowing and intelligent demands inquiry into a defendant's level of understanding, irrespective of police conduct, and a very basic understanding of one's rights is generally all that is necessary. *Id.* "The voluntariness of a *Miranda* waiver is evaluated under a totality of the circumstances test, but also includes additional safeguards for juveniles." *Id.* at 305, citing *In re SLL*, 246 Mich App 204, 209; 631 NW2d 775 (2001); *People v Givans*, 227 Mich App 113, 121; 575 NW2d 84 (1997). In *Givans*, this Court explained:

The factors that must be considered in applying the totality of the circumstances test to determine the admissibility of a juvenile's confession include (1) whether the requirements of *Miranda* . . . 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, (5) the accused's age, education, and intelligence level, (6) the extent of the defendant's prior experience with the police, (7) the length of detention before the statement was made, (8) the repeated and 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. [*Givans*, 227 Mich App at 121.]

The prosecution has the burden of proving the validity of a waiver and that a defendant's statement was voluntary by a preponderance of the evidence. *Daoud*, 462 Mich at 634; *People v Etheridge*, 196 Mich App 43, 57; 492 NW2d 490 (1992).

B. APPLICATION OF FACTORS

1. CLEAR UNDERSTANDING OF WAIVER²

The video recording of defendant's confession leaves no dispute that the 15-year-old defendant read her constitutional rights out loud and completed a waiver of rights form before any interrogation was conducted about the alleged crimes. However, defendant did not appear to clearly understand her rights from the language on the form. After defendant had read the form, the interrogating detective asked defendant if she understood her rights, and defendant responded by asking him whether the *Miranda* and waiver information in the form meant that she should not speak to him. Despite the detective's earlier promises to both defendant and her mother that he would "explain everything" to defendant, he never answered defendant's question or clarified

² We note that this particular factor of the voluntariness analysis, as applicable to juveniles, somewhat overlaps with the second component of general waiver analysis, i.e, whether the waiver was knowing and intelligent.

this misunderstanding. Instead, he merely referenced the form again and reminded defendant that her mother had already given the police permission to speak to her. As reflected in the videotaped interrogation, which captured events before and after direct questioning about the charges occurred, defendant's mother had told defendant to speak to the police about the charges. Only after defendant was reminded of her mother's permission and directive did defendant agree to speak to the detective. Under the circumstances, defendant very easily may have been left with the impression that she had no choice but to speak to the detective. As the prosecutor argues, no overt threats were made against defendant, but the detective's inaction calls into question whether defendant's agreement to speak was the result of a free and deliberate choice, or a misunderstanding of the form combined with the belief that her mother had already made the decision for her. Consequently, this factor weighs heavily against a finding of voluntariness.

The prosecutor argues that defendant's willingness to speak to the detective about the alleged crimes during their more casual conversation before defendant was advised of her constitutional rights indicates her free and deliberate choice. But this argument is unpersuasive because any willingness to speak before she was advised of her rights has no bearing on her understanding of those rights and vulnerability to the influence of others.

The prosecutor argues that, on several occasions, defendant demonstrated that she was capable of asking for clarification, so if she had not understood the waiver of rights, she would have said so. But the record demonstrates that defendant, in fact, expressed confusion about the waiver of rights and the detective did not resolve the confusion and instead alluded to the mother's statements, effectively creating greater confusion.

2. COMPLIANCE WITH MCL 764.27

The prosecutor makes no argument regarding MCL 764.27 and its requirement to take an arrested child immediately to the family division of the circuit court. On de novo review, we nevertheless note that, in this circumstance, compliance with MCL 764.27 was not required because the prosecutor charged defendant as an adult. See *People v Brooks*, 184 Mich App 793, 798; 459 NW2d 313 (1990). Therefore, this factor has no bearing on the question of voluntariness.

