NO. COA03-438

NORTH CAROLINA COURT OF APPEALS

Filed: 2 March 2004

IN THE MATTER OF:
RICK ALEXANDER PEEPLES
DOB: 12/15/1988

Surry County
No. 02 J 92B

Appeal by juvenile from order entered 12 December 2002 by Judge Charles M. Neaves, Jr., in Surry County District Court. Heard in the Court of Appeals 14 January 2004.

Attorney General Roy Cooper, by Special Deputy Attorney General Robert O. Crawford, III, for the State.

William B. Gibson, for juvenile-appellant.

CALABRIA, Judge.

Rick Alexander Peeples ("juvenile") appeals his adjudication as a delinquent juvenile asserting the trial court erred in denying his motion to suppress a statement he gave to a police officer. In the statement, juvenile admitted that he and two friends were rabbit hunting when they hid their guns at the nearby elementary school and went riding on four-wheelers. Juvenile was adjudicated a delinquent for violating N.C. Gen. Stat. § 14-269.2(b), which prohibits the possession of a rifle on school property. In the dispositional order, the trial court, *inter alia*, placed juvenile on supervised probation for six months and ordered he serve fifty

hours of community service. On appeal, juvenile argues he gave the statement during a custodial interrogation which violated N.C. Gen. Stat. § 7B-2101. Juvenile also asserts the trial court erred in failing to grant his motion to dismiss. We disagree and affirm the orders of the trial court.

Officer Greg Hemric ("Officer Hemric") testified that on 31 August 2002, he received a report of "four-wheelers and suspicious people walking on school buses at Cedar Ridge Elementary." After seeing a four-wheeler speed off, Officer Hemric searched the school grounds and, near the outdoor playground equipment, found two duffle bags containing two .22 caliber rifles and a sleeping bag. A canine unit tracked a scent from the duffle bags to a home belonging to one of juvenile's friends. Juvenile and his two friends each gave statements to the police. At the hearing, Officer Hemric read juvenile's statement into the record:

> 'We started rabbit hunting about two p.m. in the field behind Andrew's house, then went through the woods looking for rabbits. And we got to the school, and we said let's go riding. So we hid the guns and bags on play equipment and left. And when we came back, we seen police and we got scared and ran. The stuff that was in the bags – I don't know what it was but I do know there was two .22 rifles and bullets and hunting bags. But none of the stuff was mine.'

Officer Hemric explained he first spoke with the juvenile on the porch of the house, but then "asked him to step to the patrol car." Juvenile sat in the police car with Officer Hemric when he wrote his statement because it was raining outside and there was insufficient light in the house. Officer Hemric stated he did not

read juvenile his rights, nor did he contact his parents, because he did not consider the juveniles to be in custody. However, Officer Hemric could not recall telling the boys they were free to leave, and admitted that if they had tried to leave he "would have probably tried to have stopped them." There were nine officers at the scene. Over objection, the trial court admitted the juvenile's statement, determining he was not "in custody." Juvenile appeals.

Juvenile asserts the trial court should have suppressed the statement. With respect to juvenile interrogation, our statutory law provides:

> (a) Any juvenile in custody must be advised prior to questioning:
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> (1) That the juvenile has a right to remain silent;
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> (2) That any statement the juvenile does make can be and may be used against the juvenile;
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> (3) That the juvenile has a right to have a parent, guardian, or custodian present during questioning; and
>
> (4) That the juvenile has a right to consult with an attorney and that one will be appointed for the juvenile if the juvenile is not represented and wants representation.
>
> (b) When the juvenile is less than 14 years of age, no in-custody admission or confession resulting from interrogation may be admitted into evidence unless the confession or admission was made in the presence of the juvenile's parent, guardian, custodian, or attorney. If an attorney is not present, the parent, guardian, or custodian as well as the juvenile must be advised of the juvenile's rights as set out in subsection (a) of this section; however, a parent, guardian, or custodian may not waive any right on behalf of the juvenile.

N.C. Gen. Stat. § 7B-2101 (2003). As the language of the statute directs, in accordance with *Miranda*, these rights arise when a

juvenile is "in custody." *State v. Smith*, 317 N.C. 100, 104, 343 S.E.2d 518, 520 (1986), *overruled on other grounds*, *State v. Buchanan*, 353 N.C. 332, 340, 543 S.E.2d 823, 828 (2001).

