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CH. 10 CONFESSIONS

§10-1

Fifth Amendment Rights

United States Supreme Court

Sanchez-Llamas v. Oregon, 548 U.S. 331, 126 S.Ct. 2669, 165 L.Ed.2d 557 (2006) Under the Vienna Convention on Consular Relations, a person detained by authorities in a foreign country must be advised of his right to have his nation's consular office informed of the arrest. Suppression of statements which an arrestee makes in response to police interrogation is not an appropriate remedy for the failure to inform the arrestee of his rights under the Convention.

Hiibel v. Sixth Judicial Circuit Court of Nevada Humboldt County, 542 U.S. 177, 124 S.Ct. 2451, 159 L.Ed.2d 292 (2004) Neither the Fourth nor Fifth Amendments are violated by a state statute obligating a citizen to disclose his name during a Terry stop.

Chavez v. Martinez, 538 U.S. 760, 123 S.Ct. 1994, 155 L.Ed.2d 984 (2003) Fifth Amendment is violated where a statement that was compelled by police interrogation is used against defendant in a criminal proceeding. Where defendant was interrogated without **Miranda** warnings and while he was being treated for gunshot wounds, but no criminal charges were filed, the Fifth Amendment was not violated. Because the officer did not violate the Fifth Amendment, he was entitled to claim "qualified immunity" in a civil suit seeking damages for the alleged violation.

Also, the Fourteenth Amendment due process clause was not violated by the officer's actions. The Fourteenth Amendment prohibits convictions based on evidence obtained by methods that are "so brutal and so offensive to human dignity" as to shock the conscience, or which involve "the most egregious official conduct." Questioning a suspect while he is being treated for gunshot wounds does not reach the level of egregiousness required for a Fourteenth Amendment violation.

McKune v. Lile, 536 U.S. 24, 122 S.Ct. 2017, 153 L.Ed.2d 47 (2002) Defendant, a convicted sex offender who was completing his sentence, was ordered to participate in a pre-release treatment program for sex offenders. Participants in the program were required to sign a form accepting responsibility for their crimes and complete a sexual history form detailing prior sexual activities, including uncharged offenses. Polygraph examinations were used to verify the accuracy and completeness of the answers. Immunity was not offered, although no inmate had ever been prosecuted based upon information disclosed through the program. Staff members are required to disclose to law enforcement authorities any statements concerning uncharged sexual offenses involving minors.

Defendant refused to participate in the program, claiming that the required disclosures would violate his right against self-incrimination and possibly subject him to a perjury charge in light of his trial testimony that the activity had been consensual. Prison officials responded that unless defendant participated, his privileges would be reduced and he would be transferred to a maximum security institution. Defendant filed for injunctive relief to prevent such sanctions.

Revocation of privileges and transfer to a less advantageous institution did not violate the Fifth Amendment. [Ohio v. Reiner](#), 532 U.S. 17, 121 S.Ct. 1252, 149 L.Ed.2d 158 (2001) The Fifth Amendment right against self-incrimination applies to witnesses who have "reasonable cause to apprehend danger" from answering a particular question. The Ohio Supreme Court erred by holding that the privilege is unavailable where a witness claims to be innocent of any wrongdoing. See also, [People v. Dmitriyev](#), 302 Ill.App.3d 814, 707 N.E.2d 121 (1st Dist. 1998) (a witness may exercise his right against self-incrimination if he reasonably suspects that by answering he will expose himself to prosecution; a witness's attempt to exercise his privilege may be denied only where it is "perfectly clear, considering all the circumstances, that the answer sought cannot have a tendency to incriminate"); [People v. McNeal](#), 301 Ill.App.3d 889, 704 N.E.2d 793 (1st Dist. 1998) (trial court erred by holding defendant in contempt for refusing to testify at a trial on charges which the defense claimed were related to charges pending against him but which the State claimed were unrelated; the defense's assertions showed reasonable cause to fear that defendant's answers might be incriminating at his subsequent trial).

[U.S. v. Hubbell](#), 530 U.S. 27, 120 S.Ct. 2037, 147 L.Ed.2d 24 (2000) The Fifth Amendment protects against compelled disclosure of incriminating statements that are "testimonial." A suspect may be required to engage in non-testimonial conduct, such as putting on a particular shirt or making a voice exemplar, even if incriminating evidence results. Similarly, a suspect may be required to produce documents which contain "incriminating assertions of fact or belief," so long as the "creation of those documents was not 'compelled' within the meaning of the privilege."

Apart from whether the contents of the documents are privileged, however, the act of production may have "testimonial" aspects that are protected by the Fifth Amendment. In addition, the Fifth Amendment protects against the prosecution's use of compelled statements to discover incriminating evidence.

Where defendant received immunity under a federal statute that has been held to be "coextensive" with the Fifth Amendment, and thereafter produced 13,000 pages of documents in response to a subpoena duces tecum, he could not be prosecuted on charges related to matters disclosed in the documents unless the prosecution proved that its evidence "was derived from legitimate sources 'wholly independent' of the testimonial aspect of respondent's immunized conduct in assembling and producing the documents described in the subpoena."

[Mitchell v. U.S.](#), 526 U.S. 314, 119 S.Ct. 1307, 143 L.Ed.2d 424 (1999) The fact that defendant pleads guilty does not waive Fifth Amendment rights at sentencing, even as to the facts of the crime to which the plea was entered. See also, [People v. Iseminger](#), 202 Ill.App.3d 581, 560 N.E.2d 445 (4th Dist. 1990)(a trial judge may properly make inquiries of defendant at sentencing hearing, regardless whether he testifies or exercises his right of allocution; where a Fifth Amendment claim is raised, however, the trial judge should conduct a hearing); [People v. Anderson](#), 284 Ill.App.3d 708, 672 N.E.2d 1314 (4th Dist. 1996)("[A] defendant has no right to refuse to answer the trial court's questions at the sentencing hearing except - perhaps - when fifth amendment concerns are legitimately implicated.")

[Ohio Adult Parole Authority v. Woodard](#), 523 U.S. 272, 118 S.Ct. 1244, 140 L.Ed.2d 387 (1998) The right against self-incrimination is not implicated by State clemency procedures affording a convicted criminal defendant the opportunity for a voluntary interview with clemency authorities, although the inmate has no right to counsel and does not receive immunity. The Fifth Amendment does not apply merely because an inmate who fails to

participate in an interview will be judged more harshly due to his silence; even if clemency authorities draw adverse inferences from an individual's refusal to answer questions, the Fifth Amendment protects against only "compelled" self-incrimination.

Lefkowitz v. Cunningham, 431 U.S. 801, 97 S.Ct. 2132, 53 L.Ed.2d 1 (1977) Fifth Amendment is violated by State statute that imposed five-year ban on holding political or public office because of refusal to waive privilege against self-incrimination before a grand jury.

Pennsylvania v. Muniz, 496 U.S. 582, 110 S.Ct. 2638, 111 L.Ed.2d 528 (1990) Asking a DUI arrestee to perform certain sobriety tests at the scene of the arrest and at the police station does not constitute interrogation. The evidence procured is of a physical nature and is not "testimonial."

Berkemer v. McCarty, 468 U.S. 420, 104 S.Ct. 3138, 82 L.Ed.2d 317 (1984) A citizen detained so that an officer may investigate suspicious activity (i.e., a Terry stop) may refuse to answer questions, and unless there is probable cause is free to go on his way.

U.S. v. Doe, 465 U.S. 605, 104 S.Ct. 1237, 79 L.Ed.2d 552 (1984) The owner of several sole proprietorships moved to quash subpoenas for business records. The contents of the records were not privileged under the Fifth Amendment, which only protects a person from compelled self-incrimination. Where the preparation of business records is voluntary there is no compulsion. However, the act of producing the records is privileged, because it would involve testimonial self-incrimination by requiring the owner to admit the records existed. Thus, the government cannot compel production of the records without a statutory grant of use immunity.

Andresen v. Maryland, 427 U.S. 463, 96 S.Ct. 2737, 49 L.Ed.2d 627 (1976) The seizure of a lawyer's private papers from his office, pursuant to a search warrant, did not violate his Fifth Amendment rights. Although the papers were "incriminating," defendant was not "compelled" to produce them where he was not compelled to do or say anything.

Garner v. U.S., 425 U.S. 80, 96 S.Ct. 1178, 47 L.Ed.2d 370 (1976) The use of defendant's income tax returns in a criminal, non-tax prosecution did not violate his Fifth Amendment privilege against compulsory self-incrimination. The disclosures on the tax returns were not "compelled incrimination," since defendant could have claimed the privilege rather than make the disclosures.

Fisher v. U.S., 425 U.S. 391, 96 S.Ct. 1569, 48 L.Ed.2d 39 (1976) Defendants received various work papers relating to tax returns from their accountants and turned the documents over to their attorneys. The government sought to obtain the documents by summons from the attorneys. Defendants' Fifth Amendment rights were not violated, because defendants were not "compelled" to do anything; only their attorneys were "compelled."

Bellis v. U.S., 417 U.S. 85, 94 S.Ct. 2179, 40 L.Ed.2d 678 (1974) The Fifth Amendment privilege against compulsory self-incrimination protects an individual from compelled production of his personal papers and effects, as well as from compelled oral testimony. This privilege applies to the business records of a sole proprietor, but cannot be used to avoid production of records of an organization which the individual holds in a representative capacity as custodian on behalf of the group, even if the records might incriminate him

personally. See also, [People v. Sand F. Corp.](#), 24 Ill.App.3d 478, 321 N.E.2d 318 (1st Dist. 1974).

[U.S. v. Dionisio](#), 410 U.S. 1, 93 S.Ct. 764, 35 L.Ed.2d 67 (1973) The Fifth Amendment is not violated by the compelled production of a voice exemplar to be used for identification purposes.

[Lefkowitz v. Turley](#), 414 U.S. 70, 94 S.Ct. 316, 38 L.Ed.2d 274 (1973) Fifth Amendment is violated by State government contract clause imposing five-year ban on contracts with grand jury witness who refused to answer relevant questions or waive immunity.

[Couch v. U.S.](#), 409 U.S. 322, 93 S.Ct. 611, 34 L.Ed.2d 548 (1973) Where a taxpayer had delivered her records to an accountant, an IRS subpoena against the accountant for the records did not entitle the taxpayer to invoke the Fifth Amendment.

[McGautha v. California](#), 402 U.S. 183, 91 S.Ct. 1454, 28 L.Ed.2d 711 (1971) A defendant who takes the stand on his own behalf cannot claim a Fifth Amendment privilege against cross-examination on matters reasonably related to the subject matter of his direct examination.

[California v. Byers](#), 402 U.S. 424, 91 S.Ct. 1535, 29 L.Ed.2d 9 (1971) State statute which requires a driver involved in an accident resulting in damage to property to stop at scene and give his name and address does not violate the privilege against self-incrimination.

[U.S. v. Kordel](#), 397 U.S. 1, 90 S.Ct. 763, 25 L.Ed.2d 1 (1970) A corporate officer who fails to assert his self-incrimination privilege instead of answering interrogatories served on the corporation in civil proceedings may not assert, in subsequent criminal proceedings against him, that he was compelled to give testimony against himself.

[Gardner v. Broderick](#), 392 U.S. 273, 88 S.Ct. 1913, 20 L.Ed.2d 1082 (1968) A police officer who refused to waive his privilege against self-incrimination at grand jury proceedings could not be fired. However, had the policeman refused to answer questions specifically, directly and narrowly relating to the performance of his official duties, without being required to waive his immunity with respect to the use of his answers or the fruits thereof in a criminal prosecution of himself, the privilege against self-incrimination would not have been a bar to his dismissal.

[Marchetti v. U.S.](#), 390 U.S. 39, 88 S.Ct. 697, 19 L.Ed.2d 889 (1968) The Fifth Amendment prohibits prosecution for failing to register and pay the federal tax on gambling, since the registration records are available to the States and there is a reasonable fear that the information may be used as evidence against defendants in state gambling prosecutions. See, [Leary v. U.S.](#), 395 U.S. 6, 89 S.Ct. 1532, 23 L.Ed.2d 57 (1969) (same result regarding payment of federal transfer tax on marijuana); [U.S. v. Knox](#), 396 U.S. 77, 90 S.Ct. 363, 24 L.Ed.2d 275 (1969) (Fifth Amendment does not bar prosecution for filing false gambling tax returns under federal law; defendant may refuse to file the returns, but has no privilege to file false ones).

George Campbell Printing Corp. v. Reid, 392 U.S. 286, 88 S.Ct. 1978, 20 L.Ed.2d 1094 (1968) Privilege against self-incrimination applies only to natural individuals and not to corporations.

U.S. v. Wade, 388 U.S. 218, 87 S.Ct. 1926, 18 L.Ed.2d 1149 (1967) The privilege against self-incrimination offers no protection against compulsion to submit to fingerprinting, photography or measurements. In addition, the privilege does not prohibit being compelled to write or speak for identification, to appear in court, to stand or assume a stance, or to walk or make a particular gesture.

Spevack v. Klein, 385 U.S. 511, 87 S.Ct. 625, 17 L.Ed.2d 574 (1967) An attorney may not be disbarred on the ground that he invoked his privilege against self-incrimination and refused to produce records for judicial inquiry. A person has the right to remain silent without suffering any penalty, and "penalty" in this context means the imposition of any sanction which makes assertion of the Fifth Amendment privilege "costly."

Schmerber v. California, 384 U.S. 757, 86 S.Ct. 1826, 16 L.Ed.2d 908 (1966) The withdrawal of blood from an accused does not involve a Fifth Amendment right. The privilege against self-incrimination relates only to "testimonial" or "communicative" acts.

Malloy v. Hogan, 378 U.S. 1, 84 S.Ct. 1489, 12 L.Ed.2d 653 (1964) The Fifth Amendment privilege against self-incrimination is applicable to the states, and if the privilege is properly invoked in State proceedings federal standards govern.

Illinois Supreme Court

People v. Stevens, 2014 IL 116300 The privilege against self-incrimination prohibits compelled testimony, but does not prohibit a defendant from testifying voluntarily in matters that may incriminate him. When a defendant testifies in his own behalf he subjects himself to legitimate cross-examination. Although cross-examination is generally limited to the subject matters explored on direct examination, it is proper during cross to pose questions that explain, qualify, discredit, or destroy a defendant's direct testimony, including questions that affect his credibility, even if they involve new material.

At defendant's trial for the aggravated criminal sexual assault of B.P., the State was allowed to introduce evidence that defendant sexually assaulted another woman (R.G.). Both B.P. and R.G. testified that defendant abducted and sexually assaulted them. Defendant testified on direct that he and B.P. had consensual sex. He did not testify about R.G.'s allegations.

On cross, the State was allowed, over objection, to question defendant about R.G.'s allegations. On appeal defendant argued that his right against self-incrimination was violated when he was forced to answer questions about R.G.'s assault.

The Illinois Supreme Court held that the State's questions about R.G.'s assault did not violate defendant's right to self-incrimination. When defendant testified on his own behalf he opened himself up to legitimate cross-examination, including questions that discredited his direct testimony and called his credibility into question. His direct testimony put the issue of consent and his credibility in general in question, and the cross-examination about R.G. discredited defendant on both of those matters. The cross thus did not violate defendant's right against self-incrimination.

People v. Ceja, 204 Ill.2d 332, 789 N.E.2d 1228 (2003) Police did not violate the Illinois eavesdropping statute by electronically monitoring conversations between defendant and a codefendant while they were detained in the Elmhurst Police Station.

People v. Lindsey, 199 Ill.2d 460, 771 N.E.2d 399 (2002) Neither the Illinois constitutional right against self-incrimination (Art. I, §10) nor due process are violated where the State calls a probationer as a witness at the hearing on a petition to revoke his probation. The right against self-incrimination applies only in criminal cases - probation revocation proceedings are civil in nature. Further, a probationer's compelled testimony at a revocation hearing is not potentially incriminating on possible charges of indirect criminal contempt. See also, **People v. Miller**, 199 Ill.2d 541, 771 N.E.2d 386 (2002) (defendant's right against self-incrimination under the Illinois Constitution was not violated where the State called him as an adverse witness at his probation revocation hearing).

People v. Ellis, 199 Ill.2d 28, 765 N.E.2d 991 (2002) An individual may, without repercussion, refuse to identify himself if stopped and questioned by police, even if there is reason to believe he has violated the law.

Relsonelo v. Fisk, 198 Ill.2d 142, 760 N.E.2d 963 (2001) Neither the federal nor Illinois privilege against self-incrimination applies where a witness fears that his testimony may be used in a foreign prosecution. Defendant, who had been the project manager of a Venezuela pipeline project, could not rely on his State or federal rights against self-incrimination to avoid answering interrogatories in a personal injury and wrongful death case, even though he faced Venezuelan criminal charges arising from the same incident.

People v. Mulero, 176 Ill.2d 444, 680 N.E.2d 1329 (1997) The prosecutor erred by arguing at a death hearing that because she filed a motion to suppress a confession, defendant lacked remorse for the crime. A defendant cannot be penalized for exercising a constitutional right, and the State may not make comments that have a "chilling" effect on constitutional rights by making their assertion more costly.

People v. Vera, 277 Ill.App.3d 130, 660 N.E.2d 9 (1st Dist. 1995) The trier of fact may not draw any inference from a witness's invocation of the right against self-incrimination.

People v. Edgeston, 157 Ill.2d 201, 623 N.E.2d 329 (1993) A Fifth Amendment privilege exists where a witness has reasonable cause to believe that his testimony will create a "real danger of incrimination." Where a witness who previously pleaded guilty asserted that he intended to collaterally attack his plea, and if the collateral attack was successful the State intended to prosecute defendant on charges that had been dismissed as part of the plea agreement, the trial court could legitimately conclude that a "real danger of incrimination" existed.

Illinois Appellate Court

People v. Spicer, 2019 IL App (3d) 170814 Following a drug arrest, the State obtained a search warrant for defendant's cell phone. Defendant refused to provide the phone's passcode to authorities, and the trial court denied the State's motion to compel. The State filed an interlocutory appeal.

The Appellate Court first found that it had jurisdiction over the appeal, as it would not second-guess the State's certificate of impairment. But the Appellate Court affirmed the denial of the motion to compel, finding that requiring defendant to provide his passcode

implicates his fifth amendment right against self-incrimination. Although the code itself is not testimonial, the contents of the phone would be, and that is the material defendant would ultimately be forced to reveal.

People v. Whitfield, 2017 IL App (2d) 140878 Under 725 ILCS 5/103-2.1, the exception for statements that were unrecorded because electronic recording was not feasible applies only where there was no functioning recording equipment in the police station. The court rejected the State's argument that the exception applied where officers elected to interrogate the defendant in a room which did not have recording equipment but there was functioning recording equipment in another room. "It would be absurd to imagine that the General Assembly sought to require the electronic recording of all homicide-related questioning 'that is reasonably likely to elicit an incriminating response' . . . but intended to allow police to avoid this requirement by simply conducting the questioning in a room that does not have recording equipment."

Here, the State failed to show by a preponderance of the evidence that the defendant's statement was both voluntary and reliable. Reliability and voluntariness are separate issues, as a voluntary statement might nonetheless be unreliable or false. For example, a person who is developmentally disabled or actively delusional may give a voluntary statement which is unreliable because of the individual's mental impediments. Similarly, statements of a person who has been deprived of food, water or sleep may not be reliable. Finally, hypnosis-induced statements have been found to be unreliable.

The court criticized the trial court for failing to keep the issues of reliability and voluntariness separate. In addition, this case is somewhat unique because defendant denied making any statements and of the several officers present, only one claimed to have heard defendant's alleged statement. The court concluded that the reliability inquiry is not a "perfect fit" where the defendant challenges the existence of the statement in question, but found that where the alleged statement was unrecorded, there were no other statements by the defendant to support the existence or reliability of the alleged statement, and officer's claim that defendant made a statement was not corroborated although other officers were present, the State failed to meet its burden to show that the presumption against admitting unrecorded statements in a homicide case was overcome.

However, the court held that the error was harmless in view of the overwhelming evidence of guilt. Defendant's conviction was affirmed.

People v. Whirl, 2015 IL App (1st) 111483 Because a post-conviction proceeding is civil in nature, a trial judge is free to draw adverse inferences when a witness exercises his or her Fifth Amendment rights when questioned about probative evidence that has been offered against them. Where the State did not respond to the petitioner's evidence that an officer engaged in a pattern of torturing suspects, that officer's invocation of the Fifth Amendment was significant and should have caused the trial court to draw a negative inference.

People v. Clayton, 2014 IL App (1st) 130743 Under §103-2.1(a), a "custodial interrogation" occurs where: (1) a reasonable person in the subject's position would consider himself or herself to be in custody, and (2) a question is asked that is reasonably likely to elicit an incriminating response. Factors that are relevant in determining whether an individual is in custody include: (1) the location, time, length, mood, and mode of the questioning; (2) the number of police officers present; (3) the presence or absence of the suspect's family and friends; (4) any indicia of a formal arrest such as a show of weapons or force, physical

restraint, booking or fingerprinting; (5) the manner by which the suspect arrived at the place of questioning; and (6) the age, intelligence, and mental makeup of the accused.

Defendant was subjected to custodial interrogation when she made her first statement, and under §103-2.1 the encounter should have been electronically recorded. Four police officers came to the home of the 17-year-old defendant at 11:00 p.m., and asked that she accompany them to the police station to give a statement. Defendant was not given an opportunity to come to the station on her own or with her parents, with whom she lived, and was transported by officers in an unmarked car.

The court rejected the State's argument that the videotape of the second interview, in which defendant was asked to affirm that she came to the station voluntarily and of her own free will, indicated that she was not in custody. A teenager could not be expected to argue with police concerning whether she had come to the station voluntarily. Furthermore, even if defendant originally came to the station voluntarily, there was no record of what occurred between the time she arrived and the taped interview, which occurred some five hours later. Thus, the tape did not establish that the statement was voluntary.

Furthermore, the record suggested that defendant was subjected to custodial interrogation in the first, unrecorded interview. Although there was no evidence concerning the substance of the first interview, the police gave defendant **Miranda** warnings before the second interview, elected to record that interview, alluded to defendant's earlier statements, and asked why her statements during the second interview were inconsistent with the first interview. Under these circumstances, the trial court did not err by finding that the defendant was subjected to custodial interrogation during the first interview.

Where police fail to record the custodial interrogation of a murder suspect, any subsequent statements are presumed to be inadmissible. The State can overcome the presumption of inadmissibility if it can show by a preponderance of evidence that the statements were given freely and voluntarily. The court concluded that the State failed to meet its burden where it offered no evidence other than the videotapes themselves to establish that the statements made in the second and third interviews were voluntary and reliable.

Because the trial court's finding that the defendant was in custody during the unrecorded first interrogation was not against the manifest weight of the evidence, any statements made after the unrecorded interview were presumed inadmissible. Because the State failed to introduce evidence sufficient to show that the later statements were voluntary and reliable, the trial court properly suppressed those statements.

People v. Stevens, 2013 IL App (1st) 111075 The privilege against self-incrimination may be waived by a defendant who testifies as a witness. Once the privilege has been waived, a defendant becomes subject to cross-examination in the same manner as any other witness. The waiver is not partial. Defendant cannot choose to testify and present a defense and then limit the State's ability to impeach that testimony by avoiding relevant impeachment evidence during his direct examination. He cannot claim the privilege on cross-examination on matters reasonably related to the subject matter of his direct examination.

Defendant waived his privilege against self-incrimination when he chose to testify that his sexual encounter with the complainant was consensual. He could not reassert the privilege on cross-examination when the prosecutor questioned him regarding another offense to discredit defendant's claim of a consensual encounter, where evidence of that other offense had been properly admitted in the State's case-in-chief as propensity evidence (**725 ILCS 5/115-7.3**).

People v. Harris, 2012 IL App (1st) 100678 Because defendant made an incriminating statement as a result of custodial interrogation at the police station, her statement was presumptively inadmissible because it was not electronically recorded. This presumption was not overcome because the State presented no evidence related to the voluntariness of the unrecorded statement. That evidentiary gap was not filled by evidence of the subsequent videotaped statements. The Appellate Court directed that a determination be made whether defendant's unrecorded statement was voluntary and reliable prior to retrial.

Defendant's felony murder conviction was reversed and the cause remanded for a new trial.

People v. Haleas, 404 Ill.App.3d 668, 937 N.E.2d 327 (1st Dist. 2010)

1. In criminal proceedings against a police officer, the 5th and 14th Amendments prohibit use of statements which the officer made under threat of suspension or termination for exercising the right to silence. (**Garrity v. New Jersey**, 385 U.S. 493 (1967)). In **Garrity**, state law mandated discharge of police officers who invoked the privilege against self-incrimination when questioned as part of an internal police investigation. Although courts have reached differing conclusions where discharge is not mandatory, the court concluded that **Garrity**-type immunity is triggered when an officer is warned that his employment can be suspended or terminated if he exercises the right to silence when questioned about possible police misconduct. The court concluded that once such warnings are given, any statements obtained are "compelled" under the 5th Amendment.

The court rejected the State's argument that only incriminating statements are protected under **Garrity**. First, the truthfulness of a statement has no bearing on whether it is "compelled." Furthermore, even exculpatory testimony may lead to incriminating evidence.

Because defendant was warned by internal affairs investigators that termination or suspension could be based on any statement he made or on his exercise of the right to silence, his exculpatory statement could not be introduced at his subsequent criminal trial for obstructing justice, official misconduct, and perjury. The trial court's suppression order was affirmed.

2. However, the trial court erred by dismissing the indictments. Under **Kastigar v. U.S.**, 406 U.S. 441 (1972), a defendant who testifies under a grant of immunity is entitled to dismissal of the charges unless the State shows that the evidence used in the criminal proceeding has a legitimate, independent source from the compelled testimony. The court concluded that the **Kastigar** doctrine applies to statements which are "compelled" under **Garrity**. Thus, the prosecution was required to show an independent source for the evidence it used to obtain indictments against the defendant.

The court concluded that the trial court applied an erroneous standard when it required the State to show not only that the evidence on which the indictment was based was obtained from an independent source, but also that the prosecution had made no "significant non-evidentiary" use of the defendant's statements in "focusing the investigation, deciding to initiate prosecution, refusing to plea bargain, interpreting evidence, planning cross-examination [or] otherwise generally planning trial strategy." The court stressed that the purpose of the independent source doctrine is to insure that evidence derived from immunized statements is not presented to the jury, and that extending **Kastigar** to non-evidentiary uses would place the State in a worse position than if no misconduct had occurred.

The cause was remanded for a new hearing on the motion to dismiss the charges.

People v. Snow, 403 Ill.App.3d 734, 936 N.E.2d 662 (4th Dist. 2010) The 5th Amendment privilege against self-incrimination protects one from being “compelled” to testify. Where a defendant testifies voluntarily, without claiming the privilege, the 5th Amendment does not limit use of the testimony in subsequent proceedings.

Where defendant filed a petition to rescind a summary suspension of his driver’s license under the implied consent statute, and testified without asserting the 5th Amendment privilege on direct or cross-examination, his testimony was not “compelled.” Therefore, his testimony at the rescission hearing was admissible in the subsequent criminal trial for DUI.

The court rejected defendant’s argument that he had no choice whether to testify, because in the absence of any other witness who could testify to the circumstances of his arrest, his motion to rescind would be denied. Although some courts have found that a defendant may be “compelled” by duress to testify, such cases generally involve the potential loss of one’s livelihood. (See **Garrity v. New Jersey**, 385 U.S. 493 (1967) (refusal to testify would result in termination of police officers)). Being required to choose between which of two rights to exercise does not constitute duress.

The government may compel a defendant to testify in a civil proceeding, but such testimony is inadmissible in a pending or subsequent criminal proceeding. Thus, although the petitioner could be required to testify at a rescission hearing if called as an adverse witness by the State, his testimony could not be used in the underlying criminal trial for DUI.

People v. Amigon, 388 Ill.App.3d 26, 903 N.E.2d 843 (1st Dist. 2009) 725 ILCS 5/103-2(b), which provides that a statement made during custodial interrogation at a police station is presumed to be inadmissible unless it was recorded electronically, does not apply retroactively to statements taken before the effective date of the statute, even if the trial or retrial occurs after that date.

