



Police Law Bulletin



City Attorneys' Office

Toni M. Smith, Senior Assistant City Attorney

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UNITED STATES SUPREME COURT



Taking A Prisoner Aside For Questioning About Events That Occurred Outside Of Prison Does Not Automatically Create "Custody" For *Miranda* Purposes

***Howes, Warden v. Fields*, No. 10-680 (21 February 2012).**

While incarcerated, Randall Fields was escorted by a corrections officer to a conference room where two sheriff's deputies questioned him about allegations that, before he came to prison, he had engaged in sexual conduct with a 12-year-old boy. In order to get to the conference room, Fields had to go down one floor and pass through a locked door that separated two sections of the facility. Fields arrived at the conference room between 7 and 9 pm and was questioned for between five and seven hours. At the beginning of the interview, Fields was told that he was free to leave and return to his cell. Later, he was again told that he could leave whenever he wanted. The interviewing deputies were armed, but Fields remained free of handcuffs and other restraints. The door to the conference room was sometimes open and sometimes shut. About halfway through the interview, after Fields had been confronted with the allegations of abuse, he became agitated and began to yell. One of the deputies, using an expletive, told Fields to sit down and said that "if [he] didn't want to cooperate, [he] could leave." Fields eventually confessed to engaging in sex acts with the boy. Fields claimed that he said several times during the interview that he no longer wanted to talk to the deputies, but he did not ask to go back to his cell before the interview ended. When he was eventually ready to leave, he had to wait an additional 20 minutes or so because an officer had to be called to escort him back to his cell, and he did not return to his cell until well after when he generally went to bed. At no time was Fields given *Miranda* warnings or advised that he did not have to speak with the deputies.

Fields was charged with criminal sexual conduct. Fields unsuccessfully moved to suppress his confession and the jury convicted him of criminal sexual conduct. After an unsuccessful direct appeal, Fields filed for federal habeas relief. The federal district court granted relief and the Sixth Circuit affirmed, holding that the interview was a custodial interrogation because isolation from the general prison population

combined with questioning about conduct occurring outside the prison makes any such interrogation custodial per se. The United States Supreme Court reversed.

The Court stated: “it is abundantly clear that our precedents do not clearly establish the categorical rule on which the Court of Appeals relied, i.e., that the questioning of a prisoner is always custodial when the prisoner is removed from the general prison population and questioned about events that occurred outside the prison.” “On the contrary,” the Court stated, “we have repeatedly declined to adopt any categorical rule with respect to whether the questioning of a prison inmate is custodial.” The Court went on to hold that based on the facts presented, Fields was not in custody for purposes of *Miranda*. He was told at the outset of interrogation, and reminded thereafter, that he was free to leave and could go back to his cell whenever he wanted. Moreover, he was not physically restrained or threatened, was interviewed in a well-lit, average-sized conference room where the door was sometimes left open, and was offered food and water. These facts are consistent with an environment in which a reasonable person would have felt free to terminate the interview and leave, subject to the ordinary restraints of life behind bars.

Note: “Jail” is a local government’s detention center where persons awaiting trial or those convicted of misdemeanors are confined. Prison, by contrast, is a state or federal facility of confinement for convicted criminals, especially felons. When determining “custody” for Miranda purposes, case law suggests that the courts may distinguish between a suspect’s detention in jail and incarceration in prison. This is because prison may not involve some of the inherently coercive pressures that accompany jail. For example, questioning a person who is already in prison does not generally involve the shock that very often accompanies arrest; a prisoner is unlikely to be lured into speaking by a longing for prompt release; and a prisoner knows that his questioners probably lack authority to affect the duration of his sentence. Therefore, until the courts direct otherwise, officers should assume that it is more likely that a suspect will be considered in “custody” for Miranda purposes when the suspect is being confined in jail as opposed to prison.



