[Cite as *In re G.J.D.*, 2010-Ohio-2677.]

THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

GEAUGA COUNTY, OHIO

IN THE MATTER OF:	:	**O P I N I O N**
G.J.D., UNRULY CHILD.	:	
		CASE NO. 2009-G-2913

Civil Appeal from the Court of Common Pleas, Juvenile Division, Case No. 09 JU 000222.

Judgment: Affirmed.

David P. Joyce, Geauga County Prosecutor, and *Nicholas A. Burling*, Assistant Prosecuting Attorney, Courthouse Annex, 231 Main Street, Chardon, OH 44024 (For Appellee, State of Ohio).

James R. Flaiz, Carrabine & Reardon Co., L.P.A., 7445 Center Street, Mentor, OH 44060 (For Appellant).

CYNTHIA WESTCOTT RICE, J.

{¶1} Appellant, G.J.D., appeals the judgment of the Geauga County Court of Common Pleas, Juvenile Division, denying his motion to suppress and finding him to be an unruly child. At issue is whether appellant was subjected to custodial interrogation by a law enforcement officer and whether the unruly adjudication was supported by sufficient evidence. For the reasons that follow, we affirm.

{¶2} Appellant was charged in a one-count complaint with being an unruly child, in violation of R.C. 2151.022(C), in that he allegedly "behave[d] in a manner as to

injure or endanger his own health or morals or the health or morals of others, to – wit: said juvenile wrote a hit list of ten names ***."

{¶3} Appellant pled not true and filed a motion to suppress. Following a suppression hearing, the trial court denied the motion. Appellant then filed an answer. Following an adjudicatory hearing, the court found appellant to be an unruly child. Subsequently, the court ordered appellant to complete 24 hours of community service, to undergo a mental health assessment, and to follow any resulting recommendations.

{¶4} David Toth, Principal of West Geauga High School in Chester Township, testified that on April 2, 2009, he was at the University of Akron on school business when he received a telephone call from a secretary at the high school. She told him she had received a "hit list" of students from a teacher who had confiscated it as students were passing it around in class. She said it was written by appellant, a 16-year old sophomore. Mr. Toth then instructed the acting school administrator to have appellant wait in the principal's office until he arrived because he wanted to talk to him and he was concerned about the safety of the students on the hit list.

{¶5} Mr. Toth returned to West Geauga at about 11:15 a.m. Upon his arrival, he read the hit list, which included a list of ten West Geauga students. At the top of the list, it stated, "top 10 people I would drown in a chipper." Mr. Toth then went into his office; told appellant about the list he had; and asked him if he had written it. Appellant said, yes, he did. Mr. Toth asked him why he wrote it, and appellant said he did not like the students on the list. Mr. Toth asked him if they were "picking on" him, and appellant said, no, he just does not like them and they are "druggies."

{¶6} Mr. Toth told appellant that this was a serious offense for which he could be suspended or expelled, and that he would have to report it to his mother. He asked appellant if he would write out what he had just told him on a blank statement form he gave him and appellant did so. Mr. Toth said he had appellant write out a statement to give him an opportunity to tell his side of the story. Mr. Toth said this is "[p]art of my investigation procedure." On the statement form, appellant wrote, "I wrote a fake list about people I disliked. It was not my intention to go through with it, ever. I wrote it about 2 weeks ago."

{¶7} After appellant wrote his statement, at about 12:25 p.m., Mr. Toth called the Chester Township Police Department. He said he reported the incident because the hit list could be construed as a threat. He said the timing of the list was also a concern because April is the anniversary of Columbine, and near that time there is always a "heightened sensitivity about *** students making threats ***."

{¶8} Mr. Toth then called appellant's mother; advised her of the situation; and told her he had already called the police. While talking to Mrs. Deitz, at 12:56 p.m., Chester Township Police Officer Matthew Brickman entered Mr. Toth's office. Mr. Toth explained the situation to him, and the officer then spoke with Mrs. Deitz on the phone. She refused to give him permission to talk to her son, and the officer therefore did not question him. When Mrs. Deitz came to the school to get her son, Mr. Toth told her that appellant could be suspended or expelled for this offense.

{¶9} Mr. Toth testified that before taking appellant's oral and written statements, he did not have any conversations with anyone at the Chester Township Police Department. He said the school uses blank Chester Township Police

Department statement forms, which had previously been provided by the police department, to take statements from students in all types of incidents, including possible criminal activity, safety issues, and school investigations.

