W00A 047

IN THE SUPREME COURT OF FLORIDA

CASE NO. 64,575

THE STATE OF FLORIDA,

Petitioner,

vs.

R.F., a juvenile,

Respondent,

* *

ON APPEAL FROM A CERTIFIED QUESTION OF GREAT
PUBLIC IMPORTANCE FROM THE THIRD DISTRICT COURT OF APPEAL

* *

BRIEF OF PETITIONER ON THE MERITS

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INTRODUCTION

The State of Florida, was the Petitioner in the trial court. R.F., a juvenile, was the Respondent in the trial court. In this brief, the parties will be referred to as they appear before this Court. The symbol "R" will be used to designate the Record on Appeal. The symbol "TR" will be used to designate the transcript of the proceedings below. All emphasis has been supplied unless the contrary is indicated.

STATEMENT OF THE CASE AND FACTS

On December 21, 1982, the State filed its Petition for Delinquency against the Respondent alleging that the Respondent unlawfully, possessed quaaludes contrary to the provisions of §893.03 and .13 Florida Statutes. A denial was entered on Juanuary 26, 1983.

The Respondent filed a motion to suppress written and/or oral statements on August 25, 1983. In particular, the motion alleged that Assistant Principal Jimmy Dukes violated the Respondent's right to counsel and privilege against self-incrimination by failing to give Respondent Miranda warnings prior to the questioning of Respondent at school about the possession of drugs. A motion to suppress

evidence obtained through an unreasonable search and seizure was filed by Respondent on that same date and it alleged that the seizure of quaaludes from the Respondent was tainted by the Miranda violation.

An evidentiary hearing was held on August 26, 1983, before the Honorable William E. Gladstone, Circuit Court Judge. Testimony was heard from Jimmy Dukes, Assistant Principal with the Dade County School System. Dukes was assigned to the McMillan Junior High School and was responsible for discipline. (T. 23, 29).

Dukes testified that in early November, 1982, he was informed by a school security monitor[1] that the Respondent has quaaludes in his possession the day prior and was selling drugs at school.[2] Dukes directed the monitor to bring the Respondent to the principal's office upon the Respondent's arrival at school. When Respondent arrived, he was taken to Dukes' office to investigate the allegations involving the Respondent and drug distribution. The meeting was

[1]A school security monitor assists teachers and administration in maintaining an orderly educational environment. The monitor is not a police officer, does not carry a weapon, does not have arrest powers, and does not perform any of the functions normally associated with the law enforcement personnel.

[2]This information was obtained by the monitor from other students.

attended by Dukes, the monitor, and the Respondent. During the questioning, the Respondent made certain incriminating statements.[3] No Miranda warnings were given. (T. 26-29; 36).

The evidence also revealed that during this time the Dade County School Board requested all school drug cases be referred for prosecution. Dukes testified that if he received information on a school drug case, it was referred to the school security. It was the task of school security to forward cases to the State Attorney's Office for consiederration. When questioning the Respondent, however, Dukes stated he was merely investigating the validity of the allegations made against the Respondent. (T.29-36).

At the conclusion of the evidentiary hearing, the trial court suppressed all statements obtained and evidence seized from the Respondent. In support to its ruling, the Court noted that the Dade County School Board's requirement of cases being referred for prosecution transformed the Assistant Principal from disciplination to law enforcement official.

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[3]The Respondent subsequently turned over quaaludes and made further incriminating statements on the following day. While the statements and events are not detailed, the court made clear that all events following the initial questioning were tainted by the failure to give Miranda warnings.

Because there was no discretion in the referral process, the Assistant Principal's role expanded beyond the duties of parental control and administration of a favorable educational environment. As a result, the failure of the Assistant Principal to give Miranda warnings constituted error and necessitated suppression. (T. 66-70). The order granting the Motion to Suppress was signed on September 7, 1983.

Petitioner filed an appeal in the District Court of Appeal and proceeded to file a petition for common law certiorari quashing the order of the trial court granting the Respondent's Motion to Suppress. Following a response on the merits by the child the District Court of Appeal dismissed the petition in a brief opinion which simply stated:

> The state's petitioner for writ of certiorari seeking review of the trial court's order granting juvenile R.F.'s motion to suppress statements is hereby dismissed on the authority of State v. C.C., Nos. 81-2564, 82-666, 82-797 & 82-1825 (Fla. 3d DCA September 27, 1983) (en banc) [8 FLW 1281].
>
> We certify to the Supreme Court of Florida that this decision passes upon a great public importance, namely:
>
> "May this court review by certiorari an order suppressing evidence in a juvenile case?"

