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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re JOSE F., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE F.,

Defendant and Appellant.

B233968

(Los Angeles County
Super. Ct. No. FJ48511)

APPEAL from orders of the Superior Court of Los Angeles County,
Robin Miller Sloan, Judge. Affirmed.

Law Office of Patrick Thomas Santos, Patrick T. Santos, and Miguel Tovar,
for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney
General, Lance E. Winters, Assistant Attorney General, Linda C. Johnson and
Ryan M. Smith, Deputy Attorneys General, for Plaintiff and Respondent.

Minor, Jose F.,¹ appeals from orders sustaining a Welfare and Institutions Code section 602 petition, declaring him a ward of the court and ordering him placed in juvenile hall pending suitable placement. He argues his motion to suppress statements made to police officers should have been granted because he was not given *Miranda*² warnings which were required in the custodial setting of his interrogation.

We conclude the trial court properly denied the motion to suppress and affirm.

FACTUAL AND PROCEDURAL SUMMARY

The minor lived with his parents and siblings on property in Montebello on which there were two houses. The minor and his family lived in the front unit. The back unit was occupied by Mariam F., her husband, and her six-year-old daughter, J.F. J.F. often played with the minor's sister Jasmine at the front house. On February 3, 2011, J.F. returned from playing with Jasmine at the minor's house. Mariam was watching a television show about young girls who had been kidnapped. She told J.F. that she should never talk to strangers and should never let anyone touch her "private" areas. J.F. said a boy had touched her privates that day and demonstrated by grabbing her vaginal area. Angry, Mariam took J.F. to the minor's house and asked J.F. to show her who had touched her. She pointed to the minor and said he always touched her in "her private." Mariam told her therapist, who reported the abuse to the police. Police officers went to the minor's home and asked if his father would bring him to the police station for questioning. We reserve the details of the questioning of the minor for our discussion of the suppression motion.

After the questioning, the minor was arrested and charged with two counts of lewd acts upon a child in violation of Penal Code section 288, subdivision (a).

¹ Since the minor and his father have the same first and last names, we refer to the father by first name and initial, and the son as "minor."

² *Miranda v. Arizona* (1966) 384 U.S. 436 (*Miranda*).

At trial, J.F. testified that the minor took her into a room alone and touched the skin of her genital area with his finger and tongue. She said he put his finger “in her private.” This happened five times. The minor told her not to tell anyone. The minor pulled his pants down to show her his genitals, but J.F. said she did not touch him.

The court held a hearing pursuant to Evidence Code section 402 on the minor’s motion to suppress his statements to a police detective. The motion was denied.

The minor’s mother testified in his defense. She said two of her four children, including Jasmine, have epilepsy which requires her constant supervision. She does not leave Jasmine and the younger son with epilepsy alone. She described physical fights between J.F., Jasmine, and her younger son.

The trial court sustained both counts of the petition. The minor was declared a ward of the court and ordered placed in juvenile hall pending suitable placement with a sexual offender counseling component. This timely appeal followed.

DISCUSSION

The minor argues his statements should have been suppressed because he was not given *Miranda* warnings at the outset of the interrogation, which he contends was custodial.

A. Legal Principles

A person subjected to custodial interrogation must be given *Miranda* warnings advising that person of his or her right to remain silent, that any statement the person makes may be used against him or her, that he or she has a right to counsel, and that if he or she cannot afford an attorney, one will be provided. (*Miranda, supra*, 384 U.S. at pp. 444–445.) “But *Miranda* made clear that the rule was only applicable to custodial interrogation, which means, ‘questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.’ (*Miranda, supra*, 384 U.S. at p. 444.) In determining whether an individual was in custody, a court must examine all of the circumstances surrounding the interrogation, but the ultimate inquiry is simply whether there was a “‘formal arrest or

restraint on freedom of movement” of the degree associated with a formal arrest.’ (*California v. Beheler* (1983) 463 U.S. 1121, 1125 (per curiam) [(*Beheler*)], quoting *Oregon v. Mathiason* (1977) 429 U.S. 492, 495 (*Mathiason*).) The deprivation can be constructive as well as actual. ‘[C]ustody occurs if the suspect is physically deprived of his freedom of action in any significant way or is led to believe, as a reasonable person, that he is so deprived.’ [Citations.]” (*In re Kenneth S.* (2005) 133 Cal.App.4th 54, 64 (*Kenneth S.*).)

