IN THE
INDIANA SUPREME COURT

NO. 32A05-1708-JV-1907

D.Z.	)	
	)	Appeal from the
Appellant/Defendant	)	Hendricks Superior Court
	)	
v.	)	Case No. 32D03-1704-JD-86
	)	
STATE OF INDIANA	)	The Honorable Karen M. Love,
	)	Judge
Appellee/Plaintiff	)	

BRIEF IN RESPONSE TO PETITION TO TRANSFER

Jeffery A. Earl
Attorney No. 27821-64
52 West Main Street
Danville, IN 46122
jeff@lewisandearl.com
Attorney for Appellant

QUESTION PRESENTED ON TRANSFER

Is a student entitled to be advised of his *Miranda* rights prior to being questioned by a school official, when the student is the subject of an investigation by school officials and law enforcement acting in concert and when such an investigation is likely to lead to criminal charges against the student?

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BACKGROUND AND PRIOR TREATMENT OF ISSUES ON TRANSFER

The Brownsburg Community School Corporation Police Department employs Officer Nathan Flynn as a school resource officer for law enforcement duties. Tr. 17. Officer Flynn is called on to investigate allegations of misconduct within the school when it reaches a criminal level. *Id*. On March 15, 2017, Officer Flynn received a report from Assistant Principal Dowler regarding "criminal mischief of vandalism and graffiti that was written on bathroom stalls." *Id*. 17, 50.

When Officer Flynn became involved, he initiated a plan to methodically search the bathrooms and narrow down time frames to determine when graffiti appeared. *Id*. 39-40. Officer Flynn and Mr. Dowler reviewed school surveillance videos independently to see who was in the restrooms during those times. *Id*. 40. After reviewing the footage, Officer Flynn and Mr. Dowler shared with each other that they both identified D.Z. as a suspect. *Id*. 42. Officer Flynn substantially participated in the investigation. *Id*. 55. Officer Flynn was pursuing the investigation knowing that criminal charges were a possibility. *Id*. 43.

After identifying D.Z. as a suspect, Officer Flynn knew that Mr. Dowler was going to question D.Z. in his office. *Id*. Mr. Dowler told Officer Flynn "he wanted to speak to [D.Z.] by himself because he had a rapport with him and wanted to have that conversation without [Officer Flynn] present." *Id*. On March 17, 2017, Mr. Dowler called D.Z. to his office near the end of the school day and questioned D.Z. in his office with the door closed. Id. 54-56. The facts of Mr. Dowler's interrogation of D.Z. are set forth in D.Z.'s Appellant's Brief at p. 9. Mr. Dowler confronted D.Z. and told him that he knew D.Z. was responsible for the graffiti. *Id*. 61, 66. After the conversation, Mr. Dowler

informed D.Z. that he would be suspended from school for five days. *Id*. 63. After speaking to D.Z., Mr. Dowler came out and told Officer Flynn that D.Z. had admitted to the messages and writing on the walls. *Id*. 43. Officer Flynn then interrogated D.Z. himself without advising D.Z. of his *Miranda* rights.

During the fact-finding hearing, D.Z. made separate motions to suppress the statements made by D.Z. to Officer Flynn and to Mr. Dowler. *Id*. 44, 57. The State agreed that Officer Flynn's interrogation violated D.Z.'s Constitutional rights, and the juvenile court suppressed all statements that D.Z. made to Officer Flynn. *Id*. 45.[1] The juvenile court denied D.Z.'s motion to suppress statements made to Mr. Dowler. *Id*. 60.[2] At the conclusion of the hearing, the Court stated: "The primary evidence we have is a statement to the Principal." *Id*. 76. D.Z. agrees with the State's summary of the appellate disposition of this case. *Pet. to Trans.*, 9.

ARGUMENT

Children require special care to ensure that their confessions are given knowingly and voluntarily. *See Gallegos v. Colorado*, 370 U.S. 49, 53 (1962); Ind. Code § 31-32-5-1. Because of this, the United States Supreme Court, Indiana Courts, and the Indiana Legislature require that juveniles be advised of their right to remain silent, *In re K.G.*, 808 N.E.2d 631, 635 (Ind. 2004) (citing *In re Gault*, 387 U.S. 1, 30 (1967); *S.G. v. State*, 956 N.E.2d 668, 674 (Ind. Ct. App. 2011), and be afforded a meaningful opportunity to

[1] The ISBA in its Amicus Brief states that Officer Flynn's questioning "led to further admissions …." ISBA Amicus, 8. The juvenile court properly suppressed all statements made by D.Z. to Officer Flynn. As such, there is no evidence of record of what D.Z. did nor did not say to the officer. The ISBA's reference to "further admissions" by D.Z. in its brief is highly improper and should not be considered by this Court.

