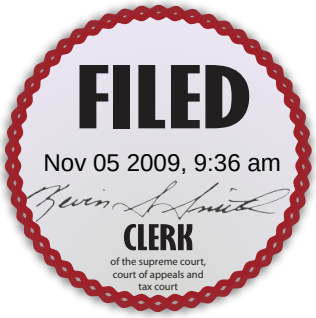

ATTORNEY FOR APPELLANT:

BERNICE A.N. CORLEY
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

JODI KATHRYN STEIN
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

C.D.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A05-0904-JV-211
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION COUNTY COURT
The Honorable Marilyn A. Moores, Judge
The Honorable Scott B. Stowers, Magistrate
Cause No. 49D09-0902-JD-363

November 5, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

C.D. appeals his adjudication as a delinquent child for committing an act that would be auto theft as a class D felony if committed by an adult. We affirm.

Issues

C.D. raises three issues, which we consolidate and restate as:

I. whether the trial court abused its discretion by admitting C.D.'s statement to a police officer into evidence; and

II. whether the evidence is sufficient to sustain C.D.'s adjudication.

Facts

On January 20, 2009, America Falcon of Indianapolis started her green Ford Expedition to warm it up and then went inside her apartment. Minutes later, she heard the vehicle accelerating and saw someone driving away with her vehicle. Falcon reported to the police that her vehicle had been stolen.

On February 3, 2009, Officer Michael Wright of the Indianapolis Metropolitan Police Department was dispatched to Woodglen Drive. When he arrived at Woodglen Drive, Officer Wright saw a green Ford Expedition blocking the street. As soon as Officer Wright pulled up, the Expedition "took off at a high rate of speed." Tr. p. 20. A man then ran up to Officer Wright and told him that the Expedition was stolen. Officer Wright followed the Expedition to a parking spot, confirmed that the vehicle was stolen, and ordered fifteen-year-old C.D. out of the vehicle. Officer Wright handcuffed C.D. and placed him in the back of the police car.

In the vehicle, Officer Wright found two temporary license plates, one "In God We Trust" license plate, and a BB gun. The glass in the driver's window was missing, and the side of the vehicle was damaged.

When Officer Wright returned to the police car, C.D. asked "what was going on and why he was in handcuffs or why he was going to jail." Id. at 24. Officer Wright responded that C.D. was driving a stolen vehicle. C.D. then stated that "he was not the person that stole the vehicle" and that Miguel Deloya "originally stole the vehicle." Id. at 33.

The State alleged that C.D. had committed acts that, if committed by an adult, would be auto theft as a Class D felony, criminal trespass as a Class A misdemeanor, unlawful entry of a motor vehicle as a Class B misdemeanor, and driving without a license as a Class C misdemeanor. At the disposition hearing, C.D. testified that he told Officer Wright that "maybe [he] knew the person who had stolen the vehicle," but that he did not tell Officer Wright that he knew the vehicle was stolen. Id. at 54. The juvenile court entered a true finding as to the auto theft as a Class D felony and driving without a license as a Class C misdemeanor allegations.

Analysis

I. Admission of Statement

The first issue is whether the trial court abused its discretion by admitting C.D.'s statement to Officer Wright. Because the admission and exclusion of evidence falls within the sound discretion of the trial court, we review the admission of evidence only for abuse of discretion. N.W. v. State, 834 N.E.2d 159, 161 (Ind. Ct. App. 2005), trans.

denied. An abuse of discretion occurs "where the decision is clearly against the logic and effect of the facts and circumstances." Id.

C.D. argues that the trial court abused its discretion by admitting into evidence his statement to Officer Wright that "he was not the person that stole the vehicle" and that Miguel Deloya "originally stole the vehicle." Tr. p. 33. According to C.D., the admission of the statement violated his rights under Indiana Code Section 31-32-5-1, which provides:

> Any rights guaranteed to a child under the Constitution of the United States, the Constitution of the State of Indiana, or any other law may be waived only:
>
> (1) by counsel retained or appointed to represent the child if the child knowingly and voluntarily joins with the waiver;
>
> (2) by the child's custodial parent, guardian, custodian, or guardian ad litem if:
>
> (A) that person knowingly and voluntarily waives the right;
>
> (B) that person has no interest adverse to the child;
>
> (C) meaningful consultation has occurred between that person and the child; and
>
> (D) the child knowingly and voluntarily joins with the waiver; or
>
> (3) by the child, without the presence of a custodial parent, guardian, or guardian ad litem, if:
>
> (A) the child knowingly and voluntarily consents to the waiver; and

> (B) the child has been emancipated under IC 31-34-20-6 or IC 31-37-19-27, by virtue of having married, or in accordance with the laws of another state or jurisdiction.

