Supreme Court of Ohio Clerk of Court - Filed April 23, 2018 - Case No. 2017-0877

IN THE SUPREME COURT OF OHIO

STATE OF OHIO

Appellant,

vs.

L.G.

Appellee.

Case No. 2017-0877

On Appeal From The Montgomery County Court Of Appeals, Second Appellate District

Court of Appeals Case No. 27296

MERIT BRIEF OF THE STATE OF OHIO, APPELLANT

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STATEMENT OF THE CASE AND FACTS

This case raises the question of the degree to which the requirements of *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), may be placed on private-citizen interviewers. The Juvenile Division of the Common Pleas Court of Montgomery County and the Second District Court of Appeals erred in expanding the protections of the Fifth Amendment of the United States Constitution, and the requirements of *Miranda* to an interview by a private citizen. The lower courts further erred in finding the juvenile suspect was in custody.

I. Procedural History

On October 28, 2015, the Dayton Police Department filed a complaint alleging thirteen-year-old L.G. committed the offense of Inducing Panic in violation of R.C. 2917.31(A)(1) and R.C. 2152.02, which would be a felony of the second degree if committed by an adult. On November 16, 2015, L.G. filed a motion to suppress, alleging he was interviewed and made statements to Executive Director of Safety and Security for Dayton Public Schools Jamie Bullens, in violation of his rights against self-incrimination under the Fifth Amendment of the United States Constitution and Section 10, Article I of the Ohio Constitution.

The magistrate held a hearing and granted the juvenile's motion to suppress, a decision later adopted by the juvenile court judge. The juvenile court found because "given the circumstances surrounding the investigation, no reasonable thirteen (13) year old child would feel he or she was at liberty to terminate the interrogation and leave," L.G. was in custody for the purposes of *Miranda*. (Juvenile Court *Decision and Judgment concerning Objections to the Decision of the Magistrate* (*"Decision"*), p. 4). The juvenile court further found, given the circumstances of the investigation, "no reasonable thirteen (13) year old child would view Mr.

Bullens as anything other than law enforcement," and Director Bullens was therefore functioning as a state actor. (*Id.* at p.5)

The State appealed to the Second District Court of Appeals, arguing Director Bullens was not functioning as a state actor and *Miranda* warnings were not required, and L.G. was not in custody when he was interviewed. In a divided opinion, the majority affirmed the decision of the juvenile court and held Director Bullens was a state actor and L.G. was in custody. *In re L.G.*, 2d Dist. Montgomery No. 27296, 2017-Ohio-2781, 82 N.E.3d 52 ("*Opinion*").

To reach this decision, the court relied on several factors that are not relevant to the determination of whether or not an individual constitutes a state actor, most notably the juvenile court's conclusion "no reasonable thirteen (13) year old child would view Mr. Bullens as anything other than law enforcement." (*Opinion* at ¶ 19)

The State filed a Notice of Appeal to this Court and, on February 5, 2018, this Court accepted jurisdiction.

II. Evidence Elicited at the Motion to Suppress Hearing

At the suppression hearing held on December 22, 2015, Dayton Police Department Officer Jeremy Stewart and Executive Director of Safety and Security for Dayton Public Schools Jamie Bullens testified for the State. (Tr. 4, 17) L.G. and L.G.'s mother testified on his behalf. (Tr. 46, 57)

Jamie Bullens is employed by the City of Dayton Public Schools as the Executive Director of Safety and Security. (Tr. 17) He is a retired detective; however, he is no longer a peace officer and does not maintain that status with the State of Ohio. (Tr. 18, 26) Director Bullens oversees the school resource officers, none of whom are armed. (Tr. 23, 25) On October 27, 2015, Director Bullens responded to Longfellow School because of a bomb threat.

(Tr. 18) Dayton Police Department Officer Jeremy Stewart was also dispatched due to the bomb threat. (Tr. 5) Officer Stewart and other law enforcement officers searched the school and determined there was no bomb. (Tr. 5) Once the police cleared the school, Director Bullens reassumed command. (Tr. 5-6, 18-19) Director Bullens decided to bring the students back into the school, and took them all to the school gymnasium. (Tr. 12, 19, 32) Officer Stewart was not in the gymnasium with the students. (Tr. 12)

Director Bullens spoke to the students and informed them a reward for any information was being offered by the Miami Valley Crime Stoppers. (Tr. 19, 33) The Miami Valley Crime Stoppers is not a law enforcement agency, and is a separate entity from the Dayton Police Department. (Tr. 34) Two individuals came forward and provided information to Director Bullens about a possible suspect. (Tr. 20) Director Bullens spoke to them individually in the cafeteria. (Tr. 20) L.G. was identified as a suspect, and Director Bullens had one of his employees bring L.G. to him in the cafeteria. (Tr. 20)

Director Bullens informed L.G. he did not have to answer any of his questions.[1] (Tr. 37-38) Director Bullens interviewed L.G. for approximately ten to twenty minutes,[2] and L.G. admitted he had called in the bomb threat. (Tr. 20-21) No one other than Director Bullens interviewed L.G. in the cafeteria. (Tr. 7-8, 23, 44-45, 51)

Officer Stewart and Sergeant Keller were in the cafeteria while L.G. was questioned. (Tr. 15) Officer Stewart testified no other uniformed officers were present. (Tr. 15) L.G. confirmed this, testifying he recalled there were two uniformed officers present. (Tr. 48-49) Neither Officer Stewart nor Sergeant Keller questioned L.G. in the cafeteria (L.G. corroborated this).

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[1] L.G. disputed this in his testimony. (Tr. 50) The juvenile court made no factual findings as to whose testimony it found more credible on this issue. *Decision*, p.3.

[2] Director Bullens testified the interview lasted less than ten minutes. (Tr. 22) Officer Jeremy Stewart testified the interview lasted "fifteen, twenty minutes maybe." (Tr. 15)

(Tr. 7-8, 23, 44-45, 50-51) Officer Stewart and Sergeant Keller did not discuss L.G.'s questioning with Director Bullens. (Tr. 8, 22-23) Neither Officer Stewart nor any other officer directed Director Bullens' questioning of L.G. in any way. (Tr. 8, 22) After L.G. was identified as a suspect, Director Bullens had no conversation with any member of the police until after he had concluded his interview of L.G. (Tr. 22-23) L.G. corroborated this, testifying no officer ever spoke to him, or to Director Bullens, during his interview in the cafeteria. (Tr. 50-51)

Officer Stewart testified that during Director Bullens' questioning he (Officer Stewart) was the closest officer to L.G., and was about ten to fifteen feet away from him.[3] (Tr.8) Director Bullens did not contact L.G.'s mother prior to questioning him. (Tr. 43) L.G.'s mother testified she had told L.G. to never talk to police without her being present. (Tr. 57)

ARGUMENT

Proposition of Law:

> **The protections of the United States Constitution only apply where there is action by the State. The Fifth Amendment protection against self-incrimination does not apply to interviews conducted by private citizens.**

It is axiomatic that state action is a necessary prerequisite to the application of constitutional protections. The protections of the Fifth Amendment and requirements of *Miranda* warnings only apply when a suspect has been subject to custodial interrogation. *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).[4] "By custodial

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[3] L.G. testified the closest officer was about five feet away. (Tr. 49) The juvenile court made no factual findings as to whose testimony it found more credible on this point. *Decision*, p. 3-4.

[4] In his *Motion to Suppress*, L.G. asserted, without separate argument, that his statements were obtained in violation of his rights against self-incrimination under the United States and Ohio Constitutions. *Id.* at p.1. However, both the juvenile court and Court of Appeals, in considering these issues, relied solely on the Fifth Amendment.

Nevertheless, except for purposes of the derivative evidence rule, see *State v. Farris*, 109 Ohio St.3d 519, 2006-Ohio-3255, 849 N.E.2d 985 (2006), this Court has consistently read Section 10,

interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *Id.* at 444.

L.G. was not subject to interrogation by law enforcement officers during the interview in question on October 27, 2015, and only interrogation by law enforcement officers will trigger the protections of *Miranda*. "From a careful examination of the language of the opinion of Chief Justice Warren in *Miranda v. Arizona*, supra, we think it clear that the term, 'custodial interrogation', was limited to 'questioning initiated by law enforcement officers.' " *State v. Bolan*, 27 Ohio St.2d 15, 18, 271 N.E.2d 839 (1971). "The Miranda requirements 'do not apply when admissions otherwise admissible are given to persons who are not officers of the law or their agents.' " (Internal citations omitted.) *State v. Watson*, 28 Ohio St.2d 15, 26, 275 N.E.2d 153 (1971).

> Custodial interrogation as covered by the *Miranda* decision consists of questioning initiated by "law enforcement officers" after the accused is taken into custody or otherwise deprived of his freedom in any significant way. Because of this requirement and also because of the general doctrine that state action is a prerequisite to the application of constitutional protections, it is clear that *Miranda* does not govern interrogation by private citizens acting on their own.

(Internal citations omitted.) *Matter of Gruesbeck*, 2d Dist. Greene No. 97-CA-59, 1998 WL 404516, *2 (Mar. 27, 1998).

Article I of the Ohio Constitution coextensively with the Fifth Amendment of the United States Constitution. *See State v. Goff*, 128 Ohio St.3d 169, 2010-Ohio-6317, 942 N.E.2d 1075, ¶ 43 (2010). "Section 10, Article I of the Ohio Constitution provides, 'No person shall be compelled, in any criminal case, to be a witness against himself * * *.' This echoes essentially identical language from the Fifth Amendment to the United States Constitution, made applicable to the states through the Fourteenth Amendment."

