NO. 2019-0621

IN THE SUPREME COURT OF OHIO

APPEAL FROM
THE COURT OF APPEALS FOR CUYAHOGA COUNTY, OHIO
NO. 105742

IN RE: M.H.,

Defendant-Appellant

MERIT BRIEF OF APPELLEE

Counsel for Plaintiff-Appellee

MICHAEL C. O'MALLEY (0059592)
Cuyahoga County Prosecutor

JENNIFER M. MEYER (0077853)
ANTHONY T. MIRANDA (0090759)
Assistant Prosecuting Attorney
The Justice Center
1200 Ontario Street
Cleveland, Ohio 44113
Phone: (216) 443-7800
jmeyer@prosecutor.cuyahogacounty.us
amiranda@prosecutor.cuyahogacounty.us

Counsel for Defendant-Appellant

MARK STANTON, ESQ.
Cuyahoga County Public Defender

PAUL KUZMINS (0074475)
Assistant Public Defender
310 Lakeside Avenue, Suite 200
Cleveland, Ohio 44113
Phone: (216) 443-7583
pkuzmins@cuyahogacounty.us

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STATEMENT OF THE CASE

M.H. was charged in Juvenile Court with Rape and Gross Sexual Imposition. He filed a motion to suppress challenging statements he made to a social worker. M.H. argued that his statement was obtained in violation of his due process rights and his right against self-incrimination. The trial court granted the motion and the State appealed.

In a 2-1 decision, the Eighth District Court of Appeals reversed. *In re M.H.*, 8th Dist. Cuyahoga No. 105742, 2018-Ohio-4848. The Eighth District rejected M.H.'s due process argument and found that his statements "were not involuntary." *In re M.H.*, ¶ 40. It also held that *Miranda* was not implicated because the social worker was not an agent of law enforcement and M.H. was not in custody when the interview occurred. *In re M.H.*, ¶ 31, 35. In a concurring opinion, Judge Keough wrote that this case was "squarely within the Ohio Supreme Court's holding in" *State v. Jackson*, 154 Ohio St.3d 542, 2018-Ohio-2169, 116 N.E.3d 1240. *In re M.H.*, ¶ 45 (J. Keough, concurring).

STATEMENT OF THE FACTS

M.H. was charged by a juvenile complaint with Rape and Gross Sexual Imposition, occurring on August 18, 2015. The complaint establishes that M.H. was either 13 or 14 years old at the time of the crime. At the motion to suppress hearing, the mother of M.H. (identified herein as "Mother") testified. Tr. at 13. She testified that she lives with M.H., his two siblings, and L.P., an adult male. Tr. at 14. L.P. is not the father of M.H. but is the father of the victim, J.M. Tr. at 14. The complaint establishes that J.M. was 12-years-old at the time of the crime and Mother testified that she sees J.M. frequently. Tr. at 14.

In the end of 2015, Mother received a letter from the Cuyahoga County Department of Children and Family Services ("CCDCFS") setting an appointment time for her and M.H. Tr. at

15. According to Mother, the letter did not state the purpose of the interview. Tr. at 15-16. The letter is not part of the record on appeal. Mother testified that she then called Esther Bradley, a CCDCFS Child Protection Specialist, who confirmed the location and time of the appointment. Tr. at 16. Mother testified that she suspected at the time that the interview related to accusations that J.M. made against M.H. Tr. at 23 ("I had my suspicions"); Tr. at 24 ("I knew the situation that was going on."); *see also* Tr. at 18 (Mother testifying that J.M.'s mother previously told Mother about the crime).

Mother and M.H. met with Bradley at the Jane Edna Hunter Building. Tr. at 24. Bradley introduced herself and led M.H. to a private room where she interviewed M.H. for forty minutes. Tr. at 17, 25. Mother never asked to be present for the interview. Tr. at 17. She also acknowledged that neither she nor M.H. told Bradley that he declined to be interviewed. Tr. at 25. After the interview, M.H. was quiet but Mother does not recall him being upset. Tr. at 30. Bradley then told Mother that she would receive a letter indicating whether the allegations made against M.H. were substantiated. Tr. at 17.