{¶10} Officer Brickman testified that Mr. Toth told him he had obtained a written statement from appellant. However, Officer Brickman said that because he did not have Mrs. Deitz' permission to talk to appellant, the statement Mr. Toth had taken was of no evidentiary value to him. As a result, Officer Brickman did not take it with him or make it part of his report. The officer said that before he arrived at the school, he did not talk to Mr. Toth, and did not ask him to take a statement from appellant.

{¶11} The door to Mr. Toth's office does not lock from the inside so anyone inside the office can leave by simply turning the door knob, opening the door, and walking out. Mr. Toth never told appellant he was not free to leave his office. He obtained the oral statement and then the written statement from appellant while they were in his office.

{¶12} Appellant appeals the trial court's denial of his motion to suppress and the court's finding on the unruly charge. Appellant asserts three assignments of error. For his first error, he alleges:

{¶13} "The trial court erred when it denied appellant's motion to suppress."

{¶14} Appellate review of a trial court's ruling on a motion to suppress evidence presents a mixed question of law and fact. *State v. Lett*, 11th Dist. No. 2008-T-0116, 2009-Ohio-2796, at ¶13, citing *State v. Burnside*, 100 Ohio St.3d 152, 154, 2003-Ohio-5372. "During a hearing on a motion to suppress evidence, the trial judge acts as the trier of fact and, as such, is in the best position to resolve factual questions and assess

the credibility of witnesses." Id. *State v. Mills* (1992), 62 Ohio St.3d 357, 366. An appellate court reviewing a motion to suppress is bound to accept the trial court's findings of fact where they are supported by competent, credible evidence. *State v. Guysinger* (1993), 86 Ohio App.3d 592, 594. Accepting these facts as true, the appellate court independently reviews the trial court's legal determinations de novo. *State v. Djisheff*, 11th Dist. No. 2005-T-0001, 2006-Ohio-6201, at ¶19.

{¶15} In *Miranda v. Arizona* (1966), 384 U.S. 436, the United States Supreme Court held:

{¶16} "*** [T]he prosecution may not use statements *** stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. ***" Id. at 444.

{¶17} It is well-settled that juveniles are entitled to protection from self-incrimination under the Fifth Amendment, and are therefore entitled to Miranda warnings where applicable. *In re Gault* (1967), 387 U.S. 1, 55. Further, "[w]hile an adjudication of unruliness *** is not based upon a finding that the accused committed a crime, we believe it still carries a significant degree of stigmatization, which, when taken together with the possible loss of liberty, mandates application of constitutional safeguards." *Smith v. Grossmann* (S.D. Ohio, 1982), 6 O.B.R. 83, 88.

{¶18} Appellant argues that his statements should have been suppressed because Mr. Toth was acting as an agent for the police and did not advise him of his

Miranda rights. The state concedes that Mr. Toth did not advise appellant of his Miranda rights, but argues that because Mr. Toth was not acting under the direction of the police, he was not obligated to give appellant his rights prior to questioning him.

{¶19} This court in *State v. Dobies* (Dec. 18, 1992), 11th Dist. No. 91-L-123, 1992 Ohio App. LEXIS 6361, addressed the issue of when a private citizen, in that case, a social worker, is required to administer the Miranda warnings. This court held:

{¶20} "*** [I]t is clear that [the social worker] Mr. Smith is not a 'law enforcement officer' who was required to administer Miranda rights. Mr. Smith had no statutory duty to enforce laws, nor authority to arrest violators. Mr. Smith also testified that his department did not participate in the prosecution of appellant. Further, he was not sent to interview appellant at the request of any law enforcement authority, although he indicated that his department does, on occasion, contact the police if they think a crime has been committed.

{¶21} "*** In *State v. Bolan* (1971), 27 Ohio St.2d 15, 18, the Ohio Supreme Court stated that:

{¶22} "'*** the duty of giving "Miranda warnings" is limited to employees of governmental agencies whose function is to enforce law, *** that it does not include private citizens *not directed or controlled by a law enforcement agency*, even though their efforts might aid in law enforcement.'" (Emphasis added.) *Dobies*, supra, at *7-*8.

