I. CONFESSIONS/ INTERROGATIONS

I.1. Voluntariness/factors

TITLE: Hastings v. State
INDEX NO.: I.1.
CITE: (1st Dist. 10/9/90), Ind. App., 560 N.E.2d 664
SUBJECT: Involuntary confessions - governmental agent; CHINS caseworker
HOLDING: Tr. Ct. erred in admitting statement D made to caseworker in CHINS petition, at D's trial on neglect charge. Evidence showed that D left 2-year-old son alone with boyfriend for half-hour, during which time boyfriend broke child's arm. Evidence also showed that D's boyfriend had broken child's legs earlier after which CHINS proceeding was commenced, & child was placed in foster home. During course of CHINS proceeding, D was required by court order & statute to cooperate with caseworker & was advised that full cooperation was required to avoid termination of parental rights. At one point, caseworker asked D whether she suspected boyfriend of having broken child's legs, & she replied that she was suspicious, but didn't want to think he had done it. Caseworker testified about this response over D's objection. On appeal, D argues that her statement to caseworker was an involuntary confession. Reviewing court must address 2 questions: (1) was caseworker "an agency of the government in the course of securing a conviction," Blackburn v. Alabama (1960), 361 U.S. 199, 80 S.Ct. 274, 4 L.Ed.2d 242; & (2) was statement given involuntarily. Here, caseworker testified that she understood she was obligated to cooperate with prosecutors & to turn over any evidence received concerning criminal charges against D. Further, Ind. Code 31-6-4-8(c) requires intake officer in CHINS proceeding to send to prosecutor or county attorney copy of preliminary inquiry. Ct. App. concludes that, in light of above-described pressure on D to cooperate with caseworker, state failed to prove voluntariness beyond reasonable doubt. Admission of involuntary statement is fundamental error requiring reversal of D's conviction.

RELATED CASES: Clephane, App., 719 N.E.2d 840 (under totality of circumstances, D's statement was voluntary; unlike Hastings, D's cooperation was not mandated by statute or by Ct. D voluntarily agreed to interview & testified that he knew he was free to leave when he arrived for interview); Thomas, App., 612 N.E.2d 604 (confession made via Agreed Entry in CHINS case was voluntarily given and admissible against D because D had advice of counsel before giving statement).

TITLE: Light v. State
INDEX NO.: I.1.
CITE: (12/15/89), Ind., 547 N.E.2d 1073
SUBJECT: Confession - voluntariness
HOLDING: Tr. Ct. did not err in admitting D's pretrial statements to police. D was convicted of murder & on appeal he argues that Tr. Ct. erroneously admitted statements because they were not made voluntarily. In reviewing voluntariness, courts look at totality of circumstances. [Citations omitted.] Here, D argues that his lack of experience in police procedure, privacy of interrogation room, coercive psychological techniques employed by police, false legal advice given, his low level of intelligence & illiteracy, inconsistencies in his statements, & explicit or implicit promises made to him by police all militate against admission of statements. Court notes that D was interrogated for only 4 hours, & that he presented no evidence of low intelligence & on the contrary had passed drivers test & been employed for 12 years as truck driver. Officer admitted lying to D, which court does not condone, but that alone does not compel finding of involuntariness. Frazier v. Cupp (1969), 394 U.S. 731, 89 S.Ct. 1420, 22 L.Ed.2d 684. On tape of statement, officer could be heard smacking D on arm 15 times, but court agrees that it was only to keep D awake & did not constitute violence or force. Court does not discuss how D's drowsiness, such that he had to be smacked 15 times to keep him awake, affected voluntariness of statements. In light of totality of circumstances, court cannot say that statements were involuntarily made. Held, conviction affirmed.

TITLE: Patterson v. State
INDEX NO.: I.1.
CITE: (1st Dist. 12/11/90), Ind. App., 563 N.E.2d 653
SUBJECT: Confession - voluntariness; recorded conversation with victim
HOLDING: Where alleged child molest victim called D, & police recorded call without D's knowledge, confessions which occurred in conversation were not involuntary & inadmissible. Victim & her mother went to police station to report incident, & later same day, in presence of detective, victim called D at work & urged him to confess to her that he had molested her. D, under impression that call was private, admitted molesting victim. However, detective was recording conversation, & transcript of tape was admitted at trial. On appeal, D argues that transcript should not have been admitted because confession was involuntary. Coercive police activity is necessary prerequisite to finding that confession is involuntary within meaning of due process clause. Light 547 N.E.2d 1073, (*citing* Colorado v. Connelly (1986), 479 U.S. 157, 107 S.Ct. 515, 93 L.Ed.2d 473. Where D does not know that he/she is talking to police agent, there is no such coercive atmosphere as to require Miranda warnings. Illinois v. Perkins (1990), 110 S.Ct. 2394. See also Adams 386 N.E.2d 657. (No compulsion existed where D made statements to victim, unaware of police officer's presence.) Even assuming, without deciding that victim was police agent, D was not under inherent compulsion of custodial interrogation by police, since he was unaware of their involvement in conversation. Also, although victim persisted in questioning D & urging him to confess, he remained free to refuse & to end conversation if he chose. D's confession to victim was voluntary, & Tr. Ct. did not err in admitting transcript of taped confession at trial. Held, conviction affirmed.

TITLE: Ramirez v. State
INDEX NO.: I.1.
CITE: 739 So.2d 568 (Fla. 1999)
SUBJECT: Voluntariness -- Efforts to Minimize Miranda Advisement
HOLDING: Interrogators' efforts to minimize importance of 17-year-old suspect's mid- interview waiver of Miranda rights rendered waiver involuntary, Florida Supreme Court holds in per curiam opinion. An informant had told police that he and D had committed burglary and murder. D was brought to police station for questioning, and before Miranda advisement he admitted his involvement in the burglary. At this point, one of the interrogating officers said to the other, "Why don't you let [D] know about his rights. I mean, he's already told us about going into the house and whatever. I don't think that's going to change [his] desire to cooperate with us." After being read his rights, D asked if he was under arrest, and officer said, "No, no, I'm just reading your rights at this time." After orally waiving Miranda rights, D admitted participating in murder. He was convicted and sentenced to death, and on appeal, he challenges the voluntariness of his Miranda waiver. State argues that mid-interview Miranda advisement cured the failure to advise D of his rights before he admitted to involvement in burglary. See Oregon v. Elstad, 470 U.S. 298 (1985). However, looking at totality of circumstances, Fla. S.Ct. finds that interrogators exploited the incriminating statement regarding the burglary which D had already made, and further minimized the importance of the rights he was being asked to waive. The Court finds that this is the sort of "cajoling" and "trickery" about which the Supreme Court had warned in Miranda. Court also looks at D's age and unfamiliarity with criminal justice system, the fact that he had not yet talked to his parents when he waived his rights, and the fact that his waiver was not in writing. Because D's murder conviction and death sentence were the product of his illegally obtained confession, they are reversed.

I. CONFESSIONS/ INTERROGATIONS

I.1. Voluntariness/factors

I.1.a. Factors

TITLE: Carlisle v. State
INDEX NO.: I.1.a.
CITE: (1/18/83), Ind., 443 N.E.2d 826
SUBJECT: Confession - voluntariness; overcoming taint of earlier statement
HOLDING: Prior involuntary statement renders second/subsequent confession inadmissible unless "break in chain of events [is] sufficient to insulate statement from that which went before." Hendricks 371 N.E.2d 1312. Fact Miranda warnings precede second confession may not purge taint of improprieties surrounding first statement. Hendricks; Brown v. IL (1975), 442 U.S. 590, 95 S.Ct. 2254, 45 L.Ed.2d 416. Here, D contends second confession was tainted by involuntary statement made immediately prior to second interrogation. D contends first statement was involuntary because questioning continued after he asked to see lawyer & because it was produced by threats, coercion & intimidation. Further, D argues close proximity in time & place of 2 statements prevents second confession from being purged of taint simply because Miranda warnings were given. Clewis v. TX (1967), 386 U.S. 707, 87 S. Ct. 1338, 18 L.Ed.2d 423; Westover v. US (1966), 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694; Holleman 400 N.E.2d 123. Court accepts state's point that D has not proven prior interrogation. Held, no error in denial of motion to suppress confession.

TITLE: Carroll v. State
INDEX NO.: I.1.a.
CITE: (8/16/82), Ind., 438 N.E.2d 745
SUBJECT: Confession - voluntariness test
HOLDING: Voluntariness of confession is determined by totality of circumstances surrounding confession, including whether statement was induced by any violence, threats, promises or other improper influence. See Jackson 411 N.E.2d 609. Here, D voluntarily came to police station, was advised of his rights, signed a waiver form, consented to a polygraph, did not request an attorney, food, drink or use of telephone or restroom facilities. D did not appear to be intoxicated. D was familiar with law enforcement procedure (because he had one previous felony conviction). Held, confession voluntary.

RELATED CASES: Little, App., 694 N.E.2d 762 (record showed that D freely confessed to shooting victim in Ind. case as part of his exculpatory explanation to Illinois officers about how victim in Illinois was killed).

TITLE: Culombe v. Connecticut
INDEX NO.: I.1.a.
CITE: 367 U.S. 568, 81 S.Ct. 1860 (1961)
SUBJECT: Voluntariness - factors; coercion
HOLDING: Confession is admissible only if it is product of D's rational intellect & free will. Traditional indicia of coercion include: duration & conditions of detention, manifest attitude of police toward D, D's physical & mental state, & diverse pressures which sap or sustain D's powers of resistance & self-control. Here, D, who had mental age of nine, was held for five days of repeated questioning during which police employed coercive tactics. Under these circumstances, confessions made at end of such period were not voluntary & their use deprived D of due process. Held, judgment reversed; Harlan, Clark, & Whittaker, JJ., dissenting.

RELATED CASES: Colorado v. Connelly, 479 US. 157, 107 S.Ct. 515 (1986)(coercive police activity is necessary predicate to finding that confession is not voluntary under 14th Amendment).

TITLE: Hendricks v. State
INDEX NO.: I.1.a.
CITE: (1-20-78), Ind., 371 N.E.2d 1312
SUBJECT: Voluntariness - Effect of prior involuntary statement
HOLDING: Prior involuntary confession does not render subsequent statements inadmissible per se. In order for subsequent confession to be admissible, there must be break in chain of events sufficient to insulate statement from that which went before. Tr. Ct.'s should consider: 1) temporal proximity of illegality & confession; 2) presence of intervening circumstances; & 3) flagrancy of official misconduct. Brown v. Illinois, 95 S.Ct. 2254 (1975). Here, even if prior statement given by D was involuntary, testimony given by D at previous trial of accomplice was sufficiently purged of whatever taint resulted from circumstances surrounding statement. D had sufficient time & freedom to reflect on actions & was emphatically told that no immunity was being offered. Sufficient intervening circumstances occurred to insulate testimony from preceding events, therefore, it was not error for Tr. Ct. to admit testimony over objection at subsequent trial of D. Held, judgment affirmed.

RELATED CASES: Abner, 479 N.E.2d 1254 (there was break in chain of events sufficient to insulate statement from two prior inadmissible statements).

TITLE: Sage v. State
INDEX NO.: I.1.a.
CITE: (12/5/2018), 114 N.E.3d 923 (Ind. Ct. App 2018)
SUBJECT: D's statement voluntary despite being hospitalized and medicated
HOLDING: In felony murder prosecution, Tr. Ct. did not abuse its discretion in admitting D's statements to police while he was hospitalized and medicated for gunshot wounds he sustained during the offenses. Because D was aware of what he was saying, the fact that he was medicated with morphine and Narco was not sufficient to show he lacked the ability to understand and waive his rights. When he gave his statement, D had recuperated sufficiently that he was to be discharged from the hospital the following day. In addition, D spoke coherently and responded appropriately to the detective's questions and was able to recollect details of the offenses. Under the totality of circumstances, D's statement was voluntary.

Court also held evidence was sufficient to support felony murder conviction, because D's act of dealing methamphetamine provided a direct and immediate connection to the ensuing confrontation in which gunfire and the killings occurred. D was armed and "violence was contemplated as part and parcel of the methamphetamine deal." Held, judgment affirmed.

I. CONFESSIONS/ INTERROGATIONS

I.1. Voluntariness/factors

I.1.a.1. Physical Coercion

TITLE: Poling v. State
INDEX NO.: I.1.a.1.
CITE: (12-2-87), Ind., 515 N.E.2d 1074
SUBJECT: Voluntariness - Factors - Physical coercion
HOLDING: D's confession was not result of coercion, even though D was not given food or drink & was handcuffed to bench in waiting room for five hours, absent evidence that D desired food or drink, or that D was threatened or mistreated by police or that they pressured D to give statement. Held, judgment affirmed.

RELATED CASES: Kokenes, 13 N.E.2d 524 (confession unreliable where police cruelly beat & tortured D to influence him to confess; confession following such coercive methods should be rejected).

I. CONFESSIONS/ INTERROGATIONS

I.1. Voluntariness/factors

I.1.a.2. Threats/promises (implied or explicit)

TITLE: A.A. v. State
INDEX NO.: I.1.a.2.
CITE: (2nd Dist., 2-26-99), Ind. App., 706 N.E.2d 259
SUBJECT: Involuntary juvenile confession - improper police pressure & manipulation
HOLDING: Although neither Miranda warnings nor protection of juvenile waiver statute applied, 15-year-old juvenile's confession was involuntary & improperly admitted into evidence. D argued that detective overbore him & that his confession was obtained by improper influence in violation of Due Process Clause of Fourteenth Amendment. Detective used D's claim that he had been molested over five-year period by his uncle to obtain his confession to single incident of child molestation. Specifically, detective told D that unless he confessed, State would not consider him to be credible witness. She then told D that if State felt he was not credible witness State would not prosecute his uncle. As in Hall v. State, 255 Ind. 606, 266 N.E.2d 16 (1971), Ct. concluded that such police coercion & manipulation is improper, & that D's confession was leveraged by improper quid pro quo.

Ct. noted that although it is necessary & appropriate function of law enforcement to assess credibility of complaining witness, detective's statements in this case did not merely provide D with frank assessment of State's case against his uncle. Instead, detective's inquiry went beyond legitimate assessment of D's credibility when she gave him ultimatum that he must confess before his claim against his uncle would be taken seriously. This conduct indicated that it was detective's "undeviating intent" to obtain D's confession. Sparks, 248 Ind. 429, 229 N.E.2d 642 (1967). Given totality of circumstances, Ct. concluded that D's confession was not voluntary, that police conduct violated Due Process Clause of Fourteenth Amendment, & that Tr. Ct. erred when it admitted confession into evidence. Held, delinquency adjudication reversed & remanded.

RELATED CASES: Williams, 997 N.E.2d 1154 (Ind. Ct. App. 2013) (officers' vague statements that D would help himself by cooperating were not promises that rendered D's confession involuntary); Giles, App., 760 N.E.2d 248 (Tr. Ct. did not err in admitting videotape of D's partial admission to police, despite claims that officer made deceptive statements & gave assurances D would receive leniency if he confessed; police officer only suggested possibility of minimal punishment & likelihood of prosecutorial leniency).

TITLE: Arizona v. Fulminante

INDEX NO.: I.1.a.2.

CITE: 499 U.S. 279, 111 S.Ct. 1247, 113 L.Ed.2d 3 (1991)

SUBJECT: Voluntariness of confession - coercion; threats of violence

HOLDING: Determination regarding voluntariness of confession must be viewed under totality of circumstances. Here, fellow inmate who was working as paid informant for FBI elicited D's confession in prison. Inmate was aware that D was receiving "rough treatment" from other inmates because he was alleged child murderer. Inmate offered to protect D in exchange for confession to child's murder. In addition to these facts relied upon by state Ct. finding confession involuntary, Ct. notes that D had low to average intelligence (D had dropped out of school in 4th grade), was slight in build, short in stature, & had not adapted well to prison life. Additionally, inmate's position as D's friend might have made D more susceptible to inmate's entreaties. Normally, state Ct. fact findings are entitled to great deference. However, ultimate issue of voluntariness is legal question requiring independent federal determination. Miller v. Fenton (1985), 474 U.S. 104, 110, 106 S.Ct. 445, 449, 88 L.Ed.2d 405. [Other citations omitted.] Although Ct. finds this close case, it concludes that state Ct. correctly determined confession involuntary. Finding of coercion need not depend on actual violence by government agent, credible threat sufficient. Held, confession involuntary. Opinion as to this part of case by White with Marshall, Blackmun, Stevens, & Scalia, joining; Rehnquist, joined by O'Conner, Kennedy, & Souter, DISSENTING.

TITLE: Ashby v. State
INDEX NO.: I.1.a.2.
CITE: (9-17-76), Ind., 354 N.E.2d 192
SUBJECT: Voluntariness - Factors - Threats/promises (implied or explicit)
HOLDING: Officer induced Ds to confess by direct representation to them that by confessing, they would be able to serve 10-year sentence rather than life term. Statements induced by such representation were not freely self-determined & thus were inadmissible. Held, judgment reversed & remanded; Prentice, J., concurring in part & dissenting in part; Givan, C.J., & Arterburn, J., dissenting.

RELATED CASES: McVey, App., 863 N.E.2d 434 (D was not in custody when he made statement during post-polygraph phase of examination; statement resulted from D's free will, not police coercion or inducement); Booker, 386 N.E.2d 1198 (D was not induced to confess to purse snatching, which resulted in D's conviction for felony murder, where he was told that it was possible that he would not be charged with any other first degree burglary because he was already charged with one first degree burglary).

TITLE: Beavers v. State
INDEX NO.: I.1.a.2.
CITE: 998 P.2d 1040 (Alaska 2000)
SUBJECT: Threat that Suspect Would Be "Hammered" Rendered Confession Involuntary
HOLDING: Alaska Supreme Court holds that confession made after 16-year-old suspect was told by police that he would be "hammered" if he didn't talk was presumptively involuntary in absence of evidence affirmatively indicating that suspect's will was not overcome by this threat. Where confession is induced by threat of harsher treatment, rather than by promise of more lenient treatment, Court will not examine totality of circumstances, but rather will presume involuntariness. Such threats convey to suspects that they will be punished for their silence, including refusal to give further answers.

TITLE: Brabandt v. State
INDEX NO.: I.1.a.2.
CITE: (1st Dist., 10-27-03), Ind. App., 797 N.E.2d 855
SUBJECT: D's confession to probation officer - voluntariness; Miranda claim
HOLDING: D's statement admitting drug & alcohol use to probation officer was not involuntary under 14th & 5th Amendments & did not require Miranda warnings because D was not subject to custodial interrogation. Probation officer received information that D was using drugs, & confronted D with this information during next probation meeting. Officer conducted a drug test on D, which later proved negative, & inspected his arms noting fresh needle marks. After this, D signed an affidavit admitting drug & alcohol use, initialing a sentence that he was making the statement of his own free & voluntary will. D testified he signed the document in part because he believed by the officer's actions of checking his arms that he had failed the drug test. D argued that the officer was required to give him a Miranda warning prior to questioning about current drug use because at that point the officer was conducting a criminal investigation. Ct. found that although meeting was a "prerequisite to his conditional liberty," D was not in custody because he arrived at office on his own; he was not behind closed doors or restrained; & when meeting concluded, D left & remained free for two more months. Luna v. State, 788 N.E.2d 832 (Ind.2003). Ct. also rejected D's argument that confession was not voluntary due to probation officer's deceit in implying that if D signed affidavit he could get treatment rather than jail. Ct. found that D's equivocal testimony stating both that officer threatened him with jail if he did not sign & at another point saying otherwise did not lead to a conclusion of coercion. Held, judgment affirmed.

RELATED CASES: Jones, App., 866 N.E.2d 339 (D was not in custody when he reported the sexual activity to his probation officer; fact that D submitted to a polygraph examination as part of a Ct.-ordered psychosexual exam does not mean that his confession was obtained by violence, threats, promises, or other improper influences so as to render it involuntarily made.

TITLE: Drew v. State
INDEX NO.: I.1.a.2.
CITE: (2/10/87), Ind., 503 N.E.2d 613
SUBJECT: Confession - voluntariness; promise solicited by D
HOLDING: Where D solicited promises from prosecutor as precondition for making full statement re murder/burglary, court finds resulting statement was freely self-determined & not induced by police or prosecutorial conduct. Here, prosecutor promised not to prosecute D for burglary/homicide & to secure suspended sentences for other charges pending against D if he would provide full & truthful videotaped statement, testify against others involved in crime & pass polygraph test. Court finds conclusion well supported by case law in other jurisdictions. [Citations omitted.] Court rejects D's reliance upon U.S. S.Ct. precedent, which D argues require exclusion of confession. Crucial element in these cases was whether confession was compelled/extracted as result of promises of leniency. Court finds D's case akin to Fowler 483 N.E.2d 739 (confession is inadmissible when obtained by promise of immunity/mitigation of punishment, *citing* Ashby 354 N.E.2d 192; relevant inquiry is whether challenged police conduct induced confession which was not freely self-determined; D voluntarily admitted guilt by nodding head before alleged inducements). Held, no error in admission of confession. DeBruler CONCURS IN RESULT.

TITLE: Ford v. State
INDEX NO.: I.1.a.2.
CITE: (3-2-87), Ind., 504 N.E.2d 1012
SUBJECT: Voluntariness of confession - Representations by police; no inducement
HOLDING: Fact D was arrested under flight warrant according to prearranged plan that D would surrender to FBI agent, after police contacted mother of D's girlfriend & FBI agent contacted mother, who encouraged D to surrender, did not render D's confession to police involuntary. Agent testified he did not tell D's mother that police would mistreat or kill D. Fact that law enforcement officers told D that other people were making statements implicating him in murder & told him it would be in his best interest to make statement himself did not render D's subsequent confession involuntary. Vague & indefinite statements by police which indicate it is in D's best interest to cooperate or to tell real story are not sufficient inducements to render his subsequent confession inadmissible. Fowler, 483 N.E.2d 739. Held, judgment affirmed.

RELATED CASES: Edwards, 412 N.E.2d 223 (deception of accused may render confession involuntary); Fennell, 492 N.E.2d 297 (detective's statements, during D's interrogation, that he thought D needed some expert help & that they were going to get that for him, were not promises of immunity or mitigation of punishment so as to render D's confession inadmissible). Fleener, 412 N.E.2d 778 (substantial evidence of probative value existed to support determination that D's confession was admissible at trial & had not been induced by promises from interrogating officer that D would not be prosecuted). Massey, 473 N.E.2d 146 (police officer explaining to D possible penalties he was facing & making general remarks that they would like D's cooperation in finding other suspects did not render D's confession involuntary).

TITLE: Garmon v. State
INDEX NO.: I.1.a.2.
CITE: (2nd Dist., 10-7-02), Ind. App., 775 N.E.2d 1217
SUBJECT: D's confession voluntarily given - police officer's opinion re: possible charges & penalties
HOLDING: In child exploitation prosecution, Tr. Ct. did not err in denying motion to suppress D's statements to detective. D argued that he was improperly induced to make incriminating statements by erroneous assurances that he faced only misdemeanor charge of possession of child pornography in connection with images found on his computer. However, statements by police during arrests or interviews that explain possible crimes & penalties that might result are not specific enough to constitute either promises or threats. Kahlenbeck v. State, 719 N.E.2d 1213 (Ind. 1999). Confession may be admissible under totality of circumstances, even though police deception had been involved. Even assuming detective misled D during interview, Tr. Ct. did not abuse its discretion in admitting D's statements. Carter v. State, 490 N.E.2d 288 (Ind. 1986) Held, judgment affirmed.

RELATED CASES: Kelley, App., 825 N.E.2d 420 (Detective's statement to D that he could be charged with perjury for false informing was not a theat which rendered D's confession involuntary; detective was doing no more than explaining consequences of D's actions should he give false information).

TITLE: Love v. State
INDEX NO.: I.1.a.2.
CITE: (3-10-80), Ind., 400 N.E.2d 1371
SUBJECT: Confession - Voluntariness - insufficient evidence of threat / promise
HOLDING: Interrogating officer's statement D might be sent to adult prison instead of boys' school if he did not confess & that "his cooperation might help in assisting him" did not constitute prohibited threats. Therefore, D's confession was voluntary. Officer did not promise D that his cooperation would guarantee leniency or assure him he would not be waived into adult Ct. if he confessed. Held, judgment affirmed.

RELATED CASES: Massey, 473 N.E.2d 146 (general remarks about police wanting D's cooperation & possible penalties D could receive did not amount to level of coercion to render his statement involuntary). Neal, 522 N.E.2d 912 (police officers cannot make promises of mitigation to induce statement, but vague & indefinite statements by police are not sufficient inducements to render subsequent confession inadmissible). Smith, 500 N.E.2d 190 (officer's statement to D during interrogation that he would get mental health assistance for D did not constitute impermissible promise of immunity or mitigation of punishment).

TITLE: Johnson v. State
INDEX NO.: I.1.a.2.
CITE: (10/5/87) Ind., 513 N.E.2d 650
SUBJECT: Confession - voluntariness; promise of leniency toward D's mother
HOLDING: D's confession was voluntary, despite detective's offer to see what he could do about release of D's mother, who was held on unrelated charge. D cites Hall 266 N.E.2d 16, in which court held that confession encouraged through threat to one's wife & family could not, as a matter of law, be considered involuntary. In Hall, state threatened to arrest D's wife, leaving D's children in care of others. Here, D's mother had already been arrested on unrelated charge so there was no question of arrest being used to coerce D. See Rogers 437 N.E.2d 957. D initiated discussion, weighing against finding of coercion. Coppock 480 N.E.2d 941. Also, non-spousal relationships are not as susceptible to coercion. Id. D testified his mother had undergone surgery 2 weeks before her arrest & had children younger than D at home. However, record also reveals that D had run away from home 6 to 8 months before arrest & had not been in contact with his mother. Hall does not control. Further, detective's representations were too vague & indefinite to constitute improper inducement. Any misunderstanding was dispelled before D concluded statement, when detective told D that release of D's mother was not in his power & he could not promise anything.

Note: Confession was found involuntary & habeas corpus relief granted in Johnson v. Trigg, (S.D. Ind.), 839 F.Supp. 571. However, 7th Circuit Court of Appeals reversed district court's findings & remanded for evidentiary hearing to determine whether D is entitled to relief. See Johnson v. Trigg (7th Cir. 1994), 28 F.3d 639 (D's confession found not to be coerced, because D was hardened criminal who was estranged from mother at time of arrest, & D surrendered before he knew his mother had been arrested).

TITLE: Jackson v. State
INDEX NO.: I.1.a.2.
CITE: (10-15-81), Ind., 426 N.E.2d 685
SUBJECT: Voluntariness - Factors - Promise of leniency in exchange for drug treatment
HOLDING: Tr. Ct. did not err in finding D's confession was voluntary & not product of promises or inducements, despite D's testimony that at time he made statements he was undergoing withdrawal from effects of heroin. D claimed he made statements after police promised to obtain medical assistance for him & assured him that prosecution would be more lenient if he cooperated. However, two police officers testified that during interrogation D denied using drugs, did not request medical attention & did not appear to be going through withdrawal. Held, judgment affirmed.

RELATED CASES: Johnson, App., 484 N.E.2d 49 (suggestion of investigating officers during interrogation of child molestation D that it would be to D's benefit to seek counseling, even if construed as inducement to confess, was insufficient to overcome D's will & render his subsequent confession involuntary & thus inadmissible).

TITLE: Hampton v. State
INDEX NO.: I.1.a.2.
CITE: (4th Dist. 10/4/84), Ind. App., 468 N.E.2d 1077
SUBJECT: Confession - voluntariness; threats/promises; leniency
HOLDING: D's confession was voluntary/admissible where detective's statements to D were similar to vague assurances sanctioned in Long 422 N.E.2d 284. Here, D contends officers threatened to file charges which could result in 20-year sentence if he did not confess & promised D misdemeanor conviction/sentence if he cooperated. Detective testified he told D to tell truth & that, although detective could make no promises, he could inform Ct. if D were truthful/cooperative. Confessions may not be procured through violence threats/promises/ undue influence overcoming D's free will. 14th Amend & Ind.Const. Art. I, Sec. 15. See Chambers v. FL (1940), 309 U.S. 227, 60 S.Ct. 472, 84 L.Ed. 716; Grassmyer 429 N.E.2d 252; Owens 427 N.E.2d 880; Bonahoon (1931), 203 Ind. 51. Vague/indefinite statements by police ["seeing what they could do for him;" "best interest to tell real story"] are not sufficient inducements to render subsequent confession inadmissible. Long. Ct. looks to all surrounding circumstances & finds state carried burden of proving voluntariness. Ortiz 356 N.E.2d 1188. Held, affirmed.

RELATED CASES: Ellis, 707 N.E.2d 797 (record did not support contention that police used deceit & improper threats to obtain D's confession); Carter, 686 N.E.2d 1254 (evidence showed that D wanted to talk to police & that police did not induce him into making involuntary statement); Luttrell, App. 636 N.E.2d 128 (No error in not suppressing confession on grounds D was subjected to intimidation & duress during initial questioning period not recorded. Officer testified he did not normally record statements while D was still denying guilt, & there was no evidence in record of intimidation or deprivation); Morgan 587 N.E.2d 680 (where officer responded to D's question about where he would serve his time, with fact that crime was eligible for death penalty, & then advised D that prosecutor would forego death penalty request if D gave statement, statement was not rendered involuntary & inadmissible. Although confession obtained by promises of immunity or mitigation of punishment is in violation of 5th & 14th Amends., circumstances in instant case did not indicate improper action by police or prosecutor, & were similar to those in Drew, 503 N.E.2d 613, where admission of confession was upheld because advising D of possibility of death penalty was not "'an inducement'"); Coppock 480 N.E.2d 941 (officer's statement that if D confessed, friend would not be charged does not equal a promise; Ct. distinguishes Hall 266 N.E.2d 16, where police threatened to arrest wife & take away children if D did not confess); Bailey 473 N.E.2d 609 (D was not tricked into making confession by detective's "promise" to release D's friend if D told truth, *citing* Lamb 348 N.E.2d 1); Gary 471 N.E.2d 695 (Ct. finds implied promises were too indefinite to render D's confession involuntary, *citing* Turpin 400 N.E.2d 1119; "A confession obtained by promises of immunity or punishment is inadmissible" *citing* Ashby; held, confession properly admitted).

TITLE: Lord v. State
INDEX NO.: I.1.a.2.
CITE: (12/8/88), Ind., 531 N.E.2d 207
SUBJECT: Confession - voluntariness; promises
HOLDING: Tr. Ct. properly denied motion to suppress confession. D argues on appeal that confession was induced by improper promises. After 5 hours of interrogation, officer began asking D the following questions: "If I could get [the prosecutor] down here right now & tell him the truth, if I could get him down here & you were willing to tell him the truth, & I could cut him a deal, would you ... would you talk to him? If I could promise you ... if I could promise you ... if I could promise you he'd cut a deal with you, would you then talk & tell the truth? ... [I]f I can get him down here, would you tell the truth, if he cut you a deal?" D gave detailed oral confession, then repeated it on tape. While police may not induce confession by means of promises, officer here was not doing so. He was merely asking appellant whether, if prosecutor would make deal, D would be willing to talk. Such vague & indefinite statements to not constitute improper promises. Long 422 N.E.2d 284; Perry 374 N.E.2d 558. When entire transcript of interrogation is examined, it is clear that police did not induce D to confess by making improper promises. Held, Tr. Ct. did not err in allowing statements into evidence. DeBruler, J., DISSENTS.

TITLE: McGhee v. State
INDEX NO.: I.1.a.2.
CITE: (2nd Dist., 12-29-08), Ind. App., 899 N.E.2d 35
SUBJECT: Involuntary confession - implied promise not to prosecute D
HOLDING: In rape and incest prosecution, Tr. Ct. abused its discretion by admitting D's confession into evidence. During videotaped interview, after D absolutely denied having had sex with his niece, detective told him that "it's embarrassing sometimes for an uncle to have sex with his niece, but it's not against the law if she wanted it." Confession was obtained as a result of detective telling D that his conduct was not criminal, rendering the confession involuntary and inadmissible. At the very least, detective's comments constituted an implied promise that D would not be prosecuted if he admitted to having sex with his niece and it turned out that the sex was consensual. As to State's argument that detective was not being intentionally deceptive because he did not know that incest between consensual adults is a crime, Court noted that interrogator's knowledge or intent, or lack thereof, is irrelevant when determining voluntariness of confession. Ashby v. State, 265 Ind. 316, 354 N.E.2d 192 (1976). Detective did not have a good faith basis for his statement. Held, conviction reversed and remanded for new trial; Bradford, J., dissenting, believes that detective's statement did not constitute either an implied or direct promise of immunity or leniency, and even if it constituted an indirect promise, it did not render D's confession involuntary.

TITLE: Pamer v. State
INDEX NO.: I.1.a.2.
CITE: (3rd Dist., 10-29-81), Ind. App., 426 N.E.2d 1369
SUBJECT: Police statements did not render confession involuntary
HOLDING: Mere exhortation by police that it would be better for D to tell truth, when unaccompanied by promise of immunity or leniency, does not render subsequent confession involuntary. Statements by police such as "seeing what they could do for him," "his cooperation might help in assisting him," or it would "be in his best interest to tell the real story" are not sufficient inducements to preclude submission of subsequent confession as evidence. Held, judgment affirmed; Hoffman, P.J., concurring in result.

RELATED CASES: Peterson, 453 N.E.2d 196 (even assuming police promised leniency, questionable whether it would have had effect of rendering D's confession inadmissible due to generally vague & indefinite character of the promise). Phillips, 428 N.E.2d 20 (police officer's statements to D about mental hospital &"what he could promise me or get me at the time " were not promises of immunity or mitigation of punishment which rendered D's confession inadmissible).

TITLE: Roehling v. State
INDEX NO.: I.1.a.2.
CITE: (5th Dist., 10-18-02), Ind. App., 776 N.E.2d 961
SUBJECT: D's involuntary admission could not provide probable cause for search
HOLDING: State failed to establish exception to warrant requirement to justify search of D's vehicle, where police officers incorrectly represented that they already had warrant to search vehicles on premises & suggested that presence of any contraband should be disclosed before search began. Shortly after D arrived at a residence, police officers appeared & placed D in handcuffs in order to execute a search warrant for residence that was directed towards another person. Officer announced upon his arrival that he had a warrant to search house & all vehicles on premises. Officer then asked D & others in house if they had anything to reveal before search commenced, at which time D volunteered that he had unlicensed handgun in his vehicle. State argued that D's post-Miranda admission that he had unlicensed handgun gave officer probable cause to search his vehicle.

Ct. concluded that D's post-Miranda admission regarding handgun was involuntary & improperly obtained under circumstances & cannot be used to establish probable cause to search vehicle. Police deception concerning existence of search warrant vitiates voluntariness of an admission, given in response to police questioning, regarding evidence that might be found in a place falsely represented to be covered by a warrant. Held, denial of motion to suppress reversed.

TITLE: State v. Brown
INDEX NO.: I.1.a.2.
CITE: 286 Kan. 170, 182 P.3d 1205 (Kan. 2008)
SUBJECT: Self-incrimination is self-executing where State threatens parental rights
HOLDING: Kansas Supreme Court held a threat by government agents that a person can lose his or her parental rights for refusing to confess to a crime is a "classic penalty" situation in which the privilege against self-incrimination is self-executing and need not be invoked by D. Moreover, it does not matter that the threat comes from government agents other than law enforcement officials. Court relied on Minnesota v. Murphy, 465 U.S. 420 (1984) for proposition that there are situations in which the right against self-incrimination is self-executing. In such situations, the privilege may be asserted at a later time to suppress statements made under state compulsion, including the "classic penalty" situation. Court noted D was compelled to choose between confessing guilt of child abuse or losing his parental rights to all his children; or in other words, he had to choose between two fundamental constitutional rights: "[the D] would suffer a substantial penalty, the loss of the fundamental liberty interest in the care, custody, and control of his children if he elected not to incriminate himself . . . ."

TITLE: State v. Ritter
INDEX NO.: I.1.a.2.
CITE: 268 Ga. 108, 485 S.E.2d 492 (Ga. 1997)
SUBJECT: Interrogator's Lie That Murder Victim Was Recovering Rendered Confession Involuntary
HOLDING: Interrogator's lie to D, that he had talked to murder victim and he was "going to be okay," rendered confession involuntary, and confession cannot be used at D's capital murder trial. Although interrogators may use some degree of trickery to obtain confession, they cross line when they lie to suspect in way that implies he will face much less serious charge. Here, telling murder suspect that victim was alive and recovering constituted an implied promise that suspect would not be charged with murder if he confessed. By Georgia statute, voluntary statement is one made "without being induced by another by the slightest hope of benefit or the fear of injury." Officer's admission that misrepresentation was motivated by fear that D would not confess if he knew seriousness of charges he faced further persuades Court that confession was made on basis of "hope of benefit."

TITLE: Villa v. State
INDEX NO.: I.1.a.2.
CITE: (4th Dist.; 12-28-99), Ind. App., 721 N.E.2d 1272
SUBJECT: Confessions - use of deceit
HOLDING: Tr. Ct. did not err in failing to suppress statement which D gave police after they assured D that his girlfriend would be released from custody if he confessed, when in fact police knew D's girlfriend had already been released. In reviewing whether statement was made voluntarily, Ct. must consider totality of circumstances. Heavrin, 675 N.E.2d 1075. Here, D asked to speak to police on day he gave his statement, interpreter was obtained, D was read rights, D continued talking with police although he knew interrogation was being recorded, & record indicated that D had other motives for talking with police than just release of girlfriend. Thus, although Ct. did not condone police's use of deception & trickery in interrogation of D, under totality of circumstances, D made statement voluntarily. Held, judgment affirmed.

RELATED CASES: Schneider, 155 N.E.3d 1268 (Ind. Ct. App. 2020) (statement at jail admissibleven though detective admitted at trial that he was not truthful with D about recording the interview); Atteberry, 911 N.E.2d 601 (Ind. Ct. App 2009) (D's statement was voluntary despite fact that police officer did not tell him that he was from Indianapolis & planned to question D regarding 1985 murder & rape); Miller, 770 N.E.2d 763 (Tr. Ct. did not err in admitting D's statement to police, despite claim that it was result of police coercion, manipulation, & fabricated evidence in combination of D's vulnerable mental state); Giles, App., 760 N.E.2d 248 (confession was voluntary & properly admitted even though police lied to D by telling him they had piece of victim's clothing which they could test for physical evidence); Luckhart, 736 N.E.2d 227 (police deception did not render D's videotaped confession involuntary); Edwards, 412 N.E.2d 223 (where police arranged false identification of D during interrogation, statement was made involuntarily).

I. CONFESSIONS/ INTERROGATIONS

I.1. Voluntariness/factors

I.1.a.3. Intoxication/drugs

TITLE: George v. State
INDEX NO.: I.1.a.3.
CITE: (4th Dist., 12-17-79), Ind. App., 397 N.E.2d 1027
SUBJECT: Voluntariness - Factors - Intoxication/drugs
HOLDING: Where D challenges voluntariness of statement by alleging he was under influence of drugs D must introduce evidence from which it could be concluded that amount & nature of drug consumed would produce involuntary statement. Mere fact statement was made by D while under influence of drugs does not render it inadmissible per se. Intoxication is one factor to be considered by trier of fact in determining voluntariness of statement. Here, evidence supported trial Ct.'s conclusion D's statements were voluntary. D invited police officers into his living quarters to talk & was not under arrest during conversation. D was not deprived of his freedom in any way. Police officers testified D was coherent during their conversations, despite D's testimony he had consumed two pints of whisky & over 24 cans of beer during day, & D's sister's testimony that D sometimes acted normally even though he was heavily intoxicated. Held, judgment affirmed.

RELATED CASES: Owens, 754 N.E.2d 927 (no error in admitting confession despite fact that, several hours before D confessed, he voluntarily smoked cigarette laced with embalming fluid, animal tranquilizer, ether & PCP); Jackson, 411 N.E.2d 609 (although D testified, he consumed both alcohol & drugs on morning he confessed, no error to admit D's confession where police officers testified D did not appear intoxicated or to be under influence of drugs). Layton, 301 N.E.2d 633 (in absence of showing that any drugs taken by or administered to D were of kind or amount which would possibly have produced involuntary confession, confession was not involuntary on ground D under influence of drugs at time he gave it).

TITLE: Linthicum v. State
INDEX NO.: I.1.a.3.
CITE: (8/20/87), Ind., 511 N.E.2d 1026
SUBJECT: Confession - voluntariness; intoxication
HOLDING: Although D had ingested alcohol & drugs, 5th Amend. does not require suppression of his statement. Where there is no police conduct causally connected to confession, there is no basis for concluding any state actor has deprived D of due process. Colorado v. Connelly (1986), U.S., 107 S.Ct. 515, 93 L.Ed.2d 473. Here, police detective testified he did not notice odor of alcohol on D's breath, & D "walked alright," did not slur his speech, & appeared to understand what was said to him. D testified he had consumed beer, some psychedelic mushrooms, & some mixed drinks. Although D had ingested alcohol & mushrooms, police did not act improperly in taking statement. Absent evidence of oppressive police conduct, 5th Amend. does not require suppression of statement. DeBruler CONCURS IN RESULT.

RELATED CASES: Banks, 2 N.E.3d 71(Ind. Ct. App 2014) (Ct. disagreed with State's argument that following Ajabu v. State, 693/921 (Ind. 1998), coercive police activity is a necessary prerequisite to establish a violation of Article 1, Section 14 of the Indiana Constitution; see full review at I.1.a.4); Pruitt, 834 N.E.2d 90 (D's pain medication & mental capacities did not undermine his ability to waive his rights & give police a voluntary statement); Hurt, App., 694 N.E.2d 1212 (discussing DeBruler's concurrence in Linthicum arguing that Ind. Constitutional definition of involuntary confession does not require police coercion).

TITLE: Polk v. State
INDEX NO.: I.1.a.3.
CITE: (8-27-84), Ind., 467 N.E.2d 666
SUBJECT: Voluntariness - Factors - Intoxication/drugs
HOLDING: D's oral & written confessions were admissible, even though confessions were made while D was in pain due to broken hand, may have been intoxicated, & was experiencing anxiety due to delay in moving investigation process along. D had natural desire to please & acquire benefits such as telephone call. D was given full oral advisement of his rights, & clearly communicated he understood what he read. D signed written waiver of rights prior to oral statement. D signed another written waiver form after he received his rights anew before statement reduced to writing following day. Held, judgment affirmed.

RELATED CASES: Jordan, 510 N.E.2d 655 (D's statement voluntary, where he did not claim he was in pain due to onset of methadone withdrawal or was unable to continue with his statement).

TITLE: Scalissi v. State
INDEX NO.: I.1.a.3.
CITE: (12-14-01), Ind., 759 N.E.2d 618
SUBJECT: Confession - voluntariness; intoxication; evidence of police coercion needed
HOLDING: In murder prosecution, Tr. Ct. did not err in admitting D's confession into evidence. D argued that State did not meet its burden of proving that his confession was voluntary, intelligent, & freely made because of evidence that he had not slept night before, had been ingesting large quantities of alcohol, along with LSD, crank, methamphetamine, & marijuana, & had been struck & kicked in head a short time before making statement. Although factors such as intoxication & lack of sleep may be factors in determining voluntariness, coercive police activity is necessary prerequisite to finding confession is not voluntary within meaning of Due Process Clause of Fourteenth Amendment. Crain v. State, 736 N.E.2d 1223. Here, record contained substantial probative evidence sufficient to establish beyond reasonable doubt that there was no evidence of improper police influence or coercion in obtaining D's confession. Held, judgment affirmed.

RELATED CASES: Schneider, 155 N.E.3d 1268 (Ind. Ct. App. 2020) (D's alleged intoxication did not render his first statement involuntary when the detectives both testified that they did not notice any signs D was intoxicated and a forensic toxicologist testified that a person with the levels of drugs found in D's system would have been "conscious of what [he was] doing and would not [have] be[en] in a state of mania).

TITLE: Simpson v. State
INDEX NO.: I.1.a.3.
CITE: (4/15/87), Ind., 506 N.E.2d 473
SUBJECT: Confession - voluntariness; intoxication (I)
HOLDING: Despite fact D tested 0.127 BAC 40 minutes after giving statement, court finds waiver of rights & confession voluntary (V). I affects only weight to be given statement (Feller 348 N.E.2d 8) & renders statement inadmissible only when I is of such degree as to produce state of mania or unconsciousness (Eiffe 77 N.E.2d 750; Parsons, App., 333 N.E.2d 871). Degree of impairment of mental faculties at time of waiver/statement is critical; totality of circumstances must be examined. Rodgers 385 N.E.2d 1136. Mere fact that BAC test provides presumptive evidence that one's motor skills are sufficiently impaired to safely drive car does not necessarily imply that mental processes are incapable of knowing/intelligent waiver of rights. Held, no error.

RELATED CASES: U.S. v. Brooks, 125 F.3d 484 (7th Cir. 1997) (nothing in record to suggest FBI had reason to believe D was not competent at time he confessed, despite claim that D had not slept and was under influence of crack cocaine); Thomas, App., 656 N.E.2d 819 (although D may have ingested alcohol earlier in day, detective's testimony established that D was not so intoxicated as to prevent him from executing knowing/voluntary waiver of rights); Williams 489 N.E.2d 53 (confession is inadmissible only if D is so I as to be unconscious of what he/she is saying, *citing* Bean 371 N.E.2d 713; held, confession V); Thomas 443 N.E.2d 1197 (although D testified he had ingested cocaine & marijuana before confessing crime to police, officers testified D did not appear I, walked & talked all right & answered questions coherently; held, confession V).

I. CONFESSIONS/ INTERROGATIONS

I.1. Voluntariness/factors

I.1.a.4. Competency

TITLE: Colorado v. Connelly
INDEX NO.: I.1.a.4.
CITE: 479 US. 157., 107 S. Ct. 515, 93 L.Ed.2d 473 (1986)
SUBJECT: Voluntariness - mental competency
HOLDING: Due Process Clause prohibits interrogation techniques, either in isolation or as applied to unique characteristics of particular suspect, which are offensive to civilized system of justice. Miller v. Fenton (1985), U.S., 106 S. Ct. 445, 88 L.Ed.2d 405. "[A]s interrogators have turned to more subtle forms of psychological persuasion, courts have found the mental condition of the D a more significant factor in the >voluntariness' calculus." However, absent police conduct, causally related to condition, there is no due process violation. Here, D approached police officer & stated he had murdered someone & wanted to talk about it. Police advised D of Miranda rights & obtained waiver. At suppression hearing, D presented expert testimony that he was schizophrenic & was following the "voice of God" in making confession. Court distinguishes Blackburn v. AL (1960), 361 U.S. 199, 80 S. Ct. 274, 4 L.Ed.2d 242 (D's confession suppressed because D was probably insane at the time of confession & police learned during the interrogation of his history of mental problems which police exploited with coercive interrogation tactics) & Townsend v. Sain (1963), 372 U.S. 293, 83 S. Ct. 745, 9 L.Ed.2d 770 (confession held involuntary where police physician had given D "truth serum" & confession obtained by officers who knew D was drugged). Mental condition is relevant to D's susceptibility to police coercion. However, coercive police activity is necessary predicate to finding confession involuntary within meaning of Due Process Clause. Suppressing D's statements would serve no purpose in enforcing constitutional guarantees. Held, taking of D's confession & its admission into evidence constitutes no constitutional violation. Blackmun, CONCURS IN PART & CONCURS IN JUDGMENT; Stevens, DISSENTS IN PART & CONCURS IN JUDGMENT; Brennan & Marshall DISSENT.

RELATED CASES: Faris, 901 N.E.2d 1123 (Ind. Ct. App. 2009) (where D's interrogation did not take place in custodial setting and officers questioning him were unaware of his disability and did not engage in coercion, Ct. cannot say as a matter of law that D's confession was involuntarily given although he functioned at a second grade level); Smith v. Duckworth, 910 F.2d 1492 (7th Circ. 1990) (D's confession was not voluntary where D was held for 30 days without being charged, was mentally unstable, questioned for total of nine hours before confessing, & allegedly was threatened with transfer to cell with detainee whom he feared; mental state is relevant if it makes D more susceptible to mentally coercive tactics).

TITLE: Ferry v. State
INDEX NO.: I.1.a.4.
CITE: (9/14/83), Ind., 453 N.E.2d 207
SUBJECT: Confession - voluntariness; competency - low I.Q.
HOLDING: Fact that D initially was found incompetent to stand trial (1/81) does not render 10/80 confession involuntary. Here, D contends he was "mentally & emotionally subnormal" when he gave confession, thus statements were not knowingly & intelligently made. See Kern 426 N.E.2d 385; Lonson 406 N.E.2d 256. D's I.Q. was between 71 & 79. State of mind rendering one incompetent to stand trial is subject to change over time. See Malo 361 N.E.2d 1201; Ind. Code 35-5-3.1-2 (now Ind. Code 35-36-3-2). Court examines testimony of interrogating officers & finds state has met its burden to prove voluntariness. Held, no error.

RELATED CASES: Pettiford, 619 N.E.2d 925 (Although at time of confession, D claimed he heard voices compelling him to confess & was later found incompetent to stand trial, Tr. Ct. did not err in refusing to suppress confession. In Colorado v. Connelly (1986), 479 U.S. 157, U.S. S.Ct. held purpose of Fifth Amendment privilege & require- ments of Miranda is to protect against police misconduct. Although mental condition is relevant to susceptibility to police coercion; if no coercion is involved confession may be considered in spite of mental condition. Here, although D was under some mental delusions at time of confession, he also had full recall of matters that had occurred, was able to talk lucidly, indicated understanding of Miranda rights, & signed written waiver of rights); Goodman 453 N.E.2d 984 (Totality of circumstances determine voluntariness, not I.Q.s alone; cases holding confessions of Ds with low I.Q.s involuntary are cited); Finchum, App., 463 N.E.2d 304 (Crim L 525, 736(2)).

TITLE: Russell v. State
INDEX NO.: I.1.a.4.
CITE: (2d Dist. 3/29/84), Ind. App., 460 N.E.2d 1252
SUBJECT: Confession - voluntariness; mental hospital resident
HOLDING: Tr. Ct. erred in refusing to suppress D's statement. Here, D, a patient at LaRue Carter Hospital psychiatric ward, was charged with deviate sexual conduct against a fellow patient. D signed waiver & gave statement. D's residence at mental institution raised prima facie question of voluntariness. Court finds evidence favorable to Tr. Ct.'s ruling insufficient as a matter of law to demonstrate knowing/voluntary/intelligent waiver. Held, reversed, remanded for new trial.

TITLE: State v. Banks

INDEX NO.: I.1.a.4.

CITE: (1/23/2014), 2 N.E.3d 71 (Ind. Ct. App 2014)

SUBJECT: Inadequate Miranda advisements to seriously mentally ill D; involuntary waiver & confession

HOLDING: Substantial evidence supported Tr. Ct.'s determination that D's confession that he murdered two women was involuntary and should be suppressed. D was a seriously mentally ill inmate diagnosed with schizo affective disorder and housed apart from the general prison population at Newcastle Correctional Facility. Detective interviewed D at a time when he was involuntarily medicated, "out of it" (per psychologist's testimony) and in restraints during the interrogation. Detective's advisement did not inform D that he had the right to have counsel present during the questioning and thus failed to properly advise D of his Miranda rights. See Franklin v. State, 314 N.E.2d 742 (1974).

Regarding D's involuntary confession claim, Court disagreed with State's argument that following Ajabu v. State, 693 N.E.2d 921 (Ind. 1998), coercive police activity is a necessary prerequisite to establish a violation of Article 1, Section 14 of the Indiana Constitution. D's mental illness is only one of the factors to be considered by Tr. Ct. in determining the voluntariness of a statement. Pruitt v. State, 834 N.E.2d 90, 115 (Ind. 2005). Here, Tr. Ct. considered evidence presented of D's mental illness, heard D's own testimony and concluded that his statement was not voluntary. Under our standard of review, Court is bound to give this determination deference. Held, grant of motion to suppress affirmed.

TITLE: State v. Hoppe
INDEX NO.: I.1.a.4.
CITE: 2003 WI 43, 661 N.W.2d 407 (Wis. 2003)
SUBJECT: Mentally Vulnerable Suspect - Subtle Interrogation Tactics
HOLDING: Police interrogation tactics that were not improper were unduly coercive when used on chronic alcoholic with mental health problems, at least where impairments were obvious to police, Wisconsin Supreme Court holds. In U.S. v. Connelly, 479 U.S. 157 (1986), U.S.S.Ct. held that statements made by a D who believed that God had ordered him to confess were not constitutionally involuntary absent improper or coercive police conduct. However, police conduct need not be egregious or outrageous in order to be coercive. Subtle pressures can be considered coercive if they exceed the subject's ability to resist. In evaluating totality of circumstances surrounding confession, majority balances personal characteristics of D against pressures imposed on him by police officer.

I. CONFESSIONS/ INTERROGATIONS

I.1. Voluntariness/factors

I.1.a.5. Delay between arrest and initial hearing

TITLE: Carpenter v. State
INDEX NO.: I.1.a.5.
CITE: (12-20-78), Ind., 383 N.E.2d 815
SUBJECT: Voluntariness - Factors - Delay between arrest & initial hearing
HOLDING: Fact that D was detained for approximately 72 hours between arrest & arraignment did not make incriminating statements D made during that time inadmissible. Such delay is only one of many factors to be considered in determining voluntariness & admissibility of confession. Tr. Ct. did not err in determining D's statement was voluntary & thus admissible. D was fully informed of his Miranda rights & indicated he understood these rights. D was informed during time of giving statement of preliminary charges filed against him. D was also informed of possibility that various other charges would be filed. Several officers involved in investigation testified they were unaware of any threats or promises made to D to coerce his statement. Held, judgment affirmed; DeBruler, J., concurring in result.

RELATED CASES: Hill, 390 N.E.2d 167 (Any delay greater than six hours is factor to be weighed in conjunction with all other circumstances relevant to issue of voluntariness).

TITLE: Corley v. United States
INDEX NO.: I.1.a.5.
CITE: 129 S.Ct 1558 (2009)
SUBJECT: Delay between arrest and initial hearing - even voluntary confessions suppressed
HOLDING: Title 18 U.S.C. § 3501 - read together with Fed. R. Crim. P. Rule 5(a), McNabb v. United States, 318 U.S. 332 (1943), and Mallory v. United States, 354 U.S. 449 (1957) requires that a confession taken more than six hours after arrest and before presentment be suppressed if there was unreasonable or unnecessary delay in bringing D before the magistrate judge to be told formally of the charges against him. In enacting § 3501, Congress intended to limit, not eliminate, McNabb-Mallory. Thus, even voluntary confessions to federal crimes still are not to be admitted, if the suspect had not been taken to court within six hours of arrest, unless a longer delay was "reasonable considering the means of transportation and the distance to be traveled to the nearest available [magistrate]." Here, although the FBI offices are located in the same building as the federal magistrate judges=courtrooms and chambers, D was not presented to a federal magistrate judge. Instead, he was kept in the FBI offices for interrogation regarding a bank robbery. The only apparent reason for the 29.5-hour delay between arrest and presentment to federal magistrate was the agents' desire to question D. Held, judgment reversed and remanded, Third Circuit opinion at 500 F.3d 210 vacated. Alito, J., DISSENTING, with whom Roberts, C.J., Scalia, J., and Thomas, J., join.

TITLE: Dowdell v. State
INDEX NO.: I.1.a.5.
CITE: (3rd Dist., 4-5-78), Ind. App., 374 N.E.2d 540
SUBJECT: Voluntariness; Factors - Delay between arrest & initial hearing
HOLDING: Confessions made after delay are not inadmissible if delay in bringing D before judge is found be trial judge to reasonable, & D is fully informed of his rights. Here, D was not formally charged or questioned at time of apprehension because D was minor. Authorities wished to have D's father present during interrogation, but father was unavailable for several days. Only after D's father appeared did questioning of D begin. Questioning occurred only after both D & his father signed waiver of rights form. Confession made more than six hours after initial detention was voluntary since delay reasonable under circumstances. Held, judgment affirmed.

TITLE: Murphy v. State
INDEX NO.: I.1.a.5.
CITE: (11-8-77), Ind., 369 N.E.2d 411
SUBJECT: Voluntariness - Factors - Delay between arrest & initial hearing
HOLDING: 81-hour delay between time of D's arrest & time when brought before magistrate did not require suppression of confession given in interim. D was properly arrested with warrant & was properly warned of his constitutional rights. Record supported trial Ct.'s finding D's confession given voluntarily, despite D's contention he was deprived of sleep, food & water, was continuously interrogated by police & was coached to make such confessions. Held, judgment affirmed & remanded on other grounds.

RELATED CASES: Richey, 426 N.E.2d 389 (delay in bringing D before magistrate for probable cause determination will not render confession inadmissible if judge finds delay to be reasonable & confession voluntary). Taylor, 406 N.E.2d 247 (though legal detention of short duration may render confession inadmissible, possibility that lawful detention has become unlawful increases as length of time of holding person in custody increases). Fortson, 385 N.E.2d 429 (although D was detained for unreasonable period of five days before being taken before judge, police were working within confines of existing local Ct. system & their misconduct was not excessively flagrant). Maxwell, App., 408 N.E.2d 158 (if D fully informed of his rights, confession given more than 6 hours after detention not per se involuntary & any delay in taking D before magistrate is but one factor to consider in determining voluntariness).

