

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

BRIAN J. ROSE,

Defendant-Appellee.

---

UNPUBLISHED  
October 20, 2000

No. 223153  
Wayne Circuit Court  
Criminal Division  
LC No. 99-003712

Before: McDonald, P.J., and Sawyer and White, JJ.

PER CURIAM.

Plaintiff appeals by delayed leave granted the trial court's order suppressing defendant's statements. We reverse and remand for further proceedings. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant is charged with criminal sexual conduct in the third degree (CSC III), the victim being at least thirteen years of age but less than sixteen years of age, MCL 750.520d(1)(a); MSA 28.788(4)(1)(a). He moved to suppress inculpatory verbal and written statements. At the evidentiary hearing, the investigating officer testified that defendant voluntarily appeared at the police station to discuss his contact with complainant. Defendant was told that he was not under arrest and that he was free to leave. During a conversation, defendant acknowledged that he had sexual intercourse with complainant. After being informed that complainant was only thirteen years of age, defendant began to cry. At that point, he was advised of his *Miranda* rights. He waived his rights, and continued the interview. Defendant also made a written statement.

Defendant testified to a somewhat different version of the interview. He testified that once the victim's age was established, the atmosphere of the interview changed, and he was asked pointed questions regarding his activities with the victim in a manner that led him to believe he was no longer free to leave. He further believed he was not free to leave because there were two officers in the interview room with him, and a third, very large, officer periodically entered the room and stood in the doorway asking questions. Defendant testified that he was so upset when his *Miranda* rights were given, that he

did not read them and did not understand them. He gave a written statement because he was told it was in his best interest to do so.

The trial court suppressed defendant's statements, finding that because defendant reasonably believed that he was not free to leave, the interrogation was a custodial one and defendant should have been advised of his rights at the outset of the interview. The trial court also found that defendant's statements were the result of psychological coercion.

A statement made by an accused during a custodial interrogation is inadmissible unless the accused voluntarily, knowingly, and intelligently waived his or her Fifth Amendment rights. *Miranda v Arizona*, 384 US 436, 444; 86 S Ct 1602; 16 L Ed 2d 694 (1966). A custodial interrogation is questioning initiated by law enforcement officers after the accused has been taken into custody or deprived of his or her freedom in a significant way. *People v Zahn*, 234 Mich App 438, 449; 594 NW2d 120 (1999). The ultimate question of whether a person is in custody and thus entitled to *Miranda* warnings is a mixed question of law and fact which we decide de novo on appeal. However, absent clear error, we defer to the trial court's historical findings of fact. *People v Mendez*, 225 Mich App 381, 382-383; 571 NW2d 528 (1997). Compliance with *Miranda* does not dispose of the issue of the voluntariness of a confession. *People v Godboldo*, 158 Mich App 603, 605-606; 405 NW2d 114 (1986). The voluntariness of a confession is evaluated under the totality of the circumstances, with consideration given to the duration of detention and questioning, the defendant's age, education, intelligence, and experience, the delay in any arraignment, the defendant's physical and mental state, and whether the defendant was threatened or promised leniency. *People v Givans*, 227 Mich App 113, 121; 575 NW2d 84 (1997). No single factor is determinative. *People v Fike*, 228 Mich App 178, 182; 577 NW2d 903 (1998).

Plaintiff argues that the trial court erred by suppressing defendant's statements. We agree, reverse the trial court's decision, and remand for further proceedings. The trial court erred by finding that defendant was in custody, and therefore entitled to *Miranda* warnings from the outset. Defendant agreed to speak with the police, and drove himself to the station. He was informed prior to the interview that he was not under arrest and that he was free to leave. At no time was defendant told that he was not free to leave. The door was left open, and the large police officer was only present intermittently. Any interview conducted by a police officer has a certain coercive aspect to it, simply because the officer is part of the law enforcement system. However, *Miranda* warnings are not required every time a police officer asks questions of a person. *Mendez, supra*, 383-384. The officer's failure to tell defendant that he was being investigated for CSC did not alter the fact that defendant was told he was free to leave, or render the interview a custodial one. Under the totality of the circumstances, defendant's perception that he was not free to leave before his admission regarding having had sex with the victim was not reasonable. Defendant was not entitled to *Miranda* warnings at the outset of the interview because he was not subject to custodial interrogation at that time. *Zahn, supra; Mendez, supra*, 383-384.

Furthermore, we find that under the totality of the circumstances, defendant's statements were knowingly and voluntarily made, and were not the product of psychological coercion. The investigating officer's failure to inform defendant of the nature of the investigation did not render defendant's

statements involuntary, especially given that the officer did not engage in active misrepresentation regarding his investigation. *People v Hicks*, 185 Mich App 107, 113; 460 NW2d 569 (1990). Defendant, who was twenty-one years of age and had completed three years of college, acknowledged that soon after the interview began, he discerned the focus of the officer's inquiries. At no time during the interview was defendant either threatened or promised leniency.<sup>1</sup> The entire encounter lasted approximately one hour. Although defendant cried during the encounter, and the trial court credited his testimony that he did not read his Miranda rights because he was too distraught, although he initialed them, the evidence does not support a finding that defendant was so distraught that he was unable to understand his rights. The trial court erred by concluding that defendant's statements were the product of psychological coercion. We find that under the totality of the circumstances, defendant's statements were knowingly and voluntarily made. *Givans, supra*.

The trial court's decision suppressing defendant's statements is reversed, and this case is remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Gary R. McDonald  
/s/ David H. Sawyer  
/s/ Helene N. White

---

<sup>1</sup> The officer's statement that it would be in defendant's best interest to write out a statement does not constitute a promise of leniency so as to render defendant's statement the product of psychological coercion.