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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

In re G.D., a Person Coming Under the  
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

G.D.,

Defendant and Appellant.

E060184

(Super.Ct.No. J249655)

OPINION

APPEAL from the Superior Court of San Bernardino County. Lynn M. Poncin,  
Judge. Affirmed.

David R. Greifinger, under appointment by the Court of Appeal, for Defendant  
and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney  
General, Julie L. Garland, Assistant Attorney General, Charles C. Ragland, and Stacy  
Tyler, Deputy Attorneys General, for Plaintiff and Respondent.

The juvenile court found true an allegation minor had engaged in a hit-and-run collision (count 1; Veh. Code, § 20002, subd. (a)).<sup>1</sup> The juvenile court released minor from house arrest and placed him on nonwardship probation (Welf. & Inst. Code, § 725, subd. (a)).<sup>2</sup> On appeal, minor contends the judgment must be reversed because the juvenile court erroneously admitted minor’s confession despite the lack of *Miranda*<sup>3</sup> advisements given him prior to what he contends was a custodial interrogation. In our original opinion dated January 14, 2015, we affirmed the judgment. On February 17, 2015, defendant filed a petition for review with the California Supreme Court. On April 15, 2015, the California Supreme Court granted review and transferred the matter back to this court with directions that we vacate our decision and reconsider the cause in light of *J. D. B. v. North Carolina* (2011) 564 U.S. \_\_\_ [131 S.Ct. 2394] (*J.D.B.*).<sup>4</sup> We have now

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<sup>1</sup> The juvenile court found not true an allegation minor drove without a driver’s license (count 2; Veh. Code, § 12500, subd. (a)).

<sup>2</sup> All further statutory references are to the Welfare and Institutions Code.

<sup>3</sup> *Miranda v. Arizona* (1966) 384 U.S. 436 (*Miranda*).

<sup>4</sup> Defendant cited and discussed *J.D.B.* both in his opening and reply briefs on appeal. Although we did not expressly mention *J.D.B.* or minor’s age in our opinion, we did consider *J.D.B.*’s holding that a minor’s age is relevant in the analysis of whether a minor has undergone custodial interrogation for purposes of *Miranda*. However, we determined that minor’s age was not a pivotal factor in our analysis under a totality of the circumstances such that it warranted an express discussion in our opinion. (*J.D.B.*, *supra*, 564 U.S. at p. \_\_\_, 131 S.Ct. at p. 2406, fn. 8 [“This is not to say that a child’s age will be . . . even a significant[] factor in every case.”]; *id.* at p. 2417, fn. omitted, disn. opn. Kennedy, J. [“Most juveniles who are subjected to police interrogation are teenagers

[footnote continued on next page]

expressly reconsidered the cause in light of *J.D.B.* in our opinion and reaffirm the judgment.

### FACTUAL AND PROCEDURAL HISTORY

On April 23, 2013, at approximately 12:16 p.m., Stephanie Mondragon was stopped at a red light in her white Honda Accord on the exit ramp of the 210 freeway. When the light turned green, she entered the intersection to make a left turn onto Baseline when her vehicle was struck on the back side by another car which never stopped. Mondragon noticed the car “was dark, like black.”

Deputy David Cruz heard the collision from inside his vehicle while parked at a Shell Station at the intersection. He contacted Mondragon. Her vehicle had light to moderate damage on its left rear side; Cruz noted it had black paint transfer. Another motorist who said he had witnessed the accident reported the suspect vehicle was a dark, Mazda 626 for which he gave two possible license plate numbers. The witness reported there were four Hispanic males inside.

The sheriff’s intelligence unit gave Cruz information regarding a possible suspect.

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*[footnote continued from previous page]*

nearing the age of majority. These defendants’ reactions to police pressure are unlikely to be much different from the reaction of a typical 18-year-old in similar circumstances.”]; *Yarborough v. Alvarado* (2004) 541 U.S. 652, 669 conc. opn. O’Connor, J. [Failure of court to mention suspect’s age in custody analysis where juvenile was close to age of majority “cannot be called [] unreasonable [under] federal law . . . .”].) We expressly reconsider our opinion in light of *J.D.B.* and its holding in this opinion as directed by the California Supreme Court.