L.G. was not subject to custodial interrogation because (1) he was not interviewed by a law enforcement officer or a person working under the direction or control of law enforcement and, (2) he was not in custody at the time of his interview. The Second District erred in ruling otherwise.

A. The lower courts erred in finding that Director Bullens was a state actor.

The lower courts erred in finding Director Bullens was functioning as a state actor when he questioned L.G. There is no dispute that Director Bullens is an employee of the City of Dayton Public Schools, and was not employed by any law enforcement agency or police department. (Tr. 17, 26) However, the juvenile court and Second District found Director Bullens' cooperation with police was such that he was effectively an instrument of the state, and the requirements of *Miranda* must apply. *See Opinion* at ¶ 22 ("Nevertheless, the juvenile court reasonably concluded that, when viewing the totality of the circumstances, Bullens was acting in conjunction with law enforcement officers, such that *Miranda* warnings were required.")

While the requirements of *Miranda* typically only apply to law enforcement officers, if a private citizen is acting as an agent of the police, the Fifth Amendment will apply. "Police may not avoid *Miranda* by delegating the questioning * * *." *Gruesbeck*, 2 1998 WL 404516 at *3. However, for an interviewer to be acting as an agent of the police they must be directed or controlled by law enforcement and their questioning must be directed or controlled by law enforcement.

"The rationale of these cases is that the duty of giving 'Miranda warnings' is limited to employees of governmental agencies whose function is to enforce law, or to those acting for such law enforcement agencies by direction of the agencies; *that it does not include private citizens*

not directed or controlled by a law enforcement agency, even though their efforts might aid in law enforcement." (Emphasis added.) *Bolan*, 27 Ohio St.2d at 18.

> "The test of government participation is whether, in light of all the circumstances, the private person 'acted as an "instrument" or agent of the state.' *Coolidge v. New Hampshire* (1971), 403 U.S. 443, 487, 91 S.Ct. 2022, 29 L.Ed.2d 564, overruled in part on other grounds by *Horton v. California* (1990), 496 U.S. 128, 110 S.Ct. 2301, 110 L.Ed.2d 112. 'The cases in this area require a great deal of entanglement between the police and the private searcher before agency can be found.' "

State v. Cook, 149 Ohio App.3d 422, 2002-Ohio-4812, 777 N.E.2d 882, ¶ 10 (2d Dist.), quoting *State v. Jodd*, 146 Ohio App. 3d 167, 172, 765 N.E.2d 880 (4th Dist. 2001). *See also State v. Ellis*, 2d Dist. Greene No. 05CA78, 2006-Ohio-1588, ¶ 14 ("The test of government participation is whether under all the circumstances the private individual must be regarded as an agent or instrument of the state.").

In reaching its decision, the juvenile court and Court of Appeals relied on the cooperation of Longfellow School with the police when law enforcement initially arrived on the scene and cleared the school of any bomb threat, the presence of two uniformed Dayton officers during the interview, and finally concluded that "no reasonable thirteen (13) year old child would view Mr. Bullens as anything other than law enforcement." (*Decision*, p.5) The juvenile court and Court of Appeals erred in this decision.

1. The presence of police will not automatically transform a private interview into a state action.

The presence of law enforcement officers alone will not transform an interview by a private citizen into a state action. *See In re W.J.L., Jr.*, 2d Dist. Clark No. 2003CA81, 2004-Ohio-3787, ¶ 12. The Third District Court of Appeals so held in *State v. Gattis*, 3d Dist. Logan No. 8-97-23, 1998 WL 126069 (Mar. 4, 1998); finding that *Miranda* warnings were not required

when a police officer arrived towards the end of a store security officer's interview of a shoplifting suspect:

> In the present case, it is undisputed that Hitchings alone asked questions of Appellant and filled out the paperwork which Appellant later signed describing the theft. Officer Tetirick was only present during the end of Hitchings interview of Appellant and did not in any way participate in the questioning process. * * * We find these facts do not implicate *Miranda* warnings since there was no custodial interrogation initiated by a law enforcement officer.

Id. at *2.

Likewise, in the instant case, officers were present throughout the interview but did not ask any questions of L.G. or participate in his questioning in any way. Their mere presence did not transform Director Bullens into a state actor.

In *In re Harris*, 5th Dist. Tuscarawas No. 1999AP030013, 2000 WL 748087 (June 7, 2000), the twelve-year-old appellant was questioned by Chief Vaughn and Captain Urban of the Millersburg Police Department as the suspect in a homicide investigation. *Id.* at *3-4. The interview occurred at the police station, after the appellant was read his *Miranda* warnings. *Id.* at *4. The appellant made incriminating statements to the police, and then asked to speak to his mother. *Id.* His mother, Cynthia Harris, was brought into the room, and "Cynthia Harris, Captain Urban and Chief Vaughn returned to the interview room and all three began asking appellant more questions about the crime * * *. During this portion of the interview, Cynthia Harris asked very direct questions concerning appellant's involvement in this matter." *Id.* at *15.

The Fifth District found the appellant's *Miranda* waiver was not knowingly, intelligently, and voluntarily given. *Id.* at *12. The Court suppressed the appellant's statements in response to Chief Vaughn and Captain Urban's questions, and further found the statements themselves were not voluntarily made. *Id.* However, the Court did not suppress the appellant's statements in response to questions asked by his mother. *Id.* at *16. Although those questions were asked at

the police station, in the presence of police, and during a four person conversation between the appellant, his mother, and two law enforcement officers, the Court distinguished between responses elicited by police and those elicited by the appellant's mother. *Id.* The Court found these questions differed because (1) the appellant's mother was not a law enforcement officer, and (2) she was not an agent of law enforcement because her questioning was not directed by law enforcement.

> Based on the above case law, we conclude that although appellant was in custody when Chief Vaughn questioned him about Devan's murder, the questioning conducted by Cynthia Harris was not a custodial interrogation because Cynthia Harris is not a law enforcement officer nor did she act as an agent for Chief Vaughn or Captain Urban while questioning appellant on July 15, 1998. *Had Captain Urban asked Cynthia Harris to help him question appellant, as he did on July 2, 1999, we would have reached a different conclusion.*

(Emphasis added.) *Id.* at *16.

In so deciding, the Fifth District relied on this Court's decisions in *Watson*, 28 Ohio St.2d 15, and *Bolan*, 27 Ohio St.2d 15. In *Watson*, this Court found it was not error to deny suppression of the defendant's statements to a newspaper reporter while the defendant was in police custody:

> In permitting the newspaper reporter to testify as to defendant's statement made to him in the bullpen, the trial court noted that "no law enforcement officers participated in this particular questioning of the defendant." * * * The Miranda requirements "do not apply when admissions otherwise admissible are given to persons who are not officers of the law or their agents." *People v. Morehead* (1970), 45 Ill.2d 326, 259 N.E.2d 8; *Schaumberg v. State* (1967), 83 Nev. 372, 432 P.2d 500.
>
> Although defendant was in custody, the statement in question was not the result of "questioning initiated by law enforcement officers." Therefore, it is of no consequence that the statement might have been influenced by earlier statements made by defendant to the police.

Watson, 28 Ohio St.2d at 26–27.

In *City of Cuyahoga Falls v. Robinson*, 9th Dist. Summit No. 15883, 1993 WL 140419 (May 5, 1993), a grocery store loss prevention officer, Bonnie Colby, witnessed Robinson (a fellow employee) commit shoplifting, and ordered Robinson into the manager's officer. *Id.* at *1. Colby asked Patrolman James Stanley to accompany them. *Id.* "Colby then questioned Robinson for approximately twenty minutes. While [Patrolman] Stanley was present during this questioning, he did not actively participate but only asked questions regarding past thefts." *Id.* The Ninth District found "Stanley was present in the manager's office to take a report and the questioning and investigation was Colby's, not Stanley's. Further, Stanley did not ask any question regarding the [current theft] but only questions regarding past thefts." *Id. at *3.* The Court therefore held "[i]n this case, Stanley's mere presence in the office does not clothe Colby's questioning with the authority of a law enforcement agency and Colby, therefore, was not required to give *Miranda* warnings." *Id.*

In the instant case, officers were present throughout Director Bullens' interview of L.G., but, unlike Patrolman Stanley, asked no questions whatsoever.

In *State v. Grant*, 67 Ohio St.3d 465, 620 N.E.2d 50 (1993), this Court held the warrantless search of a home that was the scene of an arson by private insurance investigators, although they were accompanied by police officers, did not constitute a state action and did not violate the Fourth Amendment:

> The results of private insurance agent Brininger's April 14 visit were admissible because his search did not constitute state action barred by the Fourth Amendment. Brininger entered the property on April 14 for private purposes without official instigation. Chief Cover, Investigator Zamary, and Officer Fullerman were present as a courtesy. Cover also continued his investigation; Fullerman assisted with lighting. In *State v. Morris* (1975), 42 Ohio St.2d 307, 71 O.O.2d 294, 329 N.E.2d 85, this court recognized that a warrantless search and seizure initiated by private individuals for private purposes does not violate the Fourth Amendment even though police officials are present and participate.

Id. at 471.

Likewise, the presence of Officer Jeremy Stewart and Sergeant Keller during the interview, without more, does not "clothe" Director Bullens' "questioning with the authority of a law enforcement agency." *Robinson, supra* at *3.

2. Director Bullens is not required to give *Miranda* warnings merely because he is a school administrator.

Director Bullens' role as a school official does not impose the requirements of *Miranda* on him. Questioning by one who may possess more power than the average citizen will not transform a private interview into a police action. "It might be argued that the protections of *Miranda* would be appropriate where the defendant is questioned by a person who is not a government employee but who has employment responsibilities of a law enforcement nature, such as a private security guard. * * * The courts, however, have rather consistently held that such persons as security officers, railroad detectives, insurance investigators, and private investigators are not required to comply with *Miranda.*" *Gruesbeck*, 2d Dist. Greene No. 97-CA-59, 1998 WL 404516 at *2.

