1997 WL 107544
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United States District Court,
S.D. New York.

DESHAWN E., Charlotte E., and
Anthony C., Valerie C., Plaintiffs,
v.
Howard SAFIR, Raul Russi, Peter Reinharz,
and Michael Rodrigues, Defendants.

No. 96 Civ. 5296 JSM.
|
March 10, 1997.

Attorneys and Law Firms

Jane M. Spinak, The Legal Aid Society, Juvenile Rights Division (Marin M. Lucente, Henry S. Weintraub, of counsel), New York City, for Plaintiff.

Paul A. Crotty, Corporation Counsel of the City of New York (Georgia Pestana, of counsel), New York City, for Defendants.

MEMORANDUM OPINION AND ORDER

MARTIN, District Judge:

***1** In this action, children who are the subject of Family Court delinquency proceedings seek to enjoin the New York City Police Department from having members of the Family Court Detective Squad [1] conduct interviews of plaintiffs and others similarly situated when they appear at the Family Court Probation Office pursuant to a direction contained in a desk appearance ticket issued at the time the children were arrested. Plaintiffs Defendants indicate that the Squad has been renamed the "Juvenile Crime Squad." This opinion, however, will continue to refer to the Squad as the "Family Court Detective Squad." contend that the interrogations are the product of deception and take place in an inherently coercive atmosphere. Therefore, according to the complaint, the children's statements are involuntary and the interrogation violates their constitutional due process and *Miranda* rights. Plaintiffs also allege that the interrogation takes place at a critical stage of the proceedings against them and, therefore, that they have a right to counsel before being interrogated. Plaintiffs also allege that the practices of the Family Court Detective Squad violate several provisions of state law.

Plaintiffs have moved for a preliminary injunction and the defendants have cross-moved for summary judgment. The defendants' motion for summary judgment is granted on the ground that the plaintiffs have not established a federal cause of action. Since no federal claim is asserted, the Court will not exercise supplemental jurisdiction over the state law claims.

Family Court Act—Juvenile Proceedings:
According to New York law, a juvenile who has been arrested may be interrogated by the police. N.Y. Family Court Act ("FCA") § 305.2 (McKinney 1983). [2] If the child is then released pending further proceedings, a desk appearance ticket is issued which 2 The Family Court Act specifically provides that the police "may take the child to a facility designated by the chief administrator of the courts as a suitable place for the questioning of children.. and there question him for a reasonable period of time." FCA § 305.2. requires the child and his parent or legal guardian to appear at a designated probation office where the case may be adjusted [3] without the filing of formal charges. FCA § 307.1. Statements made to a probation officer during the adjustment process are not admissible at a fact-finding hearing, and cannot be communicated to the presentment agency. FCA § 308.1.

The crux of plaintiffs' complaint is that when the child and parent are waiting at the probation office, ostensibly to meet with a probation officer, a member of the Family Court Detective Squad will appear, call out the child's name, and ask the parent and child to accompany the detective to an office where the detective proceeds to interrogate the child. There is some dispute as to whether the children are always given *Miranda* warnings prior to the interview by the police detective. Plaintiffs contend, however, that even if the warnings are given, the circumstances surrounding the interrogation are highly deceptive and coercive, since the child and parents have been given the false impression that they are being questioned by a probation officer and that adverse consequences will follow a refusal to answer the questions posed to them.

***2** Although the Court agrees with the plaintiffs that the practice of having police officers go to the room where the child and parent are waiting to meet with a probation officer and "asking" them to accompany the detective to an interrogation room is deceitful and should not be countenanced, the Court's distaste for the conduct of the police does not transform that conduct into a federal constitutional violation.

Fifth Amendment:

The Fifth Amendment does not prohibit the police from questioning a potential defendant, rather it provides that a person may not "be compelled in any criminal case to be a witness against himself." U.S. Const. amend. V. Thus, although a statement obtained from a defendant who is not properly advised in accord with the mandate of *Miranda* that he cannot be compelled to answer the officer's questions may not be used in evidence against him, the mere taking of the statement is not violative of the Constitution and does not give rise to a federal claim. *See Lefkowitz v. Turley,* 414 U.S. 70, 84, 94 S.Ct. 316, 325, 38 L.Ed.2d 274 (1973) ("Although due regard for the Fifth Amendment forbids the State to compel incriminating answers ... that may be used ... in criminal proceedings, the Constitution permits that very testimony to be compelled if neither it nor its fruits are available for such use."); *Weaver v. Brenner,* 40 F.3d 527, 535 (2d Cir.1994) ("[W]e hold that the use or derivative use of a compelled statement at *any* criminal proceeding against the declarant violates that person's Fifth Amendment rights"); *see also United States v. Ramirez,* 79 F.3d 298, 304–305 (2d Cir.1996) (government must show that statement is the product of free choice and that Miranda warnings were given before use of statement is constitutionally permissible); *Neighbour v. Covert,* 68 F.3d 1508, 1510–11 (2d Cir.1995) (failure to give *Miranda* warnings does not give rise to § 1983 claim); *Niemann v. Whalen,* 911 F.Supp. 656, 671 (S.D.N.Y.1996) (use of compelled statement triggers Fifth Amendment violation). Thus, plaintiffs' claims relating to the inadequacy of or the failure to give *Miranda* warnings do not provide a basis for relief in this Court.

