MIRANDA AND SCHOOL SETTINGS

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JUVENILE APPELLATE DEFENSE PROGRAM - INDIGENT APPELLATE DEFENSE DIVISION

ROADMAP

- What is Miranda?
- When is Miranda Needed?
- Principal Acting as an Instrument or Agent of the Police
- Adolescent Brain Development and Miranda Rights
- Children and *Miranda* Waiver
- Twice Questioned Doctrine

HYPOTHETICAL

- Johnny is 16 years old.
- The school resource officer comes to Johnny's class and asks him to come to the principal's office with him.
- Once in the office the SRO shuts the door behind them and tells Johnny to sit down. The SRO remains in the room.
- The principal tells Johnny that he was told that Johnny and Billy sexually assaulted another student during gym.
- The principal begins asking Johnny questions such as:
  - "Who were you with during gym class?"
  - "How well do you know Billy?"
  - "SRO and I have already spoken to Billy and he told us everything."
  - "This is your only chance to tell us your side of the story."
- Johnny says he doesn't know what they're talking about.
- Principal tells Johnny "Just tell us what happened and we'll figure it out. If you don't, things are just going to be worse."
- SRO chimes in, "Come on man, just tell us what happened."

QUESTIONS TO CONSIDER

- Is Johnny entitled to *Miranda* warnings?
- Is he in custody?
- Is he subject to interrogation?

CLIP: THE OTHER GUYS MIRANDA RIGHTS

WHAT IS MIRANDA?

- **The Fifth Amendment**: "No person shall ... be compelled in any criminal case to be a witness against himself[.]"
- **Utah Constitution:** "The accused shall not be compelled to give evidence against himself or herself[.]" Article I, Section 12.

- Miranda v. Arizona, 384 U.S. 436, 444 (1966).
  - Miranda admonitions include a warning that the person has
    - The right to remain silent,
    - That any statement he does make may be used as evidence against him, and
    - That he has a right to the presence of an attorney, either retained or appointed.
- In re Gault, 387 U.S. 1, 55 (1967).
  - "We conclude that the constitutional privilege against self-incrimination is applicable in the case of juveniles as it is with respect to adults."

WHEN IS MIRANDA NEEDED?

- Miranda warnings are required only when an individual is in CUSTODY and is subjected to INTERROGATION.

WHAT IS CUSTODY?

- Custody is based on the "totality of the circumstances." State v. Fullerton, 2018 UT 49, 428 P.3d 1052.
  - "Strict or sole reliance on the Carner factors is inconsistent with the totality of the circumstances analysis prescribed by federal law."
- FEDERAL TWO-PART TEST:
  - "Initial step is to ascertain whether, in light of the objective circumstances of the interrogation, whether a reasonable person [would] have felt he or she was not at liberty to terminate the interrogation and leave."
  - Second, "If an individual's freedom of movement was curtailed, the focus turns to whether the relevant environment presents the same inherently coercive pressures as the type of station house questioning at issue in Miranda."

ADDITIONAL FACTORS TO CONSIDER:

- "The location of the questioning, its duration, statements made during the interview, the presence or absence of physical restraints during questioning, and the release of the interviewee at the end of the questioning." Fullerton, 2018 UT at ¶ 25 (citing Howes v. Fields, 565 U.S. 499, 509 (2012)).
- Carner factors:
  - The site of the interrogation.
  - Whether the investigation focused on the accused.
  - Whether objective indicia of arrest were present.
  - The length and form of the interrogation.

CUSTODY AND CHILDREN

J.D.B. V. NORTH CAROLINA, 564 U.S. 261 (2011).

- J.D.B. held that there is a "reasonable child" standard for determining custody in the Miranda context.
- "[S]o 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." Id. at 277.

SHOULD CUSTODY ANALYSIS BE DIFFERENT IN SCHOOL SETTINGS?

- SHORT ANSWER: YES!!!
- Footnote in R.G. v. State
- In the school setting, the suspect is already confined. This sense of confinement is *independent of* police presence but it is NOT the result of a voluntary decision to be in the school. Kids are compelled by law to be there.
- See Custody of the Confined: Consideration of the School Settting in *J.D.B. v. North Carolina.* 91 Neb. L. Rev. 979 (2013)
  - This is the study cited by the Supreme Court in R.G. v. State

SCHOOL SETTINGS

- R.G. v. State, 2017 UT 49, ¶ 6 n. 2, 7, 8.

- We do not address the issue of custody or determine whether "a reasonable [student would] have felt he or she was at liberty to terminate the interrogation and leave." However, in the future there may be an "opportunity to address the need to alter the custody analysis for interrogations taking place in the school setting."