NORTH CAROLINA COURT OF APPEALS



Defendant’s Confession Involuntary

***State v. Martin*, No. COA12-1574 (6 August 2013).**

Defendant met the victim (T.H.) online through the internet website www.myyearbook.com. On November 14, 2011, defendant, T.H., and a friend went to McDonald’s and a video game store. Upon returning to T.H.’s residence, T.H.’s friend left, and defendant and T.H. went to her bedroom and watched videos on the computer until T.H. fell asleep. Defendant slept on the floor of T.H.’s room that evening. The following morning, defendant got into T.H.’s bed, where she was asleep on her stomach, pulled down her shorts and underwear, and had sexual intercourse with her. T.H. did not wake during this incident. Instead, she awoke after defendant was dressed. T.H. and her friend took defendant home. Later that same day, several of T.H.’s friends assaulted defendant after learning that he had intercourse with her. They punched him, kicked him, and beat him with a metal wrench. Defendant reported the assault to the Polk County Sheriff’s Office. When the police began investigating the assault, T.H. told them of the alleged rape. As a result, defendant was arrested for an unrelated probation violation; his use of www.myyearbook.com violated the terms of his probation for a prior conviction of misdemeanor sexual battery. At the time of this arrest, defendant was twenty-one years old. On

December 8, 2011, while in custody for the probation violation, Captain Randall Hodge of the Polk County Sheriff's Office took defendant out of his cell to interrogate him regarding the alleged rape. Captain Hodge led defendant into an interrogation room; his arms and legs were cuffed and shackled, and he was not told that he was free to leave. Defendant had not been advised of his Miranda rights. Captain Hodge informed defendant that T.H. "took a polygraph and she passed." In fact, T.H. had done neither. Additionally, Captain Hodge said that defendant could "help himself" and "to make things easier for you at this point . . . we can maybe compromise or work something out with a -- a plea arrangement or anything like that." Defendant confessed to having sexual intercourse with T.H. while she was asleep. After the confession, Captain Hodge stated: "What I want to do, just to cover our bases as much as I can, I can't promise you no deals with the DA. . . . The only thing I can tell the District Attorney is you cooperated with me. Okay? But I'm going to go ahead and read you your Miranda rights." Captain Hodge removed defendant's restraints and read him his *Miranda* rights. Defendant waived his rights and agreed to speak with Captain Hodge further about the incident. Thereafter, Captain Hodge continued with the second part of the interrogation: "Let me . . . I'm going to recap." Defendant confessed once more, telling Captain Hodge that he pulled T.H.'s shorts down to her knees and "inserted my penis in her vagina." To defendant's knowledge, T.H. did not wake during the intercourse.

Defendant's counsel moved to suppress all statements made by defendant during the interrogation. The judge entered an order partially granting defendant's motion, concluding that any statement made by defendant to Captain Hodge prior to defendant being advised of his Miranda rights was suppressed. The trial court deemed defendant's post-Miranda testimony admissible. Defendant entered a plea of guilty to second-degree rape and was sentenced to 44 to 62 months imprisonment. In his plea, defendant reserved his right to appeal. On appeal, defendant argued that the trial court erred in denying his motion to suppress on the basis that his confession was involuntary. Defendant specifically contended that he was interrogated in a two-stage process whereby Captain Hodge persuaded him to confess prior to having been Mirandized, thus rendering his first confession involuntary. As such, Captain Hodge then delivered the Miranda warnings and had defendant repeat his confession, which, defendant asserted, was also involuntary given the circumstances. The Court of Appeals agreed.

The voluntariness of a confession is determined by the totality of the circumstances. The requisite factors in the totality of the circumstances inquiry include: 1) whether the defendant was in custody at the time of the interrogation; 2) whether the defendant's *Miranda* rights were honored; 3) whether the interrogating officer made misrepresentations or deceived the defendant; 4) the interrogation's length; 5) whether the officer made promises to the defendant to induce the confession; 6) whether the defendant was held incommunicado; 7) the presence of physical threats or violence; 8) the defendant's familiarity with the criminal justice system; and 9) the mental condition of the defendant. Where a confession has been obtained under circumstances rendering it involuntary, a presumption arises which imputes the same prior influence to any subsequent confession, and this presumption must be overcome before the subsequent confession can be received in evidence. The burden is upon the State to overcome this presumption by clear and convincing evidence. This rule arises out of a concern that where the first confession is procured through promises or threats rendering it involuntary as a matter of law, these influences may continue to operate on the free will of the defendant in subsequent confessions.