{¶23} The Supreme Court of Ohio in *Bolan* further held: "Concluding, as we have, that the right to the presence of counsel is not applicable to questioning or interrogation by private citizens, it would follow that a 'waiver' thereof is not required." Id. at 20.

{¶24} In support of its holding in *Bolan*, supra, the Supreme Court of Ohio cited an Illinois case, *People v. Shipp* (1968), 96 Ill. App.2d 364, in which the Illinois appellate court held that the detention and questioning of a student by a high school principal in his office, without police being present, did not require Miranda warnings. The Illinois court held: "the calling of a student to the principal's office for questioning is not an 'arrest' and he is not then in custody of police or other law enforcement officials. This situation does not fall within the scope of the *Miranda* decision as the Supreme Court has limited it." (Citation omitted.) Id. at 367.

{¶25} "Private person interrogation is within *Miranda* when *the presence of the police* and/or other circumstances indicate the questioner is acting on behalf of the police. *** *A critical factor is whether the police officer supervised the interrogation*." (Emphasis added and citation omitted.) *In re Gruesbeck* (Mar. 27, 1998), 2d Dist. No. 97-CA-59, 1998 Ohio App. LEXIS 1146, *8.

{¶26} Appellant argues that *Miranda* applies here because, he claims, Mr. Toth was acting as an agent of the police; however, the record does not support this contention. It is undisputed that Mr. Toth did not discuss this matter with police at any time prior to taking appellant's statements from him. The police did not ask Mr. Toth to question appellant or to take any statements from him. Moreover, during the entire time Mr. Toth was questioning appellant, they were alone in Mr. Toth's office; at no time during the interview was any police officer present. The fact that Mr. Toth decided on his own to take statements from appellant does not make him an agent of the police.

{¶27} In support of his contention that Mr. Toth was acting as a police agent, appellant argues that Mr. Toth asked appellant to write out his statement on a blank

police department statement form. Copies of this form had previously been provided by the police department to the school. However, this argument does not apply to appellant's oral statement taken prior to the written statement and without use of the police department statement form. In his oral statement, appellant admitted to Mr. Toth that he had authored the hit list. He denied that the students on the list had picked on him and said he wrote the hit list because he does not like those students and they are druggies. As a result, even if appellant's written statement was tainted by Mr. Toth's use of the blank police department statement form, since appellant gave his previous oral admission without use of the form, the admission of appellant's written statement would have been harmless error.

{¶28} However, while use of the police department form is hardly the best practice, its use did not make Mr. Toth an agent of the police. He testified that the school uses these forms whenever students are asked to make statements concerning all sorts of incidents, including possible criminal activity, safety matters, and any investigation conducted by the school. Mr. Toth said he asked appellant to write out his statement *as part of his investigation procedure* to give appellant an opportunity to tell his side of the story. *He did not make this request at the direction of the police department.* While Mr. Toth testified that appellant's actions could be construed as threatening, he also testified that the alleged offense could lead to suspension or expulsion, which would require an investigation by the school. Thus, the fact that Mr. Toth used a blank statement form provided by the local police department in taking appellant's written statement does not mean he was acting under the direction and

control of the police. In any event, as discussed above, this argument does not apply to appellant's earlier oral confession.

{¶29} Contrary to appellant's argument, there is no evidence in the record that Mr. Toth demanded that appellant fill out a statement admitting that he authored the hit list. Mr. Toth testified: "So after that I gave [appellant] a statement. I said: Could you please write down what you told me and – what you just told me in the statement."

{¶30} In addition, appellant argues the fact that Mr. Toth gave the statement to Officer Brickman demonstrates he was acting as the officer's agent. However, Mr. Toth testified that after he handed the statement to Officer Brickman, the officer did not keep it, but rather gave it back to him. Moreover, Officer Brickman testified:

{¶31} "Q. And when you arrived on scene did Mr. Toth give you that statement?

{¶32} "A. No.

{¶33} "Q. *** At any point in time did he hand you the statement ***?

{¶34} "A. No.

{¶35} "Q. *** So there wasn't a point in time where you had the statement and gave it back to him before leaving?

{¶36} "A. No, he had it sitting on the table. *** That's when I looked at it.

{¶37} "Q. *** Why didn't you take it and make it part of your report?

{¶38} "A. Well, it's of no evidential value to me as a police officer being that he's a juvenile and I know that I'm supposed to speak with Mom or Dad or legal guardian or custodian to be granted permission to speak and obtain statements from a juvenile."

