IN THE SUPERIOR COURT OF PENNSYLVANIA
EASTERN DISTRICT

SUPERIOR COURT DOCKET NO. 2105 EDA 2012

COMMONWEALTH OF PENNSYLVANIA,
APPELLANT

v.

IN THE INTEREST OF C.R.O., A MINOR
APPELLEE

BRIEF FOR APPELLEE C.R.O.

Appeal from the Order dated June 29, 2012, as amended by the Order dated July 11, 2012, by the Court of Common Pleas of Monroe County, Forty-Third Judicial District, Commonwealth of Pennsylvania

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COUNTER STATEMENT OF THE CASE

On January 12, 2012, the Commonwealth filed a delinquency petition charging Appellee C.R.O., then a minor, with one count of rape of a child, 18 PA. CONS. STAT. ANN. § 3121(c) (West 2011); one count of involuntary deviate sexual intercourse with a child, 18 PA. CONS. STAT. ANN. § 3121(b) (West 2011); and one count of indecent assault, 18 PA. CONS. STAT. ANN. § 3126(a)(7) (West 2011). Amended Opinion and Order dated July 11, 2012 ("Op.") at 1.[1] Prior to the adjudicatory hearing, C.R.O. filed a motion seeking suppression of statements he made to two individuals: (1) Karen Choate-Bassett, a therapist at La-Sa-Quik, the residential sex offender treatment facility at which C.R.O. was placed pursuant to a delinquency court order; and (2) Carolyn Reviello, a caseworker from Monroe County Children and Youth Services ("MCCYS") who questioned C.R.O. as part of a Child Protective Services investigation. (Op. at 1).

The Honorable Jonathan Mark of the Court of Common Pleas of Monroe County held an evidentiary hearing on C.R.O.'s suppression motion on January 23 and February 22, 2012,[2] during which the Commonwealth presented the testimony of Christopher Moser, the clinical supervisor at La-Sa-Quik, Ms. Bassett and Ms. Reviello. (Op. at 1). In addition, the parties

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[1] The trial court's initial opinion was filed on June 29, 2012. For unknown reasons, certain final edits did not survive the printing of that initial opinion. Consequently, the trial court filed an amended opinion on July 11, 2012, solely to correct the errors in the initial opinion. (Op. at 1 n. *).

[2] In its Amended Opinion dated July 11, 2012 granting Appellee's suppression motion, the trial court cited the notes of testimony from the first day of hearing on January 23, 2012 as "N.T. 1 at__" and the notes of testimony from the second day of hearing on February 22, 2012 as "N.T. 2 at __". In this brief, Appellee cites to the notes of testimony from January 23, 2012 as "N.T. 1/23/2012 at __" and from February 22, 2012 as "N.T. 2/22/2012 at __".

submitted exhibits into evidence. (Op. at 1). Based on the elicited evidence, the trial court made the following findings of fact as documented in its Amended Opinion dated July 11, 2012.

Approximately one year prior to the filing of the petition underlying the instant appeal, the Hon. Jonathan Mark had adjudicated C.R.O. delinquent after C.R.O. made voluntary, counseled admissions, in court, to committing felony sex offenses against three children. (Op. at 2). The court placed C.R.O. in the temporary legal custody of MCCYS and under the supervision of the Monroe County Juvenile Probation Office ("MCJPO") and physically placed him at La-Sa-Quik. (Op. at 2).

La-Sa-Quik is a residential sex offender treatment program for males 12 ½ to 18 years of age. (Op. at 3; N.T. 1/23/2012 at 6). While La-Sa-Quik is not a secure facility, "since juveniles are court-ordered to the program they are not free to leave the facility…If a juvenile were to leave the facility, La-Sa-Quik would contact the police, the juvenile's probation officer, the appropriate county children and youth agency, and the juvenile's parent." (Op. at 3 citing N.T. 1/23/2012 at 21-22). Youth who work diligently at treatment will typically complete the La-Sa-Quik program within 18 to 24 months. Youth who do not work diligently in treatment may be confined to La-Sa-Quik by the court until the age of twenty-one. (Op. at 5 citing N.T. 1/23/2012 at 5, 18-19, 35 and Commonwealth Ex. 3).

La-Sa-Quik counselors receive specialized training and certification in a treatment model that emphasizes "ownership, honesty and disclosure" by program participants; specifically, "[t]he training teaches that disclosure of all victims and complete history of both offending and victimization is essential for treatment." (Op. at 3 citing N.T. 1/23/2012 at 23). La-Sa-Quik operates on a level system such that a youth must progress through three levels in order to complete (or "graduate from") the program and ultimately be discharged. (Op. at 5 citing N.T.

1/23/2012 at 32-35). As a youth moves up in levels, he also is entitled to additional privileges and freedoms, including an increase in the frequency of phone calls, home passes to visit family, and off-grounds trips and recreation. (Op. at 5 citing N.T. 1/23/2012 at 36-37). As the trial court found,

> [i]n order for juveniles to successfully move through the Level system and the La-Sa-Quik program, active, compliant participation is required. Treatment at La-Sa-Quik delves into a juvenile's history and background "not for law enforcement purposes or for investigative purposes [but for] treatment." The treatment "is similar to the diagnosis of a doctor." Juveniles are taught that, to move through the levels and to maximize treatment, it is important for them to take full ownership of their offending behaviors and acknowledge the harm they have inflicted on their victims. Juveniles are also told that if they are not honest in their disclosures, their ability to be rehabilitated and complete the program will be adversely affected.
>
> Consistent with their training and with general sex offender treatment standards, counselors at La-Sa-Quik teach that honesty and full disclosure of victims and offending history is the best policy. According to [La-Sa-Quik staff], disclosure of previously undisclosed victims is "essential to treatment" because "it helps hold [juveniles] accountable and it also helps [them] get the victim the help they need." Juveniles are also counseled to participate in treatment so that when they graduate "the juvenile[s] won't have any skeletons in [their] closet that may come back later to haunt them in another victim coming forward and leaving a black mark on the treatment they received or resulting in additional charges." The juveniles need to "clean their house and get everything in order while they're with [La-Sa-Quik] to avoid any future repercussions to the victim or them."

(Op. at 6 citing N.T. 1/23/2012 at 7-10, 43, 68, 70-71) (emphasis added).[3]

All youth placed at La-Sa-Quik review and sign the program's notice of confidentiality standards, which explains the limits on confidentiality with regard to the youth's disclosures as part of treatment. (Op. at 3-4 citing N.T. 1/23/2012 at 12). Specifically, the standards state that

[3] Facility staff explained the levels system to C.R.O. when he arrived at La-Sa-Quik and told him that he would have to participate in treatment to progress in levels. (N.T. 1/23/2012 at 24, 32-35.) Youth are given a handbook that describes the levels system. (N.T. 1/23/2012 at 32; Juvenile Ex. 1). The handbook specifically describes that on Level II youth "are expected to be operating in treatment from a stance that all has been disclosed regarding your offending behavior." (N.T. 1/23/2012 at 33). If C.R.O. refused to participate in his court-ordered treatment, he would be deemed non-complaint. (*Id.* at 24).

facility staff "are mandated to inform the appropriate authorities" if youth disclose any physical or sexual abuse or other past crimes. (Op. at 4 citing N.T. 1/23/2012 at 17-18 and Commonwealth Ex. 2). The notice does not specify that his disclosures will be shared with law enforcement or the district attorney's office, nor does it state that these disclosures can be admitted into evidence against the youth at an adjudicatory hearing or criminal trial. (*Id.*) C.R.O. signed a copy of the notice on October 10, 2011. (Op. at 4 citing N.T. 1/23/2012 at 12, 17, and Commonwealth Ex. 2).

La-Sa-Quik staff testified that they are mandated reporters of child abuse; they must report to Child Line any abuse disclosed by youth at the facility. (Op. at 3-4 citing N.T. 1/23/2012 at 17-18). When youth disclose that they have sexually offended previously undisclosed victims, it is La-Sa-Quik's policy to have youth fill out and sign a disclosure form. (Op. at 4 citing N.T. 1/23/2012 at 46). Youth are required to fill out the disclosure form so that there is a written record if the youth later recants his admission. (Op. at 4 citing N.T. 1 at 46). The form is then placed with the facility's "disclosure packet" which the staff is obligated to provide to the appropriate authorities. (Op. at 4 citing N.T. 1/23/2012 at 43-46.)[4] *Miranda* warnings are neither included on the disclosure form nor verbally administered to the youth when they are asked to complete the disclosure form. (Op. at 4 citing N.T. 1/23/2012 at 43).

