100 N.E.3d 246
Supreme Court of Indiana.
D.Z., Appellant (Respondent)
v.
STATE of Indiana, Appellee (Petitioner)
Supreme Court Case No. 18S–JV–295
Filed and Decided: June 20, 2018

Synopsis

Background: The State filed a delinquency petition charging juvenile with criminal mischief and harassment. The Superior Court, Hendricks County, No. 32D03–1704–JD–86, Karen M. Love, J., found juvenile delinquent for committing criminal mischief. Juvenile appealed. The Court of Appeals, 96 N.E.3d 595, reversed. The State filed a petition to transfer.
Holdings: The Supreme Court, Rush, C.J., held that:
1 assistant principal was not acting as an agent of police when he interviewed student, and
2 evidence was sufficient to support adjudication of delinquency.
Trial court affirmed.

West Headnotes (7)Collapse West Headnotes

Change View

1**Infants**

Warnings and counsel; waivers

When police officers are not present in a student suspect's interview in a school setting, students are neither in custody nor under interrogation, for *Miranda* purposes, unless school officials are acting as agents of the police.

1 Case that cites this headnote

2**Infants**

Warnings and counsel; waivers

Assistant principal was not acting as an agent of police when he interviewed student suspected of placing graffiti on school bathroom walls, and thus *Miranda* warnings were not required and the student's incriminating statements were admissible in delinquency proceeding; school resource officer was not in the room when assistant principal spoke with student, there was no evidence officer directed or encouraged assistant principal to act on his behalf, and the fact that officer interviewed student after assistant principal spoke with student did not indicate an agency relationship.

3**Criminal Law**

Custodial interrogation in general

The premise of *Miranda* is that the interaction of custody and official interrogation creates the danger of coercion.

4**Infants**

Photographs

Infants

Documentary evidence and reports

The trial court's admission of three photographs, which were pulled from the school's surveillance system, which depicted student outside of the graffitied bathrooms, was harmless, even though the photographs violated the best evidence rule as the original surveillance videotape was not preserved, during juvenile delinquency proceeding; school resource officer and assistant principal testified without objection that they independently watched the surveillance videotape and saw that, for two of the bathrooms, juvenile was the only person to go into both of them when they were graffitied, and the testimony was consistent with juvenile's confession. Ind. R. Evid. 1002.

5**Infants**

Photographs

The State laid a proper foundation for admission of five photographs depicting the graffiti in school bathroom, in juvenile delinquency proceeding, where assistant principal, who had seen the graffiti, testified and identified the graffiti in each photograph.

6**Infants**

Particular Offenses, Violations, or Defenses

Evidence was sufficient to support adjudication of delinquency based on the commission of criminal mischief; evidence showed there were five instances of graffiti, for two of them, juvenile was the only person who entered the bathrooms when the graffiti occurred, and juvenile remorsefully admitted that he knew doing the graffiti was wrong.

7**Infants**

Presumptions, inferences, and burden of proof

Under the Supreme Court's standard of review, the Court examines only the probative evidence and reasonable inferences that support the delinquency adjudication.

*247 Appeal from the Hendricks Superior Court, No. 32D03–1704–JD–86, The Honorable Karen M. Love, Judge

On Petition to Transfer from the Indiana Court of Appeals, No. 32A05–1708–JV–1907

Attorneys and Law Firms

ATTORNEY FOR APPELLANT: Jeffery A. Earl, Law Offices of Lewis & Earl, Danville, Indiana

ATTORNEYS FOR APPELLEE: Curtis T. Hill, Jr., Attorney General of Indiana, Ellen H. Meilaender, Supervising Deputy Attorney General, Indianapolis, Indiana

ATTORNEY FOR AMICUS CURIAE, INDIANA SCHOOL BOARDS ASSOCIATION: Kent M. Frandsen, Parr Richey Frandsen Patterson Kruse LLP, Lebanon, Indiana

ATTORNEYS FOR AMICI CURIAE, JUVENILE LAW CENTER; BARTO N CHILD LAW AND POLICY CENTER; EMORY LAW SCHOOL; CENTER FOR CHILDREN'S LAW AND POLICY; CENTER ON WRONGFUL CONVICTIONS OF YOUTH; AND PAUL HOLLAND: Amy E. Karozos, Greenwood, Indiana, Marsha L. Levick, Juvenile Law Center, Philadelphia, Pennsylvania

Opinion

Rush, Chief Justice.

As today's companion opinion *B.A.* holds, *Miranda* warnings protect students—no less than adults at a school—when police place them under custodial interrogation. Custodial interrogation, though, requires police involvement. So when school officials alone meet with students, a clear rule governs: *Miranda* warnings are not required.