TITLE: Pawloski v. State
INDEX NO.: I.1.a.5.
CITE: (10-10-78), Ind., 380 N.E.2d 1230
SUBJECT: Voluntariness - Factors - Delay between arrest & initial hearing
HOLDING: Determination of illegality of detention is only first step in analysis of whether resulting confession should be suppressed. When confession is product of that detention, it must be suppressed. When, however, confession is independent of that detention, as to be product of D's free will, it will be admissible. Held, judgment affirmed; DeBruler, J., concurring in result.

TITLE: Peterson v. State
INDEX NO.: I.1.a.5.
CITE: (3rd Dist., 7-19-95), Ind. App., 653 N.E.2d 1022
SUBJECT: Voluntariness of confession - 36-hour detention prior to probable cause hearing
HOLDING: Tr. Ct. did not err in admitting D's confession, where approximately 36 hours passed between his warrantless arrest & determination of probable cause. D argued that although his probable cause hearing was held within presumptively reasonable time established by County of Riverside v. McLaughlin (1991), 500 U.S. 44, delay was in fact unreasonable because it was necessitated by State's need to gather additional evidence of probable cause. However, at time of arrest, State had already gathered substantial evidence that D was involved in crimes at issue. D failed to rebut presumption that length of his pre-hearing detention was reasonable. Held, judgment affirmed.

TITLE: Peterson v. State
INDEX NO.: I.1.a.5.
CITE: (12-13-96), Ind., 674 N.E.2d 528
SUBJECT: Initial hearing - effect of delay
HOLDING: Confession made during period of illegal detention is not inadmissible solely because of delay in presenting arrestee to magistrate. Such delay is only one factor to consider in determining statement's admissibility. Pawloski v. State, 269 Ind. 350, 380 N.E.2d 1230 (1978). Here, while in custody, D confessed to two murders before his first appearance before magistrate. D was not brought before magistrate until 36 hours after arrest. Ind. Code 36-8-3-11 (repealed by P.L. 148-1995) prohibited arrested person from being detained longer than 24 hours, except when Sunday intervened, without being brought before Ct. having jurisdiction of offense. Ct. held that State's violation of this rule did not automatically require suppression of any statements made by D. Suppression is only required if statement is found by Tr. Ct. to have resulted from inherently coercive effect of prolonged, illegal detention. Minnick v. State, 544 N.E.2d 471 (Ind. 1989). It is only when confession is product of that detention that it must be suppressed. Because record indicated that D's confession was product of his own free will, & not product of his unlawful detention, his confession was admissible. Held, denial of D's motion to suppress affirmed; conviction affirmed.

TITLE: U.S. v. Davis
INDEX NO.: I.1.a.5.
CITE: 174 F.3d 941 (8th Cir. 1999)
SUBJECT: Two-hour Delay for Investigation Held Unreasonable
HOLDING: Two-hour detention of D for questioning before probable cause hearing was unreasonable where delay was for purpose of questioning her about possible additional offenses. D was arrested without a warrant after admitting to filing a false report of firearm theft. Officers detained her for two hours to allow federal authorities to question her about her boy-friend, whose gun-running operation they had been investigating. In Riverside County, CA, v. McLaughlin, 500 U.S. 44 (1991), U.S. Supreme Court held that delays in probable cause hearings of less than 48 hours may be unreasonable if delay was for purpose of justifying original arrest. Federal circuits have clarified that this principle extends to delay for purpose of investigating additional crimes. See Willis v. Chicago, Ill., 999 F.3d 284 (7th Cir. 1993); Kanekoa v. Honolulu, 879 F.2d 607 (9th Cir. 1989).

I. CONFESSIONS/ INTERROGATIONS

I.1. Voluntariness/factors

I.1.a.6. Others

TITLE: Bond v. State
INDEX NO.: I.1.a.6.
CITE: (5/13/2014), 9 N.E.3d 134 (Ind. 2014)
SUBJECT: Involuntary confession -persuading D he cannot receive a fair trial based upon his race
HOLDING: D's confession was involuntary where detective told him he might not receive a fair trial and impartial jury in Lake County due to his race. Detective intensely interrogated D in 2011 for a 2007 cold case murder. About two hours into the custodial interrogation, the detective told D, who is African American, that he wouldn't get a fair trial because of his race. D later admitted committing the murder.

In an unpublished opinion, a divided Court of Appeals disapproved of the detective's inappropriate statement but upheld the denial of D's motion to suppress. In his dissenting opinion, Judge Kirsch argued, “each time courts allow such conduct, they implicitly sanction it and encourage the next police officer in the next interrogation to go a bit further, to be more offensive, more racist and more deceptive.”

On transfer, the Indiana Supreme Court agreed, noting: "this is not a police tactic that we simply do not condone because it is deceptive. Instead, this was an intentional misrepresentation of rights ...to a fair trial and impartial jury, and the right not to be judged by or for the color of your skin--carried out as leverage to convince a suspect in a criminal case that his only recourse was to forego his claim of innocence and confess. And like Judge Kirsch, we condemn it."

Although police officers are given wide latitude in interrogation tactics, detective in this case went too far. Held, transfer granted, Court of Appeals' memorandum opinion vacated, denial of motion to suppress reversed and remanded for further proceedings.

TITLE: Brown v. State
INDEX NO.: I.1.a.6.
CITE: (11/22/85), Ind., 485 N.E.2d 108
SUBJECT: Confession - voluntariness; extreme emotional distress
HOLDING: Court rejects D's contention that his waiver & confession were not voluntarily/knowingly/intelligently made because both were given during extreme emotional distress. Degree of impairment of mental faculties at time of waiver & statement is of critical importance in determining whether statement was given voluntarily. Turner 407 N.E.2d 235. Here, court finds D's waiver & statement occurred 1.5 hours after officer observed D in emotionally upset state. Officer testified he spent some time trying to calm D & that he would not have advised D of his Miranda rights or taken a statement at that point because officer believed D's emotional state would have precluded him from using his full range of faculties to understand what he was relinquishing. When D appeared to calm down, officer left interrogation room & D was interrogated by 2 different officers, who said D appeared calm when they met him. Court finds evidence was sufficient to conclude that impairment of D's mental faculties had diminished & that his actions were voluntary/intelligent. Rodgers 385 N.E.2d 1136. Held, conviction affirmed. Prentice CONCURS IN RESULT without opinion.

TITLE: Burgans v. State
INDEX NO.: I.1.a.6.
CITE: (11/24/86), Ind., 500 N.E.2d 183
SUBJECT: Voluntariness - advice of potential death penalty
HOLDING: Failure of police to advise D that death penalty was possible sentence before commencing custodial interrogation did not render D's waiver & confession involuntary or unintelligent. Here, D contends he would not have confessed had he known death penalty was possible. D requests court adopt new rule requiring suspect to be informed, prior to custodial interrogation, that death penalty is possible, but court declines. Miranda does not require accused to be specifically informed of precise nature of potential charges for which accused is being questioned. Berkemer v. McCarty (1984), 468 U.S. 420, 104 S.Ct. 3138, 82 L.Ed.2d 317; Armour 479 N.E.2d 1294. Held, confession properly admitted.

TITLE: Carter v. State
INDEX NO.: I.1.a.6.
CITE: (3/26/86), Ind., 490 N.E.2d 288
SUBJECT: Confession - voluntariness; deception by police
HOLDING: Police deception did not render D's confession involuntary. Here, D was given Miranda warnings & questioned re murder of his ex-wife. Officer asked D: "What if I [told] you she is in hospital right now talking to some of our officers? ... You thought she was dead, didn't you?" D responded affirmatively & confessed to argument & struggle & said victim fell on knife. Officer's deception is only one factor to be considered. Totality of circumstances re D's confession must be examined to determine voluntariness. Frazier v. Cupp (1969), 394 U.S. 731, 89 S.Ct. 1420, 22 L.Ed.2d 684 (police untruthfully told D that accomplice had been arrested & confessed, implicating D; held, confession voluntary in light of Miranda warnings, duration of interrogation & maturity/intelligence of D); Wagner 474 N.E.2d 476. Held, confession was voluntary.

RELATED CASES: Bobby, 132 S.Ct. 26 (U.S. 2011) (Fifth Amendment does not prevent police from urging an accused to "cut a deal" before another accused did so (i.e., use of the "prisoner's dilemma" interrogation technique); Garmon, App., 775 N.E.2d 1217(even assuming detective misled D during interview, Tr. Ct. did not abuse its discretion in admitting D's statements re: possible charges); Miller, 770 N.E.2d 763 (Tr. Ct. did not err in admitting D's statement to police, despite claim that it was result of police coercion, manipulation, & fabricated evidence in combination of D's vulnerable mental state); Pierce, 761 N.E.2d 821 (although police officer's false claim of DNA match weighed against voluntariness, totality of circumstances did not vitiate D's waiver of rights or render his confession involuntary); Harrington, App., 755 N.E.2d 1176 (officer's statements to D informing him of problem with polygraph results & officer's urging D to tell truth did not constitute deceptive interrogation tactics); Allen, 686 N.E.2d 760 (distinguishing Dickerson, 276 N.E.2d 845, Ct. rejected D's claim that he was tricked or coerced into signing waiver of rights form at polygraph interview; D voluntariliy waived his rights just two hours before interview).

TITLE: Cole v. State
INDEX NO.: I.1.a.6.
CITE: 923 P.2d 820 (Alaska Ct. App. 1996)
SUBJECT: Involuntary Confession -- Series of Interrogation Ploys
HOLDING: Alaska Court finds that police interrogator's assertion that he could get a court order compelling the D to submit to a polygraph, together with claim that police had "bugged" his home and tape-recorded molestation with which he was charged, use of "polygraph role-playing" interrogation technique, and repeated assertion that interrogator only wanted to help D and his daughter but could not do so unless D supplied details of offense, rendered D's confession involuntary. Suggestion that the state had already invaded his home and could force him to submit to polygraph go beyond merely misrepresenting strength of state's case. They suggest that the combined forces of the state have aligned against him and are particularly coercive. Taken together, the four techniques rendered confession involuntary, and its admission violated D's due process rights.

TITLE: Criswell v. State
INDEX NO.: I.1.a.6.
CITE: (10/13/2015), 45 N.E.3d 46 (Ind. Ct. App. 2015)
SUBJECT: Officer's statement in internal investigation inadmissible
HOLDING: Tr. Ct. should have granted D's motion to suppress his incriminating statement given in an internal affairs police investigation because if D refused to give the statement, he was subject to losing his job, making his statement involuntary and inadmissible at trial.

D, a Fort Wayne police officer, attended a party at the home of a fellow officer when he, and the wives of two other officers, allegedly broke into a nearby home and removed a chain saw and several gas cans. When the Fort Wayne Police Department initiated an internal affairs investigation, it asked D to give a statement, but before doing so, asked him to review and sign a "Garrity Notice," which advised him that failure to give a statement could result in his termination, but that the statement could not be used in a subsequent criminal investigation. D gave a statement. About six months letter, the State requested and the Tr. Ct. granted a subpoena for materials from the internal affairs investigation, including D's statement, as well as the statements of the two women who allegedly accompanied him. The State eventually charged D with criminal conversion and criminal trespass, both Class A misdemeanors. D asked the Tr. Ct. to suppress his statement, but it declined.

The Tr. Ct. should have granted D's motion to suppress because his statement was coerced, not voluntary, under the Fourteenth Amendment. See Garrity v. New Jersey, 385 U.S. 493 (1967). "The option [for the officers] to lose their means of livelihood or to pay the penalty of self-incrimination is the antithesis of free choice to speak out or to remain silent [; therefore,] . . . . [w]e think the statements were infected by the coercion inherent in this scheme of questioning and cannot be sustained as voluntary . . . . "[T]he protection of the individual under the Fourteenth Amendment against coerced statements prohibits use in subsequent criminal proceedings of statements obtained under threat of removal from office, and that it extends to all, whether they are policemen or other members of our body politic." Id. at 497-98 (footnote omitted).

As to the State's claim that the statements of the two women had a source independent from D's statement, the matter is remanded for further consideration. See Kastinger v. United States, 406 U.S. 441 (1972) (the Fifth Amendment privilege against self-incrimination "has never been construed to mean that one who invokes it cannot subsequently be prosecuted . . . ." Id. at 453. The government bears the burden of proving "that the evidence it proposes to use is derived from a legitimate source wholly independent of the compelled testimony." Id. at 460.) Held, judgment reversed and remanded for further proceedings.

TITLE: Malloch v. State
INDEX NO.: I.1.a.6.
CITE: (12/21/2012), 980 N.E.2d 887 (Ind. Ct. App 2012)
SUBJECT: Voluntary confession - use of confrontational style in Reid technique
HOLDING: Tr. Ct. did not abuse its discretion by denying D's motion to suppress his statement as involuntary. The Indiana Constitution requires the State to prove beyond a reasonable doubt that a confession was voluntarily given. A confession is voluntary if it is the product of a rational intellect and not the result of physical abuse, psychological intimidation, or deceptive interrogation tactics that have overcome the D's free will. Here, D voluntarily accompanied s detective to the police station where he was twice Mirandized and interrogated about allegations he molested his step-daugther twice five years ago. Initially, D admitting the two molestations, but claimed he was asleep when they occurred. The detective employed the Reid technique. During the first half of the interrogation, the detetective was non-confrontational and encouraged the D to take responsibility in order to mitigate punishment. But, these statements were too vague and indefinite to constitute promises of leninecy. In the second half of the interrgoation, the detective was confrontational. The detective accused D forty-nine times of being awake and consciously touching his step-daugther. Although detective urged D to tell the truth, he dismissed him when he claimed to be asleep and challenged D's manhood in light of his failure to take responsibility. The detective also accused D of one day fondling his sons. Although the interrogation was confrontational and intense in light of the serious offenses being investigated, there is substantial evience to support the Tr. Ct.'s conclusion that D's statements were voluntary. D was thirty-five years old, had an associate's degree in architectural engineering and supported his faimly with his job as a network engineer. He did not request an attorney, and was not intoxicated or sleep-deprived. Finally, the confrontational portion of the interrogation lasted under one hour. Thus, his confession was voluntary. Held, judgment affirmed.

TITLE: Mays v. State
INDEX NO.: I.1.a.6.
CITE: (10/29/84), Ind., 469 N.E.2d 1161
SUBJECT: Confession - voluntariness; effect of illegally seized evidence
HOLDING: Tr. Ct. did not err in determining D's confession was admissible. Here, D was seen running from scene of robbery & arrested by police as he lay face down in wooded area. No Miranda warnings were given. D was returned to store & positively identified. Officer asked D to retrieve coat worn during robbery. Gun was also found. D was then brought back to store & given Miranda warnings. D confessed. Tr. Ct. suppressed coat & gun. Admissions made during or after illegal search or seizure are not necessarily inadmissible. Rohlfing 102 N.E.2d 199. Confrontation with incriminating evidence does not amount to coercion. Ward, App., 408 N.E.2d 140. Held, no error.

RELATED CASES: Reid, App., 444 N.E.2d 1247 (intervening circumstances purged confession of primary taint of unreasonable seizure of D; held, confession admissible).

TITLE: Voltaire v. State
INDEX NO.: I.1.a.6.
CITE: 697 So.2d 1002 (Fla.Ct. App. 1997)
SUBJECT: Deception; State Due Process Rights -- Officer Posing as Inmate
HOLDING: Use of officer posing as an inmate to question arrestee was "gross deception" which violated Florida Constitution's due process clause. D was arrested for selling cocaine to undercover officer who set up transaction. After his arrest, he stopped speaking English, speaking instead only in Creole. Police then sent Creole-speaking officer into D's cell wearing t-shirt and cut-offs. When D asked officer what he was "in for," officer replied, "Cocaine," and asked D same question. D responded with incriminating details about his crime. Conversation with this officer occurred while D was in custody and constituted interrogation, because it was conducted by state agent and reasonable person would conclude that it was intended to elicit incriminating information. Police went out of their way to deceive D into talking to officer, violating state due process clause.

I. CONFESSIONS/ INTERROGATIONS

I.1. Voluntariness/factors

I.1.b. Procedure

TITLE: Jimerson v. State
INDEX NO.: I.1.b.
CITE: (6/28/2016), 56 N.E.3d 117 (Ind. Ct. App 2015)
SUBJECT: Restriction on expert testimony regarding false confessions
HOLDING: In murder prosecution, Tr. Ct. did not abuse its discretion in restricting the testimony of D's expert witness on false confessions. Expert was allowed to testify about the phenomena of false or coerced confessions and about problematic police practices, but was not permitted to testify whether a particular technique had been applied in D's case.

Although Miller v. State, 770 N.E.2d 763 (Ind. 2002), can be read to provide for admissibility of expert testimony on techniques used in a particular interrogation, this is not to say that such testimony is always admissible or that an expert may review a confession frame by frame for the jury. Expert testimony is appropriate when it addresses issues not within the common knowledge and experience of ordinary persons and would aid the jury. Ind. Evidence Rule 702(a). But where a jury is able to apply concepts without further assistance, highlighting individual exchanges or vouching for the truth or falsity of particular evidence is invasive.

Here, together with extensive background testimony from expert, jury was provided with D's statement in audio, video, and written form. Jury had been given adequate information to apply its common knowledge and experience, so there was no need for an expert to point out the techniques allegedly employed to secure D's confession. Thus, Tr. Ct. did not abuse its discretion in prohibiting expert from addressing the particular circumstances surrounding D's confession. Held, judgment affirmed.

RELATED CASES: Kincaid, 171 N.E.3d 1036 (Ind. Ct. App. 2021) (Tr. Ct.'s refusal to allow D's expert to offer an opinion as to whether the officers who questioned her used the Reid technique and whether that could have contributed to her false confession did not deprive D of a fair trial; officers' testimony that they did not use the technique communicated nothing about the veracity of D's statement and, therefore, was not prohibited by Evidence Rule 704(b)).

TITLE: Miller v. State
INDEX NO.: I.1.b.
CITE: (6-26-02), Ind., 770 N.E.2d 763
SUBJECT: Erroneous exclusion of expert testimony - false confessions
HOLDING: In murder prosecution, where D's statement played prominent role in State's case, Tr. Ct. erroneously excluded testimony of psychologist called by defense as expert in field of police interrogation & false confessions. Expert testimony is appropriate when it addresses issues not within common knowledge & experience of ordinary persons & would aid jury. Ind. Evidence Rule 704(a). Although expert opinion testimony regarding truth or falsity of one or more witnesses' testimony is prohibited, Callis v. State, 684 N.E.2d 233 (Ind. Ct. App 1997), Callis should not be read to generally prohibit expert testimony regarding police techniques used in a particular interrogation. Fact that content of interrogation was not in dispute was not proper basis on which to exclude expert's testimony. D's trial strategy clearly included his challenge to voluntariness of incriminatory statements in his videotaped police interview. General substance of expert's testimony would have assisted jury regarding psychology of relevant aspects of police interrogation & interrogation of mentally retarded persons, topics outside common knowledge & experience. In event expert's testimony would have invaded Rule 704(b)'s prohibition of opinion testimony as to truth or falsity of D's statements, Tr. Ct. could have sustained individualized objections at trial. Excluding proffered testimony in its entirety deprived D of opportunity to present defense. Given prominence of D's statement in State's case & unique circumstances present, Ct. concluded that erroneous exclusion of whole of expert's testimony affected substantial rights of D. Held, conviction reversed & remanded for new trial; Boehm, J., concurring, noted split of authority on issue of admissibility of expert testimony as to false confessions.

RELATED CASES: Ruiz, 926 N.E.2d 532 (Ind. Ct. App 2010) (where expert on false confessions had not interviewed D or reviewed police interrogation, his proffered opinion testimony was speculative and not based on record); Miller, App., 825 N.E.2d 884 (on retrial, State must be permitted to present evidence on issue of D's mental capacity to assist jury in determining D's statement's weight & credibility; see full review at M.5.a); Carew, App., 817 N.E.2d 281 (appellate counsel was ineffective for failing to challenge on direct appeal Tr. Ct.'s exclusion of expert testimony re: deceptive police techniques used in interrogation of mentally retarded individuals; see full review at Y.4.c).

TITLE: Morgan v. State
INDEX NO.: I.1.b.
CITE: (2nd Dist., 3-9-95), Ind. App., 648 N.E.2d 1164, approved & adopted at 675 N.E.2d 1164
SUBJECT: Confession - initial determination of voluntariness required
HOLDING: Tr. Ct. erred in determining that D's statement to police was admissible without making required factual determination of voluntariness. D claimed at suppression hearing that police coerced him into making involuntary statement by guaranteeing a 40-year sentence if D did not talk. Police officer charged with making this representation denied having made it. As result of factual conflict, Tr. Ct. found that "issue presents a fact question for the [jury] to determine the voluntariness of any statement made by the D."

Admissibility of confession is to be determined by Tr. Ct., not jury. Coates v. State, 534 N.E.2d 1087. Rather than admitting statement for jury's consideration, Tr. Ct. must make preliminary determination of voluntariness. Even if Tr. Ct. finds that statement is voluntary, D may still dispute voluntariness at trial. If jury finds statement involuntary from credibility standpoint, no weight should be given in deciding D's guilt or innocence. Here, Ct. could not assume that Tr. Ct.'s blanket determination of admissibility necessarily included required initial determination of voluntariness. Held, remanded for determination of voluntariness without receiving additional evidence on issue.

I. CONFESSIONS/ INTERROGATIONS

I.1. Voluntariness/factors

I.1.b.1. Hearing (Jackson v Denno)

TITLE: Jackson v. Denno

INDEX NO.: I.1.b.1.

CITE: 378 U.S. 368, 84 S. Ct. 1774 (1964)

SUBJECT: Voluntariness - procedure; hearing

HOLDING: State procedure whereby Tr. Ct. submitted to jury along with other issues in case question as to voluntariness of confession on which evidence was in conflict, telling jury that if confession was involuntary it was to disregard it entirely & to determine question of guilt from other evidence & that, alternatively, if it found confession voluntary, to determine truth & reliability & to afford it weight accordingly, did not afford reliable determination of voluntariness of confession. State procedure did not adequately protect D's right to be free of conviction based on coerced confession. It also could not withstand constitutional attack under due process clause of Fourteenth Amendment. D was entitled to state hearing on question of voluntariness of confession but was not, unless confession was found involuntary, necessarily entitled to new trial on question of guilt. Held, judgment reversed; Clark, Harlan, Stewart, & Black, JJ., dissenting.

TITLE: Richeson v. State
INDEX NO.: I.1.b.1.
CITE: (4th Dist., 3-22-95), Ind. App., 648 N.E.2d 384
SUBJECT: Voluntariness of confession - denial of D's request to testify
HOLDING: Where D did not request hearing, Tr. Ct. did not err in refusing D's request to testify during State's case in chief regarding voluntariness of his confession. D argued that Tr. Ct. denied his due process right to testify by refusing to hold hearing to determine voluntariness contrary to Jackson v. Denno, 378 U.S. 369. However, D did not request hearing. When Tr. Ct. denied D opportunity to testify, it was following basic order of proof as prescribed under Ind.Trial Rule 43(G). D had opportunity to present his version of facts surrounding confession during his case in chief, but rested without presenting evidence. Held, probation revocation affirmed.

I. CONFESSIONS/ INTERROGATIONS

I.1. Voluntariness/factors

I.1.b.2. Standard of proof

TITLE: Lego v. Twomey
INDEX NO.: I.1.b.2.
CITE: 404 U.S. 477, 92 S. Ct. 619, 30 L.Ed.2d 618 (1972)
SUBJECT: Voluntariness - Procedure - Standard of proof
HOLDING: Prosecution must prove by at least preponderance of evidence that confession was voluntary. Stricter standard of proof is unnecessary. However, states are free, pursuant to their own law, to adopt higher standard. Hearing on voluntariness of confession is not designed to implement presumption of innocence & enhance reliability of jury verdicts. Purpose is to prevent use of coerced confession as violative of due process quite apart from its truth or falsity. D did not demonstrate that admissibility rulings based on preponderance of evidence standard are unreliable. D also failed to demonstrate that imposition of any higher standard under expanded exclusionary rules would be sufficiently productive to outweigh public interest in having probative evidence available to juries. Held, judgment affirmed; Brennan, Douglas, & Marshall, JJ., dissenting.

TITLE: Light v. State
INDEX NO.: I.1.b.2.
CITE: (12/15/89), Ind., 547 N.E.2d 1073
SUBJECT: Voluntariness - standard of proof; waiver separate
HOLDING: While voluntariness of confession itself must be proved beyond reasonable doubt, state need only prove knowing & voluntary waiver of Miranda rights by preponderance of evidence. In reviewing voluntariness of statements, courts look at totality of circumstances, reviewing all evidence in record rather than focusing only on evidence supporting finding of voluntariness. Blackburn v. Alabama (1960), 361 U.S. 199, 80 S.Ct. 274, 4 L.Ed.2d 242. Tr. Ct.'s conclusion that confession was freely & voluntarily given "must appear from the record with unmistakable clarity." Sims v. Georgia (1967), 385 U.S. 538, 87 S.Ct. 639, 17 L.Ed.2d 593. However, proof of waiver of Miranda rights will be held to separate, lower, preponderance of evidence standard. See Colorado v. Connelly (1986), 479 U.S. 157, 93 L.Ed.2d 473, 107 S.Ct. 515.

TITLE: Miller v. Fenton

INDEX NO.: I.1.b.2.

CITE: 474 U.S. 104, 106 S.Ct. 445, 88 L.Ed.2d 405 (1985)

SUBJECT: Voluntariness of confession - independent federal review in habeas corpus proceeding

HOLDING: Ultimate issue of voluntariness of confession is legal question under Due Process Clause, requiring independent federal determination, not only when claim was that police conduct was inherently coercive, but when interrogation techniques were improper because, in particular circumstances of case, confession was unlikely to have been product of free & rational will. Subsidiary factual questions in determining voluntariness of confession, such as whether drug had properties of truth serum or whether in fact police engaged in intimidation tactics alleged by D, were entitled to presumption of correctness accorded to state court's findings of fact in federal habeas corpus proceedings. Voluntariness of confession was not issue of fact presumed correct in federal habeas corpus proceeding, but was legal question meriting independent legal consideration. Held, judgment reversed; Rehnquist, J., dissenting.

I. CONFESSIONS/ INTERROGATIONS

I.1. Voluntariness/factors

I.1.c. Appellate review

TITLE: Light v. State
INDEX NO.: I.1.c.
CITE: (12/15/89), Ind., 547 N.E.2d 1073
SUBJECT: Voluntariness - standard of review
HOLDING: Voluntariness of confession must be proved beyond reasonable doubt, & in reviewing voluntariness, courts look at totality of circumstances, reviewing all evidence in record rather than focusing only on evidence supporting finding of voluntariness. Blackburn v. Alabama (1960), 361 U.S. 199, 80 S.Ct. 274, 4 L.Ed.2d 242. Tr. Ct.'s conclusion that confession was freely & voluntarily given "must appear from the record with unmistakable clarity." Sims v. Georgia (1967), 385 U.S. 538, 87 S. Ct. 639, 17 L.Ed.2d 593. However, proof of waiver of Miranda rights will be held to separate, lower, preponderance of evidence standard. See Colorado v. Connelly (1986), 479 U.S. 157, 93 L.Ed.2d 473, 107 S. Ct. 515. In separately reviewing waiver, Ind. S. Ct. gives different weight to some events than in reviewing voluntariness of statement. **NOTE:** While this case sets out separate & lower standard of proof for waiver, abandoning without expressly overruling prior caselaw (i.e. Tawney 439 N.E.2d 582; Russell, App., 460 N.E.2d 1252), it in fact allows for fuller review of voluntariness of confession itself. Prior caselaw limited review to evidence most favorable to Tr. Ct.'s finding, together with uncontradicted evidence in favor of D. See, e.g., Carlisle 443 N.E.2d 826; Russell, supra.

TITLE: U.S. v. Mills

INDEX NO.: I.1.c.

CITE: 122 F.3d 346 (7th Cir. 1997)

SUBJECT: Voluntariness of Miranda Waiver -- Appellate Review

HOLDING: Seventh Cir. Court of Appeals holds that federal district court's determination of whether waiver of Miranda rights was voluntary is subject to de novo review on appeal. In Ornelas v. U.S., 116 S.Ct. 1657 (1996), U.S. Supreme Court held that determinations of reasonable suspicion and probable cause should be reviewed de novo on appeal. Voluntariness issue is similar to these issues, because it requires assessment of facts in light of legal standard, and independent review is needed to ensure uniformity and predictability. In conducting its review, however, appellate court must take care to review findings of historical fact only for clear error and to give due weight to reasonable inferences drawn from those facts.

TITLE: U.S. v. D.F.
INDEX NO.: I.1.c.
CITE: 115 F.3d 413 (7th Cir. 1997)
SUBJECT: Voluntariness of Confession -- Appellate Review
HOLDING: Tr. Ct.'s conclusion as to voluntariness of confession is subject to de novo review on appeal. Voluntariness of confession under 5th Amendment, like probable cause or reasonable suspicion under Fourth Amendment, is mixed question of law and fact. In Ornelas v. U.S., 116 S.Ct. 1657 (1996), U.S. Supreme Court held that appellate court reviewing determination as to probable cause or reasonable suspicion should conduct independent analysis of legal significance of historical facts as found by Tr. Ct. Decision in Ornelas rested on Court's observations that (1) when legal rule can be given meaning only through application in case-specific situations, de novo review is necessary to maintain control of and to clarify the controlling legal principles, and that (2) uniform precedent is especially important to providing guidance to law enforcement officers. Same considerations apply to determinations of voluntariness of confession, making de novo review appropriate.

I. CONFESSIONS/ INTERROGATIONS

I.2. Miranda warnings (5th Amend)

TITLE: Atkins v. State
INDEX NO.: I.2.
CITE: (04/03/2020) 143 N.E.3d 1025 (Ind. Ct. App. 2020)
SUBJECT: Suppression of evidence resulting from Pirtle and Miranda violation
HOLDING: Trial court abused its discretion in denying Defendant's motion to suppress evidence resulting from a search of his backpack and his statements to police officers. After locating an armed robbery suspect, officers began questioning Defendant and asked to search his backpack for weapons. When Defendant complied, the officers found three laptops inside, one of which was later discovered to belong to the man who reported the robbery. As Defendant continued to deny involvement, the officers again asked to see his laptops, and he continued to ask why the officers needed to go through his personal items.

There is no bright line rule to determine whether Defendant was merely subjected to a *Terry* stop or whether he was in custody. Considering the totality of the circumstances and factors identified in State v. Ruiz, 123 N.E.3d 675 (Ind. 2019) and Meredith v. State, 906 N.E.2d 867 (Ind. 2009), Court concluded that the interaction between police and Defendant went from a *Terry* stop to a custodial situation. Defendant was entitled to receive a *Pirtle* warning before police searched the laptop in his backpack and did not explicitly waive his right to counsel prior to the search. When the officer first asked to search the backpack, he informed Defendant that "[y]ou can say no, request a warrant, or ask for a lawyer if you want." But Defendant was not in custody at that time, and even if this statement applies to the later search of his backpack, officer's statement fails to explicitly inform Defendant that he was entitled to the presence and advice of counsel prior to consenting to the search, and the statement fails to comply with the *Pirtle* advisement requirement for a person in custody.

Lastly, Court determined that because Defendant was in custody, he was entitled to an advisement of his Miranda rights prior to police questioning him. Thus, trial court erred by granting the State's motion to correct error and reversing the earlier grant of Defendant's motion to suppress his statements to the police.

RELATED CASES: Posso, 180 N.E.3d 326 (Ind. Ct. App. 2021) (D was not adequately advised of his right to the presence and advice of counsel before he consented to the searches of his motel room, van, and cell phone, which is a "weighty intrusion" under Pirtle, which specifically places the burden on the State to show that D's waiver of the right to counsel was explicit).

TITLE: Dickerson v. U.S.
INDEX NO.: I.2.
CITE: 530 U.S. 428, 120 S. Ct. 2326 (2000)
SUBJECT: Miranda warnings, self-incrimination
HOLDING: Custodial police interrogation, by its very nature, isolates and pressures the individual and heightens the risk that an individual will not be accorded his privilege under the Fifth Amendment. In Miranda v. Arizona, 384 U.S. 436 (1966), the Court laid down a rule that admissibility of statements made during custodial interrogation would depend on whether the police had given the suspect the four "Miranda warnings": that the suspect has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney, one will be appointed for him prior to any questioning if he so desires. Held, the Miranda warnings are constitutionally based, and may not be overruled by legislation. Any legislative alternative to the Miranda warnings must be at least as effective at appraising accused persons of their right to silence and in assuring a continuous opportunity to exercise it.

TITLE: Edwards v. United States
INDEX NO.: I.2.
CITE: (5/3/2007), D.C., 2007 WL 1280260; 02-CF-1068
SUBJECT: Seibert extends even if suspect's statements intended to be exculpatory
HOLDING: District of Columbia Court of Appeals held that police officers' use of a two-part interrogation tactic like the one condemned in Missouri v. Seibert, 542 U.S. 600 (2004), requires the exclusion of post-warnings statements even when both the pre-warnings and the post-warnings statements were intended by the suspect to be exculpatory. Court expressed concern that limiting the Seibert rule to confessions would encourage gamesmanship by interrogators that would defeat the goal of the Miranda requirements. Interrogation here occurred before the decision in Seibert. Detectives deliberately withheld Miranda warnings before asking D how he came to be arrested for a fatal shooting. D stated that he was speaking with the victim when a masked man ran up, shot the victim, and threw the gun at D's feet and D picked up the gun and ran. The interrogator gave D Miranda warnings, filled out a waiver card, and repeated his story. Later, another interrogator was able to get D to admit to shooting the victim, but he said it was in self-defense. Although the opinions in Seibert spoke in terms of "confessions," the Court decided these opinions "all clarified that the issue was not merely about complete and integrated confessions, but about any statements obtained through a two-step interrogation process."

TITLE: People v. Bradshaw
INDEX NO.: I.2.
CITE: 156 P.3d 452 (Colo. 2007)
SUBJECT: Miranda -- Statement not ambiguous
HOLDING: Colorado Supreme Court held that an arrestee's post-Miranda warnings statement to a police interrogator that he would have to speak to an attorney if the complaining witness's version of events differed from his constituted an unambiguous and unequivocal request for an attorney that triggered the officer's constitutional obligation to cease all questioning.

D was arrested for sexually assaulting and robbing a real estate agent who was showing him a house. D, who was advised pursuant to Miranda v. Arizona, 384 U.S. 436 (1966), initially agreed to talk to police and told them that the agent voluntarily engaged in sexual relations and wrote him thousands of dollars in checks. When told by an officer that that was not how the complaining witness described the encounter, D replied, "[I]f she's got some other different story, I'm going to have to have to talk to an attorney about this . . . ." Nonetheless, the officer continued to question D and elicited incriminating statements.

Court held that D's statement constituted an unequivocal demand that the interrogation end and that counsel be summoned on his behalf. It noted that the fact that the request included the future imperative, "I'm going to have to" did not negate D's clear intent that, given the accusation, he wanted a lawyer. A dissent was entered to the decision.

TITLE: Theobald v. State

INDEX NO.: I.2.

CITE: (06/30/2022) Ind. Ct. App., 190 N.E.3d 455

SUBJECT: Court of Appeals adopts federal new-crime exception to Miranda exclusionary rule to find statement admissible

HOLDING: The police stopped the defendant after he allegedly struck an officer's side mirror with his fist while driving on his motorcycle. After being handcuffed on the side of the road and detained for a "hit and run," the defendant denied hitting the mirror. But he offered to pay the officer whose mirror was hit $100. The police arrested him for bribery, among other offenses. The defendant later moved to suppress the statement about the $100 offer because he hadn't been given Miranda warnings even though he was interrogated while in custody. The Court of Appeals rejected the State's argument that the defendant was not in custody when he made the statements. He was handcuffed on the side of the interstate for 45 minutes and told he was not free to leave. The Court also found the defendant was interrogated when the police gave him two options: admit to hitting the side mirror or go to jail. The Court nevertheless held that only the statement about $100 offer was admissible. It, for the first time in Indiana, adopted the federal new-crime exception to the Miranda exclusionary rule. Under this exception, a statement made by a person who is subject to custodial interrogation but not given Miranda warnings is still admissible if the statement itself is evidence of a new crime (such as bribery or a threat). The Court acknowledged the defendant might have a convincing argument that he was offering to pay for the damage to the car rather than bribing a police officer (especially depending on what he said during the unintelligible part of the body cam footage). But the State can present evidence of the statement in a bribery prosecution and let the trier of fact decide guilt. Held: denial of the motion to suppress affirmed.

I. CONFESSIONS/ INTERROGATIONS

I.2. Miranda warnings (5th Amend)

I.2.a. When necessary

TITLE: Jones v. State
INDEX NO.: I.2.a.
CITE: (8-29-95), Ind., 655 N.E.2d 49
SUBJECT: Consent to vehicle search valid - D not in custody
HOLDING: Where D was neither arrested nor in police custody during initial traffic stop & at time he consented to automobile search, right to receive warning about consultation with counsel did not attach; thus, seizure & admission of cocaine was proper. Police received tip from confidential informant that D was carrying cocaine in gas cap. After observing D commit traffic infraction, police officer turned on lights & spotlight, & directed D to exit vehicle. Another officer arrived & partially blocked D's vehicle. First officer inquired & confirmed that vehicle & its contents belonged to D. Although no advisement of right to counsel was made, first officer sought & was granted consent for warrantless search. D rescinded his consent after second officer found drugs.

Person in police custody must be informed of right to consult with counsel about possibility of consenting to search before valid consent can be given. Sims, 413 N.E.2d 556; Pirtle, 323 N.E.2d 634. Neither Federal nor Ind. constitutional jurisprudence has developed a "bright line" test for determining when investigatory detention becomes an arrest or custodial interrogation. Objective test asks whether reasonable person under same circumstances would believe that she was under arrest or not free to resist entreaties of police. Florida v. Bostick (1991), 111 S. Ct 2382. Here, despite unusually high number of officers present for traffic stop, Ct. held that D was not "in care & control of police," & was not interrogated in manner implicating Fifth Amendment. Officers did not touch or physically restrain D's freedom of movement before moment of consent, & D was not asked incriminating questions. Fact that D rescinded consent does not affect constitutionality of search because rescission was made too late. Held, judgment affirmed, Dickson, J., dissenting.

RELATED CASES: Cohee, 945 N.E.2d 748 (Ind. Ct. App 2011) (Pirtle right to consult with counsel before consenting to a search does not apply when person is deciding whether to submit to implied consent test because such a person is not in custody); Clarke, 868 N.E.2d 1114 (as in Jones, there was no Pirtle violation because D was not seized and not in custody at time he consented to search; see full review at Z.7.a); Miller, App., 846 N.E.2d 1077 (D, who was handcuffed at time police officer asked for consent to search his vehicle, was in custody at time he consented to search & was entitled to be informed of his right to consult with counsel before consenting to search; however, invalid consent did not require reversal because police had probable cause to search D's vehicle); Sellmer, 842 N.E.2d 359 (distinguishing Jones, Ct. held D was in custody & entitled to Pirtle advisement, which officer did not provide); Joyner, 736 N.E.2d 232 (right to receive advisement did not attach, even though officer gave D Miranda wanings, because D arrived at police station on his own, was never detained, & was free to leave); Torres, 673 N.E.2d 472 (D's consent to search house was invalid because police failed to advise D of right to consult with counsel; D was handcuffed, police had read him Miranda rights, & informed him that he was suspect in stabbing).

TITLE: Luna v. State
INDEX NO.: I.2.a.
CITE: (5-14-03), Ind., 788 N.E.2d 832
SUBJECT: Miranda warnings - noncustodial interrogation at police station
HOLDING: A person who goes voluntarily for a police interview, receives assurances that he is not under arrest, & leaves after interview is complete, has not been taken into "custody" by virtue of energetic interrogation so as to necessitate Miranda warnings. Oregon v. Mathiason, 429 U.S. 492 (1977). In Dickerson v. State, 257 Ind. 562, 276 N.E.2d 845 (1972), Ct. held that Miranda warnings were required under circumstances where interrogation was initiated by police & conducted in interrogation room at police station, at time when investigation focused on accused. Ct. noted that is apparent that Dickerson's focus on who initiated interview & coercive nature of interrogation are in direct conflict with Mathiason, & to that extent Dickerson is overruled.

In this case, D drove himself to police station after police asked to interview him about his involvement in alleged child molestation. Detectives told D he was not under arrest, interrogated him for about an hour, & D confessed. A reasonable person in D's circumstances would not have believed himself under arrest or not free to resist entreaties of police. Torres v. State, 673 N.E.2d 472 (Ind. 1996). Miranda warnings were thus not required. Held, transfer granted, Ct. App.' memorandum opinion vacated, judgment affirmed.

RELATED CASES: Crabtree, 152 N.E.3d 687 (Ind. Ct. App. 2020) (09/02/2020) (D who voluntarily went to police station, took polygraph examination and spoke to police officers not in custody for Miranda purposes); Laster, App., 918 N.E.2d 428 (where D rode with officer in front seat of car and was not handcuffed and taken home after the interview, the D was not in custody); Morris, App., 871 N.E.2d 1011 (distinguishing Luna, Ct. found D was in custody; mere fact that a person is not placed in handcuffs or otherwise physically restrained by the police does not necessariliy mean a person is not in custody).

TITLE: Pedraza v. State
INDEX NO.: I.2.a.
CITE: (06/05/2020), a (Ind. Ct. App.)
SUBJECT: Miranda does not require accused to be informed of specificity of charges
HOLDING: Court granted Defendant's petition for rehearing to clarify its factual recitation regarding the circumstances of Defendant's Miranda waiver. In its original memorandum opinion, Court rejected Defendant's argument that his Miranda waiver was not knowing or voluntary because detective did not recite the specific charges pending against him despite Defendant's multiple requests during the custodial interrogation. Court clarified that the detective referred to the incident involving victim's death approximately twenty seconds after Defendant signed the Miranda waiver.

TITLE: State v. Diego

INDEX NO.: I.2.a.

CITE: (06/09/2021), 169 N.E.3d 113 (Ind.)

SUBJECT: No Miranda warnings required before police interview and Defendant was not in custody when he and his girlfriend voluntarily went to police station when asked to do so, where he was interviewed in detective's personal office, and where he was free to leave afterwards.

HOLDING: Police may not interrogate a person in custody without proper Miranda warnings or else the State risks having those custodial statements suppressed in a criminal trial. However, not every station house interview implicates Miranda. Miranda warnings are only required when a person is in custody; when a person's' freedom of movement is curtailed to a level associated with formal arrest and when he or she is under the same inherently coercive pressures in the police station as those at issue in Miranda v. Arizona. Here, a uniformed officer went to Defendant's home to ask him to come to the police station for an interview. Defendant had limited English speaking proficiency, so the officer spoke to Defendant's girlfriend who spoke English. Through the girlfriend, Defendant was told to go to the police station to speak to an officer. A few days later Defendant and his girlfriend went to the police station and were buzzed through a door and into a detective's office. Defendant was not read his Miranda warnings before being asked questions for 45 minutes by a uniformed police officer. After the interview, Defendant and his girlfriend left the police station. Defendant was later charged with three counts of child molest and filed a motion to suppress his statement to police. The trial court found the statements were inadmissible because they were made pre-Miranda. The Court of Appeals affirmed the trial court. On transfer, the Indiana Supreme Court reversed, finding Defendant was not in custody such that Miranda warnings were necessary. The majority concluded that the totality of objective circumstances surrounding the interrogation would make a reasonable person feel free to end the questioning and leave. As such, Defendant's freedom of movement was not curtailed to the degree associated with formal arrest. In reaching its decision, the Court distinguished State v. E.R.,123 N.E.3d 675 (Ind.), where statements were suppressed involving the same detective. Because the interview took place in the detective's personal office, not an interview room, the approximately forty-five-minute interview — while certainly lengthy — was not particularly hostile; it was exploratory and conversational rather than accusatory. Defendant and his girlfriend left the station unaided, which gives rise to a reasonable inference that Defendant was not cabined into a remote place in the police station. "True, the couple was told they 'needed' to come to the police station, [the detective] did carry his gun, [Defendant] was outnumbered in the interview room, and the couple had to move through several barriers. But given the casual atmosphere, exploratory and conversational line of questioning, and relatively unimpeded pathway to the room, the totality of these objective circumstances does not represent a curtailment akin to formal arrest." Goff, J., dissenting, arguing that a Miranda warning would be necessary when "a limited-English-speaking suspect, having been summoned to a police station by a fully uniformed officer, endures a prolonged and accusatory interrogation by an armed detective in a visually combined office with no clear path to the office door and with no knowledge of his ability to freely exit the secured station house entrance." One important factor distinguished this case from E.R., bolstering the trial court's conclusion that police conducted a custodial interrogation: Defendant's limited-English proficiency." (U)pon electing to interrogate such a suspect, a prudent officer, in my opinion, should consider whether the suspect's language barrier might reasonably bear on the suspect's

understanding of his freedom of action... If so, a Miranda warning would greatly assist a judge tasked with ruling on the admissibility of any statements made during the interview."

TITLE: State v. Joseph

INDEX NO.: I.2.a.

CITE: 109 Haw. 482, 128 P.3d 795 (Haw. 2006)

SUBJECT: Miranda Warnings - Attorney Present

HOLDING: Mere presence of D's attorney at custodial interrogation does not relieve police of duty to inform D of rights guaranteed by the Hawaii state constitution's counterpart to the 5th Amendment, the Hawaii Supreme Court holds. The Court reasons that the right to remain silent and the right to have counsel present are separate guarantees, and thus Miranda warnings must be given in order to protect the former even when the latter has been satisfied.

TITLE: State v. Linck
INDEX NO.: I.2.a.
CITE: (4th Dist., 4-5-99), Ind. App., 708 N.E.2d 60
SUBJECT: Miranda violation required exclusion of physical evidence
HOLDING: Tr. Ct. did not err in suppressing all of D's statements made after he admitted smoking marijuana & bags of marijuana discovered in his apartment. As police officers entered D's apartment building to investigate complaint of illegal drug use, they smelled what they believed to be marijuana burning. Officer's initial question of "what the problem was" in reference to marijuana odor constituted "interrogation" because it was made with intention of eliciting incriminating statement. D was in custody for purposes of Miranda after he admitted smoking marijuana because reasonable person would not have felt free to leave after making this admission. At that point, officers were required, but failed, to advise D of his Miranda warnings before they questioned him further.

Ct. also rejected State's request to extend holding & reasoning of Oregon v. Elstad, 470 U.S. 298 (1985), to permit admission of physical evidence obtained as direct result of improper custodial interrogation. In Elstad, Ct. held that exclusionary rule did not require suppression of subsequent valid written confession despite earlier Miranda violation, unless there was some form of coercion, which would constitute Fifth Amendment violation. Issue left unresolved by Elstad is whether fruit of poisonous tree doctrine applies based on Miranda violation, where, as here, acquisition of physical evidence is closely tied to illegally obtained confession. Ct. noted that when confession is suppressed because it was unlawfully obtained, evidence which is inextricably bound to confession must also be suppressed. Hall, 264 Ind. 448, 346 N.E.2d 584 (1976). Ct. is bound by Hall decision until Ind. or U.S. S.Ct. address this issue. Because bags of marijuana were inextricably bound to statements D made disclosing their location, they must be suppressed. Held, judgment affirmed.

RELATED CASES: Buchanan, App., 913 N.E.2d 712 (distinguishing Linck, Ct. held that D was not in custody when he was subjected to interrogation by detectives at his house, even though he had confessed to making false bomb threats during first interrogation the previous day); Peel, App., 868 N.E.2d 569 (officers asked D incriminating questions immediately after D admitted that he had committed a criminal offense; thus, under totality of circumstances, D was in custody for purposes of Miranda after he admitted smoking marijuana because reasonable person would not have felt free to leave after making this admission); Vanpelt, App., 760 N.E.2d 218 (when police officer asked D to submit to chemical test, D refused & volunteered that he had smoked marijuana earlier that evening; D's statement was voluntary & no Miranda advisement was required); Gibson, App., 733 N.E.2d 945 (where officer, without Mirandizing D, asked D who was handcuffed in passenger seat of police car whether he had any weapons or contraband in van, marijuana found in van based on D's answer should have been suppressed).

TITLE: U.S. v. Sullivan

INDEX NO.: I.2.a.

CITE: 948 F.Supp. 549 (D.C.E.Va. 1996)

SUBJECT: Traffic Stop -- Repeated Questions Regarding Contents of Car Required Miranda Warnings

HOLDING: D who, at end of traffic stop, was asked six times whether there was anything illegal in his car, was entitled to Miranda warnings prescribed for custodial interrogation. Under 4th Circuit precedent, traffic stop ended when officer returned D's driver's license. However, because officer repeated his question six times in face of D's silence, Court concludes that reasonable person would not have felt free to go. Fifth amendment Miranda rights are usually not implicated within context of valid Terry stop, but by pushing the line between a valid Terry stop and an illegal arrest, officer created custodial situation envisioned by Miranda. U.S. Supreme Court's recent holding in Ohio v. Robinette, 117 S.Ct. 417 (1996), that there is no "bright line" rule that officer must inform motorist that he is free to go before seeking consent to search vehicle simply reinforces court's duty to look at specific facts of individual case. Here, court finds, officer asked "at least one question too many."

I. CONFESSIONS/ INTERROGATIONS

I.2. Miranda warnings (5th Amend)

I.2.a.1. Custody

TITLE: B.A. v. State
INDEX NO.: I.2.a.1.
CITE: (6/20/2018), 100 N.E.3d 225 (Ind. 2018)
SUBJECT: Juvenile subjected to school custodial interrogation requiring Miranda advisements
HOLDING: Tr. Ct. abused its discretion by admitting 13-year-old B.A.'s unmirandized confession to a room filled with multiple uniformed police and school administrators. School police investigated a message, "I will got [sic] a bomb in the school Monday 8th 2016 Not a joke," scrawled on a bathroom wall. A uniformed school resource officer escorted B.A. from his bus straight to the vice principal's office for questioning. Officer instructed B.A. to copy the message text, which the officers decided "kind of matched" the message on the bathroom wall. While three officers were standing or sitting within ten feet of B.A., the Vice-Principal questioned B.A. for several minutes. The officers did not Mirandize B.A., and neither the officers nor any school staff contacted B.A.'s mother. B.A. eventually confessed and was found true of False Reporting and Institutional Criminal Mischief. Supreme Court held that under the totality of circumstances, although Vice Principal did most of the questioning, B.A. was subjected to custodial interrogation because the school uniformed resource officers participated in his interview. "[T]he consistent police presence would place considerable coercive pressure on a reasonable student in B.A.'s situation. So this case lies solidly on the "custody" end of the student-confinement spectrum." B.A.'s statements should have been suppressed under both Miranda and Indiana's juvenile waiver statute, Ind. Code § 31-32-5-1. Held, transfer granted, Court of Appeals' opinion at 73 N.E.3d 720 vacated, judgment affirmed.

RELATED CASES: O.E.W., 133 N.E.3d 144 (Ind. Ct. App. 2019) (juvenile was in custody after mother brought him to police station to discuss an incident where he reported to have been a crime victim and was then was questioned about a murder and was never told he was free to leave).

TITLE: Bean v. State
INDEX NO.: I.2.a.1.
CITE: (08-22-12), 973 N.E.2d 35 (Ind. Ct. App 2012)
SUBJECT: Custodial interrogation - effect of reading Miranda warnings
HOLDING: In the context of a prolonged detention where there is persistent, accusatory questioning by several officers, the fact that police observed certain formalities of a custodial arrest, such as reading of Miranda warnings, "does provide some support for an inference that a suspect is in custody for purposes of Miranda." Sprosty v. Buchler, 79 F.3d 635 (7th Cir. 1996). Court agreed with Seventh, Tenth, and Eleventh Circuits in that although the giving of Miranda warnings should not automatically render a suspect "in custody," neither should the giving of such warnings be irrelevant in that analysis.

Here, detectives from Carroll and White counties went to D's Lafayette home and told him that they wanted to speak about an investigation into possession of child pornography. D agreed to go to the Lafayette police station to speak about the child pornography allegations and "something else." He was not arrested and was told he could stop talking and leave the station at any time. D was at the station for more than an hour when police switched their interrogation from the pornography investigation to molestation allegations made by his daughter and niece. D asked if he needed a lawyer, was read his Miranda rights and signed a waiver. Several times, D asked about needing a lawyer and said he wanted to have a lawyer. The detectives did not stop their aggressive and lengthy questioning and eventually D confessed to molesting the girls 2.5 hours after he arrived at the police station.

Court concluded that D was in custody when he finally confessed to molesting his daughter, even if he was not formally arrested at the time. Unlike in Luna v. State, 788 N.E.2d 832 (Ind. 2003), police officer drove D to station, and he was not allowed to return home after he confessed. The detectives who spoke to D at his residence did not tell him the real reason they wanted to speak with him, and their questioning was "clearly aggressive and fairly lengthy." But the crucial factor indicating that D was in custody was that he had been advised of his right to remain silent and have an attorney, he invoked those rights, but police continued questioning him anyway.

Court rejected State's claims that D did not unambiguously invoke his right to counsel, that D reinitiated conversation with police after saying he wanted an attorney, and that admission of D's confession was harmless error. Held, Class A felony child molesting convictions reversed.

TITLE: Campbell v. State
INDEX NO.: I.2.a.1.
CITE: (1st Dist., 1-14-05), Ind. App., 820 N.E.2d 711
SUBJECT: Miranda - D not in custody; armed stand-off
HOLDING: Because D was not "in custody" at time he responded to police officers' inquiries at scene of crimes, Miranda warnings were not required & Tr. Ct. did not err in admitting D's statements into evidence. Warnings set forth in Miranda require a police officer to inform a suspect who is in custody that any statement may be used against him, that he has right to legal counsel, & that if he cannot afford an attorney one will be appointed for him. Furnish v. State, 779 N.E.2d 576 (Ind. Ct. App 2002). An accused is "in custody" & is entitled to Miranda warnings if a reasonable person in same circumstances would not feel free to leave or if his freedom of movement was deprived in any significant way. Gibson v. State, 733 N.E.2d 945 (Ind. Ct. App 2000).

Here, when detective arrived at scene & asked D "what was going on," several police officers had D surrounded at gunpoint. D was armed with a pistol. In other words, it is apparent that detective arrived in midst of a "standoff" between D & officers. When D made incriminating statements to officers, he had not yielded to show of police authority. Moreover, when D made his remarks to detective, he was still refusing to submit to authority inasmuch as he would not place his hands behind his back or submit to a patdown search so that officers could confirm that he was no longer armed. Thus, D was not "in custody" when he responded to detective's inquiries. Held, judgment affirmed in part & remanded in part on other grounds; Robb, J., concurring, notes that our common definition of "custody" fails in unique circumstance of armed standoff between D & officers.

RELATED CASES: Smith, 983 N.E.2d 226 (Ind. Ct. App 2013) (D was not in custody because he was not under arrest, went to police station voluntarily, and was allowed to leave interview room to get a drink).

TITLE: Commonwealth v. Coleman
INDEX NO.: I.2.a.1.
CITE: 49 Mass.App.Ct. 150, 727 N.E.2d 103 (Mass.App.Ct. 2000)
SUBJECT: Interrogation -- Custody; Threat of Arrest
HOLDING: Aggressive questioning of 19-year-old suspect in his own bedroom by officers who threatened him with arrest on more serious, albeit unfounded charge, was custodial despite assurances that he could leave. Threat of arrest on murder charge if suspect terminated interview and left home rendered interrogation custodial.

TITLE: Corbin v. State
INDEX NO.: I.2.a.1.
CITE: (10/31/2018), 113 N.E.3d 755 (Ind. Ct. App 2018)
SUBJECT: Failure to Mirandize D during traffic stop - harmless error
HOLDING: Court affirmed D's conviction for operating a vehicle with ACE of 0.15, despite police officer's failure to give Miranda warnings after a welfare check of D's disabled vehicle on the interstate moved to a traffic stop and ultimately arrest. Statements D made to police were made before she was in custody or were merely cumulative after she was in custody, thus any error in not giving her Miranda warnings was harmless. Held, judgment affirmed.

TITLE: Crocker v. State
INDEX NO.: I.2.a.1.
CITE: (6/18/2013), 989 N.E.2d 812 (Ind. Ct. App 2013)
SUBJECT: Consent to search valid despite Miranda violation
HOLDING: Tr. Ct. erred in admitting incriminating statements D made to police officer while sitting in officer's vehicle during traffic stop. Although a person is not automatically in custody whenever he is in a police vehicle, under circumstances of this case, D was subjected to an illegal custodial interrogation without being advised of his Miranda rights beforehand and therefore the incriminating statements made to police should have been suppressed. A reasonable person who is told to sit in a police vehicle and then immediately subjected to HGN and field sobriety test would not feel free to leave. However, error was harmless because D's consent to the search of his vehicle was valid and the physical evidence obtained therein was sufficient to sustain his convictions. See Hirschey v. State, 852 N.E.2d 1008 (Ind. Ct. App 2006). Held, judgment affirmed.

