

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

Case No. 12-1785

Appellee,

On Appeal from the Ross County Court
of Appeals, Fourth District
Case No. : 11CA3251

v.

JUSTIN K. GUYSINGER,

Appellant.

MEMORANDUM IN RESPONSE
OF APPELLEE STATE OF OHIO

OFFICE OF THE OHIO PUBLIC DEFENDER

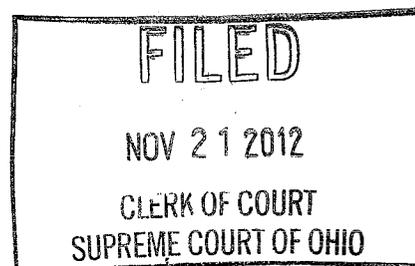
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ARGUMENT AGAINST APPELLANT'S PROPOSITION OF LAW

Appellant's Proposition of Law No. 1: A statement by a police officer that encourages a person in custody, who has requested an attorney, to "be honest" about a situation intentionally encourages that person to take action and not remain silent, and is the functional equivalent of interrogation. Fifth and Fourteenth Amendments to the United States Constitution; Section 10, Article I of the Ohio Constitution

Based upon the facts of this case, and the testimony elicited at the hearing on the Appellant's motion to suppress, there is little room to argue that the Appellant was not in "custody" at the time he made the incriminating statements at issue in this case. It is also clear that the rights provided for by *Miranda* were not recited to the Appellant prior to his incriminating statements being made. Since these rights only become necessary during a custodial interrogation, the issue before this Court becomes whether or not an interrogation took place.

Counsel for the Appellant argues that Deputy Gallagher's statement to the Appellant that "it was more than likely in [Mr. Guysinger's] best interest to start thinking about the situation and how things were going [,]" and that "it was going to be in his best interest, of benefit to him, if he started to think about the circumstances and situation of the case...and, just be honest about the situation," while not direct questioning, constituted the "functional equivalent" of interrogation, and was therefore in violation of Appellant's rights.

This statement was made to the Appellant after a firearm, matching the description given by the victim of the offense, was found under a couch the Appellant was lying down on.

After making the statement, Deputy Gallagher returned to the residence to continue investigating. After a period of about fifteen minutes passed, Deputy Gallagher was summoned to the cruiser where Guysinger was located. This summoning occurred at the request of the Appellant.

If this statement was meant to elicit a response from the Appellant, it would have done so. As the Fourth District Court of Appeals correctly reasoned, this period of time, with each lengthening minute, lessened the chance that the statement would likely evoke a response from the Appellant. Counsel for the Appellant argues, with no facts to support the same, that this Court should consider that period of time to have actually intensified the coercive effect of the deputy's statement. Maybe this argue would pass muster if Deputy Gallagher remained at the cruiser and stared down the Appellant for the fifteen minutes it took to respond, but such is not the case. Not only was the deputy not trying to intimidate or coerce a response, it is likely the deputy was not even within eyeshot of the Appellant.

In further support of his argument, Appellant cites *Innis* for the proposition that the focus, for the purpose of determining whether police engaged in the "functional equivalent" of interrogation, is "primarily on the perceptions of the suspect, rather than the intent of police." *Rhode Island v. Innis*, 466 U.S. 291, 301, 100 S.Ct. 1682 (1980)

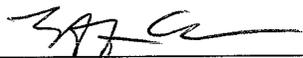
Had the Appellant testified at the hearing on the motion to suppress as to what his perceptions were, or whether or not he felt coerced into making the statement, then this matter may be in dispute. The Appellant never took the stand though, and any argument made by the Appellant now as to what his "perceptions" were is purely speculation.

CONCLUSION

Based upon the fact that Deputy Gallagher's statement was not phrased as a question and did not rise to the level of the "functional equivalent" of interrogation because it was not likely to elicit a response, the fact that it in fact did not elicit an immediate response, the fact that a period of fifteen minutes passed before the Appellant summoned the deputy back to the cruiser to confess, and finally the fact that the Appellant failed to testify at the initial hearing to relay what his perceptions were, the Appellee requests this Court to determine that it does not have jurisdiction due to the fact that there was no violation of the Appellant's constitutional rights.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was served upon Melissa M. Prendergast, Attorney for Appellant, at 250 East Broad Street, Suite 1400, Columbus, Ohio, 43215, by regular U.S. mail, this 21st day of November, 2012.



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