{¶39} Thus, while there was a minor discrepancy in the testimony concerning whether Mr. Toth handed appellant's written statement to Officer Brickman, the trial

court, as the trier of fact, was entitled to believe Officer Brickman's testimony that Mr. Toth did not hand the statement to him and that he did not take it or include it in his report. That testimony defeats appellant's argument that Mr. Toth gave his statement to the officer.

{¶40} We therefore hold the trial court did not err in denying appellant's motion to suppress because the evidence supported the finding that, in taking appellant's oral and written statements, Mr. Toth was not directed or controlled by the police. Moreover, even if appellant's written statement was tainted by use of the police department statement form, as appellant argues, such taint would not affect the legality of appellant's previous oral statement.

{¶41} Next, appellant argues that Mr. Toth's questioning amounted to custodial interrogation, which required him to advise appellant of his Miranda rights. We do not agree.

{¶42} Miranda warnings are only necessary when the defendant is subjected to custodial interrogation. *Miranda*, supra, at 444, 460-461; *State v. Biros*, 78 Ohio St.3d 426, 440, 1997-Ohio-204. The primary inquiry in determining if there is custodial interrogation is, looking at the totality of the circumstances, whether a reasonable person would feel free to terminate the interview and leave. The determination of what constitutes custody does not depend on the subjective feelings of the accused or the unarticulated subjective goals of law enforcement. *Berkemer v. McCarty* (1984), 468 U.S. 420, 442; *State v. Hopfer* (1996), 112 Ohio App.3d 521, 545-546. Rather, the focus is upon the perception a reasonable person would have under the circumstances. *Stansbury v. California* (1994), 511 U.S. 318, 323-324, citing *Berkemer*, supra.

{¶43} Further, "Ohio courts generally have found that the act of law enforcement officers questioning minors while they are at school does not amount to custodial interrogation where there is no evidence that the student was under arrest or told he was not free to leave. *** Absent some evidence that the student is under arrest or restrained to a degree associated with a formal arrest, we see nothing so inherently coercive in the school setting that would require *Miranda* warnings. This is especially true when there is nothing in the record to indicate the number of officers involved, the length of the questioning, or the vigor and antagonistic nature of the questioning. Nothing before us indicates that a formal arrest was made or that a reasonable person in Christian's situation would not have felt free to leave. As a result, appellant has failed to meet his burden of showing that he was subject to a custodial interrogation and that *Miranda* should apply. ***" (Internal citations omitted and emphasis sic.) *In re Haubeil*, 4th Dist. No. 01CA2631, 2002-Ohio-4095, at ¶16.

{¶44} As noted above, the evidence supported the finding that Mr. Toth was not acting under the direction of the police. Appellant was therefore not subject to custodial interrogation because *Miranda* does not apply to questioning by private citizens. *Bolan*, supra.

{¶45} We therefore hold the trial court did not err in denying appellant's motion to suppress because the evidence supported the finding that appellant's statements were not the product of custodial interrogation.

{¶46} Appellant's first assignment of error is overruled.

{¶47} For his second assignment of error, appellant alleges:

{¶48} "The trial court erred in denying the juvenile's motion to dismiss the complaint."

{¶49} Appellant argues that because the complaint was signed by Officer Alan Dodge, rather than Officer Brickman, the complaint was defective and should have been dismissed. However, appellant failed to properly raise this objection in the trial court and therefore waived the alleged error. This court addressed this issue in *In re Vanek* (Sep. 29, 1995), 11th Dist. No. 95-A-0027, 1995 Ohio App. LEXIS 4473, as follows:

{¶50} "Appellant *** contends *** that the pleading requirements of Juv.R. 10 were not met. Specifically, appellant contends that the Juv.R. 10(B) requirements that the [complaint] be made under oath and that it contain a numerical designation of the statute which was violated, were not properly included. Appellant believes that these failures are fatal to this action. Appellant is mistaken. As the Summit County Court of Appeals stated in *In re Dukes* (1991), 81 Ohio App.3d 145, 150 ***:

{¶51} "'Juv.R. 22 provides for objections. An objection based on a defect in the complaint must be heard before the adjudicatory hearing by a pre-hearing motion. Juv.R. 22(D)(2). All pre-hearing motions must be filed by the earlier of seven days before the adjudicatory hearing or ten days after the appearance of counsel. Juv.R. 22(E). *** Because appellants' objection was not timely, it was waived.'