The test to determine whether a custodial interrogation has triggered the necessity of *Miranda* warnings is objective: “The objective circumstances of the interrogation, not the subjective intention of the interrogating officer or the subjective understanding of the person being questioned, is evaluated in determining whether the person was in custody at the time of the questioning. ‘A policeman’s unarticulated plan has no bearing on the question whether a suspect was “in custody” at a particular time’; rather, ‘the only relevant inquiry is how a reasonable man in the suspect’s position would have understood his situation.’ (*Berkemer v. McCarty* (1984) 468 U.S. 420, 442.)” (*Kenneth S.*, *supra*, 133 Cal.App.4th at p. 64.) Where, as here, the facts are uncontroverted, we independently review the trial court’s ruling that no *Miranda* warning was required, and hence that the minor’s confession was admissible. (*Ibid.*)

B. Circumstances of the Interview

After speaking to the victim, Sergeant David Kim of the Montebello Police Department went to the front house and met Jose F., the minor’s father, at approximately 10:00 or 10:30 p.m. Sergeant Kim explained the nature of his investigation and asked whether Jose F. and the minor would be willing to come to the police station voluntarily. Jose F. said they would. Sergeant Kim’s gun was not drawn. The minor was not placed in handcuffs. Jose F. did not express any opposition to bringing the minor to the police station. Officer Marquez also was present, but did not have his gun drawn. He did not speak with the minor.

Jose F. drove himself and the minor to the police station, following Sergeant Kim. Sergeant Kim did not have the red lights or sirens on his police car activated. He could

not recall whether he spoke to the minor before escorting father and son to the police station. He had not placed the minor under arrest.

It took less than five minutes to drive to the Montebello police station. Sergeant Kim escorted the minor and Jose F. to a room used by children to play, which is next to the room used by officers to write reports. It is not in a public space. They sat and waited for a detective to arrive. Neither Sergeant Kim nor any other officer stayed in the room with them. Sergeant Kim said there were no locked doors preventing the minor and his father from leaving the station. He did not tell the minor he had to stay, or tell him anything else. Jose F. spent two and one-half to three hours at the station. He decided to go home after being told the minor was going to be detained.

Detective Paul Antista testified that he first saw the minor sitting in the waiting room with the minor's father, brother, and sister. No police officer was present and they were not guarded in any way. The room was well-lit and the television was on. At the time, Detective Antista considered the minor to be a potential suspect. The minor was not handcuffed. He was not under arrest. Detective Antista did not draw his gun. He told Jose F. that he wanted to talk to the minor regarding the allegations made by J.F. Jose F. said okay. Detective Antista asked the minor to come with him, and he followed the detective into an interview room located in the detective bureau at the police station. The path from the interview room to the lobby is "fairly obvious." The minor was sitting closest to the door.

Detective Antista was alone in the interview room with the minor. The interview began at 11:00 p.m. He told the minor that he was accused of touching J.F. Detective Antista then advised him: "He was not under arrest; he was free to leave at any time; that he did not have to answer any of my questions." He read this advisement from a form entitled "*Beheler* Admonition."³ Detective Antista asked the minor if he understood, and

³ In *Beheler*, *supra*, 463 U.S. 1121, the defendant voluntarily accompanied police to the station house, although he was told he was not under arrest. He agreed to talk about a murder, although he had not been given his rights under *Miranda*. The Supreme

the minor said “yes.” Detective Antista then asked the minor if he wanted to talk to him, and he agreed to do so. Jose F. did not ask to be with the minor during the interview, and Detective Antista did not ask him if he wanted to be present.

The interview room was 10 feet by 10 feet or 10 feet by 15 feet, well lit with no windows. The door to the room was shut, but not locked, during the interview. During the interview no other officer was present and the minor was not restrained by handcuffs or in any other way. No weapons were drawn. When giving the minor the *Beheler* admonition, Detective Antista was six to eight feet from the minor, using the same tone of voice he used for his testimony. If the minor had decided to leave, there were no locked doors that would have prevented him from leaving the police station. The detective estimated that the interview lasted 20 to 25 minutes.

