STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0685

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

Filed April 14, 2009
Reversed and remanded
Bjorkman, Judge

Olmsted County District Court
File No. 55-JV-07-2375

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Mark A. Ostrem, Olmsted County Attorney, Karen A. Arthurs, Senior Assistant County Attorney, 151 Southeast 4th Street, Rochester, MN 55904 (for respondent state)

Considered and decided by Peterson, Presiding Judge; Klaphake, Judge; and Bjorkman, Judge.

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

BJORKMAN, Judge

Based on statements appellant made to his probation agent and on evidence found in a subsequent consensual search of his residence, appellant was charged by petition with fifth-degree controlled-substance offense, sale of marijuana. Appellant moved to

suppress his statements, claiming that he was in custody when he made the statements and that the agents should have advised him of his *Miranda* rights. The district court denied the motion, and appellant submitted the matter to the court pursuant to *Lothenbach*. The district court adjudicated appellant guilty. Because appellant was under custodial interrogation at the time he made the statements, he was entitled to receive a *Miranda* warning. We therefore reverse and remand for a new trial.

FACTS

On February 27, 2007, appellant had a scheduled meeting with his probation agent, Travis Gransee. Appellant was 16 years old and had been on probation for about one year. Prior to the meeting, Gransee had received information that appellant might be selling drugs. And just before the meeting, another agent informed Gransee that he had seen appellant "acting suspiciously" in the parking lot.

The meeting went well initially, with Gransee asking general questions about how appellant was doing. Gransee advised appellant about the information he had received from others that suggested appellant was dealing marijuana, and appellant denied that he was involved in that activity. But when Gransee told appellant that he would like to walk him out to his car to see what had been going on out there, appellant admitted that his 15-year-old girlfriend was in the car. Appellant's probation conditions prohibited him from having contact with girls under the age of 16 and from being involved in dating relationships. Gransee left appellant in agent Brent Hohn's office, while Gransee went out to appellant's car.

While Gransee was gone, Hohn talked with appellant about the importance of appellant being "honest." Hohn advised appellant to "come clean" because it was hard to keep telling lies.

Gransee found appellant's girlfriend and searched appellant's car. Although Gransee did not find any drugs, he found a cell phone, which violated appellant's probation terms, and cigarettes. Gransee decided to issue an apprehension order and take appellant into custody.

Gransee returned to the office and told appellant that he was under arrest. Appellant was handcuffed and placed in a caged vehicle for transport to the Juvenile Detention Center (JDC).

During the transport from the agents' offices to the JDC, appellant was upset and crying. He begged the agents not to take him to detention. The agents repeatedly told appellant that he had to be honest with them, but did not question appellant or make any promises to him. They testified that they made it clear to appellant that he was going to detention no matter what he told them. Appellant acknowledged that the agents never promised him anything, but he believed that he would not have to go to detention if he was honest with the agents.

Toward the end of the transport, appellant stated that he wanted to come clean. He told the agents that he had been dealing drugs for some time. Appellant told the agents that he had drugs at his home, where they were located, and that he wanted the agents to remove the drugs. After the agents checked appellant into the JDC, they went to his

house and located a duffle bag containing two bags of marijuana, some baggies, and a digital scale.

D E C I S I O N

On review of a pretrial order denying a motion to suppress, this court reviews "the record independently to determine whether the district court erred in not suppressing evidence as a matter of law." *In re Welfare of M.A.K.*, 667 N.W.2d 467, 471 (Minn. App. 2003). While we review the district court's factual findings for clear error, the determination of whether a defendant was in custody and entitled to a *Miranda* warning presents a legal question that we review de novo. *State v. Wiernasz*, 584 N.W.2d 1, 3 (Minn. 1998). Because the facts are largely undisputed on the issues critical to the analysis here, we review the matter de novo.

Under *Miranda*, a person must be advised of the right to be free from compulsory self-incrimination and the right to the assistance of an attorney if taken into custody for questioning. *Miranda v. Arizona*, 384 U.S. 436, 467-69, 86 S. Ct. 1602, 1624-25 (1966). The protections guaranteed by *Miranda* "are triggered only when a defendant is both in custody and being interrogated." *United States v. Hatten*, 68 F.3d 257, 261 (8th Cir. 1995).

