Court Decisions regarding Juvenile interrogations/confession admissibility

10-year-old can make voluntary waiver of rights and can understand the wrongfulness of his acts

In *People v. Joseph H.* the Court of Appeal, Fourth District, Division 2, California, upheld the lower court's decision that a 10-year-old understood the wrongfulness of his acts (shooting his father in the head) "despite the statutory presumption of incapacity" and voluntarily waived his Miranda rights. From the Court of Appeal's decision:

"After being taken to the police station, the minor was interviewed by Detective Hopewell, a detective assigned to the Sexual Assault and Child Abuse Unit, whose role was to interview Joseph and his siblings. Prior to admonishing Joseph of his Miranda rights or interviewing him about the shooting itself, the detective asked him questions pursuant to a Gladys R. questionnaire, designed to determine if an arrestee under the age of 14 understands the wrongfulness of his or her actions, within the meaning of section 26. Following that questionnaire, the detective asked Joseph if stealing candy from a store without paying for it was right or wrong; Joseph replied it was wrong. She then asked Joseph to give her an example of doing something right and doing something wrong. Joseph responded that doing wrong things could hurt people, while it was good to care, and to help people. After asking him for an example of something that he would do that would be right, she asked Joseph to give an example of doing something that was wrong, to which Joseph replied, "Well, I shot my dad." Shortly thereafter, the detective advised Joseph pursuant to Miranda and proceeded to question him about the shooting.

The minor refers to the videotape and transcript of the interview as support for the assertion that Joseph fundamentally misunderstood the nature of Miranda and his right to be free of coercive confessions. He argues that his equivocal response when the detective asked if understood what she was saying, his body language, and his hesitation showed he did not understand what was being explained. We disagree.

Here, the minor points to his age, and the fact that he suffers from ADHD and other mental disabilities, to argue that he was susceptible to suggestion. The minor relies on the testimony of Dr. Geffner's opinion that "[H]aving borderline intellectual functioning and other cognitive deficits can make a person more easily suggestible." This may be true, but Dr. Geffner's suggestion that it was "possible" he was more easily suggestible, is not evidence that Joseph was, in fact, suggestible or confused. The detective repeatedly asked Joseph if he understood what she was explaining about his rights, and when he demonstrated misunderstanding, she provided additional explanation; Joseph's responses indicated he understood. Nothing in the record supports the premise that he was confused or suggestible.

The minor also argues that his communication deficits made it "self-evident that he would have had trouble effectively communicating his reservations and preserving his rights." The videotape of the interview shows he had no trouble communicating, aside from needing explanation of a few terms. In this respect, the detective was careful to

follow up the explanation of his rights with questions to insure he understood what she was explaining, so the assertion he had difficulty communicating his reservations is not supported by the evidence.

Further, the record does not support the minor's assertion that his hesitation, confusion, and misunderstanding of the full scope of what it meant to "waive" his rights, showed involuntariness. To the contrary, the video shows he felt guilty for what he had done. Absent coercive conduct by police, and despite his young age, his ADHD, and low-average intelligence, the finding that Joseph voluntarily waived his rights, guaranteed by the Fifth Amendment, is supported by the record.

Pursuant to section 26, a minor under the age of 14 is presumed to be incapable of committing a crime. Thus, a finding of capacity is a prerequisite to an adjudication of wardship for a minor under 14... The presumption of incapacity may be rebutted by the production of "clear proof" that the minor appreciated the wrongfulness of the conduct when it was committed.... "Clear proof" means clear and convincing evidence.

In determining capacity pursuant to section 26, the juvenile court must consider the child's age, experience, and understanding.... A minor's knowledge of his act's wrongfulness may be inferred from the circumstances, such as the method of its commission or its concealment.

Here, Dr. Salter testified that Joseph knew the difference between right from wrong. The court heard the testimony of Drs. Geffner and Salter, and read all the reports and statements that were admitted into evidence, including Joseph's own statements that he understood right from wrong, and understood he would be punished when he did something wrong. The court also considered Joseph's age and the circumstances of the crime, including Joseph's planning of the event while lying in bed (when he decided to end the "father-son thing") and the fact he hid the gun under his bed to avoid getting caught. These factors support the trial court's finding.

13-year old's statement "Could I have an attorney? Because that's not me" was an Unequivocal and Unambiguous Invocation of his Rights

In *People v. Art T.* the Court of Appeal, Second District, Division 7, California, ruled that a 13-year-old boy's statement--"Could I have an attorney? Because that's not me"--made during the course of a custodial interrogation after watching a video of a shooting was an unequivocal and unambiguous invocation of his rights. From the court's opinion:

"In this case, the detectives knew at the time of the interrogation that Art was 13 and an eighth grade student in middle school. While neither the juvenile court nor this court has had the benefit of viewing the videotape for the purpose of considering the circumstances of Art's statements to the officers in considering the motion to suppress, we find that Art's age of 13 and middle school level of education, combined with his repeated requests for his mother, would have made his lack of maturity and sophistication objectively apparent to a reasonable officer. In this context, Art's statement after viewing the video of the

shooting, "Could I have an attorney? Because that's not me," was an unequivocal request for an attorney."

Juvenile interrogation - confession volutariness issues

In *State v. Anderson* the Court of Appeals of Ohio upheld the admissibility of a juvenile's confession; considering the issues of whether or not the defendant (16 years old) made a knowing and intelligent waiver of his rights, and the influence of deceptive interrogation techniques. From the court's opinion:

"Under this assignment of error, Anderson presents two main arguments. The first is that the State failed to prove that he intelligently and knowingly waived his constitutional rights. Anderson's second argument is that the use of deceptive interrogation techniques undermines a vulnerable child's voluntary waiver of rights. We will address each matter separately.

In arguing that Anderson's waiver of rights was neither intelligent nor voluntary, Anderson focuses on the fact that he was treated in the same manner as an adult, without recognition of his individual circumstances or of current research and precedent, which indicate that children need greater protection than adults.

At the time of the interrogation, Anderson was 16 years old, and had prior experience with the criminal justice system. Consistent with the dictates of Miranda, the police explained each right to him and confirmed that he understood his rights. The questioning took place over a period of less than two hours, with one interview lasting about 20 to 30 minutes and the other lasting about a half hour. Although the police did not offer Anderson food or water, or a restroom break, they would have let him take a break if he had asked.

It is true that the police did not call Anderson's parents before speaking with him. However, "the law in Ohio does not require that a juvenile's parent or legal custodian be present during a custodial interrogation." ... "The presence of a parent or custodian during a juvenile's interrogation, therefore, is only one factor to consider in determining whether, under the totality of the circumstances surrounding the juvenile's statements, there is a valid waiver of the juvenile suspect's Miranda rights."

Anderson's second major issue concerning voluntary waiver involves deceptive interrogation techniques. As was noted, the interrogating detectives falsely told Anderson that he had been identified by witnesses. Anderson contends that a child's ability to understand and resist manipulative tactics is hampered by youthfulness, and that the International Association of Chiefs of Police, in fact, discourages use of deceptive interrogation tactics with children.

"Deception is a factor bearing on voluntariness, but, standing alone, does not establish coercion * * *." ...

Anderson does not suggest, and we have not found, Ohio authority condemning deceptive interrogation techniques in situations involving children. In Ohio, as in other jurisdictions, deception in interrogation is only one factor in assessing voluntariness. For example in State v. Jackson, 333 Wis.2d 665, 2011 WI App 63, 799 N.W.2d 461, the defendant was 15 years old, had an IQ of 73, and was charged with attempted first degree intentional homicide.... The defendant claimed his confession was involuntary due to his IQ and age, as well as the fact that the police had lied to him... However, the court of appeals disagreed, noting that:

The State responds that, while it may not have been true that multiple people had identified Jackson in a lineup, one person had. And misrepresentation or trickery does not make an otherwise voluntary statement involuntary--it is only one factor to consider in the totality of the circumstances. State v. Ward, 2009 WI 60, P 27, 318 Wis.2d 301, 767 N.W.2d 236. As we explained in State v. Triggs, 2003 WI App 91, P 19, 264 Wis.2d 861, 663 N.W .2d 396,

"Inflating evidence of [the defendant's] guilt interfered little, if at all, with his 'free and deliberate choice' of whether to confess, for it did not lead him to consider anything beyond his own beliefs regarding his actual guilt or innocence, his moral sense of right and wrong, and his judgment regarding the likelihood that the police had garnered enough valid evidence linking him to the crime."

After reviewing the totality of the circumstances, we find no evidence that Anderson's waiver was involuntary. Although Anderson was a juvenile, he was 16 and had prior experience with Miranda warnings. Furthermore, there is no indication that Anderson was under the influence of any medication or other substance, that he had low intellectual ability, or that the police used coercive tactics."

<u>The criteria to be considered in determining custody for a juvenile suspect</u>

In *US v. IMM*, Juvenile Male the US Court of Appeals reversed the district court's decision, concluding that the district court erred when it admitted into evidence an inculpatory statement obtained from IMM in violation of his Fifth Amendment rights. The district court ruled that IMM was not in custody so that Miranda advisements were not required. The Court of Appeals disagreed and stated in their opinion the following:

"IMM argues that the district court erred in refusing to suppress his inculpatory statement under Miranda. Miranda is violated when a suspect is placed in custody and is then interrogated without receiving Miranda warnings or without knowingly, intelligently, and voluntarily waiving the rights described in those warnings.

In United States v. Kim, we identified a non-exhaustive list of five factors that have often proven relevant in deciding whether a suspect was in custody: "(1) the language used to summon the individual; (2) the extent to which the defendant is confronted with evidence of guilt; (3) the physical surroundings of the interrogation; (4) the duration of the detention; and (5) the degree of pressure applied to detain the individual." ... As we

recognized in Kim, "[o]ther factors may also be pertinent to, and even dispositive of, the ultimate determination whether a reasonable person would have believed he could freely walk away from the interrogators." Id.

Although this inquiry is objective, the Supreme Court held in J.D.B. that "so long as the child's age was known to the officer at the time of police questioning, or would have been objectively apparent to any reasonable officer, its inclusion in the custody analysis is consistent with the objective nature of that test." ... The Court cautioned that "a child's age [may] affect[ ] how a reasonable person in the suspect's position would perceive his or her freedom to leave," and warned that "a reasonable child subjected to police questioning will sometimes feel pressured to submit when a reasonable adult would feel free to go." ... Thus, J.D.B. recognized that for Miranda, as for so many other rights, common sense dictates that we must take into account the unique characteristics and vulnerabilities of children.

