

**COMMONWEALTH OF KENTUCKY
GORDON CIRCUIT COURT
CASE NO. 2013-JV-1945**

COMMONWEALTH OF KENTUCKY

PLAINTIFF

Vs.

R.B., A CHILD

DEFENDANT

ORDER GRANTING DEFENDANT’S MOTION TO SUPPRESS

The above-named juvenile was charged with possessing and dispensing a controlled substance in violation of KRS 218A.1404(3). The juvenile filed a motion to suppress evidence – to wit, statements – made following a custodial interrogation conducted on April 2, 2013. The parties have submitted briefs and a hearing was conducted on July 14, 2013, at which three witnesses testified.

FINDINGS OF FACT

1. R.B. is a seventeen-year-old student at Gordon County High School.¹ He was arrested on April 2, 2013 for dispensing a controlled substance. KRS 218A.1404(3).
2. On April 2, 2013, R.B. timely arrived at school and attended three classes.
3. R.B. lawfully possessed a controlled substance when he attended school on April 2, 2013. R.B. had his wisdom teeth removed on March 29, 2013 and was lawfully prescribed hydrocodone for pain relief.
4. Hydrocodone is a Schedule II controlled substance.
5. Between the third and fourth periods on April 2, 2013, R.B. met two friends in the bathroom. He gave two hydrocodone pills to each friend. In total, R.B. dispensed four hydrocodone pills.
6. Gordon County High School Principal David Cain learned from an unnamed student that R.B. was dispensing hydrocodone pills in the bathroom. Shortly after the fourth period began, Principal Cain called R.B. to his office.
7. School Resource Officer (“SRO”) Rick Harper was presented in Principal Cain’s office when R.B. arrived. He was wearing a police-issued “polo” style shirt bearing the symbol of the Gordon County Sheriff’s Office.
8. The door of Principal Cain’s office remained closed while R.B. was present.
9. When confronted by Principal Cain, R.B. admitted to giving four pills to two other students.

¹ Because of his status as a juvenile, R.B. will be referred to only by his initials.

10. Principal Cain asked R.B. to identify the other two students, which he did. Principal Cain then left the office to check on the other two students. During his absence, SRO Harper asked R.B. additional questions about the pills, where the pills came from, and why he had given them to his friends. SRO Harper also informed R.B. that he would be charged with a crime.
11. SRO Harper drove R.B. to the police station and he was charged with dispensing a controlled substance.
12. At no time was R.B. informed of his right against self-incrimination. When he asked to call his mother, SRO Harper informed R.B. that this was not permitted. R.B.'s mother was not called until he was taken to the police station.

CONCLUSIONS OF LAW

1. The Court has proper jurisdiction over the subject matter and parties in this controversy.
2. The seminal case of Miranda v. Arizona, 384 U.S. 436 (1966) established a two-part test to determine whether it is necessary to deliver the well-known "Miranda warnings". The purpose of the Miranda warnings is to ensure that the defendant's right to avoid self-incrimination is respected and protected. The warning must be given prior to any custodial interrogation. The first issue in this case is whether R.B. was in custody at the time he was questioned. Next, this Court must determine whether the interrogation was initiated by a law enforcement officer.
3. The constitutional privilege against self-incrimination is applicable in the case of juveniles as it is with respect to adults. In re Gault, 387 US 1 (1967).
4. *Custody*: This Court must first determine whether R.B. was in custody at the time he made the inculpatory statements. To determine whether R.B. was in custody, this Court looks to the circumstances surrounding the interrogation and must decide whether a reasonable person *in R.B.'s position* would believe he could terminate the interrogation and leave. J.D.B. v. North Carolina, 131 S.Ct. 2394 (2012).
5. In this case, R.B. was called to Principal Cain's office by his fourth period teacher. He was not given the opportunity to refuse to attend the meeting. He was escorted to the office, and the door was closed. SRO Harper was present in the room, and participated in the questioning. Though not in full uniform, SRO Harper was in a shirt bearing the Sheriff's Office insignia. He was not given Miranda warnings, and was not permitted to call his mother. Considering the age and maturity level of R.B., a juvenile, it is unreasonable to conclude that he would feel free to leave the office. R.B. was in custody at the time he made the incriminating statements.

