DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2007

STATE OF FLORIDA,
Appellant,

v.

S.V., a child,
Appellee.

No. 4D06-2147

[April 25, 2007]

MAY, J.

The State appeals an order granting the defendant's motion to suppress in two cases.[1] The State argues the trial court erred in granting the motions to suppress because it did so solely on the basis that the juvenile's parents were not notified before the interview. We agree that the court erred in relying upon this basis in suppressing the juvenile's statements. We reverse the order of suppression in one case, but affirm the other for an alternative reason.

Law enforcement arrested the juvenile on July 13, 2005, on a grand theft auto charge. (Case No. 5620005CJ001461, hereinafter 1461). A detective interviewed the juvenile after informing him of his *Miranda*[2] rights through the use of a pre-printed card. At that time, the pre-printed form did not include the defendant's right to have counsel present during questioning. The juvenile confessed to stealing the motor vehicle, and the State then filed a petition for delinquency for grand theft auto.

On November 22, 2005, law enforcement began investigating a claim of stolen automobile rims. It focused its investigation on the same juvenile and obtained a search warrant for his house. The juvenile was arrested during a traffic stop near the house. Subsequent to the arrest,

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[1] The trial court issued one order listing both case numbers where motions to suppress had been independently filed.

[2] *Miranda v. Arizona*, 384 U.S. 436 (1966).

law enforcement executed the search warrant. The back-up detective for this arrest was the same one that had arrested the juvenile in July.

Following the search of his home, law enforcement informed the juvenile of his *Miranda* rights, this time including the right to counsel during questioning. The juvenile told the officers the location of another set of stolen automobile rims taken from the same victim.

When the juvenile was taken to the police station, law enforcement again advised the juvenile of his rights, including the right to counsel during questioning. The juvenile appeared to understand his rights and did not appear confused. He neither asked for an attorney nor invoked his rights. The juvenile did not appear intoxicated, and was cool, calm, and cooperative. Law enforcement did not obtain a written waiver. No one contacted the juvenile's mother before the interview. Following the interview, however, the juvenile requested to speak to his mother.

The juvenile discussed the theft of the rims and his attempt to sell them. This incident resulted in case number 562005CJ002320 [2320].

The juvenile filed a motion to suppress in each case. The trial court heard both motions at the same time.

At the hearing, the juvenile argued the State failed to prove that he had voluntarily and intelligently waived his rights because: (1) the waiver was not written; (2) his mother was not notified or present; and (3) the first detective's presence during the second arrest tainted the juvenile's statement by implicating a promise for leniency. The juvenile did not raise the inadequacy of the *Miranda* warnings in case number 1461. The State argued that law enforcement's failure to contact the juvenile's parents prior to the interview was not dispositive, and that the trial court should consider the totality of the circumstances.

The trial court granted the motion to suppress in each case. The court based its decision solely on the fact that the juvenile did not have the opportunity to speak with his mother prior to being interviewed, and his mother did not understand what was going on because of an English/Spanish language barrier. From these orders, the State timely appealed.

The State argues the trial court erred in applying a per se rule that custodial statements are inadmissible if the juvenile does not have the opportunity to speak with a parent before the interview. It continues to maintain the trial court should have looked at the totality of the

circumstances. The juvenile responds that the trial court correctly found that he had not made a voluntary and knowing waiver of his right to remain silent. For the first time on appeal, the juvenile also argues his confession in case number 1461 was properly suppressed because of defective *Miranda* warnings.

The relevant inquiry is whether the juvenile's waiver of his *Miranda* rights was knowing and voluntary given the totality of the circumstances. *State v. Cartwright*, 448 So. 2d 1049, 1051 (Fla. 4th DCA 1984) (citing *Doerr v. State*, 383 So. 2d 905, 907 (Fla. 1980)). In cases involving juveniles, the court should consider: 1) the methodology employed to administer the *Miranda* rights; 2) the age, experience, background, and intelligence of the child; 3) whether the parents were contacted and whether the child had an opportunity to speak with them prior to giving the statement; 4) whether the questioning occurred in the station house; and 5) whether the child executed a written waiver of rights. *Ramirez v. State*, 739 So. 2d 568, 576 (Fla. 1999); *accord Brancaccio v. State*, 773 So. 2d 582, 583–84 (Fla. 4th DCA 2000), *review denied*, 791 So. 2d 1095 (Fla. 2001), *cert. denied*, 534 U.S. 1022 (2001).

Here, the trial court expressly found that law enforcement did not intentionally do anything wrong. The juvenile was seventeen years old and he had previously been arrested. The trial court specifically found that the juvenile understood English. He readily answered questions and appeared calm throughout the interview. He did not execute a written waiver form. Law enforcement did not notify his parents prior to the interview. The child did not request to speak with a parent until after the interview.

The State correctly argues "[t]here is no constitutional requirement that police notify a juvenile's parents prior to questioning the juvenile." *Frances v. State*, 857 So. 2d 1002, 1003–04 (Fla. 5th DCA 2003) (citing *Brancaccio*, 773 So. 2d at 583–84). Nevertheless, "if the juvenile indicates to police that he or she does not wish to speak to them until he or she has had an opportunity to speak with parents, the questioning must cease." *Id.* at 1004 (citing *B.P. v. State*, 815 So. 2d 728, 729 (Fla. 5th DCA 2002)). This record is clear that the juvenile did not indicate prior to or during questioning that he wished to speak to his mother. Thus, the trial court's reliance on this aspect alone to support its decision was flawed.

For that reason, the order of suppression is reversed in case number 2320. With respect to case number 1461, we also find the trial court erred in relying on the failure to contact the juvenile's parents in ordering

suppression of the juvenile's statement. However, in 1461, the *Miranda* warnings given were defective because they failed to advise the juvenile of his right to counsel during questioning. *See Roberts v. State*, 874 So. 2d 1225, 1228 (Fla. 4th DCA 2004). Thus, we affirm the order of suppression in case number 1461 and the case is remanded for trial.[3]

The order in case number 1461 is affirmed, but the order in case number 2320 is reversed.

STEVENSON, C.J., and KLEIN, JJ., concur.

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Appeal from the Circuit Court for the Nineteenth Judicial Circuit, St. Lucie County; Scott M. Kenney, Judge; L.T. Case Nos. 562005CJ001461A and 562005CJ002320.

Bill McCollum, Attorney General, Tallahassee, and Thomas A. Palmer, Assistant Attorney General, West Palm Beach, for appellant.

Carey Haughwout, Public Defender, and Elisabeth Porter, Assistant Public Defender, West Palm Beach, for appellee.

Not final until disposition of timely filed motion for rehearing

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[3] We apply the tipsy coachman rule to reach this result. The tipsy coachman doctrine permits an appellate court to affirm a trial court's decision that was correct in result but based on the wrong reason if there is record evidence of any theory or principle of law that would support the order. *Dade County Sch. Bd. v. Radio Station WQBA*, 731 So. 2d 638, 644 (Fla. 1999). It is not necessary for the appellee to preserve this defense by having presented and argued the alternative basis below. *Id.* at 645.