IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	
	)	No. 65964-2-I
Respondent,	)	
	)	DIVISION ONE
v.	)	
	)	
B.L.W. (DOB: 09/23/1995),	)	UNPUBLISHED OPINION
	)	
Appellant.	)	FILED: November 14, 2011

Spearman, J. — B.L.W., a juvenile, was adjudicated guilty of rape of a child in the first degree. He claims on appeal that the trial court erred in admitting his statements to detectives. He contends the statements violated (1) his Fifth Amendment privilege against self-incrimination because he was "in custody" when they were made and he was not given Miranda warnings[1] and (2) his due process rights. We conclude evidence in the record supports the juvenile court's conclusions that he was not in custody and that his statement was made voluntarily. Accordingly, we affirm.

FACTS

In May 2009, Terrance Holcomb was told by a neighbor that 13-year-old

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

B.L.W. (DOB: 9/23/1995) was engaging in oral sex with Holcomb's son M.H. (DOB: 09/19/2000). Holcomb questioned M.H., who said B.L.W. was making him have oral sex. M.H. said this also happened to M.H.'s nine-year-old male cousin K.E. (DOB: 12/23/1999). Holcomb contacted the police.

Snohomish County Sheriff Detective Christopher Ferreira called B.L.W.'s mother and asked her to bring B.L.W. to the sheriff's office headquarters for an interview. She did so on June 4, 2009. Ferreira and his partner, Detective Jensen,[2] met B.L.W. and his mother in the lobby and gave them visitor passes. Ferreira had to use a key card to get into the sheriff's office, but he explained to B.L.W. and his mother that they did not need a key card to leave the office. Ferreira told B.L.W. he was not under arrest, was free to leave at any time, and did not have to answer questions. B.L.W. and his mother both reviewed and signed a non-custodial interview form indicating they understood he was not under arrest and could leave at any time. The detectives were aware that B.L.W. was 13 years old and had no prior involvement with law enforcement. They did not read B.L.W. Miranda warnings.

With B.L.W.'s consent, the interrogation was recorded. It lasted slightly over one hour and took place in an approximately 10 x 10 foot room. The detectives sat on one side of a table, and B.L.W. and his mother sat on the other side, closest to the door. B.L.W. was not handcuffed or restrained. Ferreira

[2] Jensen's first name does not appear in the record.

made clear that he believed sexual contact had occurred. He said to B.L.W., "You can just tell me what happened. We can just get to the heart of it and move on. You're going to walk out of here and go to your history class. You're going to walk out of here when you're done." He also told B.L.W. that he would have to explain later why he wanted to lie and that B.L.W. was the one who was going to have to "answer for it" later. Finally, Ferreira said to B.L.W., "Your side of the story is never going to come out. You really don't want to be in front of a judge telling him at that point that everything [you] said so far is a lie."

Approximately 45 minutes into questioning, B.L.W. indicated he was not comfortable answering the detectives' questions in front of his mother. His mother left the room. B.L.W. then admitted that some of M.H.'s claims of sexual abuse were correct, although he denied engaging in what K. E. and M.H. referred to as "humping," and denied that anything happened with regard to K.E. At the conclusion of the interrogation, B.L.W. and his mother walked out of the sheriff's office and B.L.W. went to school. He was not arrested.

B.L.W. was charged in juvenile court with two counts of rape of a child in the first degree. One count related to M.H. and the other related to K.E. The case proceeded to adjudication. A CrR 3.5 suppression hearing was held regarding B.L.W.'s statements to detectives. B.L.W. testified that he did not feel free to leave during the interrogation and that, based on the detectives' statements, he believed he could leave only after it was over. He testified that he believed he would avoid punishment or receive less punishment if he

confessed. B.L.W testified that he probably would not have made a statement if Ferreira had not said he would have to answer to a judge or would be in trouble later for lying. Finally, he testified that he thought if he did not make a statement, he would "wind up being in the same position without an attorney or without somebody who knows what's going on."

The juvenile court made findings of fact and concluded that B.L.W. was not in custody at the time of the interrogation; that because he was not in custody and was told he was free to leave at any time, no Miranda warnings were required; that B.L.W.'s statements were voluntarily made and not the product of threats, promises, or coercion; and that B.L.W.'s statements to the detectives were admissible.

