In re I.F.

(2018) __ Cal.App.5th __ [2018 WL 1008136]

Issue

Did officers violate the *Miranda* rights of a 12-year old murder suspect?

Facts

The minor in this case, 12-year old I.F., was charged in Calaveras County with murdering his 8-year old sister by stabbing her 22 times. The murder occurred in his sister's bedroom
while the other members of the family were attending a Little League game. I.F. phoned his mother and then 911 saying that an unknown man had stabbed his sister "a bunch of times, she's like dead." I.F.'s father was the first to arrive and, as he approached the girl, the only injury he could see was a cut over her forehead. It was only when he lifted her shirt that he could see the stab wounds. She was transported to a hospital but she was already dead.

THE FIRST INTERVIEW: A sheriff's detective spoke with I.F. outside the hospital's emergency room and obtained a description of the "man." I.F. also said that when he saw the man running away, he grabbed a kitchen knife "just in case there's anyone there," and that he later put the knife on the kitchen counter. (It was later determined that the knife blade was "damaged" and that there were traces of I.F.'s sister's blood it and on I.F.'s sneakers.) After making it clear to I.F. that he was not "in trouble" and that he did not have to speak with him, the detective asked, "Did you do anything to harm your sister?" I.F. said no. The interview lasted 16 minutes.

THE SECOND INTERVIEW: Later that day, I.F.'s father drove him to the district attorney's office where the same detective questioned him in an interview room located in a portable trailer. Both doors to the interview room were open. At the beginning of the interview (all of the interviews were recorded) the detective informed I.F. that he wanted to talk to him "as a witness," that I.F. did not have to say anything, and that he could "walk out" any time he wanted. During the subsequent interview, which lasted 77 minutes, I.F. made it clear that he never entered his sister's bedroom and that he observed her body from the doorway.

THE THIRD INTERVIEW: The third interview was conducted two days later in the DA's interview room by two other sheriff's detectives. The doors were closed. The first 40 minutes of the 84-minute interview were described as "non-confrontational," but they were also unproductive. The following is a highly-edited summary of what was said:

- Detective 1 told I.F. "[t]here's a couple things that we know and that we, I think maybe you, you've forgotten and I can understand that cuz this is a really big thing right?"
- Detective 2 told I.F that he would be able to leave with his family when the interview had concluded.
- Detective 1 confronted I.F.: "There is no man that ran out of that house is there?" I.F. responded, "Yeah there is. I saw him."
- The two detectives said, "in empathetic tones, that they had both made mistakes as young people which had been forgiven."
- Detective 2 told I.F. that he felt that I.F. was holding back, that there was "something on your mind."

- Because I.F. told the 911 operator that his sister had been "stabbed," and because the only injury that would have been visible to him as he stood outside her bedroom was a cut over her forehead, Detective 1 asked him how he had been able to determine she had been stabbed. I.F. responded, "I don't know. I could have seen it I guess."
- I.F. and the other members of his family provided DNA samples.
- Both detectives "intimated" that investigators had obtained DNA evidence that proved I.F. was the killer.

THE FOURTH INTERVIEW: The fourth interview was conducted two weeks later by a sheriff's detective and an FBI agent.

- The detective "outlined the evidence against I.F." and said that investigators had obtained "a lot of evidence" indicating that he did not tell the truth about seeing a man flee the house.
- I.F. was shown a photograph of a bloody T-shirt that had been found inside I.F.'s clothes hamper. I.F. admitted that he had worn the shirt on the day of the murder, adding "I could have changed I guess I don't remember," and "I probably changed after I see her or something."
- When asked if he wanted to continue the interview, I.F. said no, but his father insisted that he answer additional questions because "we need to find out what happened."
- I.F.'s father told him that the investigators "have evidence that it points back to you" so "just tell him yes you did it and what the deal is."
- When the FBI agent told I.F. that his parents "want to know what happened" to his sister, I.F. replied, "I don't remember doing it. But I guess I did, I don't know."

