

Cases that demonstrate the value of electronically recording interrogations

Since 2007 we have been posting on our website in our quarterly Legal Update columns court decisions that illustrate the value of electronically recording interrogations. These cases illustrate the importance of the recordings to demonstrate the unfounded defendant claims of coercive interrogation techniques, as well as instances when the interrogator did act improperly. We have prepared a document that highlights over 40 of these cases for your review. [Click here](#) for the complete document. If you want to find additional cases go to www.reid.com and Search "The Value of Recording Interrogations."

(The second edition of our book, Electronic Recording of Interrogations, will be published in the first quarter of 2020)

In ***Janusiak v. Cooper*** (August 2019) the US Court of Appeals, Seventh Circuit, rejected the defendant's claim that her statements were coerced Based on [the] testimony and a viewing of the recording of the interview, the circuit court determined that the statements were made voluntarily.

The court noted that the interview session was lengthy (approximately seven hours including breaks), but found that Janusiak "did not appear to be over tired or unable to exercise her free will during the interview." The court found that there were "at least a couple" breaks in the questioning and that the officers offered Janusiak food and drink during the interview.

In ***Johnson v. Winn*** (August 2019) the US District Court, E.D. Michigan, Southern Division upheld the lower court's decision that the defendant's confession was voluntarily made. . . . Based upon the Walker hearing testimony and a review of the interview tapes, . . . this Court did not see that the officers in any way badgered the defendant, they didn't attempt to lead him in any way.

The defendant was coherent, he didn't appear to be under the influence of any medication or other drugs. . . . The defendant appeared to understand what was being asked of him and what was said to him.

In ***Commonwealth v. Gallett*** (March 2019) the Supreme Judicial Court of Massachusetts upheld the admissibility of the defendant's confession. After reviewing the interrogation video recording. . . .

The judge found that Gallett appeared calm, was responsive to the questions, and displayed well-organized thinking and rational decision-making on how to respond.

In ***Patrick v. State*** (June 2018) the Supreme Court of Florida rejected the defendant's claim of ineffective counsel because his attorneys did not challenge the validity of his

Miranda waiver and the voluntariness of his confession. After considering the video and Dr. Morton's testimony.....

There was no glaring behavior that would have led a reasonable judge or jury to believe that [Patrick] was under the influence of any drugs or alcohol or manifesting any drug withdrawal symptoms. Indeed, while tired and distressed concerning his crimes, Patrick seemed intelligent, reflective, and engaged during the interview, even drawing a map for the interviewing officer to show where he left the victim's keys, while providing detailed instructions.

In **Torres v. State** (February 2018) the Court of Appeals of Texas, El Paso, rejected the defendant's claim that his waiver of Miranda rights was not knowing, intelligent or voluntary. In the recording of Appellant's police statement, Detective Mike Lara noted that Appellant spoke to him in English, and Appellant affirmed that he speaks English.

The video recording of Appellant's custodial statement shows no evidence of intimidation or coercion, nor physical or psychological pressure to elicit statements from Appellant..... "in this particular case, it appeared to me like this was a real tragic event that occurred and ... my impression was [Appellant] couldn't wait to get it all off of his chest; he wanted to say what he was saying; let everybody know what had happened."

In **State v. Baker** (September 2017) the Intermediate Court of Appeals of Hawaii found the defendant's confession to be voluntary, rejecting his claims that threats and promises were made and that lying about evidence was a coercive tactic.

Although the defendant only completed the 8th Grade, the DVD demonstrates that he answered police questions readily and responsively, unless he reasonably wanted to think about the question and his answer. He displayed no signs of any inability to understand questions or to respond appropriately to any given question.

In **State v. Gray** (December 2017) the Court of Appeal of Louisiana, Fifth Circuit, upheld the lower court's finding that the defendant's confession was voluntary. After taking the matter under advisement and reviewing the video-taped confession, the trial court denied defendant's motion to suppress statement. In so ruling,

The trial court noted that defendant, at no time, appeared incoherent; rather, he was "lucid, talkative," and "expressive," and was able to give detailed information in response to the detective's questions. Further, the trial court noted that it did not see "evidence of any fragmented thought processes or incoherent answers," nor any indication that defendant did not comprehend the questions or was somehow impaired by any medication that may have been administered to him at the hospital.

In particular, the video-taped confession shows that defendant was advised of his rights prior to making his statement, that defendant initialed next to each right on the rights of arrestee form indicating he understood his rights, and that he signed the form signifying

that he read his rights and wished to waive them. Further, as noted by the trial court, defendant was lucid and gave coherent and detailed answers to the detective's questions. Moreover, there is no indication that defendant was sleeping during the interview or affected by any type of medication.

In ***US v. Redmond*** (April 2018) the US District Court, D. Nevada denied the defendant's motion to suppress his incriminating statements.

