

[J-57-2002]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 44 EAP 2001
	:	
Appellee	:	Appeal from the Judgment of Superior
	:	Court entered on 9/26/2000 at No. 1607
	:	PHL 1998 affirming the Judgment of
v.	:	Sentence entered on 4/24/98 at Nos.
	:	9612-0160, 0161, 0163 & 0164 in the
	:	Court of Common Pleas of Philadelphia
JOHN PEREZ,	:	County, Criminal Division.
	:	
Appellant	:	760 A.2d 873 (Pa. Super. 2000)
	:	
	:	ARGUED: April 9, 2002

OPINION

MR. JUSTICE EAKIN

DECIDED: March 24, 2004

We are asked to determine whether the Superior Court erred in affirming appellant's judgment of sentence for robbery and related offenses, when the evidence included an inculpatory statement appellant made more than six hours after his arrest, before he was arraigned. The Superior Court's application of the "six-hour rule" established by Commonwealth v. Davenport, 370 A.2d 301 (Pa. 1977), and Commonwealth v. Duncan, 525 A.2d 1177 (Pa. 1987) (Opinion Announcing the Judgment of the Court),¹ causes us to re-examine this bright-line rule, which calls for suppression of a pre-arraignment confession simply because it was obtained more than six hours after arrest.

¹ Although Duncan was not a majority opinion, Pennsylvania courts have relied upon it, in conjunction with Davenport, as a seminal decision regarding the "six-hour rule."

At 4:30 p.m., on November 24, 1996, three men robbed a deli at gunpoint. Based on the victims' account and a videotape from a security camera, police had a description of the suspects and their car. At 6:15 p.m., a pizzeria was robbed by three men of the same description, with the same car. At 6:30 p.m., police stopped a car matching the description, and finding its occupants matched the description of the suspects, arrested them for both robberies. Appellant, a juvenile at the time, was one of the occupants; seeking to avoid discovery by the police of outstanding warrants for his arrest, he gave police what they later found to be a false name, birth date, address, and phone number.

At approximately 11:15 p.m., after concluding his preliminary investigation of the crime scenes, Detective George Feters began to interview appellant. When Detective Feters ran a computer check at 11:42 p.m., using the name appellant had given, he discovered appellant had lied. Police ascertained appellant's true identity around midnight; at 12:15 a.m., they telephoned his aunt, with whom he lived, and asked her to be present while they talked to appellant. She declined, but gave the detectives permission to speak with appellant about the robberies. At 12:45 a.m., appellant was given Miranda² warnings and agreed to make a statement; he confessed to being involved in both robberies. Questioning concluded at 4:35 a.m. Appellant was arraigned at 9:24 a.m., nearly 15 hours after his arrest.

Appellant moved to suppress his statement because it was not obtained within six hours of his arrest, in violation of Davenport and Duncan. The trial court denied the motion. Appellant was tried as an adult, a jury found him guilty, and he was sentenced to 8 to 20 years imprisonment. He appealed to the Superior Court, again alleging his confession should have been suppressed.

² Miranda v. Arizona, 384 U.S. 436 (1966).

The Superior Court affirmed, concluding that although the interrogation did not begin until nearly six hours following arrest, suppression was not required because appellant caused the delay by giving the police false information. Commonwealth v. Perez, 760 A.2d 873, 876 (Pa. Super. 2000), appeal granted, 790 A.2d 1015 (Pa. 2001). The majority was reluctant to allow appellant to benefit from a delay he intentionally caused, and cited the reasoning in Commonwealth v. Devan, 487 A.2d 869 (Pa. Super. 1985) (plurality), where the two-hour delay resulting from the accused's use of a false name was excluded from calculation of the six-hour period. The Devan court analogized cases where the defendants deliberately made themselves unavailable for trial, yet claimed violations of former Pa.R.Crim.P. 1100.³

Accordingly, the Superior Court held the six-hour period did not begin to run until appellant gave the police his correct name, rather than at the time of his arrest, when he used a false name. The court also noted that the interrogation was not prolonged, and appellant did not allege his statement was coerced or involuntary. The majority concluded:

In view of the cause of the delay and the circumstances surrounding it in this case, suppression of the statements made to police by Perez would not comport with the spirit behind the rule or with this Court's previous rulings that a defendant should not profit from a delay which he himself has caused.

