2018 IL App (3d) 180154-U

Order filed July 18, 2018

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2018

In re A.L.,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
a Minor	)	Tazewell County, Illinois.
	)	
(The People of the State of Illinois,	)	
	)	
Petitioner-Appellee,	)	Appeal No. 3-18-0154
	)	Circuit No. 17-JD-61
v.	)	
	)	
A.L.,	)	
	)	Honorable Kirk D. Schoenbein,
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Presiding Justice Carter and Justice Wright concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The trial court properly denied respondent's motion to suppress statements from his police interview. (2) The State did not violate respondent's due process rights by failing to serve his father with notice of the juvenile proceedings.

¶ 2 On June 23, 2017, the State filed a petition for adjudication of delinquency against respondent, A.L. The petition alleged that respondent, age 14 at the time, committed residential

burglary (720 ILCS 5/19-3(a) (West 2016)). The trial court found respondent guilty and sentenced him to 18 months' probation. Respondent's appeal seeks a new trial on two grounds. He claims that the court erroneously declined to suppress respondent's statements from his police interview; he also claims that the State denied him due process by failing to serve his father with the petition and summons. We affirm the trial court's judgment.

¶ 3 BACKGROUND

¶ 4 The State's petition alleged that respondent committed residential burglary by knowingly and without authority entering Daniel Epkins's home with the intent to commit a theft on May 17, 2017. The petition named respondent's parents as parties; it listed both parents' addresses. Respondent lived with his mother. The State issued summonses to both parents. The Tazewell County sheriff's office submitted an affidavit of service that stated respondent and his mother received service on June 24, 2017. The sheriff's office never successfully served respondent's father.

¶ 5 The trial court held respondent's initial arraignment hearing on July 21. Respondent failed to include the transcript from this hearing in the appellate record. The arraignment order indicates that respondent and his mother appeared. It also indicates that respondent's parents intended to hire private counsel on his behalf. Respondent's trial counsel entered her appearance on July 20 but did not attend the arraignment.

¶ 6 I. Motion to Suppress Hearing

¶ 7 Prior to trial, respondent filed a motion to suppress his statements during a police interview. The motion argued that the interview was an unrecorded custodial interrogation during which the officers never informed respondent of his *Miranda* rights. The court heard the motion on December 1 and 13, 2017. Respondent appeared with his mother and counsel.

¶ 8 Four witnesses testified at the hearing—respondent, his mother, and Detectives Brock and Darche from the Morton police department. The undisputed testimony established that Epkins reported the burglary to Morton police; he reported that the burglar stole a wireless speaker, a hunting knife, and some coins. Epkins's neighbor told police that he saw respondent jump Epkins's backyard fence on May 17—the date of the burglary. On May 24, the officers drove to respondent's house to interview him. Neither respondent nor his mother was home.

¶ 9 The officers eventually spoke to respondent's father. He called respondent's mother to tell her that the officers needed to speak with respondent. Respondent's mother immediately picked respondent up from his friend's house and drove him to the police station. They arrived about an hour after the officers spoke with respondent's father.

¶ 10 The officers brought respondent and his mother into an approximately 100-square-foot interview room. The officers closed the door, but the door remained unlocked. They wore business casual attire with their badges and sidearms on their belts.

¶ 11 At the beginning of the interview, Detective Brock told respondent that he was not under arrest, that he could leave at any time, and that he did not have to talk to the officers. Respondent replied that he understood. Brock informed respondent that the investigation suggested that he "was possibly involved" in the burglary at Daniel Epkins's house. Respondent told the officers that Epkins's son, H.E., was his friend—they attended school together. Respondent admitted that he knew someone burglarized the house but denied being present when it occurred.

¶ 12 Brock accused respondent of lying; Epkins's neighbor reported seeing respondent in the backyard on the date of the burglary. Respondent then admitted that he entered Epkins's house on May 17. However, he claimed that he contacted H.E. on Snapchat, a mobile phone application, before entering. H.E. permitted respondent to enter the house to get food and a

Playstation 4 controller. After approximately 20 to 25 minutes, the officers left the room for a 10-minute break. Respondent remained in the room with his mother.