6. *Law Enforcement Officer*: This Court must next determine whether SRO Harper initiated the questioning. This is a close call. SRO Harper did not know why R.B. had been brought to Principal Cain's office before R.B. arrived. Principal Cain did not inform SRO Harper in advance that R.B. would be brought to the office. However, SRO Harper admitted that, once he heard the circumstances of R.B.'s actions, he knew that R.B. could be charged criminally. He still failed to deliver the warnings. For this reason, the Court concludes that SRO Harper was acting in his law enforcement capacity when he participated in questioning R.B.
7. The above-named juvenile was charged with possessing and dispensing a controlled substance in violation of KRS 218A.1404(3). The juvenile filed a motion to suppress evidence – to wit, statements – made following a custodial interrogation conducted on April 2, 2013. The parties have submitted briefs and a hearing was conducted on July 14, 2013, at which two witnesses testified.

JUDGEMENT

Defendant's motion to suppress the evidence obtained from the custodial interrogation on April 2, 2013 is hereby GRANTED.

This is a final and appealable order.

Entered this 20th day of July, 2013.

Laura Fitzgerald, JUDGE
Gordon Circuit Court

TESTIMONY OF DAVID CAIN

Direct Examination

Q: Please state your name for the Court.

A: David Allen Cain.

Q: Where are you currently employed, Mr. Cain?

A: Gordon County High School. I'm the school principal.

Q: How long have you held that position?

A: Thirteen years. I was assistant principal for nine years before that.

Q: Were you employed with the high school as principal on April 2, 2013?

A: Yes, sir, I was.

Q: And do you recall having anything unusual occurring that day?

A: Yes, that was the day that R.B. was arrested.

Q: Ok. Tell me about your initial interaction with R.B. that day.

A: Well, as a high school principal, you really learn a lot about what's going on with the students through the grapevine, so to speak. I believe one of our teachers overheard a few students saying that R.B. had been in the bathroom between periods. One of them had seen him handing pills out of a prescription pill bottle.

Q: Did you approach R.B. about this?

A: Yes, I was aware that he had been out of school for a few days because he had his wisdom teeth removed. So, I kind of put that information together and decided I should talk to R.B. So I called him to the office.

Q: So, when you called him to your office, you didn't know for sure if anything had happened really?

A: That's right. I wanted to talk to him and see what was going on.

Q: Did you suspect him of committing a crime?

A: Before he came to my office?

Q: Right, before you spoke to him.

A: Well I didn't know what to think. It seemed plausible that he would have pain pills after having his wisdom teeth pulled. Of course, it is against school policy for the student to carry the prescription around the school himself. The parent is supposed to leave the prescription with the school nurse, who dispenses the drug as needed.

Q: So, how was R.B. called to your office?

A: My assistant called him in over the loud speaker.

Q: How long before he arrived?

A: Just a few minutes.

Q: When R.B. arrived, was your school resource officer present?

A: Yes. Our SRO is Rick Harper. He was in the area outside our office when R.B. was called.

Q: Did you ask SRO Harper to join you in the office when R.B. arrived?

A: No, I didn't ask him specifically to join us.

Q: But he did, in fact, join you?

A: Yes he entered right behind R.B.

Q: Did you ask R.B. any questions?

A: Yes, I asked him if he had some prescription pills, and he responded that he did. He said that he had them in his backpack, and had forgotten to drop them off at the nurse's office.

Q: Did you ask him if he had given any of the pills to other students?

A: I did. At first he said that he had not given any pills away.

Q: Did you ask again?

A: Then I said, you know, we heard you were giving pills away in the bathroom. Then R.B. said something to the effect of, "I did something really stupid."

Q: Did you ask him to elaborate?

A: Well, not really. He kind of paused for a minute, then he said that one of his friends was pestering him for the pills all morning and he finally gave him two of them.

Q: R.B. has been charged with dispensing four pills, correct?

A: That's right. I left the office to go find his friend and check on him. Evidently, while I was gone, R.B. told Officer Harper that he had given another student an additional two pills.