The day after the collision, Cruz drove to the residence at which the vehicle was registered and made contact with minor's father (father), the vehicle's owner. Cruz told father he was investigating a hit-and-run involving a black Mazda 626. Father told Cruz minor drove the vehicle; minor was at school at that time.

Cruz went to minor's school where he located the vehicle. He observed damage to the front left bumper. Cruz also saw fresh, white paint transfer on the bumper. Father testified the damage to the front of the car was not there before minor left for school the previous morning. Cruz asked father if father would bring minor to the police station to talk about the incident. Father said he would.

At the police station, Cruz asked minor if he knew why he was there. Minor responded that he did. Cruz asked if minor could tell him what happened. Minor said "he was traveling westbound on Base Line crossing over the 210 freeway overpass. The traffic light had turned red for his direction of travel. He was unable to stop for the red light and broad-sided the vehicle which was exiting the 210 freeway. After the collision, . . . he got scared, [and] wound up driving . . . back to school."<sup>5</sup> He asked if minor had a driver's license. Minor responded that he did not. Minor said he had three friends in the car with him. Cruz cited minor and allowed him to leave.

The People filed a juvenile wardship petition on May 28, 2013. On August 8, 2013, the juvenile court placed minor on informal probation pursuant to section 654.2

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<sup>5</sup> Cruz testified, "Apparently they were on lunch break."

which, if successfully completed, would result in dismissal of the matter. On October 8, 2013, the People filed a request for a hearing alleging minor had violated five terms of his informal probation. On October 16, 2013, the petition was reinstated, minor's informal probation was revoked, and the court remanded minor to juvenile detention. On October 31, 2013, minor was released on house arrest.

On November 6, 2013, the court held the juvenile wardship hearing. Counsel conducted a voir dire examination of Cruz in order to determine the question of whether minor was in custody at the time of the interview and, thus, entitled to *Miranda* warnings before questioning commenced.

Originally, Cruz planned to conduct the interview at father's residence, but he received a number of service calls, so it was determined that it would be easier for father to bring minor to the police station. Cruz testified he asked father if he would bring minor to the police station to talk about the incident. Father said he would. Cruz did not tell father he had a choice not to bring minor to the police station.

Cruz made contact with father and minor in the lobby of the police station. Cruz thanked them both for coming "and asked them if they would come back with [him] into an interview room which is just inside the front lobby door." He "walked [minor] to the front door, opened the door, allowed him to step in – into the hallway." Cruz showed them where the room was. Minor and father sat in the chairs closest to the door, directly across a desk from Cruz. The door to the room remained open during the entire interview.

Cruz was the only officer in the room. The interview area is inaccessible to the public; it is separated by a secure lobby door. However, no locked door separates the interview room from the lobby. Father stayed in the interview room with minor for the entire duration of the interview. Cruz did not tell minor he could leave or did not have to speak with Cruz. Minor never said he did not want to be interviewed. Cruz never grabbed minor in any way or forced him to sit down. He never told them they could not leave.

Father testified Cruz did not force him to bring minor to the police station; however, he felt he could not refuse the request. Cruz never told them they were not free to leave. Father did not feel he was free to leave. Minor testified he went to the police station because his father told him to. He did not feel he could leave the room. Father drove minor to the station, so that if he wanted to leave, minor would have had to walk the two to three miles home. Cruz never told minor he could not leave. Minor never told Cruz minor did not want to talk. Minor was seated next to the door to the interview room which remained open during the interview. Minor was honest with Cruz.

