

IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-300

No. COA20-371

Filed 6 July 2021

Iredell County, No. 19JB44

IN THE MATTER OF: J.D.F.

Appeal by the juvenile from an order entered on 8 August 2019 by Judge Deborah P. Brown in Iredell County District Court. Heard in the Court of Appeals on 27 April 2021.

*Attorney General Joshua H. Stein, by Assistant Attorney General Elly S. Young, for the State-Appellee.*

*Assistant Appellate Defender, Amanda S. Hitchcock, for the Juvenile-Appellant.*

GORE, Judge.

¶ 1 The juvenile, James,<sup>1</sup> appeals from an order denying a motion to suppress statements. James argues he was in custody during questioning and should have received *Miranda* warnings and that his confession was involuntary. We hold the trial court did not err in finding that James's confession was given voluntarily. However, we hold the trial court made insufficient findings of fact to support its custody conclusion and remand this matter to the trial court.

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<sup>1</sup> Pseudonyms are used to protect the identity of the juveniles.

I. Background

¶ 2 James was present in North Carolina because he was sent to live with Jennifer Elliot (“Ms. Elliot”), James’s Aunt, and her partner Robert Mitchell (“Mr. Mitchell”) in November 2018 while James’s mother was incarcerated in Georgia. At the time, James was thirteen years old. Ms. Elliot had a limited power of attorney to allow her to make medical and educational decisions for James while he lived in North Carolina. James would often play by a creek near his aunt’s house with his cousin Mason, age nine. Two boys from the neighborhood would sometimes join James and Mason in playing by the creek. These boys told James and Mason how they had brought girls to the creek to have sex. At some point in December 2018, Mason performed oral sex on Jason by the creek.

¶ 3 On 30 January 2019, the Iredell County Sheriff’s Department received a report from Ms. Elliot indicating that her son, Mason, had been the victim of sexual assault. Detective Lowrance began an investigation by interviewing Mason. Mason told Detective Lowrance that James asked Mason to perform oral sex on him in December 2018.

¶ 4 On 11 February 2019, Mr. Mitchell brought James to the Iredell County Sheriff’s Department to speak with Detective Lowrance. Detective Lowrance and Mr. Mitchell spoke for about twenty minutes in the Special Victims Unit, a locked facility, while James waited alone in the lobby. When the interview with James began,

Detective Lowrance first asked James if he knew why he was there. James indicated that he believed the interview was based on some of his behavior at school. Detective Lowrance informed James he was there to talk about some sexual activity between James and his cousin Mason.

¶ 5

The interview between James and Detective Lowrance took place in an interview room within the Iredell County Sheriff's Department. The room has a sign on its exterior that indicates when an interview is taking place, has a window to allow people outside the interview to observe, and is outfitted with video equipment, which was used to record the interview between James and Detective Lowrance. During the interview Detective Lowrance told James several times that he would go home with Mr. Mitchell at the end of the interview, regardless of what he said during the interview. At no time was James restrained and Mr. Mitchell was present for the entire interview.

¶ 6

When asked about having sexual contact with Mason, James initially denied any sexual contact. James admitted to hanging out with Mason at the creek and that two other boys had told him and Mason a story about having sex with girls by the creek. Approximately thirty minutes into the interview, Detective Lowrance told James he was giving James his last opportunity to tell the truth. At this time, James admitted to sexual contact with Mason, but stated that it was Mason's idea, he "got tired of [Mason] bringing up the story [with the two other boys]," and only did it to

get Mason to “quit bugging him about it.” James stated the sexual contact itself lasted “maybe twenty seconds.” James wrote a statement which he signed and indicated that it was voluntary. The Voluntary Statement Form signed by Detective Lowrance and by James indicates his date of birth as 5 April 2005, which is consistent with his age of 13 at the time he made the statement.

¶ 7 On 15 March 2019, petitions were filed by the court counselor alleging one act of First-Degree Sexual Offense. On 3 June 2019, James filed a motion to suppress his statement made to Detective Lowrance contending that the exclusion of the statement is required by the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and by Article 1, Sections 23 and 27, of the North Carolina Constitution. On 8 August 2019, the trial court denied James’s motion to suppress, finding that James’s statement was knowing and voluntarily given, and that James was not in custody, therefore, *Miranda* warnings were not required.

