

***Miranda* and Custodial Interrogations at School**

This outline discusses the suppression of statements by juveniles in violation of their constitutional right against compelled self-incrimination under the Fifth Amendment to the United States Constitution and *Miranda*, as well as their statutory rights under G.S. 7B-2101. It focuses specifically on law enforcement interviews of students at school; although, some general legal principles concerning *Miranda* and its application to juveniles will necessarily be addressed.

I. Basic Considerations

a. Applicability of *Miranda* to Juveniles

The Fifth Amendment right against self-incrimination, including *Miranda*, was extended to juveniles in the seminal case of *In re Gault*, 387 U.S. 1 (1967), along with several other important constitutional protections. The North Carolina Juvenile Code also provides juveniles a statutory privilege against self-incrimination in G.S. 7B-2405(4).

b. Juvenile Code Procedures: G.S. 7B-2101

i. Advisement of Juvenile Rights

G.S. 7B-2101 requires the advisement of specialized “juvenile *Miranda* warnings” prior to any questioning by law enforcement when the juvenile is “in-custody,” which include:

- (1) the right to remain silent;
- (2) that any statement the juvenile makes may be used against the juvenile;
- (3) the right to the presence of a parent, guardian, or custodian during questioning; and
- (4) the right to consult with an attorney and that one will be appointed, if the juvenile is not represented and wants representation.

ii. Additional Restrictions

- (1) A juvenile under 14, who is “in-custody,” may not waive the right to have a parent, guardian, or custodian present during questioning. “In-custody” statements made by a juvenile under 14 are inadmissible, unless a parent, guardian, or custodian was present and the juvenile waived his or her juvenile and *Miranda* rights.
- (2) If an attorney is not present, the parent, guardian, or custodian and the juvenile must be advised of the juvenile’s rights; although, a parent, guardian, or custodian may not waive any of the juvenile’s rights.

- (3) All questioning must cease, if the juvenile “indicates in any manner and at any stage” that the juvenile does not wish to be questioned further.
- (4) Before admitting any “in-custody” statements by a juvenile, the court must find that the juvenile knowingly, willingly, and understandingly waived the juvenile’s rights.

c. Threshold Questions

“*Miranda* warnings and the protections of N.C.G.S. § 7B-2101 apply only to custodial interrogations.” *In re W.R.*, 363 N.C. 244, 247 (2009). Thus, two threshold questions must be answered to determine whether a statement made by a juvenile was obtained in violation of *Miranda* or G.S. 7B-2101:

- i. Was the juvenile “in-custody”?

i.e., under all the circumstances, would a reasonable person not have felt 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 re W.R.*, 363 N.C. 244, 248 (2009).

- ii. Was the juvenile interrogated?

i.e., “questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.” *Id.* at 247.

Interrogation is also defined as “words or conduct the police should have known are reasonably likely to elicit an incriminating response.” *In re K.D.L.*, 207 N.C. App. 453, 458 (2010).

If the answer to either question is “no,” there can be no violation of *Miranda* or G.S. 7B-2101. However, if the answer to both questions is “yes,” additional questions apply:

- iii. Was the juvenile advised of his or her *Miranda* and juvenile rights?
- iv. If the juvenile is under 14, was a parent, guardian, or custodian present during questioning and was the parent, guardian, or custodian advised of the juvenile’s rights?
- v. Did the juvenile knowingly, willingly, and understandingly waive the juvenile’s rights prior to making the statement?

If the answer to either question above is “no,” the juvenile’s “in-custody” statement is not admissible.

II. *Miranda* Custody Analysis in the School Setting

a. Was the Juvenile In-Custody?

The custody test is objective and focuses on the degree of restraint on the juvenile's freedom of movement while being questioned. The surrounding circumstances must show actual "indicia of formal arrest" to justify a conclusion that a person's freedom of movement was restricted in such a way as to render him or her "in custody." Thus, a "coercive environment," alone, is not enough to trigger the requirement of *Miranda* warnings. *Oregon v. Mathiason*, 429 U.S. 492, 495 (1977) (*Miranda* warnings are not required simply because the questioning takes place in a "coercive environment," such as a police station).

