UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1228

September Term, 2015

IN RE: HECTOR S.

Eyler, Deborah S.,
Wright,
Thieme, Raymond G., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Thieme, J.

Filed: July 12, 2016

The State filed a petition in the Circuit Court for Wicomico County alleging that Hector S., a 13-year-old juvenile, was involved in the delinquent acts of second degree assault, reckless endangerment, and discharging an airgun within the city limits of Salisbury, Maryland. At an adjudicatory hearing, the court denied Hector S.'s motion to suppress and found him to be involved on all counts. After he was placed on supervised probation, he timely appealed, asking us to address the following questions:

> 1. Did the juvenile court err in denying Hector S.'s motion to suppress?
>
> 2. Does the record fail to establish that the juvenile court had jurisdiction to conduct the adjudicatory hearing?

For the following reasons, we shall affirm.

BACKGROUND

At around 3:00 p.m. on May 15, 2015, Sharon Cockerline was sitting outside at an event in a residential area near 707 East Church Street in Salisbury, Maryland, when she was shot in the side with a BB gun. She was uncertain where the shot came from, but did call 911 and spoke to the police.

Officer Lisa Perdue, of the Salisbury City Police, responded to the call, spoke to the victim, and then canvassed the area with other officers. Officer Perdue noticed a nearby duplex with several apartments. The window to one of the apartments, namely 713 East Church Street, Apartment Number 5, was cracked open, and Perdue decided to perform a

"knock and talk" at that residence. Officer Perdue knocked on the door and appellant answered. The officer testified as follows:

> THE WITNESS: And I asked him if there was anyone else at his residence with him. He advised me that his sister was in the shower. I was at the door at that time. I told him I needed to speak with his sister along with him. And he went and got his sister. It took her a few minutes, I'm standing at the doorway. It took her a few minutes, then she came out after she dressed.
>
> Q. What, if any, observations did you make while you're standing at the door?
>
> A. While I was standing there I smelled a strong odor of marijuana.

When appellant's adult sister, Azumelia Pomales-Alvira, came to the door, Officer Perdue informed her "I have reason to be here but what we're talking about as far as the marijuana it's bigger than that right now. And I told her what occurred. And then we talked about the issue at hand, what occurred with the gun and the victim."

Perdue also testified that "[t]his is all taking place right in the living room, right at the door." She clarified that it was "just inside. Standing by the sofa talking to [appellant's] sister and [appellant]." Neither appellant nor his sister objected to Officer Perdue's presence or the discussion.

Officer Perdue testified that she told appellant's sister that she was there because there had been a shooting, and that the window to their apartment was open. Officer Perdue then asked appellant's sister if anyone had a gun. The sister replied that an older brother owned a BB gun, and that no one normally touched the gun. At that point, and without any

direction from the officer, the appellant's sister then retrieved the BB gun, a Powerline 66.17 seven caliber air rifle, from a nearby bedroom and handed it over to Officer Perdue.[1]

After obtaining the BB gun from appellant's sister, Officer Perdue then read appellant his rights pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966). The officer testified that appellant's sister, who appeared to be 20-years-old, was standing nearby while the rights were read to appellant. And, appellant replied that he understood his rights.

On cross-examination, Officer Perdue agreed that she and Major David Meienschein, also from the Salisbury City Police, were both "at the doorway" to the apartment when she performed the knock and talk. Officer Perdue testified as follows:

> Q. However, you did not have sufficient information, as I recall your testimony, that you decided that you need to just enter the apartment yourself, correct? You didn't run up the stairs and just barge into the apartment, right?
>
> A. There were no stairs.
>
> Q. Or walk into the apartment.
>
> A. I was at the doorway.
>
> Q. So you decided to knock?
>
> A. I did a knock and talk, as I said.
>
> Q. Knock and talk, let's talk about knock and talk. So knock and talk, you knock on the door and by your testimony Mr. S. answers the door, is that correct?

[1] The BB gun was admitted into evidence.

A. He did.

Q. And then you told Mr. S. I need to speak to an adult, correct?

A. With the juvenile present, yes, I did.

Q. Okay. You didn't say to Mr. S. hi, I'm here because we're investigating this.

A. I did not, he's a juvenile.

Q. Right. You didn't tell Mr. S., oh, by the way, you don't have to let me into your house or even talk to me, you didn't tell him that, did you?

