

DA 21-0583

IN THE SUPREME COURT OF THE STATE OF MONTANA

2023 MT 247N

IN THE MATTER OF:

N.T.,

A Youth.

APPEAL FROM: District Court of the Eighteenth Judicial District,
In and For the County of Gallatin, Cause No. DJ-20-54A
Honorable Peter B. Ohman, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Chad Wright, Appellate Defender, Kristen L. Peterson, Assistant
Appellate Defender, Helena, Montana

For Appellee:

Austin Knudsen, Helena, Montana Attorney General, Bjorn Boyer,
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Submitted on Briefs: October 11, 2023

Decided: December 19, 2023

Filed:



Clerk

Justice Laurie McKinnon delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 N.T. appeals his conviction from the Montana Eighteenth Judicial District Youth Court, Gallatin County, for criminal mischief, a felony in violation of § 45-6-101, MCA.

¶3 On September 15, 2021, at around 11:00 p.m., Officers Kyle Hodges (Officer Hodges) and Brett Logan (Officer Logan) were dispatched to the area of 110 East Olive Street in Bozeman, following a report of individuals having spray painted graffiti on the side of a building. Shortly after arriving in the area, Officer Logan observed three individuals standing on the sidewalk. As Officer Logan drove towards the individuals, two of them began to walk away from the third. Officer Logan stopped the two individuals later identified as O.Q. and K.R. while Officer Hodges stopped the third individual later identified as N.T.

¶4 Officer Hodges told N.T. to “[s]top for a second . . .” and identified himself as a Bozeman police officer. Thereafter a short conversation ensued during which Officer Hodges asked N.T. what he was up to that evening and whether he was with the other two individuals. N.T. responded that he was with the other two individuals and that they were “[j]ust hanging around.” Officer Hodges informed N.T. that he was responding to a report of individuals spray painting buildings and inquired whether N.T. knew anything about

that. Initially N.T. said he had no knowledge of anyone spray painting; however, when Officer Hodges then asked him what they were up to, N.T. responded, “[u]m, might have been spray painting something.” This response led Officer Hodges to request that N.T. remove the backpack he was wearing and to produce identification.

¶5 N.T. did not have identification but gave Officer Hodges his name, date of birth, phone number, address, and the name of the school he attended. Officer Hodges then asked if N.T.’s backpack contained spray paint and N.T. responded that it did. He asked N.T. if he would mind opening it and showing him, which N.T. did. Officer Hodges then decided to move his vehicle off the road and asked N.T. to relocate to a parking area across the street. He then obtained N.T.’s consent to search the bag and remove the cans of spray paint inside. It was only at this point that Officer Hodges informed N.T. that he was not free to leave. Officer Hodges asked N.T. how many buildings he had spray painted that night and N.T. said he had spray painted “Penis Man” on one house. Officer Hodges then asked how many other houses N.T. had spray painted to which N.T. replied “[l]ike 2 or 3 or so.”

¶6 At this point, Officer Hodges read N.T. his Miranda rights but failed to advise N.T. he could have a parent present during any questioning. Officer Hodges then inquired whether N.T. would like to continue speaking with him and, after some back and forth, N.T. indicated he would speak to him. During the questioning N.T. described some of the places he had spray painted and what he had spray painted on them. At one point, both Officer Logan and Officer Hodges were required to leave the area to attend to a more

pressing matter and they left N.T. at the scene. However, Officer Logan later investigated the areas that N.T. had mentioned and found graffiti.

¶7 N.T. was charged with criminal mischief in violation of § 45-6-101, MCA. Prior to trial, the State conceded that due to Officer Hodges's insufficient Miranda advisory everything N.T. said after being taken into custody should be suppressed. However, the State argued the initial stop of N.T. was an investigatory stop which allowed Officer Hodges to ask questions to confirm or dispel his suspicions. Therefore, the State argued everything discussed prior to the insufficient Miranda advisory was admissible. N.T. argued that his statements and consent to a backpack search should be suppressed because they resulted from a custodial interrogation and, under the totality of the circumstances, were not voluntary.

¶8 The District Court agreed with the State and allowed the admission of all evidence gathered prior to the improper Miranda advisory. Following a jury trial, N.T. was convicted of criminal mischief and adjudicated a delinquent youth. He was ordered to pay \$23,050 in restitution for damages caused by his spray painting and required to complete 20 hours of community service. N.T. appeals.

