



Police Law Bulletin



City Attorneys' Office

Toni M. Smith, Assistant City Attorney

In this issue:*Miranda* Custody Analysis Includes Consideration of Juvenile Suspect's Age – Pgs. 1-2Defendant Not In Custody For *Miranda* Purposes – Pgs. 3-7Defendant In Custody For *Miranda* Purposes; Statements to Juvenile Were Interrogation – Pgs. 7-8

UNITED STATES SUPREME COURT



***Miranda* Custody Analysis Includes Consideration of a Juvenile Suspect's Age**

***J.D.B. v. North Carolina*, No. 09-11121 (16 June 2011)**

Police stopped and questioned J.D.B., a 13-year-old, seventh-grade student, upon seeing him near the site of two home break-ins. Five days later, after a digital camera matching one of the stolen items was found at J.D.B.'s school and seen in his possession, Investigator DiCostanzo with the Chapel Hill Police Department went to the school. A uniformed school resource officer assigned to the school took J.D.B. from his classroom to a closed-door conference room. Although DiCostanzo asked the school administrators to verify J.D.B.'s date of birth, address and parent contact information from school records, neither the police nor the school administrators contacted J.D.B.'s grandmother, his legal guardian. J.D.B. was not given, at least initially, any *Miranda* warnings. Questioning, which lasted approximately 30 minutes, began with small talk-discussion of sports and J.D.B.'s family life. DiCostanzo asked, and J.D.B. agreed, to discuss the events of the prior weekend. Denying any wrongdoing, J.D.B. explained that he had been in the neighborhood where the crimes occurred because he was seeking work mowing lawns. DiCostanzo pressed J.D.B. for additional detail about his efforts to obtain work; asked J.D.B. to explain a prior incident, when one of the victims returned home to find J.D.B. behind her house; and confronted J.D.B. with the stolen camera. The assistant principal urged J.D.B. to "do the right thing," warning that "the truth always comes out in the end." Eventually, J.D.B. asked whether he would "still be in trouble" if he returned "the stuff." In response, DiCostanzo explained that return of the stolen items would be helpful, but "this thing is going to court regardless." DiCostanzo then warned that he may need to seek a secure custody order if he believed that J.D.B. would continue to break into other homes. When J.D.B. asked what a secure custody order was, DiCostanzo explained that "it's where you get sent to juvenile detention before court." After learning the prospect of juvenile detention, J.D.B. confessed that he and a friend were responsible for the break-ins. DiCostanzo only then told him that he could refuse to answer questions and was free to leave. Asked whether he understood, J.D.B. nodded and provided further detail, including the location of the stolen items. Eventually, J.D.B. wrote a statement, at DiCostanzo's request. When the bell rang indicating the end of the school day, J.D.B. was permitted to leave to catch the bus home.

Two juvenile petitions were filed against J.D.B., charging him with breaking and entering and with larceny. His public defender moved to suppress his statements and the evidence derived therefrom, arguing that J.D.B. had been interrogated in a custodial setting without being afforded *Miranda* warnings. The trial court denied the motion and adjudicated him delinquent. The North Carolina Court of Appeals and the North Carolina Supreme Court affirmed. The latter court held that J.D.B. was not in custody when he confessed, declining to extend the test for custody to include consideration of the age of an individual subjected to questioning by police. The United States Supreme Court agreed to hear the case on appeal to determine whether the *Miranda* custody analysis includes consideration of a juvenile suspect's age.

Whether a suspect is in custody for *Miranda* purposes is an objective determination involving two discrete inquiries: first, what were the circumstances surrounding the interrogation; and second, given those circumstances, would a reasonable person have felt he or she was at liberty to terminate the interrogation. The police and the courts must examine all of the circumstances surrounding the interrogation including those that would affect how a reasonable person in the suspect's position would perceive his or her freedom. However, the test involves no consideration of a particular suspect's actual mindset. By limiting analysis to objective circumstances, the test avoids burdening police with the task of anticipating each suspect's idiosyncrasies and divining how those particular traits affect the suspect's subjective state of mind.

While the State contended that a child's age has no place in the custody analysis, the Supreme Court disagreed. In some circumstances, a child's age may affect how a reasonable person in the suspect's position would perceive his or her freedom to leave. That is, a reasonable child subjected to police questioning may sometimes feel pressured to submit when a reasonable adult would not. Courts can account for that reality without doing any damage to the objective nature of the custody analysis. A child's age is a fact that generates commonsense conclusions about behavior and perception that apply broadly to children as a class. Children generally are less mature and responsible, lack experience, perspective and judgment to recognize and avoid choices that are detrimental to them, and are more vulnerable and susceptible to outside pressures than adults.

