Circuit Court No. JA-160206R00

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1322

September Term, 2016

IN RE: A.B.

Meredith,
Reed,
Davis, Arrie W.,
(Senior Judge, Specially Assigned)

JJ.

Opinion by Davis, J.

Filed: September 6, 2017

Appellant, A.B., a juvenile, was found in possession of a firearm, by the Circuit Court for Prince George's County, sitting as a juvenile court (Hill, Jr., J.). At the disposition hearing, the court ordered Appellant into level B Custodial Placement. Appellant filed this timely appeal of the court's disposition and posits the following questions, which we quote, for our review:

1. Did the court err in admitting testimony about an incriminating, custodial statement that A.B. made when police confronted his family with the gun they found in the family's apartment and threatened to arrest his pregnant sister for the gun?

2. Did the court err in finding sufficient evidence to support a finding of involvement as to possession of a regulated firearm by someone under 21?

FACTS AND LEGAL PROCEEDINGS

On October 23, 2015, Appellant's downstairs neighbor, Claudia Castillo, awoke at approximately 3:00 a.m. to prepare lunch for her husband lunch before he left for work. Ms. Castillo resided with her husband and three children in A-1, a two-bedroom apartment on the ground floor of a three-story building located in Bladensburg, Maryland. Upon entering the kitchen, she noticed holes in the ceiling, top and side of her refrigerator and in her countertop. The holes were not present when Ms. Castillo went to sleep the night before. Consequently, she called the police.

Detective Charles Earle, a detective corporal for the Bladensburg Police Department, accompanied by a uniformed officer, responded to the call. Detective Earle spoke with Ms. Castillo and inspected the holes. He concluded that someone had shot a bullet through her ceiling, from the apartment above. Detective Earle and the uniformed

officer went to B-1, the apartment located directly above Ms. Castillo's apartment to determine if anyone had been injured.

At approximately 9:20 a.m., as Detective Earle prepared to knock on the door of Apartment B-1, the door opened. Appellant, A.B., opened the door. Detective Earle recognized Appellant as they had, according to the Detective, "dealt with each other many times in the past." Detective Earle asked Appellant if he remembered him, to which Appellant responded that he did. He then asked Appellant if he could talk with him and Appellant "stepped back and opened the door all the way" allowing the officers entry into the apartment.

Once inside the apartment, Detective Earle observed a cartridge casing lying on the ground in the dining room area. It was under the dining room table, near the hole in Ms. Castillo's kitchen ceiling. Detective Earle asked Appellant if there was anyone else in the apartment, to which Appellant responded in the negative. The Detective then pointed to the cartridge casing and again asked Appellant if there was anyone else in the apartment. Appellant again responded in the negative. Detective Earle asked him if he had a firearm on him, to which Appellant replied, "No." The Detective patted down Appellant, but did not find a weapon. Detective Earle then "yelled out loud," two or three times, to see if there was anyone else in the apartment. At that point, Appellant's 19-year-old pregnant sister, N.B., emerged from the back of the apartment.

Detective Earle ordered both Appellant and N.B. to sit down because Detective Earle knew that J.E., Appellant's and N.B.'s mother, worked the night shift. Appellant and

N.B. indicated that they did not know when their mother would be home, but that she was expected home soon. Detective Earle asked Appellant if he could search the apartment, but Appellant stated that he was only 17 years old, it was his mother's apartment and she would need to give permission for the search. N.B. unsuccessfully tried to contact her mother over the phone. After a few more minutes, Detective Earle left the apartment to obtain a search warrant. Detective Earle "determined that the apartment was a crime scene" and summoned more uniformed officers to secure the apartment while he was gone. Detective Earle told the officers that no one could enter or leave the apartment and that he should be called as soon as J.E. arrived home from work.

While at the police station obtaining the search warrant, one of the officers called Detective Earle to inform him that J.E. had arrived at approximately 10:30 a.m. The Detective returned to the apartment and spoke with J.E., explaining that someone fired a gun from her apartment into the Ms. Castillo's apartment below. J.E. began to cry. Detective Earle asked J.E. if she would consent to a search of the apartment. After Appellant denied that there was a gun present in the apartment, J.E. signed a consent-to-search form. Detective Earle testified that J.E. appeared "upset" when she signed the form.

