In the
Supreme Court of Ohio

IN RE M.H.,	:	Case No. 2019-0621
	:	
Appellant,	:	On Appeal from the
	:	Cuyahoga County
	:	Court of Appeals,
	:	Eighth Appellate District
	:	
	:	Court of Appeals
	:	Case No. 105742

MERIT BRIEF OF *AMICUS CURIAE* OHIO ATTORNEY GENERAL DAVE YOST IN SUPPORT OF APPELLEE STATE OF OHIO

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INTRODUCTION

Appellant M.H. confessed to a social worker that he had sexually assaulted a family member. M.H. claims the confession should be suppressed because the social worker did not give him the warnings required by *Miranda v. Arizona*, 384 U.S. 436 (1966). In addition, he argues that he felt pressured to confess, and that his confession was therefore involuntary—making it inadmissible under the Due Process Clause of the Fourteenth Amendment.

This case thus presents two questions. First, must social workers provide *Miranda* warnings when they interview juveniles about suspected criminal activity? Second, when a juvenile confesses a crime to a social worker, is the confession "involuntary" and thus inadmissible under the Due Process Clause? The answer to both questions is "no."

First, consider the *Miranda* question. Only law-enforcement officers, and people acting under the direction or control of such officers, must give *Miranda* warnings. Thus, social workers must give a *Miranda* warning only when they act under the direction or control of law enforcement. *See State v. Jackson*, 154 Ohio St. 3d 542, 2018-Ohio-2169 syl. The rule that social workers are not law enforcement officers applies regardless of whether the individual being questioned is an adult or a juvenile. M.H. argues that it should be otherwise. Juveniles, he contends, should be treated differently. *See* Apt. Br. 33. But he provides no compelling reason why. The only thing that M.H. offers

in defense of his argument is a set of social-science-based generalizations about juvenile development. *See id.* at 17–19, 33. But whether a social worker's questions are controlled by law enforcement is dependent upon the interactions and relationship between the social worker and any law enforcement officers or agencies. Juvenile development—even the development of the specific juvenile being questioned—does not and cannot affect that relationship. Perhaps M.H.'s arguments make good policy sense. If so, however, his complaints are more properly directed to the General Assembly.

Even if the Court disagrees with the foregoing, M.H.'s Fifth Amendment argument fails because the interview about which he complains was not custodial. *Miranda* requires police to give warnings only in "custodial interrogation[s]." 384 U.S. at 498. And custody, for purposes of *Miranda*, is determined by examining the totality of the circumstances surrounding an interrogation. *State v. Frazier*, 115 Ohio St. 3d 139, 2007-Ohio-5048 ¶112. The Eighth District, reviewing the circumstances surrounding the interview with Bradley, held that M.H. was not in custody at the time. *See* App. Op. ¶35. Among other things, it noted that the interview was short, that it took place in an unlocked room, and that M.H. was not restrained in anyway. App. Op. ¶34. This analysis accurately applies settled *Miranda* doctrine.

M.H. suggests that those factors do not matter and that his young age is, by itself, a reason to conclude that Bradley's interview was a custodial interrogation. *See* Apt. Br. 24–25 (arguing that "children are always in some form of custody"). He is wrong. Age

is just one of many factors that courts must consider when determining whether an interrogation qualifies as custodial under *Miranda*. *J.D.B. v. North Carolina*, 564 U.S. 261, 277 (2011); s*ee also State v. Barker*, 149 Ohio St. 3d 1, 2016-Ohio-2708 ¶21. And it is a factor that the Eight District in fact *did* consider, before rejecting M.H.'s claim. *See* App. Op. ¶¶32–35.