A. I did not because I wanted to talk to him and his sister.

Q. So you told him to go and get somebody, correct?

A. Yes, I did.

Q. And then you stood in the doorway of the house.

A. Yes, I did.

Q. Let me ask you where you stood in the doorway.

A. Right at the doorway.

Q. But right at the doorway outside or right at the doorway inside? Can they shut the door?

A. No, he couldn't shut the door.

Q. So he couldn't shut the door, so you entered his apartment, correct?

A. If you want to call it actually entering, I was at the doorway.

When asked whether appellant could have left, Officer Perdue agreed that he could, testifying "[i]f he wanted to leave he could have left, but I wanted to talk to his sister." Appellant was not being detained at that point, according to the officer, and the officer also agreed there were no exigent circumstances that required her to go further into the apartment to secure it for safety reasons. The officer also agreed that she was armed and in uniform, and that she asked appellant to go get his sister. Appellant was only not allowed to leave after he admitted that he shot the BB gun.

Officer Perdue then agreed that she smelled marijuana and did not read the *Miranda* rights to either appellant or his sister at that point. Appellant was read those rights after the officer and his sister discussed the BB gun.

On further cross-examination, after being asked about her own notes, Officer Perdue agreed that appellant was asked about the gun before he was read the *Miranda* rights. Officer Perdue maintained that appellant understood those rights and did not object to answering her questions.

Officer Perdue then testified as follows on redirect examination:

> Q. To clarify, when you asked the question about are there any weapons or guns in the house, was Hector being detained at that time?
>
> A. No, he was not.
>
> Q. And I believe you testified he would have been free to walk out the door at that point if he had chosen to do so.

A. Yes, he would have. Yes.

At this point during the adjudicatory hearing, pertinent to our discussion, defense counsel argued that Officer Perdue, accompanied by another armed, uniformed officer, illegally entered the appellant's home. Further, counsel argued that appellant was in custody at that point, that the police then began ordering appellant to go get his sister, and that, under the circumstances, appellant's statement was not voluntary. After the State responded that the encounter between Officer Perdue, appellant, and his sister began as an investigatory stop, was consensual and that the detention and statement that followed were lawful. The court agreed:

> All right. The Court, in considering the motion request by [Defense Counsel], I'm going to deny the motion. I find the officer, I believe, has acted in a reasonable manner in going to the apartment. I don't think the testimony is, as defense counsel asserts, that she, in effect, was ordering anyone to do anything or entering the residence in a way that it violated their constitutional rights. And further, before any questioning of Respondent or the juvenile in this case, he was properly Mirandized with his sister present, and therefore the motion is denied.

Officer Perdue then continued her testimony during the hearing, testifying that, after waiving his *Miranda* rights, appellant admitted he shot Cockerline with the BB gun. The officer testified that appellant stated that "he shot the gun and did not intentionally want to shoot Cockerline, the victim, with the BB gun." Appellant did not shoot her through the window, but went outside into his yard, and shot her at the table, which was located around thirty to forty feet away. After making this statement, appellant was placed under arrest.

After the court denied a motion for judgment of acquittal, appellant's sister, Pomales-Alvira, testified that, when the police came to their apartment on the day in question, that, after she came out of the shower, she found Officer Perdue standing, by herself, in the kitchen waiting for her. Officer Perdue was standing about five feet inside the apartment at that time.

Pomales-Alvira testified that, after Officer Perdue told her that someone was shot with a BB gun, she asked appellant if he did it, and appellant denied his involvement. Pomales-Alvira told the officer the gun belonged to another brother, and then, after the officer told her to retrieve it, that she went and got the gun and gave it to Officer Perdue. Pomales-Alvira testified that neither she, nor appellant, were told they had a right to remain silent and that anything they said could be used against them.

The State then called Colonel David Meienschein in rebuttal, and the officer confirmed that he overheard Officer Perdue read appellant his *Miranda* rights. Appellant's sister, Pomales-Alvira, was present in the room at the same time. Officer Perdue was already inside the apartment, in the living room, when Meienschein arrived on the scene.