Detective Earle initially testified that all three family members were in the living room while he conducted the search and that he could hear them discussing the gun. He then testified that Appellant's mother was outside talking on the telephone while he conducted the search of the apartment. The Detective subsequently testified that he did not "really remember" whether A.B.'s sister was inside or outside during the search, but he

ultimately testified that A.B. and his sister remained "in the living room, if I'm correct," continuing, "I think they were sitting on the couch."

Although Detective Earle did not divulge how he knew which bedroom was Appellant's, he began his search in A.B.'s bedroom, "believing, if there was a firearm it would probably be in [his] room." Under the bottom drawer of a dresser, the Detective found a black digital scale, which was admitted into evidence over objection. However, he did not find a weapon. To the right of Appellant's bedroom was N.B.'s bedroom. Detective Earle testified that, unlike the first room, "this bedroom was very well kept." He again pulled out the bottom drawer of a dresser and discovered a handgun. The safety of the gun was off, the hammer was cocked and the slide was partially back, as if the gun was jammed. The ammunition in the firearm was of the same manufacturer and caliber as the cartridge casing found on the dining room floor of Appellant's apartment.

Before touching the gun, Detective Earle put on latex gloves, grasped the gun by the barrel with two fingers and returned to the living room to show J.E. that he had discovered a gun. The Detective informed J.E. that the gun was discovered in the spare room. J.E. looked at N.B. and said, "Your room?" Detective Earle then asked N.B. if the gun was hers. N.B. emotionally responded, "No, it's not my gun." She indicated that she was not at the apartment the previous night. Appellant then stated that the gun was his, *i.e.*, "it's mine."

Detective Earle initially testified that Appellant confessed to the gun ownership first, but then the Detective later acknowledged that, before Appellant made this statement,

"I did talk to the sister about the gun." However, Detective Earle testified that, he held up the gun and asked, "Is it your gun?" His statements were directed to everyone in the family; According to Appellant, "All three of them were right there and I said it out loud holding the gun." He testified that Appellant's sister "was like all emotional, no, it's not my gun, and she was looking at her mother and looking at me saying no, it's not my gun," and that "there was a lot of confusion with the mother being very upset . . . ." Detective Earle testified, "That's where [A.B.] said it's his gun."

Detective Earle acknowledged that he did not include his interview with N.B. in his police report, which simply stated that Detective Earle entered the living room with the gun and Appellant claimed ownership of it. Detective Earle explained that he did not mention questioning A.B.'s sister in his report because "the sister already had told me that she was not there during the course of the evening [when the shooting occurred] . . . ."

J.E. testified that**,** when she returned to her apartment on October 23, 2015, she saw uniformed police officers on her balcony. J.E. said an officer asked for consent to search the apartment and, after a discussion about "ransacking," she agreed that the officer could "go ahead and search" the apartment. While the officer searched the apartment, J.E. testified that Appellant made a "little move" and another officer grabbed him and pushed him back on the couch. J.E. testified that the officer "went right on top of him," putting his knee on top of him and pushing him back. She informed the officer that Appellant had just dislocated his shoulder and recently had finished therapy. J.E. asked the officer to "take it easy, take it easy, what's going on?" J.E. said that the officer responded, "[W]ell, he made

a move," but ignored her requests to "take it easy" on Appellant. As J.E. protested and began to cry, two of the officers took Appellant onto the balcony and placed him in handcuffs.

J.E. said that the "supervisor," Detective Earle, came back and said that he found a gun under the dresser in N.B.'s room. J.E. testified that Detective Earle told her that he was going to "take my daughter down for the gun," because it was discovered in her room. J.E. testified to the brief colloquy between Detective Earle and herself:

> And I said, my daughter? He said, yes, because he found this in the, in the room. *** I told the officer she was pregnant. [H]e said either way it's the weapon that they found in the room . . . . So [A.B.], [A.B.] had to tell him what do you know about the weapon. If he doesn't . . . he's going to take my daughter down."

