NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA IN THE INTEREST OF D.C.	*	**NO. 2019-C-0317**
	*	
		COURT OF APPEAL
	*	
		FOURTH CIRCUIT
	*	
		STATE OF LOUISIANA

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APPLICATION FOR WRITS DIRECTED TO
JUVENILE COURT ORLEANS PARISH
NO. 2017-348-03-DQ-E, SECTION "E"
HONORABLE Desiree Cook-Calvin, JUDGE
* * * * * *

JAMES F. MCKAY III
CHIEF JUDGE
* * * * * *

(Court composed of Chief Judge James F. McKay III, Judge Terri F. Love, Judge Edwin A. Lombard)

LOVE, J., DISSENTS AND ASSIGNS REASONS

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WRIT GRANTED; REVERSED

APRIL 22, 2019

In this juvenile delinquency matter, the State seeks supervisory review of the trial court's April 3, 2019 judgment, granting D.C.'s motion to suppress statements. Finding error in the trial court's ruling, we grant the State's writ application and reverse.

On August 9, 2018, D.C. was charged by delinquency petition with one count of simple burglary. On March 26, 2019, the trial court granted D.C.'s motion to suppress statements. The matter was stayed in the trial court pending the State's writ application to this Court.

Detective Gregory Rotton, with the New Orleans Police Department, testified at the motion hearing. The video of Det. Rotton's body camera footage from the day of the arrest was introduced into evidence.

Det. Rotton testified that on December 11, 2017, he, along with Detective Miranda, went to the home where D.C. lived with his grandmother, S.C. The detectives were informed that an iPad had been found in D.C.'s room. S.C. explained that the owner of the iPad, Ms. Lumpkin, made a call to the iPad, which S.C. answered. S.C. informed Ms. Lumpkin that she could come to her home to

retrieve the device. Ms. Lumpkin also reported the stolen iPad and a laptop to the police.

Det. Rotton and Det. Miranda went to S.C.'s home to supervise the handover of the iPad back to Ms. Lumpkin. D.C. was still in school when the detectives first arrived.

Det. Rotton's body camera video reflects that when D.C. came home, he sat on the couch in the living room. S.C. stood directly in front of D.C.; the two detectives stood to either side. When the audio of the body camera footage begins, S.C. is heard asking D.C. what he knew about a laptop. D.C. denied having a laptop. He stated, however, that "T.T." had it. At that point, Det. Miranda is heard stating, "Come on [D.C.] just be honest." S.C. explained to D.C. that the computer belonged to a high school student who had all of her senior photographs and videos on the device. S.C. then asked D.C. how he got the iPad that was discovered in his room. He answered, from Whole Foods, out of a car. Immediately after this statement, Det. Rotton read D.C. his *Miranda*[1] rights. In response to Det. Rotton's questions, D.C. stated that he understood his rights and that he was willing to speak.

After he was Mirandized, D.C. explained that he and T.T. were pulling on car door handles in the Whole Foods parking lot. When one car was found to be unlocked, they both entered the vehicle. D.C. took the iPad, and T.T. took the laptop. After making this statement, D.C. was formally arrested.

The motion to suppress involves statements made both before and after D.C. was read his *Miranda* rights. It was argued at the suppression hearing that D.C. was in custody, and not Mirandized, when he responded to S.C.'s questions. It was

[1] *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

also argued that S.C. acted as an agent for (or in cahoots with) the detectives, eliciting incriminating information prior to the *Miranda* warnings. Thus, it was asserted that the *Miranda* warnings could not cure the defect, and that the subsequent statements should also be suppressed. The trial court agreed with both arguments and granted the motion to suppress.

1. Custodial interrogation

In *Miranda,* 384 U.S. at 444, 86 S.Ct. at 1612, the United States Supreme Court held:

> [T]he 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. By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.

In *State in Interest of D.S.*, 2018-0458, p. 8 (La. App. 4 Cir. 10/3/18), 255 So. 3d 1209, 1214-15, this Court further stated:

> According to La. C.Ch. art. 881.1 (A), the State carries the burden of proving beyond a reasonable doubt that a juvenile's confession was given freely and voluntarily. *Miranda* only applies if three conditions are met: (1) the defendant is in "custody" or significantly deprived of freedom, (2) there is an "interrogation," and (3) the interrogation is conducted by a "law enforcement officer" or someone acting as their agent. *State v. Bernard*, 2009-1178, p.5 (La. 3/16/10), 31 So.3d 1025, 1029. … The obligation to provide *Miranda* warnings attaches only when a person is questioned by law enforcement after he has been taken "into custody or otherwise deprived of his freedom of action in any significant way." *State v. Robertson*, 2017-0398, p. 3 (La. App. 4 Cir. 5/12/17), 219 So.3d 1125, 1127, writ denied, 2017-0969 (La. 3/9/18), 237 So.3d 522 (citing *Miranda v. Arizona*). "[A] mere detention does not trigger the need for *Miranda* warnings, and the use of handcuffs does not necessarily escalate a detention into a state of being 'in custody' for *Miranda* purposes." *State v. Barabin*, 2013-0334, p.6 (La. App. 4 Cir. 9/11/13), 124 So.3d 1121, 1124.

