

IN THE CIRCUIT COURT OF THE FOURTEENTH JUDICIAL CIRCUIT
WHITESIDE COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS)

VS.)

ANNA SCHROEDER,)

Defendant.)

2018 CF 191

FILED
CIRCUIT COURT WHITESIDE COUNTY
DATE 12-16-19
De R Costello
CIRCUIT CLERK

OPINION AND ORDER

This cause came before the Court for hearing on December 10, 2019, upon the Defendant's Motion to Suppress Statements, the State present by State's Attorney Terry Costello, the Defendant, ANNA SCHROEDER, present by Attorneys James Mertes, Cristina Buskohl, and James Fagerman, and the Court, having considered the Exhibits admitted during a pretrial motions conference on December 4, 2019, by stipulation of the parties (video/audio interview of Defendant, audio interview of Defendant, and the transcript of the interview of Defendant) prior to the parties' arguments upon said motion to suppress, having considered the arguments of the parties, having reviewed case law presented by the parties and those cases noted by the Court herein, and having taken the matter under advisement,

HEREBY FINDS:

FACTS: The Defendant, ANNA SCHROEDER (Anna), was a 15-year-old minor on July 6, 2017, at the time she is accused of first degree murder of her mother, Peggy Schroeder. She is also charged with concealment of that homicidal death and arson. On July 8, 2017, at approximately 11:40 p.m., Anna was interviewed at the Bureau County Jail facility in Princeton, Illinois. Present during the interview were Illinois State Police Agents Brian Masters and Nate Macklin and Whiteside County Sheriff's Office then-Detective Dave Molina. The interview was video-recorded.

The interrogation took place in an interview room with Anna seated at a small table. There were three officers present, one of whom was a juvenile officer. Two of the officers were seated at the table with Anna, while the juvenile officer took a seat off to the side of the table. Each officer introduced himself. None was in a police uniform, but at least one firearm and badge were visible. Anna was in custody. She was not handcuffed or restrained in any way, but the door to the room was closed. None of the officers was aggressive nor did they act in an intimidating manner. There is no indication that Anna had any prior experience with custodial interrogations. She was asked whether she wanted a drink or to go to the restroom during the course of the interrogation. Prior

to beginning questioning, Anna was advised that her father, who was outside of the interview room, could be present if she wished. The juvenile police officer was present during most of the interrogation, and Anna's father, Darryl Schroeder (Schroeder) was present in the interview room, after roughly half an hour had elapsed from the time the interrogation began. Schroeder remained in the room until the end of the interrogation. His presence occurred when Anna requested that he be brought into the room.

Agent Masters was the juvenile police officer present. Prior to questioning beginning, Masters moved his chair close to Anna to give her Miranda warnings and then moved his chair off to the side of the table, some distance away. Before doing so, Masters advised Anna that he was the juvenile police officer, that he was "going to be here if you have any questions at all in terms of anything you don't understand that they are asking you, well you can certainly ask me and I'll do my best to help you, okay?"

Masters next recited to Anna the Miranda rights, in accordance with the specialized requirements of 705 ILCS 405/5-401.5 (a-5). When asked, pursuant to said statute, whether she wished to have an attorney, Anna responded, "Mm. I don't know." When asked if she wanted to speak with the officers present, Anna responded that she just wanted to go home. She did not do or say anything to convey that she was invoking her right to remain silent. Thereafter, she engaged in answering questions from Agent Macklin and Detective Molina. On page 20 of the transcript of the interview and, after approximately half an hour had elapsed, Anna stated, "I don't want to talk anymore" and asked for her father. There is no evidence that the officers did not hear or understand Anna's statement. Thereafter, Masters left the room and Macklin continued to question Anna. When Anna's father, Schroeder, entered the room with Masters, the officers continued to question Anna.

A short break was taken over an hour into the interview and questioning then resumed until approximately 1:30 a.m. Following the break, Anna was not reminded of her Miranda rights nor did officers inquire if she wished to have an attorney present and wished to speak with them. There were two occasions during this interrogation process when Schroeder is observed giving Anna a hug. At various times throughout the interview, all officers state that they are there to help Anna. Anna is also seen crying and upset during various parts of the interrogation, but none of these reactions appeared to be the result of any mistreatment by the officers.

LAW: In order to determine the propriety of this interview, which qualifies as a custodial interrogation, the State has the burden of showing that the confession was voluntary by a preponderance of the evidence. People v. Flores, 2014 ILApp (1st) 121786, 387 Ill.Dec. 56, 64, 21 N.E.3d 1227 (2014). For many years, Illinois reviewing courts, including our Supreme Court, have sanctioned determining voluntariness by considering the totality of the circumstances. Factors to be considered include "the defendant's age, intelligence, background, experience, mental capacity, education, and physical condition at the time of questioning; the legality and duration of the detention; the presence of *Miranda* warnings; the duration of the questioning; and any physical or mental abuse by police, including the existence of threats, or promises." People v. Richardson, 234 Ill.2d 233, 253-54, 334 Ill.Dec.675, 917 N.E.2d 501 (2009).

