

FIRST DIVISION
December 19, 2011

No. 1-10-1837

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

<i>In re</i> ANGELO R., a Minor)	Appeal from the
(THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
)	Cook County.
Petitioner-Appellee,)	
)	
v.)	No. 10 JD 282
)	
ANGELO R.,)	Honorable
)	Carol A. Kelly,
Respondent-Appellant.))	Judge Presiding.

JUSTICE KARNEZIS delivered the judgment of the court.
Presiding Justice Hoffman and Justice Hall concurred in the judgment.

ORDER

¶ 1 *Held:* Respondent was not denied effective assistance of counsel by the absence of a motion to suppress; the trial court's judgment was affirmed.

¶ 2 Following a bench trial, 17-year-old respondent Angelo R. was adjudicated delinquent for possession of cannabis and sentenced to six months' probation. On appeal, respondent asserts that he was not provided effective assistance of counsel where his trial attorney failed to file a motion to suppress his confession as involuntary. We affirm.

¶ 3 At trial, Officer John Barak testified that at about 9:34 p.m. on January 8, 2010, he was patrolling the area of 206 North Kildare Avenue in Chicago with Officers Walter and Kavasos. At that time, the officers, who were all in the same squad car, pulled over a vehicle headed northbound on Kildare Avenue. After the vehicle stopped, respondent, who was the driver, and a second individual exited the car and started to walk away from the scene. As respondent walked toward Kildare and Maypole Avenues, Barak exited his squad car, followed him, and ordered him stop. Respondent failed to comply with the stop order, and Barak, who was about 15 feet away from respondent, saw respondent drop an object with his right hand. Barak recovered the object from the sidewalk, identified it as cannabis, and called over his partners, who arrested respondent near Kildare and Maypole Avenues. When Barak reached that intersection, he observed that about five people were there, and noted that his partners had respondent, as well as other individuals, in custody.

¶ 4 Officer Walter testified similarly to Officer Barak. Walter also testified that the vehicle he and his partners stopped for a minor traffic violation contained five or six people. As Barak followed respondent, Walter was "tak[ing] care" of the other passengers who were also exiting the car. After Walter was alerted by Barak that respondent had cannabis, he and Officer Kavasos got into their squad car and drove to Kildare and Maypole Avenues where they arrested respondent. Shortly thereafter, Barak arrived at the same intersection, along with the other passengers who were also walking toward the intersection. Walter and his partners then transported respondent to the police station. Walter processed respondent, which took about two hours, and then transferred him to Detective Gonzales.

¶ 5 Detective Gonzales, a youth detective, testified that after the arresting officers transferred respondent to him shortly after midnight on January 9, 2010, he advised respondent of his *Miranda* rights, as well as his right to have a parent or another concerned adult present during the

interview process. Respondent waived those rights and told Gonzales that he had "five or six bags of weed" and did not want to go to prison.

¶ 6 Respondent testified that on January 8, 2010, at about 9:30 p.m., he parked his car on Kildare Avenue. Police were about one-half block behind him when he parked. Respondent and his friend, Lavell Lee, exited the car and walked toward Maypole and Kildare Avenues. The police drove past respondent and Lee, and then turned around and stopped near respondent's parked car. Respondent and Lee continued walking toward Kildare and Maypole Avenues where three other men were located, including an individual respondent knew, Xavier Robertson. A couple of minutes later, three police officers arrived at the intersection in their squad car, exited the car, and two of the officers searched the group. The third officer walked into a nearby yard and started "moving stuff around." He also went into an alley and moved garbage cans. The officer came back to the scene with cannabis in his possession and asked the group, "who is going to take it." The officers released everyone except respondent. When respondent asked the officers why they were blaming him for possessing the cannabis, they responded that he looked guilty and attempted to flee. Respondent denied that Detective Gonzales read him his *Mrianda* rights, and denied giving him a statement.

¶ 7 Lavell Lee testified that he did not see police before respondent parked his car. He further testified that as they were walking toward Kildare and Maypole Avenues, a police car drove past them, turned around, and immediately approached them. Lee indicated that besides himself and respondent, their two friends, Xavier Robertson and Stephen Brown, were also at the intersection of Kildare and Maypole Avenues.

¶ 8 Following argument, the trial court found respondent delinquent for possession of cannabis. In doing so, the court found the testimony of respondent and Lee inconsistent because Lee testified that they met two friends at the intersection in question, whereas respondent

testified that there were three other individuals at that same intersection, and they only knew one of them. In addition, the court stated that Lee failed to mention that the police looked at respondent's vehicle after turning around. In contrast, the court found Detective Gonzales to be a credible witness, and held that the statement respondent made to Officer Gonzales, "together with the testimony of the two witnesses," showed that the State proved its case beyond a reasonable doubt. At sentencing, the State indicated that respondent had a criminal background and was on probation in the past. The court sentenced respondent to six months' probation.

