[Cite as *State v. Coonrod*, 2010-Ohio-1102.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

FAYETTE COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2009-08-013
	:	O P I N I O N
- vs -		3/22/2010
	:	
JOSEPH L. COONROD,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM FAYETTE COUNTY COURT OF COMMON PLEAS
Case No. 09CRI00089

David B. Bender, Fayette County Prosecuting Attorney, Kristina M. Rooker, 110 East Court Street, Washington C.H., Ohio 43160, for plaintiff-appellee

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BRESSLER, P.J.

{¶1} Defendant-appellant, Joseph L. Coonrod, appeals the decision of the Fayette County Court of Common Pleas denying his motion to suppress. We affirm the trial court's decision.

{¶2} On May 8, 2009, Fayette County Children Services (Children Services) received a report of sexual abuse involving appellant's five-year-old daughter. In response, Erica Haithcock, an inspector for Children Services, was assigned to investigate the case. On May 13, 2009, Haithcock and her supervisor, Beth Potts,

interviewed appellant at the Fayette County Jail, where he was incarcerated on unrelated charges. The interview took place in a jailhouse conference room, where only appellant, Haithcock and Potts were present. Aware of appellant's slight "cognitive delays,"[1] Haithcock took the interview slowly, explaining that appellant was not required to answer her questions, but at no time did she advise appellant of his *Miranda* rights. During the interview, Haithcock informed appellant that his daughter recently alleged that she and appellant had touched each other's genitals with their hands. Appellant twice denied touching his daughter in a sexually inappropriate manner; however, when asked a third time, appellant put his head down, became "fidgety" and responded that he "wanted his daughter to get some help."

{¶3} The same day, Haithcock forwarded appellant's statements and other evidence to Corporal J. Phillip Brown of the Fayette County Sheriff's Office. On May 18, 2009, Corporal Brown visited appellant at the Fayette County Jail to conduct an independent interview. Having previously dealt with appellant in other matters, Brown testified that he was aware that appellant "had a learning disability and he was somewhat slow." Brown also testified that before interviewing appellant, he verbally advised appellant of his *Miranda* rights "numerous" times, carefully explaining each right and asking appellant if he had any questions. After hearing his rights, appellant signed a written *Miranda* waiver. Brown testified that he recorded appellant's interview, which lasted 30 minutes and took place in the sheriff's annex inside Brown's office. During the interview, Brown questioned appellant about the alleged abuse incident and the date it may have occurred. Three days later, on May 21, 2009, Brown again visited appellant in jail for the purpose of narrowing down the date of the alleged incident. Brown testified that although he did not fully re-*Mirandize* appellant, the conversation lasted less than

1. The record reflects that appellant could not read or write.

ten minutes, and appellant recognized Brown and indicated that he "remembered" his rights as explained to him three days prior.

{¶4} On May 22, 2009, appellant was indicted for one count of gross sexual imposition. Appellant moved to suppress his May 13, 2009 statements to Haithcock and his May 18 statements to Corporal Brown. As to Haithcock's interview, appellant first argued that his statements were obtained during custodial interrogation in violation of his Fifth Amendment privilege against compelled self-incrimination, and secondly that appellant's statements during the interview were not made voluntarily. Regarding the interview with Corporal Brown, appellant argued that his *Miranda* waiver was not knowing or intelligent, and that his statements to Brown were also not made voluntarily. Following a hearing, the trial court overruled appellant's motion on all grounds.[2] As a result, appellant entered a no contest plea to one count of gross sexual imposition in violation of R.C. 2907.05(A)(4). Appellant was sentenced to four years in prison. Appellant timely appealed, raising one assignment of error:

{¶5} "THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANT BY OVERRULING HIS MOTION TO SUPPRESS A STATEMENT GIVEN TO A SOCIAL SERVICE WORKER."

