# MEMORANDUM DECISION




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IN THE
# COURT OF APPEALS OF INDIANA

L.L.,

*Appellant-Defendant*,

v.

State of Indiana,

*Appellee-Plaintiff*.

April 26, 2022

Court of Appeals Case No. 21A-JV-2188

Appeal from the Tippecanoe Superior Court

The Honorable Faith A. Graham, Judge

The Honorable Tricia L. Thompson, Juvenile Magistrate

Trial Court Cause Nos.
79D03-2010-JD-175
79D03-2010-JD-184
79D03-2107-JD-90

**Brown, Judge.**

[1] L.L. appeals his adjudication for committing an act that would be dangerous possession of a firearm as a class A misdemeanor if committed by an adult. L.L. raises one issue which we revise and restate as whether the court abused its discretion in admitting certain statements into evidence. We affirm.

## *Facts and Procedural History*

[2] At approximately 1:36 a.m. on July 3, 2021, Lafayette Police Officer Daniel Anthrop responded to 1911 Perdue. When Officer Anthrop arrived at the scene, six to eight officers were already present. L.L., his father, Kevin, L.L.'s stepbrother, H.S., and H.S.'s mother, Kelly, were outside and talking with police. Officer Anthrop approached L.L. and the others, and H.S. began speaking before Officer Anthrop asked any questions. Shortly after H.S. spoke, L.L. began to speak as well. Officer Anthrop noticed shell casings in the yard. He and the other officers determined there was evidence of a shooting near the residence and across the street. Officer Anthrop spoke with "the whole group" including L.L. in the presence of his parents. Transcript Volume II at 15. L.L. initially told Officer Anthrop that "they had no involvement" and they were on the porch smoking. *Id.* at 16. Officer Anthrop, at that point, considered L.L. and H.S. to be victims of a crime because their house had been shot at a month or two earlier. While Officer Anthrop obtained L.L.'s statement, L.L. was in the yard with his father and stepbrother. Before obtaining L.L.'s statement, Officer Anthrop did not read L.L. his *Miranda* rights. Officer Anthrop asked "[q]uestions about . . . who shot their house . . . why they would be victimized again . . . and an investigation to find who was firing across the street." *Id.* at

25. During Officer Anthrop's investigation, there were times when he was with L.L. and his family and times when he would leave.

[3] During a protective sweep of the house, officers found Donald Gritton and Nick Thomas in the basement and placed them in handcuffs in the back of patrol vehicles because officers were "told that nobody was in the house" and had "prior experience" with Gritton and Thomas being suspects in other shootings. *Id.* at 18. At some point, L.L. told Officer Anthrop that he was on the porch and gunshots came from across the street. Either L.L. or H.S. told Officer Anthrop that "they heard and saw one of the rounds hit right next to 'em," "at that point, they returned fire," "they saw a person run, get into the vehicle, the vehicle traveled westbound in that alley," H.S. continued to the street "shooting at the vehicle that . . . was still shooting back at him," and L.L. stayed on the porch. *Id.* at 31. L.L. also told Officer Anthrop that he had a Glock 19X firearm. Officer Anthrop asked L.L. who would have done this and where the guns were, and L.L. told him that his gun was in the basement. The version of events that L.L. told Officer Anthrop differed from the version he initially told him.

[4] Officer Anthrop did not arrest L.L. or H.S. because he believed reasonable persons in that situation would take action to defend themselves if someone was shooting at them. He forwarded the report for a prosecutor to review to make that decision.

[5] On July 15, 2021, the State filed a verified petition under cause number 79D03-2107-JD-90 alleging that L.L. was a delinquent for committing acts that would constitute dangerous possession of a firearm and false informing as class A misdemeanors if committed by an adult.[1]

[6] On August 4, 2021, L.L. filed a motion in limine which requested the court to exclude any of his statements "without the State first proving that [the questioning] was conducted legally pursuant to the fifth amendment of the U.S. Constitution." Appellant's Appendix Volume II at 92.

[7] On August 6, 2021, the court held a hearing. When asked if L.L. was at any point detained while he was speaking with him, Officer Anthrop answered in the negative. When asked how he came to the determination that L.L. and H.S. were victims of a crime, Officer Anthrop answered:

> [P]rior experience. Their house had been shot at before. We arrived on scene and there's evidence that, that they were shot at again. And, they placed themselves in the line of fire, uh, through the initial statement. So, I . . . pursued the investigation . . . from the perspective of them being victims of the crime.