Perez, at 879.

Judge Johnson dissented, for three reasons. First, he concluded the majority erred in relying on Devan, which was not a majority opinion, and thus of no precedential value. He further concluded the cases cited in Devan were not analogous to this case because appellant's false information did not make him physically unavailable for arraignment, nor did appellant waive his right to prompt arraignment.

³ Renumbered Pa.R.Crim.P. 600, effective April 1, 2001.

Second, the dissent maintained, a defendant can be arraigned regardless of whether the police know his correct identity; indeed, a defendant who exercises his right to remain totally silent can still be promptly arraigned. Therefore, it was the police's decision to perform further investigation which caused the delay, not appellant's dishonesty.

Finally, Judge Johnson observed the majority's holding conflicted with Davenport and Duncan. Although some members of this Court have expressed dissatisfaction with the rule, see Commonwealth v. Bridges, 757 A.2d 859, 883 (Pa. 2000) (Saylor, J., concurring; joined by Cappy, J.), cert. denied, 535 U.S. 1102 (2002), the dissent concluded it was beyond the Superior Court's authority to discard the rule as long as it remains binding precedent. Judge Johnson also concluded appellant's failure to allege his confession was coerced or involuntary was of no import, as the six-hour rule contemplated that the "'mere passage of time' while under arrest could have a coercive effect on a defendant." Perez, at 882 (Johnson, J., dissenting) (quoting Duncan, at 1182). Finding appellant had only to show his statement was made beyond the six-hour period, the dissent would have suppressed it.

In this appeal, appellant likewise argues the true cause of the delay was not his false information, but the police's decision to continue the initial investigation prior to interrogation; he argues they had sufficient information from the surveillance video, and there was no reason for the delay in questioning him. He further contends there is no need to incorporate an "excludable time" analysis into the six-hour rule, when the rule already allows for the exception of exigent circumstances.

The Commonwealth counters that police began interrogating appellant within the six-hour period, but were delayed for over an hour by appellant's false information, which made additional investigation and processing necessary. The Commonwealth further argues the six-hour rule should be reconsidered, citing the acknowledged shortcomings of a bright-line

rule of exclusion, as well as case law from other jurisdictions which have abandoned a per se approach to exclusion in favor of a "totality of the circumstances" test.

In Pennsylvania, the right to prompt arraignment is set forth in the Rules of Criminal Procedure,⁴ which state that a person who has been arrested "shall be afforded a preliminary arraignment by the proper issuing authority without unnecessary delay." Pa.R.Crim.P. 516(A) (execution of arrest warrant within judicial district of issuance) (emphasis added); see also Pa.R.Crim.P. 517(A) (execution of arrest warrant outside judicial district of issuance); Pa.R.Crim.P. 518(A) (using advanced communication technology when arrest warrant executed outside judicial district of issuance); Pa.R.Crim.P. 519(A) (arrest without warrant). This requirement is not constitutionally mandated, but it ensures a defendant is afforded the constitutional rights protected by Pa.R.Crim.P. 540, which requires the issuing authority to: read the complaint to a defendant to inform him of the nature of the charges against him, Pa. Const. art. I, § 9; inform him of his right to counsel, U.S. Const. Amends. VI, XIV, Pa. Const. art. I, § 9; and inform him of his right to reasonable bail. Pa. Const. art. I, § 14. See Pa.R.Crim.P. 540(E)(1)-(3), (G). Prompt arraignment also protects a defendant's right to be free from unreasonable seizure of his person. U.S. Const. Amends. IV, XIV, Pa. Const. art. I, § 8.