People v. Swank, 344 Ill.App.3d 738, 800 N.E.2d 864 (4th Dist. 2003) Under **Mitchell v. U.S.**, 526 U.S. 314 (1999), a guilty plea does not necessarily waive the Fifth Amendment right against self-incrimination at sentencing. In **Mitchell**, the U.S. Supreme Court held that the trial court erred by considering defendant's failure to testify at sentencing as justifying a conclusion that she had sold a quantity of drugs that mandated a ten-year-sentence.

Where defendant pleaded guilty to burglary and claimed at sentencing that his commission of the offense was related to his use of drugs, the rationale of **Mitchell** prohibited the trial court from considering, as an aggravating factor, defendant's refusal to name his drug supplier. Although **Mitchell** expressed no opinion whether silence at sentencing is relevant to the issue of lack of remorse or acceptance of responsibility, defendant's "failure to identify his drug supplier . . . had no bearing on his remorse or his acceptance of responsibility for the offense of burglary."

Although defendant did not claim a Fifth Amendment privilege when refusing to name his drug supplier, and although the privilege against self-incrimination is not self-executing, the requirement that defendant claim the privilege is excused where "some coercive factor" prevents him from doing so. Here, the trial judge's coercive actions deprived defendant of a "free choice" to claim the privilege.

The judge ordered defendant to explain how he could be expected to comply with probation when he had used illegal drugs in the past, then switched to questions about defendant's drug supplier. The judge warned defendant not to "play games," and said that unless defendant named his supplier "I am going to look at a prison sentence, a significant number of years." The judge also told defendant that his refusal to identify his supplier would be held against him, and that "you need to understand there will be a consequence" for failing

to give the sources's name. Finally, the court imposed a 4½-year-sentence despite a State recommendation for probation.

Defendant's sentence was reversed and the cause remanded for resentencing before a different judge.

People v. Bowman, 335 Ill.App.3d 1142, 782 N.E.2d 333 (5th Dist. 2002) Generally, a guilty plea in which defendant admits that he was in fact guilty of the offenses waives any claim that constitutional rights were violated before the plea was entered. Where defendant entered an Alford plea, however, and the factual basis for the plea primarily concerned defendant's confession, defendant was permitted to collaterally attack his plea after he discovered evidence suggesting that the confession had been obtained by deception or coercion.

People v. Dmitriyev, 302 Ill.App.3d 814, 707 N.E.2d 121 (1st Dist. 1998) The Fifth Amendment privilege applied although it was invoked not because defendant feared jeopardizing any post-plea motions or his appeal, but because he was concerned about committing perjury. Exercise of the Fifth Amendment privilege is appropriate where a question calls for an answer that poses a "real danger" of incrimination; defendant's subjective reason for exercising his privilege is irrelevant.

People v. Barton, 286 Ill.App.3d 954, 677 N.E.2d 476 (5th Dist. 1997) A criminal defendant does not have standing to contest the voluntariness of statements made by other witnesses, unless those statements are being used by the prosecution solely to impeach a defense witness.

People v. Taylor, 287 Ill.App.3d 800, 679 N.E.2d 82 (5th Dist. 1997) An attorney's assertion that a witness will take the Fifth Amendment should not be accepted; the witness should be called to see whether he will exercise his privilege and whether he has a "legitimate basis . . . to fear incrimination."

People v. Lamb, 224 Ill.App.3d 950, 587 N.E.2d 61 (2d Dist. 1992) A defendant who waives his privilege against self-incrimination at one proceeding may reassert that privilege at a subsequent proceeding; however, reasserting the privilege does not render the former testimony inadmissible. Also, statutory requirement that where a person who has already been charged or against whom an indictment is being sought testifies before a grand jury, he "shall be informed" that he has the right to refuse to answer incriminating questions and the right to the assistance of counsel and that anything he says may be used against him, may be satisfied by advice from defense counsel.

People v. Goodwin, 148 Ill.App.3d 56, 499 N.E.2d 119 (4th Dist. 1986) Defendant validly waives his privilege against self-incrimination pursuant to a plea agreement where, as part of the agreement, defendant agrees to testify against a codefendant. Thus, he had no valid legal right to refuse to testify.

People v. Morales, 102 Ill.App.3d 900, 430 N.E.2d 350 (1st Dist. 1981) Witness could properly invoke the privilege, though he had pleaded guilty and been sentenced, because the time to file a motion to withdraw the plea had not expired.

People v. Hartley, 22 Ill.App.3d 108, 317 N.E.2d 57 (4th Dist. 1974) Where an appeal is pending, defendant's conviction is not final and he may claim Fifth Amendment privilege at a codefendant's trial.

§10-2

Suppression Motions and Hearings

Illinois Supreme Court

People v. Hughes, 2015 IL 117242 Defendant, who was charged with first degree murder, moved to suppress statements which he made during police interrogations after he was brought from Michigan to Chicago. The motion alleged that: (1) defendant was not properly advised of his **Miranda** rights, (2) defendant was incapable of appreciating and understanding the full meaning of **Miranda** rights, (3) the statements were obtained during interrogations which continued after defendant exercised his right to silence and/or elected to consult with an attorney, (4) the statements were obtained through psychological, physical and mental coercion, and (5) the statements were involuntary.

At the hearing on the motion to suppress, trial counsel stated that the defense would proceed on two theories: (1) that defendant's hands had been handcuffed in a very uncomfortable position for the 90-minute drive to Chicago, and (2) that detectives questioned defendant on that drive without informing him of his **Miranda** rights and without making a video recording. Trial counsel stated, "I just want to give notice to counsel those are the grounds we will be proceeding on."

The trial court denied the motion to suppress, finding that the statements were not coerced and that the detectives testified credibly that they had given defendant **Miranda** warnings. Defendant's posttrial motion stated that the trial court erred by denying the motion to suppress, without any amplification.

On appeal, defendant raised several issues concerning his statements, including that his statements were involuntary because he was 19 years old, had only a ninth grade education, had not done well in school, had little to no sleep at the time of the statement, was suffering from severe emotional distress due to the death of his grandfather, and was the victim of deceptive and coercive police conduct. Defendant also claimed that he was susceptible to suggestion due to substance abuse.

The Supreme Court held that the issues were waived because defendant had not presented them in the trial court. Although the terms "forfeiture" and "waiver" have been used interchangeably, "waiver" is the voluntary relinquishment of a known right while "forfeiture" is the failure to comply with procedural requirements. Here, the claims which defendant raised on appeal, while not factually "hostile" to the claims raised in the trial court, were "almost wholly distinct" from the issues litigated at trial. Under these circumstances, the issues raised on appeal were not preserved.

Due to the differences between the issues raised in the trial court and on appeal, the trial court did not have an opportunity to consider and rule on the bulk of the challenges which defendant made on appeal. Likewise, the State did not have an opportunity to present evidence or argument concerning the challenges that were raised on appeal. Although a defendant need not present identical arguments in the trial court and on appeal, "almost entirely distinct" contentions are improper.

In a concurring opinion, Justices Burke, Thomas, and Kilbride noted that the majority failed to address defendant's plain error argument. However, the concurrence concluded that plain error did not occur.

People v. Patterson, 192 Ill.2d 93, 735 N.E.2d 616 (2000) Generally, hearsay is admissible at a hearing on a motion to suppress.

People v. Gilliam, 172 Ill.2d 484, 670 N.E.2d 606 (1996) Generally, collateral estoppel bars rehearing a motion to suppress in the same proceeding, unless there are "exceptional circumstances" or additional evidence that was not available at the first hearing. See also, **People v. Cannon**, 293 Ill.App.3d 634, 688 N.E.2d 693 (1st Dist. 1997) (evidence that officers who had allegedly tortured defendant also tortured other suspects justified relitigation of motion to suppress).

People v. Reid, 136 Ill.2d 27, 554 N.E.2d 174 (1990) The State has the burden of proving by a preponderance of the evidence that defendant made a knowing, intelligent and voluntary waiver of his or her rights. Once the State has established its prima facie case, the burden shifts to defendant to show that the waiver was not knowing, intelligent or voluntary. The court may, in its discretion, reverse the order of proof so that the defense presents its evidence first.

People v. Caballero, 102 Ill.2d 23, 464 N.E.2d 223 (1984) A reviewing court may consider the testimony at trial in determining whether a motion to suppress was properly denied. See also, **People v. Wade**, 71 Ill.App.3d 1013, 389 N.E.2d 1230 (1st Dist. 1979).

People v. Hoffman, 84 Ill.2d 480, 419 N.E.2d 1145 (1981) Trial court has discretion to entertain a motion to suppress confession (on **Miranda** grounds) after the trial has begun.

People v. Thigpen, 33 Ill.2d 595, 213 N.E.2d 534 (1966) Where defendant objected during trial to the admission of his statement, the judge should have held a hearing outside the presence of the jury.

People v. Norfleet, 29 Ill.2d 287, 194 N.E.2d 220 (1963) Defendant may file a motion to suppress even though he denies making a confession. See also, **People v. Daniel**, 78 Ill.App.2d 316, 223 N.E.2d 295 (1st Dist. 1966).

Illinois Appellate Court

People v. Cain, 2021 IL App (1st) 191921 The Appellate Court reversed defendant's convictions for murder and concealment of a homicidal death, and remanded for a new trial, for two independent reasons. First, the police did not record his statement, in violation of Section 103-2.1(b) of the Code of Criminal Procedure. Second, in a closely balanced case, the court violated Rule 431(b) by failing to ask the venire members whether they understood and accepted the principle that, if the defendant chose not to testify, the jury could not hold that choice against him.

With regard to the first issue, the police arrested defendant two weeks after a witness saw defendant pushing a red suitcase down the street the day of the victim's disappearance. The victim's body was later found in a red suitcase in an alley. Defendant told the detective in a custodial interview that he found the victim dead in his bed, and, afraid, decided to dispose of the body. He denied killing the victim. The interview was not recorded.

The statement was presumptively inadmissible under section 103-2.1(b), because it was not recorded and defendant had been charged with murder. The State may overcome the presumption of inadmissibility with proof by a preponderance of the evidence that the

statements were voluntarily given and are reliable. To do so, it should present evidence as to the totality of the circumstances, including “the defendant’s age, education, intelligence, mental capacity, physical condition at the time of questioning, the legality and duration of the detention and questioning, whether the defendant was advised of his constitutional rights, and any physical or mental abuse by police including the existence of threats or promises.” Here, other than establishing that defendant received **Miranda** warnings, that he was 50 years old, and that he had a GED, the State presented no other evidence of voluntariness at the hearing on the motion to suppress. Thus, the State failed to overcome the statutory presumption. On remand, the State would have the opportunity to overcome the presumption.

As for the 431(b) violation, the evidence was closely balanced. Defendant confessed, but only to concealing the body. He did not admit to killing the victim and told the police he had no knowledge of how she died. The medical examiner could not determine with medical certainty how the victim died. Although she concluded that the cause of death was homicide, she did so only because of the manner in which the body was disposed and because she could not come up with any other explanation. No physical evidence supported the idea that she died by homicide. Thus, plain error occurred and reversal was required.

People v. Harris, 2021 IL App (1st) 182172 Trial court erred in denying defendant’s post-conviction petition after a third-stage evidentiary hearing. Defendant made a substantial showing that the result of his pretrial suppression hearing would have been different had he been able to impeach the officers who denied using physical coercion with newly discovered evidence showing a pattern and practice of police abuse by some of those same officers.

The court erred in relying on information outside the record to find the officers credible. Specifically, the court found that this was a “heater case” with a great deal of notoriety such that officers would not have jeopardized the prosecution by using coercive tactics. No such evidence had been presented to the court. The matter was remanded for a new suppression hearing.

In re Jose A., 2018 IL App (2d) 180170 In a State appeal, the Appellate Court reversed the suppression of a juvenile’s statement given to school officials, but upheld the suppression of a second inculpatory statement given to police at the station.

Under Section 5-401.5(a-5) of the Juvenile Court Act, a statement is presumed inadmissible unless the police officer, State’s Attorney, juvenile officer, “or other public official or employee” first reads specific *Miranda* warnings and asks specifically if the juvenile (1) wants a lawyer; or (2) wants to talk to the interrogator. Here, the parties agreed that the statements were elicited without the required warnings and questions. But the State contended that the school deans who took the initial statement were not “other public officials or employees.” The Appellate Court held that under the unambiguous plain language of the statute, they were. But it held that requiring every public official to comply with the statute would lead to absurd results, such as requiring a school bus driver to read the statement and questions before questioning a student suspected of drug dealing. To avoid these “absurd results,” the Appellate Court employed the doctrine of *ejusdem generis* and interpreted the terms as applying to only those public employees whose primary duties are “the protection of the public interest and enforcement of the law.” The school deans did not meet this definition.

The Appellate Court then upheld suppression of the second statement because it was not recorded as required by Section 5-401.5(b) of the Juvenile Court Act. The State maintained that the statute did not apply because defendant was not in custody where he was requested to come to the police station and answered questions with his mother in an

unlocked interview room. The Appellate Court held that the trial court's finding that defendant would not have felt free to leave the room while in the presence of two armed police officers was not against the manifest weight of the evidence.

People v. Harper, 2013 IL App (4th) 130146 Under section 103-2.1 of the Code of Criminal Procedure, any custodial statement of an accused charged with certain homicide offenses is presumptively inadmissible unless it was electronically recorded and the recording is substantially accurate and not intentionally altered. [725 ILCS 5/103-2.1\(b\)](#). The State may overcome this presumption of inadmissibility by establishing by a preponderance of the evidence that based on the totality of the circumstances the statement was voluntary and reliable. [725 ILCS 5/103-2.1\(f\)](#).

The legislature's inclusion of subsection (f) shows that it did not intend to bar statements the police failed to record due to inadvertence or malfunctioning equipment. The court must determine whether the *statement* was voluntary and reliable, not whether the recording or the police summary of the statement was reliable. The question is whether testimony about the statement is admissible, not whether the recording is admissible, which is a separate question.

Here, the Appellate Court, employing a manifest weight of the evidence test, held that the trial court erred in finding that the statements were not reliable. Under the totality of the circumstances, the Appellate Court found that the statements were reliable based on several factors. First, the defendant was an adult of average intelligence, was not mentally ill or under the influence of alcohol or drugs, was not handcuffed or restrained, and was allowed to smoke, chew gum and use the bathroom. In addition, the police used no physical abuse or other coercive tactics, gave defendant Miranda warnings, used no questionable memory enhancement techniques such as hypnosis, and did not claim defendant made any inculpatory statements during the interview.

The Court noted that there is some overlap in the factors to be considered in determining voluntariness and reliability. The Court emphasized that the recording of the interrogation itself was the strongest evidence that defendant's statements were reliable. The Appellate Court reversed the trial court's suppression order and remanded for further proceedings.

People v. Harper, 2012 IL App (4th) 110880 Under Section 103-2.1 of the Code of Criminal Procedure, custodial statements of an accused are presumed inadmissible in homicide cases unless: (1) an electronic recording is made of the custodial interrogation, and (2) the recording is substantially accurate and not intentionally altered. [725 ILCS 5/103-2.1\(b\)](#). This presumption of inadmissibility "may be overcome by a preponderance of the evidence that the statement was voluntarily given and is reliable, based on the totality of circumstances." [725 ILCS 5/103-2.1\(f\)](#). An inadvertent failure to record an interview or an error in the recording process is not an automatic and absolute bar to the admission of the statement.

Here, the trial court suppressed a recording of defendant's custodial statement and a transcript of that recording because 30 minutes of a recording was inaudible. The trial court found that even an innocent malfunction was sufficient to result in suppression of the statement. The trial court also found that the inaudibility of a portion of the recording rendered the recording "untrustworthy and unreliable as a whole."

The Appellate Court concluded that the trial court erred in ruling on the admissibility of the recording and the transcript, as opposed to the statement itself. Further, under the plain language of the statute, an innocent malfunction of the recording equipment was insufficient to suppress statement. The trial court should have focused on whether the

missing audio portion made the recording substantially inaccurate, and if so, then determined if the presumption of inadmissibility was overcome by evidence that the statement was voluntarily given and is reliable under subsection (f).

The Appellate Court remanded for a determination by the trial court whether the recording was substantially accurate, and if not, “whether the State established by a preponderance of the evidence defendant’s *statement* is dependable and fit to be relied upon based on the totality of circumstances in this case.”

People v. Morales, 329 Ill.App.3d 97, 768 N.E.2d 84 (1st Dist. 2002) The court affirmed the trial judge's finding that defendant's pretrial statement was voluntary, but noted that it was hampered on review "because the trial court failed to make any factual findings or credibility determinations." The trial court must make clear its factual findings; reviewing courts "should not be required to surmise what factual findings . . . the trial court made."

People v. Centeno, 333 Ill.App.3d 604, 777 N.E.2d 529 (1st Dist. 2002) A defendant whose motion to suppress was denied may rely on evidence presented at trial only if he renewed the suppression motion at trial and asked the trial judge to reconsider the earlier ruling. Because defendant did not make such a request here, he could not rely on the trial evidence in seeking reversal of the order denying his motion to suppress.

People v. McDaniel, 326 Ill.App.3d 771, 762 N.E.2d 1086 (1st Dist. 2001) The trial court's factual findings and credibility determinations on a motion to suppress are reversible only for manifest error. However, de novo review is applied to the legal question of whether suppression was warranted, and where neither factual nor credibility determinations are at issue.

The trial court's credibility findings were against the manifest weight of the evidence. Although the trial judge found credible a police officer's testimony that defendant's mother never asked to see him at the police station, it was "not believable" that defendant's mother stayed at the police station for several hours without asking to see her son, especially when she twice called a police officer at home to ask how to find defendant.

People v. Long, 316 Ill. App. 3d 919, 738 N.E.2d 216, (1st Dist. 2000) Under **Simmons v. United States**, 390 U.S. 377 (1968), a defendant does not waive Fifth Amendment protections by testifying at the hearing on a pretrial motion. If defendant chooses to testify at trial, her testimony at the pretrial motion may be used for impeachment, but may not be introduced by the State in its case in chief.

People v. Strong, 316 Ill.App.3d 807, 737 N.E.2d 687 (3d Dist. 2000) Because at trial defendant renewed his pretrial objection to admission of a statement, the trial testimony could be considered in determining the propriety of the trial court's ruling on the motion to suppress.

People v. Sims, 165 Ill.App.3d 204, 518 N.E.2d 730 (3d Dist. 1988) Trial judge erred in denying defendant's motion to suppress as untimely where it was filed four days before trial. The judge had set an earlier cut-off date for motions, but heard State motions filed after such date. Also, a local circuit court rule requiring eight days notice before a hearing cannot abrogate a defendant's statutory right to file a pretrial motion to suppress an alleged involuntary confession.

People v. Davis, 166 Ill.App.3d 1016, 520 N.E.2d 1220 (4th Dist. 1988) A written statement prepared by the police and signed by defendant was admissible, though defendant claimed that he had not read it. Police officers testified that defendant did appear to read the document. Compare, **People v. Mims**, 204 Ill.App.3d 87, 561 N.E.2d 1101 (1st Dist. 1990) (an unsigned statement).

People v. Busija, 155 Ill.App.3d 741, 509 N.E.2d 168 (1st Dist. 1986) Defendant filed a pretrial motion to suppress certain statements he made to the police. A hearing was held, and the motion was denied. However, the case did not proceed to trial since the charges were dismissed by the State.

Defendant was then charged with different offenses. He filed another pretrial motion, before a different judge, to suppress the same statements. This judge held that defendant was collaterally estopped from relitigating the motion to suppress. Defendant was subsequently convicted.

The trial judge erred. Since the original charges were dismissed, the ruling never became final. Thus, the trial court cannot rely on collateral estoppel to deny a hearing on defendant's motion to suppress. Denial of a second hearing would insulate the prior ruling from review.

People v. Calderon, 101 Ill.App.3d 469, 428 N.E.2d 571 (1st Dist. 1981) The admissibility of a confession or statement may be challenged by either a motion to suppress or an objection at trial.

People v. Outlaw, 75 Ill.App.3d 626, 394 N.E.2d 541 (1st Dist. 1979) Where the evidence supports denial of defendant's motion to suppress his confession, the failure of the trial court to make specific findings of fact and law is not reversible error.

People v. Hall, 40 Ill.App.3d 56, 351 N.E.2d 369 (1st Dist. 1976) Before trial, defendant filed a motion to suppress statements. However, he failed to bring the motion to the attention of the judge or take any steps to obtain a ruling thereon, and did not object at trial. Under these circumstances, he waived any error concerning the admissibility of the statement.

People v. Peck, 18 Ill.App.3d 112, 309 N.E.2d 346 (1st Dist. 1974) Defendant was the only witness to testify at the motion to suppress, but the trial court found his testimony unworthy of belief "because his answers to the court's questions about the time of his arrival at the apartment were unsatisfactory." It was improper for the trial court to disregard defendant's uncontroverted testimony. The State failed to sustain its burden of making out a prima facie case that the confession was voluntary.

People v. Green, 14 Ill.App.3d 972, 304 N.E.2d 32 (1st Dist. 1973) Trial court properly refused to allow defendant to cross-examine policeman as to whether he had memorized the **Miranda** warnings.

People v. Lyons, 9 Ill.App.3d 213, 292 N.E.2d 70 (1st Dist. 1972) Defendant can not urge that his admission was obtained unlawfully where the admission was not used against him.

§10-3

Miranda Warnings

§10-3(a)

Generally

United States Supreme Court

Florida v. Powell, 559 U.S. 50, 130 S.Ct. 1195, 175 L.Ed.2d 1009 (2010) Although **Miranda** warnings are mandatory, the Supreme Court has not dictated specific language to be given. Instead, the relevant inquiry is whether the language chosen by police conveys the information required by **Miranda**.

The warnings given in this case were sufficient to satisfy **Miranda**. The officer informed defendant that he had “the right to talk to a lawyer before answering any of our questions” and “the right to use any of these rights at any time you want during this interview.” The officer included all information required by **Miranda**, and the assurance that defendant could consult with an attorney and exercise his rights at any time reasonably conveyed the right to have an attorney present during the interrogation.

The court rejected the Florida Supreme Court’s holding that the warnings would have given a reasonable person the impression that consultation with an attorney could occur only before the interrogation began. The court acknowledged that many states and the FBI explicitly warn a defendant of the right to have an attorney present during questioning, but found that the express inclusion of such language is not required if the words used by the officer “communicated the same essential message.”

3. See also **APPEAL**, §2-6(a)).

Missouri v. Seibert, 542 U.S. 600, 124 S.Ct. 2601, 159 L.Ed.2d 643 (2004) (Plurality opinion of four justices) **Miranda v. Arizona** mandates that persons subjected to custodial interrogation be warned of their Fifth Amendment right not to give a statement, and requires exclusion of any statements obtained in the absence of such warnings. Conversely, giving **Miranda** warnings and obtaining a waiver generally produces "a virtual ticket of admissibility," because the burden of establishing the involuntariness of a statement made after **Miranda** warnings have been given is generally too great for a litigant to sustain.

In **Oregon v. Elstad**, 470 U.S. 298 (1985), a warned statement made at the police station after an arrest was admissible, although the suspect had made an unwarned statement at his home before being taken to the station. In **Elstad**, the court stressed that the failure to warn had been in good faith.

The plurality refused to apply **Elstad** where, as an interrogation tactic, officers questioned a suspect without giving **Miranda** warnings, obtained a confession, gave warnings, and attempted to obtain a second confession which would be admissible at trial. The purpose of the "question-first, warn-second" tactic is to deprive the suspect of a free and rational choice about whether to speak - in other words, the object "is to render **Miranda** warnings ineffective by waiting for a particularly opportune time to give them, after the suspect has already confessed."

Statements obtained under the "question-first, warn-second" technique are admissible only if a reasonable person in the suspect's position would believe she had a real choice to decline to make a second statement. This test was not satisfied here - both interrogations and confessions occurred at the police station, **Miranda** warnings were given only after the first confession was obtained, the interrogations were separated by only a brief

respite, both interrogations were conducted by the same officer, defendant was not advised that her unwarned statement would be inadmissible at trial, and the officer expressly referred to defendant's confession during the second interrogation. The post-warning statements were inadmissible.

U.S. v. Patane, 542 U.S. 630, 124 S.Ct. 2620, 159 L.Ed.2d 667 (2004) Even where the police fail to give **Miranda** warnings, a Fifth Amendment violation occurs only if the prosecution attempts to introduce an unwarned statement at trial. At that point, exclusion of the statement provides a complete remedy for the **Miranda** violation. The plurality refused to require the suppression of physical evidence found as a result of an unwarned statement. Under existing precedent, evidence derived from an involuntary statement is excluded from evidence.

Where defendant was arrested for harassing his ex-girlfriend, interrupted **Miranda** warnings by stating that he knew his rights, and subsequently admitted that he owned an illegal handgun, the weapon was not required to be suppressed as a fruit of the **Miranda** violation.

New York v. Quarles, 467 U.S. 649, 104 S.Ct. 2626, 81 L.Ed.2d 550 (1984) Court created a "public-safety" exception to the requirement that **Miranda** warnings be given to an in-custody suspect prior to questioning. Following a police chase, suspect who had been carrying a gun was chased into a grocery store and apprehended. He was unarmed at the time of apprehension. Without giving **Miranda** warnings, police asked where the gun was, and the suspect answered, "over there." Police retrieved the gun from a nearby carton.

"Overriding considerations of public safety justify the officer's failure to provide **Miranda** warnings before he asked questions devoted [solely] to locating the abandoned weapon." Compare, **People v. Roundtree**, 135 Ill.App.3d 1075, 482 N.E.2d 693 (1st Dist. 1985) (exception was not applicable where all suspects were handcuffed and secured, and suitcase did not pose any threat to public safety; officer's questions as to ownership of suitcase should have been preceded by **Miranda** warnings); **People v. B.R.**, 133 Ill.App.3d 946, 479 N.E.2d 1084 (1st Dist. 1985) ("public safety" exception applies only in "extremely exigent circumstance" where police have a very "limited time" to neutralize a "volatile situation").

Pennsylvania v. Muniz, 496 U.S. 582, 110 S.Ct. 2638, 111 L.Ed.2d 528 (1990) Law enforcement officers are not required to give an in-custody suspect **Miranda** warnings before asking "routine booking questions" such as name, address, height, weight, eye color, date of birth and current age.

However, an in-custody DUI suspect must be given **Miranda** warnings before being asked whether he knew "the date . . . of your sixth birthday." Such a question required a testimonial response. See also, **People v. Dalton**, 91 Ill.2d 22, 434 N.E.2d 1127 (1982) (police may ask booking questions without giving **Miranda** warnings; defendant's statement of birth date was properly admitted though it proved an element of the offense).

Illinois v. Perkins, 496 U.S. 292, 110 S.Ct. 2394, 110 L.Ed.2d 243 (1990) An undercover police officer posing as a fellow inmate is not required to give **Miranda** warnings to an in-custody inmate-suspect before asking questions that may elicit an incriminating response. Conversations with undercover agents whom the suspect does not believe to be police officers do not implicate the concerns underlying **Miranda** (i.e., "police-dominated atmosphere" and "compulsion"). See also, **People v. Easley**, 148 Ill.2d 281, 592 N.E.2d 1036 (1992); **People v. Johnson**, 197 Ill.App.3d 762, 555 N.E.2d 412 (4th Dist. 1990) (an inmate who is incarcerated

on one charge is not subjected to custodial interrogation when an undercover informant questions him about other charges).

Duckworth v. Eagan, 492 U.S. 195, 109 S.Ct. 2875, 106 L.Ed.2d 166 (1989) Defendant was given proper **Miranda** warnings, and was then told "we have no way of giving you a lawyer, but one will be appointed, if you wish, if and when you go to court." The final phrase did not render inadequate the otherwise proper warnings.

Colorado v. Spring, 479 U.S. 564, 107 S.Ct. 851, 93 L.Ed.2d 954 (1987) Following his arrest on a weapons charge, defendant was given **Miranda** warnings. He signed a written waiver and was questioned not only about the weapons charge, but also about a murder in another state. Defendant made certain admissions about the murder.

Police are not required to inform an accused of all the crimes about which he may be questioned. Mere silence by the police as to the subject of an interrogation is not official "trickery" sufficient to invalidate a waiver of **Miranda** rights.

U.S. v. Washington, 431 U.S. 181, 97 S.Ct. 1814, 52 L.Ed.2d 238 (1977) Grand jury testimony of subpoenaed, putative defendant could be properly used at his subsequent trial, though he had not been informed in advance of his grand jury testimony that he was a potential defendant.

