STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 11, 2012
v	No. 308482 Genesee Circuit Court
MARK ANTHONY JONES, JR., Defendant-Appellant.	LC No. 11-028887-FC

Before: GLEICHER, P.J., and OWENS and BOONSTRA, JJ.

GLEICHER, P.J., (*dissenting*).

On November 18, 2010, 14-year-old Mark Jones confessed to shooting Merlyne Wray. The majority concludes that Jones' confession was voluntary. Because the totality of the circumstances demonstrates that the police coerced Jones' confession and disobeyed a Michigan statute mandating the juvenile's "immediate" appearance before the family court, I respectfully dissent. Jones should proceed to a trial untainted by the admission of his illegally-obtained confession.

I. UNDERLYING FACTS AND PROCEEDINGS

On November 17, 2010 at approximately 8:30 p.m., a Flint police officer arrested Mark Jones, Jr. at his aunt's home. The officer handcuffed Jones and placed him in a police cruiser. Jones remained handcuffed in the vehicle for about an hour before being transported to the Flint police station. Once there, he was lodged in a locked room, alone. The police made no attempt to contact Jones' parents, despite that Jones was only 14 years old.

Jones' father, Mark Jones, Sr., somehow learned of his son's arrest. He arrived at the police station before midnight and spoke with Sergeant Shawn Ellis about his son. Ellis informed Mark Jones, Sr. "we'll call you when we finish[.]" Ellis did not allow Mark Jones, Sr. to see his minor son or to be present during his custodial interrogation.

Meanwhile, Jones remained in the locked room. At 2:22 a.m. on November 18, Ellis and Flint police officer Brett Small began interrogating Jones. Ellis prefaced the questioning by stating that the officers sought to find out "what type of person you are," to determine whether

Jones was "somebody who is gonna be honest with us," "somebody who's gonna admit they made a mistake." Ellis declared, "We can explain away mistakes," and continued, "We need to find out if you're cold blooded or if something went wrong, people make mistakes."[1]

During the next eight minutes Jones answered general background questions. He informed the officers that he was in the seventh grade and had failed two grades, including the seventh. Jones admitted to having shared a marijuana "blunt" with two other people before his arrest but denied being "high." When asked whether he saw a psychiatrist or a psychologist, Jones shook his head, indicating that he did not.[2] Jones also denied using any "pills" in the day leading up to his arrest, a response that the officers should viewed with skepticism. Jones had been hospitalized the preceding evening after ingesting his aunt's prescription medication. Ellis and Small knew of this hospitalization.

After these preliminary questions and answers, Ellis pulled a card from his pocket setting forth the *Miranda* cautions. Ellis read the first five *Miranda* rights quickly and without explanation, asking after each "do you understand this?" Jones answered affirmatively. Ellis read the sixth statement as follows: "Do you wish to waive your right to have an attorney present and discuss this matter with me?" Without waiting for an answer, Ellis continued: "What number six means is do you want to talk to Brett and I right now?" Jones answered, "I'll talk right now."

During the next thirty minutes, Ellis and Small did most of the talking. Jones either remained silent or gave short, perfunctory answers denying involvement in the crime. Ellis and Small attempted various techniques to elicit a confession. They implored Jones to "stand up and . . . be a man." They claimed that the evidence they had gathered against Jones was "just overwhelming," and told the young man, "right now you look like a cold-blooded killer."

The interrogators then shifted gears by suggesting both subtly and directly that Jones should confess for the sake of his family. The officers claimed that Jones' cousin, Antonio, "is knee-deep into this" and had been at the police station "bawling like a baby." Small told Jones that Antonio was "facing the same time" as Jones "because of what *you* [Jones] did." Small informed Jones that he had spoken with Jones' mother that evening.[3] He continued, "You owe it to your mom and everybody else in your family 'cause they're gonna be victims too because of this, you owe it to *them*." Small asserted that when the media obtained the story of Jones' arrest Jones would already be "locked up" and his family would have to "pay the price for that. . . . You owe it to them." Jones continued to proclaim his innocence and announced that he wanted

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[1] The interview was videotaped but has not been transcribed. The sound quality at times is poor. Many of Jones' responses were made in a soft voice and are difficult to understand.