Given a history replete with laws and judicial recognition that children cannot be viewed simply as miniature adults, there is no justification for taking a different course here. So long as the child's age was known to the officer at the time of the interview, or would have been objectively apparent to a reasonable officer, including age as part of the custody analysis requires officers neither to consider circumstances "unknowable" to them, nor to "anticipate the frailties and idiosyncrasies" of the particular suspect being questioned. There is a wide basis of community experience upon which it is possible, as a practical matter, to determine what is to be expected of children as a general class. Including age in the custody analysis is consistent with the *Miranda* test's objective nature. This does not mean that a child's age will be a determinative, or even significant, factor in every case. It is, however, a reality that cannot be ignored.

The United States Supreme Court remanded the case back to the North Carolina Supreme Court to address the question of whether J.D.B. was in custody when he was interrogated, taking account of all the relevant circumstances of the interrogation, including J.D.B.'s age at the time.

NORTH CAROLINA COURT OF APPEALS



Defendant Was Not In Custody When He Made Statement To Detectives

***State v. Carter*, No. COA10-974 (21 June 2011).**

Late into the evening of February 22, 2007 and into the early morning hours of February 23, several Forsyth County deputies were working off-duty as security at the Red Rooster nightclub in Winston-Salem. Around 2:00 a.m., several fights broke out inside the nightclub. As the deputies and bouncers tried to stop the fights, someone threw a chair which hit several people, and the fighting escalated. The deputies then began using pepper spray to break up the groups of people fighting and to force them outside. As the crowd - consisting of approximately 400 to 500 people - moved outside, at least 30 separate fights broke out in the parking lot. Defendant was involved in one of the fights and was hit in the face, leaving a big gash under his eye. As the defendant got into his vehicle and looked in the rearview mirror, he saw how badly his eye was bleeding and got upset. He then reached under the driver's seat and pulled out a 9mm handgun. He retrieved the clip from the glove box, loaded the clip, and racked a round in the chamber. Yelling, "Fuck it. Who wants some?" defendant fired several shots towards the crowd in the parking lot. After spraying the crowd with gunfire, defendant got into his vehicle and drove off. Sergeant Plouff, who was one of at least four Winston-Salem police officers who had responded to the deputies' call for emergency assistance, was hit in the neck by one of the bullets from defendant's gun. Sgt. Plouff died from his injuries.

In the course of investigating Sgt. Plouff's death, Detective Nieves learned that defendant may have been at the Red Rooster on February 22-23, 2007. The Detective contacted the defendant on February 27, 2007, and defendant agreed to come to the police station to be interviewed. Because defendant was having problems with his car, two detectives picked him up from his mother's residence and defendant voluntarily went with them to the police station. After being interviewed for several hours, defendant gave a tape recorded statement in which he stated that he was angry after being injured in the fight inside the club, and that he went outside to his car, got his handgun, loaded it, and fired five or six times "straight up" into the air. At the conclusion of the interview, defendant was arrested and charged with the first-degree murder of Sgt. Plouff.

Prior to trial, defendant filed a motion to suppress his statement to the police on the basis that the statement was obtained in violation of his Fifth Amendment rights. The trial court denied defendant's motion. The jury found defendant guilty of second degree murder (with an aggravating circumstance that the murder was committed against a law enforcement officer engaged in the performance of his official duties). Defendant was sentenced to 196 to 245 months imprisonment. Defendant appealed arguing that the trial court erred in denying his motion to suppress the statement he made to detectives at the police station because, defendant argued, the statement was obtained as a result of a custodial interrogation conducted without his having been advised of his *Miranda* rights.

Police officers are not required to administer *Miranda* warnings to everyone whom they question. Nor is the requirement of warnings imposed simply because the questioning takes place in the station house, or because the questioned person is one whom the police suspect. *Miranda* warnings are required only

