2019 IL App (1st) 181674-U
No. 1-18-1674
March 29, 2019

FIRST DIVISION

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN THE INTEREST OF I.S., a Minor,	)	Appeal from the
	)	Court Circuit of
(THE PEOPLE OF THE STATE OF ILLINOIS,	)	Cook County.
	)	
Petitioner-Appellee,	)	17 JD 2212
	)	
v.	)	The Honorable
	)	Steven James Bernstein,
I.S., a Minor,	)	Judge Presiding.
	)	
Respondent-Appellant.	)	

JUSTICE WALKER delivered the judgment of the court.
Justices Pierce and Griffin concurred in the judgment.

O R D E R

¶ 1 *Held*: The trial court's finding that the minor was in custody when he was handcuffed was not against the manifest weight of the evidence. When the minor was taken into custody, the officers were required to provide *Miranda* warnings prior to further interrogation.

¶ 2 The trial court found I.S. delinquent on a charge of aggravated unlawful use of a weapon (AUUW), because I.S. possessed a gun but no firearm owner's identification card (FOID). We hold that the trial court erred when it denied I.S.'s motion to suppress statements he made after police found the gun in the course of a traffic stop and failed to inform I.S. of his *Miranda* rights before interrogation. We reverse the finding of delinquency and remand.

¶ 3 I. BACKGROUND

¶ 4 At approximately 11 p.m. on December 18, 2017, Officer Tony Delaney of the Palos Heights Police Department saw a car speeding on Route 83. He activated his dash cam and ordered the driver to stop. The driver, Lacy, and the passenger, I.S., handed Delaney their identification cards. Delaney took the cards back to his car and called for backup. Officer Birkmeier responded to the call. Delaney told Birkmeier he intended to search the car because he smelled cannabis. The two officers directed Lacy and I.S. out of the car. Delaney patted down I.S., checking for weapons, while Birkmeier patted down Lacy. Birkmeier directed both Lacy and I.S. to the side of the road.

¶ 5 Delaney searched the car and found a gun in the car's glove compartment. Delaney handcuffed I.S. and Birkmeier handcuffed Lacy. At first, both I.S. and Lacy said they knew nothing about the gun, but after a few minutes of questioning, without *Miranda* warning, I.S. told Birkmeier that he owned the gun.

¶ 6 The State filed a petition asking the court to adjudicate I.S. as a delinquent minor, and make him a ward of the court. The petition alleged he committed the offenses of (1) AUUW by having the gun but no FOID; (2) AUUW by being a minor and having the gun while not engaged in activities permitted under the Wildlife Code; and (3) AUUW by being a minor and having a gun of a size which may be concealed upon the person.

¶ 7 I.S. filed a motion to suppress the statements he made to Birkmeier. At the hearing on the motion, the court watched the video recorded by Delaney's dash cam. When Delaney found the gun, he said, "What's with the gun?" Delaney continued searching the car while

Birkmeier stayed at the side of the road with Lacy and I.S. The recording did not pick up the conversation of Birkmeier, I.S., and Lacy.

¶ 8 Birkmeier admitted that she did not remember the exact words of the conversation with Lacy and I.S., but she remembered that, during questioning, both Lacy and I.S. asserted "multiple times" that they did not know anything about the gun. Birkmeier did not provide *Miranda* warning, but told them "they're both in trouble." I.S. subsequently admitted that he owned the gun. Birkmeier admitted that she had not informed I.S. and Lacy of their *Miranda* rights.

¶ 9 I.S. testified that on December 18, 2017, Lacy picked him up at approximately 10:30 p.m. to take him to the place where they both worked nights. Lacy sped on the way, trying to get to work on time. Birkmeier told them, "if it's no one[']s gun," then Lacy "would be in the County [jail]." That prompted I.S. to answer that he owned the gun.

¶ 10 The trial court found that when Delaney recovered the gun, "both Lacy, the driver[,] and the defendant [are] then put in custody." Birkmeier then had a "nonthreatening conversation" with Lacy and I.S. The court found that Birkmeier "wasn't bothering anybody. She was inquiring," and that I.S. "volunteered that statement." The court concluded:

> "The fact that she didn't administer Miranda is of no consequence. She wasn't even talking to him. [H]er comments were directed at the driver. He felt bad for the driver. He said, my gun. End of question. The statement comes in."

¶ 11 In the bench trial which was based on the testimony given at the hearing on the motion to suppress, the trial court found I.S. delinquent and sentenced him to 18 months of probation. I.S. now appeals.