In the case at hand, given the totality of the circumstances: 1) defendant was in custody, 2) Captain Hodge made deceitful statements during the interrogation, 3) Captain Hodge made promises to defendant that improperly induced hope or fear, and 4) defendant may have had an impaired mental condition during questioning, the Court concluded that defendant's pre-Miranda confession was obtained under circumstances rendering it involuntary. Furthermore, the Court imputed the same prior influence to the

post-Miranda confession. Accordingly, the Court held that both the pre-Miranda and post-Miranda confessions were involuntarily made; the trial court erred in denying defendant's motion to suppress in its entirety; and a new trial was ordered.

Defendant Did Not Initiate Conversation with Police, And Even If He Had, Waiver Was Not Knowing and Intelligent

***State v. Quick*, No.COA12-1111 (April 16, 2013).**

On April 27, 2010, Defendant was in custody at the Harnett County Detention Center. Detective Rodney Jackson of the Harnett County Sheriff's Office had secured warrants for additional charges against Defendant and led him from the jail to the interrogation room of the Sheriff's Department. After Detective Jackson read Defendant his Miranda rights at 12:32 p.m., Defendant said that he wanted his attorney present. Detective Jackson and Defendant left the interrogation room and went to another room, where Defendant tried to use the phone to contact his lawyer. When he was unable to contact his attorney, Defendant left a message. Detective Jackson returned Defendant to the interrogation room and asked if he "still wanted his lawyer present." Defendant again said that he wanted his attorney. While walking from the interrogation room back to the jail, Detective Jackson told Defendant that he would be serving him with more warrants. He told Defendant that an attorney did not need to be present, that an attorney would not help with the warrants, and that the warrants would be served regardless of whether the attorney was there. At that point, Defendant said, "We need to talk." Detective Jackson returned Defendant to the interrogation room and re-read him his Miranda rights at 12:39 p.m. At 12:48 p.m., a waiver form was filled out, and Defendant signed the form indicating that he wanted to talk without his attorney.

Defendant was indicted on charges of felonious breaking or entering, felonious larceny pursuant to a breaking or entering, felonious possession of stolen goods, and felonious conspiracy to commit breaking or entering. Defendant filed a motion to suppress based on violations of his Sixth Amendment rights. The trial court granted the motion to suppress. The State filed an appeal.

The State argues that the trial court erred in granting Defendant's motion to suppress because: (1) Defendant initiated a communication with police; and (2) Defendant's waiver was knowing and intelligent. The Court of Appeals disagreed and thus affirmed the order of the trial court.

During custodial interrogation, once a suspect invokes his right to counsel, all questioning must cease until an attorney is present or the suspect initiates further communication with the police. "Interrogation" under *Miranda* encompasses not only express questioning, but also any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect. The test is whether the police "should have known" their comments were likely to elicit an incriminating response. In the present case, after Defendant asserted his right to counsel once, the police returned him to the interrogation room and again asked if wanted counsel, to which he said yes. Then, on the way from the interrogation room back to the jail, Detective Jackson told Defendant that an attorney would not be able to help him and that he would be served with the warrants regardless of whether an attorney was there. This communication went beyond the statements normally attendant to arrest and custody. The police knew or should have known that telling Defendant that an attorney could not help him with the warrants would be reasonably likely to elicit an incriminating response. It was only after this statement by police that Defendant agreed to talk. Based upon these facts, the Court concluded Defendant did not initiate the communication.