Second, consider M.H.'s argument that his confession was elicited involuntarily, in violation of his Fourteenth Amendment right to due process. A statement's admissibility primarily depends on police compliance with *Miranda*. But the Supreme Court of the United States has interpreted the voluntariness of a statement to have some bearing on whether the Due Process Clause of the Fourteenth Amendment prohibits its admission. *Dickerson v. United States*, 530 U.S. 428, 433–34 (2000). No one disputes that age is a relevant factor when determining whether, for purposes of due process, a statement was made voluntarily or whether an individual voluntarily waived his or her *Miranda* rights. *See Barker*, 149 Ohio St. 3d 1 ¶¶39–42; *In re Watson*, 47 Ohio St. 3d 86 syl. ¶1 (1989). As with the Fifth Amendment's custody analysis, however, age is just *one* of many relevant factors. And, as was true of the custody analysis, the Eighth District correctly considered M.H.'s age when deciding whether to admit his confession. *See* App. Op. ¶¶39–40. It correctly determined that, under the totality of the circumstances, M.H. confessed voluntarily.

The legal principles at issue in this case are therefore well settled—a fact with which even M.H. appears to at least partly agree. *See* Apt. Br. 14 (noting that while his first proposition of law "may not be controversial" his application of the law to the facts of this case might be). The Eighth District applied the relevant legal principles and it did so correctly. Unless the Court intends to overrule numerous precedents, including the not-even-two-years-old *Jackson*, it must affirm.

STATEMENT OF AMICUS INTEREST

The Attorney General is Ohio's chief law enforcement officer and "shall appear for the state in the trial and argument of all civil and criminal causes in the supreme court in which the state is directly or indirectly interested." R.C. 109.02. He has an interest in ensuring that social workers in Ohio are able to protect families and children by conducting unencumbered investigations into allegations of child abuse.

STATEMENT OF THE CASE AND FACTS

1. M.H. and his mother lived together with L.P., with whom M.H.'s mother had a child. Hearing Tr. 14. L.P. had other children as well, including a daughter, J.M., who did not live in the same house, but who visited often. *Id.* After one such visit, J.M.'s mother informed M.H.'s mother that J.M. had accused M.H. of touching her inappropriately. Hearing Tr. 18. After that, J.M. largely stopped visiting the house. Hearing Tr. 19–20.

Some time later, M.H.'s mother received a letter from the Cuyahoga County Department of Children & Family Services. Hearing Tr. 15. The letter asked that M.H. be brought in for an interview with a social worker. Hearing Tr. 15–16. Although the letter did not state the reasons why the Department wished to interview M.H., his mother testified that she "had [her] suspicions" that it related to J.M.'s accusations. Hearing Tr. 23–24. After receiving the letter, M.H.'s mother called the Department and spoke with social worker Esther Bradley, who confirmed the time and the location of the interview and explained that she intended to interview M.H. privately. Hearing Tr. 16, 48–49. M.H.'s mother did not ask to be present while Bradley conducted the interview. Hearing Tr. 17, 20, 25, 34.

When M.H. and his mother arrived for the interview, Bradley met them and took M.H. to a private room. Hearing Tr. 16–17. The interview lasted approximately 40 minutes and took place in a room with windows and an unlocked door. Hearing Tr. 61–62, 65. During the interview, Bradley asked M.H. whether he was sexually active. Hearing Tr. 63. He told her that he had been, but only once. *Id*. Bradley questioned M.H. further about his sexual history and M.H. indicated that J.M. was the person with whom he had engaged in sexual activity. *Id.*

Bradley prepared a report that summarized her investigation. Hearing Tr. 51. That report included the interview that she conducted with M.H. *Id.* Bradley provided

a copy of her report to Christina Cottom, a detective in the Cleveland Police department's sex-crimes unit. Hearing Tr. 71, 75.

2. Based in part on the statements M.H. made during the interview with Bradley, the State charged him in a delinquency complaint with one count of rape. App. Op. ¶2. M.H. sought to suppress his confessions. App. Op. ¶3; *see also* Hearing Tr. 4–7. The juvenile court held a suppression hearing, at which it heard testimony from Bradley, Detective Cottom, and M.H.'s mother. *See* App. Op. ¶4. At the end of the hearing the court granted the motion to suppress. Hearing Tr. 94. It did so in part because it found that "the relationship between [Cuyahoga County] Children and Family Services as well as the State [is] a little close for comfort." *Id.*

The State appealed. But after the parties completed their briefing, this Court accepted *State v. Jackson*, 154 Ohio St. 3d 542, 2018-Ohio-2169, for review. *Jackson* presented the question whether social workers should be treated as law-enforcement agents for purposes of the Fifth Amendment. *Id.* at syl. Because this Court's resolution of that question was likely to affect the outcome of M.H.'s case, the Eighth District held this case while waiting for a decision in *Jackson*. After the Court held in *Jackson* that social workers are not agents of law enforcement, *id.*, the Eighth District asked for supplemental briefing on the effect of the *Jackson* decision.

