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RENDERED: SEPTEMBER 28, 2023
NOT TO BE PUBLISHED

Supreme Court of Kentucky

2022-SC-0500-MR

PAYTON CHASE GARRISON — APPELLANT

V.

ON APPEAL FROM KNOX CIRCUIT COURT
HONORABLE GREGORY A. LAY, JUDGE
NO. 21-CR-00063

COMMONWEALTH OF KENTUCKY — APPELLEE

MEMORANDUM OPINION OF THE COURT

REVERSING AND REMANDING

A Knox County jury convicted Payton Chase Garrison of two counts of first-degree rape. He received a total sentence of twenty years' imprisonment and appeals to this Court as a matter of right.[1] He argues the trial court erred by denying his motion to suppress various incriminating statements including oral and written confessions because (1) he was subjected to a custodial interrogation in the absence of *Miranda*[2] warnings; (2) he was not provided similar warnings under KRS[3] 610.200(1); and (3) his confessions were otherwise made involuntarily. Because Garrison was in custody at the time of

[1] Ky. Const. § 110(2)(b).

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

[3] Kentucky Revised Statutes.

questioning and, thus, entitled to *Miranda* warnings, we reverse and remand for further proceedings.

In 2019, Garrison was a seventeen-year-old high school senior. During the summer of that year, fourteen-year-old Alice[4] spent the night at the Garrison residence to visit Garrison's younger sister, Betty. At some point in the evening, Garrison asked to borrow Alice's cellphone charger. When Alice went to Garrison's room to retrieve the charger, he asked her to have sex with him. Alice refused. Garrison then forced her onto the bed, pulled down her pants and underwear, and placed his penis inside her vagina. Alice told Garrison to stop, but he continued. He finally stopped after she kicked and pushed him off her. While Alice testified that she told Betty what Garrison had done, Alice did not initially report the incident to anyone else.

On October 29, 2019, thirteen-year-old Claire spent the night at the Garrison residence to visit Betty. This time, Garrison asked Claire if she needed to borrow his cellphone charger. When Claire went to Garrison's room, he told her to sit on the bed. As with Alice, Garrison forced Claire to lie down, pulled down her pants and underwear, and then placed his penis in her vagina. Claire told Garrison to stop several times.

The next morning at school, Claire told a classmate, Denise, that Garrison raped her. She also told Alice about the incident in general terms. Denise reported the rape of Claire to school officials. Denise also told school

[4] We use pseudonyms to protect the privacy of the minor victims and witnesses.

officials Alice regularly engaged in consensual sex with Garrison. Upon learning about the incidents involving Alice and Claire, thirteen-year-old Emma came forward with similar allegations against Garrison relating to an encounter in September 2019.

Later that day, Kentucky State Police Detective Jake Wilson went to the high school to investigate the allegations. Det. Wilson interviewed Alice and Claire before speaking to Garrison.[5] Garrison's mother was present at the school. Det. Wilson informed her about the nature of the allegations and asked permission to interview Garrison alone. She replied the decision was up to Garrison. After Det. Wilson informed her that it was her decision, she responded that she did not care and elected to remain outside the door while the interview was conducted. Det. Wilson proceeded to interview Garrison alone in the counselor's office behind a closed, unlocked door. Garrison was not informed of his constitutional rights at any time during the interview.

Garrison initially denied the allegations. However, as the interrogation progressed, he claimed Alice and Claire consented to sexual intercourse. Upon further questioning, Garrison eventually admitted to having sex with Alice and Claire after they told him to stop. He did not confess to raping Emma and insisted they only engaged in amorous kissing. Garrison provided a written statement to Det. Wilson confirming his oral confessions. Following the interview, Garrison was taken to the Knox County Court Designated Worker's

[5] Emma was interviewed by a different officer.

(CDW) Office where he was charged as a juvenile and released into the custody of his parents.

Subsequently, Garrison was transferred to circuit court where he would be tried as a youthful offender pursuant to KRS 635.020 and KRS 640.010. The Knox County Grand Jury indicted Garrison on three counts of first-degree rape. Garrison moved to suppress the statements he made to Det. Wilson, which the trial court denied. Following a jury trial, Garrison was found guilty of raping Alice and Claire, but not guilty of raping Emma. The trial court sentenced him to a total of twenty years' imprisonment. This appeal followed.

Garrison first argues the trial court erred by denying his motion to suppress because he was subjected to a custodial interrogation without being informed of his *Miranda* rights. We agree.