¶ 13 When the officers returned, respondent admitted that his friend, A.G., committed the burglary while respondent was in school on May 17. A.G. showed respondent the stolen items when they met after school that day. Respondent maintained that he entered the house with H.E.'s permission. However, he showed the officers how he covered his hand with his shirt to open Epkins's back sliding door without leaving fingerprints. Brock and Darche eventually arrested respondent.

¶ 14 The interview lasted approximately one hour. The officers never separated respondent from his mother until they arrested him. Neither respondent nor his mother attempted to end the interview or leave the police station.

¶ 15 Respondent's mother testified that neither she nor respondent felt free to leave. She did not "feel like she really should, could" leave the station; she was "sure" respondent felt the same way. The officers "would have got really mad" and "continued to be badgering and then come to our house and arrest him or whatever." She believed that respondent falsely confessed because the officers refused to accept his initial answers. However, she admitted that respondent "blew his top" during the interview when he raised his voice. At the time of the interview, respondent recently graduated eighth grade, took no medications, suffered from no physical or learning disabilities, and was not under the influence of alcohol or drugs.

¶ 16 Respondent testified that he did not feel free to leave the interview. He claimed that he stood up to leave during the interview; the officers suggested a break before respondent could walk out. When the officers returned, respondent told them what he thought they wanted to hear;

he did not think he could leave unless he confessed. Although respondent's mother sat with him during the entire interview, he did not believe she could handle the situation.

¶ 17 Detective Brock described respondent's demeanor as "very smug and standoffish." His demeanor improved after he spoke with his mother during the break. Brock testified that respondent also confessed to his involvement in several local vehicle burglaries. Respondent's mother later informed Brock of a Snapchat photo from one of respondent's friends wherein he held a gun inside a burglarized vehicle. Respondent's mother never sent the picture to Brock.

¶ 18 Detective Darche described respondent's demeanor as "cocky or smug." Darche testified that he overheard a "very spirited conversation between [respondent] and his mother" when Darche and Brock returned to the interview room after the break. Respondent's mother appeared very upset with respondent when the officers reentered the room. After the break, respondent's demeanor became "more amicable, cooperative."

¶ 19 The trial court denied respondent's motion to suppress. After weighing the evidence, the court found that respondent was not in custody when Detectives Brock and Darche interviewed him: "a reasonable juvenile in the Minor's position would have believed that he was free to terminate the interview and to leave the station." The case proceeded to an adjudicatory hearing.

¶ 20 II. Adjudicatory Hearing

¶ 21 On December 21, 2017, the trial court held an adjudicatory hearing on the State's petition. Respondent was present with his mother and counsel. Respondent's opening statement set forth his theory of the case: A.G. broke into Epkins's house while respondent and another friend, L.H., were at school. After school, Epkins's son, H.E., permitted respondent to enter the house.

¶ 22 Daniel Epkins testified that he returned home from work around 9 p.m. on May 17. The hinge and padlock on his bedroom door were ripped out of the woodwork. When he took inventory of the items in his room, he noticed a wireless speaker, a hunting knife, and some coins missing. He also noticed that the back sliding door was unlocked. The next day, Epkins's neighbor reported that he saw respondent and A.G. hop the backyard fence. Epkins stated that he never gave anyone permission to enter his house, nor would H.E. give his friends permission to enter the house when no one was home.

¶ 23 H.E. testified that he was friends with respondent and A.G. On May 17, H.E. left school after lunch to visit his mother in Florida. A.G. came to school that day. During lunch, A.G. asked to borrow H.E.'s Playstation 4 controller while he was in Florida. Before he left for Florida, H.E. placed the controller in his backyard and gave A.G. permission to retrieve it. H.E. never received a message from respondent that day. He never permitted anyone to enter the house on May 17.