Transcript Volume II at 17.

[1] The State also alleged that L.L. violated his probation under cause numbers 79D03-2010-JD-175 and 79D03-2010-JD-184. During the consolidated hearing, the court found that L.L. violated his probation.

[8] Upon questioning of Officer Anthrop by L.L.'s counsel, the following exchange occurred:

> Q Okay. So, when you do that protective sweep of the residence and there is a, or there a warrant being applied for, people aren't free to leave, correct? You want 'em there. You want 'em outside the house, but they can't just drive away and say, see ya later, right?
>
> A (inaudible).
>
> Q Um, so in this case, [L.L.] wasn't free to leave, correct?
>
> A That'd be correct.

*Id.* at 18-19.

[9] Upon redirect examination, Officer Anthrop indicated that L.L.'s movement was not constrained or restricted in any way. When asked if L.L. "was free to roam the property but not to leave the property," he answered: "Correct." *Id.* at 19. The following exchange also occurred:

> Q Officer, do you recall . . . telling . . . the family, that is, . . . Kevin [L.], [L.L.], [H.S.], and, and the mother . . . that your, your questions, your investigations, you were considering them victims of a crime?
>
> A Yes.
>
> Q To the best of your recollection, about how many times did you tell them that?
>
> A Countless.

*Id.* at 26-27.

[10] On recross-examination, L.L.'s counsel asked why the police would apply for a search warrant for a house looking for guns and ammunitions of a victim of a crime. Officer Anthrop answered: "Because it's still evidence in the case and, additionally, uh, we weren't having cooperation so we had to apply for the search warrant to obtain the evidence." *Id.* at 27-28.

[11] The court stated:

> [T]he standard is objective, so that's not what [L.L.] felt, it's not what the officer felt. It's what the objective person would feel in the same circumstances. And, the . . . ultimate (unintelligible) is whether there was a [coercive] environment. And, the Court does not find, in this situation, that there was a [coercive] environment. [L.L.] was present in his own front yard. [H]e had his father and other family members present. There's talk today about that there was a search warrant being applied for, but there's absolutely no evidence that [L.L.] or any objective person would know that that search warrant was being applied for or that that would place any restrictions on them, um, and the Court looks at the contrast. So, [L.L.] is standing freely in his yard, next to his father, but there are other individuals who are being restrained, they are in handcuffs, they are in a police vehicle. So, in contrast to that, um, the Court feels that an objective person in [L.L.'s] situation would not have believed that they were being restrained.

*Id.* at 29-30. The court also stated: "One other thing I wanted to point out. The Court also notes that, at one point, the officer did walk away from the group and, and did not, no indication there was any statement, don't leave, don't do anything." *Id.* at 30.

[12] The court found that L.L. had committed dangerous possession of a firearm and that the State did not prove L.L. committed false informing. It adjudicated L.L. to be a delinquent for committing an act that would constitute dangerous possession of a firearm as a class A misdemeanor if committed by an adult and granted wardship of L.L. to the Department of Correction.

## *Discussion*

[13] L.L. argues that Officer Anthrop's questions constituted custodial interrogation and "[b]ecause the statements were elicited in violation of *Miranda*, they should have been inadmissible." Appellant's Brief at 21. The State contends that L.L. was neither in custody nor being questioned by police at the time he made the challenged statements.

[14] Generally, we review the admission of evidence for an abuse of discretion. *B.A. v. State*, 100 N.E.3d 225, 229 (Ind. 2018). The underlying issue of whether L.L. was under custodial interrogation is purely legal and entitled to de novo review. *See id.* (holding that "the underlying issue – whether B.A. was under custodial interrogation – is purely legal and entitled to de novo review").

[15] In *Miranda v. Arizona*, the United States Supreme Court held that the "prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination." 384 U.S. 436, 444, 86 S. Ct. 1602, 1612 (1966). Prior to any custodial interrogation, "the person must be warned that he has a right to

remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed." *Id.* Statements elicited in violation of *Miranda* generally are inadmissible in a criminal trial. *Loving v. State*, 647 N.E.2d 1123, 1125 (Ind. 1995).