After defense counsel renewed the motion to suppress, the court ruled as follows:

> All right, let me address the motion first. As it relates to the motion, I agree, I don't think there's anything further. I think the testimony of the officers was consistent. I believe, [Defense Counsel] – the Court finds that I believe Officer Perdue was validly in the house at the time when this occurred

> and properly Mirandized the Respondent. I'm sure we'll get a second opinion on that in the future. But I'm going to deny the motion.[2]

DISCUSSION

I.

Appellant contends that the police illegally entered his home without a warrant and subjected him to custodial interrogation before he was properly advised of his *Miranda* rights. The State responds that police had implied consent to enter the residence, that appellant was not in custody and was not interrogated in violation of *Miranda*. We conclude that Officer Perdue's entry was by consent, and that, although appellant was interrogated about the shooting, he was not in custody when he made his incriminating statements. Thus, we shall affirm.[3]

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[2] After further argument, the court found appellant involved in the counts charging second degree assault, reckless endangerment, and discharging an air gun within city limits.

[3] This resolution makes it unnecessary to address the State's argument, in the alternative, that there was probable cause to enter based on the odor of marijuana emanating from the residence. We note, however, that the odor of marijuana does, in some circumstances, provide probable cause justifying a warrantless entry and/or arrest. *See Gorman v. State*, 168 Md. App. 412, 431 (2006) (affirming motion court's ruling that smell of burning marijuana provided exigent circumstances justifying warrantless entry of apartment); *see also State v. James*, 87 Md. App. 39, 46-47(1991) (holding that odor of marijuana is appropriate factor in determining whether probable cause supported search of vehicle); *Ford v. State*, 37 Md. App. 373, 377-78 (officer's sensory perceptions relevant to probable cause determination), *cert. denied*, 281 Md. 737 (1977); *Mullaney v. State*, 5 Md. App. 248, 257 (1968) (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).

A. The police entry as part of the "knock and talk" in this case was not unlawful because the appellant and his sister gave implied consent to enter the residence.

We have explained our standard of review as follows:

> In reviewing a trial court's denial of a motion to suppress evidence, we base our decision solely upon the "facts and information contained in the record of the suppression hearing." *Longshore v. State*, 399 Md. 486, 498, 924 A.2d 1129 (2007). We then extend great deference to the suppression judge with respect to the determination and weighing of first-level findings of facts, which we will not disturb unless clearly erroneous, and we view all facts in the light most favorable to the State as the prevailing party. *Williamson v. State*, 413 Md. 521, 531-32, 993 A.2d 626 (2010). We also apply a *de novo* standard of review, making our "own independent constitutional appraisal by reviewing the law and applying it to the facts of the case." *Bailey v. State*, 412 Md. 349, 362, 987 A.2d 72 (2010) (Citations omitted), *Grymes v. State*, 202 Md. App. 70, 80, 30 A.3d 1032 (2011).

Brewer v. State, 220 Md. App. 89, 99 (2014).[4]

The Fourth Amendment to the Constitution of the United States, made applicable to the States through the Fourteenth Amendment, *Mapp v. Ohio*, 367 U.S. 643, 655 (1961), guarantees, *inter alia*, "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." *See also Payton v. New York*, 445 U.S. 573, 590 (1980) ("In terms that apply equally to seizures of property and to seizures of persons, the Fourth Amendment has drawn a firm line at the entrance to the house"). However, "[t]he Fourth Amendment does not proscribe all state-initiated searches and

[4] The parties agreed to conduct the motions contemporaneous with the reception of evidence during the adjudicatory hearing.

seizures; it merely proscribes those which are unreasonable." *Florida v. Jimeno*, 500 U.S. 248, 250 (1991).

Here, after Cockerline reported that she had been shot by a BB gun, apparently at random, Officer Perdue surveyed the nearby scene and saw that a window in appellant's residence was open. At that point, the officer decided to conduct a "knock and talk" investigation. The Court of Appeals described the "knock and talk" police procedure as follows:

> [I]t is a procedure in which police officers, lacking a warrant or other legal justification for entering or searching a dwelling place, approach the dwelling, knock on the door, identify themselves as law enforcement officers, request entry in order to ask questions concerning unlawful activity in the area, and, upon entry, eventually ask permission to search the premises. Permission is often given, and, if the police then find contraband or other evidence of illegal activity, the issue is raised of whether the procedure has in some way contravened the occupant's Fourth Amendment rights.