TITLE: D.Z. v. State
INDEX NO.: I.2.a.1.
CITE: (6/20/2018), 100 N.E.3d 246 (Ind. 2018)
SUBJECT: No Miranda violation from school administrator's interrogation without police involvement
HOLDING: Where assistant principal alone met with and interrogated a juvenile student, Miranda warnings were not required. After investigating together, the assistant principal and a police officer working for the school identified 17 year-old D.Z. as a vandalism suspect. The vice-principal called D.Z. out of class and questioned him with the door closed, without offering a chance to talk to his parents or telling D.Z. he had a right not to answer questions. D.Z. admitted to the vandalism. When police officers are not present at and involved in a suspect's interview, students are neither in custody nor under interrogation, unless school officials are acting as agents of the police. B.A. v. State, No. 49S02-1709-JV-567, 100 N.E.3d 225, slip op. at 9-11 (Ind. June 20, 2018). Here, no evidence suggests that police directed or encouraged the assistant principal to act on their behalf. Nor does the police officer's interview with D.Z. immediately after the assistant principal's questioning show an agency relationship. Thus, the assistant principal was not acting as an agent of the police. But even if he had been, Miranda warnings wouldn't be required because no evidence shows D.Z. even knew that the assistant principal had talked to the officer to create a "coercive atmosphere." Illinois v. Perkins, 496 U.S. 292, 297 (1990). Held, transfer granted, Court of Appeals' opinion at 96 N.E.3d 595 vacated, judgment affirmed.

TITLE: Dunaway v. State
INDEX NO.: I.2.a.1.
CITE: (10/22/82), Ind., 440 N.E.2d 682
SUBJECT: Miranda warnings - custody/freedom to leave
HOLDING: Test for determining whether one is "seized" for 4th Amend. purposes: whether, considering all circumstances surrounding police-citizen encounter, D entertained reasonable belief he/she was not free to leave. US v. Mendenhall (1980), 446 U.S. 544, 100 S.Ct. 1870, 64 L.Ed.2d 447; Barber, App., 418 N.E.2d 563. Here, court finds D voluntarily accompanied officers to station, had previous experience with the law, was friends with one of the officers, & requested to see girlfriend "before he was arrested," thus supporting conclusion D did not believe he was under arrest when transported to station. Held, no error.

RELATED CASES: Zook, 513 N.E.2d 1217 (D voluntarily agreed to go to police station where he was interviewed by 2 fire investigators; D asked twice if he was under arrest & was told no; held, D was not under arrest & could not reasonably have believed that he was); Owen, App., 490 N.E.2d 1130 (Crim L 412.2(2); where D was suspected of shoplifting & questioned in store office by store manager & security guard who identified himself as police officer, & D was not told he could leave/refuse to answer questions, court finds D was in custody when interrogation incurred; therefore, lack of Miranda warnings requires reversal; case contains good discussion of case law).

TITLE: Holt v. State
INDEX NO.: I.2.a.1.
CITE: (2nd Dist., 12-27-78), Ind. App., 383 N.E.2d 467
SUBJECT: Miranda warnings - Custodial interrogation required
HOLDING: Miranda procedural safeguards apply only to custodial interrogations. Not every question police officer asks one in custody will necessarily amount to interrogation. Rather, it is necessary to view statement in context in which it was made. If, after having done so, it does not appear purpose of remark was to obtain confession from D, Miranda is not triggered in that it is not necessary D first be advised of his rights. Questions asked D by officer were merely for purpose of identification & not to obtain confession. Held, affirmed in part & reversed in part on other grounds.

RELATED CASES: Pasco, 563 N.E.2d 587 (custodial interrogation refers to questioning initiated by police after person has been taken into custody or otherwise deprived of his freedom of action in any significant way; interrogation must commence after person's freedom of action has been deprived in any significant way). Boarman, 509 N.E.2d 177 (police may ask routine identification information required for booking procedure without giving Miranda warnings). Lyons, 506 N.E.2d 813 (officers' conduct was not designed to bring forth self-incriminating response by D regarding robbery).

TITLE: Howes v. Fields
INDEX NO.: I.2.a.1.
CITE: (02-21-12), 132 S.Ct. 1181 (U.S. 2012)
SUBJECT: No rule that interrogation is per se custodial when prison inmate questioned in private
HOLDING: An interrogation is not per se custodial when a prison inmate is questioned in private about events that occurred outside prison.

Inmate Fields was taken from his cell to a conference room in another building, where two armed deputy sheriffs questioned him for seven hours about alleged sexual conduct with a 12-year-old boy. The deputies did not advise Fields about his rights, including his right to remain silent. They did tell Fields he could go back to his cell whenever he wanted but that there would be a delay because they would have to summon another officer to return him to his cell. Fields was not restrained; the door was sometimes open and sometimes shut. Several times, Fields said he wanted to end the questioning, but he did not ask to return to his cell until the deputies stopped questioning him. His confession led to a charge and conviction for criminal sexual conduct. In affirming the grant of habeas relief, the Sixth Circuit created a per se rule regarding custody: a prisoner will always be in custody if removed from an institution's general population and questioned about acts occurring outside the institution. See Mathis v. United States, 88 S.Ct. 1503 (1968).

Supreme Court precedent has never clearly established the Sixth Circuit's categorical custody rule regarding interrogation: "we have repeatedly declined to adopt any categorical rule with respect to whether the questioning of a prison inmate is custodial." See Illinois v. Perkins, 110 S.Ct. 2394 (1990). To determine if a person is in custody, "all of the circumstances surrounding the interrogation" must be considered. Stansbury v. California, 114 S.Ct. 1526 (1994). ALITO, J., C.J. and ALL OTHER JUSTICES CONCURRING. Cert. granted and Sixth Circuit and District Court granting of habeas corpus relief reversed.

TITLE: Illinois v. Perkins
INDEX NO.: I.2.a.1.
CITE: 496 U.S. 292, 110 S.Ct. 2394, 110 L.Ed.2d 243 (1990)
SUBJECT: Use of undercover agents in jail
HOLDING: Undercover law enforcement officer posing as fellow inmate need not give Miranda warnings to incarcerated suspect before asking questions that elicit incriminating response. Here, undercover police officer placed in cell with D who was being held on unrelated charges. Officer initiated conversation with D about murder which D admitted at length. 5th Amend. privilege against self-incrimination prohibits admission of statements given by suspect in custodial interrogation without prior warning. Miranda v. Arizona (1966), 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694. Warnings mandated by Miranda meant to preserve privilege during "incommunicado interrogation of individuals in a police-dominated atmosphere." Id. Premise of Miranda that danger of coercion results from interaction of custody & official interrogation. Questioning by captors, who appear to control suspect's fate, may create mutually reinforcing pressures that will weaken suspect's will, but where suspect does not know he is government agent, these pressures do not exist. When suspect has no reason to think, listeners have official power over him, it should not be assumed his words are motivated by reaction he expects from listeners. Ploys to mislead suspect or lull him into false sense of security that do not rise to level of compulsion or coercion to speak are not within Miranda's concerns. "In recounting the details of the ... murder, [D] was motivated solely by the desire to impress his fellow inmates. He spoke at his own peril." Held, Miranda warnings not required. Brennan, CONCURRING IN JUDGMENT; Marshall, DISSENTING.

RELATED CASES: Howes v. Fields, 132 S.Ct. 1181 (2012) (determining custody is fact-sensitive; Court struck down 6th Circuit categorical rule that a prisoner will always be in custody if removed from an institution’s general population and questioned about acts occurring outside the institution).

TITLE: J.D.B. v. North Carolina
INDEX NO.: I.2.a.1.
CITE: (06-16-11), 131 S.Ct. 2394 (U.S. 2011)
SUBJECT: A child's age properly informs Miranda custody analysis
HOLDING: Courts should consider a child's age when determining whether a child is in custody under Miranda.

13-year-old J.D.B. was pulled out of class and taken to a closed-door school conference room. A uniformed officer questioned J.D.B. for at least 30 minutes about stolen goods. The officer did not Mirandize J.D.B., let him call his guardian, or say he was free to leave. J.D.B. eventually confessed to stealing the goods.

A child's age affects how a reasonable person would perceive his or her freedom to leave. Considering age does not abandon Aobjective@ approach if officer knows the child's age or the child's age was objectively apparent to the officer. This does not require an officer to determine a particular child's subjective state of mind. Custodial interrogation involves "inherently compelling pressures". It can "induce a frighteningly high percentage of people to confess to crimes they never committed". Studies show risk of false confessions is higher with juveniles.

[**NOTE:** This case arguably overrules State v. C.D., 947 N.E.2d 1018 (Ind. Ct. App. 2011), which held that a juvenile was not in custody when questioned at school by school security officer.] SOTOMAYOR, J., joined by KENNEDY, GINSBURG, BREYER, and KAGAN, J.J.; ALITO, J., DISSENTING, joined by ROBERTS, C.J., and SCALIA and THOMAS, J.J.

RELATED CASES: B.A., 73 N.E.3d 720 (Ind. Ct. App 2017) (even though 3 officers were present when 13-year-old B.A. was questioned at his middle school, Miranda warnings were not required because B.A. was not in custody; nearly all questions were asked by the Vice-Principal; see full review, this section).

TITLE: Loving v. State
INDEX NO.: I.2.a.1.
CITE: (3-16-95), Ind., 647 N.E.2d 1123
SUBJECT: Custodial interrogation - Miranda violation
HOLDING: Tr. Ct. erred in denying D's motion to suppress statements obtained by police in violation of his Miranda rights. D was questioned at crime scene by various police officials, handcuffed, placed in back of marked police car, & taken to police station by uniformed officers. He was later taken into interrogation room by police officer who commenced further questioning. Ct. found that D was in custody, as reasonable person under these circumstances would not have believed himself to be free to leave. Miranda warnings must be given whenever person in custody is subjected to either express questioning or its functional equivalent. Rhode Island v. Innis, 100 S.Ct. 1682. Here, officer's questioning went beyond routine administrative questions when he interrogated D about events at crime scene & commented upon inconsistency between D's account & physical evidence found at crime scene. These questions were unconstitutionally obtained during custodial interrogation & were erroneously admitted into evidence. Held, transfer granted, convictions reversed & remanded.

RELATED CASES: Storey, App., 830 N.E.2d 1011 (officer's monologue about his discovery of potentially incriminating evidence & likelihood D's wife would be arrested had no apparent purpose other than to induce D to say something inculpatory, & thus constituted "interrogation" even though no questions were asked); McIntosh, App., 829 N.E.2d 531 (D's statements to police during first & second interrogation were inadmissible because she was in custody & police failed to advise her of her Miranda rights); Wright, App., 766 N.E.2d 1223 (because handcuffed D was never properly Mirandized, incriminating statements he made during police officer's pat down search should have been excluded); Bishop, App., 700 N.E.2d 473 (whether person is in custody at time of questioning depends upon objective circumstances, not upon subjective views of interrogating officers or subject being questioned); Houser, 678 N.E.2d 95 (any error in admitting pre-Miranda statements was harmless because they were repetitive of properly admitted post-Miranda statements).

TITLE: Moore v. State
INDEX NO.: I.2.a.1.
CITE: (4th Dist., 1-31-00), Ind. App., 723 N.E.2d 442
SUBJECT: Custodial interrogation - eliciting information about accident vs. crime
HOLDING: Juvenile D argued that Tr. Ct. erred in denying his motion to suppress statements he made to investigating police officers at scene of accident. D was placed in back seat of police car, could not leave scene & had statutory duty to provide information to investigating officer for accident report. D contended that since he was not free to leave accident scene, interrogation was custodial in nature & thus he should have received Miranda warnings & protection of juvenile waiver of rights statute, Ind. Code 31-32-5-1.

Ct. acknowledged that information that D was required to provide to officer for accident report was incriminating & was elicited from him in situation where there was restriction on his freedom. However, D was not "in custody" for Miranda purposes until officer knew or should have known that he was investigating potential crime scene. Officer testified that he was gathering information for injury accident report, & upon arrival at scene, he believed it was accident scene & not crime scene. Thus, D was not being subjected to "true" custodial interrogation & Ct. assumed, because of unclear record, that officer was questioning D with only intent of eliciting information about accident & not crime. Even if it would have been proper for D's statements to be suppressed, there was enough other evidence provided to Tr. Ct. through witness testimony to support D's attempted murder conviction. Held, conviction affirmed.

Note: Ct. noted that at moment during investigation of accident that officer knows or should know that investigation is contemplating crime or will turn into investigation that is criminal in nature, Miranda rights must be read immediately. Point at which information-gathering process for accident becomes for purpose of obtaining information related to crime is to be determined on case-by-case basis.

RELATED CASES: Wahl, 148 N.E.3d 1071 (Ind. Ct. App. 2020) (questioning during consensual video reenactment do not amount to custodial interrogation where the officer's inquiry is merely general on-the-scene questioning as to facts surrounding a crime or other general questioning of citizens in the fact-finding process).

TITLE: Morris v. State
INDEX NO.: I.2.a.1.
CITE: (4th Dist., 08-16-07), Ind. App., 871 N.E.2d 1011
SUBJECT: Miranda violation - custodial interrogation at police station
HOLDING: In Class A felony battery/child neglect prosecution, Tr. Ct. erred in admitting D's statements to police into evidence. D was subjected to three police interviews & was at police station for several hours before she finally confessed. After the second interview, which was obtained after D was told that it would be in her "best interest" to speak, & which was obtained in part based on promise that D would be able to go home afterwards, she nevertheless was approached yet again & asked to talk further. At this point, a reasonable person in D's position would not have felt free to resist the entreaties of the police at that time, thus she was in custody when she gave her inculpatory statements to third police officer. In finding that D was in custody, Ct. distinguished Luna v. State, 788 N.E.2d 832 (Ind. 2003). Further, mere fact that a person is not placed in handcuffs or otherwise physically restrained by the police does not necessarily mean a person is not in custody. Sellmer v. State, 842 N.E.2d 358 (Ind. 2006). Although neither interview room doors nor door leading out from secured area of police station were locked from inside, it is unclear how this would be readily apparent to a layperson who on three previous occasions had been led through a locked door into the inner part of the station & on two previous occasions had been escorted back out to the lobby by a police officer. D should have been advised of her Miranda rights when third officer began his interview of her, but she was not. D's post-Miranda, recorded statement was likewise inadmissible, as "question first-warn later" interrogation technique has been disapproved by Missouri v. Seibert, 542 U.S. 600, 124 S.Ct. 2601 (2004). Held, convictions reversed.

RELATED CASES: Kelly, 997 N.E.2d 1045 (Ind. 2013) (inculpatory statements D made to police were obtained through "question first, warn later" tactic disapproved in Seibert and were thus inadmissible); S.D., 937 N.E.2d 425 (Ind. Ct. App. 2010) (although the detective informed the juvenile he was not under arrest and could leave at any time, he was interrogated for one and a half hours in a twelve-by twelve-foot room, accused of lying and molesting and read his Miranda rights; as soon as juvenile confessed, the detective placed him in handcuffs; the juvenile was in custody which required meaningful consultation with his guardian); C.L.M., App., 874 N.E.2d 386 (Tr. Ct. abused its discretion in admitting nine-year-old D's statements into evidence because he was in custody & should have been given a Miranda warning before making statements to police officer at child advocacy center).

TITLE: People v. Elmarr
INDEX NO.: I.2.a.1.
CITE: 181 P.3d 1157 (Colo. 2008)
SUBJECT: D subject to custodial interrogation despite not being physically restrained
HOLDING: Colorado Supreme Court held a D who was asked if he would mind accompanying detectives to a police station to talk about his former wife's death, and who was never physically restrained, was nevertheless subjected to custodial interrogation for purposes of Miranda. Two detectives visited D at his home to inform him that his former wife had been found dead. After speaking with D, they asked him if he would mind accompanying them to the sheriff's department for further questioning, D agreed, and he was driven to the station in the back of an unmarked police car. The car was parked in a secure, non-public garage in the basement and D was escorted to an area of the building that was also not open to the public. He was subjected to a pat-down search upon arrival and placed in a small closed interview room, although he at no time was handcuffed. D was given incomplete Miranda warnings. After speaking with officers for a while, D said that he would like to talk to a lawyer. Officers terminated questioning at this point and left D in the room. When they returned, they asked D if he wanted to take a polygraph, which he refused. A short while later, officers told him he had to remove his clothes to allow photographs to be taken of his body. Finally, he was allowed to call a lawyer while he remained in the interview room until his attorney arrived. Majority called case a "close question," but it decided that the totality of the circumstances combined to create a "custodial atmosphere." Although D was merely asked to accompany police to the station for questioning, such a question can be interpreted as allowing no answer but "yes." Majority relied on fact D was transported in the back of the vehicle and interrogated in a small, closed-door interview room, without being told that he was under arrest or that he was free to leave. Majority also characterized interrogation in case as "aggressive," noting officers expressed doubts regarding his truthfulness, discounted his denials, confronted him with potential evidence of his guilt, and accused him of committing murder. Two separate dissents were entered.

TITLE: Salinas v. Texas

INDEX NO.: I.2.a.1.

CITE: (6/17/2013), 133 S. Ct. 2174 (US Sup. Ct. 2013)

SUBJECT: Use of pre-Miranda silence doesn't violate 5th Amendment right against self-incrimination

HOLDING: Where petitioner had not been put under arrest or in custody and had not been given Miranda warnings, his silence in response to a question from police does not violate the 5th Amendment privilege against self-incrimination. Petitioner voluntarily answered several questions from a police officer who was investigating a murder. When the officer asked whether a ballistics test would show that shell casings found at the scene would match his shotgun, petitioner balked, looking down at the ground, biting his lip and generally tightening up but saying nothing. After a few moments, the officer asked additional questions and petitioner answered them. At petitioner's later trial on the murder charge, over his objection, his silence in response to the question about the shotgun shells was admitted as evidence of guilt. Petitioner argued on appeal that this use of his pre-arrest, pre-Miranda silence violated his 5th Amendment privilege against self-incrimination. The Court does not reach that issue, finding that petitioner did not invoke the privilege during his interview. The 5th Amendment privilege against self-incrimination is not self-enforcing, and an individual seeking its protection must invoke it at the time he relies upon it. This requirement puts the government on notice that a witness intends to rely on the privilege, so that they can either argue that the testimony sought is not self-incriminating or cure any potential self-incrimination through a grant of immunity. The Court has recognized two exceptions to the requirement that a witness invoke the privilege, neither of which applies here. The first is a recognition that a D need not take the stand to assert the privilege at his own trial, but rather has an absolute right not to testify. The second exception applies where government coercion renders forfeiture of the privilege involuntary. Neither of these exceptions applies here. Petitioner argues that a third exception should be recognized where police have reason to believe that a response to their question(s) would be incriminating. The Court rejects this invitation, noting that petitioner may have remained silent for other reasons, such as embarrassment, a desire to protect someone else, or needing time to think up a "good lie." Petitioner alone knew why he did not answer the officer's question, and it was his burden to put the state on notice if he was invoking the privilege.

RELATED CASES: Mira, 3 N.E.3d 985 (2014) (testimony about D's pre-arrest, Pre-Miranda silence did not violate his 5th Amendment right against self-incrimination; such testimony violates this right only if D unambiguously invoked his right to remain silent).

TITLE: Scanland v. State
INDEX NO.: I.2.a.1.
CITE: (12-19-19) 139 N.E.3d 237 (Ind. Ct. App.)
SUBJECT: Defendant not subject to custodial interrogation, statements were properly admissible
HOLDING: Defendant was on parole with terms that prohibited him from being intoxicated or possessing a controlled substance as well as a term allowing for the reasonable search of his residence. After a dispute with his neighbor, Defendant and his girlfriend visited police headquarters for assistance and during the course of the visit, they both became upset and caused a disturbance. A parole agent heard the disturbance and asked Defendant to come to his office and to take a drug test. Defendant, still agitated, stated that he would not take a test and that he was "dirty" and had been using methamphetamine. After Defendant's refusal to submit to a urine screen, the agent handcuffed him and began to complete a form requesting a warrant for Defendant's arrest. Defendant then, without prompting, made several more incriminating statements including describing where his drug pipe was hidden in his residence. Officers accompanied Defendant to his home and found two pipes with methamphetamine residue. The Court of Appeals held that although he was in custody after the agent handcuffed him, he was not subjected to interrogation and nothing the agent did or said was the functional equivalent of interrogation and his statements were voluntary and properly admissible. The Court also held that the search of his home was reasonable under the terms of his parole release agreement because it was supported by his statements.

TITLE: Stansbury v. California
INDEX NO.: I.2.a.1.
CITE: 511 U.S. 318, 114 S.Ct. 1526, 128 L.Ed.2d 293 (1994)
SUBJECT: Miranda - custody; suspect
HOLDING: Officer's subjective, undisclosed view regarding whether person being interrogated is suspect is irrelevant to assessment whether person is in custody. D was arrested for & convicted of raping & murdering 10-year-old girl. Before arrest, police asked him to come in for interview because they had learned that victim had visited D's ice cream truck on day of her disappearance, & they believed he might be potential witness. During interview, however, officers learned that on night of killing D had driven turquoise car matching description of car from which witness had seen body dumped, & further that D had prior convictions for rape, kidnaping, & child molesting. At point of learning of prior convictions, police administered Miranda warnings. D filed motion to suppress all statements made during interview, as well as evidence discovered as result of those statements. Tr. Ct. denied motion, reasoning that D was not suspect, & thus not in custody & in need of Miranda warnings, until officer learned what kind of car D had driven on night of killing. CA S.Ct. affirmed. U.S.S.Ct. disagrees, writing that in determining whether individual was in custody, court must examine totality of circumstances surrounding interrogation, but ultimate inquiry is simply whether there was formal arrest or restraint on freedom of movement of degree associated with formal arrest. This determination depends on objective circumstances of interrogation, not on subjective views of either officers or subject. Only reasonable inquiry is how reasonable man in subject's position would have understood situation. Officers' subjective view regarding whether subject is suspect are relevant only if they are disclosed to subject, & then only to extent they would affect how reasonable person in subject's position would gauge breadth of his or her freedom to leave. Held, reversed & remanded for appropriate determination whether interrogation was custodial. Per curiam.

RELATED CASES: Howes v. Fields, 132 S.Ct. 1181 (2012) (determining custody is fact-sensitive; Court struck down 6th Circuit categorical rule that a prisoner will always be in custody if removed from an institution’s general population and questioned about acts occurring outside the institution).

TITLE: State v. Ashley
INDEX NO.: I.2.a.1.
CITE: (5th Dist., 12-28-95), Ind. App., 661 N.E.2d 889
SUBJECT: Use of confidential informant in jail
HOLDING: D's fifth & sixth amendment rights were not violated when he made statements to confidential informant who visited D while incarcerated on unrelated charges. During visits, D instructed informant to conceal & remove stolen property from basement of house where they resided. Conversations between D & informant did not violate fifth amendment privilege against self-incrimination, because D was not coerced into giving statements in police-dominated atmosphere, & Miranda doctrine is not implicated when suspect is questioned by undercover agent while in jail. Illinois v. Perkins, 496 U.S. 292, 110 S.Ct. 2394 (1990). Although D had previously invoked sixth amendment right to counsel on unrelated charges, Ct. held that fifth amendment right to counsel was not violated. Assertion of Miranda right to counsel cannot be inferred from invocation of sixth amendment right to counsel on different charges. McNeil v. Wisconsin, 501 U.S. 171, 111 S.Ct. 2204. Held, reversed & remanded.

NOTE: See card at I.3.a. re: 6th Amendment issue.

RELATED CASES: Wells, 30 N.E.3d 1256 (Ind. Ct. App 2015) (fact that D was on home detention when he made incriminating statements to an informant who was recording the conversation did not create a custodial interrogation that required Miranda warnings).

TITLE: State v. Aynes
INDEX NO.: I.2.a.1.
CITE: (5th Dist., 8-31-99), Ind. App., 715 N.E.2d 945
SUBJECT: Miranda warnings required - custodial interrogation at police station
HOLDING: Law enforcement officer cannot circumvent Miranda rule simply by telling D during interrogation that he will not be placed under arrest at that time. D does not necessarily have to be under arrest before duty to give Miranda warnings will attach. Thompson, App., 692 N.E.2d 474. In this case, Tr. Ct. did not abuse its discretion in suppressing D's videotaped statement, as there was substantial evidence to support determination that D was subject to custodial interrogation. D came to sheriff's department at detective's request after detective had informed him that "an allegation" had been made against him. Interview took place in small interrogation room located in secured area, not open to public. Detective told D that he believed allegations of child molesting were true & did not inform D that he was free to leave or that he did not have to answer questions. State argued that D was not in custody when he gave his statement, & that detective was therefore not required to provide him with Miranda warnings. Ct. disagreed & held that interrogation under these circumstances constituted significant deprivation of freedom sufficient to require Miranda warnings. In so holding, Ct. relied on Dickerson 257 Ind. 562, 276 N.E.2d 845 & Johnson, App., 484 N.E.2d 49. Held, judgment affirmed.

RELATED CASES: Luna, 788 N.E.2d 832 (a person who goes voluntarily for a police interview, receives assurances that he is not under arrest, & leaves after interview is complete, has not been taken into "custody" by virtue of energetic interrogation so as to necessitate Miranda warnings; Dickerson overruled).

TITLE: State v. Hicks
INDEX NO.: I.2.a.1.
CITE: (5th Dist., 03-12-08), 882 N.E.2d 238 (Ind. App.)
SUBJECT: Miranda - D not in custody when asked who was driving
HOLDING: Tr. Ct. erred in granting D's motion to suppress her admission to police officer that she had been driving. Officer was dispatched on a report of a truck stopped on railroad tracks. When officer arrived at the scene, he observed a group of people standing fifteen feet away from an unoccupied truck, which was stopped on railroad tracks. Officer spoke with Christina Shinn and three other individuals, who stated that they did not know who had been driving the truck. During this conversation, D pointed at Shinn and stated that Shinn had been driving the truck. Officer smelled alcohol on D and observed signs of intoxication. Officer then focused his investigation on D, and after asking her five times who was driving the truck, D admitted that she was driving.

Court held that D was not subject to custodial interrogation when questioned as to who was driving the vehicle, thus Miranda warnings were not required. In so holding, Court disregarded police officer's testimony that he would not have let D leave because he never said those words to her on the scene. Court held that requirements of Miranda do not apply beyond coercive custodial interrogation, noting that "nothing in the nature of the encounter indicates the questioning 'was conducted under circumstances of intimidation.'" Zook v. State, 513 N.E.2d 1217 (Ind. 1987). Encounter in this case was substantially similar to a traffic stop. Officer did not restrain D or use coercive tactics, but merely asked D five times who was driving. Moreover, questioning took place in a public setting in front of other individuals. Yarborough v. Alvarado, 541 U.S. 652 (2004). Questioning an individual the police suspect of a crime does not inherently render the questioning custodial interrogation requiring Miranda warnings. Held, judgment reversed and remanded for further proceedings.

HOLDING: Ramirez-Vera, 144 N.E.3d 735 (Ind. Ct. App., 3/17/20) (D was not in custody when she told officer she had driven earlier in the evening but that she had had too much to drink so she pulled over to sleep); Hudson, 129 N.E.3d 220 (Ind. Ct. App. 2019) (while D was in custody, the officer's initial question trying to determine location of gun amounted to an inquiry into the facts of the situation, not police interrogation, and did not require a Miranda advisement.

TITLE: State v. Holt
INDEX NO.: I.2.a.1.
CITE: 132 Ohio App.3d 601, 725 N.E.2d 1155 (Ohio Ct. App. 1997)
SUBJECT: Custodial Interrogation of "witness"
HOLDING: Person in custody on one offense is entitled to Miranda warnings before being questioned about another offense, even if his status with respect to latter offense is that of witness rather than suspect. Bright line rule favoring warnings protects constitutional interests Miranda is intended to serve and saves police and courts trouble of determining exactly when person's status changes from witness to suspect.

TITLE: State v. McClain
INDEX NO.: I.2.a.1.
CITE: (4th Dist. 12/15/82), Ind., 442 N.E.2d 1131
SUBJECT: Miranda warnings - appearance before judge
HOLDING: Procedural safeguards of Miranda apply only to "custodial interrogation" (CI).

Minneman, 441 N.E.2d 673 & cases cited therein. Staton, 428 N.E.2d 1203 adopted RI v. Innis (1980), 446 U.S. 291, 100 S.Ct. 1682, 64 L.Ed.2d 297 definition of interrogation (I): person in custody subjected to express questioning or functional equivalent. Here, D told judge he did the robberies because he needed money; therefore, he could not hire an attorney. Special judge granted D's motion in limine to exclude confession (C), apparently relying upon US v. Dohm (CA5 1980), 618 F.2d 1169. In Dohm, D was granted a new trial excluding his C made to judge at bail hearing because warnings given D were confusing ("the law says that testimony here really should be used against you at future proceedings but I don't know how that can be done. Technically they won't use it"). McClain was acquitted of robbery charge. State appeals reserved question of law, Ind. Code 35-1-47-2. Tr. judges should inform Ds at similar hearings that they should have counsel, should not speak to merits of offense, what they do say may be used against them. Finding no CI, court rules D's motion in limine to exclude C should not have been granted. Court relies on Johnson, 380 N.E.2d 1236 (C in response to question "What happened?" admissible, as question constituted greeting rather than I); Nading, 377 N.E.2d 1345 (statement made by D to officer completing routine paperwork admissible); Bugg, 372 N.E.2d 1156 (C made to officer who had known D for years admissible, as officer came to console rather than I D); New, 259 N.E.2d 696 (C to murder made by D, in custody for public intoxication, when asked his name admissible). **NOTE**: State's appeal of reserved question of law has no effect upon D's acquittal.

TITLE: State v. Ruiz
INDEX NO.: I.2.a.1.
CITE: (06-03-19), Ind. 123 N.E.3d 675
SUBJECT: D's statements properly suppressed -- custodial interrogation without Miranda warnings
HOLDING: Substantial, probative evidence supported trial court's conclusion that Defendant was subjected to custodial interrogation in isolated room at station house, entitling him to Miranda warnings which he did not receive. The totality of circumstances surrounding the interrogation would make a reasonable person feel not free to end the questioning and leave. Although first detective told Defendant he could walk out "that door" at any time, the officers told Defendant to "sit tight" multiple times, belying any prior indication that Defendant was free to leave police station. Second, the path by which detective took Defendant into interrogation room "drew a labyrinthine exit rout with many obstructions to egress." Finally, and most importantly, police significantly undercut any initial message of freedom when they dramatically changed the interrogation atmosphere. And overall, the station-house questioning included the coercive pressures that Miranda targeted. Second detective entered room and assumed role of main interrogator, employing subterfuge and a more aggressive style. Officers intimated that Defendant's fate was in their hands and engaged in prolonged, persistent and accusatory questioning that focused on encouraging Defendant to admit to the officer's description of the wrongdoing. Thus, Court affirmed suppression of his statements.

RELATED CASES: Atkins, 143 N.E.3d 1025 (Ind. Ct. App. 2020).

TITLE: State v. Veiman
INDEX NO.: I.2.a.1.
CITE: 249 Neb. 875; 546 N.W.2d 785 (Neb. 1996)
SUBJECT: Miranda - Custody; Offer to Drive Suspect to Hospital
HOLDING: Where police officer knew that D had been involved in car accident, statement, "Why don't you just get into my car and I'll take you [to the hospital]" created custodial situation. Officer had been attempting to question D, who was sitting in his father's car, when D's father said they needed to leave to get D to a hospital because he had a head wound. At that point, Officer made above statement. Under circumstances, it was not an "offer," but an instruction from a police officer. Further, when officer began questioning D during ride to hospital, no reasonable person would have felt free to leave. Evidence obtained during ride to hospital should have been suppressed because officer failed to advise suspect of Miranda rights.

TITLE: U.S. v. Clemons
INDEX NO.: I.2.a.1.
CITE: 201 F.Supp. 142 (U.S.D.Ct. D.C. 2002)
SUBJECT: Terry Stop May Trigger Miranda
HOLDING: Fact that officer's encounter with D was valid Terry scope and detention did not exceed scope of Terry did not mean that suspect was not in custody for Miranda purposes. Officers heard what sounded like car wreck and saw D driving with two flat tires. Officers pulled D over, and passenger ran from car. Officers ordered D to stay in car until they caught passenger, at which time they ordered him out of car, handcuffed him, and ordered him to sit on ground. At Terry's inception, stops usually involved no more than a brief detention and a few questions relating to identity and circumstances. Court reasoned, however, that as officers encounter situations fraught with increasing danger, handcuffs and drawing of weapons may be reasonable under Terry. But reasonableness for 4th Amendment purposes does not mean they are not custodial for Miranda purposes. Any reasonable person handcuffed and forced to sit on ground would have believed he was not free to leave, and custodial nature of encounter required giving of Miranda warnings.

TITLE: U.S. v. Jacobs
INDEX NO.: I.2.a.1.
CITE: (12/14/05), 3d Cir., No. 04-2214
SUBJECT: Informant Questioned in FBI Handler's Office was in Miranda Custody
HOLDING: A police detective who called an informant into his office and confronted her about whether she was acting as a courier for a drug trafficker she was investigating should have given her Miranda warnings. The officer here called the informant in without explanation and had her and her 5-year-old child wait in his office interview room for 30 minutes, then confronted her with suitcases seized from the drug trafficker. The 3d Circuit held that the informant was in custody for Miranda purposes, considering the following factors: (1) the questioning took place at the FBI office; (2) the informant was summoned to the office without explanation; (3) the defendant felt obligated to come in and to stay at the questioning because she was under the impression she was still operating as an informant; (4) the informant was not explicitly told she was not under arrest before the questioning began; (5) the detective used interrogation tactics, including confronting the informant with the seized suitcases; and (6) the detective told the informant he believed she was guilty.

TITLE: United States v. Mittel-Carey
INDEX NO.: I.2.a.1.
CITE: 456 F.supp.2d 296 (D. Mass 2006)
SUBJECT: Detention and questioning violated Michigan v. Summers
HOLDING: The U.S. District Court for the District of Massachusetts held that the detention and questioning of a suspect during the execution of a search warrant exceeded the scope of the limited seizure permitted by the Fourth Amendment in Michigan v. Summers, 452 U.S. 692 (1981), and should have been preceded by Miranda *warnings. The police searched D's house based on an investigation that had uncovered* D's attempt to transmit at least three images of child pornography. It was undisputed that the federal agents did not read the Miranda warnings to D. The question presented was whether the agents were required to do so during the course of a Summers detention. The court rejected the argument that an agent's inquiry as to where additional items of child pornography might be found was in furtherance of the search, consistent with the stated rationales in Summers. The inquiry asked D to inculpate himself. After assessing the situation in its entirety, the court held that a reasonable person in D's position would think that he was in custody. Although he was in his own home when the interrogation began, the atmosphere was entirely police-dominated and more tense than a typical police inquiry at one's residence. A police officer not only made the suspect aware of the evidence against him, but also gave him the impression that it was fairly clear that he would be going to prison. Any self-incriminating statements he made that morning were therefore suppressed.

TITLE: Vanzyll v. State
INDEX NO.: I.2.a.1.
CITE: (12/4/2012), 978 N.E. 2d 511 (Ind. Ct. App 2012)
SUBJECT: Incarcerated D not subject to custodial interrogation
HOLDING: D, who was incarcerated pending trial on drug dealing charges, was not "in custody" for purposes of Miranda when jail guard questioned him regarding a letter he sent to his girlfriend who was also incarcerated. An interrogation is not per se custodial when a prison inmate is questioned in private, even regarding events that occurred outside the prison. Howes v. Fields, 132 S.Ct. 1181 (2012).

Here, D acknowledged writing the letter, which implicated him in the offense. Jail guard did not question D about incriminating statements contained in letter, but limited his questioning to whether D wrote the letter and whether it was intended for a female inmate. Although D was not free to leave his cell, he was not made to feel uncomfortable or coerced during the brief interview. Under these facts and circumstances, D was not in custody for purposes of Miranda. Held, judgment affirmed in part and reversed in part on other grounds.

TITLE: Zook v. State
INDEX NO.: I.2.a.1.
CITE: (10/14/87), Ind., 513 N.E.2d 1217
SUBJECT: Right to counsel - custodial interrogation
HOLDING: Where D agreed to go to police station, voluntarily accompanied 2 fire investigators into closed room, & was told he was not under arrest, interrogation was not custodial & right to counsel had not accrued. D had been read Miranda warnings & had signed waiver. During interview, before confession, D asked investigators, "Shouldn't I wait 'til I get a lawyer?" Court does not reach question whether D sufficiently invoked right to counsel, finding that right had not accrued. Right to counsel accrues only upon custodial interrogation. Miranda. Here, D's freedom had not been significantly restricted so as to place him in custody. See OR v. Mathiason (1977), 429 U.S. 492, 97 S.Ct. 711, 50 L.Ed.2d 714; CA v. Beheler (1983), 463 U.S. 1121, 103 S.Ct. 3517, 77 L.Ed.2d 1275.

I. CONFESSIONS/ INTERROGATIONS

I.2. Miranda warnings (5th Amend)

I.2.a.2. Interrogation/ volunteered statements (Rhode Island v Innis)

TITLE: Bailey v. State
INDEX NO.: I.2.a.2.
CITE: (2/4/85), Ind., 473 N.E.2d 609
SUBJECT: Miranda warnings - effect on subsequent interrogations
HOLDING: Tr. Ct. did not err in admitting D's confession. Here, D contends that detective's question in elevator "what are you doing in here," to which D responded, was interrogation & that later confession should have been suppressed. Court looks to totality of facts/circumstances to determine if waiver of rights was intelligently made. Tawney 439 N.E.2d 582. D was advised of rights at scene where arrested. D was well acquainted with criminal justice system, having been convicted of 7 felonies. D signed waiver of rights & confessed following conversation in elevator. Post-waiver confession was not inadmissible because waiver was intelligently made. Held, no error. Prentice CONCURS IN RESULT.

TITLE: Broome v. State
INDEX NO.: I.2.a.2.
CITE: (5th Dist., 11-14-97), Ind. App., 687 N.E.2d 590
SUBJECT: Miranda warnings - no interrogation
HOLDING: Miranda warnings were not required because D's comments, although made while he was held in custody, were not products of interrogation. If officers do not expressly question or act in any way that officers should know is reasonably likely to elicit incriminating response from suspect, it is not necessary for accused to be advised of his rights because Miranda is not triggered. Here, D relayed to officer facts of his case after D asked officer if he would be guilty under self-defense theory. Officer responded that D needed to talk to lawyer & it depended on facts of his case. In addition, in response to another officer's question asking D if he would like to talk to reporters, D stated he would like to go on television so he could explain why he "popped" victim. Lastly, D was overheard telling another inmate that he killed homosexual man. In all three instances, officers never did anything to elicit incriminating response from D. Because D was not subject to interrogation, D's statements were not given in violation of Miranda. Held, conviction affirmed.

RELATED CASES: C.D., 947 N.E.2d 1018 (Ind. Ct. App 2011) (although juvenile was detained by school administrator and security officer in police uniform for educational purpose, i.e., to keep possibly intoxicated students out of the classroom, environment was not coercive and juvenile was not undergoing custodial interrogation when he answered officer's questions and made incriminating admissions; see full review at I.5.a); P.M., App., 861 N.E.2d 710 (although juvenile D was "in custody" by police at time he made incriminating statements, he was not being subjected to interrogation at time; it was employee of theft victim who asked D question, thus protections of Ind. Code 31-32-5-1 did not apply); Lawson, App., 803 N.E.2d 237 (excise police officer did not have to give Miranda warnings in investigation of minor consumption of alcohol prior to asking D his age, even though D's age was material element of crime officer was specifically investigating); Richardson, App., 794 N.E.2d 506 (although D was in custody, his statement to booking officer was not product of interrogation, thus Miranda rights were not required).

TITLE: Castillo-Aguilar v. State
INDEX NO.: I.2.a.2.
CITE: (01-20-12), 962 N.E.2d 667 (Ind. Ct. App 2012)
SUBJECT: Custodial interrogation - "information sheet" at police station
HOLDING: When D was arrested for driving without a license, he was asked to fill out an "information sheet" at the police station. He was not given the Miranda advisements. The answers he gave to questions on the "information sheet" led police to investigate his employment and immigration status, which eventually resulted in a prosecution and conviction for class C felony forgery for providing a false name on an I-9 form to secure employment. Routine identification questions such as requests for D's name and age do not require Miranda warnings, but some of the questions on the "information form," such as length of residence and name of car insurance company, indicated that the form was used for investigative purposes. D was "interrogated" for purposes of Miranda and should have been given the required advisements prior to filling out Information Sheet. As he was not, the answers he provided on the Information Sheet and evidence collected as a result of those answers should be suppressed. Held, denial of motion to suppress reversed.

RELATED CASES: Matheny, 983 N.E.2d 672 (Ind. Ct. App 2013) (fact that officer asked D twice for address and that address was used against him at trial did not make the questioning an interrogation).

TITLE: Drummond v. State
INDEX NO.: I.2.a.2.
CITE: (2nd Dist., 7-26-05), Ind. App., 831 N.E.2d 781
SUBJECT: Miranda violation - two-part interrogation
HOLDING: In child molesting prosecution, Tr. Ct. abused its discretion when it admitted D's tape-recorded statement into evidence. As part of investigation of incident involving D's niece, police officer interviewed D while he was incarcerated for unrelated child molesting conviction. D was not given Miranda warnings prior to his interview with officer. D spent two hours discussing incident for which he was incarcerated before officer brought up niece, which was real reason he was interrogating D. Only after officer had elicited an incriminating statement from D did he turn on tape recorder & give D a Miranda warning.

In Missouri v. Seibert, 542 U.S. 600, 124 S.Ct. 2601, 159 L.Ed.2d 643 (2004), U.S. S.Ct. disapproved of police tactic of circumventing Miranda by delaying the required warnings until after a suspect in custody has already confessed, then warning & re-interrogating the suspect to get another, arguably admissible confession. Two-part interrogation in this case appears to be exactly of the character that Seibert Ct. sought to avoid. It would be unrealistic to treat "two spates of integrated & proximately conducted questioning as independent interrogations subject to independent evaluation simply because Miranda warnings formally punctuate them in the middle." Seibert, 124 S.Ct. at 261. Held, conviction reversed & remanded for further proceedings.

RELATED CASES: Kelly, 997 N.E.2d 1045 (Ind. 2013) (inculpatory statements D made to police were obtained through "question first, warn later" tactic disapproved in Seibert and were thus inadmissible); Payne, App., 854 N.E.2d 7 (in triple murder prosecution, Tr. Ct. abused its discretion by admitting into evidence D's full statement to police where majority of statement was obtained prior to Miranda advisement & remaining portion of statement was obtained without a voluntary waiver of her Miranda rights); Maxwell, App., 839 N.E.2d 1285 (Seibert should not be be extended to cover situations where police have any conversation with a suspect without giving Miranda warnings; record not only contained no pre-Miranda confession but contained no suggestion that any officer interrogated D prior to Miranda warnings).

TITLE: Franks v. State
INDEX NO.: I.2.a.2.
CITE: (Ga. S.Ct., 7/14/97), 268 Ga. 238, 486 S.E.2d 594
SUBJECT: Miranda -- Interrogation
HOLDING: Officer engaged in interrogation by asking stabbing D reason for bandage on his arm. Considered in context, question did not qualify as routine booking question to which strictures of Miranda do not apply. To reasonable person in D's position, question would have seemed to be interrogation. Government's explanation that officer was prompted by belief that D had been injured during arrest and might sue is less than convincing, particularly since officer knew that D was reported to have been injured at time of crime.

TITLE: French v. State
INDEX NO.: I.2.a.2.
CITE: (7/12/89), Ind., 540 N.E.2d 1205
SUBJECT: Miranda warnings - polygraph exam is not custodial interrogation
HOLDING: Tr. Ct. did not err in permitting evidence of D's confession to go to jury. D was convicted of murdering 12-year-old girl. Victim had been last seen playing with D, & her body was found in vacant lot next to D's home. Police arranged for voluntary polygraph testing of 5 people, including D & his sister, at private facility run by off-duty police officer. Although majority does not mention it, D was 13-year-old with learning disabilities. D was not given Miranda warnings before exam began. D was examined by off-duty officer, in presence of uniformed officer, & during course of exam, operator told 2d officer that D was not telling truth. On hearing this remark, D burst into tears & stated that he was telling truth. At this point, D was released from machine, & although majority does not mention it, as he was released his mother came into room & D threw himself into her arms & told her he had had something to do with murder. D's mother was told that D should be taken to police headquarters, & was given option of taking him herself or letting uniformed officer do so. D's mother allowed officer to take D to headquarters, where he was placed under arrest. After D's parents arrived, he was given Miranda warnings, & thereafter confessed to murder. At trial & on appeal, D argued that he should have been given Miranda warnings before polygraph exam, & that confession should have been suppressed as fruit of that unlawful examination. Majority holds that Miranda warnings were not required because polygraph exam was not custodial interrogation, noting that warnings were given before D confessed while in custody. DeBruler & Dickson, J.J., DISSENT, discussing facts & law.

TITLE: Furnish v. State
INDEX NO.: I.2.a.2.
CITE: (2nd Dist., 12-6-02), Ind. App., 779 N.E.2d 576
SUBJECT: Miranda warnings - custodial interrogation
HOLDING: In context in which it was made, police officer's statement, "damn, Delbert, where'd you get all the money" constituted interrogation at time when D was handcuffed, searched incident to arrest, but had not been Mirandized. Thus, Tr. Ct. abused its discretion when it admitted D's statement at trial. Conceding that D was in custody at time exchange between D & officer occurred, State argued that in making statement, officer was not attempting to elicit incriminating response from D but was merely making an observation. Ct. disagreed, noting that due to fact that D was handcuffed, under arrest, had been searched, & was obviously in trouble with law, officer's question was investigatory in nature, particularly considering fact that police had no idea that liquor store D ran from had been burglarized. Officer was trying to discover where D had obtained wrapped currency removed from his boot & why he ran from officers. Under facts apparent at time, officer should have known that his statement was reasonably likely to elicit an incriminating response. Therefore, officer's question constituted interrogation, & D's response, given before he was Mirandized, was unlawfully obtained & should not have been admitted at trial. Admission of statement was not harmless error, because only direct evidence that D committed burglary was his own statement. Held, conviction reversed & remanded for new trial.

RELATED CASES: Baker, 111 N.E.3d 1146 (Ind. Ct. App 2018) (D was in custody and un-Mirandized at time he answered officer's question (that he ran because he was scared), but erroneous admission of question and response was harmless error).

TITLE: Hicks v. State
INDEX NO.: I.2.a.2.
CITE: (3/11/2014), 5 N.E.3d 424 (Ind. Ct. App 2014)
SUBJECT: Confession admissible where D confessed after being read Miranda rights
HOLDING: In murder prosecution, Tr. Ct. did not abuse its discretion by admitting into evidence two recorded statements to police in which D admitted to killing his girlfriend. D agreed to accompany officers to the police station and answer their questions. When he admitted to having been in an argument with victim, officers began to suspect D in the murder and therefore stopped the interrogation and gave D a Miranda warning before he confessed. In an interview the next day, before which he was again Mirandized, D gave more details about the argument and his actions.

At suppression hearing, D testified that he told the investigating officers, "I think I should talk to an attorney." Although this alleged request for counsel was uncontroverted, Tr. Ct. was not required to credit D's self-serving testimony.

Court also rejected D's argument that his confession should be suppressed because police engaged in the "question-first, Mirandize-later" tactic criticized in Missouri v. Seibert, 542 U.S. 600 (2004), where police purposefully withhold Miranda warnings until after the suspect confesses. But this is not what happened in this case. Because D did not confess prior to being read his Miranda rights, Seibert is inapplicable. Maxwell v. State, 839 N.E.2d 1285 (Ind. Ct. App 2005). Therefore, the statements he made about beating and stabbing his girlfriend were admissible. Held, judgment affirmed.

RELATED CASE: Reid, 113 N.E.3d 290 (Ind. Ct. App 2018) (no custodial interrogation where D was questioned in her driveway about drinking, driving and damage to her car).

TITLE: Hill v. State
INDEX NO.: I.2.a.2.
CITE: (11/28/84), Ind., 470 N.E.2d 1332
SUBJECT: Miranda - waiver of rights; volunteered statement
HOLDING: Tr. Ct. did not err in allowing into evidence D's statement made to police after Miranda warnings. Here, D said he wished to talk with officer, asked about molestation charge & stated he had touched child but did not rape her. Any statement made freely, voluntarily & without any compelling influence is admissible evidence. RI v. Innis (1980), 446 U.S. 291, 100 S.Ct. 1682, 64 L.Ed.2d 297; Roberts v. US (1980), 445 U.S. 552, 100 S.Ct. 1358, 63 L.Ed.2d 622. Ct. finds D's statement was not coerced. Held, no error.

RELATED CASES: Hicks, 609 N.E.2d 1165 (where D is in custody but makes wholly volunteered & unsolicited statement, Miranda is not applicable); State v. Bowen, App., 491 N.E.2d 1022 (D was not given Miranda warnings; Ct. finds D's unsolicited, volunteered confession was product of remorse, not result of any compulsion by police; case contains good review of Ind. case law).

TITLE: King v. State
INDEX NO.: I.2.a.2.
CITE: (2nd Dist., 12-30-05), Ind. App., 844 N.E.2d 92
SUBJECT: Miranda violation - "question-first, Mirandize later" tactic
HOLDING: In arson prosecution, Tr. Ct. erred by denying D's motion to suppress statements he made during police interview. State argued that D was not in custody at time of interview at jail because he was not initially a suspect in the investigation & he was not in a situation where he would feel compelled to talk. However, fact that officer considered D merely a witness & not a suspect is irrelevant to court's evaluation of whether he was in custody. Rather, circumstances surrounding interview may have conveyed the opposite message. Because of D's incarceration on an unrelated offense, questioning took place in an interview room at jail. Moreover, record did not indicate whether detectives ever told D that he was free to leave interview room. Under totality of circumstances, a reasonable person in D's position would not have believed himself to be free to leave but would instead have considered his freedom of movement to have been restrained. Thus, because D was subjected to custodial interrogation without benefit of Miranda warning, his pre-Miranda statements are inadmissible & should be suppressed.

As in Drummond v. State, 831 N.E.2d 781 (Ind. Ct. App 2005), D's post-Miranda statements that he made during interview were likewise inadmissible because D only received Miranda warnings after he was subjected to a custodial interrogation & had made some incriminating statements. Only after detective had elicited incriminating statements from D did he turn on tape recorder & give D a Miranda warning. In Missouri v. Seibert, 542 U.S. 600, 124 S.Ct. 2601, 159 L.Ed.2d 643 (2004), U.S. S.Ct. disapproved of police tactic of circumventing Miranda by delaying the required warnings until after a suspect in custody has already confessed, then warning & re-interrogating the suspect to get another, arguably admissible confession. The two-part, "question-first, Mirandize-later" interrogation technique used in this case appears to be exactly of the character that the Seibert court sought to avoid. Thus, Tr. Ct. erred by refusing to suppress D's post-Miranda disclosures. Held, denial of motion to suppress reversed.

RELATED CASES: Jones, App., 866 N.E.2d 339 (even if detective advised D that he was aware of D's prior statements to polygraph examiner & probation officer, such a statement is not same as a lengthy interrogation by police officers to obtain a confession without first Mirandizing the individual, in violation of Seibert).

TITLE: Lee v. State
INDEX NO.: I.2.a.2.
CITE: (12/21/88), Ind., 531 N.E.2d 1165
SUBJECT: Confession - voluntariness
HOLDING: Tr. Ct. did not err in denying D's motion to suppress statements made to police at police station. D was apprehended in restroom at scene of burglary, & was read Miranda warnings. D was then taken to police station where he was again read Miranda warnings & signed the form indicating this. However, D was not offered waiver form because he was not yet being actively interrogated. Police officer remarked, "You got to get credit that's a very professional job." D responded, "It's not good enough was [sic] it?" As D paced floor & engaged in further "small talk," D suddenly stated, "I fucked up didn't I?" Mere refusal to sign Miranda waiver does not constitute exercise of Miranda rights. Norris 498 N.E.2d 1203. Here, D did not refuse to sign form; he simply had not been offered form yet. Looking at totality of circumstances, police did not need nor seek complete statement of guilt from D. D had been found hiding inside burglarized premises, at time when safe was still hot from use of blow torch. Police never entered into serious interrogation, but merely engaged in "conversation" with D about the situation. Tr. Ct. did not abuse discretion in determining that D made statements voluntarily, of own free will & without pressure from police. Held, no error in denying suppression.

TITLE: McClure v. State
INDEX NO.: I.2.a.2.
CITE: (5th Dist., 2-6-04), Ind. App., 803 N.E.2d 210
SUBJECT: Miranda violation claim rejected - officer's display of handgun found in D's car
HOLDING: Tr. Ct. did not err in denying D's motion to suppress incriminating statement he made to police officer. D was handcuffed & placed in officer's patrol car as result of outstanding arrest warrant. An inventory search of D's car revealed a marijuana pipe, ammunition, & a handgun. Officer then returned to his patrol car while carrying items in his hand. He opened driver's door & rolled down window where D was seated. As officer turned toward D, D blurted, "that's my gun & no I don't have a permit for it."

Under Miranda, "interrogation" includes both express questioning & words or actions on part of police that police know are reasonably likely to elicit an incriminating response from suspect. Rhode Island v. Innis, 446 U.S. 291, 100 S.Ct. 1682 (1980). Volunteered statements do not amount to interrogation. White v. State, 772 N.E.2d 408 (Ind. 2002).

Here, D argued that he did not voluntarily blurt out confession & that it was made as an immediate response to officer's action of displaying the gun while rolling down back window of squad car. Ct. disagreed, noting that there was no evidence that officer held gun up to D for him to see, that he asked D anything relating to weapon, or that he in any way solicited information from D. Officer did not even have opportunity to give Miranda warnings before D stated he owned handgun. Thus, D's statement was an utterance not made in response to any questioning, words, or actions on part of officer that he should have known were reasonably likely to elicit an incriminating response. While best practice in this situation would be to advise D of Miranda warnings when he is initially placed in custody, fact that officer approached car & rolled down D's window with handgun in his hand was not tantamount to an interrogation. Held, judgment affirmed.

TITLE: Missouri v. Seibert
INDEX NO.: I.2.a.2.
CITE: 542 U.S. 600, 124 S.Ct. 260, 159 L. Ed. 2d 643 (2004) (28 June 2004)
SUBJECT: Interrogation without Miranda warnings
HOLDING: Police in some jurisdictions have, as a matter of departmental policy, attempted to circumvent Miranda by delaying the required warnings until after a suspect in custody has already confessed, then warning and re-interrogating the suspect to get another, arguably admissible confession. The Court disapproved of this practice.

Seibert was afraid she would be charged with neglect after her 12-year-old son, who suffered from cerebral palsy, died in his sleep. In her presence, two of her sons, and their friends, made plans to burn down the family's mobile home to conceal the facts of the death. In burning down the trailer, they also planned to leave in the trailer another, mentally ill, teenager named Donald who lived with the family to avoid the appearance that Seibert's son had been left unattended. Seibert's son and a friend set the fire, and Donald died. A few days later, the police arrested Seibert and an officer began questioning her about the fire, deliberately omitting Miranda warnings. After Seibert admitted knowing that Donald was meant to die in the fire, she was given a short break. An officer then turned on a tape recorder, gave Seibert the Miranda warnings, and obtained a signed waiver of rights from her. He then interrogated her again, confronting her with her earlier confession when she hesitated.

The Court held that both of Seibert's confessions should be treated as the product of one, ongoing interrogation in violation of Miranda.

RELATED CASES: Bobby, 132 S.Ct. 26 (U.S. 2011) (unless different periods of interrogation form one continuous whole, the use of Miranda warnings at subsequent periods is sufficient to offset the failure to do so at an earlier period of questioning; see full review at I.2.f.2).

TITLE: Pope v. Zenon
INDEX NO.: I.2.a.2.
CITE: (9th Cir. 11/7/95), 69 F.3d 1018
SUBJECT: 9th Circuit Condemns Pre-Miranda "Beachhead" Interrogation Tactics
HOLDING: Briefly questioning suspect regarding evidence already gathered against him, prior to Miranda warnings, violates Miranda. Here, officers engaged in "beachhead" tactic, confronting D with signature from booking form and from register at hotel where murder was committed, and asking him if they were his. He admitted they were. They also revealed that fingerprint matching his had been raised from registration card. Only then did they provide Miranda warnings. Earlier questions about signatures constituted functional equivalent of interrogation, and required Miranda warnings.

TITLE: Ross v. State
INDEX NO.: I.2.a.2.
CITE: 151 N.E.3d 1287 (Ind. Ct. App. 2020) (09/02/2020)
SUBJECT: Custodial statements given to police were voluntary and and did not violate Miranda
HOLDING: Custodial statements given to police were voluntary and and did not violate Miranda.

Court of Appeals held that although Defendant was in custody, his statements were volunteered and not the result of interrogation. And even assuming that removing the Tupperware lid and showing it to Defendant was an action likely to elicit an incriminating statement, it was merely cumulative of his first statement. Consequently, the Court of Appeals found the admission of the second statement, even if erroneous, was harmless error. Judge Mathias concurred in result but wrote separately to note that the police officers never advised Defendant of his Miranda rights, not when he was placed in restraints, when his car was searched, when he was told he had a warrant, or when he was taken to the police station and the failure to provide Miranda warnings risked that any statements would be inadmissible. Judge Mathias found the police conduct of showing the content of the container to Defendant was reasonably likely to elicit an incriminating response from him. However, because his response was merely cumulative of his previous statement, which was volunteered, any error in the admission of the statement was harmless.