¶ 8 On 25 July 2019, James admitted the charge of First-Degree Sexual Offense, by *Alford* admission. James’s decisions to admit by *Alford* plea was solely due to the denial of the motion to suppress. James gave written notice of appeal of the denial of the motion to suppress on 15 August 2019.

## II. Analysis

¶ 9 On appeal, James argues that the trial court erred in denying his motion to suppress because (1) his statements were the product of a custodial interrogation and

were made without *Miranda* warnings or the additional protections of N.C. Gen. Stat. § 7B-2101, and (2) his statements were not voluntary.

A. Standard of Review

¶ 10 Our review of a trial court's order on a motion to suppress is limited to determining whether competent evidence supports the trial court's findings of fact and whether the findings of fact support the conclusions of law. *State v. Hammonds*, 370 N.C. 158, 161, 804 S.E.2d 438, 441 (2017). If we find competent evidence supports the trial court's findings of fact, such findings are binding on appeal. *Id.* "Legal conclusions, including the question of whether a person has been interrogated while in police custody, are reviewed *de novo*." *In re K.D.L.*, 207 N.C. App. 453, 456, 700 S.E.2d 766, 769 (2010). "Under a *de novo* review, the court considers the matter anew and freely substitutes its own judgment for that of the lower tribunal." *State v. Williams*, 362 N.C. 628, 632–33, 669 S.E.2d 290, 294 (2008) (quotation marks and citation omitted).

B. Juvenile *Miranda* Rights

¶ 11 The Fifth Amendment of the United States Constitution guarantees that "[n]o person . . . shall be compelled in any criminal case to be a witness against himself." U.S. Const. amend. V. In considering this principle, the Supreme Court of the United States, in *Miranda v. Arizona*, found that "when an individual is taken into custody or otherwise deprived of his freedom by the authorities in any significant way and is

subjected to questioning, the privilege against self-incrimination is jeopardized,” therefore, certain procedural safeguards are necessary to protect the individual. 384 U.S. 436, 478, 16 L. Ed. 2d 694, 726 (1966).

¶ 12 Juveniles are also entitled to receive *Miranda* warnings before custodial interrogations. *See In re Gault*, 387 U.S. 1, 55, 18 L. Ed. 2d 527, 561 (1967). North Carolina statutory law provides further protections for juveniles who face custodial interrogation. Specifically, under N.C. Gen. Stat. § 7B-2101, “[a]ny juvenile in custody must be advised prior to questioning:”

- (1) That the juvenile has a right to remain silent;
- (2) That any statement the juvenile does make can be and may be used against the juvenile;
- (3) That the juvenile has a right to have a parent, guardian, or custodian present during questioning; and
- (4) That the juvenile has a right to consult with an attorney and that one will be appointed for the juvenile if the juvenile is not represented and wants representation.

N.C. Gen. Stat. § 7B-2101(a) (2020). Further protections are provided for juveniles who are younger than 16 years of age. In such cases “no in-custody admission or confession resulting from interrogation may be admitted into evidence unless the confession or admission was made in the presence of the juvenile’s parent, custodian, or attorney.” N.C. Gen. Stat. § 7B-2101(b). If an attorney is not present, the juvenile’s parent, custodian, or guardian must also be advised of the juvenile’s § 7B-2101(a) rights. *Id.* However, these protections are only required if the juvenile is found to be

in custody at the time of questioning under the general *Miranda* custodial interrogation framework. *In re K.D.L.*, 207 N.C. App. at 458, 700 S.E.2d at 770.

¶ 13 Whether an individual is in custody when questioned by law enforcement is an objective test and requires the court to determine “whether a reasonable person in the position of the [questioned individual] would believe himself to be in custody or that he had been deprived of his freedom of action in some significant way.” *In re D.A.C.*, 225 N.C. App. 547, 552, 741 S.E.2d 378, 381–82 (2013). This requires employing a totality of the circumstances test. *Id.* Further, when a juvenile is being questioned the court must consider the juvenile’s age, “so long as the child’s age was known to the officer at the time of police questioning, or would have been objectively apparent.” *J.D.B. v. North Carolina*, 564 U.S. 261, 274, 180 L. Ed. 2d 310, 325 (2011).