U.S. v. Wong, 431 U.S. 174, 97 S.Ct. 1823, 52 L.Ed.2d 231 (1977) Grand jury testimony of putative defendant could be properly used at his subsequent perjury trial, though he was not given effective warning of his Fifth Amendment privilege.

U.S. v. Mandujano, 425 U.S. 564, 96 S.Ct. 1768, 48 L.Ed.2d 212 (1976) Fifth Amendment gives no protection for the commission of perjury. The privilege against self-incrimination permits a witness to refuse to answer questions until he is given immunity, but does not permit the making of false statements.

Michigan v. Tucker, 417 U.S. 433, 94 S.Ct. 2357, 41 L.Ed.2d 182 (1974) The testimony of a State witness, who was found as a result of a statement defendant made to police without sufficient **Miranda** warnings, was properly admitted. Because the statement taken in violation of **Miranda** was not admitted, defendant's right against compulsory self-incrimination was protected. See also, **People v. Winsett**, 153 Ill.2d 335, 606 N.E.2d 1186 (1992).

Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966) Before any in-custody interrogation, the person must be warned that he has the right to remain silent, that any statement he makes may be used against him and that he has the right to the presence of an attorney (either retained or appointed). In addition, the person must waive his rights before any interrogation takes place.

Illinois Supreme Court

People v. Smith, 2016 IL 119659 When a prison inmate is interrogated, the mere fact of imprisonment is not enough to create "custody" within the meaning of **Miranda**. **Howe v. Fields**, 565 U.S. 499, 132 S. Ct. 1181 (2012). Instead, the trial court must examine and weigh several factors and make an objective determination as to what a reasonable man would perceive if he were in the defendant's position. The factors to be considered include the

location, length, mood and mode of the interrogation; the number of police officers present; any evidence of restraint; the intentions of the officers and the focus of their investigation.

Defendant argued that he was in custody, and therefore entitled to **Miranda** warnings, when he was questioned about throwing a liquid at a correctional officer. Defendant was serving time in solitary confinement at the time of the interview, but was removed from his cell and taken to an office. The interrogator was an Internal Affairs investigator who testified that the purpose of the interview was to ascertain defendant's version of the incident and determine what substance had been thrown on the officer.

Only the investigator and defendant were present during the interview. Defendant was handcuffed, but the officer explained that any prisoner in the segregation unit is handcuffed when taken out of their cell. The investigator stated that the encounter lasted closer to 10 minutes than to 30, and that defendant was free to terminate the interview and leave at any time. The interviewer knew that defendant would receive a "ticket" for the incident, but was not aware of any possible charges outside the prison.

The Supreme Court concluded that under these circumstances, defendant was not in custody. First, it was insignificant that the person who questioned defendant was an officer in a uniform, as such apparel is common place within a prison. Second, the fact that defendant was handcuffed did not establish custody, because persons housed in segregation were placed in handcuffs whenever they were removed from their cell to go elsewhere in the prison. The fact that defendant was in handcuffs did not place any greater burden on his freedom than when he was taken anywhere else in the prison, and defendant did not ask for the handcuffs to be removed. The court also noted that it was reasonable to restrain defendant because the officer was alone while questioning defendant about the alleged battery of another officer.

Third, there was no evidence that defendant would not have been allowed to terminate the encounter if he wished, and the investigator testified that defendant was free to leave at any time. Fourth, the fact that defendant was the focus of the investigation was not sufficient where there was no coercion.

Finally, the interview was not lengthy and in fact took no more than 15 minutes. Under these circumstances, defendant was not in custody. Therefore, **Miranda** warnings were not required.

Defendant's conviction for aggravated battery of a correction's officer and his Class X sentence were affirmed.

People v. Villalobos, 193 Ill.2d 229, 737 N.E.2d 639 (2000) The Fifth Amendment right to the assistance of counsel "does not exist outside the context of custodial interrogation;" "[a]bsent the interplay of custody and interrogation, an individual's privilege against self-incrimination is not threatened." Thus, an attorney appearance form which stated that in the absence of counsel defendant did not wish to participate in any "questioning, identification process or other procedures on any case or matter whatsoever" did not effectively invoke defendant's **Miranda** rights.

People v. Garcia, 165 Ill.2d 409, 651 N.E.2d 100 (1995) Defendant received **Miranda** warnings several times after her arrest, and she gave statements concerning the offense. About 2½ hours after the last set of warnings, defendant underwent booking procedures.

The booking officer had difficulty fingerprinting defendant because her hands were trembling, and asked why defendant was shaking. Defendant responded that "she had never shot anyone before." The officer asked what kind of gun defendant had used and where she had gotten it, and defendant said she had used a friend's .357 Magnum.

The question about why defendant was shaking was an innocent attempt to help her, and was not "custodial interrogation." Moreover, the subsequent questions about the gun did not require fresh **Miranda** warnings.

People ex rel. Waller v. 1989 Ford F350 Truck, 162 Ill.2d 78, 642 N.E.2d 460 (1994) It is an open question whether evidence obtained in violation of **Miranda v. Arizona** can be admitted in forfeiture proceedings. Here, however, defendant's statements did not violate **Miranda** because adequate warnings had been given at the time of his arrest.

People v. Lucas, 132 Ill.2d 399, 548 N.E.2d 1003 (1989) It is improper for the State to introduce evidence of defendant's request to confer with counsel upon questioning by police.

People v. Auilar, 59 Ill.2d 95, 319 N.E.2d 514 (1974) If "a defendant takes the witness stand and admits in substance matters contained in a confession or statement he has given the police, this testimony will be considered to have waived or made harmless any error that may have occurred in the admission of the confession or statement."

People v. Roy, 49 Ill.2d 113, 273 N.E.2d 363 (1971) Both inculpatory and exculpatory statements obtained in violation of **Miranda** are inadmissible. See also, **People v. Holmes**, 53 Ill.App.3d 856, 368 N.E.2d 1329 (4th Dist. 1977).

Illinois Appellate Court

People v. Mora, 2023 IL App (2d) 210653 Prior to trial, defendant filed a motion to suppress his statements to the police. The court granted that motion, in part, suppressing statements that were made prior to the giving of **Miranda** warnings, but denied the motion with regard to defendant's post-**Miranda** statements. On appeal, defendant argued that his post-**Miranda** statements were elicited through the use of an improper "question-first, warn-later" technique and should have been suppressed. He also challenged his **Miranda** waiver as involuntary. The appellate court affirmed.

The court found no evidence that officers engaged in a deliberate question-first, warn-later process to prevent defendant from asserting his **Miranda** rights. Defendant was questioned for only a few minutes before being given **Miranda** warnings. And, his confession to the shooting did not come until approximately 10 hours later.

Further, while improper pre-**Miranda** questioning resulted in the suppression of some statements, none of those statements was a confession or admission of criminal activity. Instead, the pre-**Miranda** statements simply corroborated information which the police already knew. The appellate court agreed with the trial court that the pre-**Miranda** questioning here was case-specific and therefore improper, but rejected the argument that such questioning required suppression of later statements under these circumstances.

The court then looked to the totality of the circumstances with regard to whether defendant's **Miranda** waiver was voluntary. In particular, the court noted that defendant was 24 years old, had prior interactions with the police and the criminal justice system, could read and write English, and did not appear to be under the influence of any substance. Defendant did not ask for an attorney or otherwise invoke his rights during nearly 10 hours of on-and-off interrogation. Thus, the court found he voluntarily waived his rights.

People v. Rodriguez, 2022 IL App (1st) 200315 Generally, claims of ineffective assistance of counsel for failing to file a motion to suppress must be presented in collateral proceedings because the record is insufficient for review on direct appeal. Here, however, the record was

adequate to review defendant's claim that the **Miranda** warnings he was provided were insufficient because he was not specifically told that he could have counsel present during questioning or that he could stop the questioning at any time. The appellate court rejected defendant's claim, following [People v. Macias, 2015 IL App \(1st\) 132039](#), which specifically held that the failure to tell defendant that he could have an attorney present before and during questioning did not render **Miranda** warnings fatally defective.

Similarly, the Appellate Court concluded that the record contradicted any assertion that defendant's statement was involuntary. While defendant was not particularly well-educated, having attended school only through the sixth grade, he was literate. Any health issues defendant had at the time he was questioned were not so significant as to have impacted the voluntariness of his statement. And, while the police told defendant that a confession would be mitigating, they also told him that he was facing charges and would have to go to court regardless of whether he confessed. Given the totality of the circumstances, defendant failed to show that a motion to suppress would have had a reasonable probability of success. Thus, he failed to demonstrate ineffective assistance of counsel.

[People v. McCall, 2021 IL App \(1st\) 172105](#) After his murder conviction, the trial court held a preliminary **Krankel** inquiry on defendant's allegations of ineffective assistance of counsel. The motion was denied without a **Krankel** hearing. A majority of the Appellate Court affirmed.

The majority first held that defendant failed to show possible neglect for failing to file a motion to suppress evidence found in defendant's home, where a triple murder took place. The police did not violate the fourth amendment because the items were found in plain view after a warrantless entry that was justified by the emergency aid exception. As in [People v. Ramsey, 2017 IL App \(1st\) 160977](#), the Appellate Court held that officers who are legally inside a home may recover items in plain view, and it does not matter whether the recovering officers, including evidence technicians, arrive after the emergency has ended. As long as the initial responding officers could have recovered the evidence because it was in plain view, the search complies with the fourth amendment.

Nor did defendant show possible neglect for failing to file a motion to suppress defendant's custodial statements. When detectives brought defendant into an interview room, they told defendant that they'd been looking for him because people in the neighborhood said that defendant had killed his family. Defendant told the detectives that he killed them in self-defense, explaining how it happened. The detectives offered defendant medical attention, left the interview room "for a short time" and then returned and advised defendant of his **Miranda** rights. Defendant provided further statements admitting to the crimes but asserting self-defense.

The failure to file a motion was sound strategy where the defense theory at trial was self-defense, and the custodial statements supported that defense. Thus, there was no reason to suppress the initial statement. Furthermore, the post-warning statement was not elicited via the deliberate "question first, warn later" technique that violates the fifth amendment. The unwarned "interrogation" in this case was a single statement by a detective that the police had been looking for defendant and then a follow-up question later referencing defendant's response. It resembled the permissible interrogation in [Oregon v. Elstad, 470 U.S. 298 \(1985\)](#), and was a far cry from the systematic, exhaustive, psychologically skillful interrogation in [Missouri v. Seibert, 542 U.S. 600 \(2004\)](#). In any event, suppression of the statements would not have affected the outcome of the case. Defendant contended that absent

his statements, he could have pursued a reasonable doubt strategy at trial, but the Appellate Court found the evidence overwhelming.

The dissent would have remanded for a full **Krankel** hearing because trial counsel's explanation for failing to file a **Seibert** motion did not adequately address the issues with the statements. In fact, counsel's explanation betrayed a fundamental misunderstanding of what occurred. The video of the interrogation, which was not played at the preliminary **Krankel** inquiry, plainly showed that there was a pre-warning statement that would have been suppressed, and a post-warning statement that at least arguably could have been suppressed, but counsel's explanation showed she was unaware of these circumstances. The dissent disagreed with the majority's decision to "fill in the blanks" on behalf of trial counsel, noting that the entire purpose of **Krankel** is to provide the Appellate Court with a record on which to evaluate an ineffectiveness claim.

People v. Campbell, 2014 IL App (1st) 112926 Under **McNeil v. Wisconsin**, 501 U.S. 171 (1991) and **People v. Villalobos**, 193 Ill. 2d 229, 737 NE2d 639 (2000), an anticipatory exercise of the right to counsel does not invoke the **Miranda** right to counsel so as to prevent later custodial interrogation. Instead, **Miranda** is invoked only where at the time of the request, the suspect is both in custody and either subject to interrogation or under an imminent threat of interrogation.

Defendant testified that while he was restrained in his home as a search warrant was executed, he asked an officer whether he was under arrest. When he was told that he would be arrested, defendant stated that he wanted to talk to a lawyer. The court concluded that even if defendant's testimony was believed, a request for counsel under these circumstances did not effectively invoke **Miranda** because defendant had not been arrested and was not being subjected to questioning. In order to preclude a subsequent interrogation at the police station, therefore, defendant was required to repeat his request when police initiated an interrogation.

People v. Brannon, 2013 IL App (2d) 111084 Immediately after arresting defendant, the police found foil packets containing a powdery substance on the passenger seat of a car where defendant had been sitting. Without advising defendant of his **Miranda** rights, a police officer asked defendant, "Are you going to continue to lie to us about what you are doing?" Defendant responded, "No, it's my stuff."

Because there was no dispute that the defendant was in custody and that his statement was made in response to a question designed to elicit an incriminating response, the Appellate Court agreed that the statement was inadmissible due to the absence of any **Miranda** warnings.

Defendant's comprehensive and detailed statement at the police station over an hour later after being advised of his rights was not obtained by deliberate use of a question-first, warn-later technique to circumvent **Miranda**. Evidence to be considered in determining whether the police conduct was deliberate include: the officer's testimony, the timing, setting, and completeness of the prewarning interrogation, the continuity of police personnel, and the overlapping content of the prewarning and post-warning statements.

The circumstances support the inference that the first interrogation was spontaneous and not part of a deliberate plan to avoid **Miranda**. The questioning occurred as part of an on-the-street encounter in a high-crime area involving an uncooperative defendant. The police were trying to determine whether defendant passenger was involved in the drug offenses. The prewarning interrogation consisted of one question designed to get defendant

to tell the truth, as compared to the more extensive and focused post-warning interrogation. While the same officers were involved in both interrogations, this factor alone is insufficient to show that the officers' conduct was deliberate.

People v. Wright, 2011 IL App (4th) 100047 Although **Miranda** applies to a traffic stop in which the defendant is subjected to restraints comparable to those associated with a formal arrest, the mere fact that the defendant is detained during a traffic stop does not equate to custody for **Miranda** purposes. Here, defendant was not "in custody" where he was transported in the rear seat of a squad car, by an officer who had arrested him on previous occasions, to a nearby location where defendant had parked his SUV. The court found that defendant voluntarily entered the car, sat uncuffed with the rear windows open, and knew that he was being taken only a short distance. The court also stressed that defendant was not subjected to any restraints comparable to those associated with a formal arrest.

Because defendant was not in custody, his statements were admissible despite the absence of **Miranda** warnings.

People v. Hunt, 403 Ill.App.3d 802, 939 N.E.2d 1039 (1st Dist. 2010) The due process clause of the Illinois Constitution requires that the police inform a suspect that his attorney is present in the police station and asking to see him. Where the police fail to communicate that information, defendant has not validly waived his right to counsel guaranteed by the Illinois constitutional right against self-incrimination. **People v. McCauley**, 163 Ill. 2d 414, 645 N.E.2d 923 (1994).

Defendant was in custody on an unrelated charge. The police transferred him from the county jail to the police station where they arranged a meeting between defendant and a police informant. Their conversations were monitored and recorded by the police with judicial authorization. Shortly after their conversations began, an attorney who represented defendant on his unrelated charge appeared at the station and asked to speak with the defendant. He was not allowed to speak with the defendant until 45 minutes after his arrival at the station, following which he and defendant informed the police that defendant was invoking his right to remain silent and to consult with counsel. A week later, defendant was brought back to the police station and two more conversations with the informant were monitored and recorded.

Relying on **People v. Perkins**, 248 Ill.App.3d 762, 618 N.E.2d 1275 (5th Dist. 1993), and 725 ILCS 5/103-2.1, the Appellate Court found that defendant was subject to custodial interrogation on both occasions as a matter of state law because he was involuntarily transported to the police station to be interrogated by an undercover police agent who asked questions likely to elicit an incriminating response. Since there was custodial interrogation, the police had no power to prevent or delay communication of defendant and his lawyer during the first interrogation by the informant.

Because defendant invoked his right to counsel at the first interrogation, defendant had a right to consult with his counsel prior to the second interrogation, and was denied that right when there was no consultation. The custodial interrogations were also conducted in violation of defendant's state constitutional right not to be held incommunicado and his state constitutional and statutory rights to counsel. Ill.Const. 1970, Art. I, §§2, 10; 725 ILCS 5/103-4.

The Appellate Court affirmed suppression of the last 45 minutes of the first interrogation and the entirety of the interrogations that were conducted a week later.

People v. McCarron, 403 Ill.App.3d 383, 934 N.E.2d 76 (3d Dist. 2010) Police must provide **Miranda** warnings to a person they seek to question only if the person is in custody. The determination of whether an individual is in custody is an objective one, which requires a court to examine the totality of the circumstances and assess whether a reasonable person in that situation would have felt free to terminate the encounter with the police.

Here, defendant was not in when police questioned her at the hospital. She was not arrested, restrained, or placed under police guard at the hospital. The first officer left after defendant told him that she had admitted to her husband that she had killed her daughter, but indicated that was all she wanted to say. Two other officers who attempted to question defendant told her she was not under arrest and also left when defendant said she did not want to talk. Defendant told those officers that they could return the next day and defendant told a friend that she intended to confess to the police the next day. The following day, defendant's husband and a DCFS representative were present when defendant did make a statement to the police. Therefore a reasonable person in defendant's position would have felt free to terminate the encounter with the police.

A question-first, warn-later strategy occurs where the police elicit an incriminating response from an individual without providing **Miranda** warnings, then provide the **Miranda** warnings and again elicit an incriminating statement. When the police deliberately use this technique, any statement made following the **Miranda** warnings is inadmissible, absent curative measures. The court concluded that a second statement made by defendant to the police one hour after the first statement, and preceded by **Miranda** warnings, was admissible because the police did not act deliberately to circumvent **Miranda**. The police did not act forcefully in obtaining a statement from defendant in the period of time between the offense and the first statement. The police intended to obtain only one statement from defendant. The second statement was taken only because the first statement was not recorded and the State's attorney requested a recorded statement.

People v. Barnett, 393 Ill.App.3d 556, 913 N.E.2d 1221 (3d Dist. 2009) Several statements made by the defendant were in response to custodial interrogation.¹ After defendant's arrest for DUI, the officer asked who owned the vehicle defendant had been driving, despite having already obtained that information through a computer check of the vehicle registration number. The officer testified that he needed to know the identity of the owner to complete the tow report, but admitted that he would have used the information from the computer check rather than relying on anything defendant said.

In addition, statements at the police station, in which defendant said that he was on medication and was not supposed to drink, were properly found by the trial court to have been the result of custodial interrogation. The officer testified that he could not recall most of the questions he asked during a 20-minute DUI observation period, and the court found it reasonable to infer that the officer questioned defendant concerning his medical condition. "Given defendant's admitted consumption of alcohol, any questions regarding his seizures and ingesting medication could have induced defendant to incriminate himself."

The trial court's suppression order was affirmed.

People v. Degorski, 382 Ill.App.3d 135, 886 N.E.2d 1070 (1st Dist. 2008) New **Miranda** warnings are required only if, considering the totality of the circumstances, previous warnings are so "stale" as to create a substantial risk that the suspect was unaware of his rights during an interrogation.

Where the longest period between full **Miranda** warnings was 18 hours, during which time defendant received "reminders" of his constitutional rights, there was no substantial probability that defendant was unaware of his rights when he gave a videotaped statement. Defendant was given breaks to use the bathroom, offered food and drink, and allowed to sleep. Defendant referred to the warnings during the videotaped statement, demonstrating his knowledge of his rights. Because defendant knew he was being questioned as a suspect in a murder and "nothing occurred in the 18 hours that would have led defendant to believe that the nature of his detainment or questioning had changed," there was no basis to find that the **Miranda** warnings had become stale.

The court added that this interlocutory appeal would have been unnecessary had the officers merely given full **Miranda** warnings at the beginning of the videotaped statement. "Reminders" of previously administered **Miranda** warnings are not a substitute for full warnings.

People v. Lowenstein, 378 Ill.App.3d 984, 883 N.E.2d 690 (4th Dist. 2008) Where the police deliberately decide, as an investigative technique, to refrain from admonishing a defendant of his **Miranda** rights, a subsequent confession obtained after **Miranda** warnings are given may be inadmissible. (See **Missouri v. Seibert**, 542 U.S. 600 (2004)). However, where the failure to give **Miranda** is not a deliberate investigative technique, **Oregon v. Elstad**, 470 U.S. 298 (1985) holds that the post-**Miranda** statement is admissible if it is voluntary.

Here, defendant's second statement was voluntary where he signed a waiver form indicating that his waiver was made freely and voluntarily, there was no evidence that police failed to give **Miranda** warnings as a deliberate tactic, and the trial court found that the statement was voluntary and that the officers were not acting improperly.

People v. Dennis, 373 Ill.App.3d 30, 866 N.E.2d 1264 (2d Dist. 2007) The "public safety" exception holds that before giving **Miranda** warnings, police may ask questions necessary to secure their own safety or that of the public.

Where defendant had been in custody for about 90 minutes and was being treated at a hospital for a gunshot wound to his leg, the "public safety" exception did not authorize officers to interrogate him about the whereabouts of a weapon which defendant had discarded before his arrest. The "public safety" exception is intended to allow immediate questioning where there is a "volatile" situation requiring immediate action to protect the safety of either the officers or innocent bystanders.

People v. Montgomery, 375 Ill.App.3d 1120, 875 N.E.2d 671 (5th Dist. 2007) Following Justice Kennedy's concurrence in **Missouri v. Seibert**, 542 U.S. 600 (2004), the court held that when police deliberately fail to give **Miranda** warnings until after they obtain a statement, any statement made after **Miranda** warnings are administered must be excluded unless sufficient "curative measures" were taken to compensate for the failure to give **Miranda** warnings in a timely fashion. Such "curative measures" might include a substantial break in time and circumstances between the unwarned and warned statements, or an explanation that the unwarned statement will likely be inadmissible.

Police deliberately withheld **Miranda** warnings as an investigative technique where an officer testified that **Miranda** warnings were not given because the interrogation was merely "informal" and officers "waited" to provide a **Miranda** waiver form until after defendant confessed to several offenses in multiple jurisdictions. The court considered several factors, including: (1) the completeness and detail of the questions and answers in the unwarned statement, (2) the overlapping content of the warned and unwarned statements,

(3) the timing and setting of both statements, (4) the continuity of police personnel, and (5) the degree to which the interrogator's questions treated the post-warning statement as a continuation of the unwarned interrogation.

The **Miranda** warnings - when finally given - were not effective in providing defendant a genuine choice whether to continue the interrogation. Warnings were first given after several hours of interrogation, during which defendant confessed to "everything that [he] had done" in several jurisdictions. All of the questioning occurred in a single room during a 12-hour period, and one of the officers who was present during the unwarned questioning was also present when defendant gave a confession during subsequent interrogation by officers from a different jurisdiction. Another officer had earlier advised defendant to cooperate with officers from other jurisdictions. Finally, defendant was awakened from sleep so he could be interviewed by officers from two other jurisdictions.

Because there was no substantial break in time or any meaningful change in circumstances, and because defendant was never advised that his pre-warned statements would be inadmissible, the **Miranda** warnings did not provide a genuine choice whether to exercise his Fifth Amendment rights at the subsequent interrogation.

People v. DeSantis, 319 Ill.App.3d 795, 745 N.E.2d 1 (1st Dist. 2000) Where defendant is not in custody when questioned at the police station, neither the Fifth Amendment right to counsel nor the protections embodied in **Miranda** are applicable. Thus, police are not required to end the interview even upon a clear and unequivocal request for counsel.

Even if initial questioning about the gun had been allowed under the "public safety" exception, that exception would not have applied to statements which defendant made during interrogation which occurred "after defendant became visually upset and began to cry." The continued questioning, which included asking defendant if he was "okay" and "what was wrong," had no bearing on the weapon's location or the need for public safety.

People v. Brady, 138 Ill.App.3d 238, 485 N.E.2d 1159 (1st Dist. 1985) Where the State does not seek to introduce any statement of defendant at trial, it is error for officer to testify that he gave defendant **Miranda** warnings. Such testimony "was irrelevant and improper."

People v. Bachman, 127 Ill.App.3d 179, 468 N.E.2d 817 (2d Dist. 1984) Statements that defendant made without **Miranda** warnings during presentencing interviews were admissible at sentencing. "**Miranda** warnings are not required in connection with the submission by a defendant to a routine authorized presentence interview."

§10-3(b)

Non-Police Interrogation

United States Supreme Court

Arizona v. Mauro, 481 U.S. 520, 107 S.Ct. 1931, 95 L.Ed.2d 458 (1987) Defendant was given **Miranda** warnings, and said he did not want to make a statement without counsel. Police then terminated the interrogation.

Later, defendant's wife came to the station and asked to speak with defendant. Police allowed her to do so, in the presence of an officer. The officer placed a tape recorder in plain view on the desk and recorded various incriminating statements defendant made to his wife.

Defendant's statements to his wife were properly admissible because there was no police interrogation. Police did not send the wife to see defendant for the purpose of eliciting

incriminating statements, but rather yielded to her request. See also, [People v. Lucas](#), 132 Ill.2d 399, 548 N.E.2d 1003 (1989).

Illinois Supreme Court

[People v. Hunt](#), 2012 IL 111089 In [People v. McCauley](#), 163 Ill. 2d 414, 645 N.E.2d 923 (1994), the court held there is no knowing waiver of the right to counsel when police, prior to or during custodial interrogation, refuse an attorney access to a suspect if the suspect has not been informed that the attorney was present and sought to consult with him. This rule is based on the Illinois constitutional guarantees against self-incrimination and to due process. Ill. Const. 1970, art. I, §§2, 10.

[McCauley](#) superimposed a state-specific right onto the existing **Miranda** framework. The constitutional justification for the **Miranda** regime is police custodial interrogation. [McCauley](#) did not reject this foundation by taking the police out of the equation. Accordingly, like a suspect's **Miranda** rights, a suspect's [McCauley](#) right arises only during police custodial interrogation.

Here, defendant was not subjected to police custodial interrogation when he had a conversation with an undercover informant and fellow inmate. Therefore, both **Miranda** and [McCauley](#) are inapplicable. The court expressly overruled [People v. Perkins](#), 48 Ill. App. 3d 762, 618 N.E.2d 1275 (5th Dist. 1993), which held that where a suspect has asserted his fifth amendment right to counsel, he cannot be questioned by undercover agents on a separate, unrelated, and uncharged offense while in jail, without the presence of an attorney and an opportunity to waive counsel. As the United States Supreme Court held in [Illinois v. Perkins](#), 496 U.S. 292 (1990), **Miranda** warnings were not required because the defendant was not subjected to police custodial interrogation. It follows that defendant had no fifth amendment right to counsel. It was irrelevant that he requested counsel when he was arrested for an unrelated offense.

[People v. Hawkins](#), 53 Ill.2d 181, 290 N.E.2d 231 (1972) Statements made by a suspect in response to interrogation by a private citizen are admissible even in the absence of **Miranda** warnings.

Illinois Appellate Court

[People v. Martin](#), 2020 IL App (1st) 181217 While executing a search warrant in defendant's home, police handcuffed defendant and his family before asking defendant if he'd ever been subject to a search warrant. Defendant stated "no." As the officer explained the process, defendant told him to "come on" and led him to a gun hidden in his bedroom. The gun formed the basis for his armed habitual criminal conviction.

Counsel was not ineffective for failing to move to suppress the gun as the fruit of an unlawful custodial interrogation without **Miranda** warnings. Defendant had not been "subject to interrogation" because the officer's question or statements were not reasonably likely to elicit an incriminating response. Preliminary on-the-scene questioning does not require **Miranda** warnings.

[People v. Fuller](#), 319 Ill.App.3d 180, 743 N.E.2d 1094 (5th Dist. 2001) Under 720 ILCS 5/16A-5, a merchant with "reasonable grounds" to believe that retail theft has been committed may detain the alleged perpetrator to request and verify identification, make "reasonable inquiry" about any unpurchased merchandise, conduct a "reasonable investigation" concerning the ownership of such merchandise, inform a police officer of the

detention, and surrender custody of the alleged perpetrator. A suspect's statements need not be suppressed because store security personnel acting under §16A-5 failed to give **Miranda** warnings.

Miranda applies where law enforcement officers conduct custodial interrogations of criminal suspects; the mere fact that a private citizen acts pursuant to a state statute does not constitute "state action." In the absence of any evidence that the security personnel "acted in a coordinated effort" or "pursuant to a preexisting plan" which "involved the exercise of functions exclusively reserved to the State," no "state action" occurred.

