

No. 1-08-3643

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FIRST DIVISION
June 30, 2011

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF)	Appeal from the
ILLINOIS,)	Circuit Court of
)	Cook County.
Plaintiff-Appellee,)	
)	
v.)	No. 07 CR 14075
)	
LEIGHTON JONES,)	
)	Honorable
)	Joseph M. Claps,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE HALL delivered the judgment of the court.
Justices Hoffman and Rochford concurred in the judgment.

O R D E R

HELD: Trial court erred in denying defendant's motion to suppress his oral and handwritten statements given after he underwent a polygraph test, where it denied the motion before resolving issue as to whether defendant requested the presence of an attorney prior to taking the polygraph test.

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Defendant Leighton Jones appeals his convictions of criminal sexual assault for allegedly committing acts of sexual penetration with a person whom he knew was unable to understand the nature of the acts or was unable to give knowing consent in violation of section 12-13(a)(2) of the Criminal Code of 1961 (720 ILCS 5/12-13(a)(2) (West 2000)). The alleged sexual abuse occurred over an approximate two-year period.

Defendant, who was between fifteen and seventeen years of age at the time of the charged conduct, was found guilty after a bench trial of two counts of criminal sexual assault, where it was determined that he engaged in sexual relations with his cousin, P.M., who was between eight and nine years of age at the time of the offenses.

Defendant was sentenced as an adult to five years' imprisonment. The trial court also imposed various fees and fines.

Defendant raises a number of issues on appeal. However, based on our disposition of the case, we need only address one issue at this time: whether the trial court erred in denying defendant's motion to suppress his statements. For the reasons that follow, we find the trial court erred in denying the motion, and therefore, we remand for a new suppression hearing.

BACKGROUND

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Prior to trial, a three-day hearing was held on defendant's motion to suppress statements. At the hearings, defendant argued that his inculpatory statements should be suppressed because they were given without the presence of counsel after he had unequivocally requested an attorney.

The following facts were presented at the suppression hearings. On June 18, 2007, at approximately 8:00 p.m., Chicago Police detectives Ian Barclay and Moreen O'Connell arrested defendant outside his residence. The arrest stemmed from a complaint that the defendant had on multiple occasions, from about March 7, 2000, through August 31, 2002, sexually assaulted P.M. at their grandmother's house.

Defendant testified that as he was being arrested and placed in handcuffs, he stated out loud, that he "wanted a lawyer." Defendant's testimony was corroborated by his sister, Tatianna Jones, and by his fiancée, Mariam Flores, who were both on the scene as defendant was being arrested. Detective Barclay testified, in contrast, that the defendant did not ask for an attorney at this time.

Defendant was transported to the police station and placed in an interview room where he was given his *Miranda* rights. Detective Barclay testified that detective O'Connell read defendant his *Miranda* rights from a Fraternal Order of Police

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handbook. Defendant, on the other hand, testified that he was Mirandized by detective Barclay, who read him only one of the *Miranda* rights and then told him, "You know the rest," because defendant had been arrested on a previous occasion.

Detective Barclay testified that the defendant gave an oral statement at this time. Defendant testified that he agreed to give the statement after detective Barclay told him that he was being charged as a juvenile and that if he refused to give a statement that detective O'Connell was threatening to notify the Department of Children and Family Services (DCFS) and have his children taken from him. Detective Barclay denied saying anything to that effect.

Defendant testified that he told the detectives that when he was 12 years old, he and P.M. played house and that they dry humped each other on three occasions. Defendant stated that he and P.M. never had skin-on-skin contact and they never performed oral sex on each other. Detective Barclay testified that the defendant told him that he and P.M. were "bumping and grinding."

Defendant testified that after he gave his oral statement and was being escorted back to his holding cell, detective Barclay informed him that an appointment had been scheduled for him to take a polygraph test the next day. Defendant testified that he told the detective that he wanted a lawyer to be present

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when he took the polygraph test.

According to defendant, the detective responded that the more defendant asked for an attorney, the more he looked guilty, and that if defendant passed the polygraph test he would be released. Detective Barclay denied saying anything to that effect. The detective also denied that the defendant asked for an attorney at this time.

The next day, on June 19, 2007, at around 2:00 a.m., defendant was interviewed by assistant state's attorney Tom Prisco in the presence of detectives Barclay and O'Connell. Detective Barclay testified that after ASA Prisco read defendant his *Miranda* rights, defendant waived those rights and gave a second oral statement. Shortly after giving the statement, defendant was taken to another location where he underwent a polygraph test.

After undergoing the polygraph test, defendant was taken back to the police station where he was again interviewed by ASA Prisco in the presence of detectives Barclay and O'Connell. Prior to the interview, the assistant state's attorney reviewed detective Barclay's "General Progress Reports" (GPRs). The defendant testified that when the assistant state's attorney began reading the detective's notes and came across a part where the defendant had allegedly admitted to rubbing his penis on

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P.M.'s vagina, the defendant objected, stating that he had never done such an act or admitted to such conduct.

Defendant testified that detective Barclay then countered that the defendant had admitted to such conduct the previous day and asked defendant why he was trying to make him look bad in front of his boss. Defendant testified that he responded that he was not trying to make the detective look bad, but that he had never admitted to rubbing his penis on P.M.'s vagina.

