STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0852

In the Matter of the Welfare of: B.M.K., Child.

Filed May 6, 2008
Affirmed
Collins, Judge[*]

Sherburne County District Court
File No. J2-06-50693

Lawrence Hammerling, Chief Appellate Public Defender, Leslie Rosenberg, Assistant Public Defender 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant B.M.K.)

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Kathleen Heaney, Sherburne County Attorney, Arden Fritz, Assistant County Attorney, Government Center, 13880 Highway 10, Elk River, MN 55330 (for respondent)

Considered and decided by Connolly, Presiding Judge; Stoneburner, Judge; and Collins, Judge.

U N P U B L I S H E D O P I N I O N

COLLINS, Judge

On appeal from an adjudication of delinquency for first-degree criminal damage to property based on stipulated facts, appellant argues that the district court erred in denying

[*] Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

his motion to suppress his statement to a police officer because (1) appellant was in custody at the time that he made the statement and did not receive a *Miranda* warning; and (2) even if he was not in custody, appellant's statement was involuntary. We affirm.

D E C I S I O N

When reviewing pretrial orders on motions to suppress evidence, we "review the record independently to determine whether the district court erred in not suppressing evidence as a matter of law." *In re M.A.K.*, 667 N.W.2d 467, 471 (Minn. App. 2003) (citing *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999)). Although we review the district court's factual findings of the circumstances surrounding an interrogation for clear error, the district court's determination of whether a defendant was subjected to custodial interrogation is a legal question that we review de novo. *State v. Wiernasz*, 584 N.W.2d 1, 3 (Minn. 1998).

The harmless error rule does not apply to adjudications of juvenile delinquency when, as here, the matter was submitted to the district court based on stipulated facts. *In re R.J.E.*, 642 N.W.2d 708, 713 (Minn. 2002). Rather, when a juvenile stipulates to facts in order to expedite appellate review, we will reverse the district court's adjudication of delinquency and remand for a new trial if we conclude that the juvenile was improperly subjected to custodial interrogation without receiving a *Miranda* warning. *In re D.S.M.*, 710 N.W.2d 795, 798-99 (Minn. App. 2006).

I.

Appellant B.M.K. argues that, because he was in custody and was not given a *Miranda* warning, the district court erred as a matter of law in denying his motion to suppress his statement to the officer. We disagree.

A defendant must be given a *Miranda* warning informing him of his Fifth Amendment privilege against compelled self-incrimination prior to being subject to custodial interrogation. *D.S.M.*, 710 N.W.2d at 797 (citing *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602 (1966)). And *Miranda*'s due-process protections apply to juveniles as well as adults. *State v. Burrell*, 697 N.W.2d 579, 591-92 (Minn. 2005) (citing *In re Gault*, 387 U.S. 1, 13, 87 S. Ct. 1428, 1436 (1967)). We apply an objective test to decide whether a person is in custody: "[W]hether the circumstances of the interrogation would make a reasonable person believe that he was under formal arrest or physical restraint akin to formal arrest." *D.S.M.*, 710 N.W.2d at 797-98 (citation omitted). Although there is no bright-line rule for determining whether a defendant was "in custody," we consider the behaviors exhibited by both the defendant and the law enforcement officers involved in the encounter. *See Wiernasz*, 584 N.W.2d at 2-3; *In re G.S.P.*, 610 N.W.2d 651, 657 (Minn. App. 2000). But when determining whether a juvenile was in custody, evaluation of the circumstances surrounding an interrogation should focus primarily on the perspective of the juvenile. *See State v. Edrozo*, 578 N.W.2d 719, 725 (Minn. 1998). Furthermore, the Minnesota Supreme Court has noted that one or more of the following circumstances may indicate that a suspect was not subject to custodial interrogation:

> questioning taking place in the suspect's home; police expressly informing the suspect that he or she is not under arrest; the suspect leaving the police station at the close of the interview without hindrance; the brevity of questioning (fifteen minutes); the suspect's freedom to leave at any time; a nonthreatening environment; and the suspect's ability to make phone calls.

State v. Staats, 658 N.W.2d 207, 212 (Minn. 2003).