Scott v. State, 366 Md. 121, 129-30 (2001), *cert. denied*, 535 U.S. 940 (2002).

Further:

> The prevailing rule, applicable both to and beyond a pure "knock and talk" situation, is that, absent a clear expression by the owner to the contrary, police officers, in the course of their official business, are permitted to approach one's dwelling and seek permission to question an occupant. In *Davis v. United States*, 327 F.2d 301, 303 (9th Cir.1964), the court, in sustaining a mid-day "knock and talk" encounter, concluded:
>
> > "Absent express orders from the person in possession against any possible trespass, there is no rule of private or public conduct which makes it illegal per se, or a condemned invasion of the person's right of privacy, for anyone openly and

> peaceably, at high noon, to walk up the steps and knock on the front door of any man's 'castle' with the honest intent of asking questions of the occupant thereof – whether the questioner be a pollster, a salesman, or an officer of the law."

Scott, 366 Md. at 130. And:

> "[t]o come within the implied invitation, a police officer must be on some police business. That does not necessarily mean that the officer has to have probable cause or even an objectively reasonable suspicion that criminal activity is afoot. The police business may be administrative as well as investigative, and it may be action based on a suspicion that turns out to be without substantial basis, provided the suspicion is held in good faith rather than as a pretext for an arbitrary search."

Scott, 366 Md. at 131-32 (quoting *State v. Cloutier*, 544 A.2d 1277, 1280 (Me.1988)); *see also Florida v. Bostick*, 501 U.S. 429, 434, 111 S. Ct. 2382, 2386, 115 L. Ed. 2d 389 (1991) ("[A] seizure does not occur simply because a police officer approaches an individual and asks a few questions. So long as a reasonable person would feel free 'to disregard the police and go about his business,' the encounter is consensual and no reasonable suspicion is required") (quoting *California v. Hodari D.*, 499 U.S. 621, 628 (1991)); *Ferris v. State*, 355 Md. 356, 374-75 (1999) ("This is so even if the police lack any suspicion, reasonable or otherwise, that an individual has committed a crime or is involved in criminal activity, because the Fourth Amendment simply does not apply").

Appellant does not challenge Officer Perdue's investigation, *per se*. However, appellant contends that Officer Perdue unlawfully entered his home when, after he opened the door, she walked, "uninvited," into the doorway of the residence. The State disagrees,

maintaining that, under the totality of the circumstances, and "in the light most favorable to the prevailing party," this was a consensual and lawful entry.

The Court of Appeals has made clear that "[a] search conducted pursuant to valid consent, *i.e.*, voluntary and with actual or apparent authority to do so, is a recognized exception to the warrant requirement." *Jones v. State*, 407 Md. 33, 51 (2008). "In situations where the police have some evidence of illicit activity, but lack probable cause to arrest or search, a search authorized by a valid consent may be the only means of obtaining important and reliable evidence." *Schneckloth v. Bustamonte*, 412 U.S. 218, 227 (1973); *see also Varriale v. State*, 444 Md. 400, 412 (2015) ("For a consensual search to satisfy the Fourth Amendment, the consent must be voluntary, *i.e.*, free from coercion"), *cert. denied*, 136 S. Ct. 898 (2016). "'[T]he standard for measuring the scope of a suspect's consent under the Fourth Amendment is that of "objective" reasonableness – what would the typical reasonable person have understood by the exchange between the officer and the suspect?'" *State v. Green*, 375 Md. 595, 621 (2003) (quoting *Florida v. Jimeno*, 500 U.S. at 251); *see also Sifrit v. State*, 383 Md. 77, 115 (2004) ("The scope of a suspect's consent is measured by an objective standard"). Consent may be given expressly, impliedly, or by gesture. *Turner v. State*, 133 Md. App. 192, 207 (2000). The burden of proving that the consent was valid requires the State "to prove that the consent was freely and voluntarily given." *Jones*, 407 Md. at 51 (citing *United States v. Mendenhall*, 446 U.S. 544, 557 (1980). Further,

"[t]he determination of whether consent is valid is a question of fact, to be decided based upon a consideration of the totality of the circumstances." *Jones*, 407 Md. at 52 (citing *Schneckloth*, 412 U.S. at 227); *accord Redmond v. State*, 213 Md. App. 163, 177 (2013).