Plaintiffs' claims that the circumstances surrounding the interrogation are deceptive and coercive pose a closer question. At least one Court has held that the taking of an involuntary confession violates the Fifth Amendment even if the statement is not introduced in a criminal proceeding. *Cooper v. Dupnik,* 963 F.2d 1220, 1237–44 (9th Cir.1992). The reasoning of this decision is to some extent at odds with the decision of the Second Circuit in *Neighbour v. Covert, supra.* In addition, in *Weaver v. Brenner,* 40 F.3d 527 (2d Cir.1994), the Second Circuit indicated that for there to be a Fifth Amendment violation there must be a use of the statement in a criminal proceeding, although that proceeding need not be a trial. Thus, the mere taking of the statements from plaintiffs does not amount to a Fifth Amendment violation. Moreover, while the circumstances of the interrogation may be somewhat coercive, they are not in themselves so coercive as to amount to a per se constitutional violation. *Compare Cooper v. Dupnik, supra,* at 1243.

***3** It may be that the nature of the questioning together with other facts presented in a particular case will persuade a trial judge to suppress a statement in that case, but this Court is not prepared to find that the procedure used by the Family Court Detective Squad is so coercive that it alone constitutes a Fifth Amendment violation.

Sixth Amendment:

Similarly, the plaintiffs do not state a federal claim under the Sixth Amendment. The conceded purpose of the appearance of the child and parent at the probation office is to determine whether formal delinquency proceedings should be instituted against the particular juvenile. But the Sixth Amendment right to counsel does not attach until the commencement of criminal proceedings. "It has been firmly established that a person's Sixth and Fourteenth Amendment right to counsel attaches only at or after the time that adversary judicial proceedings have been initiated against him." *Kirby v. Illinois,* 406 U.S. 682, 688, 92 S.Ct. 1877, 1881, 32 L.Ed.2d 411 (1972); *see also United States v. Gouveia,* 467 U.S. 180, 188, 104 S.Ct. 2292, 2297, 81 L.Ed.2d 146 (1984); *Moore v. Illinois,* 434 U.S. 220, 226–27, 98 S.Ct. 458, 463–64, 54 L.Ed.2d 424 (1977); *Brewer v. Williams,* 430 U.S. 387, 398–99, 97 S.Ct. 1232, 1239, 51 L.Ed.2d 424 (1977). Thus, because the plaintiffs were interrogated *before* any formal charges had been filed against them, the failure to provide counsel at the adjustment stage does not give rise to a constitutional violation as the plaintiffs Sixth Amendment right to counsel had yet to attach.

Even if this Court were to conclude that the children were entitled to counsel during the adjustment meeting with the probation officer, at which meeting an attempt is made to mediate a resolution without the filing of formal delinquency charges, the interview by the police detective is not a part of that proceeding. According to the plaintiffs, the interrogation by the detective occurs in a separate room either before or after the meeting with the probation officer. Even conceding that the making of an incriminating statement to the police officer during an interview that takes place before the meeting with the probation officer may have an adverse impact at the adjustment proceeding, the interview is not part of that proceeding, and thus, no right to counsel would arise during that separate interview. As for an interview with a detective that takes place after the adjustment meeting, there will be no impact on that adjustment proceeding, and any claim that the subsequent statement was improperly taken in the absence of counsel is most appropriately remedied by seeking at a suppression hearing to have the statement excluded.

State Law Claims:

Since plaintiffs have failed to allege either a Fifth or Sixth Amendment violation, the complaint does not state a federal cause of action. Although the allegations of the complaint certainly indicate that the activities of the Family Court Detective Squad violate the spirit, if not the letter, of the Family Court Act and are designed to deceive the children and their parents as to the nature of the interview, the Court believes that those matters should be determined in state court and, therefore, this Court will not exercise jurisdiction over the state claims.

Conclusion:

***4** For the foregoing reasons, plaintiffs' motion for a preliminary injunction is denied, defendants' motion for summary judgment is granted, and the complaint is hereby dismissed.

SO ORDERED.

All Citations

Not Reported in F.Supp., 1997 WL 107544

Footnotes

1 Defendants indicate that the Squad has been renamed the “Juvenile Crime Squad.” This opinion, however, will continue to refer to the Squad as the “Family Court Detective Squad.”

2 The Family Court Act specifically provides that the police “may take the child to a facility designated by the chief administrator of the courts as a suitable place for the questioning of children ... and there question him for a reasonable period of time.” FCA § 305.2.

3 Adjustment is a procedure followed in suitable cases for the purpose of attempting to achieve an alternative resolution of the possible charges against a juvenile without filing a formal delinquency petition. FCA § 308.1.

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