Here, only an assistant principal interviewed D.Z., so *Miranda* warnings were not required. We also find no reversible evidentiary error and that sufficient evidence supports D.Z.'s criminal-mischief adjudication, so we affirm the juvenile court.

Facts and Procedural History

In early March 2017, sexual graffiti on boys-bathroom walls at Brownsburg High School prompted a school investigation. Assistant Principal Demetrius Dowler soon enlisted school resource officer Nathan Flynn's help finding a suspect. From surveillance video, they pinpointed seventeen-year-old D.Z.

Assistant Principal Dowler called D.Z. into his office for a closed-door discussion. With only the two of them in the room, Dowler detailed his investigation and said that he knew D.Z. was the culprit. D.Z. remorsefully responded that he didn't know why he did it, that he knew it was wrong, and that he didn't have anything against the girls named in the graffiti.

Assistant Principal Dowler suspended D.Z. for five days and told Officer Flynn of D.Z.'s confession. Flynn then went into Dowler's office to talk to D.Z., who again confessed. At the end of that conversation, Flynn told D.Z. that he was being charged with a crime.

The next month, the State filed a delinquency petition alleging that D.Z. committed criminal mischief and harassment. At the factfinding hearing, the parties agreed that D.Z.'s incriminating statements to Officer Flynn should be suppressed since D.Z. was never Mirandized. But they disagreed *248 about the earlier statements to Assistant Principal Dowler. The juvenile court admitted them over D.Z.'s objection.

At the end of the hearing, the court found that the State failed to prove harassment, but that D.Z. had committed criminal mischief, a Class B misdemeanor if committed by an adult.

D.Z. appealed, challenging (1) the admission of his statements to Assistant Principal Dowler, (2) the admission of photos pulled from surveillance video, (3) the admission of photos of the graffiti, and (4) the sufficiency of the evidence supporting the criminal-mischief finding.

The Court of Appeals reversed in a split opinion, addressing only the admission of D.Z.'s incriminating statements to Assistant Principal Dowler. *D.Z. v. State*, 96 N.E.3d 595, 599–603 (Ind. Ct. App. 2018). The majority first described a modern school-discipline focus on criminal charges—a point that Judge Baker emphasized in a separate concurrence. *Id.* at 599–602 (majority opinion); 604 (Baker, J., concurring). It then found that the statements should have been suppressed because D.Z. was under custodial interrogation. *Id.* at 602 (majority opinion).

Judge Brown dissented. *Id.* at 604–06 (Brown, J., dissenting). She would have affirmed because Officer Flynn was not present for D.Z.'s interview with Dowler and because no evidence showed that Dowler was an agent of the police. *Id.*

We granted the State's petition to transfer, vacating the Court of Appeals opinion. Ind. Appellate Rule 58(A).

Standard of Review

Whether D.Z. was under custodial interrogation is an issue of law reviewed de novo. *See B.A. v. State*, No. 49S02-1709-JV-567, —— N.E.3d ——, slip op. at 4, 2018 WL 3045662 (Ind. June 20, 2018). That issue dictates whether the juvenile court abused its discretion in admitting D.Z.'s statements to Assistant Principal Dowler. *See id.*

Discussion and Decision

I. D.Z. was not under custodial interrogation.

In today's companion opinion *B.A. v. State*, we explore how *Miranda* and its custodial interrogation test apply in today's schools. *B.A.*, slip op. at 5–11, —— N.E.3d at —— – ——. As we explain there, when police officers are present at and involved in a suspect's interview, the custody and interrogation analyses are fact-specific and can result in close calls. *Id.* at 9–11, —— N.E.3d at —— – ——.

1But when police officers aren't present, a clear rule applies: students are neither in custody nor under interrogation, unless school officials are acting as agents of the police. *Id.*; *see also Ritchie v. State*, 875 N.E.2d 706, 717 (Ind. 2007) ("[C]ivilians conducting their own investigation need not give *Miranda* warnings.").