Pursuant to the trial court's disposition order, C.R.O. entered La-Sa-Quik on March 1, 2011. (Op. at 6). C.R.O. had difficulty adjusting to the La-Sa-Quik sex offender treatment program. (Op. at 6-7). C.R.O. remained on Level I for "an inordinate period of time" because he did not complete assigned clinical assignments, he did not make "`full and further disclosures'"

[4] The "disclosure packet" includes a completed CY47 – Report of Suspected Child Abuse -- as well as documentation that the facility staff contacted ChildLine, a county representative, and the child's family. (N.T. 1/23/2012 at 46).

and "he was having difficulty engaging in group sessions and sharing information in individual sessions." (Op. at 6-7 citing N.T. 1/23/2013 at 24, 40, 68 and Commonwealth Exs. 3 and 4) (emphasis added). In a July 2011 report to the court, La-Sa-Quik staff reported that C.R.O.'s individual therapy sessions were "unsatisfactory" and that he "wasn't processing openly with his counselors"; that he believed he no longer needed treatment to address his offending behavior; and that overall he was not progressing.[5] Consequently, the staff noted that their upcoming counseling sessions would focus on getting C.R.O. to take "ownership." (Op. at 7 citing Commonwealth Ex. 3 and N.T. 1/23/2012 at 27-29, 40, 68) (emphasis added). Similarly, at a placement review hearing on July 28, 2011, in an effort to guide and motivate the youth, the trial court exhorted C.R.O. to comply with treatment. Specifically, the court expressed concern about C.RO.'s lack of progress; told the youth "that in order to be released, he needed to invest in his treatment, `pick up his game,' make progress, complete the program, and demonstrate that he is no longer a danger to others," and "extracted a promise from the Juvenile to listen, be compliant, and work hard at treatment." (Op. at 7-8).

Following that July 2011 placement review hearing, C.R.O remained on Level I but did begin to make some progress in treatment. "He did so by making additional disclosures as he was being strongly urged to do." (Op. at 8 citing N.T. 1/23/2012 at 27-28 and 31) (emphasis added).[6] These disclosures – as described *infra* – prompted civil and criminal investigations and ultimately led to the filing of the delinquency petition underlying the instant appeal.

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[5]La-Sa-Quik staff further stated in the report that "despite taking ownership for behaviors that led to placement, he recently expressed he no longer believes he has a sexual problem." Commonwealth Ex. 3 at 1 (emphasis added).

[6] In a January 2012 report La-Sa-Quik staff noted that C.R.O. had disclosed additional victims and offenses and "has made variable progress toward his treatment goals of increasing his self-awareness, honesty, and ownership for his sexual behaviors." Commonwealth Ex. 4 at 1. However, C.R.O. remained at Level I status because "he has maintained inconsistent responses

Specifically, on November 9, 2011, during one of C.R.O's scheduled individual therapy sessions with his La-Sa-Quik therapist Ms. Choate-Bassett, C.R.O. disclosed to her that he had sexually offended a previously undisclosed child. (Op. at 8 citing N.T. 1/23/2012 at 49). The therapist told C.R.O. that she was a mandated reported and would have to report the disclosure to ChildLine. (Op. at 8 citing N.T. 1/23/2012 at 50, 58). The therapist asked C.R.O. to tell her the identity of the victim, where the offense happened, the frequency of sexual contact, and how C.R.O. had gained the victim's trust. (Op. at 8 citing N.T. 1/23/2012 at 49). The therapist also instructed C.R.O. to fill out and sign a disclosure form describing the offense, and C.R.O complied. (Op. at 8 citing N.T. 1/23/2012 at 49, 62).[7] "When [the therapist] instructed the Juvenile to fill out the form, she did not, formally or informally, advise him of his legal 'rights' or options." (Op. at 8). The therapist did not tell C.R.O that he could decline to fill out the disclosure form or that he could leave their session. (Op. at 8 citing N.T. 1/23/2012 at 62-63). Nor did she tell C.R.O. that he could face new charges based on the disclosure, that what he said could be used against him in court, or that he had a right to speak with his attorney. (Op. at 8 citing N.T. 1/23/2012 at 62-67). The youth did not have either his father or his attorney present when he made the disclosure, nor was he given the opportunity to call his father or attorney. (*Id.*) Subsequently, the therapist contacted ChildLine to report the new victim. (Op. at 8 citing N.T. 1/23/2012 at 58). As per La-Sa-Quik policy, she also prepared a disclosure packet – which included the disclosure form filled out by C.R.O. and a CY 47 "Report of Suspected Child

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in his treatment (particularly in the area of offense disclosure)." *Id.* Consequently, C.R.O. was significantly behind the time frame outlined in his initial treatment plan – a youth is typically expected to attain Level II in seven months and C.R.O. was in his eleventh month on Level I – which could delay his successful completion of the program within the usual time period. *Id.* at 1-2. The La-Sa-Quik supervisor Mr. Moser further testified at the January 23, 2012 evidentiary hearing that in recent months, C.R.O. "began to make some forward progress and began to offer additional disclosures." N.T. 1/23/2012 at 27-28.

[7] *See also* Commonwealth Ex. 5.

Abuse" – which she later provided to the authorities. (Op. at 8 citing N.T. 1/23/2012 at 46-49, 58, 66).

Evidence at the hearing established the investigation process that follows when a report is made to ChildLine. Upon receiving a report of suspected abuse, ChildLine contacts the appropriate county children & youth agency. (Op. at 9 citing N.T. 2/22/2012 at 9). The county agency assigns a caseworker who in turn notifies both the district attorney's office and law enforcement about the report. (*Id.)* The caseworker is mandated by statute to conduct an investigation, which includes interviewing the alleged perpetrator. (Op. at 9 citing N.T. 2/22/2012 at 8-11). The caseworker also is required to complete and transmit to the appropriate law enforcement agency and district attorney's office a CY 104 "Report of Suspected Child Abuse to Law Enforcement." (Op. at 9 citing N.T. 2/22/2012 at 8-11 and Commonwealth Ex. 6).

In this case, ChildLine turned C.R.O.'s disclosure over to Monroe County Children and Youth Services ("MCCYS") – the same agency in whose temporary legal custody the court had previously placed C.R.O. for the purpose of placing him at La-Sa-Quik -- for investigation. (Op. 9-10 citing N.T. 2/22/2012 at 8-11). MCCYS assigned Carolyn Reviello to conduct an investigation. (*Id.*) Upon receipt of the referral from ChildLine regarding C.R.O., the MCCYS investigator prepared a CY 104 "Report of Suspected Child Abuse to Law Enforcement" and sent the completed report to the Monroe County District Attorney's Office and the Stroud Area Regional Police on November 10, 2011. (Op. 9-10 citing N.T. 2/22/2012 at 8-11 and Commonwealth Ex. 6). In the CY 104, the MCCYS investigator described the statements that C.R.O. made at La-Sa-Quik. (*Id.*)

On December 2, 2011, the MCCYS investigator questioned C.R.O. by telephone about the allegations she received from ChildLine. (Op. at 10 citing N.T. 2/22/2012 at 13).[8] C.R.O.'s previous counselor at La-Sa-Quik, was the only other person in the room with C.R.O. when the MCCYS investigator questioned him by phone. (Op. at 10 citing N.T. 2/22/2012 at 21-22). The investigator explained to C.R.O. that she was calling because she had received an allegation that he had committed child abuse. (Op. 10 citing N.T. 2/22/2012 at 14.) C.R.O. stated that he had received a letter from the investigator alerting him to her investigation, and that he was familiar with MCCYS because he had gone through the same process before. (*Id.)* The investigator told C.R.O. that he had the opportunity to comment on the allegations if he wished, or not. (*Id.)* The investigator did not tell C.R.O. that he could speak to an attorney before being questioned by her. (Op. at 10 citing N.T. 2/22/2012 at 22-23). Prior to questioning, the MCCYS investigator did not advise C.R.O. that he could talk with his father or anyone else before making a statement to her, nor did she administer *Miranda* warnings. (*Id.).* In response to her questioning, C.R.O made certain admissions to the MCCYS investigator about his sexual contact with the new victim. (Op. at 10 citing N.T. 2/22/2012 at 14, 20).