{¶52} "Accordingly, appellant's arguments concerning the sufficiency of the complaint are without merit under authority of Juv.R. 22. Appellant's failure to object at the appropriate time in the proceedings precludes her from now claiming that the complaint was defective, and obviates the conclusion that such errors should result in a reversal at this stage." *Vanek*, supra, at *6-*7.

{¶53} This court reaffirmed its holding in *Vanek* in *In re Barcelo* (June 26, 1998), 11th Dist. No. 97-G-2095, 1998 Ohio App. LEXIS 2921, in which this court held: "In addition, 'an objection based on a defect in the complaint must be heard before the adjudicatory hearing by a pre-hearing motion. Juv.R. 22(D)(2).' *In re Dukes*[, supra]. Failure to file a timely objection to a purported defect in the complaint constitutes waiver. Id." *Barcelo*, supra, at *13.

{¶54} Appellant failed to raise his objection in a pre-hearing motion. As a result, based on the well-settled law of this court, he waived the issue.

{¶55} Appellant argues, however, that, pursuant to *In re Hunt* (1976), 46 Ohio St.2d 378, he had the option to raise his objection in his answer, which he claims he did in his third defense. However, he misconstrues the holding in *Hunt*. In that case the Supreme Court of Ohio affirmed the trial court's denial of a writ of habeas corpus, holding that the appellant had an adequate remedy at law in the form of an answer or motion. The Court did *not* hold, as appellant argues, that objections to defects in a complaint can be asserted in an answer in lieu of a pre-hearing motion. We also note that, even if the objection could be raised in an answer, appellant's answer was filed five days before the adjudicatory hearing and so the objection would have been untimely. Juv.R. 22(E).

{¶56} Further, even if appellant had the option of raising his objection in his answer, he failed to properly allege it. As his third defense, appellant merely alleged, "The Complaint is contrary to the Juvenile Rules." However, in alleging the complaint violated the Juvenile Rules in general, appellant failed to allege that the state violated any Juvenile Rule and, as a result, this "defense" is meaningless.

{¶57} Finally, even if appellant's objection to the complaint was not waived, it would lack merit. This court in *State v. Cragon* (Apr. 15, 1994), 11th Dist. No. 93-A-1789, 1994 Ohio App. LEXIS 1593, held:

{¶58} "*** [A]ppellant contends that the complaint was defective because it was not signed by the victim herself, but was instead signed by the victim's father, *** who was not called as a witness by the state.

{¶59} "In the case of *Sopko v. Maxwell* (1965), 3 Ohio St.2d 123, 124, *** the court stated that:

{¶60} "'*** It is not necessary that the affidavit be executed by one who observed the commission of the offense. It is sufficient if such person has *reasonable grounds to believe that the accused has committed the crime*.'

{¶61} "***

{¶62} "The primary purpose of a complaint is to inform the accused of the crime of which he is charged ***. [*Cleveland v. Weaver* (1983), 10 Ohio Misc.2d 15,] 17" (Emphasis added.) *Cragon*, supra, at *4-*5.

{¶63} Our review of the complaint in the case at bar indicates that it adequately notified appellant that he had been accused of being an unruly child, in violation of R.C. 2151.022(C), in that he wrote a hit list of ten students. Further, although Officer Brickman's name is typed beneath the signature line, the complaint was signed and sworn by Officer Dodge, another officer of the Chester Township Police Department. In addition, the complaint recites that "the undersigned," i.e., Officer Dodge, has knowledge of the facts alleged in the complaint. Since Officer Dodge is a police officer with the same police department and signed the complaint on behalf of the department

with knowledge of the allegations, Officer Dodge had "reasonable grounds to believe" that appellant had written the hit list. He was, therefore, a proper signer of the complaint. *Cragon*, supra.

{¶64} Contrary to appellant's argument, *In re Dukes*, supra, is inapposite since, there, an unknown person signed the complainant's name on the complaint and put his or her initials next to the signature, indicating the complainant had not signed the complaint. Further, in *Dukes*, there was nothing to indicate the signer had authority to sign the complaint or had any knowledge of the allegations in the complaint.

{¶65} We therefore hold that, because appellant failed to properly assert his objection to the alleged defect in the complaint by pre-hearing motion, this issue was waived.

