IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

IN RE: R.H.	:	APPEAL NOS. C-240203 C-240204
	:	TRIAL NOS. 23/2174-01 X 23/2174-02 X
	:	*JUDGMENT ENTRY*

This court sua sponte removes this cause from the regular calendar and places it on the court's accelerated calender, Loc.R. 11.1(C)(1), and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); Loc.R. 11.1.

On August 10, 2023, the State filed a delinquency complaint against R.H. in the Hamilton County Juvenile Court alleging that he committed the offenses of carrying a concealed firearm and receiving stolen property. R.H. was arrested the same day.

On March 11, 2024, R.H. filed a motion to suppress evidence recovered from his home and statements he made during the course of his arrest. On March 13, 2024, the trial court issued a written order which stated: "The State must respond to the Motion [to suppress] by March 22." The trial court also conducted a hearing on March 13 at which it instructed the State to file a response to R.H.'s motion by March 22. However, the State failed to respond as ordered.

The juvenile court scheduled a hearing on R.H.'s motion to suppress for March 27, 2024. At the hearing, it announced its decision to grant the motion to suppress as a sanction against the State for its failure to respond in writing. That oral decision was followed by a written order on March 29, 2024, which repeated that the motion

was being granted based on the lack of a timely written response from the State. Although the court in its order observed that R.H.'s motion stated with particularly the grounds upon which he sought to suppress evidence, it made no findings as to the merit of the motion.

On appeal, the State raises a single assignment of error, raising essentially three issues in support of its argument. First, the State takes issue with the juvenile court's decision to grant R.H.'s motion to suppress without a hearing. But the juvenile court was permitted to resolve the motion solely on the basis of the written submissions. To that effect, Juv.R. 19 permits juvenile courts to determine motions, either by rule or order, without an oral hearing upon "brief written statements of reasons in support and opposition."

No case law directly prescribes how Juv.R. 19 is to be interpreted in this specific context. However, a number of decisions from outside our appellate district construe analogous provisions from the Ohio Rules of Criminal Procedure and the Ohio Rules of Civil Procedure. One such case, *State v. Etzler*, 2004-Ohio-4808, ¶ 10 (3d Dist.), relies exclusively upon the language that permits disposing of motions without a hearing based on a local rule. Because the Hamilton County Juvenile Court lacks such a local rule, *Etzler* is not dispositive of the question of how Juv.R. 19 applies in R.H.'s case.

Other cases construing the criminal and civil analogues of Juv.R. 19 focus on the requirement that the nonmoving party be permitted to oppose the motion in writing before it is decided. For example, in *State v. Palivoda*, 2006-Ohio-6494, ¶ 14 (11th Dist.), the trial court erred by granting a motion to suppress without a hearing less than 24 hours after it had been filed. This short timeline did not afford the State an adequate opportunity to oppose the motion. *Id.* A four-day response timeline was

similarly held to be insufficient to trigger Juv.R. 19's hearing wavier provision in *In re K.H.*, 2018-Ohio-1137, ¶ 14 (5th Dist). These cases are more persuasive in deciding the question before us, in that they focus on the ability of the court to resolve a motion when only the moving party has submitted written support for its position.

Applying this authority here, we conclude that the State was provided with the opportunity to respond in writing that Juv.R. 19 requires. The juvenile court informed that State that its written response would be due on March 22 both in its written March 13 entry and orally at the March 13 hearing. The State therefore had, at a minimum, nine days to respond to R.H.'s motion—and that is not counting the two days the motion was pending prior to the March 13 hearing and order, during which the State presumably could have reviewed the motion and formulated a response. This is more than double the amount of time held to be too short in *In re K.H.*, at ¶ 14, and was therefore adequate to allow the State to set forth its position in writing. In reaching this conclusion, we highlight that the State was afforded the opportunity to "select dates" at the March 13 hearing and placed no objection on the record when the March 22 date was selected for its motion response timeline. Given that the State was afforded the opportunity the rule requires, we see no error in the juvenile court's decision to proceed without a hearing under Juv.R. 19.