There is no indication in this record that the consent was express. However, that is not determinative as consent also may be implied. For instance, in *In re Anthony F.*, 293 Md. 146 (1982), two police officers arrived at the home of Anthony F. without a search warrant or arrest warrant with the intention of arresting him. His sixteen-year-old sister answered the door and, upon request by the officers for admittance to speak to her brother, she "stepp[ed] back and open[ed] the door wide so they could enter." *Id*. at 147-48. The officers then asked her to get her brother from upstairs. As Anthony F. entered the downstairs level of the home, he was arrested. At no point did the officers depart from the living room of the house where they had been given permission to enter. The Court held that the sister's actions communicated consent for the officers to enter the home. *See In re Anthony F.*, 293 Md. at 151 ("[T]hird party consent of one possessing common authority over premises will justify a warrantless entry into the dwelling").

In *Chase v. State*, 120 Md. App. 141 (1998), this Court relied on *In re Anthony F*. in determining that the police had consent to enter the appellant's home. There, police officers arrived at Chase's home, without a search or arrest warrant, for the purpose of arresting him for sexual assault. The police spoke to Chase's wife at the front door. They informed her

that they needed to speak with her husband. She responded by "stepp[ing] out of the doorway." *Id*. at 150. The police entered the home and arrested Chase. This Court concluded that the circuit court's findings that this amounted to consent were not clearly erroneous. *Id*.

In light of these cases, this Court has explained implied consent as follows:

> To be sure, the Maryland and Fourth Circuit cases plainly establish that consent to search not only may be express, by words, but also may be implied, by conduct or gesture. . . . [I]n all of these cases, the police made it known, either expressly or impliedly, that they wished to enter the defendant's house, or to conduct a search, and within that context, the conduct from which consent was inferred gained meaning as an unambiguous gesture of invitation or cooperation or as an affirmative act to make the premises accessible for entry. By contrast, in those Fourth Circuit cases in which the court concluded that the facts could not support a finding of implied consent, the law enforcement officers either did not ask for permission to enter or search, and thus did not make known their objective, or, if they did, their request was met with no response or one that was nonspecific and ambiguous.

Turner, 133 Md. App. at 207-08.

We are persuaded that, under the totality of the circumstances and in the light most favorable to the prevailing party, that Officer Perdue was standing in the threshold to the home, but she did so with appellant's consent. Although there was no express statement consenting to the entry, our conclusion is supported by the record. When Officer Perdue came to the door, appellant answered. Appellant then went, albeit at Perdue's request, to get his sister. There ensued a conversation, apparently still near the doorway, about the BB gun

and the victim. We conclude that the knock and talk investigation in the doorway to appellant's residence was pursuant to a valid and lawful consent.

B. Although appellant was interrogated, he was not in custody and police were not required to give him *Miranda* warnings under the circumstances.

Appellant also contends that Officer Perdue spoke to him about the incident with the BB gun before providing an explanation of his rights under *Miranda*. The Supreme Court has acknowledged that any police interview of an individual suspected of a crime has "coercive aspects to it[.]" *Oregon v. Mathiason*, 429 U.S. 492, 495 (1977) (per curiam). However, "[o]nly 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*, 564 U.S. 261, 268-69 (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*, 564 U.S. at 269-70 (citing *Miranda*, 384 U.S., at 444, 475-476).

The *Miranda* requirements, however, apply only to custodial interrogation. *J.D.B. v. North Carolina*, 564 U.S. at 270. This Court has explained that, "before a defendant can claim the benefit of *Miranda* warnings, the defendant must establish two things: (1) custody; and (2) interrogation." *State v. Thomas*, 202 Md. App. 545, 565 (2011), *aff'd*, 429 Md. 246 (2012). *Accord Smith v. State*, 186 Md. App. 498, 518 (2009), *aff'd*, 414 Md. 357 (2010). The burden of "showing the applicability of the *Miranda* requirements," *i.e.*, that there was custody and interrogation, is on the defendant. *Smith*, 186 Md. App. at 520. "Without the presence of both custody *and* interrogation, the police are not bound to deliver *Miranda* warnings and obtain a proper waiver of the rights to silence and counsel before questioning a suspect." *Williams v. State*, 219 Md. App. 295, 317 (2014) (citation omitted), *aff'd*, 445 Md. 452 (2015).