¶ 9 On appeal, respondent contends that he was provided ineffective assistance of counsel because counsel failed to file a motion to suppress respondent's statement. Respondent specifically maintains that his statement to Detective Gonzales was involuntary where police failed to make a reasonable effort to contact a concerned adult, and where Gonzales interrogated him when he was supposed to be acting as a youth officer. Respondent thus argues that a motion to suppress the statement had a reasonable probability of success, and that the outcome at trial would have been different had his statement been suppressed.

¶ 10 A defendant arguing ineffective assistance of counsel, must demonstrate that his counsel's representation fell below an objective standard of reasonableness and that he was prejudiced by the deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984). The failure to satisfy either prong of the *Strickland* test precludes a finding of ineffective assistance of counsel. *People v. Enis*, 194 Ill. 2d 361, 377 (2000), citing *Strickland*, 466 U.S. at 697.

¶ 11 To prevail on a claim of ineffective assistance based on counsel's failure to file a motion to suppress, the defendant must show that a reasonable probability exists that the motion would have been granted, and that the outcome of the trial would have been different had the evidence been suppressed. *In re A.R.*, 295 Ill. App. 3d 527, 531 (1998). The question of whether to file a motion to suppress evidence is generally considered a matter of trial strategy, and is given great

deference. *People v. Bryant*, 128 Ill. 2d 448, 458 (1989). Counsel is not required to make futile motions in order to provide effective assistance. *People v. Stewart*, 365 Ill. App. 3d 744, 750 (2006).

¶ 12 In reviewing whether a confession is voluntary, great deference is granted to the trial court's factual findings, and only those findings that are against the manifest weight of the evidence will be reversed. *In re G.O.*, 191 Ill. 2d 37, 50 (2000). However, the ultimate question of whether the confession is voluntary is reviewed *de novo*. *G.O.*, 191 Ill. 2d at 50.

¶ 13 In determining whether a confession is voluntary courts look to the totality of the circumstances. *G.O.*, 191 Ill. 2d at 54. Although no single factor is dispositive, factors to consider include respondent's age, intelligence, background, mental capacity, education, physical condition, legality and duration of the detention, duration of the questioning, and any abuse by police. *G.O.*, 191 Ill. 2d at 54.

¶ 14 Additionally, for confessions involving minors, this court has recognized an additional factor commonly known as the "concerned adult" factor which considers whether the juvenile, either before or during the interrogation, had an opportunity to consult with an adult interested in his welfare. *G.O.*, 191 Ill. 2d at 54-55. The presence of a "concerned adult" is particularly significant where the juvenile has demonstrated trouble understanding the interrogation process, asks to speak with a "concerned adult," or the police prevent the juvenile's parents from speaking with him. *G.O.*, 191 Ill. 2d at 55.

¶ 15 "Although the presence of a youth officer does not *per se* make a juvenile's confession voluntary, it is a significant factor." *People v. Fuller*, 292 Ill. App. 3d 651, 665 (1997). The presence or absence of a parent is also a factor in evaluating whether the juvenile's confession was voluntary. *Fuller*, 292 Ill. App. 3d at 665. The "concerned adult" factor is not dispositive and a confession should not be suppressed simply because respondent was denied the opportunity

to confer with a parent or a concerned adult. *G.O.*, 191 Ill. 2d at 55.

¶ 16 Considering the totality of the circumstances, there was no reasonable probability that a motion to suppress the confession as involuntary would have been granted. The testimony shows that respondent was of normal intelligence and mental capacity, and had no physical condition that impeded his ability to make a voluntary statement. His detention and questioning by police were short, and Detective Gonzales testified that he read respondent his *Miranda* warnings prior to the interrogation. There was no testimony indicating that respondent was abused, either physically or mentally by police, nor were any promises or threats made. Furthermore, the record shows that respondent had been arrested before.

¶ 17 Additionally, the presence of Detective Gonzales, the youth officer, satisfied the "concerned adult" factor. Although there was no testimony at trial that police attempted to contact respondent's parents or another concerned adult, Gonzales testified that he informed respondent of his right to have a parent or concerned adult present, but respondent waived that right before confessing. The totality of the circumstances thus shows that respondent's confession was voluntary. See *G.O.*, 191 Ill. 2d at 56-57 (finding that the totality of the circumstances indicated that the confession of a 13-year-old was voluntary where the police called his mother, respondent did not ask for his mother, his detention was valid, he was given his *Miranda* warnings, he was intelligent, his questioning was short, and there was no abuse of any kind). Therefore, respondent has not shown that a motion to suppress would be granted.

¶ 18 Moreover, even if counsel could have succeeded on a motion to suppress respondent's confession, the result at trial would have been the same. Officer Barak testified that he saw respondent leave his vehicle and, after being ordered to stop, observed respondent drop a bag containing cannabis. Officer Walter corroborated the testimony of Barak, testifying that he witnessed respondent exit the vehicle after it was pulled over, saw Barak pursue him, and heard

Barak state that he found cannabis. Even without respondent's confession that he was in possession of cannabis, the corroborated testimony of the officers would have been sufficient to find respondent delinquent. See *People v. Tribett*, 98 Ill. App. 3d 663, 681 (1981) (finding that an officer's observation of the defendant dropping a packet containing heroin and attempting to kick it was sufficient to uphold his conviction).