where there has been such a restriction on a person's freedom to render him "in custody." In the case at hand, a detective went to the defendant's mother's house around 3:00 p.m. where he was told that defendant was not at home. The detective left a business card with defendant's sister and asked her to have defendant contact him. Shortly thereafter, defendant called the detective, who explained that police were investigating the shooting at the Red Rooster nightclub and were interviewing everybody who had been at the scene. When defendant admitted that he had been at the club, the detective asked if he would come to the police station to give a statement. Defendant told the detective that something was wrong with his car and that he was unable to come at that time. The Detective offered to send someone to pick him up at his house, and defendant agreed to being picked up. The detectives who picked up the defendant were in plain clothes. Defendant was neither searched nor frisked before getting into the passenger seat of the detectives' unmarked Honda Accord. While driving to the police station, defendant was told that "he could leave at any time" and that "he was not under arrest." When they arrived at the station, they parked in the public parking lot and entered the building through the public entrance in front rather than through the secure entrance in back. While unlocking the door allowing access to the offices and interview rooms, the detective told defendant that "the door only locks from the outside, and if he wanted to leave he could get out the door, it didn't require unlocking..." The detectives led defendant to an interview room where they again told him that he was not in custody and that he "could exit through the door at any time." After leaving defendant unattended for approximately 5 minutes, two detectives entered the room. They explained to defendant that they were investigating the shooting death of Sgt. Plouff; that he was "not under arrest;" and that "he could leave at any time." As the interview began, he was offered something to drink, which he declined. Later during the interview, defendant again was offered something to eat or drink and was given two sandwiches, some potato chips, a soda, and a cupcake. The interview, which was "conversational" in tone, lasted several hours. During the interview, defendant signed a form consenting to the search of his residence, but refused to give a DNA sample or submit to a polygraph examination. He later gave the incriminating tape recorded statement.

Considering the totality of the facts, the Court of Appeals affirmed that the defendant was not in custody at the time of his recorded statement.

Defendant Not in Custody For *Miranda* Purposes

***State v. Hartley*, No. COA10-964 (17 May 2011).**

On the morning of June 18, 2004, the bodies of Gail Tyndall, her daughter T.B. (age nine), and her son R.B. (age 14) were discovered in their trailer in Sampson County, North Carolina. Officers began looking for defendant who was Gail's 21-year-old son and the half-brother of T.B. and R.B. At 9:15 p.m., officers saw defendant walking along Highway 421. They pulled over, approached defendant, and asked him if he knew about anyone being hurt at his home. Defendant responded that he did not. The officers asked defendant if he would accompany them to the investigation headquarters at the Plainview Fire Department. Defendant agreed. Defendant was not handcuffed, was told he was not under arrest, and rode in the front of the police vehicle. At the Fire Department, officers entered a code to access the building and defendant followed them to a classroom where he was seated at a table with two officers seated across from him. Defendant was asked if he wanted anything to eat or drink, or if he needed to use the restroom. Defendant was again informed that he was not under arrest. One officer asked defendant when he last saw his family. He responded that he had dinner with them at 8:30 p.m. and left the house to go to Walmart about 1:00 a.m. while they were still sleeping. One of the officers noticed that defendant had cuts on his hands. When asked about them, defendant stated that he did not know how he had received them. One of the officers testified that she had decided she would not, at that point, allow defendant to leave. However, this was never communicated to him; rather, the

officer stated that there was forensic evidence at the scene which would likely lead to the apprehension of the person who killed defendant's family. The officer then asked defendant if there was anything else he would like to tell her, and defendant replied, "Yeah, I did it." He then confessed to committing the murders in detail. Defendant was then arrested and read his *Miranda* rights, which he waived. Defendant again confessed to the killings and signed a written confession.

According to defendant's confession, his family members went to bed around midnight on June 18th. Defendant went to his bedroom and began watching television, but he "just started thinking about stabbing [his] mom." Defendant did not know "where the thoughts came from." At approximately 1:30 a.m., defendant retrieved a knife and walked to his mother's bedroom. He waited a minute to make sure she was asleep and then entered the bedroom. He began stabbing her with the knife. She awoke immediately and began screaming and trying to fight defendant. Defendant continued to stab her until she stopped screaming. At about the same time Gail stopped screaming, R.B. came into the bedroom and turned on the light. Defendant then began stabbing R.B. until he fell face forward in the doorway of the bedroom. Defendant confessed that he then put the knife on the kitchen table, found some duct tape, and proceeded to T.B.'s room. When he entered the room, T.B. awoke and asked what he was doing. Defendant told her to put a piece of clothing from the floor into her mouth, which she did. He then used duct tape to bind her hands behind her back and tape her mouth shut. Defendant then instructed her to walk to his bedroom where he undressed himself and her. After attempting to rape the child, defendant sodomized her. He then tried to strangle her with a shoelace, but because "it was not working," he then strangled her with his forearm for about five minutes until she stopped moving. Defendant told police that he then washed his arms and changed clothes. Defendant took all of the telephones and placed them in the bathroom so that the victims could not find them "if they didn't die." Defendant then began walking in the direction of Dunn, North Carolina.

