FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

Nos. 1D21-1114
1D21-1115
1D21-1116
(Consolidated for disposition)

J.H., A Child,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Duval County.
Michael Kalil, Judge.

August 17, 2022

M.K. THOMAS, J.

J.H. (Appellant), a juvenile, appeals the trial court's finding that his waiver of *Miranda*[1] rights made during an interview with law enforcement was given knowingly, voluntarily, and intelligently. He also argues that the trial court erred by failing to indicate the length of his probation. We affirm on the *Miranda* issue but reverse and remand with instructions to enter a corrected disposition order regarding probation.

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[1] *Miranda v. Arizona*, 384 U.S. 436 (1966).

I. Factual Background

While in juvenile detention on unrelated charges, Appellant was identified as a suspect in a burglary and an armed burglary. Detective A.J. Kinard (Det. Kinard) had Appellant transported to the police station for questioning, during which Appellant confessed to participation in the two crimes and was charged accordingly.

Appellant moved to suppress his confession, alleging that the interview violated his right to be free of unreasonable searches and seizures and his privilege against self-incrimination. Appellant alleged his waiver and confession resulted from threats, promises, and inducements, and were obtained without parental awareness or notification.

During the interview, Det. Kinard read and reviewed with Appellant his *Miranda* rights and obtained Appellant's written *Miranda* waiver before asking substantive questions. Appellant told Det. Kinard he was fifteen years old and in middle school. Det. Kinard explained that the waiver is "something that the police read to witnesses, suspects, victims, whoever we encounter." Det Kinard continued, "I'm going to read these to you. And we go over this with victims, suspects, businesses, just – it's just what we do. I'm sure you've had your rights read to you before[,]" to which Appellant responded in the affirmative. Appellant confirmed that he could read and write and indicated he understood his rights.

At the motion to suppress hearing, Det. Kinard testified that Appellant appeared to understand his rights and waiver, was coherent, and never indicated that he wished to have an attorney or a parent present. Det. Kinard was not asked by either party whether he made any attempts to contact Appellant's mother prior to questioning Appellant. Appellant's mother also testified at the hearing. She confirmed that no one contacted her regarding her son being transported to the police department for questioning and only learned of the transport when she arrived at the juvenile detention center for a visit, and he was not there.

The court denied Appellant's motion to suppress, finding Appellant's statements and waiver of *Miranda* rights were given

knowingly, voluntarily, and intelligently. The court found that, although he was fifteen years old, Appellant was experienced in the juvenile delinquency system after being on probation for an unrelated felony offense. The court also noted that Det. Kinard obtained a written waiver before substantive questioning.

Appellant pleaded guilty to the additional charges, reserving the right to appeal the denial of his motion to suppress. The court ordered a predisposition report, which identified Appellant was in the eighth grade after being held back for two years, read at a fourth-grade level, and his sentence comprehension was at a sixth-grade level. The court withheld adjudication and placed Appellant on probation without indicating the length of Appellant's probation. Appellant moved to correct the disposition error, requesting that the court specify the length of his probation. Because the trial court failed to respond to the motion within thirty days of its filing, it was rendered automatically denied.[2] This timely appeal followed.

II. Analysis

Waiver of Miranda Rights

We review a trial court's factual findings on a motion to suppress for competent, substantial evidence. *Hall v. State*, 248 So. 3d 1227, 1229 (Fla. 1st DCA 2018). The trial court's application of the law to those factual findings is reviewed de novo. *Id.*

There is no bright-line rule that renders a confession by a juvenile involuntary. In order to determine whether a juvenile defendant's waiver of *Miranda* rights was voluntary, knowing, and intelligent, appellate courts employ a totality of the circumstances test. *Id.* The pertinent factors include: 1) the manner in which the *Miranda* rights were administered, like cajoling or trickery; 2) the age, experience, background, and intelligence of the defendant; 3)

[2] Under Florida Rule of Juvenile Procedure 8.135(b)(1)(B), should a trial court fail to respond to a motion to correct a disposition order within thirty days of entry, the motion is deemed denied.

whether the defendant's guardian was contacted, and the juvenile given an opportunity to consult a parent, guardian, or counsel before questioning; 4) whether the interview was conducted in a police station; and 5) whether the interrogators secured a written waiver. *Id.* (citing *Ramirez v. State*, 739 So. 2d 568, 576 (Fla. 1999)). As factors one, four, and five do not necessitate further discussion, we affirm without comment.