The Court finds that Defendant was not intoxicated during the interrogation to a degree that would affect his ability to waive his Miranda rights. Detectives Beveridge and Condratovich testified credibly that Defendant was lucid throughout the interrogation and was able to answer questions in a linear manner. This matches the Court's impression of the interrogation's audio recording. Defendant acted consistently during the interrogation with how he acted during the April 10, 2018 hearing.

In ***State v. Gomez*** (November 2017) the Court of Appeals of Ohio, Twelfth District, Butler County rejected the defendant's claim that he did not knowingly, intelligently, and voluntarily waive his *Miranda* rights.

The Court notes that the Miranda rights were read to the Defendant in Spanish. And while the Defendant, there was testimony that the Defendant's first language is not Spanish or English, there was ample testimony that he speaks the Spanish language and some of the English language.

The Court notes that at no time during the interview that was conducted in Spanish and English did the Defendant indicate that he could not understand either the interpreter or the law enforcement officers. In fact, to the contrary, the Defendant would, when asked a question by the police officer, not hesitate to correct or clarify his answer even when it was contrary to the officer's question.

In ***Rodriguez v. McDonald*** (September 2017) the U.S. Court of Appeals, Ninth Circuit, ruled that the investigators violated the defendant's *Miranda* rights.

That videotape and transcript rebut by clear and convincing evidence the state courts' factual determination that the detectives honored Mr. Rodriguez's invocation of his right to counsel—a factual determination that, on the record before the state trial court, was unreasonable. In this case, it is undisputed that Mr. Rodriguez invoked his right to counsel....

The videotape and transcript of Mr. Rodriguez's interview constitute clear and convincing evidence sufficient to rebut the state courts' factual finding that the detectives honored Mr. Rodriguez's invocation of his right to counsel by immediately ceasing their interrogation

In ***Commonwealth v. Tremblay*** (September 2017) the Appeals Court of Massachusetts, Suffolk, reversed the lower court's opinion that the defendant "was so intoxicated when he was questioned at the police station that he was incapable of making a knowing and intelligent waiver of his Miranda rights."

Based on the conduct of Sergeant Detective Stratton and the defendant's statements and behavior throughout the course of the videotape, the Commonwealth satisfied its heavy burden to prove that the defendant made a valid waiver of his Miranda rights. While the defendant does appear to stumble when he first enters the room with handcuffs on, at several points during the interview, the defendant stands up, and each time he appears quite steady on his feet. At one point, he stands to demonstrate how he hit the victim, and raises his knee while standing steady on one foot. When the defendant is led out of the room at the end of the interview, he shows no signs of unsteadiness or difficulty walking.

.....the videotape demonstrates that the defendant is alert and his answers to questions are responsive, coherent, and often "quite self-serving." The defendant's speech is clear and he appears alert and awake, not groggy or drowsy. He recounts a relatively complex series of facts replete with specific details, such as bus numbers, the name and location of a liquor store, the victim's home telephone number, and the location of specific items in the victim's apartment. The defendant corrects Sergeant Detective Stratton at one point when he asked, "so what happened tonight?" The defendant replies, "actually, wait a minute, it didn't happen tonight."

In ***U.S. v Hernandez-Gamez*** (November 2017) the U.S. District Court, S.D. California rejected the defendant's claims that he believed he did not have a choice as to whether or not he should talk to the investigators.

His contention is belied by the interrogation video and the totality of the circumstances.

Miranda warnings were given. Defendant gave his assent and signed his name on a form in Spanish advising him of his rights. He was told unambiguously that he could remain silent. He was told unambiguously that he could request counsel. He was told unambiguously that he could stop answering questions at any time. There is no indication that his waiver was involuntary. When asked if he understood his rights, Defendant said he wanted to answer questions. He stated, "I am willing to give a statement and to answer the questions. At this time I do not wish to have an attorney. I understand and I am aware of what I am doing...." He indicated that he understood what he just said.....There is no indication that Defendant's waiver was the product of intimidation, coercion, or deception.

In ***State v. Knight*** (June 2017) the Supreme Court of North Carolina upheld the lower court's decision to admit the defendant's incrimination statements. The video of the defendant's interrogation played a crucial role in the court's assessment.

In addition, ... there is no evidence here that defendant's statements were involuntary. The video of the interrogation shows that defendant was not threatened in any way and that Detective Wenhart did not make any promises, false or otherwise, to get defendant to talk.

In ***State v. Reed*** (October 2016) the Missouri Court of Appeals, Eastern District rejected the defendant's claim that the totality of the circumstances deprived him of his free will and forced him to confess.

"The actual circumstances surrounding the police questioning also indicate that Reed's confession was voluntary. Reed was advised of his [Miranda](#) rights before both interview sessions, and he waived those rights both times. Det. Rodesiler testified that he thought Reed understood his rights. Our review of the video supports the detective's testimony, as Reed listened to the warnings, appeared to understand them, and calmly signed the waiver form before both interviews. The record contains no evidence indicating that police threatened or intimidated Reed to sign the waiver form or to answer their questions.