### C. Application

¶ 14 We now turn to the facts of the present case. James first argues that he was in custody during questioning. In support of this argument James asserts that the trial court’s factual findings were unsupported by the evidence and omitted or misrepresented critical facts; because he was in custody, he should have been given *Miranda* warnings; and as a result, his confession should have been suppressed. James also argues that his confession was not voluntary. James asserts that because of his youth and inexperience and the detective’s use of trickery his confession was involuntary and should have been suppressed. We hold that because the trial court

failed to make a factual finding that reflected it considered James' age at the time he was questioned, the trial court's findings were insufficient to support its legal conclusion that James was not in custody at the time of questioning. Because we otherwise conclude that the trial court's conclusions of law were supported by its factual findings, and the findings were supported by the evidence, we remand rather than vacate or reverse the trial court's order.

*i. Custody*

¶ 15

In considering James's motion to suppress the trial court was first required to determine whether James was in custody at the time of interrogation. As stated, this required the trial court to apply an objective test and determine whether a reasonable person in James's position would consider themselves to be in custody, *i.e.*, not at liberty to terminate the interrogation, typically demonstrated by a formal arrest or restraint on freedom of movement in a manner associated with formal arrest. *In re D.A.C.*, 225 N.C. App. at 552, 741 S.E.2d at 381–82; *J.D.B.*, 564 U.S. at 270, 180 L. Ed. 2d at 322. The trial court, to fully evaluate the effect of objective circumstances on the custody analysis, must consider the juvenile's age in relation to those circumstances. *See J.D.B.*, 564 U.S. at 276, 180 L. Ed. 2d at 325–26. However, while the juvenile's age is an important consideration that must be included in the analysis, the juvenile's age will not be a determinative, or even a significant, factor in every case. *J.D.B.*, 564 U.S. at 277, 180 L. Ed. 2d at 326.



¶ 16 James first argues that the trial court's findings of fact were unsupported by the evidence and misrepresented critical facts. We review findings of fact to determine if they are supported by any competent evidence. *Hammonds*, 370 N.C. at 161, 804 S.E.2d at 441. The findings of fact are conclusive on appeal if there is any competent evidence supporting the findings, even if conflicting evidence also exists. *Id.* Here, James challenges the findings pertaining to Mr. Mitchell and Detective Lowrance speaking in the Special Victims Unit, while James waited in the lobby; the location of the interview and the sign on the interview room door; and that Detective Lowrance told James he was not under arrest and would be going home with Mr. Mitchell at the end of the interview. Competent evidence, specifically Detective Lowrance's testimony at the hearing on the motion to suppress and pictures introduced into evidence support these challenged findings of fact. Therefore, we must find these findings of fact conclusive on appeal.

¶ 17 James next challenges the trial court's conclusion of law that he was not in custody during questioning. Specifically, James asserts that this conclusion of law was unsupported by any competent evidence and failed to account for the impact of James's age in the totality of the circumstances test. We review conclusions of law *de novo*, freely substituting our judgment for the trial court's, as necessary, to determine whether the findings of fact support the conclusion of law. *Hammonds*, 370 N.C. at 161, 804 S.E.2d at 441; *In re K.D.L.*, 207 N.C. App at 456, 700 S.E.2d at 769.

¶ 18 Here, based on the factual findings made by the trial court, the determination that James was not in-custody during questioning was likely proper. This conclusion is supported by the facts showing James was not restrained during the interview, James was not searched upon arrival at the Sheriff's Department, the interview lasted approximately fifty minutes, James was transported to the Sheriff's Department by Mr. Mitchell and not in a law enforcement vehicle, and James was told multiple times he would be going home with Mr. Mitchell at the end of the interview. When weighed against the facts that James was questioned in an interrogation room within a Sheriff's Department, the interview was recorded, and the interview was conducted by an armed detective, under a standard totality of the circumstances test a conclusion that James was not in-custody would be supported by these facts.

¶ 19 However, in this case, and all cases involving an interrogation of a juvenile, the trial court was required to consider James's age as part of the totality of the circumstances test. Here, the only mention of James's age by the trial court was in the first finding of fact which stated:

The Iredell County Sheriff's Department, specifically, Detective Lowrance, received a report on January 30<sup>th</sup>, 2019 from Ms. Elliot indicating that her nine year old son, [Mason], had been the victim of a sexual assault, involving the juvenile [James], who is a thirteen (13) year old relative living in Ms. Elliot's home.