3. PRESENCE OF AN ADULT

The trial court weighed the presence of defendant's mother against voluntariness, finding that her instruction to defendant to tell the police everything was not "rational" and instead resulted from a conflict of interest involved with being both defendant's mother and an intended victim. The videotaped interrogation clearly indicates defendant's dissatisfaction with her home life, that an argument occurred between defendant and her mother on the night before the alleged crimes, and that defendant and codefendant Michael Rivera had planned to kill defendant's entire family so that defendant could live with Rivera. But the recording did not show the mother's motivations behind instructing defendant to cooperate with the police. In the recording, the mother visited the interview room for about two minutes before defendant was advised of her constitutional rights and interrogated. During the visit, the mother appeared calm and showed no signs of dissatisfaction, she expressed her love for defendant, and they even shared a moment of humor as the mother left the room. The fact that defendant's parents later retained an attorney

for defendant also belies any finding that the mother was so conflicted that she was unable to act in defendant's best interests. That said, it was not unreasonable for the trial court to infer the existence of a conflict of interest under the surrounding circumstances. If defendant's mother's motivations were not favorable to defendant's best legal interests, the situation was effectively one in which there was no *acceptable* adult presence to guide defendant, weighing against a finding of voluntariness.

Moreover, assuming that the mother was solely concerned with defendant's best interests, this factor still weighs against a finding of voluntariness. The timeframe when the mother was present and the mother's advice to defendant are relevant to whether defendant understood her constitutional rights and voluntarily waived them. The mother repeatedly urged defendant to tell the police the truth about what had happened. During her short visit, the mother offered to answer any of defendant's questions, but she had already left the room by the time defendant read the *Miranda* warnings and first expressed her confusion. Moreover, the mother had told defendant that the police did not want her in the room for the interrogation. Consequently, defendant may have been reluctant to ask for her mother at the point when she became confused. In light of the mother's instructions to defendant to speak to the police and her absence when defendant was confused about the *Miranda* warnings, this factor weighs against a finding of voluntariness. Cf. *People v Abraham*, 234 Mich App 640, 651; 599 NW2d 736 (1999) (mother was present throughout *Miranda*-waiver process and assisted the defendant in answering questions about the waiver); *People v Irby*, 129 Mich App 306, 311-312; 342 NW2d 303 (1983), overruled on other grounds *People v Williams*, 422 Mich 381; 373 NW2d 567 (1985) (stepfather was present when the *Miranda* rights were read and both the defendant and the stepfather indicated their understanding of those rights). Here, defendant's mother was not present during crucial times relative to the interview.

4. PERSONAL BACKGROUND

Defendant apparently was adopted as a five-year-old after living in an abusive situation in Poland. Defense counsel suggested that she "suffers most likely from . . . post-traumatic stress disorder." The prosecutor acknowledged that defendant's early life "may have been difficult." The record demonstrates that defendant was adopted by an affluent and, according to the prosecutor, "stable" family. Defendant alleged that she had been victimized by codefendant Rivera, which led to the filing of criminal sexual conduct charges. This information about defendant's personal background and vulnerability weighs against a finding of voluntariness.

5. AGE, EDUCATION, INTELLIGENCE

"[A] reasonable child subjected to police questioning will sometimes feel pressured to submit when a reasonable adult would feel free to go." *J D B v North Carolina*, __ US __; 131 S Ct 2394, 2403; 180 L Ed 2d 310 (2011). Children often lack the judgment, perspective, and experience to recognize and avoid choices that might be detrimental to them. *Id.* In addition, "a 14-year-old . . . cannot be compared with an adult in full possession of his senses and knowledgeable of the consequences of his admissions." *Gallegos v Colorado*, 370 US 49, 54; 82 S Ct 1209; 8 L Ed 2d 325 (1962).

The trial court erred by referring to defendant as a 14-year-old. It is undisputed that she was 15 years old. The record also demonstrates that she was a freshman in high school and did well in her classes. But regardless of evidence of defendant's intelligence, her lack of composure and exhibition of emotions during the police interrogation, her apparent shyness when discussing certain subjects, such as her relationship with codefendant Rivera, and her interest in the more trivial subjects that she and the detective discussed before the waiver, demonstrate that the trial court did not clearly err in concluding that defendant was immature. While her intelligence could support a finding of voluntariness, defendant's immaturity weighs against such a finding.