The *Mathiason* holding also has some significance in the school context, which is an inherently coercive environment for students.

i. Restraint Beyond Normal School Limitations is Required

Our appellate courts have recognized that the school setting is inherently restrictive. *In re J.D.B.*, 363 N.C. 664, 669 (2009), *rev'd and remanded on other grounds by J. D. B. v. North Carolina*, 131 S. Ct. 2394 (2011); *In re K.D.L.*, 207 N.C. App. 453, 459 (2010) (stating that the school's position *in loco parentis* requires that "schoolchildren inherently shed some of their freedom of action when they enter the schoolhouse door."). For example, school attendance is compulsory and students are required to follow school rules and respect authority figures.

However, because the typical restrictions of school do not constitute a "significant" deprivation on the students' freedom of action, a student is not "in-custody," unless law enforcement subjects the student to restraint "that goes well beyond the limitations that are characteristic of the school environment in general." *J.D.B.*, 363 N.C. at 670.

- *See, e.g., In re K.D.L.*, 207 N.C. App. 453, 459 (2010) (where juvenile was frisked by an SRO, transported to the principal's office in a patrol car, and "interrogated nearly continuously" for five hours, he was "in-custody" for purposes of *Miranda* and G.S. 7B-2101).

In other words, the relevant inquiry is whether the student was in police custody during questioning, not whether he or she was in the school's custody.

ii. Juvenile's Age Must Be Considered

Although the school setting, itself, is not enough to render a student "in-custody," it's important for courts to understand that "police interrogation is inherently coercive -- particularly for young people." *In re K.D.L.*, 207 N.C. App. 453, 459 (2010).

Recognizing the significance of “youth,” the Supreme Court of the United States has held that a juvenile’s age is relevant to the *Miranda* custody analysis “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.” *J.D.B. v. North Carolina*, 131 S. Ct. 2394, 2406 (2011).

The Supreme Court reasoned that because childhood yields objective conclusions (*e.g.*, that children are more susceptible to influence and outside pressures) “considering age in the custody analysis in no way involves a determination of how youth subjectively affects the mindset of any particular child[.]” *Id.* at 2405.

The Court also cautioned lower courts that age may not be determinative or even a significant factor in every case. *Id.* at 2406.

iii. Other Relevant Factors

While no single factor controls the determination of whether a juvenile was “in-custody” during questioning, our appellate courts have considered such factors as:

- Locked doors
- Was door open or closed
- Was door blocked
- Application of handcuffs
- Presence of uniformed officers
- Display of officer’s weapon
- Method of transportation to interview
- Length of interview
- Time and place of interview
- Provision of breaks and/or food
- Degree to which suspicion focused on juvenile
- Was juvenile told he or she was “free to leave”
- Was juvenile told he or she was not under arrest
- Was juvenile permitted to leave after being questioned
- Number of adults present

iv. Sample “In-Custody” Determinations in School Setting

- *In re W.R.*, 363 N.C. 244 (2009) (the trial court did not err when it admitted, without objection, statements made by the 14-year-old juvenile to school officials in the presence of an SRO without being given a *Miranda* warning; review was for plain error, which the court was not willing to find on the limited record before it).
- *In re K.D.L.*, 207 N.C. App. 453 (2010) (juvenile was in-custody when he was detained by an SRO and school officials, accused of drug possession, frisked by the SRO, transported in a police car to the principal’s office, and interrogated by the principal for nearly five hours with the SRO present most of the time).

- *State v. Jones*, 153 N.C. App. 358 (2002) (16-year-old, mentally retarded defendant was not in-custody where he was removed from class and escorted by an SRO to the principal's office to meet with two unarmed, plain-clothes officers whom he voluntarily agreed to accompany to the police station for an interview, and he was not handcuffed, no threats or promises were made and he was told he was not under arrest and was free to leave at any time).

b. Was the Juvenile Interrogated?

In addition to being “in-custody,” an interrogation must have occurred for *Miranda* and G.S. 7B-2101 to apply. Interrogation is defined as “words or conduct” by the police that the police should have known were reasonably likely to elicit an incriminating response. *In re K.D.L.*, 207 N.C. App. 453, 458 (2010).

i. Questioning By School Officials

Miranda does not apply to questioning by persons occupying some official capacity or in positions of authority, including school officials, unless those persons are acting as agents of a law enforcement officer.

The degree of a school resource officer's (SRO) participation in the actual questioning of a student is an important factor in determining whether a school official acted as an agent of law enforcement. Relevant questions might include:

- (1) Did SRO search student?
- (2) Did SRO escort student to the office?
- (3) Did SRO transport student in a patrol car?
- (4) Did SRO supervise the questioning?
- (5) Where was SRO seated during questioning?