¶ 24 A.G., a codefendant, testified that he stole the speaker, knife, and coins from Epkins's house on the morning of May 17. He did not attend school that day—respondent, L.H., and H.E. were at school when A.G. committed the burglary. He never spoke with H.E. that day or asked him to borrow his Playstation 4 controller.

¶ 25 A.G. also testified that respondent and L.H. came to his house after school on May 17. After A.G.'s mom asked them to leave, A.G. suggested they go to H.E.'s house to hang out in his backyard since no one was home. They walked to Epkins's house and jumped the backyard fence. Respondent and L.H. went inside through the unlocked sliding door while A.G. stayed in the backyard. They came out of the house approximately 5 to 10 minutes later with some food. A.G. did not believe anyone gave them permission to enter.

¶ 26 The State gave L.H., another codefendant, use immunity in her trial to testify in respondent's case. She testified that she, respondent, and A.G. smoked marijuana together after school on May 17. Someone suggested that they go to H.E.'s house since no one was home. She believed H.E. gave them permission to enter his house because A.G. knew the back sliding door was unlocked. L.H. confirmed that she and respondent took food from H.E.'s house. As they walked back to A.G.'s house, A.G. told L.H. and respondent that he broke into H.E.'s house earlier that day. L.H. never saw the stolen items, but she remembered that A.G. mentioned some coins. On cross-examination, L.H. explained that they took food from H.E.'s house as a "joke" because he always ate their food but never shared his.

¶ 27 Respondent testified that he went to A.G.'s house alone after school. When respondent arrived, A.G. admitted that he broke into H.E.'s house earlier that day; he showed respondent the stolen items. Once L.H. arrived, the three of them smoked marijuana then decided to get snacks from H.E.'s house. Before they entered the house, respondent used L.H.'s phone to call H.E. through Snapchat. H.E. gave respondent permission to enter the house for food. Less than two minutes later, respondent and L.H. emerged with Pringles and pancakes. When the court asked respondent why he did not tell H.E. that A.G. burglarized his house that day, respondent replied, "Because I'm not a snitch."

¶ 28 The court found respondent guilty; it did not believe that H.E. gave respondent permission to enter the house. Respondent's motion for a new trial alleged that the court erroneously denied his motion to suppress. It also alleged that the State presented insufficient evidence to prove respondent's delinquency. The court heard and denied the motion on February 2, 2018.

¶ 29 The court held respondent's sentencing hearing the same day. It deemed respondent a ward of the court and sentenced him to 18 months' probation—a sentence to which the parties agreed before the hearing. This appeal followed.

¶ 30 ANALYSIS

¶ 31 Respondent argues that he is entitled to a new trial for two reasons. First, the trial court erroneously admitted respondent's statements from an unrecorded custodial interrogation during which the officers failed to inform him of his *Miranda* rights. Second, the State violated his due process rights by failing to serve his father with the petition and summons. We address each argument separately below.

¶ 32 I. Motion to Suppress

¶ 33 When we review a trial court's motion to suppress determination, we defer to the court's fact findings unless they are clearly against the manifest weight of the evidence. *People v. Luedemann*, 222 Ill. 2d 530, 542 (2006). We review *de novo* whether the facts support the court's determination. *Id.*

¶ 34 Under the Fifth Amendment (U.S. Const., amend. V), a defendant's statements from a custodial interrogation may not be used as evidence unless the interviewing officers informed the defendant of his or her constitutional rights before conducting the interrogation. *Miranda v. Arizona*, 384 U.S. 436, 467 (1966); *People v. Hunt*, 2012 IL 111089, ¶¶ 24-25. The Juvenile Court Act of 1987 (the Act) requires additional measures, such electronically recording the interrogation, to use a minor's statements during a custodial interrogation as evidence. 705 ILCS 405/5-401.5(a-5) (West. Supp. 2017).

