IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

September 1996 Term

No. 23393

STATE OF WEST VIRGINIA,
Appellee,

v.

GEORGE ANTHONY W., AN INFANT UNDER THE AGE
OF 18 YEARS, and JOANN W. O.,
PARENT AND/OR CUSTODIAN OF SAID CHILD,
Respondents Below,

GEORGE ANTHONY W.,
AN INFANT UNDER THE AGE OF 18 YEARS,
Appellant

Appeal from the Circuit Court of Marion County
Honorable Rodney B. Merrifield, Judge
Juvenile Action No. 92-J-174

REVERSED AND REMANDED

Submitted: October 1, 1996
Filed: December 13, 1996

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Attorney for the Appellant,

George Anthony W.

No. 23394

STATE OF WEST VIRGINIA,
Appellee,

v.

STEPHFON W., AN INFANT UNDER THE AGE
OF 18 YEARS, and BETTY B.,
PARENT AND/OR CUSTODIAN OF SAID CHILD,
Respondents Below,

STEPHFON W.,
AN INFANT UNDER THE AGE OF 18 YEARS,
Appellant

Appeal from the Circuit Court of Marion County
Honorable Rodney B. Merrifield, Judge
Juvenile Action No. 92-J-173

REVERSED AND REMANDED

Submitted: October 1, 1996
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Rory L. Perry, II
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Charleston, West Virginia Attorney for the Appellant,
Attorney for the Appellee Stephfon W.

The Opinion of the Court was delivered PER CURIAM.
JUDGE RECHT sitting by temporary assignment.
JUSTICE WORKMAN reserves the right to file a dissenting opinion.

SYLLABUS BY THE COURT

"Under W.Va. Code, 49-5-8(d), when a juvenile is taken into custody, he must immediately be taken before a referee, circuit judge, or magistrate. If there is a failure to do so, any confession obtained as a result of the delay will be invalid where it appears that the primary purpose of the delay was to obtain a confession from the juvenile." Syllabus point 3, *State v. Ellsworth J.R.*, 175 W.Va. 64, 331 S.E.2d 503 (1985).

Per Curiam:

The appellants in this proceeding,[1] George Anthony W. and Stephfon W., who are infants, claim that the Circuit Court of Marion County, acting as the Juvenile Court of that County, erred in transferring them to the adult jurisdiction of the court and in directing that they be tried as adults for the murder of Dortha Minor. They also claim that the court should have ruled on the admissibility of, and should have suppressed, certain confessions made by them and should have suppressed certain physical evidence obtained as the result of those confessions. After reviewing the issues presented and the record filed, we conclude that the appellants are

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[1]The Honorable Arthur M. Recht resigned as Justice of the West Virginia Supreme Court of Appeals effective October 15, 1996. The Honorable Gaston Caperton, Governor of the State of West Virginia, appointed him Judge of the First Judicial Circuit on that same date. Pursuant to an administrative order entered by this Court on October 15, 1996, Judge Recht was assigned to sit as a member of the West Virginia Supreme Court of Appeals commencing October 15, 1996, and continuing until further order of this Court.

Additionally, these two cases were presented to the Court as separate appeals. Because of the similarity of the issues and the fact that the two cases were so entwined, and because the same law is controlling, the Court has undertaken to discuss them in a single opinion.

correct in asserting that the confessions should be suppressed and that the transfer orders which are apparently based on the confessions should be set aside.

The record in this case shows that the stabbed, strangled, and beaten body of Dortha Minor was found in her home in Fairmont on November 23, 1992. Ms. Minor had previously given money to members of the appellants' family, and early in the investigation of the crime police officers questioned the appellant Stephfon W.'s mother, Y.B., and aunt, C.W. or C.B.W. or C.B. or C., about it. As a result of the questioning, the aunt, on November 25, 1992, notified the police that Stephfon W., who was then fifteen years old, might have been involved in the homicide.[2]

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[2]At one point in the testimony, the circumstances under which suspicion devolved on Stephfon's family is discussed in the following way:

> Q: Okay. You had had some conversations with several of Mr. W . . .'s family members, including Ms. B. . . . . What caused you to look in that direction?
>
> A: Well, this isn't the first incident we've had involving Dortha Minor and money and people going to the house and getting money and checks

and taking her to the bank. And this group of people, the B . . . s, had been doing this for quite sometime.