6. EXPERIENCE WITH THE POLICE

The trial court found that defendant had no previous experience being questioned by police. The record demonstrates that defendant's only past experience with the police was as a victim. She had not previously been questioned as a suspect of a crime, and therefore would not have previously made a decision regarding her *Miranda* rights. This inexperience weighs against a finding of voluntariness. Any past experience with officers acting on her behalf to solve the earlier crime may have made her more vulnerable during the interview, when the police took a more adversarial role.

7. LENGTH OF DETENTION

Defendant was only in custody for about four hours. The trial court found that the length of detention was not a concern. This factor weighs in favor of a finding of voluntariness.

8. REPEATED AND PROLONGED NATURE OF THE QUESTIONING

The trial court found that the interrogation was "repeated and prolonged," occurring for two hours after the mother consented to it. The prosecutor argues that this finding is clearly erroneous because the questioning about the crimes lasted less than 90 minutes, the questions were open-ended, the interrogating officers were kind, and they did not make overt misrepresentations. We agree in part.

In *Eliason*, two hours of questioning did not constitute "prolonged" questioning to weigh against voluntariness. *Eliason*, 300 Mich App at 307. Here, the detective gave defendant the advice of rights form at 1:21 p.m., and the interrogation was concluded by 2:45 p.m. Comparing the less than hour and a half of questioning about the charged offenses, alone, to the timeframe in *Eliason*, we conclude that the questioning was not prolonged.

However, the trial court did not clearly err by characterizing the questioning as repeated. As the prosecutor argues, the questioning regarding the events surrounding the alleged crimes was initially open-ended and follow-up questions were asked merely for clarification. But the record also demonstrates that the detective and a second officer later repeatedly reviewed material already discussed and even challenged defendant regarding some facts, including characterizing her felonious assault of her brother as a "stabbing," when she repeatedly insisted that she cut him or hurt him, but did not stab him. Regardless of the repetition, however, defendant maintained her story consistently throughout the questioning. Therefore, any repetitiveness appears to have had little effect on voluntariness.

9. HEALTH AND PROVISION OF FOOD, SLEEP, AND MEDICAL ATTENTION

Defendant suffered a minor injury to her hand requiring a single stitch, but she was taken for treatment before arriving at the police station and the injury does not seem to have bothered her during the interrogation. She was able to write with that hand. The trial court's finding that defendant had an injury to her hand that had not been addressed is therefore clearly erroneous. The trial court's finding that defendant was provided with food and beverages is consistent with the record.

Even though defendant was given medical attention and food, the trial court did not clearly err in finding that she appeared to be fatigued during the interrogation. She was questioned on the afternoon following the alleged crimes. The prosecutor's theory of the case was that defendant stayed awake into the early morning hours to execute her plan to kill her family, she escaped from home, and was found sleeping in a field later that morning. Despite her long night, defendant was initially upbeat and responsive during the interrogation. Signs of fatigue, including defendant leaning on the table, periods of silence, and a less-upbeat tone, were most evident after about an hour of the interrogation. At approximately 2:30 p.m., defendant started making even less eye contact and covered her face with her hands and arms. She was crying by 2:34 p.m., which apparently prevented her from writing an explanation of the events surrounding the crimes. The interrogation did not end for approximately 10 minutes while she continued to cry. But it is unclear whether defendant's fatigue had any effect on voluntariness. Instead, by the time she really exhibited any signs of fatigue, she had already agreed to speak to the police and described her version of the events surrounding the crimes.

C. CONCLUSION

Considering all the factors relevant to whether defendant's waiver was voluntary, particularly her apparent confusion about her constitutional rights, the detective's questionable response to that confusion, her mother's instructions that defendant speak to the police, her mother's motivations and whether she was an acceptable adult presence, her mother's absence, assuming the mother's genuine concern for defendant, when defendant was confused about the waiver of rights form, the risk of vulnerability due to defendant's personal background, her immaturity, her lack of prior experience being questioned as a suspect by the police, and—to a much lesser extent—the repetitive questioning and defendant's fatigue, the trial court did not err by concluding that the waiver was not voluntary and understanding. The prosecution did not meet its burden of establishing voluntariness. Absent voluntariness, the confession was properly suppressed.

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ David H. Sawyer
/s/ William B. Murphy