IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	**CASE NO. 2017-0877**
Appellant,	On Appeal from the Montgomery County Court of Appeals, Second Appellate District
vs.	
L.G.,	
Appellee.	Court of Appeals Case No.: CA-27296

APPELLEE'S AMENDED MEMORANDUM IN OPPOSITION TO JURISDICTION

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WHY LEAVE TO APPEAL SHOULD NOT BE GRANTED

13-year-old seventh grader L.G. was separated from his classmates at Longfellow Alternative School and questioned by an agent of the State about an alleged felony. That agent, the supervisor of a large public school district's 26 sworn, institutional police officers, worked hand in hand with Dayton police officials at all times during the investigation of the alleged felony. He was even accompanied by armed Dayton police officers during questioning of L.G. Whereas L.G. was not informed of his Miranda rights prior to questioning, both the trial court and the Court of Appeals naturally held that L.G.'s Fifth Amendment rights were violated. The Court of Appeals clarified that it was "not holding, or even suggesting, that *Miranda* warnings are required whenever a teenager is questioned by school personnel." This fairly routine decision does not involve a question of public or great general interest nor does it present a substantial Constitutional question.

STATEMENT OF THE CASE AND FACTS

L.G. was charged with Inducing Panic in violation of R.C. 2917.31(A)(1) and R.C. 2152.02, a felony of the second degree if committed by an adult. L.G. filed a motion to suppress any statements and a hearing was held before a Juvenile Court Magistrate. The Magistrate granted the motion to suppress. The State objected to that decision but that decision was affirmed and adopted by the Juvenile Court Judge. The State appealed to the Second District Court of Appeals which again affirmed the Juvenile Court's decision.

The Second District pointed out that the facts show the questioner in this matter, the Director of Safety and Security, was a supervisor of 26 sworn institutional police officers. These 26 school officers have the authority to arrest and in fact carry handcuffs. The Director gave orders to school officers during the investigation of this matter. The Director was also *required* by school district policy to cooperate with Dayton police during the investigation. He did so – from his arrival at the scene up to the time L.G. was handed off to an armed Dayton police officer and taken to be questioned further by detectives.

The Director was alerted to the bomb threat by Sgt. Leslie Bunch of the Regional Dispatch Center. When he arrived on the scene, the school had been evacuated. The Director made a joint decision with Dayton Police Sgt. Keller to have dogs check the building for possible bombs. Soon the Director, with a uniformed officer by his side, indicated to the students that a Miami Valley Crime Stoppers reward was being offered. The Director had to have permission from Dayton Detective Querubin to offer that reward. The Director acknowledged that he was also then required to report any information gathered as a result of the reward offer to police.

When the Director finally questioned L.G. there were two armed police officers in very close proximity to L.G. and there were possibly several other officers in the same room. L.G.

had been separated from all other students prior to and during questioning. No students, cafeteria workers, janitors, teachers, or school administrators were in the cafeteria - only the Director of Safety and Security and police officers were there with L.G.

The Director was not acting as an assistant administrator determining whether a student would be suspended, he was investigating a felony and acting in concert with police at all times – as school policy *and* Dayton police policy required. His purpose was, obviously, and as found by the trial court, to investigate a serious crime.

At no time was the Director acting on his own without police involvement or supervision. He was at all times acting in concert with and as the agent of police. This is why the trial court determined there was a "great deal of entanglement" between the Director and the police. The trial court also found that when questioned by such a person in a situation where "no reasonable 13 year old" would feel free to leave, *Miranda* warnings were required. The Court of Appeals agreed.

ARGUMENT

In its Proposition of Law, the State ignores a very important facet of this case and pertinent case law. That is, a person who is acting as an agent of the police cannot subvert a detainee's Fifth Amendment protections. This is exactly what the courts below found. The director of safety and security was found to have acted as an agent of police based on the above stated facts. It is submitted that the director was in fact acting not just an agent of police but was acting fully in a law enforcement capacity (he is a retired police officer, his deputy assistant is a retired police officer, he supervises 26 police officers, and he is required by both school and local police policy to work very closely with police in a situation such as the investigation in this case). Although the trial court and Court of Appeals did not find specifically that the director was acting as a police officer, there is support in the record for such a conclusion. Nevertheless, the courts below did find that the director was at the very least acting as an agent of the police while investigating the matter. The courts below also found that L.G. would not have felt free to walk away from the questioning and was in custody at the time he was questioned.

A. **The Director of Safety and Security Acted in Concert With, and was an Agent of, Law Enforcement and Therefore Required to Give Appropriate Miranda Warnings**.

Miranda requirements apply when admissions are given to agents of law enforcement officers. *State v. Watson*, 28 Ohio St.2d 15, 275 N.E.2d 153 (1971); *see also State v. Gallagher*, (1976) 46 Ohio St.2d 225, (*statements made to parole officer without Miranda warnings are subject to suppression since parolee under heavy pressure to cooperate with parole officer*); *see also State v. Bolan*, 27 Ohio St.2d 15, 271 N.E.2d 839 (1971) *(where a private security guard who did not work for a public entity questioned a suspect prior to having any involvement with police was found not to have been an agent of police*). Even if the Director is not considered law

enforcement personnel and was only an agent of law enforcement, as this court has long held, *Miranda* requirements apply. The extensive entanglement and hand-in-hand operations which occurred between the director and police in the investigation are irrefutable in this case. The questioning therefore was clearly done by an agent of the police.

B. **L.G. was Clearly in Custody and Not Free to Leave When Questioned**.

As the courts below found, and as the facts demonstrate, L.G. was not free to leave when separated from his peers and escorted to the cafeteria which had been converted into the operations headquarters of Dayton police and the Director of Safety and Security. The courts below clarified that no reasonable 13-year-old would have felt free to leave or to ignore questions put to him in that situation. The courts' citing of L.G.'s age is of course pertinent and important to the inquiry. *J.D.B. v. North Carolina*, 564 U.S. 261, 270, 131 S.Ct. 2394, 180 L.Ed.2d 310 (2011). Having been separated from his classmates, escorted by a school police officer to a cafeteria populated only by police officers and security personnel, a 13-year-old child in L.G.'s position would not believe he was free to leave.

CONCLUSION

The Court of Appeals and the trial court correctly decided this matter and applied the law correctly to the facts. Because this is a limited ruling and there was no error below, and because existing law is very clear that agents of police must provide *Miranda* warnings prior to questioning suspects, there has been no question of public or great general interest submitted for this Honorable Court to decide.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum was delivered to Christina Mahy, Assistant Prosecuting Attorney, Montgomery County Prosecutor's Office, 301 W. Third Street, Dayton, OH 45422, on the date same was filed.

/s/ Michael E. Deffet
MICHAEL E. DEFFET