{¶6} Appellant argues that the trial court erred in refusing to suppress his statements to Haithcock on May 13, 2009 because the interview constituted "custodial interrogation," and Haithcock failed to advise appellant of his *Miranda* rights. Appellant also challenges this court's holding in *State v. Kessler*, Fayette App. No. CA2005-12-037, 2007-Ohio-1225, that a Children Services investigator was not a law enforcement officer required to issue *Miranda* warnings when he interviewed a suspect as part of a

2. The issues appellant raises on appeal are strictly related to the statements made to the Children Services worker, Ms. Haithcock.

routine investigation of sexual abuse allegations. In essence, appellant argues that social service workers, such as Haithcock, are law enforcement officers because "[t]hey are required to carryout [sic] and enforce the law of Ohio[.] * * *" Thus, appellant argues that Haithcock was required to advise him of his *Miranda* rights prior to questioning him on May 13, 2009.

{¶7} Appellate review of a motion to suppress presents a mixed question of law and fact. *Kessler* at ¶9, citing *State v. Burnside*, 100 Ohio St.3d 152, 155, 2003-Ohio-5372, ¶8. When considering a motion to suppress, the trial court assumes the role of the trier of fact and is therefore in the best position to resolve factual questions and evaluate witness credibility. *Kessler* at ¶9. As such, an appellate court must accept the trial court's findings of fact so long as they are supported by competent, credible evidence. Id. However, an appellate court must independently review the trial court's legal conclusions based on those facts and determine, without deference to the trial court's decision, "whether, as a matter of law, the facts meet the appropriate legal standard." Id., quoting *State v. Curry* (1994), 95 Ohio App.3d 93, 96.

{¶8} The Fifth Amendment of the United States Constitution provides persons with a privilege against compelled self-incrimination. *Kessler*, 2007-Ohio-1225 at ¶10. "[W]hen an individual is taken into custody or otherwise deprived of his freedom by the authorities in any significant way and is subjected to questioning, the privilege against self-incrimination is jeopardized. Procedural safeguards must be employed to protect the privilege[.]" *Miranda v. Arizona* (1966), 384 U.S. 436, 86 S.Ct. 1602. In *Miranda*, the Court defined custodial interrogation as "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." (Emphasis added.) Id. at 444. See, also, *State v. Hoffner*, 102 Ohio St.3d 358, 2004-Ohio-3430, ¶26. The *Miranda* requirements do not

apply when admissions are made to persons who are not "officers of the law or their agents." *State v. Watson* (1971), 28 Ohio St.2d 15, 26. See, also, *Kessler* at ¶18 ("Individuals not involved in law enforcement who speak to suspects are not required to advise those suspects of their *Miranda* rights").

{¶9} Under R.C. 2901.01(A)(11)(b), the definition of "law enforcement official" includes an employee of the state "upon whom, by statute, a duty to conserve the peace or to impose all or certain laws is imposed and the authority to arrest violators is conferred." *Columbus v. Gibson* (Dec. 15, 1992), Franklin App. No. 92AP-570, 1992 WL 414469, at *3; *State v. Combs* (Mar. 19, 1990), Brown App. No. CA89-06-008, at 4. Ohio courts have repeatedly addressed the issue of who is a "law enforcement official" for purposes of requiring *Miranda* warnings prior to questioning.[3] In general, Ohio courts have held that "social workers have no duty to provide *Miranda* warnings because they are private individuals without the power to arrest." *State v. Thoman*, Franklin App. No. 04AP-787, 2005-Ohio-898, ¶7 (statement made to social worker for Franklin County Children Services was not the result of questioning by law enforcement officials for purposes of *Miranda*).[4] However, we note that Ohio courts have also recognized specific narrow instances where a social worker may be required to provide *Miranda* warnings, i.e., when acting as an agent of law enforcement. See *Thoman* at ¶11; *State v. Jones*, Cuyahoga App. No. 83481, 2004-Ohio-5205, ¶40; *Evans*, 144 Ohio App.3d at 553.

3. See, e.g., *State v. Ferrette* (1985), 18 Ohio St.3d 106 (security personnel who questioned defendant did not have the authority to arrest, thus defendant was not in custody and *Miranda* warnings were not required); *State v. Stout* (1987), 42 Ohio App.3d 38, 39-40 (volunteer supervisor of probation department's substance-abuse program not a law enforcement official); *State v. Evans* (2001), 144 Ohio App.3d 539, fn. 23; *State v. Thoman*, Franklin App. No. 04AP-787, 2005-Ohio-898 at ¶8.