The Fifth Amendment[6] guarantees "[n]o person . . . shall be compelled in any criminal case to be a witness against himself." In *Miranda*, the Supreme Court held "the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination." 384 U.S. at 444. These safeguards are embodied by the familiar *Miranda* warnings which require that a suspect "must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence

[6] U.S. Const. amend. V.

of an attorney, either retained or appointed." *Id.* *Miranda* warnings are only required when a person is "both question[ed] by law enforcement and being held in custody." *N.C. v. Commonwealth*, 396 S.W.3d 852, 855 (Ky. 2013).

In the Fifth Amendment context, "*custody* is a judicially defined legal term of art, untied as it were from many of the usual senses of the term—it is limited to circumstances that entail 'a serious danger of coercion.'" *Smith v. Commonwealth*, 520 S.W.3d 340, 348 (Ky. 2017) (quoting *Howes v. Fields*, 565 U.S. 499, 508-09 (2012)). A person is in custody when he is placed under formal arrest or when law enforcement places a "restraint on the subject's freedom of movement comparable to a formal arrest." *N.C.*, 396 S.W.3d at 856 (citing *Thompson v. Keohane*, 516 U.S. 99, 112 (1995)). This test is objective and "requires a court to determine the circumstances surrounding the interrogation and, given those circumstances, to decide whether a reasonable person would believe he could terminate the interrogation and leave." *Id.* (citing *J.D.B. v. North Carolina*, 564 U.S. 261, 270 (2011)).

"[T]he constitutional privilege against self-incrimination is applicable in the case of juveniles *as it is with respect to adults*." *Id.* at 859 (quoting *In re Gault*, 387 U.S. 1, 55 (1967)). When determining the custodial status of a minor, a trial court must account for "all relevant factors," including "the child's age [if] known to the officer at the time of police questioning, or would have been objectively apparent to a reasonable officer[.]" *J.D.B.*, 564 U.S. at 277. The incorporation of a minor suspect's age into the custody analysis "is consistent with the objective nature of that test" because "a child's age differs

from other personal characteristics that, even when known to police, have no objectively discernible relationship to a reasonable person's understanding of his freedom of action." *Id.* at 275, 277. Indeed, "[p]recisely because childhood yields objective conclusions like those we have drawn ourselves—among others, that children are 'most susceptible to influence,' and 'outside pressures,' —considering age in the custody analysis in no way involves a determination of how youth 'subjectively affect[s] the mindset' of any particular child[.]" *Id.* at 275 (internal citations omitted). Nevertheless, while a child's age is "a reality that courts cannot simply ignore," by the same token, a child's age need not be "a determinative, or even a significant, factor in every case." *Id.* at 277. In other words, the mere fact of a child's legal minority does not mandate the provision of *Miranda* warnings.

When a defendant moves to suppress a confession or other incriminating statement obtained in violation of *Miranda*, the Commonwealth bears the burden of proof by a preponderance of the evidence that the statements were obtained in accordance with applicable law. *Grady v. Commonwealth*, 325 S.W.3d 333, 349 (Ky. 2010). The trial court must conduct an evidentiary hearing and "enter into the record findings resolving the essential issues of fact." *Id.* Although, "the *analysis* used to determine a *Miranda* violation and a voluntariness issue differs, the *procedure* employed to make those determinations is the same and . . . the appellate standard should likewise be similar." *Id.* at 350.

Thus, we review the denial of a motion to suppress under the ordinary two-step process:

> First, we review the trial court's findings of fact, which are deemed to be conclusive, if they are supported by substantial evidence. Next, we review *de novo* the trial court's application of the law to the facts to determine whether its decision is correct as a matter of law.

Maloney v. Commonwealth, 489 S.W.3d 235, 237 (Ky. 2016). Our review of the facts is generally limited to the evidence presented at the suppression hearing. *Gasaway v. Commonwealth*, 671 S.W.3d 298, 316 (Ky. 2023).

Having reviewed the record of the suppression hearing and the audio recording of the interview[7], we conclude the trial court's findings of fact are supported by substantial evidence. Although the record supports the trial court's findings, we agree with Garrison that highly relevant, indeed determinative, evidence on the question of custody was overlooked. *See Dye v. Commonwealth*, 411 S.W.3d 227, 231 n.3 (Ky. 2013) ("[A]n appellate court reviewing for substantial evidence is not required to turn a blind eye to evidence in the record that is not fairly accounted for in the trial court's order when that evidence tends to show that a defendant's substantial rights have been violated.").

