

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**July 19, 2016**

Diane M. Fremgen  
Clerk of Court of Appeals

**NOTICE**

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A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2015AP1585**

**Cir. Ct. No. 2013JV117**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**IN THE INTEREST OF J. T. M., A PERSON UNDER THE AGE OF 18:**

**STATE OF WISCONSIN,**

**PETITIONER-RESPONDENT,**

**v.**

**J. T. M.,**

**RESPONDENT-APPELLANT.**

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APPEAL from an order of the circuit court for St. Croix County:  
EDWARD F. VLACK III, Judge. *Reversed and cause remanded with directions.*

¶1 SEIDL, J.<sup>1</sup> James<sup>2</sup> appeals an adjudication for first-degree sexual assault of a child. He argues his statement during a police interrogation should

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

have been suppressed either for a *Miranda*<sup>3</sup> violation or because the statement was involuntary. We conclude James's statement was obtained in violation of *Miranda*, and we reverse.

## BACKGROUND

¶2 At the time of James's interrogation in April 2013, he resided at Tomorrow's Children, a private residential facility for children with special needs.<sup>4</sup> He had just turned age sixteen that month, but his math and reading functioning was at a fourth or fifth grade level.<sup>5</sup> James resided at the facility pursuant to a court order, and he was not permitted to leave the grounds.<sup>6</sup>

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<sup>2</sup> The parties refer to J.T.M. by the pseudonym, James. We therefore do the same. See WIS. STAT. RULE 809.19(1)(g).

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

<sup>4</sup> The facts are taken from a suppression motion hearing.

<sup>5</sup> James's social worker further testified at the February 2014 hearing that "I recall an IQ level of many years ago, was sixty-eight."

<sup>6</sup> James's county social worker, Christie Hill, testified as follows concerning the facility:

Q. [James] wasn't free to come and go from Tomorrow's Children as he pleased, correct?

A. No.

Q. That was an ordered placement where he was required to stay?

A. Yes. It's not a locked facility.

Q. It's not a locked facility but he's not allowed to leave the grounds for example, correct?

A. Correct.

Q. He's not allowed to be unsupervised in public?

(continued)

However, the facility was not locked. Waupaca County sheriff's department detective John Mocadlo described the facility as follows:

It's a residential facility which encompasses about four or five buildings. It looks like a small little village of houses. There's four or five houses, one is an administrative building. It's used for the administrative offices, conference facilities and stuff like that and there's a series of other buildings or houses, I believe some are just like bunk houses or residential facilities where the students or children reside in. And then I believe there's, ... one is a school and I believe one could be even a recreational facility or house.

¶3 Mocadlo went to the facility to question James about an alleged sexual assault of another resident. Mocadlo scheduled his visit with staff, and he knew James was not at Tomorrow's Children voluntarily.<sup>7</sup> After Mocadlo arrived at the administration building, staff summoned James to the building. Mocadlo explained, "He was ... brought to my building. I don't know if he was escorted, I didn't watch that ...." Mocadlo was in plain clothes, but he was wearing a badge and "carrying a side arm," both of which were visible.

¶4 Mocadlo identified himself as a police officer and told James he would "like to talk" to him and/or "we need to talk about a few things."<sup>8</sup> Mocadlo

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A. [James] didn't earn that privilege while he was there. Kids who are able to ... make enough progress within the facility have the option of being unsupervised at times. [James] didn't earn that.

<sup>7</sup> Mocadlo further explained: "I don't really know why he was there. What the nature of his crimes or what, if he was sentenced or if he was, how he was placed there but I knew he was placed there. On what order I don't know."

<sup>8</sup> Mocadlo's testimony is unclear as to whether he made both statements or made a single statement, of which he did not specifically recall the content. He testified to the first statement on cross-examination and to the second upon the circuit court's subsequent questioning seeking clarification of any conversation that occurred before or after the recorded interview.

did not tell James that he had an option of not talking or not attending the meeting and did not offer that James's parents or any other person could accompany them. As Moadlo led James to the basement, he stated something to the effect, "we're going to go downstairs here" or "we'll go down here." He escorted James to a "private office conference room" and closed the door behind them. Moadlo never told James that he had the right to get up and walk out the door or that he was free to leave. However, James was not physically restrained or handcuffed.

