UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1432

September Term, 2013

IN RE: MICHAEL C.

Krauser, C.J.,
Zarnoch,
Reed,

JJ.

Opinion by Krauser, C.J.

Filed: January 26, 2015

Found by the Circuit Court for Prince George's County, Maryland, to be involved in the offense of carrying a dangerous weapon and possessing a deadly weapon on the grounds of a public school, appellant, Michael C., contends that the circuit court erred in denying his motion to suppress a statement he made, as well as a kitchen knife found on his person on school property. Finding no error, we affirm.

ADJUDICATION HEARING

At the hearing below, there was no dispute that Officer Aisha Shelton, a police investigator assigned to the Prince George's County Public Schools, was working at Oxon Hill High School on January 22, 2013, a school day, when she was advised over the police radio that two students were entering the side door of the school building while school was in session. School policy provided that students were required to enter the school through the front door and to do so before school started. At the side door, Officer Shelton was met by her assistant and two students, one of whom was appellant, who smelled of marijuana. Concerned for appellant's "safety," and wishing to speak with the two students, the officer took appellant and the other unidentified student to a school office.

When Officer Shelton testified that once they were in the office, she asked appellant whether he was in possession of anything on school property. Defense counsel objected and moved to suppress appellant's response as he claimed that it was obtained in violation of *Miranda v. Arizona*, 384 U.S. 436 (1966). The State responded that appellant was not in custody but had been taken to the office for his safety because he smelled of marijuana. The

court agreed with the State, overruled defense counsel's objection, and denied the motion. Whereupon, Officer Shelton testified as follows:

> Mr. C definitely, he volunteered and stated to me that he was in possession, he had on [a] wool coat, to my understanding he was in possession of a kitchen knife.

After appellant turned over the knife, Shelton took him to her office to complete certain administrative procedures and to read appellant his *Miranda* rights. Although not entirely clear "when," appellant, at some point, asked for an attorney.

After the defense motion for judgment of "not involved" was denied, appellant testified on his own behalf. He stated that, on the day in question, when he arrived at school late, he was stopped because he had a strong "odor" about his person. He was then taken by Officer Shelton to a small office, about the size of a closet, and there, was asked if he had anything on his person. He replied that he did not. When asked at trial if he felt at that time that he was under arrest, he responded that he did not.[1] But he did explain that he was in possession of the knife in question because, over the Dr. Martin Luther King, Jr., holiday, he had used it to "split my cigarillo," and had forgotten that it was still on his person.

After hearing argument, the court ruled as follows:

> You know there are some things that I didn't have, but you were such [sic] eager to get on the stand and tell me everything. Yes, I want to testify. Your lawyer told you you had an absolute right to sit there and not say

[1] The court initially sustained an objection to the question asking appellant if he thought he was under arrest, but, after appellant replied "No," the court changed its ruling and denied a motion to strike that answer.

anything and he told you I could not hold that against you. To tell me that you have a knife on you over the week of Dr. King's birthday because you had to go and cut open your cigarillo and then you tell me you're stopped in the hallway, yes, because Officer Farmer said I smelled, I had a strong odor. Yes, I had an odor, yes, I pulled out a kitchen knife. She asked me whether or not I felt like I was under arrest and couldn't leave. No.

The Court will find that the State has proven beyond a reasonable doubt that the respondent did carry a dangerous weapon, to-wit a kitchen knife on or about his person on 1/22/13. In addition to that, I don't buy the story of the young man that he cut open a cigarillo. He cut open a cigarillo where, at home in his kitchen and then put the knife on his person? A kitchen knife on his person? It doesn't make sense.

I find the testimony completely incredible and the Court will find that the respondent possessed a deadly weapon to-wit, a kitchen knife on school property in violation of Criminal Law Article 4-102 and the Court will find that the State has proven that offense beyond a reasonable doubt.

DISCUSSION

Appellant maintains that he was in custody when Officer Shelton asked him whether he possessed anything on school grounds, and this question was part of an unlawful custodial interrogation as no *Miranda* advisements had been given. Thus the court erred, appellant contends, in denying his motion to suppress his admission and the knife. We disagree, as we conclude that appellant was not in custody when he admitted that he possessed a knife on school grounds.[2]

[2] Having reached this conclusion, we need not address the State's alternative argument that, because there was no evidence that appellant's statement was involuntary, the fruit of that statement, *i.e.*, the knife, was properly admitted into evidence.

