

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

EUGENE WILLIAMS,

Defendant-Appellee.

UNPUBLISHED

August 31, 2004

No. 234442

Wayne Circuit Court

LC No. 00-011044

Before: Hoekstra, P.J., and Cooper and Kelly, JJ.

COOPER, J. (*dissenting*).

I respectfully dissent from the majority opinion of my colleagues, as I believe that the trial court did not err in ordering the suppression of defendant's confession.

Defendant, a minor, confessed to capital charges without the benefit of the presence of his parent or guardian. Although he knew defendant was a minor, Officer Derryck Thomas admittedly interrogated defendant before confirming that someone had attempted to contact his parents. Officer Thomas failed to contact defendant's parents himself because "it wasn't [his] job." Furthermore, no one attempted to contact defendant's parents while he waited for several hours at the police station to be transferred to a youth home following his interrogation.

This Court has often found juvenile confessions admissible where the juvenile was not brought immediately before the juvenile court, but the juvenile's parent or guardian has been present or was contacted in those situations.¹ It is clear in the court rules and juvenile code that a

¹ See *People v Hana*, 443 Mich 202, 205-206; 504 NW2d 166 (1993) (the police attempted to contact defendant's parents, but defendant continued to incriminate himself after several warnings to remain silent until his parent or attorney arrived); *People v Givans*, 227 Mich App 113, 116; 575 NW2d 84 (1997) (the police contacted the defendant's mother who consented to an interrogation outside of her presence); *People v Rode*, 196 Mich App 58, 70; 492 NW2d 483 (1992), rev'd sub nom in part on other grounds *Hana*, *supra* (both the defendant and his mother signed the waiver form and mother remained throughout interrogation); *People v Good*, 186 Mich App 180, 183, 190; 463 NW2d 213 (1990) (the defendant was interrogated in the presence of his parent); *People v Irby*, 129 Mich App 306, 320-321; 342 NW2d 303 (1983) (both defendant and his step-father signed the waiver form and step-father remained throughout interrogation); *People v Inman*, 54 Mich App 5, 10; 220 NW2d 165 (1974) (the defendant

(continued...)

juvenile's parent or guardian must be contacted immediately when he or she is taken into custody.² The court rule and statute are not discretionary; the immediate notification of the juvenile's parent or guardian is mandatory.³

The officers arresting and interrogating defendant knowingly violated this clear rule. Combined with the facts that Officer Thomas told defendant that an attorney was not immediately available for him and failed to ascertain defendant's actual level of understanding, the trial court properly ordered the suppression of defendant's statement. I would, therefore, affirm.

/s/ Jessica R. Cooper

(...continued)

indicated that he did not want his parents present for the interrogation).

² See MCR 3.933(C) (the arresting officer must notify the court immediately when he has detained a juvenile, but is unable to reach the parent or guardian to promptly take custody of the juvenile); MCL 712A.14(1) (the arresting officer "shall immediately attempt to notify" the parent or guardian of a juvenile who has been detained).

³ See *People v Grant*, 445 Mich 535, 542; 520 NW2d 123 (1994) ("[U]se of the term 'shall' rather than 'may' indicates mandatory rather than discretionary action."); *Old Kent Bank v Kal Kustom Enterprises*, 255 Mich App 524, 532-533; 660 NW2d 384 (2003) (referencing statutory sections using the mandatory term "must").