This holding has been consistently applied to interviews by private citizens, even security personnel, who are seeking evidence of suspected crimes. In *Bolan*, 27 Ohio St.2d 15, this Court held a store security officer who detained a shoplifting suspect was not required to *Mirandize* the thirteen-year-old suspect prior to interviewing him. *Id.* at 18–19. In so deciding, this Court cited with approval other state supreme courts and courts of appeals that held *Miranda* warnings were not required for "[d]etention and questioning by department store security guards in connection with a suspected shoplifting," nor for questioning by a "security guard employed by a governmental agency, a county hospital." (Internal citations omitted.) *Bolan* at 18–19. Nor were *Miranda* warnings required for "the questioning of an employee of a gambling casino in the

manager's office while one of the casino's security guards waited outside," "[t]he questioning of a suspected shoplifter by the manager of a grocery store," or "[a] grocery store merchant's questioning of an apprehended shoplifter." (Internal citations omitted.) *Id. See also Robinson*, 9th Dist. Summit No. 15883 at *2 ("Privately employed security personnel of retail merchants are not law enforcement officers; therefore, they do not have a duty to give *Miranda* warnings prior to questioning a suspect stopped for shoplifting.").

This Court has also cited with approval out of state courts which have similarly held *Miranda* warnings were not required for "interrogation by private investigators," "as to statements made to private citizens who had seized a suspected rapist and were holding him for the police," "to admissions made by a defendant to armed private citizens who had apprehended him after he had shot at them," and "to admissions made to an insurance investigator." (Internal citations omitted.) *Bolan*, 25 Ohio St.2d at 19.

Director Bullens' position as the Executive Director of Safety and Security does not transform him into an agent of the state. The fact that Director Bullens is a retired police officer, *Opinion* at ¶ 21, is also irrelevant to this determination. *See United States v. Parr-Pla*, 549 F.2d 660, 663 (9th Cir.1977)("The hotel investigator had been a deputy sheriff for 18 years. He had retired, however, and had no affiliation with any government law enforcement agency at the time he questioned appellant."). Even the involvement of an off-duty police officer, when acting in the scope of his employment as a private security guard rather than a law enforcement officer, will not transform the interview into a state action. *See Gruesbeck*, 1998 WL 404516 at *3.

Moreover, in the instant case there is no evidence at all that L.G. knew about Director Bullens' past career with the Dayton Police Department. But even if L.G. had known Bullens

was a retired police officer, that would be irrelevant because Bullens was acting in his role as the director of safety and security for the school, not a retired police officer.

3. **Director Bullens had a separate function from the police. That his goals overlapped with those of the police is not dispositive.**

The lower courts both relied on Director Bullens' cooperation with the Dayton Police when they initially responded to the school and cleared the school from the bomb threat to hold that Bullens was an agent of the state. However, a private citizen is not transformed into a state actor merely because their goals overlap with those of police, or because their actions eventually benefit the police.

"[T]he duty of giving 'Miranda warnings' is limited to employees of governmental agencies whose function is to enforce law, * * * that it does not include private citizens *not directed or controlled by a law enforcement agency, even though their efforts might aid in law enforcement.* " (Emphasis sic.) *In re G.J.D.*, 11th Dist. Geauga No. 2009-G-2913, 2010-Ohio-2677, ¶ 21-22, quoting *Bolan*, 27 Ohio St.2d at 18. The Second District recognized that fact when it held a search conducted by hospital security personnel was not a police action, though their aims overlapped with those of the police:

> The courts have not hesitated to admit into evidence under the Burdeau rule the fruits of illegal searches conducted by persons who, while not employed by the government, have as their responsibility the prevention and detection of criminal conduct. * * * In such circumstances it makes no difference that the private employer's objectives in keeping the business operation free of criminal activity coincides with the government interest in law enforcement.

State v. Chung, 2d Dist. Montgomery No. 17154, 1999 WL 76945, *3 (Feb. 19, 1999).

The fact that a private interviewer or private searcher later turned their information or evidence over to the police also does not transform them into a state actor. "The fact that Mr. Toth decided on his own to take statements from appellant does not make him an agent of the

police." *In re G.J.D.* at ¶ 26 (finding the interview of a student by the principal did not require *Miranda* warnings, though the principal called police and offered his statement to the police).

Similarly, private searches do not violate the Fourth Amendment even when evidence is later turned over to police, so long as the police did not direct the private citizen to undertake the search, tell them where to look, or tell them what to look for. "The mere fact that evidence found and obtained during a search by a private person is ultimately turned over to the police does not destroy the private nature of the search and render it official government action subject to the exclusionary rule." *Ellis*, 2d Dist. Grene No. 05CA78, 2006-Ohio-1588 at ¶ 14.

Here, although Director Bullens' goal of ensuring the safety of the students and the school overlapped with the goals of police, Director Bullens was fulfilling his own job function as Executive Director of Safety and Security when he interviewed L.G. He was not functioning merely as an arm of the state to whom law enforcement had delegated questioning to avoid the requirements of *Miranda*.

4. Whether Director Bullens "appeared" to be a law enforcement officer to L.G., or would have appeared so to a reasonable juvenile in his position, is irrelevant.

The Court of Appeals cited the decision of the juvenile court that, "no reasonable thirteen (13) year old child would view Mr. Bullens as anything other than law enforcement * * *." (*Opinion*, ¶19; *Decision*, p.19) The view of a reasonable thirteen-year old-child as to whether or not Mr. Bullens was law enforcement is, however, wholly irrelevant. The question of whether or not Director Bullens was a state actor is answered by the extent to which the police controlled and directed his questioning – facts to which L.G. may be largely ignorant.

In L.G.'s eyes, or indeed, in the view of a reasonable thirteen-year-old, Director Bullens may have possessed the same authority as a law enforcement officer. One would hope that a student would view a teacher, a school official, or a parent as an authority figure to be trusted

and obeyed as much as an adult would a law enforcement officer. But the Fifth Amendment does not intercede every time a juvenile is interviewed by a parent or teacher, just because the juvenile views their parent's authority as unquestionable. These factors only bear on the issue of whether or not the juvenile is in custody, not on whether it is the state that has taken action, and subjected the juvenile to custodial interrogation triggering constitutional protections.

L.G.'s view of Director Bullens is wholly irrelevant to the question of whether Bullens was acting as an agent of the state, and it was error for the juvenile court and Court of Appeals to rely on this in reaching their decisions.

5. Director Bullens' questioning was not directed or controlled in any way by law enforcement

The crucial factor in determining if the private citizen interviewer was acting as an agent of the police is whether "the questioner is acting on behalf of the police." *In re G.J.D.*, 11th Dist. Geauga No. 2009-G-2913, 2010-Ohio-2677 at ¶ 25-26. There must be a great deal of entanglement between law enforcement and the private citizen before they will be considered a "state actor" for the purposes of applying constitutional protections.

In *In re G.J.D.*, David Toth, the school principal, ordered his school administrator to bring G.J.D. to the principal's office so Toth could interview the juvenile about possible threats he had made. *Id.* at ¶ 4. The juvenile confessed, and Toth had him write out a statement explaining his actions. *Id.* at ¶ 7. Toth had the juvenile write his statement on a blank statement form, provided to Toth by the police department. *Id.* at ¶ 9. After G.J.D. completed his statement Toth contacted police, and then contacted G.J.D.'s mother and advised her of the situation, including that police had already been called. *Id.* at ¶ 7-8. At no point did Toth *Mirandize* G.J.D. The Eleventh District Court of Appeals rejected the argument that Toth was acting as an agent of police:

> It is undisputed that Mr. Toth did not discuss this matter with police at any time prior to taking appellant's statements from him. *The police did not ask Mr. Toth to question appellant or to take any statements from him.* Moreover, during the entire time Mr. Toth was questioning appellant, they were alone in Mr. Toth's office; at no time during the interview was any police officer present. The fact that Mr. Toth decided on his own to take statements from appellant does not make him an agent of the police.

(Emphasis added.) *Id.* at ¶ 26.

The critical distinction is whether police ordered the private citizen to question the suspect – whether police directed them what questions to ask, what information to seek, or gave advice on how best to solicit the desired information. In *In re Harris*, 5th Dist. Tuscarawas No. 1999AP030013, 2000 WL 748087, where the appellant's mother and two police officers questioned the appellant together at the police station, the Court found that while the statements made in response to police questioning should be suppressed, those elicited by his mother's questions should not be. *Id.* at *15. The Court held appellant's mother "was not a law enforcement officer nor did she act as an agent for Chief Vaughn or Captain Urban while questioning appellant." *Id.* at *16. However, the Court held, "[h]ad Captain Urban asked Cynthia Harris to help him question appellant," as he did on another date, "we would have reached a different conclusion." *Id.*

Here, although officers were present during the interview of L.G., Director Bullens was not acting under the direction and control of police when he interviewed L.G. on October 27, 2015. L.G. was initially determined to be a suspect by Director Bullens after Bullens interviewed two individuals. When he was identified as a suspect, L.G. was brought to see Bullens in the cafeteria by a school employee, on Bullens' instructions. Both Director Bullens and Officer Stewart testified the police did not direct the questioning of L.G. in any way. Any control by the police of Director Bullens' interview would have been impossible, since both

Director Bullens and Officer Stewart testified that, after L.G. was identified as a suspect, they did not even talk to one another until after the interview was concluded. L.G. himself corroborated this fact, testifying on direct examination the officers present remained silent throughout Bullens' interview of him.

