2019 IL App (2d) 180356-U
No. 2-18-0356
Order filed February 27, 2019

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, v. NOAH I. RODRIGUEZ, Defendant-Appellee.	))))))))))	Appeal from the Circuit Court of Kendall County. No. 16-CF-261 Honorable Timothy J. McCann, Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices Zenoff and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court erred in granting defendant a directed finding on his motion to suppress his statement: the statement was not presumptively inadmissible for lack of a recording, and the State met its burden of showing that the statement was voluntary under the totality of the circumstances, even though the police did not contact defendant's parents.

¶ 2 Defendant, Noah I. Rodriguez, was charged with a single count of aggravated criminal sexual assault (720 ILCS 11-1.30(a)(2) (West 2014)). He moved to suppress statements that he made to police. After the State presented its evidence, the trial court concluded that the State failed to meet its burden of showing that defendant's statement was voluntary. The trial court

therefore granted the motion without hearing evidence from defendant. The State unsuccessfully moved to reconsider, and this appeal followed. We vacate and remand for further proceedings.

¶ 3 I. BACKGROUND

¶ 4 Defendant was born on September 8, 1997. At the hearing on defendant's motion, Caleb Waltmire, a detective with the Kendall County Sheriff's Department, testified that, in January 2015, he investigated a possible sexual assault that allegedly occurred at a motel in Aurora. The victim identified defendant as her assailant. On August 11, 2015, Waltmire interviewed defendant at the Kane County Juvenile Justice Center (KCJJC), where defendant was in custody for unrelated charges. The previous day, Waltmire visited defendant's home and spoke with defendant's uncle, who told Waltmire that defendant was in the KCJJC. Waltmire did not attempt to contact defendant's parents. When Waltmire traveled to the KCJJC, he planned to record his interview with defendant. However, he was made aware that recording devices were prohibited. The interview took place in a room just outside of the reception area. Kendall County Sheriff's Deputy Mike Mrozek was present during the interview, in the capacity of juvenile officer. Although defendant was not free to leave the KCJJC, Waltmire informed defendant that he was not under arrest and that he was free to terminate the conversation. Waltmire read *Miranda* warnings to defendant. Waltmire confirmed that defendant was able to read and understand English and that he understood his *Miranda* rights. Defendant indicated that he was willing to speak to Waltmire.

¶ 5 Waltmire inquired about defendant's education. Defendant responded that he had two years of high school. Waltmire asked defendant whether he knew the victim. Defendant denied that he did. He also denied that he engaged in any sexual activity with the victim. Waltmire asked defendant if he would provide a DNA sample. Defendant refused, and indicated that he

would not answer any more questions. The interview took less than an hour. Defendant never indicated that he needed to use the restroom, that he needed food or water, or that he needed to take a break from the interview. He never asked to contact his parents and he never requested an attorney.

¶ 6 Mrozek testified that he was trained as a juvenile officer. Mrozek explained that a juvenile officer "serve[s] as an advocate to make sure that the juvenile understands his rights as they're being read to him, Miranda, to ensure if he has any questions, that the juvenile officer can try to answer them to the best of his ability." Mrozek added that a juvenile officer makes sure that juveniles "are not hungry, thirsty, or would have to use the restroom, something of that nature." Mrozek explained his role to defendant. Mrozek confirmed Waltmire's testimony that the interview lasted less than an hour; that defendant never requested food or water or asked to use the restroom; that defendant never requested that his parents or an attorney be present; that defendant indicated that he had two years of high school and could understand and read English; and that questioning ceased at defendant's request.

¶ 7 Mrozek acknowledged that he was present when the victim was interviewed, but he did not conduct any part of the interview. He also testified that he was not otherwise involved in the investigation.

¶ 8 II. ANALYSIS

¶ 9 Before proceeding, we note that defendant argues that, because the interview was not recorded, it must be presumed to be inadmissible. We disagree. Defendant relies on section 103-2.1(b-5)(3) of the Code of Criminal Procedure 1963 (725 ILCS 5/103-2.1(b-5)(3) (West 2014)). When defendant was interviewed on August 11, 2015, section 103-2.1(b-5)(3) provided, in pertinent part:

> "(b-5) Under the following circumstances, an oral, written, or sign language statement of an accused made as a result of a custodial interrogation conducted at a police station or other place of detention shall be presumed to be inadmissible as evidence against the accused, unless an electronic recording is made of the custodial interrogation and the recording is substantially accurate and not intentionally altered:
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> * * *
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> (3) in any criminal proceeding brought under Section 11-1.30 *** of the Criminal Code of 1961 or the Criminal Code of 2012, *if the custodial interrogation was conducted on or after June 1, 2016.*" (Emphasis added.) *Id.*

¶ 10 Defendant was charged with aggravated criminal sexual assault pursuant to section 11-1.30 of the Criminal Code of 2012. However, as the State correctly observes, because defendant's interrogation took place prior to June 1, 2016, section 103-2.1(b-5)(3) does not apply.

