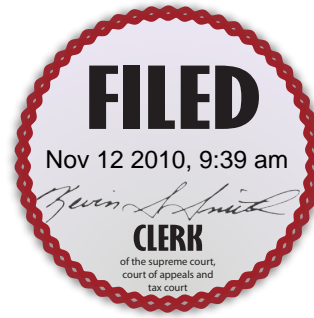


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

D.M.,)
)
Appellant-Respondent,)
)
vs.) No. 49A02-1005-JV-551
)
STATE OF INDIANA,)
)
Appellee-Petitioner.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Marilyn A. Moores, Judge
The Honorable Scott B. Stowers, Magistrate
Cause No. 49D09-1001-JD-125

November 12, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-respondent D.M. appeals the juvenile court's order finding him delinquent for committing acts that would have constituted Burglary,¹ a class B felony, and Theft,² a class D felony, had they been committed by an adult. D.M. argues that the juvenile court erred by admitting his statement to police officers into evidence because he did not have an opportunity for a meaningful consultation with his mother before waiving his rights and that neither the waiver nor his subsequent statement were voluntarily made. Finding no error, we affirm.

FACTS

On January 13, 2010, firefighter Brian Braunagel received a telephone call regarding his home. The information he learned from the call caused him to leave work and drive home immediately, calling the police on his way at approximately 1:50 p.m. When he arrived home, he discovered that his side door and gate were open and that several items of property were missing.

Sometime after 2:00, two uniformed officers arrested thirteen-year-old D.M. and his friend, C.W., and brought them to the Braunagel residence. Michelle Milton, D.M.'s mother, learned at approximately 3:00 p.m. that D.M. had been arrested. Milton immediately went to the location where her son was being held, and his father later joined them as well. When Milton arrived, D.M. was being held in a police cruiser. Police officers refused to permit her to speak with D.M. until a detective arrived on the scene,

¹ Ind. Code § 35-43-2-1.

² I.C. § 35-43-4-2.

explaining that they did not want the investigation to be impaired. Milton also alleges that the officers told her that she would not be permitted to speak with D.M. until both signed a waiver of rights form. Furthermore, Milton states that there were several fire fighters on the scene who glared at her and made hostile comments.

Indianapolis Metropolitan Police Detective Mark Quigley was dispatched to the Braunagel residence. Detective Quigley spoke with Milton, who informed him that D.M. was willing to make a statement. Milton and D.M. were then placed in Detective Quigley's vehicle, where he advised Milton and D.M. of D.M.'s rights. Milton and D.M. read and signed the advisement of rights portion of the Juvenile Waiver form. Detective Quigley then exited the vehicle to give them time to consult, explaining that he was taking his tape recorder with him and that their conversation would not be recorded. He told them that they could have "as much time [to talk] as they wanted." Tr. p. 42. He stepped away from the vehicle to a point at which he could not overhear their conversation. Several minutes later, Detective Quigley returned to the vehicle to ask if they were done talking. Milton responded affirmatively. D.M. and Milton then read and signed the waiver of rights portion of the form at approximately 4:15 p.m.; D.M. then told Detective Quigley that he and C.W. had burglarized the Braunagel residence and had stolen several items from the home.

On January 14, 2010, the State filed a petition alleging D.M. to be a delinquent child for committing acts that would have been class B felony burglary and class D felony theft had they been committed by an adult. At the close of the April 1, 2010,

hearing on the petition, the juvenile court found that the allegations in the petition were true. On April 29, 2010, the juvenile court held a dispositional hearing and placed D.M. on probation with special conditions until October 28, 2010. D.M. now appeals.

DISCUSSION AND DECISION

D.M.'s sole argument on appeal is that the juvenile court erred by admitting the statement he made to Detective Quigley into evidence because he did not have a chance for a meaningful consultation with Milton before he waived his rights and because neither the waiver nor his subsequent statement were voluntary. We review a lower court's decision to admit or exclude evidence for an abuse of discretion, which occurs when the decision is clearly against the logic and effect of the facts and circumstances before it. Hollingsworth v. State, 907 N.E.2d 1026, 1029 (Ind. Ct. App. 2009). In reviewing the decision, we will neither reweigh the evidence nor assess witness credibility, and will consider conflicting evidence in a light most favorable to the ruling. In re P.M., 861 N.E.2d 710, 713 (Ind. Ct. App. 2007).