Director Bullens was not acting under the Dayton Police Department's instructions when he interviewed L.G. He received no direction from any police officer to interview L.G., no instructions on what questions to ask him, and no advice from the police on interviewing techniques. There was not even any conversation between Bullens and the police leading up to the interview. It was Director Bullens' decision to move the students back into the cafeteria once the school had been cleared; his decision to offer a crime stopper's reward; his decision to question the two informants; his decision that L.G. was a suspect; his decision to bring L.G. to the cafeteria; his decision to question L.G., and his decision as to what questions to ask L.G. Director Bullens was not acting as a police agent when he interviewed L.G., and because L.G. was never interviewed by the police or their agent, he was never subjected to custodial interrogation. The requirements of *Miranda*, therefore, do not apply, and his statements to Director Bullens should not have been suppressed.

B. The Second District erred in finding that L.G. was in custody.

Even if Director Bullens had been functioning as a state actor, *Miranda* warnings would still not be required because L.G. was not in custody at the time of his interview. The requirement of the procedural safeguard of *Miranda* warnings only attaches when one is subjected to custodial interrogation. *Miranda*, 384 U.S. at 478–79. To determine if a person is in custody, courts look at the totality of the circumstances to determine whether, given those circumstances, a reasonable person would have felt free to terminate the encounter. *State v.*

Hoffner, 102 Ohio St.3d 358, 2004-Ohio-3430, 811 N.E.2d 48, ¶ 27. The "ultimate inquiry" is whether there is a "formal arrest or restraint on freedom of movement of the degree associated with a formal arrest." *Id.*, quoting *California v. Beheler*, 463 U.S. 1121, 1125, 103 S.Ct. 3517, 77 L.Ed.2d 1275 (1983).

The test for custody is objective, and the relevant factors include "whether the encounter takes place in surroundings that are familiar to the suspect; the number of law enforcement officers present, as well as their conduct and demeanor; the degree of physical restraint imposed; and the duration and character of the interrogation." *State v. Magnone*, 2016-Ohio-7100, 72 N.E.3d 212, ¶ 23 (2d Dist.) "Among others, the factors a court should consider in applying this standard are: the location of the interview; the duration of the interview; whether the interviewee is physically restrained; whether the interviewee is threatened or tricked; and whether the interviewee is released at the end of the interview." *State v. Mattox*, 2d Dist. Montgomery No. 27518, 2018-Ohio-992, ¶ 11, citing *Howes v. Fields*, 565 U.S. 499, 509, 132 S.Ct. 1181, 182 L.Ed.2d 17 (2012).

A review of these factors demonstrates L.G was not in custody at the time of his interview by Director Bullens. The interview took place in an environment familiar to L.G., a small number of law enforcement officers were present during the interview, [5] the law enforcement officers present said and did nothing throughout the interview, there was no physical restraint imposed upon L.G., the interview was short and not intense, there is no evidence L.G. was coerced or tricked, and L.G. demonstrated his knowledge that he was not

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[5] Director Bullens testified he was not sure how many officers were in the room during the interview. (Tr. 38-39) Officer Stewart testified he was present during the interview, stood about 15-20 feet from L.G., and was the closest officer to him. (Tr. 8, 14-15) Officer Stewart testified he and Sergeant Keller were the only uniformed officers in the room. (Tr. 14-15) L.G. testified two officers were present during the interview, and stood approximately five feet away from him. (Tr. 48- 49)

required to cooperate with Director Bullens by refusing to answer some of his questions. (Tr. 21)

1. The interview took place at school.

The interview of L.G. did not take place in an environment that was unfamiliar to L.G., nor in the more intimidating setting of a police station, or even the principal's office. Instead, the interview took place in the school cafeteria. *See In Matter of Johnson*, 5th Dist. Morgan No. CA-95-13, 1996 WL 363811, *1 ("Further, the circumstances demonstrate that the setting was not custodial in nature. Appellant was questioned in the school library, a setting that is not intimidating.").

An interview that takes place at school is not inherently coercive. *See State v. Spahr*, 2d Dist. Miami Nos. 2008 CA 21, 2008 CA 22, 2009-Ohio-4609, ¶ 15 ("Although Spahr would have us believe that this was a coercive atmosphere, courts have previously rejected the argument that a school is necessarily a coercive setting for a juvenile to be questioned by police."). *Compare In re T.F.*, 9th Dist. Lorain No. 08CA009449, 2009-Ohio-3141, ¶ 14 (Emphasis added.)("T.F. was not interviewed at home, *or even at school*, but at the police station, which is not a familiar or comfortable setting, but rather a more intimidating and authoritarian atmosphere with visible police presence.").

"[S]everal courts have held that questioning a juvenile is not custodial interrogation merely because it occurs in a school and in the presence of a police officer." *In re McDonald*, 11th Dist. Lake No. 2006-L-027, 2007-Ohio-782, ¶ 22, fn.1, citing. *In re Haubeil,* 4th Dist. No. 01CA2631, 2002-Ohio-4095, at ¶ 16; *In re Bucy*, 9th Dist. No. 96CA0019, 1996 Ohio App. LEXIS 4842, at *4-*5 (Nov. 6, 1996); *In re Johnson* , 5th Dist. No. CA-95-13, 1996 Ohio App. LEXIS 2972, at *3-*4 (June 20, 1996).

In *In re Haubeil*, 2002-Ohio-4095, the Fourth District held:

> Ohio courts generally have found that the act of law enforcement officers questioning minors while they are at school does not amount to custodial interrogation *where there is no evidence that the student was under arrest or told he was not free to leave*. * * * Absent some evidence that the student is under arrest or restrained to a degree associated with a formal arrest, we see nothing so inherently coercive in the school setting that would require *Miranda* warnings.

(Emphasis added.) *Id.* at ¶ 16. *See also In re G.J.D.*, 11th Dist. Geauga No. 2009-G-2913, 2010-Ohio-2677 at ¶ 43.

In the instant case there is no evidence L.G. was under arrest or told he was not free to leave, nor did any additional factors exist which would establish that he was restrained to a degree associated with formal arrest.

2. The Interview Was Short, And Was Not Intense

The interview of L.G. by Director Bullens lasted ten to twenty minutes, and no police officer participated in the interview. The interview also does not appear to have been intense. Director Bullens testified he told L.G. about the information he had received from others, and L.G. admitted to calling in the bomb threat. L.G. also admitted others were involved in calling in the threat. Director Bullens questioned L.G. about who else was involved, but L.G. refused to divulge that information. (Tr. 21)

Interviews of juveniles for around 30 minutes have been found to be of a short duration. "The interview was not intense and lasted only a short time–20 or 30 minutes." *In re J.S.*, 3rd Dist. Marion No. 9-15-26, 2016-Ohio-255, ¶ 31 (regarding interview of a juvenile who was 13 or 14 years old), citing *In re B.J.*, 11th Dist. Lake No. 2013-L-091, 2014-Ohio-5701, ¶ 19 ("The interview was of a short duration, lasting less than 30 minutes."). *See also In re R.L.*, 2014-Ohio-5065, 23 N.E.3d 298, ¶ 26(2d Dist.) (finding the nine-year-old juvenile's statements were voluntary and not the result of coercion or physical deprivation, after a 30 minute interview).

> "[T]he touchstone of the Fifth Amendment is compulsion...." *Lefkowitz v. Cunningham,* 431 U.S. 801, 806, 97 S.Ct. 2132, 53 L.Ed.2d 1 (1977). "Custodial arrest is said to convey to the suspect a message that he has no choice but to submit to the officers' will and to confess." *Minnesota v. Murphy,* 465 U.S. 420, 433, 104 S.Ct. 1136, 79 L.Ed.2d 409 (1984). "Moreover, custodial arrest thrusts an individual into 'an unfamiliar atmosphere' or 'an interrogation environment ... created for no purpose other than to subjugate the individual to the will of his examiner.' " *Id.* (quoting *Miranda v. Arizona,* 384 U.S. 436, 457, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966)). "Many of the psychological ploys discussed in *Miranda* capitalize on the suspect's unfamiliarity with the officers and the environment." *Id.* "[T]he coercion inherent in custodial interrogation derives in large measure from an interrogator's insinuations that the interrogation will continue until a confession is obtained." *Id.*

State v. Gradisher, 9th Dist. Summit No. 24716, 2009-Ohio-6433, ¶ 8.

In the instant case, L.G. was not in an "unfamiliar atmosphere" or an "interrogation environment" designed to "subjugate [his] will." As Judge Hall, in his dissent below noted:

> L.G.'s own testimony failed to indicate any arrest, threats of arrest, constraint, compulsion, or coercion. Other than the fact that L.G. was a school student, who would not have been permitted to leave the premises because he was in school (not because he was in police custody), there is simply no support in the record to conclude the child was in custody.

Opinion at ¶ 29 (Hall, J., dissenting).

L.G. was in his school cafeteria. His interview was short and not intense, lasting less than twenty minutes. There is no evidence L.G. was subjected to physical deprivation of any kind. There is no evidence he was handcuffed or otherwise restrained. He had not been informed he was under arrest. L.G. was not questioned by police, but by a school employee. Director Bullens testified he told L.G. he did not have to answer his questions.[6] (Tr. 37-38) L.G. had been instructed by his mother not to answer any questions by police unless she was present. (Tr. 57)

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[6] L.G. disputes this in his testimony. (Tr. 50)

Judge Hall also noted in his dissent, "during the interview, L.G. refused to provide the names of anyone else involved, demonstrating a lack of compulsion or coercion arising from the interview setting and demonstrating that L.G. knew he could refuse to answer." *Opinion* at ¶ 27 (Hall, J., dissenting). That L.G. refused to answer some questions is strong evidence he knew he did not have to answer Director Bullens' questions. Given the totality of the circumstances, L.G. was not subject to a restraint on freedom of movement of the degree associated with a formal arrest, and was not in custody for purposes of *Miranda*.