A respondent in juvenile proceedings may move to suppress evidence at his or her merits hearing. *See In re Victor B.*, 336 Md. 85, 96 (1994). Moreover, as in an adult proceeding, "[t]he factual findings of the suppression court and its conclusions regarding the credibility of testimony are accepted unless clearly erroneous. Furthermore, we review the evidence and the inferences that may be reasonably drawn in the light most favorable to the prevailing party." *In re Darryl P.*, 211 Md. App. 112, 164 (2013) (quoting *Rush v. State*, 403 Md. 68, 82-83 (2008) (emphasis omitted)).

While acknowledging that "[a]ny police interview of an individual suspected of a crime has "coercive aspects to it." In *Oregon v. Mathiason*, 429 U.S. 492, 495 (1977) (per curiam), the Supreme Court declared that "only those interrogations that occur while a suspect is in police custody, . . . 'heighte[n] the risk' that statements obtained are not the product of the suspect's free choice." *J.D.B. v. North Carolina*, 131 S. Ct. 2394, 2401 (2011) (quoting *Dickerson v. United States*, 530 U.S. 428, 435 (2000)). Because of this risk, the Court in *Miranda v. Arizona*, 384 U.S. 436 (1966) held that, prior to questioning, a suspect "must 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." *Miranda*, 384 U.S. at 444. If a suspect makes a statement during custodial interrogation, it is the Government's burden to show, "as a 'prerequisit[e]' to the statement's admissibility as evidence in the Government's case in chief, that the

defendant 'voluntarily, knowingly and intelligently' waived his rights." *J.D.B. v. North Carolina*, 131 S. Ct. at 2401) (citing *Miranda*, 384 U.S., at 444, 475-476).

There is no dispute that Officer Shelton's question in which she asked appellant if he had anything in his possession was an interrogation. *See Prioleau v. State*, 411 Md. 629, 646 (2009) ("[T]he term 'interrogation' under *Miranda* refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect") (quoting *Rhode Island v. Innis*, 446 U.S. 291, 300-02 (1980)). That leaves us with only the question of whether appellant was in custody at the time Officer Shelton asked that question.

In addressing that issue, the Supreme Court has stated that "whether a suspect is 'in custody' is an objective inquiry" implicating two discrete inquiries: "first, what were the circumstances surrounding the interrogation; and second, given those circumstances, would a reasonable person have felt he or she was at liberty to terminate the interrogation and leave." *J.D.B.*, 131 S.Ct. at 2402 (quoting *Thompson v. Keohane*, 516 U.S. 99, 112 (1995) (internal quotation marks, alteration, and footnote omitted)).

To answer these inquiries, we employ the totality of the circumstances test. *See J.D.B.*, 131 S.Ct. at 2402 ("[W]e have required police officers and courts to 'examine all of the circumstances surrounding the interrogation,'including any circumstance that 'would have affected how a reasonable person' in the suspect's position 'would perceive his or her

freedom to leave'") (internal citation omitted); *see also Thomas v. State*, 429 Md. 246, 259-60 (2012) ("The 'totality of the circumstances test' requires a court to examine the events and circumstances before, during, and after the interrogation took place. A court, however, does not parse out individual aspects so that each circumstance is treated as its own totality in the application of the law") (internal citations omitted).

The following factors are relevant in deciding whether a person is in *Miranda* custody:

> when and where it occurred, how long it lasted, how many police were present, what the officers and the defendant said and did, the presence of actual physical restraint on the defendant or things equivalent to actual restraint such as drawn weapons or a guard stationed at the door, and whether the defendant was being questioned as a suspect or as a witness. Facts pertaining to events before the interrogation are also relevant, especially how the defendant got to the place of questioning whether he came completely on his own, in response to a police request or escorted by police officers. Finally, what happened after the interrogation whether the defendant left freely, was detained or arrested may assist the court in determining whether the defendant, as a reasonable person, would have felt free to break off the questioning.

Thomas, 429 Md. at 260-61 (quoting *Owens v. State*, 399 Md. 388, 429 (2007)); *see also J.D.B.*, 131 S. Ct. at 2399 (holding that a child's age is also a factor to consider when determining custody for purposes of *Miranda*).

But, "the 'subjective views harbored by either the interrogating officers or the person being questioned' are irrelevant." *J.D.B.*, 131 S.Ct. at 2402 (citation omitted). Indeed, "[t]he test, in other words, involves no consideration of the 'actual mindset' of the particular suspect subjected to police questioning." *Id.*; *see also Aguilera-Tovar v. State*, 209 Md. App.

97, 109 (2012) ("Because the test is objective, we need be mindful that the subjective views of the officer and suspect are irrelevant").