FOOTNOTE 2:

- We emphasize that although our conclusion that the waiver in these cases was knowing and voluntary, this holding should not be read to foreclose the ability of juveniles in future cases to advance both case-specific and general evidence and argument, including expert testimony, to show either that they did not knowingly and voluntarily waive their rights or that the test we employ to assess the validity of a juvenile waiver is scientifically flawed and in need of modification or overhaul. **We recognize that the science of juvenile development is a rich, relevant, and rapidly evolving area that bears directly on the issues before us.**

WHAT IS INTERROGATION?

- Interrogation means "express questioning" or "its functional equivalent" that is, words or actions "that the police should know are reasonably likely to elicit an incriminating response from the suspect." Pennsylvania v. Muniz, 496 U.S. 582, 600 (1990).

PRINCIPAL ACTING AS AN INSTRUMENT OR AGENT OF THE POLICE.

B.A. V. INDIANA, 100 N.E.3D 225, 233 (IND. 2018).

- In custody where:
  - Officer escorted him to Vice Principal's office
  - Officer stayed between him and the door
  - Young middle schooler
  - "[Officers] knew a reasonable person in B.A.'s shoes 'would be more vulnerable to . . . outside pressures' than would adults or older teenagers." (Quoting J.D.B.)
  - No one called a trusted adult
  - Crucial that they never told him he was free to leave.
  - "[C]onsistent police presence would place considerable coercive pressure on a reasonable person in B.A.'s situation."
  - This case "lies solidly on the 'custody' end of the student-confinement spectrum."

- B.A. was interrogated where:
  - Officer gave B.A. a handwriting test
  - Officer said: "Come on man, just—just tell the truth."

- HELD: Should have been given Miranda admonitions; reversed and remanded.

D.Z. V. INDIANA, 100 N.E.3D 246, 248 (IND. 2018).

- "The clear rule governs: Officer . . . was not in the room when Assistant Principal . . . talked with D.Z. So D.Z. was entitled to Miranda warnings only if Dowler was an agent of the police.
- "The police ... cannot avoid their duty under Miranda by attempting to have someone act as their agent in order to bypass the Miranda requirements." Sears v. State, 668 N.E.2d 662, 668 (Ind. 1996)
- "There must be some evidence of an agency relationship."
- Assistant principal was not acting as an agent of police when he interviewed student suspected of placing graffiti on school bathroom walls.
- School resource officer was not in the room when assistant principal spoke with student.
- No evidence officer directed or encouraged assistant principal to act on his behalf.
- The fact that officer interviewed student after assistant principal spoke with student did not indicate an agency relationship.

IN RE T.A.G., 292 GA. APP. 48, 663 S.E.2D 392 (2008).

- The agency determination "must be resolved on a case-by-case basis, by viewing the totality of the circumstances."
- Principal "conferred with the officer about possible criminal charges, as well as the questions to ask during the interview." Principal testified at the evidentiary hearing that "she and the officer knew that different 'rules' would apply if the police became involved, so they decided that the officer should not ask questions." The "fruits of the investigation were ultimately turned over to the police."

OTHER JURISDICTIONS

- In the Matter of Appeal in Navajo County Juvenile Action, 183 Ariz. 204 (1995).
  - "[A] government employee who is not a law enforcement officer, such as a school principal, may be bound by Miranda when acting "as an instrument of the police or as an agent of the police pursuant to a scheme to elicit statements from the defendant by coercion or guile."
- State v. J.T.D., 851 So.2d 793 (Florida 2003). Mere presence of an officer is not enough.
- In matter of M.R., 2010 WL 1948286 (Tex. App. May 13, 2010). There generally must be a showing that the officer "coerced, dominated, or controlled the principal's inquiry."
- In re T.M., 2014 WL 321970 (Cal. Ct. App. Jan. 23, 2014) (unpublished). Must show that there is complicity between the officer and the principal.

ADOLESCENT BRAIN DEVELOPMENT AND MIRANDA RIGHTS

CHILDREN ARE NOT MINIATURE ADULTS

RESEARCH AND STUDIES

- Many developmental psychologists are skeptical about whether minors are ever really competent to knowingly, intelligently, and voluntarily waive constitutional rights.
  - Barry C. Field, Police Interrogation of Juveniles: An Empirical Study of Policy and Practice, 97 J. Crim. L. & Criminology 219, 228 (2006).