People v. Kerner, 183 Ill.App.3d 99, 538 N.E.2d 1223 (5th Dist. 1989) **Miranda** warnings were required where defendant, who was suspected of a sexual offense against a child, was questioned by a DCFS investigator.

People v. Dresing, 67 Ill.App.3d 109, 384 N.E.2d 575 (2d Dist. 1978) **Miranda** warnings were required where defendant, an inmate in a work release center, was questioned by his work supervisor.

People v. Baugh, 19 Ill.App.3d 448, 311 N.E.2d 607 (4th Dist. 1974) Defendant was arrested for suspected forgery, and shortly thereafter was taken to the home of the complaining witness and identified in a show-up. Immediately after the show-up, the lawyer for the complaining witness asked defendant certain questions without giving **Miranda** warnings.

While there may not have been an official affiliation existing between the lawyer and police, an affiliation arose from their joint actions: the lawyer was present at the sheriff's office when defendant was arrested, was present at the show-up and interrogated defendant in the presence of the police. Thus, defendant's answers to the lawyer's questions should not have been admitted.

§10-3(c) "In custody"

United States Supreme Court

Howes v. Fields, 565 U.S. 499, 132 S.Ct. 1181, 182 L.Ed.2d 17 (2012) Under **Miranda v. Arizona**, a suspect who is subjected to custodial interrogation must be informed before the interrogation that he has the right to remain silent, that any statement he makes may be used as evidence, and that he has the right to retained or appointed counsel. The court rejected the rule adopted by the Sixth Circuit Court of Appeals – that removing a prisoner from the general prison population and questioning him about criminal conduct which occurred outside the prison is necessarily custodial for **Miranda** purposes. The court stressed that whether questioning of a prisoner constitutes "custody" is determined under all of the circumstances, not merely by the fact that the prisoner is incarcerated on an unrelated conviction and is questioned in private. A prisoner is not in "custody" for **Miranda** purposes if he is free to terminate the interrogation and return to general population.

The question in applying **Miranda** in contexts other than station house questioning is whether the environment creates an inherently coercive atmosphere similar to that which led to the rule in **Miranda**. The mere fact of imprisonment does not create an inherently coercive atmosphere because: (1) questioning an inmate does not usually create the type of shock which often accompanies an arrest; (2) a person who is already serving a sentence is unlikely to speak to officers out of a desire to obtain a prompt release; and (3) a prisoner likely

knows that law enforcement officers who question him on unrelated charges lack authority to affect the duration of his current sentence. Questioning a prisoner in private does not have the same coercive effect as questioning a suspect outside the presence of supportive friends or family; “[f]ellow inmates are by no means necessarily friends.”

Here, the defendant was not in “custody” for **Miranda** purposes when he was questioned concerning alleged criminal activity which occurred before he was incarcerated. Several factors favored a finding that defendant was in custody defendant didn’t consent to the questioning, and was not told that he was free to decline to speak, the interview lasted five to seven hours, the deputies who questioned the respondent were armed, one of the deputies used a sharp tone and profanity. But these factors were offset by the fact that defendant was told several times that he could go back to his cell whenever he wanted, he was not threatened or physically restrained, the interview occurred in a well-lighted, averaged-sized room where the door was left open some of the time, and defendant was offered food and water. Thus, a reasonable person would have felt free to terminate the interview and ask to be returned to his cell, and the officers who questioned him did not err by failing to give **Miranda** warnings.

J.D.B. v. North Carolina, 564 U.S. 261, 131 S.Ct. 2394, 180 L.Ed.2d 310 (2011) Because children are less mature and responsible than adults and are more susceptible to the pressures of custodial interrogation, a child’s age is relevant to determining whether interrogation is “custodial.” The court noted, however, that age is a relevant consideration only if known to the officer at the time of the questioning or if the child’s age would have been apparent to a reasonable officer.

The cause was remanded to determine whether a 13-year-old seventh grader was “in custody,” and therefore entitled to **Miranda** warnings, where he was removed from class, taken to a closed conference room with two police officers and two school administrators, and questioned about criminal activity.

Yarborough v. Alvarado, 541 U.S. 652, 124 S.Ct. 2140, 158 L.Ed.2d 938 (2004) The U.S. Supreme Court has never held that a suspect's age and experience are proper factors to consider in applying the objective standard for determining whether interrogation is custodial. California state courts did not apply **Miranda** unreasonably by finding that a minor was not in custody at the time of his statements concerning a murder.

Whether a suspect is in custody for **Miranda** purposes depends on whether a reasonable person in the same situation would feel that he was free to leave. Jurists may disagree as to whether a reasonable person in the petitioner's position would have felt free to leave. Defendant was brought to the police station by his parents, was not threatened with arrest, and was interviewed by a single officer who appealed to defendant to tell the truth and help the police. Defendant's parents remained in the lobby during the interview, which focused on the crimes of an accomplice rather than on those of defendant. The officer twice asked defendant if he wanted to take a break, and allowed him to go home with his parents at the end of the interview. "All of these objective facts are consistent with an interrogation environment in which a reasonable person would feel free to terminate the interview and leave."

While some evidence suggested that defendant was not free to leave - he was interviewed for two hours, the officer conducting the interview did not tell defendant he could go, defendant was brought to the police station by his legal guardians rather than coming on his own, and defendant claimed that his parents asked to attend the interview but were

refused - the state court's determination that defendant was not in custody could not be deemed unreasonable.

Stansbury v. California, 511 U.S. 318, 114 S.Ct. 1526, 128 L.Ed.2d 293 (1994) Whether a suspect is "in custody" for **Miranda** purposes depends on whether a reasonable man in the suspect's position would have believed that he was in custody. In making this determination, only the objective circumstances surrounding the interrogation are relevant. The interrogating officer's subjective beliefs are not to be considered unless they were somehow communicated to defendant.

Pennsylvania v. Bruder, 488 U.S. 9 109 S.Ct. 205, 102 L.Ed.2d 172 (1988) A curbside stop of a motorist for a routine traffic offense, although a seizure, does not constitute custody for **Miranda** purposes. See also, **People v. Nunes**, 143 Ill.App.3d 1072, 494 N.E.2d 202 (2d Dist. 1986).

Minnesota v. Murphy, 465 U.S. 420, 104 S.Ct. 1136, 79 L.Ed.2d 409 (1984) Defendant was sentenced to probation with the requirement that he participate in a treatment program for sex offenders. During treatment, defendant told a counselor that he had committed a rape and murder seven years earlier. The counselor relayed this information to defendant's probation officer.

When the probation officer met with defendant, he told defendant about the counselor's information. Defendant became angry about this "breach of confidence" and said that he "felt like calling a lawyer." However, during the meeting defendant admitted that he had committed the rape and murder.

Miranda warnings were not required because defendant was not "in custody." Further, since defendant "revealed incriminating information instead of timely asserting his Fifth Amendment privilege, his disclosures were not compelled incrimination. Because he had not been compelled to incriminate himself, [defendant] could not successfully invoke the privilege to prevent the information he volunteered to his probation officer from being used against him in a criminal proceeding."

See also, **People v. Pettit**, 97 Ill.App.3d 692, 423 N.E.2d 513 (2d Dist. 1981).

Berkemer v. McCarty, 468 U.S. 420, 104 S.Ct. 3138, 82 L.Ed.2d 317 (1984) **Miranda** requirements are applicable to persons arrested for misdemeanor offenses; however, persons temporarily detained pursuant to routine traffic stops are not "in custody" for purposes of **Miranda** and need not be given warnings before questioning.

California v. Beheler, 463 U.S. 1121, 103 S.Ct. 3517, 77 L.Ed.2d 1275 (1983) Defendant was not "in custody" where, though he was a suspect, he voluntarily came to the police station and was allowed to leave after a brief interview.

Oregon v. Mathiason, 429 U.S. 711, 97 S.Ct. 711, 50 L.Ed.2d 714 (1977) Defendant was not "in custody" or "otherwise deprived of his freedom of action in any significant way"; he voluntarily came to the police station in response to a telephone request by police, and he was told he was not under arrest. **Miranda** warnings were not required.

Beckwith v. U.S., 425 U.S. 341, 96 S.Ct. 1612, 48 L.Ed.2d 1 (1976) A taxpayer was interviewed in a private home by IRS agents concerning potential criminal income tax

violations, without being given **Miranda** warnings. **Miranda** does not apply to interrogation in "non-custodial" circumstances even after the investigation has focused on the suspect.

During non-custodial interrogation, police may overbear a person's will to resist and obtain confessions that are not freely self-determined. "When such a claim is raised," the reviewing court must "examine the entire record and make an independent determination of the ultimate issue of voluntariness." See also, **People v. Bury**, 199 Ill.App.3d 207, 556, N.E.2d 778 (4th Dist. 1990).

Orozco v. Texas, 394 U.S. 324, 89 S.Ct. 1095, 22 L.Ed.2d 311 (1969) **Miranda** warnings were required before questioning defendant in his own bedroom; he was under arrest and was not free to leave.

Mathis v. U.S., 391 U.S. 1, 88 S.Ct. 1503, 20 L.Ed.2d 381 (1968) A person who is in custody for a charge other than the one under investigation is "in custody" for **Miranda** purposes.

Hoffa v. U.S., 385 U.S. 293, 87 S.Ct. 408 17 L.Ed.2d 374 (1966) Statements made by defendant in his hotel room, to an ostensible friend who was a police informer, were admissible despite the absence of **Miranda** warnings. Defendant was not in custody and there was no claim of coercion.

Illinois Supreme Court

People v. Logan, 2024 IL 129054 During the investigation into the death of defendant's 19-month-old son, she participated in a video-recorded re-enactment of her discovery of the child's death. After defendant was arrested and charged with first degree murder in the child's death, she filed a motion to suppress the video re-enactment, arguing that it amounted to a custodial interrogation without **Miranda** warnings having been provided.

At a hearing on the motion, a DCFS investigator testified that she told defendant, "we need to do a re-enactment. We do that in all of our own child death cases." Defendant was upset about having to go back to the apartment where her son died for the re-enactment, and she did not want to do it, but she didn't outright refuse. Detective Eric Matthews testified that the re-enactment was arranged at the request of the pathologist who performed the child's autopsy, Dr. Scott Denton. When defendant arrived at the apartment, she was accompanied by her other son and Hope Taylor, the child's grandmother. Taylor was told to wait outside with the boy.

The re-enactment lasted a little more than half an hour and consisted largely of Detective Matthews asking defendant questions about what occurred on the night of the child's death. In addition to Detective Matthews and the DCFS investigator, two additional police officers and an additional DCFS investigator were present in the apartment. Defendant testified that she did not believe she had a choice whether to participate. Defendant was permitted to leave with Taylor after the re-enactment and was not charged and arrested until several days later. The trial court ultimately denied the motion to suppress, finding that the encounter was not custodial and therefore did not require **Miranda** warnings be given. In reaching this conclusion, the court acknowledged that it was "somewhat troubled by the process."

Defendant was subsequently convicted at a jury trial. Evidence at trial included the video re-enactment and testimony from the pathologist that the child's death was due to asphyxia by compression and smothering and not the result of the child having become entangled in his bedding as had been suggested in the re-enactment. Further evidence was

that defendant told the police she had been planning to get up during the night to give the child albuterol breathing treatments for a cold, as she had been doing for the previous four nights, but no albuterol vials, either empty or full, were found during a search of the home. Additional evidence at trial tended to suggest that defendant was having financial problems at the time of the child's death, that she had taken out a \$25,000 life insurance policy on the child several months prior to his death, and that she contacted her insurance agent to file a claim on the morning after the child's death. Finally, data extracted from defendant's phone revealed that someone had searched, "how do you suffocate" on her phone on the morning before the child's death, though defendant testified that she had performed that search after the child died.

On appeal, defendant asserted error in the denial of the motion to suppress. She raised that issue as plain error and as ineffective assistance of counsel because counsel had failed to include it in the post-trial motion, resulting in forfeiture. The supreme court affirmed.

A forfeited issue may be reviewed under the plain-error doctrine (1) where the evidence is so closely balanced that the error alone threatened to tip the scales of justice against defendant, regardless of the seriousness of the error, or (2) where the error was so serious that it affected the fairness of defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence. Under either prong, the court first looks to whether an error even occurred. And, here, the court found that it had.

The video re-enactment was a custodial interrogation under the totality of the circumstances here. The police chose the time and location for the re-enactment. Defendant was told that she had to participate and was never told she was free to leave or refuse to answer questions. Several additional law enforcement officers were present, and defendant's child's grandmother, whom she described as a "mother figure" to her, was forced to wait outside. The re-enactment was a police-dominated environment where Detective Matthews did all of the questioning and directed defendant's actions in re-enacting the events under investigation. Additionally, the videotaping of the encounter contributed to the atmosphere of formality. Thus, defendant's motion to suppress should have been allowed.

But, the court concluded that the error did not amount to plain error under either prong. First, the court found that the evidence was not closely balanced where the pathologist testified that the death was caused by smothering and compression and was not accidental, defendant was having financial problems and had taken out a life insurance policy on the child, and defendant's phone data showed a search about suffocation on the morning before the child's death. And, the court found that **Miranda** violations are generally subject to harmless error review and thus do not rise to the level of "structural error" required to meet the second prong of the plain error test.

The court went on to hold that defendant was not denied effective assistance of counsel because, even if counsel's performance was deficient, she could not demonstrate prejudice. More specifically, even if the challenged evidence had been excluded, it would not have changed the outcome at trial because the remaining evidence of guilt was overwhelming.

People v. Smith, 2016 IL 119659 When a prison inmate is interrogated, the mere fact of imprisonment is not enough to create "custody" within the meaning of **Miranda**. **Howe v. Fields**, 565 U.S. 499, 132 S. Ct. 1181 (2012). Instead, the trial court must make an objective determination as to what a reasonable man would perceive if he were in the defendant's position. The factors to be considered include the location, length, mood and mode of the interrogation; the number of police officers present; any evidence of restraint; the intentions of the officers and the focus of their investigation.

Defendant argued that he was in custody, and therefore entitled to **Miranda** warnings, when he was questioned about throwing a liquid at a correctional officer. Defendant was serving time in solitary confinement at the time of the interview, but was removed from his cell and taken to an office. The interrogator was an Internal Affairs investigator who testified that the purpose of the interview was to ascertain defendant's version of the incident and determine what substance had been thrown on the officer.

Only the investigator and defendant were present during the interview. Defendant was handcuffed, but the officer explained that any prisoner in the segregation unit is handcuffed when taken out of their cell. The investigator stated that the encounter lasted closer to 10 minutes than to 30, and that defendant was free to terminate the interview and leave at any time. The interviewer knew that defendant would receive a "ticket" for the incident, but was not aware of any possible charges outside the prison.

The Supreme Court concluded that under these circumstances, defendant was not in custody. First, it was insignificant that the person who questioned defendant was an officer in a uniform, as such apparel is common place within a prison. Second, the fact that defendant was handcuffed did not establish custody, because persons housed in segregation were placed in handcuffs whenever they were removed from their cell to go elsewhere in the prison. The fact that defendant was in handcuffs did not place any greater burden on his freedom than when he was taken anywhere else in the prison, and defendant did not ask for the handcuffs to be removed. The court also noted that it was reasonable to restrain defendant because the officer was alone while questioning defendant about the alleged battery of another officer.

Third, there was no evidence that defendant would not have been allowed to terminate the encounter if he wished, and the investigator testified that defendant was free to leave at any time. Fourth, the fact that the defendant was the focus of the investigation was not sufficient where there was no coercion.

Finally, the interview was not lengthy and in fact took no more than 15 minutes. Under these circumstances, defendant was not in custody. Therefore, **Miranda** warnings were not required.

Defendant's conviction for aggravated battery of a correction's officer and his Class X sentence were affirmed.

In re D.L.H., Jr., 2015 IL 117341 The nine-year-old defendant, who had significant intellectual impairments, was not in custody for purposes of **Miranda**. The interrogations took place in familiar surroundings - at the kitchen table of his home. Only one officer was present. He wore his service weapon but was not in uniform and used a conversational tone. Defendant's father was present. The interrogations each lasted 30-40 minutes and took place in the early evening.

Defendant's age, intelligence and mental makeup favored a finding of custody, but was only one factor, and defendant did not ask the Court to adopt a bright-line rule that all nine-year-old defendants are necessarily and always in custody. The officer was unaware of defendant's intellectual impairments and the **Miranda** custody analysis does not require officers to consider circumstances that are unknowable to them. Accordingly, defendant was not in custody and **Miranda** warnings were not required.

However, the court went on to find that the second statement was not voluntary. The Court suppressed the second statement and remanded the cause to the Appellate Court to conduct a harmless error analysis on the erroneous admission of that statement.

People v. Slater, 228 Ill.2d 137, 886 N.E.2d 986 (2008) In reviewing the trial court's ruling on a motion to suppress, findings of fact and credibility are accorded great deference and will be reversed only if against the manifest weight of the evidence. The ultimate question posed by the legal challenge to the trial court's ruling is reviewed de novo, however.

Defendant was questioned three times on the same afternoon. The first interview was intended to obtain defendant's consent so a DCFS investigator and two police officers could talk to defendant's stepdaughter about possible sexual abuse. After the officers concluded that both defendant and the stepdaughter were lying, a second interview was conducted during which defendant disclosed that she was aware of the abuse.

At that point the interview was terminated and defendant was taken to the police station, where she was given **Miranda** warnings and questioned further. Eventually she gave a videotaped confession.

Defendant was not "in custody" during the second interrogation. Defendant drove herself to the Advocacy Center where the first two interrogations occurred. The second interrogation lasted only 10 to 15 minutes, and ended when defendant gave answers that indicated that she might have committed a crime. The door to the room was closed only after defendant began to cry, for privacy and to avoid disturbing others. Although the investigator told defendant that her stepdaughter could be removed from the home if DCFS believed she was in danger, he was merely apprising defendant of the next step in the investigation, not threatening to remove the stepdaughter from defendant's custody. Additionally, the Advocacy Center is a less intimidating location than a police station.

There was no indicia of formal arrest procedures, and defendant was found fit to stand trial (although she suffered from some mental difficulties). Under these circumstances, a reasonable innocent person would have believed that she was free to terminate the second interrogation and leave the advocacy center. Because defendant was not in custody, she was not entitled to **Miranda** warnings.

People v. Villalobos, 193 Ill.2d 229, 737 N.E.2d 639 (2000) The Fifth Amendment right to the assistance of counsel "does not exist outside the context of custodial interrogation."

People v. Melock, 149 Ill.2d 423, 599 N.E.2d 941 (1992) Several factors are relevant to whether defendant was "in custody," including the time and place of the confrontation, the number of officers present, the presence or absence of defendant's family or friends, any indicia of formal arrest (such as display of force or weapons, physical restraint, fingerprinting or booking) and the manner by which the individual arrived at the place of interrogation. Although custody is a different question than whether a defendant has been arrested under the Fourth Amendment, the focus should be on the perception of a reasonable man in defendant's position. See also, **U.S. v. Smith**, 3 F.3d 1088 (7th Cir. 1993) (because **Miranda** applies whenever defendant's freedom of movement is restricted in any appreciable way, the question of "custody" is "much narrower" than the issue in a Fourth Amendment case, and permits inquiry only into a "severely limited" number of factors); **In re J.W.**, 274 Ill.App.3d 951, 654 N.E.2d 517 (1st Dist. 1995) (same).

People v. Patterson, 146 Ill.2d 445, 588 N.E.2d 1175 (1992) Defendant, a prison inmate, was placed in segregation for six months after two shanks were found in his cell. He was subsequently taken to the office of a prison investigator, where he was interviewed without being given **Miranda** warnings. He remained handcuffed throughout the interview.

The investigator was not required to give **Miranda** warnings because defendant was not in custody. Defendant was already in segregation, which limits an inmate's freedom of

movement to the "greatest extent possible within the prison." Therefore, his freedom of movement was not more severely restricted during the interview than it had been previously. The fact that defendant was handcuffed did not indicate that he was in custody, as inmates in segregation are restrained when they leave the unit for any purpose and defendant did not ask that the handcuffs be removed during the interview. Finally, the investigator's office "was not an inherently coercive environment"; the interview lasted only about ten minutes and no physical or psychological pressure was exerted on defendant.

Compare, [People v. Easley](#), 148 Ill.2d 281, 592 N.E.2d 1036 (1992) (inmate who was not in segregation at time of interview and who was handcuffed throughout an interview in which he was the focus of a murder investigation was subjected to custodial interrogation and was entitled to **Miranda** warnings.)

[People v. Brown](#), 135 Ill.2d 116, 554 N.E.2d 216 (1990) Defendant was told he was wanted on a weapons charge and was searched, handcuffed and taken to the police station. He refused to sign a waiver form.

Defendant testified that he requested counsel but was told that counsel would not be provided because defendant was not under arrest. Defendant then made incriminating statements.

After about 30 minutes, defendant was allowed to return to work to ask for time off. Defendant agreed to go to the investigating agent's office later that day. When defendant arrived, he was given **Miranda** warnings. He refused to sign a waiver, but the agent said that defendant was not under arrest and was not entitled to counsel. Defendant then made incriminating statements.

The trial judge properly suppressed the statements. Defendant was in custody in the agent's office, because a reasonable man, innocent of any crime, would have believed himself to be in custody had he been in defendant's position.

[People v. Hoffman](#), 84 Ill.2d 480, 419 N.E.2d 1145 (1981) Where defendant was arrested in his home and was placed in handcuffs, **Miranda** warnings were required before questioning. This was not "general on-the-scene questioning."

[People v. Wipfler](#), 68 Ill.2d 158, 368 N.E.2d 870 (1977) Where defendant came to the police station in response to a telephone request of the police, he was not under arrest, in custody or otherwise deprived of his freedom in any significant way. Thus, **Miranda** warnings were not required before questioning.

After defendant admitted having knowledge about the crime in question, **Miranda** warnings were given. Defendant then signed a waiver form and gave a confession. The trial court's determination that defendant effectively waived his rights was not against the manifest weight of the evidence. See also, [People v. Lucas](#), 132 Ill.2d 399, 548 N.E.2d 1003 (1989).

[People v. Parks](#), 48 Ill.2d 232, 269 N.E.2d 484 (1971) **Miranda** warnings are not required before general on-the-scene questioning.

Illinois Appellate Court

[People v. Sims](#), 2022 IL App (2d) 200391 Defendant was not subject to custodial interrogation when he was seated in the front seat of a squad car while the officer prepared a written warning and asked defendant a series of questions, including asking defendant when someone had last smoked weed in the car. The stop occurred in a gas station parking

lot after the officer observed defendant commit a traffic violation on I-90. The officer asked defendant to come to the squad car, and defendant agreed to do so; he was not ordered to sit in the squad car. Defendant was not placed in physical restraints, and the officer who initiated the stop was the only officer present. It took approximately 12 minutes from the time the stop was initiated to the time that the officer began searching defendant's vehicle, during which time the officer was preparing a written warning for the traffic violation. While defendant was not free to leave during that time, that fact did not distinguish defendant's circumstance from any other traffic stop. Accordingly, defendant was not in custody, and **Miranda** warnings were not required. Defense counsel did not render ineffective assistance by not filing a motion to suppress defendant's statements on these facts.

People v. Williams, 2021 IL App (3d) 180282 When approached on the street by a police officer and asked about a robbery, defendant responded that he “would have to speak to [his] attorney.” The officer took defendant to the station, where another officer interviewed him in an interrogation room. Defendant again invoked his right to counsel, and the police ended the interrogation. A short time later, defendant re-initiated contact and confessed.

The Appellate Court majority suppressed the statement. The defendant's statement on the street was an unambiguous, unequivocal invocation of his right to counsel. The subsequent interviews therefore violated **Edwards v. Arizona**, 451 U.S. 477 (1981), whether or not that second officer was aware of the initial invocation. It was also irrelevant that the defendant invoked his right to counsel again prior to ultimately re-initiating contact and confessing to the crime.

Finally, the majority disagreed with the dissent's position, which is that the initial invocation did not inhibit the officers because defendant was not in custody at the time. The dissent pointed to **People v. Villalobos**, 193 Ill. 2d 229 (2000), which stated: “In order to invoke the **Miranda** right to counsel, an individual must be both in custody and subject to interrogation or under imminent threat of interrogation.” But the majority noted that elsewhere in **Villalobos**, the court stated “[T]he suspect must invoke the right to counsel during custodial interrogation *or when custodial interrogation was imminent.*” (Emphasis added.) Although ambiguous, after analyzing several jurisdictions, the majority concluded that an invocation must be honored by police if the circumstances indicate that a defendant believed that custodial interrogation was imminent. Here, where the police approached defendant on the street, told defendant he was a suspect in a robbery, and asked to speak with him, it was clear defendant's custodial interrogation was imminent. Therefore, the majority concluded he was entitled to the protections of **Edwards**.

People v. Wyma, 2020 IL App (1st) 170786 In assessing whether 17-year-old defendant was “in custody” for **Miranda** purposes, a court looks to whether a reasonable juvenile would have believed he could terminate the encounter and was free to leave under the circumstances. Relevant factors include the location, length, and mood of the questioning, the number of officers present, whether defendant's family or friends were present, and whether there was any indicia of formal arrest, such as physical restraint or booking procedures.

Here, the court looked to the totality of the circumstances, not just on the date of defendant's inculpatory statement but also during his prior encounters with the police and his grand jury testimony in this matter. Defendant made multiple trips to the police station, voluntarily, to speak with police. On the first occasion, he was not handcuffed, was placed in an unlocked room, was allowed to use the bathroom, and permitted the police to search his

cellphone and his Facebook account. Defendant's father was a police officer and sat outside the interview room on the second occasion while defendant spoke with police. And, when defendant testified before the grand jury, he stated he had not been threatened, police had treated him "perfectly," and he had not been promised anything or threatened.

When defendant made his inculpatory statement, a month later, he was again not handcuffed and went to the police station voluntarily. And, defendant was given **Miranda** warnings as soon as he revealed that he knew specific details about the crime scene. Given his history of having visited the police station several times prior, the fact he was placed in an unlocked room each time and had a parent nearby on at least one occasion, and the absence of any indicia of formal arrest, the trial court properly found that a reasonable 17-year-old would not have believed he was in custody at the outset of questioning on the date he confessed. Defendant was not subject to custodial interrogation prior to his being given **Miranda** warnings.

In a special concurrence, one justice advocated for a change regarding juvenile interrogations to expressly require that the police not ask any questions regarding the offense unless the minor's parent or guardian is present.

People v. Garza, 2018 IL App (3d) 170525 The Appellate Court affirmed the trial court's suppression of defendant's statements at the scene of a traffic stop as the product of custodial interrogation without his having received **Miranda** warnings. Following a K-9 alert during a traffic stop, defendant and four other vehicle occupants were ordered out of the car, asked for identification, and searched in a manner that exceeded an officer-safety pat down. When no contraband was found on any of them, the officers then searched the vehicle and found drugs in a backpack. During the vehicle search, defendant and his friends were told where to stand and were watched over by two of the six officers at the scene.

Under these circumstances, defendant was in custody for purposes of **Miranda** when one of the officers asked who the backpack belonged to and followed up on defendant's admission that it was his by inquiring about the nature of the white powder in the backpack, which defendant admitted was cocaine. These questions exceeded general on-the-scene questioning and constituted interrogation because they called for an incriminating response.

People v. Tayborn, 2016 IL App (3d) 130594 Due to the non-coercive nature of ordinary traffic stops, a person who is temporarily detained pursuant to an ordinary traffic stop is generally not considered to be in custody for **Miranda** purposes. However, the safeguards prescribed by **Miranda** become applicable during a traffic stop if the suspect's freedom of action is curtailed to the same degree as would occur in a formal arrest. Thus, a temporary detention during an ordinary traffic stop can evolve into a custodial situation requiring **Miranda** warnings before any interrogation.

Defense counsel was ineffective for failing to move to suppress a statement which was the result of custodial questioning at the scene of a traffic stop. Defendant was a passenger in a car that was stopped for not having a license plate light. The driver of the car was arrested because she was acting in a "nervous" and "furtive" manner. Because an inventory search was to be conducted, defendant was asked to stand outside the car. There was inconsistent testimony concerning whether defendant was handcuffed, but he was not arrested.