Voluntariness of a confession made by a juvenile is initially subject to the same scrutiny of a confession made by an adult. In re M.W., 314 Ill.App.3d 64, 68, 246 Ill.Dec. 830, 731 N.E.2d 358 (1st Dist. 2000). Moreover, when a defendant is a juvenile, “the ‘greatest care’ must be taken to assure that the confession was not coerced or suggested....” In re G.O., 191 Ill.2d 37, 55, 245 Ill.Dec.269, 727 N.E.2d 1003 (2000). Further, such a confession must not be “the product of ignorance of rights or of adolescent fantasy, fright, or despair.” People v. Simmons, 60 Ill.2d 173, 180, 326 N.E. 2d 383 (1975), citing In re Gault, 387 U.S. 1, 55, 87 S.Ct. 1428, 18 L.Ed. 2d 527 (1967). Consequently, when reviewing a juvenile interrogation, courts must consider the “concerned adult” factor, which requires that a minor have an opportunity, whether before or during the interrogation, to consult with an adult interested in his/her welfare. Courts must also determine whether police interfered with such a consultation. G.O. at 55. Further, it is important to note that when weighing these factors, no single factor is dispositive. Richardson, 234 Ill.2d 233, 334 Ill.Dec. 675, 917 N.E.2d 501 (2009).

In addition, an arrested minor must be committed to the care of a juvenile officer, a sworn police officer who has been specially trained to handle delinquent minors. Although the role of the juvenile officer is unclear from the statute (705 ILCS 405/5-405), there has been a divergence among reviewing courts as to whether that officer must serve as a “physical guardian”—ensuring that the minor’s parents have been notified about his/her detention and questioning, that the minor is given Miranda warnings, and that the minor is treated properly during the interview—or as an “advocate”, who is not a silent presence but, instead, demonstrates an interest in the minor’s welfare and protects the minor’s rights. In re Marvin M., 383 Ill.App.3d 693, 322 Ill.Dec. 65, 890 N.E.2d 984, (2d Dist. 2008). The Marvin M. court found that the physical guardian role made the most sense, noting that the juvenile police officer is not even required to meet with the minor before questioning or to be present during questioning. Id. at 715.

In weighing the voluntariness of a confession, reviewing courts have also considered the responses necessary to the questions asked after Miranda warnings are given to a juvenile: “Do you want to have a lawyer?” and “Do you want to talk to me?”

Whether an accused is an adult or a minor, the right to a lawyer must be expressed unequivocally and actually invoked by the accused. In instances where the accused makes a reference to counsel that is “ambiguous or equivocal in that a reasonable officer in light of the circumstances would have understood only that the suspect *might* be invoking the right to counsel”, termination of questioning is not required. (Emphasis in original.) Davis v. United States, 512 U.S. 452, 459, 114 S.Ct. 2350, 129 L.Ed.2d 362 (1994). In People v. Krueger, 82 Ill.2d 305, 311, 45 Ill.Dec.186, 312 N.E.2d 537 (1980), the Illinois Supreme Court differed in its interpretation of Miranda in terms of the explicitness with which a suspect must invoke the right to an attorney, but noted that there must be a “more positive indication or manifestation of a desire for an attorney” than statements such as, “Maybe I ought to have an attorney”, “Maybe I need a lawyer”, and “Maybe I ought to talk to an attorney”. (See also: People v. Quevado, 403 Ill.App.3d 282, 286-89, 342 Ill.Dec.515, 932 N.E.2d 642 (2d Dist. 2010), which contained references by the accused to the costs, gender

and availability of an attorney; People v. Oaks, 169 Ill.2d 409, 452, 215 Ill.Dec. 188, 662 N.E.2d 1328 (1996), which dealt with the query “Should I see a lawyer?”; People v. Smith, 102 Ill.2d 365, 376, 80 Ill.Dec. 784, 466 N.E.2d 236 (1984), which considered the accused’s inquiries into the availability of a public defender; and In re Christopher K., 217 Ill.2d 348, 383, 299 Ill.Dec.213, 841 N.E.2d 945 (2005), which concerned the question, “Do I need a lawyer?”)

Regardless of the age of the accused, the right to remain silent is also a critical factor to examine in determining the voluntariness of a confession. To safeguard a defendant’s right not to be a witness against himself, questioning of a suspect must immediately end once there is an indication “in any manner and at any time prior to or during a custodial interrogation that he wishes to remain silent.” People v. Hernandez, 362 Ill.App.3d 779, 785, 298 Ill.Dec. 819, 840 N.E.2d 1254 (1st Dist. 2005). Per Miranda, statements taken after the privilege is invoked are the product of compulsion, subtle or otherwise. Miranda v. Arizona, 384 U.S. 436, 473-74, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966). The right to remain silent right may be invoked verbally or through conduct that clearly indicates a desire to end all questioning. A verbal response must be specific and unambiguous. Hernandez at 785.