Defendant testified that ASA Prisco stated that he would "come back to it," and then began writing down basic information such as defendant's height, weight, education, and social security number. Defendant acknowledged dry humping P.M. when he was 12 years old.

Defendant testified that ASA Prisco momentarily stepped out of the interview room, and when he returned, he asked defendant if defendant was certain as to the number of times the conduct occurred and the time of year it occurred. Upon receiving defendant's answers, the assistant state's attorney continued writing, and afterwards handed defendant what he had written so the defendant could initial the corrections.

Defendant testified that when he responded that he could not read ASA Prisco's handwriting, the assistant state's attorney read part of the statement out loud, and then stopped and stated

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that he had to leave the room to make a phone call. Defendant testified that when the assistant state's attorney returned to the interview room, he asked defendant if he was sure he was not 17 years old when the conduct occurred.

Defendant responded that he was not 17 years of age when the conduct occurred because he was incarcerated when he was 17 years old. Defendant testified that after he discussed his criminal background with ASA Prisco, he complied with the assistant state's attorney's request that he sign each page of the handwritten statement.

Defendant testified that he signed the handwritten statement because he believed DCFS might take his children from him if he refused to sign the statement. He also believed he would be charged as a juvenile if he agreed to sign the handwritten statement.

The only statements the State sought to admit at trial were the oral and handwritten statements defendant made after he returned to the police station following his polygraph test. Defendant claims that these statements should have been suppressed because they were given without the presence of counsel after he requested that an attorney be present during his polygraph test.

In denying defendant's motion to suppress, the trial court

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found that since the State was not seeking to admit a statement made during the polygraph test, it did not have to resolve whether defendant actually requested the presence of an attorney before he underwent the polygraph test. We believe the trial court erred in this regard.

ANALYSIS

As an initial matter, we reject the State's argument that defendant waived this issue for review pursuant to *People v. Enoch*, 122 Ill. 2d 176, 186, 522 N.E.2d 1124 (1988). "[B]ecause defendant's contention that the court erroneously denied his motion to suppress is a constitutional issue, it is reviewable on appeal even though defendant failed to raise it in a written posttrial motion." *People v. Cox*, 295 Ill. App. 3d 666, 670, 693 N.E.2d 483 (1998).

In reviewing a trial court's ruling on a motion to suppress evidence, mixed questions of law and fact are presented. *People v. Pitman*, 211 Ill. 2d 502, 512, 813 N.E.2d 93 (2004). The trial court's findings of fact will be upheld on review unless they are against the manifest weight of the evidence. *People v. Schuning*, 399 Ill. App. 3d 1073, 1081, 928 N.E.2d 128 (2010). However, we review *de novo* the ultimate legal question of whether suppression is warranted. *Pitman*, 211 Ill. 2d at 512; *Schuning*, 399 Ill. App. 3d at 1081.

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A criminal defendant has a right to counsel at all custodial interrogations, as provided by both the United States Constitution and the Illinois Constitution. U.S. Const., amends. V, XIV; Ill. Const. 1970, art. I, § 10; *Schuning*, 399 Ill. App. 3d at 1081. A suspect's request for counsel during custodial interrogation is a *per se* invocation of his fifth amendment right and requires that all questioning by authorities cease until either an attorney has been provided or the accused himself initiates further communication, exchanges, or conversations with the police. See *People v. Torres*, 306 Ill. App. 3d 301, 310, 714 N.E.2d 534 (1999), citing *Edwards v. Arizona*, 451 U.S. 477, 484-85, 101 S. Ct. 1880, 1885, 68 L. Ed. 2d 378, 386 (1981).

The so-called *Edwards* rule is designed to prevent the police from badgering a defendant into waiving his previous assertion of his right to counsel. *Schuning*, 399 Ill. App. 3d at 1082. Therefore, if the police subsequently initiate a conversation with the accused in the absence of counsel, the accused's statements are presumed involuntary and are inadmissible as substantive evidence at trial. *Schuning*, 399 Ill. App. 3d at 1082, citing *People v. Woolley*, 178 Ill. 2d 175, 198, 687 N.E.2d 979 (1997); see also *People v. Winsett*, 153 Ill. 2d 335, 349, 606 N.E.2d 1186 (1992).

In this case, we believe the trial court erred in denying

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defendant's motion to suppress his oral and handwritten statements given after he underwent the polygraph test, because the court denied the motion without first resolving the issue as to whether defendant requested the presence of an attorney prior to undergoing the test. If the trial court determined that the defendant was not provided with an attorney after he invoked his right to have counsel present during the polygraph test, then the oral and handwritten statements defendant gave subsequent to his request for an attorney are presumed to be involuntary and inadmissible at trial.

If defendant had counsel to advise him, counsel might have advised him not to take the polygraph test or to make any subsequent statements. Thus, the trial court erred in concluding that since the State was not seeking to admit a statement made during the polygraph test, that it did not have to resolve the issue as to whether defendant requested the presence of an attorney prior to undergoing the polygraph test.

Accordingly, we vacate the trial court's judgment denying defendant's motion to suppress and remand for a new hearing on the motion. Because this new hearing may determine the outcome of the case, we decline to consider defendant's additional claims at this time. However, we retain jurisdiction to determine these claims should the State prevail at the new hearing on the motion

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to suppress.

Judgment vacated and remanded with directions.