Circuit Court for Montgomery County
Case No. 06-J-19-50500

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2042

September Term, 2019

IN RE: D.C.A.

Berger,
Arthur,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: November 6, 2020

The Circuit Court for Montgomery County, sitting as a juvenile court, found D.C.A., appellant, involved in three delinquent acts: driving without a license, taking a vehicle without the owner's consent, and driving a vehicle without the owner's consent.[1] D.C.A. appeals, presenting a single question for our review: "Did the juvenile court err in denying [his] motion to suppress his statements to the police?" Finding no error, we shall affirm the judgments.

FACTS AND SUPPRESSION FACTS[2]

Wilmer S. testified that on the morning of June 25, 2019, he and Amanda S., his wife and D.C.A.'s mother, learned that Wilmer S.'s Dodge Charger had been involved in an accident. D.C.A. was 16 years old at the time and had not been given permission to drive the car. Wilmer S. and Amanda S. lived in an apartment in Germantown, Maryland. D.C.A. lived with his maternal grandmother, who was also his legal guardian, in a different apartment in the same apartment complex.

The police were called, and Officer Martinez with the Montgomery County Police Department responded. When Officer Martinez arrived at D.C.A.'s parents' apartment,

[1] At the subsequent disposition hearing, the juvenile court placed D.C.A. on probation and into the care and custody of his grandmother, who was also his legal guardian.

[2] Because this was a juvenile case, the parties were not required to file a pre-trial suppression motion. *See* Md. Rule 4-252(a) (governing mandatory pre-trial suppression motions) and *In re Victor B.*, 336 Md. 85, 96 (1994) (holding that Title 4 of the Maryland Rules, governing procedures for criminal cases, is not applicable to juvenile proceedings). Instead, defense counsel moved for a motion to suppress during the responding police officer's testimony. Accordingly, in this section we shall relate both the facts elicited at trial and those elicited during defense counsel's motion to suppress.

D.C.A.'s mother invited him in. The officer testified that he spoke to D.C.A. in the living room and later at the police station about what had happened to his step-father's car. Before the officer testified about any statements made by D.C.A., defense counsel moved to suppress D.C.A.'s statements in those two settings. The parties then questioned Officer Martinez about the circumstances surrounding his conversations with D.C.A.

Officer Martinez testified that when he arrived at D.C.A.'s parents' apartment he was in full uniform, including a handgun, handcuffs, and a baton. After entering the apartment, he knocked on the bathroom door and asked D.C.A. to come into the living room and sit down, which he did. D.C.A., who was wearing pajama bottoms but was shirtless, chose to sit in a corner of the living room. Officer Martinez began asking D.C.A. questions, and his mother apparently joined the conversation. Officer Martinez testified that while they spoke, he stood by the front door of the apartment, about 10 to 15 feet from D.C.A. Officer Martinez asked D.C.A. about what had happened: whether he had been driving his step-father's car, whether he had been involved in a collision, and whether he had a driver's license. Officer Martinez testified that no one raised their voices during the conversation, and that D.C.A. was free to leave at any time. After speaking to D.C.A., the officer asked him and his mother to come to the police station.[3] D.C.A. was placed in the

[3] Officer Martinez testified that although he could not remember the exact words he used, "it was kind of presented as [] a yes or no whether they wanted to come." He added that he did not phrase it as "they were required" to come to the police station but that "they had an option[.]"

back of a police car and taken to the police station, about a mile from where he lived. His mother went to the police station separately.

Upon arrival at the police station, D.C.A. was placed in an interrogation room with Officer Martinez and a second officer. Neither of the officers wore their service revolver. D.C.A. was not handcuffed. Officer Martinez read D.C.A. his *Miranda*[4] rights from a pre-printed form, and D.C.A. placed his initials in the blanks on the form near the advisements and signed his name at the bottom of the form.

After hearing Officer Martinez's testimony and the parties' arguments, the juvenile court denied defense counsel's motion to suppress. The juvenile court ruled that D.C.A. was not in custody when questioned in his parents' living room, and D.C.A. validly waived his *Miranda* rights at the police station before he made any statements.

Officer Martinez continued to testify after the court's ruling. He testified, among other things, that after signing the *Miranda* waiver form at the police station, D.C.A. admitted he had driven his stepfather's car to McDonald's the previous night, and he did not possess a driver's license. Additionally, Officer Martinez testified that when D.C.A. was questioned in his parents' living room, D.C.A. made statements about driving his stepfather's car the previous night.