On this extensive record, the trial court issued an order and amended opinion dated July 11, 2012 granting C.R.O.'s motion to suppress the statements made to his La-Sa-Quik therapist and to the MCCYS investigator. The instant appeal followed.

[8]The MCCYS investigator had previously contacted the La-Sa-Quik facility and requested that the staff make C.R.O. available for the phone interview. (N.T. 2/22/2012 at 16). La-Sa-Quik staff brought C.R.O. to the phone to talk the MCCYS investigator at the time of the appointment. (*Id.*)

SUMMARY OF ARGUMENT

This case presents the question of whether a youth may be forced to incriminate himself while undergoing court-ordered sex offender treatment. C.R.O., then a minor, was placed at a treatment facility after he made voluntary, counseled admissions, in court, to committing felony sex offenses against three children. The facility's treatment model emphasizes that it is essential for youth to disclose previously unidentified victims. In fact, a youth's ability to progress through the program and ultimately be discharged and sent home is largely dependent on his honesty and disclosure in treatment. At all times, the facility staff court exerted enormous pressure on C.R.O. to disclose. Ultimately he did just that -- C.R.O. made an incriminating disclosure about offending a fourth, previously unidentified victim to the treatment facility therapist. The therapist questioned C.R.O. about the offense, instructed C.R.O. to fill out a form describing what happened, and then called ChildLine. ChildLine in turn assigned a county children & youth case worker to investigate the new disclosure. The county investigator interviewed C.R.O. while he was at the facility, and asked him specifically about his disclosure that he sexually offended another child. She also prepared and forwarded reports to both a law enforcement agency and the district attorney, as she is required by law to do.

At no time while questioning him did either the facility therapist or the county investigator advise C.R.O. of his rights under *Miranda v. Arizona,* 384 U.S. 436 (1966), or obtain a valid waiver of those rights. Nor was C.R.O. told that he could consult with his parent or his attorney prior to being questioned.

Ultimately, C.R.O. was charged with new felony sex offenses arising out of his disclosures to the therapist and county agency investigator. The trial court properly ruled that these statements were inadmissible under the Fifth and Fourteenth amendments of the U.S.

Constitution and Article I, §§ 8 and 9 of the Pennsylvania Constitution because they were involuntary, and not knowingly and intelligently made. The trial court's extensive findings of fact amply support the conclusion that C.R.O. did not "make a free and unconstrained decision to confess." *Com. v. Nester*, 709 A.2d 879, 882 (Pa. 1998) (citing *Miller v. Fenton*, 796 F.2d 598 (3rd Cir. 1986)) (emphasis added). The trial court also correctly suppressed C.R.O.'s statements to the county agency investigator on a second ground – the investigator procured the statements during custodial interrogation without first administering *Miranda* warnings and obtaining a valid waiver of *Miranda* rights.

In addition or in the alternative to the trial court's holdings, C.R.O.'s disclosures to the therapist are inadmissible on the ground that they were elicited during custodial interrogation absent *Miranda* warnings and without a voluntary, knowing and intelligent waiver of *Miranda* rights. And C.R.O.'s statements to the county agency investigator are inadmissible on a third ground not reached by the trial court -- they are the "tainted fruit" of a constitutional violation, i.e., the solicitation of involuntary statements by the facility therapist.

The United States Supreme Court has long recognized that the unique developmental attributes of adolescence are highly relevant in determining the voluntariness of youth confessions. In a line of confession cases, the Court has found that youth are more susceptible than adults to coercion; less able to understand the consequences of their actions; and less capable of asserting their constitutional rights without the assistance of an interested adult. This jurisprudence -- and the social science research that buttresses it – supports the trial court's findings that C.R.O.'s statements were not voluntarily and knowingly given, and underscores the court's caution against using such statements where, as here, the youth was provided with no protections.

ARGUMENT

I. THE TRIAL COURT DID NOT ERR IN SUPPRESSING C.R.O.'S INVOLUNTARY AND UNCOUNSELED STATEMENTS TO THE LA-SA-QUIK THERAPIST AND MCCYS INVESTIGATOR WHILE HE WAS IN STATE CUSTODY

The trial court properly ruled that the Commonwealth did not sustain its burden to establish by the preponderance of the evidence that C.R.O.'s disclosures to the La-Sa-Quik therapist and MCCYS investigator are admissible into evidence against the youth. (Op. at 12 citing *Commonwealth v. Pitts*, 740 A.2d 726 (Pa. 1999)). The Fifth and Fourteenth amendments of the U.S. Constitution and Article I, §§ 8 and 9 of the Pennsylvania Constitution prohibit the admission into evidence of statements that are not "the product of essentially free and unconstrained choice by its maker." *Culombe v. Connecticut*, 367 U.S. 568, 602 (1961) (plurality opinion), approved in *Schneckloth v. Bustamonte*, 412 U.S. 218, 225-26 (1973). Additionally, *Miranda v. Arizona,* 384 U.S. 436 (1966), prohibits the use of incriminating statements made in response to custodial interrogation unless, prior to questioning, a youth was informed of his rights and made a voluntary, knowing and intelligent waiver of those rights. The trial court correctly suppressed C.R.O.'s statements to his La-Sa-Quik therapist and the MCCYS investigator because, as evidenced by the extensive record developed below, the statements were involuntary and not knowingly and intelligently made. (Op. at 12-13, 19.) Moreover, the trial court's ruling that C.R.O.'s statements to the MCCYS investigator must be suppressed on the additional ground that they were elicited during custodial interrogation conducted without *Miranda* warnings is well supported by the relevant case law as applied to the record.

A. The Trial Court's Extensive Findings of Fact Amply Support the Conclusion that C.R.O.'s Disclosures to the La-Sa-Quik Therapist and the MCCYS Investigator Were Involuntary and Not Knowingly and Intelligently Made

The Supreme Court of Pennsylvania has held that the touchstone inquiry as to the question of voluntariness is "whether the interrogation was so manipulative or coercive that it deprived the defendant of his ability to make a free and unconstrained decision to confess." *Com. v. Nester*, 709 A.2d 879, 882 (Pa. 1998) (citing *Miller v. Fenton*, 796 F.2d 598 (3rd Cir. 1986)) (emphasis added). "The line of distinction between a voluntary and an involuntary confession is that at which governing self-direction is lost and compulsion propels the confession." *Id.* at 884 (emphasis added) (quoting *Com. v. Whitney*, 512 A.2d 1152, 1157 (Pa. 1986)). To assess whether a statement was voluntarily, knowingly and intelligently made, a court should consider a number of factors, including: "the duration and means of the interrogation; the physical and psychological state of the accused; the conditions attendant to the detention; the attitude of the interrogator; and any and all other factors that could drain a person's ability to withstand suggestion and coercion." *Id.* at 882-83. In determining whether a juvenile's confession is voluntarily, knowingly and intelligently given, the court must consider additional factors including the juvenile's age, experience, comprehension, and the presence or absence of an interested adult. *Com. v. Carter*, 855 A.2d 885, 890 (Pa. Super. Ct. 2004); *Com. v. Williams*, 475 A.2d 1283, 1288 (Pa. 1984).