The State next argues that it was entitled to advanced notice that the juvenile court intended to vacate the March 27 hearing and resolve R.H.'s motion without oral argument. But we find no authority construing either Juv.R. 19 or its criminal or civil counterparts that reads into its language a notice requirement. To the contrary, Juv.R. 19 instructs that its purpose is to "expedite [the court's] business." Requiring the juvenile court to give advanced notice of its intent to resolve motions, even those of a perfunctory nature, without a hearing would undermine the objective that Juv.R. 19 is

intended to promote. We therefore decline, at this time, to read into Juv.R. 19 a notice requirement that is neither a part of its text nor consistent with its function.

The State also argues that the juvenile court erred in granting R.H.'s motion to suppress merely as a sanction for the State's inaction, rather than on the basis of the motion's merit. We agree with the State's characterization of the juvenile court's reasoning. In its March 29 entry, the juvenile court explained that it was granting R.H.'s motion as a "remedy" for the State's "violation" of the March 13 order to file a written response. It made no other determination with regard to whether the facts set forth in R.H.'s motion were true, nor did it determine, if true, whether those facts created a legally sufficient basis to suppress evidence under the Fourth and/or Fifth Amendments to the United States Constitution.

We can find no authority that supports the authority of a trial court to grant a motion to suppress as a sanction for the nonmoving party's silence. To the contrary, case law suggests that the defendant has the burden of demonstrating that he was entitled to *Miranda* warnings and that a search was warrantless as a precursor to obtaining suppression. *See, e.g., State v. Newell*, 2017-Ohio-4143, ¶ 13, 17 (1st Dist.). We therefore conclude that, while the juvenile court did not err in resolving R.H.'s motion without a hearing, it did err in granting the motion without finding that R.H. had met this burden.

The State's sole assignment of error is therefore sustained insofar as it challenges the juvenile court's decision to grant R.H.'s motion as a sanction for the State's failure to comply with the March 13 order. The judgment of the trial court is therefore reversed, and the cause is remanded for further proceedings consistent with this judgment entry. The court further orders that 1) a copy of this Judgment

constitutes the mandate, 2) the mandate be sent to the trial court for execution under App.R. 27, and 3) costs shall be taxed under App.R. 24.

BOCK, P.J., and **KINSLEY, J.,** concur.
ZAYAS, J., concurs separately in part and dissents in part.
Zayas, J., concurring separately in part and dissenting in part.

The sole issue in this case is whether the trial court erred in refusing to conduct the scheduled hearing on the motion to suppress and granting the motion to suppress as a sanction for the State's failure to file a response to R.H.'s motion to suppress. While the majority admits that the juvenile court had no authority to do so, inexplicably, the majority concludes the court committed no error in imposing the sanction. I must respectfully dissent.

R.H. filed a motion to suppress, and the court informed the parties that "we picked the 27th for motion" and further informed the parties, "We'll just have the motion and the hearing and the arguments." The court's entry memorialized that the case was continued until March 27, 2024 for "Motion to Suppress."[1]

At the scheduled hearing, the prosecutor arrived with caselaw to support the State's argument on the motion to suppress. Previously, the State had provided several body-camera recordings to R.H., and subpoenaed witnesses to appear. Instead of proceeding with the scheduled hearing, the trial court granted the motion to suppress after finding "that the State of Ohio violated the Court's Order to respond and their explanation as to why is insufficient. Thus, the Court finds that the appropriate remedy is to grant R.H.'s Motion to Suppress."

[1] The record reflects that the court offered to have a show-cause hearing.

The record reflects that the court informed the State of its deadline to file a response, "I'll say 3/22, which is a Friday, we'll take the state's response." The State did not file a written response, but no rule requires the State to file a written response. *See, e.g., State v. Mohler*, 2011-Ohio-6121, ¶ 45 (5th Dist.) (Crim.R. 12, governing motions to suppress, "does not explicitly mandate the prosecutor file a response."); *In re K.H.*, 2018-Ohio-1137, ¶ 13 (5th Dist.) (Juv.R. 19 "contemplates a response in opposition to a motion **if so desired by the opposing party.**" (Emphasis added.)); *State v. Chapman*, 2019-Ohio-5757, ¶ 6 (9th Dist.) (Explaining that Crim.R. 12(C) and 47 do not require "that the State must respond to a motion to suppress or that it may not oppose a suppression motion unless it does so in writing before the hearing on the motion.").

