

JUVENILE INTERROGATION

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-Miranda Warning-

1) **Rule:** *Just like adult suspects, juveniles interrogated in a custodial setting are entitled to a Miranda warning. The warning should be given without the interjection of unnecessary comments. After giving the warning, it is always a good idea to have the juvenile explain each of the Miranda factors in his/her own words to allow the officer to make an independent assessment of whether the warning has been understood. If tape-recorded, the juvenile's explanation also benefits the court by giving it the same insight into the juvenile's understanding of the warning.*

a) **In re D.B.X. (MCA 2002):** A witness saw three juveniles steal a Toyota in Brooklyn Center. Police stopped the car, but the driver was able to jump out while it was still moving. Information was later developed that the driver was DBX. A month after the theft, the Olson Middle School liaison officer removed DBX from class without the knowledge or consent of his parents. He was searched, handcuffed, and taken by squad car to the downtown MPD station. He was put into an interrogation room and questioned for over two hours. DBX had no juvenile record and never before had been questioned by police. The Sergeant said that if DBX did not "come clean" on small matters, he would not be able to help, saying "I can't help you if you don't tell me the truth. Because I have to make a recommendation to the prosecuting attorney..." He then compared two kinds of people: Non-remorseful criminals and people who "make a mistake," indicating he could help the latter group. At least ten to fifteen minutes into the interrogation, the Sergeant finally gave DBX a *Miranda* warning, saying:

- Sgt: Have you ever seen anybody on TV have their rights read to them? Have you ever had your rights read to you before? Have you ever been arrested before?
- DBX: Yes, but they never...
- Sgt: They never read you your rights?
- DBX: Yeah.
- Sgt: This is just like on TV, alright? You have the right to remain silent, do you understand that?
- DBX: Yeah.
- Sgt: Whew! Anything you say can and will be used against you in court. Do you understand that?
- DBX: Yeah.
- Sgt: You have the right to talk to a lawyer and have a lawyer present now or anytime during questioning. Do you understand that?
- DBX: Uh huh.
- Sgt: Uh huh? Let me see your teeth. Oh, you've got good teeth. If you cannot afford a lawyer one will be appointed for you without cost, Do you understand that?
- DBX: Yeah.

- Sgt. All right. *** teeth. Do you feel comfortable talking to me?
- DBX: Yeah.

Thereafter, the Sgt suggested numerous times that he could help DBX if there was a confession. He alluded to a “rope of truth” that he wanted to throw to DBX, juxtaposing this image with the disclosure that he was about to take the case to a prosecutor and the truth would set DBX free because he was not a hardened criminal. The “rope of truth” and the “quicksand of deceit” were mentioned several times. The Sergeant offered to talk to DBX’s family and explain to them that DBX had made a mistake. He told DBX that he would have to give the judge his opinion on the case. Finally, he told DBX that the interrogation would be over sooner if he explained how he stole the vehicle and suggested that DBX could leave after he confessed, stating, “Just tell me what happened. It’s time. Let’s get on with our lives. It’s a weekend. It’s a Friday. You don’t go to Saturday school, do you? DBX confessed. The juvenile court allowed the confession and DBX was adjudicated delinquent.

- Held: (Klaphake): The confession was involuntary and must be suppressed.
- In addition to whether a *Miranda* was given to a juvenile, the court must also consider the totality of the circumstances, including the juvenile’s age, maturity, and intelligence, his education and prior criminal experience, any physical deprivations during interrogation, the presence or absence of parents, the length/legality of the detention, the lack or adequacy of warnings, and the nature of the interrogation.