The trial court's findings of fact regarding the totality of the circumstances leading up to and surrounding C.R.O.'s questioning by the La-Sa-Quik therapist and the MCCYS investigator well support the court's conclusion that C.R.O. did not "make a free and unconstrained decision to confess." *Nester, supra.*

As the trial court found, and the Commonwealth conceded, C.R.O. was in custody when he gave statements to the La-Sa-Quik therapist and MCCYS investigator. (Op. at 16; Appellant Br. at 10).[9] The record also supports the conclusion that C.R.O. was questioned by both the La-Sa-Quik therapist and then the MCCYS investigator. The therapist asked C.R.O. to tell her the identity of the victim, where the offense happened, the frequency of sexual contact, and how C.R.O. had gained the victim's trust. (Op. at 8 citing N.T. 1/23/2012 at 49.) The therapist also instructed C.R.O. to fill out and sign a disclosure form describing the offense, and C.R.O complied. (Op. at 8 citing N.T. 1/23/2012 at 49, 62).[10] Similarly, C.R.O. made incriminatory admissions in response to the MCCYS investigator's direct questioning about his involvement in illegal conduct. (Op. 10 citing N.T. 2/22/2012 at 13-14).

Key to the trial court's holding that the statements were involuntary were its findings that several individuals exerted great pressure on C.R.O. to make disclosures of offending behavior

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[9] With respect to custody, the test is whether a reasonable juvenile in C.R.O.'s situation would have believed that he was in custody and not free to leave. *J.D.B. v North Carolina*, 131 S. Ct. 2394, 2402-05 (2011). As the Pennsylvania Supreme Court has stated:

> (C)ustody occurs if a suspect is led to believe, as a reasonable person, that he is being deprived or restricted of his freedom of action or movement under pressures of official authority. * * * (T)he custody requirement of *Miranda* does not depend on the subjective intent of the ... interrogator but upon whether the suspect is physically deprived of his freedom of action in any significant way or is placed in a situation in which he reasonably believes that his freedom of action or movement is restricted by such interrogation.

Com. v. Marabel, 283 A.2d 285, 288 (Pa. 1971). The La-Sa-Quik clinical supervisor and C.R.O.'s therapist confirmed that at the time that he made his alleged disclosures, C.R.O. was in the physical custody of La-Sa-Quik where he was placed pursuant to court order to undergo treatment. (N.T. 1/23/12 at 21-22, 60-61). C.R.O. was not allowed to leave the facility and if he did leave, the facility would immediately contact the police and other agencies because it would be considered an unlawful escape. *Id.* at 22. Similarly, C.R.O. was in state custody when the MCCYS investigator questioned him about the allegations as part of her statutorily-mandated investigation. (N.T. 2/22/2012 at 15-16). Thus, it is indisputable that C.R.O. was in state custody at the time he made the admissions at issue here.

[10] *See also* Commonwealth Ex. 5.

while he was at La-Sa-Quik. The trial court specifically found that "[w]hile at La-Sa-Quik, the Juvenile was constantly told that treatment and successful completion of the program required full disclosure of all victims and offending behaviors, known and unknown"; "[t]he treatment team at La-Sa-Quik pushed the Juvenile to disclose"; and "it is clear that the Juvenile was pressed to disclose." (Op. at 16-17) (emphasis added). In fact, La-Sa-Quik staff had told both C.R.O. and the trial court at an earlier placement review hearing that C.R.O.'s lack of progress "was due to the Juvenile's failure to openly process with counselors, take ownership of his crimes and victims, and make full disclosures." (Op. at 17).[11] Consequently, the trial court "got into the act" and exhorted C.R.O. at the placement review hearing to "invest in his treatment, `pick up his game,' and do what his counselors asked of him in order to make progress, graduate from the program, and demonstrate that he was no longer a danger to the community," providing C.R.O. with "another source of pressure to disclose." (Op at 17).

As the trial court found, "the psychological state of the Juvenile was that of a child who was repeatedly told to disclose, and then later repeatedly asked about the ultimate and inevitable

[11] In a July 2011 report to the court, La-Sa-Quik staff had reported that C.R.O.'s individual therapy sessions were "unsatisfactory" and that he "wasn't processing openly with his counselors." (N.T. 1/23/2012 at 28-29). In that same report, LaSaQuik staff stated that "despite taking ownership for behaviors that led to placement, he recently expressed he no longer believes he has a sexual problem." Commonwealth Ex. 3 at 1 (emphasis added). The 2011 report further states that C.R.O. was an "observer" in both individual and group counseling sessions where he "continued to struggle"; his contributions and participation were "shallow" and "guarded"; and his overall participation in counseling was "unsatisfactory". *Id.* at 1-2. Consequently, the staff specifically noted in 2011 that upcoming counseling sessions would focus on getting C.R.O. to take "ownership." *Id.* at 2. By contrast, at the January 2012 suppression hearing, staff testified that in recent months, C.R.O. "began to make some forward progress and began to offer additional disclosures." (N.T. 1/23/2012 at 27-28). Thus, the evidence established that it was not enough for C.R.O. to "take[e] ownership for behaviors that led to placement" -- i.e., the offenses for which he was adjudicated delinquent and placed at LaSaQuik – in order to demonstrate progress in the treatment program. Instead, it was only when C.R.O. "began to offer additional disclosures" that he was deemed to be making "some forward progress."

disclosure, in a forced, custodial placement." (Op. at 19.) While the La-Sa-Quik staff may have sought disclosures from C.R.O. for therapeutic reasons,

> when statements resulting from use of such treatment tools are captured and used by the Commonwealth as evidence in delinquency proceedings, they become...confessions and interrogations in a custodial placement setting.
>
> Similarly, when used as a tool for protecting children and getting help for victims, the interview conducted by [the MCCYS investigator], in her capacity as an investigator and `an arm of the statewide system of Child Protective Services,' *Commonwealth v. Ramos*, 532 A.2d 465, 468 (Pa. Super. 1987), is constitutionally proper and societally beneficial. However, when the fruits of the interview are used as evidence in a delinquency case, the interview and information gleaned from the interview take on constitutional dimensions.

(Op. at 18-19).

C.R.O.'s lack of critical information and lack of access to an interested adult before he made these statements only heightened the coercion inherent in the interviews, and confirms that the statements were not intelligently and knowingly made. The La-Sa-Quik therapist did not administer *Miranda* warnings to C.R.O. prior to questioning. (Op. at 18; N.T. 1/23/12 at 66-67). While C.R.O. previously had signed a notice "which contained a one-line statement that any new offenses would be reported to the authorities, he did so a month prior to the disclosures. The warning was not repeated until after he had disclosed as he had been urged to do so." (Op. at 18). Then, "[w]hen [the therapist] instructed the Juvenile to fill out the [disclosure] form, she did not, formally or informally, advise him of his legal "rights" or options." (Op. at 8). The therapist did not tell C.R.O that he could decline to fill out the disclosure form or that he could leave their session. (Op. at 8 citing N.T. 1/23/2012 at 62-63). Nor did she tell C.R.O. that he could face new charges based on the disclosure, that what he said could be used against him in court, or that he had a right to speak with his attorney. (Op. at 8 citing N.T. 1/23/2012 at 62-67).

Similarly, the MCCYS investigator did not administer *Miranda* warnings to C.R.O. prior to questioning about the allegations of abuse. (Op. 10 citing N.T. 2/22/2012 at 23). The investigator told C.R.O that he had the opportunity to comment on the allegations if he wished, or not, but did not advise the youth that he could speak to an attorney before being questioned by her. (*Id.)* Nor did the MCCYS investigator advise C.R.O. that he could talk with his father or anyone else before making a statement to her. (*Id.)*. In fact, no interested adult was made available to C.R.O. either before or during the questioning by the La-Sa-Quik therapist or the MCCYS caseworker. (Op. at 18; N.T. 1/23/12 at 18; N.T. 2/22/2012 at 22-23.) Thus, C.R.O. did not have the opportunity to discuss with his father or attorney all the possible consequences of making any admission prior to doing so. This is particularly troubling given that the MCCYS investigator was a supervisor for the very same agency that had legal custody of C.R.O., who was at all times represented by the county public defender's office. (Op. at 18-19). As the court concluded, "no one spoke for this Juvenile" at a critical time when his constitutional rights were at stake. (Op. at 18-19).

