

No. 1-15-1099

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re INTEREST OF NATHAN B.,
(THE PEOPLE OF THE STATE OF ILLINOIS,
Petitioner-Appellant,
v.
NATHAN B., a Minor,
Respondent-Appellee).

) Appeal from the
) Circuit Court of
) Cook County
)
)
) No. 14 JD 0059
)
)
) Honorable
) Richard F. Walsh,
) Judge Presiding.

PRESIDING JUSTICE REYES delivered the judgment of the court.
Justices McBride and Gordon concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court vacated orders of the circuit court granting the juvenile respondent's motion to suppress a statement provided to the police and denying the State's motion for reconsideration, ruling that the circuit court erred by failing to consider the totality of the circumstances surrounding the juvenile's statement and remanded the case, ordering the circuit court to consider the totality of the circumstances.

¶ 2 On July 8, 2014, the State filed a petition for adjudication of wardship in the circuit court

of Cook County, charging minor respondent Nathan B. (Nathan) with possession of a firearm of a size which may be concealed upon the person (720 ILCS 5/24-3.1 (West 2014)). On March 4, 2015, Nathan filed a motion to suppress a statement he provided to the police. On the same date, the circuit court conducted a hearing on the matter and granted Nathan's motion to suppress. On March 24, 2015, the State filed a motion to reconsider, which the circuit court denied on March 25, 2015. The State now appeals, contending the circuit court erred in determining Nathan's statement was involuntary when the juvenile officer assigned to the case had participated in the search of Nathan's home. For the following reasons, we vacate the orders of the circuit court and remand the case for further proceedings.

¶ 3 BACKGROUND

¶ 4 During the suppression hearing, Nathan, who was then 17 years old, testified that at approximately 11 a.m. on June 23, 2014, approximately 10 police officers arrived at his home in Cicero, Illinois, to execute a search warrant. Following the search, the police placed Nathan, his brother Kevin, and two of Nathan's friends in a police van and transported them to the police station.

¶ 5 Nathan was separated from the others at the police station because he was a juvenile. After approximately 30 minutes, Nathan was brought into an interview room. There were two police officers present at that time. Nathan did not recall the names of these police officers, but he testified that neither of them identified himself as a juvenile officer. According to Nathan, before he knew what had occurred, the police were informing him of his constitutional rights. Nathan testified that he informed the police that he did not want to speak with them without his parents or an attorney present.

¶ 6 Nathan further testified that because of his failure to cooperate, the police officers

became angry. The police officers informed him they had discovered a firearm in his home and they knew it belonged to him. The police officers also stated that if Nathan did not accept the blame for possessing the firearm, they would arrest his other brother David, and remove his niece and nephews from the family home. The police informed Nathan that David "would do serious time" because David was on parole, whereas he would receive a "slap on the wrist" as a juvenile.¹ Nathan, fearing for David, admitted to owning the firearm and signed a preprinted document he was shown for a "split second." In addition, during the interrogation, the police brought Nathan's brother Kevin into the interview room and were trying to force them to provide evidence of additional weapons. The interrogation lasted for approximately two hours.

¶ 7 On cross-examination, Nathan identified the document he signed as an acknowledgement and waiver of his constitutional rights (waiver form). Nathan also testified that he initialed each of the constitutional rights identified in the waiver form. He further acknowledged indicating on the waiver form that he did not request that a parent be present during the interrogation. The time listed on the waiver form was 9:30 p.m.

¶ 8 Nathan additionally testified that his mother was at home when the police executed the search warrant and she was also at the scene when he was handcuffed and taken into custody. Nathan did not know the exact time of his arrest, but he agreed that he was arrested during daylight hours. He also agreed that he was not physically abused by the police officers.

¶ 9 On redirect examination, Nathan testified that while Kevin was in custody, the police also threatened Kevin with the loss of his children. According to Nathan, Kevin advised Nathan to "take the blame" for the presence of the firearm.

¶ 10 Cicero police officer Frank Savaglio testified that at approximately 1:10 p.m. on June 23,

¹ According to Nathan, however, David was in fact not on parole.

2014, he conducted a search at 1813 South 58th Avenue in Cicero. Nathan's brother David was the target of the search, which sought cannabis, drug paraphernalia, and objects used to weigh and package narcotics. According to Officer Savaglio, there were five or six adults, two juveniles and two small children present at the house, including Nathan and his mother, whom he identified in court.