Esther Bradley testified that she is a child protection specialist who works in the Sex Abuse Intake Unit in CCDCFS and investigates whether children have been sexually abused. Tr. at 38. Bradley's first step after receiving a referral is to try to do an initial home assessment to assess the safety of the child. Tr. at 39. She stated that her protocol is to notify minors of the allegations made against them and provide them an opportunity to make a statement. Tr. at 40-41. In this case, she left Mother a letter telling her that M.H. was named as an alleged perpetrator in an open sex abuse case. Tr. at 41-42. Bradley testified that a few days later, Mother called Bradley and Bradley again notified her that M.H. was an alleged perpetrator of sexual offenses. Tr. at 43-44. The phone conversation was fifteen to twenty minutes long. Tr. at 58.

When Mother arrived with M.H., Mother was aware of the allegations. Tr. at 58. Bradley agrees that the interview with M.H. lasted approximately forty minutes. Tr. at 61. The room had windows, the door was unlocked, and M.H. was not restrained. Tr. at 65. Bradley testified that the purpose of the interview was to assess the safety of the victim and to determine if a safety plan was necessary. There was no police interaction with Bradley or M.H. during the interview. Tr. at 62. At no point did M.H. request to terminate the interview or did Mother request to be present. Tr. at 62. During the interview, M.H. admitted to being sexually active with his half-sister J.M., who was 12 years old at the time. Tr. at 63. Bradley prepared a report that was then provided to Cleveland Police Detective Christina Cottom, as required by statute. Tr. at 51.

Detective Cottom testified at the hearing as well. She stated that Bradley and she never actually spoke about the case and exchanged voicemails. Tr. at 74. Cottom requested a write-up of Bradley's interview of the victim. Tr. at 75. She did not direct or request Bradley to interview M.H. Tr. at 75. Cottom did not instruct Bradley on what questions to ask. Tr. at 76. Cottom only learned about Bradley's interview after the fact. Tr. at 76.

LAW AND ARGUMENT

M.H. argues that his statements to a social worker were involuntary pursuant to the Fourteenth Amendment's Due Process Clause, and that his interview violated his Fifth Amendment's right against self-incrimination. Throughout his brief, M.H. conflates the analysis of these different constitutional amendments, mixing and matching case law irrespective of the proposition of law. Additionally, while M.H. has cited to Article I, Section 10 of the Ohio Constitution, which protects a person from being compelled to be "a witness against himself," he has *never* presented an argument that the Ohio Constitution provides greater protection than the United States Constitution. In M.H.'s first proposition of law, he states that a statement can still

be involuntary even when a social worker is not required to give *Miranda* warnings, yet spends the argument discussing voluntariness of a statement when it pertains to law enforcement who are required to give *Miranda* warnings during custodial interrogations.

It is also necessary to note that M.H.'s second and third propositions of law are dependent on each other. The second proposition asks whether M.H. was in custody and the third asks whether the social worker was an agent of law enforcement. To establish a *Miranda* violation, M.H. must show both.

M.H. fails to provide persuasive arguments and Appellee respectfully request that this Honorable Court affirm the Eighth District Court of Appeals.

Appellant's Proposition of Law 1: The statement of a child to a government social worker may be involuntary and violate due process even when the government social worker was not required to give Miranda warnings.

M.H. presents the argument in his first proposition of law with the assumption that social workers are not required to give *Miranda* warnings, but that the statement made by a thirteen year old may still be involuntary and violate due process. M.H. attempts to cobble together a new standard of voluntariness of statements based on a few social science and law review articles, not based on the law nor the record before this Honorable Court.