In ***Smith v. Duckworth*** (June 2016) the US Court of Appeals, Tenth Circuit, upheld the lower court's decision not to suppress the defendant's confession even though an expert testified that that Mr. Smith functioned "at a borderline or low average [IQ] range with deficiencies in the information processing speed and the influence of the chronic and current PCP use would affect his ability to understand the *Miranda* warnings and more importantly to understand the consequences of waiving those warnings." The trial court rejected the offer of proof.

*Based on its review of Mr. Smith's videotaped interview, the trial court observed that Mr. Smith was "very cocky" and "extremely verbal about how he tricks people and misleads them and has got them convinced how crazy he is"; that he "was able to plan how to switch clothes with different people and conceal his identity" to hide from police; that during the interview he was not "disoriented or unable to comprehend" but rather was "extremely animated and disturbingly explanatory about the murders he committed and how they were other people's fault"; and that he demonstrated the "ability to reason, make intelligent decisions, to co-op other people into his plan and to understand perfectly the consequences of his actions as he's trying to avoid capture." Ultimately, the trial court determined that "there are many indicia[] demonstrat[ing] that [Mr. Smith] possessed intelligence" and that, during the interview, "he demonstrated in many different ways his understanding of what was going on." Accordingly, the trial court concluded that "testimony regarding his specific IQ range" would not be relevant to its assessment of his *Miranda* waiver.*

In ***People v. Clark*** (May 2016) the Supreme Court, Appellate Division, Fourth Department, New York rejected the defendant's contention that the [lower] court erred in

refusing to suppress statements he made to the police during the 26-hour period of videotaped interrogation.

We reject defendant's contention that the court erred in refusing to suppress statements he made to the police during the 26-hour period of videotaped interrogation. It is axiomatic that the length of the interrogation period “does not, by itself, render the statement[s] involuntary” Instead, we must view “ ‘the totality of the circumstances surrounding the interrogation’ ” The detective ascertained defendant's date of birth, that he had completed the 10th grade and was obtaining his GED, that he could read and write, that he was not under the influence of alcohol or marijuana, and that he had never before been read his Miranda rights. The detective “did not restrict himself to a mere reading of the rights from a card ... [but][i]nstead ... described the rights in more detail and simpler language, verifying that defendant understood [them]” We further conclude that his will was not overborne by coercive police tactics.... Contrary to defendant's contention, the tactics used by the police, i.e., telling defendant that they thought he was a “good kid,” stating that he would feel better when he told the truth, and challenging the inconsistencies in his statement with the evidence, were not improper or unusual where, as here, there is no evidence that defendant was of subnormal intelligence or susceptible to suggestion.

In **McCray v. US** (March 2016) the District of Columbia Court of Appeals upheld the lower courts admission of the defendant’s incriminating statements in which the video taped interrogation played a critical role in determining the voluntariness of those statements.

After indicating that he had again reviewed the videotape (parts of it several times) and reviewed case law, Judge Greene summarized his observations about the videotape in detail and articulated the “facts [that] emerge[d]”; he also reached conclusions drawn from the facts.... Moreover, Judge Greene found that Mr. McCray “[n]ever appeared intimidated or affected in any way by Detective Weeks raising her voice in response to similar conduct by the defendant.”

... the judge declared, “Observing him in that interview ... I don't see how anyone could conclude that his will was ever overborne. He was thinking a whole lot about what was going on and what he would do about it. He was very calculated in how he responded.” Furthermore, “[w]hile [Mr. McCray] was 17, he was certainly a mature 17 for purposes of the criminal justice system”; “he did not have any obvious disabilities”; “[t]here were no police promises of leniency in exchange for the statement,” and no “badgering of the defendant.”

In ***US v. Wigginton*** (October 2015) the US District Court, E.D. Kentucky, upheld the lower court's rejection of the defendant's claim that he was too intoxicated to make reasonable decisions about what he was saying.

Further, the Court has reviewed the video of the interview and the objective circumstances support those descriptions. Throughout the interview Defendant remained upright, coherent, and demonstrated no other physical manifestations of intoxication. His speech was not slurred, and he engaged in meaningful conversation with the officers. His answers to law enforcement's questions were appropriate, and were focused on the task at hand. Moreover, his discussions with the officers indicates he was fully aware of the seriousness of the situation at hand and had detailed knowledge of the criminal justice system.... Moreover, at no time did Defendant inform officers of his alleged intoxication.

In ***Melendez v. Koehn*** (November 2015) the US District Court, N.D. California, upheld the defendant's conviction, rejecting his claims of an invalid *Miranda* waiver and of a coerced confession, in part, after reviewing the videotape of the interrogation.