¶ 11 During the search, the police discovered evidence and arrested Nathan at approximately 2:55 p.m.² The police were on the property for some period of time because there were pit bulls that needed to be removed by animal control, as well as unsafe conditions on the property. Officer Savaglio inquired whether Nathan's mother wanted to accompany him to the police station. Nathan's mother declined because the local building department had declared the house uninhabitable, requiring her to pack her belongings. According to Officer Savaglio, Nathan's mother was also concerned about other individuals residing in the house. On cross-examination, Officer Savaglio acknowledged that he knew Nathan was David's brother.

¶ 12 Cicero police officer Michael Stasiak testified he participated in the search of Nathan's home. He and Cicero police officer Michael Arlowski were present when Nathan was brought into the interview room at approximately 9:30 p.m. Officer Arlowski was designated as the juvenile officer for the interrogation. Officer Stasiak informed Nathan of his constitutional rights and requested Nathan review and sign the waiver form. According to Officer Stasiak, Nathan agreed to speak to the police without his parents or an attorney present. Nathan provided an oral statement, which Officer Stasiak transcribed and Nathan reviewed and signed. Officer Stasiak denied making any threats or promises to secure Nathan's statement. He further testified that

² Although the State's brief refers to the search yielding evidence of cannabis and drug paraphernalia, the transcript of proceedings indicates Officer Savaglio was asked "without getting into what you found," whether "needed" evidence was discovered.

Officer Arlowski did not contact Nathan's mother prior to the interrogation or participate in the interrogation.

¶ 13 On cross-examination, Officer Stasiak testified that approximately 15 police officers were involved in searching Nathan's residence, including Officer Arlowski. According to Officer Stasiak, Nathan and his family were known to the police due to prior incidents. Officer Stasiak also testified that Nathan's mother declined to accompany the police officers to the police station.

¶ 14 Officer Arlowski testified that he assisted in the execution of the search warrant and searched a designated area of the home. According to Officer Arlowski, he was not a primary officer in the investigation, but he served as the juvenile officer during Officer Stasiak's interrogation of Nathan. Officer Arlowski described his juvenile officer duties as ensuring Nathan was treated well, had access to the restroom, and was not coerced. Officer Arlowski was trained as a juvenile officer and had acted in that capacity on at least 20 other occasions.

¶ 15 Officer Arlowski further testified that he was present when Nathan was informed of his constitutional rights and he signed the waiver form in his capacity as the juvenile officer. He denied that Nathan was threatened or coerced during the interrogation. According to Officer Arlowski, Nathan was cooperative with the police and he did not request that his mother or an attorney be present for the interrogation.

¶ 16 On cross-examination, Officer Arlowski could not recall whether he observed Nathan's arrest. Officer Arlowski acknowledged that the juvenile officer is responsible for notifying parents when a juvenile is taken into custody, but he noted that Nathan's mother was already aware Nathan had been arrested. On redirect examination, Officer Arlowski testified that during the interrogation, he only inquired whether Nathan wanted to take a break or use the restroom.

According to Officer Arlowski, Nathan used the restroom once.

¶ 17 At the conclusion of the hearing, following closing arguments, the circuit court ruled as follows:

"THE COURT: As I said, I think there's two issues. The first is that they rely upon a waiver of his right to have a parent present. That's contrary to Illinois law. The case is – the right is the right of the parent. But I take [it] in this case, the parent was notified. The parent did waive the right to be there. She had to be around because of the condition of her home.

Come the second issue, and that is the issue of a juvenile officer. Illinois has created this scheme of juvenile officers to assure that minors' rights are voluntary and statements they make are voluntary. *** An officer who participates in the investigation cannot be the juvenile officer in the same case. So this young man gave a statement in which he was not represented by either a parent or by a juvenile officer or a lawyer.

I don't believe in this situation under that scheme, that the statement can be voluntary, and I'm going to grant the motion to suppress."

¶ 18 On March 24, 2015, the State filed a motion to reconsider the circuit court's ruling on the motion to suppress. Relying upon our supreme court's decisions in *People v. Patterson*, 2014 IL 115102, and *People v. Murdock*, 2012 IL 112362, the State argued that the circuit court erred in ruling that an officer who participates in an investigation cannot be a juvenile officer in the same case. The State also argued that even if Officer Arlowski completely abandoned his role as a juvenile officer, the absence of a concerned adult from an interrogation can be overcome if the totality of the circumstances proved that Nathan's statement was voluntary. The State noted that

the circuit court did not analyze any factors regarding the voluntariness of Nathan's statement other than the ostensibly compromised juvenile officer.

¶ 19 On March 25, 2015, following a hearing on the matter, the circuit court denied the motion to reconsider, stating:

"All right. My understanding of the law is this. I'll try to make it as clear as I can for any type of review.