{¶66} Appellant's second assignment of error is overruled.

{¶67} For his third assigned error, appellant contends:

{¶68} "The trial court's finding that the juvenile was unruly beyond a reasonable doubt was against the manifest weight of the evidence."

{¶69} While appellant frames this error as a manifest-weight challenge, he presents no argument in support of this assignment of error, in violation of App.R. 16(A)(7). Instead, his argument challenges solely the sufficiency of the evidence. He therefore conflates the two issues, which are analytically separate and distinct. However, in the interest of justice, we will address appellant's argument.

{¶70} Evidential sufficiency is an inquiry into whether the state introduced adequate evidence to support the verdict as a matter of law. *State v. Johnson*, 9th Dist. No. 06CA008911, 2007-Ohio-1480, at ¶5. The proper inquiry is, after viewing the

evidence in a light most favorable to the prosecution, whether the trier of fact could have found the essential elements of the offense proven beyond a reasonable doubt. *State v. Jenks* (1991), 61 Ohio St.3d 259, 273.

{¶71} In contrast, evidential weight concerns the inclination of the greater amount of credible evidence, offered at trial, to support one side of the issue rather than the other. *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52. If, on weighing the evidence, the trier of fact finds the greater amount of credible evidence sustains the issue that a party seeks to establish, that party will be entitled to its verdict. "Weight is not a question of mathematics, but depends upon its effect in inducing belief." Id., citing Black's Law Dictionary (6th ed. 1990), 1594. Thus, a court reviewing the manifest weight observes the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the trier of fact clearly lost its way. *State v. Schlee* (Dec. 23, 1994), 11th Dist. No. 93-L-082, 1994 Ohio App. LEXIS 5862, *14 -*15.

{¶72} Appellant argues that his creation of a hit list of ten of his fellow students who he would put in a chipper was insufficient to amount to unruliness. He argues the state was required to present the testimony of students who were present when the hit list was circulated and that it actually caused them concern. We do not agree.

{¶73} R.C. 2151.022(C) provides: "As used in this chapter, 'unruly child' includes any of the following: *** Any child who behaves in a manner as to injure or endanger the child's own health or morals or the health or morals of others ***."

{¶74} "*** R.C. 2151.022(C) expresses a legislative intent to bar activities among minors, i.e., anyone under the age of eighteen, that *could cause physical and*

psychological harm to those minors." (Emphasis added.) *Notz v. Ernsberger* (1998), 125 Ohio App.3d 376, 382, discretionary appeal not allowed at (1998), 81 Ohio St.3d 1527. Thus, the potential to cause physical or psychological harm is all that is required; proof that the defendant's conduct actually caused harm to a particular victim is not required.

{¶75} Turning to the facts of this case, it is undisputed that appellant wrote the hit list of ten students. Before listing the students, appellant stated, "Top 10 people I would drown in a chipper." This mechanism, which is intended to be used to make mulch, has been depicted in recent motion pictures as a device used to mutilate victims in a gruesome and horrifying manner. Mr. Toth testified the hit list could be construed as threatening to the students on it. The hit list made him concerned for the safety of these students to the point where he felt he needed to report it to the police. When Mr. Toth asked appellant why he wrote the hit list, he said because he did not like these students and they are "druggies." The hit list was confiscated while it was being passed around in a class in which appellant was not present. However, since there was no suggestion the hit list was ever stolen from appellant, the trial court could reasonably infer that appellant allowed the hit list to be taken and circulated in class. Further, if any of the students on the hit list either saw his or her name on it or was advised that his or her name was on it, that "could cause psychological harm" to them. *Notz*, supra. Further, by creating this list and allowing it to be disseminated at school, appellant could injure or endanger the morals of other students by creating the impression that it is acceptable to prepare and disseminate such hit lists in school.

{¶76} We therefore hold there was sufficient evidence to support the charge, and that the trial court did not err in finding appellant to be an unruly child.

{¶77} Appellant's third assignment of error is overruled.

{¶78} For the reasons stated in the Opinion of the court, the assignments of error are without merit. It is the order and judgment of this court that the judgment of the Geauga County Court of Common Pleas, Juvenile Division, is affirmed.

MARY JANE TRAPP, P.J., concurs,

COLLEEN MARY O'TOOLE, J., dissents.