

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of TYRE WALKER, Minor.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellee,

v

TYRE WALKER,

Respondent-Appellant.

UNPUBLISHED

February 8, 2011

No. 293818

Wayne Circuit Court

Family Division

LC No. 07-475053

Before: BORRELLO, P.J., and JANSEN and FORT HOOD, JJ.

PER CURIAM.

Following a bench trial, respondent, Tyre Walker (d/o/b 4/24/93), was adjudicated responsible for armed robbery, MCL 750.529, and carjacking, MCL 750.529a. He was sentenced to 182 days' probation and placed in the home of his parent. Respondent appeals as of right, and we affirm.

On October 8, 2008, respondent was arrested and charged with armed robbery and carjacking. After his arrest, while in the custody of the Detroit Police Department, respondent signed two documents. The first was a document entitled Constitutional Rights Certificate of Notification. The second document purports to be respondent's statement set forth in question and answer form. Before trial, respondent filed a motion to suppress this statement, arguing that his parents were precluded from being present during questioning, that he was not advised of his constitutional rights until after his statement was taken, and that he was intimidated into signing the statement. Respondent further argued that he did not make the statements that were attributed to him in the document. At the conclusion of the *Walker*¹ hearing, the court denied respondent's motion to suppress, finding that respondent was advised of his *Miranda*² rights, that

¹ *People v Walker (On Rehearing)*, 374 Mich 331; 132 NW2d 87 (1965).

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

he waived his right to remain silent, and that he, thereafter, voluntarily gave a statement to the police. The trial commenced immediately and, at its conclusion, the court found respondent responsible for armed robbery and carjacking.

Respondent argues that the trial court erred when it failed to grant his motion to suppress his statement. We disagree. This Court reviews 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, this Court 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).

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). In *Givans*, this Court held that 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*, 227 Mich App at 121. The following factors should be considered when determining the admissibility of a juvenile's confession:

(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.* (citation omitted)]

Considering these factors in light of the existing record, we conclude that the trial court did not err when it denied respondent's motion to suppress his statement.

At the *Walker* hearing, respondent and Sergeant Hughes gave very different accounts of what transpired after respondent was brought into the police station. The court clearly found the officer's version of the events more credible. This Court must give deference to the trial court's assessment of the weight of the evidence and the credibility of the witnesses. *People v Howard*, 226 Mich App 528, 543; 575 NW2d 16 (1997). The trial court's findings will not be reversed unless they are clearly erroneous. *Id.* In reviewing the totality of the circumstances and giving deference to the trial court's assessment of the weight and credibility of the witnesses, we conclude that respondent's statements to Sergeant Hughes were voluntary. At the time of his statement, respondent was 15 years old and in tenth grade. Respondent was not uncomfortable or deprived of food. Indeed, he was offered food, beverages, and an opportunity to use the rest room. Respondent denied being under the influence of any substances, and he did not appear to be intoxicated or high. Respondent did not appear sleep deprived. There is no evidence that the interrogating police officer threatened or abused respondent. The interview took place an hour

after respondent arrived at the police station, and it lasted approximately 45 minutes. There is no evidence that the questioning was repetitive or prolonged. Before taking the statement, the officer advised respondent of his *Miranda* rights. The officer confirmed that respondent could read. Respondent signed and initialed his constitutional rights form in several spots and acknowledged that he understood his rights.³ Respondent was offered the opportunity to have his mother present, but specifically indicated that he did not want her in the room during questioning. In light of these facts, the trial court did not err in determining that respondent's statements were voluntarily made. Therefore, the court properly denied defendant's motion to suppress.

Next, respondent argues that the statement should have been suppressed because Sergeant Hughes allegedly lied to respondent in an attempt to elicit certain responses and because the totality of the conversation between respondent and the officer was not reduced to writing. With respect to the first claim, the record does not establish that the officer lied or misled respondent. Instead, it confirms that the officer used his own experience and information he gleaned from interviewing other individuals to formulate his questions. With respect to respondent's claim that Sergeant Hughes left matters out of the written statement, Sergeant Hughes acknowledged that he did not reduce to writing every question asked and answer given. He testified that he would include all statements relevant to guilt or innocence. In this case, he admitted that he probably left out some of the "background information." In essence, respondent is arguing that the written statement was not an accurate reflection of the statement he made to Sergeant Hughes. Respondent's argument relates to the weight and credibility of the statement, not its admissibility. In *People v Spivey*, 109 Mich App 36, 37; 310 NW2d 807 (1981), the defendant did not contest the voluntariness of his statement, but claimed that police officers had fabricated a few sentences and then inserted them into his confession. The trial court denied the defendant a *Walker* hearing, finding it unnecessary. This Court agreed because the purpose of the *Walker* hearing was to prevent prejudice which may occur from the admission of a coerced inculpatory statement. In addition, and relevant to this final argument raised by respondent, the Court noted in *Spivey*: "Other factors relating to the confession, such as credibility, truthfulness and whether the statement had been made at all, remain for the determination of the trier of fact." *Id.* Thus, whether the written statement was an accurate reflection of respondent's statements was for the trier of fact. We find no clear error in the trial court's determination.

³ Respondent states in his brief on appeal that the Constitutional Rights Certificate contained errors because respondent's "initials were missing on the fifth right." This is incorrect. A review of the certificate confirms that respondent initialed all five of the enumerated rights. However, with respect to the actual statement that was taken in question and answer form, respondent neglected to initial Question 5: "How many bullets were in the pistol Stevie had? 'It was empty.'" Sergeant Hughes explained that this was probably an oversight because he neglected to put down a line upon which respondent could place his initials. In any event, respondent placed his full signature at the bottom of the statement after reading it and having it read to him.

Affirmed.

/s/ Stephen L. Borrello
/s/ Kathleen Jansen
/s/ Karen M. Fort Hood