(1) Here, several factors weighed in the totality:

- The transcript of the interrogation reveals that DBX told the Sgt. that he did not understand certain English words and his grammar was consistent with one who spoke English as a second language.
- The court was particularly troubled by the “failure of the police to involve DBX’s parents before questioning him.”
 - The police never attempted to contact the parents
 - Although parental presence, alone, will not invalidate a confession, it is one factor in the totality the court will consider
 - The court stated, “We believe that it would be a better practice for police to routinely have parents present before interrogating a juvenile.”
- The *Miranda* warning was confusing and DBX never clearly waived his rights.
 - While giving the *Miranda*, the Sgt., on three occasions, made reference to DBX’s teeth.
 - The question, “Do you feel comfortable talking to me?” was not related to the warning and DBX’s answer, therefore, was not a waiver.
- The Sgt. used psychological threats, coercion, and express or implied promises to coerce DBX to confess.
 - The court “specifically deplored” the suggestion that DBX could return home only after he confessed.
 - Police have no duty to make recommendations to a prosecutor or a judge.

2) **Rule: Realize that a juvenile may feel him/herself in custody in circumstances where an adult would not.**

a) **In re T.J.C., (MCA 2003):** A 15 year-old boy was lying on a trampoline with a 4-year-old girl. The mother of the younger child was inside, but watched through a window. She saw her daughter reach over and grab TJC's penis. After first thinking it was accidental, she saw TJC talk to the child, who grabbed it again. The mother called police, and later testified that her daughter told her that TJC had instructed her to touch his penis. four days later, the girl was interviewed by a Mille Lacs County Sheriff's Investigator. She told him that TJC did it "a lot" and answered "yeah" when asked if TJC ever put his fingers in her "potty." Nearly two months later, TJC was taken from his special ed class and escorted by his teacher to the principal's office where the school liaison officer and the Milaca police chief were waiting. The door was closed behind them. No one attempted to contact TJC's parents. After talking to TJC for 2 or 3 minutes, police turned on a tape recorder and TJC was told he was not under arrest and that "when we (have) completed, (TJC) would be able to get up and walk out of here and go home on the school bus." TJC was later told he could leave at any time. During the interview, TJC admitted that while babysitting the child, they played a game in which he took off his pants. He said the child tried to remove his underwear as well, and that during his struggle to retain his underwear, the child touched his penis. At trial, TJC testified he was "terrified" during the questioning. He was adjudicated delinquent for CSC 3d degree.

i) **LAW:**

- (1) A *Miranda* warning is required whenever there is the simultaneous presence of custody and interrogation.
- (2) A person is in custody when he is placed under arrest or his freedom of movement is restrained "to a degree associated with formal arrest"
- (3) The ultimate issue is whether a reasonable person, given the circumstances of the interrogation, would have felt free to terminate the questioning and leave.
- (4) Courts examine the totality of circumstances to determine custody

ii) **HELD:**

- (1) The statement was inadmissible as a violation of the juvenile's *Miranda* rights.
- (2) However, due to other, overwhelming evidence, the *Miranda* violation was harmless.
- (3) The court opined that the circumstances might not constitute a *Miranda* violation were the offender an adult.
- (4) The court felt that, "Given the facts of this case, (TJC's) parents should have been notified prior to questioning and should have been allowed the opportunity to be present during the interview.

3) **Rule: Interrogations by police officers that occur in school may require a *Miranda* warning. The question is whether a reasonable juvenile under similar circumstances would believe him/herself to be in custody.**

a) ***In re M.A.K., (MCA, 2003)***: In July of 2001, police received a report from MAK's stepfather that MAK, age 14, had taken the family car without permission, drove it without a license, and had been in an accident. Ten days later, a police officer and a police intern went to MAK's school to speak with him. They had permission from MAK's stepfather to conduct the interview, but did not try to contact either of the biological parents. MAK was taken from his classroom to the police liaison office. He was told he was not under arrest and that his stepfather had given permission for the interview. He was not told he didn't have to talk to police and was not given a *Miranda* warning. During the interview, he confessed. At no time did he ask to leave or to speak with a parent. At the end of the interview, he filled out a written statement and was given a pass to return to class. Nineteen days later, police once again went to the school, this time to investigate reports that MAK had been involved in the burglary of a garage. Although police attempted to contact MAK's mother, they had not spoken with a parent prior to the interview. MAK confessed he was present at the scene and that other boys had stolen beer from the garage.