[2] Evidence introduced during the *Walker* hearing indicated that Jones had been diagnosed with an attention deficit hyperactivity disorder.

[3] Small explained at the *Walker* hearing that he talked by phone with Tiniya Tyler, Jones' mother, before Jones' arrest. Small recalled that Tyler asked if Jones was in custody. Small replied that he was not, which was accurate at the time of their conversation.

to go home. Ellis showed Jones a statement written by or on behalf of Antonio, and asked Jones to read it. Jones appears to have been unable to do so; Ellis read it aloud for him, quoting Antonio as stating that Jones had admitted to him, "I shot her."

At 3:00 a.m., Ellis and Small walked out of the interview room, advising that they would return with a gunshot residue test kit. Jones yawned and placed his head on the table. After a few minutes Small returned. Small and Jones engaged in small talk about basketball and Jones' "future." Jones yawned again during this discussion. Small then volunteered, "Like I said I had a little conversation with your mom." Jones inquired as to "what she had said." Small replied, "Your mom loves you to death, but she's just like, I don't know what to do . . . I tried and tried and tried to get him to do right, and he don't want to do right. Is she right about that?" Actually, Small had not spoken to Jones' mother since before Jones' arrest.

During the second hour of questioning, Small persistently returned to the subject of Jones' family. Small told Jones that family members living at Jones' aunt's home were "so deep involved because there's evidence in their house." When Ellis re-entered the room a short time later, Small summarized that he had informed Jones that "we had to bring everybody down . . . we had the [aunt's] whole house down here except the babies," "you done pulled everybody in, man. . . . It's up to you to do the right thing to get these people out of this mess." Small continued, "You pulling everyone else into this, you [sic] making them accessories after the fact." Jones remained virtually silent.[4]

At about 3:40 a.m., after witnessing yet another yawn from Jones, Ellis expressed frustration with Jones' repeated denials of involvement, stating "you need to tell me pretty fast" why Jones' fingerprints were found in the victim's house. Jones again denied being at the scene of the crime. At about 3:45 a.m., Ellis told Jones that the interview was over and that Jones would be "lodged in the regional detention center for murder and carjacking." Ellis then informed Jones that Jones' father "was down here earlier – I told him to go home, I would give him a call." Ellis asked for the phone number, and Jones provided it. Ellis then referenced the fact that Jones' father "kinda went through some problems in his day" and stated, "He did the right thing, I know he'd tell you to do the right thing." Ellis and Small terminated the interrogation at 3:48 a.m. At the *Walker* hearing, Ellis testified that he "was tired" and "gave up on [the] interview when I felt that it was the point where he wouldn't – wasn't going to cooperate or tell the truth."

Flint police officer Harlon Green watched some of the interrogation while it was on-going, and asked to speak with Jones. Green was familiar with Jones' family; in 1995 he had arrested Mark Jones, Sr.[5] Ellis and Small turned Jones over to Green and observed Green talking to Jones in a hallway, but could not hear what was said. Within five minutes, Green told Ellis

[4] Small also threatened that the prosecutor was likely to charge Jones as an adult and he would be imprisoned "with rapists and killers and everything else."

[5] Mark Jones, Sr. testified at the *Walker* hearing that during his visit to the police station in search of his son, he recognized Green and the two had eye contact.

that Jones wanted "to talk to you now." Jones was crying. At 4:04 a.m., Jones, Ellis and Small returned to the interview room and Jones confessed.

At the *Walker* hearing, Green testified that he had spoken to Jones and told him that he "needed to cooperate." Green explained to Jones that he knew Jones' parents and had arrested Jones' father, "sent his dad to prison." He denied threatening Jones. According to Green, Jones "started being a little bit remorseful," and Green asked if he wanted to "go back and talk to Sergeant Ellis. And he gave me a nod, yes."

