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IN THE
COURT OF APPEALS OF INDIANA

A.B.,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 49A04-1010-JV-668
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE MARION SUPERIOR COURT - JUVENILE DIVISION
The Honorable Gary Chavers, Judge Pro Tempore
The Honorable Scott B. Stowers, Magistrate
Cause No. 49D09-1003-JD-554

May 19, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

A police officer initiated a traffic stop when he saw two males on a scooter turning left without signaling. A.B., a juvenile, was the passenger. When the officer asked the driver and A.B. who owned the scooter, A.B. claimed it was his. The officer arrested A.B. when a computer check of the scooter's vehicle identification number revealed that it had been reported stolen. After A.B. was arrested, another officer performed a pat-down search and found hydrocodone and marijuana in his pockets.

A.B. appeals his juvenile delinquency adjudication for what would be Class D felony possession of a controlled substance and Class A misdemeanor possession of marijuana if committed by an adult. He contends that the juvenile court abused its discretion by admitting evidence of the contraband found during the pat-down search. Specifically, he argues that he was not given *Miranda* warnings or the protections of Indiana's juvenile waiver of rights statute before the officer subjected him to a custodial interrogation. A.B. continues that his unlawfully-obtained statement claiming ownership tainted his arrest and subsequent search. Because A.B. was not in custody and was therefore not entitled to *Miranda* warnings or the protections of our juvenile waiver statute, we conclude that the juvenile court did not abuse its discretion by admitting evidence of the contraband. We affirm.

Facts and Procedural History

In February 2010, Officer John Walters of the Indianapolis Metropolitan Police Department saw two males on a scooter on westbound Saint Clair Street turning left onto southbound North LaSalle Street. Because the driver of the scooter failed to use a turn

signal, Officer Walters initiated a traffic stop. Officer Walters asked both individuals for identification and asked them to step off the scooter so he could obtain the vehicle identification number (VIN). The driver provided a probation identification card, and the passenger identified himself as A.B. When Officer Walters asked about the ownership of the scooter, A.B. claimed ownership. After obtaining the VIN, Officer Walters returned to his vehicle and ran the VIN and the identifying information given to him by A.B. and the driver. The scooter came back reported as stolen. Officer Walters placed A.B. under arrest.

Officer Francisco Olmos arrived to assist Officer Walters. During a pat-down search of A.B., Officer Olmos found two oval pills in a cigarette pack in one pocket and a baggie containing a green leafy substance in another pocket. The substances were later determined to be 1.42 grams of marijuana and two hydrocodone pills.

The State filed a delinquency petition alleging that A.B. had committed what would be Class D felony receiving stolen property, Class D felony possession of a controlled substance, and Class A misdemeanor possession of marijuana if committed by an adult.

At the denial hearing, Officer Walters testified that he asked the driver and A.B. who owned the scooter because he wanted to know who to get the registration documents from. A.B. objected to the admission of his statement claiming ownership on grounds that he was in custody and had not been advised of his rights. The juvenile court agreed that A.B. was in custody and sustained the objection. During Officer Olmos's testimony,

A.B. moved to suppress evidence found during the pat-down search as fruit of the poisonous tree. The juvenile court denied the motion:

> [A.B.] was on a piece of property the officers had reason to believe was stolen, in fact they verified that it was stolen and the search incident to the arrest accordingly, I don't see what they are supposed to do other than search anybody that they arrest. Therefore the motion to suppress will be denied.

Tr. p. 24. After the State rested, A.B. moved for involuntary dismissal of all three allegations. The State conceded that it had not presented sufficient evidence on the allegation of receiving stolen property but argued that it met its burden on the remaining two allegations. The juvenile court granted the involuntary dismissal motion only as to the receiving stolen property allegation. The court entered true findings for possession of a controlled substance and possession of marijuana.

A.B. now appeals.