Thus, the trial court's careful examination of all the circumstances surrounding C.R.O.'s statements do not support a finding by the preponderance of the evidence that C.R.O. voluntarily, knowingly and intelligently made the statements at issue. The Commonwealth's brief narrowly focuses only on the actual interview between C.R.O. and the La-Sa-Quik therapist, and then with the MCCYS investigator, and neglects to mention any of the circumstances leading up to the interviews. (Appellant Br. at 18-20, 24). Appellee submits that this is a futile attempt to portray the encounters as ones in which a youth of his own free will wandered into an office and decided to talk. The trial court's extensive findings of fact as to what C.R.O. was repeatedly told by the La-Sa-Quik facility staff and the court belie such a characterization. As the trial court found, it

was "[a]gainst this backdrop of stagnation and pressure to perform [that] the Juvenile walked into Ms. Bassett's office and made the disclosure that led to the civil and criminal investigations, the interview with [the MCCYS investigator] and the filing of this case." (Op. at 17). Given the requirements of C.R.O.'s court ordered treatment, he was faced with a Hobson's choice. On the one hand, he could "take ownership" by discussing any past offenses and cooperate with treatment and investigations so that victims could be identified and helped. This choice would allow him to successfully complete the treatment program and go home, but carried the risk that those statements would be used against him in court. On the other hand, he could exercise his Fifth Amendment right not to incriminate himself, but be deemed uncooperative in treatment for not taking responsibility for identifying victims so they could be helped, thereby delaying his return home and ultimate discharge from court supervision. In this untenable situation, it cannot be said that C.R.O. made "a free and unconstrained decision to confess." *Nester, supra.*[12]

B. The Trial Court Properly Concluded That the Disclosures to the MCCYS Investigator Also Must Be Suppressed Because They Were Elicited During Custodial Interrogation Conducted Without *Miranda* warnings

The trial court correctly suppressed C.R.O.'s statements to the MCCYS investigator on a second ground – the investigator procured the statements during custodial interrogation without first administering warnings as per *Miranda v. Arizona,* 384 U.S. 436 (1966) and obtaining a valid waiver of *Miranda* rights. (Op. at 23-24).

[12] The trial court also noted that allowing counselors at treatment facilities where youth are involuntarily placed to become interrogators for the Commonwealth without providing some protections such as the right to speak to an interested adult would be "fundamentally unfair." (Op. at 23). Given the severe consequences of being adjudicated delinquent for a felony sexual offense, "the full panoply of constitutional protections must be recognized, and traditional constitutional analysis must be applied, when the prosecutorial arm of the Commonwealth seeks to use against a juvenile statements made by the juvenile while in a court-ordered custodial setting." (Op. at 22).

The record establishes that C.R.O. was in custody when he was questioned by the MCCYS investigator about allegations that he sexually abused another child. The record also demonstrates that the investigator did not provide *Miranda* warnings to C.R.O. prior to her interrogation, s*ee Part I.A. supra,* despite the fact that she is statutorily required to share the results of her investigation with law enforcement and prosecutors.

The MCCYS investigator, as a county government employee, was acting as a state agent when she questioned C.R.O. about his involvement in the alleged offenses. After ChildLine received C.R.O.'s disclosures from La-Sa-Quik, ChildLine turned the case over to MCCYS for investigation. (Op. 9-10 citing N.T. 2/22/2012 at 8-11). The MCCYS investigator is mandated by statute to conduct an investigation, which includes interviewing the alleged perpetrator. (Op. at 9 citing N.T. 2/22/2012 at 8-11). The investigator is also required to complete and transmit to the appropriate law enforcement agency and district attorney's office a CY 104 "Report of Suspected Child Abuse to Law Enforcement." (Op. at 9 citing N.T. 2/22/2012 at 8-11 and Commonwealth Ex. 6). In this case, the MCCYS investigator carried out her statutorily-mandated duties, including questioning C.R.O. about the abuse allegations (Op. 10 citing N.T. 2/22/2012 at 13-14, 20-23), and sending a completed CY 104 to the Monroe County District Attorney's Office and the Stroud Area Regional Police on November 10, 2011. (Op. 9-10 citing N.T. 2/22/2012 at 8-11 and Commonwealth Ex. 6).

The trial court properly relied on the Superior Court's holding in *Com. v. Ramos*, 532 A.2d 465 (Pa. Super. Ct. 1987) in ruling that C.R.O's un-*Mirandized* statements to the MCCYS investigator are inadmissible. The defendant in *Ramos* was charged with sexual assault against a minor child. *Id.* at 466. A county children & youth agency caseworker went to the prison where the defendant was being held to interview him as part of an investigation of a report of suspected

child abuse. *Id.* Prison officials brought the defendant, who was in solitary confinement, to an interview room to be questioned by the caseworker. *Id.* The caseworker did not administer *Miranda* warnings to the defendant, who admitted to the charged offenses in the subsequent interview. *Id.* at 466-467. The Superior Court, in holding that the statements were inadmissible at the defendant's criminal trial, rejected the Commonwealth's argument that the caseworker was not required to administer *Miranda* warnings because he was not working at the direction or behest of law enforcement and the statements were obtained as part of a civil investigation. *Id.* at 467-69. Citing the Pennsylvania Supreme Court's holding in *Com. v. Chacko*, 459 A.2d 311 (1983), the *Ramos* court noted:

> [T]he particular office that the official who performs the custodial interrogation represents is inconsequential because *Miranda* was concerned with official custodial interrogations of an accused and the use of statements obtained from an accused without an attorney in such circumstances to prove the State's case against the accused.

Id. at 468 (citing *Com. v. Chacko,* 459 A.2d at 315 n. 3). Moreover, the fact that the statements were elicited from *Ramos* during a civil rather than criminal investigation was inconsequential. *See Mathis v. United States*, 391 U.S. 1, 3-4 (1968) (holding that statements made to a federal agent who questioned a prison inmate for purposes of a civil tax investigation were inadmissible in criminal trial where the agent failed to *Mirandize*). Instead, the *Ramos* court emphasized that the children & youth caseworker was required by law to investigate reports of child abuse; the agency is an investigative arm of a statewide system of child protective services; and the agency is required to provide information to law enforcement. *Ramos,* 532 A.2d at 468. The same factors are present in C.R.O.'s case.

In its brief, the Commonwealth unsuccessfully attempts to distinguish *Ramos* from the instant case by pointing out that in *Ramos*, the defendant was previously charged and had

invoked his right to counsel before he was interviewed by the caseworker, and here C.R.O. was not charged nor did he invoke his right to counsel prior to being questioned by the MCCYS investigator. (Appellant Br. at 23-24 (citations omitted)). The trial court correctly dismissed the same arguments made below by the Commonwealth. Specifically,

> [t]he holding in *Ramos* is based not on the timing of the filing of criminal charges, but rather, on the fact that, while acting as the 'investigative arm of the statewide system of Child Protective Services' and investigating a report of child abuse that also resulted in the filing of criminal charges, a children and youth worker elicited incriminating statements from a suspect who was in custody. That is exactly the fact pattern here. Additionally the fact that the defendant in *Ramos* had invoked his right to counsel was an *additional* basis for the suppression of the statements, over and above the finding that *Miranda* warnings were required but not given.

(Op. at 25) (emphasis in the original).

The Commonwealth also points out that "not every governmental employee is required to provide *Miranda* rights before engaging in conversation" and relies on *Commonwealth v. Saranchak*, 866 A.2d 292 (Pa. 2005), subsequent history, *Saranchak v. Beard*, 616 F.3d 292 (3d Cir. 2010), for the proposition that children & youth caseworkers do not have to give *Miranda* warnings every time they interview someone in custody. (Appellant Br. at 24). But *Saranchak* is inapposite. In *Saranchak*, the Supreme Court of Pennsylvania held that the county children & youth caseworker was not required to administer *Miranda* warnings to a defendant in jail prior to engaging him in conversation, where she simply commented that she did not understand how the murders with which the defendant was charged took place, which comment led to the defendant admitting to the murders. 866 A. 2d at 302. Key to the *Saranchak* court's holding was its finding that the caseworker was not investigating the defendant, but rather was concerned with the plight of his children, who were in foster care as a result of defendant's incarceration, and her question regarding the murders was purely conversational and was not made with the purpose of soliciting information from defendant about the crimes. *Id.* By

contrast, in the instant case, the MCCYS investigator was not simply "engaging in conversation" with C.R.O. when she questioned him in custodial placement about the specific allegations of abuse she received from ChildLine as part of her statutorily-mandated investigation.