Under both the Fifth Amendment to the United States Constitution and Article I, section 14 of the Indiana Constitution, people are to be free from being compelled to make statements that might subject them to criminal prosecution or aid in their conviction. Id. Here, D.M. does not distinguish between federal and Indiana law. Because the Indiana Constitution places a more stringent burden on the State in this context, we will analyze D.M.'s appeal under the Indiana Constitution. See Wilkes v. State, 917 N.E.2d 675, 680 (Ind. 2009) (observing that "[u]nlike the Federal Constitution,

Indiana law imposes on the State the burden of proving beyond a reasonable doubt that a confession is voluntary”).

We review a waiver of one’s rights and the voluntariness of a statement under the totality of the circumstances standard. Id. We must consider, therefore, whether the waiver and statement were made voluntarily and not induced by violence, threats, or other improper influences that overcame the defendant’s free will. Id. Considerations for making this determination include police coercion, the length, location, and continuity of the interrogation, and the maturity, education, physical condition, and mental health of the person being interrogated. Id.

In addition to these protections, when a juvenile is involved, the juvenile’s custodial parent must be able to have a meaningful consultation with the juvenile before the juvenile waives any rights, and both the juvenile and custodial parent must knowingly and voluntarily waive the juvenile’s constitutional rights. Ind. Code § 31-32-5-1. Whether these statutory protections have been fulfilled is reviewed under the totality of circumstances standard, considering only the evidence favorable to the trial court’s ruling and any uncontested evidence in favor of the juvenile. Hall v. State, 870 N.E.2d 449, 458 (Ind. Ct. App. 2007).

D.M. first argues that he was not given an opportunity to have a meaningful consultation with his mother before they signed the waiver of rights form. The meaningful consultation requirement is met when the State demonstrates “actual consultation of a meaningful nature or the express opportunity for such consultation,

which is then forsaken in the presence of the proper authority by the juvenile, so long as the juvenile knowingly and voluntarily waives his constitutional rights.” Id. at 459 (quoting J.D.P. v. State, 857 N.E.2d 1000, 1009 (Ind. Ct. App. 2006)).

Here, the record reveals that after advising D.M. and Milton of D.M.’s rights, Detective Quigley exited the vehicle and told them they would have “time to talk, as much time as they wanted.” Tr. p. 42. He showed them his tape recorder and showed them that he was turning it off and taking it from the vehicle while they talked, and after he exited, he stood approximately twenty feet from the vehicle and could not overhear their conversation. After several minutes had passed, the detective returned to the vehicle to ask if they were done talking; Milton responded affirmatively, telling Detective Quigley that they were finished with their conversation. Under these circumstances, we find that D.M. and Milton had sufficient opportunity for a meaningful consultation before they waived their rights.

D.M. also argues that neither his waiver of rights nor his statement to Detective Quigley were voluntarily made. Turning to the factors elucidated by Wilkes, we first note that D.M. argues that there was an overall atmosphere of coercion throughout the process such that his waiver and statement were involuntary. Specifically, he emphasizes the glares and hostile comments from the firefighters on the scene and the fact that police officers on the scene would not permit Milton to speak with D.M. before a detective arrived and allegedly told her that she would have to sign a waiver of rights form before they could talk.

As for the firefighters, we note that Milton and D.M. did not allege any hostility on the part of the police officers, and indeed, Milton testified³ that when she and D.M. had their private conversation, police officers were nowhere near the vehicle. We cannot conclude, under these circumstances, that the behavior of private citizens at the scene of a crime can be imputed to police such that the situation becomes coercive. And even if we take at face value Milton's allegation that officers told her she would have to waive her rights before being able to talk with her son, the simple fact is that Detective Quigley did not require her to do so and, in fact, she did not sign the waiver of rights portion of the form until after she and D.M. had a private conversation. Given these facts, we cannot conclude that there was police coercion involved such that D.M.'s waiver or statement were involuntary.