The court referenced the videotape in reasonably concluding that Petitioner "felt comfortable stating and restating his version that D.C. was a promiscuous young girl who planned enticing him... This, along with "the officers advis[ing] him he was not under arrest; he could stop talking at any time and they would take him back to work," sufficiently supports the court of appeal's determination that Petitioner was not in custody... And although Petitioner was questioned at length at the police station, he was not physically restrained or cuffed, and Detective Garay was assisting in Spanish during the meeting.

In ***Loza v. Mitchell*** (September 2014) the US Court of Appeals upheld the Ohio Supreme Court's decision to admit the defendant's incriminating statements...

After reviewing the video recording and transcript of Loza's interrogation, we conclude that the Ohio Supreme Court's determination that the detectives did not threaten Dorothy Jackson or Loza's unborn child was not unreasonable. The record supports the court's conclusion that "detectives merely informed appellant of the possible consequences of his actions" when they told Loza that both he and Dorothy Jackson could be imprisoned for their involvement in the killings.... As the court noted, most of the detectives' references to Jackson during the interrogation were in response to Loza's questions about what would happen if Jackson were charged and prosecuted.

In ***State v. Glasscock*** (September 2014) the Court of Appeals of Utah upheld the lower court's decision that defendant's confession was not coerced.

"Glasscock argues that his confession was involuntary because the detectives employed "coercive police interrogation tactics" to take advantage of his unstable mental

condition, and he argues that "[s]everal of the [court's] findings of fact" supporting the court's denial of his motion to suppress "were clearly erroneous." Specifically, Glasscock maintains that he was "significantly impaired from alcohol, heroin, pain pills" and that "he suffered from multiple disorders, including 'bipolar Type I,' 'post-traumatic stress,' and 'borderline personality.'" And even though the detectives "knew that Glasscock had consumed a number of impairing substances" that had "significantly impacted [Glasscock's] memory," Glasscock contends that they employed a "false friend technique" and other coercive strategies that "basically forced [him] to say what they wanted [him] to say." After carefully reviewing the evidence in the record, including the video of Glasscock's police interrogation, we agree with the district court that Glasscock's confession was not coerced.

In re J.M., a Minor (People v. J.M.) (April 2014) the Appellate Court of Illinois found that "J.M.'s youth, his mental deficiencies, the DVD which shows not only his inability to read his rights, but also his trust in Jany and Vespa despite their intention to get a statement to use against him, and Dr. Cuneo's credible, expert testimony, we find that the trial court's decision that respondent knowingly and intelligently waived his [Miranda](#) rights is against the manifest weight of the evidence."

... J.M. was also 13 years of age; however, his mental capacity was that of a 7-year-old. His IQ was either 54 or 56, which, ... puts him in the mild mentally retarded range. J.M. also attended special education classes and was unable to explain the meaning of the word "silent" with regard to the first [Miranda](#) warning.

Dr. Cuneo specifically found that J.M., who only reads at a first-grade level and who was intellectually in the bottom .04% of the population, was incapable of reading or understanding his [Miranda](#) rights. Our own review of the videotaped statement contained on the DVD shows that J.M. was incapable of reading his rights.

J.M. could not even read the word "silent" in the first warning. The DVD shows that after J.M. had trouble reading the word "silent," Officer Jany took over and read him his rights, trying to explain them along the way. Jany also told J.M. that J.M.'s mother was outside and she just hoped J.M. would be honest. After Jany read J.M. each of his rights, he told J.M. to initial and then sign the form. J.M. complied. Even though J.M. said he watched rights being given on television and had been read his rights "at the other station" on a different occasion, our review of the DVD does little to alleviate our concerns that J.M. did not fully appreciate that it was the State's intention to use his statement to secure a conviction against him or that he had the right to stand mute and request a lawyer. Instead, it appears to us that J.M. was compliant and wanted to please the officers, which, as previously discussed, is common among those suffering a mental deficiency."

In ***McNear v. State*** (March 2014) the Court of Appeals of Georgia rejected the

defendant's claim that his statements to police were voluntary and admissible. McNear asserted that his statements were not voluntary because they were made over a six hour period of time while he was "exhausted and still inebriated" from an evening of heavy drinking.

While Defendant contends that he was intoxicated at the beginning of his interview with the officers, Defendant's intoxication did not prevent him from making a rational, voluntary statement. Defendant was lucid, answered questions forthrightly, and recognized the nature of his detainment. Officers adequately explained to Defendant his rights several times throughout the interview, and Defendant clearly understood what the officers were telling him. Consequently, considering the totality of the circumstances, Defendant's statements were voluntary in spite of his possible intoxication.

In ***People v. Hughes*** (December 2013) the Appellate Court of Illinois, First District, Third Division relied extensively on the video recorded interrogation to determine that the defendant's confession should be inadmissible.