CONCLUSION

The decisions of this Court and other Ohio courts have made clear that the protections of the Fifth Amendment to the United States Constitution and Article Ten of the Ohio Constitution apply only to custodial interrogation by law enforcement or those acting under their direction and control, and not to interviews by private citizens. In the instant case, the lower courts erred in expanding the requirements of *Miranda* to an interview by a private citizen, and further erred in finding that L.G. was in custody at the time of his interview. The State therefore respectfully requests that this Court reverse the decision of the Second District Court of Appeals, and remand the case to the juvenile court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Merit Brief of Appellant was sent by regular U.S. mail this 23rd day of April, 2018 to: Michael Deffet, 117 South Main Street, Suite 400, Dayton, OH 45422.

____
CHRISTINA E. MAHY

Supreme Court of Ohio Clerk of Court - Filed June 26, 2017 - Case No. 2017-0877

IN THE SUPREME COURT OF OHIO

STATE OF OHIO

Appellant,

vs.

L.G.

Appellee.

Case No.

On Appeal from the Montgomery County Court of Appeals, Second Appellate District

Court of Appeals Case No. 27296

NOTICE OF APPEAL OF APPELLANT, THE STATE OF OHIO

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NOTICE OF APPEAL OF APPELLANT, THE STATE OF OHIO

The State of Ohio, gives notice of appeal to the Supreme Court of Ohio from the judgment of the Montgomery County Court of Appeals, Second Appellate District, entered in *State of Ohio v. L.G.,* Case No. 27296. The Court of Appeals issued an opinion and entered a final entry on May 12, 2017.

This felony case involves a matter of public or great general interest, and presents a substantial question.

Respectfully submitted,

MATHIAS H. HECK, JR.
PROSECUTING ATTORNEY

BY ______________________
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Notice of Appeal was electronically filed and a copy was sent by first class mail on this 26th day of June, 2017, to the following: Michael Deffet, 117 South Main Street, Ste. 400, Dayton, OH 45422 and Timothy Young, Ohio Public Defender Commission, 250 East Broad Street, Suite 1400, Columbus, Ohio 43215.

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FILED
COURT OF APPEALS
2017 MAY 12 AM 9: 05

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

IN RE: L.G. : C.A. CASE NO. 27296

: T.C. NO. 2015-6610

: **FINAL ENTRY**

. . . .

Pursuant to the opinion of this court rendered on the 12th day of May, 2017, the judgment of the trial court is affirmed.

Costs to be paid as stated in App.R. 24.

Pursuant to Ohio App.R. 30(A), it is hereby ordered that the Clerk of the Montgomery County Court of Appeals shall immediately serve notice of this judgment upon all parties and make a note in the docket of the mailing.

MICHAEL T. HALL, Presiding Judge

MARY E. DONOVAN, Judge

JEFFREY E. FROELICH, Judge

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FILED
COURT OF APPEALS
2017 MAY 12 AM 9:05

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

IN RE: L.G.

C.A. CASE NO. 27296

T.C. NO. 2015-6610

(Civil Appeal from Common Pleas Court, Juvenile Division)

. . . .

OPINION

Rendered on the 12th day of May, 2017.

. . . .

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. . . .

FROELICH, J.

{¶ 1} The State of Ohio appeals from a "decision and judgment" of the Montgomery County Court of Common Pleas, Juvenile Division, which suppressed statements that L.G. made when he was questioned by the Dayton Public Schools' Executive Director of Safety and Security about a bomb threat. For the following reasons, the juvenile court's decision will be affirmed.

I. Factual and Procedural History

{¶ 2} On October 27, 2015, a person called the Dayton Regional Dispatch Center and claimed that there was a bomb in Dayton's Longfellow Alternative School. The police contacted school officials, who immediately evacuated the school. The police also contacted Jamie Bullens, Dayton Public Schools' Executive Director of Safety and Security, who met police officers at the school.

{¶ 3} As Executive Director of Safety and Security, Bullens, a retired detective with the Dayton Police Department, oversees 26 school resource officers, who are trained as peace officers. The school resource officers are qualified as special police officers, and they have the authority to arrest individuals for offenses that occur on school campuses; school resource officers carry handcuffs, but do not carry weapons. Bullens indicated that he works closely with law enforcement when incidents occur that school resource officers cannot handle. And, he is directed to work closely with the police department any time formal charges may be warranted.

{¶ 4} Upon arriving at Longfellow, Bullens confirmed that the school had been evacuated, and he initiated a walkthrough. Bullens and Dayton Police Sergeant Keller had bomb-sniffing dogs sweep the building; the dogs found nothing. He and Sergeant Keller authorized the children to be brought into the school's gymnasium.

{¶ 5} While the students were in the gymnasium, Bullens told them that he needed to know who had made this bomb threat. Bullens informed the students that there was an agreement with the Miami Valley Crime Stoppers Association, and it was offering a reward from $50 to $1,000 for information leading to the person responsible for the bomb threat. Bullens then went to the school cafeteria.

{¶ 6} Soon after, two individuals came forward to school officials implicating L.G., a thirteen-year-old seventh grader. Kerry Ivy, the school resource officer, and Jack Johnson, the principal, informed Bullens that there were two individuals he needed to speak to right away. The individuals were brought to the cafeteria, where they gave information to Bullens about the bomb threat and implicated L.G.

{¶ 7} Bullens contacted Ivy and "had him go into the gymnasium with the information, the description of the individual we were looking for, and to retrieve that individual and bring him to the cafeteria." Ivy got L.G. from the gym, brought him to the cafeteria, and had L.G. sit across a table from Bullens. There, with two uniformed police officers standing nearby (closer to L.G. than to Bullens), Bullens questioned L.G. about his alleged involvement with the bomb threat. Bullens did not provide *Miranda* warnings prior to asking L.G. any questions.[1] Once confronted with the information provided by the two informants, L.G. confessed to calling in the bomb threat. When Bullens finished questioning L.G., L.G. was handed off to Officer Jeremy Stewart, one of the police officers who had been standing nearby and had witnessed the questioning. Officer Stewart placed L.G. under arrest and transported him in a cruiser to a police station for further questioning by Dayton police detectives.

{¶ 8} The following day, the Dayton Police Department filed a complaint alleging that L.G. was a delinquent child for committing the offense of inducing panic under R.C. 2917.31(A)(1), a second-degree felony under R.C. 2917.31(C)(5). L.G. filed a motion to suppress the statements that he had made to Bullens, arguing that the questioning was

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[1] Bullens testified that he told L.G. that L.G. was free to answer his questions or not answer his questions. However, L.G. testified that no one told him that he did not have to answer questions and could get up and leave.

not conducted with his (L.G.'s) consent and that he was not advised of his *Miranda* rights before the questioning. The matter was referred to a magistrate, who held an evidentiary hearing. After the hearing, the magistrate granted L.G.'s suppression motion. The State filed objections to the magistrate's decision with the juvenile court, arguing that L.G. was not in custody for *Miranda* purposes and that *Miranda* did not apply because Bullens was not a law enforcement officer or acting as an agent of law enforcement when he interviewed L.G. The juvenile court overruled the State's objections and sustained the motion to suppress. The court concluded that L.G. was in custody for *Miranda* purposes and that Bullens was acting as an agent of law enforcement.

{¶ 9} The State appeals.

II. *Miranda* Analysis

{¶ 10} In ruling on a motion to suppress, the trial court "assumes the role of the trier of fact, and, as such, is in the best position to resolve questions of fact and evaluate the credibility of the witnesses." *State v. Retherford*, 93 Ohio App.3d 586, 592, 639 N.E.2d 498 (2d Dist.1994); *State v. Knisley*, 2d Dist. Montgomery No. 22897, 2010-Ohio-116, ¶ 30. Accordingly, when we review suppression decisions, we must accept the trial court's findings of fact if they are supported by competent, credible evidence. *Retherford* at 592. "Accepting those facts as true, we must independently determine as a matter of law, without deference to the trial court's conclusion, whether they meet the applicable legal standard." *Id.*

{¶ 11} Under the Fifth Amendment to the United States Constitution, no person shall be compelled to be a witness against himself or herself. In order to ensure that this right is protected, statements resulting from custodial interrogations are admissible only

after a showing that the procedural safeguards described in *Miranda v. Arizona*, 384 U.S. 436, 444, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), have been followed. *State v. Earnest*, 2d Dist. Montgomery No. 26646, 2015-Ohio-3913, ¶ 21. To counteract the coercive pressure of custodial interrogations, police officers must warn a suspect, prior to questioning, that he or she has a right to remain silent and a right to the presence of an attorney. *Maryland v. Shatzer*, 559 U.S. 98, 103-104, 130 S.Ct. 1213, 175 L.Ed.2d 1045 (2010), citing *Miranda*, 384 U.S. at 444. "After the warnings are given, if the suspect indicates that he wishes to remain silent, the interrogation must cease. Similarly, if the suspect states that he wants an attorney, the interrogation must cease until an attorney is present." *Shatzer* at 104.

{¶ 12} *Miranda* defined custodial interrogation as "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *Miranda* at 444. "[T]he ultimate inquiry is simply whether there [was] a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest." *California v. Beheler*, 463 U.S. 1121, 1125, 103 S.Ct. 3517, 77 L.Ed.2d 1275 (1983), citing *Oregon v. Mathiason*, 429 U.S. 492, 495, 97 S.Ct. 711, 50 L.Ed.2d 714 (1977).