DISCUSSION

D.C.A. challenges the juvenile court's denial of his motion to suppress the statements he made to the police in his parents' living room and the statements he made at

[4] *See Miranda v. Arizona*, 384 U.S. 436 (1966).

the police station after he was given *Miranda* warnings. He argues that the statements he made in his parents' living room should have been suppressed because he was in custody and not *Mirandized*, and the statements he made at the police station should have been suppressed because his *Miranda* waiver was invalid as he only initialed and did not write the word "yes" or "no" next to the question that asked whether he understood his rights. The State initially argues that D.C.A. has not preserved his suppression argument as to statements he made in his parents' living room, but if preserved, the juvenile court did not err in denying D.C.A.'s motion to suppress because D.C.A. was not in custody during the questioning in the living room, and D.C.A.'s *Miranda* waiver at the police station was valid. Assuming without deciding that D.C.A. has preserved his argument for our review, we agree with the State that D.C.A.'s arguments have no merit.

Standard of review

On review of a motion to suppress, we apply the following long-held standard:

> [W]e view the evidence adduced at the suppression hearing, and the inferences fairly deducible therefrom, in the light most favorable to the party that prevailed on the motion. We defer to the trial court's fact-finding at the suppression hearing, unless the trial court's findings were clearly erroneous. Nevertheless, we review the ultimate question of constitutionality de novo and must make our own independent constitutional appraisal by reviewing the law and applying it to the facts of the case.

Corbin v. State, 428 Md. 488, 497-98 (2012) (quotation marks and citation omitted).

Miranda law

The Fifth Amendment to the United States Constitution, which applies to the States through the Fourteenth Amendment, *Malloy v. Hogan*, 378 U.S. 1, 6-7 (1964), protects

individuals from being compelled to make self-incriminating statements.[5] In the watershed case of *Miranda v. Arizona*, 384 U.S. 436 (1966), the United States Supreme Court set out the following prophylactic warnings that law enforcement personnel are required to convey to an individual before any custodial interrogation:

> [A suspect] must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires.

Id. at 479. An individual may, however, waive the rights afforded by *Miranda*. The State has a "heavy burden" to establish that a suspect has made a "knowing, intelligent, and voluntary" waiver of his *Miranda* rights by a "preponderance of the evidence." *Maryland v. Shatzer*, 559 U.S. 98, 104 (2010) (citation omitted) and *McIntyre v. State*, 309 Md. 607, 615 (1987) (citations omitted). Although the "courts must presume that a defendant did not waive his rights [and the State's] burden is great[,]" because the adequacy of a suspect's *Miranda* waiver is whether the defendant *in fact* knowingly and voluntarily waived his *Miranda* rights, waiver may be "inferred from the actions and words of the person interrogated." *North Carolina v. Butler*, 441 U.S. 369, 373 (1979) (footnote omitted).

[5] "No person . . . shall be compelled in any criminal case to be a witness against himself[.]" U.S. Const. amend. V.

Statements made in parents' living room

D.C.A.'s first argument, that he was in custody in parents' living room when the police interrogated him but failed to *Mirandize* him, is unpersuasive.

As stated above, before a defendant may claim the benefits of *Miranda*, a defendant must establish two things: custody and interrogation. *State v. Thomas*, 202 Md. App. 545, 565 (2011), *aff'd*, 429 Md. 246 (2012) (quotation marks and citation omitted). Whether an individual is "in custody" for purposes of Miranda "is an objective inquiry based on the totality of the circumstances." *Brown v. State*, 452 Md. 196, 210 (2017) (citing *Stansbury v. California*, 511 U.S. 318, 323 (1994) and other cases). A person is considered in custody if the persons' freedom of action is curtailed to "the degree associated with formal arrest[,]"meaning that a reasonable person would not "have felt he or she was at liberty to terminate the interrogation and leave." *J.D.B. v. North Carolina*, 564 U.S. 261, 270 (2011) (quotation marks and citations omitted). Relevant facts include:

> when and where [the interrogation] occurred, how long it lasted, how many police were present, what the officers and the defendant said and did, the presence of actual physical restraint on the defendant or things equivalent to actual restraint such as drawn weapons or a guard stationed at the door, and whether the defendant was being questioned as a suspect or as a witness. Facts pertaining to events before the interrogation are also relevant, especially how the defendant got to the place of questioning whether he came completely on his own, in response to a police request or escorted by police officers. Finally, what happened after the interrogation whether the defendant left freely, was detained or arrested may assist the court in determining whether the defendant, as a reasonable person, would have felt free to break off the questioning.

Brown v. State, 452 Md. 196, 211 (2017) (quotation marks and citation omitted).