As for the length of the process, the record reveals that at some point after 2:00 p.m., D.M. was arrested. His mother arrived on the scene at some point after 3:00, and Detective Quigley arrived sometime after that. Milton, D.M., and the detective discussed D.M.'s rights, Milton and D.M. had a private conversation, and then Milton and D.M. waived their rights at approximately 4:15 p.m. At most, therefore, D.M. was held by the police for two hours, and police officers asked no questions of D.M. whatsoever until after he and Milton waived their rights. The overall length of the process does not lead us to conclude that the waiver or statement were involuntary.

³ D.M. did not testify at the hearing, so there is no evidence in the record that he felt at all intimidated or coerced by the police officers or Detective Quigley.

As for D.M.'s maturity, education, physical condition, and mental health, he was a thirteen-year-old boy who had no prior contacts with the juvenile justice system. But as noted above, he was given the opportunity to have a meaningful consultation with his mother, which should compensate for his youth and inexperience. There is no indication in the record that he has any impairment of his physical or mental condition. Therefore, we do not find D.M.'s youth to indicate that his waiver or statement were involuntary. Under the totality of the circumstances, we find that the juvenile court did not err by finding that the State established beyond a reasonable doubt that D.M. voluntarily, intelligently, and knowingly waived his rights and made his statement after having a meaningful consultation with Milton.

The judgment of the juvenile court is affirmed.

NAJAM, J., concurs.

MATHIAS, J., dissents with opinion.

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MATHIAS, Judge, dissenting

I respectfully dissent from the majority’s conclusion that the State proved beyond a reasonable doubt that D.M. knowingly and voluntarily waived his right to remain silent.

While it is true that we consider conflicting evidence in a light most favorable to the ruling, we must also consider the uncontested evidence favorable to the juvenile. P.M. v. State, 861 N.E.2d 710, 713. Here, the uncontested evidence establishes that Milton was repeatedly told that that she would not be permitted to speak with her son until they both signed a waiver of rights form. Nevertheless, the majority concludes the waiver was voluntary because Milton and D.M. did not actually sign the waiver of rights until after being permitted to speak. I disagree.

Indiana Code section 31-32-5-4 (2008) provides that in determining whether a juvenile's waiver of rights during a custodial interrogation was made knowingly and voluntarily, the court must consider all of the circumstances, including:

- (1) The child's physical, mental, and emotional maturity.
- (2) Whether the child or the child's parent, guardian, custodian, or attorney understood the consequences of the child's statements.
- (3) Whether the child and the child's parent, guardian, or custodian had been informed of the delinquent act with which the child was charged or of which the child was suspected.
- (4) The length of time the child was held in custody before consulting with the child's parent, guardian, or custodian.
- (5) Whether there was any coercion, force, or inducement.
- (6) Whether the child and the child's parent, guardian, or custodian had been advised of the child's right to remain silent and to the appointment of counsel.

Here, there is significant uncontested evidence of police coercion. When Milton arrived on the scene and asked to speak to her son, she was told that she would have to sign a waiver form before being permitted to do so. D.M. repeatedly attempted to speak to his mother through the window of the police car, and each time, Milton was told that she was not to speak with her son until a detective arrived and she signed a waiver. When Detective Quigley arrived, he told Milton that he was going to question her son. Although Milton and D.M. did not actually sign the waiver until after they were advised of D.M.'s rights and given time to talk privately, Milton testified that she signed the waiver form because the previous statements of the police had convinced her that was required to do so.

This uncontested evidence of coercive police conduct, in combination with D.M.'s young age and inexperience with the justice system, leads me to the conclusion that the State failed to prove beyond a reasonable doubt that D.M. and Milton voluntarily waived of D.M.'s rights. Under these facts and circumstances, I would hold that the trial court abused its discretion when it admitted D.M.'s statements to Detective Quigley.