2Here, unlike in *B.A.*, the clear rule governs; Officer Flynn was not in the room when Assistant Principal Dowler talked with D.Z. So D.Z. was entitled to *Miranda* warnings only if Dowler was an agent of the police. *See* *Sears v. State*, 668 N.E.2d 662, 668 (Ind. 1996) ("The police ... cannot avoid their duty under *Miranda* by attempting to have someone act as their agent in order to bypass the *Miranda* requirements."), *overruled on other grounds by* *Scisney v. State*, 701 N.E.2d 847, 848–49 (Ind. 1998).
"There must be some evidence of an agency relationship" before we can find one. *Sears*, 668 N.E.2d at 669. But as Judge Brown explained in her dissent, no evidence suggests that police directed or encouraged Assistant Principal Dowler to act on their behalf. *See* *249 *D.Z.*, 96 N.E.3d at 604–06 (Brown, J., dissenting); *see also* *Resnover v. State*, 460 N.E.2d 922, 933 (Ind. 1984). Quite the reverse; Dowler asked Officer Flynn—the only officer mentioned in the record—to help with his ongoing school investigation. And while Dowler did share D.Z.'s confession with Officer Flynn, the focus was not on criminal charges but on finding out who was doing the graffiti.
Nor does Officer Flynn's interview with D.Z. show an agency relationship simply because it came on the heels of Dowler's interview. Yes, Officer Flynn knew during his investigation that criminal charges were possible. And he did tell D.Z. at the end of his interview that criminal charges were coming. But that is not enough to show that Dowler's interview was pretextual priming for Officer Flynn's interrogation. *Contra* *D.Z.*, 96 N.E.3d at 603.
3Assistant Principal Dowler thus was not acting as an agent of the police. But even if he had been, *Miranda* warnings wouldn't be required here. *Miranda*'s premise is that "the interaction of custody and official interrogation" creates the danger of coercion. *Illinois v. Perkins*, 496 U.S. 292, 297, 110 S.Ct. 2394, 110 L.Ed.2d 243 (1990). Since that coercion "is determined from the perspective of the suspect," an agency relationship implicates *Miranda* only if the suspect is aware enough of the underlying police involvement to create a "coercive atmosphere." *Id.* at 296, 110 S.Ct. 2394; *Ritchie*, 875 N.E.2d at 717 (recognizing that the "essential ingredients" of a coercive atmosphere are absent when the suspect "speaks freely to someone whom he believes is not an officer"). Here no evidence shows that D.Z. even knew that Assistant Principal Dowler had talked to Officer Flynn.
For these reasons, the juvenile court correctly denied D.Z.'s motion to suppress his incriminating statements to Assistant Principal Dowler.
II. The admission of photos was not reversible error; sufficient evidence supports D.Z.'s criminal-mischief adjudication.
Because the Court of Appeals reversed the juvenile court on *Miranda* grounds, it did not address D.Z.'s three other appellate arguments. D.Z. also challenges the admission of two sets of photos and the sufficiency of the evidence supporting his criminal-mischief adjudication.
4D.Z. first challenges the admission of three photos—pulled from the school's surveillance video—of him outside graffitied bathrooms. He argues that the State failed to lay their foundation and that their admission violated Indiana Evidence Rule 1002's best evidence rule.[1] We find that any errors were harmless.
While the original video wasn't preserved, both Officer Flynn and Assistant Principal Dowler testified without objection that they independently watched it and saw that, for two of the bathrooms, D.Z. was the only person to go into both of them when they were graffitied. That testimony meshes with D.Z.'s confession—D.Z. remorsefully told Dowler that he didn't know why he did the graffiti, that he knew it was wrong, and that he didn't have anything against the girls named. The photos were thus cumulative of other substantial evidence, so any error in their admission was harmless. *See* *McCallister v. State*, 91 N.E.3d 554, 562–63 (Ind. 2018).
*250 5D.Z.'s next argument is that the State failed to lay a proper foundation for five photos of the graffiti. He correctly notes that Officer Flynn couldn't lay a full foundation for at least four of the photos since he hadn't seen the graffiti itself. *See* *Shelton v. State*, 490 N.E.2d 738, 742 (Ind. 1986) ("A witness's testimony that the picture is a true and accurate representation of the evidence portrayed is the foundation [required for] the admission of a photograph."). But Assistant Principal Dowler **did** see the graffiti and identified it in each photo, filling the cracks in the photos' initial foundation. *See* *Torres v. State*, 442 N.E.2d 1021, 1024–25 (Ind. 1982).
67D.Z.'s final argument is that insufficient evidence supports his criminal-mischief adjudication. Under our standard of review, "we examine only 'the probative evidence and reasonable inferences' that support the verdict." *Lock v. State*, 971 N.E.2d 71, 74 (Ind. 2012) (quoting *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007)). Here, the evidence shows five instances of graffiti. For two of them, D.Z. was the only person who

could've done both. Plus, D.Z. remorsefully admitted that he knew doing the graffiti was wrong. These facts and their reasonable inferences sufficiently support the juvenile court's delinquency adjudication.

Conclusion

D.Z. was not entitled to *Miranda* warnings since he was interviewed only by a school official—not by police. He also cannot prevail on his evidentiary and sufficiency of the evidence challenges. We thus affirm his criminal-mischief adjudication.

David, Massa, Slaughter, and Goff, JJ., concur.

All Citations

100 N.E.3d 246, 355 Ed. Law Rep. 1232

Footnotes

1

D.Z.'s arguments cue interesting questions about silent witness foundation, whether photos pulled from a video are "duplicates," and the interaction between Indiana Rules of Evidence 1003 and 1004. Because the answers would not affect the outcome here, we leave them for another case.

End of Document