When the officers found suspected cocaine in the car, one of the officers questioned defendant about the substance. Defendant responded that he was transporting the cocaine from Chicago to Iowa. Two or three squad cars were present, and four to six officers were at

the scene. The court noted that the trial judge found the defendant was in custody when the cocaine was discovered. The Appellate Court concluded that in any event, defendant's detention was transformed into custody once the cocaine was found and placed on the hood of the car. Because defendant was in custody, **Miranda** warnings were required before questioning.

In re S.W.N., 2016 IL App (3d) 160080 A police officer, who was a certified juvenile officer, went to defendant's home to question him about a sexual assault. The officer asked defendant's mother if he could question defendant, who was a high school student, at the police station. The mother agreed and declined the officer's invitation to accompany them. At the station, the officer repeatedly told defendant that he was not under arrest. He also gave defendant **Miranda** warnings, but did not take any special steps to make them easier for a juvenile to understand. The interrogation lasted about 43 minutes before defendant made inculpatory statements.

A State's expert testified that defendant suffered from some degree of intellectual impairment and offered no opinion about whether defendant would have been able to understand the **Miranda** warnings. Four defense witnesses who knew defendant from school and were either teachers or experts in various fields related to education or psychology testified that defendant had some degree of intellectual impairment and would not have been able to knowingly and intelligently waive his **Miranda** rights.

The Appellate Court held that (1) defendant was in custody and (2) did not knowingly and intelligently waive his rights.

A defendant is in custody for **Miranda** purposes if a reasonable person in defendant's position would not have felt at liberty to terminate the interrogation and leave. The following factors are considered in deciding whether a defendant is in custody: (1) location, time, length, mood, and mode of questioning; (2) number of officers present; (3) presence of family or friends; (4) any indicia of a formal arrest procedure; (5) how defendant arrived at the interrogation site; (6) whether defendant received **Miranda** warnings; and (7) age, intelligence, and mental makeup of the defendant. The reasonable person standard must take into account the age and intellectual capabilities of the defendant.

The court found that a reasonable person of defendant's age and mental capabilities would not have felt free to terminate the interrogation in this case and thus defendant was in custody. Although the officer repeatedly told defendant that he was free to leave at any time, that is only one factor in the analysis. The interrogation took place in a small room at the police station. The substance and mode of questioning indicated to defendant that he was the only suspect. There were no formal indicia of arrest such as booking or fingerprinting, but the officer gave defendant **Miranda** warning which can in themselves be an indicator of custody. There was no concerned adult present. And defendant's limited mental capabilities indicate that he would not have felt free to leave.

To validly waive **Miranda** rights, the defendant must fully understand the rights being waived and the consequences of doing so. Special care must be taken when a juvenile or a defendant with cognitive impairments waives **Miranda** rights.

The court found that the evidence overwhelmingly showed that defendant did not knowingly and intelligently waive his rights. It was undisputed that defendant suffered from limited intellectual abilities. The officer delivered the warnings in the same manner he would to an adult of average intelligence and provided very little explanation about what the rights entailed. And each of defendant's four witnesses testified that he was either unable to understand his rights or unable to understand what a waiver entailed.

The court vacated the adjudication of delinquency, suppressed defendant's statements, and remanded for further proceedings.

People v. Coleman, 2015 IL App (4th) 140730 Two parole officers visited defendant's home to conduct a "compliance check" on defendant. The officers suspected defendant had been dealing drugs based on information they received prior to the compliance check. Both officers carried weapons, but were not general criminal investigators. If they discovered evidence of a new crime they contacted the local police. It was standard procedure to handcuff parolees during compliance checks, but the officers never gave **Miranda** warnings during these checks.

The officers separated defendant from his mother and sister, who were in another room. They obtained a urine sample from defendant and searched his bedroom. They found a locked box in the bedroom which contained a large amount of money. After finding the money, the officers handcuffed defendant behind his back. They then questioned defendant about the money and selling marijuana. In response, defendant admitted he had marijuana under his mother's bed, which the officers recovered.

Defendant specifically testified that he believed he was free to leave during the questioning, despite being handcuffed, because he "hadn't done anything wrong."

The Appellate Court held that defendant's statements were properly suppressed because the officers had not given him **Miranda** warnings. Although defendant was on parole, he still retained his Fifth Amendment rights, including the right to **Miranda** warning prior to custodial interrogation. The court also found that defendant was in custody when the officers questioned him. It found dispositive the fact that defendant was handcuffed after the officers found the large amount of money. When a law enforcement officer handcuffs an individual, the officer is "making a show of force and physically restraining" that person, actions "indicative of arrest." A reasonable person in this position would not "feel free to leave until the handcuffs are removed." Additionally, since defendant was handcuffed after the officers found the large amount of money, a reasonable person would have believed that the "parole visit had morphed into an arrest."

The court found that defendant's testimony that he subjectively believed he was free to leave was "irrelevant" to the **Miranda** question, which solely requires an objective determination of whether a reasonable person would feel free to leave.

The trial court's order suppressing defendant's statement was affirmed.

The dissenting justice would have found that because defendant subjectively believed he was free to leave, he was not subjected to custodial interrogation and **Miranda** warnings were not required.

People v. Bowen, 2015 IL App (1st) 132046 Courts have repeatedly rejected the idea that any interrogation of an inmate in a penal institution constitutes custodial interrogation. Instead courts must examine all the circumstances surrounding the interrogation and decide whether they present the same inherently coercive pressures as those found in **Miranda**. Thus an inmate is in custody only when the totality of circumstances would lead a reasonable inmate to believe that his liberty was limited beyond the usual conditions of his confinement.

A correctional officer conducted a "shakedown" of two tiers in Cook County Jail. During a "shakedown," the officer removes the prisoners from their cells, secures them, pats them down, and then checks their cell for contraband. The officer removed defendant and his cellmate from their cell, handcuffed and patted them down, then searched the cell, eventually discovering a shank. The officer asked the two cellmates who the shank belonged to and defendant said that it was his.

The court held that defendant was not in custody when the officer questioned him about the shank and thus **Miranda** warnings were not required. Defendant was removed from his cell, handcuffed, and patted down as part of a routine search of his cell. After discovering the shank, the officer engaged in very brief questioning about who the shank belonged to. Nothing in these circumstances “presented the same inherently coercive pressures as the type of station house questioning at issue in **Miranda**.”

Since a motion to suppress based on the failure to give **Miranda** warnings had no reasonable probability of success, trial counsel was not ineffective for failing to file a motion to suppress.

[People v. Fort, 2014 IL App \(1st\) 120037](#) The Appellate Court concluded that defendant was subjected to custodial interrogation when police officers who were executing a search warrant asked whether there was contraband in a bedroom where she was being taken to retrieve her child. Therefore, **Miranda** warnings should have been given.

Police who were executing a search warrant entered the home by force and with their weapons drawn, and gathered most of the home’s inhabitants in the living room. Defendant asked to be allowed to retrieve her baby from a bedroom, and was escorted to the door of the room after a supervisor gave permission. Before allowing defendant to retrieve the child, the officer asked whether there was anything in the room that “police should know about.”

The court concluded that a reasonable, innocent person in defendant’s position would have been unlikely to think that she could simply refuse to answer the question and retrieve her child from the room. Instead, the police deprived defendant of freedom of action in a significant way by restricting her ability to attend to her child. Under these circumstances, defendant was in custody when the question about contraband was asked. Therefore, **Miranda** warnings should have been given.

The court rejected the argument that the question did not amount to “interrogation,” but was instead a typical question to be asked at the scene of an encounter. A question at the scene of a crime qualifies as “interrogation” if it is reasonably likely to elicit an incriminating response. Although the officer testified that he was concerned there might be weapons in the room, the court noted that he asked about all contraband and did not limit his inquiry to weapons.

Because the defendant was subjected to custodial interrogation, the trial court erred by denying the motion to suppress her statement that there was cocaine in the room.

[People v. Follis, 2014 IL App \(5th\) 130288](#) The trial court did not err by finding that a reasonable person in defendant’s position would have believed that he was in custody when he confessed to the offense of predatory criminal sexual assault of a child. Defendant knew that he was being investigated by the Department of Children and Family Services concerning serious allegations, and he had been removed from his home by police a month earlier so DCFS could investigate. He knew that the officers had come to his home twice on the date in question, and he fled before deciding to return and submit to questioning.

Defendant was transported to the police station by squad car, although the officers stated that he was not in custody. None of defendant’s family members were at the station during the interrogation.

Defendant was 18 years old with diminished mental capacity. He had dropped out of school in the tenth grade, and expert testimony described him as scoring in the bottom 1% of the population intellectually and having the cognitive abilities of a ten-year-old.

The interview took place in a small room with the doors shut. Defendant was interrogated for more than an hour before he made any incriminating statements, and the trial court found that the officers asked “very leading and suggestive questions.”

The court concluded that under these circumstances, the trial court did not err by finding that defendant was in custody during the interrogation.

People v. Hannah, 2013 IL App (1st) 111660 Defendant was subjected to custodial interrogation where: (1) he was detained because he was on premises for which police were executing a search warrant, and (2) he was asked who owned a handgun that was found during the search. The court noted that the police forced their way into the residence to execute the search warrant, had their weapons drawn, searched and handcuffed the defendant and the other occupant, and physically moved defendant to a separate room where he was monitored by several police officers while the search was conducted. It was in the separate room that he was asked who owned the handgun found in a bedroom. The court concluded that no reasonable person would have felt free to refuse to answer the question or to terminate the encounter, and that defendant was not free to leave. Furthermore, the situation presented the inherent compulsion which is intended to be countered by the **Miranda** warning requirement. Under these circumstances, **Miranda** warnings were required before defendant was asked about ownership of the handgun.

The court rejected the State’s argument that defendant was not “in custody” because he was merely detained while the search warrant was executed. Unlike this case, the precedent relied upon by the State involved defendants who were not handcuffed at the time of questioning.

The court also rejected the argument that under **People v. Colyar**, 2012 IL 111835, handcuffing a defendant for the safety of officers does not constitute “custody” under **Miranda**. In **Colyar**, the issue was whether the defendant was “seized” in violation of the Fourth Amendment where he was handcuffed and searched after a bullet was observed in plain view inside a vehicle. Here, the issue was whether, under the Fifth Amendment, a person who is detained while a search warrant is being executed is “in custody” for **Miranda** purposes.

The court also rejected the argument that the case fit within the “public safety” exception to **Miranda**. Here, defendant was interrogated after the firearm was recovered, when there was no safety risk to the officers. Furthermore, the question asked of defendant did not aid the police in recovering the weapon or executing a search warrant, and therefore was not general on the scene questioning concerning the facts of the crime. Instead, it was a question which was reasonably likely to elicit an incriminating response, and therefore constituted interrogation.

However, the error was harmless where the defendant subsequently made a second incriminating statement regarding his ownership of the handgun after he was advised of his **Miranda** rights at the police station. Therefore, the conviction was affirmed.

In re Marquita M., 2012 IL App (4th) 110011 The 15-year-old respondent was not in custody when she was escorted from her classroom by the freshman dean of students and a police liaison officer, and questioned in the dean’s office about having a knife at school. She was not taken to a police station or physically restrained. Only one officer was present and nothing indicates the officer made any show of force. No formal booking procedure or search of her person occurred. The questioning was of limited duration and respondent was not badgered. The officer’s use of a hypothetical during the questioning was merely inquisitory

and not accusatory. A reasonable person in these circumstances would not have felt that she was in police custody.

People v. Harris, 2012 IL App (1st) 100678 Any statement made as a result of custodial interrogation at a police station or other place of detention shall be presumed inadmissible as evidence against the accused in a murder case unless it is electronically recorded. 725 ILCS 5/103-2.1(b). If the trial court finds by a preponderance of the evidence that this provision was violated, any statements made by the defendant during or following that non-recorded custodial interrogation are presumed inadmissible, even if those statements were obtained in compliance with §103-2.1(b). 725 ILCS 5/103-2.1(d). It is irrelevant that the police did not willfully violate §103-2.1(b). The presumptive inadmissibility of such statements can be overcome by a preponderance of the evidence that the statement was voluntarily given and is reliable, based on the totality of the circumstances. 725 ILCS 5/103-2.1(f).

Under the statute, a custodial interrogation occurs when a reasonable person in the suspect's position would consider herself in custody and is presented with a question reasonably likely to elicit an incriminating response. 725 ILCS 5/103-2.1(a). The statute thus codifies the common-law definition of custodial interrogation developed by **Miranda v. Arizona**, 384 U.S. 436 (1966), and its progeny. Both **Miranda** and §103-2.1 serve a protective purpose, and therefore **Miranda** case law can serve as guidance in interpreting §103-2.1.

Factors relevant to the determination whether a defendant is in custody include: (1) the location, time, length, mood, and mode of the questioning; (2) the number of police officers present during the interrogation; (3) the presence or absence of family and friends of the person; (4) any indicia of formal arrest procedures, such as the show of weapons or force, physical restraint, booking or fingerprinting; (5) the manner by which the individual arrived at the place of questioning; and (6) the age, intelligence, and mental makeup of the accused. A court must determine whether a reasonable person, innocent of any crime, would have believed that she could terminate the encounter and was free to leave.

6. Factors (1), (3), and (5) demonstrate that defendant was unquestionably subject to custodial interrogation. The police picked her up from a friend's house after midnight, after searching for her for more than a week, and transported her in an unmarked squad car to the station. There she was placed alone in an interview room that was likely locked. At the station, defendant admitted she had given the police a false name because she had an outstanding warrant for her arrest on a probation violation. Once the police confirmed this, defendant was not free to leave.

The Appellate Court was not persuaded by the State's argument that defendant was in custody on the probation violation and not the murder. "[T]he only fair reading of the circumstances in the record is that the police held the defendant in continued custody on the probation violation and, at best, used this custody to mask their intention to question her solely about the murder." Defendant was subjected to five interviews over 24 hours that were conducted with a confrontational mood of questioning, and the police did not convey that defendant could decline to answer questions. "This was more than mere investigatory questioning; it was custodial interrogation of a murder suspect."

Because defendant made an incriminating statement as a result of custodial interrogation at the police station, her statement was presumptively inadmissible because it was not electronically recorded. This presumption was not overcome because the State presented no evidence related to the voluntariness of the unrecorded statement. That evidentiary gap was not filled by evidence of the subsequent videotaped statements. The

Appellate Court directed that a determination be made whether defendant's unrecorded statement was voluntary and reliable prior to retrial.

Defendant's felony murder conviction was reversed and the cause remanded for a new trial.

People v. Beltran, 2011 IL App (2d) 090856 Defendant was not in custody during a videotaped interview conducted in her hospital room. Defendant had been involuntarily admitted to a mental health hospital after suffering an "acute psychological breakdown" in the emergency room when told that her daughter was dead.

The court found only one factor indicating that defendant was in custody – she had reason to believe that she would be a target of a criminal investigation after her daughter died due to a brutal beating in the defendant's home. However, the court found that all other factors rebutted the conclusion that she was in custody:

A. **Location** - A hospital room is a neutral surrounding which does not present the same pressure as a police station or other law enforcement facility. The court also rejected the argument that defendant was in custody because she was questioned after having been involuntarily committed to a mental health hospital after attempting suicide during a psychological "episode" in the emergency room. The court found that only restraints imposed by law enforcement officers are relevant to determining whether a suspect is "in custody" for **Miranda** purposes. Here, the decision to involuntarily admit defendant was made by medical personnel, without any involvement by police.

B. **Time, length, mood, and mode of questioning** - Although the defendant was questioned at 5:45 a.m., neither her appearance on the videotape nor her statements suggested that she was too tired to participate. The interview lasted 45 minutes, which the court found was not excessive for a noncustodial interview.

In addition, defendant was told before the interview began that she did not have to talk to the officers, and the officers did not badger her or employ a hostile or accusatory tone.

C. **The number of police officers present** - Although four officers were present, only two asked questions.

D. **The presence or absence of family or friends of the suspect** - Although none of defendant's family or friends were present during the questioning, none were present when police arrived. In other words, this was not a situation in which police excluded family or friends in order to create a situation in which the suspect was more likely to confess.

E. **Any indicia of a formal arrest** - There was no *indicia* of a formal arrest; defendant was not booked, fingerprinted, or handcuffed, and no guard was posted outside her room. Although the officers read defendant her **Miranda** rights and said that they had a search warrant, neither factor creates a custodial situation, especially where the defendant was informed shortly thereafter that she did not have to answer questions.

F. **The manner by which the individual arrived at the location of the questioning** - Defendant came to the hospital of her own accord while seeking emergency care for her daughter, and not because she had been arrested and taken there by police.

G. **The age, intelligence, and mental make up of the accused** - Although one expert found that defendant's IQ was only 79, the trial court did not abuse its discretion by finding that a second expert, who concluded that defendant was of average intelligence, was more credible. Furthermore, although defendant had been administered Haldol, a psychotropic medication, on the previous night, neither the video nor the transcripts indicated that she was suffering any adverse effects of the drug during the questioning.

The court acknowledged that defendant had undergone a psychotic breakdown a few hours before she was questioned, but found that her condition was not exploited by the

officers in order to extract a confession. Before entering defendant's room, the officers asked a nurse if defendant would be able to talk with them. In addition, they explicitly advised defendant that she did not have to speak with them. Finally, defendant's statements that she did not want to talk to the police were equivocal and not a clear indication that she wanted to end the interview.

People v. Havlin, 409 Ill.App.3d 427, 947 N.E.2d 893 (3d Dist. 2011) The mere fact that an accused is not free to leave during a traffic stop or an investigation does not mean that a defendant is in custody for **Miranda** purposes. **Miranda** warnings are not required where the police conduct a general on-the-scene investigation as to the facts surrounding a crime or other general questioning.

A police officer stopped a truck in which defendant was a passenger because its license plate was obstructed from view by a trailer hitch. After checking for outstanding warrants, the officer verbally warned the driver about the violation, then asked to talk further. The driver assented, and the officer asked if there was anything illegal in the truck and was told there was not. The officer asked for and received the driver's consent to search the truck and each occupant's consent to search his person as each exited the truck. After the driver and occupants were searched, for their safety they were asked to stand with another officer at the front of the squad car as the truck was searched. The officer found a baggie of pills in the glove compartment during a search of the truck. He asked the occupants of the truck to whom the pills belonged, and defendant admitted the pills were Valium and were his.

Although defendant was seized for Fourth Amendment purposes, he was not in custody for Fifth Amendment purposes when he responded to the officer's question. The police had only issued a verbal warning to the driver for a minor infraction. The defendant was not handcuffed, placed in a locked squad car, or told he was under arrest. He was not transported from the scene of the stop. Neither of the two officers on the scene displayed weapons or physically restrained the occupants of the truck by force. Defendant was not separated from his companions when the officer asked about the pills. The lights on the squad cars were flashing, but this was necessary to ensure the safety of the persons and vehicles at the side of the road at 2 a.m. The mood at the scene was serious, but not oppressive.

Because defendant was not in custody, **Miranda** warnings were not required before defendant responded to the officer's general question regarding the pills. The court reversed the trial court's decision granting defendant's motion to suppress his statement.

People v. Wright, 2011 IL App (4th) 100047 A defendant suspected of DUI was not "in custody" where he was transported in the rear seat of a squad car, by an officer who had arrested him on previous occasions, to a nearby location where defendant had parked his SUV. The court found that defendant voluntarily entered the car, sat uncuffed with the rear windows open, and knew that he was being taken only a short distance. The court also stressed that defendant was not subjected to any restraints comparable to those associated with a formal arrest.

Because defendant was not in custody, his statements were admissible despite the absence of **Miranda** warnings.

The court noted that under Fourth District precedent, a trial court can conclude that the defendant was "in custody" only if it finds both that the defendant subjectively believed that he was in custody and that a reasonable innocent person in defendant's position would have believed that he was in custody. If the suspect testifies that he did not believe that he was in custody during the questioning, the trial court need not consider whether a reasonable

person would have believed himself to be in custody. See [People v. Goyer, 265 Ill.App.3d 160, 638 N.E.2d 390, 393 \(4th Dist. 1994\)](#).

Although the defendant failed to testify that he believed he was in custody, the State failed to raise the **Goyer** issue before the trial court. Therefore, the Appellate Court declined to reach this issue.

The court rejected defendant's argument that the toxicology test results of blood and urine samples which defendant provided should have been excluded because the officer failed to tell defendant that he could refuse to give the samples. A defendant who has been arrested for DUI has no constitutional right to refuse chemical testing. Furthermore, police inquiry into whether a suspect will submit to a blood alcohol test does not constitute "interrogation" within the meaning of **Miranda**.

[People v. Jordan, 2011 IL App \(4th\) 100629](#) Generally, due to the non-coercive aspects of ordinary traffic stops, a person temporarily detained during a traffic stop is not in custody, unless the person is thereafter subjected to treatment that renders him in custody for practical purposes.

The Appellate Court affirmed the trial court's finding that defendant's detention was custodial and no longer incident to an ordinary traffic stop when she confessed to possessing cannabis. The defendant was a passenger in a car stopped by the police. The police isolated her from the driver of the car in the rear seat of a squad car for 27 minutes before she confessed. This isolation allowed the police the advantage of playing her and the driver against each other. She was also locked in the squad car for 23 minutes and the police threatened to extend this detention indefinitely by indicating they intended to send for drug-detecting dogs. Defendant could have reasonably concluded that the police did not accept her initial insistence of innocence and that she would not be allowed to leave until she confessed to suspected wrongdoing.

Although the police told defendant she was not in any trouble, this assertion was contradicted by the police asking questions designed to elicit incriminating responses, locking defendant in the squad car, and conducting a full search of the car, including an anticipated dog sniff. The presence of twice as many police officers as detainees contributed to the police-dominated atmosphere and reinforced to defendant that she was targeted by the investigation. The Appellate Court also found it troubling that the police officer who interrogated defendant turned his microphone off and thus there was no audio portion of the eight minutes of the interrogation that resulted in the confession.

Because the police failed to give defendant **Miranda** warnings, the confession and cannabis seized by the police that was the fruit of that questioning were properly suppressed.

[People v. Chestnut, 398 Ill.App.3d 1043, 921 N.E.2d 811 \(4th Dist. 2010\)](#) The Appellate Court affirmed the trial court's order granting defendant's motion to suppress evidence which the officers found during a search of the defendant. Defendant came to a house where a search warrant was being executed, and eventually consented to a search of his person.

Under [Michigan v. Summers, 452 U.S. 692 \(1981\)](#), a police officer has limited authority to detain occupants of premises that are being searched, in order to ensure that the occupants are unarmed and uninvolved in any criminal activity. It has been held that under **Summers**, the term "occupants" includes individuals who approach the premises while a search warrant is being executed. (See [U.S. v. Jennings, 544 F.3d 815 \(2008\)](#)).

However, "custodial interrogation" of persons seized under **Summers** is permitted only if there is an articulable basis for suspecting criminal activity. Because the police had no reasonable suspicion that defendant was engaged in criminal activity, **Summers** allowed

them to ask only for defendant's identity and an explanation of his reasons for being on the property. They could not ask incriminating questions, including whether defendant was in possession of controlled substances.

Here, the interrogation of the defendant was "custodial," because a reasonable person would not have believed that he was free to leave. The court stressed that police asked whether defendant was in possession of controlled substances, one of the officers testified that defendant was not free to leave, defendant was prevented from leaving because one officer was standing in front of him and another to his rear and in front of the door through which he would have to exit, and defendant was restricted to the porch of the house. Because there was no basis to suspect criminal activity, the custodial questioning was not justified under **Summers**.

The court also noted that because the police engaged in custodial interrogation, **Miranda** warnings were required. (See also **APPEAL**, §2-7(a) & **SEARCH & SEIZURE**, §§44-4(b), 44-8(b), 44-11(b)).

People v. McCarron, 403 Ill.App.3d 383, 934 N.E.2d 76 (3d Dist. 2010) Defendant was not in custody and therefore the police did not need to **Mirandize** the defendant when they questioned her at the hospital. Defendant was a 37-year-old pathologist who was suffering from depression, but was lucid and coherent. Following a suicide attempt, she had been brought to the hospital by ambulance accompanied by her mother and a police officer. The officer asked her no questions. She was not arrested, restrained, or placed under police guard at the hospital. The first officer who spoke to her at the hospital left after defendant told him that she had admitted to her husband that she had killed her daughter, but indicated that was all she wanted to say. Two other officers who attempted to question defendant told her she was not under arrest and also left when defendant said she did not want to talk. Defendant told those officers that they could return the next day and defendant told a friend that she intended to confess to the police the next day. The following day, defendant's husband and a DCFS representative were present when defendant did make a statement to the police. The circumstances of that interview were not coercive. Therefore a reasonable person in defendant's position would have felt free to terminate the encounter with the police.

A question-first, warn-later strategy occurs where the police elicit an incriminating response from an individual without providing **Miranda** warnings, then provide the **Miranda** warnings and again elicit an incriminating statement. When the police deliberately use this technique, any statement made following the **Miranda** warnings is inadmissible, absent curative measures.

The court concluded that a second statement made by defendant to the police one hour after the first statement, and preceded by **Miranda** warnings, was admissible because the police did not act deliberately to circumvent **Miranda**. The police did not act forcefully in obtaining a statement from defendant in the period of time between the offense and the first statement. The police intended to obtain only one statement from defendant. The second statement was taken only because the first statement was not recorded and the State's attorney requested a recorded statement.

People v. Alfaro, 386 Ill.App.3d 271, 896 N.E.2d 1077 (2d Dist. 2008) Whether a suspect is in custody for **Miranda** purposes is determined by considering whether a reasonable person would have felt free to terminate the interview and leave. Relevant factors include the location, time, length, mood and mode of the interrogation; the number of police officers

present; the presence or absence of the accused's family and friends; any indicia of formal arrest; and the age, intelligence, and mental makeup of the accused.

Because defendant was in custody when he made inculpatory statements, he should have received **Miranda** warnings. The primary factor on which the court relied was that over the course of the three-hour interview, the mood changed from friendly and non-confrontational to confrontational and accusative. As the interrogations progressed, defendant was told that all of the criminal liability resulting from the case could "come down on" him, and that he was accountable for the crime. He was also shown a picture of an electric chair and warned that a publicity-hungry prosecutor could decide to seek a death sentence. Although the length of the interview and the circumstances of the interrogation would not necessarily have established custody in other situations, the change in the mood was such that a reasonable person would not have felt free to leave.

In addition, the court stressed that defendant was brought to the sheriff's office for questioning after being initially questioned at his workplace, and was dependent on the police to provide him with transportation after the interview ended. The questioning occurred after defendant completed his overnight shift at work, and defendant was obviously fatigued because he appeared to be drowsy and to doze off during the interview.

People v. Croom, 379 Ill.App.3d 341, 883 N.E.2d 681 (4th Dist. 2008) A reasonable, innocent person would have felt that he was free to terminate the encounter where he made statements while seated in an unmarked van with two officers, he could have left the van at any time by opening the door, the officer who conducted the interrogation was dressed in plainclothes, the questioning occurred in the middle of the afternoon, and the officers drove him home at his request, but he elected to remain in the van and make additional statements.

People v. Briseno, 343 Ill.App.3d 953, 799 N.E.2d 359 (1st Dist. 2003) Under **Berkemer v. McCarty**, 468 U.S. 420 (1984), the roadside questioning of a motorist during a routine traffic stop is not "custodial interrogation" for **Miranda** purposes. Although the subject of a traffic stop is not free to leave, such stops are usually brief, occur in public, and do not significantly inhibit the exercise of Fifth Amendment rights. Thus, the principles underlying **Miranda** are not implicated. The same rule applies where a motorist is questioned as part of a DUI roadblock.

People v. Carroll, 318 Ill.App.3d 135, 742 N.E.2d 1247 (3d Dist. 2001) A suspect is entitled to **Miranda** warnings when he or she is subjected to custodial interrogation. A person is in custody where a reasonable person, innocent of any crime, would believe he is not free to leave.

A suspect's subjective belief whether he is in custody is a relevant factor. A defendant who seeks to suppress statements need not produce affirmative evidence that he actually believed himself to be in custody. Although defendant voluntarily accompanied the officers to the police station and was repeatedly told he was not under arrest, the investigation had "focused exclusively" on defendant by the time of his confession. In addition, defendant had just inculpated himself in a murder. A reasonable person in such circumstances would clearly believe himself to be in custody, "despite the officers' assurances to the contrary."