Q: And Stephfon was a -- or is a B . . . . In essence, he's a member of the same family, is that what you're saying?

A: Yes, sir.

Q: So your initial contact was, essentially, to go speak with the B . . .s, and based upon what --

A: There were other people we talked to who also did the same thing. This was a woman who had given away, what we believe to be large sums of money to people in the community that knew that they could approach her and she would give them money.

Q: Okay, but you fairly quickly had some idea that a member of the B . . ./B . . ./W. . . family might have been involved in this, isn't that true?

A: That's -- you can assume that.

Elsewhere it is discussed in the following terms:

Q: Now, was Mr. W . . .'s mother, Y.B., was she questioned at some time in this case?

A: Y.B.?

Q: Yes. That's Stephfon's mother.

A: Yes, sir. I would have to check the --

Q: You just don't recall now?

A: Well, I would have to check. I'm not sure. I know there were several members of the family questioned.

Q: Let me see if I can -- if I showed you your testimony from the first hearing on that issue, would that help jog your recollection?

A: It's been awhile.

Q: Here on page 79 of the December 4th, 1992, preliminary hearing. Start at page 78. My co-counsel tells me there's more there.

A: I believe at that time I stated that she was questioned, yes, sir.

Q: Okay, and she was in fact a suspect?

A: Well, the family -- members of the family had gotten money from Ms. Minor over the years.

Q: Had there been other folks that had gotten money from Ms. Minor as well?

A: Yes, sir.

Q: And was one of those C.W., or C.B.W.?

A: Yes, sir.

Q: And was she also questioned?

A: Yes, sir, she was.

Q: And she was a suspect as well?

A: She was one of the people that we talked to because of the prior incidents with Dortha Minor, yes, sir.

Q: And what led you to believe that you should question Stephfon especially?

A: Information I received from C.B.

Q: And what was that information?

A: Basically, that there had been a confrontation when she refused to give Stephfon money on a prior occasion and that Stephfon was running with a group of people she called a gang and that she believed that they were the ones responsible for the act.

Q: Did you inform Stephfon that in fact you had questioned his mother, Y., and his aunt, C., previously?

A: They were with him, sir.

Q: Yes, but I'm saying did you tell him, we've questioned them, we suspected them before?

A: I don't think I made that statement to him, no, sir.

Stephfon W. had previously been involved in criminal activity, had been adjudicated a delinquent, and had been placed on probation. He had violated the terms of his probation and had failed to appear at a juvenile probation revocation hearing scheduled for approximately 1:00 or 1:30 p.m. on November 25, 1992. As a consequence, a capias was issued for his arrest, and Stephfon was located at around 3:30 p.m.

The record does not show any connection between the issuance of the capias and the implication of Stephfon in the murder by his aunt.

However, shortly after the issuance of the capias, Stephfon was taken into custody and was taken to the Fairmont City Police Station rather than to a court or a juvenile detention center. There the city police informed Stephfon that they wanted to talk to him about the Minor murder.

Police Chief Ted Offutt read Stephfon his *Miranda* rights and asked him if he knew anything about the murder. He denied any knowledge.

From the police station, Stephfon W. was taken before a judge of the Circuit Court of Marion County for a hearing on the probation revocation question. Upon arriving, a police officer informed the court and the prosecuting attorney that the police wanted to question Stephfon about the murder of Dortha Minor after the hearing. It does not appear that the attorney representing Stephfon in the probation revocation was informed or undertook to advise Stephfon with regard to the questioning or the murder.[3] It appears that his representation was limited to the probation revocation matter. At the conclusion of the revocation hearing, the court revoked Stephfon W.'s probation and sentenced him to one year at the Industrial Home for Youth at Salem.