After I.F. was charged with murder in juvenile court, his attorney filed a motion to suppress all of his statements on grounds that they were obtained in violation of his *Miranda*. The judge denied the motion and, at the conclusion of the jurisdictional hearing, affirmed the murder petition. I.F. was sentenced to 16-years to life.

Discussion

The main issue on appeal was whether I.F. had been "in custody" for *Miranda* purposes at any point and, if so, when it occurred. The law is settled that a minor, like an adult, is "in custody" for *Miranda* purposes if a reasonable person in his position would have believed that his freedom of action had been curtailed to the degree associated with a formal arrest.[1] Although the circumstances that are relevant in making this determination are the same regardless of whether the suspect was a minor or an adult, in juvenile court proceedings the courts must evaluate them in light of the minor's age and his experience, if any, with the criminal justice system.[2] In this regard, the court noted that I.F. was only 12-years old and that he had a clean record and was not a "seasoned

[1] See *Berkemer v. McCarty* (1984) 468 U.S. 420, 440; *People v. Stansbury* (1995) 9 Cal.4th 824, 830 [the issue is "whether a reasonable person in the defendant's position would have felt he or she was in custody"].

[2] See *J.D.B. v. North Carolina* (2011) 564 U.S. 261, 272 ["a reasonable child subjected to police questioning will sometimes feel pressured to submit when a reasonable adult would feel free to go"].

juvenile delinquent." The court noted that the following circumstances are almost always significant in determining whether a suspect was in custody:

LOCATION OF THE INTERVIEW: The location of the interview is important because some places such as government buildings (and especially police stations) are heavily secured and are seldom viewed as "friendly" places.

TONE OF THE INTERVIEW: An interview is more apt to be deemed custodial if it was accusatory as opposed to investigative, meaning the apparent purpose of the interview was to simply learn what happened as opposed to obtaining an incriminating statement.[3]

"YOU'RE FREE TO LEAVE": Telling a suspect that he was not under arrest and was free to leave has been described as "[t]he most obvious and effective means of demonstrating that a suspect has not been taken into custody,"[4] and "powerful evidence" of this.[5]

UNIFORMS, WEAPONS: Especially if the suspect was a minor, the courts often note whether the officers were in uniform and whether their weapons were in plain view. Here, the investigators wore plain clothes or regulation polo shirts, except the detectives who conducted the third interview who wore uniforms.

LENGTH OF INTERVIEW: The duration of the interview is also relevant.[6] While it is seldom important when the suspect was an adult, it may become more significant if the suspect was a minor, especially a younger minor.

With these circumstances in mind, the court examined the circumstances surrounding the interviews with I.F.

The first interview

It was apparent that I.F. was not in custody when he was briefly questioned outside the emergency room. As the court explained, "where the interview was conducted in the relatively public setting of the entrance to the emergency room, with people coming and going, a reasonable 12 year old subject to non-confrontational questioning by a single officer would feel free to terminate the interview and leave."

The second interview

Although the location of the second interview was the DA's interview room, and although it lasted 77 minutes, the court ruled it was not custodial because (1) I.F. was repeatedly informed that he was not under arrest and that he could leave whenever he wanted; (2) the detective's tone was "professional and appropriate," and (3) the detective's questions were aimed at obtaining information, not incriminating evidence. Said the court, "Although some of the questions may have caused a reasonable child to experience momentary embarrassment, they would not have caused such a child to

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[3] See *Yarborough v. Alvarado* (2004) 541 U.S. 652, 664 ["Instead of pressuring Alvarado with the threat of arrest and prosecution, she appealed to his interest in telling the truth and being helpful to a police officer."].

[4] *U.S. v. Boslau* (8th Cir. 2011) 632 F.3d 422, 428. Also see *U.S. v. Crawford* (9th Cir. en banc 2004) 372 F.3d 1048, 1060 ["[p]erhaps most significant for resolving the question of custody"]; *People v. Aguilera* (1996) 51 Cal.App.4th 1151, 1162-64, fn.7.

[5] *U.S. v. Czichray* (8th Cir. 2004) 378 F.3d 822, 826.