Detective Antista said he did not ask questions in an accusatory manner, but rather just asked for information. At some point during the interview, he expressed doubt as to whether the minor was telling the truth. This was because the minor had put his head down on the table and had started to cry. He gave the minor some time, then told him he did not think he was being truthful. Detective Antista said he made this statement in a calm and nonaggressive manner. This was the only break in the interview. The minor did not request any other breaks. Detective Antista did not raise his voice, did not stand up, and did not stand over the minor at any time in the interview. The interview was recorded but the recording was lost along with several other recordings when the system went down.

After the minor admitted touching J.F., he was formally placed under arrest in the juvenile booking area of the station. Detective Antista told the minor he was under arrest, although he was not handcuffed. He walked the minor to the juvenile booking area.

Court held the defendant was neither taken into custody nor significantly deprived of his freedom of action. (*Id.* at p. 1123.)

C. Analysis

The court denied the motion to suppress the minor's statement to Detective Antista without explaining its reasoning. Respondent cites *Kenneth S.*, *supra*, 133 Cal.App.4th 54, which is similar to this case before us. In that case, a police officer telephoned a minor's foster mother and asked if she would voluntarily bring the minor and his brother to the police station for questioning about crimes that had occurred in the neighborhood. At 7:00 the following morning, the foster mother brought the boys to the station. They were all buzzed into a security area and taken upstairs to an area where civilians were not allowed to "just roam around.'" (*Id.* at p. 59.) The foster mother agreed to allow the detective to speak to the minor alone. The two boys were escorted to separate rooms. The minor was placed in a small room with the door partially open. The foster mother was put in a room about 10 feet away. The interview with the minor was recorded. The detective thanked him for volunteering to come to the station, and told him he was not under arrest and was free to leave at any time. (*Ibid.*) *Miranda* warnings were not given before the interview. Twenty-five minutes into the interview, the detective began asking about the robbery which he was investigating. Eventually the minor admitted the robbery. (*Ibid.*) At that point, he was given his *Miranda* rights and was detained. (*Id.* at p. 60.)

The Court of Appeal concluded that the minor was subjected to neither actual nor constructive restriction on his freedom. He came to the station voluntarily with his foster mother. The detective told him he was not under arrest and was free to leave. (*Kenneth S.*, *supra*, 133 Cal.App.4th at p. 65.) The court held that the fact the interview took place in the police station did not demonstrate a constructive restriction on the minor's freedom. (*Ibid.*) A reasonable person in the minor's position would not have understood he was in custody within the meaning of *Miranda*. (*Ibid.*)

Similarly, here, the minor's father brought him to the police station for questioning after officers went to the family home. The minor voluntarily waited with his family in an unguarded room at the police station. He was not physically restrained at any time. He was placed in an interview room and was told that he was not under arrest, that he

could leave at any time, and could refuse to answer questions. As in *Kenneth S., supra*, 133 Cal.App.4th 54, there is no evidence that the minor was actually or constructively restrained. We conclude that a reasonable person in the minor's position would not have understood he was in custody under the totality of these circumstances.

The minor attempts to distinguish *Kenneth S., supra*, 133 Cal.App.4th 54, because the police contacted Jose F. the same night the interview took place, rather than the day before as in *Kenneth S., supra*, 133 Cal.App.4th at p. 59. He contends: "Here, it was nearly midnight, and not 7:00 a.m. In this case, there was no time that elapsed in between the request to come to the station and the actual coming to the station, wherein the consequences might be considered and the person might retain counsel. Here, the minor and the father followed behind [Sergeant] Kim in their car. The cases are easily distinguishable and factually inapposite. The choice to come to the station in *In re Kenneth [S.]* was self-reflected outside the presence of any Officers. The same cannot be said here."

There is no evidence that either Jose F. or the minor asked the officers to wait until the next morning to interview the minor. Nor is there evidence that they asked for time to retain counsel. The argument made by the minor suggests that he was rushed into an interview without time to reflect. But the evidence, from Jose F. and the police officers, is that the minor spent time in the waiting room at the station before the interview began. The fact that the minor and his father followed the police car to the station does not establish that the interview was not voluntary or that the minor was in custody at the time. We see no basis to distinguish the holding in *Kenneth S.*

The interview of the minor was not custodial, and did not trigger the need for *Miranda* warnings. The trial court did not err in admitting his statement to the police.

DISPOSITION

The orders of the juvenile court are affirmed.

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EPSTEIN, P. J.

We concur:

WILLHITE, J.

SUZUKAWA, J.