¶5 Moadlo's audio-recorded interview of James in the basement office lasted approximately twenty minutes. Moadlo did not give *Miranda* warnings. He started with small talk; he introduced himself, explained that he was a law enforcement officer and that some of his duties include child interviews, and inquired as to James's name, age, and hobbies. Approximately one minute and forty-five seconds into the interview, he also told James that if there was something that he did not want to talk about he could say, "I don't care to talk about it," and they would move on.

¶6 Eventually, Moadlo told James he was there to investigate an incident that had occurred between James and another boy. As Moadlo explained, James responded that he "was aware of that, that it happened sometime in March and that staff and social workers have already talked to him about it." James proceeded to describe his sexual conduct with another resident of the facility. When Moadlo was asked if he used any strategic tactics in conducting the interview, he testified: "I try to build a rapport and I use a theme and a line of questioning to—would be age appropriate and incident appropriate ...." He asserted he did not make any promises or threats to James.

¶7 When Moadlo finished his questioning, he told James the “interview was concluded.” He walked with James upstairs “and told a staff member that I was finished with him ... and then there was some direction from her to say ‘Okay [James], you can go back to your house.’”

¶8 Moadlo also testified he had previously met with James in November 2011. He explained, “[I]t was ... another meeting and interview with [James] at Tomorrow’s Children in a conference room regarding a similar incident involving another boy.” Moadlo did not read James his *Miranda* rights during that prior interrogation either.

¶9 In addition to the foregoing testimony, a copy of Moadlo’s police report was attached to the delinquency petition in this case. It explains that Moadlo had been directed to follow up on a written report regarding “possible child abuse/sex offense” from the county department of health and human services, and that a county social worker had “already investigated” the offense, “substantiated it[,] and feels that criminal activity was present.” Moadlo’s report also indicates he met with a Tomorrow’s Children social worker immediately prior to interviewing James. The social worker told him James “is here only a few more days. [James] has been a problem at Tomorrow’s Children doing similar behavior and is being transferred to a sexual preparator [sic] facility.”

¶10 James moved to suppress his statement to Moadlo, contending it was obtained without *Miranda* warnings and was involuntary. The circuit court denied the motion, concluding James was not in custody and gave the statement voluntarily. Following James’s admission to the petition and entry of a dispositional order, James appeals.

## DISCUSSION

¶11 James contends his statement should have been suppressed for a *Miranda* violation.<sup>9</sup>

By its very nature, custodial police interrogation entails “inherently compelling pressures.” *Miranda* [*v. Arizona*, 384 U.S. 436, 467 (1966)]. Even for an adult, the physical and psychological isolation of custodial interrogation can “undermine the individual’s will to resist and ... compel him [or her] to speak where he [or she] would not otherwise do so freely.” *Id.* Indeed, the pressure of custodial interrogation is so immense that it “can induce a frighteningly high percentage of people to confess to crimes they never committed.” *Corley v. United States*, 556 U.S. 303, —, 129 S.Ct. 1558, 1570 (2009)). That risk is all the more troubling—and recent studies suggest, all the more acute—when the subject of custodial interrogation is a juvenile.

*J.D.B. v. North Carolina*, 564 U.S. 261, 269 (2011) (citations omitted).

¶12 Recognizing the “inherently coercive nature of custodial interrogation,” in *Miranda* the Court adopted a set of prophylactic measures designed to safeguard the constitutional guarantee against self-incrimination. *J.D.B.*, 564 U.S. at 269; *State v. Schloegel*, 2009 WI App 85, ¶7, 319 Wis. 2d 741, 769 N.W.2d 130. Accordingly, prior to questioning, a suspect in custody “must be warned that he [or she] has a right to remain silent, that any statement he [or she] does make may be used as evidence against him [or her], and that he [or she] has a

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<sup>9</sup> James alternatively argues his statement was involuntary. We need not reach that argument. See *State v. Castillo*, 213 Wis. 2d 488, 492, 570 N.W.2d 44 (1997) (appellate courts not required to address every issue raised when one issue is dispositive).

right to the presence of an attorney, either retained or appointed.”<sup>10</sup> *Miranda*, 384 U.S. at 444.