II. ALTERNATIVE GROUNDS SUPPORT THE TRIAL COURT'S SUPPRESSION OF THE STATEMENTS AT ISSUE

A. In Addition, Or In the Alternative, C.R.O.'s Statements To the La-Sa-Quik Therapist Must Be Suppressed As They Were Elicited During Custodial Interrogation And the Youth Was Not Given *Miranda* Warnings Prior To the Questioning

C.R.O. also argued below that his disclosures to the La-Sa-Quik therapist must be suppressed because the therapist failed to administer *Miranda* warnings and obtain a voluntary, knowing and intelligent waiver of his *Miranda* rights prior to questioning. (Op. at 11-12). Although the trial court found that C.R.O. was subjected to custodial interrogation at La-Sa-Quik (Op. at 16-18), the court cited to an unpublished memorandum by a panel of this court for the proposition that therapists are not required to administer *Miranda* warnings in a situation such as this because they are not law enforcement officers. (Op. at 13 & n. 8 citing to *Com v. Smith*, No. 1357 MDA 2000, (Pa. Super. Ct. filed August 3, 2001).) Appellee C.R.O. respectfully submits that the unpublished *Smith* holding directly conflicts with United States Supreme Court case law as well as other Pennsylvania cases in which the *Miranda* rule has been applied to questioning by non-law enforcement actors. As discussed *infra*, this precedent, combined with the trial court's findings that C.R.O. was subjected to custodial interrogation, supports a holding that C.R.O.'s statements to the La-Sa-Quik therapist also must be suppressed on *Miranda* grounds.

C.R.O. was court ordered to undergo treatment at La-Sa-Quik. C.R.O. allegedly made incriminating statements to his therapist in response to questioning specifically about his involvement in sexual offending. The key United States Supreme Court case on point is *Estelle v. Smith*, 451 U.S. 454 (1981), in which the Court held that statements made to a psychiatrist during a court-ordered examination were inadmissible during both the guilt and penalty phases of a criminal trial. *Id.* at 462–63. The defendant in *Estelle* was indicted for murder, and prior to his trial, the judge ordered a psychiatric examination to determine if he was competent to stand trial; the defendant was in custody at the time of the examination. *Id.* at 456–57. The defendant was deemed competent; he was later convicted of murder and subsequently sentenced to death. *Id.* at 457–60. During the sentencing hearing, the examining psychiatrist testified to disclosures that the defendant made to him, as well as his own personal conclusions as to the defendant's future dangerousness. *Id.* at 458–60.

The United States Supreme Court found that because the psychiatric examination was ordered by the court to determine the defendant's competence, the psychiatrist was acting as an agent of the state. Prior to submitting to the psychiatric exam, the defendant was not read *Miranda* warnings, nor did he make a valid waiver of his rights. *Id.* at 466–67. The Court held that the compelled examination of the defendant while he was in state custody and without a valid waiver of his *Miranda* rights violated his Fifth Amendment privilege against self-incrimination. *Id.* at 473.[13] *See also Com. v. G.P.*, 765 A.2d 363, 366, 369 (Pa. Super. Ct. 2000) (holding that in circumstances where criminal sanctions can attach based on testimonial admissions from a defendant in a psychiatric evaluation, the defendant must be informed of his

[13] The Court further held that since the defendant's right to counsel had attached, the defendant's Sixth Amendment right to counsel was violated because his attorney was not advised as to the full scope of the possible uses of the defendant's statements prior to the psychiatric examination. *Id.* at 469-71. Appellee C.R.O. does not argue a Sixth Amendment violation.

or her right to consult with counsel, and be advised that any admissions made can be used as evidence against the defendant and can lead to criminal convictions).

Estelle dictates that C.R.O.'s statements to the La-Sa-Quik therapist be suppressed on the ground that he was not advised of his *Miranda* rights nor did he make a valid wavier of the rights. Like the defendant in *Estelle*, C.R.O. was in state custody when he made incriminating statements which were elicited during court-ordered treatment. Like the psychiatrist in *Estelle,* the therapist was acting pursuant to a court order and was an agent of the state for the purposes of C.R.O.'s incriminating disclosures. The evaluating psychiatrist in *Estelle* knew that he would report his findings to the district attorney and the court. Similarly, the La-Sa-Quik therapist knew that she would report any disclosures of illegal conduct by C.R.O. to state and county authorities. (N.T. 1/23/12 at 58.) Indeed, it is evident in the Sexual Offense Disclosure Form that the therapist instructed C.R.O. to fill out – with pre-prepared sections indicating that the "Hotline" and "the county" were to be informed of any disclosure – that throughout her questioning of C.R.O., the therapist had the intention of providing any self-incriminating admissions to government authorities. (Commonwealth Ex. 5.) And like the situation in *Estelle,* at no time before, during or after this questioning was C.R.O. advised of his *Miranda* rights.

The *Estelle* Court specifically found that the fact "[t]hat respondent was questioned by a psychiatrist designated by the trial court to conduct a neutral competency examination, rather than by a police officer, government informant or prosecuting attorney, *is immaterial.*" *Id.* (emphasis added). Likewise in the instant case, it is "immaterial" that the La-Sa-Quik therapist who questioned C.R.O. was not a "police officer, government informant or prosecuting attorney." Other cases, including those by Pennsylvania courts, have held that the *Miranda* rule

applied to questioning by non-law enforcement actors. *See, e.g., Mathis v. United States*, 391 U.S. 1, 3-4 (1968) (holding that statements made to a federal agent who questioned a prison inmate for purposes of a civil tax investigation were inadmissible in criminal trial where the agent failed to *Mirandize*); *Com. v. Chacko*, 459 A.2d 311, 315 n. 3 (1983 (questioning by director of treatment at prison); *Com. v. Ramos, supra* (questioning by children & youth caseworker). Notably, the unpublished memorandum in the *Smith* case does not cite to or distinguish *Estelle*, *Mathis*, or *Chacko*, which all predate it. Appellant submits that the holdings in *Estelle and Mathis* dictate that because C.R.O. did not receive *Miranda* warnings prior to being questioned by the therapist, his statements cannot be admitted as evidence at his adjudicatory hearing. *See Com. v. McGrath*, 470 A.2d 487, 490-91 (Pa. 1983)(1983) ("In matters concerning the Fifth Amendment privilege against self-incrimination, this Court is bound by the pronouncements of the Supreme Court of the United States.") (citing *Malloy v. Hogan*, 378 U.S. 1, 10-11 (1964)).

The Commonwealth cites *Com. v. Heggins*, 809 A.2d 908 (Pa. Super. Ct. 2002) in support of its argument that the La-Sa-Quik therapist was not required to provide *Miranda* warnings prior to questioning C.R.O. about sexual offenses. (Appellant Br. at 10). In *Heggins*, this court found that counselors at the North Central Secure Treatment Facility at Danville were not the equivalent of law enforcement officers for *Miranda* purposes when the youth made inculpatory statements regarding his involvement in an uncharged murder. 809 A.2d at 915-16. *Heggins* is distinguishable from the instant case in several respects. Key to that court's holding that the youth was not subjected to custodial interrogation requiring *Miranda* warnings were the following findings of fact: "cooperating with the counselors required the Appellant to discuss in general terms his criminal lifestyle. Cooperating did not require him to admit his guilt to other

crimes"; the Danville counselors did not probe the Appellant's criminal lifestyle in furtherance of an investigation; and the Appellant was specifically informed that any statements regarding unsolved crimes would be reported to law enforcement. *Id.* at 915-16 (emphasis added).

By contrast, the record here demonstrates that C.R.O. was, in fact, required to make specific disclosures about other crimes in order to be deemed compliant with La-Sa-Quik's treatment program. *See Statement of Case at 4-7 infra.* As the trial court found, "[a]ccording to La-Sa-Quik staff, disclosure of previously undisclosed victims is `essential to treatment'; to progress through treatment juvenile are taught that they must take full ownership of their offending behaviors; and "`juveniles need to clean their house'" while at La-Sa-Quik. (Op. at 6) (citations omitted). It is important to note that in their July 2011 report to the court, La-Sa-Quik staff specifically stated that C.R.O. was not progressing in treatment "despite taking ownership for behaviors that led to placement." (Commonwealth Ex. 3 at 1) (emphasis added). The record here shows that unlike the youth at Danville, C.R.O. would not have been deemed as cooperative in treatment if he solely discussed "in general terms his criminal lifestyle" and the offenses for which he previously was adjudicated delinquent.