The court stated that, We watched the video recording of Hughes' interrogation from start to finish. Our bird's-eye view of what occurred before the first confession and, more tellingly, between the time of the first confession and the second confession, raises intolerable doubts about the validity of the second confession. The methods the detectives used during the interrogation process contaminated this confession. The totality of the circumstances underlying Hughes' second confession establish that he lacked the ability to make a rational, unconstrained decision to confess.

In ***People v. Kronenberger*** (March 2014) the Appellate Court of Illinois, First District, First Division, upheld the lower court's decision to admit the defendant's confession, relying on the videotape of the interrogation to discredit the defendant's claims.

From the court's opinion: "The defendant makes a number of arguments that his videotaped confession to the police was given involuntarily, because the interrogation techniques used by police detectives to obtain it included repeated threats, coercion and deception. Such repeated threats and coercion, he asserts, precluded him from voluntarily waiving his [*Miranda*](#) rights or otherwise voluntarily providing a statement.

... Based on our examination of the videotaped statement, we find that the defendant's portrayal of the interrogation as containing repeated threats and coercion to be an out-of-context view of the detectives' comments. The running theme of the bulk of the interrogation was that the police tried to convince the defendant to tell his version of what happened and tried to appeal to his sense of doing the "right thing." Throughout the interrogation, the detectives told the defendant that they knew he was involved in the crime but did not think he was the shooter, and that they thought Emil was actually the

mastermind behind the robbery and killing. ... Likewise, we find that the police did not offer any inducement or promises of leniency to obtain the defendant's confession. Rather, the alleged "promise of leniency," when viewed in context on the videotape, shows that Detective Murray informed the defendant that the detective did not "cut deals," that the detective's objective was to have the "absolute truth in knowing that [he was] putting the right person in jail," and that he wanted to be able to state with certainty that the defendant did not personally discharge the firearm.... Indeed, during the interrogation, detectives never misrepresented to the defendant that he would escape legal consequences if he confessed, but instead, they candidly told the defendant that "no doubt" he was in a bad situation, that no one would get a "free walk," but that he should do the "right thing" by telling the police what had occurred.

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In **Hansen v. Johnson** (2014) the US District Court, S.D. California found that reviewing the electronic recording of the defendant's interrogation and confession to be critical in evaluating the voluntariness of the statement. From their opinion:

The interrogation was recorded on a DVD player. Throughout the interview, Hansen who was one month shy of her 18th birthday, displayed a calm and rational demeanor. She showed emotion only during breaks and at the end of the interview. Hansen's responses and her level of engagement in the interview indicate that she understood what was being discussed and that she was aware of her predicament. She also told the detectives that she was familiar with her Miranda rights. The interview lasted about 80 minutes and thus was not excessive in length. The detectives removed Hansen's handcuffs for the interview. Throughout the interview, the detectives' tone and demeanor were civil and professional. The detectives did not use deceptive practices during the interview. In fact, Hansen remarked during the interview that the detectives were "both very nice," and said, "I think you guys are the most straightforward people I've seen."

The DVD recording of the interview supports the trial court's finding that Hansen did not confess because of coercion applied by the police, but rather, that she confessed freely and voluntarily.

In ***State v. Walker*** (2013) the Court of Appeal of Louisiana, Second Circuit held that the defendant's confession was admissible.

"Defendant complains that he did not understand his *Miranda* rights or have the ability to comprehend his actions. He asserted that he did not knowingly, intelligently, and voluntarily waive his rights prior to giving the confession. On appeal, he argues that his confession was the product of fear, duress, intimidation, menaces, threats, inducements and/or promises.

The trial court was correct to conclude that defendant's statements, including his confession, were freely and voluntarily made. Twice on the video, the defendant is re-advised of his rights. He begins reciting the events as they occurred and appears relieved to be doing so. He is brought dinner during the confession, and he eats. He is allowed to smoke. There is no coercion.

In ***Reed v. Woods*** (2013) the US District Court, E.D. Michigan upheld the lower court's decision that the defendant's confession was not coerced.

"Petitioner's second claim asserts that his statement to police violated his Fifth Amendment rights. Petitioner states that the police offered him leniency if he cooperated and that he was scared. Respondent argues that the state court adjudication of the claim was reasonable.

Defendant was advised of his rights before he was questioned and voluntarily, knowingly and intelligently waived those rights, although he refused to sign a written waiver. Although the officer made promises to defendant, most reflected a promise to make an effort to gain a more lenient outcome depending [on] the information defendant could provide. As noted, an officer told defendant that the police had no actual charging authority. Thus, the interrogating officer did not make any explicit promises to defendant with respect to actual criminal charges and sentencing. With regard to other factors, the interview was not prolonged. There was no evidence that defendant was threatened or abused, or that defendant was intoxicated under the influence of drugs, deprived of food or drink, or sleep deprived. Although defendant claims that he was "scared", there was no evidence that his psychological state was altered by fear to a degree that he was unaware or not operating of his own free will.

