

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

ANTHONY J. QUINN,

Defendant-Appellee.

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UNPUBLISHED

May 23, 1997

No. 195775

Recorder's Court

LC No. 95-11830

Before: McDonald, P.J., and Reilly and O'Connell, JJ.

PER CURIAM.

Defendant, who was fifteen years old at the time of the events below, was bound over for trial on charges of first-degree criminal sexual conduct, MCL 750.520b; MSA 28.788(2), assault with intent to rob while armed, MCL 750.89; MSA 28.284, and three counts of armed robbery. MCL 750.529; MSA 28.797. Following a *Walker*<sup>1</sup> hearing, the trial court concluded that a confession made by defendant had not been made voluntarily, and ordered the confession suppressed. The prosecution now appeals by leave granted. We vacate the order appealed and remand.

A confession is voluntary when it is “the product of an essentially free and unconstrained choice by its maker.” *People v Cipriano*, 431 Mich 315, 334; 429 NW2d 781 (1988), quoting *Culombe v Connecticut*, 367 US 568, 602; 81 SCt 1860; 6 L Ed 2d 1037 (1961). When evaluating the voluntariness of a confession, the trial court must consider the totality of the circumstances. *Cipriano*, *supra*. The “totality of the circumstances” test is also used in the context of a juvenile’s confession. See *People v Good*, 186 Mich App 180, 189; 463 NW2d 213 (1990).

However, this Court has enumerated several factors that *must* be considered when examining the circumstances surrounding a juvenile’s confession, such as (1) whether the requirements of *Miranda v Arizona*, 84 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966), have been met and whether the defendant clearly understood and waived those rights, (2) the degree of police compliance with the safeguards mandated by the juvenile court rules, (3) the presence of a parent, custodian, or guardian, and (4) the juvenile’s personal background. *Good*, *supra*, 189. A court must also consider the defendant’s age, educational level and intelligence level, and the extent of the defendant’s prior

experience with the police; the length of the detention before the statement; the repeated and prolonged nature of the questioning; and, whether the defendant was injured, intoxicated, in ill health, physically abused or threatened with abuse, or deprived of food, sleep, or medical attention. *Id.*

The issue of the voluntariness of a confession is a question of law for the court's determination. *People v Etheridge*, 196 Mich App 43, 57; 492 NW2d 490 (1992). When reviewing the trial court's conclusion concerning the voluntariness of a confession, "this Court examines the entire record and makes an independent determination of voluntariness. However, this Court, recognizing the trial court's superior ability to view evidence, gives deference to the trial court's findings unless they are clearly erroneous." *Id.*

In the present case, the trial court based its decision that defendant's confession was not voluntary primarily on one factor. The court noted that because defendant was under the age of seventeen, he would normally enjoy the protections of MCL 764.27; MSA 28.886, which articulates several procedural safeguards that must be satisfied when one under seventeen is arrested.<sup>2</sup> The court recognized that, in light of the crimes of which defendant was accused, the automatic waiver statute was implicated, see MCL 600.606; MSA 27A.606, but emphasized that at the time of defendant's arrest and confession, he had not yet been charged as an adult. Because of this lapse, the court reasoned that defendant remained entitled to the protections of MCL 764.27; MSA 28.886, until waiver occurred and defendant was formally charged as an adult. In accordance with its interpretation of the MCL 764.27; MSA 28.886, the court weighed heavily the failure of law enforcement officers to comply with its requirements when evaluating the totality of the circumstances.

We believe the court's conclusion that MCL 764.27; MSA 28.886, applied to the present case to be incorrect as a matter of law. As set forth in MCL 712A.2(a)(1); MSA 27.3178(598.2)(a)(1), the "juvenile division of the probate court has jurisdiction over a child 15 years of age or older who is charged with a violation of [certain enumerated felonies] only if the prosecuting attorney files a petition in juvenile court instead of authorizing a complaint and warrant." This finer point of the relevant statute was emphasized in *People v Spearman*, 195 Mich App 434, 444-445; 491 NW2d 606 (1992) (emphasis in original), rev'd on other grounds *People v Veling*, 443 Mich 23, 42; 504 NW2d 456 (1993), which stated that "[p]robate courts have exclusive jurisdiction with regard to [minors between the age of fifteen and seventeen who are accused of committing certain enumerated felonies] *only* if the prosecutor chooses to proceed against them as minors by filing a petition with the probate court." While *Spearman* deviates to some extent from the language of the statute itself, the thrust of each is substantially identical.

Thus, in contrast to the conclusion reached by the trial court, the circuit court has jurisdiction over juveniles between the age of fifteen and seventeen accused of certain enumerated felonies until such time as it is divested of that jurisdiction by the filing of a petition in the probate court. Therefore, in the instant case, the circuit court had jurisdiction over defendant until such time as the prosecution filed a petition in probate court. Because there is no indication that any such petition was ever filed, the procedural safeguards set forth in MCL 764.27; MSA 28.886, were not implicated in the present case.

The trial court, therefore, erred in considering the lack of compliance with MCL 764.27; MSA 28.886, when evaluating the totality of the circumstances surrounding defendant's confession.

The balance of the trial court's written opinion is insufficient to allow this Court to conduct a meaningful review of the admissibility of the defendant's confession. The court mentioned only the defendant's youth and the failure of the police to take adequate steps to notify defendant's parents. Accordingly, we vacate the order appealed and remand the matter to the trial court to reconsider the totality of the circumstances surrounding defendant's confession.

Vacated and remanded.

/s/ Gary R. McDonald  
/s/ Maureen Pulte Reilly  
/s/ Peter D. O'Connell

<sup>1</sup> *People v Walker (On Rehearing)*, 374 Mich 331, 338; 132 NW2d 87 (1965).

<sup>2</sup> The most significant safeguard for purposes of the instant case is the requirement that the juvenile be taken "immediately" to the juvenile division of the probate court upon arrest, rather than to the police station.