People v. Lira, 318 Ill.App.3d 118, 742 N.E.2d 885 (3d Dist. 2001) Defendant was in custody where the interview was at the police station, and lasted for 45 minutes, and the mood of the interview was that of a serious interrogation. In addition, the interrogating officer testified that defendant was under arrest as soon as he arrived at the station. See also, **People v.**

[Elliot, 314 Ill.App.3d 187, 732 N.E.2d 30 \(2d Dist. 2000\)](#) (defendant was in custody when she was interrogated; no reasonable person could have believed she was free to leave where officers burst in while she was using the toilet and held her alone in the apartment while persons outside the structure were handcuffed; in addition, one of the officers explicitly stated that defendant was not free to leave); [People v. Patel, 313 Ill.App.3d 601, 730 N.E.2d 582 \(2d Dist. 2000\)](#) (defendant, a passenger in a car stopped for a traffic violation, was in custody when asked how much he had to drink; although the officer asked to see defendant's driver's license only to determine whether he could move the car, when the officer asked about drinking he was standing at the passenger door of the vehicle and knew that defendant was under 21 and appeared to have consumed alcohol).

[People v. Armstrong, 318 Ill.App.3d 607, 743 N.E.2d 215 \(1st Dist. 2000\)](#) A suspect is in custody where, under the circumstances, a reasonable person would conclude he is not free to leave. Among the factors to be considered are the location, mood and length of the interview, the number of police officers present, the presence or absence of defendant's family or friends, any indicia of formal arrest, and the manner by which defendant arrived at the place of the interview.

In light of the 16-year-old defendant's age, level of education, and lack of prior arrests, the failure of officers to tell him he was free to leave, the absence of his grandmother from the interrogation, and police awareness of anonymous tips that defendant had been involved in the offense, a reasonable person would have believed that he was under arrest.

[People v. Rivera, 304 Ill.App.3d 124, 709 N.E.2d 710 \(3d Dist. 1999\)](#) Factors to be considered in determining whether a defendant is in custody, for **Miranda** purposes, include: (1) the location, time, length, mood and mode of the interrogation; (2) the number of police officers present; (3) the presence or absence of the accused's family or friends; (4) any indicia of formal arrest; (5) whether the accused is allowed to "walk from the location of the interrogation unaccompanied by police"; and (6) the age, intelligence and mental makeup of the suspect.

There were at least six police officers and four squad cars at the scene and defendant's van was blocked in both the front and back. Any "general, on-the scene investigatory purpose" ended when a bag of suspected cocaine was removed from defendant's van, at which point "the officer's reasonable suspicion of criminal activity had developed into probable cause to believe that defendant was involved in a cocaine delivery." Under such circumstances, defendant was in custody and **Miranda** warnings should have been given before defendant was asked questions that were reasonably likely to elicit incriminating responses.

[In re H.D.B., 301 Ill.App.3d 234, 703 N.E.2d 951 \(4th Dist. 1998\)](#) The minor was clearly in "custody," and therefore entitled to **Miranda** warnings before he was questioned, where he was handcuffed and told that DCFS would be called if another occupant of the premises, the mother of an infant, had been involved in selling drugs. Although an officer need not interrupt a suspect who is volunteering a statement, the statements in question were not volunteered.

[People v. McDaniel, 249 Ill.App.3d 621, 619 N.E.2d 214 \(2d Dist. 1993\)](#) (affirmed on other grounds, [164 Ill.2d 173, 647 N.E.2d 266 \(1995\)](#)) Authorities were not required to cease questioning upon defendant's request for counsel where defendant was not in custody at the time of the request. Compare, [People v. Spivey, 209 Ill.App.3d 584, 568 N.E.2d 327 \(1st Dist. 1991\)](#) (even where defendant is not in custody, interrogation must cease upon a request for counsel).

People v. Maiden, 210 Ill.App.3d 390, 569 N.E.2d 120 (1st Dist. 1991) Where a police officer executing a search warrant asked about an odor coming from the basement, defendant's response that he had dumped PCP in the basement should have been suppressed because the officer failed to give **Miranda** warnings. The officer's question could not be deemed "general on-the-scene questioning" where 10 officers forcibly entered the home and the officer who asked the question had his weapon drawn and grabbed defendant by the arm.

People v. Urban, 196 Ill.App.3d 310, 553 N.E.2d 740 (3d Dist. 1990) Two police officers testified that they went to defendant's home and told him that they had a grand jury subpoena for him. They also told him that there was a major narcotics investigation being conducted in the area and advised him to come to the police station.

Defendant came to the police station, and was fingerprinted, photographed and asked to come to the police chief's office. He was then given the subpoena but told he was not under arrest and was free to leave.

An officer told defendant his name had come up in a narcotics investigation and repeated that defendant was free to leave. Defendant was also told that if he chose to cooperate, the officers would inform the prosecutor. No **Miranda** warnings were given, and defendant confessed to certain narcotics purchases. After about an hour, the questioning ended and defendant was allowed to leave.

Although defendant was a suspect at the time of questioning, he had not been subjected to a formal arrest or any significant restraint on his freedom. **Miranda** warnings were not required.

People v. B.R., 133 Ill.App.3d 946, 479 N.E.2d 1084 (1st Dist. 1985) Police officers testified that on the day following a shooting incident, they received a telephone call informing them that respondent had "knowledge" of the shooting and possessed a handgun. Police went "specifically" to look for the respondent and found him at a known gang hang-out. When respondent acknowledged that he had heard about the shooting, one of the officers said he wanted to talk about it. Respondent got into the back of a police car.

Three officers entered the car with respondent, and without giving **Miranda** warnings questioned him for five to 10 minutes. Police told respondent they had heard he was "right there" at the shooting, that they wanted to get the gun off the street and that he could "only hurt himself by lying." In response to the officers' request, respondent said he would find the gun. The officers agreed to return in 30 to 45 minutes, and respondent left the car.

When police returned, respondent got into the car and told the officers where they could locate the gun. Upon being asked who did the shooting, respondent gave the police four names. When the officers said they were going to question those people, respondent stated that he did not want to get his friends in trouble. Respondent then confessed, after which he was arrested. Respondent testified that he confessed when the officers did not release him, that he never felt free to leave the police car and that he cooperated because he was afraid.

Under these circumstances, and given respondent's age (15 years old), he was in custody and was entitled to **Miranda** warnings "both before, and certainly after, the gun was recovered."

People v. Roundtree, 135 Ill.App.3d 1075, 482 N.E.2d 693 (1st Dist. 1985) After defendant and two other men were arrested, a trooper searched their vehicle and found a suitcase on the rear seat. The suitcase contained a substance later identified to be cocaine. After discovering the suitcase, the trooper "asked, in general, to the three defendants, who owned

the suitcase." Defendant replied "it's mine."

Defendant's statement was inadmissible. The statement was obtained while defendant was in custody, was in response to the trooper's question about the ownership of the suitcase and was obtained without **Miranda** warnings. "As a matter of law, a person who is arrested and handcuffed is in custody and such arrest activates a person's **Miranda** rights."

People v. Kilfoy, 122 Ill.App.3d 276, 466 N.E.2d 250 (2d Dist. 1984) Police were not required to give **Miranda** warnings before asking defendant whether he lived at certain premises that were the subject of a search warrant.

People v. Dixon, 102 Ill.App.3d 426, 430 N.E.2d 547 (1st Dist. 1981) **Miranda** warnings were not required where statements were elicited during preliminary, on-the-scene questioning. See also, **People v. Johnson**, 96 Ill.App.3d 763, 422 N.E.2d 50 (1st Dist. 1981) (interview on suspect's porch, while suspect was free to leave).

People v. Hentz, 75 Ill.App.3d 526, 394 N.E.2d 586 (1st Dist. 1979) Defendant was subjected to "custodial interrogation" at his home since the police considered defendant a suspect when they went to his home, defendant was not questioned at the scene of a crime, police surrounded defendant's house and had no intention of letting him escape, and at least one officer "greeted" defendant with a drawn gun.

People v. Levendoski, 100 Ill.App.3d 755, 426 N.E.2d 1241 (3d Dist. 1981) Defendant, a DuPage County jail inmate, asked to talk with a certain detective. The detective went to the jail and asked defendant what he wanted to talk about. Defendant said, "[A]n armed robbery." The detective asked for more details, and defendant furnished them. Since the armed robbery occurred outside the detective's jurisdiction, he said he would contact the Bolingbrook police.

Bolingbrook officers subsequently came to the jail, advised defendant of his **Miranda** rights and obtained a statement. Defendant testified that the Bolingbrook officers agreed to arrange a deal for defendant to get probation and drug treatment; defendant also testified that he was not told that armed robbery is a Class X, non-probationable offense.

Although defendant asked to talk to the detective, the detective proceeded to ask questions of defendant to elicit information. Since defendant was in custody and the detective asked him questions, **Miranda** warnings were required.

However, the statements to the Bolingbrook officers were not the direct product of the statements to the detective, since it is "clear that defendant wished to confess." In addition, the record does not show that these statements were the result of promises of leniency.

People v. Clark, 84 Ill.App.3d 637, 405 N.E.2d 1192 (1st Dist. 1980) Police officers sent to the scene of a shooting found the deceased slumped in an automobile, and saw two women standing nearby. One of the women, defendant, was identified as the decedent's wife. The police asked her to sit in the police car and permitted her friend to accompany her.

While defendant and her friend were seated in the police car, an officer asked, "[W]hat happened?" Defendant responded, "I shot my husband." At this point the officer asked the friend to leave the police car. Without giving **Miranda** warnings, the officer asked defendant, "What do you mean you shot your husband? What happened?" In response, defendant made certain statements.

Defendant's initial statement ("I shot my husband") was properly admitted into

evidence, because it was in response to general, on-the-scene questioning and was not the product of custodial interrogation. However, defendant's subsequent statements should have been suppressed because they were the result of custodial interrogation without the benefit of **Miranda** warnings.

People v. Killian, 42 Ill.App.3d 596, 356 N.E.2d 423 (4th Dist. 1976) Statements defendant made while being taken to the police station, following his arrest for DUI, were obtained in the course of custodial interrogation. Thus, they were not admissible in the absence of **Miranda** warnings.

§10-3(d) “Interrogation”

United States Supreme Court

Rhode Island v. Innis, 446 U.S. 291, 100 S.Ct. 1682, 64 L.Ed.2d 297 (1980) **Miranda** warnings are required whenever a person in custody is subjected to either express questioning or its "functional equivalent" - that is, any words or actions on the part of the police, other than those normally attendant to arrest or custody, that the police should know are reasonably likely to elicit an incriminating response from the suspect.

Here, a "few off-hand remarks" by the police while transporting defendant to the station did not constitute interrogation. See also, **Arizona v. Mauro**, 107 S.Ct. 1931, 95 L.Ed.2d 458 (1987); **Pennsylvania v. Muniz**, 110 S.Ct. 2638, 111 L.Ed.2d 528 (1990).

Brewer v. Williams, 430 U.S. 387, 97 S.Ct. 1232, 51 L.Ed.2d 424 (1977) While defendant, a murder suspect, was in a police car, an officer who knew defendant was deeply religious made a speech about how snow was going to fall and the victim's body might not be found for a Christian burial. The "Christian burial speech" was tantamount to interrogation.

Illinois Supreme Court

People v. Garcia, 165 Ill.2d 409, 651 N.E.2d 100 (1995) Defendant was convicted of first degree murder and unlawful use of a weapon, and was sentenced to death. The evidence showed that defendant received **Miranda** warnings several times after her arrest, and that she gave statements concerning the offense. About 2½ hours after the last set of warnings, defendant underwent booking procedures.

The booking officer had difficulty fingerprinting defendant because her hands were trembling, and asked why defendant was shaking. Defendant responded that "she had never shot anyone before." The officer asked what kind of gun defendant had used and where she had gotten it, and defendant said she had used a friend's .357 Magnum.

The question about why defendant was shaking was an innocent attempt to help defendant, and was not "custodial interrogation." Therefore, defendant's response should be viewed as a voluntary admission.

Although the officer's subsequent questions were "interrogation" because they were directed to the alleged crime and were reasonably likely to elicit incriminating responses, no new **Miranda** warnings were necessary. Renewed warnings are required only where there is a "substantial probability that the warnings given at a previous interrogation are so stale and remote" as to create a "substantial possibility" that the suspect is unaware of his or her rights. See also, **People v. Miller**, 173 Ill.2d 167, 670 N.E.2d 721 (1996).

People v. Wilson, 164 Ill.2d 436, 647 N.E.2d 910 (1994) Under **Miranda**, "interrogation" occurs only when a suspect is expressly questioned or subjected to actions that are reasonably likely to elicit an incriminating response. Where defendant was not regarded as a suspect until he said that he had acted as a lookout, the officers had no reason to suspect that their questioning would elicit incriminating responses.

Also, defendant's second written statement, which was given after he received **Miranda** warnings, was not the fruit of an identical, unwarned statement given two hours earlier. Police engaged in no coercion to obtain either statement, allowed defendant to eat and rest between the statements and obtained a valid **Miranda** waiver before the second statement. Under these circumstances, the reading of **Miranda** warnings before the second statement "cured the condition that made the prior . . . written statement inadmissible."

People v. Patterson, 146 Ill.2d 445, 588 N.E.2d 1175 (1992) Defendant, a prison inmate, was placed in segregation for six months after two shanks were found in his cell. He was subsequently taken to the office of a prison investigator, where he was interviewed without being given **Miranda** warnings. He remained handcuffed throughout the interview.

The investigator testified that there were two purposes for the interview - to improve institutional security by determining whether defendant feared for his safety, and to ascertain whether defendant would raise a necessity defense if he was prosecuted for possessing the weapons. If defendant failed to claim during the interview that he had feared for his life, his statements would be used to rebut any necessity defense at trial.

The investigator was not required to give **Miranda** warnings because defendant was not in custody. In addition, the interview did not constitute "interrogation," which must involve some degree of compulsion beyond that inherent in custody itself. Because at least one purpose of the interview was to determine whether defendant possessed the shanks because he feared that he might be attacked by fellow inmates, the investigator's questions were reasonably related to determining whether defendant had any safety concerns. In addition, there was no attempt to induce incriminatory statements.

People v. Enoch, 122 Ill.2d 176, 522 N.E.2d 1124 (1988) Following defendant's arrest, he was given **Miranda** warnings and said he wanted an attorney. A police officer then explained the procedure for getting an attorney and that defendant would be taken to the county jail and booked for murder. Defendant asked whose murder, and the officer replied the murder of Kay Burns.

However, another officer testified that defendant was told the murder of Kay Burns and that they had a witness who had seen him leaving her apartment. Defendant then said "Oh no, not Kay Burns," and added that he had walked her to within a block of her apartment on the night in question.

The trial judge denied the motion to suppress, holding that defendant's statements were voluntary and not the result of police interrogation or its functional equivalent. Informing defendant he was being booked for the murder of Kay Burns was "clearly a police action normally attendant to arrest and custody," and was therefore not interrogation.

Illinois Appellate Court

People v. Doehring, 2021 IL App (1st) 190420 Area 5 detectives did not violate defendant's rights when, upon granting his custodial request to make a phone call, they listened to defendant's end of the conversation and testified to his statements in court. Defendant had no reasonable expectation of privacy in an open room in a police station.

Section 103-3 of the Code of Criminal Procedure, which grants defendant the statutory right to a phone call, has no privacy provision, and the Appellate Court declined defendant's invitation to read one into the statute. Had the legislature intended to grant the right to a private phone call, they would have said so, as they did for communications between an accused and his attorney under section 103-4, which has an explicit privacy provision.

The detectives did violate defendant's Fifth Amendment rights, however, when they questioned him after the phone call, despite defendant's prior invocation of his right to counsel. After the phone call, the detectives asked defendant, who was crying, whether his mother now knew where he was, and if she was crying as well. In response, defendant punched the wall three times. This response was triggered by improper questioning in violation of **Edwards v. Arizona**, 451 U.S. 477 (1981). The State argued that the detectives' questions did not constitute an "interrogation" under **Edwards**, because they were not designed to elicit an incriminating response. While this may be true of the first question, the second question – whether his mother was crying – asked with full knowledge that defendant had just incriminated himself during his phone call, was reasonably likely to elicit an incriminating response. However, the error was harmless. While defendant's non-verbal, angry response to the question may fairly be characterized as incriminating, it did not have nearly the weight of a verbal confession of guilt. Moreover, the remaining evidence against defendant was overwhelming.

People v. Garza, 2018 IL App (3d) 170525 The Appellate Court affirmed the trial court's suppression of defendant's statements at the scene of a traffic stop as the product of custodial interrogation without his having received **Miranda** warnings. Following a K-9 alert during a traffic stop, defendant and four other vehicle occupants were ordered out of the car, asked for identification, and searched in a manner that exceeded an officer-safety pat down. When no contraband was found on any of them, the officers then searched the vehicle and found drugs in a backpack. During the vehicle search, defendant and his friends were told where to stand and were watched over by two of the six officers at the scene.

Under these circumstances, defendant was in custody for purposes of **Miranda** when one of the officers asked who the backpack belonged to and followed up on defendant's admission that it was his by inquiring about the nature of the white powder in the backpack, which defendant admitted was cocaine. These questions exceeded general on-the-scene questioning and constituted interrogation because they called for an incriminating response.

People v. Wright, 2016 IL App (5th) 120310 **Miranda** warnings are required when a defendant is in custody and is subjected to interrogation, which includes express questioning or its functional equivalent. Interrogation includes any words or actions that the police should know are reasonably likely to elicit an incriminating response. This test focuses primarily on the perception of the defendant, rather than the intent of the police.

The police arrested defendant after seeing a man who resembled him in a video taken at the scene of an armed robbery. The arresting officer, Prather, testified that he had known defendant for most of his 26-year career and since he had no intention of interrogating defendant, thinking it would be pointless, did not give defendant **Miranda** warnings. Prather told defendant he was under arrest for armed robbery and told him about the video.

Prather placed defendant in his patrol car and drove him a block away where the police arrested Sharon, defendant's long-time girlfriend and the mother of his three grown children. When Defendant asked why they arrested Sharon, Prather answered that she might have knowledge of the crimes. Defendant said they should let Sharon go because she

didn't know anything about it. Although defendant continued to deny involvement in the robberies, he told Prather that if he let defendant and Sharon go, he would tell the police who committed the crime and tell them where to find the gun and mask, two items which had not been previously mentioned. Prather told defendant he would not let him go because he was convinced, based on the video, that defendant was the offender.

Prather took defendant to a holding cell where he spoke to defendant several times. Defendant continued to assert his innocence and told Prather he did not commit "this kind of crime." Prather agreed, but said defendant had been convicted of armed robbery before. Defendant said he could lead Prather to the guys who gave him the clothes. Prather said that was ridiculous since it was the video that had him "hemmed up and charged with" the offense. Prather admitted that when defendant claimed he was innocent, Prather argued with him and kept him engaged in conversation.

The Appellate Court held that Prather's language and actions constituted interrogation. Prather engaged defendant in ongoing conversation, asked at least one question, discussed the inculpatory evidence, and argued with defendant, thus keeping him engaged in conversation. He also drove defendant to the place where Sharon was arrested and questioned by police. These actions were "particularly evocative" and likely to elicit an incriminating response. The fact that Prather never intended to question defendant and never expected defendant to make any admission was irrelevant. The proper focus was on defendant's perception of Prather's actions.

The court suppressed defendant's statements and remanded for a new trial.

The dissent did not believe Prather action's constituted interrogation since defendant freely engaged in conversation and volunteered information about the crime.

People v. Barnett, 393 Ill.App.3d 556, 913 N.E.2d 1221 (3d Dist. 2009) Several statements made by the defendant were in response to custodial interrogation.² After defendant's arrest for DUI, the officer asked who owned the vehicle defendant had been driving, despite having already obtained that information through a computer check of the vehicle registration number. The officer testified that he needed to know the identity of the owner to complete the tow report, but admitted that he would have used the information from the computer check rather than relying on anything defendant said.

In addition, statements at the police station, in which defendant said that he was on medication and was not supposed to drink, were properly found by the trial court to have been the result of custodial interrogation. The officer testified that he could not recall most of the questions he asked during a 20-minute DUI observation period, and the court found it reasonable to infer that the officer questioned defendant concerning his medical condition. "Given defendant's admitted consumption of alcohol, any questions regarding his seizures and ingesting medication could have induced defendant to incriminate himself."

The trial court's suppression order was affirmed.

People v. Elliot, 314 Ill.App.3d 187, 732 N.E.2d 30 (2d Dist. 2000) An interrogation occurs when a police officer uses words or actions which he should know are reasonably likely to elicit an incriminating response. When an officer who was executing a warrant asked defendant whether she had "any drugs on you," he utilized a question that was "[o]bviously designed to elicit an incriminating response."

People v. Perkins, 248 Ill.App.3d 762, 618 N.E.2d 1275 (5th Dist. 1993) "Interrogation" is any practice which the officer "should know is reasonably likely to evoke an incriminating response." Authorities should have known that an incriminating response was likely where

two police agents posed as fellow arrestees and asked defendant whether he had ever murdered anyone.

People v. Rodriquez, 96 Ill.App.3d 431, 421 N.E.2d 323 (1st Dist. 1981) Police officer's remark that "the victim may die" was reasonably likely to elicit a response, and therefore constituted interrogation.

People v. Jordan, 90 Ill.App.3d 489, 413 N.E.2d 195 (3d Dist. 1980) Following an arrest for driving while intoxicated, but before being given **Miranda** warnings, defendant was seated in the police station when an officer noticed a substance on the floor at his feet. The officer asked defendant where the substance came from, and defendant responded that it was from his boots. Defendant was subsequently given **Miranda** warnings and made other statements concerning the substance.

Defendant's statement was not spontaneous where it was made in response to an express question asked by the police officer. Failure to comply with **Miranda** requires suppression of the initial statement.

Defendant's subsequent statements were also properly suppressed, since there was not sufficient attenuation to dissipate the taint of the original unwarned statement.

People v. Burson, 90 Ill.App.3d 206, 412 N.E.2d 1160 (3d Dist. 1980) Defendant was arrested for driving while his license was revoked. While defendant was seated in a police car, an officer stated, "[N]ow, Jerry, you know better than to drive that car." Defendant responded "[Y]es, I know but can't you give me a break?" No **Miranda** warnings had been given.

The officer's statement was interrogation. The statement was the "functional equivalent" of express questioning, because the officer should have known that his statement was "reasonably likely to elicit an incriminating response."

People v. Sanders, 55 Ill.App.3d 178, 370 N.E.2d 1213 (2d Dist. 1977) In-custody statement obtained from defendant, after he stated a desire to see an attorney before signing a waiver of rights form, should have been suppressed. The State argued that the police officers did not interrogate defendant after his request for counsel, but merely had a conversation with him to "point out a few facts in the case" (i.e., that statements had been obtained from two accomplices, that there was a strong case against defendant and the penalties for the offenses). Where the objective of police remarks is to gain a response or admission, such remarks need not be purely interrogative in character in order to constitute "interrogation" or "questioning."

People v. Pendleton, 24 Ill.App.3d 385, 321 N.E.2d 433 (1st Dist. 1974) After his arrest, defendant was advised of his **Miranda** rights at the police station. He said that he did not wish to make a statement. The police officer then asked if defendant "wished to ask [the officer] any questions concerning the case." Although defendant did not "respond immediately," he did eventually make certain incriminating admissions.

Since defendant said he did not want to make a statement, the officer's question could only have been intended to start defendant talking; "[w]e deem this form of interrogation to be a ruse designed to circumvent the mandate of **Miranda**."

Illinois Supreme Court

People v. McKinley, 69 Ill.2d 145, 370 N.E.2d 1040 (1977) Statement made by defendant while in a police car after his arrest was properly admissible, despite the lack of proper **Miranda** warnings, since the officer did not question defendant but only said he was being taken for identification by two witnesses who saw him leaving the crime scene. The statement was "volunteered" and was not prompted by interrogation.

People v. Ruegger, 32 Ill.App.3d 765, 336 N.E.2d 50 (4th Dist. 1975) Defendant's statement made in question and answer form was not a "volunteered" statement. **Miranda** warnings were required.

Illinois Appellate Court

People v. Lopez, 93 Ill.App.2d 426, 235 N.E.2d 652 (3d Dist. 1968) **Miranda** warnings are not required when person volunteers a statement.

§10-4

Waiver of Rights

§10-4(a)

Generally

United States Supreme Court

Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966) An accused may effectively waive his rights to silence and counsel, if the waiver is made voluntarily, knowingly and intelligently. However, a valid waiver will not be presumed from the accused's silence or from the fact that a confession was eventually obtained.

Berghuis v. Thompkins, 560 U.S. 370, 130 S.Ct. 2250, 176 L.Ed.2d 1098 (2010) Under **Miranda v. Arizona**, a suspect who is subjected to custodial interrogation has the right to remain silent and the right to the presence of counsel. An invocation of the right to counsel is sufficient to end the interrogation only if it is clear and unambiguous. (See **Davis v. U.S.**, 512 U.S. 452 (1994)). Although the court had never set standards for the specificity required to invoke the right to silence, it held in this case that there is no "principled reason" to adopt different standards for invoking the right to counsel and the right to silence.

The court added that requiring an unambiguous invocation of the right to silence results in an objective inquiry of the sufficiency of a request and relieves law enforcement agents of the difficult task of determining what the suspect meant by an unclear statement. Finally, suppression of statements made after ambiguous references to the right to silence would add only marginally to the protection of **Miranda**, but would place a significant burden on society's interest in prosecuting crimes.

Thus, a suspect does not invoke the right to silence by merely refusing to speak. When a suspect makes an incriminatory statement after an extended period of silence in response to police questioning, the relevant issue is whether the suspect waived his **Miranda** rights before making the statement.

Here, defendant did not exercise the right to silence by remaining silent during most of a three-hour interrogation (defendant occasionally responded "yes," "no," or "I don't know" to police questioning, but otherwise did not speak). Because the defendant did not exercise his right to silence, the officers were not required to end the interrogation.

Although defendant's refusal to speak during the interrogation did not invoke the right to silence, a statement which he eventually made in response to police questioning was admissible only if he waived his **Miranda** rights.³ A waiver must be voluntary in the sense that it is the product of a free and deliberate choice and made with full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it.

A waiver need not be express, however, and may be inferred from the defendant's behavior. Thus, "a suspect who has received and understood the **Miranda** warnings, and has not invoked his **Miranda** rights, waives the right to remain silent by making an uncoerced statement to the police."

Here, there was no evidence that defendant failed to understand his rights, and no evidence that his statement was coerced. In addition, his answers to the officer's questions constituted a "course of conduct indicating waiver" of the right to silence; had defendant "wanted to remain silent, he could have said nothing in response to [the officer's] questions, or he could have unambiguously invoked his **Miranda** rights and ended the interrogation."

The court also rejected the argument that police must obtain a **Miranda** waiver before they even begin custodial questioning.

Because defendant waived his right to silence by responding to the officer's questions, and there was no evidence that defendant failed to understand the **Miranda** warnings or that his statement was involuntary, his responses to the officer's questions were not inadmissible on the grounds they had been obtained in violation of **Miranda**. (See also **COUNSEL**, §13-4(b)(4)).

Connecticut v. Barrett, 479 U.S. 523, 107 S.Ct. 828, 93 L.Ed.2d 920 (1987) Defendant waived his **Miranda** rights when he specifically agreed to talk with police officers about the offense, but refused to give a written statement until counsel was present.

Oregon v. Elstad, 470 U.S. 298, 105 S.Ct. 1285, 84 L.Ed.2d 222 (1985) A confession obtained during custodial, noncoercive questioning in the absence of **Miranda** warnings did not taint a subsequent confession obtained after proper **Miranda** warnings and waiver. Police were not required to advise defendant that his prior statements could not be used. See also, **People v. Wilson**, 164 Ill.2d 436, 647 N.E.2d 910 (1994); **People v. Fuller**, 141 Ill.App.3d 737, 490 N.E.2d 977 (3d Dist. 1986).

Tague v. Louisiana, 444 U.S. 469, 100 S.Ct. 652, 62 L.Ed.2d 622 (1980) At the suppression hearing, the arresting officer testified that he read defendant his **Miranda** rights. However, the officer also testified that "he could not recall whether he asked [defendant] whether he understood the rights as read to him, and that he 'couldn't say yes or no' whether he rendered any tests to determine whether [defendant] was literate or otherwise capable of understanding his rights."