[16] The trigger to require advisement of *Miranda* rights is custodial interrogation. *State v. Brown*, 70 N.E.3d 331, 335 (Ind. 2017) (citing *White v. State*, 772 N.E.2d 408, 412 (Ind. 2002)). "Custody under *Miranda* occurs when two criteria are met. First, the person's freedom of movement is curtailed to the degree associated with formal arrest. And second, the person undergoes the same inherently coercive pressures as the type of station house questioning at issue in *Miranda*." *State v. Diego*, 169 N.E.3d 113, 117 (Ind. 2021) (quoting *State v. E.R.*, 123 N.E.3d 675, 680 (Ind. 2019), *cert. denied*, 141 S. Ct. 130 (2020)) (quotations and citations omitted). "Custody, therefore, is 'a term of art that specifies circumstances that are thought generally to present a *serious* danger of coercion.'" *Id.* (quoting *Howes v. Fields*, 565 U.S. 499, 508, 132 S. Ct. 1181, 1189 (2012)) (emphasis added in *Diego*).

[17] "Under *Miranda*, freedom of movement is curtailed when a reasonable person would feel not free to terminate the interrogation and leave." *Id.* (quoting *E.R.*, 123 N.E.3d at 680) (citation omitted). The benchmark for this inquiry is whether the level of curtailment is akin to formal arrest. *Id.* To make this determination, we examine the totality of objective circumstances surrounding the interrogation, including "the location, duration, and character of the

questioning; statements made during the questioning; the number of law-enforcement officers present; the extent of police control over the environment; the degree of physical restraint; and how the interview begins and ends." *Id.* (quoting *E.R.*, 123 N.E.3d at 680). The Seventh Circuit has compiled the following list of factors identified by courts to "be significant in determining whether a person is in custody": whether and to what extent the person has been made aware that he is free to refrain from answering questions; whether there has been prolonged coercive, and accusatory questioning, or whether police have employed subterfuge in order to induce self-incrimination; the degree of police control over the environment in which the interrogation takes place, and in particular whether the suspect's freedom of movement is physically restrained or otherwise significantly curtailed; and whether the suspect could reasonably believe that he has the right to interrupt prolonged questioning by leaving the scene. *Gauvin v. State*, 878 N.E.2d 515, 521 (Ind. Ct. App. 2007) (quoting *Sprosty v. Buchler*, 79 F.3d 635, 641 (7th Cir. 1996), *cert. denied*, 519 U.S. 854, 117 S. Ct. 150 (1996)), *trans. denied*.

[18] With respect to interrogation, the Indiana Supreme Court has held that interrogation under *Miranda* "refers not only to express questioning, but also to any words or actions on the part of the police . . . that the police should know are reasonably likely to elicit an incriminating response from the suspect." *B.A.*, 100 N.E.3d at 233 (quoting *Rhode Island v. Innis*, 446 U.S. 291, 301, 100 S. Ct. 1682 (1980)). "The focus is the suspect's perceptions, not police intent." *Id.* (citing *Innis*, 446 U.S. at 301, 100 S. Ct. 1682).

[19] The record reveals that Officer Anthrop approached L.L. and his family while they were outside, H.S. began speaking before Officer Anthrop asked any questions, and then L.L. also began to speak. Officer Anthrop spoke with "the whole group" including L.L. in the presence of his parents. Transcript Volume II at 15. Officer Anthrop considered L.L. and H.S. to be victims of a crime because their house had been shot at a month or two earlier. Officer Anthrop also told L.L. and his family that he considered them to be victims of a crime. During his investigation, there were times when Officer Anthrop was with L.L. and his family and times when he would leave. The officers placed Gritton and Thomas in handcuffs and in the back of patrol vehicles, while L.L. and his family remained outside.

[20] Based on our review of the record and the totality of the circumstances, we cannot say that L.L. was interrogated or that there was a restraint on L.L.'s freedom of movement to the degree associated with a formal arrest at the time he made the challenged statements. Accordingly, we cannot say that the juvenile court abused its discretion.

[21] For the foregoing reasons, we affirm the juvenile court's order.

[22] Affirmed.

May, J., and Pyle, J., concur.