The appellate court ultimately reversed. App. Op. ¶43–44. In a two-one decision with three separate opinions, a divided court held that "M.H. was not subjected to a

custodial interrogation as contemplated by *Miranda*." App. Op. ¶26. The appellate court held both that Bradley was not acting in a law enforcement capacity, App. Op. ¶¶29–31, and that M.H. was not in custody during the interview, App. Op. ¶¶32–35. The court also rejected M.H.'s Due Process claim, holding that his statements were not involuntary. App. Op. ¶¶38–40. Both the lead opinion and the concurrence expressed reservations about the outcome, but nevertheless concluded that *Jackson* bound them. *See* App. Op. ¶¶31, 51. The dissent disagreed and would have distinguished *Jackson* and affirmed the trial court's decision suppressing M.H.'s statements. App. Op. ¶54.

M.H. appealed, and the Court accepted his first three Propositions of Law for review. *In re M.H.*, 156 Ohio St. 3d 1452, 2019-Ohio-2780.

ARGUMENT

M.H. asserts that Bradley's interview violated his Fifth Amendment rights and his due process rights under the Fourteenth Amendment. The Court ought to reject both arguments, since both fail under this Court's precedent.

Amicus Curiae Ohio Attorney General's Proposition of Law 1:

> *An individual's age is irrelevant when determining whether a state actor is an agent of law enforcement; age is considered only when determining whether an interrogation was custodial.*

The Fifth Amendment to the United States Constitution provides, in relevant part, that "[n]o person . . . shall be compelled in any criminal case to be a witness against himself." (The Ohio Constitution similarly states that "[n]o person shall be

compelled, in any criminal case, to be a witness against himself." Art. I, §10. But M.H. makes no argument pursuant to this clause.) As originally understood, the Fifth Amendment barred the government from using coerced statements against criminal defendants. *See Bram v. United States*, 168 U.S. 532, 542–45 (1897). It did not, however, require the government to inform criminal suspects of their right to self-incrimination.

Almost two-hundred years later, the Supreme Court, in *Miranda v. Arizona*, 384 U.S. 436 (1966), changed course. *Miranda* held that a "prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of [a] defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination." *Id.* at 444; *accord State v. Maxwell*, 139 Ohio St. 3d 12, 2014-Ohio-1019 ¶113. These procedural safeguards include warning the criminal suspect that he has a right against self-incrimination—that "he has the right to remain silent," and that "anything said can and will be used against" the suspect "in court." *Miranda*, 384 U.S. at 468–69. This warning serves as a "prophylactic," in the sense that it stops suspects from unknowingly declining to exercise their right to self-incrimination. *Dickerson v. United States*, 530 U.S. 428, 437 (2000) (quoting *New York v. Quarles*, 467 U.S. 649, 653 (1984)). But it also has the effect of greatly expanding the Fifth Amendment's reach: whereas the Fifth Amendment originally barred the government from *violating* the right against self-incrimination, after *Miranda* it requires the government to assist suspects in asserting the right.

Critically, however, *Miranda* applies only to "custodial" interrogations. 384 U.S. at 444. That is, it limits the use of statements only when those statements were obtained through "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.*; *see also State v. Bolan*, 27 Ohio St. 2d 15, 18 (1971).

In the absence of a *Miranda* warning, the admissibility of a defendant's statements turns on three questions. First, was there an interrogation? Second, did law-enforcement officers conduct the interrogation? Third, was the interrogation custodial? *Miranda* bars the use of a defendant's statements *only if* the answer to all three questions is "yes."

In this case, the answer to at least two of the three questions is "no." First, Bradley was not a law-enforcement officer and she was not working under the direction or control of law-enforcement officers. Second, M.H. was not in "custody" when he spoke with Bradley. Either answer provides an independent reason to affirm the Eighth District's decision.