In addition, La-Sa-Quik staff testified that they are mandated reporters of child abuse and must report to Child Line any abuse disclosed by the youth. (Op. at 3-4 citing N.T. 1/23/2012 at 17-18). In fact, it is the facility's policy to instruct a disclosing youth to fill out a disclosure form; the completed form is then placed with the facility's "disclosure packet" which the staff then provides to the appropriate authorities. (Op. at 4 citing N.T. 1/23/2012 at 43-46; Commonwealth Ex. 5). The *Heggins* opinion, by contrast, cites to no findings that Danville staff are statutorily required to the report unsolved crimes to law enforcement, or that the Danville staff set up a system for youth to document in writing their disclosures about criminal offenses so that the documents can then be turned over to the state.

Finally, unlike the youth in Heggins, C.R.O. was not specifically informed prior to his questioning by La-Sa-Quik staff that they would report any disclosures to law enforcement. When he first arrived at La-Sa-Quik, C.R.O. signed a notice his statements would "inform the appropriate authorities" if youth disclose any physical or sexual abuse or other past crimes. (Op. at 4 citing N.T. 1/23/2012 at 17-18 and Commonwealth Ex. 2) (emphasis added). A youth such as C.R.O. could have reasonably interpreted "appropriate authorities" to be the county children & youth agency which had legal custody of him, his probation officer, his attorney or even his father. The notice does not specify that his disclosures will be shared with law enforcement or the district attorney's office, nor does it state that these disclosures can be admitted into evidence against the youth at an adjudicatory hearing or criminal trial. (*Id.)*

The critical underpinnings of the *Heggins* holding are absent here. In fact when applied to the facts of the instant case, the reasoning in *Heggins* directs a finding that because the La-Sa-Quik therapist did not advise C.R.O. of his *Miranda* rights and obtain a valid waiver, his statements to her are inadmissible.

B. In Addition, Or In The Alternative, C.R.O.'S Disclosures In Response To Custodial Interrogation By the MCCYS Investigator Must Be Suppressed Because They Are The Tainted Fruit Of The Involuntary Statements Elicited By The La-Sa-Quik Therapist

C.R.O. also argued below that, in addition or in the alternative, C.R.O.'s statements to the MCCYS investigator should be suppressed because they are the "tainted fruit" of a constitutional violation – the solicitation of involuntary statements by his La-Sa-Quik therapist. (Op. at 12.) Although the trial court did not rule on this argument, this court may rule that C.R.O.'s statements to the MCCYS investigator are inadmissible on this ground based on the extensive factual record developed below. *See Commonwealth v. Ruey*, 586 Pa. 230, 234 (Pa. 2006)

(upholding Superior Court's ruling that medical records were admissible into evidence but on different grounds).

Evidence obtained through prior illegality is inadmissible against a defendant. *See Wong Sun v. United States*, 371 U.S. 471, 488 (1963). In the case of confessions, the Commonwealth must establish that a second statement or confession is not the exploitation of the original illegality and was obtained under circumstances sufficiently distinguishable to purge it of the original taint, in order for the second statement to be admissible as evidence. *Com. v. Marabel*, 283 A.2d 285, 290-91 (Pa. 1971); *Com. v. Banks*, 239 A.2d 416, 419 (1968). *See also Wong Sun*, 371 U.S. at 488 (holding that the test is "whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint.") To determine if the Commonwealth has met its burden in the instant case, this Court must analyze the totality of the circumstances surrounding the second statement to the MCCYS investigator to assess if the taint of the initial involuntary statement to the La-Sa-Quik therapist was eliminated. *Marabel*, 283 A.2d at 290; *Banks*, 239 A.2d at 419. Key factors to consider in this analysis are whether "an accused was taken into custody by the second authority, removed both in time and place from his original surroundings, and then adequately advised of his rights and given an opportunity to exercise them." *Miranda*, 384 U.S. at 496. *See also Com. v. Frazier*, 279 A.2d 33, 35 (Pa. 1971); *Com. v. Moody*, 239 A.2d 409, 412-13 (Pa. 1968).

In the instant case, the MCCYS investigator sought to interview C.R.O. specifically about the incriminating admissions he made to the La-Sa-Quik therapist. (Op. at 10 citing N.T. 2/22/2012 at 13, 20). Thus, there is a "causal relationship or nexus" between the two statements. *Marabel*, 283 A.2d at 290. Applying the other factors listed above demonstrates that the

circumstances of that second interview did not eliminate the taint of the first. Specifically, C.R.O. was still in custody at La-Sa-Quik when he was questioned by the MCCYS worker. (Op. at 10 citing N.T. 2/22/2012 at 13-14; N.T. 2/22/2012 at 15-16). Indeed, La-Sa-Quik staff brought C.R.O. to the phone to be questioned by the MCCYS investigator. (N.T. 2/22/2012 at 16). The investigator did not tell C.R.O that he could speak to an attorney before being questioned by her, even though she knew that C.R.O. was in placement pursuant to a juvenile delinquency adjudication and was represented by counsel. (Op. at 10 citing N.T. 2/22/2012 at 22-23). Prior to questioning, the investigator did not advise C.R.O. that he could talk with his father or anyone else before making a statement to her, nor did she administer *Miranda* warnings. (Op. at 10 citing N.T. 2/22/2012 at 22-23). Under these circumstances, the Commonwealth cannot sustain its burden to show that C.R.O.'s statements to the MCCYS investigator were purged of the original illegality.

III. UNITED STATES SUPREME COURT JURISPRUDENCE, SUPPORTED BY RESEARCH, RECOGNIZES THAT YOUTH SUCH AS C.R.O. ARE MORE SUSCEPTIBLE TO COERCION AND LESS ABLE TO EXERCISE FREE WILL, SUCH THAT COURTS MUST TAKE EXTRA CARE TO ENSURE THAT YOUTH CONFESSIONS ARE TRULY THE PRODUCT OF VOLUNTARY AND KNOWING CHOICE

The United States Supreme Court has long recognized that the unique developmental attributes of adolescence are highly relevant in determining the voluntariness of youth confessions. In a line of confession cases, the Court has found that youth are more susceptible than adults to coercion; less able to understand the consequences of their actions; and less capable of asserting their constitutional rights without the assistance of an interested adult. This jurisprudence -- and the social science research that buttresses it – supports the trial court's

findings that C.R.O.'s statements were not voluntarily and knowingly given, and underscores the court's caution against using such statements where, as here, the youth was provided with no protections.

As the United States Supreme Court observed 75 years ago in *Haley v. Ohio*, 332 U.S. 596, 599 (1948), a teenager, too young to exercise or even comprehend his rights, becomes an "easy victim of the law." In *Haley*, the Court held that a fifteen-year-old boy's confession – which was obtained by police officers working in relays who neither informed him of his rights nor provided him access to counsel or family – violated due process. *Id.* at 598. The Court's analysis of the voluntariness of Haley's confession turned on his juvenile status:

> Age 15 is a tender and difficult age for a boy of any race. . . That which would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens. This is the period of great instability which the crisis of adolescence produces. A 15-year old lad, questioned through the dead of night by relays of police, is a ready victim of the inquisition. Mature men possibly might stand the ordeal . . . But we cannot believe that a lad of tender years is a match for the police in such a contest.

Id. at 599-600.