Defendant was charged with three counts of first degree murder, one count of attempted first degree rape, and one count of first degree sexual offense. At trial, it was undisputed that defendant killed the three victims and perpetuated sexual acts on T.B., but defendant claimed he was not guilty of the crimes due to his being insane. The jury found defendant guilty of the charges on all counts. Defendant appealed.

Defendant argued, among other things, that the trial court erred in denying his motion to suppress his confession because the confession was given while he was in custody and prior to him having been advised of his *Miranda* rights.

In determining whether a suspect was in custody, an appellate court must examine all the circumstances surrounding the interrogation and, based upon those circumstances, must determine whether a reasonable person in defendant's position would have believed that he was under arrest or was restrained in his movement to an equivalent degree. In the case at hand, the court noted that defendant was told twice that he was not under arrest; he voluntarily went to the Fire Department; he was never handcuffed; he rode in the front of the police vehicle; officers asked him if he needed food, water, or use of the restroom; the defendant was never misled or deceived; the defendant was not questioned for a long period of time; and the officers did not use physical intimidation during the interview. Defendant pointed out that he was subjected to a pat-down; the Fire Department required an access code; he was not offered medical attention; he was never left alone in the room; he had no previous experience with the criminal justice system; he was a suspect; and one of the officers continued to question him after she had subjectively determined that she would not allow him to leave had he tried to do so. The court found that none

of the factors alone are determinative. Considering the totality of the circumstances, the court was not persuaded that defendant was in custody.

Defendant Not In Custody For Purposes of *Miranda*

***State v. Clark*, No. COA10-403 (19 April 2011).**

On May 2, 2006, Detective Huffman of the Burke County Sheriff's Office received a call reporting that a sexual assault had been committed against a child. At least one patrol officer had already responded to the scene. While patrol officers were at the victim's residence, but before Detective Huffman arrived, defendant went to the residence and knocked on the front door. The child's father, who was "irate," answered the door. A law enforcement officer told the defendant to "come with [him]" and escorted defendant away from the house. Defendant stood with or around one or more police officers in the driveway for about an hour before Detective Huffman arrived. As the detective arrived at the residence, defendant, inquired if Huffman was the detective responsible for handling the case. After Huffman responded in the affirmative, defendant stated that he wanted to talk to the detective in order "to make some wrongs right." Detective Huffman told defendant that he would need to make contact with the child first. The detective remained in the child's house for 30-40 minutes. At some point while defendant was waiting for Detective Huffman to emerge from the residence, defendant attempted to approach the child's sister, who was his girlfriend, but was instructed by an officer to "come back." As Detective Huffman exited the residence, defendant approached him for a second time and again stated that he needed to speak with him. Detective Huffman explained that he was not going to discuss the case in the victim's driveway, but would be happy to talk to defendant at the Sheriff's Office. Because the detective smelled alcohol on the defendant, he offered defendant a ride to the Sheriff's Office in his unmarked Crown Victoria, or as an alternative, told defendant that he could have a family member or friend drive him. Defendant elected to ride with Detective Huffman. As the two men traveled to the Sheriff's Office, defendant rode in the front passenger seat and was not subject to any restraints. Defendant again stated that he "wanted to make wrongs right." Upon arrival at the Sheriff's Office, defendant was taken to an interview room. Defendant was not restrained in any way. Detective Huffman explicitly informed the defendant that defendant did not have to talk with him, and that defendant did not have to be there. Defendant nonetheless made various incriminating statements which were later memorialized in writing. Following the defendant's review of the written statement, the defendant asked, "Do I need a lawyer?" The detective responded by saying that he could not give the defendant legal advice. There was no evidence that defendant was asked any additional questions. The detective left the room to prepare arrest warrants. Defendant was left in the interview room without handcuffs and with the door open. When the detective returned with the completed warrants, defendant was transported to the magistrate's office.

Defendant was charged with first degree burglary, first degree rape of a child, first degree sexual offense against a child, and taking indecent liberties with a child. Indictments were later issued charging defendant with taking indecent liberties with a child and first degree rape. Defendant made a motion to suppress statements he made to Detective Huffman. The trial judge denied defendant's motion. Following the denial of his motion, defendant pled guilty to first degree rape. Defendant then appealed the denial of his motion.

