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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)).¹ The juvenile court released minor from house arrest and placed him on nonwardship probation (Welf. & Inst. Code, § 725, subd. (a)).² On appeal, minor contends the judgment must be reversed because the juvenile court erroneously admitted minor's confession despite the lack of *Miranda*³ advisements given him prior to what he contends was a custodial interrogation. We affirm.

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

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

² All further statutory references are to the Welfare and Institutions Code.

³ *Miranda v. Arizona* (1966) 384 U.S. 436 (*Miranda*).

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. 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.”⁴ 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 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.

⁴ Cruz testified, “Apparently they were on lunch break.”

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* (Aug. 14, 2014, S061026) ___ Cal.App.4th ___ [2014 Cal. LEXIS 5467, *34; 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.)

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. 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.

DISPOSITION

The judgment is affirmed.

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CODRINGTON
J.

We concur:

McKINSTER
Acting P. J.

MILLER
J.