Appellant, who was present when these statements were made, said "Okay, okay, I know about the weapon."

N.B. testified that she was sleeping at her grandmother's house during the early morning hours of October 23, 2015. She returned to her house in the morning and was cleaning the apartment when her brother called her into the living room. When she entered the living room, two police officers told her and her brother to sit on the couch.

After the siblings tried, unsuccessfully, to contact their mother, the officers seized their phones, including the house phone, and "said that we wasn't allowed to talk." N.B. testified that an officer told her, "[W]ell, if you guys don't tell us where the gun is then you're not going to leave. You are going to stay right here and be on lockdown." N.B. testified that, before Detective Earle confronted the family with the gun, while A.B. was

sitting on the couch, two officers "wrestled on him, because he was trying to sit comfortable." She described the officers holding her brother down and she testified that the police then "put everybody on the balcony," and put Appellant in handcuffs. N.B. then testified that, when Detective Earle confronted the family about the gun he found, "he was waving [the gun] while he was talking. He was like it's a gun in your house. It was in your room, so therefore we are going to lock you up." She testified that Detective Earle directed this threat to her, but he was only two to three feet away from A.B. when he said it. She testified, "That's when [A.B.] was like yeah I know about the gun; I know about the gun, yeah."

Initially, N.B. testified that the officer said nothing to Appellant when inquiring about the gun found in her room. However, she later said that the officer told Appellant, "well we are going to take your sister" because "[t]he gun was in your sister's room." According to N.B., the officer was telling Appellant "to write something as if he did it himself." When the officer was trying to put her in handcuffs, Appellant spoke up: "I know about the gun; I know about the gun, yeah."

Appellant testified that he was leaving the apartment, on October 23, 2015, to go to the store across the street. As he neared the steps outside the apartment, one of the officers grabbed his arm and walked him back into the apartment and told him to sit down.

Appellant was originally indicted as an adult in the Criminal Division of the Circuit Court for Prince George's County. Appellant filed a motion to transfer jurisdiction to the juvenile court, which was granted. A delinquency petition was then filed with the juvenile

court.

The adjudicatory hearing was held on April 25, 2016, May 19, 2016 and May 23, 2016, during which Appellant also made four motions to suppress. The third motion is pertinent to the instant appeal. Appellant sought to suppress the statement he made at the apartment, asserting that the statement was the product of an un-*Mirandized*[1] custodial interrogation and was involuntary under Maryland common law. Appellant pointed out that Detective Earle had admitted that A.B. made the statement only when Detective Earle confronted his family with the gun and asked A.B.'s pregnant sister if it belonged to her, and that Detective Earle also admitted to omitting this from the police report. In response to the court's query as to why the officers should have known that this conduct was reasonably likely to elicit a statement from A.B., counsel responded, "Because it's his sister, your Honor." He further pointed out that Detective Earle testified about having prior contacts with A.B., arguing that the police had already decided that A.B. was "their guy" and had "no intention of locking up his pregnant 19-year-old sister."

The court found that Appellant was in police custody when he made the statement to Detective Earle and refused, over counsel's objection, to make a finding of fact as to whether or not A.B. was in handcuffs, noting that "the mother didn't say he was in cuffs." However, the court denied Appellant's motion to suppress evidence of his statement about the gun, concluding, "I do not find they should have known it would elicit a response from

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

the brother." The court reasoned, "It would be different if the gun were sitting out on the dining room table, then there would be no other indication of why [the pregnant sister] would be arrested other than to try to pressure her brother." The court further reasoned, "I don't think it's a threat if an officer says he's going to do something, which in my mind he's legally entitled to do.[] I don't believe the statement was made to him to get him to make a response." The court further noted that, in the cases presented by defense counsel in support of the motion, "the question was made directly to the subject."

In ruling on the charge of possession of a firearm by a person under 21, the court acknowledged that there was conflicting evidence regarding what Appellant said when Detective Earle confronted his family with the gun. In issuing its ruling, the court relied on the testimony of N.B. that Appellant said he "knew something about" the gun, rather than on Detective Earle's testimony that A.B. said it was his gun. The court reasoned, "[E]ven assuming . . . that he said the sister's version, I know something about the gun. Why wouldn't that still be enough?" The court continued:

> Looking . . . at the statement of the version . . . his sister gives . . . [and] looking at the totality of the circumstances, which includes a bullet hole in a floor . . . and a shell casing on the floor . . . the Court is convinced beyond a reasonable doubt that [A.B.] was in possession of the firearm.

