

Two State Supreme Courts Rule on Actions Taken by School Resource Officers in Questioning Students

Executive Summary: In two separate cases, the Supreme Courts of Kentucky and Delaware have held that school resource officers ("SRO") have violated a student's constitutional rights in questioning students for alleged wrongdoing, where the SRO failed to administer *Miranda* warnings prior to questioning the students.

In the first case out of Kentucky, a student, NC, was questioned by the SRO and the assistant principal when an empty prescription pill bottle was discovered in the boys' bathroom with the student's name on it. *NC v Commonwealth of Kentucky*, 396 SW3d 852 (May 5, 2013). NC was taken into the school office by the assistant principal and SRO and the door was closed. The student admitted to giving two pills to another student and told the student that he would be subject to discipline. When the assistant principal left the office to check on the other student, the SRO told NC that he would be charged with a crime and explained the criminal consequences. At the time the SRO was wearing his uniform or a shirt identifying himself as from the "Sheriff's Office" and he was armed with a gun. At no time did the SRO tell the student that he was free to leave or give him any version of the *Miranda* warnings. NC was charged with possessing and dispensing a controlled substance, which is a felony. In the petition charging the student, the SRO stated that the student had admitted to the affiant to giving two of his prescription pills to another student.

The court concluded that NC was entitled to *Miranda* warnings before he was interrogated. The court determined that the student was "in custody" at the time of his questioning because he was taken from his classroom by a law enforcement officer, who was clearly identified as such, and who wore a gun. Further, the court point-

ed to the fact that he was seated in the assistant principal's office and the door was shut. The officer sat down next to the student and the court determined that the demeanor of both the assistant principal and the SRO indicated that the student was not permitted to leave. Further, because the student was first questioned by the assistant principal, he was lead to believe that the matter was only a school discipline matter and he had no reason to believe that he was facing criminal charges. The



court also considered that the medicine that he brought to school was his legal prescription and he was aware that his possession of the medicine had violated school rules. It was not until the questioning was over and the confession was made that the SRO told NC that he was being charged with felony criminal charges. The court concluded that no reasonable student would have believed that he was at liberty to remain silent, or to leave, or that he was even admitting to criminal responsibility under these circumstances.

The court next balanced the public

needs for safety in the educational environment with the child's individual rights. While recognizing the need for a safe school environment was exceedingly high, the court criticized the school's no-tolerance policy in relation to drug offenses and the shifting of discipline for such offenses from in school discipline to juvenile justice interventions and criminal charges. When a school disciplinary issue shifts to a criminal matter, the court determined that the student has a right not to be led into incriminating himself. The court concluded that "a proper balance is struck if school officials may question freely for school discipline and safety purposes, but any statement obtained may not be used against a student as a basis for a criminal charge when law enforcement is involved or if the principal is working in concert with law enforcement in obtaining incriminating statements, unless the student is given the *Miranda* warnings and makes a knowing, voluntary statement after the warnings have been given." The court was quick to point out that every custodial interrogation will not necessarily invoke the giving of *Miranda* warnings. For example, if law enforcement is involved in a purely school disciplinary issue, such as maintaining order and creating a safer environment for the administrator and the student, a *Miranda* warning is not necessary.

In the second case, *Hunt v State of Delaware*, 2013 Del LEXIS 315, (June 25, 2013), the vice principal of an elementary school asked a Delaware State Trooper to come to the school and talk to a small group of students about bullying. At the same

(Continued on page 6)

Two State Supreme Courts Rule on Actions Taken by School Resource Officers in Questioning Students (cont'd)

(Continued from page 3)

time, the Trooper served as the SRO at the high school where his task was to create and maintain "a safe, secure, and orderly environment for students, teachers and staff." After talking to the small group, the vice principal told the SRO that there had been a bullying incident involving an autistic student whose money had been taken from him on the school bus. The vice principal had obtained information that a student AB took the money. With AB's mother's consent, the vice principal asked the SRO to come to school to talk with AB. The two men went to the reading lab where AB was waiting. Shortly after, the vice principal was called away on a school emergency leaving the SRO alone with AB. AB admitted that he had the money (one dollar) but that another student had actually taken the money. The SRO obtained the identity of the other student, Hunt, and called him down to the office. He walked Hunt to the reading lab, where AB was sitting. While walking, the SRO said he told Hunt that AB claimed that Hunt took the dollar on the bus and that "I know that you didn't do that. You are not in any trouble. I just need you to be brave and come in here." He also admitted to having instructed Hunt that "When I tell you - when I tell the story of what's happened and I look at you, you just say no, you didn't do it. . . ." Once inside the reading lab, the SRO ques-

tioned Hunt about the bullying incident. Hunt reported that the SRO used a "mean voice" and told him 11-12 times that the SRO had the authority to arrest Hunt and place him in jail if he did not tell the truth. He also said that bad children were sent to a special house where people are mean and they could not see their siblings. Hunt started to cry. When Hunt became emotional, the SRO turned to AB and berated him due to Hunt's emotional response. AB admitted to taking the money from the student. When he returned home, Hunt told his mother about the incident. His parents withdrew him from school and he was home-schooled for the remainder of the school year. The mother subsequently filed suit alleging that the officer's actions violated her son's 4th Amendment rights.

The Delaware Supreme Court determined that Hunt was "seized" for 4th Amendment purposes. The court pointed to the facts that he was called to the office, walked with the SRO to the reading lab, that the SRO wore a uniform, carried a gun, handcuffs, and other

indicia of police authority. Further, the door to the reading lab was closed and the SRO admitted that he did not expect Hunt to leave. The court further found that the seizure was not "reasonable." The court pointed out that the SRO believed that AB was only involved in the bus incident and that Hunt was not involved. Further, Hunt's mother was not contacted to ask permission to conduct the interrogation. The SRO had no training on how to question elementary children and, under the state police contract, he was to perform SRO duties only at the high schools. The vice principal never asked the SRO to question Hunt and the SRO never asked permission from the administration. The court stressed that if the SRO believed that Hunt was not involved in the incident, his reasoning for questioning him became suspect. The court believed that the SRO used Hunt not to find out whether Hunt was involved, but to elicit a confession from AB by intimidating and threatening Hunt in AB's presence. When Hunt began to cry, the SRO shamed AB into confessing. These facts, concluded the court, supported a finding that SRO's sei-

Michigan Supreme Court Weighs in on "Past Practice" Argument (cont'd)

(Continued from page 2)

acknowledged and *mutually accepted* that it creates an amendment to the contract." The court concluded that the evidence presented only established that the charging party unilaterally expected that the previous actuarial table would continue to be used even if it were de-

termined by the retirement commission that a different table would better effectuate the provisions of the retirement plan. The charging party simply relied on the fact that the previous actuarial table had been used for more than two decades as dispositive of the issue. The court rejected this position and stated

that the fact that the retirement commission chose not to exercise its discretion in changing the actuarial table until 2006 does not overcome the parties' reaffirmation in their collective bargaining agreements of the discretion provided to the retirement commission in the county ordinance.