Discussion and Decision

A.B. contends that the juvenile court abused its discretion by admitting evidence of the hydrocodone and marijuana found during the pat-down search.

Although A.B. initially challenged the admission of this evidence through a motion to suppress, he is now appealing following a completed trial. Our standard of review is thus whether the juvenile court abused its discretion by admitting the evidence at trial. *A.M. v. State*, 891 N.E.2d 146, 148 (Ind. Ct. App. 2008), *trans. denied*. The standard is essentially the same whether the challenge is made by a pretrial motion to suppress or by trial objection. *Id.* at 149. We do not reweigh the evidence, and we consider conflicting evidence most favorable to the trial court's ruling. *Id.* We will

affirm the trial court's ruling if it is supported by substantial evidence of probative value. *Id.*; *see also Alford v. State*, 699 N.E.2d 247, 250 (Ind. 1998) ("Although the trial court's reason for admitting the confession was erroneous, we will affirm the judgment of the trial court if it is sustainable on any legal grounds apparent in the record.").

A.B. argues that he was not given his *Miranda* warnings or an opportunity for meaningful consultation with a parent as required by Indiana's juvenile waiver of rights statute before Officer Walters subjected him to a custodial interrogation by asking who owned the scooter. A.B. continues, "[H]ad the officer not subjected A.B. to an unlawful interrogation while in custody, the arrest and subsequent search would never have taken place. Therefore, the fruits of the search incident to arrest also should have been suppressed." Appellant's Br. p. 7.

Pursuant to the United States Supreme Court's decision in *Miranda v. Arizona*, 384 U.S. 436 (1966), when law enforcement officers question a person who has been taken into custody or otherwise deprived of his freedom of action in any significant way, the person must first be warned that he has a right to remain silent, that any statement he makes may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. *Luna v. State*, 788 N.E.2d 832, 833 (Ind. 2003) (citing *Miranda*, 384 U.S. at 444). Further, in the context of waiving intricate, important, and long established Fifth and Sixth Amendment rights, we require that a juvenile be afforded a meaningful opportunity to consult with a parent or guardian before the solicitation of any statement. *S.D. v. State*, 937 N.E.2d 425, 429 (Ind. Ct. App. 2010), *trans. denied*; *see* Ind. Code § 31-32-5-1 (juvenile waiver of rights statute).

As a general rule, however, when a juvenile who is not in custody gives a statement to police, neither the safeguards of *Miranda* warnings nor the juvenile waiver of rights statute is implicated. *C.L.M. v. State*, 874 N.E.2d 386, 390 (Ind. Ct. App. 2007). A person temporarily detained during an ordinary traffic stop is not "in custody" for purposes of *Miranda*. *Berkemer v. McCarty*, 468 U.S. 420, 440 (1984); *Lockett v. State*, 747 N.E.2d 539, 543 (Ind. 2001), *reh'g denied*.

Officer Walters initiated a traffic stop when he saw the driver of the scooter turn left without signaling. He asked the driver and A.B. for identification and asked them to step off the scooter so he could obtain the VIN. He asked who owned the scooter so he could ask the owner for registration documents. He then completed a computer check of the VIN and the driver's and A.B.'s identifying information. The evidence shows that this was an ordinary traffic stop. A.B. was not in custody when Officer Walters asked who owned the scooter. *See Lockett*, 747 N.E.2d at 543 (defendant not in custody where officer initiated traffic stop believing defendant may be impaired, had defendant exit car, and asked defendant for identification and whether he had any weapons). Therefore, he was not entitled to *Miranda* warnings or the protections of our juvenile waiver statute. Because A.B.'s statement claiming ownership was not unlawfully obtained, his argument that the alleged illegality tainted his arrest and subsequent search fails.

We conclude that the juvenile court did not abuse its discretion by admitting evidence of the hydrocodone and marijuana found during the pat-down search.

Affirmed.

KIRSCH, J., and MATHIAS, J., concur.