Even if Defendant had initiated communication with police, the Court found that Defendant's waiver was not knowing and intelligent. Whether a waiver is knowingly and intelligently made depends on the specific facts of each case, including the defendant's background, experience, and conduct. Age, although not determinative, can be one of the factors considered as part of the totality of the circumstances. In the present case, (1) Defendant was 18 years old and had limited experience with the criminal justice system; (2) there was a period of time between 12:39 p.m. and 12:54 p.m. where there is no evidence as to what occurred; and (3) there was no audio or video recording. After initially asserting his right to counsel at 12:32 p.m. and trying to contact his attorney, Defendant was taken back into the interrogation room, where Detective Jackson told him to let him know once he had an attorney if he wanted to talk. Defendant reaffirmed that he still wanted his lawyer present. Then, on the way back from the interrogation room,

Detective Jackson told Defendant that he was being served with more warrants and that an attorney would not be able to help. Defendant was then returned again to the interrogation room for a third time and re-advised of his *Miranda* rights at 12:39 p.m.

Only seven minutes elapsed between Defendant's initial assertion of his right to counsel and his supposed waiver of that right, during which time Defendant tried to contact his attorney and reasserted his right to counsel at least once. A waiver form was filled out at 12:48 p.m. and witnessed at 12:59 p.m. There is no evidence as to what transpired in the interrogation room between 12:39 p.m. and 12:59 p.m. The Court stated that the timeline, along with the statements by police that an attorney would not be able to help with the warrants, suggest that any waiver by Defendant was not knowing and intelligent. Thus, the Court found that Defendant's age and inexperience, when combined with the circumstances of his interrogation, supported the conclusion that the State failed to prove Defendant's waiver was knowing and intelligent.

Juvenile Was Not In Custody For Purposes of *Miranda*

In the Matter of D.A.C., No. COA12-568 (19 February 2013).

On October 29, 2011, Detective Lieutenant Scott Williams of the Stanly County Sheriff's Office, who was off duty at the time, responded to a call that gunshots had been fired into a home. Upon arriving at the location specified in the call, Lieutenant Williams determined, based upon the angle at which the bullets had entered the home, that the shots had originated from the house across the street. After Detective Williams was joined by Sergeant W. H. Smith, the two officers approached the home across the street, outside of which they encountered D.A.C. The officers asked D.A.C. if his mother was home. After D.A.C. went inside and informed his mother of the officers' presence, Sergeant Smith and Lieutenant Williams informed D.A.C.'s mother that shots had been fired into the home across the street and asked if D.A.C. had been outside shooting. After initially responding in the negative, D.A.C.'s mother told officers that she had been home all day, with the exception of brief periods when she had left to drop off and pick up her husband. While in the presence of his mother, the officers asked D.A.C. if he had fired a gun that day and obtained a negative answer. Sergeant Smith and Lieutenant Williams obtained permission to search the area outside the home. They found spent shotgun shells on the front porch. With the exception of an intervening birdhouse, there was a direct line of sight from the porch of the residence in which D.A.C. lived to the house which had been fired into. At the time that the officers spoke with D.A.C.'s father for the purpose of telling him what they found, he told them that he "figured" that D.A.C. had fired the shots in question. When the officers informed the father that they were going to speak with D.A.C. briefly outside, his father told D.A.C. to go with the officers and to be truthful. At that point, Sergeant Smith and Lieutenant Williams asked D.A.C. if he would speak with them and received an affirmative response. Although the officers informed the parents that they were welcome to accompany their son outside, neither parent said anything. Instead, both parents remained inside with the door shut while the officers spoke with D.A.C. Sergeant Smith, Lieutenant Williams, and D.A.C. went to