In ***US v. Mitchell*** (2013) the US District Court, N.D. Texas, upheld the admissibility of the defendant's waiver and statements even though he had claimed that the "detective's alleged statements to Defendant, the detective's alleged tone of voice, and Defendant's lack of sleep, lack of food, and medical condition" prevented him from making a free and deliberate choice to waive his *Miranda* rights.

After listening to the audio of the interrogation in its entirety, the court does not believe the tone of voice rose to the level that would cause Defendant to be "overborne" and thereby render any of his statements involuntary. The court certainly does not expect an interrogator to act in a coercive, threatening, or overbearing manner; however, an interrogation is not a playbook for civility. An interrogating officer can, and often does, use terms and language that would not be appropriate in another venue. As the Fifth Circuit has noted, "there is nothing inherently wrong with efforts to create a favorable climate for confession." ... Further, it is universally known that an interrogation can be stopped at any time by a custodial suspect.

In ***US v. Smith*** (2013) the US District Court, E.D. Michigan, Southern Division, upheld the defendant's confession relying extensively on the videotape of the interrogation.

A careful review of the videotaped interrogation reveals that early on in the questioning, after Smith was advised of his rights, he said numerous times, "I'm done," or "I'm done talking." In each of the approximately eight times that Smith said he was done, however, he continued talking and questioning continued.

*Even if Smith did invoke his Fifth Amendment right to counsel, he later waived that right. Smith did not make his most damaging admissions until after a break in questioning whereupon the interview resumed at his request. From the video, it is obvious that Smith now wants to talk as he is seen physically waving the officers back into the room with his hands and states that he wants to answer their questions. Smith himself reinitiated the police interview after asking for counsel; thus, under the holding of the Supreme Court in *Oregon v. Bradshaw*, there is no Edwards violation in this case.*

Throughout the interview, Mr. Smith went toe-to-toe with his questioners, shouting as much at officers as they were shouting at him. Smith has not shown that his circumstances made him susceptible to having his will overborne, or that his will was, in fact, overborne by police coercion. Accordingly, Smith cannot show that his waiver of his rights was involuntary and his confession should not be excluded on this basis.

In ***State v. Palacios-Rodriguez*** (2013) the Superior Court of New Jersey, Appellate Division, upheld the defendant's confession, relying extensively on the trial court judge's review of the videotape of the interrogation.

And I must say from looking at the video ..., it appear to me that no[t] only was the language communicated to in a very correct manner—there's nothing to indicate that didn't understand the terminology that being explained to him through the interpretation....

"Likewise, in the case at bar, the trial court recognized that defendant exhibited some degree of intoxication, however, the court determined that defendant knowingly waived his rights. As evidenced by the Miranda hearing proceeding and the court's observation of the interview tape, defendant appeared to be under the continuing influence of alcohol

yet was capable of communicating with the detectives and was responsive in answering questions."

In ***State v. Swindler*** (2013) the Supreme Court of Kansas found the video recording of the defendant's interrogation compelling evidence that his rights were violated. "In this case, Swindler does not claim officers manufactured information or evidence in order to get him to confess, But he argues that the investigators' bait and switch about his ability to terminate the interview and leave had the same coercive effect.

The video in the appellate record makes it very clear that Swindler wanted to exercise the power the investigators had initially guaranteed that he possessed. From the time that he said "I'm done. I want to go home. I'm done," it is obvious that Swindler wanted to terminate the interview and leave the KBI office. His girlfriend and two small children were waiting for him in the hallway, and he expressed his desire to go to work to provide for his children. He repeated that he was "done" and wanted to go home.

In short, the investigators set the rules of engagement and then did not hesitate to break them as soon as they thought Swindler might slip away without telling them what they wanted to hear. Under the totality of these circumstances, the State cannot carry its burden to show that Swindler's resulting oral confession, written confessions, and drawing were given voluntarily under the Fifth Amendment. The district judge's refusal to suppress the confessions and drawing was error."

In ***Malloch v. State*** (2012) the Court of Appeals of Indiana relied extensively on the video recording of the defendant's interrogation to evaluate the credibility of his allegations. Detective Lauer asserted, repeatedly and falsely, that his investigation clearly established that Malloch intentionally touched C.P. However, his deception does not necessarily render the confession involuntary.

We have examined each of Detective Lauer's statements that Malloch highlights on appeal. In considering the totality of the circumstances, we also note that Malloch was thirty-five years old at the time of the interviews, had an associate's degree in architectural engineering, and supported his family with a job as a network engineer. Before each interview, he was read his [Miranda](#) rights and indicated that he understood them. As we concluded above, Malloch did not request an attorney, and Detective Lauer made no promises in order to get the confession. Further, there is no indication, nor does Malloch suggest, that he was intoxicated or sleep-deprived. The second phase of the first interview, the only portion in which Detective Lauer was confrontational in his questioning, lasted just under an hour.