1. M.H.'s statement was voluntary.

M.H. cites in Appellant's brief that whether an admission from a juvenile was voluntary, "the greatest care must be taken to assure that the admission was voluntary, in the sense not only that it was not coerced or suggested, but also that it was not the product of ignorance of rights or of adolescent fantasy, fright, or despair." App. Brief, pg. 15 citing *In re Gault*, 387 U.S. 1, 55 (1967). All of the cases M.H. cites are distinguishable from this case because all of those cases involved statements **made to police**. As will be discussed at length in the third proposition, a

social worker is not required to give a juvenile *Miranda* warning. *State v. Jackson*, 154 Ohio St.3d 542 (2018).

Because social worker Bradley is not required to give *Miranda* warnings and assumed from M.H.'s first proposition of law, in order to show that M.H.'s statement was made involuntary and in violation of his due process, he must show "separate from custody considerations, concerning whether a defendant's will was overborne by the circumstances surrounding the giving of his confession." *In re M.H.* ¶ 39 citing *State v. Johnson*, 12th Dist. Warren No. CA2015-09-086, 2016-Ohio-7266, ¶ 76, quoting *State v. Kelly*, 2nd Dist. Greene No. 2004-CA-20, 2005-Ohio-305, ¶10. The inquiry is measured by the totality of the circumstances: "the age, mentality, and prior criminal experience of the accused, the length, intensity, and frequency of the interrogation, the existence of physical deprivation or mistreatment, and the existence of threat or inducement." *In re M.H.* ¶ 39 citing *State v. Edwards*, 49 Ohio St.2d 31, 358 N.E.2d 1051 (1976), paragraph two of the syllabus, vacated on other grounds, 438 U.S. 911, 98 S. Ct. 3147, 57 L. Ed. 2d 1155 (1978).

The Eighth District Court of Appeals properly weighed the totality of the circumstances: the age of M.H., the interview was done solely by the social worker, he was driven to the Jane Edna Hunter Building by his mother who knew about the allegations regarding her son prior to their arrival, the interview lasted 40 minutes in an unlocked room, M.H. was not restrained, a reasonable juvenile in his circumstances would have felt free to leave the interview, and he in fact was free to leave after the interview. *In re M.H.* ¶ 40.

There is no evidence in the record that M.H. was ignorant of his rights as is claimed in Appellant's brief. On one hand, M.H. claims in his brief that if his mother would have known she could have had an attorney present, she would have. Tr. 35. But on the other hand, M.H. then claims he was coerced to give a statement because his own mother drove him to the Jane Edna

Hunter Building. App. Brief pg. 19-20. M.H. cannot have it both ways. In actuality, the alleged ignorance of M.H.'s mother regarding M.H.'s rights is not imputed to M.H. There is no evidence in the record to support the contention that M.H. was ignorant of his rights, coerced to give a statement, or frightened by Social Worker Bradley.

M.H. alleges that Social Worker Bradley's interview was "inherently coercive interrogation." (App. Br. pg. 20). There is no evidence in the record that M.H. thought Social Worker Bradley was a law enforcement officer, nor would a reasonable juvenile would assume someone who introduced herself as a Child Protection Specialist would think the social worker is law enforcement. M.H. is incorrect in his bold statement that the Child Protection Specialist is an agent of the government and therefore, an agent of law enforcement and that leads to the conclusion that the interview was coercive. By M.H.'s logic, a paralegal, bailiff, even a sanitation worker who does a trash pull are law enforcement because they are employed by the government. This conclusion is a fallacy.

There is no evidence in the record that Child Protection Specialist Bradley was working as an agent of law enforcement. She has a duty to investigate the allegations of rape and gross sexual imposition of a 12 year old child. She then has a statutory duty to report any potential criminal findings to law enforcement, which is exactly what Bradley did in this case. R.C. 2151.421.

M.H.'s claim that children as a class are entitled to general presumptions that weigh against voluntariness is contrary to law. *J.D.B.* did not create a new four prong test that suggests children are entitled to a presumption against voluntariness of a statement as M.H. alleges. *J.D.B. v. North Carolina*, 564 U.S. 261, 131 S.Ct. 2394 (2011). Instead, *J.D.B.* held that age is a relevant factor when interpreting *Miranda* custody issues, which is not applicable here since M.H.'s first proposition assumes that a social worker is not required to give *Miranda* warning. *Id* at 265.