A juvenile officer who acts as an investigator prior to the minor's interview and confession cannot act independently as a juvenile officer protecting the rights of the minor. And that raises – and the case I, quite frankly, don't have before me – but the case is Justice Tice (phonetic). While she was sitting in the [a]ppellate [c]ourt, she held that failure to provide the minor with an independent juvenile officer or to follow the statute raises a presumption that the admission or confession is not voluntary.

And that's what I'm relying on. I don't believe that presumption was overcome."

The circuit court then continued the case for an April 22, 2015, status date. On April 22, 2015, the State filed a certificate of substantial impairment pursuant to Illinois Supreme Court Rule 604(a)(1) (Ill. S. Ct. R. 604(a)(1) (eff. Dec. 11, 2014)), asserting that the circuit court's orders substantially impaired its ability to prosecute the case. On the same date, the State also filed a notice of appeal to this court. On August 19, 2015, this court, based on the representation of Nathan's counsel that Nathan would not be submitting an appellate brief, ordered that this case be taken for consideration on the record and the State's brief only.

¶ 20 ANALYSIS

¶ 21 Jurisdiction

¶ 22 "We first consider our own jurisdiction to hear this appeal. We have a duty to consider our jurisdiction *sua sponte* and to dismiss the appeal if jurisdiction is lacking." *People v. Walker*, 395 Ill. App. 3d 860, 863 (2009). In this case, there are two jurisdictional issues not discussed in the State's brief.

¶ 23 First, the State appeals from the circuit court orders granting Nathan's motion to suppress and denying the State's motion to reconsider, pursuant to Illinois Supreme Court Rules 604(a)(1) and 660(a). Ill. S. Ct. R. 604(a)(1) (eff. Dec. 11, 2014); R. 660(a) (eff. Oct. 1, 2001). These rules do not expressly allow the State to appeal from an interlocutory order suppressing evidence in a juvenile delinquency proceeding. See *In re B.C.P.*, 2013 IL 113908, ¶ 6. Our supreme court, however, has modified Rule 660(a) to allow such appeals. *Id.* ¶ 20. Moreover, "when the State takes an interlocutory appeal from a suppression order in a juvenile delinquency proceeding, the matter should be expedited pursuant to Rule 660A." *Id.* ¶ 18; see Ill. S. Ct. R. 660A (eff. July 1, 2013). Accordingly, the State's appeal is authorized and expedited in this case.

¶ 24 Second, the circuit court did not enter written orders granting Nathan's motion to suppress or denying the State's motion for reconsideration. "[A]n oral pronouncement will not be an appealable order only if it is apparent of record that the parties are aware that a written order is to follow." *People v. Toolen*, 116 Ill. App. 3d 632, 644 (1983). This rule of appealability extends to a court's oral pronouncement granting a motion to suppress. See *People v. Bierman*, 163 Ill. App. 3d 256, 258-59 (1987) (oral pronouncement granting a motion to quash arrest and suppress evidence is an appealable order). In this case, the transcript of proceedings establishes that the circuit court contemplated the State would seek review of the denial of the

motion to reconsider. The transcript does not contain any statements that would suggest the court intended to issue a written order memorializing its ruling. Thus, we conclude we have jurisdiction to hear this case and turn to address the merits of the State's appeal.

¶ 25

The Merits

¶ 26 On appeal, the State argues that the circuit court erred in granting Nathan's motion to suppress his statement to the police. When reviewing the circuit court's ruling on such a motion, we examine the circuit court's factual findings deferentially, overturning them only if they are against the manifest weight of the evidence, but we review *de novo* the ultimate question of whether the accused's confession was voluntary after examining the totality of the circumstances. *Patterson*, 2014 IL 115102, ¶ 37.

¶ 27 The State contends the circuit court erred as a matter of law by failing to consider the totality of the circumstances surrounding Nathan's statement. "To determine the voluntariness of a confession, courts consider the totality of the circumstances, including such factors as the defendant's age, intelligence, background, experience, education, mental capacity, and physical condition at the time of questioning." *Murdock*, 2012 IL 112362, ¶ 30. "Other factors include the duration and legality of the detention and whether there was any physical or mental abuse by the police." *Id.* "Threats or promises made by the police may be considered physical or mental abuse." *Id.* "No single factor is dispositive, rather '[t]he test of voluntariness is whether the individual made his confession freely and voluntarily, without compulsion or inducement of any kind, or whether the individual's will was overborne at the time of the confession.'" *Id.* (quoting *People v. Morgan*, 197 Ill. 2d 404, 437 (2001)).