i) **HELD:**

- (1) The schoolhouse interviews required a *Miranda* warning.
- (2) The totality of circumstances governs whether a juvenile is in custody during an interrogation:
 - (a) Here MAK was taken from his class and escorted to the police liaison office without being told why
 - (b) He had no prior police contact
 - (c) He was told he was not under arrest but was never told he was free to leave or could refrain from answering questions
 - (d) He was not asked if he wished parental presence
 - (e) He was allowed to return to class only when police were satisfied with his statements
- (3) The court concluded a reasonable person would not have felt free to leave and/or did not have to answer questions. MAK was, therefore, in custody and a *Miranda* was required.

-Parental Presence-

1) ***Rule: Parental presence during police interrogation of a juvenile is not an absolute requirement in Minnesota. Unfortunately, the court cases do not make it clear where the line is drawn. If your case is important, contact your County Attorney's Office to discuss the legal implications of not notifying parents before you conduct the interview.***

a) ***State v. Jones (MSC, 1997)***: *The Jones rule (that parental presence is one factor in the totality of circumstances courts will examine to determine whether a juvenile's confession is voluntary) remains the rule in Minnesota.* Jones, a juvenile, was certified for trial as an adult and convicted of first-degree murder for the shooting of a convenience store clerk in Stacy, Mn. A large part of the evidence came from two separate statements given by Jones to police. In the first,

Jones admitted he pulled the trigger. In the second, he claimed he pulled the trigger only after his co-defendant, Johnson, first pointed the gun at Jones and threatened to kill him. Jones was 17 ½ years old. Interrogating officers never asked if he wanted to speak to a parent or other adult, and Jones never asked to see his mother until the interrogation was over. On appeal, he contended his statements should not be received in evidence because police failed to ask if he wanted a parent present, did not honor his request to see his mother after the interrogation, and failed to advise him of the possibility of adult certification.

i) **There are 3 ways a defendant can attack the admissibility of a confession:**

- (1) The statements occurred after the defendant invoked his *Miranda* rights
- (2) The waiver was not knowing and intelligent
- (3) The statement was involuntary (coerced).

ii) HELD:

- (1) A juvenile's request to speak to a parent does not automatically invoke either the right to an attorney or the right to remain silent.
- (2) Courts will examine the totality of circumstances. A request for parental presence is one factor respecting whether the statement was knowing, intelligent, and voluntary.
- (3) There is no bright-line rule requiring a police officer to advise a juvenile suspect of the possibility of adult certification.

b) **State v. Burrell (MSC, 2005):** *The Burrell case makes it clear that, in at least some circumstances, parental presence is required. However, it took thirteen requests for parental presence by Burrell, a juvenile, to trigger the result in this case. There Tyesha Edwards, 11, died from a stray bullet fired during a gang feud. Two persons, Williams and Tyson, pled guilty. A jury found defendant guilty of the murder and also of the attempted murder of Oliver, the apparent target. Oliver was shown photo lineups and identified Tyson and Williams as being involved in the shooting. Oliver said, however, that a 15-to-17 year old male named "Skits" was the shooter. Police subsequently learned that Skits was a nickname for Burrell, who grew up in Minneapolis but had moved to Bemidji with his mother. Oliver selected Burrell's photo from a 3d lineup. Four days after the shooting, police arrested Burrell who was brought to a police department interrogation room. The interview videotape begins with Burrell sitting alone. After 8 minutes, a police officer opens the door but did not say anything. About a minute later, Burrell asked to call his mother. The officer responded that Burrell would have to wait. The officer asked if Burrell had been in trouble before. Burrell responded affirmatively, then said, "So I don't get to talk to my mom before I get to talk to (inaudible)? The officer responded that Burrell would have to talk to the investigator, then left him alone. Twelve minutes later, two investigators entered and removed Burrell's handcuffs. They informed him that they were "looking at that little girl that got shot." and asked Burrell how old he was. Burrell responded that he was 16. The investigators said that they had talked with Williams and Tyson and that "they're hooking you into this stuff." They indicated Williams and Tyson were "helping themselves" and that Burrell needed to do the same. Shortly thereafter, Burrell again asked if he could call his mother. An investigator responded that they were going to talk to him "(be)cause*