[3]Stephfon W.'s counsel has explained that he assumed that Stephfon was being taken to the police station to wait for transportation to the detention facility. He commented that although he knew this was not normal procedure, he thought the variation occurred because it was the day before Thanksgiving, and he assumed that representatives from the county sheriff's department were unavailable to transport Stephfon.

Stephfon W. remained at the court for approximately one hour while paper work was being completed. Then, in violation of W.Va. Code §49-5-16(a), he was escorted back to the city police station by Fairmont City Police officers.[4] At the station, he was placed in an interview room

[4]West Virginia Code §49-5-16(a) provides that a child under eighteen years of age "shall not be committed to a . . . police station." The subsection provides, in its entirety:

> A child under eighteen years of age shall not be committed to a jail or police station, except that any child over fourteen years of age who has been committed to an industrial home or correctional institution may be held in the juvenile department of a jail while awaiting transportation to the institution for a period not to exceed ninety-six hours, and a child over fourteen years of age who is charged with a crime which would be an offense of violence which would be a felony if committed by an adult, may, upon an order of the circuit court, be housed in a juvenile detention portion of a county facility, but not within sight of adult prisoners. A child charged with or found to be delinquent solely under subdivision (3), (4) or (5), section four [§49-1-4(3), (4) or (5)], article one of this chapter, shall not be housed in a detention or other

with his mother and aunt. Stephfon's grandmother, Betty B., was never invited into the room, even though she was his guardian and custodian. According to the testimony, she remained in the hallway outside the interrogation room.[5] A police officer spoke Stephfon briefly, and Stephfon

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> facility wherein persons are detained for criminal offenses or for delinquency involving offenses which would be crimes if committed by an adult: Provided, That a child who is adjudicated delinquent under subdivision (5) of said section [§49-1-4(5)] and who has violated an order of probation or a contempt order arising out of a proceeding wherein the child was adjudicated delinquent for an offense which would be a crime if committed by an adult may not be housed in a detention or other facility wherein persons are detained who have not been adjudicated delinquent for such offenses.

[5]The record reflects the following relating to the grandmother's exclusion from the interrogation room:

> Q: Did Mr. . .. [Stephfon] or Ms. B . . . [his mother] or her sister Ms. B . . . W . . . [Stephfon's aunt], that you call her now, ask for Ms. B . . . [Stephfon's grandmother] to be there when these rights were being read or anything was being signed?
>
> A: No, no one asked me for anyone else to be there or made any requests for Ms. B . . . to be there.
>
> Q: Did Ms. B . . . make any request to be there

denied being involved in the murder of Dortha Minor. He was then left alone with his mother and aunt, who, as previously indicated, had been suspects in the crime. He was allowed to speak privately with them, and shortly thereafter he informed the police officers that he wished to make a statement.[6] *Miranda* rights were recited to Stephfon, and he made a

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at the time?

A: No, sir.

Q: She was available in case either she or anybody else wanted her to come in, is that correct?

A: She was there in the hallway, yes, sir.

[6]The police officer who had spoken with Stephfon was asked what the mother and aunt said. The testimony proceeded as follows:

Q: And then you left the room for a short time and he talked to his mother and his aunt, correct?

A: That's correct.

Q: Did you hear any of their conversation?

A: No, sir.

Q: So you don't know if they were telling him, you should tell anything you know or anything of that nature?

tape-recorded statement suggesting that George W. had committed the crime in his presence. The statement was concluded at 6:06 p.m.

At 6:30 p.m., after the oral statement was concluded, Stephfon W. and his mother, who was not his legal guardian, executed a "Juvenile Rights and Waiver" form, and shortly thereafter Stephfon W. signed a written transcription of his taped statement.[7]

> A: I would assume that that's what they were telling him, because they came out and said that he wanted to make a statement about it.