Turning to the second factor—age, experience, background, and intelligence of the defendant—Appellant argues that his age rendered his waiver unknowing and involuntary. In evaluating this factor, a court looks to "mental capacity or I.Q., age, physical condition, demeanor, coherence, articulateness, capacity to make full use of one's faculties, memory, level of education, level of reading skill, time of interrogation, [and] prior record or experience with the criminal justice system." *Carter v. State*, 697 So. 2d 529, 534 (Fla. 1st DCA 1997) (alteration in original) (quoting *State v. Crosby*, 599 So. 2d 138, 142 (Fla. 5th DCA 1992)).

Appellant's age, level of understanding, and experience shows that Appellant understood he voluntarily waived his *Miranda* rights. Appellant can read and write, was calm during the interview, and indicated he understood his rights. Appellant was familiar with the criminal justice system, and, as noted by the trial court, had been incarcerated for a serious felony at the time of his interview. Appellant was read his *Miranda* rights, never indicating that he was confused. Det. Kinard testified that Appellant seemed to understand the rights read to him and was coherent and aware. Thus, there exists competent, substantial evidence to support the trial court's determination that Appellant's lower level of I.Q. and education did not result in an involuntary and unknowing waiver. *See Brookins v. State*, 704 So. 2d 576, 578 (Fla. 1st DCA 1997) (holding sixteen-year-old defendant's waiver voluntary despite being "borderline" disabled and functioning at the level of an eight- to ten-year-old child).

Factor three contemplates whether the defendant's parent or guardian was contacted, and the juvenile given an opportunity to consult them or counsel before questioning. Although relevant to the balance of the factors, the absence of a juvenile defendant's parent during questioning does not automatically render a waiver

involuntary. *See Hall*, 248 So. 3d at 1231*; State v. Herrera*, 201 So. 3d 192, 197 (Fla. 2d DCA 2016); *McIntosh v. State*, 37 So. 3d 914, 918 (Fla. 3d DCA 2010). There is no constitutional requirement that interviewing officers notify a juvenile's parents or guardians prior to questioning, nor is there an obligation to extend an opportunity to consult with them or counsel when the juvenile does not request such an opportunity. *See Neely*, 126 So. 3d at 346.[3]

While Appellant's mother testified that she first learned of Appellant's interview when she went to visit him where he had been incarcerated, no testimony was gathered to reveal the efforts used to contact her. Further, nothing in the record indicates that Appellant's mother's absence from the interview affected the voluntariness of Appellant's statements. Appellant's mother never testified as to what she would have done had she been informed of the interview, and Appellant never asked for his mother during the interview or indicated that he wanted to stop speaking until she arrived. Therefore, the fact that Appellant's mother was not informed prior to his questioning, and was absent during the interview, does not render Appellant's waiver involuntary.

Accordingly, we conclude that under the totality of the circumstances, the relevant factors do not establish that Appellant's waiver of his *Miranda* rights was involuntary or unknowing. We thus affirm the trial court's denial of Appellant's motion to suppress.

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[3] We note that section 985.101(3), Florida Statutes, requires that law enforcement attempt, and continue to attempt, to notify the parents upon taking a juvenile "*into custody*." (Emphasis added). However, failure to comply with this statutory requirement does not necessarily mean a *Miranda* waiver was unknowing and involuntary but only a factor to be considered. *See Ramirez v. State*, 739 So. 2d 568, 577 (Fla. 1999). Here, Appellant was already in custody when the interrogation for the additional charges occurred. The parties raise no arguments regarding this distinction.

Motion to Correct Sentencing Error

A trial court's ruling, or failure to rule, on a motion to correct a sentencing error presents a purely legal issue which an appellate court reviews de novo. *Daffin v. State*, 31 So. 3d 867, 869 (Fla. 1st DCA 2010).

When adjudication is withheld in a juvenile proceeding, a court may impose a specific probationary period or an indeterminate period of probation. *D.L.J. v. State*, 765 So. 2d 740, 742 (Fla. 1st DCA 2000). However, a disposition is legally insufficient where a court orders a term of probation but fails to indicate whether the probation is indefinite or for a fixed period. *See S.T. v. State*, 8 So. 3d 1153, 1153 (Fla. 1st DCA 2009); *J.M.W. v. State*, 935 So. 2d 630, 632 (Fla. 2d DCA 2006). Thus, the lower court erred by failing to either indicate Appellant's probation was for an indeterminate period or state the specific length of time of Appellant's probation. We, therefore, reverse the final disposition order and remand the case for entry of a corrected order.

III. Conclusion

For the foregoing reasons, we AFFIRM in part, REVERSE in part, and REMAND for entry of a corrected order.

RAY and OSTERHAUS, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Jessica J. Yeary, Public Defender, and Pamela D. Presnell, Assistant Public Defender, Tallahassee, for Appellant.

Ashley Moody, Attorney General, and Darcy Townsend, Assistant Attorney General, Tallahassee, for Appellee.