We are persuaded that Officer Perdue's discussion with appellant and his sister amounted to an interrogation. As the Court of Appeals explained in *Drury v. State*, 368 Md. 331, *cert. denied*, 537 U.S. 942 (2002), "[t]he test to be applied in determining whether the police officer's statements and exhibition of the physical evidence was tantamount to interrogation is whether the words and actions of the officer were reasonably likely to elicit incriminating responses from petitioner." *Drury*, 368 Md. at 335-36 (citation omitted); *see*

also Rhode Island v. Innis, 446 U.S. 291, 301 (1980) ("[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"). Officer Perdue testified that she told appellant she wanted to speak to both him and his sister. After the sister arrived, the officer informed them there had been a shooting, and that she noticed that the window to their apartment was open. Officer Perdue then asked if anyone had a gun in the residence. It is apparent that these questions were directly related to the shooting and were reasonably likely to elicit an incriminating response.

That being said however, we are also persuaded that appellant was not in custody when Officer Perdue spoke to him, in the doorway to his residence, with his sister present. The Supreme Court has held that "whether a suspect is 'in custody' is an objective inquiry." *J.D.B.*, 564 U.S. at 270. Further:

> "Two discrete inquiries are essential to the determination: 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. Once the scene is set and the players' lines and actions are reconstructed, the court must apply an objective test to resolve the ultimate inquiry: was there a formal arrest or restraint on freedom of movement of the degree associated with formal arrest."

J.D.B., 564 U.S. at 270 (quoting *Thompson v. Keohane*, 516 U.S. 99, 112 (1995).

And, in considering whether a person is in *Miranda* custody, the following factors are relevant:

> 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 v. State, 429 Md. 246, 260-61 (2012) (quoting *Owens v. State*, 399 Md. 388, 429 (2007)).

This Court discussed whether a person was in "custody" when interrogated in his home in *Bond v. State*, 142 Md. App. 219 (2002). There, the defendant was a suspect in a hit-and-run accident in which several vehicles were damaged. *Id*. at 223. The accident occurred after 10:00 p.m., and "several" uniformed officers arrived at the defendant's trailer home "either late on the same night as the incident or in the early morning hours of the next day." *Id*. at 223-24. An officer knocked on the defendant's door, and although the defendant was in bed, his eleven-year-old nephew answered the door, let the three police officers into the trailer and then took them to the defendant's bedroom. *Id*. The officers stood in the only doorway to the defendant's bedroom and questioned him about the

accident, informing him that they were advised that he was involved in the incident. *Id*. at 224. The defendant remained in bed, only partially clothed, throughout most of the questioning. *Id*. The officers did not tell the defendant that he was under arrest, nor did they tell him he was "free to leave" or that he "did not have to speak with them." *Id*. at 225. Under the circumstances, we held that the defendant was entitled to the protections of *Miranda* and his statements should have been suppressed, explaining:

> The interrogation in this case took place late at night in the appellant's bedroom, with the appellant in bed and partially clothed. To be sure, the questioning did not occur in the potentially coercive atmosphere of a police station, or of a strange and unfamiliar location. It ran to the other extreme, however. Whether the appellant was awake or asleep when the officers entered his bedroom, the highly private location of the interrogation, the late hour, the appellant's state of undress, the number of officers present, and the accusatory nature of the questioning were such that an ordinary person in the circumstances would be intimidated, and would not think he could end the encounter merely by telling the officers to leave.

Bond, 142 Md. App. at 233.