A suspect is entitled to receive *Miranda* warnings when he or she is subject to interrogation while in custody. The proper inquiry for determining whether a person is in custody for purposes of *Miranda* is based on the totality of the circumstances. Several factors that may be considered

are: whether the suspect is told that he or she is free to leave; whether the suspect is handcuffed; whether the suspect is in the presence of uniformed officers, and the nature of the security around the suspect. The defendant argued that the officers' instructions to "come with me," and to "come back," while defendant was waiting to see the lead detective were tantamount to a formal arrest which would have required Detective Hoffman to administer *Miranda* warnings to defendant. The Court of Appeals found that these facts did not establish that defendant was in custody. Instead, the officers' actions amounted to nothing more than an attempt to control the scene and prevent emotional encounters between a suspect and the alleged victim's family. Moreover, even if defendant was detained for *Miranda* purposes while awaiting Detective Huffman's emergence from the child's house, defendant's statements to Huffman remain untainted as a result of subsequent events i.e. the detective clearly informed defendant that he was not under arrest; defendant repeatedly asked to speak to the detective; and defendant voluntarily accompanied the detective to the Sheriff's Office. Therefore, the Court of Appeals found no basis for providing Defendant with any relief on appeal.

**Juvenile Was In Custody For Purposes of Miranda;
Officer's Statement to Juvenile Was Interrogation**

In re L.I., No. COA09-1306 (6 July 2010).

On December 19, 2008, a deputy with the Durham County Sheriff's Office was patrolling an area of a recent robbery. He saw a Toyota 4Runner drive by and noticed that the male driver was not wearing a seatbelt. The deputy stopped the car and approached the driver's side window. The deputy asked the driver and front seat passenger to step out of the vehicle. There were four other passengers in the backseat of the 4Runner. Apparently tipped off by the front seat passenger, the officer then asked L.I., who was one of the four backseat passengers, to exit the vehicle. As she did, the officer asked her for the marijuana that he "knew she had." The juvenile then turned away and appeared to reach in her pants. When the deputy tried to see what the juvenile was reaching for, she responded, "Yo, you can't look in my pants." At this point, the deputy placed L.I. in investigative detention, handcuffed her, and placed her in the backseat of his patrol car. While waiting for a female officer to arrive to search L.I., the deputy told the juvenile that "if you take drugs into the jail, it's an additional charge." L.I. then told the officer that the drugs were in her coat pocket. The drugs were recovered and the juvenile was released into her mother's custody.

A juvenile petition was filed alleging that L.I. was delinquent for possessing marijuana with the intent to sell or deliver. L.I. filed a motion to suppress her statements as well as the contraband. The motion to suppress was denied. The trial court subsequently adjudicated L.I. delinquent. L.I. appealed.

First, L.I. argued that her statement admitting that she had marijuana in her coat pocket should have been suppressed because it was obtained as a result of custodial interrogation and that she had not first been advised of her *Miranda* rights. The Fifth Amendment requires that, prior to custodial interrogation, a person must be advised of his or her *Miranda* rights. In addition to the warnings mandated by *Miranda*, N.C.G.S. §7B-2101 requires that, prior to custodial interrogation, a juvenile must be advised of the right to have a parent, guardian or custodian present. Thus, the question for the Court was whether L.I.'s statement regarding the marijuana was made during custodial interrogation.

"Custody," for purposes of *Miranda*, means a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest. At the time of L.I.'s statements, she had been placed in investigative detention, handcuffed, and placed in the backseat of a patrol car. Considering the totality of the circumstances, The Court found L.I. to be in custody for the purposes of *Miranda*.

Under *Miranda*, “interrogation” includes both express questioning by police and its functional equivalent. The functional equivalent of interrogation is words or actions on the part of the police that the police should know are reasonably likely to elicit an incriminating response from the suspect. In the case at hand, the deputy’s statements to L.I., while she was alone and handcuffed in the back of the patrol car, that he was “taking her downtown” and that it was an “additional charge” to take drugs into a detention facility were clearly made, and reasonably likely, to elicit an incriminating response.

Therefore, the Court of Appeals ruled that the L.I.’s statement regarding the marijuana in her coat pocket should have been suppressed.

L.I.’s second argument was that the marijuana should have been suppressed because it was found as a result of an unlawful interrogation and thus, was “fruit of the poisonous tree.” The Court of Appeals pointed out, however, that the United States Supreme Court has ruled that although a statement obtained in violation of *Miranda* must be excluded, physical evidence obtained as a result of the violation does not have to be excluded. Therefore, the Court ruled that the marijuana itself was properly admitted into evidence.