¶ 12 II. ANALYSIS

¶ 13 I.S. challenges the trial court's decision to deny his motion to suppress his statements to Birkmeier. Our supreme court stated the relevant principles as follows:

> "[A] conviction based 'in whole or in part, on an involuntary confession, regardless of its truth or falsity' violates a defendant's constitutional rights. *Miranda v. Arizona*, 384 U.S. 436, 464 n. 33 (1966). 'The test of voluntariness is whether the individual made his confession freely and voluntarily, without compulsion or inducement of any kind, or whether the individual's will was overborne at the time of the confession.' *People v. Morgan*, 197 Ill. 2d 404, 437 (2001). Courts weighing the voluntariness of a confession consider the 'totality of the circumstances,' including the defendant's 'age, intelligence, background, experience, education, mental capacity, and physical condition at the time of questioning,' along with the duration and legality of the detention. *People v. Murdock*, 2012 IL 112362, ¶ 30. Courts also consider whether there was any physical or mental abuse, including if police made threats or promises to a defendant. *Id.* No single factor is dispositive. *Id*. The State has the burden of establishing the voluntariness of the defendant's confession by a preponderance of the evidence. [Citation.]
>
> The trial court's findings of fact in a suppression hearing will be disturbed only if they are against the manifest weight of the evidence. [Citation]. We review the trial court's ultimate finding on voluntariness *de novo*." *People v. Hughes*, 2015 IL 117242, ¶¶ 31-32.

¶ 14 The parties agree on most of the relevant facts. Delaney and Birkmeier patted down both Lacy and I.S. before Delaney started the search. When Delaney found the gun, he immediately asked both Lacy and I.S., "What's with the gun?" They both denied knowing anything about the gun, and the officers handcuffed them. Birkmeier spoke with them, and they both asserted multiple times that they did not know anything about the gun. Birkmeier told them "they're both in trouble." I.S. then said he owned the gun.

¶ 15 The trial court specifically found that the officers took I.S. and Lacy into custody by handcuffing them. The State contends that the trial court erred in making the finding of custody. We will not disturb the finding of fact unless it is against the manifest weight of the evidence. *People v. Carroll*, 318 Ill. App. 3d 135, 139 (2001); *People v. Gorman*, 207 Ill. App. 3d 461, 471 (1991); *People v. Kolakowski*, 319 Ill. App. 3d 200, 212 (2001).

¶ 16 *People v. Braggs*, 209 Ill. 2d 492, 506 (2004), governs our analysis:

> "[I]n determining whether a person is 'in custody' for purposes of *Miranda*, a court should first ascertain and examine the circumstances surrounding the interrogation, and then ask if, given those circumstances, a reasonable person would have felt he or she was not at liberty to terminate the interrogation and leave. [Citation.] With respect to the latter inquiry, the accepted test is what a reasonable person, innocent of any crime, would have thought had he or she been in the defendant's shoes. [Citations.]
>
> When examining the circumstances of interrogation, the following factors have been found relevant in determining whether a statement was made in a custodial setting: the location, time, length, mood, and mode of the

> interrogation, the number of police officers present, the presence or absence of the family and friends of the accused, any indicia of formal arrest, and the age, intelligence, and mental makeup of the accused."

¶ 17 I.S. made the statement in an unfamiliar place, by the side of the road, not in the coercive setting of a police station. I.S. stood next to Lacy during the discussion. Although I.S. was only 17 years old, he had some prior arrests but no convictions. The parties do not dispute the trial court's finding of I.S.'s "sophistication" and intelligence.

¶ 18 The officers handcuffed I.S. and Lacy after a pat down and finding no weapons. "Handcuffs are generally recognized as a hallmark of a formal arrest." *United States v. Newton*, 369 F.3d 659, 676 (2d Cir. 2004). "When a law enforcement officer places handcuffs on an individual, the officer is making a show of force and physically restraining the individual. *** When a reasonable person is placed in handcuffs by law enforcement, he will not feel free to leave until the handcuffs are removed." *People v. Coleman*, 2015 IL App (4th) 140730, ¶ 38. Here, as in *People v. Hannah*, 2013 IL App (1st) 111660, ¶ 45, "[t]he defendant *** was handcuffed having been previously searched by the officers ***. There was no question of officer safety at the point in time when [the defendant confessed]. *** [A]t issue here is whether a reasonable person under the circumstances would have felt free to terminate the police questioning and leave. We answer that in the negative. Therefore, we find that the defendant was in custody for the purposes of *Miranda*." The trial court's finding that the officers took I.S. into custody before he claimed ownership of the gun is not contrary to the manifest weight of the evidence.

¶ 19 We review the finding of admissibility *de novo*, applying the principles restated in *Hughes*. Because the case involves a confession by a minor, we take care "to assure that the confession was not coerced or suggested and that 'it was not the product of ignorance of rights or of adolescent fantasy, fright or despair.' " *People v. Simmons*, 60 Ill. 2d 173 (1975), *quoting In re Gault*, 387 U.S. 1, 55 (1967)." *In re G.O.*, 191 Ill. 2d 37, 54 (2000).