This court accepted review on grounds of express and direct decisional conflict. The briefing schedule in the

case was stayed pending resolution of State v. C.C., supra. On October 21, 1985, the court ordered a brief on the merits of the case after approving the District Court opinion in State v. C.C., __ So.2d __ (Fla. Case No. 64,354).

POINT ON APPEAL

WHETHER THE TRIAL COURT"S REFUSAL TO FOLLOWING A CONTROLLING LEGAL PRECEDENT ON THE PROPRIETY OF EXTENDING CONSTITUTIONAL PROTECTIONS AGAINST IMPROPER POLICE CONDUCT TO NON-POLICE SITUATIONS CONSTITUTES A DEPARTURE FROM THE ESSENTIAL REQUIREMENTS OF LAW.

SUMMARY OF ARGUMENT

The trial court's application of a constitutional protection against police initiated interrogation of one in police custody to a situation involving school principals constitutes a serious and devasting departure from the essential procedural guidelines for application of Federal Constitutional protections. Contrary to a controlling precedent from the Third District Court of Appeal the trial court deprived the State of Florida of the ability to state its case against R.F.

This refusal to comply with the controlling decision of G.B.F. v. State, 356 So.2d 884 (Fla. 3d DCA 1978) should be corrected by the district court. The Petitioner requests this court quash the dismissal of the Petition with instructions that the district court grant the writ.

On Authority of G.B.F. V. State, 356 So.2d 884 (Fla. 3d DCA 1978); and State v. Jones, __ So.2d __ (Fla. Case No.), Boyd C.J. concurring, [10 FLW 565] the State of Florida seeks to quash the dismissal of its petition by the District Court of Appeal with instruction to grant the writ. The trial court's decision to extend the rule of Miranda v. Arizona to school principals is so far afield as to constitute a departure from the essential requirements of law.

ARGUMENT

THE TRIAL COURT'S REFUSAL TO FOLLOWING A CONTROLLING LEGAL PRECEDENT ON THE PROPRIETY OF EXTENDING CONSTITUTIONAL PROTECTION AGAINST IMPROPER POLICE CONDUCT TO NON-POLICE SITUATIONS CONSTITUTES A DEPARTURE FROM THE ESSENTIAL REQUIREMENTS OF LAW.

The issue of whether school officials are required to give Miranda warnings to students during the investigation of disciplinary matters was squarely addressed by the District Court in G.B.F. v. State, 356 So.2d 884 (Fla. 3d DCA 1978). In G.B.F., a juvenile made certain incriminating statements during questioning by an Assistant School Principal regarding a theft of money. On appeal, G.B.F. contended that he was entitled to Miranda warnings prior to the questioning. The Third District disagreed:

> We cannot agree with G.B.F.'s contention that he was entitled to Miranda warnings. The decision of the United States Supreme Court in Miranda v. Arizona, 384 U.S. 436 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), clearly limits the requirements therein to questioning by law enforcement officers. It is forcibly argued that a school official may be an agent of the police and, thereby, become liable to the same restrictions in the questioning of suspects as the police themselves. However, there is nothing in this record to support even a suspicion that the assistant principal who took the statement of G.B.F. was acting in the place of the police or as a police agent. It was simply the job of the assistant principal to

> investigate complaints originating out of the activities of students on school grounds. As such, he was a school official and not a police official. Therefore, the necessity for Miranda warnings did not exist. We have been cited to no case holding otherwise and the State has cited two cases supporting this position. See Doe v. State, 88 N.M. 347, 540 P.2d 827 (N,Mex.App.1975), and People v. Shipp, 96 Ill.App.2d 364, 239 N.E.2d 296 (Ill.App.1968).
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> G.B.F. v. State, supra, 356 So.2d at 885.

The decisions relied upon in G.B.F. are also instructive on his issue. In Doe V. State, 540 P.2d 827 (N.Mex. App. 1975), a high school student contended he was entitled to Miranda warnings prior to questioning by school personnel. The New Mexico Court of Appeal rejected the claim and noted some strong policy concerns against such a rule:

> We do not read Goss v. Lopez, [419 U.S. 565 (1975)] to require the giving of Miranda-type warnings in cases involving in-school disciplinary matters. See also People v. Shipp, 96 Ill.App.2d 364, 239 N.E.2d 296 (1968). The elaborate criminal trial model has no place in the school house.
>
> The purpose of most school-house interrogations is to find facts related to violations of school rules or relating to social maladjustments of the child with a view toward correcting it. Giving Miranda-type warnings would only frustrate this purpose. It would put the school official and student in an adversary position. This would be in direct opposition to the school official's role as counselor.
>
> People v. Shipp, supra, 239 N.E.2d at 298.