Here, the district court concluded that IMM was not in custody. We review the "in custody" determination de novo

IMM does not challenge the district court's factual findings and, having carefully reviewed the record, we conclude that those findings are not clearly erroneous. However, applying the legal standard set forth above to the "determination" regarding IMM's custodial status, we conclude that IMM was "in custody" for Miranda purposes. A reasonable person, and especially a reasonable twelve-year old child, in IMM's position would not, under all of the circumstances, have felt that he was free to terminate the interrogation and leave.

The first Kim factor, "the language used to summon the individual," slightly favors a finding that IMM was in custody. In general, when a suspect voluntarily agrees to accompany police with an "understanding that questioning would ensue," this factor weighs against a finding of custody.... although IMM's mother agreed to a voluntary meeting with the detective, there is no evidence that IMM himself ever agreed to an interview, understood it to be voluntary, or understood his mother's role in making the necessary arrangements. Because the ultimate issue is whether IMM himself understood that he was free to leave, we cannot impute his mother's subjective awareness of the circumstances of the interview to IMM. The evidence shows only that, from IMM's vantage point, an armed detective arrived at his house one Saturday morning, drove him and his mother 30 to 40 minutes to a police station, and brought him to a small room where he remained for nearly an hour of questioning. Although the officer did not menace IMM or order him into the car, it is doubtful that a juvenile in IMM's position would have seen the circumstances of his arrival at the police station as the result of a free and voluntary choice to be questioned.

The second Kim factor, "the extent to which the defendant is confronted with evidence of guilt," overwhelmingly favors a finding of custody. "We have found a defendant in custody when the interrogator adopts an aggressive, coercive, and deceptive tone." ... Here, although the detective did not raise his voice, he repeatedly confronted IMM with

fabricated evidence of guilt and engaged in elaborate deceptions. The detective fed IMM facts that fit the detective's predetermined account of what must have happened, accused IMM of dishonesty whenever IMM disagreed with the detective's false representations, and forced IMM to choose between adopting the detective's false account of events as his own and calling his own grandfather a liar. This last tactic directly played upon IMM's close relationship with his grandfather, whom he called "dad," and employed intense psychological coercion of a sort to which juveniles are uniquely vulnerable.... Further, although the detective did not explicitly threaten IMM, he bluntly warned that the situation would "turn into a big thing if you're not going to be honest." Thus, while the detective told IMM at the outset of the interview that IMM could stop it if he felt uncomfortable, the detective's aggressive, coercive, and deceptive interrogation tactics created an atmosphere in which no reasonable twelve-year-old would have felt free to tell the detective, an adult making full use of his position of authority, to stop questioning him.

The third Kim factor, "the physical surroundings of the interrogation," also weighs strongly in IMM's favor. While "[t]he fact that questioning takes place in a police station does not necessarily mean that such questioning constitutes custodial interrogation,"... it often does. That is especially true for juveniles, who are more likely to be overwhelmed by entry into a police station staffed by armed, uniformed officers.... Here, IMM was placed in a small room with the door closed. Although the door was unlocked, there is no evidence that IMM was aware of this fact. To the contrary, the detective twice exercised control over IMM's practical ability to enter and exit the room—first by ordering IMM to knock on the door if he needed to use the restroom and later by directing IMM to sit alone in the small room until the detective returned.

In short, with respect to the third Kim factor, IMM was interrogated alone behind a closed door that appeared to be locked, in a small room in a police station located 30 to 40 minutes away from his home. He was told that, if he wanted to leave to use the restroom, he needed to knock and obtain the detective's permission. Faced with this situation and level of police control, a reasonable person would not likely have felt free to terminate the interrogation and leave the police station at will.

The next Kim factor, "duration of detention," strengthens the conclusion that IMM was in custody. IMM spent 30 to 40 minutes in the unmarked police car and then nearly an hour being questioned. Although our precedents do not specify a precise amount of time at which a detention turns custodial, we have found an adult defendant to have been in custody when she was interrogated for 45 to 90 minutes.... Under all the circumstances, including the fact that IMM, as a juvenile, was likely more overwhelmed and intimidated than an adult would be by such prolonged direct questioning by an adult police officer, this Kim factor supports a finding of custody.

The fifth and final Kim factor, "the degree of pressure applied to detain the individual," confirms that IMM was in custody. As in Kim, "this was a full-fledged interrogation, not a brief inquiry," in which IMM was "detained for 'some time' "and then questioned for "at least [50 total] minutes."... This questioning was both hostile and accusatory, and,

when conducted in isolation in a small room in a police station, quite capable of causing IMM considerable concern regarding his future. Although IMM was neither handcuffed nor arrested, "the scenario was not without pressure resulting from a combination of the surroundings and circumstances encompassed by the other factors."

Ultimately, guided by the Kim factors, considering the totality of the circumstances of IMM's detention, and taking into account IMM's status as a juvenile, we conclude that a reasonable person in IMM's position would not have felt free to terminate the questioning and leave the police station. We therefore conclude that IMM was "in custody" during his interrogation by the detective. Here, IMM was never read his Miranda rights and the district court agreed with that description of what happened. Certainly it is clear that the detective did not explain the meaning or consequences of the Miranda rights to IMM. Accordingly, IMM's inculpatory statements during his interrogation by the detective must be suppressed."

Denial of juvenile suspect's request to see mother during interrogation did not render the confession inadmissible

In *Robinson v. Commonwealth* the Court of Appeals of Virginia upheld the lower courts admission of the defendant's incriminating statements even though his request to speak to his mother was denied during the interrogation. From the court's opinion:

"Appellant was placed in a room without restraints, given a drink, and an opportunity to use the restroom. He gave no indication of being under the influence of drugs, responded to questions asked, and remained calm, despite crying towards the end of the interview when he confessed. The portion of the interview leading up to appellant's confession lasted less than half an hour. Additionally, Detective Rodey read appellant his Miranda rights aloud at the beginning of the interview and appellant signed the waiver form. Throughout the videotaped interview, Detective Rodey sat across a table from appellant and his demeanor, tone, and language while questioning appellant were neither aggressive nor threatening. While it is clear from Prioleau's and appellant's mother's testimony that appellant had some emotional and learning disabilities, those issues did not prevent appellant from progressing through school and earning passing grades. While his attendance and academic records are not ideal, neither are they so lacking that we can say appellant's ability to understand the extent and nature of his rights was so impaired as to render his confession involuntary.

Furthermore, while Detective Rodey's statements to appellant that he was considered an adult for purposes of the new charges were inaccurate, appellant never argued that the misrepresentation was intentional or made in bad faith. More importantly, the misrepresentation does not rise to the level of such deliberate deception or coercion as would compel appellant to involuntarily confess. Indeed, Detective Rodey's statement did not "impede [appellant's] ... 'ability to understand the nature of his rights and the consequences of abandoning them.' .... Appellant had been made aware of and acknowledged his Miranda rights and, moreover, it was not his first experience with the justice system.

... For these same reasons, we cannot say that Detective Rodey's refusal of appellant's requests to see his mother rendered appellant's confession involuntary or coerced. At its core, this case assesses the significance of a juvenile's request for a parent in the context of determining the voluntariness of a subsequent confession, an issue that has not been specifically addressed by the Supreme Court or this Court. Indeed, while this case may highlight significant concerns previously raised in the jurisprudence relating to law enforcement personnel declining to honor a minor's request to see his parent when subjected to custodial interrogation, given the specific facts of this case, we cannot say that appellant's confession was coerced. Appellant was not unfamiliar with the justice system. He had recently pled guilty to and was awaiting sentencing on very similar charges of armed robbery and malicious wounding. Detective Rodey did not do anything to overbear appellant's will or physically intimidate appellant to obtain the confession. To the contrary, Detective Rodey stated that appellant could talk to his mother later. Finally, before ever asking for his mother and less than thirty minutes before his confession, appellant had been informed of his Miranda rights, acknowledged his understanding of them, signed a waiver to that effect, and never requested counsel."

Repeatedly threatening a seventeen-year-old with the death penalty is "objectively coercive"

In *Dye v. Commonwealth* the Supreme Court of Kentucky found that the defendant's confession was coerced by threats of the death penalty if he did not confess. "First, the officers incorrectly and repeatedly informed Appellant that, if convicted, he could receive the death penalty (i.e., that he was "death eligible"). ... the U.S. Supreme Court held that the Eighth and Fourteenth Amendments to the U.S. Constitution impose a categorical bar to executing individuals who were under eighteen years old at the time of the crimes.... It is undisputed that all four interrogating officers knew Appellant was seventeen years old....

Each death penalty reference was immediately followed by an officer asserting that the only way for Appellant to avoid execution was to confess to the murder. Perhaps the most troubling exchange between Appellant and the officers regarding the death penalty occurred about an hour into the interrogation. To this point, Appellant had not made any incriminating statements and the officers had left the room to give Appellant a break. During the break Appellant began to cry. When the officers returned to the room, the following exchange occurred:

Officer: Are you sure you don't want anything? Use the bathroom or anything? You hungry or anything?
Appellant: I don't know what I am. I'm just scared.
Officer: I know you're scared, man. I know you are.
*Appellan*t: Is it the death penalty?
Officer: I'm sorry?
Appellant: Are they gonna give me the death penalty?
Officer: Oh yeah.
Appellant: [inaudible]

Officer: Now, you'll probably spend twenty or thirty years on death row in a room all by yourself.... That's why I was trying to tell you man, this is the only chance you got to avoid all that right now. Tonight, tonight will be your only chance.

Not only did the officer erroneously convey that Appellant was death-eligible, but also that he was certain to receive a death sentence unless he confessed to his sister's murder. We hold that repeatedly threatening a seventeen-year-old with the death penalty is "objectively coercive."

Likewise, the officers made several inappropriate allusions to prison violence or rape throughout the interrogation. For example, about an hour into the interrogation one of the officers warned Appellant: "I can tell you right now, a seventeen-year-old or eighteen-year-old young buck straight into [the Kentucky State Prison (KSP) at] Eddyville, killing a nine-year-old--you can imagine what they're going to do to you on a daily basis." A second officer told Appellant that he "wouldn't want nobody to have to do that to my own son, but that's exactly what they're going to do to you."

12-year-old should have been advised of his Miranda rights when questioned at school

In *State v. D.P.* the Court of Appeals of Oregon ruled that a 12-year-old should have been advised of his Miranda rights when he was being questioned at school about allegedly having sexual intercourse with a 10-year-old girl.

The court ruled that "taking into account the length of the interview, the location, youth's age, maturity level, the repetitive and escalating nature of the questions throughout the interview, and the increasingly coercive tactics used by the detectives, a reasonable twelve-year-old of similar age, knowledge and experience, placed in youth's situation, would have felt required to stay and answer all of the detective's questions... In sum, we hold that, given the totality of the circumstances and in view of youth's age and experience--or lack thereof--the setting in which the interview took place was "compelling." Thus, Miranda warnings were required. The juvenile court erred in denying youth's motion to suppress."