Jones testified differently. He claimed that Green warned that if he did not "let them know what happened [they would] send my dad back to prison, send my mom to jail." Other evidence introduced at the *Walker* hearing established that Jones was "pretty low average" in intelligence, had failing grades in school and was on probation with the juvenile court.

The trial court concluded that "what Mr. Green said to [Jones] . . . did affect his decision to cooperate with the police." Although the trial court found that Jones had made a "free choice, the unconstrained choice to confess," the trial court continued:

> And even though I would agree from the testimony Mr. Green's statements were threatening. I don't think anyone could see his statements as being other than threatening toward the juvenile when you look at it in the context it was made. But it was not threatening to the point it affected his free and unconstrained choice to come in and cooperate with the police[.]

II. GUIDING LEGAL PRINCIPLES

The United States Supreme Court "has emphasized that admissions and confessions of juveniles require special caution" to ensure that the juvenile's statements to police are voluntarily made. *In re Gault*, 387 US 1, 45; 87 S Ct 1428; 18 L Ed 2d 527 (1967). The Supreme Court first examined the vulnerabilities of juveniles subjected to custodial police questioning in *Haley v Ohio*, 332 US 596; 68 S Ct 302; 92 L Ed 224 (1948). In *Haley*, police interrogated a 15-year-old boy from "shortly after midnight . . . for about five hours." *Id.* at 598. Neither the boy's parents nor counsel were present. The boy finally confessed. He then agreed to sign a statement prefaced with a recitation of his "constitutional rights," which he agreed to waive. *Id.* The lower court found the confession voluntary, as did a jury. *Id.* at 599.

The United States Supreme Court declared, "We do not think the methods used in obtaining this confession can be squared with that due process of law which the Fourteenth Amendment commands." *Id.* The Court continued:

> What transpired would make us pause for careful inquiry if a mature man were involved. And when, as here, a mere child—an easy victim of the law—is before us, special care in scrutinizing the record must be used. Age 15 is a tender and difficult age for a boy of any race. He cannot be judged by the more exacting standards of maturity. That which would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens. This is the period of great instability which the crisis of adolescence produces. [*Id.*]

Nor was the Court persuaded that advising the boy of his constitutional rights eliminated the questioning's taint:

> But we are told that this boy was advised of his constitutional rights before he signed the confession and that, knowing them, he nevertheless confessed. That assumes, however, that a boy of fifteen, without aid of counsel, would have a full appreciation of that advice and that on the facts of this record he had a freedom of choice. We cannot indulge those assumptions. [*Id.* at 601.]

The Supreme Court reversed Haley's conviction, holding his confession involuntary.

In *Gallegos v Colorado*, 370 US 49; 82 S Ct 1209; 8 L Ed 2d 325 (1962), the Supreme Court again held that the circumstances surrounding a juvenile's custodial questioning violated the juvenile's due process rights. The petitioner in *Gallegos* was "a child of 14" who signed a confession after being questioned without his parents or a lawyer present. *Id.* at 49-50. After he confessed, the boy was detained for five days before being allowed to see his parents. *Id.* "The fact that petitioner was only 14 years old," the Court explained, "puts this case on the same footing as *Haley v Ohio*[.]" *Gallegos*, 370 US at 53. In *Gallegos* there was no evidence of "prolonged questioning," "the boy was advised of his right to counsel," and he "did not ask either for a lawyer or for his parents." *Id.* at 54. Nevertheless, the Court held his confession involuntary, reasoning:

> [A] 14-year-old boy, no matter how sophisticated, is unlikely to have any conception of what will confront him when he is made accessible only to the police. That is to say, we deal with a person who is not equal to the police in knowledge and understanding of the consequences of the questions and answers being recorded and who is unable to know how to protest his own interests or how to get the benefits of his constitutional rights.
>
> The prosecution says that the youth and immaturity of the petitioner and the five-day detention are irrelevant, because the basic ingredients of the confession came tumbling out as soon as he was arrested. But if we took that position, it would, with all deference, be in callous disregard of this boy's constitutional rights. He cannot be compared with an adult in full possession of his senses and knowledgeable of the consequences of his admissions. He would have no way of knowing what the consequences of his confession were without advice as to his rights—from someone concerned with securing him those rights—and without the aid of more mature judgment as to the steps he should take in the predicament in which he found himself. . . . To allow this conviction to stand would, in effect, be to treat him as if he had no constitutional rights. [*Id.*]