your mom wasn't with ya these last couple of days." The investigator continued, saying that they would talk to Burrell's mother, but first Burrell would be given an opportunity to "let us know your side." Seven more exchanges ensued before an investigator gave Burrell a *Miranda* warning. The investigator asked if Burrell understood each of those rights and Burrell muttered something unintelligible and nodded his head up and down. Burrell stated he did not know anything about the little girl because he and his mother had only arrived in the Cities on the evening of November 23, the day after the shooting. He said he slept at his brother's home that night, then, early the next morning, he bought some new clothes at about 6:45 a.m. at the Mall of America, and saw a movie. About 30 minutes later, Burrell was informed that the Mall of America stores were not open at that hour. He was arrested. Burrell asked to speak to his mother 10 times after police gave him the *Miranda* warning, and each time the request was denied. In one interchange, Burrell asked to speak with his mom and the investigator replied, "...not yet, Not yet. Uh, when we're finished here we'll let you talk to her." During the interrogation, Burrell's mother had arrived at the police station. She was taken to a separate interrogation room where she told investigators her son's street name was "Skits" and that she and Burrell had arrived in Minneapolis on the previous Thursday, the day before Tyesha was killed. The investigator who talked to Burrell's mother then spoke with Burrell, telling him that his mother said they had arrived on Thursday. Burrell first responded that it was "a Friday or Saturday....I don't know." Shortly thereafter he said, "Was it on Thursday? Actually it was on Thursday." After an additional 30 minutes of interrogation, Burrell said, "I really want to talk to my mom, you understand that?" Several minutes went by, during which Burrell continued to ask to talk with his mother. Over the 2 hour, 57-minute interrogation, Burrell asked to speak with his mother thirteen times; three times before *Miranda* and 10 times thereafter. He never asked for an attorney. During a pretrial hearing, Burrell contended that his *Miranda* waiver was ineffective because he was not allowed access to his mother. The district court first ruled that his *Miranda* waiver was knowing and intelligent, and then determined that there was no right to parental presence; therefore, the officer's failure to allow him to contact a parent did not affect admissibility of his statement. The mother had died in a traffic accident before trial. The district court denied Burrell's motion to suppress her statements to police on the ground that they were trustworthy. The court also denied Burrell's request for disclosure of Tyson's and Williams' plea negotiations and the testimony of their attorneys on the grounds that the negotiations were inadmissible evidence and that the testimony of the attorneys would violate the attorney-client privilege.

i) Was the *Miranda* waiver ineffective because Burrell was not advised of the possibility that his response could be used in adult court?

(1) In *State v. Lloyd (Minn. 1973)*, the Court suggested that the best course of action would be to specifically warn a juvenile that his statements could be used in adult court. However, where investigators do not warn a juvenile of possible adult prosecution, that knowledge may be imputed to the juvenile by the circumstances, including the circumstances of the arrest and the discussions that precede the administration of *Miranda*. Here,

Burrell was in handcuffs and was told that police were "looking at that little girl that got shot." Based upon the circumstances, knowledge that he might be involved in an adult prosecution can be imputed to Burrell.

ii) **Should Burrell's statement have been suppressed because police did not permit him to contact his mother despite repeated requests?**

(1) In *State v. Hogan* (Minn. 1973), the Court rejected a *per se* rule requiring parental presence. The Uniform Rules of Juvenile Procedure, which took effect in 1983, contain no parental presence requirement, but do require that a child be advised of his *Miranda* rights (see, Minn. R. Juv. P. 6.01).