Based on the facts in the record and controlling case law, M.H.'s first proposition of law fails.

> ***Appellant's Proposition of Law 2: A child does not feel free to leave when he is driven to a government agency for questioning by a parent and separated from that parent and interrogated in a private interrogation room without being told he is free to leave free to not cooperate.***

In his Memorandum in Support, M.H. presented an argument in support of his second proposition of law in the same section as his third proposition of law. Both propositions dealt exclusively with *Miranda* warnings. Now he asserts that the second proposition of law "straddles the line between the *Miranda* doctrine and the voluntariness doctrine and directly impacts both." App. Brief pg. 23. This Court should reject M.H.'s attempt to expand his second proposition of law beyond its text and original briefing.

M.H. asks this Court to hold that a juvenile is in custody whenever his mother drives him to meet with a state actor because the juvenile is not free to leave without the parent's permission. He is unable to identify a single case in which a court has adopted that expansive holding. M.H.'s second proposition of law would render juveniles in custody whenever parents take their kids to school. Such a rule is a distortion of *Miranda*'s focus on prohibiting coerced statements.

Custody, for purpose of *Miranda*, is not always determined by simply asking if the person is free to leave. *See City of Cleveland v. Oles*, 152 Ohio St.3d 1, 2017-Ohio-5834, 92 N.E.3d 810, ¶ 30 (citations omitted) ("If the inquiry were whether the driver felt free to leave, then every traffic stop could be considered a custodial interrogation because few motorists would feel free either to disobey a directive to pull over or to leave the scene.") Rather, "custody is a term of art that specifies circumstances that are thought generally to present a serious danger of coercion." *Howes v. Fields*, 565 U.S. 499, 508-09, 132 S.Ct. 1181 (2012).

M.H. relies almost entirely upon the Supreme Court's decision in *J.D.B. v. North Carolina*, 564 U.S. 261, 131 S.Ct. 2394 (2011). In that case, a thirteen-year-old was "removed from his classroom by a uniformed police officer, escorted to a closed-door conference room, and questioned by police." *J.D.B.*, at 265. The officer in that case threatened to secure a custody order which would have sent J.D.B. to juvenile detention. *J.D.B.*, at 266-67. No parent was present, no *Miranda* warning was given, and J.D.B. confessed.

The Supreme Court **did not** hold that J.D.B. was in custody for purposes of *Miranda*. It merely held that "a child's age properly informs the *Miranda* custody analysis." *J.D.B.*, at 265. The age of the juvenile, "[i]n some circumstances," "would have affected how a reasonable person in the suspect's position would perceive his or her freedom to leave." *J.D.B.*, at 271-72 (internal citations omitted). The Court focused on the nature of the *police* interview, which "has coercive aspects to it." *J.D.B.*, at 268. "This does not mean that a child's age will be a determinative, or even a significant, factor in every case." *J.D.B.*, at 263.

There is very little in the record to indicate that the social worker's interview of M.H. was coercive. The Eighth District correctly recognized "no charges had been filed," "M.H. was not under arrest," the interview lasted "40 minutes" and was conducted "in a private room . . . while M.H.'s mother waited in the lobby," there was "no police presence at any time," the interview room was "unlocked," M.H. was "not physically restrained," M.H. never expressed "reluctance or hesitation in answering Bradley's questions," and "there is no evidence of overt intimidation or coercion." *In re M.H.*, ¶ 33-34.

The State acknowledges, as did the lower court, that M.H.'s age is a legitimate factor to consider in determining if M.H. was in custody. *In re M.H.*, ¶ 32. But M.H. asks this Court to hold that age is dispositive. He makes no attempt to hide the breadth of the rule he asks this Court

to adopt: "The circumstances of M.H.'s confession demonstrate the coercive environment that is created when one couples the idea that a child is always in the custody of someone with a child's desire to comply with adult authority." App. Brief pg. 24. This Court should reject M.H.'s request for a *per se* rule that a juvenile is in custody when he is taken by a parent to meet with a state actor. Such interactions, without other coercive facts, were not contemplated in *Miranda* as requiring a prophylactic warning.

