IN THE SUPREME COURT OF FLORIDA

CASE NO. 64,400

THE STATE OF FLORIDA,

Petitioner,

vs.

S. L., a juvenile,

Respondent.



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ON PETITION FOR DISCRETIONARY REVIEW

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# REPLY BRIEF OF PETITIONER ON THE MERITS

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## INTRODUCTION

The respondent, the State of Florida, was the prosecution in the trial court. The petitioner was the respondent in the trial court. The parties will be referred to as they stood before the trial court. The symbol "R" will represent references to the record on appeal. The symbol "SR" will represent references to the supplemental record on appeal.

## STATEMENT OF THE CASE

The State of Florida adopts the Statement of the Case as set out in its original brief.

## STATEMENT OF THE FACTS

A two-count petition for delinquency was filed charging the respondent with burglary and petty theft. (R.1, 10). At the time the petition for delinquency was filed, the respondent was 16 years of age. On or about February 20, 1982, the respondent and a co-defendant allegedly broke into a truck and stole a CB Radio. (R.11-12). On March 2, 1982, the police received a report that an owner of a car had caught the respondent and the co-defendant in the process of breaking into his car. The owner took the names and addresses of the two juveniles. He took them home and then called the police. (R.17-18). The police went to the

respondent's home without an arrest warrant. (R.18). After questioning the two juveniles, the police arrested them for loitering and prowling. The police did not obtain arrest warrants prior to going to the respondent's home . (R.23). Once at the Lemos house, the police awoke Mrs. Lemos. She was informed that the police wanted to take her son to the police station. She became very upset. She demanded that the police not take her son until she had called an attorney. (R.29, 34, 59-60). She also stated that she wanted to go to the police station with her son. The police explained that she could follow in her own car and gave her the address of the police station. (R.34-35, 52). While at the respondent's house, the respondent was read his Miranda rights by Detective Jones. (R.36, 43). Jones read the respondent his Miranda rights from memory, not a card. Jones then asked if the respondent would like to talk about the loitering and prowling charge. The respondent indicated that he did. Jones then interviewed the respondent. Respondent's mother was present at this time. (R.43-44). She knew the respondent was to be questioned at the police station concerning the loitering and prowling charge. (R.84-85). The mother was quite excited and apparently intoxicated. (R.35, 45, 49, 63). She was verbally abusive to the police. (R.34-35). She admitted to being hysterical at the time. (R.63-64, 66). Among other things, she told the respondent that he had better tell the truth to the

police. (SR.14). She was hollering quite a few things. (SR.16-17).

The respondent was transported to the police station. Up to this point, the police were only aware of the loitering and prowling charge. The co-defendant, in both the loitering and prowling and the burglary, then confessed to the burglary and implicated the respondent therein. (R.50, 54, 82-83). With this information, Detective Randy Jones again approached the respondent. This was 30-45 minutes after returning to the police station. He did not reread the respondent's Miranda rights. He asked the respondent whether he remembered his rights as read to him at the house. The respondent stated that he did. Jones stated to the respondent that if at any time he did not want to talk about this matter, the burglary, then he would stop. Jones explained that he did not have to talk and that he had a right to an attorney. (R.47). Jones confronted the respondent with the co-defendant's confession. (R.47, 54-55). The respondent made a statement concerning the burglary.

The respondent's mother had called the police station. Detective Petrie told her the respondent was going to be questioned about a burglary. She initially informed Petrie that she would be down to the police station and

subsequently called back to state that she would not, in fact, be down to the police station. At no time did Mrs. Lemos request that she speak to the respondent. (R.28, 85-86).

The trial court granted the respondent's motion to suppress. (R.126-127). The court found that the initial Miranda warnings at the respondent's house were inadequate as well as the question to the respondent at the police station of whether he remembered those rights. Secondly, the court found that the police improperly questioned the respondent at the police station because the respondent's mother requested to be present and requested legal counsel for the respondent. Lastly, the court found the arrest of the respondent for loitering and prowling was illegal in that there was no warrant and the offense was not committed in the officer's presence.

## POINTS ON APPEAL

I

WHETHER THE TRIAL COURT DEPARTED FROM THE ESSENTIAL REQUIREMENTS OF THE LAW BY HOLDING THAT THE CONFESSION OF THE RESPONDENT TO HAVING COMMITTED BURGLARY WAS OBTAINED ILLEGALLY; SPECIFICALLY, IN VIOLATION OF THE RESPONDENT'S MIRANDA RIGHTS IN RELATION TO HIS RIGHT TO COUNSEL WHERE THE POLICE ADVISED THE RESPONDENT OF HIS MIRANDA RIGHTS AT HIS HOUSE, THEN LATER, IMMEDIATELY PRIOR TO QUESTIONING, ASKED THE RESPONDENT IF HE RECALLED HIS MIRANDA RIGHTS AS READ TO HIM, REITERATED THAT HE DID NOT HAVE TO TALK ABOUT THE CRIME AND REMINDED HIM THAT HE HAD A RIGHT TO AN ATTORNEY.