a point about ten feet outside the home, where they talked for about five minutes. Everyone was standing at arm's length from each other during this discussion. Lieutenant Williams was wearing civilian clothes, while Sergeant Smith was in uniform. Although both officers were armed, neither of them touched or made any movement towards their weapons at any point. D.A.C. was not placed under arrest, handcuffed, or searched. On the other hand, neither officer ever explicitly told D.A.C. that he was free to leave or advised D.A.C. of his rights under *Miranda*. D.A.C. never indicated that he did not want to speak, asked to leave, or requested to speak with anyone else. At the beginning of this conversation, the officers informed D.A.C. that the available information tended to suggest that someone had fired a gun from his residence into the home across the street. After making this statement, the officers asked D.A.C., "did you do it?" In response, D.A.C. admitted having fired the shot in question and stated that he had been attempting to hit a birdhouse that was across the street. Once D.A.C. had made this admission, the remainder of the conversation focused on various details, including the number of times that D.A.C. had actually fired the weapon. Subsequently, D.A.C. agreed to provide a written statement, ultimately writing a portion of this sitting inside a patrol vehicle and the remainder on the vehicle's trunk.

On November 18, 2011, juvenile petitions were filed, alleging that D.A.C. should be adjudicated a delinquent juvenile for committing the offenses of injury to real property and injury to personal property. The trial court adjudicated him delinquent. D.A.C. appealed from the trial court's adjudication arguing that the trial court erred by denying his motion to suppress his oral admissions to investigating officers on the grounds that he was in custody at the time that he was questioned by Sergeant Smith and Lieutenant Williams and that he had not been advised of his rights under *Miranda* and N.C. Gen. Stat. § 7B-2101.

Miranda warnings and the protections of N.C.G.S. § 7B-2101 apply only to custodial interrogations. As a result, the critical issue is whether D.A.C. was in custody at the time that he orally admitted having fired the shot which struck the neighbor's residence. The test for determining if a person is in custody is whether, considering all the circumstances, a reasonable person would not have thought that he was free to leave because he had been formally arrested or had had his freedom of movement restrained to the degree associated with a formal arrest. In making the required determination, a reviewing court must consider the totality of the surrounding circumstances. Among other things, determining whether a juvenile was in custody at the time that he or she made an inculpatory statement requires consideration of the juvenile's age, "so long as the child's age was known to the officer at the time of police questioning, or would have been objectively apparent. In addition, (1) the nature of the interrogator, (2) the time and place of the interrogation, (3) the degree to which suspicion had been focused on the defendant, (4) the nature of the interrogation and (5) the extent to which defendant was restrained or free to leave," may also be relevant. A careful analysis of the totality of the circumstances surrounding the making of D.A.C.'s statement clearly indicates, as the trial court determined, that D.A.C. was not subject to the degree of restraint inherent in a formal arrest at the time that he admitted having shot in the direction of the neighbor's house. The fact that the investigating officers asked him to step outside, rather than instructing him to do so, suggests that D.A.C. was not subject to any formal restraint at the time he was questioned. In addition, the record contains no indication that D.A.C. did anything more during his conversation with Sergeant Smith and Lieutenant Williams than answer a simple, straightforward question. All three participants in this conversation were standing and remained at arm's length from each other during the time that the officers spoke with D.A.C. In addition, instead of being in uniform, Lieutenant Williams was wearing a sweatshirt and khaki pants during the questioning. D.A.C. was questioned in an open area in his own yard with his parents nearby. The conversation between D.A.C. and the investigating officers occurred in broad daylight and lasted for about five minutes. The Court of Appeals held that the findings of fact set out in the trial court's order clearly supported its determination that D.A.C. was not subjected to custodial interrogation.

Defendant's Waiver of *Miranda* Rights Was Knowing, Voluntary, and Intelligent

***State v. Robinson*, No. COA11-1584 (17 July 2012).**

Angela Hart lived with defendant in defendant's mother's home located in Asheville, North Carolina. On the afternoon of August 16, 2009, Hart contacted defendant by telephone. During the conversation, defendant lied to Hart and told her that his mother had a nervous breakdown and that she needed to come home. When she arrived at the house, defendant again lied to her and told her that he had stored some of her belongings in the basement and that she should accompany him down there. At the top of the basement stairs, defendant stabbed Hart in the neck with a paring knife. Hart attempted to run from defendant, and he chased her outside around the house onto the street, where he tackled her against a parked car. Defendant proceeded to stab Hart repeatedly. Hart again attempted to run away from defendant, but she fell down, upon which defendant caught her and began stabbing her repeatedly. Hart then tried to run towards a nearby house, as defendant followed and continued to stab her. When Hart no longer moved, defendant returned to his house.