TITLE: Sater v. State
INDEX NO.: I.2.a.2.
CITE: (12/3/82), Ind., 441 N.E.2d 1364
SUBJECT: Miranda warnings - when necessary; D initiates conversation
HOLDING: Miranda warnings not necessary where D requests police officer to converse with him/her & officer has no intention to interrogate & no knowledge that D is about to make self-incriminating statement. Mere fact D is represented by counsel does not mean police cannot procure statement from D without notice to attorney. US v. Springer (CA7 1972), 460 F.2d 1344; Kern 426 N.E.2d 385. Here, D requested that officer be summoned so that they might continue previous conversation. D had counsel; no Miranda warnings were given. D told officer he did not want his family & girlfriend harassed because of a crime he & his brother had committed. Statement was admitted at trial. Held, no error in admission of statement.

RELATED CASES: Malott, 485 N.E.2d 879 (Crim L 412.2(2); D's 4 statements to police (set out in opinion) were volunteered & as such were admissible, *citing* New 259 N.E.2d 696; mere fact D had been shot & was handcuffed behind his back & was uncomfortable does not render statements inadmissible, citing Wolf 426 N.E.2d 647); Flowers, 481 N.E.2d 100 (Crim L 517.2(3); D, under sedation & sleepy, spontaneously volunteered confession to officer whom he had known for 8 years through Boys Club & who was guarding him at hospital following his arrest).

TITLE: Seeglitz v. State
INDEX NO.: I.2.a.2.
CITE: (11-17-86), Ind., 500 N.E.2d 144
SUBJECT: Miranda warnings - When necessary - Interrogation/volunteered statements
HOLDING: Miranda requirements do not apply to general on-the-scene questioning in noncoercive atmosphere. Officer may ask routine questions for purpose of obtaining basic identifying information without giving Miranda warnings. Here, D was approached at scene of auto accident by police officer. Accident occurred after police chased burglary suspects. D claimed to be cousin of auto's owner. D was not subjected to custodial interrogation requiring Miranda warnings when police officer asked D his name. Held, judgment affirmed.

RELATED CASES: Campbell, App., 820 N.E.2d 711 (D was not in custody at time he responded to police officer's inquiries at scene of crimes, when officer arrived in midst of armed stand-off between D & other officers; see full review at I.2.a.1); Moore, App., 723 N.E.2d 442 (D not subjected to "true" custodial interrogation, as officer was gathering information about accident & not crime; see full review at I.2.a.1); Bishop, App., 700 N.E.2d 473 (although D testified that he did not feel free to walk away, his subjective belief is not controlling; clearly D occupied role of injured victim rather than suspect; because D was not in custody, Miranda warnings were not required); Hurt, App., 694 N.E.2d 1212 (D was not in custody when he confessed in sun room of psychiatric hospital).

TITLE: State v. O'Neill
INDEX NO.: I.2.a.2.
CITE: (12/20/2007), N.J., A-79-06
SUBJECT: Plurality approach in Missouri v. Seibert adopted under state constitution
HOLDING: New Jersey Supreme Court invoked its state constitution to insulate itself from the "shifting sands of federal jurisprudence" in establishing a rule governing confessions obtained using "question first, warn later" interrogation techniques. Court adopted the approach of the plurality in Missouri v. Seibert, 542 U.S. 600 (2004), which focuses on whether the initial, unwarned questioning made subsequent Miranda warnings ineffective. Like the plurality in Seibert, Court emphasized that "the two-step, 'question-first, warn-later" interrogation is a technique devised to undermine both the efficacy of Miranda and our state law privilege." Also like the plurality in Seibert, Court noted that "the test must be whether in the setting of two-stage interrogation, the Miranda warnings gave the D a meaningful opportunity to exercise his rights." Court held "in considering the admissibility of a D's incriminating statements following unwarned and warned interrogations, the proper standard under New Jersey law focuses on whether a suspect knowingly, voluntarily, and intelligently waived his rights before speaking to the police . . . That approach will avoid the unworkable standard of delving into a police officer's state of mind and keep the spotlight on the focal issue - whether the D properly waived his rights." In Seibert, Justice Kennedy provided the crucial fifth vote but argued that the rule from Oregon v. Elstad, 470 U.S. 298 (1985) establishing a presumption that the giving of Miranda warnings is enough to cure an earlier violation and render a subsequent statement admissible should continue to apply when the failure to warn was a "good faith" mistake by law enforcement.

I. CONFESSIONS/ INTERROGATIONS

I.2. Miranda warnings (5th Amend)

I.2.a.3. Emergency exception

TITLE: Cronk v. State
INDEX NO.: I.2.a.3.
CITE: (1st Dist. 1/11/83), Ind. App., 443 N.E.2d 882
SUBJECT: Miranda warnings - emergency exception
HOLDING: There is an emergency exception to Miranda where questioning is necessary to insure safety of public, police officers or accused & time is a critical factor. Commonwealth v. Hankins (Pa. Super. 1981), 439 A.2d 142 (robbery in progress, bank customers lying on floor; question to surrendering robber "where are the others" permissible); US v. Castellana (CA5 1974), 500 F.2d 325 (police, in executing search warrant, asked accused whether he had weapons within reach; question was asked to insure safety of persons present, not to elicit confession). Here, D had chained himself to cannon on courthouse lawn. After refusing to remove his protest to the sidewalk, officers cut chain, cuffed & arrested him. He told officers a bomb would explode if officer stepped off of plywood placed on lawn by D. Officers asked him about bomb, its location & how it was detonated. D responded. D taken to jail where he was questioned further & drew diagram of bomb which was turned over to state police who dismantled bomb. No Miranda warnings were given. Court finds officers were faced with emergency situation perilous to themselves & others. Time may have been vital concern. Initial questioning was "justified by reasonable prudence"; responses are admissible. Questioning at stationhouse without Miranda warnings was improper because the emergency had expired at that time. Statements without Miranda warnings made at stationhouse were properly ruled inadmissible. However, D opened the door to these statements during cross-exam; therefore, prosecutor was justified in bringing them out on redirect. Held, no error.

TITLE: Lucas v. State
INDEX NO.: I.2.a.3.
CITE: (12-18-80), Ind., 413 N.E.2d 578
SUBJECT: Miranda warnings - Investigation of auto accident
HOLDING: Ct. ruled admission into evidence of D's statements was not error. D made statements to officer without warnings concerning his right to remain silent or right to counsel. Officer was investigating auto accident in which D apparently was involved. Officer received no report of crime at time D made statements. Officer did not suspect any foul play until he discovered victim's body. Officer's concern was for injuries which victim may have received in accident. D was free to leave until time body discovered. Therefore, D was not subject to custodial interrogation at time of statements. Held, judgment affirmed.

RELATED CASES: Moore, App., 723 N.E.2d 442 (D not subjected to "true" custodial interrogation, as officer was gathering information about accident & not crime; see full review at I.2.a.1).

I. CONFESSIONS/ INTERROGATIONS

I.2. Miranda warnings (5th Amend)

I.2.a.4. Public safety exception

TITLE: Bailey v. State
INDEX NO.: I.2.a.4.
CITE: (3-12-02), Ind., 763 N.E.2d 998
SUBJECT: Miranda - public safety exception
HOLDING: In murder prosecution, Tr. Ct. did not err in admitting D's statement that victim was "over by lawnmower." Statements that are product of custodial interrogation prior to advisement of Fifth Amendment guarantee against self-incrimination are generally inadmissible. Miranda v. Arizona, 384 U.S. 436 (1966). Nevertheless, a "public-safety" exception to the Miranda rule exists when officers have an immediate concern for safety of general public in that an armed weapon remained undiscovered & time is a critical factor. Price v. State, 591 N.E.2d 1027 (Ind. 1992); New York v. Quarles, 467 U.S. 649 (1984).

Here, based upon dispatch, police officers believed two victims were involved in incident. Arriving at scene, they saw only one victim. Even after D was apprehended, the second victim's location & condition were unknown. Though police officer's concern & questioning of D was not for general public's safety, it was for safety of another possible victim. Ct. followed other jurisdictions which have held that questioning for limited purposes of locating or aiding a possible victim falls within public-safety exception to Miranda. Moreover, Ct. noted that officer's questioning of D, though clearly custodial, was not type of interrogation that Miranda contemplates. Officer limited his initial questions to location of potential victim & immediately advised D of his rights once location was ascertained. Held, judgment affirmed.

RELATED CASES: Gavin, 41 N.E.3d 1038 (Ind. Ct. App 2015) (no error in admitting D's statement to police about location of a gun even though D made statement before being informed of his Miranda rights; public-safety applied because police were concerned three year-old might access gun in car).

TITLE: New York v. Quarles

INDEX NO.: I.2.a.4.

CITE: (6-12-84), 467 U.S. 649, 104 S.Ct. 2626, 81 L.Ed. 2d 550

SUBJECT: Miranda warnings - When necessary; Public safety exception

HOLDING: D's initial statement indicating whereabouts of gun in supermarket where D was apprehended & gun itself were admissible despite officer's failure to read D his Miranda rights before attempting to locate weapon. There is "public safety" exception to requirements of Miranda which is not dependent on subjective motivation of officer. Held, judgment reversed & remanded; O'Connor, J., concurring in part & dissenting in part; Marshall, Brennan, & Stevens, JJ., dissenting.

TITLE: Price v. State
INDEX NO.: I.2.a.4.
CITE: (05/28/92), Ind., 591 N.E.2d 1027
SUBJECT: Victim's statements to others not inadmissible hearsay
HOLDING: D's statement that "I ain't gonna lie; I shot her & I'll show you where the gun is," which was made while he was forced to ground with guns pointed to his head, was not product of coerced confession. Although D had not been read Miranda rights, statement was given when he was asked, upon apprehension, where gun was. Court found situation analogous to that in New York v. Quarles, 467 U.S. 649, 81 L.Ed.2d 551, 104 S.Ct. 2626, in that overriding concerns for public safety in finding gun justified questioning as to its whereabouts before giving Miranda advisements. See also, review on other issue, Price 591 N.E.2d 1027 at O.9.c.

I. CONFESSIONS/ INTERROGATIONS

I.2. Miranda warnings (5th Amend)

I.2.a.5. Other exceptions

TITLE: Ares v. State

INDEX NO.: I.2.a.5.

CITE: (10/18/2007), Del., 937 A.2d 127

SUBJECT: Scope of Miranda's 'booking questions' exception exceeded

HOLDING: Delaware Supreme Court held that a police officer exceeded the scope of Miranda's "booking questions" exception by asking D who had invoked his right to remain silent whether he had any children. Court said the garrulousness previously displayed by D should have put the officer on notice that his question would likely elicit an incriminating response. In Rhode Island v. Innis, 446 U.S. 291 (1980), the U.S. Supreme Court explained that "interrogation" for Miranda purposes refers "not only to express questioning" but also to its "functional equivalent," that is, "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." In Pennsylvania v. Muniz, 496 U.S. 582 (1990), the Supreme Court held that "routine booking questions" regarding such matters as an arrestee's name, address, height, date of birth, and age do not require a testimonial response and thus may be asked of suspects who have invoked their Miranda rights. Court, here, joined those courts that have held that a question that is innocuous on its face is beyond the scope of the booking-questions exception if the officer knows or should know that the question is reasonably likely to elicit an incriminating response. Court stressed that the officer in this case was aware that reading D the charges had prompted him to make a statement about his gun ownership. By continuing the conversation, the officer "converted it into the functional equivalent of an interrogation." "A question regarding a suspect's family, although not normally objectionable, might assume a completely different character if asked in the context of an attempted murder of a spouse." Although officer testified his intention with the question about children was to keep D relaxed during fingerprinting, the answer was not needed as part of the biographical data required to complete booking, or to fill out an arrest report, or to seek a warrant.

TITLE: Huey v. State
INDEX NO.: I.2.a.5.
CITE: (2d Dist. 2/2/87), Ind. App., 503 N.E.2d 723
SUBJECT: Miranda warnings - not required before field sobriety tests
HOLDING: Tr. Ct. did not err in admitting results of field sobriety test. Here, D contends Miranda warnings were required, citing dicta in Schmerber v. CA (1966), 384 U.S. 757, 86 S.Ct. 1826, 16 L.Ed.2d 908 (compelling person to submit to testing in which effort will be made to determine guilt/innocence on basis of physiological response, whether willed or not, is to evoke spirit & history of 5th Amend.). Field sobriety tests are not communicative in nature; therefore, Miranda warnings are not required prior to their administration. Heichelbech 281 N.E.2d 102. See also Smith, App., 496 N.E.2d 778; Rowe, App., 299 N.E.2d 852. Held, no error.

TITLE: Illinois v. Perkins
INDEX NO.: I.2.a.5.

CITE: (1990), 496 U.S. 292, 110 S.Ct. 2394, 110 L.Ed.2d 243
SUBJECT: Use of undercover police officer in jail
HOLDING: Use of undercover police officer posing as cellmate does not make statements of D involuntary in violation of 5th Amend. Here, undercover police officer placed in cell with D who was being held on unrelated charges. Officer initiated conversation with D about murder which D admitted at length. Placing undercover agent near suspect in order to gather incriminating information permissible under 5th Amend. Hoffa v. U.S. (1966), 385 U.S. 293, 87 S.Ct. 408, 17 L.Ed.2d 374. Only distinction between Hoffa & case here is that D here was incarcerated. "[D]etention, whether or not for the crime in question, does not warrant a presumption that the use of an undercover agent to speak with an incarcerated suspect makes any confession thus obtained invalid." Facts here are also distinguishable from Mathis v. U.S. (1968), 391 U.S. 1, 88 S.Ct. 1503, 20 L.Ed.2d 381. In Mathis, IRS agent questioned D without reading Miranda warnings while D was incarcerated on other charges. Statement so procured was held inadmissible. Here, however, D did not now cellmate was undercover police officer. "Where the suspect does not know he is speaking to a government agent there is no reason to assume the possibility that the suspect might feel coerced." Held, statement voluntary. Brennan, CONCURRING IN JUDGMENT; Marshall, DISSENTING.

TITLE: Pennsylvania v. Muniz

INDEX NO.: I.2.a.5.

CITE: (6-18-90), 496 U.S. 582, 110 S.Ct. 2638, 110 L.Ed.2d 528

SUBJECT: Miranda warnings - When necessary; other exceptions

HOLDING: Privilege against self-incrimination protects accused only from being compelled to testify against himself, or otherwise provide State with evidence of testimonial or communicative nature, but not from being compelled by State to produce real or physical evidence. To be testimonial, communication must, explicitly or implicitly, relate factual assertion or disclose information, Here, slurred nature of D's answers to police questions given before he received his Miranda warnings was not testimonial, & thus did not fall within scope of privilege against self-incrimination. D's answers to questions eliciting D's name, address, height, weight, eye color, date of birth, & current age were admissible. D's remarks in connection with videotaped efforts to perform sobriety tests & regarding his refusal to take breathalyser test were admissible. However, D's answer to question regarding date of his sixth birthday was testimonial & inadmissible. Held, judgment vacated & remanded; Rehnquist, C.J., White, Blackmun, & Stevens, JJ., concurring in result , concurring in part, & dissenting in part; Marshall, J., concurring & dissenting in part.

TITLE: State v. Brown
INDEX NO.: I.2.a.5.
CITE: (3/2/2017), 70 N.E.3d 331 (Ind. 2017)
SUBJECT: Miranda warnings not required for sobriety checkpoint interrogation
HOLDING: Detainment of Defendant as part of a sobriety checkpoint is no more custodial than a routine traffic or Terry stop; thus, Defendant was not entitled to Miranda warnings at the checkpoint. Courts have repeatedly held that motorists temporarily detained during traffic stops are "seized" for purposes of Fourth Amendment, but are not ordinarily in custody for Miranda purposes. Berkemer v. McCarty, 468 U.S. 420 (1984); Meredith v. State, 906 N.E.2d 867 (Ind. 2009). Sobriety checkpoint did not trigger Miranda warning in this case because it was temporary, brief in nature and public, thus meeting the requirements of Berkemer. Police officers were working in a well-lit parking lot and were instructed that they had only two minutes to discern impairment. "This is not to say that there cannot be a set of circumstances where a detention as part of a sobriety checkpoint is so lengthy and/or private that it triggers Miranda." But Court could not say that Defendant was in custody for Miranda purposes under circumstances of this case. Held, transfer granted, Court of Appeals' memorandum opinion vacated, suppression order reversed and remanded for further proceedings. Rucker, J., concurring in result, acknowledges U.S. Supreme Court precedent but believes motorists detained at sobriety checkpoints are entitled to Miranda protection.

Note: Although Defendant did not file motion to suppress and instead objected to evidence introduced at trial, suppression order precluded further prosecution; thus, State could bring this appeal pursuant to I.C. 35-38-4-2(5).

TITLE: Sweeney v. State
INDEX NO.: I.2.a.5.
CITE: (12-18-98), Ind., 704 N.E.2d 86
SUBJECT: Absence of Miranda warnings - presence of lawyers equivalent to advisement
HOLDING: Despite fact that D was in custody & was not advised of his Miranda rights, equivalent to advisement of Miranda rights existed & thus it was unnecessary for D to be advised of his rights. Warnings required by Miranda are in absence of fully effective equivalent. Miranda v. Arizona, 384 U.S. 436 (1966); Poulton, 666 N.E.2d 390. Here, D had two of his lawyers present when he provided statements which he sought to suppress. Irrespective of fact that defense attorneys encouraged D to provide certain statements to federal authorities to solidify plea agreement, certainly these attorneys advised D of his rights & protected D from being coerced by State. Under these circumstances, there was no error in State's failure to advise D of his Miranda rights. Held, judgment affirmed.

I. CONFESSIONS/ INTERROGATIONS

I.2. Miranda warnings (5th Amend)

I.2.b. Who must give

TITLE: Alspach v. State
INDEX NO.: I.2.b.
CITE: (4th Dist. 10/6/82), Ind. App., 440 N.E.2d 502
SUBJECT: Miranda warnings - probation officers (PO)
HOLDING: A PO is an assistant to the Tr. Ct., not a government agent. As such, PO is not required to give probationer Miranda warnings prior to interrogation. Turner, 407 N.E.2d 235; Trinkle, 284 N.E.2d 816; Leaver, 237 N.E.2d 368. Relying on caveat in Dulin, App., 346 N.E.2d 746, that court will not sanction abusive PO conduct, court establishes rule: Miranda warnings need not be given by POs legitimately engaged in supervision of probationers when: (1) probationer is not in custody, (2) interrogation is reasonably related to PO's duty to supervise probationer; (3) questioning is reasonable under all circumstances, including length of time & hour of day or night it is conducted, manner in which it is conducted, persons present during questioning, place where it is conducted. Here, D was placed on probation for a year & ordered to complete alcohol treatment program. He was kicked out of program for drug possession. PO filed revocation. D visited PO pursuant to "whereabouts advisory" condition of probation. PO took D in conference room, closed doors & questioned D regarding termination from program. D told PO he was kicked out because he had marijuana in his possession. Over defense objection, PO testified regarding D's admission at revocation hearing. D maintained testimony should have been excluded because PO did not give D Miranda warnings. Held, no error.

RELATED CASES: Johnson, 117 N.E.3d 581 (Ind. Ct. App. 2018) (juvenile probation officer who talked to D was not an agent of the police and therefore there was no need for Miranda warnings or juvenile rights waiver). Brabandt, App., 797 N.E.2d 855 (D's statement admitting drug & alcohol use to probation officer was not involuntary under 14th & 5th Amendments & did not require Miranda warnings because D was not subject to custodial interrogation; see full review at I.1.a.2)

TITLE: Beckwith v. United States
INDEX NO.: I.2.b.
CITE: (4-21-76), 425 U.S. 341, 96 S.Ct. 1612, 48 L.Ed.2d 1
SUBJECT: Miranda warnings - Who must give
HOLDING: Statements made by D taxpayer to IRS agents during course of non-custodial interview in criminal tax investigation were admissible against D in ensuing criminal tax fraud prosecution even though D was not informed of Miranda rights. Although focus of investigation may have been on D when interviewed, in sense that D's tax liability was under scrutiny, that is not equivalent of focus or custody for Miranda purposes. Miranda involves questioning initiated by law enforcement officers after person has been taken into custody or otherwise deprived of his freedom of action in any significant way. Held, judgment affirmed; Marshall, J., concurring in judgment; Brennan, J., dissenting.

TITLE: Bowman v. State
INDEX NO.: I.2.b.
CITE: (4th Dist. 10/3/84), Ind. App., 468 N.E.2d 1064
SUBJECT: Miranda warnings - security guards
HOLDING: Off-duty police officer, privately employed as security guard, need not give Miranda warnings to persons properly detained under Ind. Code 35-33-6-2. Here, officer was not acting within law enforcement capacity when he detained Ds & questioned them about suspected theft from store. Ds detained by store owner/agent pursuant to Ind. Code 35-33-6-2 are not in custody as contemplated by Miranda. See also Adams 386 N.E.2d 657. Officer in fact did give Ds Miranda warnings, but court finds his training as police officer, not Ds' "custody," prompted recitation of Miranda. Held, affirmed.

RELATED CASES: But see Robey, App., 481 N.E.2d 138 (D was appointed public servant (Ind. Code 35-41-1-24) & as special deputy had same duties as county police officer, including duty to arrest persons committing felony within their sight; therefore, evidence was sufficient to sustain D's conviction for official misconduct where D offered to forego shoplifter's arrest in exchange for $50; affirmed on reh'g, 484 N.E.2d 628); Owen, App., 490 N.E.2d 1130 (although court reaffirms Bowman, it finds security guard in this case identified self as police officer; therefore, failure to give Miranda warnings requires reversal); Tapp, App., 406 N.E.2d 296 (for purpose of increasing severity of punishment for battery, security guard was police officer).

TITLE: Burch v. State
INDEX NO.: I.2.b.
CITE: (7/7/83), Ind., 450 N.E.2d 528
SUBJECT: Miranda warnings - PSI report
HOLDING: Inclusion in PSI report of personal statements given by Ds without Miranda warnings does not violate 5th Amend Baumann v. US (CA9 1982), 692 F.2d 565 (holding that Estelle v. Smith (1981), 451 U.S. 454, 101 S.Ct. 1866, 68 L.Ed.2d 359 does not require that federal probation officer give D Miranda warnings before taking statement for PSI). In Estelle, psychiatrist who conducted competency exam testified before jury at penalty phase in capital case concerning statements made by D during exam. Testimony was used to establish aggravating circumstance upon which to base death penalty. Here, probation officers gathered information for use by judge in determining sentence. Judge ordered PSI in Ds' attorney's presence; attorney could have advised Ds regarding legal consequences of interviews & attended interview. Held, no error.

TITLE: Luckett v. State
INDEX NO.: I.2.b.
CITE: (3rd Dist., 11-27-73), Ind. App., 303 N.E.2d 670
SUBJECT: Miranda warnings - Who must give; private citizens
HOLDING: Miranda guidelines speak only to confessions given to law enforcement officers & warnings need not be given by civilians conducting their own investigation. Here, victims of break-in were acting under own initiative as private citizens. Citizens were not under police control & were not police agents. Citizens were not acting under police officers' direction when they induced D to confess. Thus, D's constitutional rights were not violated by admission of confession, even though pre-interrogation Miranda warnings were not given to D. Held, judgment affirmed.

RELATED CASES: McFarland, 336 N.E.2d 824 (Miranda does not apply to situation where private citizens gather evidence apart from police activity, even if information was procured by chicanery); Trinkle, 284 N.E.2d 816 (D's statements were admissible, even though citizen used physical persuasion to force D to admit to theft); Hayes, App., 667 N.E.2d 222 (D was not entitled to Miranda warnings prior to counseling session with therapist, where D voluntarily sought treatment with independent source); Taylor, 659 N.E.2d 535; see card at L.1.b.1 (D not entitled to Miranda warnings prior to mental competency examination conducted by state-appointed psychiatrist; where D requested examination; see Mahaffey card at J.8.a)

TITLE: Sears v. State
INDEX NO.: I.2.b.
CITE: (7-9-96), Ind., 668 N.E.2d 662
SUBJECT: Miranda warnings & media interviews
HOLDING: Tr. Ct. properly admitted videotaped interviews that D gave to news media. Police cannot avoid their duty under Miranda by attempting to have someone act as their agent in order to bypass Miranda requirements, which apply to functional equivalent of police interrogation. Robey v. State, 555 N.E.2d 145 (Ind. 1990); Smith v. State, 465 N.E.2d 1105 (Ind. 1984). Here, there was no evidence that news media was acting as agent for police, thus Miranda warnings were not required. There was no official interrogation by any police officer & media was never acting on any requests by police to ask certain questions or in any way influence actual subject matter of interviews. Ct. rejected D's argument that newly arrested persons should be protected from overwhelming power of media. Held, no error.

I. CONFESSIONS/ INTERROGATIONS

I.2. Miranda warnings (5th Amend)

I.2.c. Adequacy of

TITLE: Allen v. State
INDEX NO.: I.2.c.
CITE: (9-25-97), Ind., 686 N.E.2d 760
SUBJECT: Adequacy of Miranda advisement
HOLDING: Claim that Miranda advisements were inadequate requires only that State prove warnings were given & that they were sufficiently clear. Here, D was properly advised of his Miranda rights at moment he was first accused of murder. Approximately two hours later, after D suggested he take lie detector test, polygraph examiner loosely reviewed Miranda warnings with D. Examiner embellished explanation of D's rights by defaming half of practicing lawyers & suggesting that remaining silent might hurt him. Although examiner's improper remarks may have affected D's subsequent decision to waive his rights, remarks did not nullify prior, proper written & oral warnings D received. Held, judgment affirmed.

RELATED CASES: Sotelo, 342 N.E.2d 844 ((test is whether words in context used, considering age, background and intelligence of individual interrogated shows a clear, understandable warning of all his rights).

TITLE: Eagan v. State
INDEX NO.: I.2.c.
CITE: (8/2/85), Ind., 480 N.E.2d 946
SUBJECT: Miranda warnings - adequacy of
HOLDING: Prior to giving first statement, D was adequately advised of his right to consult with a lawyer. Furthermore, even if Miranda warnings were inadequate, D did not incriminate himself in first statement. Here, advisements given prior to first & second statements are set forth in opinion. As to first waiver form, court distinguishes Dickerson, 276 N.E.2d 845 (D presented with similar waiver form, but police did not read/explain it or make sure D could read it) & Goodloe, 252 N.E.2d 788 (arresting officer's advisements patently inadequate & incomplete & clearly did not inform D of right to attorney prior to questioning). Court finds case more analogous to Jones, 252 N.E.2d 572 (advisements similar to those in present case & interrogating officers explained them). Second waiver form is similar to that approved in Robinson, 397 N.E.2d 956. Held, no error. DeBruler DISSENTS, finding advisements did not inform D he had right to counsel now, as opposed to "if & when" he went to court, *citing* CA v. Prysock, (1981), 453 U.S. 355, 101 S. Ct. 2806, 69 L.Ed.2d 696. **NOTE:** Upheld by U.S. S. Ct., Duckworth v. Eagan, (1989), 109 S. Ct. 2875.

TITLE: Edwards v. State
INDEX NO.: I.2.c.
CITE: (11-18-80), Ind., 412 N.E.2d 223
SUBJECT: Miranda warnings - adequacy of
HOLDING: Trial Ct. erred in permitting State to use D's admissions as evidence of guilt at trial. D was given oral advisement of his rights more than five hours after having been completely advised of his rights & giving written statement. D executed written statement at time when he was not under suspicion. No evidence was presented concerning contents of oral advisement. Investigator's testimony that he told D that D need not answer questions did not support compliance by State with requirement that D be told of consequences of foregoing his privilege against self-incrimination & right to counsel. Record provided no assurance D was completely & accurately advised of his Miranda rights prior to his admission of guilt upon custodial interrogation. Held, judgment reversed & new trial ordered. Pivarnik, J., & Givan, C.J., dissenting.

TITLE: Florida v. Powell
INDEX NO.: I.2.c.
CITE: (2-23-10), 130 S.Ct. 1195 (2010)
SUBJECT: Miranda warnings - need not be exact, but must reasonably convey rights
HOLDING: Officer's advisement that the D had "the right to talk to a lawyer before answering any of [the law enforcement officers'] questions," and that he can invoke this right "at any time . . . during th[e] interview," satisfied Miranda. An individual held for questioning must be clearly informed of all four Miranda rights, including that he has the right to consult with a lawyer and to have the lawyer with him during interrogation. In determining whether police officers adequately conveyed four warnings, the inquiry is simply whether the warnings reasonably convey to a suspect his rights as required by Miranda. Here, an officer read the D his rights from the standard Tampa Police Department Consent and Release Form 301. The form states: "You have the right to remain silent. If you give up that right to remain silent, anything you say can be used against you in court. You have the right to talk to a lawyer before answering any of our questions. If you cannot afford to hire a lawyer, one will be appointed for you without cost and before any questioning. You have the right to use any of these rights at any time you want during this interview." The D signed the form. The form did not entirely omit any information regarding a right Miranda required them to impart. It informed the D had the "the right to talk to a lawyer before answering any of [their' questions," and "the right to use any of [his] rights at any time [he] want[ed] during th[e] interivew." In combination, the two warnings reasonably conveyed D's right to have an attorney present, not only at the outset of interrogation, but at all times. Although the form was not the clearest possible formulation of Miranda's right-to-counsel advisement, it was sufficient when given a commonsense reading. The FBI's standard advice of right that "you have the right to talk to a lawyer for advice before we ask you any questions. You have the right to have a lawyer with you during questioning" is exemplary but not a precise formulation necessary to meet Miranda's requirements. Held, judgment of the Supreme Court of Florida reversed; Stevens, J., dissenting on basis that the Supreme Court lacked jurisdiction to hear the case because the Florida Supreme Court decided the case under the Florida Constitution and the warning at issue did not reasonably convey to D that he had a right to have a lawyer with him during the interrogation; Breyer, J., joins in Part II, dissenting.

TITLE: Franklin v. State
INDEX NO.: I.2.c.
CITE: (8-1-74), Ind., 314 N.E.2d 742
SUBJECT: Miranda warnings - Adequacy of; presence of counsel during interrogation
HOLDING: Only advising D of his "right to have attorney present to consult with" is not clear enough expression of D's right to presence of counsel during interrogation because time of such entitlement is not specified. Here, D's statement was properly admitted, despite written form which did not sufficiently advise D of his right to have attorney during interrogation. Testimony demonstrated D had been adequately informed of right to immediate & continuing presence of counsel & had been asked whether he understood his rights. D was also asked whether he wished to contact an attorney & whether he wished to make a statement to police. Held, judgment affirmed.

RELATED CASES: Grey, 404 N.E.2d 1348 (despite evidence concerning incomplete warnings given D, evidence as to prior Miranda warnings, both oral & written, was sufficient to support Tr. Ct.'s conclusion that D had been adequately advised of potential inculpatory use of his statements). Grimes, App., 353 N.E.2d 500 (no requirement that D sign written waiver in order to comply with constitutional requirement that D be advised of his rights prior to any custodial interrogation). Harkins, App., 415 N.E.2d 139 (D's confession was voluntarily given & admissible where warning & waiver form containing complete Miranda statement was read to D, even though restatement of D's Miranda rights on waiver form used to record D's statement was incomplete). Burton, 292 N.E.2d 790 (it is not necessary to use exact wording of Miranda to communicate to D his rights).

TITLE: England v. State
INDEX NO.: I.2.c.
CITE: (7/17/85), Ind., 479 N.E.2d 1323
SUBJECT: Miranda warnings - adequacy
HOLDING: Admission of D's confession over his objection was error where Miranda warnings given by IN State Police were inadequate. Here, officer gave following warning: "I want to advise you of your basic Miranda [sic] rights which I'm sure you are familiar of & you are aware that you do not have to talk to me & that anything you say can be used against you & you have the right to have an attorney present & you are aware of that?" 479 at 1324. Officer did not advise D that if he could not afford attorney one would be appointed for him prior to any questioning if he asked for one or that D had right to stop questioning at any time. Ct. finds reasonable probability that D's improperly admitted confession contributed to conviction, thus affecting his substantial rights; therefore, error was not harmless beyond a reasonable doubt. Held, reversed & remanded for new trial.

RELATED CASES: Shane, 615 N.E.2d 425 (Where D voluntarily went to police station, was advised of rights & signed waiver, consented to collection of bodily samples, & upon return to police station from hospital was asked if he still understood rights; it was not necessary that he be Mirandized again before taking statement. Interruption in questioning process was not sufficient to interfere with D's understanding of rights.); Saintignon, 616 N.E.2d 369. (Although at time of interrogation concerning death of child D was in custody as result of unrelated charge & thought interrogation was about that charge, procedure used was not irregular & statements were admissible. Once D has been Mirandized, warnings do not have to be reiterated every time subject of interrogation is changed, as long as suspect isn't deprived of opportunity to make informed & intelligent assessment of his interests.)

TITLE: Hedgecough v. State
INDEX NO.: I.2.c.
CITE: (1st Dist., 5-19-75), Ind. App., 328 N.E.2d 230
SUBJECT: Miranda warnings - Adequacy of
HOLDING: Merely handing D warning & waiver form to sign is insufficient to establish that D understood his rights prior to signing form, unless accompanied by clear & adequate explanation. Here, admission of D's written confession was proper, where record showed officer explained warning & waiver form sentence by sentence before D signed form. D understood both officer's explanation & rights, & indicated he understood ramifications of signing waiver portion of form. Execution of waiver form is not conclusive, but simply one factor for Tr. Ct. to weigh in considering voluntariness of statement. Held, judgment affirmed.

RELATED CASES: Hewitt, 300 N.E.2d 94 (D's refusal to sign written waiver of his constitutional rights was not determinative of whether D made valid waiver). Hutts, App., 298 N.E.2d 487 (D, who declined to make written statement to officers after signing card stating he waived his rights to remain silent & have counsel but who soon thereafter voluntarily made an oral confession, had been adequately informed of his constitutional rights; testimony concerning D's oral confession was admissible). Miller, 335 N.E.2d 206 (no requirement Miranda warning include statement that if D indicates at any stage of interrogation, he wishes to consult an attorney before speaking. There can be no questioning until request granted or statement that if D indicates at any stage of interrogation that he wishes not to be further interrogated, interrogation must stop).

TITLE: Jones v. State
INDEX NO.: I.2.c.
CITE: (Tex. Crim. App.), 11/5/03, 74,060
SUBJECT: Statement taken before, but signed after, Miranda warnings
HOLDING: The Texas Court of Criminal Appeals has held that a statement taken before a suspect was given Miranda warnings, but signed after the warnings were given, was not admissible.

TITLE: Partlow v. State
INDEX NO.: I.2.c.
CITE: (9-22-83), Ind., 453 N.E.2d 259
SUBJECT: Adequacy of Miranda warnings - Repeating advisements
HOLDING: If at beginning of custodial interrogation D has been given Miranda advisement & made valid waiver, advisement of Miranda rights need not be repeated, so long as circumstances attending any interruption or adjournment of process is such that suspect has not been deprived of opportunity to make informed & intelligent assessment of his interests involved in interrogation, including right to cut off questioning. Michigan v. Mosley, 96 S. Ct. 321 (1975). Here, D showed that he had continuing understanding of his rights & was willingly & knowingly proceeding with interrogation by police. Held, judgment affirmed.

RELATED CASES: Willey, 712 N.E.2d 434 (one Miranda advisement was sufficient where D was interrogated by 5 officers over seven-hour time period); Craig, App., 379 N.E.2d 490 (although it is better practice to re-advise D of his rights before requesting that D sign written statement transcribed from tape recording made several days earlier, this is not necessary to voluntariness requirement which affects admissibility of statement). Bivins, 642 N.E.2d 928 (questions put to D after examination would not have caused him to forget rights of which he had been advised & understood moments before; D failed to demonstrate changes in circumstances indicating that his answers ceased to be voluntary).

TITLE: State v. Keller
INDEX NO.: I.2.c.
CITE: (4th Dist., 04-10-06), Ind. App., 845 N.E.2d 154
SUBJECT: Inadequate Miranda advisement - State must ensure D understands rights
HOLDING: In murder prosecution, Tr. Ct. properly granted D's motion to suppress his first statement to police officers. Law enforcement officers must clearly explain a person's constitutional rights & determine the accused's understanding prior to commencing an interrogation. Dickerson v. State, 276 N.E.2d 845, 257 Ind. 562 (1972). An oral advisement, whether or not, accompanied by the use of a form, is the preferred (but not required) method of ensuring an accused's constitutional rights. Here, D was not orally advised of his rights, but was provided with a form after officer ascertained that he was able to read, write & told to sign if he understood it. After D briefly reviewed the form & affirmed that he had read the form, he signed it. D did not affirm that he understood the document. Moreover, there was no indication that D understood his right to have an attorney present or to stop answering questions at any time. In light of totality of circumstances, Ct. could not say that advisement provided to D was sufficient to ensure a knowledgeable & intelligent waiver of his constitutional rights. Ct. also held that Tr. Ct. properly denied D's motion to suppress second statement to police a day later, & search of his hotel room. Although Ct. disapproved of officers' method of gaining initial entry, which resulted in improper search & seizure, valid consent given by third party given shortly thereafter was sufficient for a proper search of hotel room. Held, judgment affirmed.

RELATED CASES: Strickland, 119 N.E.3d 140 (Ind. Ct. App. 2019) (distinguishing Keller, Ct. noted that officers read Miranda advisement to all three in hotel room and then asked them separately whether they understood their rights; the officers received assurances from D she understood her rights); Banks, 2 N.E.3d 71, (Ind. Ct. App. 2014) (detective's advisement did not inform D that he had the right to have counsel present during the questioning and was thus inadequate; see full review at I.1.a.4).

TITLE: United States v. Street
INDEX NO.: I.2.c.
CITE: (12/20/2006), 11th Cir., 472 F.3d 1298
SUBJECT: Miranda warnings insufficient where parts omitted
HOLDING: Eleventh Circuit U.S. Court of Appeals held that a veteran police officer suspected of committing a bank robbery did not receive constitutionally adequate Miranda warnings when an FBI agent advised him that he had the right to remain silent and the right to have a lawyer present during the questioning. Court acknowledged that interrogators have some leeway with respect to the order and form of warnings, but it decided that advising a suspect of only two of the four rights did not satisfy the bright-line rule imposed by Miranda v. Arizona. "This is one instance in which half-way is not close enough for government work," Court noted. Court also stated fact that a D is a police officer, lawyer, or some other person who would be expected to be aware of the Miranda rights plays no role in a court's determination of the adequacy of Miranda warnings.

The Court did allow statements made by the D after he had signed a written waiver form to stand. Court found situation more akin to Oregon v. Elstad, 470 U.S. 298 (1985) than Missouri v. Seibert, 542 U.S. 600 (2004). Seibert involved police deliberately not giving Miranda warnings until getting incriminating statements from a suspect and once the individual's tongue had loosened up giving Miranda warnings to get the statements again. Court noted in present case the investigating officer did not deliberately circumvent Miranda, but rather "just messed up."

I. CONFESSIONS/ INTERROGATIONS

I.2. Miranda warnings (5th Amend)

I.2.d. Invocation of rights

TITLE: Berghuis v. Thompkins

INDEX NO.: I.2.d.

CITE: (06-01-10), U.S., 130 S. Ct. 2250

SUBJECT: Interrogation of suspects - Miranda requires D to affirmatively assert right not to speak to police; mere silence not enough

HOLDING: If a suspect wants to assert his right against self-incrimination in the face of police interrogation he must clearly say so; sitting silently and refusing to cooperate during a three- hour grilling is not an assertion of his right to silence. Secondly, if the suspect finally breaks down, even with a monosyllabic response to a suggestive question, that will constitute a waiver of his right to silence and his incriminating response will be admissible as evidence against him. In other words, despite the warnings that he has a right to be silent, a suspect may not invoke that right by simply remaining silent while interrogation proceeds; beyond satisfying themselves that the suspect understands his rights (written waivers are unnecessary) police do not have to discontinue their questioning until the suspect makes clear without ambiguity that the suspect does not want to talk to the police. However, a one-word affirmative response to a loaded question will suffice as a waiver of the right to silence.

Here, D was convicted and sentenced to LWOP in connection with a Michigan drive-by shooting. He was arrested in another state about a year later. He was questioned by two detectives at a county jail for about three hours. The interrogation was basically in the form of a monologue by the interrogators. The suspect had been given Miranda warnings. The detectives testified that D apparently understood the information but would not sign a waiver. He simply remained silent while the detectives talked. Near the end of the session an officer asked the suspect whether he believed in God and whether he prayed. He responded with a simple "Yes." The detective then asked, "Do you pray to God to forgive you for shooting that boy down?" The suspect answered "Yes," and that was the confession and the waiver.

In Miranda v. Arizona, 384 U.S. 436 (1966), the Court declared that if a suspect indicates "in any manner" that he wants to remain silent (and remaining silent would seem to communicate that choice) the interrogation must cease. In a significant pull back from that position, the Court now holds that just as an invocation of the right to counsel must be unequivocal (Davis v. United States, 512 U.S. 452 (1994)), so must the assertion of the right to silence. Held, Sixth Circuit Court of Appeals' opinion at 547 F.3d 572 reversed and remanded. Sotomayor, J., joined by Stevens, Ginsburg, and Breyer, JJ., DISSENTING, points out how the majority position marks "a substantial retreat from the protection" of Miranda and its basic rationale.

RELATED: Battering, 85 N.E.3d 605 (Ind. Ct. App 2017) (D unequivocally invoked his right to silence so the granting of his motion to suppress was affirmed; even though D eventually re-engaged in conversation with officers, this was only after length, high-pressured comments by officer clearly designed to induce D to talk again; also, officers failed to re-advise D about right to silence).

TITLE: Broome v. State
INDEX NO.: I.2.d.
CITE: (5th Dist., 11-14-97), Ind. App., 687 N.E.2d 590
SUBJECT: Interrogation - no invocation of right to remain silent & right to attorney
HOLDING: D's statement during interrogation that "I'm about to end this" did not invoke his Fifth Amendment right to remain silent or his Sixth Amendment right to counsel. If suspect's request for counsel is perceived to be inherently ambiguous, or equivocal in light of preceding events, any further questioning should be narrowly limited to clarifying whether suspect actually wished to have counsel present. Jackson, 597 N.E.2d 950. Similarly, when accused invokes his right to remain silent, police must scrupulously honor his right to cut off questioning. Here, because no reference to attorney was made, D's comment did not constitute request for counsel. Also, because D's statement was not declaring present fact--i.e., that interrogation had ended--but was rather stating what he believed might soon occur, D did not assert his right to remain silent. Thus, Tr. Ct. properly denied D's motion to suppress evidence of his confession. Held, conviction affirmed.

RELATED CASES: Powell, App., 898 N.E.2d 328 (D's statements, "could I see about getting a lawyer or something man?" and "yeah, I'm ready to cut this off cause, I mean I feel like ya'll getting ready start asking me some crazy questions, you know what I'm saying" and "man, I'm done, man" were ambiguous and not clear invocations of the right to counsel or to remain silent when considered in context of interview; after claiming he was "done", the D continued speaking-without pause-with the detectives, even after one detective told him he did not have to do so).

TITLE: Hendricks v. State
INDEX NO.: I.2.d.
CITE: (2nd Dist., 12-12-08), Ind. App., 897 N.E.2d 1208
SUBJECT: Invocation of rights - admission of statement harmless error
HOLDING: Tr. Ct. committed harmless error by admitting D's statement which was obtained in violation of Miranda into evidence. When a suspect asserts the right to counsel during custodial questioning, the police must stop the interrogation until counsel is present or the suspect reinitiates communication with police and voluntarily waives the right to counsel. Additionally, after the Fifth Amendment right to counsel is invoked, a waiver in response to police-initiated interrogation is not sufficiently voluntary to meet that amendment's mandate.

Here, in response to being provided his Miranda rights, D asked the officer twice if he could "do this" with an attorney. Moreover, D stated "I'm not saying nothing." However, officer continued to talk to D who then signed the waiver. D signed the waiver in response to the officer's statements, after he invoked his right to silence and to counsel. Therefore, the questioning was impermissible police-initiated interrogation. However, State admitted at trial two recorded phone conversations with D agreeing to sell the informant cocaine, and the cocaine that was found protruding in a napkin from D's buttocks. Thus, admission of the statements were harmless beyond a reasonable doubt. Held, judgment affirmed.

TITLE: Mendoza-Vargas v. State
INDEX NO: I.2.d.
CITE: (09-20-12), 974 N.E.2d 590 (Ind. Ct. App 2012)
SUBJECT: Failure to scrupulously honor D's invocation of right to remain silent
HOLDING: In Class A felony dealing in methamphetamine prosecution, Tr. Ct. abused its discretion in admitting D's post-Miranda statements to police, who failed to scrupulously honor his right to remain silent. A suspect's assertion of the right to remain silent does not preclude further interrogation as long as his right to cut off questioning at any time is "scrupulously honored" by the interrogating officers. Michigan v. Mosley, 423 U.S. 96 (I975). There are several non-exclusive factors used to determine whether interrogation was properly resumed, including: the amount of time that lapsed between interrogations, the scope of the second interrogation; whether new Miranda warnings were given, and degree to which police officers pursued further interrogation once the suspect has invoked his right to silence. United States v. Gillaum, 372 F.3d 848 (7th Cir. 1998).

Here, D was handcuffed while police searched home pursuant to search warrant. Police continued to question D even after he had invoked his right to remain silent and did not re-advise him of his Miranda rights before re-initiating questioning. Instead of scrupulously honoring D's right to remain silent by ceasing any questions after he indicated he didn't want to talk, police made an effort to induce D to cooperate by answering questions. Court concluded that error was not harmless, despite the fact the evidence might be sufficient without D's statements. Sufficiency is not dispositive under harmless error analysis. The error affected D's substantial rights based on probable impact of the evidence on the jury. Court could not say D's incriminating statements had no impact on jury's decision, as evidence was not overwhelming, and prosecutor relied on statements in closing argument to bolster State's claim of constructive possession and intent. Held, judgment reversed and remanded for retrial.

RELATED CASES: Moore, 23 N.E.3d 840 (Ind. Ct. App 2015) (police detectives' ostensibly unrelated questioning concerning children who had been in D's care when arrested amounted to interrogation, which was pursued despite D’s clear invocation of her right to silence).

TITLE: Risinger v. State

INDEX NO.: I.2.d.

CITE: (12-9-2019), 137 N.E.3d 292 (Ind. Ct. App.)

SUBJECT: Erroneous admission of statements resulting from detectives' failure to honor D's invocation of his right to remain silent

HOLDING: Defendant's statement, “I’m done talking,” was an unequivocal invocation of his right to remain silent pursuant to Miranda, and the detectives’ continuation of questioning thereafter was a failure to scrupulously honor that right. A formal declaration such as "I'm invoking my right to remain silent" is not what the law requires. Court reversed Defendant's murder conviction, as the error from the admission of statements he made during the three police interviews was not harmless. The second and third interviews built upon the confession which was unconstitutionally obtained by detectives after they failed to scrupulously honor Defendant's invocation of his right to remain silent during the interview the previous day.

TITLE: State v. Leyva
INDEX NO.: I.2.d.
CITE: (Utah Ct. App. 11/9/95), 906 P.2d 894
SUBJECT: Ambiguous Invocation of Miranda Right - Pre-Waiver
HOLDING: In-custody D's ambiguous invocation of Miranda right limits questioning to clarification of statement, where ambiguous invocation precedes waiver of Miranda rights. In Davis v. U.S., 114 S.Ct. 2350 (1994), U.S. Supreme Court held that "stop and clarify" approach following ambiguous invocation of Miranda right is not constitutionally required. However, Davis was post-waiver case, and Utah Court would distinguish it on that ground. This distinction is consistent with shift in allocation of burden of proof that occurs once waiver occurs.

TITLE: United States v. Caruto

INDEX NO.: I.2.d.

CITE: (5/12/2008), 9th Cir., 07-50041,

SUBJECT: Due process violated where prosecutor remarked on omissions where Miranda later invoked

HOLDING: Ninth Circuit Court of Appeals held a prosecutor infringed a D's due process rights by remarking on omissions in a version of events she told police officers before she revoked an earlier waiver of her Miranda rights. Although prior decisions have allowed prosecutors to impeach Ds with omissions in post-waiver statements, Court said D's post-omission invocation of her rights made this case one of first impression in the circuit. D began to give story about someone borrowing her vehicle after cocaine was found in the gas tank, but then invoked her right to counsel. During trial, she testified to additional details about who borrowed her vehicle and the prosecution elicited testimony from a border agent and commented in closing about such details not being provided previously. Court analyzed case in relation to Doyle v. Ohio, 426 U.S. 610 (1976); Wainwright v. Greenfield; and Anderson v. Charles, 447 U.S. 404 (1980) (where Supreme Court declined to extend Doyle to a situation where D waived his Miranda rights and a post-arrest statement that was inconsistent with his trial testimony). Court noted the prosecutor was allowed to highlight omissions from D's statement to police, while D could not fully explain why her post-arrest statement was not as detailed as her testimony without disclosing that she had invoked her Miranda rights. Court also reflected on distinction between an inconsistent statement and an omission. "Where, as here, it is a D's invocation of her Miranda rights that results in the omitted facts that create the difference between the two descriptions, cross-examination based on those omissions draws meaning from the D's protected silence in a manner not permitted by Doyle."

I. CONFESSIONS/ INTERROGATIONS

I.2. Miranda warnings (5th Amend)

I.2.d.1. Counsel (Edwards v. Arizona)

TITLE: Alford v. State
INDEX NO.: I.2.d.1.
CITE: (8-19-98), Ind., 699 N.E.2d 247
SUBJECT: Miranda violation - harmless error
HOLDING: D's videotaped statement was obtained in violation of Miranda where, after his arrest & waiver of Miranda rights, he unequivocally asserted his Fifth Amendment right to counsel & police did not end interrogation. Standard for whether police "interrogate" suspect is not whether questions are asked but whether police should know that their words or actions are reasonably likely to elicit incriminating response from suspect. Rhode Island v. Innis, 100 S.Ct. 1682, (1980). Here, detective confronted D in interrogation room with potentially incriminating evidence, with no apparent purpose other than to induce D to say something inculpatory. D's statement that "I think it would be in my best interest to talk to an attorney" was unequivocal request for counsel. Ct. held that error in admitting evidence was harmless beyond reasonable doubt, because physical evidence conclusively showed at least knowing killing & clearly rebutted any claim of self-defense, which was D's sole contention at trial. Held, conviction affirmed.

RELATED CASES: Hendricks, App., 897 N.E.2d 1208 (D's repeated question whether he could "do this" with an attorney invoked his right to counsel and D's statement that "I'm not saying nothing" invoked his right to remain silent and subsequent waiver was unconstitutional; harmless error)

TITLE: Arizona v. Roberson
INDEX NO.: I.2.d.1.
CITE: (1988), 486 U.S. 675, 108 S.Ct. 2093, 100 L.Ed.2d 704
SUBJECT: Invocation of right to counsel - questioning about other offenses
HOLDING: When suspect invokes right to counsel during interrogation questioning must cease.

Edwards v. AZ (1981), 451 U.S. 477, 101 S.Ct. 1880, 68 L.Ed.2d 378. Unless counsel is provided, re-interrogation may occur only if "the accused himself initiates further communication, exchanges, or conversations with the police." Id. at 485. If suspect believes he/she is not capable of undergoing questioning without counsel, it is presumed that any subsequent waiver has come at authorities' behest & is product of inherently compelling pressures not purely voluntary choice of suspect. Here, D invoked right to counsel during interrogation concerning burglary. Three days later, D who was still in custody was questioned by different officer about separate burglary. Court's previous Edwards cases do not compel that exception to Edwards be recognized where police-initiated interrogation following invocation of right to counsel in separate investigation. Nor do facts here compel exception to Edwards. Suspect who has invoked right to counsel which has not been provided will feel more compelled to speak when further interrogated. Mere repetition of Miranda warnings does not overcome presumption of coercion. It is insignificant that second officer was unaware of D's request for counsel. Whether re-interrogation concerns same or different officer/offense, same need to determine whether suspect has requested counsel exists. Held, confession inadmissible. O'Connor not participating; Kennedy, joined by Rehnquist, DISSENTS.

TITLE: Bane v. State
INDEX NO.: I.2.d.1.
CITE: (02/25/92), Ind., 585 N.E.2d 97
SUBJECT: Self-incrimination - invoking right to counsel.
HOLDING: D's comments about desiring counsel before questioning were not so unequivocal as to invoke request for counsel requiring termination of questioning, & suppression of statements obtained there by. Officer asked D if he was willing to give him statement without having attorney present, & following exchange occurred: (D's statements are bolded)

> **O.K. Well let's lets [sic] if you're willing to do that let's uh it's my understanding you don't want to sign the rights form now is that right?**
>
> **Not 'til you know?**
>
> **O.K.**
>
> **When I talk to my lawyer I'll.**
>
> **O.K. But you don't want a lawyer at this time, is that correct?**
>
> **I will get a lawyer.**
>
> **O.K. But you don't want one now is what I'm saying. O.K.?**
>
> **I'd like to have one but you know I it would be hard to get a hold of one right now.**
>
> **Well what I am asking you Clayton is do you wish to give me a statement at this time without having a lawyer present?**
>
> **Well I can I can [sic] tell you what I did**.

Ct. found instant case distinguishable from Sleek 499 N.E.2d 751, & Smith v. Illinois 469 U.S. 91, 105 S.Ct. 490, 38 L.Ed.2d 488, because there was no clear & unequivocal request for attorney, & to be more analogous to that in Pasco 563 N.E.2d 587. Held, conviction affirmed, DeBruler & Dickson, JJ., dissenting on request for counsel issue.

RELATED CASES: Smith, 983 N.E.2d 226 (Ind. Ct. App 2013) (D's request for counsel was not unambiguous and unequivocal where he said: 1) "I mean, what happens if I say I want a lawyer? Do I get one in here now and then we talk about it?" and 2) "If I ask for a lawyer and what's it going to be, what's it going to be?"); Edmonds, App., 840 N.E.2d 456 (because D's prior actions & statements cast doubt on legitimacy of her request for attorney, detectives were not required to stop questioning D & made a good faith, non-coercive inquiry into whether she really intended to request attorney on waiver form before she spoke to police).

TITLE: Billups v. State
INDEX NO.: I.2.d.1.
CITE: (11/16/00), Md. Ct. Spec. App., 762 A.2d 609
SUBJECT: Invocation of Right to Counsel -- Writing No on Waiver Form
HOLDING: A D who signed a form waiving the right to counsel, but wrote "no" next to his signature made an unequivocal assertion of the right to counsel, and all statements made in response to subsequent interrogation must be suppressed. The Maryland Court of Special Appeals wrote, "there cannot be a more unambiguous response to a written waiver than a written, unconditional 'no.'"

TITLE: Blake v. State
INDEX NO.: I.2.d.1.
CITE: (Md. S. Ct.), 5/12/2004, 81
SUBJECT: Conversation Following Invocation of Right to Counsel
HOLDING: Police officer who, after D invoked his right to counsel, handed him copy of charges falsely indicating he faced death penalty and said, "I bet you want to talk now," engaged in functional equivalent of interrogation and violated D's 5th Amendment rights. Because officer's statement was likely to elicit a response, it constituted functional equivalent of interrogation. Although D here asked if he could "still talk," half an hour after the officer's comment, it cannot be said under these circumstances that he voluntarily initiated conversation with police.

TITLE: Connecticut v. Barrett
INDEX NO.: I.2.d.1.
CITE: (1987), 479 U.S. 523, 107 S.Ct. 828, 93 L.Ed.2d 920
SUBJECT: Request for counsel for written statement but not for oral statement
HOLDING: The fundamental purpose of Miranda decision was to assure that individual's right to choose between speech & silence remains unfettered throughout interrogation process. One rule adopted by Court to insulate exercise of 5th Amend. rights from governmental compulsion is that once an attorney is requested by accused, interrogation must cease until attorney is present. [Citations omitted.] Here, D, after being advised of Miranda rights, stated he was willing to talk to police about incident verbally, but did not want to put anything in writing until his attorney came. At trial a police officer testified as to what D verbally told him. Court finds D's limited requests for counsel were accompanied by affirmative announcements of his willingness to speak. Miranda gives D right to choose between speech & silence & here, D chose to speak. Court distinguishes cases requiring broad interpretation of requests for counsel that were less than all-inclusive. Oregon v. Bradshaw (1983), 462 U.S. 1039, 103 S.Ct. 2830, 77 L.Ed.2d 405 ("I do want an attorney before it goes very much further."); Edwards v. AZ (1981), 451 U.S. 477, 101 S.Ct. 1880, 68 L.Ed. 2d 378 ("I want an attorney before making a deal.") Interpretation is only required where D's words understood as ordinary people would understand them, are ambiguous. Here, D made clear his intentions & they were honored by police. Held, no 5th Amend. violation. Brennan, CONCURS IN JUDGMENT; Stevens, joined by Marshall, DISSENTS.