Before Davenport, to enforce the prompt arraignment requirement, this Court held all evidence obtained during unnecessary delay between arrest and arraignment was

⁴ Cf. McNabb v. United States, 318 U.S. 332 (1943); Mallory v. United States, 354 U.S. 449 (1957). These cases dealt with the right to prompt arraignment provided by Rule 5(a) of the Federal Rules of Criminal Procedure, and created what became known as the "McNabb-Mallory rule," providing for automatic exclusion of otherwise voluntary statements obtained during a period of "unnecessary delay." However, the McNabb-Mallory exclusionary rule stemmed from the Supreme Court's power to supervise the federal courts, and was not constitutionally required to be imposed on the states. Gallegos v. Nebraska, 342 U.S. 55, 63-64 (1951).

inadmissible, unless the evidence bore no relationship to the delay. Commonwealth v. Futch, 290 A.2d 417, 419 (Pa. 1972) (identification obtained during uncounselled line-up after unnecessary 13-hour delay was inadmissible, but harmless error, in light of other independent identification evidence). This holding was refined in Commonwealth v. Williams, 319 A.2d 419 (Pa. 1974), where this Court developed a three-part test for determining whether evidence obtained during pre-arraignment delay would be suppressed: (1) the delay must be unnecessary; (2) the evidence must be prejudicial; and (3) the evidence must be reasonably related to the delay. Id., at 420.

Given the flood of cases that followed, this Court in Davenport sought to "simplify the task of determining the admissibility of statements taken before arraignment and thereby further judicial economy." Id., at 306. The Court adopted a rule that made the admissibility of statements obtained between arrest and arraignment dependent on the length of time between these events: "[i]f the accused is not arraigned within six hours of arrest, any statement obtained after arrest but before arraignment shall not be admissible at trial." Id. Six hours was chosen because there was no case where a delay of six or more hours was held to be "necessary" delay, and the National Advisory Commission on Criminal Justice had recommended that time frame. See id., at 306 n.7 (collecting cases and citing Standards and Goals of the National Advisory Committee on Criminal Justice, Corrections § 4.5 (1973)).

In Duncan, the rule was modified, in response to a decade of mechanical enforcement of the six-hour period. The Court reiterated the twin aims of the rule, "to guard against the coercive influence of custodial interrogation, [and] to ensure that the rights to which an accused is entitled at preliminary arraignment are afforded without unnecessary delay." Id., at 1181 (quoting Davenport, at 305). The Court stressed that there was never an intent to have the rule rigidly applied without regard to its purpose of discouraging coercive interrogation, and emphasized the rule did not abandon Futch and Williams'

requirement that the evidence sought to be suppressed be reasonably related to the delay. Duncan, at 1182. Therefore, in determining whether to suppress an incriminating statement, "the focus should be upon when the statement was obtained, i.e., within or beyond the six-hour period." Id. Accordingly, the rule was modified to allow the admission of statements made within six hours of arrest, regardless of when arraignment occurred, as such statements were not the product of delay.

In Commonwealth v. Bond, 652 A.2d 308 (Pa. 1995), this Court reaffirmed the six-hour rule, holding it to be offense-specific; that is, "the arrest of a suspect for one criminal offense does not commence the six-hour period for questioning regarding a separate criminal offense." Bridges, at 870 (citations omitted); see also Commonwealth v. Persiano, 725 A.2d 151 (Pa. 1999). In Commonwealth v. Washington, 692 A.2d 1018 (Pa. 1997), this Court held there was no violation of Davenport or Duncan where the accused gave an inculpatory statement within five hours of the start of questioning, even though he was in custody for approximately 28 hours on an unrelated charge. Because there was no prolonged delay in arraignment for the crime at issue, the confession was admissible.