DISCUSSION

I.

Appellant contends that the motions court erred in denying his third motion to suppress because Detective Earle's testimony, concerning A.B.'s statement, "was elicited

by the functional equivalent of interrogation and/or was coerced." Alternatively, Appellant maintains that, if it cannot be determined from the record that the statement was coerced or elicited by the functional equivalent of interrogation, the motions court made "insufficient factual findings to support a determination that the statement was voluntary" and did not violate Appellant's Constitutional rights.

The State responds that "[t]he lower court correctly concluded that A.B. failed to meet his burden of proving that he was subject to interrogation under *Miranda* when he blurted that the gun was his after Detective Earle asked his sister whether the gun belonged to her."

When reviewing a lower court's ruling on a motion to suppress, we review only the "facts and information" from the suppression hearing and accept the court's factual findings unless clearly erroneous. *Smith v. State*, 414 Md. 357, 361 (2010). However, we undertake an "independent constitutional appraisal of the record by reviewing the law and applying it to the facts of the present case[,]" *i.e., de novo. Id.*

"It is a basic principle that a statement taken during custodial interrogation conducted before a defendant is informed of his or her *Miranda* rights may not be used by the State in its case in chief against the defendant." *Drury v. State*, 368 Md. 331, 335 (2002). "The test to be applied in determining whether the police officer's statements and exhibition of the physical evidence was tantamount to interrogation is whether the words and actions of the officer were reasonably likely to elicit incriminating responses from petitioner." *Id.* at 335–36 (citations omitted). "A conviction must be reversed when a

statement is admitted at trial in violation of *Miranda*." *Argueta v. State*, 136 Md. App. 273, 279 (2001).

> The Supreme Court has recognized, however, that, although '[a]ny police interview of an individual suspected of a crime has 'coercive aspects to it,' the *Miranda* requirements apply only to custodial interrogation. Thus, before a defendant can claim the benefit of *Miranda* warnings, the defendant must establish two things: (1) custody; and (2) interrogation. The burden of 'showing the applicability of the *Miranda* requirements,' *i.e.*, that there was custody and interrogation, is on the defendant.

State v. Thomas, 202 Md. App. 545, 565 (2011) (quoting *J.D.B. v. North Carolina*, 131 S. Ct. 2394, 2401–02 (2011)) (citations omitted).

Although not all Constitutional safeguards afforded to adults are applicable to juveniles in delinquency proceedings, *In re Roneika S.*, 173 Md. App. 577, 587 (2007), *Miranda* rights are applicable to juveniles. *See In re Joshua David C.*, 116 Md. App. 580, 594 (1997) (noting that the definition of "custody" for *Miranda* purposes is broader in juvenile delinquency proceedings).

Custody

"A determination of whether custodial questioning has occurred requires, in the first instance, a finding that the defendant was in 'custody,' as that term is defined in the *Miranda* opinion." *Arguetta,* 136 Md. App. at 282 (citations omitted). Appellant notes that the court found that he was in police custody when he made the statement to Detective Earle. Appellant provides no argument in support of his premise that he was in custody for *Miranda* purposes. Despite this seeming "concession" that A.B. was in custody, we are required to conduct our own independent review of the law. *See Smith v. State*, 186 Md.

App. 498, 523 (2009) ("The suppression hearing judge, to be sure, concluded that custody had been established, but we must make our own independent assessment in that regard.").

> Although the circumstances of each case must certainly influence a determination of whether a suspect is 'in custody' for purposes of receiving *Miranda* protection, the ultimate inquiry is simply whether there is a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest.

Id. at 529.

Furthermore,

> In regard to juveniles, we have added the caveat that 'it is reasonable . . . for courts to apply a wider definition of custody for *Miranda* purposes.' Indeed, in determining whether a juvenile's statement was made while in custody, the court must consider additional factors, such as the juvenile's education, age, and intelligence.