Similarly, in *Gallegos v. Colorado*, 370 U.S. 49 (1962), the Court barred the admission of the confession of a fourteen-year-old held for five days without access to his parents or a lawyer. The Court's holding took issue with "the element of compulsion . . . condemned by the Fifth Amendment." *Id.* at 51. Recognizing the relevance of age, the Court reasoned that the juvenile "cannot be compared with an adult in full possession of his sense and knowledgeable of the consequences of his admissions." *Id.* at 54. Without advice as to his rights or the benefit of more mature judgment, the Court found that the juvenile "would have no way of knowing what the consequences of his confession were" or "the steps he should take in the predicament in which he found himself." *Id.*

Most recently, in *J.D.B. v North Carolina*, the Court once again recognized that a youth's age "is far more than a chronological fact"; "[i]t is a fact that generates commonsense conclusions about behavior and perception" that are "self-evident to anyone who was a child once himself, including any police officer or judge." 131 S. Ct. at 2403 (citations and internal quotations omitted). *See also Roper v. Simmons*, 543 U.S. 551, 569 (2005) (noting that these observations restate what "any parent knows" about children). Among the "commonsense conclusions" that the Court has consistently applied to analyze confessions by juveniles are the following: youth are "generally less mature and responsible than adults"; they "often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them"; and they "are more vulnerable or susceptible to ... outside pressures than adults". *J.D.B.*, 131 S. Ct. at 2403 (citations and internal quotations omitted).

In the past decade, the Court has relied on scientific research to support these "commonsense conclusions" about fundamental differences between juvenile and adult decision making. *See J.D.B.*. 131 S. Ct. at 2403. The Court in *Roper v Simmons* cited to prevailing sociological, psychological, and neurobiological research in finding that juveniles under eighteen were less mature, more reckless, and "more vulnerable or susceptible to ... outside pressures" than adults. *Roper v. Simmons,* 543 U.S. 551, 569 (2005) (holding that the death penalty "[could not] be imposed upon juvenile offenders" under 18). Five years later, in *Graham v. Sullivan,* the Court relied in part on the expanding "developments in psychology and brain science [which] continue to show fundamental differences between juvenile and adult minds." *Graham v. Florida*, 130 S. Ct. 2011, 2026 (2010) (holding that the Eighth Amendment prohibits life without parole sentences for juvenile offenders in non-homicide cases).

Indeed, the research on adolescent development cited by the Court in more recent decisions confirms its long-held observations about adolescents – they experience coercion and evaluate risks and long term consequences differently than adults, which impacts their decision-making abilities. See *J.D.B.,* 131 S. Ct. at 2403 n. 5 (noting the basis in science for what the Court has observed as far back as *Haley*; "the literature confirms what experience bears out"). Adolescent development research has identified significant differences between how adolescents and adults perceive their environment and circumstances. Laurence Steinberg *et al.*, 2008 Developmental Psychology 44(6), 1764-1778. Research shows that adolescents are less future oriented than adults in two distinct ways: "time perspective" (thinking about the future) and "anticipation of future consequences" (evaluating future outcomes of decisions before choosing a course of action). Laurence Steinberg *et al.*, 2008 Developmental Psychology 44(6), 1764-1778. Adolescents tend to process information in an "either-or" way, particularly in stressful situations. Where adults perceive multiple options in a particular situation, adolescents may only perceive one. *See* Marty Beyer, *Immaturity, Culpability & Competency in Juveniles: A Study of 17 Cases*, 15 CRIM. JUST. 27, 27 (Summer 2000); Marty Beyer, *Recognizing the Child in the Delinquent*, 7 KY. CHILD RTS. J. 16, 17-18 (Summer 1999).

Psychosocial factors influence adolescents' perceptions, judgments and abilities to make decisions, and they limit their capacities for autonomous choices. Elizabeth Cauffman & Laurence Steinberg, *Researching Adolescents' Judgment and Culpability*, in YOUTH ON TRIAL: A DEVELOPMENTAL PERSPECTIVE ON JUVENILE JUSTICE 325 (Thomas Grisso & Robert G. Schwartz eds., 2000); Kathryn Modecki, *Addressing Gaps in the Maturity of Judgment Literature: Age Differences in Delinquency*, 32 LAW & HUM. BEHAV. 78, 79-80 (2008). Specifically, adolescents' present-oriented thinking, egocentrism, greater conformity to authority figures,

minimal experience, and greater vulnerability to stress and fear increase the likelihood that they will feel their choices are more limited than adults when dealing with police. *See* Marty Beyer, *Recognizing the Child in the Delinquent*, 7 KY. CHILD RTS. J. 16, 17 (Summer 1999); Marty Beyer, *Immaturity, Culpability & Competency in Juveniles: A Study of 17 Cases*, 15 CRIM. JUST. 27, 27 (Summer 2000); David Elkind, *Egocentrism in Adolescence*, 38 CHILD DEV. 1025, 1029-30 (1967); KIDS ARE DIFFERENT: HOW KNOWLEDGE OF ADOLESCENT DEVELOPMENT THEORY CAN AID IN DECISION-MAKING IN COURT (L. Rosado ed., 2000); Laurence Steinberg *et al.*, *Age Differences in Future Orientation and Delay Discounting*, 80 CHILD DEV. 28, 30, 35-36 (2009).

Further, research confirms that "[a]dolescents are more likely than young adults to make choices that reflect a propensity to comply with authority figures . . . when being interrogated by the police." Thomas Grisso *et al.*, *Juveniles' Competence to Stand Trial: A Comparison of Adolescents and Adults' Capacities as Trial Defendants*, 27 LAW & HUM. BEHAV. 333, 357 (2003); *see also* Lawrence Kohlberg, THE PSYCHOLOGY OF MORAL DEVELOPMENT: THE NATURE AND VALIDITY OF MORAL STAGES 172-73 (1984). Thus, when subjected to custodial interrogation, youth are less prone to feel that they can end the encounter and leave.

Most recently, the American Academy of Child & Adolescent Psychiatry cited to research showing that brain development continues through adolescence into early adulthood in recommending that juveniles have an attorney present when questioned by police. American Academy of Child & Adolescent Psychiatry, *Policy Statement: Interviewing and Interrogating Juvenile Suspects*, March 7, 2013.[14] The Academy noted that because "[t]he frontal lobes, responsible for mature thought, reasoning and judgment, develop last," adolescents "are more

[14] *Available at* http://www.aacap.org/cs/root/policy_statements/interviewing_and_interrogating_juvenile_suspects

likely to act on impulse, without fully considering the consequences of their decisions or action." *Id.*

Juveniles such as C.R.O. -- who have limited capacity to anticipate the future consequences of making legal decisions, and are experiencing the psychosocial stressors of court involvement and lack of access to an interested adult when questioned – are generally less capable than an adult in a similar situation of accurately determining the risk of disclosure. This risk is heightened where, as in C.R.O.'s case, the youth lacks essential information as to the possible outcomes of disclosure.

C.R.O. was court ordered to complete treatment. The evidence described above shows that it would be reasonable for a youth in C.R.O.'s shoes to conclude that he needed to make disclosures in order to successfully complete his treatment and be discharged. In the moments when he was questioned, an adolescent such as C.R.O. would have been focused on going home, and not concerned about the long-term consequences for making these kinds of statements. From the perspective of a minor such as C.R.O., the short term benefits of making a disclosure – completing treatment so he could get home faster – would likely outweigh any possible long term consequence of making an admission.

Finally, the Supreme Court has acknowledged that certain settings are more coercive for minors than for adults precisely because they are minors, and the effect of the coercive setting "cannot be disentangled from the identity of the person questioned". *J.D.B*, 131 S. Ct. at 2405. Here the effect of the coercive environment "cannot be disentangled" from C.R.O.'s status as a minor. C.R.O. was court ordered to be at La-Sa-Quik, where non-compliance with the requirements of treatment, i.e., making admissions and taking ownership, meant limited freedoms and access to family, and a longer wait to go home. In such an inherently coercive

setting, it is unrealistic to expect that C.R.O. would believe that he could refuse to speak or answer questions about his offending conduct.

CONCLUSION

Wherefore for the foregoing reasons, and for any other reasons that may appear to this Honorable Court, Appellee C.R.O. respectfully requests that this Court affirm the trial court's order of June 29, 2012, as amended by its order of July 11, 2012, suppressing the statements at issue.

Respectfully submitted,

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DATED: April 10, 2013

CERTIFICATE OF SERVICE

I, Lourdes M. Rosado, hereby certify that on this 10th day of April, 2013, I served two (2) copies of the foregoing Appellee's brief via United States Postal Service First Class Mail upon the following individuals:

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