We acknowledge that Detective Lauer's interrogation of Malloch was confrontational and intense in light of the serious offenses being investigated. Nonetheless, after our own careful review of the video recordings and consideration of the totality of the circumstances, we conclude that there is substantial evidence to support the trial court's conclusion that Malloch's statements in both interviews were voluntary under federal and

state standards of review.

In ***Van Jackson v. State*** (2012) the decision by the Texas Court of Appeals, Austin, points out the value of investigators video recording the interrogation. In their decision the court stated that, "Jackson argues that the video proves that he was "fatigued, hungry, injured[,] and left isolated in a small room for some time" and that the detective induced his confession by suggesting that he might receive a lighter sentence if he was honest and apologized for robbing Rivas.

..... Although Jackson was arguably tired during the interrogation, the video shows that he was alert, coherent, and could answer the detective's questions. The detective's questioning lasted less than twenty minutes, and at no time was the detective threatening or overbearing.... Therefore, we conclude that Jackson's confession was voluntary, and the trial court did not err in denying Jackson's motion to suppress the confession.

In ***Lewis v. Miller*** (2012), the U.S. District Court, E.D. California upheld the lower court's decision to admit the defendant's incriminating statements, even though the "Defendant contends the "[t]he totality of circumstances demonstrate that [she] did not voluntarily waive her *Miranda* rights" and that she did not voluntarily confess to police.

In reaching their opinion the videotape of the interrogation proved invaluable to the Court, which stated, "This court has reviewed the videotape of petitioner's interrogation and agrees with the California Court of Appeal that petitioner's confession to police was not given involuntarily. There is no evidence petitioner was coerced to confess to a crime she did not commit or that she was intimidated or worn down by improper interrogation tactics, lengthy questioning, or anything else. On the contrary, petitioner answered the detective's questions fully and freely during an interrogation that was not unduly lengthy and never harsh. There is also no evidence that petitioner's will was overborne by the overall circumstances or the conduct of the interrogation. Petitioner was alert and articulate throughout the interrogation, she was offered breaks whenever she appeared to be in pain or upset, and she was given food and water and allowed to walk outside the interview room. The interrogation was not conducted in an uncomfortable location and petitioner was frequently asked how she felt and whether she needed anything.

In ***People v. Walker*** (2012) the Appellate Court of Illinois, First District, the trial court had reviewed the videotaped interrogation of the defendant twice to determine whether or not he made a knowing and intelligent waiver of his rights.

The trial court also viewed Walker's videotaped statement twice and found that the statement was voluntarily, knowingly, and intelligently made. We find that Walker's statement was voluntary and the trial court properly denied his motion to suppress."

In ***State v. Lee*** (2011) the Court of Appeal of Louisiana, First Circuit, upheld the trial courts decision to admit the defendant's confession, relying on the videotape of the interrogation to review the defendant's allegations.

The court found that "The videotape of defendant's confession does not support his contention that the remarks improperly induced him to confess. Defendant gave the confession after being advised of his rights and indicating that he understood them. The videotape reflects that he was advised of the reason for the interrogation, and was questioned by the police for only approximately twenty-five minutes before confessing. No promises were made to him. In fact, Detective Favaron specifically told defendant that he wanted him to understand that he had no control over what would happen.

In ***Rodriguez v. Martel*** (2011) the U.S. District Court, E.D. California, rejected the defendant's claim that his statements to police should have been suppressed at his trial because they were "obtained involuntarily and without a valid waiver of his Miranda rights."

However, when the videotaped interview was reviewed, the court stated that it "corroborates the absence of any coercive tactics. There was no physical or psychological pressure placed on defendant, and no threats or promises made to him, to induce him to talk to the detectives. The detectives were polite toward defendant, their tone cordial and friendly. When defendant expressed he was thirsty, he was brought water. He manifested no hesitation or uncertainty during questioning about whether he wanted to speak to the detectives. In sum, our review of the taped interview reveals nothing in the detectives' treatment of defendant or his response to them to indicate that he was intimidated or worn down in any way by improper interrogation tactics, lengthy questioning, or anything else."

In ***State v. Decloues*** (2011) the Court of Appeal of Louisiana, Fourth Circuit, relied on the taped confession to determine whether or not the defendant was too impaired to offer a voluntary confession.

" Our review of the taped confession indicates that at the beginning of the interview the detective read the defendant his rights. The defendant appears attentive while those rights were being read, acknowledging each one individually. When asked whether he understood his rights, the defendant gave a definitive yes. The defendant is noticeably fidgety and sometimes had to be asked to speak up, but as Doctor Vosburg observed, he was easily calmed. His answers were responsive to the questions asked by the detective. Significantly, the confession is detailed in the description of how the murder occurred.

Moreover, the defendant's confession coincides with the physical evidence presented at trial. The tape and testimony show that appellant was advised of and understood his rights.