In re Joshua David C., 116 Md. App. 580, 594 (1997).

We agree with the lower court's finding that Appellant was in custody for purposes of *Miranda*. He was expressly told that he, along with his sister, were not permitted to leave the apartment. It is reasonable that an adult, let alone a 17-year-old, would believe that his freedom of movement was formally restrained in light of the fact that uniformed police officers were not allowing anyone to leave the apartment.

Interrogation

"Once it is established that the Appellant is in custody, the next consideration is whether he was interrogated." *Arguetta,* 136 Md. App. at 283. What constitutes an "interrogation," as the term is used in *Miranda*, "is not limited to express questioning; it also includes its 'functional equivalent.'" *Drury*, 368 Md. at 336 (citing *Rhode Island v. Innis*, 446 U.S. 291 (1980)).

> That is to say, the term 'interrogation' under *Miranda* refers not only to express questioning, but also to *any words or actions on the part of the police* (other than those normally attendant to arrest and custody) *that the police should know are reasonably likely to elicit an incriminating response from the suspect*. The latter portion of this definition focuses primarily upon the perceptions of the suspect, rather than the intent of the police. This focus reflects the fact that the *Miranda* safeguards were designed to vest a suspect in custody with an added measure of protection against coercive police practices, without regard to objective proof of the underlying intent of the police.

Id. (emphasis supplied).

The Supreme Court, in *Innis, supra*, reiterated that "the police surely cannot be held accountable for the unforeseeable results of their words or actions, the definition of interrogation can extend only to words or actions . . . that they *should have known* were reasonably likely to elicit an incriminating response." *Id.* (second emphasis supplied).

Furthermore, the Court also noted that, "[w]hile the . . . inquiry focuses primarily upon the perception of the suspect rather than the intent of the police . . . the intent of the police is not irrelevant 'for it may well have a bearing on whether the police should have known that their words or actions were reasonably likely to evoke an incriminating response." *Id.* at 336–37. The Court distinguished routine police procedure or "innocuous comment" from those words or actions that "aimed at invoking an incriminating remark." *Id.* at 341.

In *Drury*, the Court of Appeals held that the petitioner was subjected to the functional equivalent of interrogation. *Id.* at 337. The Court noted that, although there was no express interrogation, *i.e.*, the officer did not ask questions, petitioner was brought to the police station for the "express purpose of questioning" and the police displayed the

physical evidence in question and stated that it would be processed for fingerprints. *Id.* The Court concluded:

> It appears to us that the only reasonable conclusion that can be drawn from the foregoing facts is that the officer should have known, in light of his having told petitioner that he was being brought in for questioning, that putting the evidence before petitioner and telling him that the items were going to be fingerprinted was reasonably likely to evoke an incriminating response from him. The only plausible explanation for the officer's conduct is that he expected to elicit a statement from petitioner.

Id.

In *Argueta*, *supra*, we held that Appellant was subject to interrogation for *Miranda* purposes when, after conducting a pat-down and discovering a knife, the police officer asked Appellant, "What are you doing with this?" 136 Md. App. at 281. We further explained:

> Officer Lagos's testimony as to his suspicion of gang activity at the scene indicates that he should have known that his question as to why Appellant was carrying this knife would elicit an incriminating response. It is irrelevant for purposes of our analysis whether Officer Lagos was honestly hoping that Appellant would provide an innocent explanation for carrying the knife. The dispositive factor in this analysis is whether Officer Lagos *should have known* that his question would elicit an incriminating response. Officer Lagos testified to having six years [of] experience as a police officer and that he initially approached the subjects because of his suspicion of gang activity. He should have known that his question was reasonably likely to elicit an incriminating response.

Id. at 284 (Emphasis supplied).