In determining whether the circumstance of the interview were "compelling" the court described the details as follows: "Here, the detectives initially made a concerted effort to be unimposing in both dress and demeanor, and attempted to keep the interview "low key" so that they would not scare or intimidate youth. The detectives shook hands with youth when he entered, kept their voices down, asked specific questions, avoided leading questions, used simple language, and gave youth time to answer each question. Neither detective wore a uniform or displayed his badge or firearm. At the beginning of the interview, the detectives explicitly told youth that he was free to leave, and that he was not required to answer questions. Youth affirmed that he understood those things. The detectives also explained to youth that they were not going to arrest him that day no matter what happened during the interview. The detectives requested youth's permission to record the interview, youth declined, and the detectives complied with youth's directive.

On the other hand, the detectives deliberately chose an interview location--an office at youth's school--in part, so that youth's parents would not interrupt the interview. Youth did not come to the interview room of his own volition; instead, he was summoned by the school's principal, removed from class, and escorted into the interview room, where he was then left alone with two police detectives. He was seated with his back facing the closed door, so that he could not see the exit. The detectives did not call youth's parents before the interview. Youth did not have anyone familiar in the interview room with him, such as a parent, counselor, or teacher. The detectives did not tell youth that any of those people could be present. The detectives did not inform youth that he had a right to refuse the request for the DNA swab. The interview lasted for one hour and forty minutes. Further, although youth had consistently denied any sexual contact and any wrongdoing, throughout the interview the detectives revisited topics and questions in an effort to elicit different answers from youth. The detectives spoke about DNA, DNA transfer, and the sexual assault kit multiple times; they reiterated that if youth did not tell them the truth, then "the decision maker would have to make assumptions." Throughout the entire interview, the detectives repeatedly renewed their directive that youth had to tell his parents "the truth," despite youth's statements that he feared doing so and that he had not done anything wrong.

The detectives' initial inquiries were to find out "what happened"; later, the detectives said that youth could decide "to tell the truth or not tell us what happen[ed]." In contrast to the "low key" approach employed at the outset, by the end of the interview the questions were pointed and presumed youth's guilt--e.g ., asking "how long [youth's] penis had been in [the victim]'s vagina." The detectives told youth that the victim needed an explanation, and repeated multiple times--all while youth continued to deny any wrong doing--that, if youth had been older, he would be going to prison. Instead, they explained that since he was only 12 years old, it would be handled "differently"--but they did not to explain what consequences he might actually face. Finally, near the end of the interview, Smith stood up, donned blue plastic gloves, opened the DNA testing kit, and asked youth to consent to a DNA swab-after repeatedly explaining to youth how DNA can transfer from person to person and without informing youth that he could withhold consent.

Although the detectives were unaware of the extent of youth's prior behavioral problems--such as youth's propensity to be argumentative; youth's marked emotional, social, and intellectual immaturity; or youth's need for concrete and succinct answers to questions--they were aware of youth's age, his prior behavioral issues, his need for an unconventional schooling environment to address his behavioral problems, and the conditions surrounding the allegations against youth. Thus, at a minimum, the detectives should have known from the circumstances that youth was in a category of children that require a heightened level of precautions to ensure that he understood that he was not required to stay or answer the detectives' questions."

<u>A promise of leniency: “[e]verybody gets a clean slate when they turn 17” – confession involuntary</u>

In *People v. Travis* (2013) the Appellate Court of Illinois, Third District, carefully examined the elements that are necessary to establish that a juvenile confession was voluntary. The court concluded that in this instance the defendant’s confession was

involuntarily given. The focal point of this decision is outlined by the court:

“Furthermore, we believe the manner in which the police conducted the recorded, fifth interview weighs toward a finding that the defendant's confession was involuntarily given. Specifically, Nicodemus made misleading promises of leniency to the defendant during the recorded, fifth interview.

“To constitute an offer of leniency that renders a confession inadmissible, a police statement must be coupled with a suggestion of a specific benefit that will follow if the defendant confesses.” .... At the time of the defendant's offense, a juvenile who was at least 15 years old at the time of the offense and who was charged with first degree murder had to be tried as an adult.... While we acknowledge that the defendant had not been charged before he confessed and that it is the prosecutor who has the discretion to decide what charges to bring against an accused... we believe the clear import of Nicodemus's statements to the defendant was to assure him that he would remain in juvenile court no matter what crime he was charged with in connection with the shooting of Villagomez. Nicodemus stated to the defendant:

“People make mistakes. You're a juvenile. Juvenile system's very forgiving, very understanding when people mess up. Crimes that you commit when you're a juvenile you're not even tried as an adult sometimes. You don't even get the maximum penalties. You don't even do that. Everybody gets a clean slate when they turn 17. You're lucky that you're less than 17, okay? But in order to get those breaks, to get those chances, you have to show some remorse, some compassion, and not just be * somebody that doesn't have a conscious [sic], somebody that throws other people's names out there. You gotta be somebody that takes responsibility for their actions because if you don't do that, you're never gonna get any breaks. No one's ever gonna look at you as this kid's worth taking a chance on.”

Significantly, Nicodemus's statement to the defendant that “[e]verybody gets a clean slate when they turn 17” indicated to the defendant that if he confessed to shooting Villagomez, he would receive some leniency as a juvenile. The videotape shows that these statements were not lost on the defendant, either, as he asked twice after confessing when he would be taken to the River Valley Juvenile Detention Facility in Joliet. Under these circumstances, we find that Nicodemus's misleading promises of leniency to the defendant during the recorded, fifth interview weigh in favor of a finding that the defendant's confession was involuntarily given.’

<u>Circumstances that indicate juvenile interrogation was not custodial</u>

In *Commonwealth v. Bermudez* (2012) the Appeals Court of Massachusetts upheld the lower court’s decision that the interrogation of a juvenile was not custodial. The court stated, “Applying these factors to the facts found by the judge and the objective circumstances depicted in the interrogation videotape, we conclude that the defendant's interrogation was not custodial. Although the interrogation occurred at the police station, the defendant appeared there voluntarily, accompanied by his mother, in response to a

police request. He was neither under arrest nor escorted to the station by the police. The interrogation lasted seventy minutes, and the defendant sat next to the door throughout the interview. One of the two interviewing officers left the room from time to time, and the other sat across from the defendant behind a desk next to a computer. The questioning was conversational and nonthreatening in tone, and the detectives repeatedly told the defendant, who was not handcuffed or restrained in any way, that he would be allowed to return home with his mother, as he ultimately was. The defendant's age, a few months shy of his eighteenth birthday, placed him on the cusp of majority, and far removed from the tender years of early adolescence. Viewing all the pertinent factors objectively, including the defendant's age at the time of the interview, we conclude that the interrogation was not custodial so as to require Miranda warnings."

Juvenile interrogation – voluntariness considerations; value of video recording

In *People v. Murdock* (2012) the Illinois Supreme Court addressed the issue of whether or not the defendant's statements to the police were involuntary because he, a juvenile, was interrogated as an adult. The State counters that defendant's statements were voluntary and the trial court was correct in denying the motion to suppress. Defendant concedes that Detective Mushinsky did not engage in any behavior that would be considered coercive when applied to an adult. However, defendant argues that he was a juvenile, 16, at the time of the interrogation, and that the Supreme Court of the United States has recognized that "special caution" is required when reviewing the voluntariness of a minor's confession. The court stated the following in their opinion:

"The taking of a juvenile's confession is a sensitive concern, and for this reason the greatest care must be taken to assure that the confession was not coerced or suggested. ... The confession should also not be the product of adolescent fantasy, fright, or despair.... Illinois courts have recognized an additional factor not applicable in cases involving adults: the presence of a "concerned adult." ... This factor considers whether the juvenile, either before or during the interrogation, had an opportunity to consult with an adult interested in his welfare... In weighing this factor, courts also consider whether the police prevented the juvenile from conferring with a concerned adult and whether the police frustrated the concerned adult's attempt to confer with the juvenile...

However, a juvenile's confession or statement should not be suppressed merely because he was denied the opportunity to confer with a parent or other concerned adult before or during the interrogation.... The concerned adult factor is particularly relevant in situations in which the juvenile has demonstrated trouble understanding the interrogation process, he asks to speak with a concerned adult, or the police prevent the concerned adult from speaking with him.... The concerned adult factor is just one of the many factors to be examined when determining whether a juvenile's confession was voluntary...

We agree with the trial court that Mushinsky made no promises to defendant, and see no reason to disturb the trial court's credibility determination on this point. On direct examination Mushinsky testified that he made no promises of leniency to defendant in

exchange for information. When asked on cross-examination about whether defendant was promised freedom if he "g[a]ve up the trigger man," Mushinsky replied that defendant's claim was "absolutely false." Mushinsky testified that he "already knew who both trigger men were by the time" he talked to defendant. Defendant testified on direct examination that Mushinsky promised him, before the video statement was recorded, that he could go home if he "helped [Mushinsky] get the trigger man." On cross-examination, however, defendant conceded that on the videotape, when asked by Mushinsky if he had been promised anything in exchange for providing a statement, defendant answered "no." Also, on direct examination, when asked if it was "really brought home to him" that he did not have to talk to the police if he did not want to, defendant said "no" and that Mushinsky never told him that. However, on the videotape, when asked if he understood that he did not have to talk to Mushinsky or answer his questions unless he voluntarily chose to do so, defendant immediately and clearly answered "yes." Defendant claimed he only said "yes" on the videotape because he was tired and he thought Mushinsky would let him go.

We also agree with the findings made by the trial court regarding the videotape. Defendant claimed at the suppression hearing that, when the video was made, he was "tired and scared." Defendant claimed he did not really understand the Miranda rights Mushinsky was reading to him. Defendant's statements are belied by his appearance on the videotape. Defendant's overall demeanor during the interview is calm. Defendant does appear somewhat nervous at times, but no more nervous than would be anyone else in his situation. Defendant appears able to understand his situation and the questions posed to him. Defendant is able to provide answers in a clear, narrative structure. Defendant does not appear on the videotape to be in any sort of physical or mental distress. He does not appear to be exhausted or in any sort of suggestive state. He does not appear to misunderstand or be confused by any of the questions asked by Mushinsky. Defendant never asks Mushinsky to repeat a question. We can find no reason, based on the transcripts and videotape, to disturb the trial court's findings of fact. The trial court's factual findings are not against the manifest weight of the evidence.
Upon review, we agree with the trial court that the totality of the circumstances indicate defendant's statements were voluntary. We first consider defendant's age, experience, educational background, and intelligence. Defendant, at 16, is on the older end of the juvenile scale. While he did testify that he attended Greeley Alternative School, it is not clear if he attended because of learning difficulties or behavioral problems. Defendant, in his brief, notes that his presentence investigation report showed he had only completed one semester of high school and had poor grades. However, based on the evidence from the suppression hearing and videotape, defendant was able to understand and give full, concise, and clear answers to questions posed to him. While in his letter to Judge Lucas defendant claimed to have never been in trouble with the police before, he did not appear to misunderstand or be confused by Mushinsky's questions or the discussion of Miranda rights. Thus, defendant appears to be of normal intelligence and mental capacity for someone his age.