¶9 On appeal N.T. argues that Officer Hodges was not merely engaging in general fact-finding or just asking questions but rather interrogating N.T. from the beginning to gather information to confirm his suspicion that N.T. was connected to the incidents of graffiti. N.T. argues that his age, maturity, education, and inexperience with the criminal justice system made him more susceptible to coercive interrogation and an involuntary confession. N.T. alleges that Officer Hodges was fully aware from the outset that N.T. was

a child and that he should have read N.T. his rights before asking him any questions. Based on Officer Hodges' failure to read N.T. his Miranda rights at the beginning of their interaction, N.T. argues that any statements he made to Officer Hodges were involuntary and coerced.

¶10 Conversely, the State argues that N.T.'s statements were voluntary and not a result of a coerced confession. The State further argues it was permissible for Officer Hodges to ask N.T. questions and that he did not engage in prohibited questioning tactics or deceit to gain a confession. Rather, the State maintains Officer Hodges asked a brief number of preliminary questions during which N.T. admitted to having spray painted something. The State thus maintains N.T.'s confession was voluntary.

¶11 This Court reviews "a district court's denial of a motion to suppress to determine whether the district court's findings of fact are clearly erroneous and whether the district court's interpretation and application of the law is correct." *State v. Rookhuizen*, 2007 MT 312, ¶ 6, 340 Mont. 148, 172 P.3d 1257. This Court considers "numerous factors in individual cases that can bear upon whether a confession is voluntary, and no single factor controls." *State v. Eskew*, 2017 MT 36, ¶ 17, 386 Mont. 324, 390 P.3d 129. However, some relevant factors "include[] the defendant's age, education, background and experience with law enforcement." *Eskew*, ¶ 17. Other factors include whether there was "use of psychological coercion . . . interrogation under the assumption of guilt; and lying to the suspect about what is known of [their] involvement in the crime." *Eskew*, ¶ 18.

¶12 In Montana, "[i]n order to obtain or verify an account of the person's presence or conduct or to determine whether to arrest the person, a peace officer may stop any person

or vehicle that is observed in circumstances that create a particularized suspicion that the person or occupant of the vehicle has committed, is committing, or is about to commit an offense.” Section 46-5-401(1), MCA. In the present case, Officer Logan and Officer Hodges were responding to a report of individuals “spray painting graffiti on the side of a building” and were dispatched to the area of 110 East Olive Street at around 11:00 p.m. When they arrived, Officer Hodges observed N.T. with two other individuals standing in close proximity to the scene of the call. At this point, Officer Hodges headed in the direction of N.T. while Officer Logan approached the other two individuals who had walked off on their own. He activated his lights and said “[s]top for a second, Bozeman Police. How’s it going, man?” He then preceded to ask N.T. preliminary questions regarding who he was and what he was doing.

¶13 Officer Hodges asked N.T. what he was up to and whether he was with the other two individuals. N.T. responded that he did know the other two individuals and that they were “[j]ust hanging around.” Officer Hodges then asked N.T. his age and where he lived and N.T. responded he was 17 and lived “[d]own by Costco.”¹ He then informed N.T. that he had received a report of people spray painting buildings and asked whether N.T. knew anything about that. Initially, N.T. denied having any knowledge. However, after pointing out that it was odd that three underaged individuals were walking around after 11:00 p.m. on a Wednesday “just hanging around,” N.T. stated that they “might have been spray painting something.”

¹ Costco is located almost four miles away from where Officer Hodges encountered N.T.

¶14 Nothing in Officer Hodges' actions indicate that he was utilizing psychological coercion, questioning N.T. under the assumption of guilt, or that he lied to procure a confession from N.T. Initially, Officer Hodges asked N.T. preliminary questions because he found N.T. standing in the area where he had just received a report of individuals spray painting buildings. N.T. provided evasive responses. For example, N.T. indicated that the three of them were just hanging out, but N.T. lived near Costco which was almost four miles away from his current location. Even after receiving these responses, Officer Hodges did not use coercive language, suggest N.T. was lying, or that he knew N.T. was involved. Instead, Officer Hodges said that "it doesn't really make sense to be walking around so late at night" and N.T. agreed, saying, "I suppose." Having received such a response, Officer Hodges then asked "[s]o, what were you doing down there?" N.T. told him he "might have been spray painting something."

¶15 Considering all these factors as a whole, this Court cannot conclude that the interaction between Officer Hodges and N.T. was anything but a routine investigative stop. The record does not support that Officer Hodges utilized tactics which turned a routine investigative stop into a coerced confession. Therefore, the District Court did not err when it admitted the statements made by N.T. during his initial encounter with Officer Hodges.

¶16 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. This appeal presents no constitutional issues, no issues of first impression, and does not establish new precedent or modify existing precedent.

¶17 Affirmed.

/S/ LAURIE McKINNON

We Concur:

/S/ MIKE McGRATH

/S/ JAMES JEREMIAH SHEA

/S/ INGRID GUSTAFSON

/S/ JIM RICE