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June 11, 2015
Court of Appeals
Division I
State of Washington

No. 72967-5-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

J.W. (DOB 7/22/1997),

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF
THE STATE OF WASHINGTON FOR KING COUNTY

The Honorable John P. Erlick

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The juvenile court erred in finding that *Miranda*¹ warnings were not required prior to J.W.'s admissions.

2. The juvenile court erred in failing to suppress J.W.'s statements to the police as the result of custodial interrogation.

3. In the absence of substantial evidence, the juvenile court erred in entering Conclusion as to Disputed Fact 1, finding that Officer Hurley did not ask J.W. to speak about the incident.

4. In the absence of substantial evidence, the juvenile court erred in entering Conclusion as to Disputed Fact 4, finding that J.W. asked Officer Hurley if she could speak to him about the incident.

5. To the extent it is considered a finding of fact, and in the absence of substantial evidence, the juvenile court erred in entering Conclusion of Law 15, finding that Officer Hurley's statement to J.W. that she could be arrested was "not the type of statement that is coercive or would be regarded as reasonable [sic] likely to elicit an incriminating response."²

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

² CP 48.

6. To the extent it is considered a finding of fact, and in the absence of substantial evidence, the juvenile court erred in entering Conclusion of Law 16, finding that “there was no interrogation in this case.”³

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Custodial statements made in the absence of *Miranda* warnings which are the result of interrogation are presumed to be involuntary. Here, the juvenile court found that J.W. was in custody but that *Miranda* warnings were not necessary because J.W.’s admissions were not the result of interrogation. Did the juvenile err when it found J.W.’s statements to the officer voluntary and admissible, requiring suppression and reversal of her conviction?

2. Interrogation includes statements or actions by the police designed to produce an incriminating response. Here the officer’s statement to J.W. that she could be arrested for minor in possession of alcohol was a statement designed to elicit an incriminating response from J.W. which constituted interrogation. Did the trial court err in failing to find the officer’s statement was the functional equivalent of interrogation that rendered J.W.’s admission involuntary?

³ CP 48.

C. STATEMENT OF THE CASE

Based on information from employees of a Safeway store in Redmond regarding a possible theft of alcohol, Redmond Police detained three young women, one of them appellant J.W. CP 46; RP 23-26. Officer Matthew Hurley who was standing near the young women while the investigation was being conducted looked at a bag sitting next to J.W. and asked her age. CP 46-47; RP 43. When she responded she was 16 years old, Officer Hurley remarked that she could be arrested for being a minor in possession of alcohol (MIP). CP 47; RP 43. J.W. asked to speak to Officer Hurley in private and the two walked a short distance away. CP 47; RP 27, 43. J.W. admitted being homeless and taking the alcohol to sell on the street to support herself. CP 46; RP 44. Officer Hurley did not advise J.W. of her *Miranda* rights prior to her admission. RP 46.

J.W. was arrested and charged in juvenile court with third degree theft and MIP. CP 27-28. At a combined CrR 3.5 hearing and fact-finding hearing, the juvenile court found that J.W. was in custody when she made her admission to Officer Hurley.⁴ CP 47-48. The court

⁴ Conclusion of Law 111 stated:

denied the motion to suppress J.W.'s admission, finding the officer's statement that J.W. could be arrested for MIP was not interrogation, thus *Miranda* warnings were not required. CP 47. The court found J.W. guilty of the theft but acquitted her of MIP. CP 52-53.

D. ARGUMENT

In the absence of *Miranda* warnings, the State failed to prove that J.W.'s admissions were voluntary.

1. *A defendant must be advised of her Miranda rights and must waive those rights prior to the admission of statements made during any custodial interrogation.*

The prosecution may not use statements obtained from custodial interrogation unless procedural safeguards guarantee that the accused was informed of and freely waived the constitutional privileges of the Fifth and Sixth Amendments to the United States Constitution. *Miranda*, 384 U.S. at 444-45. A confession is voluntary and admissible if "the defendant has been advised concerning rights and the defendant then knowingly, voluntarily and intelligently waives those rights." *State v. Aten*, 130 Wn.2d 640, 663, 927 P.2d 210 (1996). Any "self-

11. After being contacted by Mr. Hurley, the respondent was in custody based upon the following factors – the age of respondent, that the officer stated he had probable cause to arrest for Minor in Possession of Liquor, and that the suspects were detained for what a juvenile may have been [sic] considered an extended period of time.