Second, there is no evidence of physical or mental abuse. Defendant testified that Mushinsky made promises to him that he would be released if he gave information on the

shooter, but the trial court found Mushinsky more credible on this matter than defendant, and we see no reason to disturb the trial court's finding in that regard. Mushinsky testified that he never made any threats toward defendant. Defendant was not handcuffed during the interview. On the videotape, Mushinsky's tone with defendant is conversational, not confrontational. There is no evidence that any sort of police trickery was employed to extract information from defendant. The absence of trickery weighs in favor of voluntariness.

Third, we consider defendant's physical condition. Defendant did appear nervous at times during the videotaped statement, but some nervousness on defendant's part is not inconsistent with voluntariness. On the videotape, defendant does not appear to be sweating or shaking. He does not appear to be in any type of distress. Rather, defendant appears for the most part calm and alert. He does not appear tired or exhausted. Mushinsky testified that defendant was offered food, drink, and the opportunity to use the bathroom. Based on the videotape and the testimony of Mushinsky, which the trial court found more credible than that of defendant, defendant was in good physical condition during his detention and interview.

Fourth, the length of defendant's detention and interview does not render his statements involuntary. The seven-hour duration of defendant's detention is somewhat lengthy. However, Mushinsky testified that he only interviewed defendant from around 6:45 to 10 p.m. that day, and that based on Mushinsky's recollection, defendant was in the interview room from about 5:30 p.m. to 10 p.m. the day of September 19, 2001. Weighing in favor of voluntariness, the interview was conducted in the evening hours, instead of, for example, the very early morning hours, when sleep deprivation can lead to a potentially more coercive environment. ... Defendant's total time of detention was less than 12 hours... Defendant was detained for six to seven hours. The interview took place in the evening and the actual interview only lasted three hours. The interview time was reasonable and we cannot say it contributed to a coercive atmosphere that would render defendant's statements involuntary."

Ohio juvenile not statutorily entitled to counsel during an interrogation which occurs prior to invocation of court's jurisdiction

In *In re M.W.* (2012) the Supreme Court of Ohio held that "As a matter of first impression... police interrogation of juvenile prior to an invocation of juvenile court's jurisdiction was not "proceeding" in which juvenile was statutorily entitled to representation by counsel."

From the court's opinion: R.C. 2151.352 provides: "A child, the child's parents or custodian, or any other person in loco parentis of the child is entitled to representation by legal counsel at all stages of the proceedings under this chapter or Chapter 2152 of the Revised Code."

The fallacy of M.W.'s argument is highlighted by the fact that he invokes a right to counsel pursuant to R.C. 2151.352 before the delinquency matter is brought against him in juvenile court. His reliance on R.C. 2151.352, which requires a court to appoint

counsel or ascertain whether a party is aware of his right to counsel, is weakened by the fact that the jurisdiction of the juvenile court had not yet been invoked, and thus no court had authority to act.

In view of these reasons and the plain language of R.C. 2151.352, we conclude that an interrogation that occurs prior to the filing of a complaint alleging delinquency or prior to an appearance in juvenile court is not a proceeding that falls within the scope of R.C. Chapter 2151. This determination is consistent with our duty to construe statutes to avoid unjust and unreasonable results. R.C. 1.47©

The need to have clear and unequivocal Miranda waiver forms for juveniles

In *R.W. v. State* (2012) the Indiana Court of Appeals found the lower court was in error to admit the juvenile defendant's confession because the Miranda waiver form was not "clear and unequivocal."

In the context of juvenile delinquency proceedings, our Supreme Court has stated that "[w]ritten waiver forms are not required to satisfy the constitutional demands of Miranda or the statutory requirements of [I.C. S] 313251, but they are particularly strong evidence."... Moreover, when used, "they should be clear and unequivocal." Id. In the present case, only Mother signed the top half of the waiver form pertaining to the acknowledgment of the advisement of R.W.'s rights, but only R.W. signed the bottom half, which is the portion of the waiver form that conveys the actual waiver of the rights. Based upon the way the form was completed, one may speculate as to how it came to pass that only one signed the top half and only the other signed the bottom half. Such speculation, however, cannot cure the fatal flaw in the document, i.e., that R.W.'s mother's signature does not appear on the line denominated "PARENT'S SIGNATURE", signifying that Mother acceded to the waiver of R.W.'s constitutional rights. Thus, we must look elsewhere to find evidence that Mother consented to the waiver. Mother did not testify at the denial hearing. Detective Brice Adams, the IMPD officer who advised Mother and R.W. of his rights and presented them with the waiver form, and who conducted R.W.'s questioning, offered no testimony on the subject of Mother's consent to waiver. The videotape itself is similarly unhelpful. In short, we find no evidence indicating that Mother consented to the waiver of R.W.'s rights. Absent a valid waiver of rights, it was error to admit R.W.'s confession."

The importance of discussing the Miranda rights with a juvenile suspect

In *Commonwealth v. Wade W*. (2012) the Appeals Court of Massachusetts overturned the lower court's admission of the defendant's incriminating statements because of concern regarding the subject's understanding of the Miranda warnings. From the court's opinion:

"On November 10, 2008, Saugus police officers were investigating a bomb threat that had been written, in some fashion, in the boys' bathroom at Saugus High School. Two officers spoke with the sixteen year old juvenile, in the presence of his mother and stepfather, at the Saugus police station. The motion judge found "the interrogation was

custodial." At the beginning of the interview, one officer, Detective Frederick Forni, read to the juvenile his Miranda rights. Forni read them one after another fairly rapidly, and without stopping between them; at the end of the recitation, he asked if the juvenile understood his rights, and then passed the form to the juvenile's mother and asked her to look at it. Forni did say more than once that both the juvenile and his mother could ask questions if they wished. The juvenile's mother looked briefly at the form and then handed it to her son, who signed it immediately without appearing to read it. Forni then directed the juvenile to a place on the form saying, "[T]his next line just is the waiver; keeping these rights in mind that you still want to talk to us." The juvenile began to write and his mother said, "So he's not waivering his rights?" Forni said, "I'm sorry?" The mother said, "Is that what he's doing? He's not waivering his rights?" Forni responded, "Well, no...." At this point, the second officer, Detective Donovan, spoke over Forni and said, "He's just saying that he'll talk to us." Forni added, "Yeah, that's what we say. If you would, just sign as a witness and then just put mother there."

At the hearing on the motion to suppress, the juvenile's mother testified that she did not understand that she was there to advise her son about his rights, or that he was waiving his right to remain silent, or that "an attorney would have been appointed ... prior to any questioning at [her] request." She also testified that, before she joined her son and his stepfather in the interview room, Detective Donovan had told her that he wanted to speak to her son before she spoke with him or told him anything.

"In reviewing a ruling on a motion to suppress, '[w]e accept the judge's subsidiary findings absent clear error but conduct an independent review of his ultimate findings and conclusions of law.' Commonwealth v. Bostock, 450 Mass. 616, 619 (2008), quoting Commonwealth v. Jiminez, 438 Mass. 213, 218 (2002). '[O]ur duty is to make an independent determination of the correctness of the judge's application of constitutional principles to the facts as found.' Commonwealth v. Bostock, supra at 619." Commonwealth v. Hoyt, 461 Mass. 142, 148 (2011). In addition, as in Hoyt, we have before us in the record the interrogation video recording and the transcript of the interrogation. "We are thus 'in the same position as the motion judge in viewing the videotape.' " Hoyt, supra, quoting from Commonwealth v. Prater, 420 Mass. 569, 578 n. 7 (1995). See Commonwealth v. Novo, 442 Mass. 262, 266 (2004), quoting from Commonwealth v. Bean, 435 Mass. 708, 714 n. 15 (2002) (court "will 'take an independent view' of recorded confessions and make judgments with respect to their contents without deference to the fact finder, who 'is in no better position to evaluate the[ir] content and significance' "). "A juvenile defendant over the age of fourteen may properly waive his constitutional rights if, after having been advised of those rights, he was afforded an opportunity to consult with an interested adult who was informed of and understood those rights " (emphasis supplied). Commonwealth v. McCra, 427 Mass. 564, 567 (1998). Under all of the circumstances here, we are persuaded that the Commonwealth did not meet its burden of proving beyond a reasonable doubt that the juvenile's waiver of his rights was knowing and intelligent, because it is not clear that his mother, the interested adult, in fact understood those rights. To her question whether the juvenile was waiving his rights, Forni's first response was "No." It may be, as the Commonwealth argues, and as the officer himself testified, that Forni intended the

answer to be a contradiction of the mother's statement that the juvenile was not waiving his rights; we do not mean to suggest that the officer intended any deception. However, the officer's state of mind is not the issue.

In addition, Detective Donovan's response, "He's just saying that he'll talk to us," undercut, rather than reinforced, the earlier warnings. In order to show a knowing and intelligent waiver under these circumstances, the officers were required either to respond that the juvenile was in fact waiving certain rights and to explain those rights again or, at a minimum, to ask the mother to explain her question so that they could respond appropriately. The mother's question "clearly indicated that [s]he was confused about the legal consequences of making a statement, and [s]he was effectively, though not intentionally, deceived by the officer's response." Commonwealth v. Dustin, 373 Mass. 612, 613 (1977).

Court considers criteria to determine if a 15-year old student was in custody when questioned by the police at school

In *Marquita M., a Minor v. State* (2012) the Appellate Court of Illinois, Fourth District, considered the issue of whether a 15-year old student was in custody when she was questioned by the police at school. Fron the Appellate Court's opinion:
Our supreme court has noted the circumstances establishing police custody are not always self-evident..... However, "the Court in Miranda was concerned with interrogations that take place in a police-dominated environment containing 'inherently compelling pressures which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely.'..... "In looking at the circumstances of interrogation, courts look at several factors to determine whether a statement was made in a custodial setting, including:

"(1) the location, time, length, mood, and mode of the questioning;

(2) the number of police officers present during the interrogation;

(3) the presence or absence of family and friends of the individual;

(4) any indicia of formal arrest procedure, such as the show of weapons or force, physical restraint, booking or fingerprinting; (5) the manner by which the individual arrived at the place of questioning; and (6) the age, intelligence, and mental makeup of the accused."