"The test for determining whether a person is in custody is objective—whether the circumstances of the interrogation would make a reasonable person believe that he was under formal arrest or physical restraint akin to formal arrest." *In re Welfare of D.S.M.*, 710 N.W.2d 795, 797-98 (Minn. App. 2006). Here, the undisputed facts demonstrate that appellant was "in custody" in the usual sense of the term, when he made his incriminating

statements. He was handcuffed, in a caged vehicle, under transport to the JDC, and not free to leave.

Contrary to the district court's analysis, *Minnesota v. Murphy*, 465 U.S. 420, 104 S. Ct. 1136 (1984), does not compel a different conclusion. In that case, the Supreme Court emphasized that the defendant was "not in custody for purposes of receiving *Miranda* protection" when he merely appeared at a scheduled meeting with his probation officer and was not restrained or placed under formal arrest. *Murphy*, 465 U.S. at 430, 104 S. Ct. at 1144. *Murphy* did not involve a probationer who was placed under arrest for violating his probation, was being transported to a detention facility, and, at the urging of his probation agent to "come clean," made incriminating statements about other criminal activity. We conclude that under the circumstances here, appellant was in custody for purposes of *Miranda*.

We next turn to the second *Miranda* factor, whether appellant was under "interrogation" at the time he made his incriminating statements. The *Miranda* safeguards apply to "express questioning or its functional equivalent." *Rhode Island v. Innis*, 446 U.S. 291, 300-01, 100 S. Ct. 1682, 1689 (1980). Interrogation includes "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." *Id*. at 301, 100 S. Ct. at 1689-90. These words or actions "must reflect a measure of compulsion above and beyond that inherent in custody itself." *Id.* at 300, 100 S. Ct. at 1689. In determining whether interrogation occurred, we focus on the suspect's perceptions. *Id*. at 301, 100 S. Ct. at 1690.

Appellant appeared for a regularly scheduled meeting with Gransee. But the probation agents subsequently took appellant into custody because he admittedly violated his probation terms by having a dating relationship with a girl under the age of 16. While the agents may not have asked appellant specific questions, they repeatedly told him that they had received information that he was selling drugs and urged him to be "honest" and to "come clean."[1] Appellant testified that after he was placed in handcuffs, Gransee told him that "[he] had from the car . . . to the detention center to be honest and start talking." There was no reason for the agents to continue to discuss the need to be truthful. Their continued urgings for appellant to be "honest" and "come clean," even after they had evidence of several probation violations, created a level of compulsion above and beyond that inherent in the custody itself. The agents' statements were the functional equivalent of questioning and were reasonably likely to elicit an incriminating response.

We are mindful that appellant was a juvenile at the time he made his incriminating statements. We have held that a juvenile's youth, relative inexperience, and the unavailability of a parent impact the need for a *Miranda* warning. *See, e.g.*, *D.S.M.*, 710 N.W.2d at 798 (14-year-old juvenile who was subjected to coercive questioning by police, was not allowed to have parent present, held in private room inside police station, and was not told he was free to terminate interrogation at any time, should have received a *Miranda* warning); *In re Welfare of G.S.P.*, 610 N.W.2d 651, 657-58 (Minn. App. 2000) (reversing adjudication of 12-year-old juvenile because officer failed to give

[1] In that regard, this case is distinguishable from *State v. Tibiatowski*, 590 N.W.2d 305, 311 (Minn. 1999), where the probationer blurted out a confession in response to his case manager's general inquiry as to whether there was anything he wanted to tell her.

Miranda warning where juvenile had no prior criminal justice experience, was summoned to principal's office where principal and police officer conducted interrogation without telling juvenile he was free to leave, and was told that he must answer questions).

We conclude that based on all of the circumstances, appellant was under "custodial interrogation" at the time that he made his incriminating statements and that he should have been given a *Miranda* warning.

The harmless-error doctrine does not apply to delinquency adjudications that are submitted to the district court under *Lothenbach*. *In re Welfare of R.J.E.*, 642 N.W.2d 708, 712-13 (Minn. 2002). When a juvenile is improperly subjected to a custodial interrogation without receiving a *Miranda* warning and then stipulates to the facts in order to expedite appellate review of the issue, the proper disposition of the case is to reverse and remand for a new trial. *Id*. at 713. We therefore reverse appellant's adjudication and remand for a new trial.

Reversed and remanded.