¶ 19 In reaching this conclusion, we reject respondent's contention that the testimony of Officer Barak was inconsistent with that of Officer Walter. Respondent maintains that Barak testified that there were only two people in the car, while Walter stated that there were five or six people in the car. However, the record shows that Barak testified that he saw two people exit the car, noted that there were other people inside the car when it was pulled over, and indicated that there were five people at the intersection of Maypole and Kildare Avenues. Similarly to Barak's testimony, Walter testified that there were five or six individuals in the car, and, after respondent was detained, the individuals who were in the car walked toward Maypole and Kildare Avenues. In contrast, despite respondent's contentions to the contrary, we agree with the trial court that respondent and Lee testified inconsistently where they provided differing accounts regarding the officers' actions after they turned their car around, as well as how many people were at Maypole and Kildare Avenues.

¶ 20 We also find *People v. McDaniel*, 326 Ill. App. 3d 771 (2001), *In re J.J.C.*, 294 Ill. App. 3d 227 (1998), and *People v. Montanez*, 273 Ill. App. 3d 844 (1995) cited to by respondent, distinguishable from the case at bar. In these cases, the parents of the juvenile respondents were frustrated by police in their attempts to see their children. *McDaniel*, 326 Ill. App. 3d at 783-84; *J.J.C.*, 294 Ill. App. 3d at 236-37; *Montanez*, 273 Ill. App. 3d at 854-55. In this case, however, Officer Gonzales testified that respondent waived his right to have a concerned adult present, and the record is silent as to whether police contacted a concerned adult, or that one contacted police.

¶ 21 Respondent also contends that Officer Gonzales cannot be described as a neutral observer to the interrogation because he was an active participant in the investigation itself, and was the only officer present during the interrogation. Respondent relies on *People v. Griffin*, 327 Ill. App. 3d 538, 547 (2002) for support where the court held that the youth officer's participation in the investigation meant the officer failed to fulfill his duties as a youth officer. In *Griffin*, 327 Ill. App. 3d at 548, a police officer who interviewed witnesses, visited the crime scene, and conducted a search of a codefendant's house, was simultaneously acting as the defendant's juvenile officer. The court in *Griffin* disapproved of the officer's simultaneous duties as both a police officer and a juvenile officer. See *Griffin*, 327 Ill. App. 3d at 549. Here, by contrast, the record does not indicate that, while acting as respondent's juvenile officer, Gonzales engaged in any investigative conduct related to respondent's drug possession charge. Instead, the record only reveals that Gonzales read respondent his *Miranda* rights and took his statement. See *In re Marvin M*, 383 Ill. App. 3d 693, 717-18 (2008) (distinguishing *Griffin* on similar grounds).

¶ 22 We further note, and the parties acknowledge, that the role of a youth officer is not clear. Case law shows two approaches regarding the duties of a youth officer. The first approach holds that the youth officer is a type of physical guardian whose duties include notifying the respondent's parents, ensuring that *Miranda* rights were given to the juvenile, and ensuring that the juvenile was not coerced in any way. See *People v. Haynie*, 347 Ill. App. 3d 650, 654 (2004). The second approach requires that the youth officer actively demonstrate interest in the juveniles's welfare and protect his rights. See *Griffin*, 327 Ill. App. 3d at 547.

¶ 23 Whether the role of the youth officer is that of an affirmative advocate for respondent or a physical guardian is ultimately unimportant because the mere presence of a youth officer is a significant factor in determining whether a juvenile's confession is voluntary. See *In re J.E.*, 285 Ill. App. 3d 965, 976 (1996); *People v. Gardner*, 282 Ill. App. 3d 209, 217-18 (1996); and *In re*

D.C., 244 Ill. App. 3d 55, 63-64 (1992). Additionally, the most that can be said of Detective Gonzales' conduct is that he failed to fulfill the role of a youth officer in questioning respondent. "It has long been the law that a juvenile officer is not required to meet with a minor before the police begin questioning or to be present during questioning." *Marvin M.*, 383 Ill. App. 3d at 715, citing *People v. Plummer*, 306 Ill. App. 3d 574, 588 (1999). If, due to Gonzales' participation in questioning respondent, no individual performing the functions of a youth officer was present during questioning, it would only be one factor to consider in weighing the totality of the circumstances. See *People v. Cunningham*, 332 Ill. App. 3d 233, 247 (2002) (finding that the absence of a youth officer did not create an atmosphere so coercive as to render the defendant's confession involuntary where the defendant had an opportunity to confer with his father before the interview, the interview lasted 30 minutes, and defendant confessed 20 minutes after his status changed from witness to potential suspect). Therefore, given the totality of the circumstances, respondent's confession to the youth officer at the police station was voluntarily given.

¶ 24 For the foregoing reasons, respondent has not demonstrated that his counsel was ineffective for failing to file a motion to suppress his inculpatory statement. We affirm the judgment of the trial court.

¶ 25 Affirmed.