The *Bond* decision was based largely upon the Supreme Court's decision in *Orozco v. Texas*, 394 U.S. 324 (1969), a case that held that the late night questioning of a suspect by four police officers in his boarding house bedroom amounted to a custodial interrogation. The Court explained that

> [a]ccording to the officer's testimony, petitioner was under arrest and not free to leave when he was questioned in his bedroom in the early hours of the morning. The *Miranda* opinion declared that the warnings were required

> when the person being interrogated was "in custody at the station or otherwise deprived of his freedom of action in any significant way."

Orozco v. Texas, 394 U.S. at 327 (quoting *Miranda*, 384 U.S. at 477).

Here, although appellant was interrogated by two uniformed and armed police officers in the threshold of his residence, we are not persuaded that he was in "custody," for purposes of *Miranda*. Notably, appellant's sister was present during the interview and Officer Perdue indicated that the sister was the primary subject of the inquiry. Officer Perdue also testified that appellant was free to leave testifying that "[i]f he wanted to leave he could have left, but I wanted to talk to his sister." Unlike the defendant in *Bond*, it is likely that appellant could have ended the interview and left if he so desired. We conclude that appellant was not in custody when he was questioned about the incident and that the motions court properly denied the motion to suppress.

II.

Appellant also asserts that the circuit court did not have jurisdiction over this case because, at the adjudicatory hearing, the State failed to prove that he was a "child," in other words, "an individual under the age of 18 years." *See generally*, Md. Code (1973, 2013 Repl. Vol., 2015 Supp.) §§ 3-8A-01(d); 3-8A-03(a)(1) of the Courts and Judicial Proceedings Article. ("C.J.P."). This argument is based on the fact that the only evidence of appellant's age that was produced at the adjudicatory hearing was Officer Perdue's

testimony that he was a "young gentleman." This, however, is not fatal to the juvenile court's exercise of jurisdiction.

C.J.P. § 3-8A-03(a)(1) provides that a circuit court, sitting as a juvenile court, "has exclusive original jurisdiction over [a] child who is alleged to be delinquent[.]" A child is defined as "an individual under the age of 18 years." C.J.P. § 3-8A-01(d). The age of the person at the time the alleged delinquent act was committed controls the determination of jurisdiction of the juvenile court. C.J.P. § 3-8A-05(a). Juvenile proceedings are initiated by the filing of a juvenile petition, which, *inter alia*, "shall state [t]he respondent's name, address and date of birth." Md. Rule 11-103(a)(2)(a). It is the filing of this petition by which the juvenile court gains jurisdiction over the matter. *See Hart v. Bull*, 69 Md. App. 229, 233-34 (1986) ("No jurisdiction exists in a juvenile delinquency case until a petition is filed by the State.") (emphasis and citation omitted); *see also* C.J.P. § 3-8A-10(c) (requiring intake officer to make inquiry into juvenile petition to determine if juvenile court has jurisdiction).

Appellant cites a case from the Court of Appeals of Texas, *In the Matter of A.S.*, 875 S.W.2d 402, 403 (Tex. App.1994), for the proposition that failure to adduce evidence of the child's age at the adjudicatory hearing is fatal to the juvenile court's exercise of jurisdiction. Appellant fails to recognize, however, that the Texas appellate courts have since

distinguished the relevant portion of that case, *see In re E.D.C.*, 88 S.W.3d 789, 792 (Tex. App. 2002).

Further, this Court has held that once the State files a delinquency petition – which includes the alleged delinquent's birthdate – there is "a presumption in favor of subject matter jurisdiction, and that the burden was on [the respondent] to introduce evidence sufficient to rebut that presumption." *In re John F.*, 169 Md. App. 171, 181 (2006) (disussing *In re Nahif A.*, 123 Md. App. 193, 211 (1998), *overruled on other grounds by In re Antoine M.*, 394 Md. 491 (2006) (finding "no such requirement" of proving the age of the child at an adjudicatory hearing)).

In accordance with Md. Rule 11-103, the delinquency petition filed in this case listed appellant's birthdate, indicating that appellant was 13 years old at the time of the incident. Accordingly, the juvenile court properly exercised jurisdiction, and the burden was on appellant to rebut the presumption of proper jurisdiction. He made no attempt to do so. We, therefore, find no error in the juvenile court's exercise of jurisdiction in this matter.

JUDGMENTS AFFIRMED.

COSTS TO BE ASSESSED TO APPELLANT.