¶ 28 When considering the voluntariness of a custodial statement made by a juvenile, the totality of the circumstances also includes the presence of a "concerned adult." *Murdock*, 2012

IL 112362, ¶ 32. "The taking of a juvenile's confession is a sensitive concern, and for this reason the greatest care must be taken to assure that the confession was not coerced or suggested." *Id.* Accordingly, courts must consider "whether the juvenile, either before or during the interrogation, had an opportunity to consult with an adult interested in his welfare." *Id.* Illinois courts are concerned when a statement was made before the juvenile " 'had an opportunity to confer, prior to questioning with an adult interested in his welfare, either his parents or a juvenile officer.' " *In re D.C.*, 244 Ill. App. 3d 55, 62 (1992) (quoting *People v. Knox*, 186 Ill. App. 3d 808, 813 (1989)). The *Murdock* court, however, held that "a juvenile's confession or statement should not be suppressed merely because he was denied the opportunity to confer with a parent or other concerned adult before or during the interrogation." *Murdock*, 2012 IL 112362, ¶ 33. "*The concerned adult factor is just one of the many factors to be examined when determining whether a juvenile's confession was voluntary.*" (Emphasis added.) *Id.*

¶ 29 In this case, rather than relying on *Patterson* and *Murdock*, the circuit court apparently relied on the appellate court's decision in *People v. Griffin*, 327 Ill. App. 3d 538 (2002).³ In that case, the appellate court ruled that "[y]outh officers cannot act in their role as a concerned adult while at the same time actively compiling evidence against that juvenile." *Id.* at 547-48. The *Murdock* court found the reasoning of this aspect of *Griffin* to be sound. See *Murdock*, 2012 IL 112362, ¶¶ 49-51.

¶ 30 The *Griffin* court, however, acknowledged that there is no requirement that a youth officer be present when a minor is questioned. *Id.* at 547. The court observed that the presence of a youth officer is "a significant factor *in the totality of the circumstances analysis.*" (Emphasis

³ Although the circuit court did not cite *Griffin* by name, it is cited in the State's brief and was authored by Justice Theis, a fact to which the circuit court referred in denying the motion to reconsider.

added.) *Id.* The *Griffin* court also acknowledged "[t]hese cases are fact specific and each case must be evaluated on its own particular set of circumstances." *Id.* The *Griffin* court ultimately performed the totality-of-the-circumstances analysis before concluding Griffin's motion to suppress should have been granted. *Id.* at 549. Thus, we do not interpret *Griffin* as a case establishing a *per se* rule mandating suppression when a juvenile officer is not present or abandons the duties of such an officer. We also do not interpret *Griffin* as creating a presumption that a juvenile's statement is involuntary when a juvenile officer is not present or abandons the duties of such an officer.

¶ 31 Similarly, in *Murdock*, our supreme court ruled that "[w]hile the presence of a juvenile officer is a significant factor in the totality of the circumstances argument, there is no requirement that a juvenile officer be present when a minor is questioned, and the absence of a juvenile officer will not make a juvenile's statements *per se* involuntary." *Murdock*, 2012 IL 112362, ¶ 52. Notably, despite the juvenile officer's complete abandonment of his duties, the *Murdock* court ultimately concluded that the juvenile's statements were made voluntarily and upheld their admission at trial. *Id.* ¶ 55. The *Patterson* court reaffirmed these aspects of *Murdock*. See *Patterson*, 2014 IL 115102, ¶¶ 55-56. Accordingly, we conclude the circuit court erred as a matter of law in ruling that Nathan's statement was involuntary based solely on the fact that the juvenile officer had participated in the search of Nathan's home (or a presumption arising from that fact).

¶ 32 The remaining issue is the appropriate course of action to be taken where, as here, the circuit court has applied an incorrect standard in ruling upon the motion to suppress. The question of voluntariness is for the circuit court in the first instance. *People v. Simmons*, 60 Ill. 2d 173, 181 (1975). Thus, the appropriate remedy in this case is to vacate the orders of the

circuit court and remand the cause for a determination of the voluntariness of Nathan's statement based on the proper legal standard. See *id.* at 181-82 (vacating a judgment and remanding for a determination of the voluntariness of the statement of a 16-year-old borderline-mentally-retarded boy under proper standards).

¶ 33

CONCLUSION

¶ 34 For all of the aforementioned reasons, the orders of the circuit court are vacated and the case is remanded for further proceedings consistent with this order.

¶ 35 Vacated and remanded.