FILED
JUN 25 1986
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN THE MATTER OF P.S.R., A Child,

Appellant.

Filed June 25, 1986

6-156
85-1079

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Appeal from the Iowa District Court for Woodbury County (No. J 1211) - D. E. McEntaffer, Juvenile Referee.

Child appeals the juvenile court's finding of delinquency asserting that the juvenile court erred in failing to suppress and deem inadmissible the confession made by the child. **AFFIRMED.**

Teri L. Ladwig, Assistant County Public Defender, for appellant.

Thomas J. Miller, Attorney General; Charles K. Phillips, Assistant Attorney General; Patrick C. McCormick, County Attorney; and Kent Reiff, Assistant County Attorney, for appellee, State of Iowa.

Heard by Snell, P.J., and Donielson and Hayden, JJ.

SNELL, P.J. 141

On April 8, 1985, a fire occurred in the back yard barbecue of Diane Whitlock's home in which her daughter was seriously injured. Lieutenant Donald E. Murphy, a fire and arson investigator for Sioux City, and Sergeant Terry Kern, of the Sioux City Police Department, were assigned to investigate the cause of the fire. Diane Whitlock's eleven-year-old son, P.S.R., was suspected of starting the fire.

Shortly after the fire, P.S.R. went to stay with Reverend James Stanley, the minister of the church to which Whitlock and her family belong. On April 12, 1985, Officer Kern called the reverend to inform him that P.S.R. had to be questioned regarding the fire. April 15 was the date set for the interview. The officer told Reverend Stanley that arrangements had been made to transport P.S.R. to the juvenile detention facility on April 16. On the evening of April 15, Officer Kern and Investigator Murphy arrived at Reverend Stanley's home. The reverend, P.S.R., and Whitlock were present. Officer Kern told Whitlock and P.S.R. that the officers were only there to talk to P.S.R. that evening and that when the officers left, P.S.R. would remain at the reverend's home. Whitlock signed a consent and waiver of rights form.

The officers proceeded to question P.S.R. about the fire. P.S.R. stated that he had lit a piece of paper on fire which blew into the fireplace where his sister was playing. Officer Kern told P.S.R. that was not what happened and it would be necessary for P.S.R. to tell the truth.

After approximately fifteen minutes of questioning, P.S.R. told the officers that he had started a fire in the fireplace, intending his sister to be burned. After the interview, Whitlock and P.S.R. were informed that P.S.R. would be transported to the detention facility the next day.

On April 16, 1985, P.S.R. was arrested and taken to the Woodbury County

Detention Facility. A dispositional hearing was held on July 1, 1985. P.S.R. was adjudicated delinquent and placed on probation. His temporary care, custody, and control was placed with the Third Judicial District Juvenile Court Services, Woodbury County Office, for purposes of placement in a residential treatment facility.

On appeal, P.S.R. contends that the juvenile court erred in failing to suppress and deem inadmissible P.S.R.'s confession to Officer Kern and Investigator Murphy. P.S.R. argues that this confession was involuntary because it was induced by the officers' promise that P.S.R. would not be taken to jail and, therefore, was obtained in violation of his constitutional and statutory right to counsel. P.S.R. asserts that the waiver of his right to counsel was invalid because it was also involuntary.

Iowa Code section 232.11 guarantees juveniles the right to representation of counsel in delinquency proceedings. It provides:

> 1. A child shall have the right to be represented by counsel at the following stages of the proceedings within the jurisdiction of the juvenile court under division II:
>
> > a. From the time the child is taken into custody for any alleged delinquent act that constitutes a serious or aggravated misdemeanor or felony under the Iowa Criminal Code, or during any questioning thereafter by a peace officer or probation officer.

Iowa Code § 232.11(1)(a) (1985). Section 232.11(2) further provides that the child's right to be represented by counsel cannot be waived by a child less than sixteen years old without the written consent of the child's parent, guardian, or custodian.

P.S.R. correctly states that a statement obtained from a child without a valid waiver of his right to counsel is per se inadmissible in juvenile delinquency proceedings. See In Interest of J.A.N., 346 N.W.2d 495, 498-99 (Iowa 1984).

P.S.R. also validly asserts that police promises of help or leniency render confessions involuntary. Id. at 499. However, these principles have no application in the case at bar.

There is no evidence in the record that any promises were made by the officers to either P.S.R. or his mother that P.S.R. would receive better or different treatment if he confessed. There were no promises that P.S.R. would not go to jail if he talked or confessed. Neither did the officers threaten that P.S.R. would go to jail if he did not talk or confess. The officers made no statement regarding the likelihood of P.S.R.'s being incarcerated at a later date. The only promise which the officers made was that P.S.R. could remain at the reverend's home and would not be incarcerated the evening of April 15. This promise was not given as an inducement nor was it dependent upon what P.S.R. said during questioning.

We conclude that the waiver of P.S.R.'s right to counsel and his subsequent confession were voluntary.

AFFIRMED.