STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of TERRANCE LEWIS, Minor.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellee,

v

TERRANCE LEWIS,

Respondent-Appellant.

UNPUBLISHED
July 27, 2004

No. 252464
Genesee Circuit Court
Family Division
LC No. 03-116238-DL

Before: Bandstra, P.J., and Fitzgerald and Hoekstra, JJ.

PER CURIAM.

In this delinquency case, respondent, a minor, appeals by leave granted[1] from the order of disposition entered after a jury found him guilty of second-degree child abuse, MCL 750.136b(3). The order of disposition placed respondent on formal probation and in an out-of-state residential facility. We affirm.

Respondent argues on appeal that he was in police custody when initially questioned regarding the incident and therefore he should have been given *Miranda*[2] warnings. Respondent further argues that because neither the police, nor the protective services worker who was acting in concert with the police, gave him *Miranda* warnings, his subsequent statements should be suppressed. We disagree.

After a *Walker*[3] hearing, the trial court denied respondent's motion to suppress, finding that respondent was not in custody at the time of questioning and that his statements were voluntarily made. In reviewing suppression hearing findings, we defer to the trial court's factual findings unless they are clearly erroneous. *People v Herndon*, 246 Mich App 371, 395; 633 NW2d 376 (2001). However, we review de novo whether respondent was "in custody" at the

[1] Because respondent's appeal as of right was not timely filed, this Court considered it as an application for delayed leave, which this Court granted.

[2] *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

[3] *People v Walker (On Rehearing)*, 374 Mich 331; 132 NW2d 87 (1965).

time he made the statements, *id.*, as well as the trial court's ultimate decision regarding a motion to suppress, *People v Williams*, 240 Mich App 316, 319; 614 NW2d 647 (2000).

"*Miranda* warnings are necessary only when the accused is interrogated while in custody, not simply when he is the focus of an investigation." *Herndon, supra* at 395, citing *People v Hill*, 429 Mich 382, 387-393; 415 NW2d 193 (1987). "Custodial interrogation is questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *Herndon, supra* at 395-396 (internal quotations omitted), quoting *Hill, supra* at 387, quoting *Miranda, supra* at 444. The inquiry focuses on whether, under the totality of the circumstances, the defendant would have reasonably believed that he was not free to leave. *People v Mendez*, 225 Mich App 381, 382-383; 571 NW2d 528 (1997). The fact that an individual has become the focus of an investigation does not trigger the *Miranda* requirement absent a finding that the individual was in police custody. *Hill, supra* at 389-391. "The determination of custody depends on the objective circumstances of the interrogation rather than the subjective views harbored by either the interrogating officers or the person being questioned." *People v Zahn*, 234 Mich App 438, 449; 594 NW2d 120 (1999).

Here, the *Walker* hearing testimony established that everyone who had contact with the eleven-month-old victim that day was asked to go to the police station for questioning and everyone voluntarily complied with the request, including respondent and his mother. The mere fact that the interviews were conducted at the police station is not alone sufficient to trigger *Miranda* warnings. *Mendez, supra* at 383-384. Respondent's mother was on the premises during his interview and she neither objected to nor requested to attend his interview. Furthermore, the undisputed testimony at the *Walker* hearing established that respondent was neither threatened nor induced into speaking and never tried to leave nor requested to leave during the interview. Also, respondent had the intellectual ability to understand the nature of the questioning. Finally, respondent was allowed to return home after the interview. We find that these facts weigh heavily against a finding that respondent reasonably believed that he was not free to leave at any time during the interview. Therefore, we conclude that respondent was not in custody at the time of the interview, and thus, *Miranda* warnings were not required. Accordingly, the trial court did not err in denying the motion to suppress on this basis.

Furthermore, because *Miranda* warnings were not required, whether the protective services worker was acting in concert with the police is inapposite. Also, to the extent that respondent further argues that his interview with the protective services worker amounted to an interrogation, and therefore, *Miranda* warnings were required before the questioning began, his argument is without merit because *Miranda* warnings are necessary only when the accused is interrogated *while in custody*. *Herndon, supra* at 395. Because respondent was not in custody at the time of the interrogation, *Miranda* warnings were not required.