TITLE: Currie v. State
INDEX NO.: I.2.d.1.
CITE: (4th Dist. 9/16/87), Ind. App., 512 N.E.2d 882
SUBJECT: Interrogation - invocation of right to counsel
HOLDING: Request for court appointed counsel made at probable cause hearing was sufficient invocation of counsel for Miranda purposes. Once right to counsel is asserted, suspect is not subject to further interrogation until counsel has been made available. However, suspect may initiate conversation after knowing & intelligent waiver of right previously invoked. Sleek 499 N.E.2d 751 (citing OR v. Bradshaw (1983), 462 U.S. 1039, 103 S.Ct. 2830, 77 L.Ed.2d 405; Edwards v. AZ (1981), 451 U.S. 477, 101 S.Ct. 1880, 68 L.Ed.2d 378). Valid waiver cannot be established by showing only that suspect responded to further police-initiated interrogation. Sleek. Fact that interrogation had not begun at time right was asserted is not significant. If suspect "indicates in any manner and at any stage of the process that he wishes to consult with an attorney before speaking, there can be no questioning." Id. (quoting Miranda, emphasis added by Sleek). Here, D requested at probable cause hearing that counsel be appointed for him. Record does not reveal whether D specifically stated he was choosing to remain silent. Interrogation later that day was initiated by police. Held, any statements obtained during this interrogation should have been excluded at trial.

RELATED CASES: Pilarski, App., 635 N.E.2d 166 (No error finding D had not invoked right to counsel. One officer said he never heard D ask for lawyer and other said D mumbled something he thought was request. After D was transported to station, officer there was informed he did not want to talk and may have requested lawyer, so officer advised D of Miranda rights again, and D signed waiver and gave statement. D's mumbling after initial advisement raised question as to assertion of right to counsel, and so advising him again was proper procedure to clarify situation. Also, no problem with questioning after D invoked right to remain silent, because they needed to clarify counsel situation).

TITLE: Davis v. U.S.
INDEX NO.: I.2.d.1.
CITE: (1994), 512 U.S. __, 114 S.Ct. 2350, 129 L.Ed.2d 362
SUBJECT: Interrogation - ambiguous invocation of right to counsel
HOLDING: Once suspect initially waives Miranda rights, only unambiguous request for counsel will trigger requirement that all questioning cease. Five-justice majority rejects position favored by most lower courts (including IN: see, e.g., Sleek v. State 499 N.E.2d 751), which would require that when suspect makes ambiguous statement regarding counsel, officers should stop questioning him/her immediately or question only for limited purpose of clarifying whether suspect wants counsel. Miranda warnings are not constitutional requirements, but procedural safeguards. Primary protection offered by Miranda is warnings themselves. Second layer of protection is provided by Edwards v. Arizona, 451 U.S. 477, 101 S.Ct. 1880, 68 L.Ed.2d 378 (1981), which requires that if a suspect who has received Miranda warnings & waived counsel subsequently requests counsel at any time, all questioning must cease until attorney has been provided or suspect reinitiates conversation. However, majority holds that to trigger this second layer of protection, suspect must articulate desire for counsel sufficiently clearly that reasonable police officer under circumstances would understand statement as request for attorney. While clarifying ambiguous statements might be good practice, majority is unwilling to require this third layer of protection. Because officers here clarified suspect's statements before further questioning, Souter, Blackmun, Stevens, & Ginsburg, JJ., CONCUR in judgment, but would impose "stop & clarify" requirement.

TITLE: Edwards v. Arizona
INDEX NO.: I.2.d.1.
CITE: (5-18-81), 451 U.S. 477, 101 S.Ct. 1880, 68 L.Ed.2d 378
SUBJECT: Miranda warnings - Invocation of right to counsel
HOLDING: Under Miranda, after suspect requests attorney, waiver of that right must be knowing & intelligent, as well as voluntary. Here, state courts applied erroneous standard for determining waiver of right to counsel by focusing on voluntariness of confession rather than on whether D understood his right to counsel & intelligently & knowingly relinquished it. Where D had invoked his right to have counsel present during custodial interrogation, valid waiver of that right could not be established by showing only that D responded to police-initiated interrogation after being advised again of his rights. Thus, use of D's confession against him at his trial violated D's Fifth & Fourteenth Amendment rights to have counsel present during custodial interrogation. Held, judgment reversed; Burger, C.J., Powell & Rehnquist, JJ., concurring.

TITLE: Hartman v. State
INDEX NO.: I.2.d.1.
CITE: (5/31/2013), 988 N.E.2d 785 (Ind. 2013)
SUBJECT: Police reinitiated interrogation after D invoked right to counsel
HOLDING: In murder and assisting suicide prosecution, Tr. Ct. erred in denying D's motion to suppress his confession because detective, in violation of the Fifth Amendment, reinitiated interrogation after he had invoked his right to counsel. D was charged with burglary and brought in for questioning regarding his missing father. After Miranda warnings, he asked for an attorney and questioning ceased. After serving search warrants and discovering the body, D, still in custody was questioned again 48 hours later at 1:00 a.m. The detectives said "by law" the detective "had" to read him the search warrants. After detective read the search warrant, he immediately asked D if he had any questions. In response, D asked if the house had been searched and if anything had been found. Detective took D to an interview room, re-Mirandizedhim and eventually D confessed his role in his father's death.

Court rejected State's argument that D initiated dialogue with detectives and that they did not reinitiate interrogation by reading him search warrants and asking if he had any questions. There existed no requirement or justification that the warrants be read to D where the warrants had already been executed and the search performed. In telling the D that he was required "by law" to read the already-executed warrants, the detective was engaging in a ploy that supports Court's conclusion that the police were attempting to evade their obligation to cease questioning of a suspect who had unambiguously requested counsel. The totality of circumstances involving the content, place, and timing of the communication by the police with D, combined with the detective's immediate follow-up inquiry asking the D if he had any questions—all notwithstanding the D's prior invocation of his right to counsel—constituted impermissible questioning or its functional equivalent in contravention of the requirements established by Miranda, Edwards v. Arizona, 451 U.S. 477 (1981), and Rhode Island v. Innis, 446 U.S. 291 (1980). Held, transfer granted, Court of Appeals' opinion at 962 N.E.2d 1273 vacated, denial of motion to suppress reversed and remanded for further proceedings.

TITLE: Lagrone v. U.S.
INDEX NO.: I.2.d.1.
CITE: (12-28-94), 7th Circ., 43 F.3d 332
SUBJECT: Requesting consent to search after D invokes right to counsel
HOLDING: D argued that after asking to speak to attorney, police should have ceased interrogating D about whether D would sign consent to search form. Court held that because requesting consent to search is not likely to elicit incriminating statement, such questioning is not interrogation and, therefore, Miranda warnings are not required. U.S. v. Glenna, 878 F.2d 967 (7th Cir. 1989). Held, judgment affirmed.

TITLE: Lewis v. State
INDEX NO.: I.2.d.1.
CITE: (05-14-12), 966 N.E.2d 1283 (Ind. Ct. App 2012)
SUBJECT: D unambiguously invoked right to counsel
HOLDING: D's question,"Can I get a lawyer?" during a custodial police interview constituted an unequivocal invocation of his Fifth Amendment right to counsel. Thus, Tr. Ct. erred in denying D's motion to suppress the statements he made to police during the interview. D was invited by sheriff for an interview regarding an alleged sex crime with a 13-year-old girl. Sheriff told D he was not under arrest and free to leave at any time, read him his Miranda rights, and then began asking D about the crime. During questioning, D asked, "Can I get a lawyer?" but police continued questioning him. At a suppression hearing, both parties stipulated that D reasonably believed he was in custody and not free to leave. Court held that State is bound on appeal by that stipulation and cannot argue D was not in custody. In United States v. Lee, 413 F.3d 622 (7th Cir. 2005), Seventh Circuit Court of Appeals deemed a suspect's question "Can I have a lawyer?" to be similar to other statements recognized as proper invocations of the right to an attorney. Much as the question, “Can I get the car tonight?” Would be universally understood as a request to borrow the car tonight, and not as a theoretical question regarding one’s *ability* to borrow the car tonight, we have little trouble concluding that Lewis’s question would be understood by any reasonable police officer as an unequivocal request for counsel. Held, judgment reversed and remanded with instructions to grant D's motion to suppress.

See also: Clemons v. State, 967 N.E.2d 514 (Ind. Ct. App 2012) (agreeing with conclusion that D's questions regarding whether he could obtain counsel were procedural questions and comments that were not an unequivocal request for counsel).

TITLE: Maryland v. Shatzer
INDEX NO.: I.2.d.1.
CITE: (2-24-10), 130 S.Ct. 1213 (2010)
SUBJECT: Initiation of questioning after Miranda -must wait 14 days after release
HOLDING: Because the D experienced a break in Miranda custody lasting more than two weeks between the first and second attempts at interrogation, Edwards does not mandate suppression of his statements. When an accused has invoked his right to have counsel present during custodial interrogation, he is not subject to further interrogation by the authorities until counsel has been made available to him, unless the accused himself initiates further communication, exchanges, or conversations with the police. Edwards v. Arizona, 4451 U.S. 477, 484-85 (1981). But where a suspect has been released from custody and returned to his normal life for some time before a later attempted interrogation, there is little reason to think that any change of heart would have been coerced. Thus, Miranda adequately protects the rights of a suspect who initially requested counsel but is re-interrogated after a break in custody that is of sufficient duration to dissipate its coercive effects. Fourteen days provides plenty of time for the suspect to get re-acclimated to his normal life, to consult with friends and counsel, and to shake of any residual coercive effects of his prior custody. Here, in 2003, the police attempted to interrogate the D who was incarcerated on an unrelated charge. The D invoked his right to counsel. The D was released back into the general prison population to serve his unrelated sentence. In 2006, upon the police learning new information regarding the same crime on which the D invoked his right to counsel in 2003, the police again attempted to interview the D who was still incarcerated. This time, the D eventually talked. Without minimizing the harsh realities of incarceration, lawful imprisonment imposed upon conviction of a crime does not create the coercive pressures identified in Miranda, especially when the detention is relatively disconnected from their prior unwillingness to cooperating in an investigation. Because the D's continued detention after the 2003 interrogation did not depend on what he said (or did not say) to the police, and he has not alleged that he was placed in a higher level of security or faced any continuing restraints as a result of the 2003 interrogation, the inherently compelling pressures of custodial interrogation ended when he returned to his normal life in the general prison population. Because 2.5 years separated the first and second interrogation, Edwards did not apply to the second interrogation and the police could initiate an interrogation. Held, judgment of the Court of Appeals of Maryland reversed, and the case remanded for further proceedings not inconsistent with this opinion; Thomas, J., concurring; Stevens, J., concurring.

TITLE: McNeil v. Wisconsin
INDEX NO.: I.2.d.1.
CITE: (1991), 501 U.S. 171, 111 S.Ct. 2204, 115 L.Ed.2d 158
SUBJECT: Questioning after right to counsel
HOLDING: Once 6th Amendment right to counsel has attached & been invoked, any subsequent waiver during police-initiated custodial interview is ineffective. Michigan v. Jackson (1986), 475 U.S. 625, 106 S.Ct. 1404, 89 L.Ed.2d 631 (right attached & was invoked at initial hearing when counsel appointed). 6th Amendment is offense-specific & cannot be invoked for future prosecutions because it does not attach until prosecution commences. 5th Amendment right to counsel is not offense-specific; once suspect invokes right to counsel for interrogation regarding one offense, he/she may not be re-approached regarding any offense unless counsel is present. Arizona v. Roberson (1988), 486 U.S. 675, 108 S.Ct. 2093, 100 L.Ed.2d 704. Here, D was arrested on armed robbery charge & at bail hearing had counsel appointed. Police then sought to question D regarding separate murder offense. D signed 3 separate Miranda waiver forms prior to each of 3 separate interviews regarding murder charge. D contends that although he expressly waived his Miranda right to counsel, those waivers were invalid product of impermissible approaches because his prior invocation of 6th Amendment right with regard to robbery charge was also invocation of 5th Amendment right. Invocation of 5th Amendment right to counsel requires, at mini mum, some statement that can reasonably be construed as desire for attorney in dealing with custodial interrogation by police. Request for assistance of attorney at bail hearing on separate offense does not establish such desire. Rule D seeks would mean most persons in pretrial custody would be unapproachable by police suspecting them of involvement in other crimes even though they had never expressed unwillingness to be questioned. Held, 6th Amendment right to counsel on murder charge had not attached & was not invoked; 5th Amendment right to counsel was expressly waived. Statements properly admitted. Stevens, joined by Marshall & Blackmun, DISSENT.

TITLE: Minnick v. Mississippi

INDEX NO.: I.2.d.1.

CITE: (1990), 498 U.S.146, 111 S.Ct. 486, 112 L.Ed.2d 489

SUBJECT: Counsel must be present at interrogation after invocation of right-extraneous consultation insufficient

HOLDING: Police must terminate interrogation of accused in custody if he/she requests counsel. Miranda v. Arizona (1966), 384 U.S. 438, 86 S.Ct. 1602, 16 L.Ed.2d 694. Officials may not reinitiate questioning "until counsel has been made available." Edwards v. Arizona (1981), 451 U.S. 477, 101 S.Ct. 1880, 68 L.Ed.2d 378. Here, D invoked right to counsel. Subsequently, D consulted with appointed counsel 2-3 times. D then gave inculpatory statement which police initiated outside presence of counsel. Held, when counsel is requested, interrogation must cease, & officials may not reinitiate interrogation without counsel present, whether or not accused has consulted with his attorney. Requirement of presence at interrogation derives from Miranda & assures adequate protection against compelled statements in governmental atmosphere. Opportunity to consult with counsel outside interrogation is not sufficient to protect purpose of Miranda/Edwards. Rule here does not foreclose waiver finding where D invokes right to counsel but then initiates further conversation with police. Held, conviction reversed. Souter not participating; Scalia, joined by Rehnquist, dissenting.

TITLE: Morgan v. State
INDEX NO.: I.2.d.1.
CITE: (4th Dist., 12-5-01), Ind. App., 759 N.E.2d 257
SUBJECT: Miranda violation - Invocation of right to counsel; harmless error
HOLDING: D unambiguously invoked his right to counsel during police interrogation when he told officer he would "feel more comfortable with lawyer," even though he subsequently changed his mind and did not want an attorney. After D stated he would feel more comfortable with lawyer, officer asked "so you don't want to talk to me at this time?", and D shook his head no. Officer continued his exchange with D, however, explaining why it was in D's best interest to talk to him, and D changed his mind. In light of totality of circumstances, even if D's statement could, standing alone, be considered "equivocal," officer who was questioning D reasonably understood that D was asserting his right to have counsel present. Still, officer chose not to break off communication with D. Even though D's confession should not have been entered into evidence, Tr. Ct.'s error was harmless because confession did not contribute to his conviction and was unimportant in relation to substantial evidence of guilt considered by jury. Held, judgment affirmed.

TITLE: Porter v. State
INDEX NO.: I.2.d.1.
CITE: (1st Dist., 3-15-01), Ind. App., 743 N.E.2d 1260
SUBJECT: Invocation of right to counsel - custodial interrogation; waiver not found
HOLDING: Tr. Ct. erred in denying D's motion to suppress evidence found as result of consent to search of his apartment. After D's arrest, he was taken to jail & was advised of his Miranda rights. D began answering police officer's questions, but shortly thereafter he unequivocally invoked his right to counsel. Officer testified that D then began to comment about how people were trying to run him out of town, & that he would not be able to take care of his cat & apartment if he were sent to jail. Subsequently, officer told D that search warrant could easily be obtained & then asked D for his consent to search his apartment. Ct. did not find D's comments to be knowing, intelligent, & voluntary waiver of his right to have attorney present, which is essential to protecting right against self-incrimination. Edwards v. Arizona, 451 U.S. 477, 101 S.Ct. 1880, 68 L.Ed.2d 378 (1981). Once accused has invoked his right to have attorney present, police cannot reinitiate questioning unless knowing, intelligent, & voluntary waiver of right is shown. Id. D's comments in this case were of general nature & did not indicate willingness for officer to elicit incriminating statements. Thus, because officer's request for D's consent to search apartment violated D's Fifth Amendment right to have attorney present during questioning, evidence was inadmissible. Error was harmless beyond reasonable doubt because admission of evidence from D's apartment did not contribute to his conviction. Held, conviction affirmed.

TITLE: Sauerheber v. State
INDEX NO.: I.2.d.l.
CITE: (9-1-98), Ind., 698 N.E.2d 796
SUBJECT: Invocation of right to counsel - custodial interrogation required
HOLDING: When suspect invokes right to counsel during interrogation, police must cease questioning until counsel has been made available or until accused initiates further communication with police. Edwards v. Arizona, 451 U.S. 477, 101 S.Ct. 1880, 68 L.Ed.2d 378 (1981). Here, D made several requests for attorney at time State collected hair, saliva, & blood samples pursuant to search warrant. Four days later, after detective informed D of his Miranda rights, D indicated that he understood his rights & that he wished to waive them. Ct. held that D's request for counsel had no effect at time it was made because D was not being questioned at time of request, & Fifth Amendment privilege against self-incrimination does not apply to taking of blood samples. Schmerber v. California, 384 U.S. 757, 86 S.Ct. 1826, 16 L.Ed.2d 908 (1966). Further, D's request for counsel did not preclude police from initiating contact with D four days later. Rights under Miranda & Edwards do not extend to permit anticipatory requests for counsel to preclude waiver at time interrogation begins. Although context of interrogation may be found before actual questioning begins, D's initial encounter with police had explicit purpose of sampling & there was no indication that police contemplated questioning D at that time. Held, judgment affirmed.

RELATED CASES: Cohee, 945 N.E.2d 748 (Ind. Ct. App 2011) (Miranda warnings not required before seeking and obtaining consent to draw blood); Stroup, App., 810 N.E.2d 355 (D's statement of "how long would it be before I got a lawyer appointed" was a procedural question rather than an unequivocal request for counsel).

TITLE: Sleek v. State
INDEX NO.: I.2.d.1.
CITE: (11/14/86), Ind., 499 N.E.2d 751
SUBJECT: Interrogation - invocation of right to counsel
HOLDING: Tr. Ct. erred in denying D's motion to suppress confession made after D invoked right to counsel. Here, D said: "Well, feel (sic) like I ought to have an attorney around...." Police continued to ask him questions. Court finds D's statement was not inherently ambiguous & as such was sufficient to invoke his right to have counsel present. Court rejects state's contentions that statement was ambiguous in light of preceding events, in that D had been advised of Miranda rights 3 times in 24-hour period, had never invoked 5th Amend rights & had already made several inculpatory statements. Court also rejects state's contention that D's "remark" was more a nature of questioning himself on what he should do & his subsequent actions in shrugging his shoulder & signing a waiver form indicated that he did not wish to consult an attorney. D's post-request responses to further interrogation may not be used to cast doubt on clarity of initial request for counsel. Smith v. IL (1984), 469 U.S. 91, 92, 105 S.Ct. 490, 491, 83 L.Ed.2d 488, 491. Even if D's request was perceived to be inherently ambiguous, or equivocal in light of preceding events, any further questioning should have been narrowly limited to clarifying whether D actually wished to have counsel present. [Citations omitted.] Interrogating officer may not use guise of clarification as subterfuge for eliciting waiver of previously asserted invocation of right to counsel. [Citations omitted.] Court finds officer's questions went beyond permissible scope of clarification & interprets them as attempt to evoke incriminating response/induce D to reconsider invocation of right to counsel. Court finds admission of illegally obtained confession constitutes reversible error. Held, convictions re-versed & remanded for new trial.

RELATED CASES: Anderson, 961 N.E.2d 19 (Ind. Ct. App 2012) (D told police "I really would like to talk to an attorney or something because I don't know where this is going. I don't want y'all to feel that I'm lying to you in any kind of way. I'm confused and there's a lot of stuff going on"; this was an unequivocal invocation of D's right to remain silent which should have been scrupulously honored); Propes, 550 N.E.2d 775 (sets out pre-Edwards analysis of continued questioning after invocation of right to counsel; PCR denial reversed); Cox 493 N.E.2d 151 (invocation was ambiguous; D then continued to ask questions of officer, which court finds constitutes knowing waiver of right to counsel); Malott, 485 N.E.2d 879 (Crim L 412.1(4); police violated Miranda by interrogating D after he said he did not understand his rights; held, harmless error); Lindsey, 485 N.E.2d 102 (Edwards is not controlling when D is arrested, questioned, invokes his right to counsel, is released & then arrested on a different charge; questioning on second charge is permissible); Minnick, 467 N.E.2d 754 (conviction reversed); Moore, 467 N.E.2d 710 (conviction reversed); Clark, 465 N.E.2d 1090 (Crim L 517.2(1), 531(3); when D asserts right to counsel during questioning, subsequent confession is per se inadmissible absent proof that D initiated resumption of questioning & made voluntary/knowing/intelligent waiver of counsel, *citing* Edwards v. AZ, (1981), 451 U.S. 477, 101 S.Ct. 1880, 68 L.Ed.2d 378 & Wall, 441 N.E.2d 682; held, conviction reversed; Givan, joined by Pivarnik, DISSENTS); Sills, 463 N.E.2d 228 (Crim L 414; juvenile case; held, D & father joined in Miranda waiver); Romine, 455 N.E.2d 911 (police ceased interrogation following ambiguous invocation; D initiated further conversation).

TITLE: State v. Bohn
INDEX NO.: I.2.d.1.
CITE: (Mo.Ct. App., 8/5/97), 950 S.W.2d 277
SUBJECT: Invocation of Right to Counsel -- Reaction of Interrogator
HOLDING: Murder suspect who responded to polygraph examiner's request that she speak to investigators by saying she felt "like [she] ought to have a good counselor" unequivocally invoked right to counsel. Court put emphasis on examiner's interpretation of statement. Examiner left room and told police investigator that an "attorney problem" had come up. Investigator then entered room and interrogated suspect for hour and a half, obtaining incriminating statements. Court rejects state's argument that request was not clear and unequivocal, noting that polygraph examiner understood statement to be request for attorney and ceased interrogation, and state cannot change its position at later date.

TITLE: Storey v. State
INDEX NO.: I.2.d.1.
CITE: (3rd Dist., 7-19-05), Ind. App., 830 N.E.2d 1011
SUBJECT: Miranda - Invocation of right to counsel; involuntary confession
HOLDING: Police officer's continued interrogation of D violated his Fifth Amendment right to counsel. D made an unequivocal request for counsel immediately after officer placed him in car & read him his Miranda rights. Officer's monologue about his discovery of potentially incriminating evidence & likelihood D's wife would be arrested had no apparent purpose other than to induce D to say something inculpatory, & thus constituted "interrogation" even though no questions were asked. Loving v. State, 647 N.E.2d 1123 (Ind. 1995). Further, D's subsequent written confession to another detective was induced by officer's speech on way to station. After Fifth Amendment right to counsel is invoked, a waiver in response to police-initiated interrogation, even after additional Miranda warnings, is not sufficiently voluntary & intelligent to meet mandate of Fifth & Fourteenth Amendments. Michigan v. Jackson, 475 U.S. 625 (1986). Accordingly, when a suspect asserts right to counsel during custodial questioning, police must stop interrogation until counsel is present or suspect reinitiates communication with police & waives right to counsel. Jolley v. State, 684 N.E.2d 491 (Ind. 1997).

If accused initiates further communication, Ct. looks at entire interrogation to determine whether purported waiver was knowing & intelligent under circumstances. Here, officer's suggestions he would arrest D's wife in connection with crimes charged were threats of the sort that would call into question the voluntariness of his statement. Hall v. State, 255 Ind. 606, 266 N.E.2d 16 (1971). Held, convictions for possession/manufacture of methamphetamine in excess of three grams reversed & remanded for new trial.

RELATED CASES: Bean, 973 N.E.2d 35 (Ind. Ct. App 2012) (D's statement, "I want a lawyer so that way, you know, I don't have to worry about--you know--saying I don’t know for the fifty-millionth time" was an unequivocal invocation of the right to counsel; see full review at I.2.a.1).

TITLE: Taylor v. State
INDEX NO.: I.2.d.1.
CITE: (12-3-97), Ind., 689 N.E.2d 699
SUBJECT: Confession voluntary - no invocation of right to counsel
HOLDING: D's rights to counsel & right to be free from self-incrimination under both federal & state constitutions were not violated when police continued to question him after he said: "I don't know what to say. I guess I really need a lawyer, but, I mean, I've never done this before, so I don't know." Invocation of Miranda right to counsel requires, at minimum, some statement that can reasonably be construed to be expression of desire for assistance of attorney. Davis v. United States, 114 S.Ct. 2350 (1994). Tr. Ct. properly applied Davis standard in finding that D's purported assertion of his Fifth Amendment rights was not unambiguous request for lawyer. Under both constitutions, clear & unequivocal request for counsel is necessary to require suppression of subsequent statements made while in custody. Where, as here, ambiguous request for counsel is made, ' 13 of Indiana Constitution does not require police to attempt to clarify ambiguous statements. Held, judgment affirmed; Sullivan, J., dissenting.

RELATED CASES: Schuler, 112 N.E.3d 180 (Ind. 2018) (D's statement, "I want my attorney, but I'll answer, you can ask me questions however" was not an unambiguous request for counsel); King, 991 N.E.2d 612 (Ind. Ct. App 2013) ("Am I going to need an attorney?" was not a request for counsel, but rather, merely a question); Malloch, 980 N.E.2d 887 (Ind. Ct. App 2012) (D's comments "Is it best advised to speak with a lawyer?" and that he was unable to get a hold of lawyer on Friday night were not unambiguous and unequivocal invocations of the right to counsel when considered in the context of the exchange with the detective); Collins, App., 873 N.E.2d 149 (D's statements "Do I need an attorney," "I probably need an attorney" and "how long would it take to obtain an attorney" did not unambiguously invoke his right to counsel); Cox, App., 854 N.E.2d 1187 (D did not invoke her right to remain silent or to counsel under Miranda, where she mentioned her attorney in child custody matter & that she had been advised not to speak with anyone, but immediately said thereafter that she would talk, claiming innocence); Griffith, 788 N.E.2d 835 (D's statement that "I might as well not say anything more" in response to police not striking any deals with D for his information did not constitute an invocation of silence); Taylor, 689 N.E.2d 699 (D's comments did not constitute assertion of right to remain silent); Morgan, App., 759 N.E.2d 257 (D unambiguously invoked his right to counsel during police interrogation when he told officer he would "feel more comfortable with lawyer," even though he subsequently changed his mind & did not want an attorney); Goodner, 714 N.E.2d 638 (D did not more than express indecision followed by his continued dialog with officer); Broome, App., 687 N.E.2d 590 (because no reference to attorney was made, D's comment did not constitute request for counsel); Lord v. Duckworth, 29 F.3d 1216 (7th Cir. 1994) (D's statement: "I can't afford a lawyer, but is there any way I can get one?" on its face, was not sufficiently clear implication of present desire to consult with counsel; police were under no obligation to stop questioning D).

I. CONFESSIONS/ INTERROGATIONS

I.2. Miranda warnings (5th Amend)

I.2.d.2. Post arrest silence (see J.8.e)

TITLE: Borkholder v. State
INDEX NO: I.2.d.2.
CITE: (3rd Dist., 10-12-89), Ind. App., 544 N.E.2d 571
SUBJECT: Miranda warnings - Invocation of rights - Post-arrest silence
HOLDING: Complete & indefinite cessation of police questioning is required only when accused invokes his right to counsel, not when he invokes his right to silence. Once accused invokes his right to silence, police must cease questioning immediately. Michigan v. Mosley, 96 S.Ct. 321 (1975). Here, issue of whether D's right to remain silent was not raised in motion to suppress. Therefore, Ct. did not consider whether D's right to cut off questioning was scrupulously honored. Police may resume questioning only after passage of significant amount of time & after giving fresh set of Miranda warnings. Held, judgment affirmed.

RELATED CASES: Mendoza-Vargas, 974 N.E.2d 590 (Ind. Ct. App 2012) (police did not wait a substantial amount of time before re-initiating questioning and instead immediately began to question D right after he invoked his right to remain silent; nor did they re-advise him of his Miranda rights before re-initiating questioning; see full review at I.2.d).

TITLE: Doyle v. Ohio
INDEX NO.: I.2.d.2.
CITE: (6-17-76), 426 U.S. 610, 96 S.Ct. 2240, 48 L.Ed.2d 91
SUBJECT: Miranda warnings - Invocation of rights; post-arrest silence
HOLDING: Use for impeachment purposes of Ds' silence, at time of arrest & after they received Miranda warnings violated Due Process. Post-arrest silence following such warnings is insolubly ambiguous. Moreover, it would have been fundamentally unfair to allow D's silence to be used to impeach explanation subsequently given at trial after D had been impliedly assured, by Miranda warnings, that silence would carry no penalty. Held, judgment reversed & remanded; Stevens, Blackmun, & Rehnquist, JJ., dissenting.

RELATED CASES: Sobolewski, App., 889 N.E.2d 849 (by asking D why he had not informed the police about alleged exculpatory information while awaiting trial, the prosecutor was clearly attempting to impeach D's credibility with his post-arrest silence, which is impermissible; harmless error).

TITLE: Haviland v. State
INDEX NO.: I.2.d.2.
CITE: (3-13-97), Ind., 677 N.E.2d 509
SUBJECT: Confession voluntary; no invocation of right to remain silent
HOLDING: Tr. Ct. did not err in denying D's motion to suppress his confession. D's statement, "I'm through with this," did not constitute invocation of his right to remain silent. D appeared only to be "through with hearing" that he had killed his uncle, not "through with answering questions." Reluctantly, D answered questions without pausing or indicating in any manner that he would no longer respond. Evidence supported Tr. Ct.'s finding that D's confession was freely & voluntarily given, & not product of coercion. Held, conviction affirmed.

RELATED CASES: Risinger, 137 N.E.3d 292 (Ind. Ct. App. 2019) (unlike Haviland, D's statement "I'm done talking" neither raised doubts nor expressed concerns about continuing to talk); Cox, App., 854 N.E.2d 1187 (D did not invoke her right to remain silent or to counsel under Miranda, where she mentioned her attorney in child custody matter & that she had been advised not to speak with anyone, but immediately said thereafter that she would talk, claiming innocence); Griffith, 788 N.E.2d 835 (D's statement that "I might as well not say anything more" in response to police not striking any deals with D for his information did not constitute an invocation of silence); Taylor, 689 N.E.2d 699 (D's comments did not constitute assertion of right to remain silent).

TITLE: Robinette v. State
INDEX NO.: I.2.d.2.
CITE: (1-11-01), Ind., 741 N.E.2d 1162
SUBJECT: Post arrest silence - inadmissible to prove sanity
HOLDING: Raising insanity defense does not open door to testimony obtained in violation of D's Miranda rights. D's post-arrest & post-Miranda silence cannot be used as evidence of sanity. Wainwright v. Greenfield, 474 U.S. 284 (1986). Use of D's post-Miranda silence to prove D's sanity is subject to harmless error analysis, under which State bears burden of establishing that federal constitutional error was harmless beyond reasonable doubt. Brecht v. Abrahamson, 507 U.S. 619 (1993). Here, in order to prove D's sanity at time of offenses, State introduced taped interrogation in which D asserted her right to remain silent nearly fifty times over four hours. Tr. Ct. gave limiting instruction telling jury to consider first tape for limited purpose of D's demeanor & to disregard second tape. However, because D produced experts that testified to her lack of mental capacity at time of crimes & only other evidence of D's sanity around time of crime was testimony of one of victims, videotapes easily contributed to her convictions. Limiting instructions fell well short of curing harm. Thus, because Tr. Ct. erroneously admitted videotaped statements D made after being Mirandized & asserting her right to remain silent, D was entitled to new trial. Held, convictions reversed.

RELATED CASES: Barcroft, 26 N.E.3d 641 (Ind. Ct. App 2015) (Tr. Ct. committed fundamental error by relying on D's post-Miranda request for counsel as evidence of D's sanity).

TITLE: Vitek v. State
INDEX NO.: I.2.d.2.
CITE: (6-29-01), Ind., 750 N.E.2d 346
SUBJECT: Use of D's post-arrest silence for impeachment - D opens door
HOLDING: Although evidence of D's post-Miranda silence is generally not admissible, D may open door to its admission. Doyle v. Ohio, 426 U.S. 610, 619-20 (1976). In this case, prosecutor was permitted to bring in evidence of D's refusal to give videotaped statement because it was defense counsel's intent on cross-examination to suggest that D cooperated with police. Ct. also concluded that it was consistent with limitations Tr. Ct. placed on use of video-tape refusal for State to touch on issue of D's cooperation during closing argument. Held, judgment affirmed.

TITLE: State v. Rodrigues
INDEX NO.: I.2.d.2.
CITE: 113 Haw. 41, 147 P.3d 825 (Haw. 2006)
SUBJECT: Refusal to record confession equates to right to remain silent
HOLDING: Hawaii Supreme Court held a criminal suspect's refusal to repeat an incriminating statement for recording purposes functions as an invocation of the Fifth Amendment right to remain silent if it occurs at the close of the interview. D argued that, by refusing to repeat his statement on tape, he asserted his right to remain silent where officer testified to D's refusal to be taped and the officer's notes of the interview were admitted into evidence with the defense questioning their accuracy. Court found that, because the D's refusal to be taped caused the termination of all questioning by the police, it acted as a de facto invocation of his right to remain silent and refrain from answering further inquiries. Two other jurisdictions analyzing this question are split on the issue. See State v. Woods, 542 N.W.2d 410 (Neb. 1996) (finding Fifth Amendment right); Ball v. State, 699 A.2d 1170 (Md. 1997) (not finding). Court here noted that the record did not reflect whether the D was willing to continue the interview so long as it was not taped. Even so, it decided that the facts were closer to those in Woods than in Ball. Court also pointed to language in Miranda v. Arizona, 384 U.S. 436 (1966), to the effect that a D may answer some questions from police without giving up his right to stop providing information at any time and invoke his right to counsel. The Court continued, a D's mere refusal to allow an interview to be recorded, by itself, does not render any part of his statement inadmissible. "If the refusal to permit the interview to be electronically recorded is incidental to the suspect's general willingness to speak with police and answer questions, there is no invocation of a right to remain silent." However, the Court also held that it was not plain error for the Tr. Ct. in this case to allow the State to bring out the fact that the D refused to reiterate an inculpatory statement on tape, as the information was part of the prosecution's effort to convince the jury of the reliability of the officer's recollections of the interview, to clarify why the interview was memorialized solely by the officer's notes instead of a recording, and was unaccompanied by any implication of guilt.

I. CONFESSIONS/ INTERROGATIONS

I.2. Miranda warnings (5th Amend)

I.2.e. Waiver of rights

TITLE: Johnson v. State
INDEX NO.: I.2.e.
CITE: (4th Dist., 06-08-05), Ind. App., 829 N.E.2d 44
SUBJECT: Miranda warnings - D's silence; waiver not shown
HOLDING: D's first custodial statement to police should have been suppressed because police did not obtain a valid waiver of his Miranda rights. A waiver of one's Miranda rights occurs when D, after being advised of those rights & acknowledging that he understands them, proceeds to make a statement without taking advantage of those rights. Ringo v. State, 736 N.E.2d 1209 (Ind. 2000). Waiver may not be presumed from a D's silence or a confession. N.C. v. Butler, 441 U.S. 369, 373 (1979). Here, it is clear that D did not sign a waiver before he made first statement. There is also no evidence that D was given a copy of the waiver of rights or was even asked whether he understood his rights after he was given his Miranda warnings. Thus, even if D voluntarily waived his rights, as evidenced by his willingness to give a statement once confronted with evidence against him, transcript is devoid of any evidence, apart from his silence & statement itself showing that D acknowledged that he understood his rights. D's literacy cannot support an acknowledgment of his rights because he was not provided with a copy of the waiver of rights form. State did not establish that D knowingly & voluntarily waived his Miranda rights. However, distinguishing Missouri v. Seibert, 124 S.Ct. 2601 (2004), Ct. held that admitting statement was harmless because D's second taped confession was properly admitted, & there is no evidence that first statement was coerced. Detective's failure to obtain a valid waiver regarding first statement involved a good-faith Miranda mistake open to correction by careful warnings, & therefore, did not render second statement inadmissible. Held, judgment affirmed.

RELATED CASES: Strickland, 119 N.E.3d 140 (Ind. Ct. App. 2019) (distinguishing Johnson, Ct. noted that officers read Miranda advisement to all three in hotel room and then asked them separately whether they understood their rights; the officers received assurances from D she understood her rights); Keller, App., 845 N.E.2d 154 (D's second advisement of rights, given prior to independent interrogation, was sufficient to correct good-faith mistake made day before, prior to D's first statement).

TITLE: Kelly v. State
INDEX NO.: I.2.e.
CITE: (11/21/2013), 997 N.E.2d 1045 (Ind. 2013)
SUBJECT: Miranda violation - two-part interrogation
HOLDING: In Class A felony dealing in cocaine prosecution, Tr. Ct. erred in denying D's motion to suppress inculpatory statements she made to police which were obtained through the "question first, warn later" tactic disapproved in Missouri v. Seibert, 542 U.S. 600, 124 S.Ct. 2601, 159 L.Ed.2d 643 (2004). Seibert involved police deliberately not giving Miranda warnings until getting incriminating statements from a suspect, then giving the warnings to get the statements again.

Here, State concedes the statements D made before police officer read her the Miranda warning should be suppressed, but argued that her post-Miranda statements are admissible under Oregon v. Elstad, 470 U.S. 298, 318 (1985). Court disagreed, noting that D's pre-warning statement regarding knowledge of cocaine in her vehicle was more specific than her post-warning statement, both statements concerned the same subject, were made in same location, mere minutes apart, in response to the same officer. Most significantly, officers referred to D's pre-warning admission three times during the post-warning interrogation. Under these circumstances, Court concluded, as in Seibert, "that a reasonable person in the suspect's shoes would not have understood [the Miranda warning] to convey a message that she retained a choice about continuing to talk."

This does not mean that officers must offer a Miranda warning prior to initiating any conversation with a suspect, nor does it mean that a pre-warning confession necessarily renders a post-warning confession involuntary. Officers may still, under Elstad, cure a good-faith mistake by administering a proper warning before proceeding with further questioning. But here, such a cure was impossible when it was followed by explicit references to a pre-warning incriminating statement. Held, transfer granted, Court of Appeals' memorandum opinion vacated, reversed and remanded for further proceedings.

TITLE: McDougal v. State
INDEX NO.: I.2.e.
CITE: (1/12/04), Ga. S. Ct., S03A1475
SUBJECT: Mere Request to Speak to Officers Didn't Waive Invocation of Right to Counsel
HOLDING: D's mere request to speak to his interrogators did not amount to waiver of previously invoked 5th Amendment right to counsel absent an indication that he intended to initiate conversation about his involvement in the crime. Although suspects may waive previously invoked right to counsel by reinitiating conversations with interrogators, totality of circumstances here do not show that D wished to waive that right.

TITLE: Morales v. State
INDEX NO.: I.2.e.
CITE: (5th Dist., 6-8-01), Ind. App., 749 N.E.2d 1260
SUBJECT: Miranda warnings - waiver not shown
HOLDING: Custodial D did not knowingly, voluntarily, & intelligently waive her Miranda rights when she signed waiver form before answering officer's questions at police station. Officer orally translated "advice of rights" form for D, who spoke very little English. However, translator did not ask D whether she understood her rights & did not advise D that she would be waiving her rights by signing waiver form. D should not be instructed to sign waiver form if she understands it, but rather she should be informed that she is signing waiver of rights & that she should sign it only if she desires to answer questions at that time without presence or advice of attorney. Dickerson v. State, 257 Ind. 562, 276 N.E.2d 845 (1972). Thus, Tr. Ct. erred when it denied D's motion to suppress her statements to police; however, error was harmless because statements were cumulative of substantial independent evidence of guilt. Held, conviction affirmed.

Note: Given fifty-five percent increase in Indiana's Hispanic population during past decade, Ct. noted that both D's rights & effective law enforcement would be better served if standardized forms containing Miranda warnings & waivers written in Spanish were created & distributed to all law enforcement agencies.

TITLE: Nichols v. State
INDEX NO.: I.2.e.
CITE: (1st Dist., 8-23-89), Ind. App., 542 N.E.2d 572
SUBJECT: Miranda warnings - Waiver; low IQ
HOLDING: Degree of impairment of D's faculties at time of waiver of right & confession is of critical importance in determining whether statement was given voluntarily. While D's mental condition may be significant in determining whether confession given voluntarily, mental condition, by itself & apart from its relation to official coercion, never disposes of inquiry into constitutional voluntariness. Here, Tr. Ct.'s determination that D's confession to police was voluntary was supported by evidence, including testimony of police officers & psychiatrists. Held, judgment affirmed.

RELATED CASES: Blatz, App, 369 N.E.2d 1086 (State did not carry its burden of showing that eighteen year-old D, who had eight years of special education as slow learner, made voluntary & knowing waiver of his rights to remain silent & to have attorney present during interrogation, even though D signed written waivers before giving statement). Cooper, 309 N.E.2d 807 (record sustained Tr. Ct.'s finding that D who had seventh grade education understood confession he signed). Harrison, 382 N.E.2d 920 (even though D had 90 IQ & fourth grade reading level, D's intelligence & reading ability were not such as would render D's waiver of rights involuntary; when D indicated he did not understand his rights, they were further explained to D by his friend).

TITLE: Santana v. State
INDEX NO.: I.2.e.
CITE: (4th Dist., 5-21-97), Ind. App., 679 N.E.2d 1355
SUBJECT: Miranda warnings - waiver shown
HOLDING: After initial stop of vehicle, D was advised of his Miranda rights, & when asked by officer whether he understood English language, D responded, "kind of, little bit." Upon further inquiry, officer discovered that D understood & read Spanish language, so he handed D printed Spanish Miranda advisement card & asked D to read it. After reading card while officer observed, D indicated that he understood his rights & wished to speak with police. Officers indicated that D responded appropriately to their commands & questions, & D never indicated that he did not understand what he was being told to do. Although advisements simply said that anything "can" be used in Ct., Ct. held that omission of word "will" was not fatal variance so as to require suppression of statements. Myers, 510 N.E.2d 1360. Under facts & circumstances of this case, Tr. Ct. did not err in denying D's motion to suppress statements. Held, judgment affirmed.

I. CONFESSIONS/ INTERROGATIONS

I.2. Miranda warnings (5th Amend)

I.2.e.1. In general

TITLE: Ajabu v. State
INDEX NO.: I.2.e.1.
CITE: (3-6-98), Ind., 693 N.E.2d 921
SUBJECT: Waiver of rights - self-incrimination & effect of failure to advise D of attorney's attempt to contact him
HOLDING: Right to be free from self-incrimination protected by Article I, § 14 of Indiana Constitution is not violated where: 1) police fail to inform suspect prior to pre-charge interrogation of lawyer's unsolicited & unknown efforts to contact suspect; or 2) police do not honor counsel's request to be present during any questioning. Neither Fifth nor Fourteenth Amendment is violated by admission of confession obtained after attorney, unknown to suspect, & hired by third party, unsuccessfully seeks to intervene in interrogation. Moran v. Burbine, 475 U.S. 412, 106 S. Ct. 1135, 89 L.Ed.2d 410 (1986). Language, textual history, & purpose of Article I, § 14 of Indiana Constitution all point to conclusion that it protects D against use of his compelled testimony, not his voluntary statements. Following holding & reasoning outlined in Burbine Ct. held that necessity of clear request for counsel in Fifth Amendment context is prerequisite for invocation of Indiana constitutional right under Section 14. Here after D was taken to jail, his father hired attorney for him. Counsel called jail & asked that D not be questioned until attorney was present. Prosecutors went forward with planned interrogation session without telling D about attorney's phone call. D was told only after requesting counsel, & after having confessed to murder. Treatment of lawyer whose activities were unknown to D could not have affected voluntariness of D's decision to speak with interrogators. Thus, Tr. Ct. properly concluded that D knowingly, intelligently, & voluntarily waived his state constitutional right to be free from self-incrimination, & Article I, § 14 of Indiana Constitution did not bar use of D's resulting confession. Further, actions of police & prosecutors in failing to inform D of attorney's phone call did not violate due process of law under Fourteenth Amendment. Held, conviction affirmed, remanded for resentencing; Selby & Dickson, JJ., concurring. Note: In concurring opinion, two justices said that majority's decision should not apply to case where counsel actually comes to place where D is confined or asks to speak with D.

RELATED CASES: Malinski, 794 N.E.2d 1071 (Law enforcement officials have a duty to inform a custodial suspect immediately when an attorney hired by the suspect's family to represent him is present at police station seeking access to him; see full review, this section).

TITLE: Armour v. State
INDEX NO.: I.2.e.1.
CITE: (7/3/85), Ind., 479 N.E.2d 1294
SUBJECT: Miranda - waiver of rights; advisement of charges
HOLDING: Miranda does not require that accused be specifically informed by interrogator of precise nature of potential charges for which accused is being questioned. Berkemer v. McCarty (1984), 468 U.S. 420, 104 S.Ct. 3138, 82 L.Ed.2d 317. Court finds it would be unreasonable to require police to inform suspects at investigatory stage re nature of all potential charges since "enumerable unknown factors ... affect resulting formal charge, if any." Nonetheless, suspect should be informed of reason for investigation or incident which gives rise to interrogation so he/she can make knowing & intelligent decision whether to forego privilege against self-incrimination. D contends he believed he was being questioned concerning battery of 3-month old son & was unaware of potential neglect charges (of which he was convicted). Court finds no police deception. Held, conviction affirmed.

TITLE: Auten v. State
INDEX NO.: I.2.e.1.
CITE: (1st Dist. 8/8/89), Ind. App., 542 N.E.2d 215
SUBJECT: Miranda - waiver; refusal to sign form
HOLDING: Tr. Ct. erred in finding that D's statement was voluntary, where evidence showed simply that D twice refused to sign waiver form, several hours apart, but gave statement after second refusal. Mere refusal to sign waiver form does not in & of itself constitute exercise of Miranda rights. In Norris 498 N.E.2d 1203, D refused to sign form because attorney had advised him never to sign anything in his absence, but D indicated that he would be happy to cooperate & voluntarily, gave statement. Because Norris volunteered his statement, refusal to sign waiver form was not exercise of right to remain silent. In Lee 531 N.E.2d 1165, D was not presented with waiver form, but spoke freely about incident after receiving Miranda warnings. These cases do not indicate that right to remain silent may never be invoked by refusal to sign waiver form. In Benton 401 N.E.2d 697 Ind. S. Ct. found refusal to sign form to be refusal to waive rights, distinguishing those cases in which D volunteered statement without prodding by police. Here, D refused to sign form at 11 p.m. on night of arrest, & again 3 hours later. There is no evidence that D was equivocal about remaining silent, or that she at any time, initiated discussion. D testified that she refused to sign form because she assumed that if she did, she would be giving up her rights. Evidence leads to conclusion that D invoked right to remain silent by refusing to sign form. Without evidence on what transpired between second refusal to sign waiver & giving of statement, there is no proof that police scrupulously honored D's refusal to talk. Held, Tr. Ct. erred in admitting D's statement. Conviction reversed due to insufficient evidence.

RELATED CASES: Bevill, 472 N.E.2d 1247 (D's refusal to sign written statement of his confession was based on D's concern with accuracy of contents of D's story as retold by officers; statements to police were freely & voluntarily given).

TITLE: Colorado v. Connelly
INDEX NO.: I.2.e.1.
CITE: (1986), 479 U.S. 157, 107 S.Ct. 515, 93 L.Ed.2d 473
SUBJECT: Miranda waiver - compulsion resulting from D's mental state
HOLDING: "The relinquishment of the right [to remain silent] must have been voluntary in the sense that it was the product of free & deliberate choice rather than intimidation, coercion, or deception. . . ." Moran v. Burbine (1986), U.S., 106 S.Ct. 1135, 89 L.Ed.2d 410. Here, D approached police officer & stated he had murdered someone & wanted to talk about it. Police advised D of Miranda rights. D stated he understood rights, but still wanted to discuss murder. At suppression hearing, D presented evidence that he was suffering from chronic schizophrenia & that his confession was motivated by "the voice of God" which commanded him to confess. Expert testimony revealed that these "command hallucinations" interfered with D's "volitional abilities; that is, his ability to make free & rational choices." Court rejects D's argument that an attempted waiver is invalid whenever the D feels compelled to waive rights by reason of any compulsion. Held, an attempted waiver is invalid only when compulsion to waive flows from government coercion. Blackmun CONCURS IN PART & CONCURS IN JUDGMENT; Stevens DISSENTS IN PART & CONCURS IN JUDGMENT; Brennan & Marshall DISSENT.

TITLE: Colorado v. Spring
INDEX NO.: I.2.e.1.
CITE: (1987), 479U.S.564, 107 S.Ct. 851, 93 L.Ed.2d 954
SUBJECT: Voluntariness of waiver - suspect's awareness of all possible subjects of questioning
HOLDING: Statement is not "compelled" under 5th Amend. if individual "voluntarily, knowingly & intelligently" waives constitutional privilege. Miranda v. AZ (1966), 384 U.S. 436, 444, 86 S.Ct. 1602, 16 L.Ed. 2d 694. Waiver will not be considered coerced if relinquishment is product of free & deliberate choice & is made with full awareness of nature of right being abandoned & consequences of decision to abandon it. Id. Here, D was arrested for firearms violation. While questioning D re firearms violation, officers also questioned him concerning unrelated homicide. D initially denied knowledge of homicide, but later confessed. Prior to both statements D was fully Mirandized & waived rights. Court finds no allegation that D failed to understand rights or misunderstood consequences of speaking freely to police. Rather, D argues that failure of police to inform D that he would be questioned re homicide constitutes official "trickery" sufficient to invalidate waiver even if official conduct did not amount to "coercion." Court rejects argument that "mere silence by law enforcement officials as to the subject matter of an interrogation is "trickery" sufficient to invalidate suspect's waiver. . . ." Valid waiver does not require that suspect be informed of all information useful in making decision or all information that might affect decision to confess. Moran v. Burbine (1986), U.S., 106 S.Ct. 1135, 89 L.Ed.2d 410. Here, additional information could affect only wisdom of Miranda waiver, not its essentially voluntary & knowing nature. Held, suspect's awareness of all possible subjects in advance of interrogation is not relevant in determining whether suspect voluntarily, knowingly & intelligently waived 5th Amend. privilege. Marshall, joined by Brennan DISSENTS.

TITLE: Craig v. State
INDEX NO.: I.2.e.1.
CITE: (12-16-77), Ind., 370 N.E.2d 880
SUBJECT: Miranda warnings - hearing on voluntariness of waiver
HOLDING: Tr. Ct. could reasonably infer existence of valid waiver from detective's testimony. Testimony showed adequate warnings & indication that D understood warnings & wished to waive rights involved & showed absence of inducement. There were no indicators that D was not able to comprehend his rights or freely determine to relinquish them. D was entitled on motion, to hearing outside jury's presence, at which trial Ct. would determine voluntariness of waiver & confession before jury could be exposed to confession. Tr. Ct.'s failure to conduct hearing deprived D of opportunity to present evidence bearing on validity of his waiver. Evidentiary hearing was required to determine if D executed valid waiver. Held, appeal held in abeyance & case remanded for hearing.

TITLE: Light v. State
INDEX NO.: I.2.e.1.
CITE: (12/15/89), Ind., 547 N.E.2d 1073
SUBJECT: Miranda waiver - standard of proof
HOLDING: While voluntariness of confession itself must be proved beyond reasonable doubt, state need only prove knowing & voluntary waiver of Miranda rights by preponderance of evidence. Ind. S. Ct. *cites* Colorado v. Connelly (1986), 479 U.S. 157, 93 L.Ed.2d 473, 107 S.Ct. 515, for this lower standard, although federal standard for voluntariness of confession itself has always been lower preponderance standard, & Connelly did not purport to set out new or separate standard for proof of voluntary waiver. In separately reviewing waiver, Ind. S. Ct. gives different weight to some events than in reviewing voluntariness of statement. Police here testified that D was read Miranda rights & understood them before any interrogation commenced - recorded or unrecorded - & that D consented to be interviewed. This testimony is adequate to support finding that D knowingly & intelligently waived Miranda rights.
NOTE: While this case sets out separate & lower standard for review of waiver, abandoning without expressly overruling prior caselaw (i.e. Tawney 439 N.E.2d 582; Russell, App., 460 N.E.2d 1252), it in fact allows for fuller review of voluntariness of confession itself. Prior caselaw limited review to evidence most favorable to Tr. Ct.'s finding, together with uncontradicted evidence in favor of D. See, e.g., Carlisle 443 N.E.2d 826; Russell, supra.

TITLE: Malinski v. State
INDEX NO.: I.2.e.1.
CITE: (9-3-03), Ind., 794 N.E.2d 1071
SUBJECT: Duty to inform suspect of attorney's presence at police station
HOLDING: Law enforcement officials have a duty to inform a custodial suspect immediately when an attorney hired by the suspect's family to represent him is present at police station seeking access to him. This requirement is based on Indiana Constitution, article I, section 13's guarantee that accused has right "to be heard by himself & counsel" in all criminal prosecutions. Cts. have specifically distinguished between attempts to contact client in person, as in this case, & attempts over the phone. See Ajabu v. State, 693 N.E.2d 921 (Ind. 1998). Despite withholding of information in this case, Ct. held that under totality of circumstances, D knowingly, voluntarily & intelligently waived his right against self-incrimination & right to counsel during questioning at police station. There was no indication that attorney retained by D's family had a previous relationship with D himself. Second, police repeatedly read D his rights & he consistently waived them & agreed to talk, giving detailed statements. Third, D signed a written waiver of his Miranda rights. Finally, at no time during interrogations did D request counsel. Held, judgment affirmed.

TITLE: McFarland v. State
INDEX NO.: I.2.e.1.
CITE: (2-23-88), Ind., 519 N.E.2d 528
SUBJECT: Miranda warnings - signed waiver not dispositive
HOLDING: Signing of waiver of rights form does not conclusively show valid waiver of rights to remain silent & to consult with counsel. Here, evidence supported admission of statement D made to police when he was questioned three times, even though D claimed his Fifth & Sixth Amendment rights were violated because he was not allowed, after three requests, to be brought to jail without answering questions & that he was coerced into making statements to police. D was arrested, given numerous Miranda warnings, & three times signed waiver form. D indicated to arresting officer he understood his rights. Three testifying officers stated D at no time requested to be brought to jail. D was not threatened, harmed, or coerced in any way to make statements. Held, judgment affirmed.

RELATED CASES: Hill, App., 825 N.E.2d 432 (Ct. rejected D's assertion that he must be informed in writing of his rights or that he must execute a written waiver of those rights); Brock, 540 N.E.2d 1236 (signed rights waiver form is not dispositive of issue, & express written or oral waiver of rights is not required to establish valid waiver).

TITLE: Michigan v. Mosley

INDEX NO.: I.2.e.1.

CITE: (12-9-75), 423 U.S. 96, 96 S.Ct. 321, 46 L.Ed.2d 313

SUBJECT: Miranda warnings - Waiver of rights - In general

HOLDING: If D claims right to remain silent, police are not prohibited from continuing to question D, so long as D's right to cut off questioning is scrupulously honored. Here, admission into evidence of D's incriminating statement did not violate Miranda principles, because D's right to cut off questioning was scrupulously honored. Police immediately ceased robbery interrogation after D's refusal to answer. Police commenced questioning about murder only after significant time lapse & after fresh set of warnings had been given to D. Held, judgment vacated & case remanded; White, J., concurring; Brennan & Marshall, JJ., dissenting.

RELATED CASES: Edwards v. Arizona, 101 S.Ct. 1880 (after suspect requests attorney, waiver of that right must be knowing & intelligent, as well as voluntary; waiver given during police- initiated conversations invalid even though D is again advised of his rights).

TITLE: Moran v. Burbine

INDEX NO.: I.2.e.1.

CITE: (1986), 475 U.S. 412, 106 S.Ct. 1135, 89 L.Ed.2d 410

SUBJECT: Waiver of rights - effect of failure to advise D of attorney's attempt to contact him/her

HOLDING: D may waive effectuation of Miranda warnings provided waiver is made voluntarily, knowingly, & intelligently. First, relinquishment must have been voluntary (product of free & deliberate choice rather than intimidation, coercion or deception). Edwards v. AZ (1981), 451 U.S. 477, 101 S.Ct. 1880, 68 L.Ed.2d 378. Second, waiver must have been made with full awareness both of nature of right being abandoned & consequences of decision to abandon it. Id. Only if totality of circumstances surrounding interrogation reveal both uncoerced choice & requisite level of comprehension may court properly conclude that Miranda rights have been waived. Fare v. Michael C. (1979), 442 U.S. 707, 725, 99 S.Ct. 2560, 2572, 61 L.Ed.2d 197. Events occurring outside presence of suspect & entirely unknown to suspect have no bearing on his/her capacity to comprehend & knowingly relinquish constitutional right. Withholding of information by interrogators is relevant to constitutional validity of waiver only if it deprives D of knowledge essential to his/her ability to understand nature of rights & consequences of abandoning them. Here, attorney contacted police on D's behalf. Police informed her that they would not be questioning D or placing him in lineup that evening - 45 minutes later police obtained waiver of Miranda rights & inculpatory statement from D. Court notes that this information would have been useful to D & may even have affected his decision to confess. However, Constitution does not require police to supply suspect with flow of information to help suspect calibrate his/herself interest in deciding whether to speak or stand by his/her rights. Stevens, joined by Brennan & Marshall, DISSENTS.