[7]The term "Juvenile Rights and Waiver" form is used somewhat advisedly. The form bore the title "Juvenile Rights and Waiver", but it contained no statement to the effect that the juvenile was specifically *waiving* any rights and did not specifically advise that an attorney would be provided at a juvenile detention hearing under W.Va. Code §49-5-8(d). It did say:

> If you/your child is taken into custody, you/your child is entitled to be taken immediately before a juvenile referee or circuit court judge (in no event can the hearing be delayed until later than the next judicial day) for a detention hearing. The sole issue is whether you/your child will be detained pending further court proceedings.

At that point, there was a signature line for both the juvenile and his "Parent/Guardian/Custodian".

This was followed by an addendum, which stated:

> By signing my name below, I am saying that, although I understand those rights above, I am willing (or, as the parent, guardian or custodian, I am willing for my child or ward) to talk to the police officer or other agent of the State of West Virginia or Marion County; and that I do this voluntarily with no undue influence of any kind whatsoever being placed on me.

There were more signature lines for the juvenile and the "Parent/Guardian/Custodian" below this.

At around 8:20 p.m., the police, with the assistance of George W.'s mother and his "stepfather", located George at a friend's house.[8] He and his stepfather were then taken to the police station in a police vehicle. His mother followed in her vehicle.

There is no evidence that George was notified that he was not under arrest or free to leave when he arrived at the police station. To the contrary, a Detective Retton indicated that George was not free to leave. Detective Retton's testimony on this point proceeded as follows:

> Q: Now, at the -- was George free to leave at 8:20 when this questioning was started?
> A: When it started?
>
> Q: Yes, sir.
>
> A: I -- that wouldn't have been my decision. I don't know -- I don't believe he would have been able to leave.
>
> Q: Do you know if he would have been able to leave at the conclusion of the interview at 9:05?

[8]Although the "stepfather" was never legally married to the George's mother, it appears that he had lived with her for fifteen years and that he had a stepfather-son relationship with George. Therefore, we adopt the term stepfather to refer to him.

A: At the conclusion, I don't believe he would have been allowed to leave.

At the police station, George was given his *Miranda* rights, and he signed a "Juvenile Rights and Waiver" form.[9] His mother did not sign the portion of the form indicating recognition of the right of George to be taken before a juvenile referee or circuit judge. She did sign the addendum indicating that she was willing to have George talk to police officers. George also agreed to give a taped statement.

When the taping began, Police Chief Offutt again recited *Miranda* rights to George. In the statement, George suggested that Stephfon W. had murdered Dortha Minor and that he had assisted. George also agreed to take the police to search for physical evidence.

[9]This was virtually identical to the "Juvenile Rights and Waiver" form signed by Stephfon W., discussed in note 7, *supra*.

Shortly after George gave his statement, a Detective Retton was directed to remain with Stephfon W. No attempt was made to arrange a detention hearing for him. A Detective Cain, who was involved in the investigation, explained:

> [I] didn't think there would be a need to call a Magistrate at that point. It was after hours. It was Thanksgiving eve. We would need a Magistrate, a Prosecutor, a defense attorney, the Department of Human Services. That takes an hour or so to set up. I saw no need to do it. Why not do it when we were all ready, and when we were ready is when I called.

Detective Cain further explained that if a magistrate had been called, "the Magistrate wants the juvenile forthwith. I'm not going to call them and say I'm ready to come when I'm not ready to come."

After George gave his statement, the questioning of Stephfon proceeded, and Stephfon was informed of the differences between his statement and that of George. At length, Stephfon admitted that he stabbed Dortha Minor a couple of times and agreed to give an amended statement.

At 9:36 p.m., Stephfon gave a second statement, which suggested that he was more involved in the murder than was indicated by his first statement. He also suggested where physical evidence involved in the crime might be located.

After obtaining this statement, the police, accompanied by George, his mother and stepfather, conducted a search for the physical evidence. The search was unsuccessful, and the police asked George and his family for permission to search an automobile and their home. The permission was granted, and the search revealed articles of clothing which the police believed were connected to the crime.