Here, the juvenile court ruled that D.C.A. was not in custody when Officer Martinez first questioned him because he was 16 years old, the questioning took place in his parents' living room at 9:30 a.m. with only one police officer and his mother present, and he was not threatened nor "told he wasn't free to leave, or put in handcuffs." The court reasoned that under the circumstances D.C.A. "could have either, you know, presumably, gone back into his bedroom, or gone, you know, somewhere else." We agree with the juvenile's court's reasoning.[6]

[6] D.C.A. points out that we have held that when the individual being questioned is a juvenile, "it is reasonable . . . for courts to apply a wider definition of custody for *Miranda* purposes." *In re Lucas F.*, 68 Md. App. 97, 103, *cert. denied*, 307 Md. 433 (1986). This wider definition may include such factors as the juvenile's "education, age, nationality, intelligence and psychological traits[.]" *In re Owen F.*, 70 Md. App. 678, 685 n.3, *cert. denied*, 310 Md. 275 (1987). The more recent decision by the United States Supreme Court in *J.D.B. v. North Carolina*, 564 U.S. 261 (2011) merits further discussion.

In *J.D.B.*, a 13-year-old middle school student was "removed from his classroom by a uniformed police officer, escorted to a closed-door conference room, and questioned" in the presence of two police officers and two administrators for at least half an hour about his role in a series of burglaries. *J.D.B.*, 564 U.S. at 265-66. He was not given *Miranda* warnings nor told he was free to leave. *Id.* Although the State argued that age has no bearing in a custody determination, the Supreme Court disagreed and reiterated long standing jurisprudence recognizing that "children cannot be viewed simply as miniature adults." *Id*. at 274 (citation omitted). The Supreme Court cautioned, however, that "[t]his is not to say that a child's age will be a determinative, or even a significant, factor in every case[,]" especially when "teenagers nearing the age of majority are likely to react to an interrogation as would a typical 18-year-old in similar circumstances[.]" *Id*. at 277 (quotation marks and citations omitted). Nonetheless, the Court dismissed concerns that considering the age of the child damages "the objective nature of the custody analysis." *Id.* at 265, 272. The Court reasoned that "so long as the child's age was known to the officer at the time of the police questioning, or would have been objectively apparent to a reasonable officer, its inclusion in the custody analysis is consistent with the objective nature of that test." *Id.* at 277 (footnote omitted). The Court clarified that "including age as part of the custody analysis requires officers neither to consider circumstances

D.C.A. argues that his situation is analogous to *Bond v. State*, 142 Md. App. 219 (2002). We find *Bond* easily distinguishable. In *Bond*, three armed police officers went to Bond's trailer home around midnight to investigate a hit and run accident. *Bond*, 142 Md. App. at 223-24. They were let in and proceeded to Bond's bedroom where Bond, an adult, was in bed, shirtless, and perhaps without pants. *Id*. at 224. The officers stood in the doorway of the bedroom and questioned him accusatorily about the accident, telling him that witnesses saw him strike the other vehicles with his truck as he left a VFW hall's parking lot. *Id*. We held that Bond was in custody for *Miranda* purposes, reasoning:

> [T]he highly private location of the interrogation, the late hour, the appellant's state of undress, the number of officers present and the accusatory nature of the questioning were such that an ordinary person in the circumstances would be intimidated, and would not think he could end the encounter merely by telling the officers to leave.

Id. at 233.

The differences between the facts in *Bond* and those here are too many to offer D.C.A. any appreciable help. In *Bond*, the questioning took place in the "highly private location" of his bedroom, at midnight, with three officers present. Here, the questioning took place in D.C.A's parents' living room around 9:30 a.m., with only one officer present. Moreover, there was no evidence that the tone of the questioning in the living room was

unknowable to them, . . . nor to "anticipat[e] the frailties or idiosyncrasies" of the particular suspect whom they question[.]" *Id*. at 274 (quotation marks and citations omitted).

We need not decide whether our "wider definition of custody" standard cited in *In re Lucas F.* and *In re Owen F.* invites reconsideration because D.C.A. does not allege that the juvenile court failed to consider his age or those factors within the wider definition of custody.

accusatory, rather, Officer Martinez testified that it was a "plain conversation." That both D.C.A. and Bond were shirtless (and Bond possibly without pants) are about the only similarities of the two cases. Accordingly, *Bond* is not the analogous case that D.C.A. had hoped for.

Citing *In re Joshua David C.*, 116 Md. App. 580 (1997), D.C.A. also suggests that his mother's presence and participation in the questioning made the conversation more custodial. We disagree. The questioning in *Joshua David C.*, occurred at night when the ten-year-old respondent was taken to the police station by his mother, advised of *Miranda* in his mother's presence, but then questioned outside his mother's presence by the police chief. *Id*. at 594. In the context of those facts, we did not view "the act of [respondent]'s mother in bringing [respondent] to the interview [as] probative of the custody issue[,]" but we did view respondent's young age and questioning outside the presence of his mother as a significant factor in holding that the respondent was in custody. *Id*. at 594-95.