The court noted, “Well, the testimony I am hearing from Deputy Cruz is that he tried a couple times to go to the house and that didn’t work out, and then he asked the father could he come down to the station because apparently they were having problems meeting up at the house.” “So it does sound like there was a choice.” “Clearly we do not have a formal arrest here.” “So the question becomes whether or not we have a functional equivalence of a formal arrest . . . .” “In looking at the totality of the

circumstances based on the preponderance of evidence, I do not find that the minor was in custody for the purpose of a Miranda warning.”

## DISCUSSION

Minor contends the interview constituted an in-custody interrogation such that Cruz should have read him his *Miranda* rights. Thus, since no such rights were read to him, minor’s confession should have been excluded and the judgment must be reversed. We disagree.

“The applicable law is settled: “As a prophylactic safeguard to protect a suspect’s Fifth Amendment privilege against self-incrimination, the United States Supreme Court, in *Miranda*, required law enforcement agencies to advise a suspect, before any custodial law enforcement questioning, that ‘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.’ [Citations.]” [Citation.]” (*People v. McCurdy* (2014) 59 Cal.4th 1063, 1085-1086; see § 625, subd. (c) [application of *Miranda* to minor suspects].)

“An interrogation is custodial, for purposes of requiring advisements under *Miranda*, when “a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.” [Citation.] Whether a person is in custody is an objective test; the pertinent question being whether the person was formally arrested or subject to a restraint on freedom of movement of the degree associated with a formal

arrest. [Citation.] ‘[C]ustody must be determined based on how a reasonable person in the suspect’s situation would perceive his circumstances.’ [Citation.]” (*People v. Linton* (2013) 56 Cal.4th 1146, 1167.)

“But *Miranda* warnings are not required ‘simply because the questioning takes place in the station house, or because the questioned person is one whom the police suspect.’ [Citation.] While the nature of the police questioning is relevant to the custody question, police expressions of suspicion, with no other evidence of a restraint on the person’s freedom of movement, are not necessarily sufficient to convert voluntary presence at an interview into custody. [Citation.]” (*People v. Moore* (2011) 51 Cal.4th 386, 402-403; see *People v. Zamudio* (2008) 43 Cal.4th 327, 343-345 [Not a custodial interrogation for purposes of *Miranda* where the defendant was asked to come to the police station, no threat or application of force, no intimidating movement, no brandishing of weapons, no blocking of exits, defendant accompanied by family members, no handcuffing, no search of his person, and no hostility in questioning.]; *People v. Holloway* (2004) 33 Cal.4th 96, 118-121 [Not a custodial interrogation for purposes of *Miranda* even though the defendant was initially handcuffed by a parole officer, when detectives had the handcuffs removed and told the defendant he could have his friend drive him to the station for questioning if he liked.])

“In reviewing constitutional claims of this nature, it is well established that we accept the trial court’s resolution of disputed facts and inferences, and its evaluations of credibility, if supported by substantial evidence. We independently determine from the

undisputed facts and the facts properly found by the trial court whether the challenged statement was illegally obtained.’ [Citation.]” (*People v. Thomas* (2011) 51 Cal.4th 449, 476.)

Minor contends that, pursuant to *J.D.B.*, *supra*, his age was a dispositive factor in the determination of whether he was the subject of a custodial interrogation for purposes of *Miranda* such that his confession should have been suppressed. He maintains minor felt compelled by his father to submit to the questioning; thus, requiring a determination minor was coerced such that Cruz was required to read minor *Miranda* warnings. We disagree.

*J.D.B.* held that a minor’s age is properly considered as part of a *Miranda* custody analysis. (*J.D.B.*, *supra*, 131 S.Ct. at p. 2406.) In *J.D.B.*, the minor was a 13 year old who was first questioned by two police officers regarding a burglary when the minor was found near the subject residence. Five days later, the minor was removed from his classroom by a police officer. The minor was escorted to a closed-door room where he was questioned by two police officers and two school administrators. The questioning lasted 30 to 45 minutes. No *Miranda* warnings were given; the minor’s guardian, his grandmother, was not notified; and the minor was not told he was free to leave. (*Id.* at p. 2399.)

