IN THE COURT OF APPEALS OF IOWA

No. 0-625 / 09-1791
Filed November 24, 2010

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MICHAEL ALLEN GRAY,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Stephen C. Clarke, Judge.

The State appeals from a district court ruling granting the defendant's motion to suppress. **AFFIRMED.**

Thomas J. Miller, Attorney General, Thomas S. Tauber, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Kimberly Griffith, Assistant County Attorney, for appellant.

Mark C. Smith, State Appellate Defender, Theresa R. Wilson, Assistant Appellate Defender, and Alana Stamas, Student Legal Intern, for appellee.

Heard by Eisenhauer, P.J., and Potterfield and Doyle, JJ. Tabor, J., takes no part.

DOYLE, J.

The State sought, and was granted, discretionary review of a district court ruling granting the defendant's motion to suppress statements he made to a police officer during an interview at a police station when he was sixteen years old. The State claims the district court erred in concluding the defendant was in custody when he made the statements and in further concluding the statements were not voluntary. We affirm the decision of the district court.

I. Background Facts and Proceedings.

When Michael Gray was sixteen years old, his father and stepmother left him in charge of his three-year-old and four-year-old half-brothers while they went to a doctor's appointment. When they returned home, the four-year-old told them Gray had bit the three-year-old's "peewee." The mother asked the three-year-old if Gray had touched his "no thank you spot," and the child said yes. The parents confronted Gray, who became upset and threatened to run away.

The parents reported the incident to the police that evening. An officer asked them to bring Gray to the station so he could be interviewed. Gray's father drove home and got him. After arriving at the police station, Gray was placed in an interview room by himself at around 6:53 p.m. An officer told him, "I'm going to talk to your dad for just a minute and we'll go from there." The officer closed the door to the interview room, and then asked Gray's father for his permission to speak with Gray. The father agreed, and the officer returned to the interview room at 6:58 p.m., shutting the door behind him.

The officer began the videotaped interview with Gray by informing him that

> [n]o matter what you say or do this evening—and we're a long ways from it—but you're walking out of the police station tonight, okay? Unless you tell me you killed three people last week and here's where the bodies are, you're walking out of the police station, okay? You will not be arrested tonight even if there was probable cause to arrest you, okay? But I want you to understand, if we do our thorough investigation, and we will do a thorough investigation, we'll get to a little bit of that here in a minute, and there exists probable cause, then the chances that you might get arrested exist.

After explaining what that investigation would entail, the officer asked Gray about the four-year-old's report that Gray bit the three-year-old's penis. Gray denied having done so, but admitted to sexually abusing the three-year-old in a different manner. He provided additional details about what had occurred upon being questioned further. The interview ended at 7:55 p.m. Gray and his father left the police station around 8:20 p.m.

A trial information was later filed charging Gray with second-degree sexual abuse. Gray pleaded not guilty and filed a motion to suppress the statements he made during his interview at the police station. He argued that he "was placed in a custodial atmosphere which required *Miranda* [warnings] which was not presented and the Defendant did not waive his right to remain silent nor voluntarily participate in the giving of a statement."

A hearing on the motion to suppress was held, at the conclusion of which Gray's counsel argued "the State hasn't proved that it's a voluntary statement on the part of the defendant" given, among other things, his "age and lack of experience in the system." Following the hearing, the district court entered a ruling granting the motion to suppress, finding Gray was in custody when he was interviewed and his statements were not voluntarily given due in part to promises of leniency. On the question of custody, the court found:

> Here we have a 16, almost 17-year-old youth who has been described as immature and inexperienced. He is brought to the police station by an understandably upset father, brought to a secure area of the police station where he is separated from his father, placed in an interrogation room and the door closed. He is advised . . . that he would be let go when the interrogation was over. He was not, however, advised . . . that he was free to terminate the interview at any time, nor was he advised that he was free to leave at any time. Every time [the officer questioning him] left the room, he closed the door to the interrogation room. The youth dutifully sat in the chair in which he was placed from the time he was taken to the interview room until 90 minutes later when he was released. Under the totality of the circumstances, it is the court's opinion that this youth was deprived of his freedom and, thus, the officer should have administered the *Miranda* warnings.

The State applied for discretionary review, which was granted by our supreme court before the appeal was transferred to this court.

II. Scope and Standards of Review.

We engage in a de novo review of constitutional claims arising from a motion to suppress. *State v. Feregrino*, 756 N.W.2d 700, 703 (Iowa 2008); *see also State v. Bogan*, 774 N.W.2d 676, 679 (Iowa 2009) (reviewing constitutional claims of a *Miranda* violation de novo). This review requires us to make an independent evaluation of the totality of the circumstances, while deferring to the district court's findings of fact due to the court's opportunity to assess witness credibility. *Bogan*, 774 N.W.2d at 679.

III. Discussion.

A. Miranda Warning.

The Supreme Court requires that before beginning a custodial interrogation, a suspect must be informed

> 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.