[6] See *California v. Beheler* (1983) 463 U.S. 1121, 1122; *Yarborough v. Alvarado* (2004) 541 U.S. 652, 665; *Green v. Superior Court* (1985) 40 Cal.3d 126, 135.

experience a restraint on freedom tantamount to an arrest." The court also noted that an attempt had been made to make the interview less intimidating by putting posters of classic motion pictures on the walls. (The court indicated that the attempt would have been more effective if the posters had been more "kid friendly.")

The third and fourth interviews

It is not necessary to discuss separately the circumstances and tone of the third and fourth interviews because they were so similar. They were both rather lengthy: the third interview lasted 84 minutes and the fourth interview lasted about two hours. More important, an obvious change in the atmosphere occurred in the course of the third interview and continued into the fourth. Specifically, while the first and second interviews were investigatory in nature, the third and fourth interviews became accusatory. For example, during the third interview I.F. was asked, "There is no man that ran out of that house is there?" And in the fourth interview he was informed that investigators had obtained "a lot of evidence" indicating that he did not tell the truth about seeing a man flee the house.

Even more important, in both interviews I.F. was confronted with evidence of his guilt. In the third interview, he was reminded that he had told the 911 operator that his sister had been "stabbed" but, as noted, he could not have known that if, as he claimed, he had never entered his sister's bedroom. When asked to explain how he determined that his sister had been stabbed, I.F. responded, "I don't know. I could have seen it I guess." This same point was made during the fourth interview when I.F. was shown a photograph of the bloody T-shirt he had admitted wearing on the day of the murder. Finally, although the investigators were "polite and friendly" and although they told I.F. that he was free to leave, at one point he was told that he could leave "when the interview was over." This was problematic, said the court, because it would have indicated to him that, until then, he was not free to leave.

For these reasons, the court ruled that "the third and fourth interviews were custodial and that they should have been suppressed. Consequently, it remanded the case to the juvenile court with instructions to conduct a new adjudication hearing.

COMMENTS

As we discussed in the Winter 2018 edition and on Point of View Online, officers in California are now effectively prohibited from questioning minors who are 15-years old or younger if they were "in custody" for *Miranda* purposes. Although the new law was not in effect when I.F.'s sister was murdered, the case is nevertheless timely and useful because it addresses the things that officers must do (and avoid doing) in order to prevent interviews with minors from becoming custodial.

Four other things should be noted. First, the court's analysis of this issue was fair and, we believe, accurate.[7] Second, in addition to being a tragic and emotional case, the investigators were hampered by I.F.'s parents who demanded control over when and how their son would be interviewed. For example, at one point I.F.'s father said he would permit the investigators to interview his son "only on the condition that he be the one to confront I.F." and, during the fourth interview, he told I.F. to cooperate "no less than seventeen times." Said the court, "[T]here is no reason the presence of a parent could not contribute to the creation of a coercive atmosphere, as [the father's] presence did here."

[7] Compare *In re Elias J.* (2015) 237 Cal.App.4th 568.

Third, it was apparent that the investigators who questioned I.F. understood that they were on shaky ground during the third and fourth interviews, as demonstrated by their repeated (and prudent) statements to I.F. that he was free to leave at any time, and also by the restrained and sympathetic manner in which they questioned him. But as sometimes happens—especially in extremely serious cases—they were eventually forced to choose between terminating the interview (and never knowing exactly what happened) and going forward in hopes that they can prevent the interview from becoming custodial. As I.F. demonstrates, this is sometimes impossible. Fourth, if I.F. is retried, there is a good chance that prosecutors will be able prove his guilt based on the bloody t-shirt and sneakers, along with some of the things I.F. said during the first and second interviews.

Finally, in another recent case, *People v. Saldana*,[8] the court ruled suppressed the confession of a 58-year old suspect for the same reasons as in *I.F.* The crux of the court's ruling was as follows: "[W]hen police create an atmosphere equivalent to that of formal arrest by questioning a suspect who is isolated behind closed doors in a police station interrogation room, by repeatedly dismissing his denials and telling him at the outset he is free to leave—when all the objective circumstances later are to the contrary—*Miranda* is triggered." POV

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[8] 19 Cal.App.5th 432.