The minor confessed and his confession was admitted at trial after the court denied his motion to suppress. (*J.D.B.*, *supra*, 131 S.Ct. at p. 2400.) The North Carolina Supreme Court affirmed the conviction. (*Id.* at p. 2401.) *J.D.B.* remanded the matter for

the state courts to address the issue of whether, “taking account of all of the relevant circumstances of the interrogation, including J. D. B.’s age at the time[,]” the minor was in custody at the time of the interrogation.

We agree with *J.D.B.* that a minor’s age is a relevant factor to consider in conducting an analysis of whether a minor has been the subject of a custodial interrogation. However, in the instant case, under the circumstances, minor’s age was not a significant, let alone a dispositive factor in that determination. Regardless, the juvenile court implicitly, if not expressly, considered minor’s age when it made its determination minor was not in custody. Even assuming error, it was harmless.

This case is readily distinguishable from *J.D.B.* Minor was 16 and a half years old at the time of his questioning. Minor was not escorted by officers to the room in which he was questioned; rather, after unsuccessfully attempting to meet up with minor at minor’s home a couple of times, a single officer asked minor’s father to bring minor to the police station. Cruz did not order minor to come to the station for questioning. Minor’s father testified he voluntarily brought minor to the police station later that day after minor returned home from school; minor’s father testified he was not forced to do so.

Cruz thanked them for coming to the police station. He “asked them if they would come back with [him] into an interview room which [was] just inside the front lobby door.” Cruz “walked [minor] to the front door, opened the door, allowed him to step in – into the hallway.” The juvenile court expressly found *minor* and his father had a choice

whether to come to the police station.

Moreover, the door to the room remained open during the entire interview. Minor and his father sat close to the door on the opposite side of the desk from Cruz; they had unimpeded access to leave the room and the police station at any time they wished.

Furthermore, minor's father was with minor the entire time he was questioned by a *single* police officer. The questioning consisted of only a couple open-ended, nonhostile questions. Cruz asked minor if he knew why he was there. Minor replied that he did. Cruz asked minor what happened. Minor then told the officer exactly what had occurred. The juvenile court found minor told the officer what happened "without any prodding or any real interrogation, . . ."

Even if minor felt compelled by his father to submit to the questioning at the police station, father is not an agent of the state. The Fourth Amendment protects an individual from actions committed by the state or its agents, not private citizens. (*Skinner v. Railway Labor Executives' Assn.* (1989) 489 U.S. 602, 615.) Here, the only government involvement in procuring minor's presence at the police station was a request by an officer that father bring minor to the station for questioning. This did not convert father to an agent of the state. Thus, although a private actor's coercive actions might give rise to a civil penalty, it would not, at least under the facts of this case, extend to the suppression of evidence of minor's confession adduced in a juvenile delinquency court. (*Jones v. Kmart Corp.* (1998) 17 Cal.4th 329, 334.)

Moreover, the juvenile court implicitly, if not explicitly, considered minor's age when making its determination minor was not in custody when questioned by Cruz. Minor's age and date of birth are reflected on the cover sheet of the juvenile wardship petition. In point of fact, this was a *juvenile* court presiding over a hearing on a *juvenile wardship* petition. The juvenile court and the parties made repeated references, both express and implied, throughout the proceedings to minor's minority.

Defense counsel specifically argued that, pursuant to *J.D.B.*, "minor's age and youth . . . should be factors weighed in to [*sic*] the custodial voluntary analysis." The juvenile court summarized the issue as "whether *the minor* is in custody at the time of the interrogation." [Italics added.]

The court noted that, "In looking at the totality of the circumstances to determine custody, no single factor is dispositive." It noted that the officer "tried several times to conduct the questioning at *minor's* residence, and that didn't work so he asked the father to bring *the minor* to the station . . . ." [Italics added.] The juvenile court itself determined, "In looking at *the totality of the circumstances* based on the preponderance of evidence, I do not find that *the minor* was in custody for the purpose of a Miranda warning." [Italics added.] Thus, the court expressly referred to minor as *a minor* in its determination that minor was not in custody when questioned by Cruz. We must, therefore, assume the court considered minor's age in rendering its ruling. (*People v. Bryant, Smith and Wheeler* (2014) 60 Cal.4th 335, 403 [""In the absence of evidence to the contrary, we presume that the court "knows and applies the correct statutory and case

law.” [Citation.]”.)