Respondent also argues that his statements were involuntary, and therefore, should have been suppressed. In support of this assertion, respondent contends that he was not read his *Miranda* rights, he was only twelve years old at the time of the interview, he had no prior experience with the police, he was separated from his mother at the police station, he was intellectually deficient, he was held at the police station for over three hours, the police delayed formal arrest, and the interviewing techniques used during his interview were coercive and designed to elicit incriminating responses.

Even if respondent were in custody at the time of the interview, his statements would not warrant suppression unless they were involuntary. *People v Cipriano*, 431 Mich 315, 331; 429 NW2d 781 (1988). The test of voluntariness is whether, considering the totality of all the surrounding circumstances, the challenged statement was the product of an essentially free and unconstrained choice by its maker or whether the maker's will has been overborne and his capacity for self-determination critically impaired." *People v Peerenboom*, 224 Mich App 195, 198; 568 NW2d 153 (1997), quoting *Cipriano, supra* at 333-334 (citations omitted). With regard to the admissibility of a juvenile's statements, the factors to be considered in applying the totality of the circumstances test include:

> (1) whether the requirements of *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966), have been met and the defendant clearly understands and waives those rights, (2) the degree of police compliance with MCL 764.27; MSA 28.886 and the juvenile court rules, (3) the presence of an adult parent, custodian, or guardian, (4) the juvenile defendant's personal background, (5) the accused's age, education, and intelligence level, (6) the extent of the defendant's prior experience with the police, (7) the length of detention before the statement was made, (8) the repeated and prolonged nature of the questioning, and (9) whether the accused was injured, intoxicated, in ill health, physically abused or threatened with abuse, or deprived of food, sleep, or medical attention. [*People v Givans*, 227 Mich App 113, 121; 575 NW2d 84 (1997).]

The issue here regarding whether the *Miranda* requirements were met is but one of the factors to be considered in applying the totality of the circumstances test and is not outcome determinative. Furthermore, there was no indication that the police did not comply with both MCL 764.27, which involves procedures to be used when a juvenile is arrested, and with the juvenile court rules. Again, the testimony from the *Walker* hearing established that the police did not take respondent into custody until a petition had been filed and approved by the court. Respondent's mother was present at the police station during the interview and neither objected to the interview nor asked to attend the interview. Although respondent's I.Q. was on the low side at that time, his report card grades reflected an average level of intelligence. Furthermore, the record reveals that respondent was at the police station for no more than one hour before he was interviewed, which was not unreasonable considering the number of people that were interviewed that night regarding the incident. Furthermore, after the interview, which lasted approximately one hour, respondent was reunited with his mother. A protective services supervisor conducted the interview with respondent, using the forensic interviewing protocol, which requires the use of open-ended, non-leading questions. Finally, there was no evidence presented that respondent was injured, intoxicated, ill, abused, threatened, or deprived in any way during the interview. While the police officer's comment at the end of the interview regarding respondent being the only person alone with the victim that day may have been inappropriate, this was not enough to render the entire interview coercive. Given the totality of the circumstances, we conclude that respondent's statements were voluntary. Therefore, the trial court did not err in admitting the statements at trial.

Finally, respondent argues that without his statements, the evidence was insufficient to establish guilt beyond a reasonable doubt. However, in light of our conclusion that respondent's statements were voluntary and properly obtained, they were properly before the jury, and thus

this argument is inapposite. Nonetheless, we note that with the inclusion of respondent's statements, there was sufficient evidence for which a rational jury could have found that the essential elements of second-degree child abuse were proven beyond a reasonable doubt. *People v Knowles*, 256 Mich App 53, 57-58; 662 NW2d 824 (2003); MCL 750.136b(3).

Affirmed.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Joel P. Hoekstra