In re Joshua David C., is inapposite. In that case the respondent's mother was not present during questioning whereas here D.C.A's mother was present during questioning. Additionally, nothing in the evidence suggested that her presence or questioning of D.C.A. made the situation more coercive, rather, it is possible that her presence made the situation less coercive. *Cf. State v. Castillo*, 186 A.3d 672, 684-85, 689 (Conn. 2018) (the presence of respondent's mother during his encounter with the police and the fact that she appeared "angry," worried," "nervous," "upset," and at one point yelled at him, did not make the atmosphere more coercive or weigh in favor of a finding of custody where respondent was 16 years old and questioned at home). In sum, given D.C.A.'s age, the time and place of

questioning, and that Officer Martinez testified that the questioning was in a normal voice, we agree with the juvenile court that D.C.A. was not in custody.

Statements made at the police station

D.C.A.'s second argument, that his *Miranda* waiver at the police station was not knowing and voluntary because he only initialed and did not write the word "yes" or "no" next to the questions that asked whether he understood his rights, is likewise unpersuasive.

The Court of Appeals has recently reiterated the factors to consider when determining whether a suspect has validly waived *Miranda*:

> In evaluating the validity of a waiver in a given case, the court must consider the particular facts and circumstances surrounding that case, including the background, experience, and conduct of the accused. This inquiry has two distinct dimensions:
>
> > First, the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception. Second, the waiver must have been made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it. Only if the totality of the circumstances surrounding the interrogation reveals both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the *Miranda* rights have been waived.
>
> This approach requires an examination of all the circumstances surrounding the interrogation, including the individual's age, experience, education, background, and intelligence, and . . . whether he has the capacity to understand the warnings given him, the nature of his Fifth Amendment rights, and the consequences of waiving those rights.

Gonzalez v. State, 429 Md. 632, 651-52 (2012) (quotation marks and citations omitted).

Before questioning D.C.A. at the police station, Officer Martinez testified that he read D.C.A. his *Miranda* rights from a pre-printed form.[7] D.C.A. initialed each advisement and signed the bottom of the form. The sixth advisement read, "Do you understand what

[7] The "**ADVICE OF RIGHTS FORM**" provided:

> ____ 1. You have the right now and at any time to remain silent.
>
> ____ 2. Anything you say may be used against you.
>
> ____ 3. You have the right to a lawyer before and during any questioning.
>
> ____ 4. If you cannot afford a lawyer, one will be appointed for you.
>
> ____ 5. (NOTE: #5 will only be used for an arrestee who will be charged as an adult.) You have the right to be taken promptly before a District Court Commissioner who is a judicial officer not connected with the police. A Commissioner will inform you of each offense you are charged with and the penalties for each offense; provide you with a written copy of the charges against you; advise you of your right to counsel; make a pre-trial custody determination; and advise you whether you have a right to a preliminary hearing before a judge at a later time.
>
> ____ 6. Do you understand what I have just said?
>
> Answer: _____

D.C.A. placed his initials in every blank space, including on the Answer line for question 6. Below the sixth entry, the officer and D.C.A. wrote their signatures on the signature line provided.

I have just said?" and had a blank line to the left and an additional blank line to the right with the word "Answer." D.C.A. placed his initials on both blank lines.

D.C.A. challenges his *Miranda* waiver on the sole fact that instead of answering "yes" or "no" in the blank to the right of question 6, he wrote his initials. D.C.A. argues that "[f]ar from establishing that [he] understood his rights, the Advice of Rights Form reflects a child who signed his name wherever there was text followed by a line, regardless of its content." He again cites *In re Joshua David C.* in support of his argument.

We again find *In re Joshua David C.* distinguishable. As related above, in that case we held that a ten-year-old boy signing a *Miranda* waiver form at night while alone with the police chief after being separated by his mother amounted to only a superficial satisfaction of a *Miranda* waiver. The differences between that case and the facts before us are significant -- D.C.A. was *16 years old* when he signed the *Miranda* waiver form during the *afternoon*. To find a waiver under these circumstances, where the only piece of evidence that suggests an involuntary waiver is that D.C.A. placed his initials, instead of writing the words "yes" or "no," in the blank next to the last entry, would elevate form over substance.[8] The juvenile court found that D.C.A.'s initialing of the "Answer" line was reasonably interpreted as an affirmative response to the question. The juvenile court ruled, based on the totality of the evidence:

[8] D.C.A. argues in passing that it is significant that he initialed entry number five about prompt presentment to a district court commissioner even though that advisement did not apply to him. We disagree that this is significant. Viewing the evidence in the light most favorable to the State, it is likely that D.C.A. initialed that advisement because he understood it, even if the advisement did not apply to him.

> I'll find that Miranda was satisfied, because the officer gave him the advice of rights form. The respondent, who is 17, I guess he was 16 at the time, so he's not like a 12-year-old kid or something, you know, he understood the rights as indicated by his signature, and . . . his course of conduct showed that he knowingly and voluntarily waived his rights.

We find no error in the juvenile court's ruling.

JUDGMENTS OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.