- Adolescents often misunderstand words and phrases commonly found in Miranda warnings and even those who do cognitively comprehend Miranda language struggle to understand the implications of waiving their Miranda rights.
  - Goldstein, N. E. S., Kelly, S. M., Peterson, L., Brogan, L., Zelle, H., & Romaine, C. R. (2015), Evaluation of Miranda Waiver Capacity, in K. Heilbrun, D. DeMatteo, & N. E. S. Goldstein (Eds.), APA handbook of psychology and juvenile justice (pp. 467- 488). Washington, DC: American Psychological Association.

- Research demonstrates that even when the police carefully communicate the Miranda rights using simplified language, adolescents lack capacity to make waiver decisions that are knowing, voluntary and intelligent.
  - Cleary, H. M. D., & Vidal, S. (2016), Miranda in actual juvenile interrogations: Delivery, waiver, and readability. Criminal Justice Review, 41(1), 98-115.

- "Adolescents are more likely than young adults to make choices that reflect a propensity to comply with authority figures, such as confessing to the police rather than remaining silent[.]"
  - Thomas Grisso et al., Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants, 27 Law & Hum. Behav. 333, 357 (2003).

- "[Y]oung people are especially prone to confessing falsely. Juveniles account for as much as one third of documented false confessions. Experimental results are consistent with this finding, as are studies of the reliability of child witnesses. The very young—those under fifteen—are the most at risk."
  - Juvenile Miranda Waiver, 126 Harv. L. Rev. at 2360-61 (Quoting Christine S. Scott Hayward, Explaining Juvenile False Confessions: Adolescents Development and Police Interrogation, 31 Law & Psychol. Rev. 53, 61 (2007).

CHILDREN AND *MIRANDA* WAIVER

UTAH CODE § 80-6-206 – INTERVIEW OF A CHILD

- **Proper waiver requires:**
  - A parent or friendly adult present during interrogation.
  - Youth to waive rights and parents to consent to interrogation.
  - Applies to all youth and in all custodial interrogations except if:
    - They have been emancipated
    - The child misrepresents age and the officer relied on the misrepresentation in good faith;
    - After reasonable efforts are made, law enforcement isn't able to contact parents within one hour.
- **Confinement**:
  - Youth cannot be interrogated unless
    - 1) Youth has consulted with their attorney;
    - 2) Youth waives their constitutional rights; and
    - 3) Attorney is present for interrogation.

KNOWING AND VOLUNTARY WAIVER

- If adolescent is subject to custodial interrogation, he is entitled to Miranda warnings.
- Any waiver must be KNOWING, INTELLIGENT, and VOLUNTARY
- Analyze waiver using "totality of the circumstances" test. See R.G./D.G v. State, 2017 UT 19, ¶ 18 (citing State v. Bybee, 2000 UT 43, ¶ 17). This includes considering the following factors:
  - (1) Age,
  - (2) Intelligence,
  - (3) Education,
  - (4) Experience,
  - (5) The minor's ability to comprehend the meaning and effect of his statement,
  - (6) Whether the police used any coercive tactics in obtaining the waiver, and
  - (7) Whether a parent, adult friend, or attorney was present.

TWICE QUESTIONED DOCTRINE

SEIBERT V. MISSOURI, 542 U.S. 600 (2004).

- Defendant was arrested at 3:00am and taken into interview room and questioned by police officer for 30-40 minutes without Miranda warnings.
- Defendant gave incriminating statements and was given a 20-minute break before the same police officer turned on a tape recorder, gave Miranda warnings and obtained a signed waiver of rights. Officer continued questioning defendant after waiver, confronted her with pre-Miranda statements and further obtained incriminating statements used to convict her.

- The S.C. identified five "relevant facts" to determine whether midstream delivery is enough to protect defendant's rights.
  1. The completeness and detail of the questions and answers in the first round of interrogations;
  2. The overlapping content of the two statements;
  3. The timing and setting of the first and second statement;
  4. The continuity of police personnel; and
  5. The degree to which the interrogator's questions treated the second round as continuous with the first.

SEIBERT CONT'D

- Midstream Miranda warnings could not be effective enough to accomplish their objective of informing the defendant of her rights.
  - Both pre- and post-Miranda questioning occurred at the station house.
  - The first set of questioning was systematic and exhaustive.
  - The Miranda warnings were giving after only a 20-minute break.
  - The both sets of questioning was conducted by same police officer
  - The police officer did not inform defendant that the prior statement could be used against her.
- The Supreme Court found that the second set of questioning was a mere continuation of the first set of questions and that "responses were fostered by references back to the confession already given."

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QUESTIONS?

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