

**IN THE COURT OF APPEALS  
ELEVENTH APPELLATE DISTRICT  
GEAUGA COUNTY, OHIO**

IN THE MATTER OF:	:	<b>O P I N I O N</b>
J.C., DELINQUENT CHILD	:	
	:	<b>CASE NO. 2011-G-3017</b>
	:	

Criminal Appeal from the Geauga County Court of Common Pleas, Juvenile Division, Case No. 10JD000528.

Judgment: Affirmed.

*David P. Joyce*, Geauga County Prosecutor, and *Nicholas A. Burling*, Assistant Prosecuting Attorney, Courthouse Annex, 231 Main Street, Chardon, OH 44024 (For Appellee-State of Ohio).

*Paul J. Mooney*, Assistant Public Defender, 211 Main Street, Chardon, OH 44024 (For Appellant-J.C.).

DIANE V. GRENDELL, J.

{¶1} Delinquent child-appellant, J.C., appeals the January 6, 2011 Judgment Entry of the Geauga County Court of Common Pleas, Juvenile Division, denying his Motion to Suppress Confession. The issue presented is whether a confession, obtained after a two-and-a-half hour interview conducted at the defendant's trailer, is involuntary and the product of coercive police tactics. We hold that the evidence does not support J.C.'s contention that his confession was involuntary or the product of coercive police tactics. Accordingly, we affirm the judgment of the court below.

{¶2} On October 20, 2010, a Complaint was filed in the Geauga County Court of Common Pleas, Juvenile Division, alleging J.C., dob 3/30/92, to be a delinquent child in that he “inserted his penis into a little girl’s mouth, contrary to and in violation of R.C. 2907.02(A)(1)(b), Rape, a felony of the first degree, if committed by an adult.”

{¶3} On December 13, 2010, J.C. filed a Motion to Suppress Confession. J.C. sought to suppress a recorded statement, obtained by Mark Clark, a Criminal Investigator with the Geauga County Prosecutor’s Office, as being obtained in violation of his rights under the Fifth and Fourteenth Amendments to the United States Constitution.

{¶4} On January 5, 2011, a hearing was held on the Motion to Suppress.

{¶5} Clark testified that on July 28, 2010, he observed an interview with the victim in which she disclosed J.C. had sexually abused her.

{¶6} Clark further testified that on September 13, 2010, he located J.C. at his girlfriend’s mother’s home at Leader’s Mobile Home Park in Chardon, Ohio. Clark was wearing dress pants with a shirt and tie. He had a firearm on his person and identification that he was a Prosecutor’s Investigator with the Geauga County Sheriff’s Department. Clark met with J.C. at about 1:35 or 1:40 p.m. Together they drove a short distance to another trailer that J.C. had purchased and was renovating. They spent “a good 20 to 25 minutes” looking around the trailer. The interview was conducted at a picnic table near the trailer. Clark described the interview as follows:

{¶7} I advised him, you know, just put it all out on the table for him, what I saw, what was said, and that’s why I was here to talk to him. \*\*\* [W]hen I told him what the allegation was, his initial reply, with all due respect, was that’s f\*\*\*ed up. \*\*\* I began to question him about his relationship with [the victim], you know, what duties and responsibilities he had when she did reside with him, as far as any hygiene care. Did he have to bathe her,

change her diaper, all those types of things. How much time he spent alone with her. We talked a little bit about his family history, some of the problems he had, you know, encountered with his family growing up.

{¶8} We then discussed, you know, the likelihood that he was sexually abused when he was younger, or at least attempted to have been sexually abused. We discussed that issue, as well, and again, asked him, again, why possibly, why is [the victim] saying this if he's saying this didn't occur. Why is she saying this.

{¶9} I explained to him that, you know, from what I observed in the interview, she gave a very compelling statement to what occurred, very descriptive for her age, you know, of what took place. I told him it didn't make any sense to me that they got along so well and she cared about him why, you know, she would be making this up, why she would be lying about this.

{¶10} And as the time went on, I could tell that he was being somewhat deceptive in his answers. \*\*\* I asked him, he stated that, you know, he would never do anything to hurt her, which is a very common response for people who have committed these kinds of offenses. And I said, I never said you hurt her. She never said that what you did caused [sic] any pain.

{¶11} As time went on, I could tell that, you know, he was, you know, upset about this issue. And I asked him, you know, are you afraid of something? What are you afraid of? And I told him that maybe things didn't happen exactly, you know, like [the victim] said, but something, I feel happened for her to be saying this. This does not make sense. And we tried to sort through that, and I tried to sort through that with him. He offered no reasonable explanation of why she would be making this up, and basically stated to me that, you know, he can't think of a reason why she would make this up.