The juvenile court made particular reference to minor’s minority during its explanation of its ruling. It strains credulity to believe the juvenile court could be so thoroughly cognizant of the issue of minor’s minority without considering minor’s age when making the determination minor was not in custody when questioned. Regardless, as discussed above, minor’s age was not a dispositive factor in determining whether he was in custody during Cruz’s questioning. Considering the panoply of other relevant factors, minor was not in custody when questioned.

Here, minor was neither formally arrested, even after his confession, nor was he subjected, at any time, to a restraint on his freedom of movement to the degree associated with formal arrest. Cruz initially attempted to interview minor at minor’s home. When that did not work out, Cruz *asked* father if he *would* bring minor to the police station for questioning. The request itself suggests father could have refused. Cruz did not order father to bring minor to the station or wait for minor to arrive home and drive minor to the station himself. As the juvenile court explicitly found, “So it does sound like there was a choice.”

Cruz escorted father and minor into an interview room immediately adjacent to the lobby. Cruz never grabbed or touched minor in any way. Father and minor sat closer to the door than did Cruz. The door remained open during the entire interview which the court found was not lengthy. Cruz was the only officer participating in the interview. The route to the lobby was unimpeded by any locked doors. The questioning was open-

ended, consisted of only a few questions, and was not hostile.

To the extent minor argues he was compelled by father to attend the interview and answer questions, we note that father was not an agent of the state. Moreover, if minor wished to leave, walking two to three miles home was not such an impediment that it precluded voluntary participation in the interview. Minor could have simply walked out of the interview at any time he wished without obstruction. Therefore, minor was never in custody such that Cruz was required to read minor his *Miranda* rights. Thus, minor's confession was properly admitted at the hearing.

Finally, we hold that even if the juvenile court erred in neglecting to expressly indicate it considered minor's age when determining whether minor was in custody for the purpose of requiring *Miranda* warnings and that minor's age was a dispositive factor in that analysis, any error was harmless. (*In re Art T.* (2015) 234 Cal.App.4th 335, 356 [“When statements are obtained in violation of *Miranda* . . . the error is reviewed under the federal ‘harmless beyond a reasonable doubt’ standard . . . .”]; *People v. Thomas*, *supra*, 51 Cal.4th at p. 498.) Here, Cruz heard the collision and responded to Mondragon shortly thereafter. Mondragon informed Cruz a “dark vehicle” struck her car. Mondragon's white vehicle had sustained moderate damage along with black paint transfer from the offending vehicle. Another motorist who witnessed the accident informed Cruz the suspect vehicle was a dark Mazda 626, for which he gave two license plate numbers.

Cruz testified he obtained a possible suspect identification from the sheriff's

intelligence unit the next day. He drove to the residence at which the vehicle was registered and made contact with minor's father. Minor's father informed Cruz minor had driven father's black Mazda 626 to school. Cruz went to the school where he observed damage to the front left bumper and fresh, white paint transfer.

Father testified the he owned the vehicle and lent it to minor to enable him to learn to drive and get to school. He loaned the car to minor on the day of the accident. Father testified there had been no damage to the car prior to minor's leaving for school the morning of the accident. Father testified he discovered the damage prior to Cruz's arrival and told Cruz about the damage to the car after Cruz arrived. Thus, even without minor's confession, the evidence established beyond a reasonable doubt that minor had been involved in an accident in a vehicle matching the description given by a witness and fled the scene on the day Mondragon's car was struck. Any error was harmless.

#### DISPOSITION

The judgment is affirmed.

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CODRINGTON  
J.

We concur:

McKINSTER  
Acting P. J.

MILLER  
J.