Application of a stringent bright-line rule to the vastly different sets of circumstances that may be involved in arrest, investigation, and arraignment has yielded perplexing results, and the rule has drawn its share of criticism. See Commonwealth v. Keasley, 462 A.2d 216, 217 (Pa. 1983) (McDermott, J., concurring) ("The Davenport rule severely undermines the truth-determining process, and results in the exclusion of constitutionally permissible statements."); Commonwealth v. Jenkins, 454 A.2d 1004, 1008 (Pa. 1982) (McDermott, J., concurring) ("We must...discard Davenport and return to a more flexible approach. This will enable our courts to suppress statements where they were obtained through coercion rather than watch the clocks and count the hours."); Commonwealth v. Bennett, 450 A.2d 970, 971 (Pa. 1982) (Flaherty, J., concurring) ("'[S]topwatch justice' exacts a considerable toll on society when one who is actually guilty of the crimes charged

escapes conviction and punishment for his guilty conduct because of what is termed in lay parlance, a 'technicality'."); id., at 972 (McDermott, J., concurring) ("[T]he iron six-hour rule of Davenport has created more mischief than it ever cured...in fact, it cannot even cure the mischief to which it was addressed. The Davenport rule had shielded the guilty for no reason relevant to the individual circumstances of their cases.").

People v. Cipriano, 429 N.W.2d 781 (Mich. 1988), involved Michigan's statutory requirement that an accused be brought before a magistrate "without unnecessary delay." Id., at 783 n.1 (citing M.C.L. §§ 764.13, 764.26; M.S.A. §§ 28.871(1), 28.885). Michigan, the first state to adopt the McNabb-Mallory rule, see People v. Hamilton, 102 N.W.2d 738 (Mich. 1960), had previously applied what was termed a "schizophrenic" version of the rule: "[o]n the one hand, an exclusionary rule based solely on delay is adopted, while on the other exclusion applies only when the defendant proves a causal connection between the delay and the challenged confession." Cipriano, at 787 (quoting Keene, The ill-advised state court revival of the McNabb-Mallory rule, 72 J. Crim. L. & Criminology 204, 212 (1981)). The Cipriano court noted the concerns that caused the McNabb Court to adopt the rule in 1943 had been "addressed and remedied for the most part by subsequent changes in constitutional doctrines," id., at 788 (footnote omitted), that prompt arraignment had never been elevated by the U.S. Supreme Court to the level of a constitutional right, id., at 789, and that Michigan's pre-arraignment delay statutes had never provided for automatic exclusion of a confession obtained during delay. Id.

Significantly, the Michigan Supreme Court noted the vast majority of state courts⁵ interpreting similar statutes, rejected the McNabb-Mallory rule:

⁵ See, e.g., Smith v. State, 282 So. 2d 907 (Ala. 1973); State v. Arnett, 579 P.2d 542 (Ariz. 1978); Landrum v. State, 944 S.W.2d 101 (Ark. 1997); People v. Thompson, 611 P.2d 883 (Cal. 1980); People v. Heintze, 614 P.2d 367 (Colo. 1980); Headrick v. State, 366 So. 2d 1190 (Fla. Dist. Ct. App. D1 1978); State v. Wyman, 547 P.2d 531 (Idaho 1976), overruled on other grounds, State v. McCurdy, 603 P.2d 1017 (1979); People v. Johnson, 256 N.E.2d (continued...)

Under the view adopted in most states, a confession obtained from a suspect in violation of his statutory right to prompt arraignment is not ipso facto inadmissible; rather, arraignment delay is taken into account as one relevant factor in evaluating the overall voluntariness of the confession. See, for example, State v. Newman, 409 N.W.2d 79 (ND, 1987); Ferry v. State, 453 N.E.2d 207 (Ind, 1983); People v. Goree, 115 Ill.App.3d 157, 70 Ill.Dec. 869, 450 N.E.2d 342 (1983); People v. Harris, 28 Cal.3d 935, 171 Cal.Rptr. 679, 623 P.2d 240 (1981); State v. Wiberg, 296 N.W.2d 388 (Minn, 1980); State v. Wyman, 97 Idaho 486, 547 P.2d 531 (1976), overruled on other grounds State v. McCurdy, 100 Idaho 683, 603 P.2d 1017 (1979).