¶ 35 It is undisputed that Detectives Brock and Darche neither informed respondent of his *Miranda* rights nor recorded the interview. The question is whether the interview was a custodial

interrogation. Section 5-401.5(a) of the Act defines "custodial interrogation" as one "(i) during which a reasonable person in the subject's position would consider himself or herself to be in custody and (ii) during which a question is asked that is reasonably likely to elicit an incriminating response." *Id.* § 5-401.5(a). The first element is dispositive in this case.

¶ 36 The factors relevant to whether "a reasonable person in the subject's position would consider himself or herself to be in custody" include:

> "(1) the location, time, length, mood, and mode of the questioning; (2) the number of police officers present during the interrogation; (3) the presence or absence of family and friends of the individual; (4) any indicia of a formal arrest procedure, such as the show of weapons or force, physical restraint, booking or fingerprinting; (5) the manner by which the individual arrived at the place of questioning; and (6) the age, intelligence, and mental makeup of the accused." *People v. Slater*, 228 Ill. 2d 137, 150 (2008).

¶ 37 Respondent argues that he "clearly had reason to believe that he was the focus of a criminal investigation, and therefore, was not free to leave." The record refutes this position. The two officers attempted to speak to respondent at his mother's house, but no one was home. Respondent's mother picked him up from a friend's house and drove him to the police station—neither officer asked respondent to come to the police station. The two officers interviewed respondent for approximately one hour in an unlocked room. His mother was present during the entire interview. At the start of the interview, the officers told respondent and his mother that he was not under arrest, that he did not have to talk to them, and that they could leave at anytime. Respondent indicated that he understood. Although respondent was a minor, he suffered from no

disabilities that impaired his ability to understand the situation or leave the police station. The officers never formally arrested or restrained respondent in any way until after the interview concluded. This record indicates that respondent was not in custody during the interview.

¶ 38 Respondent also argues that his age, by itself, indicates that he was in custody during the interview. He cites *Gallegos v. Colorado*, 370 U.S. 49, 54-55 (1962), for the proposition that "a juvenile is not on equal footing with his police interrogators." If this showing alone demonstrated custody, we would simply presume that all juveniles are in custody when they speak to police. In more than 50 years since *Gallegos*, neither our legislature nor our supreme court has adopted this position. Although age is one consideration in determining one factor of the custody analysis ("age, intelligence, and mental makeup of the accused"), it is not dispositive.

¶ 39 Finally, respondent contends that his arrival at the police station was involuntary. His "mother drove him to the police station *** He had no choice whether or not to go. No reasonable 14 year old would feel like he was able to leave the police station after his mother picked him up *** [and] drove him to the police station ***." Parental authority is not police authority. Respondent's mother's authority over her son is irrelevant to whether he was in police custody during the interview.

¶ 40 Based on this record, we find that a reasonable person, innocent of any crime, would not have considered himself or herself to be in custody. See *People v. Travis*, 2013 IL App (3d) 110170, ¶ 50 (holding that defendant was not in custody when between four and eight officers responded to a traffic stop, took the 15-year-old defendant to the police station in a police car with his consent, and interviewed him in an unlocked room without a parent or family member present). We affirm the trial court's determination on respondent's motion to suppress.

¶ 41 Even if we found that the trial court erroneously denied respondent's motion to suppress, the error was harmless beyond a reasonable doubt. See *People v. Patterson*, 217 Ill. 2d 407, 428 (2005). The State presented numerous witnesses who testified that H.E. never permitted respondent to enter the house. Respondent admitted at trial that he entered the house to get snacks. L.H. confirmed that she entered the house with respondent. This evidence sufficiently proved both elements of residential burglary—respondent entered Epkins's house without authority with the intent to steal food. See 720 ILCS 5/19-3(a) (West 2016). Suppressing respondent's interview statements would not change the outcome of this case.

¶ 42 II. Due Process

¶ 43 Respondent also argues that he is entitled to a new trial because the State violated his due process rights by failing to serve his father with the petition and summons, as required by the Act. 705 ILCS 405/5-525(1)(a) (West Supp. 2017). This requirement is excused for non-custodial parents who do not make regular support payments and do not communicate with the minor on a regular basis. *Id.* § 5-525(1)(a)(ii).