Miranda v. Arizona, 384 U.S. 436, 478-79, 86 S. Ct. 1602, 1630, 16 L. Ed. 2d 694, 726 (1966). The State acknowledges that Gray was never read a *Miranda* warning, so the only question we must decide is whether he was entitled to receive one. The *Miranda* requirements do not come into play unless both custody and interrogation are present. *State v. Simmons*, 714 N.W.2d 264, 274 (Iowa 2006). The State concedes Gray was interrogated at the police station, but argues he was not in custody. We disagree.

A suspect is in custody upon formal arrest or under any other circumstances where the suspect is deprived of his or her freedom of action in any significant way. *State v. Ortiz*, 766 N.W.2d 244, 251 (Iowa 2009). In determining whether a suspect is in custody, we examine the extent of the restraints placed on the suspect during the interrogation in light of whether a reasonable person in the suspect's position would have understood the situation to be one of custody. *Id*. This test is applied objectively. *Id.* In making our determination, we consider the following four factors:

> (1) the language used to summon the individual;
> (2) the purpose, place, and manner of interrogation;
> (3) the extent to which the defendant is confronted with evidence of [his] guilt; and
> (4) whether the defendant is free to leave the place of questioning.

Id. at 252.

1. Language used to summon. Gray was brought to the police station by his father at the direction of the officer to whom the abuse was first reported. When Gray's father picked him up at home, he told Gray he needed to go to the

police station but did not tell him why, believing he already knew what was going on. Gray did not resist leaving the house and going with his father.

The State argues these circumstances are similar to those present in *State v. Smith*, 546 N.W.2d 916, 923 (Iowa 1996), where four juveniles were brought to a juvenile center by their mothers at the request of juvenile authorities. The court in *Smith* found the juveniles went to the juvenile center voluntarily, which, though "not alone enough to negate a finding of custody," is "indicative of the state of mind of a reasonable person in the situation." 546 N.W.2d at 923. However, we believe the facts here are more similar to those present in *Bogan* where a juvenile defendant was summoned to the school office by his principal at the direction of the school liaison officer and a plain-clothes detective. 774 N.W.2d at 680. Once there, he "did not volunteer to speak to the police and did not acquiesce." *Id.* The court accordingly concluded "the first factor tends to support the conclusion that Bogan was in custody." *Id.* at 680-81.

Like the defendant in *Bogan*, Gray did not volunteer or consent to speak to the police once at the station, though his father did on his behalf. Furthermore, Gray's father testified at the suppression hearing that when he told Gray to do things he usually obeyed him. Gray was not told why he was being taken to the police station, although his father assumed he knew why. For these reasons, we conclude this first factor tends to favor a finding of custody, though not strongly.

2. Purpose, place, and manner of investigation. When Gray and his father arrived at the police station, they checked in at the front desk and were escorted to an interview room. Gray was left in the room by himself, while the officer that was going to interview him—Sergeant Keith Rogers—spoke with his

father. Rogers shut the door to the interview room while he spoke with Gray's father, but did not lock it. When he returned, he closed the door behind him and began the interview by telling Gray he needed to talk to him about "what's going on here." Rogers told Gray he had spoken with his father and stepmother and "[o]bviously, you know why we're here." He explained Gray would not be arrested that night but an investigation into the sexual abuse allegations would be conducted, including further interviews and DNA testing. He told Gray it was important for him to tell the truth.

It seems clear from the foregoing that the purpose of the interrogation was to obtain Gray's confession. The place of the interview also suggests a reasonable person in Gray's position would have understood his situation to be one of custody. Although "custody is not implicated merely because questioning takes place at the police station," *Smith*, 546 N.W.2d at 922, here Gray was escorted to a small interview room where he was kept by himself while the officer went in and out, always closing the door behind him. *See, e.g.*, *Ortiz*, 766 N.W.2d at 252 (determining defendant was in custody when he was transported to police station by an officer, taken to a secure area at the station, and put in an interview room by himself); *State v. Mortley*, 532 N.W.2d 498, 501-02 (Iowa Ct. App. 1995) (finding defendant was in custody where he was separated from a family member at police station, placed in a small room with an officer, and never told he was not under arrest or free to leave).

On the other hand, the actual interview was relatively brief, lasting only about one hour with periodic breaks in questioning. *See Smith*, 546 N.W.2d at 924 (examining brevity of interviews, ranging from twenty to forty minutes, in

deciding custody question); *State v. Brown*, 341 N.W.2d 10, 16 (Iowa 1983) (finding no custody where defendant was questioned intermittently for more than two hours). The interrogation was conducted in a non-coercive manner; only one officer questioned Gray, and he did so in a quiet, relaxed way. *See Smith*, 546 N.W.2d at 924 (looking at whether a confrontational and aggressive style is utilized in questioning, with multiple officers present, or whether the circumstances seem more relaxed and investigatory in nature). We nevertheless conclude, given both the purpose and place of the interview, that this second factor again tends to favor a finding of custody.