TITLE: Oldham v. State
INDEX NO.: I.2.e.1.
CITE: (1st Dist. 8/16/84), Ind. App., 467 N.E.2d 419
SUBJECT: Miranda - waiver of rights; post-polygraph questioning
HOLDING: Refusal to suppress incriminating statement made to police following polygraph without counsel was not error where D was advised of Miranda rights & signed waiver. D was not entitled to second warning about rights after polygraph. Original waiver covered entire transaction. Wyrick v. Fields (1982), U.S., 103 S.Ct. 394, 74 L.Ed. 2d 214. Here, D asked to consult with lawyer before taking polygraph. D's attorney was unavailable (in court). Officers told D he should take test now. D said he would like attorney present, but agreed to take test. After test, officer told D answers indicated deception. While waiting for elevator, D told officers he had exposed himself but denied any touching (attempted child molesting charges). Court rejects D's argument that police improperly influenced him. Grassmyer, App., 429 N.E.2d 248. Held, no error.

I. CONFESSIONS/ INTERROGATIONS

I.2. Miranda warnings (5th Amend)

I.2.e.2. Initiation of conversation after Miranda warnings

TITLE: Arizona v. Mauro
INDEX NO.: I.2.e.2.
CITE: (1987), 481 U.S. 520, 107 S. Ct. 1931, 95 L.Ed.2d 458
SUBJECT: Statements made to spouse following invocation of right to counsel
HOLDING: When accused has "expressed his desire to deal with the police only through counsel, [he] is not subject to further interrogation by the authorities until counsel has been made available to him, unless the accused himself initiates further communication, exchanges, or conversations with the police." Edwards v. AZ (1981), 451 U.S. 477, 484-85, 101 S. Ct. 1880, 68 L.Ed.2d 378. This rule applies not only to express questioning, but also to its "functional equivalent." RI v. Innis (1980), 446 U.S. 291, 100 S.Ct. 1682, 64 L.Ed.2d 297. Any words or actions on part of police (other than those attendant to arrest/custody) that police should know are reasonably likely to elicit incriminating response from suspect constitute "functional equivalent" of interrogation. Id. Here, D invoked his right to counsel. D's wife insisted upon speaking to him. Police acceded to request provided police be permitted in room. Officer sat in room with D & wife, placed tape recorder on desk in clear view & recorded conversation during which D made incriminating statements. Court finds this action did not constitute functional equivalent of interrogation. Officer asked neither D nor wife any questions. Nor is there any evidence that decision to permit liaison was psychological ploy. There was possibility that D would incriminate himself while talking to wife. However, "[o]fficers do not interrogate a suspect simply by hoping that he will incriminate himself." Held, D was not subjected to compelling influences, psychological ploys, or direct questioning; D's volunteered statements cannot be considered the result of police interrogation. Stevens, joined by Brennan, Marshall, & Blackmun, DISSENTS.

TITLE: Carr v. State
INDEX NO.: I.2.e.2.
CITE: (09-29-10), 934 N.E.2d 1096 (Ind. 2010)
SUBJECT: Miranda - waiver invalid when preceded by refusal to honor invocation of right to counsel
HOLDING: Tr. Ct. abused its discretion by admitting D's custodial statements made during his videotaped interview by police. Once a suspect indicates that he is not capable of undergoing custodial questioning without advice of counsel, any subsequent waiver that has come at the authorities' behest, and not at the suspect's own instigation, is itself the product of the inherently compelling pressures and not the purely voluntary choice of the suspect. Maryland v. Shatzer, 130 S.Ct. 1213, 1219 (2010).

Here, a detective interviewed D the morning after a shooting. D unequivocally and unambiguously requested counsel four times. For instance, in the beginning of the interview, D stated, "I'm in a situation where I feel like . . . I really need an attorney to . . . talk with, and for me." After each invocation, the detective would acknowledge the request but then keep the conversation going. Although the detective's interviewing style was not threatening or intimidating, these instances violated the D's right to counsel. Moreover, D did not subsequently waive his right to counsel by making statements such as, "yeah, OK. Well, I mean ask me, ask me what you want to ask me," "go ahead and ask me questions and if I feel comfortable telling you I will tell you," and "I'm willing to answer questions, you know, up to a point I suppose." Although D's statements suggest either a voluntary waiver or at least an equivocation that would serve to undermine his invocation of the right to counsel, such purported waiver or equivocation would not have occurred had the detective scrupulously honored D's requests for counsel by immediately ceasing further communications with him until an attorney was present. Instead, the detective prolonged the conversation and instigated the subsequent dialogue. This pattern occurred three times. Thus, Court cannot give credence to D's subsequent apparent waiver or equivocation, and the videotape of D's interview was erroneously admitted into evidence.

The admission of the tape was not harmless beyond a reasonable doubt. D admitted to a friend the night of the shooting that he had shot the victim because "he wouldn't tell me the truth." Also, the victim's blood was found on D's pants. However, D's statements during the police interview contained considerable details regarding his state of mind during the killing -- details not provided by this other evidence. Because the only issue at trial was whether D knowingly shot the victim or did so under sudden heat or as an accident, the court cannot say that the admission of the videotape was harmless beyond a reasonable doubt. Held, transfer granted, memorandum Court of Appeals' opinion vacated, judgment reversed.

RELATED CASES: Williams, 997 N.E.2d 1154 (Ind. Ct. App. 2013) (D's confession was voluntary, even though he seemed somewhat confused about whether he wanted counsel; D's statements were equivocal, police twice advised him of his Miranda rights, and D understood that police could not force him to talk); Bean, 973 N.E.2d 35 (Ind. Ct. App 2012) (detectives' persistent resumptions of communication after D's invocation of rights were improper; see full review at I.2.a.1).

TITLE: Lane v. State
INDEX NO.: I.2.a.2.
CITE: (7-12-77), Ind., 364 N.E.2d 756
SUBJECT: Miranda warnings - When necessary - Interrogation/volunteered statements
HOLDING: Statements made by D during custodial interrogation are inadmissible over D's objection, unless officers give adequate & specified warnings to D before questioning, & D waives those rights. In order for D to effectively waive privilege of silence & right to attorney, waiver must be voluntary, knowing, & intelligent. Volunteered statements fall completely outside scope of Miranda. Miranda safeguards are directed at protecting D from abuses of interrogation. There can be no presumption of compulsion where there is no interrogation. D has right to speak equal to his privilege of silence. Corollary of D's right to remain silent is D's right to cut off questioning. Held, judgment affirmed.

RELATED CASES: Franklin, 364 N.E.2d 1019 (evidence was sufficient to show statement was voluntarily made despite fact that D had been in custody for more than six hours).

TITLE: Grimm v. State
INDEX NO.: I.2.e.2.
CITE: (7-25-90), Ind., 556 N.E.2d 1327
SUBJECT: Miranda warnings - Waiver of rights - Initiation of conversation after Miranda warnings
HOLDING: Initiation of conversation or discussion by accused, by itself, is not sufficient to establish waiver of previously asserted right to counsel. Here, evidence supported finding that D initiated dialogue with police after D waived his right to counsel, thus making D's subsequent confession to officer voluntary. In conversation with his brother, D requested that he meet with officer. Immediately before meeting was to occur, D was asked if he still wanted to meet with officer & D answered affirmatively. D was twice made aware of his rights, & initialed & signed Miranda rights waiver form. After making brief oral statement, D invoked his right to counsel, & interrogation ceased until D subsequently volunteered statement to officer he knew. Held, judgment affirmed.

RELATED CASES: Porter, App., 743 N.E.2d 1260 (D's comments after invoking right to counsel in this case were of general nature & did not indicate willingness for officer to elicit incriminating statements; see full review at I.2.d.1); Dickson, 520 N.E.2d 101 (even if FBI agent did not readvise D of his rights when D shifted topic of conversation & made inculpatory statements about murder, substantial evidence supported Tr. Ct.'s determination that D voluntarily waived his rights; therefore, waiver form, confession & search waiver form were admissible).

TITLE: Moore v. State
INDEX NO.: I.2.e.2.
CITE: (10/3/86), Ind., 498 N.E.2d 1
SUBJECT: Miranda - waiver of rights; initiation of conversation
HOLDING: In an opinion Justice Shepard's DISSENT refers to as "remarkable," "unbecoming," "especially amazing," & "beyond the pale," the court overturns a decision reached without dissent 6 months before: Phillips 492 N.E.2d 10. If D claims right to remain silent, police are not prohibited from continuing to question D, so long as D's "right to cut off questioning" is "scrupulously honored." MI v. Mosley (1975), 425 U.S. 96, 96 S.Ct. 321, 46 L.Ed.2d 313. Court distinguishes invocation of right to remain silent from invocation of right to counsel. In latter instance, accused must initiate further communication, exchanges, or conversations with police. Here, court finds no showing that police failed to scrupulously honor D's right to remain silent or that D failed to know & recognize this right before waiving it. "To extent Phillips has been interpreted to equate waiver requirements where D invokes right to remain silent with right to counsel, we hereby set aside Phillips." Held, conviction affirmed. Shepard, joined by DeBruler DISSENTS, expressing grave concern over court's willingness to overrule prior decision without regard to stare decisis & in plain disregard of existing 5th Amend. case law.

RELATED CASES: Initiation of conversation: see Sater card at I.2.a.2. Invocation of right to counsel: see Sleek card at I.2.d.1.

TITLE: People v. Redgebol
INDEX NO.: I.2.e.2.
CITE: (5/27/2008), Colo., 184 P.2d 86
SUBJECT: Suspect invoking Miranda did not open door to further questioning
HOLDING: Colorado Supreme Court held a suspect who had invoked his Miranda rights did not open the door to further police questioning by recommencing a conversation with his interrogators 30 seconds later. Court reasoned that the passage of 30 seconds is not sufficient for prosecutors to show that the police ceased their interrogation and that the suspect voluntarily reinitiated it. Court has previously held that a suspect's invocation of the request for counsel provided by Miranda v. Arizona, 384 U.S. 436 (1966), must, like the right to silence interpreted in Michigan v. Mosley, 423 U.S. 96 (1975), be "scrupulously honored" by police interrogators. A police detective fell short of this standard, Court decided, when he continued to speak with the suspect "instead of terminating the interrogation and leaving the room."

TITLE: Stewart v. U.S.
INDEX NO.: I.2.e.2.
CITE: (DC Ct. App. 12/21/95), 668 A.2d 857
SUBJECT: Interrogation - Appeal to Religion
HOLDING: Detective's words of "encouragement and inspiration" to suspect who belonged to same church amounted to interrogation for Miranda purposes. Suspect had received Miranda warnings and invoked right to remain silent. Detective then told him that other members of their church would not judge him for his "mistakes," and asked if the suspect would like to talk to him more later. The suspect indicated that he did. Approximately eight hours later, without giving fresh Miranda warnings, the detective resumed his conversation with the suspect, asking him, "What happened?" The suspect then confessed. The appellate court finds that the detective's earlier conversation was tantamount to an interrogation, because the detective should have known that it was reasonably likely to produce an incriminating response. Coupled with the lack of fresh Miranda warnings before later conversation/confession, the detective's behavior did not "scrupulously honor" the suspect's invocation of the right to remain silent.

I. CONFESSIONS/ INTERROGATIONS

I.2. Miranda warnings (5th Amend)

I.2.f. Effect of failure to give

TITLE: Commonwealth v. Martin
INDEX NO.: I.2.f.
CITE: (5/12/2005), Mass. S. Ct., SJC-09361, 827 N.E.2d 198
SUBJECT: Physical Fruits of Unwarned Questioning
HOLDING: Relying on Massachusetts Constitution, Mass. S. Ct. holds that failure to provide Miranda warnings to in-custody suspect requires suppression of any physical evidence derived from voluntary but unwarned statements. In U.S. v. Patane, 124 S. Ct. 2620 (2004), splintered majority of U.S. S. Ct. held that reliable physical evidence derived from unwarned but voluntary statements could be used. However, Mass. S.Ct. holds that greater protections of its state constitution require suppression of physical fruits of unwarned statements.

TITLE: State v. Jones

INDEX NO.: I.2.f.

CITE: (06/27/2022), Ind. Ct. App., 191 N.E.3d 878

SUBJECT: A violation under the Fifth Amendment Miranda protections or Indiana's parallel self-incrimination clause found in Article One, Section 14 does not require suppression of nontestimonial evidence that is the fruit of the violation.

HOLDING: Any violation of a defendant's right to be free from self-incrimination under the Fifth Amendment, or Article 1, Section 14 of the Indiana Constitution, does not require suppression of the physical fruits of that violation. Police saw Defendant driving and knew her driver's license was suspended from previous encounters. After initiating a traffic stop, police asked Defendant for her driver's license and confronted her about the suspension. The police officer then returned to his car, confirmed that Defendant's license was suspended, and requested that a tow truck be sent to the location of the traffic stop. After telling Defendant her vehicle was being towed and asking her to exit the car, police asked Defendant if there was anything in the vehicle. Defendant replied there was marijuana in the vehicle, and after police spotted it, they took the substance and handcuffed Defendant. Police then asked if there was anything else in the car. Defendant replied that she had a gun on her person, and when asked where it was, she informed the officer that the firearm was in her bra strap. Police then removed a handgun from Defendant's bra strap. Police then again asked Defendant if she had anything else on her person, and she replied that she had heroin and crack cocaine hidden on the other side of her bra. Police removed the suspected drugs from Defendant's bra strap. After seizing the drugs and gun, police read Defendant her Miranda rights. Defendant filed a motion to suppress, which the trial court partially granted, finding that the suspected marijuana, heroin, and crack cocaine, as well as the handgun, were the fruit of the poisonous tree of Defendant's statements made before she had received her Miranda advisements. The State appealed. The Court of Appeals found Defendant's statements about the contraband in her bra, even though obtained in violation of Miranda, were voluntary and did not require suppression of the physical evidence obtained as a result of the Miranda violation *citing* U.S. v. Patane, 542 U.S. 630, 124 S.Ct. 2620 (2004). The Court of Appeals, in an issue of first impression, found that a plain reading of Article 1, Section 14 of the Indiana Constitution holds that Indiana's self-incrimination clause is designed to prevent the admission of testimony obtained in violation of Indiana's constitution but not suppression of non-testimonial evidence and therefore the contraband here could be admitted. On cross-appeal, Defendant challenged the trial court's conclusion that her car was properly searched and that, therefore, the marijuana found therein did not need to be suppressed. The Court of Appeals disagreed, finding that there was no Fourth Amendment or Article 1, Section 11 violation in the search of the car because the search did not begin until after Defendant made the admission that there was marijuana in the car.

TITLE: State v. Knapp
INDEX NO.: I.2.f.
CITE: (7/14/05), Wis. S.Ct., 700 N.W.2d 899
SUBJECT: Deliberate Miranda Violation -- Physical Evidence Derived
HOLDING: The Wisconsin Supreme Court has held that physical evidence obtained as a direct result of an intentional Miranda violation is inadmissible under Wisconsin's state constitution. The Court disagreed with the 5-justice majority in U.S. v. Patane, 542 U.S. 630 (2004), finding two policy reasons that justify exclusion of reliable physical evidence: (1) the police conduct involved is particularly repugnant, and (2) the preservation of judicial integrity.

TITLE: State v. Peterson
INDEX NO.: I.2.f.
CITE: (4/6/2007), Vt., 2007 WL 1029631; 923 A.2d 585
SUBJECT: Vermont rejects Patane under state constitution
HOLDING: Vermont Supreme Court held that the Vermont Constitution's guarantee against compelled self-incrimination requires the suppression of the tangible fruits of a Miranda violation, parting ways with the recent federal precedent of U.S. v. Patane, 542 U.S. 630 (2004). Court emphasized that a contrary rule would encourage law enforcement officers to withhold Miranda warnings in order to gain access to critical physical evidence. Court stated that "we would have to make a fundamental departure from our exclusionary rule jurisprudence in order not to apply an exclusionary rule here." Court noted three other state supreme courts had deviated from Patane based on state constitutional grounds. See Commonwealth v. Martin, 827 N.E.2d 198 (Mass. 2005), State v. Knapp, 700 N.W.2d 899 (Wis. 2005), State v. Farris, 849 N.E.2d 985 (Ohio 2006).

TITLE: State v. Sosinski

INDEX NO.: I.2.f.

CITE: (N.J. Super. Ct. App. Div.), 5/12/00, 750 A.2d 625

SUBJECT: Intentional Violation of Miranda -- Impeachment Use Barred

HOLDING: The New Jersey Superior Court, Appellate Division, has held that where Miranda rights are intentionally violated at the behest of a prosecutor, statements made cannot be used for impeachment purposes. Although statements obtained in violation of Miranda rights are generally admissible to impeach, Oregon v. Hass, 420 U.S. 714 (1975); Harris v. New York, 401 U.S. 222 (1971), here, the failure to give Miranda rights was not the product of a good faith mistake by police, but the product of intentional misconduct by the prosecutor, and violated Rule 3.8(b) of the Rules of Professional Conduct.

TITLE: United States v. Patane

INDEX NO.: I.2.f.

CITE: 542 U.S. 630, 124 S.Ct. 2620 (2004)

SUBJECT: Miranda violations, suppression of physical evidence

HOLDING: Failure to give Miranda warnings (Miranda v. Arizona, 384 U.S. 436 (1966)) before interrogating a suspect in custody does not require suppression of any physical evidence obtained as a result of the suspect's unwarned but voluntary statements. However, physical evidence obtained as a result of a D's coerced, involuntary statements is subject to suppression. The 5th Amendment provides that "no person ... shall be compelled in any criminal case to be a witness against himself." This plurality opinion said that persons "subjected to coercive police interrogations have an automatic protection from the use of their involuntary statements (or evidence derived from their statements) in any subsequent criminal trial," (emphasis in original) quoting the plurality opinion from Chavez v. Martinez, 538 U.S. 760, 769 (2003).

I. CONFESSIONS/ INTERROGATIONS

I.2. Miranda warnings (5th Amend)

I.2.f.1. In general

TITLE: Roarks v. State
INDEX NO.: I.2.f.1.
CITE: (5/23/83), Ind., 448 N.E.2d 1071
SUBJECT: Pre-Miranda questioning
HOLDING: Tr. Ct. did not err in refusing to suppress D's confession where pre-Miranda questioning by police at stationhouse was simply to obtain "background information," D was not questioned about the instant offense, police did not do or say anything likely to elicit an incriminating response (see RI v. Innis (1980), 446 U.S. 291, 100 S. Ct. 1682, 64 L.Ed.2d 297) & D was given Miranda warnings upon his arrest. Here, D was arrested, given Miranda warnings, taken to Warren County jail, given Miranda warnings & then transported to Fountain County jail where he was questioned by an F.B.I. agent & police. Prior to giving D Miranda warnings at Fountain County Jail, police asked him his name & address & whether he had a criminal record. The Tr. Ct. granted D's motion to suppress all pre-Miranda questioning, but ruled the confession occurred after proper waiver of rights & was admissible (entire interview was videotaped). Held, no error.

I. CONFESSIONS/ INTERROGATIONS

I.2. Miranda warnings (5th Amend)

I.2.f.2. Overcoming taint

TITLE: Bobby v. Dixon
INDEX NO.: I.2.f.2.
CITE: (11-07-11), 132 S. Ct. 26 (U.S. 2011)
SUBJECT: D's confession admissible – limit on Missouri v. Seibert
HOLDING: Per Curiam. A habeas court may not grant relief unless the state court's allegedly erroneous ruling "was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility of fairminded disagreement." Harrington v. Richter, 131 S. Ct. 770 (2011). Here, Court overturned the Sixth Circuit's three independent reasons for a habeas grant, all relating to the state court's admission of D's confession to murder. First, D's statement taken five days after he invoked his right to counsel (but he was not yet in custody when he invoked counsel) did not violate Miranda, since there is no right to invoke counsel other than during a custodial interrogation. A suspect cannot invoke his Miranda rights anticipatorily, before he is "in custody."

Second, the Sixth Circuit had no authority for its view that the Fifth Amendment prevents police from urging an accused to "cut a deal" before another accused did so (i.e., use of the "prisoner's dilemma" interrogation technique). Court rejected D's argument that this technique rendered D's first interrogation involuntary, which thereby tainted his second confession.

Third, D was not subjected to the "question first-warn later" interrogation technique prohibited in Missouri v. Seibert, 542 U.S. 600, 124 S.Ct. 2601 (2004), because D denied guilt during the first step, so nothing was out-of-the-bag by the time the rights warning was given in step two. See also, Oregon v. Elstad, 470 U.S. 298 (1985) (voluntary, warned statement following voluntary but unwarned statement is admissible). Moreover, D's first and second statements were separated by a considerable period of time (four hours) and were not otherwise part and parcel of one continuous interrogation session. Even if the Ohio courts were wrong in their interpretation of Elstad and Miranda, Ohio courts were reasonable in ruling that D's confession was admissible under Elstad, given the significant break between the two confessions in this case. Thus, as a state prisoner seeking federal habeas relief under the Antiterrorism and Effective Death Penalty Act (AEDPA), D did not show that the Ohio courts' decision to admit his second confession was obviously wrong. Held, Sixth Circuit Court of Appeals' opinion at 627 F.3d 553 reversed and remanded for further proceedings.

Note: Limiting Missouri v. Seibert, the Court held that unless different periods of interrogation form one continuous whole, the use of Miranda warnings at subsequent periods is sufficient to offset the failure to do so at an earlier period of questioning. Moreover, in Frazier v. Cupp, 394 U.S. 731 (1969) and Elstad, the Court rejected a similar argument against use of "prisoner's dilemma" interrogation tactic.

TITLE: Butler v. State
INDEX NO.: I.2.f.2.
CITE: (3d Dist. 5/23/85), Ind. App., 478 N.E.2d 126
SUBJECT: Miranda - overcoming taint of failure to give
HOLDING: Tr. Ct. did not err in denying D's motion to suppress confession. Here, D's uncle, a police officer, went to D's house (no uniform) to tell D he'd been implicated in burglary & would be in his best interests to talk with detectives. On way to station in uncle's car, D admitted involvement. At station, D was read rights, signed written waiver, & again admitted involvement & signed written statement [S]. D contends written S was poisonous fruit. Procedural Miranda violation differs significantly from constitutional violation of 4th Amend. OR v. Elstad (1985), U.S., 105 S.Ct. 1285, 84 L.Ed.2d 222. Miranda exclusionary rule serves 5th Amend & "sweeps more broadly than 5th Amend itself." Id., 105 S.Ct. at 1292. 5th Amend only prohibits use of compelled testimony. Failure to administer Miranda warnings creates presumption of compulsion. Miranda requires exclusion of otherwise voluntary unwarned Ss, but, subsequent voluntary & informed waivers are not inherently tainted. Admissibility of subsequent S turns solely on whether it was made knowingly & voluntarily. Absent deliberately coercive or improper tactics in obtaining initial Ss, mere fact D made unwarned admission does not warrant presumption of compulsion. Subsequent administration of Miranda warnings to D who has given voluntary but unwarned Ss ordinarily should suffice to remove conditions that precluded admission of earlier Ss. Id. Court also rejects D's contention that his 9th grade education prevented him from appreciating consequences of giving S. Id. Held, S given at station was voluntary; & conviction affirmed.

RELATED CASES: Lyons, App., 503 N.E.2d 928 (juvenile's subsequent confession properly admitted).

TITLE: Drummond v. State
INDEX NO.: I.2.f.2.
CITE: (2nd Dist., 7-26-05), Ind. App., 831 N.E.2d 781
SUBJECT: Miranda violation - two-part interrogation
HOLDING: In child molesting prosecution, Tr. Ct. abused its discretion when it admitted D's tape-recorded statement into evidence. As part of investigation of incident involving D's niece, police officer interviewed D while he was incarcerated for unrelated child molesting conviction. D was not given Miranda warnings prior to his interview with officer. D spent two hours discussing incident for which he was incarcerated before officer brought up niece, which was real reason he was interrogating D. Only after officer had elicited an incriminating statement from D did he turn on tape recorder & give D a Miranda warning.

In Missouri v. Seibert, 542 U.S. 600, 124 S.Ct. 2601, 159 L.Ed.2d 643 (2004), U.S. S.Ct. disapproved of police tactic of circumventing Miranda by delaying the required warnings until after a suspect in custody has already confessed, then warning & re-interrogating the suspect to get another, arguably admissible confession. Two-part interrogation in this case appears to be exactly of the character that Seibert Ct. sought to avoid. It would be unrealistic to treat "two spates of integrated & proximately conducted questioning as independent interrogations subject to independent evaluation simply because Miranda warnings formally punctuate them in the middle." Seibert, 124 S.Ct. at 261. Held, conviction reversed & remanded for further proceedings.

RELATED CASES: Payne, App., 854 N.E.2d 7 (in triple murder prosecution, Tr. Ct. abused its discretion by admitting into evidence D's full statement to police where majority of statement was obtained prior to Miranda advisement & remaining portion of statement was obtained without a voluntary waiver of her Miranda rights); Maxwell, App., 839 N.E.2d 1285 (Seibert should not be be extended to coversituations where police have any conversation with a suspect without giving Miranda warnings; record not only contained no pre-Miranda confession but contained no suggestion that any officer interrogated D prior to Miranda warnings).

TITLE: Mato v. State
INDEX NO.: I.2.f.2.
CITE: (5/28/85), Ind., 478 N.E.2d 57
SUBJECT: Miranda warnings - effect of failure to give; harmless error
HOLDING: In a cursory review of issue raised as fundamental error in PCR petition, court finds police failure to read D Miranda rights upon arrest was harmless error where record shows D suffered no prejudice because he made no incriminating statements. Held, denial of PCR affirmed.

RELATED CASES: Owen, App., 490 N.E.2d 1130 (Crim L 1169.12; court rejects state's contention that failure to give Miranda warnings was harmless error where D was himself a police officer & knew his rights; under Miranda, no amount of circumstantial evidence that suspect may have been aware of rights will suffice to stand in place of adequate warnings of these rights, *citing* 21 Am.Jur.2d, Criminal Law Section 792 (1981)).

TITLE: State v. Seibert
INDEX NO.: I.2.f.2.
CITE: (12/10/02), Mo. S.Ct., SC84315
SUBJECT: Later Warned Statement After Intentional Miranda Violation
HOLDING: Missouri Supreme Court holds that giving of full Miranda warnings cannot remove taint of prior unwarned statement where prior statement resulted from intentional violation of Miranda rights, where there was only 20 minute delay between two statements, and where interrogating officer used prior unwarned statement in subsequent interrogation after Miranda warnings were given. Officer here candidly admitted he used technique he learned in police training, which involved interrogating subject without Miranda warnings in order to obtain "breakthrough" statement, and then using "breakthrough" statement to lead to further, admissible statements after warnings are given. Majority presumes this technique was used in order to weaken the subject's ability to exercise her constitutional rights.

I. CONFESSIONS/ INTERROGATIONS

I.2. Miranda warnings (5th Amend)

I.2.g. Appellate review

TITLE: Malott v. State

INDEX NO.: I.2.g.

CITE: (12/3/85), Ind., 485 N.E.2d 879

SUBJECT: Miranda - appellate review; harmless error

HOLDING: Where statement taken in violation of Miranda was merely composite of 4 previously admitted statements (volunteered to police), its admission was harmless error beyond a reasonable doubt. Here, after advising D of his rights, police asked him if he understood them. D said no. Police continued to interrogate D. His statements in response to that questioning were erroneously admitted into evidence. Court finds this statement equivalent to composite of statements 1-4. It introduced no additional testimony/evidence. Lloyd 448 N.E.2d 1062; Music 427 N.E.2d 1071; Greer 245 N.E.2d 158. Held, harmless error.

I. CONFESSIONS/ INTERROGATIONS

I.3. Questioning after right to counsel attaches (6th Amend)

TITLE: Buchanan v. Kentucky

INDEX NO.: I.3.

CITE: (1987), 483 U.S. 402, 107 S. Ct. 2906, 97 L.Ed.2d 336

SUBJECT: Psychiatric interview

HOLDING: 6th Amend. right to counsel is violated where psychiatrist's testimony concerning examination is admitted into evidence when counsel was not advised of scope of interview. Estelle v. Smith (1981), 451 U.S. 454, 101 S. Ct. 1866, 68 L.Ed.2d 359. Here, D's counsel requested examination. Court presumes counsel consulted with D concerning nature of examination. Held, no violation of 6th Amend. right to counsel. Marshall, joined by Brennan, DISSENTS.

TITLE: Montejo v. Louisiana
INDEX NO.: I.3.
CITE: 129 S.Ct. 2079 (May 26, 2009)
SUBJECT: Questioning after right to counsel attaches
HOLDING: Overruling Michigan v. Jackson, 475 U.S. 625 (1986), Supreme Court held that police may initiate interrogation of a criminal D even though the D has requested counsel at an arraignment or similar proceeding. Interrogation is a critical stage at which a D has the right to counsel. However, the right to counsel may be waived by a D, so long as relinquishment of the right is voluntary, knowing, and intelligent. We should not presume, as did the Court in Jackson, that such a wavier is invalid simply because the D is represented. Jackson was created by analogy to a similar prophylactic rule established in Edwards v. Arizona, 451 U.S. 477 (1981), that police cannot reinitiate contact with a D who has unequivocally invoked his Fifth Amendment- Miranda right to have counsel at the custodial interrogation. Because Edwards and Jackson are meant to prevent police from badgering Ds into changing their minds about their rights, the Edwards rule is sufficient to protect a D's Sixth Amendment right to counsel. In other words, a D who is advised of and voluntarily waives his Miranda rights also waives his Sixth Amendment right to counsel.

Here, prior to being charged, D waived his Miranda rights and gave a statement to police. Subsequently, at a preliminary hearing, D was charged with first degree murder and the Office of Indigent Defender was appointed to represent him. Later that same day, the police asked D if he would accompany them on an excursion to locate the murder weapon. After some dispute, D was again read his Miranda rights and agreed to go along. During the excursion, D wrote an inculpatory letter of apology to the victim's widow. No reason exists to assume that D, who had done nothing at all to express his intentions with respect to his Sixth Amendment rights, would not be perfectly amenable to speaking with the police without having counsel present. If D's waiver of his Miranda rights was voluntary, he also waived his Sixth Amendment right to counsel. However, D should be given an opportunity to contend that his letter of apology should have been suppressed under the rule of Edwards. D understandably did not pursue an Edwards objection because Jackson served as the Sixth Amendment analogy to Edwards and offered broader protections. Held, conviction affirmed, judgment of Louisiana Supreme Court vacated and case remanded for further proceedings not inconsistent with this opinion; Alito, J., joined by Kennedy, J., concurring on basis that the dissent in this case is inconsistent with their position in Arizona v. Gant, 555 U.S.__ (2009), *overruling* of New York v. Belton, 453 U.S. 454 (1981); Stevens, Souter, and Ginsburg, JJ., dissenting with whom Breyer, J., joins except for footnote 5 on basis that there is no support for the majority's opinion that Jackson is "untenable as a theoretical and doctrinal matter" and that the D did not voluntarily waive his Sixth Amendment rights simply because he was advised of his Miranda rights.

NOTE: There are at a couple ways of dealing with Montejo. First, early in the proceedings, attorneys can file an invocation of the D's right to counsel at all interviews, interrogations, or contact with police. It would help to have a client's signature on the pleading. Although Justice Scalia states that a D may not assert his right to counsel or privilege against self-incrimination before an attempt to interrogate takes place, Indiana provides a broader right to counsel than does the Sixth Amendment. Just as an attorney in Indiana can invoke a client's right to counsel by showing up at the police station, arguably an attorney should be able to invoke the right to counsel by filing a motion. Malinski v. State, 794 N.E.2d 1071 (Ind. 2003) (law enforcement officials have a duty to inform a custodial suspect immediately when an attorney hired by the suspect's family to represent him is present at police station

seeking access to him; see full review, this section). Moreover, the pleading could request the court to order the prosecutor to inform the police they cannot contact the represented D. Arguably, a prosecutor has an ethical duty to tell police officers not to talk about the case with a represented D. Although the majority of the Supreme Court states that the Rules of Professional Conduct apply to attorneys, and not police officers, this may not be true in Indiana. See Rule 5.3 discussing the responsibility regarding non-lawyer agents. The commentary to Rule 4.2 prohibiting lawyers from talking with represented individuals also suggests that the Rule applies to "investigative agents." The commentary also states "when communicating with the accused in a criminal matter, a government lawyer must comply with this Rule in addition to honoring the constitutional rights of the accused. The fact that a communication does not violate a state or federal constitutional right is insufficient to establish that the communication is permissible under this Rule." For the same reasons, a prosecutor or law enforcement officer should not seek to have a cell mate act as their agent.

Second, it can be argued that the police must obtain a voluntary waiver of a D's right to counsel when interviewing that D even if the D is not in custody. Justice Scalia hints that a non-custodial interrogation may not be a critical stage of a proceeding involving the right to counsel. However, under the Indiana Constitution, custodial interrogation is not a pre-requisite to the right to counsel. Pirtle v. State, 323 N.E.2d 634 (Ind. 1975); Sims v. State, 413 N.E.2d 556 (Ind. 1980) (Indiana Constitution provides right to counsel for person who is in custody and being asked to consent to a search). If an unrepresented person in custody but not being interrogated is entitled to be advised of his right to an attorney, then so should a represented person being interrogation but not in custody.

TITLE: Patterson v. Illinois
INDEX NO.: I.3.
CITE: (1988), 487 U.S. 285, 108 S.Ct. 2389, 101 L.Ed.2d 261
SUBJECT: Post-indictment interrogation without counsel
HOLDING: 6th Amend. guarantees right to counsel at post-indictment interviews with law enforcement authorities. MI v. Jackson (1986), 475 U.S. 625, 629-30, 106 S.Ct. 1404, 89 L.Ed.2d 631. Here, following indictment, while D was being transported, he asked officer why another person was not also indicted. Officer then obtained Miranda waiver & took D's inculpatory statement. Later that day prosecutor took another statement from D after obtaining Miranda waiver. Court rejects D's argument that once 6th Amend. right to counsel attaches police are barred from initiating meeting with him. Once "an accused ... ha[s] expressed his desire to deal with the police only through counsel" he should "not [be] subject to further interrogation by the authorities until counsel has been made available to him, unless the accused himself initiates further conversation." Edwards v. AZ (1981), 451 U.S. 477, 484-85, 101 S.Ct. 1880, 68 L.Ed.2d 378. Preserving integrity of D's choice to communicate with police only through counsel is essence of Edwards - not barring an accused from making initial decision whether to proceed without counsel. Here, D at no time sought to exercise right to have counsel present. Provided accused "knowingly/intelligently" elects to proceed without counsel statements are admissible. Held, statements admissible. Blackmun, DISSENTS; Stevens, joined by Brennan & Marshall, DISSENTS.

TITLE: People v. Burdo
INDEX NO.: I.3.
CITE: (10/30/97, N.Y.Ct. App.) 91 N.Y.2d 146; 690 N.E.2d 854
SUBJECT: Interrogation -- Right to Counsel
HOLDING: New York Court of Appeals holds that New York Constitution's Right to Counsel is broader than federal 6th amendment right, in that it is not offense-specific. Once state right to counsel has attached, it provides protection against counselless interrogation on unrelated offenses.

TITLE: State v. Dagnall
INDEX NO.: I.3.
CITE: (05/27/99), Wis. Ct. App., 640 N.W.2d 570
SUBJECT: Invocation of 6th Am. Right to Counsel
HOLDING: Wisconsin Court of Appeals holds that formally charged D can invoke 6th Amendment right to counsel with less clarity than would suffice to invoke right to counsel under Miranda. Detectives transporting previously charged D from out of state knew that department had received letter from attorney saying that he represented D and did not want officers talking to D when he was not present. On meeting detectives, D said, "My lawyer told me I shouldn't talk to you guys." However, detectives told D that he had been implicated by others and asked him to tell them his side. After receiving Miranda warnings, D made incriminating statements. State argued that D's statement did not adequately invoke right to counsel, *citing* Davis v. U.S., 512 U.S. 252 (1994). Court rejects this argument, however, distinguishing Davis because it addressed standard for invoking Miranda right to counsel, rather than 6th Amendment right which attaches at charging. The Court did, however, look to Davis for proposition that inquiry must focus on whether a reasonable officer would have understood, under the circumstances, that D was invoking right to counsel. Circumstances here must include letter from attorney, together with D's statement. Reasonable officer under these circumstances should have understood that D had invoked 6th Amendment right to counsel.

TITLE: U.S. v. Bender
INDEX NO.: I.3.
CITE: (1st Cir.), 8/4/00, 221 F.3d 265
SUBJECT: Uncounseled Statements Indirectly Incriminating D on Charged Crime
HOLDING: The 6th Amendment does not allow state to use D's uncounselled statements about other crimes that indirectly incriminate him/her with respect to charge to which right to counsel has attached. Police sent informant into jail cell to talk to D about possible plan to fabricate alibi and murder witnesses against him on charged crime. Because these statements tended to incriminate him on the charged crime, and were deliberately elicited by government agents, they cannot be admitted against D at trial on charged offense.

I. CONFESSIONS/ INTERROGATIONS

I.3. Questioning after right to counsel attaches (6th Amend)

I.3.a. When right attaches

TITLE: Callis v. State
INDEX NO.: I.3.a.
CITE: (4th Dist., 8-20-97), Ind. App., 684 N.E.2d 233
SUBJECT: Right to counsel - pre-indictment polygraph exam and interview
HOLDING: Excluding defense attorney from pre-indictment polygraph exam and post-polygraph interview did not violate D's Sixth Amendment right to counsel because pre-indictment polygraph exam and interview occurred prior to commencement of criminal proceeding. Sixth Amendment right to counsel attaches at any stage of prosecution where counsel's absence might derogate from accused's right to fair trial. Jones, 655 N.E.2d 49. According to Ind. Code 35-34-1-1, prosecution commences with filing of information or indictment. D relied on Greenlee, App., 477 N.E.2d 917, and Casada, App., 544 N.E.2d 189, which held polygraph examination was critical stage of proceeding. Ct. distinguished instant case by noting Greenlee concerned examination after criminal proceedings had been initiated and Casada did not distinguish between pre- and post-indictment examinations. Here, because D's examination and interview was given prior to filing of information, they were not critical states of proceeding, and D's Sixth Amendment right to counsel had not attached. Held, conviction affirmed.

RELATED CASES: Taylor, 49 N.E.3d1019 (Ind. 2016) (Indiana right to counsel invites greater protection because it attaches earlier – upon arrest, rather than only when "formal proceedings have been initiated" as with federal right. See full review at Y.9.c.); Caraway, App., 891 N.E.2d 122 (disagreeing with Kochersperger, *infra*, and holding that D's right to counsel attached immediately prior to detective's request to sign polygraph stipulation agreement; see full review at Y.2.i); Kochersperger, App., 725 N.E.2d 918 (Tr. Ct. properly denied motion to suppress evidence obtained through polygraph examination and post-testing interrogation; though not represented by counsel at time of examination, D was fully advised of his right to counsel prior to executing stipulation and knowingly and voluntarily waived such right by signing advice of rights form); Little, App., 694 N.E.2d 762 (D's confession to murder was voluntary, despite fact that Illinois contingent did not notify D's Ind. attorney before interviewing D about Illinois murder).

TITLE: Curry v. State
INDEX NO.: I.3.a.
CITE: (1st Dist., 12-8-94), Ind. App., 643 N.E.2d 963
SUBJECT: Questioning after right to counsel attaches
HOLDING: Sixth Amendment right to counsel attaches when prosecution is commenced, that is, at or after initiation of adversary judicial criminal proceedings. Once this right to counsel has attached & has been invoked, any subsequent waiver during police initiated custodial interview is ineffective. Michigan v. Jackson 106 S.Ct. 1404 (1986). Held, judgment affirmed, remanded on other grounds.

RELATED CASES: Weaver, 583 N.E.2d 186 (D can waive his Sixth Amendment protection by initiating conversation or discussion with authorities); Scott, 510 N.E.2d 170 (D confessed to private individual who arranged with police to discuss murder with D. Because D not in custody or deprived of freedom when he confessed, neither safeguards of Miranda warning nor procedural safeguard for waiver of juvenile's constitutional rights applied).

TITLE: Fellers v. U.S.
INDEX NO.: I.3.a.
CITE: 540 U.S. 519, 124 S.Ct. 1019 (26 January 2004)
SUBJECT: Right to Counsel, interrogation, Miranda, Elstad
HOLDING: Police arrived at Fellers' home and told him that "they had come to discuss his involvement in methamphetamine distribution," that he had been indicted for conspiracy to distribute methamphetamine, and that they had a warrant for his arrest. They also told him that the indictment listed several other people, some of whom they named. Fellers admitted knowing the others and having used methamphetamine with them. The police took Fellers to the jail, where Fellers signed a written waiver of his Miranda rights and reiterated his earlier incriminating statements.

Defense counsel moved to suppress Fellers' statements made at his home and at the jail. The District Court suppressed the 'unwarned' statements made at home but admitted the post- Miranda statements under Oregon v. Elstad, 470 U.S. 298 (1985). Fellers' statements at the jail were admitted into evidence and Fellers was convicted.

The Court of Appeals held that the officers' failure to Mirandize the D did not violate his 6th Amendment rights because the officers did not interrogate Fellers at his home, and concluded that the statements at the jail were properly admitted under Elstad. Under Elstad, after a Miranda violation, the admissibility of a subsequent statement turns on whether it is knowingly and voluntarily made.

The U.S. Supreme Court reversed. The 6th Amendment right to counsel was triggered in this case by the indictment. At Fellers' home, the police "deliberately elicited" incriminating statements from Fellers, who had not waived his right to counsel. To admit those statements at trial would have violated the basic protections of the 6th Amendment. Massiah v. U.S., 377 U.S. 201, 206 (1964). "The Court of Appeals erred in holding that the absence of an 'interrogation' foreclosed [Fellers'] claim that the jailhouse statements should have been suppressed as fruits of the statements taken from [Fellers] at his home." Holding that Fellers had not been "questioned," the Court of Appeals erred by conducting its "fruit of the poison tree" analysis under the 5th Amendment rather than under the 6th Amendment, and did not reach the question of whether the 6th Amendment requires suppression of Fellers' jailhouse statements on grounds that "they were the fruits of previous questioning conducted in violation of the 6th Amendment...."

The Supreme Court remanded the case to the Court of Appeals to address, in the first instance, whether the Elstad rule applies when a suspect makes incriminating statements after a knowing and voluntary waiver of his right to counsel even though the police earlier questioned him in violation of the 6th Amendment.

TITLE: Finney v. State
INDEX NO.: I.3.a.
CITE: (5th Dist., 4-17-03), Ind. App., 786 N.E.2d 764
SUBJECT: Police questioning after right to counsel attached
HOLDING: When a D, whose Sixth Amendment right to counsel has attached, has retained an attorney & that attorney makes his representation of the D known to State, the Sixth Amendment right to counsel has been invoked. Here, in resisting law enforcement prosecution, Tr. Ct. abused its discretion in denying D's motion to strike police officer's testimony regarding statement D made to him. After becoming aware that State had initiated formal criminal proceedings against him, D retained attorney. D unmistakably evidenced his desire to deal with authorities only through his attorney when attorney contacted officer directly to arrange for D's surrender to police. Officer questioned D when he asked him why he fled, & D did not spontaneously volunteer statement. Thus, officer's question was impermissible police-initiated interrogation. Further, D's purported waiver of his right to counsel after reading of his Miranda rights was ineffectual with respect to his Sixth Amendment right to counsel. Heffner v. State, 530 N.E.2d 297 (Ind. 1988). State adequately demonstrated existence of overwhelming evidence of D's guilt that sufficiently minimized any prejudicial effect that officer's erroneously-admitted testimony might have had. Held, conviction affirmed.

TITLE: Illinois v. Perkins
INDEX NO.: I.3.a.
CITE: (1990), 496 U.S. 292, 110 S.Ct. 2394, 110 L.Ed.2d 243
SUBJECT: Use of undercover police officer in jail
HOLDING: Use of undercover police officer posing as cellmate to elicit statement from D about murder unrelated to charge D was then incarcerated on did not violate 6th Amend. Government may not use undercover agent to circumvent 6th Amend. right to counsel once suspect has been charged. Massiah v. U.S. (1964), 377 U.S. 201, 84 S.Ct. 1199, 12 L.Ed.2d 246; U.S. v. Henry (1980), 447 U.S. 264, 100 S.Ct. 2183, 65 L.Ed.2d 115; Maine v. Moulten (1985), 474 U.S. 159, 106 S.Ct. 477, 88 L.Ed.2d 481. Here, D had not been charged with murder which was subject of statement. Therefore, 6th Amend. right to counsel had not attached. Held, statement admissible. Brennan, CONCURRING IN JUDGMENT; Marshall, DISSENTING.

TITLE: Jackson v. State
INDEX NO.: I.3.a.
CITE: (5-10-78), Ind., 375 N.E.2d 223
SUBJECT: Interrogation - right to counsel
HOLDING: D's right to counsel was not violated by statement made to officer without presence of counsel. No formal charges with respect to homicide inquired about had commenced. D's counsel had only been appointed with respect to an armed robbery charge. Even if attorney-client relationship existed with respect to murder charge under investigation, statement made by D would not have been inadmissible per se even though D's counsel was not present or contacted. Although D was admittedly in custody, Miranda warnings were not required since statement was not result of interrogation. Even if such warnings were required, earlier warnings were sufficient in light of D's clear recognition of his right to remain silent. D conditioned his statement upon presence of prosecutor, which showed that he knew of his right to remain silent & was waiving that right. Held, judgment affirmed; DeBruler & Prentice, JJ., concurring in result.

RELATED CASES: Manns, App., 419 N.E.2d 1313 (since Miranda warning is necessary only before custodial interrogation, no warning & no waiver of rights necessary before D made voluntary statement to police at time of arrest. Therefore, statement was admissible at D's trial).

TITLE: J.D.P. v. State

INDEX NO.: I.3.a.

CITE: (4th Dist., 12-05-06), Ind. App., 857 N.E.2d 1000

SUBJECT: Questioning permitted after invocation of Sixth Amendment right to counsel on unrelated charge

HOLDING: Tr. Ct. did not abuse its discretion in allowing into evidence juvenile's statements made after he & his mother had waived his Miranda rights. One's assertion of Miranda right to counsel cannot be inferred from the invocation of the Sixth Amendment right to counsel on different charges. McNeil v. Wisconsin, 501 U.S. 171 (1991). Here, on May 23, 2005, the juvenile invoked his right to counsel by requesting a public defender at an initial hearing for a false informing charge & a house arrest violation. In June, the police found evidence that the same day the juvenile allegedly committed false informing concerning whether he was setting bottles on fire, he also committed an arson of a barn. Thus, on June 4, 2005, the juvenile & his mother went to the police station for questioning solely about the arson. The mother & the juvenile waived the juvenile's Miranda rights. Although the juvenile had asserted his Sixth Amendment right to counsel on the charged false informing offense, this assertion did not invoke the right for his future prosecution on the aiding in arson offense. Thus, the juvenile's statements were admissible into evidence. Held, judgment affirmed.

TITLE: Jewell v. State
INDEX NO.: I.3.a.
CITE: (11-30-11) Ind., 957 N.E.2d 625
SUBJECT: Right to counsel - Indiana Constitution protects inextricably intertwined charges
HOLDING: Tr. Ct. did not abuse its discretion by denying D's motion to suppress statements made to alleged victim during phone calls arranged, directed and recorded by the State. The Sixth Amendment right to counsel is offense-specific, meaning that the right attaches only to police questioning regarding the charged offenses and offenses that would be considered the same offense as the charged offense under the Blockburger test. Texas v. Cobb, 121 S.Ct. 1335 (2001). However, this Court finds that under the broader protections of Article 1, Section 13 of the Indiana Constitution, the right to counsel also attaches to police questioning regarding offenses which are inextricably intertwined with the charge on which counsel is already representing the D. A reviewing court must examine and compare all the facts and circumstances - as known at the time of the investigation - related to the conduct, including the nature of the conduct, the identity of the persons involved (including the victim, if any), and the timing, motive and location of the crimes.

Here, D was charged with tattooing a minor, a class A misdemeanor, for taking his former stepdaughter who was under eighteen to get a tattoo. After D hired counsel to represent him, evidence that D had a sexual relationship with his former stepdaughter was discovered. A detective arranged for the stepdaughter to make recorded phone calls to D in order to obtain more evidence of the misconduct. The detective would prompt the stepdaughter with notes on things to say and ask D. D claimed that the calls violated his right to counsel under the Indiana Constitution. But D's sexual misconduct was not - based on the facts and circumstances known to the detective at the time of the phone calls- so closely related to the offense of tattooing a minor to be inextricably intertwined. Aside from the identity of the parties, the nuclei of operative facts for the two offenses are wholly distinct. Thus, even under the broader protections of Article 1, Section 13, D's invocation of his right to counsel on the tattooing charge did not extend to the questioning regarding sexual misconduct. Held, transfer granted, Court of Appeals' opinion at 938 N.E.2d 1283, in all other respects summarily affirmed; judgment affirmed.

RELATED CASES: Leonard, 73 N.E.3d 155 (Ind. 2017) (D's right to counsel was not violated when State introduced statements he made while waiting in jail for his murder trial, where D asked a purported hit man to kill a State's witness, because D's right to counsel had attached only as to his murder case, and not using the statements would unnecessarily frustrate the public's interest in investigating criminal activities; see full review, this section.)

TITLE: Leonard v. State
INDEX NO.: I.3.a.
CITE: (5/2/2017), 73 N.E.3d 155 (Ind. 2017)
SUBJECT: Right to counsel for charged case does not apply to future cases
HOLDING: Tr. Ct. did not abuse its discretion in admitting statements D made, while awaiting his double murder trial, to an officer posing as a hit man, where D asked the officer to kill a person who was going to testify for the State. These statements led to later charges for Conspiracy to Commit Murder. Even though D's right to counsel had attached once he was charged in the murder case, this right had not attached for future cases, including the Conspiracy case, so the procurement and use of the statements at his murder trial did not violate D's right to counsel.

D lived with his girlfriend in Richmond Hill, a neighborhood on the southeast side of Indianapolis. To collect on a home insurance policy, they triggered a massive natural gas explosion of their home, which damaged or destroyed dozens of homes in the neighborhood and killed their next door neighbors. While awaiting trial, D was placed in the same cell block as Robert Smith, a police informant. D discussed his case with Smith, and on one occasion, told Smith that he was worried about Mark Duckworth, a friend who was going to testify for the State. D told Smith he wanted Duckworth killed. Smith offered to put D in contact with a hit man named "Jay," who was actually Jeremy Godsave, an ATF Special Agent. D called Godsave twice, saying he wanted Duckworth killed. The State used these statements at trial.

On appeal, D argued that because he had been charged in the explosion case, his right to counsel had attached for future cases, including charges arising from his statements to Special Agent Godsave. However, the "Sixth Amendment right [to counsel] . . . is offense specific. It cannot be invoked once for all future prosecutions, for it does not attach until a prosecution is commenced . . . . Accordingly . . . a D's statements regarding offenses for which he ha[s] not been charged [are] admissible notwithstanding the attachment of his Sixth Amendment right to counsel on other charged offenses." Texas v. Cobb, 532 U.S. 162, 167-68 (2001). "[T]o exclude evidence pertaining to charges as to which the Sixth Amendment right to counsel had not attached at the time the evidence was obtained, simply because other charges were pending at that time, would unnecessarily frustrate the public's interest in the investigation of criminal activities." Id. at 171.

Thus, D's phone calls to Special Agent Godsave were not protected by his Sixth Amendment right to counsel. Accordingly, the the Tr. Ct. did not abuse its discretion in admitting those statements. Held, judgment affirmed.

RELATED CASES: Leonard, 86 N.E.3d 406 (Ind. Ct. App 2017) (in conspiracy to commit murder prosecution, Tr. Ct. did not abuse its discretion in admitting recordings of D's jail phone calls with an undercover officer posing as a hitman, as right to counsel had not attached to murder-for-hire case was not inextricably intertwined with case for which D was incarcerated), Texas v. Cobb, US, 121 S.Ct. 1335, 149 L.Ed.2d 321 (D's right to counsel was not violated when State introduced statements he made while waiting in jail for his murder trial, where D asked a purported hit man to kill a State's witness, because D's right to counsel had attached only as to his murder case, and not using the statements would unnecessarily frustrate the public's interest in investigating criminal activities; see full review, this section); Jewell, 957 N.E.2d 625 (Ind. 2011) (Article 1, Section 13 of the Indiana Constitution provides more protection than does Texas v. Cobb; under the Indiana Constitution, the right to counsel also attaches to police questioning regarding offenses which are inextricably intertwined with the charge on which counsel is already representing the D; reviewing court must examine and compare all the facts

and circumstances - as known at the time of the investigation - related to the conduct, including the nature of the conduct, the identity of the persons involved (including the victim, if any), and the timing, motive and location of the crimes; D's crime for tattooing minor was not inextricably intertwined with crime of sexual misconduct with the same minor).

TITLE: Maine v. Moulten
INDEX NO.: I.3.a.
CITE: (1985), 474 U.S. 159, 106 S.Ct. 477, 88 L.Ed.2d 481
SUBJECT: Statements made before 6th Amend. attaches
HOLDING: Where police are investigating crimes for which D has not yet been charged (hence 6th Amend. right to counsel has not yet attached), statements made by D may be admitted at later trial of those uncharged crimes. However, any statements obtained concerning crimes for which D has been charged are not admissible at trial for those crimes if in obtaining evidence state knowingly circumvents accused's right to have counsel present. Burger, joined by White, Rehnquist, & joined in part by O'Connor, DISSENTS.

TITLE: McNeil v. Wisconsin
INDEX NO.: I.3.a.
CITE: (1991), 501 U.S. 171, 111 S.Ct. 2204, 115 L.Ed.2d 158
SUBJECT: Questioning after right to counsel
HOLDING: Once 6th Amend. right to counsel has attached & been invoked, any subsequent waiver during police-initiated custodial interview is ineffective. Michigan v. Jackson (1986), 475 U.S. 625, 106 S.Ct. 1404, 89 L.Ed.2d 631 (right attached & was invoked at initial hearing when counsel appointed). 6th Amend. is offense-specific & cannot be invoked for future prosecutions because it does not attach until prosecution commences. 5th Amend. right to counsel is not offense-specific; once suspect invokes right to counsel for interrogation regarding one offense, he/she may not be reapproached regarding any offense unless counsel is present. Arizona v. Roberson (1988), 486 U.S. 675, 108 S.Ct. 2093, 100 L.Ed.2d 704. Here, D was arrested on armed robbery charge & at bail hearing had counsel appointed. Police then sought to question D regarding separate murder offense. D signed 3 separate Miranda waiver forms prior to each of 3 separate interviews regarding murder charge. D contends that although he expressly waived his Miranda right to counsel, those waivers were invalid product of impermissible approaches because his prior invocation of 6th Amend. right with regard to robbery charge was also invocation of 5th Amend. right. Invocation of 5th Amend. right to counsel requires, at mini mum, some statement that can reasonably be construed as desire for attorney in dealing with custodial interrogation by police. Request for assistance of attorney at bail hearing on separate offense does not establish such desire. Rule D seeks would mean most persons in pretrial custody would be unapproachable by police suspecting them of involvement in other crimes even though they had never expressed unwillingness to be questioned. Held, 6th Amend. right to counsel on murder charge had not attached & was not invoked; 5th Amend. right to counsel was expressly waived. Statements properly admitted. Stevens, joined by Marshall & Blackmun, DISSENT.

TITLE: Moran v. Burbine

INDEX NO.: I.3.a.

CITE: (1986), 475 U.S. 412, 106 S.Ct. 1135, 89 L.Ed.2d 410

SUBJECT: Interference with right to counsel - initiation of adversary proceedings

HOLDING: D has right to have attorney present during any interrogation occurring after formal charging proceeding. U.S. v. Gouveia (1984), 467 U.S. 180, 187, 104 S.Ct. 2292, 81 L.Ed.2d 146. Once right has attached, police may not interfere with efforts of D's attorney to act as medium between suspect & state. ME v. Moulton (1985), 474 U.S. 159, 106 S.Ct. 477, 88 L.Ed.2d 481. It is initiation of formal proceedings, when government's role shifts from investigation to accusation, that triggers 6th Amend. right to counsel. Existence of attorney-client relationship does not trigger 6th Amend. right. Here, police failed to inform murder suspect of telephone calls from attorney, who had been contacted by suspect's sister. Police informed attorney that they would not be questioning suspect nor placing him in lineup that evening. Less than 1 hour later police obtained valid Miranda waiver & statement from D. Held, events which led to inculpatory statement preceded formal initiation of adversary judicial proceedings. Thus, 6th Amend. right to counsel had not yet attached. Stevens, joined by Brennan & Marshall, DISSENTS.

TITLE: State v. Everybodytalksabout
INDEX NO.: I.3.a.
CITE: (9/6/2007), Wash., 166 P.3d 693
SUBJECT: Admissions in PSI report should have been suppressed on retrial
HOLDING: Washington Supreme Court held that evidence of incriminating statements that D made during a counsel-less interview by a pre-sentence report writer should not have been admitted at a later retrial. Court ruled that the interview and the statements satisfied both the "critical stage" and the "deliberately elicited" requirements of the standards governing the Sixth Amendment right to counsel. Court determined that as in Estelle v. Smith, 451 U.S. 454 (1981), D's "counsel was not aware that the presentence interview would encompass questions about the crime that [D] had been convicted and [D] was denied his counsel's assistance in determining whether to submit to the interview." Court distinguished from cases from other jurisdictions on the ground that they involved challenges to the use of uncounseled statements at sentencing, not at trial as in this case. Court rejected idea of lower state court that probation officer merely gave D an opportunity to tell his side of the story and/or reassert his innocence. Quoting U.S. v. Henry, 447 U.S. 264 (1980), Court noted that "under Sixth Amendment analysis, the government agent need only 'stimulate conversations about the crime charged' to deliberately elicit incriminating statements."

