STATE OF MINNESOTA
IN COURT OF APPEALS
A13-2202

In the Matter of the Welfare of:
A. A. C.-F., Child.

Filed June 9, 2014
Affirmed
Kirk, Judge

Hennepin County District Court
File No. 27-JV-13-1262

Cathryn Middlebrook, Chief Appellate Public Defender, Jenna Yauch-Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant A. A. C.-F.)

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Jean Burdorf, Assistant County Attorney, Minneapolis, Minnesota (for respondent State of Minnesota)

Considered and decided by Kirk, Presiding Judge; Hooten, Judge; and Willis, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

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

KIRK, Judge

In this extended-jurisdiction juvenile (EJJ) prosecution, the district court convicted appellant of second-degree criminal sexual conduct after a jury trial, imposed a stayed adult sentence, and placed appellant on EJJ probation. On appeal, appellant argues that the district court erred by denying his motion to suppress his statement to a police officer. We affirm.

FACTS

In October 2012, 14-year-old N.L. reported to police that she had sexual intercourse approximately ten times with 17-year-old appellant A.A.C.-F., who is her first cousin. Hennepin County Sheriff's Office Detective James Packard interviewed appellant, who had since turned 18, at his high school. Detective Packard told appellant he was not under arrest and did not give appellant a *Miranda* warning; appellant admitted that he had sexual intercourse with N.L. one time. Respondent State of Minnesota charged appellant with one count of second-degree criminal sexual conduct and one count of third-degree criminal sexual conduct, and moved to designate the prosecution as EJJ. The district court granted the motion.

Appellant moved to suppress his statement to Detective Packard, and the district court denied the motion. Following a trial, a jury found appellant guilty of second-degree criminal sexual conduct and not guilty of third-degree criminal sexual conduct. The district court imposed a stayed 36-month sentence and placed appellant on EJJ probation. This appeal follows.

D E C I S I O N

Appellant argues that the district court erred by denying his motion to suppress his statement to Detective Packard because he was not given a *Miranda* warning before making the statement. "When reviewing a district court's pretrial order on a motion to suppress evidence, we review the district court's factual findings under a clearly erroneous standard and the district court's legal determinations de novo." *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008) (quotation omitted).

Under the United States and Minnesota Constitutions, the state may not compel an individual to be a witness against himself. U.S. Const. amends. V, IV; Minn. Const. art. I, § 7. To safeguard this privilege, a police officer must give a *Miranda* warning to an individual who is in custody before interrogating the individual. *Miranda v. Arizona*, 384 U.S. 436, 444, 86 S. Ct. 1602, 1612 (1966). That warning requires a police officer to inform the individual "that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney." *Id.* Generally, an individual's statements to police during a custodial interrogation are admissible at trial only if the police first informed the individual of his *Miranda* rights. *State v. Thompson*, 788 N.W.2d 485, 491 (Minn. 2010).

In determining whether an individual's statements to police are admissible in the absence of a *Miranda* warning, this court first considers whether the individual was in custody at the time he made the statements. *Id.* "An interrogation is custodial if, based on all the surrounding circumstances, a reasonable person under the circumstances would believe that he or she was in police custody of the degree associated with formal arrest."

Id. (quotation omitted). The Minnesota Supreme Court has identified several factors that may indicate that an individual is in custody, although none of the factors standing alone is dispositive. *State v. Staats*, 658 N.W.2d 207, 211 (Minn. 2003). An individual may be in custody if the following factors are present: the police interviewed the individual at the police station; a police officer told the individual he is the prime suspect; the police officers restrained the individual's freedom; the individual made an incriminating statement; multiple police officers were present; and the officers pointed a gun at the individual. *Id.* The supreme court has also identified several factors that indicate that an individual is not in custody, including: the officers questioned the individual in his home; the police informed the individual he is not under arrest; the individual left the police station without hindrance when the interview was over; the police briefly questioned the individual; the individual was free to leave the interview at any time; the environment was nonthreatening; and the individual was able to make a phone call. *Id.* at 212.

Here, appellant was 18 at the time of the interview. Detective Packard interviewed him in the principal's office at appellant's high school, which was a large office containing two desks. Detective Packard testified that he chose to conduct the interview at the high school because he did not know where appellant lived. Detective Packard closed the door to the room to protect appellant's privacy, but he did not lock it. Appellant was not wearing handcuffs during the interview, and Detective Packard never displayed his weapon. Detective Packard, who was not in uniform, was the only person present in the room with appellant; a uniformed school-resource police officer escorted appellant to the room but was not present during the interview.