By contrast, the Court of Appeals, in *Smith, supra*, held that the petitioner was not subject to interrogation for *Miranda* purposes. 414 Md. at 370. The petitioner was served with a copy of the search warrant which inventoried the property taken; however, this was

done in compliance with the Maryland Rules. *Id.* Also consistent with the Rules, the police officer made a true statement that the property was recovered from a raid on petitioner's property. *Id.* The Court of Appeals noted that this "was not tantamount to an 'interrogation' within the meaning of *Miranda.*" *Id. See also Clarke v. State*, 3 Md. App. 447, 451–52 (1968) (holding that asking Appellant his name, age and place of employment during booking procedure did not constitute an interrogation as contemplated by *Miranda*; the questions were routine, asked of all people booked at the police station and were not asked to elicit an incriminating response).

In *Prioleau v. State*, 411 Md. 629 (2009), the Court of Appeals held that the phrase "What's up" did not constitute the functional equivalent of interrogation.

> Given that the phrase "what's up" is generally understood to be a greeting, and that [Detective] Stach did not intend the phrase to relate to anything "illegal," we conclude that the detective's utterance of the words "what's up, Maurice" was not the functional equivalent of interrogation, under the circumstances of this case. Consequently, appellant's statement that followed on the heels of [Detective] Stach's greeting was not the product of interrogation but rather was volunteered by appellant. It was a classic "blurt," to which the protections of *Miranda* do not apply.

Id. at 644–45.

Appellant asserts that it was coercive to direct the question about who owned the gun to N.B., Appellant's pregnant sister. The State responds that, notwithstanding that "it is undisputed that [A]ppellant was in custody at the time he made the challenged statement" and that "it also was undisputed that A.B. had not received Miranda warnings at the apartment, the only issue before this Court is whether A.B. was interrogated." According to the State, viewing the evidence in the light most favorable to it, Detective Earl recovered

the gun from under N.B.'s bottom dresser drawer and displayed it to all three individuals, whereupon J.E. commenced crying and said, "Oh my God, where did you find that?" When Detective Earl told J.E. that he "found it in the spare room," J.E. looked at N.B. and queried, "Your room?" In response to J.E.'s question, N.B. responded, "No it's not my gun. I told you I wasn't even here last night." According to the State, it was at that juncture that A.B. then said "It's mine." However, the court repeatedly commented that it was viewing the evidence of A.B.'s statement from N.B.'s testimony, *i.e.*, "I know about the gun; I know about the gun, yeah."

The lower court's rationale for denying Appellant's Motion to Suppress is as follows:

> [B]ecause to me they clearly had probable cause to arrest the sister, as we counted before. The gun is found in her bedroom in her dresser drawer. They clearly had probable cause to arrest her. It would be different if the gun were just sitting in the open on the dining room table. They say, okay, we're going to arrest you, meaning the sister, just the sister. That would be different because they have no other indication as to why she should be arrested other than to try to pressure her brother. But, they legitimately had probable cause to arrest her. They found a gun in her dresser drawer. Look what I found, and I am going to arrest you. I don't find that they should have known that it was going to elicit a response from the respondent in this case.
>
> ***
>
> You keep using the word "threat." I don't think it is a threat if an officer says he's going to do something, which in my mind he's legally entitled to do. So, as I said before, I don't think the statement was made and was reasonable likely to elicit a response from your client. But, I don't believe that the statement was made to him to get him to make a response.
>
> In both of these cases that you gave me, the question was made directly to the suspect.

In the instant case, Appellant was not subject to express interrogation. *See Drury*, 368 Md. at 337 (noting that there was no dispute regarding lack of express interrogation where police officer did not ask direct questions of suspect; rather, the officer made a statement and displayed evidence). "[I]t is well settled that the functional equivalent of interrogation can occur even if the defendant is not asked a single question." *Prioleau*, 411 Md. at 646 (citing *Rhode Island v. Innis*, 446 U.S. 291 (1980)).

Under functional equivalent of interrogation analysis, the key is whether Detective Earle should have known that his words or actions would have been reasonably likely to elicit an incriminating response from A.B. *Argueta, supra.* We hold that it was unforeseeable that A.B. would have made the incriminating statement after Detective Earle presented the handgun and questioned N.B. about its ownership.