With the hope of locating other physical evidence, two other officers took Stephfon W. and his mother on a further search. This search was conducted with Stephfon's consent and produced a cooking pot and a knife mentioned in the confessions.

At around 10:00 p.m. on this same day, November 25, 1992, George W. was taken to a magistrate court for a detention hearing. Upon arrival, Stephfon W. was already there.

A preliminary hearing was held on December 4, 1992. The State presented evidence to establish probable cause, including the juveniles' confessions and the testimony of officers who were involved in the investigation. Although counsel for Stephfon W. and George W. did not offer evidence, they did cross-examine the State's witnesses. At the conclusion of the hearing, Judge Merrifield, upon findings of fact and conclusions of law, found probable cause to believe that Stephfon W. and George W. had participated in the death of the decedent. He ordered that they be held without bond, pending adjudication of their cases.

On December 16, 1992, the court held a hearing on the State's motion to transfer both juveniles to the criminal jurisdiction of the court. The defense attorneys moved for continuances for both juveniles, stating that they had not had sufficient time to prepare their responses to the

State's motion to transfer. Defense counsel for both juveniles appealed to this Court, where we reversed and remanded for a new transfer hearing.[10]

On remand, the court held a seven-day hearing. The first four days of the hearing were devoted to the defense counsels' motions to suppress certain evidence, and the last three days were devoted to the State's motion to transfer. By order dated June 14, 1995, the court denied the defendants' motions to suppress and granted the State's motion to transfer. It is from this order that the appellants now appeal.[11]

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[10]*See Matter of Stephfon W.*, 191 W.Va. 20, 442 S.E.2d 717 (1994).

[11]In the consideration of this case, we employ the standard of review adopted today in syllabus point 2 of *State v. Hosea*, No. 23674 (W.Va. Dec. __, 1996), which provides:

> The Court is constitutionally obligated to give plenary, independent, and *de novo* review to the ultimate question of whether a particular confession was obtained as result of the delay in the presentment of a juvenile after being taken into custody before a referee, circuit judge or a magistrate when the primary purpose of the delay was to obtain a confession from the juvenile. The factual findings upon which the ultimate question of admissibility is predicated will be reviewed under the deferential standard of clearly erroneous.

It appears that both the appellants in the present proceeding are raising issues relating to the failure of the authorities to present them to a judge or other appropriate party for a detention hearing prior to obtaining the statements involved in this case. The duty to provide such is defined by W.Va. Code §49-5-8(d), which states:

> A child in custody must immediately be taken before a referee or judge of the circuit court and in no event shall a delay exceed the next succeeding judicial day: Provided, That if there be no judge or referee then available in the county, then such child shall be taken immediately before any magistrate in the county for the sole purpose of holding a detention hearing. The judge, referee or magistrate shall inform the child of his or her right to remain silent, that any statement may be used against him or her and of his or her right to counsel, and no interrogation shall be made without the presence of a parent or counsel. If the child or his or her parent, guardian or custodian has not retained counsel, counsel shall be appointed as soon as practicable . . . .

Whether the appellants were entitled to such a hearing and whether one was appropriately conducted is of some importance for, under the law of this State, the failure of police authorities to afford a juvenile

the appropriate hearing can affect the validity of any confession which results from the failure to conduct such a hearing. As stated in syllabus point 3 of *State v. Ellsworth J.R.*, 175 W.Va. 64, 331 S.E.2d 503 (1985):

> Under W.Va. Code, 49-5-8(d), when a juvenile is taken into custody, he must immediately be taken before a referee, circuit judge, or magistrate. If there is a failure to do so, any confession obtained as a result of the delay will be invalid where it appears that the primary purpose of the delay was to obtain a confession from the juvenile.[12]

Under the quoted standards, two relevant questions arise in the present proceeding: The first is whether the appellants were taken into