{¶12} His denials, while they were denials, were as I would categorize them \*\*\*, from the training I received as weak denials. They weren't strong, emphatic denials. They were just weak. Typically, somebody who hasn't done this and is accused of such an act, is coming out of their chair at me if I accuse them of this and they haven't done this, and he was not. He was receptive to what I was saying. He was listening to what I was saying.

{¶13} Finally at a point, I told him that, you know, look, you're 18 now. This, you're saying that you were 15 or 16 when this happened. You were a kid. I'm here to make sure that this isn't still going on, you know, and I'm here to find out what happened.

{¶14} At which point, he told me he was very afraid. I asked him what he was afraid of. He said he was afraid of talking to me about this because of what would happen, and at that point in the interview, that was, in my mind, his first admission to the fact that this had occurred. He said he was afraid of going to jail if he told me what happened. He said he was afraid of losing his girlfriend. He said he was afraid of his girlfriend's family finding out about this, his family finding out about it and what people would think about him, like he was some kind of a f\*\*\*ing pervert, is what he referred to it as. \*\*\*

{¶15} I listened to what he said, and I asked him, you know, I go, this is what she said happened. And I told him what she said had occurred. \*\*\* I go, is that what happened, and he replied that it was. \*\*\* [H]e replied that it was by dropping his head and nodding.

{¶16} At this point, Clark advised J.C. that he would need to make a statement and that he could make a written or a recorded statement, whichever one he was more comfortable doing. J.C. opted to make a recorded statement. Clark testified that, since it was too windy to make a recorded statement outside and that J.C.'s trailer was in a state of disrepair, he took J.C. to his car to make the statement. Clark's car was a "regular" Ford Fusion, without markings, police radio, or other indicia of law enforcement.

{¶17} The recorded statement was submitted to the court during the suppression hearing. In relevant part, the recorded statement provides the following:

{¶18} Clark: Okay, and I've identified myself to you, correct? You know who I am and that I'm a law enforcement officer and we talked about that right? We've talked before I think if you remember talking to me about, about another issue? Okay. [J.C.], at any point during the time we've been talking \*\*\* , did I tell you that you were under arrest?

{¶19} J.C.: No.

{¶20} Clark: [D]o you feel that you're under arrest right now?

{¶21} J.C.: No.

{¶22} \*\*\*

{¶23} Clark: So and since you weren't under arrest, and I've never told you were under arrest, were you under the impression that at any point that we were talking that if you didn't want to talk, you didn't have to talk. Is that correct?

{¶24} J.C.: Mmhmm.

{¶25} Clark: Okay. Um, so I'm assuming that since you didn't leave, your willingness to talk to me was voluntary, is that correct?

{¶26} J.C.: Mmhmm.

{¶27} Clark: I'm sorry?

{¶28} J.C.: Yeah.

{¶29} Clark: Yeah? Okay. All right. Have you ever been told of what your rights are before \*\*\*

{¶30} J.C.: Yeah.

{¶31} Clark: \*\*\* about talking with the police or do you know what they are? I think you mentioned to me earlier that you have been, that you've heard them?

{¶32} J.C.: Yeah.

{¶33} Clark: You know what they are?

{¶34} J.C.: Yeah.

{¶35} \*\*\*

{¶36} Clark: Okay, okay. And that is you do have the right to remain silent. That, anything you say can and will be used against you in Court. Um, that you have the right to talk with a lawyer for advice and ask him any questions um if you cannot afford an attorney, one can be appointed for you. Ah before answering any, or Geauga County has a public defender; before answering any questions, you have the right to talk with a public defender. If you decide to answer questions now without the presence of an attorney, um or make any statements now without the presence of an attorney, you have the right to stop answering questions at any time. Um, is that what you remember your rights to be?

{¶37} J.C.: Mmhmm.

{¶38} Clark: Okay. So you fully understand what your rights are then about talking to me?

{¶39} J.C.: Yep.

{¶40} \*\*\*

{¶41} Clark: [D]id I coerce you in any way and beat you with a rubber hose or anything to talk to me or you're pretty much 'cause you wanted to talk to me?

{¶42} J.C.: Well I just decided to come out and say it instead of keeping it in.

{¶43} Clark testified that by 4:00 p.m., the interview had concluded and he was leaving the trailer park.

{¶44} J.C. testified at the suppression hearing that his confession was involuntary. His testimony, as to the issue of voluntariness, is as follows:

{¶45} J.C.: [Clark] said that he was there for [the victim] \*\*\* and she told him and everyone else that investigated her that he was there for, to see if what she said was true.

{¶46} Q<sup>1</sup>: Okay. At that point, were you read your rights at that point?

{¶47} J.C.: Yeah, right after that, he started to say them, but he didn't say it all at once. He like just said the, you know, you're not under arrest thing.

{¶48} Q: Okay. And then what happens then?