Defendant's statement was inadmissible, since "no evidence at all was introduced to prove the petitioner knowingly and intelligently waived his rights before making the incriminating statement." See also, **People v. Rodriguez**, 76 Ill.App.3d 431, 421 N.E.2d 323 (1st Dist. 1981).

North Carolina v. Butler, 441 U.S. 369, 99 S.Ct. 1755, 60 L.Ed.2d 286 (1979) Courts must presume against waiver and the prosecution's burden is great, but a waiver can be inferred from the actions and words of the accused. See also, **People v. Higgins**, 50 Ill.2d 221, 278 N.E.2d 68 (1972).

Brewer v. Williams, 430 U.S. 387, 97 S.Ct. 1232, 51 L.Ed.2d 424 (1977) The standard to be applied to determine if there is an effective waiver of counsel, at either trial or at critical pre-trial proceedings, is whether there was "an intentional relinquishment of a known right or privilege."

Colorado v. Connelly, 479 U.S. 157, 107 S.Ct. 515, 93 L.Ed.2d 473 (1986) State must prove a waiver of **Miranda** rights by a preponderance of the evidence.

Other Federal Court

U.S. v. Tillman, 963 F.2d 137 (6th Cir. 1992) Although **Miranda** warnings need not take any precise form, the warnings in this case were deficient because they failed to inform defendant that his statements could be used against him and that he could have an attorney present.

Illinois Supreme Court

People v. Chapman, 194 Ill.2d 186, 743 N.E.2d 48 (2000) Under **People v. McCauley**, 163 Ill.2d 414, 645 N.E.2d 923 (1994), the Illinois constitutional right to due process is violated where the police refuse to allow an attorney who is at the police station to see his or her client, or fail to inform the suspect that the attorney is at the station and wishes to consult with him. The **McCauley** rule applies only where the attorney is physically present at the station, however, and not where police receive a telephone call from someone claiming to be a suspect's attorney.

McCauley did not require suppression of statements which defendant made after his attorney called the station but before counsel reached the station. See also, **People v. Rodriguez**, 324 Ill.App.3d 468, 754 N.E.2d 393 (1st Dist. 2001) (**McCauley** did not apply where, instead of coming to the police station himself, defense counsel sent a third-year law student to speak with defendant). The officers did not act improperly by refusing to disclose defendant's location to a caller who claimed to be defendant's attorney or by subsequently moving defendant to a different station. Because there was no way for police to verify the caller's identity, the refusal to discuss the case over the phone was "prudent." "Only through [the attorney's] physical presence may the police verify, through proper identification, that the person in front of them is the person he or she is claiming to be." Defendant was not moved to prevent consultation with defense counsel, but because the station at which the interrogation occurred did not have a holding facility.

However, the trial judge properly suppressed statements defendant made after his attorney arrived at the first station, although by that time defendant had been moved. Because defense counsel came to defendant's "last known location," **McCauley** applied.

People v. Johnson, 182 Ill.2d 96, 695 N.E.2d 435 (1998) Under **McCauley**, the Illinois Constitution's right to counsel is violated where police officers: (1) refuse to allow an attorney access to a person who is undergoing interrogation, and (2) fail to inform the suspect that an attorney is present and asking to see him.

McCauley was not violated where officers removed defendant from a courtroom as he was awaiting an initial appearance on one charge so they could question him on an unrelated offense. In **McCauley**, the attorney who sought access to defendant had been retained by defendant's family (albeit without defendant's knowledge). Here, by contrast, no attorney had been retained or appointed to represent defendant, and no attorney was refused access to defendant. Removing a defendant who is waiting to appear at a hearing at which counsel may be appointed is not the sort of "deceitful act" prohibited by **McCauley**.

n re W.C., 167 Ill.2d 307, 657 N.E.2d 908 (1995) When determining whether a suspect knowingly and intelligently waived his **Miranda** rights, the court must determine whether the language and context of the warnings, in view of the suspect's age, background and intelligence, constitute a clear, understandable explanation of the suspect's constitutional rights. Although the evidence here suggested that the minor lacked the mental ability to understand standard **Miranda** warnings, he may have been able to understand "simplified" warnings provided by an assistant State's Attorney. Waiver upheld.

People v. McCauley, 163 Ill.2d 414, 645 N.E.2d 923 (1994) There can be no a valid waiver of the right to counsel where police fail to inform the suspect that an attorney is present and attempting to speak with him, rejecting **Moran v. Burbine**, 475 U.S. 412 (1986) (unless the suspect's "capacity" or "ability" to comprehend his Fifth Amendment rights is affected, failing to advise a defendant of his attorney's presence creates no Federal constitutional violation), and providing greater protection under Illinois law. Due process clause of the Illinois Constitution requires that police inform a defendant that his attorney is present and asking to see him.

People v. Bernasco, 138 Ill.2d 349, 562 N.E.2d 958 (1990) Where defendant did not understand fundamental terms contained in the **Miranda** warnings, was unable to form an intent to waive those rights and did not have a normal ability to understand questions and concepts, he was properly found not to have knowingly and intelligently waived his **Miranda** rights.

People v. Morgan, 69 Ill.2d 200, 370 N.E.2d 1063 (1977) The trial court did not err in suppressing statements made by defendant to a polygraph examiner, since the examiner merely testified that "**Miranda** warnings were read to the defendant." Because the examiner did not indicate the nature of the admonitions, the State failed to show that defendant knew and waived his rights.

People v. Prude, 66 Ill.2d 470, 363 N.E.2d 371 (1977) Juveniles need not be advised they may be prosecuted as adults before they may effectively waive the right to remain silent. Where defendants were given **Miranda** warnings and indicated that they understood them, the totality of the circumstances showed that they knowingly and intelligently waived their rights to remain silent and that the confessions were voluntarily given.

People v. Roy, 49 Ill.2d 113, 273 N.E.2d 363 (1971) Where defendant was intoxicated, he did not knowingly waive his **Miranda** rights.

Illinois Appellate Court

People v. Leanos, 2023 IL App (1st) 191079 Defendant, who was 18 years old at the time, was interrogated about a murder after his bike was found abandoned at the scene. Initially, defendant denied that he was present during the offense. Subsequently, he admitted that he was there, but he implicated another individual as the shooter. As it turned out, though, that individual was already in jail at the time of the crime. Finally, defendant admitted committing the offense.

Defendant argued that his **Miranda** waiver was invalid in light of his young age and the use of misleading interrogation tactics. Specifically, defendant argued, among other things, that an officer's statements during the interrogation that, "[w]hat you tell us is stain'

in here,” and [w]hat you say her, stays where with us right now,” undermined his earlier **Miranda** waiver. The appellate court agreed that the officer’s statements were an improper “blanket promise of confidentiality.” Such a promise directly contradicts the **Miranda** warning that anything said during an interrogation can and will be used against the individual.

But, the court declined to adopt a *per se* rule that any post-waiver promise of confidentiality necessarily vitiates a **Miranda** waiver and requires suppression of all statements made thereafter. Instead, the court applied a case-by-case analysis and held that suppression is warranted only where a false blanket promise of confidentiality induced the incriminating statement. Under such an analysis, it is the State’s burden to show that the **Miranda** waiver remained effective.

Ultimately, the court concluded that the officer’s false promise of confidentiality did not induce defendant’s incriminating statements. Defendant did not request to speak “off the record” and did not say anything to indicate that he misunderstood the scope of his **Miranda** rights. Further, defendant’s incriminating statements were not made until approximately three hours after the officer’s assurances that defendant’s statements would stay “in here” and “with us.” During that time, defendant accused another individual of being the shooter. Defendant only incriminated himself after he was confronted with the fact that the other individual was in jail at the time of the shooting, suggesting that it was that confrontation, and not the false promise of confidentiality, that induced his statement.

Notably, the court specifically stated that it was not deciding whether a promise of confidentiality renders a confession involuntary under general due process standards, unrelated to any **Miranda** violation, because that issue was not raised on appeal.

The court also rejected defendant’s additional allegations of **Miranda** error. The officers statements that the truth was “the only thing” that would help defendant, that he should “come clean,” and that confessing would take the “weight” off his chest were not misrepresentations about legal consequences, but rather a permissible form of moral or psychological pressure. Similarly, it was not improper for one of the officers to begin the encounter with a brief cordial conversation with defendant, whom he knew previously. Nor was it error for the other officer to tell defendant that, “just as we do with everybody, we are going to read you your rights.” This did not undermine the **Miranda** warnings or render them a mere formality.

People v. Mora, 2023 IL App (2d) 210653 Prior to trial, defendant filed a motion to suppress his statements to the police. The court granted that motion, in part, suppressing statements that were made prior to the giving of **Miranda** warnings, but denied the motion with regard to defendant’s post-**Miranda** statements. On appeal, defendant argued that his post-**Miranda** statements were elicited through the use of an improper “question-first, warn-later” technique and should have been suppressed. He also challenged his **Miranda** waiver as involuntary. The appellate court affirmed.

The court found no evidence that officers engaged in a deliberate question-first, warn-later process to prevent defendant from asserting his **Miranda** rights. Defendant was questioned for only a few minutes before being given **Miranda** warnings. And, his confession to the shooting did not come until approximately 10 hours later.

Further, while improper pre-**Miranda** questioning resulted in the suppression of some statements, none of those statements was a confession or admission of criminal activity. Instead, the pre-**Miranda** statements simply corroborated information which the police already knew. The appellate court agreed with the trial court that the pre-**Miranda**

questioning here was case-specific and therefore improper, but rejected the argument that such questioning required suppression of later statements under these circumstances.

The court then looked to the totality of the circumstances with regard to whether defendant's **Miranda** waiver was voluntary. In particular, the court noted that defendant was 24 years old, had prior interactions with the police and the criminal justice system, could read and write English, and did not appear to be under the influence of any substance. Defendant did not ask for an attorney or otherwise invoke his rights during nearly 10 hours of on-and-off interrogation. Thus, the court found he voluntarily waived his rights.

People v. Buschauer, 2022 IL App (1st) 192472 In 2000, defendant called 911 stating that he had found his wife unresponsive in their whirlpool bathtub. She died, and the investigation into her death went cold after a few months. The investigation was reopened several years later, and the police obtained a warrant for defendant's arrest in 2013. Defendant was living in Wisconsin at the time, and detectives went there to interview him. They did not immediately execute the warrant or tell defendant they had it. Defendant spoke with the police for several hours before invoking his right to counsel. At that time he was arrested. Defendant moved to suppress the statements made during the 2013 interrogation, which was denied. Defendant was subsequently convicted of first degree murder at a bench trial.

The appellate court held that trial court did not err in denying defendant's motion to suppress. Defendant was not denied due process by the officers' failure to tell him that they had a warrant for his arrest before they questioned him in Wisconsin. While it would have been useful for defendant to know of the existence of the warrant before deciding to waive his **Miranda** rights and speak with the officers, he had no right to that information. Due process protects against police conduct which interferes with a suspect's constitutional or statutory rights. Because there was no statute or constitutional provision entitling defendant to knowledge of the existence of the arrest warrant, his due process rights were not violated by the detectives' withholding of that information.

The court also concluded that defendant's right to counsel and privilege against self-incrimination were not violated by the officers' failure to disclose the existence of the warrant prior to questioning. Defendant was given **Miranda** warnings, and his waiver of those rights was knowing, voluntary, and intelligent. Defendant was 64 years old with no apparent cognitive difficulty. He was well-educated, and he had previously invoked his **Miranda** rights during the initial investigation into his wife's death in 2000. In reaching this conclusion, the court noted that it was adhering to its prior decision in **People v. Rudd, 2020 IL App (1st) 182037**, that an officer's failure to inform a suspect that the police have a warrant for his arrest does not defeat the validity of an otherwise valid **Miranda** waiver.

Finally, the court stated that it was leaving open the possibility that, "in an appropriate case with fully developed arguments," it could find that the type of deception employed here was forbidden by the Illinois Constitution. Here, however, defendant failed to make a persuasive argument that the Illinois Constitution should be interpreted to provide broader protections than its federal counterpart where defendant made only brief references to relevant portions of the Illinois Constitution but failed to develop any arguments for greater protection.

People v. Rudd, 2020 IL App (1st) 182037 Defendant did not have the right to an attorney during a consensual station-house interview, despite the fact that the State had filed a complaint for an arrest warrant. The Sixth Amendment right to counsel attaches "at or after

the initiation of adversary judicial criminal proceedings—whether by way of formal charge, preliminary hearing, indictment, information, or arraignment.” A felony cannot be charged via complaint. A complaint is merely a request for a probable cause hearing so as to obtain an arrest warrant.

It is true that Illinois precedent holds that the filing of a complaint for an arrest warrant may trigger a defendant’s Sixth Amendment right to counsel where there was “significant prosecutorial involvement in procuring the arrest warrant.” **People v. Hayes**, 139 Ill. 2d 89 (1990). Since then, however, the United States Supreme Court has cast doubt on this principle. **Rothgery v. Gillespie County**, 554 U.S. 191, 198 (2008).

Either way, in this case there was insufficient prosecutorial involvement. The prosecutor approved the complaint as part of the detective’s attempt to seek an interview, but the detective filed the complaint and conducted the interview. Following the interview, the complaint was withdrawn at the prosecution’s request. All of the other steps taken by prosecutors, including issuing subpoenas and assisting with the interrogation, were investigatory rather than accusatory.

Finally, defendant could and did waive his right to counsel despite not knowing of the complaint. A waiver taken after proper **Miranda** warnings is valid regardless of whether defendant knows all of the investigatory steps that the State has taken against him.

People v. Wilson, 2020 IL App (1st) 162430 The 16-year-old, intellectually-disabled defendant lacked the ability to understand his **Miranda** warnings, and therefore did not knowingly and intelligently waive his rights before giving his custodial statement. The trial court should have suppressed his statements to the police. The remaining evidence was insufficient to convict him of being accountable for the murder, so the Appellate Court reversed defendant’s conviction outright.

The suppression hearing revealed that defendant had an IQ around 70, and learning disabilities, but that he responded in the affirmative after a detective asked if he understood each **Miranda** warning. When told of his right to free counsel, defendant indicated he did not understand, but after the detective repeated the warning, defendant agreed. After each sides’ expert provided contradictory opinions on whether defendant could understand the warnings, the trial court based its ruling on its own interpretation of the videotaped statement. The court concluded that because defendant expressed confusion over one warning, he was willing to seek clarification if he did not understand his rights. Thus, the trial court found the statement admissible.

In finding the trial court’s ruling was against the manifest weight of the evidence, the Appellate Court considered the “double whammy” of defendant’s youth and intellectual disability. In such cases, courts must review the circumstances of the waiver with the “utmost scrutiny.” Here, a review of the relevant factors showed the ruling could not survive this scrutiny. For example, although defendant had prior contact with the police, there was no specific evidence that he heard **Miranda** warnings before. And while defendant indicated he understood each warning, the Appellate Court deemed his answers perfunctory and mechanical. Defendant indicated that he did not understand one right until clarified by the officer, but contrary to the trial court’s finding, this equivocation was insufficient to establish full understanding. The court noted that subsequent to this interrogation, the legislature altered the **Miranda** procedure for juveniles to simplify the warnings, precisely because juveniles frequently waive their rights without understanding them. Based on these factors, the court could not find evidence of defendant’s understanding, and thus it held there was not a knowing and voluntary waiver.

The Court then rejected the State's argument that the error was harmless. Defendant was convicted for participating in the principal's plan to rob the driver of a car. A witness placed defendant in the car, but this witness also said defendant appeared to be "shocked" when he exited the car. Defendant's statement indicated that he knew the third-party wanted to rob the victim. But no other evidence supported the notion that he aided and abetted with the intent to promote the crime. Nor was there sufficient evidence of a common design, even taking into consideration the fact that defendant fled the scene and did not tell the police.

In re S.W.N., 2016 IL App (3d) 160080 A police officer, who was a certified juvenile officer, went to defendant's home to question him about a sexual assault. The officer asked defendant's mother if he could question defendant, who was a high school student, at the police station. The mother agreed and declined the officer's invitation to accompany them. At the station, the officer repeatedly told defendant that he was not under arrest. He also gave defendant **Miranda** warnings, but did not take any special steps to make them easier for a juvenile to understand. The interrogation lasted about 43 minutes before defendant made inculpatory statements.

A State's expert testified that defendant suffered from some degree of intellectual impairment and offered no opinion about whether defendant would have been able to understand the **Miranda** warnings. Four defense witnesses who knew defendant from school and were either teachers or experts in various fields related to education or psychology testified that defendant had some degree of intellectual impairment and would not have been able to knowingly and intelligently waive his **Miranda** rights.

The Appellate Court held that (1) defendant was in custody and (2) did not knowingly and intelligently waive his rights.

To validly waive **Miranda** rights, the defendant must fully understand the rights being waived and the consequences of doing so. Special care must be taken when a juvenile or a defendant with cognitive impairments waives **Miranda** rights.

The court found that the evidence overwhelmingly showed that defendant did not knowingly and intelligently waive his rights. It was undisputed that defendant suffered from limited intellectual abilities. The officer delivered the warnings in the same manner he would to an adult of average intelligence and provided very little explanation about what the rights entailed. And each of defendant's four witnesses testified that he was either unable to understand his rights or unable to understand what a waiver entailed.

The court vacated the adjudication of delinquency, suppressed defendant's statements, and remanded for further proceedings.

In re J. M., 2014 IL App (5th) 120196 Whether a **Miranda** waiver is knowing and intelligent is a factual question that is reviewed under the manifest weight of the evidence standard. A factual finding is against the manifest weight of the evidence where the opposite conclusion is clearly evident or the finding is unreasonable, arbitrary, and not based on the evidence.

Before a confession can be admitted at trial, the State must prove by a preponderance of the evidence that the defendant validly waived both the privilege against self-incrimination and the right to counsel. A **Miranda** waiver is valid where it is knowing and intelligent in that it reflects an intentional relinquishment or abandonment of a known right or privilege. A valid waiver requires that the suspect is aware not only of the State's intention to use any statement to help secure a conviction, but also that he or she can refuse to talk and request a lawyer.

In determining whether a suspect knowingly and intelligently waived **Miranda** rights, the critical question is whether the officer's statements, in context and considering the subject's age, background, and intelligence, conveyed a clear and understandable warning of the suspect's rights. Although a mental deficiency does not necessarily render a waiver involuntary or unknowing, the defendant's mental capacity is a factor which must be considered.

Furthermore, courts must take care that a juvenile's incriminating statement is not the product of ignorance of one's rights or "adolescent fantasy, fright or despair." Furthermore, suspects who are mentally deficient are more susceptible to police coercion or pressure, are predisposed to try to please the questioner, and tend to be more submissive and less likely to understand their rights. Thus, when dealing with a mentally deficient juvenile, courts must exercise extreme care to ensure that any waiver of **Miranda** was knowing and intelligent.

The trial court abused its discretion by finding that the minor suspect's **Miranda** waiver was knowing and intelligent. The minor was 13 years old but had the mental capacity of a seven-year-old. His IQ was 54 - 56, which placed him in the mildly retarded range. The minor attended special education classes, had difficulty reading the first **Miranda** warning, and was unable to explain the meaning of the word "silent." After the minor had trouble reading the first warning, a police officer read the rest of the warnings and attempted to explain them. The officer also told the minor that his mother was outside and wanted him to tell the truth. However, the mother testified that she was never told by police that she could attend the interrogation of her son.

The minor had been found unfit to stand trial, and an expert testified that the minor did not knowingly and intelligently waive his **Miranda** rights. Finally, the court concluded that the DVD of the interrogation showed that the minor "put his trust in" the officers and did not understand that they would use any statements they obtained against him. Under these circumstances, the trial court erred by finding that the **Miranda** waiver was knowing and voluntary.

The order denying the motion to suppress was reversed and the cause remanded for further proceedings.

People v. Kronenberger, 2014 IL App (1st) 110231 When a defendant indicates "in any manner" during interrogation that he wants to remain silent, the interrogation must cease. But an invocation of the right to silence must be unambiguous, unequivocal, and clear. Defendant argued that he invoked his right to silence on two separate occasions during the police interrogation. The Appellate Court disagreed, finding that defendant never made an unambiguous and unequivocal invocation of his right to silence.

Defendant (who was properly Mirandized) would at times answer the detectives' questions, at times say nothing, and at times lament his circumstances. At one point, the detectives asked defendant a series of questions about whether he wanted to keep talking. In response, defendant made some very slight movements of his head, but it was unclear whether he actually nodded or shook his head. The Appellate Court held that defendant's head gestures did not clearly indicate a desire to end all questioning, and hence were not an unambiguous and unequivocal invocation of the right to silence.

Later, the detectives left the room, and when one of them reentered, he asked defendant, "Are you done talking to me? Are you done talking to all of us?" Defendant answered "Yeah." The Court held that viewed within the context of the circumstances leading up to defendant's response, it was unclear whether defendant was indicating that he wished

to remain silent or whether he had nothing else to tell the detectives. Defendant thus did not unambiguously invoke his right to silence.

Even if defendant had invoked his right to silence in the above exchanges, the later videotaped confession did not need to be suppressed. Shortly after the above exchanges, defendant clearly invoked his right to counsel and the detectives immediately ended the interrogation. Once a defendant invokes his right to counsel, further questioning must cease, unless defendant reinitiates interrogation.

Defendant was left alone in the interrogation room for 40 minutes and then taken out for processing. At that point, defendant voluntarily reinitiated the interrogation by saying that he wanted to talk to the detectives. The detectives gave him **Miranda** warnings and defendant reaffirmed that he wanted to speak to them.

Under these circumstances, even if defendant had invoked his right to silence during the first two exchanges, and the detectives failed to honor those requests, defendant later invoked his right to counsel and the detectives scrupulously honored that request. The subsequent videotaped confession was therefore admissible because it was made after defendant reinitiated the interrogation and after he had been readvised of his rights.

The trial court properly denied the motion to suppress.

People v. Daniels, 391 Ill.App.3d 750, 908 N.E.2d 1104 (1st Dist. 2009) The trial court's finding that the defendant knowingly and intelligently waived her **Miranda** rights was contrary to the manifest weight of the evidence. Defendant had an IQ between 55 and 64, placing her in the lowest 1/10 of 1% of adults her age. She was functionally illiterate and could read only very simple, short sentences of two to three words. The defendant had trouble retaining information, was incapable of memorizing and recalling three items during a conversation, could not identify the president of the United States, and had trouble performing complicated counting, addition or subtraction. Defendant had attended special education classes throughout her life, and received social security disability checks based on her mental disability.

In addition, defendant had been found unfit to stand trial due to mental limitations and her inability to understand the roles of court personnel. Finally, she had been diagnosed as suffering from mental retardation and symptoms of psychosis.

Although one of the experts who examined the defendant disagreed with two other experts concerning the defendant's ability to understand **Miranda** warnings, all three experts agreed that defendant was unable to function at an abstract level and that some degree of abstract reasoning is required to comprehend **Miranda** warnings. In addition, "record is replete with evidence of the shortcomings of the examination" by the expert who found that defendant was able to understand **Miranda** warnings.

In any event, it appeared that the trial court did not base its holding on its evaluation of the credibility of the experts, but instead "chose to formulate" an opinion based upon the judge's individual "conceptualization of what it would take to establish sufficient comprehension" of **Miranda** warnings. Because the trial court's conclusion was not supported by the evidence, the defendant's confession should have been suppressed.

The court also noted that the trial judge relied primarily on defendant's claim that she understood the **Miranda** warnings; the Illinois Supreme Court has made clear that when a defendant lacks the ability to understand **Miranda** warnings, her beliefs concerning her ability to comprehend those warnings is of little value. The court also noted expert testimony indicating that defendant would "parrot" what she had heard about **Miranda** even if she did not understand the concepts embodied in the warnings.

Because defendant's videotaped confession should not have been admitted in the absence of a valid **Miranda** waiver, and the error was not harmless where the confession was the primary evidence of guilt, the conviction was reversed and the cause remanded for a new trial.

People v. Woods, 338 Ill.App.3d 78, 787 N.E.2d 836 (1st Dist. 2003) Under Illinois law, a criminal suspect's constitutional rights are violated where officers fail to inform him that his attorney is present at the police station and asking to see him, and also where officers refuse to allow consultation with an attorney who is physically present and prepared to advise the suspect.

Defendant's rights were violated when the attorney was denied access to defendant, without regard to whether interrogation was occurring at that time. This violation was not cured merely because defendant was told that an attorney had come to see him; the officer failed to tell defendant that the attorney had been sent to the police station by defendant's girlfriend, which might have caused defendant to refuse to make any further statements until he spoke to the attorney.

In addition, the police did not merely fail to supply general information that an attorney had come to see defendant, but also engaged in "deceitful" actions intended to deprive defendant of communications from his attorney that were directly related to the right to counsel. Specifically, officers destroyed a written note from the attorney without giving it to defendant.

People v. DeSantis, 319 Ill.App.3d 795, 745 N.E.2d 1 (1st Dist. 2000) **McCauley** applies only when the suspect is in custody. Where defendant was being questioned at the police station, but it was not yet clear "whether [he] was going to be a witness or suspect," officers were not required to disclose that an attorney had come to the police station and asked to see him.

People v. Bridges, 198 Ill.App.3d 534, 555 N.E.2d 1191 (3d Dist. 1990) Following his arrest for armed robbery and attempt murder, defendant was given **Miranda** warnings and denied involvement in the crimes. Defendant was 17 years of age and had a "diminished mental capacity." After he denied any involvement, the officer then asked whether there was any reason for defendant's bloody footprint and fingerprints to be found at the scene, whether there was any reason for defendant to be on the film from the security camera and whether defendant thought the victim had been going for a gun. The officer also told defendant that the gun used in the shooting was needed to determine the bullet's trajectory and aid in medical treatment. The officer admitted that all of the statements were false. Defendant subsequently made incriminating statements.

The trial judge erred by denying defendant's motion to suppress his statements. Based on the false representations by the officer and defendant's age and mental condition, "it cannot be said that this was a voluntary or knowing confession." (However, the Court held that the error was harmless in view of the overwhelming evidence of defendant's guilt.) See also, **People v. Higgins**, 239 Ill.App.3d 260, 607 N.E.2d 337 (5th Dist. 1993) (police told person of reduced mental capacity that he had failed polygraph and that his fingerprints had been found at the scene; there was also expert testimony that defendant would have had trouble understanding warnings and was especially susceptible to undue influence).

People v. Nau, 167 Ill.App.3d 338, 521 N.E.2d 177 (2d Dist. 1988) After being found unfit for trial, defendant filed a motion to suppress statements he made to the police shortly after

the offense. After hearing the testimony of a police officer, an assistant State's Attorney and psychiatric experts, the trial judge found that defendant was not sane at the time of the statements and did not knowingly and meaningfully waive his **Miranda** rights. Those findings were not contrary to the manifest weight of the evidence.

In re T.S., 151 Ill.App.3d 344, 502 N.E.2d 761 (4th Dist. 1986) While at the police station and in response to questioning, respondent made two statements. The first statement, an oral one, was made without **Miranda** warnings and in an "intimidating, coercive and deceptive atmosphere." The second statement, a written one, followed **Miranda** warnings.

In light of the coercion and improper tactics used in obtaining the unwarned oral statement, "the administration of **Miranda** warnings immediately prior to the written statement did not cure the condition that rendered the oral statement inadmissible." The court rejected the application of *Oregon v. Elstad*, 470 U.S. 295 (1985), under these circumstances.

People v. Lippert, 125 Ill.App.3d 489, 466 N.E.2d 276 (5th Dist. 1984) Defendant's statements to police during a polygraph or Psychological Stress Evaluation Test were admissible at trial where he was given **Miranda** warnings and executed a waiver.

People v. Markiewicz, 38 Ill.App.3d 495, 348 N.E.2d 240 (1st Dist. 1976) Defendant was interrogated in the hospital following an overdose of tranquilizers, which caused her to be in a coma and near death. Two police officers testified that defendant was advised of her rights, and responded affirmatively when asked if she understood and consented to making a statement. Two doctors testified for defense that defendant's condition made her unable to understand and knowingly and intelligently waive her constitutional rights. The finding that defendant's physiological condition prevented her from knowingly and intelligently waiving her rights was not contrary to the manifest weight of the evidence.

People v. Ruegger, 32 Ill.App.3d 765, 336 N.E.2d 50 (4th Dist. 1975) State failed to sustain its burden of proving that waiver of rights was voluntary. Defendant testified that a policeman made certain offers to assist defendant if he confessed. The policeman denied these offers, but another officer testified that the offers could have been made.