Five years after deciding *Gallegos*, the Supreme Court instructed in *Gault*, 387 US at 55:

> If counsel was not present for some permissible reason when [a juvenile's] admission was obtained, the greatest care must be taken to assure that the admission was voluntary, in the sense not only that it was not coerced or

> suggested, but also that it was not the product of ignorance of rights or of adolescent fantasy, fright or despair.

In *Gallegos*, 370 US at 55, the Supreme Court identified as a "guide to the decision of cases such as this . . . the totality of circumstances[.]" The Court continued:

> The youth of the petitioner, the long detention, the failure to send for his parents, the failure immediately to bring him before the judge of the Juvenile Court, [and] the failure to see to it that he had the advice of a lawyer or a friend--all these combine to make us conclude that the formal confession on which this conviction may have rested . . . was obtained in violation of due process. [*Id.* at 55 (citation omitted).]

Examination of the "totality of the circumstances" remains the framework for evaluating whether a confession made by a child or an adult qualifies as voluntary. In *Fare v Michael C*, 442 US 707, 725; 99 S Ct 2560; 61 L Ed 2d 197 (1979), the Supreme Court reaffirmed that courts must examine the "totality of the circumstances surrounding the interrogation[] to ascertain whether the accused in fact knowingly and voluntarily decided to forgo his right to remain silent and to have the assistance of counsel." The Court explained that the "totality of the circumstances" approach "mandates . . . inquiry into all the circumstances surrounding the interrogation." *Id.* The pertinent circumstances include "the juvenile's age, experience, education, background, and intelligence, and . . . whether he has the capacity to understand the warnings given him, the nature of his Fifth Amendment rights, and the consequences of waiving those rights." *Id.*

In *People v Givans*, 227 Mich App 113, 121; 575 NW2d 83 (1997), this Court enumerated as follows the factors that "must be considered" in determining whether a juvenile's statement is voluntary:

> (1) [W]hether 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 . . . 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.[6]

[6] Although not discussed in the analysis of this dissent, there appears to be sufficient record evidence to weigh the ninth *Givans* factor in Jones' favor. He was questioned in the dead of night, repeatedly yawned during the interrogation, and even laid his head down for a short rest when momentarily left alone.

While the *Givans* factors inform an inquiry into the voluntariness of a child's statement, they omit mention of the central element of the inquiry: whether a child freely decided to confess, or confessed because unfair and unacceptable pressures brought to bear on the child overcame his will. Intimidating, coercive police tactics designed to exploit a child's weaknesses are as unacceptable as physical abuse, a lengthy interrogation, or prolonged questioning.

> [T]he constitutional inquiry is not whether the conduct of state officers in obtaining the confession was shocking, but whether the confession was "free and voluntary; that is, [it] must not be extracted by any sort of threats or violence, nor obtained by any direct or implied promises, however slight, nor by the exertion of any improper influence." [*Malloy v Hogan*, 378 US 1, 7; 84 S Ct 1489; 12 L Ed 2d 653 (1964) (citation omitted, alteration in original).]

III. THE LEGAL PRINCIPLES, APPLIED

The police deliberately isolated 14-year-old Mark Jones, Jr. from his parents, questioned him for several hours in the middle of the night, failed to comply with the statutory requirement that any interrogation await an appearance in the family court, and threatened legal harm to his family if he refused to cooperate. The totality of these circumstances differs only marginally from those presented in *Haley* and *Gallegos.* Accordingly, I believe that Jones' confession was the product of coercion and should be suppressed.