A. Bradley was a social worker, not a law-enforcement officer.

1. Less than two years ago, the Court held that social workers are not agents of law enforcement unless they "act[] at the direction or under the control of law enforcement." *State v. Jackson*, 154 Ohio St. 3d 542, 2018-Ohio-2169 syl., cert denied *Jackson v. Ohio*, 139 S. Ct. 2621 (2019). That holding was consistent with the Court's long-standing

precedent, which 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." *State v. Bolan*, 27 Ohio St. 2d 15, 18 (1971).

M.H. does not dispute that Bradley was a social worker, not a law-enforcement officer. *Jackson* (and *Miranda*) therefore barred the introduction of M.H.'s statements to Bradley only if she was acting at the direction or under the control of law enforcement. But all of the evidence shows that she was not. Bradley testified that the police did not take part in her interview with M.H., Tr. p. 58–59, 62, and that the only contact that she had with the police occurred *after* that interview, Tr. 60–61. Christina Cottom, a detective with the Cleveland Police Department, confirmed Bradley's testimony. Cottom testified that she did not direct or otherwise influence Bradley's questioning, Tr. 75–76, 81, and that she in fact had no contact with Bradley until after Bradley had interviewed M.H., Tr. 74. Cottom testified that, even then, she and Bradley never spoke directly—all of their communication occurred through voicemail and was limited to a request that Bradley provide Cottom with a copy of her interview write-up. Tr. 74–75.

If anything, Bradley had significantly less involvement with law enforcement than did the social worker in *Jackson*. In *Jackson*, the social worker was assigned to the county jail and interviewed Jackson during his incarceration at the jail. *Jackson*, 154 Ohio St. 3d 542 ¶3. Bradley's interview, by comparison, took place at a neutral site to

which law enforcement had no connection and over which they had no control. Tr. p.58–59, 62, 75–76.

The fact that M.H. was a minor has no bearing on the question whether Bradley was a law-enforcement officer or acted as an agent of law enforcement. How could it? Whether someone is a law-enforcement agent does not turn on the age of the person with whom they happen to be speaking. Accordingly, under *Jackson*, the only relevant question is whether a social worker "acted at the direction or under the control of law enforcement." *Jackson*, 154 Ohio St. 3d 542 syl. The answer is driven exclusively by the relationship between the social worker and law enforcement. The age of the individual being questioned has no bearing on the inquiry.

2. M.H. raises some contrary arguments, but *Jackson* already rejected most of them, and all of them fail without regard to *Jackson*.

Precedent. M.H. points to *Estelle v. Smith*, 451 U.S. 454 (1981), *Mathis v. United States*, 391 U.S. 1 (1968), and *State v. Roberts*, 32 Ohio St. 3d 225 (1987). He claims these cases support his argument that government agents *other than* law-enforcement officers can be required to provide *Miranda* warnings. *See* Apt. Br. 30–31 and 33–34. *Jackson* already distinguished these precedents, denying that any of the three had any bearing on the question whether social workers must give *Miranda* warnings. *See* 154 Ohio St. 3d 542 ¶25–28. And the reasons it gave are just as relevant today as they were at *Jackson*'s issuance in 2018.

Estelle, for example, is expressly limited to the "distinct circumstances" of that case, in which the Court held that the Fifth Amendment barred the admission of incriminating, un-*Mirandized* statements that a defendant made to a psychiatrist performing a court-ordered competency evaluation. 451 U.S. at 466. When a psychiatrist interrogates a defendant during a court-ordered evaluation of the defendant's competency, and when the psychiatrist shares incriminating statements at trial, the court has effectively compelled the defendant to serve as a witness at his own trial—precisely what the Fifth Amendment protects against. *See Jackson*, 154 Ohio St. 3d 542 ¶26 (quoting *Estelle*, 451 U.S. at 466). The same cannot be said when a person confesses to a social worker conducting social work disconnected from any court proceedings.