Several neighbors in the area heard a female screaming for help, saw defendant stabbing Hart multiple times, and called 911. Officer Robert Bingaman with the Asheville Police Department was the first police officer to arrive at the scene at approximately 1:50 p.m. As Officer Bingaman approached the area, he observed defendant crossing the street with his hands, arms, bare chest, and pants covered in blood. Officer Bingaman exited his patrol vehicle and approached defendant in front of defendant's house. Defendant "threw his hands in the air" and stated that he was "not resisting." Defendant complied with Officer Bingaman's order to get on the ground and was handcuffed. During this time, defendant stated that he "just killed a woman." When Officer Bingaman stood defendant up and asked defendant where the woman was, defendant motioned with his head and eyes in the direction of Hart's body and stated, "She's over there." After providing his name and address to Officer Bingaman, defendant spontaneously stated, "I'm glad this is over. I'm about to meet my maker." A dispatcher riding with Officer Bingaman checked the location indicated by defendant and reported back to Officer Bingaman that he had observed a body.

EMS personnel arrived soon thereafter and pronounced Hart dead at the scene. The pathologist who conducted Hart's autopsy testified that Hart sustained a total of 57 sharp force injuries. Forty-four of those injuries were superficial; the remaining thirteen were deeper stab wounds, including four in Hart's back that penetrated both of her lungs. Thirty-six of the injuries were inflicted on Hart's face, head and neck, one of which penetrated her eyeball. The paring knife used in the assault was left imbedded in Hart's right cheek. At the scene, EMS personnel also asked defendant if he was injured, to which defendant responded that he had cut his hand when he was "cutting that b--h."

Defendant was arrested and taken to the Asheville Police Department. At approximately 4:30 p.m., Detective Davis, with defendant's consent, took swabs of the blood on defendant's chest and a swab from defendant's cheek for DNA. Defendant asked Detective Davis if Hart was dead or alive, to which Detective Davis responded that he did not know the status of her condition at that time. Defendant was then taken to a decontamination room where he was bathed and bandaged. Defendant was then placed in an interview room equipped with an audio-video recording system and was given some food. As defendant was finishing his meal, Detective Davis entered the interview room at approximately 7:00 p.m. and asked defendant if he was "ready to talk for a little bit[.]" Defendant responded that he was ready, that he "wanted to do the right thing," that he was "sorry for what he did," and that he had "asked God to forgive him." Detective Davis informed defendant that he would need to sign a waiver of his *Miranda* rights in order to speak with the detective about what had happened. Specifically, Detective Davis told

defendant, "You've got to waive your rights, basically saying you want to talk to me, that's all this is saying, and then we can move on and hear your story." Detective Davis then read the *Miranda* rights to defendant from a pre-printed waiver form. Detective Davis had defendant initial beside each paragraph and sign the waiver form. Detective Davis then proceeded to question defendant about the assault. During the interrogation, Detective Davis asked defendant to make a written statement, with which defendant complied. Defendant's statements to Detective Davis revealed that he had become frustrated with Hart and that he had planned to kill her and commit suicide afterwards. However, his mother would not let him back inside the house after he assaulted Hart. After obtaining defendant's written statement, Detective Davis informed defendant that Hart had died and that defendant would be charged with first-degree murder.