¶13 Whether a person is in custody for purposes of *Miranda* requires consideration of the totality of the circumstances. *J.D.B.*, 564 U.S. at 270-71. Relevant circumstances include “the defendant’s freedom to leave; the purpose, place, and length of the interrogation; and the degree of restraint.” *State v. Lonkoski*, 2013 WI 30, ¶6, 346 Wis. 2d 523, 828 N.W.2d 552. A custodial situation arises when “a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.” *Miranda*, 384 U.S. at 444; *State v. Quigley*, Nos. 2015AP681-CR/2015AP682-CR, recommended for publication (WI App June 15, 2016) (2016 WL 3263943). The Supreme Court later explained that custody means “a formal arrest or restraint on freedom of movement of the degree associated with formal arrest.” *Thompson v. Keohane*, 516 U.S. 99, 112 (1995); *Quigley*, 2016 WL 3263943, ¶32.

¶14 Ultimately, a person is in law enforcement custody under *Miranda* “where a reasonable person would not feel free to terminate the interview and leave the scene.” *State v. Martin*, 2012 WI 96, ¶33, 343 Wis. 2d 278, 816 N.W.2d 270. This is an objective standard that does not depend on the subjective views of the person being interrogated or the officer conducting the interrogation.<sup>11</sup> *Stansbury v. California*, 511 U.S. 318, 323 (1994). Nonetheless, a child’s age, if

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<sup>10</sup> If someone is subjected to custodial interrogation without the warnings and makes statements, whether exculpatory or inculpatory, then those statements constitute a *Miranda* violation and, absent exceptions, cannot be used by the prosecution. *Miranda*, 384 U.S. at 444.

<sup>11</sup> Although potentially relevant to a voluntariness analysis, “a suspect’s prior interrogation history with law enforcement has no role to play in the custody analysis” because that is a subjective matter. *J.D.B. v. North Carolina*, 564 U.S. 261, 275 (2011).

known or apparent to the officer, must be taken into account in the objective, reasonable person analysis. *J.D.B.*, 564 U.S. at 265, 271-77. In *J.D.B.*, the Court observed, “It is beyond dispute that children will often feel bound to submit to police questioning when an adult in the same circumstances would feel free to leave.” *Id.* at 264-65. Two inquiries are essential in determining whether a person was in custody: “first, what were the circumstances surrounding the interrogation; and second, given those circumstances, would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave.” *Thompson*, 516 U.S. at 112 (footnote omitted).

¶15 The circuit court’s findings of historical fact will be accepted unless they are clearly erroneous. *State v. Armstrong*, 223 Wis.2d 331, 352, 588 N.W.2d 606 (1999). Whether the facts demonstrate custody is a question of law that we review de novo. *Id.* at 353. It is the State’s burden to show, by a preponderance of the evidence, that an interrogated suspect was not in custody. *Id.* at 345 (observing allocation of burden of proof was important because the record provided “only sketchy information” about the circumstances of the police interview).

¶16 The circumstances surrounding James’s interrogation were not in dispute and are set forth in detail above.<sup>12</sup> The relevant testimony at the

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<sup>12</sup> We note, however, that in the “analysis” section of the circuit court’s decision denying James’s suppression motion, the court indicated: “[James] was not handcuffed, frisked, restrained or threatened in any way. At all times, he was free to leave or otherwise terminate the encounter.” To the extent the latter sentence was a factual finding, it was clearly erroneous. *See State v. Armstrong*, 223 Wis. 2d 331, 352, 588 N.W.2d 606 (1999); *Noll v. Dimiceli’s, Inc.*, 115 Wis. 2d 641, 643-44, 340 N.W.2d 575 (Ct. App. 1983). The hearing testimony provides no support for a finding that James was free to leave or otherwise terminate the encounter. That question was never asked of Mocadlo, and the finding is not a reasonable inference from the testimony presented.

suppression hearing came primarily from detective Moadlo, the State's witness.<sup>13</sup> James did not testify. The circuit court recited some of the facts presented in the hearing testimony in the court's written decision, and it did not expressly reject any testimony.

¶17 Considering the totality of the objective circumstances, a reasonable person in James's position would not have felt free to terminate the interrogation and leave the scene. The overall context of James's experience was that he was already involuntarily present at the facility, placed there by court order.<sup>14</sup> His placement is somewhat analogous to a person ordered to jail. "[A] person who is incarcerated is *per se* in custody for purposes of *Miranda*." *Armstrong*, 223 Wis. 2d at 353-56 (holding that *Miranda* applies to all custodial interrogations, even where the topic of interrogation is unrelated to the existing custody). While we do not equate James's placement to jail, from the perspective of someone in James's position, he was restricted to the facility grounds by governmental authority and was under constant supervision. Presumably, there would be negative consequences for failure to follow staff instructions.