C.D. argues that his right to consultation with an attorney or parent was not properly waived and that his statement to Officer Wright was inadmissible because he was not advised of his rights and he was subjected to a custodial interrogation. Presumably C.D. is referring to his rights under Miranda v. Arizona, 384 U.S. 436, 469, 86 S. Ct. 1602, 1625 (1966), which requires law enforcement officials to give those in custodial interrogation an advisement of certain constitutional rights. Ogle v. State, 698 N.E.2d 1146, 1149 (Ind. 1998). However, we conclude that C.D.'s rights under Miranda are not implicated here and, thus, there was no violation of the waiver provisions of Indiana Code Section 31-32-5-1.

"The purpose of the issuance of Miranda warnings is to secure the constitutional privilege against self-incrimination by providing procedural safeguards to be employed during questioning initiated by officers focusing on a person suspected of wrongdoing." J.D. v. State, 859 N.E.2d 341, 345 (Ind. 2007). "[W]ithout proper safeguards the process of in-custody interrogation of persons suspected or accused of crime contains inherently compelling pressures which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely." Id. (quoting Miranda, 384 U.S. at 467, 86 S. Ct. at 1624). However, "Miranda recognizes that '[a]ny statement given freely and voluntarily without any compelling influences is . . . admissible in evidence.'" Id. (quoting Miranda, 384 U.S. at 478, 86 S. Ct. at 1630). Similarly, our

supreme court has held that voluntary statements made by a juvenile at the time of his or her arrest do not come under the prohibitions of Indiana Code Section 31-32-5-1. Stidham v. State, 608 N.E.2d 699, 701 (Ind. 1993) (holding that there was no violation of the predecessor to Indiana Code Section 31-32-5-1 if a juvenile spontaneously volunteers a statement to police officers who are guarding him or her following an arrest).

Here, although C.D., who was handcuffed in the back of the police car, was clearly in police custody, we conclude that he was not subject to an interrogation. An "interrogation" includes "express questioning and words or actions on the part of the police that the police know are reasonably likely to elicit an incriminating response from the suspect." White v. State, 772 N.E.2d 408, 412 (Ind. 2002) (citing Rhode Island v. Innis, 446 U.S. 291, 301, 100 S. Ct. 1682, 1689-90 (1980)). The evidence most favorable to the juvenile court's true finding shows that C.D. asked Officer Wright "what was going on and why he was in handcuffs or why he was going to jail." Tr. p. 24. Officer Wright responded that C.D. was driving a stolen vehicle. C.D. then stated that "he was not the person that stole the vehicle" and that Miguel Deloya "originally stole the vehicle." Id. at 33. Officer Wright was merely responding to C.D.'s question, and we cannot say that his response was reasonably likely to elicit an incriminating response from C.D. We conclude that C.D. was not subjected to a custodial interrogation and that his rights under Miranda and Indiana Code Section 31-32-5-1 are not implicated. The trial court did not abuse its discretion by admitting C.D.'s statement.

II. Sufficiency of the Evidence

The next issue is whether the evidence is sufficient to sustain C.D.'s adjudication as delinquent for having committed an act that would be auto theft as a Class D felony if committed by an adult. When we review sufficiency of the evidence claims with respect to juvenile adjudications, we neither reweigh the evidence nor judge the credibility of the witnesses. J.D.P. v. State, 857 N.E.2d 1000, 1010 (Ind. Ct. App. 2006), trans. denied. Rather, we consider only the evidence most favorable to the judgment and the reasonable inferences drawn therefrom and will affirm if the evidence and those inferences constitute substantial evidence of probative value to support the judgment. Id.

The offense of auto theft is governed by Indiana Code Section 35-43-4-2.5(b), which provides: "A person who knowingly or intentionally exerts unauthorized control over the motor vehicle of another person, with intent to deprive the owner of: (1) the vehicle's value or use . . . commits auto theft, a Class D felony." C.D. argues only that the evidence was insufficient to show that he knew the vehicle was stolen. The evidence shows that C.D. "took off at a high rate of speed" when Officer Wright approached the scene. Tr. p. 20. When he stopped C.D., Officer Wright found two temporary license plates, one "In God We Trust" license plate, and a BB gun in the vehicle. The glass in the driver's window was missing, and the side of the vehicle was damaged. When Officer Wright returned to the police car, C.D. asked "what was going on and why he was in handcuffs or why he was going to jail." Id. at 24. Officer Wright responded that C.D. was driving a stolen vehicle. C.D. then stated that "he was not the person that stole the vehicle" and that Miguel Deloya "originally stole the vehicle." Id. at 33. Under

these circumstances, the evidence was sufficient to show that C.D. knew the vehicle was stolen.[1]

Conclusion

C.D.'s statement to Officer Wright was admissible, and the evidence was sufficient to demonstrate that C.D. knew the vehicle was stolen. We affirm.

Affirmed.

NAJAM, J., and KIRSCH, J., concur.

[1] C.D. makes no argument regarding the length of time between the theft of the vehicle and his arrest or regarding his exclusive possession of the vehicle during that time. See Shelby v. State, 875 N.E.2d 381, 384-86 (Ind. Ct. App. 2007), trans. denied.