Here, the circumstances indicate that B.M.K. was not in custody. The interview took place at B.M.K.'s school, an environment that was familiar to him. After receiving a note informing him to go to the principal's office to "See Kim," the in-school police officer, B.M.K. left his classroom and walked unescorted to the office. The record indicates that B.M.K. was acquainted with the officer because he had contact with her during three prior incidents and knew that she was the police-liaison officer regularly stationed at his school. The officer was not wearing her uniform. And even though no one else was in the room where the interview took place and the door was closed for privacy, the officer never searched or handcuffed B.M.K. Moreover, B.M.K. admitted at the hearing that he felt comfortable speaking with the officer and was not threatened or intimidated by her during the interview.

Also, the conduct of the interview itself illustrated that it was not custodial in nature. The officer began the interview by identifying herself to B.M.K. and telling him that he was not under arrest, was free to leave, and was not required to answer any of her questions. Because the officer did not consider B.M.K. to be a suspect, but instead assumed that another juvenile had used B.M.K.'s name in an attempt to shift the blame, she did not record the interview. *See G.S.P.*, 610 N.W.2d at 658 (recording an interview

suggested that it was custodial in nature). The officer told B.M.K. that he had been accused by another juvenile of damaging a vehicle, and that she wanted to get B.M.K.'s side of the story. The officer did not raise her voice or threaten B.M.K. with charges or punishment during their conversation. *See D.S.M.*, 710 N.W.2d at 797-98 (shouting and coercive questioning by an officer were important to the court's custody analysis); *G.S.P.*, 610 N.W.2d at 658 (explaining the charging process and quoting from a statute book indicated that the interview was custodial in nature). Finally, the interview here was brief, lasting only five to ten minutes before the officer gave B.M.K. a hall pass to return to class.

Although B.M.K. testified to feeling that he would be "locked up" if he did not answer the officer's questions, this assertion is belied by B.M.K.'s admission that the officer never threatened him in any way. B.M.K.'s testimony that he does not remember whether the officer ever told him that he was not under arrest, was free to leave, and was not required to answer any of her questions is not compelling. The district court was well within its discretion to accept the officer's testimony as credible and more persuasive than B.M.K.'s based on the court's observations of the witnesses' demeanor during the suppression hearing, and to accordingly adopt the officer's version of the events that took place during the interview. *See Staats*, 658 N.W.2d at 212; *State v. Dickerson*, 481 N.W.2d 840, 843 (Minn. 1992).

Likewise, B.M.K.'s attempt to analogize his case to *M.A.K.* rings hollow. *See M.A.K.*, 667 N.W.2d 467. B.M.K. argues that the interview was custodial in nature because the officer failed to give him a hall pass to return to class until after the interview

was finished. But while the officer's failure to give the juvenile a hall pass beforehand was one factor on which the *M.A.K* court based its finding that the juvenile was in custody, this single factor was not determinative. 667 N.W.2d at 472. Rather, the *M.A.K.* court's custody determination was based on the totality of the circumstances that surrounded the interrogation, including the fact that the juvenile was escorted from class by a uniformed officer, was not told that he was free to leave, and was never informed that he did not have to answer questions. *Id*. None of these additional factors, which led to a determination of custodial interrogation in *M.A.K.*, are present in this case.

In sum, because a reasonable 15-year-old juvenile in the circumstances in which B.M.K. was interviewed would have believed that he was free to leave, it cannot be said that B.M.K. was wrongfully subjected to custodial interrogation without being given a *Miranda* warning. Accordingly, we conclude that the district court did not err as a matter of law in denying B.M.K.'s motion to suppress his statement on this ground.

II.

Alternatively, B.M.K. argues that the district court erred as a matter of law in denying his motion to suppress because, even if he was not in custody, his statement was not voluntary. We disagree.

Whether a defendant's statement was voluntary presents a question of law that we review de novo. *State v. Ritt*, 599 N.W.2d 802, 808 (Minn. 1999). But we will uphold the district court's factual findings regarding the circumstances that surround an interrogation unless clearly erroneous. *State v. Williams*, 535 N.W.2d 277, 286 (Minn. 1995) (citation omitted).

