



A T T O R N E Y S

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JUVENILES AT SCHOOL AND CUSTODY - The question answered...somewhat.

By
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A common question from law enforcement is whether or not they must give a student at school juvenile *Miranda* rights before any questioning takes place. Is a student in school automatically considered in custody? The basic answer is no. However, a recent North Carolina Court of Appeals case discusses when that juvenile at school may be in custody and require *Miranda* rights.

In re W.R. ___ N.C. App. ____; (October 3, 2006)

Facts: W.R. was a 14-year-old middle school student. The principal received a concerned phone call from a parent of the school (the court doesn't say what the phone call consisted of specifically about but it appears to have concerned weapons). Based on that phone call, the assistant principal brought W.R. to her office. Both the principal and assistant principal asked W.R. if he had anything with him that he should not have at school. He repeatedly said he did not.

As some point the School Resource Officer (who is a sworn law enforcement officer with the city) joined the group in the office and participated in the questioning. Fifteen minutes into the questioning W.R. is asked (we don't know by whom) to empty his pockets. Once he did the SRO did a "basic search" for weapons. The questioning continued for another fifteen minutes. During this time the principal or assistant principal left to speak with other students about the situation but W.R. was never left unattended. After further questioning he admitted to bringing a knife to school the day before. This admission was used at his delinquency hearing.

W.R. argued that using the statement was a violation of his Fifth Amendment *Miranda* rights as well as a violation of his juvenile *Miranda* rights under North Carolina General Statute 7B-2101.

COURT RULING:

The Court of Appeals used the language from the *Miranda* opinion which specifies that the Fifth Amendment protects statements of self-incrimination during **custodial interrogation**. The juvenile *Miranda* statute, 7B-2101, also specifies that the juvenile interrogation rights apply when a juvenile is in custody.

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So, the question for the court to answer is whether or not W.R. was in custody when he was questioned. The court says that W.R. was in custody when being questioned in the assistant principal's office.

The court quotes THE LEADING CASE on defining "custody" in North Carolina, *State v. Buchanan* 353 N.C. 332 (2001). "To determine whether a juvenile is in custody for these purposes, the test is 'whether a reasonable person in [the juvenile's] position, under the totality of the circumstances, would have believed that he was under arrest or was restrained in his movement to the degree associated with a formal arrest.'" The determination of custody is an objective test - whether a reasonable person in the suspect's position would believe he or she was under arrest.

There is some precedent for this case. In 1998, the N.C. Court of Appeals decided *In re Phillips*, 128 N.C. App. 732, in which the court decided that a juvenile is not in custody when questioned by school officials in a school office and there are no law enforcement officers present.

But the current case is different from *Phillips*. The court says that the juvenile was repeatedly questioned by three people - the principal, assistant principal and school resource officer. There was no evidence presented to the court that the juvenile was told he was free to leave. The juvenile was under constant supervision during this time "[g]iven the totality of the circumstances, a reasonable person standing in the place of the juvenile would have believed that he was restrained in his movement to the degree associated with a formal arrest."

Because the court decided that the juvenile was in custody, juvenile *Miranda* warnings, pursuant to 7B-2101 should have been given.

WHAT DOES THIS MEAN FOR YOU?

It appears that if a school administrator is doing the questioning with no law enforcement officer present, the juvenile's statement would be admissible without the juvenile *Miranda* warnings.

If a law enforcement officer is doing the questioning and tells the juvenile that he or she is free to leave and can go back to class and the officer does not engage in any action which negates that statement, juvenile *Miranda* warnings are not required. [Note: If hall passes are required, an officer may want to write it out ahead of time and let the juvenile know he or she can use it when he or she is ready.]

If a law enforcement officer is doing the questioning and the juvenile freedom of movement is restrained in some way, as in this case, then juvenile *Miranda* warnings would be required.

An unanswered question is whether or not juvenile *Miranda* warnings would be required when the school administrator is doing the questioning and the law enforcement officer is present but does not participate in the questioning – would juvenile *Miranda* rights be required then? Officers should be very careful in this situation.

THE SILVER LINING

The court DID NOT SAY that a juvenile is automatically in custody just because they are in school. A juvenile will be in custody for *Miranda* purposes when a reasonable person would feel that he or she was under arrest or had their freedom of movement restrained similar to a formal arrest. Being in school is not being arrested. What a relief!

Your Jeopardy category for the day:

Movies of the '80s

The clue:

The coolest movie made about juvenile delinquency.

Answer:

What is *Ferris Bueller's Day Off*?

Greatest line from the movie: "Bueller ... Bueller ... Bueller."

The actor was Ben Stein, playing one of Mr. B's teachers. Stein is an attorney, commentator and writer. He has made a career out of those three words. See the movie if you have not, and you'll see why. He is every boring, spaced-out, un-cool teacher you've ever had. He defines "monotone."

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