Because Jones' confession was videotaped, virtually no facts are in dispute. The *Walker* hearing testimony diverged concerning only one pertinent issue: what Officer Green said to Jones immediately before Jones confessed, during the only portion of the interrogation that was not recorded. The trial court found from that testimony that "Mr. Green's statements were threatening." The majority minimizes this finding, asserting:

> We do not read the trial court's characterization of Green's statement as "threatening" to indicate that the trial court accepted defendant's allegation that Green explicitly threatened to arrest his mother and father unless he confessed, especially because the trial court found that the statement did not affect defendant's choice to make a voluntary and unconstrained confession and was threatening in "context." [*Ante* at 8.]

Although the trial court failed to indicate whether it found Jones' testimony more credible than Green's, the trial court indisputably found Green's interaction with Jones both "threatening" and "somewhat troubling." The trial court's choice of those words signifies that it did not accept Green's version of the conversation as a mere fatherly chat. Rather, the trial court concluded that Green did threaten Jones, the threat was "coercive" and "would have a tendency to . . . affect the juvenile's decision whether to . . . cooperate with the police[.]"

It is important that Green's threat, whatever its magnitude, be considered in conjunction with the surrounding circumstances, including that Jones had been subjected to other threats during the hours preceding Green's intervention. Indisputably, the police told Jones that his family members were "gonna be victims too because of this," that "it's up to you to do the right thing to get these people out of this mess." The officers insisted to Jones that by "pulling

everyone else into this you making them accessories after the fact." These statements were intended to intimidate and coerce Jones to confess.

In my view, the trial court and the majority err by isolating these threats (including Green's) from their context, particularly Jones' age and the absence of his parents. The majority compounds this error by ratifying the trial court's decision to simply tally the *Givans* factors supporting each side and to select the winner on that basis. Rather than taking "the greatest care" to assure that Jones' confession was voluntary by weighing the relevant circumstances and integrating them within a comprehensive context, the trial court proceeded piecemeal, scoring each *Givan* factor as an isolated unit. This constitutes clear error, as the voluntariness inquiry demands weighing some of the *Givans* factors more heavily than others, particularly a defendant's age and the absence of a parent. A court's determination of whether a confession was voluntarily given "depends upon a *weighing* of the circumstances of pressure against the power of resistance of the person confessing." *Dickerson v United States*, 530 US 428, 434; 120 S Ct 2326; 147 L Ed 2d 405 (2000) (quotation marks, citation and alteration omitted, emphasis added). "[T]icking off" the points scored for each side is relatively uncomplicated, but hardly suffices as a thoughtful, cumulative evaluation of the totality of the circumstances. See *Doody v Ryan*, 649 F3d 986, 1011 (CA 9, 2011) (characterizing such a method as "superficial"). Because a juvenile's confession requires special scrutiny, the crude counting method employed by the trial court and affirmed by the majority fails to satisfy constitutional standards.

For example, the first *Givans* factor addresses whether the police have fulfilled the *Miranda* requirements. While certainly a relevant question, that an officer read the *Miranda* cautions to a 14-year-old who has flunked two grades in school sheds little light on whether the child understood what they meant.[7] A 17-year-old high school student with average grades likely can comprehend the warnings with far greater sophistication than can an academically challenged 14-year-old. Thus, while reading the warnings to a child is important, the weight that should be assigned to this factor should vary according to the age and intellectual ability of the child.

The second *Givans* factor considers the degree of police compliance with MCL 764.27 and the juvenile court rules. MCL 764.27 provides in relevant part:

> [I]f 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 as provided in [MCL 712A.1-MCL 712A.31]. [Emphasis added].

The majority holds that the police complied with MCL 764.27 despite that Jones was not taken to the family division of the circuit court until 3:18 p.m. on November 18, long *after* he had been

[7] That Jones had previously been read his *Miranda* rights, at an even younger age, similarly says little about whether he understood them.

interrogated and confessed. Clearly, the Legislature enacted MCL 764.27 to protect a juvenile from police overreaching, and to insert an adult presence between the police and the child. The majority's determination that the police obeyed this statute confounds logic. By electing to begin questioning Jones at 2:20 a.m. rather than waiting until morning, the police disregarded the explicit statutory commandment that upon arrest, a child under 17 years of age must be taken immediately to the family court. See *People v Strunk*, 184 Mich App 310, 315; 457 NW2d 149 (1990).[8] Likely the police sought to benefit from the late hour, the possibility that Jones was tired, and the absence of a judge who would see to it that Jones' parents were involved. But regardless of the reasons the police interrogated Jones without waiting for a family court hearing, I simply cannot agree that the police obeyed the statute's letter or its spirit.

