

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

BRITTANY BIANCA WALKER,

Defendant-Appellee.

UNPUBLISHED

October 28, 2008

No. 284233

Saginaw Circuit Court

LC No. 07-029160-FJ

Before: Hoekstra, P.J., and Cavanagh and Zahra, JJ.

PER CURIAM.

Plaintiff appeals by leave granted the trial court's order granting defendant's motion to suppress her confession. Because we conclude that, based on the totality of the circumstances, defendant's confession was voluntary, we reverse.

I

On February 7, 2007, defendant, a juvenile, was arrested by police conducting a search of her house pursuant to a warrant. Defendant was brought to the police department headquarters and, upon being questioned, confessed to the subsequently charged crimes.

Plaintiff commenced proceedings against defendant in the family court to waive jurisdiction over defendant to the trial court. After a phase one probable cause hearing, defendant was charged with conspiracy to commit first-degree home invasion, MCL 750.110a(2); MCL 750.157a, first-degree home invasion, MCL 750.110a(2), two counts of felonious assault, MCL 750.82, and possession of a firearm during the commission of a felony, MCL 750.227b. After a phase two hearing, the family court waived jurisdiction of defendant to the trial court.

Defendant moved the trial court to suppress her confession on the basis that it was obtained in violation of MCL 764.27. Concluding that defendant's confession was involuntary under the totality of the circumstances and that suppression of a statement obtained in violation of MCL 764.27 is required if the delay in bringing the juvenile before the family court is for the purpose of extracting a confession, the trial court suppressed defendant's confession. We granted plaintiff's application for leave to appeal. *People v Walker*, unpublished order of the Court of Appeals, entered April 29, 2008 (Docket No. 284233).

II

On appeal, plaintiff claims that the trial court erred in suppressing defendant's confession because it focused on the reason for taking defendant to police headquarters and it failed to fully and accurately consider the totality of the circumstances. We agree.

A

We review de novo a trial court's ultimate decision on a motion to suppress. *People v Akins*, 259 Mich App 545, 563; 675 NW2d 863 (2003). However, we will not disturb a trial court's findings of fact following a suppression hearing unless the findings are clearly erroneous. *People v Givans*, 227 Mich App 113, 119; 575 NW2d 84 (1997). A trial court's factual findings are clearly erroneous if, after a review of the record, we are left with a definite and firm conviction that a mistake has been made. *Id.*

B

The confession of a juvenile is admissible if, under the totality of the circumstances, the statement was voluntary. *In re SLL*, 246 Mich App 204, 209; 631 NW2d 775 (2001). "The test of voluntariness is whether, considering the totality of all the surrounding circumstances, the confession is the product of an essentially free and unconstrained choice by its maker, or whether the accused's will has been overborne and his capacity for self-determination critically impaired." *Givans, supra* at 121. In applying the totality of the circumstances test to determine the admissibility of a juvenile's confession, a court must consider the following factors:

(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. [*Id.*]

Below, defendant moved to suppress her confession on the basis that she was interrogated in violation of MCL 764.27. This statute provides:

Except as otherwise provided in . . . section 600.606 . . . if a child less than 17 years of age is arrested, with or without a warrant, the child shall be taken immediately before the family division of circuit court of the county where the offense is alleged to have been committed, and the officer making the arrest shall immediately make and file, or cause to be made and filed, a petition against the child

A statement obtained in violation of MCL 764.27 is not subject to automatic suppression. *People v Hall*, 249 Mich App 262, 267; 643 NW2d 253 (2002), remanded in part on other

grounds 467 Mich 888 (2002); *People v Good*, 186 Mich App 180, 188; 463 NW2d 213 (1990). Rather, as indicated above, the violation is one factor to consider in applying the totality of the circumstances test. *Hall, supra* at 267.¹

In considering the totality of the circumstances, we conclude defendant's statement was voluntary. The interviewing officers informed defendant of her *Miranda* rights, and defendant clearly understood and waived her rights. Defendant was 16 years and 10 months old, in the eleventh grade, and "was doing okay in school." She received As, Bs, and Cs, and was on track to graduate; she had no learning problems. At the time of questioning, defendant was not injured, intoxicated, in ill health or physically abused, nor was she threatened with abuse or deprived of food, sleep, or medical attention. Although an adult parent was not present during the questioning, defendant, as acknowledged by the trial court in ruling on plaintiff's motion for reconsideration, had prior experience with the police.

The arresting officer failed to comply with MCL 764.27. Rather than immediately bringing defendant before the family court, the officer brought defendant to the police department headquarters for the purpose of questioning her regarding her involvement in the crimes. However, the officer believed that defendant would be treated as an adult under the automatic waiver provision of MCL 600.606 and MCL 764.1f. Because MCL 764.27 does not apply to juveniles charged as adults, *People v Brooks*, 184 Mich App 793, 797-798; 459 NW2d

¹ We recognize that in *People in Jordan*, 149 Mich App 568, 577; 386 NW2d 594 (1986), this Court adopted "the *White* exclusionary rule" to violations of MCL 764.27. This rule, set forth in *People v White*, 392 Mich 404; 221 NW2d 357 (1974), provided that not every confession obtained during an unreasonable prearrest delay, see MCL 764.13, must be excluded, but that where the delay was used as a tool to extract the confession, the exclusionary rule requires suppression of the confession. *Id.* However, in *People v Cipriano*, 431 Mich 315, 333-334; 429 NW2d 781 (1988), the Supreme Court, after examining its prior case law, including *White*, regarding the suppression of a confession obtained in MCL 764.13, which it noted had been labeled "schizophrenic," held that "unnecessary delay" is only one factor in determining whether the statement was voluntary. The Supreme Court stated:

In relegating prearrest delay to its status as one of several factors to be considered in judging the voluntariness of a confession, we do not condone the failure of the police to comply with the statutes. An arrested suspect should not be subjected to prolonged, unexplained delay prior to arraignment; and such delay should be a signal to the trial court that the voluntariness of a confession obtained during this period may have been impaired. However, we hold that an otherwise competent confession should not be excluded solely because of a delay in arraignment. [*Id.* at 335.]

From *Cipriano*, we conclude that a violation of MCL 764.27 is only factor in determining the voluntariness of a juvenile's confession. See *Good, supra* at 188. We further believe that, if the violation was used solely as a tool to extract a confession, the violation may weigh heavily toward a conclusion that the confession was involuntary.

313 (1990), the arresting officer did not intentionally violate the statute.² Moreover, we disagree with the trial court's conclusion that the periods of detention and questioning were of a prolonged nature. Defendant was detained approximately an hour before she was questioned,³ and within forty minutes of being questioned, defendant admitted, in some form, to her involvement in the crimes. The interviewing officers then took a 20-minute break before questioning defendant for approximately another 40 minutes. There is no indication that the officers engaged in any coercive behavior.⁴

Considering the totality of the circumstances, defendant's confession was the product of a free and unconstrained choice. *Givans, supra* at 121. Accordingly, we reverse the trial court's order suppressing defendant's confession.

Reversed.

/s/ Joel P. Hoekstra
/s/ Michael J. Cavanagh
/s/ Brian K. Zahra

² The purpose of suppressing a confession obtained in violation of a court rule is to deter official misconduct. See *Cipriano, supra* at 332; *Good, supra* at 187-188. Here, because there was no official misconduct, suppressing defendant's confession would not serve to deter any future misconduct.

³ This delay was caused by the arresting officer's completion of the search of defendant's house.

⁴ The defendant testified that she decided to tell the interviewing officers the truth when one of the officers told her that he knew she was lying.