Defendant was indicted for first-degree murder on April 5, 2010. At trial, defense counsel moved the court to suppress defendant's statements made during the interrogation conducted by Detective Davis. Defense counsel asserted defendant did not knowingly and voluntarily waive his *Miranda* rights, and therefore, his statements as a result of the interrogation must be excluded. The trial court denied the motion. Defendant was found guilty of first-degree murder and sentenced to life imprisonment without the possibility of parole. Defendant appealed arguing that the trial court erred in failing to suppress both his statements made during the recorded interrogation at the police station and his handwritten statement because the State failed to show that these custodial statements were preceded by a knowing, intelligent, and voluntary waiver by defendant of his *Miranda* rights.

It is well established that the State is prohibited from using any statements resulting from a custodial interrogation of a defendant unless, prior to questioning, the defendant has been advised of his right to remain silent; that any statement may be introduced as evidence against him; that he has the right to have counsel present during questioning; and that, if he cannot afford an attorney, one will be appointed for him. However, "a defendant may waive effectuation of these rights by a voluntary, knowing, and intelligent waiver." "Whether a waiver is knowingly and intelligently made depends on the specific facts and circumstances of each case, including the background, experience, and conduct of the accused." Our Courts consider the totality of the circumstances of the case in determining whether a defendant's statement was voluntary. Factors to be considered include the defendant's familiarity with the criminal justice system, length of interrogation, amount of time without sleep, whether the defendant was held incommunicado, whether there were threats of violence, whether promises were made to obtain the confession, the age and mental condition of the defendant, and whether the defendant had been deprived of food. In the case at hand, defendant argues that the totality of the circumstances indicated his *Miranda* waiver was neither knowing and intelligent nor voluntary. Defendant contended that Detective Davis misled him about Hart's condition, asked him if he was ready to talk before informing him of his *Miranda* rights, and instructed him to sign the waiver form without asking him if he understood the implications. Defendant also pointed to evidence concerning his limited mental capacity and his previously determined IQ score placing him in the category of borderline mental retardation. However, in light of the foregoing principles, the Court of Appeals disagreed and concluded that the evidence was sufficient to demonstrate that defendant's waiver of his *Miranda* rights prior to making any incriminating statements was knowing, intelligent, and voluntary. The record reveals defendant was familiar with the criminal justice system, having four prior convictions, two of which were felony offenses. The record also reveals no threats or promises were made to defendant prior to his agreeing to talk with Detective Davis. Although Detective Davis informed defendant that he did not know the status of Hart's condition, the record in no way indicates Detective Davis's statement misled defendant into talking about the incident when he otherwise would not have done so. Further, the record reveals defendant was not deprived of any necessities. To the contrary, defendant was given a shower, medical care, and food. In addition, although there is evidence in the record documenting defendant's limited mental capacity, the record in no way indicates defendant was confused at any time during the custodial interrogation, that he

did not understand any of the rights as they were read to him, or that he was unable to comprehend the ramifications of his statements. At all times during defendant's statements to Detective Davis, he "appeared lucid," "appeared to be awake," and "was alert." Thus, the evidence wholly indicates defendant was aware of his actions and wished to inform the officer about what had happened during his encounter with Hart. The Court of Appeals therefore affirmed the trial court's denial of defendant's motion to suppress.

Juvenile Defendant Not In Custody For Purposes of *Miranda*

***State v. Yancey*, No. COA11-1409 (19 June 2012).**

Shortly after 8:00 a.m. on October 15, 2009, Officer Moss with the Valdese Police Department observed defendant, then 17 years old, sitting on a sidewalk on Main Street. Because defendant appeared to be of school age, Moss stopped and asked for his name and what he was doing. Defendant appeared nervous, continually putting his hands in his pockets. Moss asked if he could look in defendant's back pack, and defendant agreed. In it, the officer found loose coins, a plastic bag with coins and jewelry, and an old class ring. The officer then drove defendant to the police department and called his mother who arrived later and took him home.