¶ 20 The trial court here found that Birkmeier did not interrogate I.S., but "was inquiring," making statements to and asking questions of Lacy before I.S. confessed. The court held I.S.'s confession was voluntary and therefore admissible. The officers immediately began to question both individuals after the gun was found. That questioning continued without *Miranda* warning.

¶ 21 "The term 'interrogation' under *Miranda* refers both to express questioning and to any words or actions on the part of the police, other than those normally accompanying arrest and custody, that the police should know are reasonably likely to elicit an incriminating response from the suspect. [Citation.] In determining whether a statement is one reasonably likely to elicit such a response, the focus is primarily upon the perceptions of the suspect." *People v. Olivera*, 164 Ill. 2d 382 (1995). Birkmeier admitted that both Lacy and I.S. asserted "multiple times" that they had no knowledge of the gun. After taking I.S. into custody, Birkmeier inquired about the gun and told Lacy, standing next to I.S., "they're both in trouble." I.S. inferred that police might put Lacy in jail.

¶ 22 Courts have noted that threats to arrest third persons may produce nonvoluntary statements even if police have lawful grounds to carry out the threats. In *People v. Thomas*, 8 N.E.3d 308, 314 (N.Y. 2014), police "threaten[ed] that if defendant continued to deny

responsibility for his child's injury, his wife would be arrested and removed from his ailing child's bedside." The court held "the issue is not whether [the threat] reflected a reasonable investigative option, but whether it was permissibly marshaled to pressure defendant to speak against his penal interest. It was not. *** [D]efendant's agreement to 'take the fall'—an immediate response to the threat against his wife—was pivotal to the course of the ensuing interrogation and instrumental to his final self-inculpation." *Thomas*, 8 N.E.3d at 314; see also *State v. Corns*, 426 S.E.2d 324, 327 (S.C. App. 1992); *United States v. Griffin*, 572 F. Supp. 126, 128 (D.D.C. 1983). Some courts have held that threats to arrest persons other than close family members may also, in some circumstances, render statements inadmissible. *United States v. Finch*, 998 F.2d 349, 356 (6th Cir. 1993); *United States v. Irons*, 646 F. Supp. 2d 927, 968–69 (E.D. Tenn. 2009); *Spano v. New York*, 360 U.S. 315, 319 (1959). In all situations, the general principle remains in effect. Police "interrogate" a suspect when they use "any words or actions *** that the police should know are reasonably likely to elicit an incriminating response." *Rhode Island v. Innis*, 446 U.S. 291, 301 (1980).

¶ 23 Birkmeier's statement that unless someone confessed, "they're both in trouble," was reasonably likely to elicit an incriminating response. *People v. Elliot*, 314 Ill. App. 3d 187, 190 (2000). Accordingly, we find that Birkmeier engaged in a custodial interrogation of I.S. without informing I.S. of his *Miranda* rights.

¶ 24 Generally, "[t]he prosecution may not use statements of the defendant stemming from custodial interrogation unless *Miranda* warnings have been given." *People v. Maiden*, 210 Ill. App. 3d 390, 394 (1991). "[A] person being questioned by law enforcement officers must first '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,' as long as that person has been 'taken into custody or otherwise deprived of his freedom of action in any significant way.' " *People v. Slater*, 228 Ill. 2d 137, 149 (2008), *quoting Miranda*, 384 U.S. at 444.

¶ 25 Weighing *Hughes* factors, and recognizing the "sensitive concern" of taking a juvenile's confession (*G.O.*, 191 Ill. 2d at 54), we find that I.S.'s confession was not voluntary but was in response to a threat to put his friend in jail. Placing handcuffs on an individual is a show of physical restraint. Once an individual, especially a minor, is taken into custody, the police must administer *Miranda* warning prior to questioning. *People v. Hannah*, 2013 IL App 1st 111660, ¶¶ 45-47. After taking I.S. into custody and before making remarks designed to elicit a confession, the officers had a duty to inform I.S. of his rights. The trial court erred by admitting the involuntary confession into evidence.

¶ 26 The State concedes that the admission of the statement into evidence cannot constitute harmless error. Accordingly, we reverse the finding of delinquency and remand for a new trial.

¶ 27 III. CONCLUSION

¶ 28 Birkmeier handcuffed I.S. and made remarks that were reasonably likely to elicit an incriminating response, without first informing I.S. of his *Miranda* rights. I.S. did not voluntarily confess when he responded to Birkmeier's implicit threat to jail I.S. and his friend. We reverse the finding of delinquency and remand for a new trial.

¶ 29 Reversed and remanded.