(2) HELD: Upon the totality of circumstances, "police ... should have realized that by making repeated requests for a trusted and respected parent, Burrell desired his mother's counsel before waiving his *Miranda* rights, as well as afterward." Although there is no *per se* rule requiring parental presence, the circumstances of this case...particularly when coupled with the pre-*Miranda* mischaracterization of statements made by codefendants (see item 3, below), compel a finding that the *Miranda* waiver was ineffective.

iii) **Did interrogating officers use deception or trickery and thereby invalidate the confession?**

(1) Burrell argued that the interrogating officers lied pre-*Miranda* when they told him that codefendants Tyson and Williams had implicated him in the shooting. The Court found that the circumstances "strongly suggest that some mischaracterizations occurred" before Burrell received a *Miranda* warning.

iv) **Were police justified in keeping Burrell and his mother separated where it was feared that the mother would adopt Burrell's alibi?**

(1) The Court suggested that it would have been a better practice for the police to halt Burrell's interrogation, talk to the mother (to isolate the day of their arrival in the Twin Cities) and then allow parent-child contact before resuming interrogation of Burrell.

v) **Was it prejudicial error for the court to allow the jury to view the videotaped statement of Burrell?**

(1) Yes. Because the statement followed an ineffective *Miranda*, it was error to show it to the jury. Moreover, it contained the detective's assertion that Williams and Tyson had inculpated Burrell. Accordingly, "the jurors may well have gone to the jury room believing that both Tyson and Williams had identified Burrell by name as being involved and that Tyson had blamed Burrell for the shooting.

(2) HELD: The use of the videotape is barred from any subsequent prosecution.

vi) **Was there inappropriate testimony from Gang Strike Force Officers?**

(1) While Burrell's appeal was pending, but after his trial, the Minnesota Supreme Court decided *State v. DeShay* and *State v. Lopez-Rios*. In both, the Court cautioned about gang expert testimony that was duplicative, based on hearsay, more prejudicial than probative, or conclusory about gang affiliation. Recognizing that the trial court did not have the benefit

- of these decisions, the Court merely reminded the district court, on remand, to consider them as the issue of expert gang testimony arises.
- vii) Reversed and remanded for new trial.
 - viii)
 - c) **NOTE:** Although it has been discussed more than once, the Minnesota Legislature has never passed a statute requiring parental presence at juvenile interrogations.

-Stress-Inducing Techniques-

- 1) **Rule:** *Do not make coercive statements. Coercion can be the promise of a benefit as well as the threat of a consequence. For example, telling a juvenile that s/he can “go back to your class as we get this statement taken care of” is coercive as it implies that the suspect cannot leave until a statement is given.*
- 2) **Minn. Stat. § 634.03:** A confession of a defendant is not sufficient to support a conviction:
 - a) If there is no evidence that the offense has actually been committed, or
 - b) Even if made to a private person, it was made under the influence of fear induced by threats.
- 3) **State v. Garner, (MSC, 1980):** Defendant went to a liquor store and tried to cash a check payable to “Ray Hanson” that had been stolen from a Duluth metal company. He produced an ID with Hanson’s name. Police arrested defendant and took him to the station for interrogation. The detective immediately recognized Garner as his paperboy and greeted him by name. The detective then learned that Garner’s car, still at the liquor store, had been searched. A gun was found. The detective, who had been trained in stress-inducing techniques in an FBI course, told Garner that if he did not give a truthful statement “I’m going to load you up with so much that you’re going to be round-shouldered.” The detective also violated Garner’s body space by putting him in a chair that didn’t move and then approaching him until they were almost touching. Defendant, who had been drinking, gave a written confession.
 - a) **HELD:**
 - i) The MSC stated, “We are truly dismayed...by the conduct of the interrogating officer in this case *** The techniques clearly exceed the bounds of responsible law enforcement and are obviously designed to extort confessions...rather than seek the truth... We condemn this type of interrogation *** We are equally distressed by the prosecutor’s judgment in introducing...(this) confession.”
 - ii) Reversed. Although the other evidence of guilty was admittedly overwhelming, the court refused to apply the harmless error rule and not only invalidated the confession but the conviction as well.
- 4) **Rule:**
 - a) *It is never, under any circumstances permissible to lie in order to obtain a waiver of a constitutional right. Do not lie to a suspect before a Miranda waiver has been given. A valid waiver of a constitutional right cannot occur under circumstances of fraud and deception.*