There is no dispute that the handgun was discovered in N.B.'s room. It is logical that, after discovering the handgun in her room, Detective Earle would ask N.B. about the weapon. Although the Detective had testified that he did not suspect that N.B. was involved in the incident, *i.e.*, he left his interview with her out of his official police report, it would still be reasonable for him to ask her about the weapon.

However, it would still be impermissible interrogation if Detective Earle asked N.B. questions and presented the discovered handgun if he should have known that doing so would have been reasonably likely to elicit an incriminating response from A.B. The evidence supports no such conclusion.

As the State notes, Detective Earle did not directly question A.B.; rather, he questioned N.B. Therefore, it would be foreseeable that N.B. would respond, not A.B. As in *Blake, supra,* "[i]f a police officer acts with a purpose of getting a suspect to talk, it follows that the officer has reason to know that his or her conduct was reasonably likely to elicit an incriminating response." There was no evidence that Detective Earle was acting with the purpose of "getting" A.B. to talk. The Detective was questioning N.B. about evidence discovered in her room. The fact that tensions were high and A.B. blurted out an incriminating statement cannot be attributed to Detective Earle's words or actions. As was the case in *Prioleau, supra,* where "[i]t was a classic 'blurt,' to which the protections of *Miranda* do not apply."

Appellant heavily relies upon the fact that Appellant's 19-year-old sister, who was pregnant, was emotional and upset. He also notes that his mother, J.E., was crying and upset as well. Indeed, Detective Earle testified that both J.E. and N.B. were upset and that there was a lot of "confusion" during the incident. Appellant's logic is that it was foreseeable for him to make the statement, "I know about the gun; I know about the gun, yeah[,]" in order to keep his sister from being questioned or arrested.

The State counters that Appellant is not viewing the record in the light most favorable to the State. According to the State, "[t]he lower court did not find that the [D]etective 'confronted' A.B. or anyone else with the gun. Nor did it find that the [D]etective threatened to arrest N.B."

The key is not whether the officer should have known that his words or actions

would have reasonably been likely to make the suspect upset, defensive or protective of his loved ones. The test is whether the officer should have known that his words or actions would have reasonably been likely to elicit an incriminating response. We cannot say that it was foreseeable that A.B. would blurt out a statement of knowing "something" about the gun at issue. Detective Earle did not take A.B. into an interrogation room, where the only purpose would have been to elicit a response. The Detective did not question A.B. alone, again, rendering the Detective's words or actions purposeful for eliciting a response from A.B. Detective Earle was conducting an investigation as to the ownership of the weapon. Having discovered the weapon in N.B.'s room, it is only logical for him to question her about it.

Appellant was not subject to interrogation, express or its functional equivalents. Therefore, *Miranda* warnings were not required. Accordingly, the lower court properly denied Appellant's Motion to Dismiss.

II.

Appellant's final contention is that the evidence presented is insufficient to support his convictions. Appellant invites our attention to the court's reliance upon his "sister's testimony that A.B. said he 'knew something about' the gun [and] 'the totality of the circumstances, which includes a bullet hole in the floor . . . and a shell casing on the floor.'" Appellant asserts that this evidence "was patently insufficient to find that A.B. possessed the gun hidden in the apartment[.]"

The State responds that, in viewing the evidence in the light most favorable to the State, the evidence supports the juvenile court's finding that Appellant "committed the delinquent act of possessing a regulated firearm while under the age of 21."

On review, we determine whether the evidence presented is legally sufficient to support a conviction if, "after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Taylor v. State*, 346 Md. 452, 457 (1997) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).

> We give 'due regard to the [fact finder's] finding of facts, its resolution of conflicting evidence, and, significantly, its opportunity to observe and assess the credibility of witnesses.' Although our analysis does not involve a re-weighing of the evidence, we must determine whether the . . . verdict was supported by either direct or circumstantial evidence by which any rational trier of fact could find [the defendant] guilty beyond a reasonable doubt of the . . . charges.

Olson v. State, 208 Md. App. 309, 328–29 (2012) (quoting *Moye v. State*, 369 Md. 2, 12–13 (2002)). Accordingly, "[t]he limited question before us, therefore, is not whether the evidence *should have* or *probably would have* persuaded the majority of fact finders, but only whether it *possibly could have* persuaded any rational fact finder." *Id.* at 329 (second emphasis supplied) (quoting *Fraidin v. State*, 85 Md. App. 231, 241 (1991)).