Cipriano, at 785 (footnotes omitted).

The Michigan court concluded unnecessary delay in arraignment was only one factor in determining whether a confession was voluntary, and held the test should be "whether the totality of the circumstances surrounding the making of the confession indicates that it was freely and voluntarily made." Id., at 790. Among the other factors to be considered were: the accused's age; his level of education and intelligence; the extent of his previous experience with police; the repeated and prolonged nature of the questioning; the length of

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343 (Ill. 1970); Krauss v. State, 100 N.E.2d 824 (Ind. 1951); State v. Hansen, 225 N.W.2d 343 (Iowa 1975); State v. Johnson, 565 P.2d 993 (Kan. 1977); Savage v. Commonwealth, 939 S.W.2d 325 (Ky. 1996); State v. Marchetti, 173 So. 2d 531 (La. 1965); State v. Franklin, 463 A.2d 749 (Me. 1983); Woods v. State, 556 A.2d 236 (Md. 1989); Commonwealth v. Rosario, 661 N.E.2d 71 (Mass. 1996); State v. Wiberg, 296 N.W.2d 388 (Minn. 1980); Scruggs v. State, 412 So. 2d 732 (Miss. 1981); State v. Smith, 588 S.W.2d 27 (Mo. 1979); State v. Benbo, 570 P.2d 894 (Mont. 1977); Huebner v. State, 731 P.2d 1330 (Nev. 1987); State v. Lavalley, 189 A.2d 475 (N.H. 1963); State v. Barry, 429 A.2d 581 (N.J. 1981); State v. Ortiz, 422 P.2d 355 (N.M. 1966); People v. Hopkins, 449 N.E.2d 419 (N.Y. 1983); State v. Richardson, 245 S.E.2d 754 (N.C. 1978); State v. Newnam, 409 N.W.2d 79 (N.D. 1987); State v. Cowans, 227 N.E.2d 201 (Ohio 1967); State v. Shipley, 375 P.2d 237 (Or. 1962); State v. Huddleston, 924 S.W.2d 666 (Tenn. 1996); Cantu v. State, 842 S.W.2d 667 (Tex. Crim. App. 1992); Horne v. Commonwealth, 339 S.E.2d 186 (Va. 1986); State v. Moore, 560 P.2d 712 (Wash. 1977); State v. Mason, 249 S.E.2d 793 (W.Va. 1978); Raigosa v. State, 562 P.2d 1009 (Wyo. 1977).

detention prior to the confession; whether he was advised of his constitutional rights; whether he was injured, ill, drugged, or intoxicated when he confessed; whether he was deprived of food, sleep, or medical attention; and whether he was physically abused or threatened with abuse. Id.

Applying these principles to the three cases before it, the Cipriano court concluded the co-defendants' confessions, given 26 hours after arrest, three days after arrest, and two days after arrest, respectively, were not coercively obtained, and thus were admissible. However, the court commented, "we do not condone the failure of the police to comply with the statutes. ... However, we hold that an otherwise competent confession should not be excluded solely because of a delay in arraignment." Id., at 790.

Even while professing to follow a rule of automatic exclusion based on the passage of time, our courts have recognized so many exceptions that, as one member of this Court has observed, the rule is "so readily capable of avoidance as to function as no rule at all..." Bridges, at 883 (Saylor, J., concurring; joined by Cappy, J.). The factors upon which such exceptions have been based bear close, if not identical, resemblance to those under the "totality of circumstances" approach: the unavailability of a magistrate; the accused's actual knowledge of his rights and the charges; the time spent transporting the accused to the jurisdiction where the warrant was issued; and delay attributable to the accused's mental or physical condition. Thus, Pennsylvania courts have already abandoned an "all or nothing" application of the six-hour rule; if the delay was caused by circumstances beyond police control, and there was no apparent coercion, voluntary confessions have generally not been excluded because of the delay.⁶

⁶ See, e.g., Commonwealth v. Bracey, 662 A.2d 1062 (Pa. 1995) (period of delay attributable to accused's mental or physical condition is "necessary delay," and must be excluded when determining whether statement was obtained as result of "unnecessary delay"); Commonwealth v. Hughes, 555 A.2d 1264 (Pa. 1989) (no Davenport violation where defendant gave oral statement within six hours of arrest and subsequent written (continued...))