II

WHETHER THE TRIAL COURT DEPARTED FROM THE ESSENTIAL REQUIREMENTS OF THE LAW BY HOLDING THAT THE CONFESSION OF THE RESPONDENT WITHOUT HIS MOTHER'S PRESENCE WAS OBTAINED ILLEGALLY WHERE THE RESPONDENT WANTED TO TALK TO THE POLICE AND WHERE HIS MOTHER STATED THAT SHE WANTED TO BE PRESENT AT THE POLICE STATION BUT FAILED TO APPEAR AND STATED THAT SHE WANTED AN ATTORNEY BUT NEVER RETAINED ONE.

III

WHETHER THE TRIAL COURT DEPARTED FROM THE ESSENTIAL REQUIREMENTS OF THE LAW IN HOLDING THAT THE LEGALITY OF THE ORIGINAL ARREST OF THE RESPONDENT FOR LOITERING AND PROWLING WAS RELEVANT TO THE RESPONDENT'S CONFESSION OF BURGLARY WHERE AT THE TIME OF THE ORIGINAL ARREST OF THE RESPONDENT FOR LOITERING AND PROWLING THE POLICE DID NOT KNOW OF HIS INVOLVEMENT IN THE BURGLARY, AND WHERE THE INFORMATION THE POLICE OBTAINED PROVIDING PROBABLE CAUSE FOR THE DETENTION OF THE RESPONDENT FOR BURGLARY WAS OBTAINED TOTALLY INDEPENDENT OF HIS ARREST FOR LOITERING AND PROWLING.

## SUMMARY OF THE ARGUMENT

The trial court departed from the essential requirements of the law. The respondent was clearly apprised of his Miranda rights. The respondent intelligently and voluntarily waived them. There is no record support for the court's finding to the contrary. The trial court departed from the essential requirements of law by holding that the respondent's mother exercised his constitutional rights to silence and to counsel. Lastly, the trial court erred in holding the illegality of the respondent's arrest for loitering and prowling effected his confession on the charge of burglary. After the police had arrested the respondent for loitering and prowling, the co-defendant confessed to the prior burglary, implicating the respondent therein. The police therefore had probable cause to arrest the respondent for the burglary. The information forming that probable cause came about totally independent of the respondent's arrest for loitering and prowling.

## ARGUMENT

### I

### THE POLICE APPRISED THE DEFENDANT OF HIS MIRANDA RIGHTS AND MORE SPECIFICALLY, OF HIS RIGHT TO COUNSEL AT THE TIME OF HIS QUESTIONING.

Initially, at the house, the respondent was Mirandized. (R.43). Detective Jones told the respondent he had the right to remain silent. If he gave up that right, anything he said could be used against him in a court of law. He was advised of his right to counsel and if he couldn't afford one, that one would be provided without charge by the State. (R.43). Later, at the police station, just prior to questioning, the respondent was again reminded of his rights. (R.47). He was told that he did not have to talk to the police and that he could stop at anytime. The respondent was told he could wait for an attorney or his mother if he wanted to. (R.47). It is clear from these statements that the respondent was adequately apprised of his right to not talk to the police and of his right to an attorney. It was not necessary that the Miranda rights be set forth verbatim. State v. Craig, 237 So.2d 737 (Fla. 1970); Jones v. State, 356 So.2d 4 (Fla. 4th DCA 1977). See Alvord v. State, 322 So.2d 533 (Fla. 1975).

Here the Court departed from the essential requirements of the law by finding the respondent was not adequately apprised of his constitutional rights and of his right to counsel. Although the Miranda rights may have not been read verbatim, the respondent clearly was apprised of his right to counsel and of his right not to talk to the police. Those rights were the crucial rights in this case. The respondent intelligently and voluntarily waived those rights.

II

THE CONFESSION OF THE RESPONDENT WAS LEGAL EVEN THOUGH THE RESPONDENT'S MOTHER HAD STATED EARLIER THAT SHE WANTED TO GO TO THE POLICE STATION AND WANTED TO OBTAIN AN ATTORNEY BUT IN FACT TOOK NEITHER ACTION.