The juvenile court did not cite to any authority to justify granting the motion to suppress, absent an evidentiary hearing, as a sanction for the State's failure to file a written response. The majority concedes that "we find no authority of a trial court to grant a motion to suppress as a sanction for the nonmoving party's silence." Because the court lacked the authority to grant the motion to suppress as a sanction for the State's failure to file a written response, this court should sustain the State's sole assignment of error. *See Drennen v. Heinonen*, 146 Ohio App.3d 214, 216 (11th Dist. 2001) ("The trial court exceeded its authority by imposing a monetary sanction for appellants' failure to attend the scheduling conference" when there is no rule providing for sanctions in that situation.); *Turner v. Boyrdkdar*, 1999 Ohio App. LEXIS 3857 (8th Dist. Sept. 19, 1986) (Vacating a court's imposition of sanctions for defendant's failure to attend a pretrial hearing because no rule provided for sanctions against a party failing to appear.); *Ashtabula Cty. Med. Ctr. v. Douglass*, 1988 Ohio App. LEXIS 2108 (11th Dist. June 3, 1988) (Holding that the attorney could not be

held in contempt for failing to appear "absent a specific order to attend or a local rule of court mandating attendance.").

Instead, the majority concludes that "while the juvenile court did not err in resolving R.H.'s motion without a hearing, it did err in granting the motion without finding that R.H. had met this burden." I agree that a defendant alleging a *Miranda* violation has the initial burden to prove by a preponderance of the evidence that he was questioned by the police as part of a custodial interrogation. *See State v. Eichler*, 2024-Ohio-4819, ¶ 18 (7th Dist.), citing *Colorado v. Connelly*, 479 U.S. 157 (1986).

However, the majority fails to recognize that, without an evidentiary hearing, R.H. cannot meet this burden. *See State v. Newell*, 2017-Ohio-4143, ¶ 18 (1st Dist.) (Holding that the trial court erred in granting the motion to suppress without a hearing because "defendant failed to present any evidence demonstrating a warrantless seizure or that she was in custody."). R.H.'s motion presented factual allegations and legal arguments, nothing more. Whether a defendant has been subjected to custodial interrogation for purposes of the Fifth Amendment and *Miranda* is a fact-intensive inquiry, necessitating an examination of the totality of the circumstances. *See Berkemer v. McCarty*, 468 U.S. 420, 442 (1984); *State v. Gumm*, 73 Ohio St.3d 413, 429 (1995). When a defendant failed to present any evidence demonstrating a warrantless seizure or that she was in custody, "the burden of proof never shifted to the state to demonstrate the validity of the search or seizure and that the statements were not obtained in violation of her *Miranda* rights." *Newell* at ¶ 18.

Accordingly, even when a hearing was held, appellate courts have reversed decisions on motions to suppress where the court's factual findings were deemed incomplete.

For example, in *State v. Nichols*, 2020-Ohio-5157 (10th Dist.), the defendant filed a motion to suppress her statements, arguing she was subjected to a custodial interrogation without *Miranda* advisements. *Id.* at ¶ 3. After an evidentiary hearing, the trial court granted the motion to suppress in part. *Id.* However, the court "made only two factual findings," and "the findings of fact contained no analysis or discussion of the testimony [of the witnesses]." *Id.* at ¶ 43-44. Because the court's factual findings failed to include the necessary facts "to conduct the legal analysis" and to "evaluate the credibility of witnesses," the factual findings were deemed incomplete. *Id.* at 45. Ultimately, the court reversed the suppression ruling because "[t]he absence of adequate factual findings impedes a reviewing court's ability to determine the extent to which the facts in the record were considered by the trial court." *Id.*; *see State v. Trivett,* 2016-Ohio-8204, ¶ 8 (9th Dist.) (stating that if a trial court omits facts which are "necessary to a determination" of a pertinent legal question, "the trial court's findings of fact as a whole are not supported by competent, credible evidence"); *State v. Camper*, 2023-Ohio-4673, ¶ 39 (10th Dist.) (When a trial court's factual findings fail to include pertinent facts presented during the evidentiary hearing, "a reviewing court must reverse a trial court's suppression ruling and remand the matter for the trial court to make factual findings in the first instance.").