The purpose of the six-hour rule is to guard against coercive interrogation and to ensure the accused is promptly afforded his constitutional rights, see Duncan, at 1181; if the accused has not been subjected to coercive tactics, the mere passage of six hours in

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statement, completed after six-hour period, was mere recitation of oral statement); Commonwealth v. D'Amato, 526 A.2d 300 (Pa. 1987) (applying Travaglia and concluding transportation time from state where defendant fled, to state where warrant was issued, was excludable from computation of six-hour period); Commonwealth v. Travaglia, 467 A.2d 288 (Pa. 1983) (no Davenport violation where defendants were charged in two counties, and, although arraignment in second county was 7 ½ hours after arrest, it entailed traveling 40 miles, and second arraignment provided defendants with no more information than first arraignment); Keasley, supra (no Davenport violation where, although 12 hours between arrest and arraignment, delay was caused by exigent circumstance of unavailability of judge, police made diligent efforts to secure prompt arraignment in face of circumstances, and no interrogation occurred during delay; accused had given statement within one hour of arrest); Jenkins, supra (stressing Davenport rule was intended to be flexible, no violation where defendant made statement 4 ½ hours after arrest, was released before six-hour period expired because arraignment within that time was impossible, then subsequently rearrested and arraigned within 2 ½ hours); Commonwealth v. Payne, 760 A.2d 400 (Pa. Super. 2000) (no Davenport violation where defendant's statement occurred ten minutes after expiration of six-hour period, since defendant first admitted involvement in crime shortly after arrest, and subsequent statement was voluntary clarification of first one), appeal denied, 771 A.2d 1282 (Pa. 2001); Commonwealth v. Devine, 750 A.2d 899 (Pa. Super. 2000) (citing Odrick and related cases for proposition that, as long as statement was initiated within six-hour period, no Davenport violation); Commonwealth v. Odrick, 599 A.2d 974 (Pa. Super. 1991) (no Davenport violation where, although statement did not conclude until 50 minutes after six-hour period, statement began well before six-hour period had elapsed, and delay was not result of police coercion, had no impact on voluntary statement, and was directly attributed to confusion caused by two different crimes occurring at same time in same location); Commonwealth v. Robertson, 463 A.2d 1133 (Pa. Super. 1983) (no Davenport violation where defendant was arrested for murder and robbery, arraigned only on murder before he gave statement, and was not arraigned on robbery until six hours and ten minutes after arrest; purposes of Davenport rule, promptly affording protections of Pa.R.Crim.P. 140 and informing accused of rights by neutral judicial authority, were satisfied at initial arraignment on murder charge, and defendant was informed at time of arrest that charges were murder and robbery); Commonwealth v. Ryles, 418 A.2d 542 (Pa. Super. 1980) (unavailability of judge for arraignment constituted exigent circumstance which excused arraignment six hours and 25 minutes after arrest).

custody prior to questioning does not taint his confession. We agree that "[a]n involuntary confession can be extorted in five minutes or six hours. Time is important but not of the essence. It must be considered with other factors, but is not by mere passage determinative." Hughes, at 1284 (McDermott, J., concurring). Accordingly, we hold voluntary statements by an accused, given more than six hours after arrest when the accused has not been arraigned, are no longer inadmissible per se.⁷ Rather, in determining the admissibility of all statements, regardless of the time of their making, courts must consider the totality of the circumstances surrounding the confession. The factors noted in Cipriano are relevant, as are those which have traditionally been recognized in determining the voluntariness of a confession:

The test for determining the voluntariness of a confession and the validity of a [Miranda] waiver looks to the totality of the circumstances surrounding the giving of the confession. Some of the factors to be considered include: the duration and means of interrogation; the defendant's physical and psychological state; the conditions attendant to the detention; the attitude exhibited by the police during the interrogation; and any other factors which may serve to drain one's powers of resistance to suggestion and coercion.