{¶49} J.C.: And then we start talking deeper into it. He asked me like, you know, just asked me if that would be true, and that's when I said that, you know, it's f'd up. \*\*\* And I would not do that to my own niece. I wouldn't even do that to anyone. \*\*\* And he just started asking me more questions about it, more questions. I kept repeating no over and over and over again. I kept saying no. \*\*\* And about an hour into it, I felt like I was forced into saying yes.

{¶50} Q: Okay. Now, during that time, how long were you there at the picnic table?

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1. J.C. is being questioned by defense counsel.

{¶51} J.C.: Oh, we were sitting there a good hour and a half, hour and 45 minutes.

{¶52} \*\*\*

{¶53} Q: He told you those facts [regarding the incident]. And what were you saying at that time?

{¶54} J.C.: I said, no, I wouldn't, you know, I would not do that. Maybe she got the wrong person. And I just kept feeling like I was forced into saying it. And I didn't know I could just get up and walk away.

{¶55} Q: All right. Two things. One, why do you feel, or why did you feel you were being forced to say it? What was going on at the time?

{¶56} J.C.: I just kept saying no, and he kept looking at me, like you know, why are you saying no. And he just kept looking at me in a weird way that I just, you know, felt like I was getting forced into saying what he wanted to hear.

{¶57} Q: Okay. And you mentioned you didn't feel like you were free to leave. Why not?

{¶58} J.C.: I don't know why. When I was sitting there talking to him, I don't know, I just felt like I couldn't get up and walk away. And if I did get up and walk away, I didn't know if he would arrest me or stop me from walking away or force me to stay or what would happen. So I didn't even try to get up and go.

{¶59} \*\*\*

{¶60} Q: Okay. And then at some point, how do you end up back in his car?

{¶61} J.C.: Because he asked me if I would want to write down what to say, like, or I could put it over a recorder. And he said if it was up to me, I would want to put it on a recorder. So let's go to my car.

{¶62} Q: So you were compliant and you went to his car?

{¶63} J.C.: Um-hum.

{¶64} Q: All right. And why did you do that?

{¶65} J.C.: Like I said, like I didn't know I could just get up and go and I just wanted it, you know, to tell him what he wanted to hear so I can go back to

what I wanted to do for the day because I was going to go to my house and work on it and do stuff there.

{¶66} Q: Okay.

{¶67} J.C.: And I felt like I was forced into saying what he wanted to hear or else he would not leave.

{¶68} On January 6, 2011, the juvenile court issued a Judgment Entry, denying the Motion to Suppress.

{¶69} On February 16, 2011, following an adjudication hearing, J.C. entered a plea of no contest to an amended Complaint, charging him with committing acts which, if committed by an adult, would constitute Gross Sexual Imposition, a felony of the third degree in violation of R.C. 2907.05(A)(4).

{¶70} On April 14, 2011, following a disposition hearing, the juvenile court ordered J.C. to be committed to the custody of the Ohio Department of Youth Services for placement in an institution for an indefinite term consisting of a minimum period of six months and a maximum period not exceeding his twenty-first birthday.

{¶71} On May 10, 2011, J.C. filed a Notice of Appeal. On appeal, J.C. raises the following assignment of error: “The juvenile court erred by not suppressing the statement of appellant.”

{¶72} J.C. contends that he was interrogated in a custodial setting without properly being advised of his rights and that his confession was the product of police coercion. Cf. *State v. Kassow* (1971), 28 Ohio St.2d 141, paragraph one of the syllabus (“[t]he rule of *Miranda* \*\*\* which requires proof of the voluntary waiver of the Fifth Amendment *right not to respond* to police questioning, exists independently of, and in addition to, the historic rule of evidence that an accused’s statement may not be used



against him in any way if the *statement itself* is proved to be involuntary, *i. e.*, untrustworthy when tested by traditional legal standards”) (emphasis sic).

{¶73} At a suppression hearing, “the trial court is best able to decide facts and evaluate the credibility of witnesses.” *State v. Mayl*, 106 Ohio St.3d 207, 2005-Ohio-4629, at ¶41. “Its findings of fact are to be accepted if they are supported by competent, credible evidence, and we are to independently determine whether they satisfy the applicable legal standard.” *Id.*, citing *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, at ¶8.

{¶74} Statements obtained during the custodial interrogation of a defendant are not admissible at trial unless the police have used procedural safeguards to secure the defendant's Fifth Amendment right against self-incrimination and Sixth Amendment right to representation. *Miranda v. Arizona* (1966), 384 U.S. 436, 444. “Only *custodial* interrogation triggers the need for *Miranda* warnings.” *State v. Lynch*, 98 Ohio St.3d 514, 2003-Ohio-2284, at ¶47 (emphasis sic); *State v. Biros*, 78 Ohio St.3d 426, 440, 1997-Ohio-204. “Custodial interrogation” means “questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.” *Miranda*, 384 U.S. at 444.