In a typical case, a custodial setting is indicated by "the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of

[7] The audio recording of the interview was not played at the suppression hearing, but was entered into the record by order of the trial court.

voice indicating that compliance with the officer's request might be compelled." *United States v. Mendenhall*, 446 U.S. 544, 554 (1980). The trial court correctly found that these factors were not present here. Garrison was not threatened by the presence of several officers. The record is silent as to whether Det. Wilson was carrying a weapon. Det. Wilson neither physically restrained Garrison nor deprived him of food, water, or the use of the restroom. The tone of the interview was conversational.

Nevertheless, the absence of the *Mendenhall* factors is not necessarily determinative because this Court has recognized

> Other factors which have been used to determine custody for *Miranda* purposes includ[ing]: (1) the purpose of the questioning; (2) whether the place of the questioning was hostile or coercive; (3) the length of the questioning; and (4) other indicia of custody such as whether the suspect was informed at the time that the questioning was voluntary or that the suspect was free to leave or to request the officers to do so, whether the suspect possessed unrestrained freedom of movement during questioning, and whether the suspect initiated contact with the police or voluntarily admitted the officers into the residence and acquiesced to their requests to answer some questions.

Smith v. Commonwealth, 312 S.W.3d 353, 358-59 (Ky. 2010) (citing *United States v. Salvo*, 133 F.3d 943, 950 (6th Cir. 1998)). We are convinced these other indicia of custody were sufficient relative to Garrison to have mandated the provision of *Miranda* warnings.

In the present appeal, the purpose of the questioning was accusatory as opposed to a generalized, on-the-scene investigation into an unsolved crime. *See Miranda*, 384 U.S. at 477; *see also Escobedo v. Illinois*, 378 U.S. 478, 492 (1964) (determining that suspects deserve protection when questioning "shifts

from investigatory to accusatory"). From the outset, the tenor of the interview evinced Det. Wilson's intent to elicit incriminating responses from Garrison. Det. Wilson told Garrison he found the victims' allegations to be very credible and that Garrison was a bad liar, "so let's not try to cover stuff up and try to think of an answer and say I don't know or anything like that." He further told Garrison that he gets "about the same results every time" when a victim presents a believable story. Det. Wilson also repeatedly referred to DNA evidence that never materialized. Moreover, the statements made by Garrison during the interview amounted to complete oral and written confessions, which are indicative of custody. *See Taylor v. Commonwealth*, 611 S.W.3d 730, 742 (Ky. 2020) ("Taylor's and Kaballah's statements were not full confessions but were used in the Commonwealth's case-in-chief which supports the conclusion that the defendants were in custody.").

Further, in determining whether a particular location was hostile or coercive, a court must ask "whether the relevant environment presents the same inherently coercive pressures as the type of station house questioning at issue in *Miranda*." *Howes*, 565 U.S. at 509. In *Howes*, the Supreme Court recognized that "[a] person who is 'cut off from his normal life and companions,' and abruptly transported from the street into a 'police-dominated atmosphere,' may feel coerced into answering questions." *Id.* at 511 (citations omitted).

Under Kentucky law, the atmosphere of the schoolhouse is not tantamount to that of the police station. *C.W.C.S. v. Commonwealth*, 282

S.W.3d 818, 822 (Ky. App. 2009). To hold otherwise would conflate in loco parentis custody with police custody. *Id.* This objective view of the coercive effect of a location in general is distinct from the subjective view of the coercive effect of a location upon a particular individual under the voluntariness analysis. *Compare id., with Commonwealth v. Bell*, 365 S.W.3d 216, 225 (Ky. App. 2012) (holding a minor's statements given to police at school were coerced and thus, involuntary despite the provision of *Miranda* warnings), *and Schneckloth v. Bustamonte,* 412 U.S. 218, 226 (1973) (holding voluntariness analysis considers "both the characteristics of the accused and the details of the interrogation[.]"). Our unpublished decision in *Farra v. Commonwealth*, 2013–SC–000505–MR, 2015 WL 3631603, at *6 (Ky. June 11, 2015), confirms the absence of a per se rule that every in-school interview of a minor is custodial. In *Farra*, we distinguished *N.C.* and held a seventeen-year-old juvenile was not in custody during an in-school police interrogation. *Id.*

However, just as the facts supporting *Farra* differed from those in *N.C.*, the circumstances surrounding Garrison's present appeal are distinguishable from *Farra*. In holding Farra was not in custody, we particularly noted "Farra's admissions that he had been advised of his rights; he knew he was not under arrest; he knew he had the right to remain silent; and he was more than seventeen years of age[.]" *Id.* Moreover, we emphasized Farra's experience with law enforcement and the fact that Farra had "arguably" been told he was free to leave. *Id.* Likewise, in *C.W.C.S.*, the Court of Appeals placed great weight on the fact that the minor was "told he was free to leave and not required to

discuss the sexual misconduct allegations" in holding "that he was not in custody[.]" 282 S.W.3d at 822.