The other cases are similarly distinguishable. In *Mathis*, 391 U.S. 1, for example, the government *conceded* that the IRS agent who performed the questioning was a "'law enforcement agent.'" *Jackson*, 154 Ohio St. 3d 542 ¶25 (quoting *State v. Bernard*, 31 So. 3d 1025, 1030 (La. 2010)). As a result, the Court had no occasion to address whether the IRS agent's non–law-enforcement status exempted him from *Miranda*'s scope. As for *Roberts*, that case held that probation officers are law-enforcement officers, for purposes of *Miranda*, because they are charged with enforcing the law and have the power to make arrests. *Jackson*, 154 Ohio St. 3d 542 ¶27 (quoting *Roberts*, 32 Ohio St. 3d at 230). The same cannot be said for social workers, which is why *Jackson* held that *Roberts* had no bearing on social workers.

Bradley's duties. M.H.'s remaining arguments fare no better. For example, he points to Bradley's duty under R.C. 2151.421(F) to provide a written copy of her investigation report to the relevant law-enforcement agency as evidence that she was acting as an agent of law enforcement. Apt. Br. 31, 33. His argument ignores controlling precedent from this Court and the Supreme Court of the United States. The latter held, in *Ohio v. Clark*, 135 S. Ct. 2173 (2015), that a reporting obligation under R.C. 2151.421 does not transform an individual into an agent of law enforcement. *Id.* at 2182–83. This Court looked to that decision when it held in *Jackson* that the existence of a reporting obligation under R.C. 2151.421 does not mean that social workers conduct interviews "at the direction or under the control of law enforcement." *Jackson*, 154 Ohio St. 3d 542 ¶21.

M.H. also suggests that Bradley should be treated as a law-enforcement officer, not a social worker, because she had previously been a police officer and was skilled in interrogations. *See* Apt. Br. 20–21, 29. But again, *Jackson* disposes of that argument. The Court already rejected the claim that social workers should be treated as law enforcement officers when they have "interrogation skills comparable to or exceeding those of most law enforcement officers." *Jackson*, 154 Ohio St. 3d 542 ¶12. And even if *Jackson* had not expressly rejected the relevance of this fact, M.H.'s argument that it somehow bears on the analysis would fail. The question whether *Miranda* applies cannot be made to turn on a case-by-case examination of a particular social worker's interviewing skills.

That approach would prove unworkable—it would give social workers, prosecutors, and lower courts no meaningful guidance. And to the extent it pressured social workers into giving *Miranda* warnings where none is needed, on the off-chance that the speaker might confess to a serious crime, it may well interfere with social workers' ability to elicit information that they need to perform their important role.

B. M.H. did not make the statements in question as part of a custodial interrogation.

M.H.'s *Miranda* claim would fail even if *Miranda* applied to social workers, because Bradley did not subject M.H. to a "custodial" interrogation.

1. An individual's age is relevant when determining whether an interrogation was custodial. *J.D.B. v. North Carolina*, 564 U.S. 261, 265 (2011). Under *Miranda*, an interrogation is custodial when an individual has been "deprived of his freedom of action in any significant way." *Miranda*, 384 U.S. at 444. That is an objective inquiry. *State v. Hoffner*, 102 Ohio St. 3d 358, 2004-Ohio-3430 ¶27 (citing *Thompson v. Keohane*, 516 U.S. 99, 112 (1995)); *see also Stansbury v. California*, 511 U.S. 318, 322 (1994). Its focus is on whether a *reasonable* individual would have felt free to terminate the interrogation, not on whether the *specific* individual felt free to do so. *J.D.B*, 564 U.S. at 271. The individual's age may bear on whether someone in his position would reasonably feel free to terminate the interrogation. *Id*. "This is not to say that a child's age will be determinative, or even a significant, factor in every case." *Id*. at 277. Instead, age is just one factor

that courts ought to consider when determining whether, under the totality of the circumstances, an interrogation was custodial. *See id.*

The Eighth District gave M.H.'s age the proper weight when it held that he was not in custody for purposes of *Miranda*. *See* App. Op. ¶25. It noted that he was thirteen-years-old at the time Bradley interviewed him. App. Op. ¶32. And it raised questions about how his age might have affected his statements to Bradley. *Id.* Despite those questions, however, the appellate court held that most of the relevant factors "weigh[ed] against a finding that M.H. was in custody." App. Op. ¶33. It first noted that M.H. expressed no confusion about why he was meeting with Bradley and that there was no evidence that he objected to the meeting. App. Op. ¶32. The court further emphasized that M.H. was not under arrest, that he appeared voluntarily, and that he was free to leave after the interview was over. App. Op. ¶33. Finally, the appellate court noted that M.H. was not restrained in any way; his interview, which lasted only 40 minutes, took place in a room with windows that had a closed, but unlocked, door. App. Op. ¶34.