The North Carolina Supreme Court recently discussed the appropriate test for whether a person is "in custody." *Buchanan*, 353 N.C. at 340, 543 S.E.2d at 828. The Court instructed: "based on United States Supreme Court precedent and the precedent of this Court, the appropriate inquiry in determining whether a defendant is 'in custody' for purposes of *Miranda* is, based on the totality of the circumstances, whether there was a 'formal arrest or restraint on freedom of movement of the degree associated with a formal arrest.'" *Buchanan*, 353 N.C. at 339, 543 S.E.2d at 828. The Court explained the proper test is this so-called "ultimate inquiry" test and not the "free to leave" test, often utilized in the context of the Fourth Amendment seizure of a person and occasionally incorrectly applied by our appellate courts to the "in custody" determination. *Id.*, 353 N.C. at 340, 543 S.E.2d at 828. Accordingly, to determine whether a juvenile is "in custody" the test is "whether a reasonable person in defendant's position, under the totality of the circumstances, would have believed that he was under arrest or was restrained in his movement to the degree associated with a formal arrest." *Id.*, 353 N.C. at 339-40, 543 S.E.2d at 828; *accord State v. Barden*, 356 N.C. 316, 337, 572 S.E.2d 108, 123 (2002), *cert. denied*, ___ U.S. ___, 155 L. Ed. 2d 1074 (2003). Moreover, "[t]his is an objective test, based upon a reasonable person standard, and is 'to be applied on a case-by-case

basis considering all the facts and circumstances.'" *State v. Jones*, 153 N.C. App. 358, 365, 570 S.E.2d 128, 134 (2002) (quoting *State v. Hall*, 131 N.C. App. 427, 432, 508 S.E.2d 8, 12 (1998), *aff'd*, 350 N.C. 303, 513 S.E.2d 561 (1999)(citation omitted)).

In the case at bar, juvenile spoke with an officer on the porch of his friend's home. The officer asked juvenile to write a statement in his patrol car because it was raining and the light in the home was insufficient. We cannot find, under these circumstances, the fact that juvenile wrote his statement in a patrol car is sufficient for a reasonable person to believe "he was under arrest or was restrained in his movement to the degree associated with a formal arrest." Our determination is supported by North Carolina case law. In *State v. Hipps*, 348 N.C. 377, 399, 501 S.E.2d 625, 638 (1998), our Supreme Court held defendant was not "in custody" when he got into a patrol car of his own free will, sat in the front seat, was not handcuffed, was not told he was under arrest or that he could not leave. Similarly, in the case at bar, juvenile was asked to sit in the police car but was not handcuffed, told he was under arrest or informed he could not leave. *See also State v. Parker*, 59 N.C. App. 600, 607, 297 S.E.2d 766, 770 (1982) (holding defendant was not in custody when he was asked by a police officer to sit in the patrol car and defendant voluntarily agreed); *cf. State v. Johnston*, 154 N.C. App. 500, 503, 572 S.E.2d 438, 441 (2002), *appeal dismissed*, 356 N.C. 687, 578 S.E.2d 320 (2003) (holding defendant was in custody when he "was

ordered out of his vehicle at gun point, handcuffed, placed in the back of a patrol car").

We note that Officer Hemric's statement that he "would have probably tried to have stopped [juvenile from leaving]" does not affect this Court's analysis. "'A policeman's unarticulated plan has no bearing on the question whether a suspect was 'in custody' at a particular time; the only relevant inquiry is how a reasonable man in the suspect's position would have understood his situation.'" *Buchanan*, 353 N.C. at 341-42, 543 S.E.2d at 829 (quoting *Berkemer v. McCarty*, 468 U.S. 420, 442, 82 L. Ed. 2d 317, 336 (1984)). Having determined a reasonable man in juvenile's position would not have believed he was either under arrest or restrained to the degree of a formal arrest, we affirm the ruling of the trial court denying juvenile's motion to suppress his statement on the basis that juvenile was not in custody at the time.

Juvenile's remaining argument on appeal, that the court improperly denied his motion to dismiss, was premised upon finding juvenile's statement should have been suppressed. Accordingly, we affirm the court's denial of defendant's motion to dismiss.

Affirmed.

Judges BRYANT and ELMORE concur.

Report per Rule 30(e).