¶ 11 Where a defendant moves to suppress a statement claimed to be involuntary, the State bears the burden of proving, by a preponderance of the evidence, that the statement was voluntary. *People v. Richardson*, 234 Ill. 2d 233, 254 (2009). The following principles govern the determination of whether a juvenile's statement to police was voluntary:

> "When determining whether a juvenile's confession was voluntarily given, relevant considerations include: (1) the juvenile's 'age, intelligence, background, experience, education, mental capacity, and physical condition at the time of questioning'; (2) the duration of the detention, including whether the police physically or mentally abused the juvenile or employed trickery or deceit in obtaining the confession; and (3) whether the juvenile had an opportunity to speak with a parent or other concerned adult prior to or

> during the interrogation, including whether the police prevented or frustrated such opportunities. [Citation.] No single factor is dispositive; rather, courts must consider the totality of the circumstances surrounding the confession. [Citations.]" *People v. Travis*, 2013 IL App (3d) 110170 ¶ 54.

Furthermore, "[c]ustodial interrogation of juvenile suspects is to be scrutinized with particular care in order to ensure that statements elicited are not the product of fantasy, fright or despair." *In re R.T.*, 313 Ill. App. 3d 422, 428 (2000). In reviewing the trial court's ruling, we afford great deference to the trial court's findings of fact, but we review *de novo* the ultimate question of whether the statement was voluntary. *In re G.O.*, 191 Ill. 2d 37, 50 (2000).

¶ 12 Defendant's age when he was questioned—he was less than a month away from his eighteenth birthday—favors a finding that his statement was voluntary. See *People v. Westmoreland*, 372 Ill. App. 3d 868, 878 (2007) (that the defendant was nearly the age of majority weighed in favor of admissibility of his statements). The trial court found that the interrogation was unfair because a "presumably trained police investigator" was pitted against "an individual with two years of high school." However, in *People v. Robinson*, 273 Ill. App. 3d 1069, 1072 (1995), the 16-year-old defendant's completion of only one year of high school weighed in favor of admissibility of his statements where he "displayed no difficulty communicating with the detectives." Similarly, here, there is no suggestion that defendant had any difficulty communicating with the officers.

¶ 13 The trial court also stressed that the officers made no effort to contact defendant's parents. The State argues that the officers were under no obligation to contact defendant's parents.

¶ 14 Section 5-405 of the Juvenile Court Act (705 ILCS 405/5-405 (West 2014)) provides, in pertinent part:

> "(1) A law enforcement officer who arrests a minor with a warrant shall immediately make a reasonable attempt to notify the parent or other person legally responsible for the minor's care or the person with whom the minor resides that the minor has been arrested and where he or she is being held. ***
>
> (2) A law enforcement officer who arrests a minor without a warrant under Section 5-401 shall, if the minor is not released, immediately make a reasonable attempt to notify the parent or other person legally responsible for the minor's care or the person with whom the minor resides that the minor has been arrested and where the minor is being held ***."

¶ 15 The State argues that, because Waltmire did not arrest defendant, these provisions do not apply. Defendant responds as follows:

> "Although [defendant] was not arrested for this particular offense *prior* to the interview, *** the officers knew that [defendant] was facing custodial interrogation for this offense. And [defendant's] motion to suppress informed the trial court that he was in custody at the KCJJC after being arrested for domestic battery ***. Thus, the requirement for a reasonable attempt at parental notification—being a juvenile under arrest who was about to be interrogated—was present as soon as the officers knew they would be participating in the custodial interrogation of [defendant] for this offense." (Emphasis in original.)

Although defendant's argument is not supported by the language of the statute, we acknowledge that it is consistent with the purpose of the statute, which is to allow a concerned adult to confer

with and counsel a minor before he or she is interrogated. *People v. Gonzalez*, 351 Ill. App. 3d 192, 203 (2004).

¶ 16 We need not determine the scope of section 5-405, however. As stated in *Gonzalez*, "[w]hile police conduct that frustrates a parent's attempt to confer with his or her child is a significant factor in the totality-of-the-circumstances analysis [citation], our supreme court has rejected a rule that the failure to notify a juvenile's parents that the minor has been taken into custody is sufficient *per se* to mandate suppression of the minor's statements [citation]." *Id.* at 203-04. "[W]here the police have not contacted the juvenile's parent prior to the interrogation, the relevant inquiry is whether the absence of a parent or other adult interested in the minor's welfare contributed to a coercive atmosphere." *Id.* at 204. Here, it did not. The interview was quite short. Defendant never requested to have either a parent or an attorney present. He never requested food, drink, or to use the restroom. There is no evidence that defendant was questioned in an aggressive or abusive manner. The officers honored defendant's request to terminate the interview. It is difficult to see how the presence of a parent or other concerned adult would have had any meaningful effect on the atmosphere of the interview.

¶ 17 The trial court was also critical of Mrozek's performance as a juvenile officer, saying that he was "as helpful as a lump of clay." However, we have rejected the idea that a juvenile officer must be an affirmative advocate for a minor. *In re Marvin M.*, 383 Ill. App. 3d 693 (2008). A juvenile officer's duties are "notifying a concerned adult, making sure the minor receives *Miranda* warnings, making sure the minor's physical needs are met, and making sure he or she is well treated." *Id.* at 715. Although Mrozek did not notify a concerned adult, he performed the other functions.

¶ 18 Looking at the totality of the circumstances, we conclude that the State met its burden of showing, by a preponderance of the evidence, that defendant's statement was voluntary. Accordingly, defendant was not entitled to a finding at the close of the State's case. We therefore remand so that defendant may introduce evidence in support of his motion to suppress.

¶ 19 III. CONCLUSION

¶ 20 For the foregoing reasons, we vacate the order of the circuit court of Kendall County granting defendant's motion to suppress. We remand so that defendant may introduce evidence in support of the motion.

¶ 21 Vacated and remanded.