{¶ 13} The inquiry whether a person is subject to custodial interrogation is an objective question, focusing on how a reasonable person in the suspect's position would have understood the situation. *J.D.B. v. North Carolina*, 564 U.S. 261, 270, 131 S.Ct. 2394, 180 L.Ed.2d 310 (2011); *Berkemer v. McCarty*, 468 U.S. 420, 442, 104 S.Ct. 3138, 82 L.Ed.2d 317 (1984).

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 not 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 a formal arrest.

(Internal quotation marks, alteration, and footnote omitted.) *Thompson v. Keohane*, 516 U.S. 99, 112, 116 S.Ct. 457, 133 L.Ed.2d 383 (1995). The subjective views of the interviewing officer and the suspect are immaterial to the determination of whether a custodial interrogation was conducted. *E.g.*, *J.D.B.* at 271; *Stansbury v. California*, 511 U.S. 318, 323, 114 S.Ct. 1526, 128 L.Ed.2d 293 (1994); *State v. Hatten*, 186 Ohio App.3d 286, 2010-Ohio-499, 927 N.E.2d 632, ¶ 50 (2d Dist.).

{¶ 14} In *J.D.B.*, the United States Supreme Court recognized that, "[i]n some circumstances, a child's age 'would have affected how a reasonable person' in the suspect's position 'would perceive his or her freedom to leave.' " 564 U.S. at 271-272, quoting *Stansbury* at 325. The Court held that, "so long as the child's age was known to the officer at the time of police questioning, or would have been objectively apparent to a reasonable officer, its inclusion in the custody analysis is consistent with the objective nature of that test." *J.D.B.* at 277.

{¶ 15} Under the specific facts before us, we agree with the juvenile court that L.G. was in custody when he was questioned by Director Bullens. It was apparent that an active police (as well as school) investigation was underway – uniformed police officers

and bomb-sniffing dogs were present, and a Crime Stoppers reward had been offered to the students. All students were gathered in the school's gymnasium following a bomb threat; they were not free to move about the school on their own. L.G. was retrieved from the gymnasium by the school resource officer, who had the authority of a special police officer. L.G. was brought to the cafeteria to be questioned by the school district's Executive Director of Safety and Security, not school personnel with whom L.G. would have been familiar. Two uniformed officers stood five to fifteen feet from L.G., standing closer to L.G. than to Bullens; Officer Stewart indicated that he observed Bullens's questioning of L.G. Under these circumstances, a reasonable person in L.G.'s position would have believed that he was in custody.

{¶ 16} We recognize that the subjective belief of the child being interviewed is not controlling. Probably, and hopefully, most children confronted by an adult authority figure asking about an incident at school would not feel free just to walk away. A legitimate concern is that any thirteen-year-old who is questioned by an authoritative figure in school will always reasonably believe that he or she is not free to leave and will always be considered "in custody" – thus, conjuring up images of *Miranda* warnings being constitutionally required every time a teacher, a school nurse, or a principal, let alone a "security guard" or "resource officer," interacts with the student.

{¶ 17} In addition, we note that, under different circumstances, Ohio courts generally have found that "the act of law enforcement officers questioning minors while they are at school does not amount to custodial interrogation where there is no evidence that the student was under arrest or told he was not free to leave." *In re Haubeil*, 4th Dist. Ross No. 01CA2631, 2002-Ohio-4095, ¶ 16 (finding that the juvenile was not in

custody when questioned by a police officer in the principal's office); *see also State v. Spahr*, 2d Dist. Miami Nos. 2008 CA 21 & 2008 CA 22, 2009-Ohio-4609, ¶ 15 ("courts have previously rejected the argument that a school is necessarily a coercive setting for a juvenile to be questioned by police"). *But see In re A.A.*, 9th Dist. Lorain No. 08CA009512, 2009-Ohio-4094, ¶ 16 (finding that the juvenile was in custody during his interview with a police detective in an assistant principal's office where the juvenile was pulled out of class and could have faced adverse consequences if he left the office without permission).

{¶ 18} We are not holding, or even suggesting, that *Miranda* warnings are required whenever a teenager is questioned by school personnel; that is not the law and that is not what happened here. Rather, under the specific facts of this case, we agree with the juvenile court that, "given the circumstances surrounding the investigation, no reasonable thirteen (13) year old child would feel he or she was at liberty to terminate the interrogation and leave."

{¶ 19} In concluding that *Miranda* warnings were required prior to L.G.'s questioning, the juvenile court further found that "no reasonable thirteen (13) year old child would view Mr. Bullens as anything other than law enforcement" and that "Mr. Bullens was clearly not acting on his own, but rather * * * acted as an agent of the police during the investigation of [L.G.]."

{¶ 20} It is well established that "the duty of giving '*Miranda* warnings' is limited to employees of governmental agencies whose function is to enforce law, or to those acting for such law enforcement agencies by direction of the agencies; that it does not include private citizens not directed or controlled by a law enforcement agency, even though their

efforts might aid in law enforcement." *State v. Bolan*, 27 Ohio St.2d 15, 18, 271 N.E.2d 839 (1971). In *Bolan*, the defendant made incriminating statements to a merchant's private security guard who had initially detained him (*see* R.C. 2935.041) before the police arrived. The Ohio Supreme Court held that the store's private security guard was not required to provide *Miranda* warnings to the suspect prior to questioning him.

{¶ 21} Bullens testified that he was a retired police detective and that he did not maintain his status as a peace officer. He further testified that the Dayton police did not direct his questioning of L.G., nor did he speak with police officers between the time that L.G. was identified and when L.G. was questioned.

{¶ 22} Nevertheless, the juvenile court reasonably concluded that, when viewing the totality of the circumstances, Bullens was acting in conjunction with law enforcement officers, such that *Miranda* warnings were required. The juvenile court explained, in part:

> While Mr. Bullens testified the City of Dayton Police did not direct his questioning of [L.G.] in any way, in light of the foregoing [facts], the Court finds a great deal of entanglement existed between the Officers and Sergeants of the Dayton Police Department responding to Longfellow Alternative School on October 27, 2015 and Mr. Bullens. The Court finds it significant that when Mr. Bullens arrived on scene, he and Sergeant Keller made the joint decision to have dogs check for any devices in the school building. Mr. Bullens and Sergeant Keller then made a joint decision to let children back in the school's gymnasium. Later, Mr. Bullens offered a reward to students for information leading to the person responsible for making the bomb threat after he received permission from Detective

Querubin at Miami Valley Crime Stoppers Association. Then, Mr. Bullens directed Mr. Ivy, the school's Resource Officer, to retrieve [L.G.] from the gymnasium after receiving information implicating [L.G.] in the crime. Once made to sit alone and away from his peers in the school's cafeteria, [L.G.] was questioned by Mr. Bullens about the incident in the close, physical presence of at least two (2) uniformed and armed Dayton Police Officers.

{¶ 23} Upon review of the totality of the circumstances, we agree that Bullens's questioning of L.G. was part of the criminal investigation, not simply the school district's investigation, into the bomb threat at Longfellow Alternative School. Bullens's interactions with the police following the bomb threat, including his interview of L.G. in the presence of police officers, reasonably rendered him an agent of law enforcement for purposes of *Miranda*.

{¶ 24} The State's assignment of error is overruled.

III. Conclusion

{¶ 25} The juvenile court's "decision and judgment" will be affirmed.

. . . .

DONOVAN, J., concurs.

HALL, P.J., dissenting:

{¶ 26} The majority opinion effectively holds that a 13-year-old school child is in custody if being questioned by school authorities about a bomb threat when non-participating police officers are present nearby. Here, though, there is no evidence that during the questioning L.G. was under arrest or restrained to a degree associated with a

formal arrest.

{¶ 27} L.G. was questioned for ten to twenty minutes in the school cafeteria by a school safety administrator. Two police officers, who did not participate in any way, were standing not far away. The trial court determined that "given the circumstances surrounding the investigation, no reasonable thirteen (13) year old child would feel he or she was at liberty to terminate the interrogation and leave" (Doc. # 6 at 4), and that the questioner was "acting as an agent for the City of Dayton Police Department." (*Id.* at 5). In addition to the facts set forth in the majority opinion, I note that the questioner, Mr. Bullens, testified that the child was not in police custody at the time of the interview. (Tr. at 23). Bullens also stated that the police did not in any way direct the questioning of the child. One of the Dayton police officers who was in the cafeteria testified that L.G. was not in custody and was not questioned by police before Bullens' questioning. (*Id.* at 8). The child was not in police custody at the time. (*Id.* at 8-9). School resource officers do not carry weapons. (*Id.* at 25). Although resource officers carry handcuffs, there is no indication that any were used, let alone displayed, or that L.G. had any knowledge of this fact. Bullens does not maintain any status as a police officer or peace officer. (Id. at 26). In addition, L.G.'s mother testified that she had told him never to talk to the police without her: "I told him don't never speak to them without me being present." (Id. at 57). Given this explicit parental instruction, L.G. knew he could refuse to talk to Bullens. Moreover, during the interview, L.G. refused to provide the names of anyone else involved, demonstrating a lack of compulsion or coercion arising from the interview setting and demonstrating that L.G. knew he could refuse to answer.

{¶ 28} There are only two issues before us: first, whether at the time of questioning

by a school administrator, apparently in street clothes, the child was in "custody" merely because two police officers, who said and did nothing, were present; and second, whether Bullens, the director of school security, was acting as an agent of the police. The first issue, custody, is separate from the related issue of whether L.G.'s statements were voluntary, an issue not addressed in the motion or the trial court's decision and, consequently, not relevant in this appeal.