Far from ignoring his age, as M.H. suggests, the appellate court did precisely what controlling precedent required it to do: it considered M.H.'s age as one factor in a totality-of-the-circumstances inquiry. *See* App. Op. ¶¶24, 32. It even gave his age significant weight. *See* App. Op. ¶32. The court merely found that, *even after* considering M.H.'s age, the circumstances of Bradley's interview compelled the conclusion that

M.H. was not in "custody" for purposes of *Miranda*. App. Op. ¶35. M.H is therefore simply wrong when he argues that the appellate court "applied a reasonable adult standard and evaluated the freedom to leave through the eyes of M.H's mother and not through the eyes of M.H." *See* Apt. Br. 25.

Finally, M.H. discusses *J.D.B.* at length, relying on it as support for both his *Miranda* argument and his Due Process argument. *See* Apt. Br. 10–14. But *J.D.B.* does not sweep as broadly as M.H. suggests. *J.D.B.* held only that age is a *relevant* part of a *Miranda* custody analysis. *See J.D.B.*, 564 U.S. at 265. And critically, it *did not* hold that J.D.B. was in custody—it left that question for the lower court to resolve on remand. *See id.* at 281. The narrow scope of *J.D.B.* is devastating to M.H.'s argument. After all, if M.H. were right that juveniles are "always in custody" when questioned by authority figures, *see* Apt. Br. 23–24, then there would have been no need for remand to address whether J.D.B. was in custody: he would have been, as a matter of law.

Amicus Curiae Ohio Attorney General's Proposition of Law 2:

> *The Due Process Clause of the Fourteenth Amendment imposes no restrictions on the admission of statements unless those statements resulted from coercive police activity.*

1. Before *Miranda*, the key inquiry when determining whether an individual's statement was admissible at trial was whether the statement was "made freely, voluntarily and without compulsion or inducement of any sort." *Wilson v. United States*, 162 U.S. 613, 623 (1896); *see also Bram*, 168 U.S. at 542–43. This "voluntariness" test controlled for purpose of both the Fifth Amendment and the Fourteenth Amendment's Due

Process Clause. *See Dickerson v. United States*, 530 U.S. 428, 433–34 (2000). When it comes to the Fifth Amendment, *Miranda* has now supplanted voluntariness as the relevant consideration. *Id.* at 434. The Due Process Clause, however, retains some relevance even after *Miranda*; the United States Supreme Court has "never abandoned [its] due process jurisprudence, and thus continue[s] to exclude confessions that were obtained involuntarily." *Id.*

Defendants are rarely able to "make a colorable argument that a self-incriminating statement was 'compelled'" in violation of the Due Process Clause. *Berkemer v. McCarty*, 468 U.S. 420, 433 n.20 (1984). Confessions extracted through torture would qualify as coerced. *See Brown v. Mississippi*, 297 U.S. 278, 285–86 (1936). And in a limited set of cases, courts have also excluded statements when they were made under the threat of severe punishment from the government, such as the loss of a job, professional license, ability to receive government contracts, or the right to hold public office. *See McKune v. Lile*, 536 U.S. 24, 49–50 (2002) (O'Connor, J. concurring in judgment). In "classic penalty situation[s]" such as these, an individual's choice to exercise his Fifth Amendment rights is purely nominal—he can do it, but he will face serious punishment for doing so. *See Minnesota v. Murphy*, 465 U.S. 420, 435 (1984). In such a situation the State "not only compel[s] an individual to appear and testify, but also" seeks "to induce him to forgo the Fifth Amendment privilege by threatening to impose economic or other sanctions 'capable of forcing the self-incrimination which the

Amendment forbids.'" *Id.* at 434 (quoting *Lefkowitz v. Cunningham*, 431 U.S. 801, 806 (1977)). It is the threat of *significant* punishment that distinguishes a penalty situation from "the ordinary case in which a witness is merely required to appear and give testimony." *Id.* at 435.