Q: When you returned to the office, did Officer Harper inform you that he was taking R.B. into custody?

A: He did.

Q: What happened next?

A: R.B. was taken to the station and charged. He was later expelled from school as well.

Q: No further questions, Your Honor.

Cross-examination

Q: Mr. Cain, I only have a few questions. You said that you did not specifically invite Officer Harper into your office, is that right?

A: Right.

Q: But he was present?

A: Yes, he was.

Q: So, why do you think Officer Harper entered the office with you?

A: It is kind of our normal procedure. When a student has been called into the office, he usually joins me in talking to the student.

Q: Why?

A: Well, it is an additional display of authority. If a student has been called out of class to my office, it's usually because they broke a rule.

Q: So, you and Officer Harper have a routine, would you say, when it comes to questioning students?

A: I suppose.

Q: Who usually does more of the talking?

A: I do.

Q: You said you left Officer Harper alone with R.B. after you learned the pills had been given away?

A: That's right.

Q: And when you returned, you learned R.B. was being charged with a crime?

A: That's right.

Q: Did that surprise you?

A: Not really. I know it's illegal to dispense prescription pills.

Q: Had Officer Harper informed you that he would be arresting R.B.?

A: Not specifically.

Q: So, is it fair to say, that Officer Harper didn't need to inform you that he might arrest R.B.?

A: That's fair to say. Once R.B. admitted what he'd done, I figured he would be facing criminal charges.

Q: So this has happened before: you bring a student to your office, you talk to him or her, based on the student's responses, the student might be facing criminal charges?

A: Yes, we have had students in the past who have committed crimes and have been charged criminally. More than just school discipline.

Q: How long have you and Officer Harper been working together?

A: I believe we just finished our sixth school year working together.

Q: Nothing further, your Honor.

TESTIMONY OF RICHARD HARPER

Direct Examination

Q: Please state your name for the Court.

A: Rick Harper.

Q: Where are you currently employed, Officer Harper?

A: I'm an officer with the Gordon County Sheriff's Department.

Q: How long have you been an officer?

A: Ten years.

Q: What is your current assignment?

A: I'm assigned to Gordon County High School as the school resource officer.

Q: How long have you been assigned to the high school?

A: A little over six years. When I became a deputy with the Sheriff's office, I knew I wanted to be a school resource officer. But it took me a few years to get enough seniority.

Q: Were you at work at the high school on April 2, 2013?

A: Yes I was.

Q: And do you recall having a conversation with R.B. that day?

A: Yes, I do.

Q: Where did this conversation take place?

A: In Principal Cain's office.

Q: Were you invited to the office to speak with R.B.?

A: Hmm. I wouldn't say I was, like, invited into his office. I heard R.B. being called over the loud speaker to come to the Principal's office, and so when I saw him come through the main office I went with him into Principal Cain's area.

Q: Is this your usual practice, to sit in when a student is called to the office?

A: Yeah I guess so. I mean, I can't say if I sit in on every single meeting but, yeah, a lot of times. Especially when I

hear them being called to the office. R.B. has had some discipline issues in the past. Nothing this serious, but he's had some attendance issues, discipline issues. So when I heard his name being called I thought, I might go on in there and see what's going on this time. It's part of my job.

Q: What exactly is your function in the school, Officer Harper?

A: I'm an on-site link between law enforcement and the school. I'm there to assist the school in any way I can when it comes to keeping the school safe, disciplining students.

Q: So, is it fair to say that students know who you are, and know that you might participate in the normal disciplinary process for minor infractions?

A: I think that's fair to say.

Q: When R.B. came into Principal Cain's office, did you start to ask him questions?

A: No. Principal Cain started asking him questions about these pills he had and whether he had given them to anybody else.

Q: How long did the conversation continue before R.B. admitted he had given the pills to his friends?

A: Not long at all. To be honest, I wasn't even quite up to speed on what we were even doing there before R.B. basically told us what he had done. He kind of just blurted it out. He said something about having done something really stupid.

Q: At that moment, did you decide to arrest R.B.?

A: No, I knew I could arrest R.B. because he had just admitted to a criminal act. But I wanted to hear him out.

