[Cite as *In re L.G.*, 2017-Ohio-2781.]

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

IN RE: L.G.	:	
	:	
	:	C.A. CASE NO. 27296
	:	
	:	T.C. NO. 2015-6610
	:	
	:	(Civil Appeal from Common
	:	Pleas Court, Juvenile Division)
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O P I N I O N

Rendered on the ___12th___ day of _____May_____, 2017.

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FROELICH, J.

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

decision will be affirmed.

I. Factual and Procedural History

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

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

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

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

threat. Bullens then went to the school cafeteria.

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

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

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

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

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

{¶ 9} The State appeals.

II. *Miranda* Analysis

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

{¶ 11} Under the Fifth Amendment to the United States Constitution, no person shall be compelled to be a witness against himself or herself. In order to ensure that this

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

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

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

> Two discrete inquiries are essential to the determination: first, what were the circumstances surrounding the interrogation; and second, given those circumstances, would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave. Once the scene is set and the players' lines and actions are reconstructed, the court must apply an objective test to resolve the ultimate inquiry: was there a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest.

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

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

{¶ 15} Under the specific facts before us, we agree with the juvenile court that L.G. was in custody when he was questioned by Director Bullens. It was apparent that an

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

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

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

Dist. Ross No. 01CA2631, 2002-Ohio-4095, ¶ 16 (finding that the juvenile was not in custody when questioned by a police officer in the principal's office); *see also State v. Spahr*, 2d Dist. Miami Nos. 2008 CA 21 & 2008 CA 22, 2009-Ohio-4609, ¶ 15 ("courts have previously rejected the argument that a school is necessarily a coercive setting for a juvenile to be questioned by police"). *But see In re A.A.*, 9th Dist. Lorain No. 08CA009512, 2009-Ohio-4094, ¶ 16 (finding that the juvenile was in custody during his interview with a police detective in an assistant principal's office where the juvenile was pulled out of class and could have faced adverse consequences if he left the office without permission).

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

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

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

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

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

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

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

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

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

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

III. Conclusion

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

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DONOVAN, J., concurs.

HALL, P.J., dissenting:

{¶ 26} The majority opinion effectively holds that a 13-year-old school child is in custody if being questioned by school authorities about a bomb threat when non-participating police officers are present nearby. Here, though, there is no evidence that

during the questioning L.G. was under arrest or restrained to a degree associated with a formal arrest.

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

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

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

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

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

prosecution of appellant. Further, he was not sent to interview appellant at the request of any law enforcement authority, although he indicated that his department does, on occasion, contact the police if they think a crime has been committed.

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

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

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

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

> as the Supreme Court has limited it." (Citation omitted.) *Id.* at 367, 239 N.E.2d 296.
>
> "Private person interrogation is within *Miranda* when *the presence of the police* and/or other circumstances indicate the questioner is acting on behalf of the police. * * * *A critical factor is whether the police officer supervised the interrogation.*" (Emphasis added and citation omitted.) *In re Gruesbeck* (Mar. 27, 1998), 2d Dist. No. 97-CA-59, 1998 Ohio App. LEXIS 1146, *8, 1998 WL 404516.

In re G.J.D. at ¶ 20-25.

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

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

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