At the beginning of the interview, Detective Packard told appellant that he wanted to talk. Appellant responded that he "kind of ha[d] a clue" why Detective Packard wanted to talk to him. Detective Packard then asked appellant for his current address, and appellant refused to provide it. Detective Packard told appellant that he was not under arrest and did not have to talk if he did not want to. Detective Packard told appellant twice that he could "walk out th[e] door." Appellant indicated that he was willing to talk and did not attempt to leave. Appellant admitted that he had sexual intercourse with his cousin N.L. on one occasion during the summer of 2012. He stated that he was 17 at the time, and he thought N.L. was 15. Appellant refused to answer several of Detective Packard's questions. Detective Packard was courteous and friendly to appellant, and appellant was polite and cooperative. The interview lasted from 10:37 a.m. until 11:05 a.m. and, at the end of the interview, Detective Packard told appellant the school-resource officer would escort him back to class.

Appellant points to several factors that he argues indicate that he was in custody during the interview. He argues that Detective Packard controlled his movement throughout the interview, beginning when he first introduced himself to appellant. Appellant contends that Detective Packard told him where to walk and where to sit, prevented him from talking to an unidentified woman who asked if he was available, and commanded him to talk even when he expressed his desire not to do so. We disagree. Although Detective Packard exercised control over the location of the interview, appellant was not "restrained to a degree associated with a formal arrest." *State v. Flowers*, 788 N.W.2d 120, 129 (Minn. 2010). Detective Packard did not handcuff

appellant, did not lock the door to the room, did not tell appellant he was a prime suspect, and told appellant several times that he was not under arrest and could leave at any time. *See id.* at 130 (concluding that Flowers was not in custody when, among other things, investigators did not tell him he was a prime suspect, did not restrain his freedom, two officers questioned him, the officers did not use guns, and the officers told him he was not under arrest and was free to leave).

Appellant also argues that he was confused about his legal rights and that Detective Packard refused to explain them to him. At one point in the interview, appellant vaguely suggested that he did not want to mention something if he did not have a right to a lawyer. Detective Packard responded by explaining that appellant did not have to talk to him, was not under arrest, and could leave at any time. Appellant asked Detective Packard who reported the allegations and whether he needed to tell Detective Packard where he was currently living. Contrary to appellant's argument, appellant never explicitly asked for a lawyer, and the recording of the interview does not indicate that appellant was confused. Instead, it indicates that appellant asked Detective Packard to clarify certain questions before he decided whether to answer. On several occasions, appellant refused to answer Detective Packard's questions. And Detective Packard testified that he did not have trouble communicating with appellant and it appeared to him that appellant understood his questions and was of average intelligence.

Appellant contends that the fact that the interview took place in his high school and was audio-recorded supports his argument that the interview was custodial. He argues that the circumstances of this case are similar to that of the appellant in *In re*

Welfare of T.J.C., 662 N.W.2d 175 (Minn. App. 2003), *rev'd on other grounds*, 667 N.W.2d 108 (Minn. 2003). In *T.J.C.*, the appellant was pulled out of class to be questioned; was escorted to an inner office by a uniformed school-resource officer, where the door was closed behind him; was told he was not under arrest and was free to leave; was questioned and admitted to sexual conduct; was not given a *Miranda* warning; and the interview was audio-recorded. *Id.* at 180.

T.J.C. is distinguishable from this case for several important reasons. First, unlike 15-year-old T.J.C., appellant was an adult at the time of his interview. *See id.* (stating that "these circumstances might not amount to custodial interrogation if the subject were an adult"); *cf. State v. Budke*, 372 N.W.2d 799, 801-02 (Minn. App. 1985) (concluding that 18-year-old Budke, who was interviewed in his high school principal's office by a police officer, was not in custody because he was not under arrest, was free to leave at the end of the questioning, and the location was not unduly restrictive). Second, appellant was interviewed by one plainclothes police detective, while T.J.C. was interviewed by two police officers, at least one of whom was in uniform. *See T.J.C.*, 662 N.W.2d at 180. Finally, although in *T.J.C.* we stated that "a tape-recorded interview is strongly suggestive of custodial interrogation," *id.*, the supreme court has since "declined to treat recording as indicative of custody because such a rule would discourage the practice of recording noncustodial interviews, a practice we do not require but support." *Flowers*, 788 N.W.2d at 130. Thus, the fact that Detective Packard recorded appellant's interview is not suggestive of a custodial interview.

Considering the totality of the circumstances surrounding appellant's interview with Detective Packard, a reasonable person in the same circumstances would not believe that he or she was restrained to a degree associated with a formal arrest. Detective Packard was therefore not required to provide appellant with a *Miranda* warning because appellant was not in custody. Accordingly, the district court did not err by denying appellant's motion to suppress his statement.

Affirmed.