Q: Did you continue to question him?

A: No, Principal Cain was doing most of the talking with him. And like I said, he didn't have to ask too many questions. R.B. pretty much just told him what had happened.

Q: Did you ask R.B. any questions?

A: Not while the Principal was in there.

Q: At some point did Principal Cain leave the office?

A: Yes, he left after a few minutes, once R.B. had given us the names of the other students. He had to go check on those students and get the pills back.

Q: Did you ask R.B. any questions while Principal Cain was gone?

A: Not that I recall. I did tell him that he had done something very dangerous.

Q: Did R.B. say anything to you during this time?

A: No - he just kind of nodded his head.

Q: At what point did you decide to take R.B. down to the station?

A: When he told us what he had done, of course I knew that is a criminal offense - dispensing prescription pills. But we didn't leave until Principal Cain had returned to the office.

Q: Why is that?

A: I wanted to make sure the situation with the other two students was secure before I left the premises.

Q: So you drove R.B. to the station, correct?

A: Yes I drove him.

Q: Did R.B. say anything to you in the car?

A: He said his mom was going to kill him.

Q: No further questions.

Cross-examination

Q: Officer Harper, you've been working with Principal Cain for six years, correct?

A: Right.

Q: How many times have you been present in the Principal's office when he was questioning a student?

A: Questioning a student about a criminal offense?

Q: No, just questioning a student about any violation - of a school rule, or anything.

A: Well, more than I could count. Probably a couple times a day. A big part of my job is assisting in school discipline.

Q: Office Harper, what I'm getting at is, when you question a student about any kind of school discipline issue, is the Principal always present with you?

A: No, no. Not usually. A lot of times I hear about issues directly from the teachers or even the students. And I'm present in the school. I'm walking around - I don't sit in my office. So I'm kind of patrolling, for lack of a better term.

Q: In your experience, when is the Principal involved in disciplining a student?

A: When it's something pretty major. I mean, the Principal isn't getting involved because someone didn't clean up after themselves at lunch.

Q: So, when you heard R.B. being called to the Principal's office, you knew it must be for something "pretty major"?

A: Yes, that's why I went in there.

Q: Is it part of your job to enforce the laws of Kentucky in the school setting?

A: Well, sure. I'm a sworn law enforcement officer. That's the duty of any law enforcement officer.

Q: You aren't a trained teacher, are you?

A: No.

Q: You are a law enforcement officer who happens to be assigned to a school?

A: Yes, you could put it that way. But I have special training to be a school resource officer, and my duties go beyond just simple law enforcement. I've built a relationship with the school.

Q: A law enforcement officer who is assigned to, say, a narcotics task force, would receive special training in narcotics, the drug trade - is that right?

A: Sure, we all receive specialized training.

Q: When you were in the Principal's office with R.B., you said he just sort of blurted out that he had distributed the pills to the other students. Is that right?

A: Yes.

Q: The first time Principal Cain asked R.B. about the pills, didn't R.B. deny giving them to his friends?

A: Not that I recall.

Q: You don't remember him initially denying it?

A: No.

Q: It's your testimony that R.B. just blurted it out, without actually being asked any questions?

A: Pretty much.

Q: Why do you think he would just tell you that?

A: I don't know. A lot of times, when the students have been called to the Principal's office, they pretty much figure they've been caught.

Q: So, when R.B. admitted what he'd done, you knew that is a criminal offense immediately?

A: Yes.

Q: Did you deliver Miranda warnings at that time?

A: No.

Q: R.B. initially said he'd only given the pills to one student, correct?

A: That's right.

Q: But then later he admitted he had given pills to two students?

A: Correct.

Q: When did he tell you this?

A: While Principal Cain was checking on the first student.

Q: Did R.B. tell you this in response to a question that you had asked?

A: No. He just kind of said, you should check on this other student too.

Q: When you drove R.B. to the station, did he ask to call his mother?

A: Yes he did. I told him he would be able to call her later after he had been processed at the station.

Q: Did anyone deliver Miranda warnings to R.B. at the station?

A: I'm not aware.

Q: No further questions your honor.