- b) *While there is no Minnesota case that absolutely forbids lying to a juvenile suspect after a Miranda waiver, it is a practice that will be closely examined by the appellate courts. It is suggested that officers do not lie to juvenile suspects unless the technique has been discussed with the County Attorney and/or it will not be possible to procure the evidence in any other way.*
- c) *If a court determines that a lie to a juvenile during interrogation invalidates any subsequent confession, the juvenile's statement can still be used for impeachment purposes if the juvenile takes the stand and becomes subject to cross-examination.*
- d) *State v. C.J.M., (MCA, 1987): Defendant's sister claimed she had been raped by defendant, her brother, who was 19 by the time the crime was investigated, while she was alone in her house, asleep in her bedroom. Defendant, intoxicated, barged in demanding money for liquor. When she refused, he threw her to the floor, held her arms, and forced intercourse. He told her he would kill her if she told their mother. About six months later, she learned she was pregnant and told the nurse about the rape, stating she had no other sexual activity. The next day, her family took her out-of-state for an abortion. No blood testing was done to determine paternity. When the victim decided to press charges, the mother became angry, later testifying that she believed the victim's boyfriend was the father. The girl gave a statement to police saying that the incident was the only time she had sex with her brother. Thereafter, she gave another statement in which she claimed her brother had been raping her once or twice a week from the time she was 13 until she was in the 10th or 11th grade. Defendant, in jail on unrelated charges, was interrogated. After providing a *Miranda* warning, the detective lied, claiming that blood tests proved defendant had fathered the unborn child and also claiming there had been a witness to the rape. Defendant then made incriminating statements and was later found guilty of criminal sexual conduct and interfamilial sexual abuse.*
- e) *HELD: Although the detective lied, his conduct did not amount to the intimidation in Garner.*
- f) *NOTE: The MCA, however, stated, "...we strongly condemn such tactics (lying) and suggest that, in the future, we will reexamine a conviction based upon the sole ground of dishonesty, without the additional factor of (*Garner*-like) interviewing techniques."*

-Right to Silence-

- 1) *Rules:*
 - a) *Coercion is generally understood to require conduct that would tempt an innocent person to confess.*
 - b) *The invocation of a right to silence cannot be ambiguous. Where an officer is unsure of whether a juvenile is asserting the right, it is permissible for the officer to ask clarifying questions.*
 - c) *Volunteered statements not given in response to custodial interrogation do not require a *Miranda* warning, even if given to a government official.*