At trial, M.H. and K.E. both testified that B.L.W. touched their penises and had oral sex with them when they were six to seven years old and seven to eight years old, respectively. The boys' hearsay statements to a child interview specialist were also admitted.

The juvenile court found B.L.W. guilty of the count involving M.H., but not guilty of the count involving K.E. The court imposed a special sexual offender disposition alternative (SSODA), consisting of 20 days of confinement, 24 months of community supervision, 80 hours of community service, a $100.00 victim compensation penalty, and a suspended 36-week commitment to the Juvenile Rehabilitation Administration (JRA).

DISCUSSION

B.L.W. claims the admission of his statements constituted reversible error. We review a trial court's decision after a CrR 3.5 hearing to determine if substantial evidence supports the court's findings of fact, and whether those findings support the conclusions of law. State v. Broadaway, 133 Wn.2d 118, 130-31, 942 P.2d 363 (1997). Unchallenged findings are verities on appeal. State v. Hill, 123 Wn.2d 641, 647, 870 P.2d 313 (1994). We review conclusions of law de novo. State v. Johnson, 128 Wn.2d 431, 443, 909 P.2d 293 (1996).

Fifth Amendment

B.L.W. first claims that detectives' failure to give him Miranda warnings violated his Fifth Amendment privilege against self-incrimination.[3] However, the requirement to inform a suspect of his Miranda rights does not attach until custodial interrogation begins. Thus, the dispositive issue is whether B.L.W. was in custody. In resolving this issue, the question is whether a reasonable person in the individual's position would believe he or she was in police custody to a degree associated with formal arrest. State v. Lorenz, 152 Wn.2d 22, 36-

[3] In Miranda v. Arizona, 384 U.S. 436, 444, 86 S. Ct. 1602, 16 L. Ed. 2d 694, 10 A.L.R.3d 974 (1966), the United States Supreme Court created a rule to ensure the protection of the privilege against self-incrimination under the Fifth Amendment:

> [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.

The Court held that a suspect interrogated while in police custody must be told that he has a right to remain silent; that anything he says may be used against him in court; he is entitled to the presence of an attorney if he chooses to talk to police; and that if he cannot afford an attorney one will be appointed for him prior to the interrogation if he desires. Id. at 479. These warnings are a bright-line constitutional requirement independent of the requirement that custodial statements be voluntary in a due-process sense. Dickerson v. United States, 530 U.S. 428, 443, 120 S.Ct. 2326, 147 L.Ed.2d 405 (2000).

37, 93 P.3d 133 (2004) (citing Berkemer v. McCarty, 468 U.S. 420, 440, 104 S.Ct. 3138, 82 L.Ed.2d 317 (1984)). This test involves two discrete inquiries: "[F]irst, what were the circumstances surrounding the interrogation; and second, given those circumstances, would a reasonable person have felt he or she was at liberty not to terminate the interrogation and leave." Thompson v. Keohane, 516 U.S. 99, 112, 116 S.Ct. 457, 133 L.Ed.2d 383 (1995). Where a child suspect is involved, the child's age is an appropriate consideration in the custody analysis, so long as the child's age should have been objectively apparent to a reasonable officer. J.D.B. v. North Carolina, __ U.S. __, 131 S.Ct. 2394, 2406, 180 L.Ed.2d 310 (2011); see also State v. D.R., 84 Wn. App. 832, 836, 930 P.2d 350 (1997).

B.L.W. contends he was in custody because a reasonable 13-year-old in his position would not have felt free to terminate the interrogation and leave. He points out that he was interrogated by two detectives in a 10 x 10 foot room with the door closed; that he was escorted there by a detective who used a key card to enter; and that although detectives told him he did not have to answer questions and could leave at any time, they also told him he as going to "move on" and "walk out of here when you're done." He cites State v. Daniels, 160 Wn.2d 256, 156 P.3d 905 (2007) in support.