Furthermore, when reviewing a sufficiency of the evidence claim where the conviction was secured by jury, "the appellate court will review the case on both the law and the evidence . . . [and] will not set aside the judgment of the trial court on the evidence unless clearly erroneous[.]" MD. RULE 8–131(c). "Under the 'clearly erroneous' standard,

'if there is any competent evidence to support the factual findings below, those findings cannot be held to be clearly erroneous.'" *Johnson v. State*, 440 Md. 559, 568 (2014) (quoting *Washington v. State*, 424 Md. 632, 651 (2012)).

Pursuant to Md. Code Ann., Pub. Safety ("P.S.") § 5–133(d)(1), "a person who is under the age of 21 years may not possess a regulated firearm," subject to several enumerated exceptions, *e.g.*, a member of the armed forces. "'In order for . . . evidence supporting [a] handgun possession conviction to be sufficient, it must demonstrate either directly or inferentially that [the defendant] exercised some dominion or control over the handgun." *McNeal v. State*, 200 Md. App. 510, 524 (2011) (quoting *Parker v. State*, 402 Md. 372, 407 (2007)). *See also* Md. Code Ann., Crim. Law § 5–101(v) ("'Possess' means to exercise actual or constructive dominion or control over a thing by one or more persons.").

> Although [P.S.] Section 5–133[] is silent concerning the *mens rea* required, the Court of Appeals has held that a "possession conviction normally requires knowledge of the illicit item." Here the court instructed the jury in conformity . . . when it said: "the State has the obligation to prove . . . knowledge on the part of" [the defendant] that "he was in possession of a handgun."

Id. (quoting *Parker*, 402 Md. at 407).

In the instant appeal, the State was tasked with proving every element of the crime beyond a reasonable doubt, *i.e.* that Appellant was under 21 years old at the time of the incident, the gun that was discovered was a regulated firearm and that Appellant was in possession of the gun. Appellant's age and the status of the gun as regulated are not contested on appeal. The sole inquiry is whether the evidence, viewed in the light most

favorable to the State, is sufficient to support the allegation that Appellant possessed the gun, thereby supporting the juvenile court's finding. We hold that the evidence was sufficient to support the assertion that Appellant possessed the gun. We explain.

Ms. Castillo testified that there were no bullet holes in her kitchen ceiling when she went to bed the evening before October 23, 2015. When she awoke in the early morning hours, the bullet hole was present. N.B. testified that she spent the night in question at her grandmother's residence. Appellant, N.B., J.E. and Detective Earle testified as to J.E.'s overnight employment. There was no further testimony or evidence presented that other individuals were in the apartment overnight. Accordingly, Appellant was the only person in the apartment during the time when the gun discharged, causing the hole and damage to Ms. Castillo's kitchen. Furthermore, a cartridge casing was found in Appellant's apartment, under the dining room table. The cartridge casing matched the bullet that made the hole in Ms. Castillo's ceiling, Moreover, a black digital scale was discovered in Appellant's room under the bottom dresser drawer. This method of storage was the same as that used to store the gun, discovered in N.B.'s room. This, in addition to Appellant's statement to Detective Earle that he "knew something" about the gun, support the *mens rea* requirement that Appellant had knowledge of the gun and exercised control or dominion over it.

After reviewing the evidence in the light most favorable to the State, we hold that the juvenile court properly ruled that the evidence presented would support any rational fact-finder in its conclusion that Appellant possessed the gun, in violation of P.S. § 5–133. In its ruling, the court noted the cartridge casing, the hole in the floor and N.B.'s version

of Appellant's statement, *i.e.* that he "knew something about the gun," supported a conclusion, beyond reasonable doubt that Appellant had been in possession of the firearm. Having found the evidence sufficient to sustain a finding of involvement in the possession of a regulated firearm by an individual under the age of 21, we affirm the judgment of the Circuit for Prince George's County, Juvenile Division.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED;
COSTS TO BE PAID BY APPELLANT.