In this case, the evidence indicates respondent was not in custody for Miranda purposes when she made the statements at issue. Respondent was 15 years old at the time. See J.D.B. v. North Carolina, 564 U.S. ----, ----, 131 S.Ct. 2394, 2406, 180 L.Ed.2d 310 (2011) (noting a child's age, when known or objectively apparent to a reasonable officer, is a relevant consideration in the Miranda custody analysis). Dinkheller and Officer Hermsmeier came to respondent's classroom during her second-hour class and walked her back to Dinkheller's office. She was not taken to or questioned at the police station. See People v. Giacomo, 239 Ill.App.3d 247, 255, 180 Ill.Dec. 435, 607 N.E.2d 329, 334

(1993) (finding 15-year-old's statements were voluntary when made, not at the police station, but at school, "a nonthreatening atmosphere"); People v. Savory, 105 Ill.App.3d 1023, 1029, 61 Ill.Dec. 737, 435 N.E.2d 226, 230 (1982) (noting a room adjacent to the principal's office was a less coercive environment than the police station). Moreover, nothing indicates Hermsmeier handcuffed or physically restrained respondent. Only one law-enforcement officer was present in Dinkheller's office, and nothing indicates Hermsmeier displayed a weapon or exhibited a show of force. Also, no formal booking procedure or search of respondent's person took place before the questioning.

Based on the circumstances, a reasonable person in respondent's situation would not have felt she was in police custody during the questioning that took place in Dinkheller's office. Thus, no Miranda warnings were necessary."

<u>If a juvenile is questioned in a police car, is he in custody? In this case the court said no.</u>

In *Sturm v. Darnell* (2012) the U.S. District Court, S.D. Ohio upheld the trial court's decision that in this case the juvenile offender was not in custody, even though he was questioned in a police vehicle. They stated in their opinion that: "The trial court found the following facts in support of its conclusion that Sturm was not in custody when he was interviewed by Detective Warden. First, the officers interviewed Sturm in an unmarked police car in front of Sturm's residence. This vehicle was indistinguishable from a regular passenger vehicle, except for the presence of a small police radio, which was not turned on during the interview. Also, the entire passenger compartment of the vehicle was open and all four doors on the vehicle had working door handles. Second, the officers obtained permission from Sturm's father before questioning Sturm. Third, Sturm's father sat in the unmarked car with him for the first portion of the interview. Fourth, before any questioning began, Detective Warden told Sturm that he was not under arrest, that he was free to leave at any time, and that he did not have to speak with the officers. Sturm responded that he understood. Based on these findings, which are supported by the record, the trial court did not err in concluding that Sturm was not in custody at the time of the questioning."

<u>Is the request by a 15 year old to speak to their mother (in a custodial setting) tantamount to requesting an attorney? In this case, no.</u>

In *People v. Nelson* (2012) the California Supreme Court considered the issue of whether the defendant (15 years old) made a post waiver invocation of his Miranda rights by asking several times to speak to his mother or by making certain other statements while being questioned. If he did, then the investigators' failure to stop the interrogation compelled suppression of the statements he made after the invocation.

In this case the trial court determined that defendant made a knowing, intelligent, and voluntary waiver of his Miranda rights. The Court of Appeal agreed...

"Here, investigators Salcedo and Sutton questioned defendant for over five hours, and the

entire interrogation was both recorded and transcribed. At the hearing on the motion in limine, the trial court stated it had reviewed the videotape and considered what transpired at the interrogation. The court also received testimony from Salcedo and Sutton, as well as from defendant himself. Defendant acknowledged he had understood the Miranda rights that were read to him at the start of the interrogation, and admitted there were no threats, no weapons, no handcuffs, and no promises from the investigators during the investigation. Defendant said he knew what an attorney was, because he had been represented by an attorney in juvenile court. Defendant had agreed to speak with the investigators, because he felt it would "seem funny" if he did not do so. He explained that, as the hours went on, he was "sort of being worn down" and getting tired and stressed as the investigators got tougher in their questioning. Defendant also admitted having lied to the investigators during the interrogation. The recording of the interview showed that defendant was deceptive throughout the five-hour session and admitted to wrongdoing only when confronted with evidence or caught in a lie.

In announcing its ruling, the trial court made an explicit finding that, based on its reading of the transcripts, listening to testimony, and viewing the recorded interview, defendant had "zero credibility." Then, after determining that defendant had made a knowing, intelligent, and voluntary waiver of his Miranda rights at the outset of the interrogation, the court addressed the issue at the heart of this matter. Summarizing the details of the interrogation and viewing defendant's statements in context, the court found that, whenever defendant requested to speak to his mother, he did so because he wanted to tell his mother what was going on and to ask her what he should do. The court further found that, even if defendant subjectively desired attorney assistance, his statements were objectively ambiguous because they were limited to the issue whether or not he should take the polygraph test. That is, although defendant indicated reluctance to take the test without speaking to his mother or a lawyer, he "continued to consent to voluntarily talk" to the authorities on other topics. The court also observed that, "even though in his own mind he thought his mother was [only] ten minutes away," defendant went ahead and signed a written confession without waiting for her arrival. Relying on ..... the court found that defendant did not invoke his Miranda rights, and that even if there was a request for an attorney, it was ambiguous and did not require cessation of the interview. As we shall explain, the trial court's conclusions are both legally and factually supported.

Our review of the transcribed and videotaped interview finds ample support for the trial court's resolution of the conflicting inferences that may be gleaned from defendant's various requests and statements.... After waiving his Miranda rights, defendant was open and responsive to questioning on any topic. Defendant, who was 15 years old, appeared confident and mature. About three and a half hours into the interview, the investigators asked why defendant hurt Thompson and whether he was willing to take a polygraph test. Defendant responded by asking to call his mother, and, when asked the reason for the call, he offered no indication that he wanted an attorney or that he did not want to talk further. Instead, he specifically stated he wanted to let his mother "know what's happening" and to ask her what he should do because he was being accused of murder. On this record, the trial court properly concluded that a reasonable officer in the

circumstances would not have viewed defendant's request to call his mother as a clear and unequivocal invocation of the Miranda rights.

As the interrogation proceeded, defendant asked several more times to call his mother when the investigators again asked about a polygraph test, or why he hurt Thompson. The investigators generally did not inquire into the reasons for the subsequent requests, but defendant clarified a second time that he wanted to let his mother know "what's going on right now" and where he was. Given the circumstances surrounding each of defendant's requests, a reasonable officer would not have understood any of them as an unambiguous assertion of Miranda rights. Although defendant became increasingly upset during the interview, and quieter toward the end, the questioning properly continued because defendant never communicated an intent to stop the interview altogether.

On this record, we conclude the trial court did not err in denying defendant's in limine motion. A reasonable officer in the circumstances would not have understood defendant's requests to call his mother, or any of his other statements, to be unambiguous and unequivocal invocations of his Miranda rights.... Accordingly, investigators Salcedo and Sutton were not required to stop their questioning, and defendant's custodial statements were properly admitted at trial."

Was defendant's request to speak to his mother an assertion of his right to silence? In this case, no.

In *State v. Diaz-Bridges* (2012) the Supreme Court of New Jersey considered the issue of whether the defendant's statements about his desire to speak with his mother were assertions of his constitutionally-protected right to silence.

"Because of the nature of the analysis undertaken by the trial and the appellate courts and the issues raised before this Court, we recount in detail what happened during the nearly ten hours of interview that followed.
At 11:25 a.m., when the questioning started, the detectives advised defendant of his Miranda rights, which he acknowledged that he understood and waived. The detectives then reminded defendant that there were outstanding warrants for him in New Jersey in matters unrelated to the O'Brien murder and advised him that he had the right to have a public defender present for any questioning concerning those unresolved matters. Defendant was also told that an attorney had been assigned to represent him in his unrelated Morris County cases and that he had the right to have that attorney present during their interview with him. After acknowledging that he was aware of these rights, defendant waived them as well.

During the first three hours of the interrogation, defendant denied committing the murder. Instead, he gave an account of his activities on the day of the murder and attempted to divert attention from himself by suggesting that two other young men in the neighborhood were probably the culprits. Eventually, he told the detectives that the victim's son Tyler had committed the murder and had confessed to him. His explanation, all delivered in a tone and with gestures suggesting he was only trying to help the

detectives find the killer, was inconsistent with some of his prior statements and with other information about the crime that the detectives had already learned.

..... At approximately three hours and forty-two minutes of elapsed time, defendant was asked again what happened on the day of the murder. After a momentary pause, defendant said, "Can I just call my mom first?" Wilson then responded by telling defendant that they wanted "to hear first what you have to say because we, you want ... right now you got to get it off your chest." As defendant continued crying softly, Caruso asked if he wanted to talk to his mother because he was ashamed. For the next few minutes the detectives both consoled him and tried to prompt him to tell them what happened. Apart from several comments not responsive to any questions, defendant cried and sniffled.

..... After defendant confessed, the detectives asked if he wanted anything and offered him a tissue. He responded by saying that he wanted to talk to his mother. Wilson told defendant that they would arrange a call with his mother, but that they wanted defendant to relax and get his thoughts together. The detectives then took a thirty minute break while Dangler remained with defendant. During the break, defendant again asked if he could speak to his mother, and Dangler replied that they would arrange it. Minutes later, after defendant again asked if he could make that phone call, Dangler left the room, telling defendant that he would ask about the phone.

... When the interrogation resumed, defendant again began to ask to talk to his mother, repeating his request numerous times during the next three-quarters of an hour. Most significant were his comments to the detectives about the reasons why he wanted to speak with her. In particular, he explained that he wanted to talk to her so that he could "stay calm," that he believed she was the only one who would understand, and that he wanted her to hear what he had done from him rather than from the police. In response to one of these statements, Wilson asked defendant directly, "Do you, do you still wish to talk to us?" and defendant replied by saying: "yes[.] I have no problem talking to you; I just want to talk to my mom. That's it."

... In this appeal, that review leads us to the inescapable conclusion that defendant's request to speak with his mother, however frequently and fervently repeated, sprang from the very understandable desire to tell her what he had done before she heard it from the police and to hear her words of comfort. Those requests, based on all of the circumstances, did not at any time constitute defendant's invocation of his right to silence.