¶ 44 The State named both parents in the delinquency petition; it also listed each parent's address. The Tazewell County sheriff's office served respondent and his mother, the custodial parent, on June 24, 2017—the day after the State filed its petition. The State issued a summons to respondent's father, but he never received service. Respondent failed to raise this issue in the trial court; he now seeks relief under the plain-error doctrine.

¶ 45 We need not conduct a plain-error analysis to decide this issue. The trial court held respondent's initial arraignment hearing on July 21, 2017, approximately one month after respondent and his mother received service. The arraignment order indicates that respondent's mother appeared with respondent. It also indicates that respondent's parents retained a private

attorney on his behalf. The order does not indicate whether respondent challenged or questioned his father's service. The subsequent orders in the record contain no mention of respondent's father or the service issue.

¶ 46 Because the appellant bears the burden of supplying a sufficient appellate record, any doubt arising from the record's incompleteness must be resolved against the appellant. *People v. Johnson*, 285 Ill. App. 3d 307, 308 (1996). Respondent failed to supply this court with reports of proceedings from the arraignment hearing or the five subsequent hearings. Without these records, we have no way to know whether respondent or his counsel waived service, if the court excused service pursuant to section 5-525(1)(a)(ii) of the Act, or if the parties raised the issue at all. We must resolve this doubt against respondent; "the matter has been waived, and we shall inquire no further." *In re J.P.J.*, 109 Ill. 2d 129, 137 (1985).

¶ 47 A plain-error analysis would yield the same result. Even if the error was "clear or obvious" (*People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007); *In re Marcus W.*, 389 Ill. App. 3d 1113, 1126 (2009)), it fails to satisfy either prong of the plain-error doctrine.

¶ 48 Relief is appropriate under the first prong if the evidence is so closely balanced that the error threatened to tip the scales of justice against the defendant. *Piatkowski*, 225 Ill. 2d at 565. Here, the evidence is not so closely balanced. It is undisputed that respondent took food from Epkins's house. Respondent testified that H.E. gave him permission to enter the house during a Snapchat call on L.H.'s phone. Neither L.H. nor A.G. corroborated this testimony. H.E. testified that respondent never called him. The conflict created solely by respondent's self-serving testimony does not make the evidence closely balanced for plain-error purposes. *In re M.W.*, 232 Ill. 2d 408, 437-39 (2009). Respondent also fails to explain how serving his father would have affected the trial court's evaluation of the evidence. See *id.* at 438-39. Neither the record nor

respondent's arguments indicate that the error threatened to tip the scales of justice against respondent.

¶ 49 The second prong of our plain-error doctrine applies to serious errors that affect "the fairness of the defendant's trial and challenge[] the integrity of the judicial process, regardless of the closeness of the evidence." *Piatkowski*, 225 Ill. 2d at 565. The State's failure to serve a noncustodial parent in a juvenile proceeding is not structural error. For jurisdiction and due process purposes, courts have repeatedly held that it is crucial for the State to serve a minor's custodial parent, not the noncustodial parent. *In re M.W.*, 232 Ill. 2d at 426; *In re Tyrone W.*, 326 Ill. App. 3d 1047, 1049-50 (2002).

¶ 50 Respondent cites *In re J.W.*, 87 Ill. 2d 56, 62 (1981), for the proposition that a minor's parent "may be the only adult in the world from whom he can claim or hope for any loyalty or help whatever. Even a slight hope is better than nothing." The court's rationale in *J.W.* does not apply in this case; respondent's mother received service, sat next to him during his police interview, and attended all of his hearings. At no point in this case was respondent without a parent's support. The record fails to show any indication that the State's failure to properly serve respondent's father affected the fairness of respondent's trial or the integrity of the judicial process.

¶ 51 CONCLUSION

¶ 52 For the foregoing reasons, we affirm the judgment of the circuit court of Tazewell County.

¶ 53 Affirmed.