Even when an invocation of the right to silence is made, obtaining a subsequent statement is not always improper. Michigan v. Mosley, 423 U.S. 96, 98, 96 S.Ct. 321, 46 L.Ed.2d 313 (1975). In In re D.W.S., 99 Ill.App.3d 1035, 55 Ill.Dec. 309, 426 N.E.2d 284 (3rd Dist. 1981), the Court noted that an accused’s exercise of his right to remain silent or to terminate questioning does not prevent subsequent interrogation by police. Re-interrogation is permissible, ONLY IF the subject’s right to terminate initial questioning was “scrupulously honored”, which translates to the immediate cessation of questioning. Factors to consider in evaluating a re-interrogation are whether there was a significant period of time from the termination of all questioning until the re-interrogation and whether there were new Miranda warnings given prior to the re-interrogation. An additional factor tending to show the voluntariness of a resumed interrogation could be a new fact which would explain the accused’s reconsideration of his decision to remain silent. 1037-38. (See also People v. Faison, 78 Ill.App.3d 911, 34 Ill.Dec.276, 397 N.E.2d 1233 (3d Dist. 1979); People v. Pleasant, 88 Ill.App.3d 984, 44 Ill.Dec.226, 411 N.E.2d 132 (3d Dist. 1980); People v. Savory, 82 Ill.App.3d 767, 38 Ill.Dec. 103, 403 N.E.2d 118 (3d Dist. 1980))

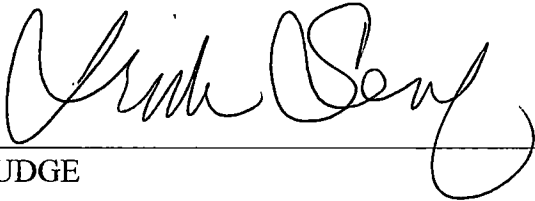
APPLICATION OF LAW TO FACTS: Turning to the facts of the instant interrogation, and looking at the totality of the circumstances, Anna had just attained the age of 15 years. Her education level was age-appropriate. While observing her during the course of the video, she appeared to be of average intelligence and was able to understand questions asked of her and answer coherently. While she seemed to be nervous, Anna did not appear to be fearful of the officers in the room and none of those officers behaved aggressively or in an intimidating manner. Anna did not have any prior experience in terms of police interrogations. At times, she was tearful, but was still able to respond to questions. There was nothing to indicate that her physical condition was compromised. The questioning lasted approximately two hours, which is not unreasonable, as multiple offenses were being investigated. She was advised of her Miranda warnings prior to

the interrogation, including the special language set forth in the Juvenile Court Act. Although the police kept mentioning that they were there to help her, there was nothing in their statements that rose to the level of threats, promises, or even trickery. The concerned adult factor was observed. There was a juvenile officer present and he properly performed his duties. Further, Anna's father was available and was brought into the interview room at her request. Anna never invoked her right to counsel, as her ambiguous statement, "Mm. I don't know" cannot be construed as an invocation of that right or a manifestation of a desire for counsel. The officers present had no duty to follow up on that ambiguous statement.

It is the duty of this Court to ensure that a fair trial is received by all parties and that both sides follow the rule of law. Therefore, following the mandates of the case law cited above, this Court notes that the problem with this interrogation arose the minute that Anna exercised her right to remain silent and cut off questioning, by unequivocally stating, "I don't want to talk anymore." At that point, reviewing courts have held that all questioning should have immediately ceased. It does not matter that Anna's father was brought into the room and that she continued to speak with officers thereafter. Her right to remain silent after she unambiguously stated her desire to terminate questioning was not "scrupulously honored" by these officers, as required by our United States Supreme Court in *Miranda* and subsequent decisions. Had these officers taken a break, allowed Anna to have her father present as she requested, and re-Mirandized her or reminded her of those rights, we would have a different outcome, similar to that in the *D.W.S.* case, *supra*, where the Third District sanctioned a second interrogation after the minor originally stated, in his first interrogation, that he no longer wished to talk, questioning immediately ended, a break ensued, the minor was provided with his *Miranda* rights again, and he waived those rights and confessed.

RULING: THE COURT, THEREFORE, ORDERS that all statements made by the Defendant prior to making the statement, "I don't want to talk anymore" are voluntary and admissible. All statements made thereafter are determined to be involuntary and are, thus, inadmissible and must be suppressed.

Dated: December 16, 2019



JUDGE