In determining whether a statement was voluntary for purposes of the Due Process Clause, courts use the same totality-of-the-circumstances test they use to determine whether a suspect's decision to speak notwithstanding a *Miranda* warning was voluntary. *State v. Green*, 90 Ohio St. 3d 352, 366 (2000). Under that test, courts ask whether a statement was truly voluntary in light of a variety of factors, including "the *age*, mentality, and prior criminal experience of the accused; the length, intensity, and frequency of interrogation; the existence of physical deprivation or mistreatment; and the existence of threat or inducement." *State v. Frazier*, 115 Ohio St. 3d 139, 2007-Ohio-5048 ¶112 (emphasis added); *see also Haley v. Ohio*, 332 U.S. 596, 600-01 (1948). Highlighting the relevance of the age element, the Court has emphasized that this totality-of-the-circumstances test "takes on even greater importance when applied to a juvenile." *Barker*, 149 Ohio St. 3d 1 ¶39.

2. In this case, there is no basis on which the Court could conclude that M.H.'s statements to Bradley were involuntary or that they were otherwise obtained in violation of the Due Process Clause.

M.H. did not even attempt to demonstrate he was subject to "physical abuse, threats, deprivation of food, medical treatment, or sleep." *See State v. Clark*, 38 Ohio St. 3d 252, 261 (1988) (identifying types of coercive tactics); *see also Colorado v. Connelly*, 479 U.S. at 163 n.1 (1986) (same). As the appellate court noted, he provided "no evidence—*or allegations*—of any threats, coercion, suggestions, restraints, or physical deprivation or harm[.]" App. Op. ¶40 (emphasis added). In addition, the interview was relatively short and took place in an unlocked room without any form of physical restraint and without any police presence. App. Op. ¶34. Not only that, M.H. never expressed any "reluctance or hesitation in answering Bradley's questions." *Id.* And there is no evidence or allegation that Bradley (or anyone else) threatened M.H. with *any* penalty, let alone a severe one, if he refused to speak to Bradley. Given all this, M.H. failed even to make allegations of the sort necessary to support a Due Process claim—certainly he did not provide any evidence to support such a claim.

If the Court were to agree with M.H. that the circumstances of this case resulted in an involuntary statement, its decision would result in a dramatic expansion of the involuntary-statement doctrine and would render *Miranda* largely meaningless. If M.H. is correct, then nearly every statement made by a juvenile during custodial interrogation would be considered involuntary and would be barred under the Due Process Clause—even those made after a *Miranda* warning. Why? Because M.H.'s argument that his statement was coerced is both legally and factually indistinguishable from his argument

that he was in custody during his interview with Bradley. As a legal matter, he relies on *J.D.B.* as the foundation for both his custody and Due Process claims. *See* Apt. Bt. 10–13. And as a factual matter, he points to the same set of circumstances to prove each claim. *Compare* Apt. Br. 15 *with* 25. If merely being in "custody" is coercive (at least for juveniles), then *every* custodial interrogation violates the Due Process Clause without regard to *Miranda*. The effect of M.H.'s argument would thus be to make confessions inadmissible in cases against juveniles. The Supreme Court of the United States has never countenanced such a sweeping approach to Due Process claims, and there is no reason to believe it would do so today.

* * *

Perhaps it would make good policy to exclude juveniles' confessions from evidence. Perhaps not. Either way, the Constitution says nothing about the issue, and so the matter is properly directed to Ohio's General Assembly, which can weigh the competing considerations and, if it wishes, adopt an appropriate policy. But neither the Fifth nor the Fourteenth Amendment demand the outcome that M.H. seeks.

CONCLUSION

For the foregoing reasons, the Court should affirm the Eighth District's decision.

Respectfully submitted,

DAVE YOST
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Merit Brief of *Amicus Curiae* Ohio Attorney General Dave Yost in Support of Appellee State of Ohio was served this 22nd day of October, 2019, by U.S. mail and e-mail on the following:

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