In ***US v. Hristov*** (2010) the US District Court, D. Massachusetts, upheld the admissibility

of the defendant's confession. In making their decision the lower court put great reliance as to the credibility of the defendant's confession based on the behavior he displayed during the interrogation.

After reviewing the videotape, I find that the waiver was knowing and valid. Hristov shows no sign of having below-average intelligence, having played an integral part in an ATM skimming scheme that involved the installation and operation of sophisticated technology. Furthermore, Hristov appears to have a decent, albeit not perfect, grasp of English. The videotape indicates that Hristov was able to understand and answer most of Detective Cleary's questions without difficulty. He demonstrated a fairly substantial vocabulary....."

In ***Commonwealth v. Chaperon*** (2010) the Appeals Court of Massachusetts upheld the admission of the defendant's confession after reviewing the videotape of the interrogation.

Viewed in that way, we agree with the motion judge that the manner in which the defendant was questioned did not render the defendant's statements involuntary. Significantly, throughout the interrogation, the defendant remained composed and did not seek to terminate the interview; he carefully calibrated his answers, offering explanations (both plausible and implausible) to deflect suspicion; and, despite eventually admitting that he had touched or rubbed the victim's vagina on a number of occasions, he steadfastly denied that he ever penetrated her with his fingers as she alleged.

In ***People v. Robair*** (2010) the Court of Appeal, Second District, Division 6, California upheld the trial court's decision to admit the defendant's confession. The trial court had relied heavily on reviewing the video and audio recordings of the defendant's interrogation to determine the voluntariness of his statements.

"The overall tenor of the interview was courteous. The officers were using a normal tone of voice. Nobody was yelling at him. He was offered food and beverages which he didn't want, but then at the end when he wanted a soda, one was provided to him very promptly. They did accuse him of lying. They urged him very strongly to tell the truth on multiple occasions. They questioned him very persistently, but not in an overbearing manner. Nobody was leaning over him or shaking a fist in his face or anything like that." The court further found "[t]here was never any offer of leniency. They did tell him that they would take him to see if he could show them where this Eric lived so that they could talk to him and follow up on his story about Eric, and they did suggest that it was getting close to the time when they were going to be doing that and he would have to go show them, but that didn't seem to be an improper threat."

In ***the Matter of Richard Uu*** (2008) the Supreme Court, Appellate Division, Third

Department, New York points out the value of recording an interrogation. In this case Richard Uu had made incriminating statements about sexual contact with a four-year-old girl. At a juvenile delinquent proceeding he tried to suppress his statements "on the grounds that he did not make a knowing and intelligent waiver of his *Miranda* rights and that the waiver was obtained in violation of his right to counsel."

The court stated that "viewing the totality of the circumstances surrounding the Miranda waiver and subsequent confession, we conclude that Family Court correctly declined to suppress respondent's statements as involuntary." The court went on to say, "Furthermore, upon a review of the videotape of respondent's interview, we find no basis to conclude that respondent's admissions were involuntary. The entire interview was brief in duration, lasting approximately 45 minutes and took place at a reasonable time of the day in a room certified for the questioning of juveniles. Additionally, a DSS caseworker was present with respondent during the entirety of the interview. There is no evidence that respondent was tricked, threatened or coerced into confessing, or that the strategies used by the investigator were so fundamentally unfair so as to have denied respondent due process or "create[d] a substantial risk that [he] might falsely incriminate himself" Considering the totality of the circumstances surrounding respondent's questioning, we cannot say that his statements were involuntarily made."

In ***Perales v. State*** (2008) the Court of Appeals of Texas, Fort Worth upheld the trial court's decision to admit the defendant's video taped confession. The defendant had claimed that it should have been excluded because his confession was involuntarily given because "(1) he was too young and inexperienced to intelligently waive his rights, and (2) his confession was induced by promises of benefits that he would receive if he confessed and by lies that the investigating detective told him during the interrogation."

In their decision the Court of Appeals points out that "We have reviewed the video and the transcript of the video admitted at trial. The video reveals that Detective Dishko, the investigating detective, read Perales his rights-as set forth in the code of criminal procedure article 38.22, section 2(a) - within the first minutes of the interrogation. He asked Perales if he understood his rights, and Perales indicated that he did. Perales then signed a form to further verify that he understood his rights.

In ***People v. Duchine*** (2008) the defendant claims that his police station confession should have been excluded from evidence because he did not expressly waive his *Miranda* rights.

The Court found that the "Defendant's videotaped police interrogation shows that he was fully advised of his Miranda rights, and said he understood those rights. The police never asked defendant to waive his rights; the interrogating officer started questioning defendant after advising defendant of his rights without obtaining an express waiver. However, it is clear from the circumstances that defendant knowingly and voluntarily

waived his rights." The Court stated, "[A]n explicit statement of waiver is not invariably necessary to support a finding that the defendant waived the right to remain silent or the right to counsel guaranteed by the Miranda case."