[2] D.Z. also objected to the admission of still photos from the surveillance videos and photographs. These issues are addressed in D.Z.'s Appellant's Brief.

consult with a parent before waiving their rights, *S.G.*, 956 N.E.2d at 674-75; Ind. Code § 31-32-5-1 (Juvenile Waiver Statute). For the reasons discussed below, this Court should uphold the decision of the Appellate Court that D.Z. should have been advised of his *Miranda* rights, and that absent these warnings, the juvenile court abused its discretion in admitting D.Z.'s statements to Mr. Dowler.

The Brownsburg Community Schools Corporation Police Department employs its own officers for law enforcement duties, including investigating school misconduct that reaches a criminal level. Officer Flynn, one of the Brownsburg Community School Corporation's police officers, received a report of criminal mischief and vandalism from Mr. Dowler and was asked to assist Mr. Dowler with the investigation of the conduct. After conducting the investigation, Officer Flynn and Mr. Dowler identified D.Z. as a suspect, and Mr. Dowler questioned D.Z. to obtain an admission to the conduct without advising D.Z. of his constitutional rights to avoid self-incrimination or allowing D.Z. a meaningful opportunity to consult with a parent.

Despite the State's attempt to couch these events as "indisputably a matter implicating order and discipline in the school ….", *Pet. to Trans.* 12, the facts of this case simply do not support that characterization. From March 15, 2017, this was at best a joint school discipline and criminal investigation. The State wishes to separate the investigation and subsequent interrogation conducted by Mr. Dowler from that of Officer Flynn. But any such separation is meaningless when the school employs the police officer as a part of its own police department, and when a school official asks the police officer to assist in the investigation of a report of criminal mischief. As the State points out, this is not a case where the police were independently investigating criminal activity on their own and sought the assistance of school administrators in their

investigation. *Pet. to Trans.* 12-13. This is a case where the school utilized its own employed police force to assist with an investigation into criminal activity in the school.

The State and the Indiana School Board Association (ISBA) argue that the Appellate Court's decision will significantly hamper schools' ability to preserve order and security inside the school and carry out its educational mission and that the decision fails to consider the practical difficulties it will create. The Appellate Court's decision clearly addresses these exact issues in its quotation of *N.C. v. Com.*, 396 S.W. 3d 852 (Ky. 2013). *D.Z. v. State*, ___ N.E.3d ___ (Ind. Ct. App. 2018), slip op. at 12-13.

Under the Appellate Court's decision, schools would not be required to advise students of their *Miranda* rights anytime a school official questions a student for purely school discipline purposes. Rather, *Miranda* warnings would only be required when law enforcement is involved or the school official is working in concert with law enforcement. *Id.* at 12. In this case, had Mr. Dowler's interaction with D.Z. ended with the school-imposed discipline of suspension, there would be no question under current Indiana law that D.Z. was not entitled to be given the *Miranda* warnings prior to be questioned by Mr. Dowler and that his admissions could support the disciplinary action. But that is not the case. Upon eliciting an admission from D.Z., Mr. Dowler not only informed D.Z. of his suspension, he immediately reported the admission to Officer Flynn, who played a substantial role in the investigation and who knew Mr. Dowler was interrogating D.Z., and D.Z. was subsequently charged criminally.

The Appellate Court's decision does not deviate from established case law as argued by the State and the ISBA. In *S.G.*, the Court of Appeals recognized an array of cases falling between two extremes. 956 N.E.2d at 676 (quoting Paul Holland, Schooling Miranda: Policing Interrogation in the Twenty-First Century Schoolhouse, 52 Loy. L.