Commonwealth v. DeJesus, 787 A.2d 394, 403 (Pa. 2001) (citation omitted), cert. denied, 123 S.Ct. 580 (2002); see also Commonwealth v. Johnson, 727 A.2d 1089 (Pa. 1999).

⁷ Cf. Commonwealth v. Mason, 490 A.2d 421 (Pa. 1985) (violation of Pa.R.Crim.P. 2004 (now Pa.R.Crim.P. 204), which requires search warrants be served by law enforcement officers, does not result in automatic exclusion of evidence seized pursuant to warrant). This Court "reemphasize[d] that exclusion/suppression of evidence is not an appropriate remedy for every violation of the Pennsylvania Rules of Criminal Procedure concerning searches and seizures. It is only where the violation also implicates fundamental, constitutional concerns, is conducted in bad-faith or has substantially prejudiced the defendant that exclusion may be an appropriate remedy." Id., at 426 (emphasis in original). Likewise, the right to prompt arraignment in Pennsylvania is afforded by the Rules of Criminal Procedure, and is not constitutionally mandated; therefore, application of a per se exclusionary rule to violations of the prompt arraignment rule is an unduly harsh sanction.

We recognize the enumerated goals of Davenport, including simplification and guidance to court, counsel and law enforcement, elimination of needless pretrial litigation and consequent delay, and lessening the burden on the system without sacrificing the protections afforded the arrested party. Hence, we do not return to the day of near-mandatory litigation based on delay alone, and hold that the time that elapses between arrest and arraignment, by itself, is not grounds for suppression.

That said, delay which directly exacerbates some other coercive police conduct may be relevant, even if less than six hours, for the test remains the totality of circumstances, and the duration of coercive behavior may be relevant to that determination. However, without more, the mere passage of time is not grounds to suppress. If delay exceeds six hours, it is not per se grounds to suppress, but is one factor that must be considered in determining whether, in the totality of circumstances, coercion resulted in the challenged evidence. To the extent that prior cases hold to the contrary, they are overruled.

Without a per se rule of exclusion based on the mere passage of time, computation of "excludable time" will no longer be necessary. Courts instead will look to the totality of the circumstances, including the cause and effect of any delay beyond six hours. However, courts will not have to determine what time "counts" when computing the six-hour period. This rule will apply to appellant's case and all pending cases where the issue has been properly raised.

Turning to appellant's case, we note our standard of review in evaluating the denial of a suppression motion:

In reviewing a trial court's suppression ruling, our initial task is to determine whether the factual findings are supported by the record. In making this determination, we must consider only the evidence of the prosecution's witnesses, and so much evidence of the defense that remains uncontradicted when fairly read in the context of the record as a whole. When the evidence supports the factual findings, we are bound by such findings; we may reverse only if the legal conclusions drawn therefrom are erroneous.

Bridges, at 868 (citation omitted).⁸

At the time of appellant's arrest, he lied to the police about his age and identity. Unaware they did not have correct information and would later have to spend time uncovering appellant's real name, as well as incurring additional processing time because he was a juvenile, the police continued investigating the crime scenes. Detective Fetters was assigned to investigate the deli robbery sometime after 5:00 p.m.; he was the only detective assigned because they "were short-handed as far as manpower went...." N.T. Suppression Hearing, 10/1/97, at 73. At the police station, he interviewed the complainants and viewed the security camera video, then went to the deli around 7:30 p.m., where he met the mobile crimes unit. Detective Fetters had the other officers view the video with him, to show them where he wanted fingerprints and photographs taken. He interviewed other witnesses, and spent about an hour and a half processing the scene.