> ***Appellant's Proposition of Law 3: A child-suspect must be provided Miranda warnings when that child is interrogated by a social worker who is exercising her statutory duty to investigate child abuse allegations and does so cooperatively with the police on a regular and institutional basis.***

The law is clear that *Miranda* advisements apply only to law enforcement officers or their agents. *Miranda* itself defined 'custodial interrogation' as "questioning initiated by law enforcement officers." *Miranda v. Arizona*, 384 U.S. 436, 444, 86 S.Ct. 1602 (1966). This Court has long held that the "*Miranda* requirements do not apply when admissions otherwise admissible are given to persons who are not officers of the law or their agents." *State v. Watson*, 28 Ohio St.2d 15, 275 N.E.2d 153 (1971) (paragraph five of the syllabus); *see also State v. Bolan*, 27 Ohio St.2d 15, 18, 271 N.E.2d 839 (1971) (emphasis added).

M.H.'s third proposition of law is squarely foreclosed by this Court's decision in *State v. Jackson*, 154 Ohio St.3d 542, 2018-Ohio-2169, 116 N.E.3d 1240. In that case, a social worker interviewed an incarcerated adult without providing a *Miranda* warning. This Court held that a "social worker's duty to cooperate and share information with law enforcement with respect to a child abuse investigation does not render the social worker an agent of law enforcement . . . unless other evidence demonstrates that the social worker acted at the direction or under the control of the law enforcement." *Jackson*, ¶ 22. M.H. does not ask this Court to overrule *Jackson* and the principles of *stare decisis* demand its continued adherence.

In an attempt to avoid the clear application of *Jackson* to this case, M.H. argues this case is different. First, he argues that police and DCFS have a "institutionalized relationship" including the police's knowledge that a DCFS social worker's interview will be provided to police. App. Brief pg. 28. However, this Court recognized that while R.C. 2151.421 "imposes a duty on a children services agency to cooperate with and provide information to law enforcement regarding child abuse investigations, it does not mandate that agency employees interview alleged perpetrators of child abuse *at the direction or under the control of law enforcement*." *Jackson*, ¶ 21 (emphasis added). The 'institutional relationship' is limited to two things: (1) any interview of child *victims* should be conducted by both police and social workers to eliminate the need for successive interviews and (2) social works must report their investigation to law enforcement. R.C. 2151.421 (G)(1) and (K)(2). Outside of these statutory obligations, which were acknowledged by this Court in *Jackson*, there is no evidence that DCFS was working at the direction or under the control of Cleveland Police.

In this case, there is no evidence that the interview of M.H. was done at the direction of Cleveland Police. Police were not present for the interview, did not request Bradley to conduct the interview, and did not provide Bradley with questions to ask. Detective Cottom testified that she only learned about the interview after the fact. There is simply no evidence in the record that Bradley was working as an agent of Cleveland Police or that she was directed by Cleveland Police in anyway.

In *Jackson*, this Court noted that Ohio defines a law enforcement officer as one "with a statutory duty to enforce laws and authority to arrest violators." *Jackson*, ¶ 27 (citing *State v. Roberts*, 32 Ohio St.3d 225, 513 N.E.2d 720 (1987). The Court relied upon the fact that the social worker in *Jackson* did not have the authority to make arrests. *Jackson*, ¶ 27. M.H. emphasizes

that the social worker in this case was a former police officer. *See* Tr. at 55. But Bradley's prior training is irrelevant and establishes nothing about the purpose and function of her work in this case. Because she lacked the power to arrest when she interviewed M.H., she was not a law enforcement officer required to administer a *Miranda* warning.