Rev. 39 (2006)). On one side is a principal acting alone and without invoking or outwardly benefiting from the authority of law enforcement who may question a student without complying with *Miranda's* requirements. *Id*. In such a situation, the student's answers to the principal's questions would be admissible in a juvenile or criminal proceeding. *Id*. On the other side is a police officer, acting in a traditional law enforcement role, who must advise a student of his rights before questioning him. *Id*. In this situation, if the officer fails to do so, any statements made by the student will not be admissible. *Id*. The challenges for courts come from the array of cases that fall between these two extremes, and they require courts to determine whether and when a principal's questioning is subject to *Miranda*. *Id*. This case, and the numerous cases cited by the parties and amici curiae in their respective briefs in this appeal, fall somewhere in that array and courts have decided them on a case-by-case basis. To the extent this case deviates from prior decisions, such a deviation is supported by the facts of this case, for example that the school employs its own law enforcement officers to conduct criminal investigations, that the Mr. Dowler requested assistance from Officer Flynn with the investigation of criminal behavior, and that Mr. Dowler and Officer Flynn discussed Mr. Dowler speaking to D.Z. first because he had a rapport with D.Z. These facts make clear that Mr. Dowler and Officer Flynn intended to illicit an admission from D.Z. that could be used to bring criminal charges against him, and, therefore, Mr. Dowler's questioning of D.Z. is subject to *Miranda*.

The State and ISBA argue that schools will be required, without proper training, to discern when *Miranda* warnings are required and could be liable to civil suits for failure to do so. Even in situations where a school official fails to properly advise a student of his *Miranda* rights prior to questioning (or, more simply, to ask the school

resource officer to do so), the remedy for a such a failure would simply be that any incriminating statements subsequently made by the student to the school official could not be used against the student as a basis for a criminal charge. *Id*. It is highly unlikely that a school official would face any civil liability.

The ISBA argues that the Appellate Court's decision will require special training of administrators resulting in costs of expense and staff time. The ISBA ignores the fact uncovered by the Appellate Court that school officials are already being trained in police interrogation techniques, including "how to initiate the confrontation, develop the interrogational theme, stop denials, overcome objections, and … stimulate the admission." *D.Z.*, slip op. at 10-11 and fn. 2. Further, school resource officers are already well-trained in knowing how and when to advise suspects of their constitutional rights, and there is no reason a school, especially one like Brownsburg that employs its own police force, could not rely on the officer's expertise.

The cost of such protections is quite small compared to the importance of protecting the constitutional rights of juveniles when schools utilize law enforcement to investigate potentially criminal behavior and attempt to elicit an admission to such behavior from students. To allow such conduct without the minimal protection of advising a student of his *Miranda* rights is to provide a blueprint to school officials and school police officers on how to circumvent a student's constitutional rights and statutory protections yet still obtain an admission of guilt.

CONCLUSION

For the reasons set forth above, D.Z. respectfully requests that this Court affirm the decision of the Court of Appeals reversing the juvenile court's finding that D.Z. is a delinquent child and hold that where a school official and a police officer act in concert in investigating potentially criminal behavior, knowing the possibility of criminal charges, and later obtain incriminating statements from a student, the student must be advised of his or her *Miranda* rights prior to being questioned.

Respectfully Submitted,

Jeffery A. Earl
Attorney No. 27821-64
52 West Main Street
Danville, IN 46122
(317) 451-6145
jeff@lewisandearl.com
Attorney for Appellant

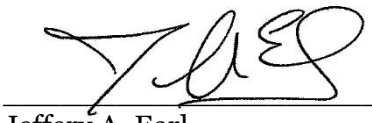
CERTIFICATE OF SERVICE

The undersigned, attorney for Appellant, D.Z., certifies that on April 16, 2018, the foregoing Brief in Response to Petition to Transfer was filed in the Indiana Supreme Court using the Indiana Electronic Filing System (IEFS) and was served through IEFS on the following:

Curtis T. Hill
Ellen H. Meilaender
Indiana Attorney General
efile@atg.in.gov
ellen.meilaender@atg.in.gov
Attorneys for State

Kent M. Frandsen
PARR RICHEY FRANDSEN PATTERSON KRUSE LLP
kfrandsen@parrlaw.com
Attorney for ISBA

Amy Karozos
Marsha L. Levick
akarazos@att.net
mlevick@jlc.org
Attorneys for Juvenile Law Center, et al.



Jeffery A. Earl,
Attorney for Appellant