State v. Lashuay, 2007-Ohio-6365 (6th Dist.) is also instructive. In *Lashuay*, the defendant filed a motion to suppress, challenging the probable cause to detain him. The court overruled the motion after conducting an evidentiary hearing. *Id.* at ¶ 6. Three and a half months after the ruling, the defendant filed a motion to reopen the hearing after receiving a newly discovered recording of the stop. *Id.* at ¶ 8. The State argued that the videotape did not dispute the officers' testimony, and the trial court overruled the motion without reviewing the recording. *Id.* at ¶ 9.

On appeal, the Sixth District held that the trial court "abused its discretion in refusing to reopen the suppression hearing to consider the new evidence's effect. Failure to consider the new evidence denied appellant a full and fair opportunity to present his case on the seizure's validity." *Id.* at ¶ 20. The court determined that the trial court's failure to consider the videotape rendered its factual findings incomplete and prevented the appellate court from reviewing the ruling. *Id.* at ¶ 21. Similarly, here, the juvenile court's refusal to consider any evidence prevents this court from reviewing the merits of R.H.'s claims. *See id.*

Moreover, the majority's reliance on Juv.R. 19 is misplaced. Juv.R. 19 provides:

> An application to the court for an order shall be by motion. A motion other than one made during trial or hearing shall be in writing unless the court permits it to be made orally. It shall state with particularity the grounds upon which it is made and shall set forth the relief or order sought. It shall be supported by a memorandum containing citations of authority and may be supported by an affidavit.
>
> To expedite its business, unless otherwise provided by statute or rule, the court may make provision by rule or order for the submission and determination of motions without oral hearing upon brief written statements of reasons in support and opposition.

I first note that the juvenile court did not make any "provision by rule or order" to resolve the motion to suppress without an oral hearing. Juv.R. 19. To the contrary, the court scheduled an evidentiary hearing on the motion.

Significantly, the language of Juv.R. 19 is identical to Crim.R. 47.[2] In interpreting Crim.R. 47's applicability to motions to suppress, the Ohio Supreme Court has held that, "A trial court must hold a suppression hearing if the motion meets Crim.R. 47's minimum standards." *State v. Codeluppi*, 2014-Ohio-1574, ¶ 9. When a motion to suppress states a legal and factual basis with sufficient particularity to give notice of the issues to be decided, a trial court must hold an evidentiary hearing on the motion to suppress. *See State v. Shindler*, 70 Ohio St.3d 54 (1994); *State v. Mishler*, 2024-Ohio-1085, ¶ 14 (Where defendant's motion to suppress identified the factual and legal basis with particularity, the trial court erred by not holding a hearing.); *State v. Hartley*, 51 Ohio App.3d 47, 48 (9th Dist. 1988) (Although a hearing is not required to resolve every suppression motion, the trial court is required to hold a hearing when the claims are supported by factual allegations which would justify relief.).

As the juvenile court acknowledged in its entry granting the motion to suppress, R.H.'s motion "stated with particularity the grounds upon which it was made." While Juv.R. 19 and Crim.R. 47 do not require an evidentiary hearing on every motion, a trial court must hold an evidentiary hearing where the claims in a motion to suppress would justify relief, and where the claims are supported by factual allegations. *See id.* Accordingly, in this case, even if the state had filed a timely response to the motion to suppress, the trial court should have held an evidentiary hearing.

[2] Crim.R. 47 provides: "An application to the court for an order shall be by motion. A motion, other than one made during trial or hearing, shall be in writing unless the court permits it to be made orally. It shall state with particularity the grounds upon which it is made and shall set forth the relief or order sought. It shall be supported by a memorandum containing citations of authority, and may also be supported by an affidavit.

To expedite its business, the court may make provision by rule or order for the submission and determination of motions without oral hearing upon brief written statements of reasons in support and opposition."

Consequently, the juvenile court erred by failing to conduct an evidentiary hearing and granting R.H.'s motion to suppress as a sanction for the state's failure to file a response. Although the court was understandably frustrated with the State's failure to file a response, no rule or authority provided for the sanction under these circumstances. Accordingly, we should sustain the assignment of error, reverse the trial court's judgment, and remand the cause with instructions to conduct an evidentiary hearing on the motion to suppress.

To the clerk:
Enter upon the Journal of the Court on 11/27/2024 per Order of the Court.

By:_____
Administrative Judge