On November 20, 2009, Detectives Strikeleather and South, dressed in plain clothes and driving an unmarked car, went to defendant's home to speak with him. At that time, defendant had been identified as the possible suspect in several breaking or entering cases. Because defendant had friends visiting his home, the detectives asked defendant if he would ride in their car with them. The detectives told defendant that he was free to leave at any time. Defendant sat in the front seat of the vehicle while it was driven approximately two miles from his home. When the vehicle was stopped, Detective South showed defendant reports of the break-ins. The detectives told defendant that if he was cooperative, they would not arrest him that day, but would turn in the paperwork to the District Attorney. Defendant gave a statement admitting to the break-ins.

Defendant plead guilty to three counts of breaking or entering, but reserved his right to appeal. On appeal, he argued that he was in custody during his November 20, 2009 encounter with detectives South and Strikeleather and that his inculpatory statements were obtained in violation of *Miranda*.

The Court of Appeals concluded, that based upon the totality of the circumstances, defendant was not in custody, noting: 1. the officers were in plainclothes in an unmarked vehicle; 2. the defendant voluntarily spoke with and rode with the detectives; 3. defendant was told that he was free to leave and could leave the vehicle at any time; 4. defendant sat in the front seat of the vehicle and the entire encounter lasted less than 2 hours; 5. defendant was not frisked or handcuffed; and 6. defendant was 17 years 10 months old at the time of the encounter.

Officer Had Reasonable, Articulable Suspicion Of Criminal Activity; Plain Feel Doctrine Supported Seizure of Tools From Defendant Discovered During Frisk; Defendant Was In Custody When Questioned And Therefore Should Have Been *Mirandized*

***State v. Hemphill*, No. COA11-639 (21 February 2012).**

At approximately 10:10 p.m., a Charlotte-Mecklenburg police officer was dispatched to Auto America in response to a report of suspicious activity involving two African American males, one wearing a white

hoodie. Auto America was closed for the day and its gate was shut. Officer Adkins saw defendant, wearing a white hoodie, peeking around a van. As soon as defendant saw the officer, he began to run. The officer chased defendant giving several verbal commands to stop. Defendant was trying to hide behind a dumpster when the officer caught up with him. The officer put defendant on the ground. While handcuffing defendant, the officer asked why he was running. Defendant responded that he was breaking into Auto America and did not want to get caught. When the officer frisked defendant, he recovered a 10" screwdriver from his left back pocket and a small wrench from his back right pocket. Defendant was then advised of his *Miranda* rights. A sledgehammer was discovered near the van defendant had hidden behind, and officers found a 3'x3' hole in the wall of the business. When questioned about the sledgehammer and the hole, defendant stated that he had bought the tools earlier that day and that he hid them so he could break into the business at night.

Defendant was charged with attempted breaking and entering, possession of implements of housebreaking, and resisting a public officer. Defendant moved to suppress both evidence collected from the scene and statements he made at the scene. The motions were denied. Defendant was found guilty on all charges and appealed.

The Court of Appeals found that the facts were sufficient to establish that reasonable suspicion existed to detain the defendant. The officer was informed at 10:10 p.m. that there had been a report of suspicious activity at Auto America at a time the business was closed. When the officer arrived at the business, he saw the defendant, who generally matched the description of one of the individuals reported, peering from behind a van. When defendant spotted the officer, Defendant ran away from him. When the officer caught the defendant, he was hiding behind a dumpster. Upon feeling a screwdriver and wrench on the defendant's person during a pat-down, the officer was justified in removing these items as they constituted both a potential danger to the officer and were further suggestive of criminal activity being afoot.

The Court of Appeals did, however, agree with defendant's argument that his responses to the officer's questioning while on the ground and being restrained with handcuffs should have been suppressed because the defendant had not been given *Miranda* warnings. The officer's questioning constituted an interrogation and a reasonable person in the defendant's position, having been forced to the ground by an officer and in the process of being handcuffed, would have felt his freedom of movement had been restrained to a degree associated with formal arrest. Thus, there was a custodial interrogation. (Note though that because the defendant admitted his guilt after having been given *Miranda* warnings, the Court of Appeals found that the trial court's failure to suppress defendant's pre-*Miranda* statements was not prejudicial or harmful so as to warrant a new trial).