Conceding that social workers lack the power to arrest, M.H. asserts that social workers are empowered to take juveniles into custody, which he says is similar to the arrest power. His citation to R.C. 2919.22 and Juv.R. 6 is misleading. R.C. 2919.22 criminalizes the endangering of children and makes no mention of public services agency social workers. Juv.R. 6 does not allow social workers to take custody of children except as "pursuant to an order of the court." *See* Juv.R. 6(A)(1). The rule also permits a "duly authorized officer of the court" to take custody of children in situations of immediate harm but this provision is inapplicable to social workers who are not duly authorized officers of the court. Juv.R. 6(A)(3). It is simply absurd to compare a police officer's ability to physically arrest an individual in an interrogation with a social worker's ability to secure a custody order under Juv.R. 6. Moreover, it is beyond absurd to claim in this case, where the mother of M.H. voluntarily transported M.H. to an interview with Bradley, that Bradley used her "power to separate a child from his home." App. Brief pg. 32.

In an attempt to expand the application of *Miranda* to non-law enforcement officers, M.H. cites to a series of inapplicable cases. He cites to cases involving statements made to a parole or probation officer. *State v. Roberts*, 32 Ohio St.3d 255, 231 (1987); *State v. Gallagher*, 46 Ohio St.2d 225 (1976). Probation and parole officers differ from social workers in that they are empowered to make arrests like police officers. *See* R.C. 2151.14(B); R.C. 2967.15(A). The Supreme Court's decision in *Estelle v. Smith*, 451 U.S. 454, 101 S.Ct. 1866 (1981) is clearly inapplicable to this case as it involves *compelled* statements made pursuant to court-ordered

psychiatric examination. M.H. also cites to *Mathis v. United States*, 391 U.S. 1, 88 S.Ct. 1503 (1968), involving an IRS agent's interview of an adult in prison. That case is silent about the agent's power of arrest. Social workers are not similar to IRS agents, court psychiatrists, or probation or parole officers.

Incredibly, M.H. also argues that a juvenile would not "know the difference between a detective and an investigative social worker." App. Brief pg. 33. The Court is left to speculate what M.H. thought since he did not testify at the lower court's hearing. But it defies common sense that a reasonable thirteen-year-old would confuse a police officer, armed with a gun and a badge, depicted in countless movies and tv shows, with the less familiar occupation of social worker.

Aside from the social worker's duty to "determine the circumstances surrounding the . . . abuse . . . and the persons responsible," R.C. 2151.421(G)(1), social worker interviews of alleged juvenile perpetrators of child abuse or neglect help to ensure the safety of child victim. Questioning an alleged juvenile perpetrator helps a social worker learn whether a child victim is safe to remain living with an alleged juvenile perpetrator or if the alleged perpetrator may still have access to the child victim. Sometimes questioning may reveal that, though the child victim lives apart from alleged juvenile perpetrator, the child victim is not safe in her current custody arrangement. For example, safety is at issue when an alleged juvenile perpetrator reveals that the child victim's guardian was aware of the abuse or neglect.

CONCLUSION

M.H.'s three propositions of law fail as a matter of law. Therefore, Appellee respectfully requests that this Court affirm the Eighth District Court of Appeals decision.

Respectfully submitted,

MICHAEL C. O'MALLEY (0059592)
Cuyahoga County Prosecuting Attorney

/s/ Jennifer M. Meyer
JENNIFER M. MEYER (0077853)
ANTHONY T. MIRANDA (0090759)
Assistant Prosecuting Attorneys
The Justice Center, 8th floor
1200 Ontario Street
Cleveland, Ohio 44113
Phone: (216) 443-7800
Fax: (216) 443-7602
jmeyer@prosecutor.cuyahogacounty.us
amiranda@prosecutor.cuyahogacounty.us

CERTIFICATE OF SERVICE

A copy of the foregoing Merit Brief of Appellee was provided by electronic mail this 4th day of November, 2019 to Paul Kuzmins, at pkuzmins@cuyahogacounty.us.

/s/ Jennifer M. Meyer
JENNIFER M. MEYER (0077853)
Assistant Prosecuting Attorney