2) **State v. Jason Ryan Williams (MSC, 1995)**: On October 12, 1992, Michael Hage returned from work to his home in Brooklyn Park and discovered that his wife had been killed from a shotgun blast to the back of her head and another to her lower back. His 3-year-old daughter was dead, having been stabbed. His 4-year-old son had also been stabbed but was clinging to life and ultimately survived. Several items of property had been stolen, including the family's 1992 Hyundai. At about 10:15 p.m., an officer on routine patrol spotted the car being driven in Champlin. The car's five occupants were arrested and transported to BPPD for questioning. During transport, Williams asked why he had been arrested and was told it was for being a passenger in a stolen vehicle. No mention was made of the homicides. Williams replied, "...we picked up (three other passengers) later. They had nothing to do with it." during the medical screening portion of the booking process, it was noted that Williams had a cut on his right palm. At 10:45 p.m. he was placed, alone, in a detention cell. Over a six-hour period, detectives interrogated the other occupants of the car and learned that Williams told them that he had stolen the car and cut his hand while shooting a shotgun. At about 5:20 a.m., Williams was taken to an interrogation room where two detectives provided a full *Miranda* warning. Williams waived his rights and said he wanted to talk. He claimed to have stolen the car from a south-side liquor store. About 45 minutes into the interrogation, a detective informed Williams that the car had been stolen from the home of people who had been murdered and that it was suspected Williams injured his hand while committing the murders. Williams denied involvement. About an hour into the interview, the detective told Williams if any sexual assault had taken place, physical evidence such as semen could ID him. Williams denied any such thing had happened and the detective accused him of lying. Williams became angry, stood up, and said, "I don't have to take any more of your bullshit." He then walked out of the interview room and back to a detention cell. To allow Williams time to cool off, the detectives left the detention area of the police department. They then learned that the 4-year-old was expected to survive. They decided to return to Williams' cell and give him this information. Approximately 5 minutes after leaving the interrogation area, they returned to the cell, informed Williams of the boy's condition, and asked if he would like to give his side of the story. Williams nodded in affirmation and returned to the interview room. During the next half-hour, Williams gave his version of what happened at the house. At no time did Williams ask to speak to a parent or lawyer. After talking with Williams, the detectives turned on a tape recorder, gave another *Miranda* warning, and took a taped statement. Williams was taken to the hospital for treatment of the cut, and then booked at the Juvenile Detention Center. The detectives went to the JDC to give Williams a typed copy of the statement. He read the entire 19 pages and made six corrections. The confession was put into evidence at trial. During his stay at JDC, Williams saw a staff member whom he knew from prior contacts. The staffer asked Williams where he had been and Williams replied that he had "been around," and then added, "...and now I'm going to St. Cloud." When asked why, Williams responded, "Hey, man, I killed two people, where do you think I'm going to go?" Another staff-person later asked Williams what was wrong with his hand. He replied that he was injured by the stock of a sawed-off gun. Finally, a 3d JDC staffer was in an officer that had a speaker monitor system connected with the "mods." She

overheard Williams speaking through the air vents to another juvenile, saying, “The only person that had any heart was the mother; she’s the only one that wanted to fight me when I had the gun and the other ones were chicken and they had no heart.”

a) Issues:

i) Were the circumstances such that the confession was coerced?

(1) No. Williams was held for 6 ½ hours in a detention cell with a bed, toilet, & sink with running water. He was allowed to use his asthma inhaler and had medical attention for his hand. Although one detective told him the 4-year-old could make an ID, it was pure speculation.

(a) These factors are not the type of things that would make an innocent person confess.

(b) Ten delinquency petitions had been filed against Williams between ages 12 and 15. Four were felonies. He was familiar with the system and the *Miranda* warning. He had invoked his right to silence on at least one prior occasion.

ii) Did BPPD detectives fail to “scrupulously honor” William’s right to silence?

(1) It was argued that when Williams said, “I don’t have to take any more of your bullshit,” it was essentially an invocation of the right to remain silent.

(2) HELD: To unambiguously invoke the right to silence, a suspect’s hostile behavior, standing alone, is not sufficient.

iii) Was Williams entitled to be advised he could have a parent present or that he might be prosecuted as an adult?

(1) No.

(a) Although Mn. courts have encouraged police to advise juveniles of the possibility of adult certification, there is not blanket rule requiring it.

(b) The presence of parents is only one factor among the totality the court will consider in determining whether a confession was knowing, intelligent and voluntary.

iv) Should the confession be suppressed because police only tape-recorded a portion of it?

(1) No. *State v. Scales* was decided on June 30, 1994. It’s rule is prospective only. Williams was interrogated in October of 1992.

(a) Because *Scales* is an exercise of the Court’s supervisory authority over criminal procedure in the state, it is not a newly-declared constitutional right that must be bestowed retroactively.

v) Should the statements to JDC staff be suppressed?