<u>Is a request to talk to his mother invoking the defendant's right to remain silent? No.</u>

In *Locust v. Ricci* (2011) the U.S. District Court, D. New Jersey, rejected the defendant's claim that the trial court erred in denying suppression of his inculpatory statements on the grounds that the police did not honor his request to invoke his right to counsel and his right to remain silent, and that the incriminating statements were the result of an overbearing of his will.

In their opinion the District Court stated that, "Defendant contends his request to speak with his mother was an invocation of the right to silence and that by continuing the questioning, the police "violated the bright-line rule" of State v. Hartley, 103 N.J. 252, 267 (1986), and his statement must be suppressed as unconstitutionally compelled. However, not every request by a defendant or break in questioning is an invocation of the right to silence. Id. at 222. In order to invoke the bright-line rule and require scrupulous adherence to defendant's request to speak with a family member, the request must be made for the purpose of obtaining advice from a trusted family member... In other words, the request must be the equivalent of a direct statement that defendant does not wish to continue speaking with the police or wishes to obtain advice from the family member before any interrogation continues. Stated another way, the request must be the equivalent of a request to halt the questioning.

Here, the circumstances indicate that defendant was not, in fact, invoking his right to silence. Defendant expressly denied that he needed the assistance of counsel and thereby implied that his call to his mother would not be for obtaining advice but for some other purpose. Defendant also willingly agreed to postpone his call and appeared eager to bolster his claim of innocence. Indeed, according to the officers, defendant did not exhibit any unwillingness to speak with police at any time during the interrogation. Moreover, defendant signed several waiver forms, expressly waiving the assistance of an attorney and his right to silence. Consequently, we reject this argument.

<u>In this same case, the court addressed the issue of overbearing the defendant's will by misrepresenting evidence</u>

Locust also argues that his confession should have been suppressed because his free will was overborne and his statement was not given voluntarily, in violation of the Fifth Amendment. Locust raised this argument on direct appeal, insisting that the record shows that he was exhausted, hungry, impaired and frightened at the time he made his admissions. Furthermore, he claims that Captain George's misrepresentation about blood being found on petitioner's clothes was "flagrantly deceptive conduct" that had the capacity to overbear his will.

"The fact that the police lie to a suspect does not, by itself, render a confession involuntary." ... "[U]se of a psychologically-oriented technique during questioning is not inherently coercive[;] ... [t]he real issue is whether the person's decision to confess results from a change of mind rather than from an overbearing of the suspect's will ." ... In order to render a confession involuntary, the suspect must have been subjected to "very substantial" psychological pressure.

That is not what happened here. Defendant, who had normal intelligence, had prior experience with the police and fully comprehended his situation, as evidenced by his initial lies. Additionally, there was testimony on which the trial judge was fully entitled to rely, indicating that defendant was provided with food, drink, and cigarettes while at the station, that he appeared alert, that he was Mirandized at least three times, and that he

was not mistreated in any way. The lie by Captain George did not have the capacity to overbear defendant's will. It seems more likely that defendant simply realized that he was not going to get away with the crime and decided to unburden himself. Therefore, we see no basis to suppress defendant's inculpatory statement.

Is a student in custody when asked by school officials to accompany the police for questioning?

In *Kalmakoff v. State* the Alaska Supreme Court outlined the criteria to determine custody for a student questioned by police. In this case a jury convicted Byron Kalmakoff of raping and murdering his cousin in the village of Pilot Point. Kalmakoff had just turned 15 when the crime was committed. On the day of his first interview the police told principal teacher, Jodi Mallonee, that she "needed to get Byron for the troopers so they could interview him." Mallonee called Kalmakoff out of class and Etuckmelra drove him and two other students to the city offices in the VPSO truck. All that the students were told was that the troopers needed to get some information from them. The trial court found on remand that Kalmakoff "was not told that he did or did not have to accompany the VPSO to the city offices, and that it is likely that he believed that he had to go." Kalmakoff was never told whether he had to answer the troopers' questions. Nobody contacted Kalmakoff's grandparents--who were also his adoptive parents--to inform them about the interview. The subject was not advised of his Miranda rights before making incriminating statements, which were not suppressed because the trial court determined that the defendant was not in custody during the initial interview.

The Alaska Supreme Court disagreed, finding that the totality of circumstances surrounding the first interview were such that the defendant should have been advised of his rights. The court stated the following:

Here, Kalmakoff was removed from school and transported to the interview by the VPSO in her official vehicle. The troopers had instructed the VPSO to bring Kalmakoff, along with two other students, to the city offices. Even if the use of the VPSO truck can be explained by convenience, Kalmakoff was still escorted to the interview by a law enforcement officer. Furthermore, the VPSO told Kalmakoff that the troopers needed to get some information from him, and neither the VPSO nor the principal teacher told Kalmakoff that he did not have to attend the interview or answer the troopers' questions. On remand, the superior court found that Kalmakoff likely believed that he had to go with the VPSO to the interview. Finally, the superior court found that neither the troopers nor school authorities informed Kalmakoff's grandparents about the interview and Kalmakoff was not given the opportunity to consult with or obtain the presence of a parent or guardian before the interview began. Even when Kalmakoff's grandmother came to the city offices, the troopers did not inform her that they were questioning Kalmakoff or invite her to join them in the interview.

The events before the interrogation thus weigh strongly in favor of a finding that Kalmakoff was in Miranda custody throughout the first interview. Facts intrinsic to the interrogation also support this conclusion. Kalmakoff had turned 15 only a few weeks before, and he had no previous history of delinquent acts or contact with law enforcement. Troopers Mlynarik and Stephenson were in uniform and visibly armed, and they did not tell Kalmakoff that he was free to leave or

that he did not have to answer their questions. Instead, Trooper Stephenson repeatedly emphasized that Kalmakoff needed to tell them the truth. Moreover, the troopers' questions became pointed and accusatory well before the break in the interview where the trial court found that the interview became custodial, including a series of questions that directly implicated Kalmakoff in the murder.

Kalmakoff was in custody for Miranda purposes throughout the first interview and was therefore entitled to Miranda warnings prior to questioning. Because the troopers failed to administer those warnings, all of Kalmakoff's statements made during the first interview were obtained illegally and must be suppressed.

The statement that you are "not going to be under arrest" and that "[y]ou're gonna walk out of here one way or the other....you're not under arrest." was found to be coercive.

In *In the Matter of M.E. Jr., Alleged Delinquent Child* (2011) the Court of Appeals of Ohio found that the interrogator's statement "that M.E. would not be arrested was an improper promise of leniency. Clark told M.E. he was "not going to be under arrest" and that "[y]ou're gonna walk out of here one way or the other. * * * You're not under arrest." While Clark may have been attempting to represent to M.E. that he would not be taken into custody at the conclusion of the interview, his statement essentially conveyed that M.E. would not be under arrest at any time, regardless of any statements or confession he made. Such a statement could be objectively viewed as a promise that M.E. would not be criminally punished for his actions. "When the benefit pointed out by the police to a suspect is merely that which flows naturally from a truthful and honest course of conduct, we can perceive nothing improper in such police activity. On the other hand, if * * * the defendant * * * might reasonably expect benefits in the nature of more lenient treatment at the hands of the police, prosecution or court in consideration of making a statement, even a truthful one, such motivation is deemed to render the statement involuntary and inadmissible."

.....the weight of the other factors supports a conclusion that M.E.'s confession was involuntary. M.E. is a juvenile and was only sixteen at the time of the confession. The record shows that he did not have prior criminal experience. In addition, evidence presented at the suppression hearing showed M.E.'s mental capacity is limited. Thompson testified that M.E.'s IQ was in "the 70s" and that he was "borderline mentally retarded ."

Although Clark testified that M.E. appeared intelligent and was responsive to the questions, the trial court found M.E. has "diminished cognitive capability."

When considering the coercive nature of Clark's statement that M.E. would not be undern arrest in conjunction with other factors, the totality of the circumstances render M.E.'s confession invalid.

The Supreme Court holds that a child's age properly informs the Miranda custody analysis

In *J.D.B. v. North Carolina* the United States Supreme Court ruled that a juvenile's age must be

a consideration in the determination of custody and the subsequent advisement of Miranda rights. (2011)

The Court stated that "Reviewing the question de novo today, we hold that so long as the child's age was known to the officer at the time of police questioning or would have been objectively apparent to a reasonable officer, its inclusion in the custody analysis is consistent with the objective nature of that test. This is not to say that a child's age will be a determinative, or even a significant, factor in every case."

Elements to consider in determining a juvenile's ability to make a knowing and intelligent waiver of his rights

In *State v. Gutierrez* the Supreme Court of New Mexico considered whether or not a 16-year-old defendant suffering from " a mental impairment caused by attention deficit hyperactivity disorder (ADHD)" could make a knowing and intelligent waiver of his rights. In their opinion the court outlined the elements to consider in making this assessment.

"In determining whether [a child over the age of fifteen] knowingly, intelligently and voluntarily waived the child's rights, the court shall consider the following factors:

(1) the age and education of the respondent;

(2) whether the respondent is in custody;

(3) the manner in which the respondent was advised of the respondent's rights;

(4) the length of questioning and circumstances under which the respondent was questioned;

(5) the condition of the quarters where the respondent was being kept at the time of being questioned;

(6) the time of day and the treatment of the respondent at the time of being questioned;

(7) the mental and physical condition of the respondent at the time of being questioned; and

(8) whether the respondent had the counsel of an attorney, friends, or relatives at the time of being questioned."

The court concluded "In this case, we similarly conclude that, notwithstanding Child's ADHD diagnosis, there is no evidence that he lacks sufficient intelligence to have understood his rights or the consequences of waiving them. Evidence in the record supports the district court's findings that Child was sixteen years and eleven months old at the time of his interrogation, he had been advised of his rights on previous occasions, and he had, in fact, refused to speak to authorities without a lawyer present on at least one of these occasions. In addition, Child possessed a

lengthy juvenile arrest record and had appeared in court several times. On these facts, we are not persuaded that Child's ADHD prevented him from sufficiently understanding his rights or the consequences of waiving them. One advantage of the totality-of-the-circumstances approach is that it allows courts "to take into account those special concerns that are present when young persons, often with limited experience and education and with immature judgment, are involved." Fare, 442 U.S. at 725. Another advantage is that it "refrains from imposing rigid restraints on police and courts in dealing with an experienced older juvenile with an extensive prior record who knowingly and intelligently waives his Fifth Amendment rights and voluntarily consents to interrogation."