¶18 James was summoned to the administrative building from another location by facility staff and immediately turned over to a plain clothed, armed

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<sup>13</sup> The remainder of the testimony came from James's county social worker, who was also the State's witness.

<sup>14</sup> The record contains the social worker's disposition report, which details James's placement history vis-à-vis the Tomorrow's Children facility. The history may be relevant to James's involuntariness argument, but appears irrelevant to the objective custody inquiry, as Moadlo testified he did not know what manner of court order led James to be at the facility. See *J.D.B.*, 564 U.S. at 271 (discussing the objective test).

police officer.<sup>15</sup> Detective Mocadlo then told James he wanted to talk and that they were going down to the basement. James was led to a basement office and the door was closed behind him. There is no evidence that the room had any windows. He was never told that he did not need to meet with Mocadlo, or that he could subsequently terminate the interrogation. He was never offered the opportunity to call his parents. Mocadlo told James when the interrogation was done, escorted him back upstairs, and turned him back over to staff. Mocadlo told the staff he “was finished with him.” Upon James’s release to staff, the staff person then granted James permission to leave the building, directing him to another building. James was just a few weeks past his sixteenth birthday.<sup>16</sup>

¶19 On the other hand, Mocadlo did not draw his firearm or handcuff or physically restrain James, and there were no other officers present. Mocadlo also told James during the interview that James could tell him if he did not “care to talk about” a particular question, and they would move on. Mocadlo never expressly told James he was under arrest.<sup>17</sup>

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<sup>15</sup> We note Mocadlo did not go to the facility to investigate an active situation. Rather, he went there knowing James had been identified as the perpetrator of an assault that had occurred forty days prior and had already been investigated and “substantiated” by a social worker.

<sup>16</sup> When asked whether he knew James’s age at the time of the interrogation, Mocadlo responded: “I believe he was 15 or 16, if my memory recalls he was born in April and he would have just, either he was 15 or just turned 16.”

<sup>17</sup> The Supreme Court, however, has observed, “[W]ere the guiding concern clarity and nothing else, the custody test would presumably ask only whether the suspect had been placed under formal arrest. But we have rejected that ‘more easily administered line,’ recognizing that it would simply ‘enable the police to circumvent the constraints on custodial interrogations established by *Miranda*.’” *J.D.B.*, 564 U.S. at 280 (citations omitted).

¶20 Reviewing the facts here, we cannot conclude that a reasonable sixteen-year-old would have felt free to simply terminate the interrogation and depart the closed office, much less return upstairs unescorted or leave the building.<sup>18</sup> If James was expected to know he had any such rights under the circumstances here, then it was incumbent upon Mocadlo to tell him so. Advisements that a suspect is not under arrest and is free to leave “are ‘of substantial importance.’” *Quigley*, 2016 WL 3263943, ¶40 (citations omitted). “Such advisements are ‘not talismanic,’ but they are ‘highly probative[.]’” *Id.* (citations omitted). In reviewing the totality of the circumstances here, we emphasize the Supreme Court’s acknowledgement that “a reasonable child subjected to police questioning will sometimes feel pressured to submit when a reasonable adult would feel free to go.” *J.D.B.*, 564 U.S. at 272.

¶21 The totality of the circumstances suggested James was not free to terminate the law enforcement encounter, and Mocadlo—the adult authority figure who was directing the encounter—did nothing to dispel that notion. To conclude a teenager in James’s circumstances would have felt free to get up and walk away would ignore the reality of the situation. Accordingly, the circuit court erroneously denied the suppression motion. We therefore reverse the dispositional order and direct the circuit court to vacate the delinquency order and James’s admission, and grant James’s suppression motion.

*By the Court.*—Order reversed and cause remanded with directions.

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<sup>18</sup> As noted previously, the State carries the burden of proving James was *not* in custody. See *State v. Armstrong*, 223 Wis. 2d 331, 345, 588 N.W.2d 606 (1999).

This opinion will not be published. See WIS. STAT. RULE  
809.23(1)(b)4.