Unlike the majority and the trial court, I conclude that the violation of MCL 764.27 served to solidify Jones' isolation from any adult who could have assisted him. The majority's conclusion to the contrary, validating Jones's retention in custody for almost 18 hours before being brought before a family court judge nullifies the statute's plain words. The majority renders the statutory protection irrelevant in assessing the voluntariness of a juvenile's confession, instead transforming it into an inconvenience that may be easily avoided. If the majority is correct that MCL 764.27 is a mere trifle divested of meaning by an after-hours interrogation, I fail to see how compliance with the statute deserves to be weighted equally with a child's age and the presence or absence of his parents in considering the totality of the circumstances surrounding a juvenile's confession.

Ultimately, the voluntariness inquiry focuses on whether a juvenile's confession was the product of a free choice. In my view, age significantly informs that determination, and the trial court erred by placing the age factor on the same footing as all the others. "The difficulty a vulnerable child of 14 would have in making a critical decision about waiving his *Miranda* rights and voluntarily confessing cannot be understated." *Hardaway v Young*, 302 F3d 757 (CA 7, 2002). Jones' age of 14 factors critically in the voluntariness equation. A 14-year old child, particularly a 14 year old who has flunked two grades and has only low-average intelligence, is an easy target for intimidation. "[T]he younger the child, the more carefully we scrutinize police questioning tactics to determine if excessive coercion or intimidation or simple immaturity that would not affect an adult has tainted the juvenile's confession." *Id.* at 765. The Supreme Court observed in *Haley*, 332 US at 599, "A 15-year old lad, questioned through the dead of night by relays of police, is a ready victim of the inquisition." Jones' age, limited education and low-average intelligence weigh strongly against the voluntariness of his confession.

The absence of Jones' parents, combined with the officers' deliberate exclusion of Jones' parents from the interrogation, powerfully contradicts the voluntariness of Jones' confession. MCL 712A.14(1) provides that when a police officer lacking a court order takes a child into custody,

[8] Similarly, there is no record indication that the officers complied with MCR 3.933(C)(1)'s requirement that they "immediately contact the court" upon detaining the minor offender.

> he or she *shall immediately attempt to notify the parent or parents*, guardian, or custodian. While awaiting the arrival of the parent or parents, guardian, or custodian, a child under the age of 17 years taken into custody under the provisions of this chapter shall not be held in any detention facility unless the child is completely isolated so as to prevent any verbal, visual, or physical contact with any adult prisoner. Unless the child requires immediate detention as provided for in this act, the officer shall accept the written promise of the parent or parents, guardian, or custodian, to bring the child to the court at a fixed time. The child shall then be released to the custody of the parent or parents, guardian, or custodian. [Emphasis added.]

Similarly, MCR 3.934(A)(3) demands that the police notify a minor's parents "of the detaining of the juvenile" if the child is not released and the prosecutor has yet to authorize a complaint and warrant charging the minor as an adult. This statute and this court rule envision parental involvement, not deliberate isolation of a child from his parents.

The United States Supreme Court emphasized in *Haley*, 332 US at 600:

> No friend stood at the side of this 15-year old boy as the police, working in relays, questioned him hour after hour, from midnight until dawn. No lawyer stood guard to make sure that the police went so far and no farther, to see to it that they stopped short of the point where he became the victim of coercion. No counsel or friend was called during the critical hours of questioning.

In *Gallegos*, 370 US at 54, the Court observed:

> A lawyer or an adult relative or friend could have given the petitioner the protection which his own immaturity could not. Adult advice would have put him on a less unequal footing with his interrogators. Without some adult protection against this inequality, a 14-year-old boy would not be able to know, let alone assert, such constitutional rights as he had.