When Detective Fetters returned to the station around 9:00 p.m., he was notified of the pizzeria robbery and assigned to that case as well. The complainants had already been interviewed, so he went straight to the scene, arriving around 9:30 p.m. The mobile crimes unit being otherwise occupied, another detective helped him process the scene. They took photographs, tried to gather physical evidence including a spent round in the ceiling, and investigated the block where the pizzeria was located, looking for evidence related to a shot fired at officers in pursuit of the robbers. They also interviewed the owner of the pizza shop. About an hour and a half was spent processing the pizza shop; the

⁸ In his Reply Brief, appellant asks this Court to clarify the scope of review in a suppression case; he points to the Commonwealth's citation to the trial record and argues only evidence from the suppression hearing may be considered in evaluating a suppression ruling. See Appellant's Reply Brief, at 6-17. As there is ample support in the suppression hearing record for the trial court's factual findings and conclusions of law, we decline the invitation to address whether trial evidence may be considered.

detectives left there and spent half an hour searching the intersection where the robbers' car had been stopped. They returned to the police station around 11:15 p.m.

Detective Fetters did not begin to question appellant until hours after his arrest, but appellant's argument that there was "no reason to delay [the] interrogation," is not correct. The detective explained at the suppression hearing that because he was the detective assigned to the case, he alone was responsible for interviewing three suspects, including appellant, and no other detective would have done so while he was processing the crime scene, especially when they had their own assignments coming in. See N.T. Suppression Hearing, 10/1/97, at 80-81. Half an hour into the interview, the detective realized appellant's deception and had to spend another hour finding out his real name and obtaining his aunt's permission to speak with him. Thus, nearly six and one-half hours passed until appellant was given Miranda warnings and made his statement.

Nothing in the record indicates this delay was aimed at overcoming appellant's will, or that he was subjected to coercive tactics. Rather, the detective began interviewing appellant within five hours of arrest, as soon as feasible. Once appellant's real name and age were ascertained, in spite of his efforts to conceal them, he was given Miranda warnings; he answered "yes" to each question concerning his understanding of his rights and his waiver of them. Detective Fetters testified although appellant seemed "a bit nervous...[a] bit apprehensive," when he was given the warnings, he "became a little bit more relaxed and began to talk to me freely," after being told his aunt had given permission for him to be interviewed. N.T. Suppression Hearing, 10/1/97, at 91.

The interview took place in the captain's office, where appellant was informed of the video of the robbery, which was shown to him at his request. Detective Fetters was the only officer who stayed in the room with appellant. There were several breaks taken during the statement. Appellant was permitted to use the bathroom, and was given something to eat. The detective interrupted the interview to fill out a juvenile flow chart on appellant, as

well as to rest his hand from writing; during these breaks he told appellant he could relax. The detective testified that at no time did appellant tell him he wanted to stop the interview, or that he did not understand the conversation. Appellant's physical demeanor never changed. Appellant signed his name at the conclusion of the four-page statement, as well as on each page. The entire process took just under four hours.

Nothing in the duration or means of interrogation, appellant's physical or psychological state, the conditions attendant to detention, the attitude exhibited by the detective during interrogation, or the duration or circumstances of appellant's pre-interrogation detention, indicates appellant's will was overborne or that his statement was the product of coercion. Although appellant was a juvenile, he lied about his age to prevent the discovery of outstanding bench warrants for his arrest. Appellant was aware he was being charged with robbery, and he knew his rights. His agreement to waive those rights and make a statement cannot be said to have been anything other than knowing, intelligent, and voluntary. Accordingly, the Superior Court and the suppression court properly concluded the statement was admissible at trial, and appellant's judgment of sentence is affirmed.

Judgment of sentence affirmed.

Former Chief Justice Zappala did not participate in the decision of this case.

Mr. Justice Castille files a concurring opinion.

Mr. Justice Nigro files a concurring and dissenting opinion.

Mr. Justice Saylor files a concurring and dissenting opinion.