By contrast, Garrison was neither advised of his rights nor informed that the questioning was voluntary or that he was otherwise free to leave. While Garrison's mother assented to Det. Wilson's request to interview Garrison alone, "there is no evidence that [Garrison] himself ever agreed to an interview, understood it to be voluntary, or understood his mother's role in making the necessary arrangements." *United States v. IMM*, 747 F.3d 754, 766 (9th Cir. 2014). Moreover, "[b]ecause the ultimate issue is whether [Garrison] himself understood that he was free to leave, we cannot impute his mother's subjective awareness of the circumstances of the interview to [Garrison]." *Id.*; *see also E.C. v. Commonwealth*, 565 S.W.3d 171, 178 (Ky. App. 2018) ("[T]he *Miranda* warnings must be given to the individual. A parent or guardian of a minor cannot consent on behalf of the minor."). In fact, the presence of Garrison's mother waiting outside the door could arguably represent an additional authority figure impeding Garrison's freedom of movement. *See N.C.*, 396 S.W.3d at 863 (holding the presence of a non-state actor acting in tandem with law enforcement may be properly considered in *Miranda* analysis).

Additionally, the determination that Garrison was in custody is bolstered by the fact he was not free to leave at the conclusion of the interview until after he was transported by police to the CDW Office where he was charged as a juvenile. *See Smith*, 520 S.W.3d at 348 ("[A]n inmate-suspect's post-invocation return to the jail's general population is conceptually indistinguishable from an

unjailed suspect's invoking, being released from custody, and going home."); *Callihan*, 142 S.W.3d at 127 (holding an adult suspect was not in custody when police "told [him] that he was free to leave at any time, that he had no obligation to answer questions, and that he would be able to return home after the interview."). Further, there is no indication Garrison had any prior experience with law enforcement such that he was independently aware of his rights.

Undoubtedly, this appeal presents a close question given Garrison's age and maturity coupled with the school officials' lack of involvement in the interrogation. Nonetheless, where a minor suspected of committing multiple class B felonies outside of school is interviewed by police in school, the absence of some overt assurance that Garrison remained free to leave or otherwise remain silent compels the conclusion that he was in custody. *See Howes*, 565 U.S. at 515 (noting that suspect "was told at the outset of the interrogation, and was reminded again thereafter, that he could leave" was "[m]ost important" factor indicating lack of custody).

Taking into account "the particular susceptibility of juveniles to the influence of authority figures and the naturally constraining effect of being in the controlled setting of a school with its attendant rules[,]" we hold "[n]o reasonable student, even the vast majority of seventeen year olds, would have believed that he was at liberty to remain silent, or to leave . . . under these circumstances." *N.C.*, 396 S.W.3d at 861, 862. Because Garrison was in custody, *Miranda* warnings were required. Therefore, the trial court erred by

denying Garrison's motion to suppress the statements obtained from the custodial interrogation.

Neither can we consider the lack of *Miranda* warnings harmless in the present appeal. *See Taylor*, 611 S.W.3d at 743 (holding failure to give required *Miranda* warnings subject to harmless error analysis). "[I]n determining whether an error is prejudicial, an appellate court must consider whether on the whole case there is a substantial possibility that the result would have been any different." *Commonwealth v. McIntosh*, 646 S.W.2d 43, 45 (Ky. 1983). Further, "[o]ur harmless error standard of review for a constitutional issue is 'whether the errors were harmless beyond a reasonable doubt.'" *Taylor*, 611 S.W.3d at 743 (quoting *Nunn v. Commonwealth*, 461 S.W.3d 741, 750 (Ky. 2015)). Given the jury convicted Garrison on the two counts of rape to which he confessed and acquitted him on the count which he denied, it is evident that the use of the oral and written confessions obtained in violation of his Fifth Amendment privilege against self-incrimination cannot be deemed a harmless error.

Because we have determined Garrison's statements were inadmissible and should have been suppressed, we need not consider his remaining arguments. Accordingly, the judgment of the Knox Circuit Court is reversed and remanded for further proceedings consistent with this opinion.

All sitting. VanMeter, C.J.; Bisig, Conley, Lambert, Nickell, Thompson, JJ., concur. Keller, J., concurs in result only.

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