16-year-old's confession upheld – example of factors to consider in juvenile interrogation

In *State v. LaCroix* the Court of Appeals of Washington, Division 1, upheld the admissibility of a 16 year-old's confession. On appeal the defendant had claimed that the length of the interrogation (5 hours) and the coercive police activity during the interrogation should have resulted in a suppressed confession. In their opinion the Appeals Court found that "As noted, the trial court's finding that he was interrogated for approximately five hours during normal waking hours is supported by the evidence. The five hours of interrogation were spread over a nine hour period. He was provided with food, beverages, bathroom breaks, and other periods without questioning. LaCroix cites no authority compelling a finding that such circumstances amount to coercion."

As to coercive police activity, the court stated that, "A police officer's psychological ploys, such as playing on the suspect's sympathies, saying that honesty is the best policy for a person hoping for leniency, or telling the suspect that he could help himself by cooperating may play a part in a suspect's decision to confess, "but so long as that decision is a product of the suspect's own balancing of competing considerations, the confession is voluntary." ....."The question [is] whether [the interrogating officer's] statements were so manipulative or coercive that they deprived [the suspect] of his ability to make an unconstrained, autonomous decision to confess."

"LaCroix next points to the officers' repeated assertions both that it was in his best interest to be honest with them, and that they believed he was being dishonest. In this regard he also points to the officers' use of the CVSA in support of their statements to him that he was not believed by them and to the officers' claim that another suspect had implicated him.

"Moreover, the officers' references to the results of the CVSA in support of their contentions that LaCroix was being dishonest did not render LaCroix's subsequent statements involuntary.... the United States Supreme Court rejected the proposition that the use of a polygraph during interrogation is inherently coercive. In fact, " '[c]ourts have held confessions to be voluntary when police falsely told a suspect that his polygraph examination showed gross deceptive patterns,'... and Washington courts have declined to suppress confessions merely because they were given after the administration of a polygraph test.

"LaCriox's age at the time of his interrogation similarly does not militate in favor of finding that his statements were involuntary. At the time of the interrogation, LaCroix was "one and a half months shy of his seventeenth birthday." While a suspect's age must be considered in evaluating

the admissibility of a confession, it is well established that a 16–year–old can voluntarily confess, even in the absence of a friendly adult."

Court upholds Miranda waiver of a 12 year old

In *In re ANDREA V., a Person Coming Under the Juvenile Court Law. The People, Plaintiff and Respondent, v. Andrea V.* (2010) the Court of Appeal, Second District, California upheld the Miranda waiver of a 12-year-old. In reaching their decision the court stated that, "Here, Officer Gonzalez's testimony, which the juvenile court clearly credited, supports the finding the minor knowingly and voluntarily waived her Miranda rights. Officer Gonzalez testified he and his partner questioned the minor while the three of them were seated at a table in an interview room. No guns were drawn. Officer Gonzalez testified he read the minor her rights, and she readily responded affirmatively when asked if she understood each right. He also asked if the minor wanted to relate what had happened, and she answered, "Yes," and then confessed to the robbery. The questions Officer Gonzalez posed were simple and straightforward. He made no threats to the minor. Nor was there any evidence he attempted to deceive or made promises to the minor during the interview. For her part, the minor actively participated in the interview, and answered appropriately; at no time did she express any confusion, or inability or unwillingness to respond. Apart from the minor's testimony at the Evidence Code section 402 hearing, which the juvenile court was free to disbelieve, there is nothing to suggest a violation of her Miranda rights. Thus, the totality of circumstances surrounding the interview establish the minor knowingly and voluntarily decided to forgo her rights to remain silent and to assistance of counsel. The juvenile court did not err in admitting the confession into evidence."

What constitutes custody for an 11-year-old?

In *In the Matter of M.G., a Juvenile* the Court of Appeals of Texas overruled the trial court's decision to admit the confession of an 11-year-old. The defendant had appealed on the basis that "the trial court erred in overruling his motion to suppress his videotaped statements because the statements were the result of custodial interrogation, yet he had not been advised of his rights, which violated the Fifth and Fourteenth Amendments to the United States Constitution; Article 1, Sections 9 and 10 of the Texas Constitution; and section 51.095 of the Texas Family Code."

In reaching their decision to reverse, the Court of Appeals pointed out that "The room was small. Detective Caldwell sat very close to M.G. while questioning him and appeared to be, at least in part, between M.G. and the door. Detective Caldwell never informed him of any of his rights under the Texas Family Code, and she was not sure if she told him that he was free to leave. Instead, Detective Caldwell made it clear that M.G. was the focus of the investigation involving the sexual assault of his brother. Despite M.G.'s denials, Detective Caldwell repeatedly asked M.G. if he had sexually assaulted his brother. At some point, M.G. became teary-eyed. Nevertheless, Detective Caldwell continued to press him for truthful statements, telling him that she knew that he was not being completely honest during the Scotty's House interview. She also stressed to him several times that they had found a shirt in his bedroom with potential DNA evidence on it and brought his mother into the interview room, not for M.G.'s benefit, but only to allow Detective Caldwell to take DNA cheek swabs from him. After all this, M.G. finally gave a statement inculpating himself in the sexual assault.

Based on the circumstances outlined above, we conclude that a reasonable eleven-year-old child would have believed that his freedom of movement had been significantly restricted at some point after Detective Caldwell began to press M.G. for a truthful statement."

Juvenile confession found inadmissible – "thirteen hours of relentless overnight questioning of a sleep-deprived teenager by a tag team of officers overbore the will of that teen, rendering his confession involuntary"

In *Doody v. Schriro* the United States Court of Appeals, Ninth Circuit found the defendant's confessions should have been found inadmissible. From the court's opinion:

"This case emerged from a horrendous crime-the murder of nine individuals, including six monks, inside a Buddhist temple. The ensuing investigation ensnared Petitioner Johnathan Doody, a seventeen-year old high school student. Although Doody eventually confessed to participating in the nine murders, he now challenges his confession, asserting that the Miranda advisements he was given were inadequate and that his confession was involuntary. We agree on both counts. Specifically, we conclude that the advisement provided to Doody, which consumed twelve pages of transcript and completely obfuscated the core precepts of Miranda, was inadequate. We also hold that nearly thirteen hours of relentless overnight questioning of a sleep-deprived teenager by a tag team of officers overbore the will of that teen, rendering his confession involuntary.

Court upholds Miranda waiver by 15-year-old

In State v. Fardan the Minnesota Court of Appeals found the Miranda waiver of a 15-year-old to be valid and that the Appellant's single request for his father, which the district court noted was established only by appellant's own testimony, was simply not enough to indicate that he was invoking his right to remain silent. "The Supreme Court has repeatedly rejected a per se rule requiring parental presence at interrogations of juveniles."

Court upholds Miranda waiver of 14-year-old

In *In re Jeffrey W.* the Court of Appeals of Arizona upheld the trial court's decision to admit the confession of a 14-year-old who subsequently appealed on the basis that "his lack of prior police contact, young age, mental and cognitive deficits, [and] upbringing to respond to authority, all clearly manifested an inability to waive his Miranda rights," thus rendering his confession involuntary.

The Appeals court found that the State presented adequate evidence at the voluntariness hearing that Jeffrey understood and voluntarily waived his rights. Detective F. testified, and the video recording of the interview confirmed, Jeffrey told Detective F. he understood each right after it was read and explained to him, he did not ask for further clarification, and he signed a written waiver of his rights. Further, Jeffrey invoked his right to have a parent present during the interview when advised he could do so, and Detective F. waited until Jeffrey's mother arrived to begin formally questioning him.

And, although there was evidence Jeffrey's cognitive abilities were below average for his age, "[l]ow intelligence, in itself, will not invalidate an otherwise knowing and intelligent waiver." Under these circumstances, we see no abuse of discretion.

Appeals court reverses admissibility of a confession from an 11-year-old because of the interrogator's behavior

In *State in the interest of J.E.T.* (2009) the Court of Appeals of Louisiana reversed the trial court's decision to admit the confession from an 11-year-old, stating that "Considering the entire sequence of events from the time the Juvenile was picked up to the time his interview was concluded, we conclude that the eleven-year-old Juvenile's waiver was improperly induced by threats, coercion, and intimidation. The Juvenile was alone with detectives during the drive to the sheriff's office, with one detective admittedly "joking" about harming the Juvenile. After the Juvenile arrived, he entered the building without his family, via the entrance for suspects. The Juvenile's mother did not stay by his side to protect him, but chose to stay behind while her son was interrogated for two hours with his stepfather, a man with whom he had a strained relationship and whose biological daughter was the victim.

During the interview, the Juvenile was threatened to tell the truth "or else," he was cursed at, and he possibly had objects thrown at him. The timing of the incident involving the lights is not entirely clear and may have occurred after the interview had concluded. The incident, nonetheless, is demonstrative of the Juvenile's fear and lends further support to the credibility of the Juvenile's claim that he was intimidated, threatened, and coerced to waive his rights and confess to the offense, as well as Detective Primeaux's willingness to intimidate, threaten, and coerce a suspect."

Juvenile's confession ruled inadmissible because of several violations of the Texas Family Code

In *In The Matter of D.J.C., Appellant* the Court of Appeals of Texas, Houston (1st 363 Dist.) reversed the trial court's decision to admit the confession of a 16-year-old defendant, stating that when the interview moved from a non-custodial interview into a custodial environment the juvenile was not given the proper advisement of rights, and it was a violation of the Texas Family Code not to let the defendant's grandmother (his legal guardian) sit in on the questioning.

Court finds confession inadmissible because the Miranda rights were not properly explained to the defendant - a 15-year-old with "borderline intellectual functioning"

In *Etherly, Petitioner, v. Schwartz, Respondent* the U. S. District Court, N.D. Illinois, Eastern Division found that the trial court was in error in admitting the defendant's confession. The U.S. District Court said that "In this case, police officers and ASA Alesia advised Mr. Etherly of his Miranda rights in a formulaic fashion, then asked him to acknowledge that he understood those rights, but neither the detectives, nor the ASA, nor Youth Officer DiGrazia made any attempt to probe the boy's actual understanding of the rights recited or asked him to explain the meaning of the warnings in his own words. Compare Hardaway, 302 F.3d at 761 (after being advised of Miranda rights, juvenile defendant "explained his rights back to [the ASA] in his own words, stating that he did not have to speak with [her] if he didn't want to, that anything he told

[her] she could tell a judge in a trial against him, that he could have an attorney there when he was questioned about the case, even if he or his family couldn't pay for one.") Indeed, the evidence is that the Miranda warnings Mr. Etherly received exemplified the kind of rote "recitals which merely formalize constitutional requirements" that the Court disregarded in Haley because of the defendant's youth. Accordingly, the appellate court arguably transgressed Haley, based on Mr. Etherly's age alone, by according any weight at all to the fact that he formally received Miranda warnings. This transgression reached the level of unreasonable error, however, when factors beyond Mr. Etherly's youth are taken into account. At the time of his arrest, Mr. Etherly had no criminal history or experience with the criminal justice system.....

