STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of JULIAN DE LOS SANTOS,
Minor.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellant,

v

JULIAN DE LOS SANTOS,

Respondent-Appellee.

UNPUBLISHED
December 28, 2001

No. 232592
Kent Circuit Court
Family Division
LC No. 95-113801-DL

Before: Gage, P.J., and Jansen and O'Connell, JJ.

JANSEN, J. (*dissenting*).

I respectfully dissent because I believe that the trial court properly granted respondent's motion to suppress his police statement.

While the majority exerts a great amount of its analysis into its ruling that the trial court erred in considering that respondent would be required to register as a sex offender under the Sex Offenders Registration Act, MCL 28.721 *et seq.*, regardless of whether this factor is error or not, the totality of the circumstances surrounding the interview shows that the trial court properly suppressed respondent's statement. As acknowledged by the majority, the presence or absence of a single factor in the totality of the circumstances is not determinative of voluntariness. *People v Cipriano*, 431 Mich 315, 334; 429 NW2d 781 (1988). Because the record supports the trial court's finding that the statement was not voluntary, I believe that the majority is improperly substituting its view of the record for that of the trial court.

Respondent, a twelve-year-old child, is charged with sexually assaulting another child. At the time of the alleged assault, respondent was a ward of the court, having recently been abandoned by his mother and left on his own. Respondent and the alleged victim shared the same protective services caseworker. Two Grand Rapids police detectives went to respondent's school on February 17, 2000, to interview respondent. The interview started at about 11:00 a.m., and Detective Rogers, the lead detective, testified that while she could not recall the exact length of the interview, she believed it lasted about an hour.

The police detectives were met by a receptionist at the school and other "school personnel" went to get respondent from his class. Interestingly, there is absolutely no indication that the police detectives had any contact either with the school principal or any of respondent's teachers at any time. Both detectives were present and both interviewed respondent, although Detective Rogers asked most of the questions. No parent or other adult was present to advise respondent. Indeed, there was no indication that respondent was ever given an opportunity to have any adult present with him.[1]

Most importantly, the police assured respondent that he was not in trouble and would not be arrested, no matter what he told them. Respondent denied any involvement in the alleged offense but, after repeated questioning, began to cry and gave a *fourth* statement in which he confessed to placing his penis on the unclothed buttocks of the other child. Respondent was then permitted to return to class. The trial court found that there was no coercion and that respondent was not in custody, but nonetheless granted respondent's motion to suppress the confession, noting that the charged offense could lead to respondent's inclusion on the Sex Offender's Registry, that there was no adult ally present, and that the police promised respondent that he was not in trouble.

Here, respondent was a small twelve-year-old child in the fifth grade whose mother had recently abandoned him and moved to Texas, leading to his becoming a ward of the state and the subject of a neglect petition. This is not a case like *In the Matter of SLL*, 246 Mich App 204, 210; 631 NW2d 775 (2001), where the respondent knew that his mother was "readily available to him" and had consented to the interview. Respondent here had no adult to turn to, his protective services worker was also the caseworker for the child-victim of the alleged assault, and no guardian or supporting adult was sought or present at respondent's interview. Indeed, the trial court clearly placed a great deal of emphasis on the fact that the police officers made no reasonable effort to ascertain whether any adult was in a position to act as respondent's parent.

Further, respondent had little prior contact with the police and was questioned repeatedly even after he made a statement. The interview lasted about one hour. The police told respondent that he would not be arrested, no matter what he said, and that he was not in trouble. The trial court also placed great emphasis on the fact that the police officers represented to respondent that he would not be arrested no matter what he said and that such a representation could lead respondent to conclude that there would be no future implications for him in the criminal system. I agree, and would add that such an implication can certainly be construed to be coercive since respondent's subsequent arrest was based on his interview. By the time respondent made his fourth statement, the confession to a criminal act, he was crying.

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[1] The prosecutor asked Detective Rogers at the evidentiary hearing whether respondent ever invoked his right to counsel and Detective Rogers stated that he did not. However, Detective Rogers had previously testified that respondent was not given his constitutional warnings pursuant to *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d (1966), because respondent was not under arrest and she was not planning to arrest respondent no matter what he said. Similarly, Detective Westmoreland also testified that *Miranda* warnings were not needed because respondent was not under arrest. Suffice it to say that arrest does not trigger the giving of *Miranda* warnings; rather, it is well settled that *Miranda* warnings are required during a custodial interrogation. *People v Hill*, 429 Mich 382; 415 NW2d 193 (1987).

Considering the totality of all the circumstances surrounding the interview, I cannot conclude that the trial court erred in finding that the respondent's statement was not voluntary. I would affirm the trial court's order suppressing respondent's police statement.

/s/ Kathleen Jansen