TITLE: Texas v. Cobb
INDEX NO.: I.3.a.
CITE: (2001), US, 121 S.Ct. 1335, 149 L.Ed.2d 321
SUBJECT: Sixth Amendment, right to counsel, interrogation, Blockburger test
HOLDING: Sixth Amendment right to counsel is "offense specific" and does not attach to uncharged crimes, even though they may be factually related to a charged offense, unless they would be considered the same offense under the Blockburger test. "[W]here the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not." Blockburger v. United States, 284 U. S. 299 (1932). Here, D was charged with burglarizing his neighbor's house. The neighbor's wife and daughter vanished at the same time as the burglary, but no charges were filed in connection with their disappearance. When the police learned that the D had made incriminating statements about the disappearance, they took the D into custody and interviewed him without notifying the lawyer who represented him on the burglary. D admitted to having killed the woman and child. Held, the confession was admissible at trial because D had not been charged with the murders at the time he confessed to them, and under Texas statutes the murders were different offenses from the burglary. (**Note** that in the facts of this capital murder case, the aggravating circumstance was multiple murder and the burglary was apparently not used as an aggravator).

RELATED CASES: Leonard, 73 N.E.3d 155 (Ind. 2017) (D's right to counsel was not violated when State introduced statements he made while waiting in jail for his murder trial, where D asked a purported hit man to kill a State's witness, because D's right to counsel had attached only as to his murder case, and not using the statements would unnecessarily frustrate the public's interest in investigating criminal activities; see full review, this section.), Jewell, 957 N.E.2d 625 (Ind. 2011) (Article 1, Section 13 of the Indiana Constitution provides more protection than does Texas v. Cobb; under the Indiana Constitution, the right to counsel also attaches to police questioning regarding offenses which are inextricably intertwined with the charge on which counsel is already representing the D; reviewing court must examine and compare all the facts and circumstances - as known at the time of the investigation - related to the conduct, including the nature of the conduct, the identity of the persons involved (including the victim, if any), and the timing, motive and location of the crimes; D's crime for tattooing minor was not inextricably intertwined with crime of sexual misconduct with the same minor).

I. CONFESSIONS/ INTERROGATIONS

I.3. Questioning after right to counsel attaches (6th Amend)

I.3.b. Waiver of rights

TITLE: Bradford v. State

INDEX NO.: I.3.b.

CITE: (Ark. S. Ct. 7/8/96), 325 Ark. 278; 927 S.W.2d 329

SUBJECT: Miranda Waiver Insufficient to Waive Sixth Amendment Interrogation Rights Where Counsel Was Appointed at Initial Hearing

HOLDING: D who had not requested assistance of counsel and who was unaware that, at her initial appearance, court had appointed public defender service to represent her, did not validly waive 6th Amendment right to have counsel present at interrogations when she executed Miranda waiver. Michigan v. Jackson, 475 U.S. 625 (1986), held that Miranda waivers did not count as 6th Amendment waivers. Jackson, however, had requested assistance of counsel at initial hearing. Court here finds that that does not make Jackson distinguishable; footnote in Jackson clearly states that request was not necessary and was merely one factor justices considered. Although in Patterson v. Illinois, 487 U.S. 285 (1988), Court held that Miranda waiver was sufficient in case in which D had not requested assistance of counsel, D in that case had not been appointed counsel, either. Officers here, like officers in Jackson, should have checked to see whether counsel had been appointed before approaching D for interrogation.

TITLE: Heffner v. State
INDEX NO.: I.3.b.
CITE: (11/23/88), Ind., 530 N.E.2d 297
SUBJECT: Questioning after right to counsel invoked
HOLDING: Tr. Ct. erred in admitting statement made by D after he indicated he wanted counsel, in response to police-initiated questioning. D was arrested in MD on IN murder charge. Before extradition hearing, D tried to contact attorney, leaving message with associate. Two days later, D was questioned by IN state police officer. Officer advised D of Miranda rights & D signed waiver form. Officer then asked D, on record, if it was true that he had not hired attorney. D responded that his attorney was supposed to be there but had not arrived yet. After further questioning about identity of attorney, officer said: "I guess what I want to make clear for the record ... you have not retained an attorney. Is that correct? You have not paid him any money?" D replied that he had not done so yet. Officer then asked D to verify that he had signed a Miranda waiver & that it was with D's permission that they continued their conversation. After right to counsel is invoked, waiver in response to police-initiated questioning, even after additional Miranda warnings, is not sufficiently voluntary & intelligent. MI v. Jackson (1986), 475 U.S. 625, 106 S.Ct. 1404, 89 L.Ed.2d 631 (card at I.3.b). Here, D's incriminating statement followed officer's intimation that his right to counsel was contingent upon payment of retainer & resulted from 32 hour police-initiated interrogation. Held, conviction reversed & remanded for new trial. Pivarnik, J., DISSENTS.

RELATED CASES: Storey, App., 830 N.E.2d 1011 (police officer's continued interrogation of D violated his Fifth Amendment right to counsel; see full review at I.2.d.1).

TITLE: Johnson v. State
INDEX NO.: I.3.b.
CITE: (3rd Dist., 07-28-06), Ind. App., 851 N.E.2d 372
SUBJECT: Confession admissible - no advisement D had already been charged
HOLDING: Failure to inform a D that he has been charged with the crime with respect to which he is making a statement does not vitiate an otherwise valid Miranda warning given at the interview where the statement was made. Here, D did not challenge adequacy of his advisement of rights but claimed that advisement & his subsequent waiver were invalid because he was not first informed that he had already been charged with two murders. D was made sufficiently aware of his right to have counsel present during police questioning, & of the possible consequences of a decision to forgo the aid of counsel. Patterson v. Illinois, 487 U.S. 285 (1988). It is not clear whether arresting officers read two-count murder warrant to D at the time of his arrest, but D was or reasonably should have been aware of the gravity of his situation with respect to the crimes about which he was being questioned. Tr. Ct. did not err in admitting into evidence D's statement to police. Held, judgment affirmed.

TITLE: Michigan v. Jackson
INDEX NO.: I.3.b.
CITE: (1986), 475 U.S. 625, 106 S.Ct. 1404, 89 L.Ed.2d 631
SUBJECT: Request for counsel at arraignment - subsequent waiver deemed invalid
HOLDING: 5th Amend. protection against compelled self-incrimination provides right to counsel at all custodial interrogations. Edwards v. AZ (1981), 451 U.S. 477, 101 S.Ct. 1880, 68 L.Ed.2d 378. 6th Amend. guarantee of assistance of counsel also provides right to counsel at post-arraignment interrogations. Arraignment signals initiation of adversary judicial proceedings & attachment of 6th Amend. If police initiate interrogation after D's assertion, at an arraignment or similar proceeding, of his/her right to counsel, any waiver of D's right to counsel for that police-initiated interrogation is invalid. Here, police obtained statements from Ds after they had requested counsel at arraignment. Prior to giving statements, Ds had executed written waivers. Held, written waivers are insufficient to justify police-initiated interrogations after request for counsel when the 6th Amend. has attached. Burger CONCURS IN JUDGMENT; Rehnquist, joined by Powell & O'Connor, DISSENTS.

TITLE: Patterson v. Illinois

INDEX NO.: I.3.b.

CITE: (1988), 487 U.S. 285, 108 S.Ct. 2389, 101 L.Ed.2d 261

SUBJECT: Waiver of right to counsel

HOLDING: Waiver of 6th Amend. right to counsel is valid only when it reflects "an intentional relinquishment or abandonment of a known right or privilege." [Citation omitted.] Key inquiry is: Was accused who waived 6th Amend. rights during post-indictment questioning made sufficiently aware of right to have counsel present during questioning & of possible consequences of decision to forego counsel? Here, D was advised of Miranda warnings, including right to counsel & executed waiver of right to counsel under Miranda sufficient to satisfy 6th Amend. Miranda warnings given D made him aware of right to counsel during questioning. Additionally, Miranda warnings served to make D aware of consequences of waiver - i.e., that any statement made, would be used against him at his trial. Held, accused who is admonished with Miranda warnings has been sufficiently apprised of nature of 6th Amend. rights, & consequences of abandoning those rights, so waiver on this basis will be considered knowing & intelligent. Court additionally rejects D's argument that waiver of counsel pursuant to 6th Amend. should be as searching & formal for post-indictment interrogation as it is for waiver of counsel at trial. Different standards may apply because full "dangers & disadvantages of self-representation" during questioning are less substantial & more obvious to accused than they are at trial. Held, statements given here are admissible because D validly waived right to counsel. Blackmun, DISSENTS; Stevens, joined by Brennan & Marshall, DISSENTS.

TITLE: Simmons v. State
INDEX NO.: I.3.b.
CITE: (11/14/83), Ind. App., 455 N.E.2d 1143
SUBJECT: Questioning after appointment of counsel
HOLDING: Tr. Ct. did not err in admitting testimony re statement D made to police officer without counsel. Here, D was escorted to court (for indigency hearing) by officer. Upon leaving court, D told officer "maybe I should just admit robbery." D contends statement was elicited without presence of counsel in violation of 6th Amend. Testimony based on statements made by criminal Ds is inadmissible when police deliberately educe information in absence of defense counsel. Brewer v. Williams (1977), 430 U.S. 387, 97 S.Ct. 1232, 51 L.Ed.2d 424. Court finds D uttered spontaneous declaration. No interrogation occurred. Held, no error.

RELATED CASES: Boney, App., 880 N.E.2d 279 (D reinitiated contact with police after ceasing interrogation and requesting lawyer); Gilliam, App., 650 N.E.2d 45 (D's volunteered statements to police were preceded by knowing & voluntary waiver of 6th Amendment right to counsel & 5th Amendment privilege against self-incrimination); Sater 441 N.E.2d 1364 (police may procure statement from D without notice to attorney, even though D is represented by counsel, *citing* US v. Springer (CA7 1972), 460 F.2d 1344 & Kern 426 N.E.2d 385; here, no Miranda warnings were given, but court finds D initiated conversation; held, no error in admission of statement).

I. CONFESSIONS/ INTERROGATIONS

I.3. Questioning after right to counsel attaches (6th Amend)

I.3.c. Jail informants (US v Henry)

TITLE: Commonwealth v. Franciscus
INDEX NO.: I.3.c.
CITE: (4/2/98, Pa. S. Ct.), 710 A.2d 1112
SUBJECT: Jail Informer -- Lack of Police Direction
HOLDING: A pattern of conduct in which police officers promised to reward a prisoner for informing on other inmates, and assisted him in doing so, made the informer an agent of the state even though the officers did not give him specific directions on how to conduct himself. Accordingly, statements obtained during counselless conversations with D violated both 6th amendment right to counsel and the Pennsylvania state constitutional right to counsel. Although informer's first contact with police was unsolicited, pattern developed involving obtaining statements from several fellow inmates and receiving rewards from police each time, including favorable testimony at sentencing and money in his commissary fund.

TITLE: Commonwealth v. Murphy
INDEX NO.: I.3.c.
CITE: (3/6/2007), Mass., 862 N.E.2d 30,
SUBJECT: Informant is state agent even if no specific target
HOLDING: The Massachusetts Supreme Judicial Court held that a jailhouse informer's cooperation agreement does not have to specify a particular target of investigation for him to qualify as a government agent whose questioning of fellow inmates will implicate their Sixth Amendment right to counsel or similar provisions under its state constitution. Under Massiah v. U.S., 377 U.S. 201 (1964), a D's Sixth Amendment right to counsel is violated by the use at trial of incriminating statements he made that were deliberately elicited by a government agent in the absence of the D's counsel after he had been indicted. A jailhouse informer can be an agent of the state. U.S. v. Henry, 447 U.S. 264 (1980).

Court noted that "there is nothing in Supreme Court precedent that mandates targeting as determinative of a person's status as a government agent." An agency relationship arises once there is an "articulated agreement containing a special benefit" between the informant and the government and an informer. "Indeed a bright line rule that requires targeting a specific D no matter what the agreement between the informant and the government would allow the government to circumvent its affirmative obligation to protect rights of the accused by creating what one court has called an 'informant at large.'"

In this case, government promised the informer that the prosecutor would move for a reduced sentence if he provided substantial assistance, but the prosecutor did not know what form that cooperation would take. In his foundational testimony, the informer stated he took this to mean he should "find out information . . . and help get somebody convicted." Court concluded that informant was government agent in this case.

TITLE: Dier v. State
INDEX NO.: I.3.c.
CITE: (12/15/82), Ind., 442 N.E.2d 1043
SUBJECT: Jail informant
HOLDING: Where prisoner is induced by police to engage fellow prisoners in conversations & to be alert for inculpatory statements made by them, testimony of informant should be excluded on 6th Amend grounds. US v. Henry (1980), 447 U.S. 264, 100 S.Ct. 2183, 65 L.Ed.2d 115; Iddings, App., 427 N.E.2d 10. Henry involved paid informant. In Iddings, police told informant he would receive favorable treatment in exchange for reporting inculpatory statements. Principles of Henry & Iddings do not prohibit introduction of spontaneous statements not elicited by government action. Here, D told fellow prisoner about robbery & death of victim. Prisoner volunteered information to police & testified against D at trial. Court finds prisoner's reception of incriminating statements "mere fortuitous circumstance which state could not be held to have deliberately elicited or foreseen." Held, no error.

RELATED CASES: Jewell, App., 672 N.E.2d 417 (evidence provided by inmate who collected but did not induce incriminating statements was not subject to suppression); Dodson 502 N.E.2d 1333 (Crim L 517(6); court rejects D's contention that jail informant (Myers) was induced by police to elicit incriminating statement from D; court finds D knew Myers was trustee; although charges against Myers were reduced, the plea agreement was entered into before Myers obtained statement from D).

TITLE: Kansas v. Ventris

INDEX NO.: I.3.c.

CITE: 129 S.Ct. 1841, 173 L.Ed.2d 801 (2009)

SUBJECT: Exclusionary rule unnecessary to protect against confession elicited in violation of Sixth Amendment right to counsel

HOLDING: D's confession to an informant, elicited in violation of the Sixth Amendment, was admissible to impeach his inconsistent testimony at trial. Whether otherwise excluded evidence can be admitted for purposes of impeachment depends upon the nature of the constitutional guarantee that is violated. Sometimes that explicitly mandates exclusion from trial, and sometimes it does not. The Sixth Amendment right extends to having counsel present at various pretrial "critical" interactions between the D and the State, including the deliberate elicitation by law enforcement officers (and their agents) of statements pertaining to the charge. Massiah v. U.S., 377 U.S. 201, 206 (1967). The Massiah right is a right to be free of uncounseled interrogation and is infringed at the time of the interrogation. That is when the assistance of counsel is denied. Thus, this case does not involve the prevention of a constitutional violation, but rather the scope of the remedy for a violation that has already occurred. The interests safeguarded by exclusion in such situations are outweighed by the need to prevent perjury and to assure the integrity of the trial process. This Court has held in every other context that tainted evidence--evidence whose very introduction does not constitute the constitutional violation, but whose obtaining was the constitutionally invalid--is admissible for impeachment. See Oregon v. Hass, 420 U.S. 714 (1975); Walder v. U.S., 347 U.S. 62, 65 (1954); Harris v. New York, 401 U.S. 222, 226 (1971); Michigan v. Harvey, 494 U.S. 344, 348 (1990).

Here, prior to trial, officers planted an informant in D's holding cell, instructing him to Akeep [his] ear open and listen@ for incriminating statements from D. According to informant, in response to informant's statement that D appeared to have Asomething more serious weighing in on his mind,@ D confessed to the murder for which he was charged. The State conceded this was a Sixth Amendment violation. Without determining whether there was a violation, Court held that the statement could be used to impeach D when D took the stand and testified that the co-D committed the murder. Held, judgment of Kansas Supreme Court reversing D's conviction reversed; Stevens, J., with whom Ginsburg, J., joins DISSENTING on the basis that introduction of an illegally obtained confession violates the Sixth Amendment when introduced at trial.

RELATED CASES: Hogan, 966 N.E.2d 738 (Ind. Ct. App 2012) (because there was no evidence that D's statement was involuntarily given, his statement taken in violation of his Sixth Amendment right to counsel was properly used for impeachment).

TITLE: Kuhlman v. Wilson
INDEX NO.: I.3.c.
CITE: (1986), 477 U.S. 436, 106 S.Ct. 2616, 91 L.Ed.2d 364
SUBJECT: Jail informant
HOLDING: Once D's 6th Amend. right to counsel has attached, government agents may not "deliberately elicit" incriminating statements from D in absence of D's lawyer. Massiah v. U.S. (1964), 377 U.S. 201, 84 S.Ct. 1199, 12 L.Ed.2d 246. D's 6th Amend. rights are violated when police obtain incriminating statements from jailhouse informant who engaged D in conversation & developed relationship of trust & confidence with D such that D revealed incriminating information when counsel was not present. U.S. v. Henry (1980), 447 U.S. 264, 100 S.Ct. 2183, 65 L.Ed.2d 115. Police may not obtain incriminating statements from D by employing accomplice who agrees to cooperate with police. ME v. Moulten (1985), 474 U.S. 159 106 S.Ct. 477, 88 L.Ed.2d 481. Primary concern of Massiah line of cases is secret interrogation by investigatory techniques that are equivalent of direct police interrogation. Here, D's cellmate had agreed to act as police informant. Informant was instructed not to question D, but to "keep his ears open" for names of D's accomplices. D made incriminating statements which were reported to police. U.S. S.Ct. finds D failed to prove violation of 6th Amend. right to counsel simply by showing that informant, either through prior arrangement or voluntarily, reported his incriminating statements to police. D must demonstrate that police & informant took some action, beyond merely listening, that was designed deliberately to elicit incriminating remarks. Burger CONCURS IN JUDGMENT, Brennan, joined by Marshall, DISSENTS; Stevens DISSENTS.

TITLE: Maine v. Moulten

INDEX NO.: I.3.c.

CITE: (1985), 474 U.S. 159, 106 S.Ct. 477, 88 L.Ed.2d 481

SUBJECT: Questioning after right to counsel attaches -statements elicited by informant

HOLDING: 6th Amend. guarantees accused, at least after initiation of formal charges, right to rely on counsel as "medium" between D & state. Knowing exploitation by state of opportunity to confront accused without counsel being present is as much a breach of state's obligation not to circumvent right to assistance of counsel as intentional creation of such an opportunity. Thus, 6th Amend. is violated when state obtains incriminating statements by knowingly circumventing accused's right to have counsel present in confrontation between accused & agent of state. Proof that state "must have known" that its agent was likely to obtain incriminating statements from accused in absence of counsel suffices to establish 6th Amend. violation. See n.12, at 487-88. Here, state violated D's 6th Amend. rights when it arranged to record conversations between D & co-D. Fact that D initiated conversations & that state advised co-D to "be himself," "act normal" & "not incriminate" D are not sufficient to excuse 6th Amend. violation. Burger, joined by White, Rehnquist & joined in part by O'Connor, DISSENTS.

TITLE: Rutledge v. State
INDEX NO.: I.3.c.
CITE: (7/8/88), Ind., 525 N.E.2d 326
SUBJECT: Religious jail visitor - no intentional use by state
HOLDING: D's jail cell confession to Gideon member, although made in absence of Miranda warnings & assistance of counsel, was properly admitted. D relies on Massiah v. U.S. (1964), 377 U.S. 201, 84 S.Ct. 1199, 12 L.Ed.2d 246, which held that right to counsel is violated when state intentionally creates situation likely to induce incriminating statement from charged D in absence of counsel. D argues that special agreement existed between Gideons & police, so that police wrongfully used civilian Gideon member to obtain confession. Here, sheriff allowed Gideons to visit inmates 1 hour per week after regular visiting hours. After D's confession, Gideon member said nothing to police for over 2 months, & then did so only when asked to corroborate cellmate's account of D's confession. 6th Amend. is not violated when passive listener merely collects but does not induce incriminating statements. Dier 442 N.E.2d 1043. Held, D's confession to Gideon member properly admitted.

RELATED CASES: Frederick, 755 N.E.2d 1078 (D did not show that police intentionally elicited information from D in violation of Massiah).

TITLE: United States v. Henry
INDEX NO.: I.3.c.
CITE: (6-16-80), 477 U.S. 264, 100 S.Ct. 2183
SUBJECT: Questioning after right to counsel attaches - jail informants
HOLDING: D's incriminating statements made to paid informant who, while confined in same cellblock as D, had been told by government agents to be alert to any statements made by federal prisoners but to not initiate conversations with or question D regarding charges against D, were inadmissible as being "deliberately elicited" from D in violation of D's Sixth Amendment right to counsel. Under instant facts, particularly fact that informant was acting under instructions as paid informant for government while ostensibly no more than fellow inmate, & that D was in custody & under indictment at time, incriminating statements were deliberately elicited. Since D was unaware that informant was acting for government, D could not be held to have waived his right to assistance of counsel. Held, judgment affirmed; Powell, J., concurring; Blackmun, White, & Rehnquist, JJ., dissenting.

I. CONFESSIONS/ INTERROGATIONS

I.4. Recording of Custodial Interrogations (Ind. Ev. R. 617)

TITLE: Cherry v. State
INDEX NO.: I.4.
CITE: (7/27/2016), 57 N.E.3d 867 (Ind. Ct. App 2015)
SUBJECT: Recording admissible under Evidence Rule 617(a)(3) exception
HOLDING: Tr. Ct. did not err in admitting D's statement, where part of the statement was unrecorded either because of operator error or equipment malfunction.

Indiana detectives, investigating a shooting, travelled to another state's sheriff's department to question a suspect. They tried to use the office's video system to record the interview, as Indiana Evidence Rule 617 requires, but a malfunction or operator error left part of the interview unrecorded. D, who represented himself, invoked Rule 617 and moved to suppress statements he made to police, claiming the detectives made unconstitutional threats and denied his requests for counsel during the unrecorded part of the interview. The Court agreed with the Tr. Ct. that the exception for an equipment malfunction or operator error found in Rule 617(a)(3) applied, and thus found that the Tr. Ct. properly denied the motion to suppress. Held, judgment affirmed.

TITLE: Fansler v. State
INDEX NO.: I.4
CITE: (6 N.E.3d 21 N.E.3d 2018), 100 N.E.3d 250 (Ind. 2017)
SUBJECT: Motel room used for sting operation and custodial interrogation was not a "place of detention" requiring electronic recording
HOLDING: Indiana Evidence Rule 617 prohibits the admission of unrecorded statements made during custodial interrogations in a "place of detention," defined as "a jail, law enforcement agency station house, or any other stationary or mobile building owned or operated by a law enforcement agency at which people are detained in connection with criminal investigations." Here, D was charged with a litany of drug offenses following a sting operation that lured him into a drug deal at a motel. Upon his arrest, D was Mirandized and interrogated by police in a motel room that was the base of police operations for the day. At trial, D objected to the admission of his incriminating motel room statements without an electronic recording as required by Ind. Evidence Rule 617.

On appeal of D's convictions, Supreme Court found no error in admission of his unrecorded statements. The Court concluded that Rule 617 did not apply because, although D was under a custodial interrogation, he was not in a place of detention. In determining whether a location can be considered a "place of detention" requiring an electronic recording under Indiana Evidence Rule 617, Courts should analyze the control law enforcement has over the premises, the frequency of use to conduct custodial interrogations and the purpose for which law enforcement uses the space. In this case, law enforcement did not have "control" over the motel room because the room was used for its intended purpose when law enforcement was not there. Further, police used the room only sporadically to perform sting operations and the primary use of the motel room was surveillance, not interrogation. Held, transfer granted, Court of Appeals' opinion at 81 N.E.3d 671 vacated, judgment affirmed.

TITLE: Weed v. State
INDEX NO.: I.4
CITE: (7/29/2022, 192 N.E.3d 247 (Ind. Ct. App. 2022)
SUBJECT: Evidence rule requiring electronic recording of custodial interrogations did not apply to malfunctioning equipment in Michigan
HOLDING: Defendant became a suspect in the burglary of an auto shop in Mishawaka, IN, after being seen climbing over the fence in surveillance footage of the shop. Before he was apprehended, Defendant was arrested in Michigan on unrelated charges. During a Mirandized interrogation on those charges, the detective asked to search Defendant's backpack, and he consented. Inside the backpack were the clothes Defendant was wearing in the auto shop's surveillance footage. The recording of the interrogation - and of Defendant's alleged consent to a search - was lost due to a system malfunction. On appeal, Defendant claimed he never consented to the backpack search and argued the evidence from that search should be excluded because the interrogation was not recorded as required under Indiana Evidence Rule 617. The Court of Appeals held the trial court did not abuse its discretion by admitting the challenged evidence. Two specific exceptions to the rule requiring the electronic recording of custodial interrogations were pertinent. The first covers malfunctioning equipment due to a law enforcement officer's unintentional failure to properly operate the recording equipment or a malfunction unknown to the law enforcement officer. The second covers custodial interrogations conducted by law enforcement officers outside of Indiana. There was no evidence indicating that the electronic recording system's malfunction was intentional or known during the interrogation, or that the interrogation took place in Indiana. Each exception alone would have allowed the trial court to admit the evidence. Held: judgment affirmed.

I.5. Juvenile (Ind. Code 31-6-7-3)

TITLE: A.A. v. State
INDEX NO.: I.5.
CITE: (2nd Dist., 2-26-99), Ind. App., 706 N.E.2d 259
SUBJECT: Involuntary juvenile confession - improper police pressure & manipulation
HOLDING: Although neither Miranda warnings nor protection of juvenile waiver statute applied 15 year-old juvenile's confession was involuntary & improperly admitted into evidence. D argued that detective overbore him & that his confession was obtained by improper influence in violation of Due Process Clause of Fourteenth Amendment. Detective used D's claim that he had been molested over five-year period by his uncle to obtain his confession to single incident of child molestation. Specifically, detective told D that unless he confessed, State would not consider him to be credible witness. She then told D that if State felt he was not credible witness State would not prosecute his uncle. As in Hall v. State, 255 Ind. 606, 266 N.E.2d 16 (1971), Ct. concluded that such police coercion & manipulation is improper, & that D's confession was leveraged by improper quid pro quo.

Ct. noted that although it is necessary & appropriate function of law enforcement to assess credibility of complaining witness, detective's statements in this case did not merely provide D with frank assessment of State's case against his uncle. Instead, detective's inquiry went beyond legitimate assessment of D's credibility when she gave him ultimatum that he must confess before his claim against his uncle would be taken seriously. This conduct indicated that it was detective's "undeviating intent" to obtain D's confession. Sparks, 248 Ind. 429, 229 N.E.2d 642 (1967). Given totality of circumstances, Ct. concluded that D's confession was not voluntary, that police conduct violated Due Process Clause of Fourteenth Amendment, & that Tr. Ct. erred when it admitted confession into evidence. Held, delinquency adjudication reversed & remanded.

TITLE: Bluitt v. State
INDEX NO.: I.5.
CITE: (10-13-78), Ind., 381 N.E.2d 458
SUBJECT: Juvenile confessions / interrogations - in general
HOLDING: In all cases involving juvenile confessions, it must be determined whether there were neutralizing pressures which rendered confessions involuntary, & whether those pressures resulted from police presence. Tr. Ct. is required to examine totality of circumstances to make such determination. In juvenile cases, Ct. should look only to record to determine if there was meaningful opportunity for full consultation between juvenile & his parents or guardian, without any coercion on part of police. Here, confession made by each of three juveniles in presence of his parent in his home was admissible, even though request by any juvenile or his parent to speak alone in home at time of arrest would have been denied. Absence of opportunity of juvenile & his parent to consult in private before juvenile confesses does not render confession inadmissible if overriding atmosphere of interrogation process indicates fundamental fairness & totality of circumstances demonstrates, there was no coercion. Held, judgment affirmed.

TITLE: In Re Gault
INDEX NO.: I.5.
CITE: (1967), 387 U.S. 1, 87 S.Ct. 1428, 18 L.Ed.2d 527
SUBJECT: Self-incrimination - juvenile proceedings
HOLDING: Privilege against self-incrimination is applicable to juvenile Ct. proceedings which may result in D's commitment to state institution. Such proceedings are regarded as "criminal" for purposes of privilege. If counsel not present when admission made, greatest care must be taken in insure that admission is voluntary. Here, neither D nor parents were informed that D was not required to make statement or testify or that incriminating statement might result in delinquency adjudication. S.Ct. rejected Arizona Sup. Ct.'s assertion that confession without Miranda-type warning added to process of "individualized treatment" of juvenile D and that confession was therapeutic for child and should be encouraged without restriction. Held, reversed and remanded.

TITLE: Stewart v. State
INDEX NO.: I.5.
CITE: (8-29-01), Ind., 754 N.E.2d 492
SUBJECT: Juvenile Miranda waiver - meaning of "custodial" parent
HOLDING: Where "custodial" parent does not sign a Juvenile D's Miranda warnings waiver, it is invalid & any confession is inadmissible. Ind. Code 31-32-5-1(2) requires the participation of a "custodial parent" & prohibits a unilateral waiver of rights by the child. Whipple v. State, 523 N.E.2d 1363 (Ind. 1988). Here, Juvenile D's biological father signed the waiver. The father had never been awarded custody by a Ct., the child did not reside with him & was born out of wedlock. At a minimum, "custodial" parent means either a person who has been adjudicated by a Ct. to have legal custody of the child, or a parent who actually resides with the unemancipated juvenile. Therefore, Juvenile D's father did not meet this definition of "custodial" parent & the waiver of Miranda warnings was invalid. Further, it was not harmless error to admit Juvenile D's confession because the State had not presented any other evidence that he was at the crime scene. Confession definitively established his role in commission of robbery & murder. Held, conviction reversed & remanded for new trial.

I. CONFESSIONS/ INTERROGATIONS

I.5. Juvenile (Ind. Code 31-6-7-3)

I.5.a. Warnings and waiver

TITLE: B.A. v. State
INDEX NO.: I.5.a.
CITE: (6/20/2018), 100 N.E.3d 225 (Ind. 2018)
SUBJECT: Juvenile subjected to school custodial interrogation requiring Miranda advisements
HOLDING: Tr. Ct. abused its discretion by admitting 13-year-old B.A.'s unmirandized confession to a room filled with multiple uniformed police and school administrators. School police investigated a message, "I will got [sic] a bomb in the school Monday 8th 2016 Not a joke," scrawled on a bathroom wall. A uniformed school resource officer escorted B.A. from his bus straight to the vice principal's office for questioning. Officer instructed B.A. to copy the message text, which the officers decided "kind of matched" the message on the bathroom wall. While three officers were standing or sitting within ten feet of B.A., the Vice-Principal questioned B.A. for several minutes. The officers did not Mirandize B.A., and neither the officers nor any school staff contacted B.A.'s mother. B.A. eventually confessed and was found true of False Reporting and Institutional Criminal Mischief. Supreme Court held that under the totality of circumstances, although Vice Principal did most of the questioning, B.A. was subjected to custodial interrogation because the school uniformed resource officers participated in his interview. "[T]he consistent police presence would place considerable coercive pressure on a reasonable student in B.A.'s situation. So this case lies solidly on the "custody" end of the student-confinement spectrum." B.A.'s statements should have been suppressed under both Miranda and Indiana's juvenile waiver statute, Ind. Code § 31-32-5-1. Held, transfer granted, Court of Appeals' opinion at 73 N.E.3d 720 vacated, judgment affirmed.

TITLE: C.J. v. State
INDEX NO.: I.5.a.
CITE: (1/23/2020), 141 N.E.3d 830 (Ind. Ct. App. 2020)
SUBJECT: Insufficient evidence to support juvenile adjudication where waiver of rights not knowing, intelligent, and voluntary
HOLDING: Court reversed Respondent's true finding for what would be the adult offense of Level 4 felony child molesting because the juvenile court abused its discretion in admitting his statement into evidence and the remaining evidence is insufficient. Respondent and his mother met with a police detective and signed a waiver of rights form before Respondent was interrogated by the detective without his mother present. Respondent was a "low-functioning" twelve-year-old whose speech was stunted, used poor grammar, and spoke of unrelated topics during the interrogation. He sprawled on the floor, drummed on the chair, sang, clapped and laughed while waiting for the detective. The trial court found he had "special needs" requiring services for care and treatment. Respondent was never told of the delinquent act of which he was suspected or of the serious potential consequences. The Court also noted the brevity of the conversation between Respondent and his mother impacts the analysis because we expect people facing consequential decisions to take time to contemplate their options before making a decision. The Court of Appeals held that Respondent's waiver of his rights was not knowing, intelligent, and voluntary under the totality of the circumstances, including his demonstrated lack of maturity, the fact he was not advised of the crime and possible consequences, and his minimal consultation with his mother. The remaining evidence was insufficient to support his adjudication as a delinquent, thus the Court reversed.

TITLE: D.Z. v. State
INDEX NO.: I.5.a.
CITE: (6/20/2018), 100 N.E.3d 246 (Ind. 2018)
SUBJECT: No Miranda violation from school administrator's interrogation without police involvement
HOLDING: Where assistant principal alone met with and interrogated a juvenile student, Miranda warnings were not required. After investigating together, the assistant principal and a police officer working for the school identified 17 year-old D.Z. as a vandalism suspect. The vice-principal called D.Z. out of class and questioned him with the door closed, without offering a chance to talk to his parents or telling D.Z. he had a right not to answer questions. D.Z. admitted to the vandalism. When police officers are not present at and involved in a suspect's interview, students are neither in custody nor under interrogation, unless school officials are acting as agents of the police. B.A. v. State, No. 49S02-1709-JV-567, 100 N.E.3d 225, slip op. at 9-11 (Ind. June 20, 2018). Here, no evidence suggests that police directed or encouraged the assistant principal to act on their behalf. Nor does the police officer's interview with D.Z. immediately after the assistant principal's questioning show an agency relationship. Thus, the assistant principal was not acting as an agent of the police. But even if he had been, Miranda warnings wouldn't be required because no evidence shows D.Z. even knew that the assistant principal had talked to the officer to create a "coercive atmosphere." Illinois v. Perkins, 496 U.S. 292, 297 (1990). Held, transfer granted, Court of Appeals' opinion at 96 N.E.3d 595 vacated, judgment affirmed.

TITLE: Dowdell v. State
INDEX NO.: I.5.a.
CITE: (3rd Dist., 4-5-78), Ind. App., 374 N.E.2d 540
SUBJECT: Juvenile - Warnings & waiver; delay in questioning
HOLDING: Ct. ruled juvenile D's confession was voluntarily made. Confessions made after delay are not inadmissible if delay in bringing D before judge is found by trial judge to be reasonable & D is fully informed of his rights. D was not formally charged or questioned at time of apprehension because D was minor. Authorities wished to have D's father present during interrogation, but father was unavailable for several days. Only after D's father appeared did questioning of D begin. Questioning occurred only after both D & his father signed waiver of rights form. Confession made more than six hours after initial detention was voluntary since delay was reasonable under circumstances. Held, judgment affirmed.

TITLE: Fowler v. State
INDEX NO.: I.5.a.
CITE: (10/11/85), Ind., 483 N.E.2d 739
SUBJECT: Juvenile interrogations - warnings; when required
HOLDING: Tr. Ct. did not err in refusing to suppress juvenile D's statements to police. Here, D was questioned four times. First time was non-custodial, investigatory police interview (at station). Neither Miranda advisements nor additional procedural safeguards accorded juveniles under Lewis 288 N.E.2d 138 were required. Court finds D was not in custody in #2 (D at station, read Miranda rights; police stayed in room while D & his family read & signed waiver form) & #3 (D & father in police car, advised of Miranda; father & son signed waiver form, police did not leave/no meaningful consultation). To be custodial in nonarrest context, interrogation must commence after person's freedom of action has been deprived in any significant way. Staton 428 N.E.2d 1203. Police told D he was not under arrest/was free to leave at any time. D was not detained after interviews. Police failure to employ Lewis procedural safeguards does not require suppression. Held, no error.

RELATED CASES: P.M., App., 861 N.E.2d 710 (although juvenile D was "in custody" by police at time he made incriminating statements, he was not being subjected to interrogation at time; it was employee of theft victim who asked D question, thus protections of Ind. Code 31-32-5-1 did not apply); Borton, App., 759 N.E.2d 641 (there was no custodial interrogation because D volunteered information to officers while pretending to be victim/ eyewitness); S.A., App., 654 N.E.2d 791 (because juvenile D was not subject to custodial interrogation, his statements made to vice-principal were properly admitted); Lyons, App., 503 N.E.2d 928 (statement was admissible because it was uncoerced); Seay, App., 363 N.E.2d 1063 (because juvenile D was not being interrogated, statement was admissible).

TITLE: S.G. v. State
INDEX NO.: I.5.a.
CITE: (08-24-11), 956 N.E.2d 668 (Ind. Ct. App 2011)
SUBJECT: Juvenile confessions - no custodial interrogation despite presence of school officer
HOLDING: Juvenile court did not abuse its discretion by admitting into evidence juvenile's incriminating statements. In cases where a juvenile is subject to custodial interrogation, such child must be read his rights under Miranda, and the State must obtain the waiver of such rights pursuant to the juvenile wavier statute requiring meaningful consultation with a parent or guardian.

Here, a teacher's phone was stolen at school. The Principal received information that S.G. had the phone. At the Principal's request, a school officer brought S.G. to the Principal's office. While in the office with S.G. and the officer, the Principal asked S.G. one question, whether he had the teacher's cell phone. The officer was not conducting an independent investigation into the missing cell phone and did not ask any questions. Moreover, the officer did not take S.G. into custody when he admitted to having possessed the phone. Under certain circumstances, a police officer's presence in conjunction with a school official's questioning may be significant enough to constitute the type of setting that Court would characterize as custodial. However, the facts of this case do not satisfy the requirements of a custodial interrogation. Also, there was no evidence that the Principal was acting as the officer's agent. Prior to the Principal's request for the officer to bring S.G. to the office, the officer did not even know about the stolen phone. Because S.G. was not subject to custodial interrogation, he was not entitled to Miranda warnings and to meaningful consultation. Held, judgment affirmed.

TITLE: Sills v. State
INDEX NO.: I.5.a.
CITE: (5/14/84), Ind., 463 N.E.2d 228
SUBJECT: Juvenile interrogations - waiver
HOLDING: Tr. Ct. did not err in admitting juvenile's confession. Here, D was arrested & taken to interrogation room. D's father arrived 15 minutes later. Police advised both of Miranda rights. D signed written waiver, which father signed as witness. D contends waiver did not meet requirements of 31-6-7-3, *citing* Deckard, App., 425 N.E.2d 256 (parent present when juvenile signed waiver but parent did not sign waiver; held, no establishment that parent joined in D's waiver of rights). Court finds evidence establishes father joined in waiver; father signed form, albeit online designated "witness." Father testified at suppression hearing that he did not object to son giving statement to officers & in fact encouraged him to do so. Held, no error.

RELATED CASES: Chandler, 419 N.E.2d 142 (juvenile's confession was admissible where no evidence of force coercion, or inducement); Hickman, App., 654 N.E.2d 278 (D's statements were voluntarily given during custodial interrogation, after he was fully advised of his Miranda rights).

TITLE: Smith v. State
INDEX NO.: I.5.a.
CITE: (2nd Dist., 2-21-80), Ind. App., 400 N.E.2d 1137
SUBJECT: Juvenile - Warnings & waiver; parent's presence at interrogation
HOLDING: Juvenile D's confession was admissible, even though part of confession was made when juvenile's mother was out of room at juvenile's request. Purpose of requiring parent's presence is not to witness statement, but rather to assist in decision whether to give it. Here, police advised juvenile D & his mother of juvenile's rights, & juvenile was allowed to consult with his mother prior to questioning. Police exerted no pressure but did inform juvenile of evidence against him & potential penalty. Juvenile attended eleventh grade & could read & understand English. Held, judgment affirmed.

RELATED CASES: Tippitt, 364 N.E.2d 763 (mother's absence at interrogation did not make statement inadmissible). Bridges, 299 N.E.2d 616 (where juvenile & mother are advised by probation officer that counsel is unnecessary, confession cannot be used against juvenile in subsequent trial or hearing).

TITLE: State v. C.D.
INDEX NO.: I.5.a.
CITE: (05-02-11), 947 N.E.2d 1018 (Ind. Ct. App 2011)
SUBJECT: No custodial interrogation, so no denial of right to meaningful consultation
HOLDING: Ind. Code ' 31-32-5-1 requires a juvenile's waiver of rights to be knowingly or voluntarily made and either counsel or parent or guardian to join in the waiver. However, the Miranda warnings and statutory meaningful consultation safeguards apply only to a juvenile who is subjected to custodial interrogation. G.J. v. State, 716 N.E.2d 475 (Ind. Ct. App 1999). Here, a school employee brought C.D. to principal's office, where he was detained to "maintain school order" by ensuring that a drug-impaired individual was not in the classroom. C.D.'s speech and mannerisms seemed "slower than normal" to principal, so he summoned school security officer, who was in police uniform, to evaluate C.D. for drug influence. The evaluation consisted of a physical examination and questions about prescription drugs, contact lenses, and medical problems. Officer told principal that he thought C.D. was under the influence of marijuana and had smoked it that day. At that point, C.D. asserted that he had smoked marijuana the previous evening but not that day. Principal then searched C.D.'s backpack and discovered two Adderall pills.

Court held that although C.D. was detained, he was not undergoing "custodial interrogation" when he answered officer's questions and made incriminating admissions because officer was acting to fulfill an educational purpose, i.e., to keep possibly intoxicated students out of the classroom. Environment in which C.D. was questioned was no more coercive than in G.J., as both were detained and questioned at school. Furthermore, C.D. admitted to drug use without being directly questioned on that point by officer or principal. Fact that C.D., unlike G.J., was examined by a school security officer in police uniform rather than a school administrator, "is not significant" because officer was not independently investigating the matter but did so at principal's request and in his presence. After examination was complete, principal did not immediately ask officer to take C.D. into custody but instead advised C.D. that he would be suspended. This evidence indicates that officer was acting to further educationally related goals. T.S. v. State, 863 N.E.2d 362 (Ind. Ct. App 2007). Thus, C.D. was not deprived of his right to meaningful consultation with his parents when officer examined him. Held, grant of motion to suppress reversed and remanded.

RELATED CASES: K.F., 961 N.E.2d 501 (Ind. Ct. App 2012) (where juvenile was never interrogated by police but rather made statements to mom at the police station, juvenile was not subjected to custodial interrogation; thus, the fact that mom was also victim of the crime did not make the statements inadmissible, although the court did express concern over whether a parent who is also a victim can provide meaningful consultation prior to waiver of rights).

TITLE: Stone v. State
INDEX NO.: I.5.a.
CITE: (7-17-78), Ind., 377 N.E.2d 1372
SUBJECT: Juvenile; Warnings & waiver - good faith effort to obtain D's age
HOLDING: Tr. Ct. did not err in admitting confession, although police officers complied only with requirement of adult waiver of constitutional rights. Officers did not afford juvenile D special additional safeguard of parental or familial presence & advisement & opportunity to consult with friendly & familiar person or with attorney. This is required condition of valid juvenile waiver. Where police make good faith & diligent effort to determine age of suspect but are frustrated in such effort by misstatement of suspect as to age, as matter of state law, requirements of juvenile waiver are satisfied. Here, interrogating officers, making erroneous threshold determination of juvenile D's age, relied upon D's own statements. D twice stated in preliminary stage of interrogation he was nineteen years old. Officers also relied on police records of four past arrests showing D was nineteen years old. Held, judgment affirmed.

TITLE: Stidham v. State
INDEX NO.: I.5.a.
CITE: (02-03-93), Ind., 608 N.E.2d 699
SUBJECT: Foreign statement of juvenile inadmissible - no guardian present
HOLDING: Although Illinois does not require guardian or parent to be present for wavier of Miranda rights of suspect under 18, Indiana does require such protections, & therefore admission of confession of juvenile taken in Illinois under its procedures, was error. After allegedly killing decedent, D & his friends eventually drove to Illinois where they were arrested. During course of arrest, D volunteered statement that they had killed decedent. After contacting Indiana authorities, Illinois officers proceeded to Mirandize & question 17 year old D, & obtained his statement. Ind. Code 31-6-7-3 makes juvenile statement inadmissible unless his counsel, or custodial parent, guardian, or guardian ad litem is present, & child's representative & child waive right to remain silent. Ct. rejected State's argument that because statement was lawfully obtained under Illinois law, it was admissible in evidence in Indiana, by noting that question was admissibility of that statement in Indiana prosecution. Ct. also rejected authority from other jurisdictions which would have held statement admissible. Ind. Code 31-6-7-3 is quite specific about requirements. Ct. also found fact D was emancipated minor had no impact on admissibility, because legislature created no such exception. Although court found juvenile's voluntary statement was admissible, it found error in admission of Illinois confession & remanded for new trial.

TITLE: Tingle v. State
INDEX NO.: I.5.a.
CITE: (4/5/97), Ind., 632 N.E.2d 345
SUBJECT: Confession of juvenile D - voluntary waiver of rights
HOLDING: Tr. Ct. did not err in admitting juvenile D's confession, where D and grandmother were not informed of potential charges or penalties which D could face following confession. State must prove beyond reasonable doubt that juvenile D's waiver of rights was made "knowingly, intelligently and voluntarily" from totality of circumstances for confession to be admissible at trial. Here, D's grandmother was adult with whom D consulted before giving statement to police. Neither D nor grandmother were informed of potential charges or penalties facing D prior to waiver of rights and confession. Ct. held that Tr. Ct. acted within its discretion to find ignorance of potential charges insufficient to render confession involuntary. Held, no error in admitting confession. Taylor, 438 N.E.2d 275; Williams, 433 N.E.2d 769. Held, remanded with instructions to vacate judgments upon three offenses, vacate sentences for two offenses, with one conviction and sentence affirmed.

RELATED CASES: Cherrone, 726 N.E.2d 251 (totality of circumstances surrounding D's interview with police support Tr. Ct.'s conclusion that D's waiver was voluntary); Foster, App., 633 N.E.2d 337; Lyons, App., 503 N.E.2d 928 (inadmissible statements made by D before Miranda warnings given do not render confession following valid waiver of rights inadmissible).

TITLE: Whitehead v. State
INDEX NO.: I.5.a.
CITE: (7-22-87), Ind., 511 N.E.2d 284
SUBJECT: Juvenile - Warnings & waiver - Statements to youth care worker
HOLDING: Statements murder D made to youth care worker at juvenile correctional institute were not product of "coercive custodial interrogation." Therefore, Miranda requirements did not apply. Juvenile D initiated conversation. No evidence presented that youth care worker had any responsibility for investigating murder. Tr. Ct.'s finding that D' statements to youth care worker at juvenile facility were not involuntary. Finding supported by substantial evidence. Only support for D's assertion he was under influence of medication was his own testimony of what medication he remembered taking. Held, judgment affirmed in part & remanded in part. Dickson, J., concurred in part & dissented in part.

I. CONFESSIONS/ INTERROGATIONS

I.5. Juvenile (Ind. Code 31-6-7-3)

I.5.b. "Meaningful consultation"

TITLE: Andrews v. State
INDEX NO.: I.5.b.
CITE: (11/3/82), Ind., 441 N.E.2d 194
SUBJECT: Juvenile interrogations - "meaningful consultation"; de facto guardian
HOLDING: Juvenile must be afforded "meaningful opportunity" to consult with parents or guardian without any coercion by police before a statement may be taken. Lewis 288 N.E.2d 138. See Shepard 404 N.E.2d 1; Burnett 377 N.E.2d 1340; Buchanan 376 N.E.2d 1311. Here, D's request to consult with grandmother was granted. D now contends confession should have been suppressed because he did not consult with parents. D had run away from adoptive parents & was living with natural grandmother. D refused to speak with adoptive mother. Court finds consultation with "de facto guardian" is permissible, citing Burnett (sister). Held, no error.

RELATED CASES: Carlisle, 443 N.E.2d 826 (mother could not come, sent D's 18-year-old sister).

TITLE: C.J. v. State

INDEX NO: I.5.b.

CITE: (01-23-20), 141 N.E.3d 830 (Ind. Ct. App. 2020)

SUBJECT: Insufficient evidence to support juvenile adjudication where waiver of rights not knowing, intelligent, and voluntary

HOLDING: Court reversed Respondent's true finding for what would be the adult offense of Level 4 felony child molesting because the juvenile court abused its discretion in admitting his statement into evidence and the remaining evidence is insufficient. Respondent and his mother met with a police detective and signed a waiver of rights form before Respondent was interrogated by the detective without his mother present. Respondent was a "low-functioning" twelve-year-old whose speech was stunted, used poor grammar, and spoke of unrelated topics during the interrogation. He sprawled on the floor, drummed on the chair, sang, clapped, and laughed while waiting for the detective. The trial court found he had "special needs" requiring services for care and treatment. Respondent was never told of the delinquent act of which he was suspected or of the serious potential consequences. The Court also noted the brevity of the conversation between Respondent and his mother impacts the analysis because we expect people facing consequential decisions to take time to contemplate their options before making a decision. The Court of Appeals held that Respondent's waiver of his rights was not knowing, intelligent, and voluntary under the totality of the circumstances, including his demonstrated lack of maturity, the fact he was not advised of the crime and possible consequences, and his minimal consultation with his mother. The remaining evidence was insufficient to support his adjudication as a delinquent, thus the Court reversed.

TITLE: D.M. v. State
INDEX NO: I.5.b.
CITE: (06-22-11), 949 N.E.2d 327 (Ind. 2011)
SUBJECT: Juvenile confession - meaningful consultation despite officer's statements that mother must sign waiver before talking to child
HOLDING: Juvenile court did not abuse its discretion by admitting juvenile's confession into evidence. There are four requirements before a child's statement can be used: 1) both the child and the parent must be adequately advised of the child's rights; 2) the child must be given an opportunity for meaningful consultation with the parent; 3) both the juvenile and the parent must knowingly, intelligently and voluntarily waive the child's rights; and 4) the statements must be voluntary and not the result of coercive police activity.

Here, the child was arrested for burglary and brought to the victim's residence. About one hour later, the police informed the child's mother about the arrest, and mother went to the scene. Mother testified that at the scene her child, who was being held in a police cruiser, attempted to talk with her through the window of the car, but officers told her that she could not speak with him until the detective arrived and she signed a waiver form. After another hour, the detective arrived, and mother indicated her child would speak to the detective. The detective then gave mother and child a form to sign advising of the child's rights and indicating that the two understood. After several minutes of allowing the mother and child to privately talk in the police cruiser, the detective asked if they were done and they indicated they were. Mother and child then signed the bottom part of the waiver form waiving the child's rights. Child then confessed to the burglary. Even assuming mother's testimony is true, the procedure utilized was sufficient to remedy any prior ambiguity as to whether she had to waive the child's rights in order to speak with him and the child's rights were not waived until after an opportunity for meaningful consultation was provided. Nor was the atmosphere with many officers on the scene too intimidating for meaningful consultation. Although the child was a thirteen-year-old seventh grader with no previous experience with law enforcement or the criminal justice system, there is no evidence that his mental and emotional maturity were hindered, and he was given meaningful consultation with this mother, which is intended to neutralize the additional pressures that result from his youth and immaturity. Moreover, the child was unaware of the statements the police made to mother that she must sign a waiver in order to talk with him. Thus, the child's waiver was voluntary. But the waiver form, the police used could have been clearer. The words "Juvenile Waiver" should not have been used at the top of the form to describe both the advisements of rights section and the wavier section. In the advisement of rights section, the form should not have said that the parent and child "have been allowed" time together, but rather that they "will be" allowed time together. The advisement of rights should occur before meaningful consultation so the parent and child will know what to discuss. Finally, the waiver of rights form did not clearly indicate that both the child and parent were required to waive, although there were two signature lines. Had the form been clearer, the confusion in this case could have been resolved easily. Held, transfer granted, Court of Appeals' memorandum decision vacated, judgment affirmed.

RELATED CASES: R.W., 975 N.E.2d 407 (Ind. Ct. App 2012) (where juvenile signed waiver of rights form but mother did not, admission of his confession to attempted burglary was fundamental error because confession was only evidence that juvenile intended to commit a felony once he broke into residence); N.B., 971 N.E.2d 1247 (Ind. Ct. App 2011) (juvenile was afforded meaningful consultation despite fact mom was also facing potential charges for shooting; juvenile properly waived his rights despite fact that

waiver form was signed by mom and juvenile prior to meaningful consultation); Estrada, 969 N.E.2d 1032 (Ind. Ct. App 2012) (D's statement to police detective was admissible because her mother knowingly and voluntarily waived D's rights and both mother and daughter signed the form saying they understood it; Spanish translation of advisement of rights form adequately informed mother and daughter of daughter's rights).

TITLE: L.W. v. State
INDEX NO.: K.9.d.
CITE: (11/23/2022), Ind. Ct. App., 199 N.E.3d 1225
SUBJECT: Suppression of blood draw results for juvenile who was not afforded meaningful consultation
HOLDING: In this interlocutory appeal, L.W. appealed the denial of her motion to suppress the results of a blood draw taken after she was a driver involved in a fatal accident. L.W. moved to suppress the blood draw and resulting evidence because she was seventeen years old and the officer who took her for the blood draw and obtained her consent did not allow for her to have meaningful consultation with her mother who showed up at the scene of the accident.

A blood draw is a search under both the Fourth Amendment and Indiana Constitution Art. 1, Sec. 11. A warrantless search is per se unreasonable under both constitutions unless there is a valid exception to the warrant requirement. One exception is consent, and under I.C. 9-30-7-2, drivers involved in crashes involving serious injury or death impliedly consent to a blood draw. However, a driver may refuse consent in that circumstance, and if they do so, the State must have probable cause to proceed over the driver's objection. Here, L.W. consented after being read an implied consent warning, but she was not given a chance to discuss that decision with her mother prior to the blood draw.

I.C. 31-32-5-1, the juvenile waiver-of-rights statute, requires that a child be given an opportunity to speak privately with a custodial parent before waiving any rights (unless the child waives his or her rights with the assistance of an attorney), and I.C. 31-32-5-2 provides that the protections of the juvenile waiver-of-rights statute can only be waived after being notified of that protection, in the presence of the juvenile's parent, and the juvenile knowingly and voluntarily waives that right. Here, because L.W.'s mom was present on the scene, it would have taken 10 seconds for the police to notify L.W. and mom of the right to meaningful consultation, but it did not happen.

Exigent circumstances could also justify a warrantless blood draw. However, here there was no probable cause to believe that L.W. was intoxicated. To the contrary, the police openly stated that no one was accusing L.W. of being intoxicated before the draw, and noted no signs typically used to show possible impairment, so exigent circumstances were not present that could otherwise justify a warrantless blood draw. "Absent a valid consent or exigent circumstances, the State's warrantless draw of L.W.'s blood violated her Fourth Amendment rights."

The State contended that harmless error could be applied, but the Court of Appeals noted that harmless error is a standard that is applied after a trial in which error has occurred, not prior to trial. Thus, the Court reversed the denial of the motion to suppress and remanded for further proceedings.

TITLE: Patton v. State
INDEX NO.: I.5.b.
CITE: (3/16/92), Ind., 588 N.E.2d 494
SUBJECT: Confession of juvenile D - meaningful consultation required for valid waiver of rights
HOLDING: Tr. Ct. did not err in denying D's motion to suppress statement to police. State bears burden of showing that meaningful consultation with parent, custodian or guardian ad litem, or properly waived opportunity for consultation has taken place before confession is admissible. Following consultation, both child and parent must knowingly waive rights of child. Callahan, 527 N.E.2d 1133; Lewis, 288 N.E.2d 138. Here, because D argued that he was deprived of meaningful consultation with mother because detectives did not leave waiver of rights form with them while consultation was taking place. Critical question is whether child and adult were aware of rights in order to discuss them intelligently. Because rights were repeatedly explained to D and mother, and there was no evidence of coercion, force or inducement by police, Ct. found requirements for meaningful consultation had been met. Held, judgment affirmed.

RELATED CASES: Hall, App., 870 N.E.2d 449 (meaningful consultation requirement was met where parents consulted with D for 25 minutes after D had been alone, handcuffed, & not wearing any shoes in interogation room for 5 hours prior to consultation); Brown, 751 N.E.2d 664 (although better practice is to provide consultation after advising juvenile & his or her parents of rights to be waived, lack of an advisement of rights prior to consultation did not affect quality of consultation that D received & therefore he was not entitled to relief); Cherrone, 726 N.E.2d 251 (Ct. disagreed with D's contention that statute requires consultation after waiver); Borum, App., 434 N.E.2d 581 (adult who joins child in consultation and waiver of rights must have no interest adverse to child. Case worker from Dept. of Public Welfare, child's legal guardian, was not appropriate consulting adult where caseworker had initiated proceedings against child by filing delinquency petition and Dept. was represented by attorney who functioned as prosecuting agent of State); Trowbridge, 717 N.E.2d 138 (fact that D's mother notified authorities regarding her concern about D's involvement in victim's murder was insufficient to render her interests adverse to D for purposes of consultation & waiver of juvenile's rights).