{¶75} There are two aspects to the issue of whether a person is “in custody” for the purposes of *Miranda*. *Thompson v. Keohane* (1995), 516 U.S. 99, 112. “[F]irst, what were the circumstances surrounding the interrogation; and second, given those circumstances, would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave.” *Id.* (footnote omitted); *Berkemer v. McCarty* (1984), 468 U.S. 420, 442 (determination of whether a suspect was in custody at a

particular time requires an inquiry into “how a reasonable man in the suspect’s position would have understood his situation”). In order for custodial interrogation to occur, there must be “a ‘formal arrest or restraint on freedom of movement’ of the degree associated with a formal arrest.” *California v. Beheler* (1983), 463 U.S. 1121, 1125, quoting *Oregon v. Mathiason* (1977), 429 U.S. 492, 495. An “objective test” is applied in making this determination. *Thompson*, 516 U.S. at 112. A “determination of custody depends on the objective circumstances of the interrogation, not on the subjective views harbored by either the interrogating officers or the person being questioned.” *Stansbury v. California* (1994), 511 U.S. 318, 323.

{¶76} In the present case, J.C. has failed to identify any objective criteria suggesting custodial interrogation. J.C. was interviewed at a picnic table near his home, by a single police investigator in plain clothes driving an unmarked county vehicle, who repeatedly assured him that he was not under arrest. The presence of a firearm and identification badge merely identified Clark as a law enforcement officer. J.C. testified that he “felt” he was not free to leave, but could not articulate any objective basis for this feeling. Since J.C. did not undergo custodial interrogation, the issue of whether Clark properly administered the Miranda warnings has no bearing on the admissibility of his confession.

{¶77} Alternatively, J.C. contends his confession was involuntary, the result of Clark’s coercive interrogation tactics.

{¶78} The Due Process Clause of the Fourteenth Amendment’s guarantee that no State shall “deprive any person of life, liberty, or property, without due process of law” condemns the use of coercive police conduct that renders a confession involuntary.

See, e.g., *Miller v. Fenton* (1985), 474 U.S. 104, 109-110, and the cases cited therein. “In deciding whether a defendant’s confession is involuntarily induced, the court should consider the totality of the circumstances, including the age, mentality, and prior criminal experience of the accused; the length, intensity, and frequency of interrogation; the existence of physical deprivation or mistreatment; and the existence of threat or inducement.” *State v. Edwards* (1976), 49 Ohio St.2d 31, paragraph two of the syllabus; *State v. Clark* (1988), 38 Ohio St.3d 252, 261 (“[w]hile voluntary waiver and voluntary confession are separate issues, the same test is used to determine both, *i.e.*, whether the action was voluntary under the totality of the circumstances”).

{¶79} In the present case, there was no evidence of the coercive or “overreaching” police conduct, which is a prerequisite to a finding of involuntariness. *State v. Treesh*, 90 Ohio St.3d 460, 471, 2001-Ohio-4, (citation omitted). As discussed above, J.C. was not in custody at the time of the interview. J.C. had prior experience with the juvenile justice system. J.C. was emancipated and living outside his parents’ home. There was no evidence of physical deprivation, mistreatment, threat, or inducement. Finally, the length of the interview, approximately two hours, is not considered excessive. See *State v. Sapp*, 105 Ohio St.3d 104, 2004-Ohio-7008, at ¶87 (there was no inherently coercive police tactics where the suspect “was never interrogated for more than four hours without a break”); *State v. Quigley*, 11th Dist. No. 2004-G-2577, 2005-Ohio-5276, at ¶¶35-41 (a confession obtained after “a little over two hours” of questioning in a closed interrogation room was not the product of police overreaching). On the contrary, J.C. stated at the time that he “decided to come out and say it instead of keeping it in.”

{¶80} Although J.C. asserts that he was dominated and controlled by Clark during the course of the interview, the record does not substantiate this claim. When asked why he felt like he was being forced to confess, J.C. could only say that Clark looked at him in a “weird way.”

{¶81} J.C. claims that Clark intentionally waited until he was eighteen-years-old before conducting an interview, although the Complaint had been filed while he was only seventeen-years-old, in order to avoid having to obtain parental consent to interview him<sup>2</sup>. J.C. also faults Clark for only recording the confession, and not the entire interview, suggesting that Clark was “playing games with the process.” Neither of these allegations, assuming, arguendo, there was some merit in them, have any bearing on the actual conduct of the questioning.

{¶82} The sole assignment of error is without merit.

{¶83} For the foregoing reasons, the Judgment of the Geauga County Court of Common Pleas, Juvenile Division, denying J.C.’s Motion to Suppress, is affirmed. Costs to be taxed against appellant.

TIMOTHY P. CANNON, P.J.,

THOMAS R. WRIGHT, J.,

concur.

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2. Clark denied delaying interviewing J.C. for this purpose.