CP 48.

incriminating statements obtained from an individual in custody are presumed to be involuntary, and to violate the Fifth Amendment, unless the State can show that they were preceded by a knowing and voluntary waiver of the privilege.” *State v. Sargent*, 111 Wn.2d 641, 648, 762 P.2d 1127 (1988). The protections under *Miranda* apply equally to juveniles. *In re Gault*, 387 U.S. 1, 42-57, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967).

Miranda procedural protections are implicated when a suspect is subjected to “custodial interrogation.” *Roberts v. United States*, 445 U.S. 552, 560-61, 100 S.Ct. 1358, 63 L.Ed.2d 622 (1980). A suspect is in “custody” for *Miranda* purposes when a “reasonable person in [the] suspect’s position would have felt that his or her freedom was curtailed to the degree associated with a formal arrest.” *State v. Heritage*, 152 Wn.2d 210, 218, 95 P.3d 345 (2004).

Here, the juvenile court found that J.W. was in custody when she made her admissions to Officer Hurley. CP 48 (Conclusion of Law 11). The officer never advised J.W. of her *Miranda* rights prior to her admissions.

2. *Officer Hurley's statement to J.W. was the functional equivalent of "interrogation" because it was reasonably likely to elicit an incriminating response.*

The juvenile court ruled that Officer Hurley's statement that J.W. could be arrested for MIP was not interrogation or a statement reasonably likely to elicit an incriminating response. CP 48. On the contrary, the officer's statement was precisely the type of statement that the officer knew would be reasonably likely to elicit an incriminating response from J.W., thereby constituting interrogation.

"Interrogation" is defined as express questioning or "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." *Rhode Island v. Innis*, 446 U.S. 291, 300-01, 100 S.Ct. 1682, 64 L.Ed.2d 297 (1980). The focus of the definition of "interrogation" is on the defendant's perception, not the officer's intent. *Innis*, 446 U.S. at 301; *State v. Willis*, 64 Wn.App. 634, 637, 825 P.2d 357 (1992). It is not just an officer's triggering question or statement that determines whether interrogation has taken place; also important is the nature of any conversation that leads up to the admission. *Willis*, 64 Wn.App. at 637; *United States v. LaPierre*, 998 F.2d 1460, 1466 (9th Cir.1993); *United*

States v. Disla, 805 F.2d 1340, 1347 (9th Cir.1986). The inquiry is an objective one, and requires the court to consider how the officer's statements and conduct would be perceived by a reasonable person facing the same circumstances. *United States v. Ventura*, 85 F.3d 708, 711 (1st Cir.1996). Whether an interrogation took place is a question of fact, subject to the clearly erroneous standard of review. *State v. Walton*, 64 Wn.App. 410, 414, 824 P.2d 533, *review denied*, 119 Wn.2d 1011 (1992).

Here, the only possible reason the officer made the statement to J.W. was to elicit an admission that she knew she was under 21 years of age and was guilty of being a minor in possession of alcohol. The officer's statement was not merely an observation or otherwise innocuous; it had some purpose. The officers' statement was immediately preceded by J.W.'s admission that she was under 21 years of age in response to the officer's question about her age. The trial court's conclusion that the officer's statement was not interrogation or designed to elicit an incriminating response is simply illogical, nonsensical, and clearly erroneous.

In *State v. Wilson*, 144 Wn.App. 166, 184-85, 181 P.3d 887, 895 (2008), the Court reversed the trial court's failure to suppress the

defendant's statements based upon a police officer's statement to a defendant that was ultimately determined to be the type designed to elicit an incriminating response. The defendant was in custody for stabbing her husband. She had requested counsel, and she had terminated her interview with police. Then, however, the officer told the defendant that her husband had died as a result of his stab wounds. The defendant immediately confessed to his murder. The trial court refused to suppress the statements, finding that by delivering the death notification, the officer did not intend to elicit an incriminating response. The Court of Appeals reversed:

Here, the trial court ruled that Ms. Wilson's statement was admissible because the officer delivering the death notification did not *intend* to elicit an incriminating response. But this is not the test. The proper test is whether the words notifying Ms. Wilson that her "husband" was dead were spoken by an officer when he should have known that the words were reasonably likely to elicit an incriminating response. Here, the officer delivered the death notification to Ms. Wilson after she requested counsel.