This passing mention of James's age is not sufficient for us to say that the trial court properly considered James's age when applying the requisite totality of the circumstances test. Therefore, we conclude that the trial court erred in concluding James was not in custody during questioning and remand to the trial court for a new suppression hearing with instructions to consider James's age.

*ii. Voluntariness*

¶ 20 James next argues that his statement to Detective Lowrance should have been suppressed as involuntary. In support of this argument, James asserts that he was especially vulnerable to coercion because of his age and inexperience. Further, James claims Detective Lowrance used deceit, threats, and accusations that James was lying to coerce him into confessing.

¶ 21 A voluntary confession is the “product of an essentially free and unconstrained choice by its maker.” *Schneckloth v. Bustamonte*, 412 U.S. 218, 225–26, 36 L. Ed. 2d 854, 862 (1973) (internal citations omitted). If one’s “will has been overborn and his capacity for self-determination critically impaired, the use of his confession offends due process.” *Id.* A totality of the circumstances test is utilized to determine whether a confession was involuntary. *State v. Jackson*, 308 N.C. 549, 581, 304 S.E.2d 134, 152 (1983). Admission of an involuntary confession violates an individual’s due process rights. *Id.* North Carolina follows the federal test to determine voluntariness. *Id.* “Some factors considered to determine whether a confession is voluntary are: (1)

the youth of the accused, (2) the accused's lack of education, (3) the length of detention, (4) the nature of questioning, and (5) the use of physical punishment, such as deprivation of food or sleep." *State v. McKinney*, 153 N.C. App. 369, 373, 570 S.E.2d 238, 242 (2002) (citing *Schneckloth*, 412 U.S. at 226, 36 L. Ed. 2d at 862).

¶ 22 Generally, "a minor has the capacity to make a voluntary confession . . . without the presence or consent of counsel or other responsible adult . . ." *State v. Dawson*, 278 N.C. 351, 362, 180 S.E.2d 140, 147 (1971). The factors used in considering the admissibility of a confession given by a minor are his intelligence, education, experience, and ability to comprehend the meaning and effect of his statement, in addition to his age. *Id.* In *State v. McKinney*, the defendant, who was sixteen years-old at the time of questioning, argued that his youth and inexperience with the justice system showed a lack of understanding and rendered his confession involuntary. 153 N.C. App. at 374, 570 S.E.2d at 243. However, the *McKinney* Court found the defendant's youth and inexperience argument unpersuasive because the defendant acknowledged to the interrogating officers that he knew and understood his rights. Here, similarly to *McKinney*, James indicated on his signed confession that the statement was given voluntarily. Therefore, we find that despite James's age and inexperience he knew and understood the action he was taking.

¶ 23 "Admonitions by officers to a suspect to tell the truth, standing alone, do not render a confession inadmissible." *State v. McCullers*, 341 N.C. 19, 460 S.E.2d 163,

168 (1995) (internal citation and quotation omitted). North Carolina courts have routinely found that when officers tell suspects, during questioning, that they think the suspect is lying or this is the suspect's last chance to tell the truth, subsequent confessions are not coerced. *See McKinney*, 153 N.C. App. at 375, 570 S.E.2d at 243; *Jackson*, 380 N.C. at 579, 304 S.E.2d at 151; *State v. Thompson*, 227 N.C. 19, 23–24, 40 S.E.2d 620, 623–24 (1946). Here, Detective Lowrance's alleged deceitful statements were, "I just believe you're not telling me the whole truth, and I think you're holding back . . ." and "I'm giving you an opportunity, and it's your last opportunity, and I'm telling you that this is your last opportunity to be truthful." These statements do not rise to the level of coercion and do not render James's confession involuntary.

¶ 24 As a result, we conclude that the trial court did not err by finding that James's confession was voluntary.

### III. Conclusion

¶ 25 For the foregoing reasons we hold that the trial court did not err in finding that James's confession was voluntarily given. However, we hold that the trial court erred by failing to consider James's age as part of its custody analysis. We therefore remand for a new suppression hearing with instructions for the trial court to consider James's age in assessing whether James was in custody at the time of questioning.

IN RE J.D.F.

2021-NCCOA-300

*Opinion of the Court*

NO ERROR IN PART; REMAND.

Judges INMAN and GRIFFIN concur.