The facts show that appellant was stopped after he entered Oxon Hill High School, late, and through a side entrance. This violation of school policy prompted Officer Shelton to approach appellant.[3] Officer Shelton then escorted appellant to an office located on school property for his safety and in order to speak with him further. There, appellant's movement was not restricted to the degree associated with a formal arrest, and, in fact, appellant testified that he did not feel he was under arrest at that time. While appellant was alone with Officer Shelton, there is no indication that Shelton coerced appellant, physically restrained him, or searched him prior to the questioning. Moreover, Shelton did not engage in a lengthy interrogation that would have made appellant feel like he was not free to leave but posed a single question asking whether appellant was in possession of anything on school property. Furthermore, although there was no testimony during the merits hearing as to appellant's age, we do know that he was a high school student and that this would have

[3] The Maryland Code of Regulations, requires "[e]ach local school system shall develop a student attendance policy." Md. Code Regs. 13A.08.01.05 ("COMAR"). Pursuant to that regulation, the Prince George's County Schools have created a policy for students reporting late to school, which provides that "students who arrive late to school must report first to the appropriate administrative office to obtain a late pass before being admitted to any classroom or other area of the school[.]" Prince George's County Public Schools, Student Rights & Responsibilities Handbook, p. 11 (2014 - 2015).

been objectively apparent to Officer Shelton.[4] We are persuaded that appellant was not in custody, as that term is understood under *Miranda*.

Further, we find an Illinois appellate court decision, *In re Marquita M.*, 970 N.E.2d 598 (Ill. App. Ct. 2012), *appeal denied*, 979 N.E.2d 878 (Ill. 2012), instructive. In that case, the freshman dean of students at Quincy Junior High School received information that Marquita might be in possession of a weapon on school grounds. *Id.* at 601. The dean and a police liason officer made contact with Marquita, escorted her from class, and then walked her to the dean's office. *Id.* Marquita thereafter admitted that she had a knife on her person. *Id.*

The Illinois appellate court concluded that Marquita was not in custody when she made this admission. *Id.* at 603-04. Marquita, who was 15 years old at that time, was not taken to a police station but was interviewed at the school by one police officer. *Id.* at 603. There was no indication that she was physically restrained in any way. *Id.* No formal booking procedure or search occurred prior to the questioning. *Id.* at 603-04. Furthermore, the questioning was limited in duration and was of an inquisitory nature. *Id.* at 604. Under these circumstances, the Illinois court concluded "a reasonable person in respondent's situation would not have felt she was in police custody during the questioning that took place in [the dean's] office. Thus, no *Miranda* warnings were necessary." *Id.* And, a similar

[4] At the disposition hearing, it was established that appellant was 17 years old at the time of the underlying incident.

conclusion is warranted in this case based on our review of the totality of the circumstances set forth above.

Indeed, numerous other courts have concluded that a student is not in custody under similar circumstances. *See C.S. v. Couch*, 843 F. Supp. 2d 894, 919 (N.D. Ind. 2011) (holding that questioning by school officials did not mean that student was in custody); *State v. Barrett*, 683 So. 2d 331, 339 (La. Ct. App. 1996) (holding student was not in custody either when he was questioned by principal, or when a law enforcement officer asked him how he got to school and where his car was located); *J.D. v. Commonwealth*, 591 S.E.2d 721, 725 (Va. Ct. App. 2004) (concluding that defendant was not in custody when he was interviewed in associate principal's office, even when the school security officer was present, because there was no indication that the student was under arrest or not free to leave); *see also In re Corey L.*, 203 Cal. App. 3d 1020, 1024 (Cal. Ct. App. 1988) ("[S]chool officials need not give *Miranda* warnings before questioning students about suspected violations of school rules or criminal activity on the grounds that this type of inquiry is not a custodial interrogation within the meaning of *Miranda*"); *Commonwealth v. Ira I.*, 791 N.E.2d 894, 902 (Mass. 2003) ("A trip to the principal's office for an interview is not a 'formal arrest,' nor does it suggest to the student that he or she faces such an arrest"); *In re Drolshagen*, 310 S.E.2d 927, 927 (S.C. 1984) ("Merely because the questioning took place in the principal's office, in the presence of police officers, 'did not render it a 'custodial interrogation'") (citations omitted).