In People v. Shipp, 239 N.E.2d 296 (Ill.App. 1968), the Illinois Court of Appeal similarly refused to apply Miranda to the schoolhoulse:

> The United States Supreme Court carefully limited its holding in the Miranda case in which the Court held that a person in custody must be advised of his right to remain silent, his right to counsel, his right to court appointed counsel, if indigent, and that statements he makes may be used against him. The following two paragraphs are quotations from the Miranda opinion:
>
> "General on-the-scene questioning as to facts surrounding a crime or other general questioning of citizens in fact-finding process is not affected by our holding."
>
> "The constitutional issue we decide * * is the admissibility of statements obtained from a defendant questioned while in custody [and] deprived or his freedom of action."
>
> On this appeal we hold that 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. People v. P. (Anonymous), 21 N.Y.2d 1, 286 N.Y.S.2d 225, 223 N.E.2d 255.
>
> People v. Shipp, supra, 239 N.E.2d at 298.

Accord, Boynton v. Casey, 543 F.Supp. 995 (D. Maine 1982) ("no authority is cited by Plaintiffs, and the Court can find none, supporting an extension of the Miranda Rule . . . to interrogations conducted by school officials in furtherance of their disciplinary duties").

The only fact differentiating the present case from the previously discussed decisions is the existence of a school board policy relating to the referral of school drug cases for possible prosecution. The institution of a policy to combat the use of drugs in school, however, does not transform the assistant principal into one "acting in the place of the police or as a police agent." There is no evidence of law enforcement involvement whatsoever. Assistant Principal Dukes was simply performing his job functions of investigating complaints originating out of the activities of students on school grounds. G.B.F. v. State, supra.

The policy instituted by the school board is actually no different than any policy previously in effect on vandalism, aggravated misconduct, or other severe disciplinary violations. From time to time, students' cases are forwarded to the State Attorney for possible prosecution. A requirement of Miranda warnings in this case could easily be extended to other disciplinary incidents and would truly hamper school officials

in the maintenance of an orderly educational environment, as well as diminish the value of the internal disciplinary process.

The prophylactic rule in Miranda is inapplicable in the context of private interrogations. Boynton v. Casey, supra. at 997 n.4. Absent the suggestion, aid, or affiliation of a law enforcement agency with the private indicidual, Miranda does not apply. United States v. Parr-Pla, 549 F.2d 660 (9th Cir. 1977); United States v. Solomon, 509 F.2d 836 (5th Cir. 1975). School officials, at least to a limited degree, stand in loco parentis to students under their supervision and care. See, Nelson v. State, 319 So.2d 154 (Fla. 2d DCA 1975). As such, a lesser standard on Fourth Amendment search issues has been adopted in the school setting. State v. D.T.W., 425 So.2d 1383 (fla. 1st DCA 1983). Similarly, the quasi-private nature of school officials necessitates a similar relaxation of Fifth Amendment requirements.[4]

[4]The inapplicability of Miranda does not render a student without recourse to challenge statements given to school officials. The issues of voluntariness, coercion, and inducements, see, Doe v. State, 540 P.2d 827, 833 (N.Mex. App. 1975), would still be subject to attack.

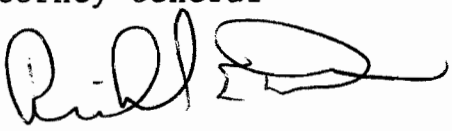
In the present case, Assistant Principal Dukes questioned the Respondent pursuant to his duty to maintain the safety and walfare of the students. (T.35). Under such circumstances, Miranda warnings would have frustrated the performance of his duties to detect violations of school rules. There should be no doubt that the statements and evidence in this case should not have been suppressed. Thus, the trial court's order granting the Respondent's Motions should be quashed as it constitutes a departure from the essential requirements of the law. State v. Jones, __So.2d __ (Fla. Case No. 64,042), Boyd C.J. concurring, [10 FLW 565]. See Also State v. Smith, 260 So.2d 489 (Fla. 1972).

CONCLUSION

Based upon the above-cited legal authority the petitioner urges this Honorable court to quash the order of the District Court with instructions to grant the writ.

Respectfully submitted,

JIM SMITH
Attorney General



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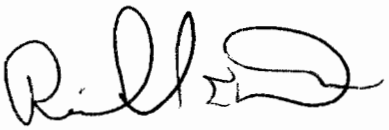
CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing **BRIEF OF PETITIONER ON THE MERITS** was furnished by mail to **ELLIOT SCHERKER,** Assistant Public Defender, 1351 N.W. 12th Street, Miami, Florida 33125 on this 21ST day of November 1985.



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