STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of DEQUAVIS CHRISTOPHER EVERETT, Minor.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellee,

v

DEQUAVIS CHRISTOPHER EVERETT,

Respondent-Appellant.

UNPUBLISHED
December 29, 2009

No. 291929
Saginaw Circuit Court
Family Division
LC No. 06-030465-DL

Before: K. F. Kelly, P.J., and Hoekstra and Whitbeck, JJ.

PER CURIAM.

Following a second-phase hearing to waive jurisdiction, an order was issued waiving jurisdiction of respondent to the circuit court having general criminal jurisdiction. Respondent appeals as of right. We affirm.

Siaira Bennett and her boyfriend, Jonathon (Jay) Most, were visiting Eve Gutierrez. At some point Most left and then returned with respondent. Respondent did not come in the house, but he did ask Most where Gutierrez's bedroom was located. Most did not respond. At approximately 1:05 a.m., Most and Bennett left the house. Shortly thereafter, Gutierrez went to check the deadbolt and saw a shadow in the basement. She immediately called 9-1-1. Respondent was found in a room in the basement behind a door. The light bulbs had been removed from all the fixtures in the basement.

When respondent was apprehended in the basement, he was asked what he was doing there. Respondent claimed, "The girl upstairs let me in here." While walking up the stairs, one officer told his partner that there was no sign of forced entry, and respondent said that the girl had let him in through the back door. Thereafter, when Gutierrez denied having let him in, respondent said that "Jay" let him in. Counsel objected to evidence of these statements, asserting that neither *Miranda*[1] warnings nor parental permission to speak to respondent had been given.

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

The trial court concluded that the first question may have been a custodial interrogation, but that the second two statements were volunteered and not the result of interrogation. Respondent argues that this ruling was in error.

The prosecutor was required to present legally admissible evidence. MCR 3.950(D)(1)(b). A statement made during custodial interrogation is not admissible unless a defendant was made aware of *Miranda* rights beforehand and waived those rights. *People v Harris*, 261 Mich App 44, 55; 680 NW2d 17 (2004). A "custodial interrogation" is defined 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." *Yarborough v Alvarado*, 541 US 652, 661; 124 S Ct 2140; 158 L Ed 2d 938 (2004) (quotation omitted). "The principal rationale of the requirement that *Miranda* warnings be given is to guard against the possibility that government agents might compel an individual to make self-incriminating statements while in custody." *People v Honeyman*, 215 Mich App 687, 694; 546 NW2d 719 (1996). Spontaneous and voluntary statements not the product of interrogation need not be suppressed. *People v Fisher*, 166 Mich App 699, 707-708; 420 NW2d 858 (1988).

The trial court properly concluded that respondent was subject to custodial interrogation when first asked why he was there. This "questioning [was] initiated by law enforcement officers after [respondent had] been taken into custody or otherwise deprived of his freedom of action in [a] significant way." *Yarborough*, *supra*. However, the court properly concluded that he was not being interrogated when he volunteered the second and third statements. That the police were discussing the absence of evidence of forced entry and asking Gutierrez what happened were not conversations that the "police knew or reasonably should have known [were] likely to invoke an incriminating response." *Fisher*, *supra* at 707.

Respondent next argues that the evidence was insufficient to show that he had any criminal intent, and accordingly, insufficient to establish the breaking and entering of an occupied dwelling with the intent to commit a felony, larceny, or assault. MCL 750.110a(2). The prosecutor was required to establish that there was probable cause to believe that respondent had such intent. MCL 712A.4(3). Probable cause exists when there is a reasonable ground of suspicion supported by circumstances sufficiently strong to warrant a cautious person to believe that the accused is guilty of the offense charged. *People v Hudson*, 241 Mich App 268, 279; 615 NW2d 784 (2000). This is a low threshold. Respondent's implied interest in where Gutierrez would be located during the night, coupled with evidence suggesting that he was lying in wait, would give rise to a reasonable ground of suspicion that he intended a crime against a person. Moreover, a reasonable but negative inference could be drawn that respondent at least had the intent to steal when he broke into and entered the premises. Accordingly, the requisite probable cause existed.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Joel P. Hoekstra
/s/ William C. Whitbeck