{¶ 29} L.G. was escorted to the school cafeteria from the gymnasium, where students were assembled upon returning to the building after evacuation because of the bomb threat. However, L.G.'s own testimony failed to indicate any arrest, threats of arrest, constraint, compulsion, or coercion. Other than the fact that L.G. was a school student, who would not have been permitted to leave the premises because he was in school (not because he was in police custody), there is simply no support in the record to conclude that the child was in "custody."

{¶ 30} The record also does not support a finding that Bullens was an agent of the police. In a legally similar case, *In re G.J.D.*, 11th Dist. Geauga No. 2009-G-2913, 2010-Ohio-2677, the Eleventh District quoted from its earlier decision in *State v. Dobies*, 11th Dist. Lake No. 91-L-123, 1992 WL 387356 (Dec. 18, 1992), which involved a social worker named Mr. Smith, and reasoned as follows:

> "* * * [I]t is clear that [the social worker] Mr. Smith is not a 'law enforcement officer' who was required to administer *Miranda* rights. Mr. Smith had no statutory duty to enforce laws, nor authority to arrest violators. Mr. Smith also testified that his department did not participate in the prosecution of appellant. Further, he was not sent to interview appellant at

the request of any law enforcement authority, although he indicated that his department does, on occasion, contact the police if they think a crime has been committed.

"* * * In *State v. Bolan* (1971), 27 Ohio St.2d 15, 18, 271 N.E.2d 839, the Ohio Supreme Court stated that:

" '* * * the duty of giving "*Miranda* warnings" is limited to employees of governmental agencies whose function is to enforce law, * * * that it does not include private citizens *not directed or controlled by a law enforcement agency,* even though their efforts might aid in law enforcement.' " (Emphasis added.) *Dobies,* supra, at *7-*8.

The Supreme Court of Ohio in *Bolan* further held: "Concluding, as we have, that the right to the presence of counsel is not applicable to questioning or interrogation by private citizens, it would follow that a 'waiver' thereof is not required." *Id.* at 20, 271 N.E.2d 839.

In support of its holding in *Bolan,* supra, the Supreme Court of Ohio cited an Illinois case, *People v. Shipp* (1968), 96 Ill.App.2d 364, 239 N.E.2d 296, in which the Illinois appellate court held that the detention and questioning of a student by a high school principal in his office, without police being present, did not require *Miranda* warnings. The Illinois court held: "the calling of a student to the principal's office for questioning is not an 'arrest' and he is not then in custody of police or other law enforcement officials. This situation does not fall within the scope of the *Miranda* decision as the Supreme Court has limited it." (Citation omitted.) *Id.* at 367, 239

N.E.2d 296.

"Private person interrogation is within *Miranda* when *the presence of the police* and/or other circumstances indicate the questioner is acting on behalf of the police. * * * *A critical factor is whether the police officer supervised the interrogation.*" (Emphasis added and citation omitted.) *In re Gruesbeck* (Mar. 27, 1998), 2d Dist. No. 97-CA-59, 1998 Ohio App. LEXIS 1146, *8, 1998 WL 404516.

In re G.J.D. at ¶ 20-25.

{¶ 31} I would follow the Eleventh District's reasoning, and our own jurisprudence in *In re Gruesbeck*, and hold that the evidence does not support the trial court's conclusion that Bullens was acting as an agent of the police. Therefore, L.G. did not need to be advised of his *Miranda* rights prior to questioning.

{¶ 32} I would reverse the trial court's judgment because the record reveals L.G. was not in custody and was not questioned by police or a police agent.

. . . .

Copies mailed to:

Lynne R. Nothstine
Michael E. Deffet
Hon. Nick Kuntz

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MONTGOMERY COUNTY

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO
JUVENILE DIVISION

In re: Lasean Goldsmith **DOB: 4/6/2002**	**J.C. No. 2015-6610 (0C), (0E)**
	JUDGE NICK KUNTZ **MAGISTRATE CALAWAY** **<u>DECISION AND JUDGMENT CONCERNING OBJECTIONS TO THE DECISION OF THE MAGISTRATE</u>**

This matter is before the Court upon objections filed by the State of Ohio, by and through the Office of the Montgomery County Prosecuting Attorney, on March 23, 2016. The State of Ohio objects to the Decision of the Magistrate filed March 15, 2016 by Magistrate Calaway. The State of Ohio filed supplemental objections on August 4, 2016. On August 25, 2016, Lasean Goldsmith, said juvenile, filed a reply to the State of Ohio's objections, by and through counsel.

On October 28, 2015, the Dayton Police Department filed a complaint alleging Mr. Goldsmith to be a delinquent child. The complaint alleged that on or about October 27, 2015, Mr. Goldsmith, a child of about thirteen (13) years old at the time, did cause the evacuation of a public place, cause serious public inconvenience or alarm by initiating or circulating a report or warning of an alleged or impending fire, explosion, crime or other catastrophe, knowing that such report or warning is false, and the public place involved in a violation of (A)(1) is a school or an institution of higher education; an act contrary to R.C. § 2917.31(A)(1), a felony of the second degree and in violation of R.C. § 2152.02.

On November 16, 2015, Mr. Goldsmith filed a Motion to Suppress, by and through counsel, alleging that the questioning of Mr. Goldsmith by police or agents acting in support of the police, was not conducted with the consent of the juvenile, and the juvenile was not advised of his *Miranda* rights prior to said questioning. Further, Mr. Goldsmith asserts any and all statements gained from him were obtained in violation of his 5th Amendment right against self-incrimination and said questioning violated the U.S and Ohio Constitutions. Subsequently, Mr. Goldsmith avers all evidence and statements allegedly made after his initial statement are "fruit of the poisonous tree" and should be suppressed. This matter came before Magistrate Calaway on December 22, 2015 for a hearing regarding the Motion to Suppress filed by said juvenile, by and through counsel.

By Magistrate's Interim Order filed December 22, 2015, the Magistrate ordered said juvenile be released from Detention Services and be placed on parent-enforced house arrest. By the same Interim Order, the Magistrate took the matter of the Motion to Suppress under advisement. By Decision filed March 15, 2016, the Magistrate granted Mr. Goldsmith's Motion to Suppress.

On March 23, 2016, the State of Ohio filed general objections to the Decision of the Magistrate. The State of Ohio supplemented said objections on August 4, 2016 contending the Magistrate erred by granting Mr. Goldsmith's Motion to Suppress as no violation of Mr. Goldsmith's 5th Amendment rights occurred. Specifically, the State of Ohio argues Mr. Goldsmith was not subject to custodial interrogation by law enforcement officers which would trigger *Miranda* warnings. Further, the State of Ohio argues Jamie Bullens, Executive Director of Safety and Security for Dayton Public Schools, was not acting as an agent of the police when he interviewed Mr. Goldsmith on October 27, 2015. The State of Ohio respectfully requests this Court reverse the Decision of the Magistrate and deny Mr. Goldsmith's Motion to Suppress.

On August 25, 2016, Mr. Goldsmith filed a reply to the State of Ohio's objections. Mr. Goldsmith argues he was in custody when he was questioned by Mr. Bullens on October 27, 2015. Further, Mr. Goldsmith asserts he was effectively in State custody, questioned about criminal behavior, and therefore entitled to *Miranda* warnings. Mr. Goldsmith requests this Court adopt the Decision of the Magistrate and suppress any and all evidence and statements made by him in violation of the 5th Amendment.

Upon careful review of the available record, the Court hereby **OVERRULES** the State of Ohio's objections. Pursuant to Juv.R. 40(D)(4)(a), a Magistrate's Decision is not effective unless adopted by the Court. Further, if one or more objections to a Magistrate's Decision are filed timely, the Court shall undertake an independent review as to the objected matters to ascertain that the Magistrate has properly determined the facts, and appropriately applied the law. Juv.R. 40(D)(4)(d). The Court hereby conducts the following independent review.

Miranda warnings are required when a suspect is subject to custodial interrogation. *Miranda v. Arizona*, 384 U.S. 436, 444 (U.S. 1966). Custodial interrogation is two-pronged: it is questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. *Id.* Two discrete inquiries are essential to the determination of "in custody" for purposes of *Miranda*: first, what were the circumstances surrounding the interrogation; and second, given those circumstances, would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave. *Thompson v. Keohane*, 516 U.S. 99, 112 (U.S. 1995). The initial determination of custody depends on the objective circumstances of the interrogation, not on the subjective views harbored by either the interrogating officers or the person being questioned. *Yarborough v. Alvarado*, 541 U.S. 652, 663 (U.S. 2004). Courts must examine all of the circumstances surrounding the interrogation and determine how a reasonable person in the position of the individual being questioned would gauge the breadth of his or her freedom of action.

Id. In *J.D.B. v. North Carolina*, the United States Supreme Court held a child's age properly informs the *Miranda* custody analysis. 564 U.S. 261, 265 (U.S. 2011). In some instances, a reasonable child subjected to police questioning will sometimes feel pressured to submit when a reasonable adult would feel free to go. *Id.* at 272. Even where a "reasonable person" standard otherwise applies, the common law has reflected the reality that children are not adults. *Id.* at 274. So long as a child's age was known to the officer at the time of the interview, or would have been objectively apparent to any reasonable officer, including age as part of the custody analysis requires officers neither to consider unknown circumstances, nor to anticipate the frailties or idiosyncrasies of the particular suspect whom they question. *Id.* As such, inclusion of the child's age in the custody analysis is consistent with the objective nature of that test. *Id.* at 277.