TITLE: S.D. v. State
INDEX NO.: I.5.b.
CITE: (11-29-10), 937 N.E.2d 425 (Ind. Ct. App 2010)
SUBJECT: Juvenile confession - videotaped consultation not meaningful
HOLDING: Where a juvenile and his guardian knew they were being recorded during their consultation, the consultation was not meaningful, and the introduction of the juvenile's statement constituted fundamental error. Any constitutional right guaranteed to a child may be waived only "by the child's custodial parent, guardian, custodian, or guardian ad litem if: Ymeaningful consultation has occurred between the person and the child." Ind. Code 31-32-5-1. Consultation can be meaningful only in the absence of police pressure. When a juvenile who is not in custody gives a statement to police, neither the safeguards of Miranda warnings nor the juvenile waiver statute is implicated.

Here, D's guardian babysat for the five or six-year old complaining witness (CW) who would remove her clothing, touch her vagina and ask others to look at and rub her "peepee." CW's mother explained to the guardian that her daughter had been recently molested by her father. Subsequently, CW accused the juvenile of touching her inappropriately. In a second interview, the child only accused her father. The juvenile and his guardian went to the police station for an interview. They were left alone in a room in which they pointed out and acknowledged the video camera in the corner. The juvenile told his guardian that he did not care if he talked with the detective or whether she was present during the interview. After signing the Miranda waiver, the guardian left, and the detective interrogated the juvenile.

Although the detective informed the juvenile he was not under arrest and could leave at any time, he was interrogated for one and a half hours in a twelve-by-twelve-foot room, accused of lying and molesting and read his Miranda rights. As soon as the juvenile confessed, the detective placed him in handcuffs. Because a reasonable person in similar circumstances would not believe he was free to leave, the juvenile was in custody when he confessed.

Moreover, the video cameras constituted an improper police presence, infringing on the privacy necessary to any meaningful consultation. The fact that the juvenile and his guardian did not request the police to turn off the cameras or move them to a room without cameras does not waive the right to meaningful consultation. The burden is on the State to demonstrate that they were afforded meaningful consultation. Because the juvenile was in custody when he confessed and was not given meaningful consultation, the admission of the statement was error. The error was fundamental in light of the fact that the core evidence against the juvenile consisted of his confession and CW's testimony that he touched her peepee, which was then impeached with her admission in her second interview, where she stated that only her father had touched her inappropriately. Held, judgment reversed.

RELATED CASES: J.L., 5 N.E.3d 431 (Ind. Ct. App 2014) (juvenile's decision to proceed with questioning without consulting with his mother was not voluntary and knowingly made where he was never told that the the video camera would be turned off and the detective would leave the room during the consultation with his mother).

TITLE: Washington v. State
INDEX NO.: I.5.b.
CITE: (11/28/83), Ind., 456 N.E.2d 382
SUBJECT: Juvenile interrogations - privacy of "meaningful consultation"
HOLDING: Tr. Ct. did not err in admitting officer's testimony re 17-year-old D's confession. Here, D's mother & grandmother were present when D was read Miranda warnings. D shouted he did not want warnings & that he committed crime. D & his mother signed waiver of rights. Mother told officer she was afraid of D & did not want to be left alone with him. As officer left room to provide opportunity for meaningful consultation, D became verbally abusive toward mother. Officer intervened. D became abusive with officer & had to be physically restrained & removed from room. D contends his admission was not accompanied by valid waiver because he was denied opportunity for meaningful consultation, required by Ind. Code 31-6-7-3. Statute does not require parent to place self in position of physical harm in order to afford meaningful consultation. Additionally, D's statement was spontaneous/voluntary. Johnson 380 N.E.2d 1236 (holding Miranda safeguards inapplicable to such utterances) applies to juvenile matters. Held, no error.

RELATED CASES: Bryant, App., 802 N.E.2d 486 (police monitoring & videotaping of consultation between juvenile & his parent or guardian does not comply with concept of meaningful consultation); Fowler 483 N.E.2d 739 (Infants 68.4; court rejects D's contention that level of privacy afforded D & his mother was insufficient to permit meaningful consultation); Graham 464 N.E.2d 1 (held, inadmissibility of first statement (because officer inadvertently forgot to allow private consultation) did not render second statement (made after private consultation) automatically inadmissible; DISSENT by DeBruler & Prentice).

I. CONFESSIONS/ INTERROGATIONS

I.6. Use for impeachment

I.6.a. Involuntary

TITLE: Moore v. State
INDEX NO.: I.6.a.
CITE: (2/28/2020), 143 N.E.3d 334 (Ind. Ct. App.)
SUBJECT: Involuntary confession claim rejected; false testimony by detective in bench trial
HOLDING: In obstruction of justice prosecution, trial court did not abuse its discretion in admitting Defendant's confession. Defendant argued that his confession was involuntary because detective violated Article 1, Section 13 of the Indiana Constitution when he refused to advise Defendant of the charges he faced until after he made incriminating statements. But there is no authority requiring investigating officers to provide the accused with information; instead, this constitutional provision requires an accused to be sufficiently informed of the crime of which he is charged in writing so that he can prepare a defense. The Court also rejected Defendant's argument that his confession was involuntary because "detectives lied to [him] about the facts and misrepresented the law" when police told Defendant days before his confession that a jury would understand that he was helping his father. Court disagreed, concluding that the detective's statements that a jury would be understanding do not equate to legal advice. Court also held that, because this was a bench trial, and trial court specifically found that Defendant's confession served as the basis for his conviction, the detective's false testimony that urine found where the victim had died had been tested for DNA was not a basis for vacating the conviction. "Had this been a jury trial, where we do not make the same assumptions and a jury does not provide a statement about what influenced its decision, [detective's] testimony would have been interpreted differently."

I. CONFESSIONS/ INTERROGATIONS

I.6. Use for impeachment

I.6.b. 5th Amend violation

TITLE: Crane v. Kentucky
INDEX NO.: I.6.b.
CITE: (6-9-86), 476 U.S. 683, 106 S. Ct. 2142, 90 L.Ed.2d 636
SUBJECT: Use for impeachment - 6th Amendment violation
HOLDING: Certain interrogation techniques are so offensive to civilized system of justice that they must be condemned under Fourteenth Amendment Due Process Clause. To assure that fruits of such techniques are never used to secure conviction, Due Process also requires that jury not hear confession until tr. judge has determined that it was freely & voluntarily given. Sims v. Georgia (1967), 385 U.S. 538, 87 S. Ct. 639, 17 L.Ed.2d 593. Circumstances surrounding taking of confession can be highly relevant to two separate inquiries: one legal & one factual. Manner in which confession was extracted is relevant to purely legal question of voluntariness. But physical & psychological environment that yielded confession can also be of substantial relevance to ultimate factual issue of D's guilt or innocence. Here, D's confession was determined to be voluntary. Tr. Ct. granted State's motion in limine & prevented D from introducing any testimony bearing on circumstances under which confession was obtained. U.S. S. Ct. holds that Constitution guarantees D meaningful opportunity to present complete defense, whether rooted directly in Due Process Clause of Fourteenth Amendment or in Compulsory Process & Confrontation Clauses of Sixth Amendment. Thus, blanket exclusion of testimony about circumstances of D's confession deprived him of fair trial. Held, remanded to state Ct. for determination as to whether error was harmless. All justices joined opinion.

TITLE: Gauvin v. State
INDEX NO.: I.6.b.
CITE: (2nd Dist., 12-31-07), Ind. App., 878 N.E.2d 515
SUBJECT: Statements obtained in violation of Miranda admissible for impeachment
HOLDING: Statements given by a D are admissible for purpose of impeaching the D's trial testimony, even if the statements were obtained in violation of Miranda. Page v. State, 689 N.E.2d 707 (Ind. 1997). Use of a D's statements for impeachment is restricted only when such statements are obtained under coercion or duress. Id. Here, in neglect of dependent prosecution, police gave D incomplete Miranda warning before his interrogation session when detective did not warn D that he had the rights "to have counsel present during questioning, to confer with counsel prior to questioning & to stop questioning at any time."

However, Tr. Ct. did not abuse its discretion in determining that D's statements were voluntary &, therefore admissible to impeach D. Although detective was aggressive & accusatory during interrogation, D presented no accusation that his statements were induced by violence, threats, or promises. Even assuming detective was being deceptive when he told D that victim had been sodomized, D did not explain how these deceptive tactics overcame his free will in making his statements. Held, judgment affirmed.

RELATED CASES: Mills, 198 N.E.3d 720 (Ind. Ct. App. 2022) (Article I, Section 13 of the Indiana Constitution did not prohibit the use of D's statement to impeach his trial testimony where D initiated and knowingly, freely, and voluntarily gave the statement to law enforcement after he was appointed counsel).

TITLE: Newton v. State
INDEX NO.: I.6.b.
CITE: (2d Dist. 11/29/83), Ind. App., 456 N.E.2d 736
SUBJECT: Confession - use for impeachment; Miranda violation
HOLDING: Tr. Ct. did not err in allowing state to use excerpts of his previously suppressed statement for impeachment purposes. Here, post-arrest statement was suppressed because of Miranda violation. Statements inadmissible under Miranda in state's case in chief may be used for impeachment purposes. Harris v. NY (1971), 401 U.S. 222, 91 S.Ct. 643, 28 L.Ed.2d 1; Johnson 284 N.E.2d 517. State must establish voluntariness before using statement for impeachment purposes. Mincey v. AZ (1978), 437 U.S. 385, 98 S.Ct. 2408, 57 L.Ed.2d 290; Rowe 444 N.E.2d 303. Court rejects D's contention that statement was involuntary, induced by detective's threats that D would not survive at Michigan City because of his size & nature of his offense. Held, statement properly admitted.

RELATED CASES: Tarver 513 N.E.2d 176 (Statement made after D requested attorney admissible for impeachment); see also Barker 440 N.E.2d 664, card at I.6.e.

I. CONFESSIONS/ INTERROGATIONS

I.6. Use for impeachment

I.6.c. 6th Amend violation

TITLE: Cruz v. New York
INDEX NO.: I.6.c.
CITE: (4-21-87), 481 U.S. 186, 107 S. Ct. 1714, 95 L.Ed.2d 162
SUBJECT: Use for impeachment - 6th Amendment violation
HOLDING: Confrontation Clause guarantees D right "to be confronted with witnesses against him." Right includes right to cross-examine witnesses. D is deprived of rights under Confrontation Clause when Co-D's incriminating confession is introduced at joint trial, even if jury is instructed to consider confession only against Co-D. Bruton v. U.S. (1968), 391 U.S. 123, 88 S.Ct.1620, 20 L.Ed.2d 476. In Parker v. Randolph (1979), 442 U.S. 62, 99 S.Ct. 2132, 60 L.Ed.2d 713, plurality determined no Sixth Amendment violation where each jointly tried D had himself confessed, D's own confession was introduced against him, & his confession recited essentially same facts as confessions of non-testifying co-Ds. Ct. now rejects Parker plurality opinion that Bruton, is inapplicable in cases involving interlocking confessions. Ct. finds co-D's confession will be relatively harmless if incriminating story it tells is different from D's, but enormously damaging if it confirms, in all essential respects, D's alleged confession. Held, where non-testifying co-D's confession incriminating D is not directly admissible against D, Confrontation Clause bars its admission at their joint trial, even if jury is instructed not to consider it against D, & even if D's own confession is admitted against him. However, D's confession may be considered at trial to assess whether co-D's statements are supported by sufficient "indicia of reliability" to be directly admissible against him (assuming unavailability of co-D), despite lack of opportunity for cross-examination. D's confession may also be considered on appeal to assess whether any Confrontation Clause violation was harmless. Held, judgment reversed & remanded; White, J., Rehnquist, C.J., Powell, & O'Connor, JJ., dissenting.

RELATED CASES: Richardson v. Marsh (1987), 481 U.S. 200, 107 S. Ct. 1702, 95 L.Ed.2d 176 (co-D's confession is admissible when all references to D's existence have been removed & confession is incriminating as to D only when linked with other evidence).

TITLE: Davis v. State
INDEX NO.: I.6.c.
CITE: (8-9-71), Ind., 271 N.E.2d 893
SUBJECT: Use for impeachment - 5th Amendment violation; rebuttal
HOLDING: D testified he did not remember shooting victim. On rebuttal, State put on stand officer who investigated crime & in doing so apparently questioned D. This questioning occurred after D stated he would like to notify his attorney. Admission of officer's testimony that D had stated to him he shot victim, over D's objection that testimony violated standards of Miranda, did not amount to prejudicial error. Ct. reconsidered its ruling & struck out officer's testimony & instructed jury to disregard his testimony. It is proper to rebut testimony of D, who takes stand, with evidence which would otherwise be inadmissible under Miranda. Held, judgment affirmed.

TITLE: Michigan v. Harvey
INDEX NO.: I.6.c.
CITE: (1990), 494 U.S. 344, 110 S.Ct. 1176, 108 L.Ed.2d 293
SUBJECT: Impeachment exception to exclusionary rule - 6th Amend. violations
HOLDING: State may use confession obtained in violation of 6th Amend. as impeachment if D testifies at trial contrary to prior statement. After D request assistance of counsel, any waiver of 6th Amend. rights given in discussion initiated by police is presumed invalid, & evidence so obtained is inadmissible in state's case-in-chief. Michigan v. Jackson (1986), 475 U.S. 625, 106 S.Ct. 1404, 89 L.Ed.2d 631. Here, police procured statement in violation of rule in Jackson, supra. Prior to statement police obtained valid Miranda waiver. At trial, D testified & state was permitted to impeach parts of D's testimony with his prior statement. Statements taken in violation of Miranda may not be used in state's case-in-chief, but are admissible to impeach conflicting testimony by D. Harris v. New York (1971), 401 U.S. 222, 91 S.Ct. 643, 28 L.Ed.2d 1. No reason for a different result in case where 6th Amend. violated because exclusionary rule in both cases is to ensure that constitutional rights are protected. Where D testifies, he/she is under "obligation to speak truthfully & accurately." Harris, supra, at 225, 645. Search for truth in criminal case outweighs "speculative possibility" that exclusion of evidence might deter future violations of rules not directly compelled by consultation (i.e., exclusionary rule). Oregon v. Haas (1975), 420 U.S. 714, 95 S.Ct. 1215, 43 L.Ed.2d 570. Held, D may be impeached with statement obtained in violation of Jackson, supra, provided. There is otherwise valid waiver under traditional standards. Burden on state to show waiver is knowing voluntary. Stevens, joined by Brennan, Marshall & Blackmun, DISSENTING.

TITLE: Mills v. State
INDEX NO.: I.6.c.
CITE: (10/29/86), Ind., 498 N.E.2d 1236
SUBJECT: Confession - use for impeachment; 6th Amend. violation
HOLDING: Tr. Ct. rejects D's contention that police officer's rebuttal testimony concerning D's confession was inadmissible because made while D was in custody & Mirandized & had asked for an attorney. Here, Tr. Ct. excluded D's statement so far as substantive portion of state's case was concerned. However, statements were admissible to show D made statements contrary to his testimony at trial. Fact prior statement made by D has been ordered suppressed does not give D license to assume witness stand & proceed to testify contrary to prior statement without any fear of contradiction. OR v. Hass (1975), 420 U.S. 714, 95 S.Ct. 1215, 43 L.Ed.2d 570. Held, conviction affirmed.

I. CONFESSIONS/ INTERROGATIONS
I.6. Use for impeachment
I.6.d. Immunized testimony

TITLE: New Jersey v. Portash
INDEX NO.: I.6.d.
CITE: (3-20-79), 440 U.S. 450, 99 S. Ct. 1292, 59 L.Ed.2d 501
SUBJECT: Immunized testimony cannot be used for impeachment
HOLDING: Under Fifth Amendment privilege against self-incrimination, D's testimony before grand jury under grant of immunity could not constitutionally be used to impeach D's testimony in later criminal trial. Fact that D did not take witness stand does not render constitutional question abstract & hypothetical. Testimony was given in response to grant of legislative immunity is essence of coerced testimony & involves constitutional privilege against compulsory self-incrimination in its most pristine form. Any balancing of interests so as to take into account interest in preventing perjury is not only unnecessary but impermissible. Held, judgment affirmed; Brennan & Marshall, JJ., concurring; Powell & Rehnquist, JJ., concurring; Blackmun, J., & Burger, C.J., dissenting.

I. CONFESSIONS/ INTERROGATIONS

I.6. Use for impeachment

I.6.e. Other

TITLE: Barker v. State
INDEX NO.: I.6.e.
CITE: (10/14/82), Ind., 440 N.E.2d 664
SUBJECT: Confession - use for impeachment; juvenile
HOLDING: An inadmissible confession may be used to impeach D, provided trustworthiness of statement satisfies legal standards. Harris v. NY (1971), 401 U.S. 222, 91 S. Ct. 643, 28 L.Ed.2d 1; Purcell, App., 406 N.E.2d 1255, on *reh'g* 418 N.E.2d 533. Basis of Harris: D privileged to testify in own defense, but privilege does not include right to commit perjury. Here, D (a juvenile) confessed to burglary/theft. Tr. Ct. held confession inadmissible because D's 18-year-old sister acted as guardian, thus violating dictates of Ind. Code 31-6-7-3 & Lewis 288 N.E.2d 138. During hearing on confession, prosecution warned D that should he testify, his confession could & would be used to impeach him if testimony was contrary to confession. D testified he did not commit crimes. Prosecution used confession on cross-exam to impeach D. Court finds confession, although not satisfying Lewis, was trustworthy (Miranda rights given, waiver signed, short interrogation, no police threats or inducements, D not suffering from mental disability). Further, Tr. Ct. instructed jury to consider confession for impeachment purposes only & not as evidence against D. Held, no error in allowing excluded confession to be used for impeachment purposes.

RELATED CASES: Brown, App., 464 N.E.2d 361.

TITLE: Cutler v. State
INDEX NO.: I.6.e.
CITE: (2/21/2013), 983 N.E.2d 217 (Ind. Ct. App 2013)
SUBJECT: Use of recorded custodial statement for impeachment
HOLDING: In an issue of first impression, Court held that State may impeach a testifying D by using a prior custodial statement that was recorded but was not "available at trial" as required by Indiana Evidence Rule 617(a). Rule provides that, in a felony criminal prosecution, evidence of a statement made by a person during a Custodial Interrogation in a Place of Detention shall not be admitted against the person unless an Electronic Recording of the statement was made, preserved, and is available at trial...." Rule 617 does not impose a burden on D to demand production of any recording in advance of trial.

Here, after D took the stand in his burglary trial, prosecutor sought to confront him with the statement he gave to police denying knowing the victim, where she lived, and that he couldn't explain how his DNA ended up in her home. D's attorney objected because he hadn't received an electronic recording of the interview, only the written police report describing it. The prosecution only had the written report and neither party knew the statement had been recorded. Tr. Ct. did not err in overruling D's objection, noting that even a statement taken in violation of Miranda v. Arizona may be used against a testifying D. See Page v. State, 689 N.E.2d 707 (Ind. 1997). Held, conviction affirmed.

TITLE: Fletcher v. Weir
INDEX NO.: I.6.e.
CITE: (3-22-82), 455 U.S. 603, 102 S.Ct. 1309, 71 L.Ed.2d 490
SUBJECT: Use for impeachment - Post-arrest silence
HOLDING: In absence of affirmative assurances embodied in Miranda warnings, State does not violate due process of law by permitting cross-examination as to post-arrest silence when D chooses to take stand. State is entitled, in such situations, to leave to judge & jury under its own rules of evidence resolution of extent to which post-arrest silence may be deemed to impeach criminal D's own testimony. Held, judgment reversed & remanded; Brennan, J., would have set case for oral argument; Marshall, J., dissenting from summary reversal of case.

TITLE: Jenkins v. Anderson
INDEX NO.: I.6.e.
CITE: (6-10-80), 447 U.S. 231, 100 S.Ct. 2124, 65 L.Ed.2d 86
SUBJECT: Use for impeachment - pre-arrest silence
HOLDING: Fifth Amendment was not violated by use of pre-arrest silence to impeach D's credibility. While Fifth Amendment prevents prosecution from commenting on D who asserts right to remain silent during his criminal trial, it is not violated when D testifies in own defense & is impeached with his own prior silence. Impeachment follows D's own decision to cast aside his cloak of silence & advances truthfinding function of criminal trial. In addition, use of pre- arrest silence to impeach D's credibility does not deny him fundamental fairness guaranteed by Fourteenth Amendment. Common law has traditionally allowed witnesses to be impeached by their previous failure to state fact in circumstances in which that fact naturally would have been asserted. State Ct. is not required to allow impeachment through use of prearrest silence. Each jurisdiction is free to formulate evidentiary rules defining situation in which silence is viewed as more probative than prejudicial. Held, judgment affirmed; Stewart & Stevens, JJ., concurring in part; Marshall & Brennan, JJ., dissenting.

TITLE: People v. Trujillo
INDEX NO.: I.6.e.
CITE: (7/1/02), Colo. S.Ct., 49 P.2d 316
SUBJECT: Unwarned, Voluntary Statement Cannot be Used to Impeach Defense Witness
HOLDING: Although a statement taken from D in violation of Miranda can be used to impeach D himself, Colorado Supreme Court holds it cannot be used to impeach another defense witness.

TITLE: Van Cleave v. State
INDEX NO.: I.6.e.
CITE: (12-30-87), Ind., 517 N.E.2d 356
SUBJECT: Use for impeachment - Other; guilt phase
HOLDING: State's violation of discovery order, by failing to notify D it would use his "cleanup" confession to impeach D, did not prejudice D in connection with death sentence. D's commission of several burglaries added significantly to his criminal history. State had already proven to satisfaction of Tr. Ct. other aggravating factors. These factors included intentionally killing during attempted robbery & other evidence of D's criminal history. Although D's previous statement, containing "cleanup" confession to twenty-five burglaries, would not have been admissible against him on issue of D's guilt in listed burglaries, statement was properly used for impeachment. This was after D stated, in penalty phase of his murder trial, he had told Ct. about "all the crimes" in which he was previously involved. Shield provided by Miranda cannot be perverted into license to use perjury by way of defense. Held, judgment affirmed.

I. CONFESSIONS/ INTERROGATIONS

I.8. Motion to suppress

TITLE: Fansler v. State
INDEX NO.: I.8.
CITE: (6 N.E.3d 21 N.E.3d 2018), 100 N.E.3d 250 (Ind. 2017)
SUBJECT: Motel room used for sting operation and custodial interrogation was not a "place of detention" requiring electronic recording
HOLDING: Indiana Evidence Rule 617 prohibits the admission of unrecorded statements made during custodial interrogations in a "place of detention," defined as "a jail, law enforcement agency station house, or any other stationary or mobile building owned or operated by a law enforcement agency at which people are detained in connection with criminal investigations." Here, D was charged with a litany of drug offenses following a sting operation that lured him into a drug deal at a motel. Upon his arrest, D was Mirandized and interrogated by police in a motel room that was the base of police operations for the day. At trial, D objected to the admission of his incriminating motel room statements without an electronic recording as required by Ind. Evidence Rule 617.

On appeal of D's convictions, Supreme Court found no error in admission of his unrecorded statements. The Court concluded that Rule 617 did not apply because, although D was under a custodial interrogation, he was not in a place of detention. In determining whether a location can be considered a “place of detention” requiring an electronic recording under Indiana Evidence Rule 617, Courts should analyze the control law enforcement has over the premises, the frequency of use to conduct custodial interrogations and the purpose for which law enforcement uses the space. In this case, law enforcement did not have “control” over the motel room because the room was used for its intended purpose when law enforcement was not there. Further, police used the room only sporadically to perform sting operations and the primary use of the motel room was surveillance, not interrogation. Held, transfer granted, Court of Appeals' opinion at 81 N.E.3d 671 vacated, judgment affirmed.

TITLE: Steele v. State
INDEX NO.: I.8.
CITE: (10/3/2012), 975 N.E.2d 430 (Ind. Ct. App 2012)
SUBJECT: Failure to record custodial interrogation - "place of detention"
HOLDING: Indiana Evidence Rule 617 prohibits the admission of unrecorded statements made during custodial interrogations in a "place of detention," defined as "a jail, law enforcement agency station house, or any other stationary or mobile building owned or operated by a law enforcement agency at which people are detained in connection with criminal investigations." Here, Rule 617 did not apply because police officer's interrogation of D occurred at a gas station, not a place of detention. The rule does not, either explicitly or implicitly, impose an affirmative duty on law enforcement officers to transport a person to a place of detention before conducting a custodial interrogation. D's policy arguments for imposing such a duty should be directed to the Evidence Rules Review Committee, which may recommend to the Indiana Supreme Court that the rule be amended accordingly. Held, denial of motion to suppress affirmed.

TITLE: Taylor v. State
INDEX NO.: I.8.
CITE: (7/8/85), Ind., 479 N.E.2d 1310
SUBJECT: Confessions - motion to suppress
HOLDING: Tr. Ct. did not err in denying his motion to suppress confession (predicated upon police brutality) or by later granting state's motion in limine (MIL) barring any reference to contents of confession because it included self-serving exculpatory statements. Tr. Ct. ruled MIL applied solely to D's statements & did not include any conduct occurring at time of arrest. Court rejects D's contention that MIL prevented him from establishing existence of police brutality, given above ruling & fact defense counsel CXed officer re whether D was beaten by police at time of arrest. Held, no error.

I. CONFESSIONS/ INTERROGATIONS

I.9. Corpus delicti/admissibility of confession

TITLE: Elliott v. State
INDEX NO.: I.9.
CITE: (4th Dist. 7/7/83), Ind. App., 450 N.E.2d 1058
SUBJECT: Corpus delicti (CD) - proof of
HOLDING: Tr. Ct. did not commit fundamental error in allowing D's statements into evidence before state had established CD. White, App., 404 N.E.2d 1144. Out-of-court statements are not admissible unless there is independent proof of CD; but order of proof is within Tr. Ct.'s discretion. White. Here, independent evidence established victim died from bullet wound to neck; crime scene was victim's apartment where blood was splattered throughout living room, which was in a state of disarray; when D brought victim to hospital, he had blood all over his clothes & fresh scratch marks on his knuckle & wrist; lab analysis of victim's fingernail clippings showed human blood. This evidence gave rise to reasonable inference victim was shot in her home during struggle & was sufficient to establish CD independent of D's statements. Held, conviction affirmed.

RELATED CASES: Sluss, App., 436 N.E.2d 907 (although desirable to first establish corpus delicti before showing confession or statement against interest by D, such is not necessary, as matter of order of proof is within sound discretion of trial judge); Ballard, 318 N.E.2d 798 (sufficient evidence to establish corpus delicti for robbery and burglary); Douglas, 481 N.E.2d 107 (CD (intent to commit robbery) established); Coleman, 465 N.E.2d 1130 (exact felony or attempted felony need not be established prior to admitting D's confession in felony-murder trial); Evans, 460 N.E.2d 500 (Groves, App., 479 N.E.2d 626 (proof of CD of crime requires that crime in question has been committed by someone; for purpose of admitting D's out-of-court statement, proof of CD may be by circumstantial evidence rather than proof beyond a reasonable doubt, *citing* Graham, 461 N.E.2d 1; held, CD of DWI established); Finchum, App., 463 N.E.2d 304 (case discusses general principles).

TITLE: Johnson v. State
INDEX NO.: I.9.
CITE: (7-21-95), Ind., 653 N.E.2d 478
SUBJECT: Admissibility of statements - corpus delicti for robbery
HOLDING: Tr. Ct. did not err in admitting testimony of four witnesses regarding D's extrajudicial confessions. Elderly victim of theft was diagnosed as suffering subdural hematoma. Victim never regained consciousness & died approximately two months later. Treating physician testified that hematomas are caused by trauma, which could result from blow to head, fall, or any type of force. D argued that independent evidence did not adequately prove that someone took victim's purse by force or threat of force or by putting victim in fear. Ct. rejected D's argument & held that evidence supported inference that victim was robbed. Although independent evidence did not conclusively establish cause of victim's fatal injuries, corpus delicti for robbery was not precluded, since reasonable person could conclude that victim's injuries were caused by force. Independent evidence need not be shown beyond reasonable doubt nor demonstrate prima facie proof as to each element of charged offense, but must support inference that crime was committed. Willoughby v. State, (1993), Ind., 552 N.E.2d 462. Held, judgment affirmed.

TITLE: Johnson v. State
INDEX NO.: I.9.
CITE: (06-24-20), Ind. Ct. App., 150 N.E.3d 647
SUBJECT: Insufficient evidence of corpus delicti to support admission of confession
HOLDING: Complaining witness (C.W.) did not appear in court for Defendant's trial for Level 5 battery with a deadly weapon. Over objection, testimony of police officer as to her conversation with C.W., photos of bruises of C.W., a stick and Defendant's out-of-court confession were admitted into evidence. Court of Appeals found insufficient evidence to support the inference that a crime had been committed with regard to battery with a deadly weapon before Defendant's out-of-court confession regarding that charge was admitted into evidence. Even assuming the photographs, the stick and the C.W.'s statements to the police officer were properly admitted, there was still insufficient evidence to support conviction that Defendant committed battery by a deadly weapon against C.W. Held, conviction reversed.

TITLE: Jones v. State
INDEX NO.: I.9.
CITE: (2nd Dist., 11-13-98), Ind. App., 701 N.E.2d 863
SUBJECT: Sufficient evidence of corpus delicti shown - circumstantial evidence of death
HOLDING: In appeal of murder & neglect of dependent prosecution, D argued that evidence apart from her confessions did not support inference that she committed either crime. Ct. disagreed & concluded that evidence apart from D's confessions, although circumstantial, gives rise to reasonable inference that victim is dead & criminal act was cause of death. Production of victim's body is not required in murder prosecution if circumstantial evidence shows that death did occur. Campbell, 500 N.E.2d 174. Corpus delicti may be established solely by circumstantial evidence. Smith, 689 N.E.2d 1238. Held, convictions affirmed.

RELATED CASES: Campos, 885 N.E.2d 590 (voluntariness of D's secretly-recorded statements to passenger while in police cruiser purged the taint of the illegal search and detention); Hawkins, App., 884 N.E.2d 939 (officer's opinion that victim was shot in semi-truck of cab & that shooting was then covered up was independent evidence of corpus delicti to support admission of D's confession); Shanabarger, App., 798 N.E.2d 210 (independent evidence existed that D committed murder); Richardson, App., 794 N.E.2d 506 (sufficient corpus delicti for murder shown).

TITLE: Moore v. State
INDEX NO.: I.9.
CITE: (4th Dist. 9/8/86), Ind. App., 497 N.E.2d 242
SUBJECT: Corpus delicti - state's failure to prove
HOLDING: State failed to produce independent evidence permitting an inference of theft of radio, to which D had confessed. Here, state's witnesses testified, without contradiction, that store had no records documenting a theft by D; store had no way of knowing if items returned by D's friends were stolen or originally taken from its store; radio in question was probably returned to store's stock prior to trial & could not be identified; store had several standard procedures to discover employee theft (videotaping/personal surveillance) but store had not observed D stealing property. Appellate courts may not affirm convictions without independent evidence inferring corpus delicti. Riley, 349 N.E.2d 704; Jones, 252 N.E.2d 572. Held, confession improperly admitted; cause remanded for new trial. See Hogan, 132 N.E.2d 908.

TITLE: Reynolds/Herr v. State
INDEX NO.: I.9.
CITE: (12/11/91), Ind. App., 582 N.E.2d 833
SUBJECT: Corpus delicti -- controlled substance
HOLDING: D sold some cocaine in baggie to informant, but kept another in her purse; informant did not handle or see contents of this other baggie. She was then convicted of possession of cocaine within 1,000 feet of school property & dealing in cocaine within 1,000 feet of school property. D appealed & claimed in part that because possession of cocaine is lesser included offense of dealing in cocaine she could not be convicted of both based on only one possession of cocaine. Ct. held that State failed to prove independent evidence to convict D of possession of cocaine in that substance which was not properly identified. Held, conviction for possession was reversed & conviction for dealing was affirmed; Conover, J., concurring & dissenting.

TITLE: Seal v. State
INDEX NO.: I.9.
CITE: (6/18/2018), 105 N.E.3d 201 (Ind. Ct. App. 2018)
SUBJECT: Corpus delicti - independent evidence of penetration unnecessary for admission of confesssion
HOLDING: Tr. Ct. did not abuse its discretion in admitting D's confession as evidence of level 1 felony child molesting, because independent evidence of penetration is unnecessary for the admission of his confession. At trial, four-year-old complaining witness (C.W.) testified that D touched her on the skin of her vagina and that he touched her more than one time. In D's statement to police, he confessed that his finger went "up between the labia..in between the crack...where the clitoris is." D conceded that there was independent evidence that he committed level 4 felony child molesting by touching C.W.'s sex organ, but claimed the corpus delicti rule demands independent evidence of penetration of C.W.'s sex organ to sustain the higher-level felony. "(T)he admission of a confession requires some independent evidence that supports an inference that the crime charged was committed, but the corpus delicti rule does not require the State to 'make out a prima facie case as to each element of the offense charged.'" Shinnock v. State, 76 N.E.3d 841, 843 (Ind. 2017); Jones v. State, 253 Ind. 235, 252 N.E.2d 572 (1969). "The paramount consideration in applying the corpus delicti rule is whether independent evidence sufficiently corroborates the confession so that a D is not convicted of a crime that did not occur. Here, S.P.'s testimony adequately corroborated D's confession. In a footnote, Court suggested it is time for Indiana Supreme Court to consider updating or replacing the corpus delicti rule with a "trustworthiness" standard adopted in other jurisdictions. Held, judgment affirmed.

TITLE: Shinnock v. State
INDEX NO.: I.9.
CITE: (6/27/2017), 76 N.E.3d 841 (Ind. 2017)
SUBJECT: State established corpus delicti; confessions to bestiality admissible
HOLDING: The State's evidence supported a reasonable inference that Defendant committed bestiality; thus, the State satisfied the corpus delicti rule, making Defendant's confessions admissible.
Defendant lived with Paul Moore and Moore's two dogs. One morning when Moore returned home from work, he called twice for his dogs, but only the male dog responded. Moore then called the female dog by name; she did not respond until Moore opened the door to Defendant's bedroom; she ran out of the bedroom and scurried under a couch. Moore noticed Defendant was wearing only boxer shorts and a t-shirt and that his penis was erect. The floor was covered in dog feces, which was unusual.

In concluding the State did not present sufficient evidence that a crime occurred to render Defendant's confessions admissible, the Court of Appeals applied the wrong standard; it asked whether the evidence was sufficient to uphold a conviction for bestiality when it should have applied a lower burden, merely asking whether the evidence was sufficient to support a reasonable inference that Defendant committed bestiality. See Harkrader v. State, 553 N.E.2d 1231, 1232-33 (Ind. Ct. App. 1990). Such evidence may be circumstantial. Malinski v. State, 794 N.E.2d 1071, 1086. (Ind. 2003). Further, the State need not prove all elements of the crime before a confession is introduced. Jones v. State, 253 Ind. 235, 249, 252 N.E.2d 572, 580 (1969). The State's evidence did establish a reasonable inference that Defendant committed bestiality; thus, the State established the corpus delicti, meaning Defendant's confessions were admissible. Held, transfer granted, Court of Appeals opinion vacated, and judgment affirmed.

RELATED CASES: J.C., 140 N.E.3d 865 (Ind. Ct. App. 2019) (totality of independent evidence established an inference that a crime accurred and juvenile's confession was properly admitted).

TITLE: Shinnock v. State
INDEX NO.: I.9.
CITE: (2/9/2017), 70 N.E.3d 845 (Ind. Ct. App. 2017)
SUBJECT: Confession to bestiality inadmissible due to corpus delicti rule
HOLDING: Defendant's confession to bestiality was inadmissible because the State did not produce independent evidence to establish the corpus delicti of the crime. Defendant lived with Paul Moore and Moore's two dogs. One morning when Moore returned home from work, he called twice for his dogs, but only the male dog responded. Moore then called the female dog by name, who did not respond until Moore opened the door to Defendant's bedroom; she ran out of the bedroom and scurried under a couch. Moore noticed Defendant was wearing only boxer shorts and a t-shirt and that Defendant's penis was erect. Defendant admitted to both Moore and the police that he had sex with the dog. At trial, Defendant properly objected to admitting his confession because the State failed to provide evidence independent of the confession to show he did, in fact, have sex with the dog. The evidence about the dogs' behavior and Defendant's state of arousal was not sufficient to establish the corpus delicti. Because of the State's failure of evidence, the trial court erred in overruling Defendant's objection and admitting his confession. See Workman v. State, 716 N.E.2d 445, 447 (Ind. 1999). Held, judgment reversed.

TITLE: State v. Brockob
INDEX NO.: I.9.
CITE: (12/28/2006), Wash., 150 P.3d 59
SUBJECT: *Corpus delecti* rule applies to crime described in statement
HOLDING: The Washington Supreme Court held that evidence that D shoplifted between 15 and 30 packages of pseudoephedrine-containing cold medicine was insufficient to corroborate a D's admission that he was stealing the pills with the intent to give them to a third party to use to manufacture methamphetamine. Washington applies the corpus delicti rule, which prohibits the admission of a D's extrajudicial confession without independent proof of the offense. The federal system and most states require only proof of the trustworthiness of the statement.

In this case, D was caught shoplifting Sudafed. At his trial on a charge of unlawful possession of pseudophedrine with intent to manufacture methamphetamine, a police officer testified that D admitted that he planned to give the cold tablets to a third party to use to make methamphetamine. The majority emphasized that "the corpus delicti revolves around whether independent evidence corroborates *the crime described in the D's incriminating statement*." The evidence that D stole between 15 and 30 packages of Sudafed is sufficient to support a logical inference only that he intended to steal the cold medicine. The dissent contended that the number of pills stolen sufficiently satisfied the corpus delicti rule.

TITLE: Weida v. State
INDEX NO.: I.9.
CITE: (2nd Dist., 3-31-98), Ind. App., 693 N.E.2d 598
SUBJECT: Confessions - sufficient evidence of corpus delicti
HOLDING: Tr. Ct. properly admitted into evidence D's admission that he was driver of truck. State is not required to prove corpus delicti beyond reasonable doubt but must present independent evidence from which inference may be drawn that crime was committed. Douglas, 481 N.E.2d 107. Here, D was charged with driving while intoxicated. Without regard to D's statement at accident scene that he was driver of truck, there was evidence that D & passenger of truck were drinking from late afternoon, two left in D's truck which ended up in ditch, & both were present & intoxicated at accident scene. Although D advanced several hypothetical situations that may provide alternative explanations for accident, all that is required to prove corpus delicti & render D's admission to driving truck admissible is evidence supporting reasonable inference that intoxicated person was responsible. Thus, D's admission was properly admitted. Held, conviction affirmed.

RELATED CASES: Winters, App., 727 N.E.2d 758 (corpus delicti need not be established by confession itself but by independent evidence from which inference may be drawn that crime was committed).

TITLE: Williams v. State
INDEX NO.: I.9.
CITE: (4th Dist., 11-28-05, Ind. App., 837 N.E.2d 615
SUBJECT: Sufficient evidence of corpus delicti for arson shown
HOLDING: In murder & arson prosecution, State established corpus delicti of arson, thus Tr. Ct. did not err in admitting D's confession into evidence. To support introduction of a D's confession into evidence, the corpus delicti of crime must be established by independent evidence of both (1) the occurrence of specific kind of injury & (2) someone's criminal act as the cause of injury. Sweeney v. State, 704 N.E.2d 86 (Ind. 1998). Independent evidence need only provide an inference, which may be established through circumstantial evidence, that a crime was committed. Id. Corpus delicti of arson consists of burning of property in question & a criminal agency as a cause of that burning. Fox v. State, 384 N.E.2d 1159 (Ind. Ct. App. 1979).

Relying on Pawloski v. State, 380 N.E.2d 1230 (Ind. 1978), D argued that there was insufficient evidence to establish that fire was incendiary in nature. In so arguing, D *cited* Ind. Code 35-47.5-2-9, which defines "incendiary" as "a flammable liquid or compound with a flash point not greater than one hundred fifty (150) degrees Fahrenheit, as determined by Tagliabue or an equivalent closed cup device, including gasoline, kerosene, fuel oil, or a derivative of these substances." Ct. did not agree that Pawloski requires there be proof of an "incendiary" fire as defined in statute because: 1) definition of "incendiary" does not apply outside Ind. Code 35-47.5, which deals with "controlled explosives," & 2) Article 47.5 was not adopted until 2002, thus when referring to "incendiary," the Pawloski Ct. could not have meant the definition found in Ind. Code 35-47.5-2-9. Webster defines "incendiary" as an adjective as "of, relating to, or involving a deliberate burning of property...." State's expert witness in this case testified that by incendiary she meant a fire started by someone who "had knowledge of what they are doing & they...conduct some Ct. that would intentionally cause a fire..." State established that fire was "incendiary" sufficient to prove *corpus delicti* of arson. Held, judgment affirmed.

RELATED CASES: Fouts, 207 N.E.3d 1257 (Ind. Ct. App. 2023) (*corpus delecti* rule satisfied by establishing an inference the charged crimes occurred).

TITLE: Willoughby v. State
INDEX NO.: I.9.
CITE: (4/10/90), Ind., 552 N.E.2d 462
SUBJECT: Confession - corpus delicti - multiple crimes
HOLDING: Where D confesses to several crimes of varying severity within single criminal episode, confession is admissible as to all crimes if corpus delicti of principal crime or crimes is established. Here, D was charged with murder, robbery, & confinement, & his statements to police, which were admitted at trial, detailed each offense. However, at trial, independent evidence of confinement was weak, & on appeal, D argues that statements were inadmissible because of this lack of corroboration. Before D's confession may be introduced, corpus delicti of crime must be established by independent evidence of (1) occurrence of specific kind of injury, & (2) someone's criminal act as cause of injury. Hudson 375 N.E.2d 195. This rule arose from hesitance to accept confession without corroboration, in order to reduce risk of convicting D based on confession to crime that did not occur, & to reduce risk of confessions obtained through coercive tactics, but extent to which rule actually furthers these goals has been seriously questioned. With increasing number of offenses defined more precisely & in greater detail, defining corpus delicti itself is complex, & may impose unrealistic or at least unnecessary burden on prosecution. Where D confesses to several crimes of varying severity within single criminal episode, strict & separate application of corpus delicti rule to each offense adds little to ultimate reliability of confession once independent evidence of principal crimes is introduced. Confession at that point has been substantially corroborated & is admissible as to all offenses. Held, conviction affirmed.

RELATED CASES: Roach, 119 N.E.3d 170 (Ind. Ct. App. 2019) (the combination of circumstantial evidence and D's confession to confinement within the same episode and a lack of objection to the confession combined resulted in no error in the admission of confession); Hurt, 570 N.E.2d 16 (corpus delicti rule does not have to be applied to each offense; here, victim was found naked, bloody, near death and with multiple stab wounds, and blood consistent with victim's blood was found on D's clothing; this was sufficient to establish that crime had been committed even though there was no direct evidence that crime of rape had occurred).

I. CONFESSIONS/ INTERROGATIONS

I.10. Derivative evidence from confession

TITLE: State v. Linck
INDEX NO.: I.10.
CITE: (4th Dist., 4-5-99), Ind. App., 708 N.E.2d 60
SUBJECT: Miranda violation required exclusion of physical evidence
HOLDING: Tr. Ct. did not err in suppressing all of D's statements made after he admitted smoking marijuana & bags of marijuana discovered in his apartment. As police officers entered D's apartment building to investigate complaint of illegal drug use, they smelled what they believed to be marijuana burning. Officer's initial question of "what the problem was" in reference to marijuana odor constituted "interrogation" because it was made with intention of eliciting incriminating statement. D was in custody for purposes of Miranda after he admitted smoking marijuana because reasonable person would not have felt free to leave after making this admission. At that point, officers were required, but failed, to advise D of his Miranda warnings before they questioned him further.

Ct. also rejected State's request to extend holding & reasoning of Oregon v. Elstad, 470 U.S. 298 (1985), to permit admission of physical evidence obtained as direct result of improper custodial interrogation. In Elstad, Ct. held that exclusionary rule did not require suppression of subsequent valid written confession despite earlier Miranda violation, unless there was some form of coercion, which would constitute Fifth Amendment violation. Issue left unresolved by Elstad is whether fruit of poisonous tree doctrine applies based on Miranda violation, where, as here, acquisition of physical evidence is closely tied to illegally obtained confession. Ct. noted that when confession is suppressed because it was unlawfully obtained, evidence which is inextricably bound to confession must also be suppressed. Hall, 264 Ind. 448, 346 N.E.2d 584 (1976). Ct. is bound by Hall decision until Ind. or U.S. S.Ct. address this issue. Because bags of marijuana were inextricably bound to statements D made disclosing their location, they must be suppressed. Held, judgment affirmed.

RELATED CASES: Buchanan, App., 913 N.E.2d 712 (distinguishing Linck, Ct. held that D was not in custody when he was subjected to interrogation by detectives at his house, even though he had confessed to making false bomb threats during first interrogation the previous day); Peel, App., 868 N.E.2d 569 (officers asked D incriminating questions immediately after D admitted that he had committed a criminal offense; thus, under totality of circumstances, D was in custody for purposes of Miranda after he admitted smoking marijuana because reasonable person would not have felt free to leave after making this admission); Vanpelt, App., 760 N.E.2d 218 (when police officer asked D to submit to chemical test, D refused & volunteered that he had smoked marijuana earlier that evening; D's statement was voluntary & no Miranda advisement was required); Gibson, App., 733 N.E.2d 945 (where officer, without Mirandizing D, asked D who was handcuffed in passenger seat of police car whether he had any weapons or contraband in van, marijuana found in van based on D's answer should have been suppressed).

TITLE: Nix v. Williams
INDEX NO.: I.10.
CITE: (6-11-84), 467 U.S. 431, 104 S.Ct. 2501, 81 L.Ed.2d 377
SUBJECT: Derivative evidence from confession - inevitable discovery exception adopted
HOLDING: Evidence of body discovered by violation of Sixth Amendment right to counsel was admissible where prosecution proved by preponderance of evidence that body would have inevitably been discovered anyway. Under inevitable discovery exception to exclusionary rule, prosecution was not required to prove absence of bad faith. Evidence supported finding that search party ultimately or inevitably would have discovered victim's body even had D, whose statement directing police to site was result of post-arrest interrogation in violation of right to counsel, not been questioned by police. Held, judgment reversed & remanded; White & Stevens, JJ., concurring; Brennan & Marshall, JJ., dissenting.

TITLE: Wong Sun v. United States
INDEX NO.: I.10.
CITE: (1-14-63), 371 U.S. 471, 83 S.Ct. 407
SUBJECT: Derivative evidence from confession - corroboration
HOLDING: Criminal confessions & admissions of guilt require extrinsic corroboration, & conviction must rest upon firmer ground than uncorroborated admission or confession of accused. Where crime involved no tangible corpus delicti, evidence corroborative of D's confession must implicate D in order to show that crime was committed. One corroborated admission by D did not, standing alone, corroborate unverified confession. Rule which regulated use of out-of -court statements was one of admissibility, rather than simply of weight, of evidence, & Co-D's statement which was insufficient to convict could not serve to corroborate D's confession. Held, judgment reversed & remanded; Clark, Harlan, Stewart, & White, JJ., dissenting.

I. CONFESSIONS/ INTERROGATIONS

I.11. Derivative evidence from illegal arrest (Brown v Illinois, Dunaway v New York)

TITLE: Brown v. Illinois
INDEX NO.: I.11.
CITE: (6-26-75), 422 U.S. 590, 95 S. Ct. 2254, 45 L.Ed.2d 416
SUBJECT: Derivative evidence from illegal arrest
HOLDING: Miranda warnings, alone & per se, cannot always make act of confession sufficiently product of free will to break causal connection between illegality of arrest & confession. In determining admissibility of statements after illegal arrest, Miranda warnings are factor along with passage of time, intervening circumstances & purpose & flagrancy of official misconduct. Here, in-custody statements which stemmed from illegal arrest were not rendered admissible merely because D had been given Miranda warnings prior to making statements. State failed to sustain burden of showing admissibility of in-custody statements taken after illegal arrest which, both in design & purpose was investigatory, where first statement was separated from illegal arrest by less than two hours, there was no intervening event of significance & second statement was result & fruit of first statement. In order for causal chain between illegal arrest & subsequent statements to be broken, statement must meet Fifth Amendment standard of voluntariness & also must be sufficiently act of free will to purge primary taint. Consideration of statement's admissibility in light of distinct policies & interests of Fourth Amendment is mandated. Held, judgment reversed & remanded; White, Powell, & Rehnquist, JJ., concurring.

TITLE: Felders v. State
INDEX NO.: I.11.
CITE: (6/30/87), Ind., 516 N.E.2d 1
SUBJECT: Lack of probable cause for arrest not basis to challenge of conviction
HOLDING: Court rejects D's pro se amendment to his brief, challenging existence of probable cause for his arrest & conviction. Assuming arguendo that police lacked probable cause to arrest D & charge him with murder, it would not affect legality of conviction. Illegality of arrest is of consequence only as it affects admission of evidence obtained through search incident to arrest. Williams 304 N.E.2d 311; Martin, App., 374 N.E.2d 543. Illegal arrest has no bearing upon guilt or innocence of accused. Martin. Jurisdiction of court over D is not terminated by illegal arrest. Dickens 260 N.E.2d 578. Invalid arrest does not affect right of state to try case nor does it affect judgment of conviction. Denson 330 N.E.2d 734; Martin. Court finds no evidence obtained as result of D's arrest was admitted at trial; therefore, any absence of probable cause did not influence determination of guilt. Held, conviction affirmed.

RELATED CASES: Sewell, App., 452 N.E.2d 1018 (Crim L 99, 394.4(9); officer's reason for stop of D's car was insufficient, but D was not harmed by admission of his conversation with officer).

TITLE: Dunaway v. New York
INDEX NO.: I.11.
CITE: (6-5-79), 442 U.S. 200, 99 S.Ct. 2248, 60 L.Ed.2d 824
SUBJECT: Derivative evidence from illegal arrest
HOLDING: Taking person into custody & to police station for questioning on less than probable cause to arrest violates Fourth Amendment. Confessions obtained during such detention are inadmissible even if Fifth Amendment is complied with, unless State shows that there has been sufficient break in causal connection between illegality & confession. Here, D was "seized" for Fourth Amendment purposes when he was arrested & taken to police station for questioning. Seizure without probable cause violated Fourth Amendment, & D's confession given following seizure & interrogation was not admissible. State conceded that police lacked probable cause to arrest D before his incriminating statement during interrogation. Connection between unconstitutional police conduct & incriminating statements obtained during D's illegal detention was not sufficiently attenuated to permit use at D's trial. Held, judgment reversed; White & Stevens, JJ., concurring; Rehnquist, J., & Burger, C.J., dissenting.

TITLE: Moss v. State
INDEX NO.: I.11.
CITE: (4th Dist., 02-05-09), 900 N.E.2d 780 (Ind. Ct. App. 2009)
SUBJECT: Admissibility of D's statements- claim of illegal detention
HOLDING: In felony murder and conspiracy to commit robbery prosecution, Tr. Ct. did not err in denying D's motion to suppress. D argued that he was being illegally detained at the time of his initial incriminating statement because: 1) his fiancee tried to post Howard County bond before D was questioned about Grant County murder, but detective discouraged her from doing so, and D was not informed of her attempt before he was questioned, and 2) he was not informed of the existence of the Grant County body attachment and bond until after he was interrogated, and he was therefore denied an opportunity to post bond. Although detective's statement to fiancee (that D "couldn't" post bond) was misleading, there is no evidence that D ever invoked his right to offer bail and earn his release, nor is there any evidence that D ever asked to stop the interrogation so that he could raise bail.

Regardless of legality of D's detention vis-a-vis the two body attachments and bonds, Court agreed with State that police had an independent basis on which to hold D: probable cause to arrest D for his involvement in robbery and shooting. First, D's three alleged confessions to fiancé, father of his ex-girlfriend, and jailhouse informant were consistent with eyewitness accounts of the crime. Second, D's name was brought up as one of the perpetrators when a photo array was shown to witnesses. Third, the accounts of D's three alleged confessions were consistent with each other. Fourth, and most importantly, fiance's statement was particularly reliable, given that she was incriminating the father of her child and the man she was set to marry. Detective's subjective belief that he lacked probable cause to arrest D until after he made his initial incriminating statement has no legal effect. VanPelt v. State, 760 N.E.2d 218 (Ind. Ct. App. 2001). Held, judgment affirmed.

TITLE: New York v. Harris

INDEX NO.: I.11.

CITE: (4-18-90), 495 U.S. 14, 110 S.Ct. 1640, 109 L.Ed.2d 13

SUBJECT: Derivative evidence from illegal arrest - statement made following warrantless home arrest

HOLDING: Where D is unlawfully arrested in his home without warrant but with probable cause, exclusionary rule does not bar use at trial of D's statement made outside home. No "per se" or "but for" rule that makes inadmissible any evidence which somehow came to light through claim of causation that began with illegal arrest. U.S. v. Ciccolini (1978) 435 U.S. 268. Rather, penalty imposed upon state for violation of law must bear some relation to purposes which law is to serve. Id. Rule which prohibits arrest in home without warrant is designed to protect physical integrity of home, because physical entry of home is chief evil against which Fourth Amendment is directed. See Payton v. New York (1980), 445 U.S. 573, 100 S.Ct. 1371, 63 L.Ed.2d 639. Nothing in Payton suggests that arrest in home without warrant but with probable cause somehow renders unlawful continued custody of suspect once D is removed from house. Case is distinguishable from those holding indirect fruits of illegal search or arrest must be suppressed when they bear sufficiently close relationship to underlying illegality. See, generally, Brown v. Illinois (1975), 422 U.S. 590, 95 S.Ct. 2254, 45 L.Ed.2d 416. In those cases police lacked probable cause. Attenuation analysis is only appropriate where, as threshold matter, courts determine challenged evidence is in some sense product of illegal governmental activity. U.S. v. Crews (1980), 445 U.S. 463, 100 S.Ct. 1244, 63 L.Ed.2d 537. Held, judgment reversed; Marshall, Brennan, Blackmun, & Stevens, JJ., dissenting.

TITLE: Taylor v. Alabama
INDEX NO.: I.11.
CITE: (6-23-82), 457 U.S. 687, 102 S.Ct. 2664, 73 L.Ed.2d 314
SUBJECT: Derivative evidence from illegal arrest - no act purging primary taint
HOLDING: Confession obtained through custodial interrogation after illegal arrest should be excluded unless intervening events break causal connection between arrest & confession so that confession is sufficient act of free will to purge primary taint. Here, there was no meaningful intervening event. Confession may have been voluntary for Fifth Amendment purposes because Miranda warnings were given. However, illegality of initial arrest was not cured by fact that six hours elapsed between arrest & confession. D was permitted short visit with his girlfriend, police did not physically abuse D, & arrest warrant, based on comparison of fingerprints, was filed after D was arrested. Such warrant was irrelevant to whether confession was fruit of illegal arrest. In addition, fingerprints which were used to extract confession were themselves fruit of illegal arrest. This cannot be deemed sufficient "attenuation" to break connection between illegal arrest & confession merely because they formed basis for arrest warrant. Held, judgment reversed & remanded; O'Connor, J., Burger, C.J., Powell & Rehnquist, JJ., dissenting.

RELATED CASES: Morris, 399 N.E.2d 740 (confession, which was product of illegal arrest, should have been suppressed).

TITLE: Triplett v. State
INDEX NO.: I.11.
CITE: (7/19/82), Ind., 437 N.E.2d 468
SUBJECT: Derivative evidence from illegal arrest
HOLDING: A confession obtained through custodial interrogation after an illegal arrest should be excluded unless intervening events break the causal connection between the illegal arrest & the confession so that the confession is sufficiently an act of free will to purge the primary taint. Here, D's pretrial motion to suppress confession should have been granted where D, arrested without warrant or probable cause, was detained & questioned by police at station house under circumstances similar to Dunaway v. NY (1979), 442 U.S. 200, 99 S. Ct. 2248, 60 L.Ed.2d 824. Barber 418 N.E.2d 563 distinguished. Held, D's conviction reversed, case remanded.

RELATED CASES: Johnson, App., 829 N.E.2d 44 (warrantless arrest for minor consumption was lawful even though police were interested in questioning D about suspected involvement in robbery); Avery, 531 N.E.2d 1168 (D's confession was brought about entirely by D's own request to talk to police in presence of D's girlfriend); Brown 503 N.E.2d 405 (Ct. finds 2 intervening factors purged taint of illegal arrest from confession: D had private discussion with his father & D himself requested to speak to officer; Ct. distinguishes Hughes, App., 385 N.E.2d 461 which involved "particularly flagrant conduct" by police; see Brown v. IL (1975), 422 U.S. 590, 95 S.Ct. 2254, 45 L.Ed.2d 416; Campbell 500 N.E.2d 180 (although case presents "close question," Ct. determines reasonable person would not have considered self in custody, therefore, case does not violate Dunaway); State v. Thrall App., 470 N.E.2d 749 (suppression of D's confession was proper where no probable cause existed to arrest D for crime; Ct. finds D was "in custody" for 4th Amend purposes when police interrogated him).