3. Extent to which Gray was confronted with evidence of guilt. After explaining the interview and its purpose to Gray, Rogers asked him about the four-year-old's report that Gray bit the three-year-old's penis. When Gray denied having done so, Rogers asked if there was any reason why Gray's DNA would be on the boy's penis. He told Gray his parents had already agreed to let him take a buccal swab from Gray and would likely let police take a buccal swab from the three-year-old as well. Gray then confessed to sexually abusing his little brother. Rogers took a twenty-minute break in questioning Gray, leaving him alone in the interview room with the door shut.

When he returned, Rogers told Gray that his parents had said they saw him coming out of the three-year-old's bedroom when they returned home. He asked Gray whether he had been truthful regarding when the incident occurred. He also questioned Gray about his failure to remember certain details of the abuse, such as whether he used lubricant or ejaculated. Given the foregoing, we determine this factor also weighs in favor of finding Gray was in custody when

questioned. *Cf. id.* at 925 (concluding this factor did not weigh in favor of custody finding where officers did not discuss or disclose any particular evidence to defendant during interrogation).

4. Whether Gray felt free to leave. "One obvious factor we must examine is the degree of physical restraint imposed on the defendant[ ] during the interview process." *Id.* While Gray was not physically restrained during the questioning, he was confined to the interview room. The State makes much of the fact that the door to the interview room was not locked. It was, however, closed for the entire interview. Whenever Rogers left the room, he would tell Gray to "sit tight" and shut the door behind him. Although Rogers told Gray at the beginning of the interview he was not under arrest and would be going home that night, he never told Gray he was free to leave at any time or that he did not have to talk to him. *See United States v. Griffin*, 922 F.2d 1343, 1349 (8th Cir. 1990) (stating the "most obvious and effective means" of showing a suspect is not in custody "is for the police to inform the suspect that an arrest is not being made and that the suspect may terminate the interview at will"); *Bogan*, 774 N.W.2d at 681 (finding custody where defendant was never told he could leave place of questioning). This factor also tends to support a conclusion that Gray was in custody even though he was not arrested at the end of the interview. *Cf. United States v. Galceran*, 301 F.3d 927, 931 (8th Cir. 2002) (noting lack of arrest at interrogation's conclusion "is a 'very important' factor weighing against custody").

In summary, we conclude all of the foregoing factors show a reasonable person in Gray's position would have understood his situation to be one of

custody. We accordingly decline the State's invitation to decide whether the district court erred in considering Gray's age in the custody analysis under *Yarborough v. Alvarado*, 541 U.S. 652, 124 S. Ct. 2140, 158 L. Ed. 2d 938 (2004).[1] We also reject the State's argument that the district court erred in considering Gray's limited prior criminal history in its custody inquiry, as our de novo application of the four factors discussed above establish Gray was in custody, regardless of his inexperience with the law. In addition, while a defendant's criminal history is not an appropriate factor to be considered in determining the overall custodial character of the situation, *see Smith*, 546 N.W.2d at 924 n.2, the court simply mentioned Gray's limited prior criminal history in its background facts. Aside from stating Gray was "described as immature and inexperienced," the court did not refer to that fact again in its custody analysis.

B. Voluntariness.

Given our conclusion that a reasonable person in Gray's position would have understood his situation to be one of custody, we need not and do not consider the State's alternate argument that the district court erred in additionally determining Gray's statements were not voluntary. *See Bogan*, 774 N.W.2d at 682-83; *cf. State v. Countryman*, 572 N.W.2d 553, 558 (Iowa 1997) (considering

[1] Our supreme court has held that age is one of the factors to be used in determining a defendant's custodial status. *See Smith*, 546 N.W.2d at 923. Several years after *Smith*, the United States Supreme Court decided *Yarborough*, which questioned whether age should be considered in a custody analysis because the test is meant to be objective. 541 U.S. at 666-68, 124 S. Ct. at 2151-52, 158 L. Ed. 2d at 953-54 (stating "consideration of a suspect's individual characteristics—including his age—could be viewed as creating a subjective inquiry"). The court in *Brogan* was asked to reconsider its holding in *Smith* in light of *Yarborough*, but declined to do so because an objective application of the other four factors identified in *Smith* led to the conclusion the defendant was in custody. *Brogan*, 774 N.W.2d at 681 n.1. The same is true here.

defendant's "separate claim" her statements were involuntary after finding she was not in custody when the statements were made). This includes the State's related assertion that this court should modify its evidentiary-based approach to claims of promissory leniency. *See, e.g.*, *State v. McCoy*, 692 N.W.2d 6, 28 (Iowa 2005) (agreeing with district court's analysis of promissory leniency claim on evidentiary basis, rather than under the federal constitutional totality-of-the-circumstances test).

IV. Conclusion.

Based upon our de novo review, we conclude Gray was subjected to a custodial interrogation without being given a *Miranda* warning. The district court did not err in granting Gray's motion to suppress statements made during that interrogation. We accordingly affirm the judgment of the district court.

AFFIRMED.