Sample Cases:

- *In re W.R.*, 363 N.C. 244 (2009) (the record was insufficient to conclude that the presence of the SRO, at the request of school administrators conducting the investigation, rendered the questioning of the 14-year-old juvenile a “custodial interrogation,” where no evidence was presented and no findings were made as to the SRO's actual participation in the questioning).
- *In re K.D.L.*, 207 N.C. App. 453 (2010) (trial court erred in denying juvenile's motion to suppress, even though SRO asked no questions, because SRO frisked the juvenile, transported him to principal's office and was present through most of the lengthy interrogation; the officer's near-constant supervision of the juvenile's interrogation and “active listening” could cause a

reasonable person to believe the principal's interrogation was done in concert with the SRO or that the person would endure harsher criminal punishment for failing to answer).

- *In re Phillips*, 128 N.C. App. 732 (1998) (trial court properly denied the juvenile's motion to suppress because *Miranda* did not apply to questioning by a school official who was not acting as an agent of a law enforcement officer; moreover, juvenile was questioned for school disciplinary purposes and not to obtain information to use in criminal proceedings).

ii. Spontaneous Statements

Volunteered or spontaneous statements made by a juvenile to a law enforcement officer, even if made while the juvenile was "in-custody," do not trigger the protections of *Miranda* or G.S. 7B-2101.

- *In re D.L.D.*, 203 N.C. App. 434 (2010) (a juvenile's unsolicited and spontaneous statements that "the money was not from selling drugs" were not at the questioning of the SRO and were properly admitted as evidence because they were exempt from *Miranda* protections, despite the fact that the juvenile was "in custody" and had not been given any warnings).

c. Was the Juvenile's Right to a Parent, Guardian, or Custodian Provided?

All juveniles have the right to the presence of a parent, guardian, or custodian during a custodial interrogation. G.S. 7B-2101(a)(3). Additionally, "in-custody" statements made by a juvenile under 14 are inadmissible, unless a parent, guardian, or custodian was present and the juvenile waived his or her juvenile and *Miranda* rights. G.S. 7B-2101(b).

i. Only Includes Persons With "Legal Authority"

The juvenile's right to a parent, guardian, or custodian only includes a person with "legal authority over the juvenile." *See, e.g., State v. Oglesby*, 361 N.C. 550, 556 (2007) (juvenile's aunt was not an authorized person); *In re M.L.T.H.*, 200 N.C. App. 476, 488 (2009) (juvenile's 21-year-old brother was not an authorized person), *rev. improvidently allowed*, 364 N.C. 420 (2010).

The parent, guardian, or custodian's role is "to help the juvenile understand his situation and the warnings he is being given so that he can make a knowing and intelligent decision about whether he should waive his right to be silent." *Id.*

Thus, if the juvenile invokes the right to have a parent, guardian, or custodian present, only one of these authorized persons is allowed.

ii. Invocation of Right to Have Parent Present

If the juvenile “indicates in any manner and at any stage” that he does not wish to be questioned further, all questioning must cease immediately. G.S. § 7B-2101(c). This requirement is triggered when the juvenile invokes the right to have a parent, guardian, custodian, or attorney present during questioning.

Once a juvenile has invoked the right to have a parent, guardian, custodian, or attorney present, questioning may not resume until the requested person has been made available to the juvenile, or the juvenile himself initiates further communication with the police. *State v. Smith*, 317 N.C. 100 (1986); *State v. Branham*, 153 N.C. App. 91, 95 (2002).

- *See, State v. Smith*, 317 N.C. 100, 106 (1986) (trial court erred by admitting “in-custody” statements made by a 16-year-old defendant because officers improperly resumed questioning, after the juvenile had requested the presence of his mother), *overruled on other grounds by State v. Buchanan*, 353 N.C. 332 (2001).
- *State v. Branham*, 153 N.C. App. 91 (2002) (the 16-year-old defendant’s juvenile rights were violated when he invoked his right to have a parent present during questioning but an officer told him that “he could still continue if he chose to.”).
- *But see, State v. Oglesby*, 361 N.C. 550 (2007) (trial court properly denied 16-year-old defendant’s motion to suppress, even though he requested to telephone his aunt before making the statement, because an aunt was not “a parent, guardian, or custodian” within the meaning of N.C.G.S. § 7B-2101(a)(3), and thus, questioning was not required to cease).

d. Was the Juvenile’s Waiver Knowing, Willing, and Understanding?