A review of the available record reveals a bomb threat was called into Longfellow Alternative School on October 27, 2015. (Tr. 5). After receipt of the threat, all Longfellow students evacuated the school building, but were later allowed to return to the school's gymnasium when it was determined no bomb threat existed. (Tr. 5, 18-19). Once inside Longfellow's gymnasium, Jamie Bullens, Executive Director of Safety and Security for Dayton Public Schools, informed the students they had entered into an agreement with the Miami Valley Crime Stoppers Association and as such, were offering a reward ranging in value from fifty to one-thousand dollars ($50.00 to $1,000.00) for information leading to the person responsible for the bomb threat. (Tr. 19, 34). Following said announcement, Mr. Goldsmith was removed from the gymnasium by Kerry Ivy, a School Resource Officer, after two (2) individuals provided information implicating Mr. Goldsmith in the bomb threat. (Tr. 19-20, 36-37, 48). The Court notes School Resource Officers are trained as peace officers pursuant to the Ohio Revised Code. (Tr. 24). Further, once Resource Officers are state-certified, they are qualified to be sworn in through the Dayton Police Department as institutional police officers or special police officers. (Tr. 25). School Resource Officers, like Mr. Ivy, are able to arrest people on the school's campus. (Tr. 25). Additionally, School Resource Officers carry handcuffs, but do not carry weapons. (Tr. 25). After Mr. Goldsmith was removed from the gymnasium where he had been assembled with other Longfellow students, he was further separated from his classmates in the school's cafeteria. (Tr. 21, 36-37, 48). There, Mr. Goldsmith was made to sit alone at a cafeteria table where he was questioned by Mr. Bullens regarding his alleged involvement with the bomb threat. (Tr. 14, 21, 50). Mr. Bullens testified once Mr. Goldsmith was confronted with the information provided by the two (2) individuals, he allegedly confessed to his involvement with the bomb threat. (Tr. 21, 38).

The available record reveals Mr. Bullens testified he told Mr. Goldsmith he was free to answer his questions, or not answer his questions. (Tr. 37-38). However, this testimony is contradicted by that of Mr. Goldsmith. (Tr. 49). Mr. Goldsmith testified no one ever told him he did not have to answer any questions or that he was free to get up and leave. (Tr. 49). Further, the Court finds it significant Mr. Goldsmith was questioned by Mr. Bullens for approximately ten (10) to twenty (20) minutes in the physical presence of at least two (2) uniformed and armed Dayton Police Officers. (Tr. 14-15, 22, 48-49). Said Police Officers stood at all times approximately five (5) to fifteen (15) feet

from Mr. Goldsmith in his physical presence and awareness. (Tr. 8, 49). Mr. Goldsmith testified there may have been additional police officers standing near the door. (Tr. 50). Additionally, while Mr. Bullens testified he was not aware of Mr. Goldsmith's age, he was aware of Mr. Goldsmith's grade level. (Tr. 41). The Court finds because Mr. Bullen's knew Mr. Goldsmith's grade level, Mr. Goldsmith's age should have been objectively apparent to Mr. Bullens. Further, the Court notes Laseanda Goldsmith, Mr. Goldsmith's mother, was not contacted before her child was questioned by Mr. Bullens. (Tr. 43, 57). In light of the foregoing, the Court finds, given the circumstances surrounding the investigation, no reasonable thirteen (13) year old child would feel he or she was at liberty to terminate the interrogation and leave. Accordingly, the Court finds Mr. Goldsmith was "in custody" for purposes of *Miranda.*

Aside from the "in custody" requirement, a suspect must also be interrogated by law enforcement officers, or an agent of the police, to trigger *Miranda* warnings. *Miranda*, 384 U.S. at 444. *Miranda* does not govern interrogation by private citizens acting on their own. *In re Gruesbeck*, 1998 Ohio App. LEXIS 1146, *5 (Ohio Ct. App., Greene County Mar. 27, 1998). However, private person interrogation is within *Miranda* when the presence of the police and/or other circumstances indicate the questioner is acting on behalf of the police. *Id.* at *8. Agency is established when, in light of all the circumstances, the private person acted as an instrument of the state. *State v. Cook*, 777 N.E.2d 882, 885 (Ohio Ct. App., Montgomery County 2002). A private person must be directed or controlled by a law enforcement agency. *In re G.J.D.*, 2010-Ohio-2677, P22 (Ohio Ct. App., Geauga County June 11, 2010). A great deal of entanglement between the police and the private searcher must be established before agency can be found. *Cook*, 777 N.E.2d at 885.

The Court notes Mr. Bullens testified he is required to work closely with the police department if a situation occurs and formal charges may be warranted. (Tr. 28). Here, Mr. Bullens testified he received a call from the Dayton Police Department Regional Dispatch on October 27, 2015 that an individual contacted the Dispatch Center and made an allegation of a bomb threat at Longfellow Alternative School. (Tr. 18). When Mr. Bullens arrived on scene at the school, he met with Sergeant Keller of the City of Dayton Police Department and confirmed the school had been evacuated; he initiated a walk-through and began checking the building. (Tr. 18-19). Mr. Bullens testified he and Sergeant Keller made the decision to have dogs check for any devices in the school building. (Tr. 31). At some point, Mr. Bullens and Sergeant Keller then made a decision to let children back in the school's gymnasium. (Tr. 31). Further, Mr. Bullens testified he spoke with Detective Querubin associated with the Miami Valley Crime Stoppers Association on October 26, 2015, the day prior to the incident at Longfellow Alternative School. (Tr. 33). Detective Querubin gave Mr. Bullens his permission to offer a reward for information leading to the responsible party in this matter. (Tr. 19, 33-34). Mr. Bullens announced said reward to Longfellow students as they sat together in the gymnasium. (Tr. 19, 33). After two (2) individuals provided information implicating Mr. Goldsmith in the bomb threat, Mr. Bullens asked Mr. Ivy, the school's Resource Officer, if he could retrieve the individual, Mr. Goldsmith, from gymnasium and bring him to the cafeteria. (Tr. 19-20, 36-37). Once in the school's cafeteria, Mr. Bullens questioned Mr.

Goldsmith regarding a bomb threat, a criminal act, and then attempted to gather information as to why Mr. Goldsmith allegedly made the bomb threat. (Tr. 21, 42). When Mr. Bullens finished questioning Mr. Goldsmith, Mr. Goldsmith was handed off to Officer Jeremy Stewart, City of Dayton Police Officer, who had been waiting close by in the school's cafeteria while Mr. Goldsmith was questioned. (Tr. 7-9). Officer Stewart placed Mr. Goldsmith under arrest and then transported Mr. Goldsmith to West Patrol Operations to be questioned further by Dayton Police Detectives. (Tr. 9).

While Mr. Bullens testified the City of Dayton Police did not direct his questioning of Mr. Bullens in any way, in light of the foregoing, the Court finds a great deal of entanglement existed between the Officers and Sergeants of the Dayton Police Department responding to Longfellow Alternative School on October 27, 2015 and Mr. Bullens. The Court finds it significant that when Mr. Bullens arrived on scene, he and Sergeant Keller made the joint decision to have dogs check for any devices in the school building. (Tr. 31). Mr. Bullens and Sergeant Keller then made a joint decision to let children back in the school's gymnasium. (Tr. 31). Later, Mr. Bullens offered a reward to students for information leading to the person responsible for making the bomb threat after he received permission from Detective Querubin at Miami Valley Crime Stoppers Association. (Tr. 19, 33-34). Then, Mr. Bullens directed Mr. Ivy, the school's Resource Officer, to retrieve Mr. Goldsmith from the gymnasium after receiving information implicating Mr. Goldsmith in the crime. (Tr. 19-20, 36-37). Once made to sit alone and away from his peers in the school's cafeteria, Mr. Goldsmith was questioned by Mr. Bullens about the incident in the close, physical presence of at least two (2) uniformed and armed Dayton Police Officers. (Tr. 14-15, 22, 48-49). In light of the foregoing, the Court finds no reasonable thirteen (13) year old child would view Mr. Bullens as anything other than law enforcement. The Court finds Mr. Bullens was clearly not acting on his own, but rather the Court finds Mr. Bullens acted as an agent of the police during the investigation of Mr. Goldsmith.

In light of the foregoing, the Court finds Mr. Goldsmith was in custody for purposes of *Miranda* and was interrogated by Mr. Bullens, acting as an agent of the City of Dayton Police Department. Therefore, the Court finds Mr. Goldsmith was entitled to *Miranda* warnings prior to interrogation initiated by Mr. Bullens. Accordingly, the State of Ohio's objections are **OVERRULED.** The Court hereby **GRANTS** Mr. Goldsmith's Motion to Suppress and **ORDERS** any and all statements and evidence gathered from Mr. Goldsmith in violation of his 5th Amendment right against self-incrimination be and hereby are **SUPPRESSED.**

With the above determinations, the Court hereby adopts the Decision of the Magistrate, as its own, with all the provisions and requirements contained therein, and hereby makes the same the ORDER OF THIS COURT.

IT IS SO ORDERED.

APPROVED:

Nick Kuntz, Judge

ENDORSEMENT: The Clerk of Courts is hereby directed to serve upon all parties not in default for failure to appear, notice of the judgment and its date of entry upon the journal.

NOTICE OF FINAL APPEALABLE ORDER

Copies of the foregoing Entry and Order, which may be a Final Appealable Order, were entered upon the journal and mailed to the parties indicated below, via regular mail, on or within three (3) days of the time stamped date on this Order.

JUDGE NICK KUNTZ, By: S. Mongelli, (Deputy Clerk), Juvenile Division

Lasean Goldsmith, 4017 Delphos Ave., Dayton, Ohio 45402
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Chris Kuntz, Bailiff
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