Initially, it must be stated that a juvenile does not have a constitutional right to have his parents present at his questioning. In Doerr v. State, 383 So.2d 905 (Fla. 1980), the court found that a juvenile's confession is not necessarily inadmissible just because it was given prior to notification of his parents. In Doerr, the Supreme court of Florida resolved the conflict among the Districts in their interpretation of §39.032(3), Florida Statutes, holding that the law does not require that every confession by a juvenile after he is taken into custody be automatically rendered inadmissible if it was obtained prior to notification of the child's parents or legal custodian. Doerr, a sixteen year old juvenile, was arrested for burglary. Prior to arresting Doerr, the arresting officer informed Doerr's mother that he intended to arrest her son. While in the police car, en route to the juvenile detention center, the officer advised him of his rights. He was again advised of his rights at the detention center. In response to questioning, Doerr admitted to several burglaries, and supplied the officer

with details of the burglaries. The court in affirming the denial of Doerr's motion to suppress stated:

> As we read the pertinent portion of §39.03(3), it's purpose is to assure that when a juvenile is to be kept beyond the perior of statutory definition of custody, his parents must be advised of his whereabouts. T.B. v. State, 306 So.2d 183 (Fla. 2d DCA 1975). While the legislature could also require notification of a juvenile's parents before he could be interrogated, it has not seen fit to do so. Therefore, even though Detective Hartery may have intended from the outset to cause appellant to be detained, this is irrelevant to our disposition of the case because the statutory requirement of notification has nothing to do with interrogation.
>
> Doerr, supra at p.907.

In Fare v. Michael C., 442 U.S. 707, 99 S.Ct. 2560 (1979), the court determined that a juvenile can waive his Fifth Amendment rights without consulting with an adult.

Looking at the totality of the circumstances, this confession was voluntarily made. The defendant made his confession on March 2, 1982. (R.17). His birthdate was March 28, 1966. He was therefore very close to sixteen years of age at the time of his confession. On two occasions he was apprised of his rights. Initially at his house, in front of his mother, the defendant was told his

rights and he thendiscussed the loitering and prowling charge with the officer. (R.43; SR.12). The defendant indicated at the time that he understood his rights. (SR.12). Concerning his rights as expressed by Detective Jones later at stationhouse.

Officer Jones could not have made it clear that the defendant did not have to speak if he didn't want to. (R.47). The defendant, almost sixteen, was old enough to understand what Jones was telling him and was old enough to voluntarily and knowingly waive his rights. The respondent never appeared upset. On the contrary, he appeared calm. (R.65; SR.14). He never made any statements indicating that he wanted to speak either to his mother or to an attorney. On the contrary, the testimony is that the respondent was perfectly willing to speak to the police concerning both incidents, the loitering and prowling and the burglary. (R.43, 47; SR.12, 18). The only factor indicating lack of a voluntary confession was that the respondent's mother was not present. As stated, this by itself is not sufficient to indicate a non-voluntary confession. The trial court departed from the essential requirements of the law by holding the confession involuntary based on that single factor.

According to K.L.C. v. State, 379 So.2d 455 (Fla. 1st DCA 1980), Mrs. Lemos had a right to confer with her son prior to questioning if she requested it. In order to do so, she must have made herself reasonably accessible. J.E.S. v. State, 366 So.2d 538 (Fla. 1st DCA 1979). In this case, Mrs. Lemos never requested to see her son nor did she request to be present at his questioning. Although she stated she was going to the police station, she ultimately called one of the officers involved and asked that he bring her son home. She explained that she was tired and had to work the following day. (R.85). Mrs. Lemos never made herself accessible to confer with her son and never asked to speak with him over the phone. Simply stating that she wanted to go to the police station without taking some action in furtherance of the statement is not sufficient to make the respondent's confession involuntary.

## III

THE TRIAL COURT ERRED IN EVEN CONSIDERING THE ISSUE OF THE LEGALITY OF THE RESPONDENT'S ARREST FOR LOITERING AND PROWLING.

Initially, the State asserts that the trial court should not even have considered the legality of the respondent's arrest for loitering and prowling. The respondent confessed to a totally unrelated burglary of which the police were not even aware when they first went to see him. They questioned the respondent concerning the burglary only after the co-defendant confessed to the unrelated burglary and implicated the respondent as a co-conspirator in the crime. The respondent had no standing to contest the legality of the co-defendant's confession. The police therefore had probable cause to arrest the respondent for the burglary. The only thing accomplished by the respondent's arrest for loitering and prowling was that the police already had him in custody at the station house. The legality of the respondent's arrest for loitering and prowling was moot in terms of the burglary. This would not be true if the charges against the respondent had been for loitering and prowling. That was not the case. The evidence to detain the respondent on the burglary charge arose from the circumstances totally unrelated to and independent of the arrest for loitering and prowling. The court

therefore departed from the essential requirements of the law in even considering the issue of the respondent's arrest for loitering and prowling in that none of the events which followed grew out of that arrest. See State v. Shular, 400 So.2d 781 (Fla. 3d DCA 1981); State v. Maier, 378 So.2d 1288 (Fla. 3d DCA 1979).

## CONCLUSION

Based on the foregoing citations of fact and law, the order of the trial court must be reversed.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copy of the foregoing REPLY BRIEF OF PETITIONER ON THE MERITS was furnished by mail to OFFICE OF THE PUBLIC DEFENDER, 1351 N.W. 12th Street, Miami, Florida 33125, on this 25th day of November, 1985.

Jack B. Ludin

JACK B. LUDIN
Assistant Attorney General

/vbm