

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

GREGORY JONES,

Defendant-Appellee.

UNPUBLISHED
February 23, 2001

No. 227021
Wayne Circuit Court
LC No. 99-011965

Before: Meter, P.J., and Neff and O'Connell, JJ.

MEMORANDUM.

Plaintiff appeals as of right the dismissal of a first-degree murder charge entered after the trial court granted defendant's motion to suppress. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant moved below to suppress his statements, and the trial court held a hearing in accord with *People v Walker*, 374 Mich 331; 132 NW2d 87 (1965). The parties stipulated that defendant was in custody as of 8:25 p.m. on October 8, 1999, and that he made a statement at 5:33 p.m. on October 11, at least 70 hours after his arrest. Defendant made a second statement at 9:00 p.m. At the conclusion of the hearing, the trial court granted the motion to suppress, finding that no emergency or other extraordinary circumstance existed to justify defendant's detention in excess of 48 hours without a judicial determination of probable cause.

In *People v Manning*, __ Mich App __; __ NW2d __ (Docket No. 224898, issued 12/15/2000), this Court held that automatic exclusion of a confession is not required where a statement is made more than 48 hours after a warrantless arrest. A delay of more than 48 hours in the arraignment presumptively violated the Fourth Amendment, but an unnecessary delay does not require automatic suppression. Slip op at 17. The trial court must consider whether the statement was voluntary based on the totality of the circumstances. *Id.*; *People v Cipriano*, 431 Mich 315, 333-334; 429 NW2d 781 (1988). The Court reversed and remanded for further proceedings.

Here, as in *Manning*, *supra*, the trial court suppressed defendant's statements solely on the basis of the delay in arraignment. The trial court was required to consider the voluntariness of the statements based on the totality of the circumstances, and could not rely solely on delay. On remand, the trial court is directed to make this determination.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Patrick M. Meter
/s/ Janet T. Neff
/s/ Peter D. O'Connell