Moreover, Mr. Etherly was a learning disabled high school freshman with "borderline intellectual functioning" and a "very limited vocabulary," who was failing all of his classes and unable to read, write, or spell basic words. These factors underscore the unlikelihood that Mr. Etherly's acknowledgment of his Miranda rights indicated any meaningful understanding of- much less a knowing waiver of those rights.

For the foregoing reasons, the Illinois Appellate Court's determination that Mr. Etherly's confession was voluntary amounted to a unreasonable application of the Supreme Court's "totality of the circumstances" test."

Can a 12-year-old make an intelligent and knowing waiver of their rights? Yes

In *State v. F.G.H.* the Court of Appeals Washington Division 3 upheld the conviction of a 12-year-old, who on appeal claimed that "he did not knowingly, voluntarily, and intelligently waive his Miranda rights before confessing to police."

The Appeals court stated that "Here, F.G.H. told the officer he understood his rights and wanted to make a statement. Officer Masters testified he had no problem communicating with F.G.H. and he believed F.G.H. had no difficulty understanding him. While F.G.H. was only 12 years old, nothing in the record shows that he lacked the intelligence or capability to understand the right to remain silent. F.G.H. argues 12-year-olds are too young, in general, to understand the full consequence of the exercise or waiver of their constitutional rights. But, "the test is whether a person knew he had the right to remain silent, and that anything he said could be used against him in a court of law, not whether he understood the precise legal effect of his admissions." Dutil v. State, 93 Wn.2d 84, 90, 606 P.2d 269 (1980). Moreover, "If a juvenile understands that he has a right, after he is told that he has that right, and that his statements can be used against him in a court, the constitutional requirement is met." Id. Under the totality of the circumstances, we conclude F.G.H. was capable of waiving his right to remain silent. Substantial evidence supports this finding and this finding supports the court's conclusion that F.G.H.'s confession was voluntary. There was no error in admitting the confession at F.G.H.'s bench trial."

Juvenile interrogation in school - was Miranda required? Does a deceptive offer to help render the confession inadmissible? Not in this case

In *State V. J.S.* the Court of Appeals of Washington, a 13-year-old student was questioned by a police detective in the office of a school counselor at J.S.' school. "The counselor and a Child

Protective Services (CPS) investigator were also present. Detective McCarthy was not in uniform, his jacket was zipped so that his firearm and handcuffs were not visible, and he had arranged the chairs in the room so that J.S. would be seated next to the door. Detective McCarthy did not give Miranda warnings before the interview, but the detective told J.S. that he was not under arrest, was not required to answer any questions, was free to leave at any time, could not get in trouble for refusing to talk or walking out, and would be allowed to return to his classroom after the interview." "We agree with the trial court that the interrogation of J.S. was not custodial."

The defendant also claimed that the trial court erred by admitting his statement because the interrogator was not truthful and mad false promises during the interview.

J.S. contends that his statement was involuntary because Detective McCarthy deceived and threatened him. According to J.S., Detective McCarthy falsely told him the purpose of the interview was to get him help and threatened J.S. by saying that he could not receive help unless he confessed. That description, however, does not fairly represent what happened.

The detective stated that his goal for the interview was to find the truth and to offer help. He did not threaten J.S. Rather, he assured J.S. that it was common for boys his age to be curious about those things, but that T.B.'s brother was certain he saw sexual contact, and for the adults present to be able to help J.S., they needed to know the truth. When J.S. continued to deny the allegations, the detective reiterated that if J.S. was not truthful, the detective could not help him: "But if your [sic] not willing to be honest about it, then you know it's, the help situation is over, right?"

Even if the detective's offer of help was deceptive, there is substantial evidence in the record to support the trial court's conclusion that J.S.'s statement was voluntary."

<u>15-year-old's confession should have been suppressed – Miranda violation [Siebert]</u>

In *People v. Lopez* "The 15-year-old defendant was brought to the police station at approximately 1 p.m. and placed in an interrogation room. Detectives questioned him at that time and advised him that Leal had implicated him in Hector's murder. Defendant provided the detectives with information and was left alone in the same room, with the door closed, for four to five hours while detectives continued to investigate. Defendant was not handcuffed during this period and the door to the interview room remained unlocked. However, defendant's freedom of movement was restricted, as he was not allowed to leave the room without an escort and was never told that he was free to leave the police station."

"At 6 p.m., the detectives who initially brought defendant to the station, questioned him, and left him in the interview room returned to that same interview room and spoke to defendant again. They told defendant that Leal had admitted to participating in Hector's murder and that Leal had implicated him. At this time, defendant was aware that Leal had now implicated him twice in this crime, and that Leal had confessed. Without providing Miranda warnings, the detectives asked defendant "whether he was involved in this incident or not." Defendant answered by giving an incriminating oral statement.

Detective Bautista testified that defendant was not questioned while he gave the statement, he "just kept talking." After defendant confessed, the detectives stopped questioning him, gave him his Miranda warnings, and terminated the interview."

"We recognize that defendant's handwritten statement was taken after defendant received Miranda warnings at least twice, that an assistant State's Attorney was doing the questioning rather than a detective, and that defendant's father was present. However, the unwarned and warned statements were taken close in time, in the same place, with Detective Keane present for both, and defendant was never advised that his oral statement would be inadmissible. Viewing all the relevant factors, we cannot conclude that a reasonable juvenile in defendant's position would have understood that he had a genuine choice about whether to continue talking to the police. We find that defendant's handwritten statement was involuntary for fifth amendment purposes pursuant to the United States Supreme Court's decision in Seibert. Defendant's handwritten statement should have been suppressed."

Juvenile claims her confession was coerced because the detective repeatedly told her she had to tell him what happened, thus leading her to believe she did not have the right to remain silent – court rejects this argument

In re J.S, J.S. argues her confession was coerced and thus involuntary because the detective who questioned her repeatedly told her she had to tell him what happened, thus leading her to believe she did not have the right to remain silent; her parents were not with her during the school interview; and she had made the functional equivalent of a request to end the interrogation."

"During the school interview, the detective repeatedly asked J.S. to tell him what happened with C.S. For example, the detective stated I need you to tell me what happened. I need you to be honest with me. There's no telling a part of the truth here and not telling me the rest of it[.] I need to have the whole story.... But I need you to tell me the truth and not leave anything out and not hold things back or change the story. I need to know what happened."

Although J.S. argues these questions led her to believe she could not remain silent, we disagree. There is nothing wrong with a police officer asking a juvenile to explain what occurred or to tell the truth."

Does a 12-year-old juvenile have to be advised of their Miranda rights when questioned about a criminal matter by the police while in the school building? No

In re J.H., Appellant the District of Columbia Court of Appeals stated: Appellant, who was twelve years old at the time, was interrogated by a police officer at his school and confessed to a sexual offense involving his three-year-old sister. No Miranda warnings were given by the police officer. Concluding that appellant had not been in "custody," the trial court declined to suppress the confession, which constituted the primary evidence against the youth. Applying the proper standard of review to the record presented, "we cannot conclude as a matter of law that [appellant] was in custody when the police interrogated [him], i.e., that [his] freedom of action was curtailed to a degree associated with a formal arrest." Morales v. United States, 866 A.2d 67,

74 (D.C.2005). We therefore uphold the trial court's denial of the motion to suppress. We also conclude that the confession was adequately corroborated.

Failure to allow 17-year-old to call his mother nullifies confession

In *People v. Westmorland* the Illinois Appellate court upheld the suppression of a 17-year- old's confession, stating that:

"There were, however, some quite unsettling aspects of the interrogation. The officers made no attempt to locate defendant's parents when they arrested him and also denied his two requests during the interview to speak to his mother. Defendant was "immature" for his age and "wide-eyed." With defendant already vulnerable from the complete denial of parental contact, Galason raised his voice during the interview and said, "I don't give a shit if you go to jail or not." This was the conduct that, in the trial court's words, "terrified" defendant. Under the totality of the circumstances, which encompass both defendant's individual psychological makeup as well as the officers' conduct, we agree with the trial court that defendant's will was overborne.

US District Court upholds confession of 16-year-old who was questioned without parent or guardian present

In *Woodham v Wilson* the US District Court, S.D. Mississippi found that a 16-year-old's confession was admissible even though he was interrogated without a parent or guardian present. The court said that "Woodham contends the trial court should have excluded his two confessions because of his young age (sixteen) at the time they were made and because he had no guardian or attorney present. The state supreme court rejected this claim, holding that the proper analysis was of the "totality of the circumstances," and that in view of those circumstances, his confessions were admissible."

Juvenile confession suppressed for failure to offer “concerned adult” protections

In *State v. Westmorland* the Illinois Appellate Court, Second District, upheld the trial court's decision to suppress a 17-year-old defendant's condition, focusing on the officer’s failure to afford the defendant any "concerned adult" protections. Here is an excerpt from their decision:

"The aspect of the interrogation that we find most significant is the total failure by the police to afford defendant any of the "concerned adult" protections explained above. The detectives made no attempt to locate defendant's parents before or during the interview nor did they afford him the assistance of a juvenile officer. They also refused defendant's two requests during the interview to speak with his mother. Here, the police refused defendant's two requests to contact his mother and made no effort themselves to contact defendant's parents before or during the interview. As in Knox, there was no juvenile officer present during the interview to offset the absence of a parent. We recognize that defendant was given Miranda warnings and did not receive any promises or threats. The same, however, was true of the respondent in V.L.T. and the defendant in Knox, but in neither case did this fact override the coercion that the court found in the remaining circumstances. Likewise, the provision of Miranda warnings and the absence of promises or overt threats did not ameliorate the pressure brought to bear on defendant, a 17-year-

old who was "immature" for his age and became "terrified" while in custody when his two specific requests to contact a parent were refused and when Galason raised his voice to him and said, "I don't give a shit if you go to jail or not." If section 5-405(2) of the Act and the parallel common-law protections are to have real force, we cannot countenance the police action in this case but must find that defendant's confession was involuntary."

Juvenile's written confession to police was not voluntarily given

In *State v. Jerrell C.J.* the Wisconsin Supreme Court found that:

• Juvenile's written confession to police was not voluntarily given

• following the arrest of a juvenile, the failure of police to call the juvenile's parents for the purpose of depriving the juvenile of the opportunity to receive advice and counsel will be considered strong evidence that coercive tactics were used to elicit the juvenile's incriminating statements; and

• pursuant to Supreme Court's supervisory power to ensure fair administration of justice, all custodial interrogation of juveniles shall be electronically recorded where feasible, and without exception when questioning occurs at a place of detention