We hold that the juvenile court's findings of fact supported its conclusion that B.L.W. was not in custody. D.R. is on point. There, the juvenile suspect was told he was not required to answer questions, but was not told he was free

to leave. D.R., 84 Wn. App. at 834. The court examined two Oregon cases, State ex rel. Juv. Dep't v. Killitz, 59 Or.App. 720, 651 P.2d 1382 (1982)) and State ex rel. Juv. Dep't v. Loredo, 125 Or.App. 390, 865 P.2d 1312 (1993), and concluded that the difference between them was that in Loredo, the suspect was told that he was free to leave. The court noted that "this factor is significant," and that unlike in Loredo, D.R. was not told he was free to leave. D.R., 84 Wn. App. at 838. Accordingly, the court concluded that the juvenile was in custody and Miranda warnings were required.

Here, the juvenile court found that B.L.W. was told on at least two occasions that he was not under arrest and was free to leave at any time; B.L.W. and his mother signed a form indicating they understood that B.L.W. was not under arrest and could leave at any time; and B.L.W. was not restrained in any manner, and he and his mother were seated closest to the door. B.L.W. does not assign error to any of the court's findings of fact, so we treat them as verities. Under D.R., they support the juvenile court's conclusion that a reasonable juvenile in B.L.W.'s position would not believe himself to be in police custody to a degree associated with formal arrest. Daniels does not support B.L.W.'s claim, as there was no indication that the defendant there was told she did not have to answer questions and was free to leave. See Daniels, 160 Wn.2d at 266-67.

Due Process

B.L.W. next contends his statements were involuntary and obtained in

violation of his due process rights, because of his age and what he describes as implied promises of leniency by detectives. He points to their statements that he could "move on" and "walk out of here" when he was done, and that they believed B.L.W. had merely acted out of "curiosity" and did not "deserve to go to [Denny Youth Center]." He points out that detectives told him, "You are going to have to explain later why you wanted to lie" and "You really don't want to be in front of a judge telling him at that point that everything [you] said so far is a lie."

A defendant is deprived of due process of law if his conviction is founded, in whole or in part, upon an involuntary confession, without regard for the truth or falsity of the statements, and even if there is ample evidence aside from the confession to support the conviction. Jackson v. Denno, 378 U.S. 368, 376, 84 S.Ct. 1774, 12 L.Ed.2d 908 (1964). A "voluntary" statement is one that is the product of the defendant's own free will and judgment. State v. Unga, 165 Wn.2d 95, 102, 196 P.3d 645 (2008). The inquiry is whether, under the totality of the circumstances, the statement was coerced.[4] Broadaway, 133 Wn.2d at 132; Unga, 165 Wn.2d 95 at 103 (totality of circumstances analysis applies to juvenile's statement). While a police officer's psychological ploys, such as statements that honesty is the best policy for a defendant hoping for leniency or that the suspect could help himself by cooperating, may play a part in a suspect's decision to confess, "'so long as that decision is a product of the

[4] Among the circumstances to be considered may be the maturity, education, physical condition, and mental health of the defendant; the length of the interrogation; and the conduct of the police, including any promises or misrepresentations made. Broadaway, 133 Wn.2d 118, 132, 942 P.2d 363 (1997); Unga, 165 Wn.2d at 101-02.

suspect's own balancing of competing considerations, the confession is voluntary.'" Unga, 165 Wn.2d at 102 (quoting Miller v. Fenton, 796 F.2d 598, 605 (3d Cir. 1986)).

Substantial evidence in the record supports the conclusion that B.L.W.'s statement was voluntary. He was repeatedly told he was not under arrest, did not have to answer any questions, and was free to leave at any time. Initially, he was interviewed in the presence of his mother, but as the interrogation progressed he indicated he did not feel comfortable talking in front of her. She then left. Moreover, B.L.W. testified at the CrR 3.5 hearing that he believed the consequences of not making a statement were that he would be in the same position, only without an attorney. These circumstances indicate that B.L.W. was assessing what he wanted to disclose and to whom, and what the consequences of disclosure would be. A defendant's mistake about, or ignorance of, the full consequences of the decision to speak with the police does not affect the voluntariness of the choice to speak. State v. Heggins, 55 Wn. App. 591, 598-59, 779 P.2d 285 (1989) (citing Connecticut v. Barrett, 479 U.S. 523, 530, 107 S.Ct. 828, 833, 93 L.Ed.2d 920 (1987)). The record does not support B.L.W.'s contention that detectives coerced him into making a statement.

Affirmed.

Spearman, J.

WE CONCUR:

Leach, A.C.J.

Lau, J.