(1) No. All the statements were volunteered and, as such, not governed by the 5th Amendment. No staff-person deliberately exploited a relationship with the accused.

-Right to Counsel-

- 1) **Rule:** *The right to counsel under the 6th Amendment differs from the right to remain silent under the 5th Amendment in the following respect: When a suspect*

invokes the right to silence, the police must “scrupulously honor” that demand by stopping questioning immediately (except for housekeeping matters unrelated to the investigation) but may return to see if the suspect wishes to talk after a reasonable break in time and space. However, when the right to counsel is invoked, police must cease questioning and withdraw, but may not re-initiate contact. It is permissible for a person represented by counsel to invite the police to resume an interview, but a new Miranda waiver must be obtained.

2) **State v. Hannon (MSC, 2002)**: Defendant was found guilty of premeditated murder, kidnapping, and arson arising from a fire at a St. Cloud apartment building. Victim Deborah Tolhurst was found burned and dead in the apartment where the fire originated. Police received information that Hannon lived in the apartment with her. He was found hiding in the bedroom of another apartment. When interrogating officers told him that they believed he killed Tolhurst, the following interchange occurred:

- Hannon: Can I have a drink of water, then lock me up ... I think we really should have an attorney.
- Police: We'll get you a drink of water.
- Hannon: I don't want to talk anymore, please. This is...this is really wrong. This woman has scars all over her from this Paul Mackey. He's callin' her fifty times a week.
- Police: If you want to talk to an attorney, you understand we have to quit talking to you, okay, and then your side of this story will never be known. That's your choice. That's a choice you're making.
- Hannon: So, that means what?
- Police: That means we're gonna put this thing together and we're gonna convict you of murder.
- Hannon: Of murder?
- Police: Absolutely. Yup.

The interrogation continued and Hannon made numerous statements regarding his involvement in Tolhurst's death. He mentioned duct-taping her legs, throwing a lighted paper bag on top of her, and saying, "You need to burn, you bitch."

a) HELD:

- i) The Minnesota Supreme Court reversed and ordered a new trial, finding a 6th Amendment right to counsel violation.

b) LAW:

- i) To have an unequivocal request for counsel, the accused must articulate his desire with sufficient clarity that a reasonable peace officer would understand the statement to be a request for an attorney.

(1) Here, Hannon's invocation of his 6th Amendment right was sufficient.

-Right to Silence (5th Amendment) vs. Right to Counsel (6th Amendment-

- 1) The procedural difference between the invocation of a 5th Amendment right to silence and the invocation of a 6th Amendment right to counsel is this:

- a) Following an unequivocal invocation of the right to counsel, police must withdraw but can later re-approach to ask the suspect if s/he has changed his/her mind and now wishes to talk.
- b) Following an invocation of the right to counsel, police must withdraw and cannot re-approach unless the accused initiates further communication and validly waives the earlier request for counsel.
 - i) Police may, however, ask very narrow questions to clarify the suspect's true desire regarding an attorney.

-Exceptions to *Miranda*-

- 1) Exceptions to the Miranda rule:
 - a) ***State v. Hendrickson*** (MCA 1998)
 - i) There is a ***public safety exception*** to Miranda and Scales that permits officers to ask questions reasonably prompted by a concern for public safety.
 - ii) The availability of the public safety exception does not depend on the motivation of the officers but, rather, whether officers were confronted with the immediate necessity of determining the whereabouts of a threat to public safety
 - b) ***State v. Provost*** (MSC 1992):
 - i) The ***rescue doctrine*** excuses the absence of Miranda where there is an overriding need to save a human life or rescue persons whose lives are in danger
 - (1) Three factors must be met to claim the rescue exception
 - (a) Urgency of need in that no other course of action promises relief
 - (b) Possibility of saving a human life
 - (c) Rescue is the primary purpose and motive of the interrogator