Concerning whether an individual is in custody for purposes of *Miranda*, this Court has stated,

> The obligation to provide *Miranda* warnings attaches only when a person is questioned by law enforcement after he has been taken "into custody or otherwise deprived of his freedom of action in any significant way." *Miranda, supra*, 384 U.S. at 444, 86 S.Ct. at 1612 (1966). Custody is decided by two distinct inquiries: an objective assessment of the circumstances surrounding the interrogation to determine whether there is a formal arrest or restraint on freedom of the degree associated with formal arrest; and, second, an evaluation of how a reasonable person in the position of the interviewee would gauge the breadth of his freedom of action. *Stansbury v. California*, 511 U.S. 318, 322, 114 S.Ct. 1526, 1529, 128 L.Ed.2d 293 (1994), (citing *California v. Beheler*, 463 U.S. 1121, 1125, 103 S.Ct. 3517, 3520, 77 L.Ed.2d 1275 (1983) (per curiam)); *State v. Manning*, 03–1982, p. 24 (La. 10/19/04), 885 So.2d 1044, 1074 (citations omitted).

State v. Hankton, 2012-0466, p. 13 (La. App. 4 Cir. 4/30/14), 140 So.3d 398, 407; *See also State in Interest of J.D.*, 2014-0551, p 8 (La. App. 4 Cir. 12/3/14), 154 So.3d 726, 731–32.

The Supreme Court "has consistently held that *Miranda* warnings are not required when the law officer is making a general, on-the-scene investigation to determine whether there has been the commission of a crime, and, if so, by whom." *State v. Thornton*, 2012-0095, pp. 4-5 (La. 3/30/12), 83 So.3d 1024, 1026 (citations omitted). In *State v. Anderson*, 332 So.2d 452 (La. 1976), the Supreme Court held that a general inquiry by an officer at defendant's home during an investigation of his reported involvement in a shooting did not constitute custodial interrogation requiring *Miranda* warnings. *See also State v. Hodges*, 349 So.2d 250 (La. 1977).

After reviewing the evidence and considering the totality of the circumstances in the present case, we find that the questioning conducted prior to the *Miranda* warnings did not constitute custodial interrogation within the meaning

of *Miranda*. The initial few questions posed by S.C. were clearly designed to elicit information from D.C. As the grandmother and guardian, S.C. was fully justified in asking D.C. what he knew about the iPad discovered in his room and the laptop that the victim reported stolen. Det. Rotton testified that he did not tell S.C. what questions to ask, and he did not give her a copy of the police report. He stated that S.C. was fully aware of the events prior to their arrival. Finally, he stated that when questioning juveniles, he generally, out of courtesy, allows the guardian to speak if they so choose.

The record before us also reflects the voluntary nature of D.C.'s statements. Det. Rotton testified that he did not threaten or coerce D.C. in anyway, and that his statements were freely given. The video supports this assertion. Det. Miranda is heard telling D.C. to tell the truth. However, "[c]ourts have routinely held that a mild exhortation to tell the truth, … will not negate the voluntary nature of a confession." *State v. Blank*, 2004-0204, p 18 (La. 4/11/07), 955 So.2d 90, 108 (citing *State v. Petterway*, 403 So.2d 1157, 1159-60 (La. 1981)).

2. Questioning by a Private Party:

As previously stated, *Miranda* applies when the interrogation is conducted by a law enforcement officer *or* someone acting as their agent. Here, the record does not support D.C.'s contention that S.C. was acting as an agent for the detectives. To the contrary, it is evident from the video that S.C. was acting as an involved grandmother. S.C. voluntarily undertook to question D.C., and he answered her questions without hesitation.

In granting the motion to suppress D.C.'s statements made before and after he was *Mirandized*, the trial court stated from the bench:

> … the officers … could have just mirandized this child from the beginning when he came into the room, and they could have interrogated him under *Miranda*. They had all of that there, so I don't see what was the issue was with them not Mirandizing him. That just makes me feel like they were in cahoots. This was designed to get a statement from the child. For those reasons, I'm going to grant the motion to suppress at this time.

Based on these statements, the trial court would have had the detectives Mirandize D.C. when he first walked into the room. The jurisprudence, as discussed above, does not support such an action.

For the foregoing reasons, we find that the questioning of S.C. prior to being Mirandized did not constitute custodial interrogation within the meaning of *Miranda*. Moreover, we find that the record does not support the assertion that S.C. acted as an agent of the detectives. Accordingly, we grant the State's writ application and reverse the judgment granting the motion to suppress.

WRIT GRANTED; REVERSED