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[12]Quite recently in *State v. Sugg*, 193 W.Va. 388, 456 S.E.2d 469 (1995), this Court revisited *State v. Ellsworth J.R.*. In note 6 of *Sugg*, we emphasized:

> When analyzing the juvenile prompt presentment standards, we are not as lenient with procedural shortcomings as we are with the adult standards. *See State v. Ellsworth J.R.*, 175 W.Va. at 69, 331 S.E.2d at 508 (consideration of constitutional rights "apply to juvenile defendants even more forcibly [than to adult defendants] because of their age and immaturity"). Therefore, even brief, unexplained delays are magnified when a juvenile's rights are at issue.

custody without being provided with the hearing required by W.Va. Code §49-5-8(d), and the second is whether the primary motivation for the authorities' failing to provide such a hearing was to obtain a confession.

In *Ellsworth*, the Court indicated that custody, as used in W.Va. Code §49-5-8(d), is the equivalent of an arrest. In syllabus point 3 of *State v. Giles*, 183 W.Va. 237, 395 S.E.2d 481 (1990), another juvenile case, this Court said:

> "An arrest is the detaining of the person of another by any act or speech that indicates an intention to take him into custody and that subjects him to the actual control and will of the person making the arrest." Syllabus point 1, *State v. Muegge*, 178 W.Va. 439, 360 S.E.2d 216 (1987).[13]

In *State v. Moss*, 180 W.Va. 363, 376 S.E.2d 569 (1988), this Court explained that, in the juvenile context, an arrest may occur even though a juvenile is not actually taken into custody initially for a crime

[13]*State v. Meugge* has been overruled to the extent that it involves arrests by individuals other than the police. *See State v. Honaker*, 193 W.Va. 51, 454 S.E.2d 96 (1994). In the present case, police officers were plainly involved.

in issue. In that case, the juvenile was confined in the Ohio State Reformatory for crimes committed in Ohio. West Virginia authorities learned of his whereabouts and lodged a detainer against him so that he would not be released from custody before they could transport him to West Virginia to answer West Virginia charges. Upon being transported to West Virginia, he was not given a hearing pursuant to W.Va. Code §49-5-8(d) before a confession was extracted from him. This Court held that noncompliance with the requirement that the juvenile be promptly presented before a judicial officer, as required by W.Va. Code §49-5-8(d), resulted in the inadmissibility of the confession, if the failure to present was primarily motivated by the decision to obtain a confession from the juvenile. The Court also indicated that the failure to present, under such circumstances, would operate to exclude the confession even where *Miranda* rights had been given and waived.

In examining the present case, the Court believes that the evidence supports the conclusion that both the appellants were held in custody without being presented before a judicial officer, in violation

of W.Va. Code §49-5-8(d), for the primary purpose of questioning them about the murder of Dortha Minor. Clearly, Stephfon W. was not free to leave. Just like the juvenile in *State v. Moss*, *Id.*, Stephfon was in custody under legal process, but he was detained, just as was the juvenile in *State v. Moss*, for the primary purpose of questioning, rather than being taken immediately to a judicial officer for a W.Va. Code §49-5-8(d) hearing.

In the case of George W., the record conclusively shows that the police, after obtaining the statement of Stephfon W. implicating George in the crime, made a deliberate effort to locate George W. and, upon finding him, placed him in a police cruiser. Three witnesses in this case testified that George W. was taken by the arms and escorted to the police cruiser and handcuffed. A detective present testified that he was not handcuffed. He was then taken to the police station for interrogation. It is clear that George was not advised that he could walk away from interrogation at any time, and Detective Retton, an officer involved in the case, testified that he did not believe that George was free to leave when he arrived at the police station for questioning.