A defendant who is convicted based on an involuntary statement is deprived of due process of law. *State v. Camacho*, 561 N.W.2d 160, 169 (Minn. 1997); *see also* U.S. Const. amend. XIV. Thus, even when a defendant is not in custody, the state has the burden of proving by a preponderance of the evidence that the defendant's statement was made voluntarily. *State v. Andrews*, 388 N.W.2d 723, 730 (Minn. 1986). Determining whether a statement is voluntary necessitates inquiry into whether the totality of the circumstances surrounding the interrogation, including the actions of the police, "were so coercive, so manipulative, so overpowering that the defendant was deprived of his ability to make an unconstrained and wholly autonomous decision to speak as he did." *State v. Jones*, 566 N.W.2d 317, 326 (Minn. 1997) (quotation omitted). Thus, deciding whether a juvenile's statement was made voluntarily mandates consideration of the juvenile's "age, maturity, intelligence, education, experience and ability to comprehend; length and legality of the detention; lack of, or adequacy of a warning; the nature of the interrogation; and whether the [juvenile] was deprived of physical needs." *In re D.S.N*, 611 N.W.2d 811, 814 (Minn. App. 2000). The presence or absence of a juvenile's parents is another factor that we evaluate in determining whether a juvenile's statement was voluntary. *See In re D.B.X.*, 638 N.W.2d 449, 453 (Minn. App. 2002).

Application of the totality-of-the-circumstances test to the facts of this case amply supports the district court's determination that B.M.K.'s statement was voluntary. B.M.K. was 15 years old and in the tenth grade when the interrogation took place. Although the record shows that B.M.K. has an individual education plan because of an unspecified behavior disorder, he does not suffer from any physical or mental disabilities,

and his grades indicate that he is of at least average intelligence. The officer testified that B.M.K. was alert, responsive, sober, and relatively calm throughout the interview. Moreover, the officer's assessment of B.M.K.'s comprehension is supported by his admission that he felt comfortable speaking with the officer and was not threatened or intimidated by her during the interview.

The record also details B.M.K.'s prior experience in the criminal-justice system, as well as with the particular officer who interviewed him. The officer testified that she had prior involvement with B.M.K., including issuing him a citation for fifth-degree assault, speaking with him after he was assaulted with a deadly weapon, and talking with him after he was cited for disorderly conduct by another police officer. Although B.M.K. asserts that his prior experience with the criminal justice system makes it more likely that his statement was involuntary, we have recognized that, because experienced juveniles are more likely to have an enhanced understanding of the system and be less intimidated, their statements are more likely to be voluntary. *See D.S.N.*, 611 N.W.2d at 815.

In addition, the record shows that the interview lasted for no more than ten minutes and that B.M.K. was never denied access to any food, drink, or bathroom use. Although his parents were not contacted beforehand and were not present at the interview, B.M.K. never asked to speak with either of his parents or with a lawyer. Moreover, the absence of a parent is not determinative of whether a juvenile's confession was voluntary, but rather only one factor that must be weighed in concert with the totality of the circumstances. *See Jones*, 566 N.W.2d at 323-24; *Burrell*, 697 N.W.2d at 593-95; *State v. Critt*, 554 N.W.2d 93, 96 (Minn. App. 1996), *review denied* (Minn. Nov. 20,

1996). And, as discussed above, even though B.M.K. did not receive a *Miranda* warning, his detention was nonetheless legal because he was not "in custody."

Finally, the nature of the interview illustrates that the statement was voluntary. The officer did not engage in coercive or deceptive police tactics when questioning B.M.K., as would be required to show that his statement was involuntary within the meaning of the Fourteenth Amendment's due process clause. *See Williams*, 535 N.W.2d at 287. The officer did not raise her voice at B.M.K. or threaten him with charges or punishment during their conversation. And B.M.K. even admitted that the officer was calm and moderate during the interview. *See id.*

Although B.M.K. cites a litany of social-science references in support of his contention that juveniles generally lack the capacity to voluntarily confess their guilt, Minnesota courts have declined to set a minimum-age prerequisite for voluntary confessions, instead requiring that juvenile confessions be evaluated under the facts and circumstances of each individual case. *See, e.g.*, *D.B.X.*, 638 N.W.2d at 455. Moreover, because this evidence was not presented to the district court, we decline to credit it now for the first time on appeal. *See Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996).

In sum, our careful assessment of the totality of the circumstances that surrounded B.M.K.'s interview satisfies us that the district court did not err in determining that B.M.K.'s statement was made voluntarily. And because his statement was both noncustodial and voluntary, we conclude that the district court did not err as a matter of law in denying B.M.K.'s motion to suppress.

Affirmed.