Ms. Wilson was in jail for stabbing Mr. Thrush. Ms. Wilson had requested counsel, and her interview with police had been terminated. Given Ms. Wilson's situation, the officer should have known that the death notification was reasonably likely to elicit an incriminating response. The officer should not have initiated a conversation with Ms. Wilson by stating that Mr. Thrush had died. The court erred by allowing Ms.

Wilson's statement after she invoked her right to counsel.

Wilson, 144 Wn.App. at 184-85.

Similarly, in *In re Cross*, the defendant had been advised of his *Miranda* rights and had invoked them. 180 Wn.2d 664, 678-79, 327 P.3d 660 (2014). An officer then told the defendant, "Sometimes we do things we normally wouldn't do, and we feel bad about it later." *Id.* at 679. The defendant subsequently admitted the crime. *Id.* The Supreme Court ruled the defendant had been subjected to custodial interrogation in violation of *Miranda*:

Here, while there was no express questioning, Officer Silcox subjected Cross to the "functional equivalent of questioning." *Id.* at 302, 100 S.Ct. 1682. Unlike the comment in *Innis*, Officer Silcox spoke directly to Cross. She could tell that he was upset, almost certainly because of the murders, which had just occurred that morning. The comment was evocative in that it referred to the recent killings, which were brutal and emotional and involved Cross's family. This is true even if Silcox's intent was to express sympathy. Thus, the trial court erred in ruling that Silcox's comment was no different than the statement made in *Innis*.

In re Cross, 180 Wn.2d at 686.

In a decision with a fact pattern more similar to J.W.'s, in *Commonwealth v. Clark C.*, in response to the juvenile's question as to whether his grandmother had turned him in, a police officer replied,

“No.” 59 Mass.App. Ct. 542, 545, 797 N.E.2d 5, 8 (2003). The officer then told the young man “You said you were going to turn yourself in yesterday when I spoke to you, you said you were going to turn yourself in at 8:00 in the morning[,]” to which the young man replied that he was afraid because he had had “a previous bad experience with police officers.” *Id.* There was no dispute that the young man was in custody when he made this statement. *Id.* The issue on appeal was whether the officer’s comment and the young man’s response constituted interrogation or its functional equivalent, requiring *Miranda* warnings. *Id.* at 546. The appellate court found that it was:

In the case before us, while it was the recently awakened juvenile who asked the question about his grandmother, the lieutenant did more than answer the juvenile’s question in the negative. He went on to raise the issue of the arrangements made in the telephone call. Although the lieutenant testified that he was trying to protect the grandmother, the judge was not required to credit this testimony. See *Commonwealth v. Franklin*, 376 Mass. 885, 898, 385 N.E.2d 227 (1978) (credibility of witnesses’ testimony is within the province of the trier of fact even when the proof offered is in support of a constitutional claim and the evidence is uncontradicted). Moreover, it is not the officer’s professed purpose in making the remark that controls, but rather the perception of an objective observer.

Clark C., 59 Mass.App. Ct. at 548.

Similarly, here the officer's statement was one that was reasonably likely to elicit an incriminating response from J.W. The officer saw the bag filled with bottles of liquor sitting next to J.W. and had already asked her age and discovered she was under 21 years of age. The officer was also part of a team of police investigating the theft of the liquor. In light of these facts, but especially the question about her age, the officer's statement was not merely an observation but would reasonably be understood or designed to get J.W. to admit to the officer she was guilty of MIP and possibly theft, which she did. The juvenile court erred in finding the officer's statement was not designed to elicit an incriminating response and J.W. is entitled to suppression of her admission.

E. CONCLUSION

For the reasons stated, J.W. asks this Court to find the juvenile court in finding her admissions to the police officer admissible. As a result, J.W. asks this Court to suppress her admissions and reverse her conviction.

DATED this 11th day of June 2015.

Respectfully submitted,

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**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE**

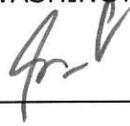
STATE OF WASHINGTON,)	
)	
Respondent,)	
)	NO. 72967-5-I
v.)	
)	
J.W.,)	
)	
Juvenile Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 11TH DAY OF JUNE, 2015, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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