Recently, in *State v. Jones*, 193 W.Va. 378, 456 S.E.2d 459 (1995), this Court examined the circumstances under which the stop of a person for interrogation by the police was converted into a custodial detention. The Court indicated that controlling factors were the length, duration, and purpose of the stop; the extent of the questioning; and the location of detention and interrogation. The Court also indicated that limited police investigatory interrogation was allowable when a suspect was expressly informed that he was not under arrest, he was not obligated to answer questioning, and he was free to go. Here, George was detained for a lengthy period of time and questioned extensively. He was detained in a police cruiser and at a police station, and the obvious purpose of the questioning was to explore his involvement in the murder of Dortha Minor and possibly to extract a confession from him. He was not told that he was free to leave.

Accordingly, under the overall circumstances of this case, this Court believes that both Stephfon W. and George W. were in custody within the meaning of our juvenile cases.

The record in the case also conclusively shows that Stephfon W. and George W. were not given W.Va. Code §49-5-8(d) hearings before the confessions were extracted from them. Stephfon W. was in custody a lengthy period prior to the time he gave his confession, the evidence being that he was arrested at around 3:30 p.m. and that he was giving his statement at 6:00 p.m. Although other juvenile proceedings were conducted in the interim, the Court cannot discern a reason why no effort was made to provide him with the hearing contemplated by W.Va. Code §49-5-8(d), at least at the conclusion of the revocation proceeding, other than the desire to question him about the murder. Additionally, at the conclusion of the other proceedings, he was taken to the police station for questioning, in plain violation of W.Va. Code §49-5-16(a), which prohibits detention of a juvenile in a police station. Somewhat similarly, George W. was located sometime between 6:50 and 8:20 p.m., and no effort was given to provide him with a W.Va. Code §49-5-8(d) hearing. Instead, he, although a juvenile, was taken to a police station, where he was given his *Miranda* rights and where interrogation began.

In sum, the Court believes that both prongs of the *Ellsworth J.R.* test were met with respect to both juveniles. They were both in custody, and it is obvious that the primary purpose of the custody in both cases was interrogation. Additionally, timely W.Va. Code §49-5-8(d) hearings were not afforded the juveniles.

When there is a failure to conduct a timely W.Va. Code §49-5-8(d) hearing under circumstances such as those in the present case, that is, where the purpose of the delay is to extract a confession, syllabus point 3 of *State v. Ellsworth J.R., supra*, indicates that a confession obtained in the delay is invalid. This is true even where *Miranda* rights have been given and waived. *State v. Moss, supra*, and *State v. Guthrie*, 173 W.Va. 290, 315 S.E.2d 397 (1984). Under the circumstances of this case, the Court believes that the confessions obtained by the police were inadmissible in evidence.

The Court notes that Stephfon W. also argues that, under the fruit of the poisonous tree doctrine, physical evidence in this case discovered as a result of the confessions was inadmissible. *See State v. Mullins*, 177 W.Va. 531, 355 S.E.2d 24 (1987); *State v. Stanley*, 168 W.Va. 294, 284 S.E.2d 367 (1981); and *State v. Canby*, 162 W.Va. 666, 252 S.E.2d 164 (1979).

We cannot discern from the record that the confessions were the only sources leading the police to the discovery of the physical evidence, and it appears that there might have been consents, other than those given by Stephfon W. and George W., which impact on the admissibility of this evidence. In light of the Court's confusion on this point, we believe that, upon remand, the trial court should take such steps as are reasonably necessary to develop the full facts surrounding the seizure of the physical evidence and should then reassess the admissibility of that evidence in light of the law.

After examining the record, it is also clear to this Court that the decision to transfer the appellants to the jurisdiction of the circuit court from the jurisdiction of the juvenile court was based upon the confessions. Since the Court believes that the confessions and physical evidence were inadmissible, the decision of the circuit court transferring jurisdiction of the case was based upon improper evidence and must be reversed.

For the reasons stated, the decision of the Circuit Court of Marion County transferring the jurisdiction of these cases is reversed, and the Court declares that the confessions discussed herein were illegally obtained and are inadmissible against the appellants and should be suppressed. The cases are remanded for such further proceedings under the juvenile or criminal jurisdiction of the circuit court as may be appropriate and necessary.

Reversed and remanded.