4. See, also, *Kessler*, 2007-Ohio-1225 (Children Services investigator was not an agent of law enforcement when he acted pursuant to his statutory duties to investigate alleged abuse and was not acting at the sheriff's direction); *State v. Simpson* (Feb. 21, 1992), Ross App. No. 1706, 1992 WL 37793 (defendant was not in custody when statements were made to a social worker).

{¶10} In the case at bar, the trial court rejected appellant's argument that his interview with Haithcock constituted custodial interrogation. Relying on *State v. Kessler*, the trial court held that the statements appellant made to Haithcock were "not custodial, [and] not subject to Miranda," because Haithcock was not "sent there by Corporal Brown to see what she could get [appellant] to say * * * but to simply gather information and notify [appellant] that he had been named as an alleged perpetrator."

{¶11} After a review of the record, we agree with the trial court's finding that based upon the facts in the record, Haithcock was not acting at police direction during the interview on May 13, 2009. Nothing in the record indicates that the purpose behind Haithcock's interview was to assist the police in their investigation or that she was otherwise acting as an agent of law enforcement. Haithcock testified that the purpose of her interview was "to advise [appellant] that there was an allegation of sexual abuse against him from his biological daughter and to ask him about the situation that was reported to [Children Services]." After the interview, Haithcock forwarded the evidence she gathered, including appellant's statements, to the Fayette County Sheriff's Office, where the police subsequently interviewed appellant as part of their own investigation.

{¶12} In interviewing appellant and reporting her findings to the police, Haithcock was not acting under police direction, but performing her customary duties as a Children Services investigator. See R.C. 2151.421(A)(1). See, also, *Gibson*, Franklin App. No. 92AP-570 at *3. As an investigator for Children Services, Haithcock had a legal duty to investigate any complaint concerning child abuse and to report all known or suspected abuse to law enforcement. *Kessler* at ¶19 ("Children Services agencies have a statutory duty to investigate any complaint concerning alleged child abuse"). See, also, R.C.

5153.16(A); R.C. 2151.421(A)(1).[5] Further, Haithcock testified that no law enforcement officers participated in her interview with appellant on May 13, 2009. In fact, law enforcement did not become involved in the case until Haithcock forwarded her findings to the Fayette County Sheriff's Office *after* her interview.

{¶13} In sum, the record reflects that in interviewing appellant, Haithcock was performing her duties as an investigator for Children Services and nothing more. In conducting the interview, Haithcock did not act at the direction, behest or control of Corporal Brown or any other law enforcement official. Further, Haithcock was neither invested with the power to arrest, nor did her duty to enforce Ohio law exceed her statutory duty to report alleged child abuse to the police. See *Thoman*, 2005-Ohio-898 at ¶10 (Children Services investigators have "no statutory obligation to make reports to police, except as required by R.C. 2151.421[A][1]"); *Kessler*, 2007-Ohio-1225 at ¶19. Because Haithcock was neither a "law enforcement official" nor an agent thereof, she (1) could not have subjected appellant to "custodial interrogation," as contemplated by *Miranda*, and (2) was not required to advise appellant of his *Miranda* rights prior to the interview on May 13, 2009. Thus, we hold that the trial court did not err by overruling appellant's motion to suppress his oral statements to Haithcock on May 13, 2009.

{¶14} Judgment affirmed.

RINGLAND and HENDRICKSON, JJ., concur.

5. "R.C. 2151.421 governs the official reporting, investigation, and disposition of incidents of child abuse and/or neglect. The statute requires that whenever a suspected incident of child abuse or neglect is reported, an investigation must be commenced within twenty-four hours. The authority and responsibility to conduct such investigations and to submit the necessary reports are vested solely in the county department of human services or the children services board, in cooperation with law enforcement agencies." *Brodie v. Summit Cty. Children Services Bd*. (1990), 51 Ohio St.3d 112, 117.