More recently, the New Jersey Supreme Court has cautioned, "[C]ourts should consider the absence of a parent or legal guardian from the interrogation area as a highly significant fact when determining whether the State has demonstrated that a juvenile's waiver of rights was knowing, intelligent, and voluntary." *State v Presha*, 163 NJ 304, 308; 748 A2d 1108 (2000). The Court defined the term "highly significant factor" to mean "that courts should give that factor added weight when balancing it against all other factors." *Id.* at 315. As these cases recognize, parental absence qualifies as a fact of great consequence in the voluntariness inquiry.

In this case, other facts amplify the importance of the absence of Jones' parents. First, the police deliberately precluded Jones' parents from talking with their son. After successfully sealing Jones from parental guidance and counsel, the officers made good use of parental absence, admonishing Jones that his parents would like him to "tell the truth," claiming that his parents would be "victims too because of this" and would "pay the price" for Jones's actions, and asserting that other family members could be prosecuted as "accessories after the fact." "Coercion may involve psychological threats as well as physical threats. Specifically, threats to

arrest members of a suspect's family may cause a confession to be involuntary." *United States v Finch*, 998 F2d 349, 356 (CA 6, 1993). The absence of Jones' parents magnified the coercive atmosphere surrounding this interrogation. Regardless of Green's specific words, the trial court found that Green threatened Jones. Green's threat followed two hours of other threats. By repeatedly referencing negative consequences for Jones' family, the officers used a wholly inappropriate strategy to extract Jones' confession.

Furthermore, the decisions to rebuff Jones' father's interest in his son's welfare and to neglect calling Jones' mother after his detention weigh heavily against the prosecution. Other courts have not hesitated to find similar conduct highly significant when assessing voluntariness. For example, the New York Court of Appeals has held:

> [I]t is impermissible for the police to use a confession, even if it be otherwise voluntary, obtained from a 17-year-old defendant when, in the course of extracting such confession, they have sealed off the most likely avenue by which the assistance of counsel may reach him by means of deception and trickery. [*People v Townsend*, 33 NY2d 37, 41; 300 NE2d 722 (1973).]

The Illinois Court of Appeals has also determined that purposefully precluding a parent from speaking with a child about to be subjected to police interrogation "casts some doubt over the voluntariness of [the] defendant's statement." *People v Knox*, 186 Ill App 3d 808, 814; 542 NE2d 910 (1989). The Supreme Court of Wisconsin has written, "If the police fail to call the parents for the purpose of depriving the juvenile of the opportunity to receive advice and counsel, that would be strong evidence that coercive tactics were used to elicit the incriminating statements." *Theriault v State*, 66 Wis 2d 33, 48; 223 NW2d 850 (1974). The Supreme Court of South Dakota has framed the issue as follows: "It is precisely because most children lack the maturity, perspective, and judgment to weigh the sometimes devastating consequences of waiving their constitutional rights that parental or adult guidance is encouraged." *State v Horse*, 2002 SD 47; 644 NW2d 211, 223-224 (2002).

Supreme Court precedent, Michigan statutes and court rules, and the *Givans* factors counsel that parents should be involved when their children are interrogated by the police. The reason for this is obvious: children in crisis need and deserve parental guidance. Last year the United States Supreme Court re-emphasized that a child's age factors prominently in the *Miranda* custody analysis, recapping "commonsense conclusions" applicable to children including that they "are more vulnerable or susceptible to . . . outside pressures" than adults, and "cannot be compared" to adults undergoing police interrogation. *JDB v North Carolina*, __ US __; 131 S Ct 2394, 2403; 180 L Ed 2d 310 (2011) (citations omitted). In this case, the police deprived a child of the opportunity to speak to his parents and proceeded to capitalize on the parents' absence by threatening that the parents and other family members would suffer harm if Jones withheld cooperation. The common thread running through the events surrounding Jones' confession is coercion. I would therefore hold Jones' statement inadmissible.

/s/ Elizabeth L. Gleicher