In fact, in cases where custody has been found, there have been other factors suggesting that the suspect was not free to leave and was being held under circumstances resembling a formal arrest. *See, e.g., Kalmakoff v. State*, 257 P.3d 108, 123 (Alaska 2011) (concluding fifteen-year-old was in custody after being removed from school and questioned by police officers in a city office); *In re I.J.*, 906 A.2d 249, 262 (D.C. 2006) (holding juvenile resident of a youth center was in custody when he was questioned by a police officer after, in juvenile's presence, school officials found marijuana underneath his bed); *State v. Doe*, 948 P.2d 166, 173-74 (Idaho Ct. App. 1997) (concluding ten-year-old suspect, who was told by school resource officer that he was accused of sexually assaulting a younger girl, was in custody because he was unlikely to believe that he could simply leave the principal's office or stop the interview); *In re K.D.L.*, 700 S.E.2d 766, 772 (N.C. Ct. App. 2010) (holding suspect was in custody after being accused of drug possession, frisked, transported in a police cruiser, and interrogated for six hours); *State v. D.R.*, 930 P.2d 350, 352-53 (Wash. Ct. App. 1997) (concluding suspect in custody because, not only was he not told he was free to leave, but the detective began the interview by telling him that the police already knew he was having intercourse with his own sister).

Furthermore, we conclude that, even if Michael was in custody for purposes of *Miranda* when Officer Shelton asked him if he had anything in his possession, any error was harmless beyond a reasonable doubt. *See State v. Logan*, 394 Md. 378, 388-91 (2006) (applying harmless error analysis to a *Miranda* violation but holding error was not harmless

beyond a reasonable doubt); *see also Bartram v. State*, 33 Md. App. 115, 153 (1976) ("It is, of course, settled law that a *Miranda* error can, indeed, be harmless error."), *aff'd*, 280 Md. 616 (1977); *Cummings v. State*, 27 Md. App. 361, 385 n.5 ("That a *Miranda* violation can be harmless error is not to be doubted."), *cert. denied*, 276 Md. 740 (1975).

The evidence showed that Michael C. entered the high school late, through a side entrance, with the strong odor of marijuana about his person. The smell of marijuana may, under some circumstances, serve as probable cause for an arrest. *See Ford v. State*, 37 Md. App. 373, *cert. denied*, 281 Md. 737 (1977); *see also Bailey v. State*, 412 Md. 349, 376 (2010) ("It is well-established that odor is a valid consideration in the probable cause analysis.") (citation omitted); *Mullaney v. State*, 5 Md. App. 248, 257 (1967) (holding that it was well-settled that "the smell of distinctive odors can constitute evidence of crime and of probable cause"), *cert. denied*, 252 Md. 732 (1969). Even absent Michael's statement concerning his acknowledgment of the knife on his person, any error was harmless in admitting that statement because there was independent probable cause to arrest Michael for the possession of marijuana. Thus, the police could have searched him incident to an arrest and would have found the knife in any event. *See Belote v. State*, 411 Md. 104, 112 (2009) (observing that the police may search a person incident to a lawful custodial arrest); *Leuschner v. State*, 41 Md. App. 423, 428-29 (concluding that, even if hair samples were obtained from appellant after an invalid confession, the samples would have been inevitably discovered based on other evidence in the case), *cert. denied*, 285 Md. 731, *cert. denied*, 444

U.S. 933 (1979); *see also* Md. Code (1978, 2014 Repl. Vol.), § 7-308 (a) of the Education Article (providing that school administrators may search a student where there is a reasonable belief that the student possesses an illegal item); *accord* COMAR 13A.08.01.14.

Ultimately, as the Court of Appeals has recognized:

> [S]tudents in a public school setting, while not shedding their Constitutional rights at the schoolhouse gate, nonetheless have a lesser expectation of privacy than do adults. Simply as unemancipated minors, they lack "some of the most fundamental rights of self-determination." [*Vernonia School District 47J v. Acton*, 515 U.S. 646, 654 (1995).] Although public school officials do not stand entirely *in loco parentis* with respect to the students, they do exercise a "custodial and tutelary" authority that permits "a degree of supervision and control that could not be exercised over free adults" and that cannot be ignored in conducting a "reasonableness" inquiry. *Id.* at 655-65, 115 S.Ct. at 2392, 132 L.Ed.2d at 576.

In re Patrick Y., 358 Md. 50, 59 (2000).

Therefore, given that Michael C. was late, entered Oxon Hill High School through a side entrance, and smelled of marijuana, it was reasonable for Shelton to escort him to an office. At that moment, he was not in custody when Officer Shelton asked him if he had anything in his possession on the school premises. Because his statement was not the product of custodial interrogation, the court properly denied appellant's motion to suppress the statement and the knife.

JUDGMENTS AFFIRMED.
COSTS TO BE PAID BY APPELLANT.