If the court finds that a juvenile’s statements resulted from a custodial interrogation, the State has the burden to show that “the warnings were made and that the juvenile knowingly, willingly and understandingly waived them.” *State v. Miller*, 344 N.C. 658, 666 (1996); *see also* G.S. 7B-2101(d).

i. Totality of Circumstances Test

Whether a juvenile’s waiver is knowingly, willingly, and understandingly made depends on the totality of the circumstances in each case, “including the background, experience, and conduct of the accused.” *Miller*, 344 N.C. at 666.

The totality of the circumstances in the context of determining the voluntariness of a waiver “includes evaluation of the juvenile’s age, experience, education, background, and intelligence, and into whether he has the capacity to understand the warnings given him, the nature of his Fifth Amendment rights, and the consequences of waiving those rights.” *Fare v. Michael C.*, 442 U.S. 707, 725 (1979).

ii. Sample Cases on Validity of Waiver

- *Fare v. Michael C.*, 442 U.S. 707 (1979) (the totality of the circumstances showed that the 16-year-old juvenile voluntarily and knowingly waived his Fifth Amendment rights where he was fully informed of his rights, indicated that he understood them, and there were no special factors to indicate he was unable to understand the nature of his actions, *i.e.* no improper interrogation tactics, lengthy questioning, trickery or deceit).
- *State v. Miller*, 344 N.C. 658 (1996) (the 17-year-old defendant knowingly waived his juvenile rights where he was advised of his rights with an adult *Miranda* form with the added question, “Do you wish to answer questions without your parent/parents present?” and it was clear he understood his right to have a parent present where he initially asked for his mother but ultimately asked her to leave because he felt uncomfortable).
- *State v. Fincher*, 309 N.C. 1 (1983) (the 17-year-old defendant did not knowingly waive his juvenile rights where he was not informed of his right to have a parent present; however, the erroneous admission of his “in-custody” statement was harmless under §15A-1443(a) in light of overwhelming evidence of his guilt).
- *State v. Williams*, 209 N.C. App. 441 (2011) (the 17-year-old defendant voluntarily and knowingly waived his right to have a parent present during questioning about a robbery and murder when he stated that he only wanted his mother present for questioning related to other charges for which he was already in-custody, and not the new charges of robbery and murder).
- *In re M.L.T.H.*, 200 N.C. App. 476 (2009) (the 15-year-old juvenile’s *Miranda* waiver was not made “knowingly, willingly, and understandingly” when he was incorrectly told that he could have “any person” present and chose to have a 21-year-old brother present), *rev. improvidently allowed*, 364 N.C. 420 (2010).

III. Additional Considerations

a. Required Findings and Conclusion of Law

The court must enter findings of fact and conclusions of law in the record to support its denial of a juvenile's motion to suppress. *In re N.J.*, 728 S.E.2d 9, 11 (N.C. Ct. App. 2012) (applying G.S. 15A-977(f) to delinquency proceedings on the ground that "the procedural standards for juveniles must be at least as strict as those for adults.").

The court's failure to enter findings of fact and conclusions of law is reversible error, "unless (1) the trial court provides its rationale from the bench, and (2) there are no material conflicts in the evidence at the suppression hearing." *Id.* at 11-12. If both criteria are met, the court's findings are implied from the denial of the motion to suppress. *Id.*

- *In re N.J.*, 728 S.E.2d 9 (N.C. Ct. App. 2012) (reversed and remanded trial court's order denying juvenile's motion to suppress because the court failed to make written or oral findings of fact and conclusions of law and failed to state a rationale before denying the suppression motion).

b. Exclusionary Rule

A violation of a juvenile's rights under *Miranda* or G.S. 7B-2101 requires the exclusion of any statements made the juvenile, but does not automatically require the exclusion of physical evidence. *In Re L.I.*, 205 N.C. App. 155, 163 (2010). The exclusion of physical evidence obtained as a result of a *Miranda* violation requires evidence of "actual coercion" by law enforcement. *Id.*

- *In Re L.I.*, 205 N.C. App. 155, 163 (2010) (although the juvenile's in-custody statement was obtained in violation of her *Miranda* rights, the marijuana obtained as a result of the statement was properly admitted because there was no actual coercion where the juvenile was not deceived, held incommunicado, threatened or intimidated, promised anything, or interrogated for an unreasonable period of time; nor was there evidence that the juvenile was under the influence of drugs or alcohol or that her mental condition was such that she was vulnerable to manipulation).