§10-4(b)

Interrogation After the Right to Counsel Attaches

United States Supreme Court

Massiah v. U.S., 377 U.S. 201, 84 S.Ct. 1199, 12 L.Ed.2d 246 (1964) Questioning of defendant after indictment violates his right to counsel. See also, **People v. Costa**, 38 Ill.2d 178, 230 N.E.2d 871 (1967).

Fellers v. U.S., 540 U.S. 519, 124 S.Ct. 1019, 157 L.Ed.2d 1016 (2004) After defendant was indicted for conspiracy to distribute methamphetamine, two police officers went to his home to execute an arrest warrant. The officers advised defendant that they had come to discuss his involvement in methamphetamine distribution, that they had a federal arrest warrant, and that defendant had been indicted for activities with four individuals. Defendant responded that he knew the four people and had used methamphetamine during his association with them.

The officers then took defendant to the jail, where they advised him for the first time of his rights under **Miranda**. Defendant signed a **Miranda** waiver and repeated his inculpatory statements. In addition, he admitted to having loaned money to one of the named individuals despite suspecting that she was involved in drug transactions.

The Sixth Amendment right to counsel is triggered by the initiation of formal judicial proceedings, including indictment. The Sixth Amendment prohibits use of statements deliberately elicited by federal agents in the absence of counsel and after defendant has been indicted. Under [Patterson v. Illinois, 487 U.S. 285 \(1988\)](#), however, if defendant waives his right to counsel, the Sixth Amendment does not bar post-indictment questioning in the absence of counsel.

Here, officers "deliberately elicited information" at defendant's home by informing defendant of the reason for their visit, the indictment, and his alleged association with several co-conspirators. Because defendant's statements at his home were "deliberately elicited" by police in the absence of counsel and after defendant had been indicted, a Sixth Amendment violation occurred.

The court rejected the argument that under [Oregon v. Elstad, 470 U.S. 298 \(1985\)](#), defendant's jailhouse statements were admissible so long as they were voluntary. Although [Elstad](#) provides that a voluntary confession obtained after full **Miranda** warnings and a valid waiver is not necessarily tainted by an earlier, unwarned statement, [Elstad](#) is a Fifth Amendment decision which the Supreme Court has not applied to violations of the Sixth Amendment.

The cause was remanded to the Court of Appeals to consider whether defendant's jailhouse statements should be suppressed as fruits of the improper questioning at the home.

[Texas v. Cobb, 532 U.S. 162, 121 S.Ct. 1335, 149 L.Ed.2d 321 \(2001\)](#) The Sixth Amendment right to counsel is "offense-specific," and attaches only when a prosecution is commenced. Thus, the Sixth Amendment right to counsel bars questioning about a crime with which defendant has been charged, but not about factually related crimes.

An "offense," for purposes of the Sixth Amendment right to counsel, is defined by [Blockburger v. U.S., 284 U.S. 299 \(1932\)](#). Under [Blockburger](#), "whether there are two offenses" depends on whether "each provision requires proof of a fact which the other does not."

Although defendant was charged with burglary and had accepted the appointment of counsel on that charge, police did not violate the Sixth Amendment by interrogating him about the murders of the occupants of the burglarized premises.

[McNeil v. Wisconsin, 501 U.S. 171, 111 S.Ct. 2204, 115 L.Ed.2d 158 \(1991\)](#) Sixth Amendment right to counsel is "offense-specific" and applies only to crimes for which prosecution has actually commenced. Once a defendant has invoked his Sixth Amendment right, any waiver that occurs in response to police-initiated interrogation about that crime is invalid.

Exercising the Sixth Amendment right to counsel on one offense, however, does not invoke the Fifth Amendment right to counsel concerning unrelated offenses. See also, [People v. Perry, 147 Ill.2d 430, 590 N.E.2d 454 \(1992\)](#) (although in appropriate cases the Illinois Constitution will be construed more broadly than comparable provisions of the Federal Constitution, [McNeil](#) strikes an appropriate balance between individual rights and law enforcement under both constitutions).

Patterson v. Illinois, 487 U.S. 285, 108 S.Ct. 2389, 101 L.Ed.2d 261 (1988) Defendant's post-indictment statement to police was properly admissible where he was given **Miranda** warnings and made an effective waiver. **Miranda** warnings are ordinarily sufficient to protect the Sixth Amendment rights of a defendant who is questioned by the police after he is indicted or otherwise formally charged. See also, **People v. Thomas**, 116 Ill.2d 290, 507 N.E.2d 483 (1987).

U.S. v. Henry, 447 U.S. 264, 100 S.Ct. 2183, 65 L.Ed.2d 115 (1980) After defendant was indicted and confined in jail, a government agent asked a paid informer, who was confined in the same cellblock, to "be alert" to any statements made by defendant. The informer was also told not to initiate any conversation with or question defendant. At trial, the informer testified concerning certain incriminating statements made to him in the jail by defendant.

The statements were obtained in violation of defendant's right to counsel. The Sixth Amendment prohibits law enforcement officials from deliberately eliciting post-indictment statements from an accused in the absence of counsel.

The fact that the informer was told not to initiate conversation was not critical - "[e]ven if the agent's statement is accepted that he did not intend that [the informer] would take affirmative steps to secure incriminating information, he must have known that such propinquity likely would lead to that result."

Kuhlmann v. Wilson, 477 U.S. 436, 106 S.Ct. 2616, 91 L.Ed.2d 364 (1986) Police did not violate defendant's Sixth Amendment rights by placing an informant in his cell with instructions "to listen" without questioning defendant. The State court found that incriminating statements defendant made to the informant, after defendant's right to counsel had attached, were spontaneous and unsolicited. The defense "must demonstrate that the police and their informant took some action, beyond merely listening, that was designed deliberately to elicit incriminating remarks."

Maine v. Moulton, 474 U.S. 159, 106 S.Ct. 477, 88 L.Ed.2d 481 (1985) Defendant's right to counsel under the Sixth Amendment was violated where, after his indictment, the police recorded conversations between him and his codefendant through an arrangement with the codefendant, who was a government informant. See also, **People v. Clankie**, 124 Ill.2d 456, 530 N.E.2d 448 (1988) (Moulton applies to "closely related offenses").

Illinois Supreme Court

In re Christopher K., 217 Ill.2d 348, 841 N.E.2d 945 (2005) Under **Davis v. U.S.**, 512 U.S. 452 (1994), whether a suspect has invoked his right to counsel during interrogation is an objective inquiry. Police are not required to end questioning when a suspect makes an ambiguous reference to an attorney, although "it will often be good police practice to clarify whether the suspect actually wants counsel."

While **Davis v. U.S.** is limited to invocations of the right to counsel which occur after a knowing and voluntary **Miranda** waiver, the same test should be applied where the suspect makes a reference to counsel immediately after being advised of his **Miranda** rights and before making a waiver. The proximity in time between the **Miranda** warnings and the statement about counsel is relevant to the interpretation which a reasonable officer would give to defendant's statement, but the primary focus should be on defendant's actual statement.

A minor's age is not "the determinative factor" in deciding whether a juvenile has made an adequate request for counsel during custodial questioning. The "relevant inquiry must remain on what the police reasonably believed the statement to mean"; the "[r]espondent's age is not wholly irrelevant to this inquiry, but it is merely one of multiple factors. . ."

A reasonable police officer would not have understood the 14-year-old minor's statement ("Do I need a lawyer?") as a request for an attorney. The statement was made immediately after the **Miranda** rights were read, before any waiver occurred, and was phrased as a request for advice. Although respondent was only 14, he was "articulate and above average in intelligence." Also, detectives allowed respondent's mother, who was present, to confer with her son in private before the interrogation commenced.

People v. Martin, 102 Ill.2d 412, 466 N.E.2d 228 (1984) While defendant was in custody on a rape charge, and after counsel had been appointed, he was questioned about an unrelated murder. Defendant was advised of his **Miranda** rights and, without requesting counsel, gave a statement about the murder. There was no Sixth Amendment violation.

People v. Thompkins, 121 Ill.2d 401, 521 N.E.2d 38 (1988) Sixth Amendment right to counsel does not attach upon filing of a complaint, because a complaint does not "constitute a formal commitment by the People to prosecute defendant."

Also, defendant did not invoke his Fifth Amendment right to counsel by speaking with an attorney whom he had not yet retained, after having received **Miranda** warnings. Defendant acknowledged that he understood each of his **Miranda** rights and thereafter freely spoke to police, resulting in an unequivocal waiver of those rights.

People v. Evans, 125 Ill.2d 50, 530 N.E.2d 1360 (1988) The right to counsel does not attach until the commencement of adversarial judicial criminal proceedings, even though the right had attached for an unrelated charge.

People v. Young, 153 Ill.2d 383, 607 N.E.2d 123 (1992) At an extradition hearing in Wisconsin, defense counsel and defendant explicitly stated that defendant was exercising his Fifth and Sixth Amendment rights on the Illinois murder charge on which extradition was being sought. Illinois authorities were not informed that defendant had exercised his rights. The Illinois officers interrogated defendant during the trip to Illinois and obtained incriminating statements. Defendant made additional statements at the Illinois police station. **Miranda** warnings were given before each statement, and defendant did not request an attorney or ask to remain silent.

Illinois officers had no duty to ask Wisconsin authorities whether defendant had exercised his rights to counsel or silence. Illinois officers had no basis to suspect that defendant would have exercised his rights, as there was no reason for Wisconsin authorities to question him on the Illinois charges. Furthermore, since extradition is merely a summary procedure intended to return an accused to the charging jurisdiction, Illinois officers had no reason to anticipate that defendant might have exercised his Illinois rights during the extradition hearing. Finally, the Wisconsin authorities who transferred defendant to the Illinois officers did not know that defendant had exercised his rights during the hearing; thus, they would not have advised the Illinois officers of that action even had they been asked.

Also, the fact that a fugitive warrant was issued and the extradition process commenced did not give rise to defendant's Sixth Amendment right to counsel. Extradition

is not a "critical stage" of a criminal prosecution, but merely a summary procedure to return fugitives to the demanding State. The prosecutor's action in this case — approving a fugitive warrant — was not the equivalent of bringing "the full prosecutorial forces of the State" to bear against defendant. Contra, [People v. Maust](#), 216 Ill.App.3d 173, 576 N.E.2d 965 (1st Dist. 1991) (where defendant was under indictment and requested the appointment of counsel in his written extradition waiver, police were barred from initiating interrogation.)

Illinois Appellate Court

[People v. Synowiecki](#), 2023 IL App (4th) 220834 Defendant was charged with various felonies on September 4, appeared in court, and requested and received appointment of the public defender. He posted bond and was released a few days later. On September 11, defendant was questioned by the police without his attorney, and the State introduced that video-recorded statement at defendant's trial. On appeal, defendant argued that trial counsel was ineffective for not filing a motion to suppress, arguing that his video-recorded statement was taken in violation of the sixth amendment.

The sixth amendment guarantees the right to have counsel present at all critical stages of criminal proceedings, including interrogation. The right attaches after adversarial judicial criminal proceedings have been initiated. A defendant may waive his sixth amendment right to counsel after it attaches so long as the waiver is voluntary, knowing, and intelligent.

Defendant argued that because counsel had been appointed, the police were prohibited from contacting him without his attorney. The appellate court rejected this argument. The appointment of counsel in criminal proceedings is not the equivalent of a defendant's "invocation" of his right to counsel during interrogation under [Edwards v. Arizona](#), 451 U.S. 477 (1981) ("once a suspect in custody has invoked his right to counsel, all questioning must cease until counsel is present unless the suspect initiates further discussion"). A represented defendant may waive his right to counsel at a subsequent interrogation. The court found such a waiver here where defendant was given **Miranda** warnings at the outset of questioning and voluntarily answered questions thereafter without requesting counsel's assistance. Because a motion to suppress would have been meritless, trial counsel was not ineffective for failing to file one.

[People v. Mrdjenovich](#), 2023 IL App (1st) 191699 After a masseur was shot and killed at a Schiller Park motel, defendant implicated Dorsey, the head of what defendant described as a sex-trafficking business, first to detectives, then to a grand jury. Defendant worked for Dorsey but claimed to be in Dallas during the murder. He said Dorsey told him the details of the crime.

Defendant was arrested in Michigan for possessing a stolen car. The detectives visited him in jail and urged him to return to Chicago after his release so that he could help them "put Dorsey away" and in turn help defendant get his life in order. In the meantime, detectives interviewed another masseur who put defendant at the scene of the murder.

Defendant took a bus back to Chicago. The detectives met him at the bus station and drove him directly to the police station for questioning. Over the course of two days, defendant's story changed, and he eventually confessed to the murder. Defendant moved to suppress on various grounds, but only an insignificant portion (statements made in between an invocation of the right to silence and his re-initiation of the interview) was suppressed, and he was eventually convicted. Defendant renewed his challenges to the confession on appeal.

Defendant first argued that his confession was the product of an illegal arrest. He argued that when detectives met him at the bus station, drove him to the police station, and interviewed him for two days, he was under arrest without probable cause or a warrant, because a reasonable person would not feel free to leave under those circumstances. The appellate court disagreed.

First, although detectives did not have probable cause at the time he was taken to the station, within 20 minutes of the interrogation defendant admitted he was in Chicago during the shooting and therefore had lied to the grand jury. Thus, the officers had probable cause to detain him at that point, so defendant would have to prove he was arrested prior to that statement. But the record showed the detectives did not use physical force, handcuffs, or otherwise coerce defendant with a display of authority. To the contrary, defendant agreed to meet the detectives at the station and even texted them when he did not initially see them. The door of the interview room was unlocked, and his belongings were not confiscated and searched until after he admitted to lying to the grand jury. And while defendant received **Miranda** warnings, the detectives told him he was free to leave and not under arrest. Finally, the court found that the entire relationship between defendant and the detectives was predicated on a cooperative, voluntary *quid pro quo*, part of which involved defendant providing information about Dorsey, his business, and the murder, which is exactly what was happening at the time of this interview.

Defendant next argued that his confession violated **Edwards v. Arizona**, because he invoked his right to counsel on the first day of his interrogation and was re-interrogated the next day prior to confessing. The appellate court disagreed. All interrogation ceased the day of defendant's invocation. Defendant re-initiated the conversation the next day. While defendant argued that keeping him overnight was a coercive tactic, the detention was lawful because the officers had probable cause to detain him after he admitted to obstruction of justice by lying to the grand jury. A lawful detention cannot be considered a coercive tactic.

The appellate court also rejected the argument that the officers coerced the re-initiation by failing to help defendant procure a lawyer by the time he confessed 15 hours later. Defendant didn't try to call a lawyer, despite having access to a phone. Finally, there was nothing improper about the detectives' deceitful tactics, including portraying defendant as a victim and suggesting he would gain sympathy from the state's attorney. While the detectives "came dangerously close" to promising defendant he would not be charged for the murder, they never did so, and in fact did explicitly stated they were not making any promises. Thus, the officers did not violate **Edwards**.

People v. Campbell, 2014 IL App (1st) 112926 Under **McNeil v. Wisconsin**, 501 U.S. 171 (1991) and **People v. Villalobos**, 193 Ill. 2d 229, 737 NE2d 639 (2000), an anticipatory exercise of the right to counsel does not invoke the **Miranda** right to counsel so as to prevent later custodial interrogation. Instead, **Miranda** is invoked only where at the time of the request, the suspect is both in custody and either subject to interrogation or under an imminent threat of interrogation.

Defendant testified that while he was restrained in his home as a search warrant was executed, he asked an officer whether he was under arrest. When he was told that he would be arrested, defendant stated that he wanted to talk to a lawyer. The court concluded that even if defendant's testimony was believed, a request for counsel under these circumstances did not effectively invoke **Miranda** because defendant had not been arrested and was not being subjected to questioning. In order to preclude a subsequent interrogation at the police

station, therefore, defendant was required to repeat his request when police initiated an interrogation.

People v. Martin, 408 Ill.App.3d 44, 945 N.E.2d 1239 (1st Dist. 2011) Once formal charges have been filed, the State has an affirmative obligation to not act in a manner which circumvents the Sixth Amendment right to counsel. (**Maine v. Moulton**, 474 U.S. 159 (1985)). The State violates this obligation by knowingly circumventing the right to counsel during a confrontation between the defendant and a state agent.

The State violated **Moulton** when it asked the complainant to wear a wire when he visited defendant in the county jail. During the recorded conversation, defendant offered to pay the complainant \$3,000 if he failed to come to court to testify. The Supreme Court noted that the complainant became a State agent when he agreed to wear the wire, and that **Moulton** precludes any use at trial of the conversation between the complainant and the defendant.

Had defense counsel objected to the conversation, the evidence would have been excluded. Due to the overwhelming admissible evidence of guilt, however, a different result would not have been likely had counsel acted competently. Thus, counsel was not constitutionally ineffective.

For the same reason, the “closely balanced evidence” prong of the plain error rule did not apply. Defendant’s convictions for attempt murder and attempt armed robbery were affirmed.

People v. Brown, 358 Ill.App.3d 580, 831 N.E.2d 1113 (5th Dist. 2005) Under **Maine v. Moulton**, 474 U.S. 159 (1985), the Sixth Amendment right to counsel is violated where, after initiation of formal charges, the State circumvents defendant's right to have counsel present during a confrontation between defendant and a State agent.

A Sixth Amendment violation occurred at defendant's trial for first degree murder where the State introduced tape recorded conversations between defendant and his cellmate, who had agreed to cooperate with the State in an attempt to obtain evidence against defendant. The statements concerned defendant's plot to murder a witness, and was bolstered by three documents which the cellmate claimed defendant prepared and which included a coded list of witnesses and two city maps.

The Sixth Amendment prohibits the State from intentionally procuring uncounseled, incriminating statements that are used against defendant concerning charges that were pending when the statements were made, whether or not defendant incriminates himself concerning the pending charges or only for crimes which have not yet been charged.

People v. Rish, 336 Ill.App.3d 875, 784 N.E.2d 889 (3d Dist. 2003) The **Strickland v. Washington** test for ineffective assistance of counsel applies not only to claims raised under the Sixth Amendment, but also to those raised under the Illinois Constitution. Also, the Illinois Constitution entitles persons who are subjected to custodial interrogation to conflict-free counsel, even though the Fifth Amendment contains no such requirement.

People v. Hoskins, 168 Ill.App.3d 904, 523 N.E.2d 80 (1st Dist. 1988) Defendant was arrested and charged with aggravated battery arising out of a beating and shooting. He retained counsel and was released on bond. The victim subsequently died from the injuries, and defendant was rearrested for murder. Following his rearrest, defendant's counsel advised him to make no statements and instructed the police not to question defendant. However,

two detectives did interview defendant. After this questioning ceased, defendant asked to speak with the detectives. He was given **Miranda** warnings and confessed.

Because defendant had been formally charged with an offense based upon the same underlying situation as the murder, his Sixth Amendment right to counsel had attached at the time of rearrest. Further, defendant's request to talk to the officers, made shortly after the unlawful police-initiated questioning, was not an effective waiver of counsel.

People v. Dove, 147 Ill.App.3d 659, 498 N.E.2d 279 (4th Dist. 1986) Defendant contended that his Sixth Amendment right to counsel was violated by statements he made to a police informant, during two separate conversations, after a complaint was filed and an arrest warrant issued.

"A defendant has a Sixth Amendment right to counsel upon the filing of a complaint and the issuance of an arrest warrant in felony cases," even before defendant is arrested. Thus, a conversation between defendant and a friend, who was a police informant, should have been suppressed. The informant was wearing a listening device and repeatedly made inquiries of defendant and urged him to talk louder.

A second conversation occurred in the jail after defendant's arrest, and between the same parties. Before going to the jail, the informant told a police officer that defendant asked to see him. The officer initially suggested that the informant wear a listening device, but after being told by the State's Attorney that it would be illegal, the officer told the informant that no listening device could be used. The officer testified that he told the informant that he would be strictly on his own, he could not question defendant on behalf of the police and he was not being asked to interrogate defendant. However, the officer said that if the missing child (i.e., the murder victim) was still alive he should tell the police so they could get her. This conversation was admissible because the evidence did not establish a coordinated action between the informant and the police. The informant voluntarily told police the substance of the conversation.

People v. Fleming, 134 Ill.App.3d 562, 480 N.E.2d 1221 (1st Dist. 1985) Adversarial proceedings against a minor began when a delinquency petition was filed, because such a petition is similar to a criminal complaint. There was a "high degree of prosecutorial involvement" in the filing of the delinquency petition.

The minor's right to counsel was violated when the police failed to inform him that he was represented by counsel before their interrogation began.

People v. Humphries, 222 Ill.App.3d 81, 584 N.E.2d 996 (5th Dist. 1991) Defense counsel and the prosecutor agreed that attempt armed robbery charges would be dismissed if defendant passed a polygraph examination. Defendant took the polygraph without counsel being present and after receiving **Miranda** warnings. After the test was completed, the examiner informed defendant that he had not passed. After a discussion, the examiner said, "You know you still haven't explained why you failed the test; you talked about robbing [the victim], didn't you?" Defendant then made incriminatory statements.

The post-polygraph statements were taken in violation of the Sixth Amendment right to counsel.

§10-4(c)

Interrogation After Request for Counsel

United States Supreme Court

Edwards v. Arizona, 451 U.S. 477, 101 S.Ct. 1880, 68 L.Ed.2d 378 (1981) When an accused invokes his right to have counsel present during custodial interrogation, his subsequent response to questioning, even after additional admonishments, does not constitute a valid waiver. See also, **Shea v. Louisiana**, 470 U.S. 51, 105 S.Ct. 1087, 84 L.Ed.2d 38 (1985) (**Edwards** applies to cases pending on direct appeal at the time it was decided); **Solem v. Stumes**, 465 U.S. 638, 104 S.Ct. 1338, 79 L.Ed.2d 579 (1984) (**Edwards** is not to be applied to cases on collateral review).

Maryland v. Shatzer, 559 U.S. 98, 130 S.Ct. 1213, 175 L.Ed.2d 1045 (2010) **Edwards v. Arizona**, 451 U.S. 477 (1981), provides that once an accused has invoked his right to counsel during custodial interrogation, a valid waiver of the right to counsel requires more than a mere showing that the accused subsequently responded to police-initiated custodial interrogation, even if the subsequent interrogation was preceded by new **Miranda** warnings. Under **Edwards**, a defendant who exercises his right to counsel during custodial interrogation may not be reinterrogated unless he initiates further communication, exchanges, or conversations with the police.

Edwards is not a constitutional requirement, but a prophylactic rule based on the belief that when a defendant requests the assistance of counsel for custodial interrogation, any subsequent interrogation without counsel poses a greater risk of coercion. As a judicially-crafted prophylactic rule, **Edwards** should be extended only to situations in which its benefits - preserving the integrity of the defendant's choice to communicate with police through counsel and preventing police from badgering an arrestee into waiving a previously asserted right to counsel - outweigh the cost of excluding what may be voluntary, reliable statements.

A break in custody which returns the suspect to his "normal life" makes it less likely that a subsequent decision to waive counsel is the result of coercion rather than the product of the suspect's free will. In addition, a defendant who was previously released after requesting counsel knows from experience that to end the interrogation, "he need only demand counsel." The court concluded that extending **Edwards** to preclude subsequent interrogation where the defendant has been released for a significant period of time would not significantly advance the interest of excluding forced confessions.

However, extension of **Edwards** would result in the suppression of many voluntary confessions. Furthermore, based on precedent, the application of **Edwards** following a break in custody would preclude police from interrogating defendants who have previously exercised their right to counsel even when the subsequent interrogation concerns unrelated crimes or questioning by a different law enforcement jurisdiction. The court concluded that the "only logical endpoint of **Edwards** disability is termination of **Miranda** custody and any of its lingering effects."

Because it would be impractical to decide on a case-by-case basis whether a break in custody is sufficient to end the coercive effort of reinterrogation, the court adopted a "bright-line" rule that a break in custody of 14 days or more is sufficient to allow the defendant to "shake off any residual coercive effect" of custody. In a footnote, however, the court stressed that even a defendant who has been released for more than 14 days may show that his

Miranda waiver was involuntary. In such cases, the defendant is entitled to the protection of **Miranda** even if he cannot claim the *per se* protection of **Edwards**.

Where defendant was incarcerated in a state prison on an unrelated charge when he exercised his right to have counsel during interrogation concerning a new crime, his return to general population constituted a sufficient “break” in custody to trigger the 14-day rule. Thus, police could interrogate defendant when the investigation was reopened more than two years after the request for counsel. The court concluded that lawful incarceration on an unrelated offense does not create the type of “coercive pressure” associated with continued custody on an offense for which the defendant has requested counsel, and that upon his return to general population defendant “regain[ed] the degree of control [he] had over [his life] prior to the interrogation.”

Montejo v. Louisiana, 556 U.S. 778, 129 S.Ct. 2079, 173 L.Ed.2d 955 (2009) Where counsel is appointed in the absence of a specific request by defendant, there is no presumption that any subsequent waiver of counsel is invalid. The Sixth Amendment right to counsel may be waived, as long as the waiver is knowing, intelligent, and voluntary. In determining whether a waiver is knowing and voluntary, there is no reason to distinguish between a defendant who is represented by counsel and one who is not. Overruling **Michigan v. Jackson**, 475 U.S. 625, ___ S.Ct. ___, ___ L.Ed.2d ___ (1986) (held that police could not initiate interrogation after arraignment at which defendant requested appointment of counsel).

McNeil v. Wisconsin, 501 U.S. 171, 111 S.Ct. 2204, 115 L.Ed.2d 158 (1991) The Fifth Amendment right to counsel, which is intended to protect the right against self-incrimination by allowing one to channel all communication with the police through an attorney, is triggered by custodial interrogation and does not depend on whether prosecution has actually commenced. Once the Fifth Amendment right is invoked, police cannot initiate interrogation on any offense unless counsel is present.

Minnick v. Mississippi, 498 U.S.146, 111 S.Ct. 486, 112 L.Ed.2d 489 (1990) Defendant was arrested in California on a Mississippi warrant. He was questioned by FBI agents, and requested counsel. This interview ended, and defendant met with counsel who was appointed for him.

Thereafter, a Mississippi officer arrived at the California jail, questioned defendant without counsel being present, and obtained an incriminating statement. That statement must be suppressed because defendant was questioned, in the absence of counsel, after he made a specific request for an attorney.

Arizona v. Roberson, 486 U.S. 675, 108 S.Ct. 2093, 100 L.Ed.2d 704 (1988) When an accused invokes the right to counsel during interrogation, the police are barred from initiating further, counselless interrogation concerning either the crime under investigation at the time of the request or unrelated crimes. See also, **People v. Hicks**, 132 Ill.2d 488, 548 N.E.2d 1042 (1989); **Butler v. McKeller**, 494 U.S. 407, 110 S.Ct. 1212, 108 L.Ed.2d 347 (1990) (Roberson is not retroactive to cases on collateral review).

Arizona v. Mauro, 481 U.S. 520, 107 S.Ct. 1931, 95 L.Ed. 458 (1987) Following *Miranda* warnings, defendant invoked his right to counsel. The questioning then ceased.

Defendant's wife then asked to see defendant. The police allowed the meeting to take place in the presence of a police officer, who placed a tape recorder in plain sight on the desk and recorded incriminating statements made by defendant to his wife.

The police action, even after defendant's request for counsel, did not constitute interrogation. Defendant was not subjected to compelling influences, psychological ploys or direct questioning. Also, there was no evidence that the police induced the wife to meet with defendant. Defendant's statements to his wife were voluntary. See also, [People v. Lucas](#), 132 Ill.2d 399, 548 N.E.2d 1003 (1989).

[Davis v. U.S.](#), 512 U.S. 542, 114 S.Ct. 2350, 129 L.Ed.2d 362 (1994) Once a suspect has made a knowing and voluntary waiver of his **Miranda** rights, police need not cease their questioning unless there is an unambiguous request for counsel. Also, officers need not ask any clarifying questions when a suspect makes an ambiguous reference to counsel. Instead, officers may simply continue the interrogation until an unambiguous invocation of the right to counsel occurs.

Defendant's remark that "maybe" he should talk to a lawyer was not an unambiguous assertion of the right to counsel, thus the officers were not required to ask clarifying questions or end the interrogation. Defendant's subsequent statements were properly admitted into evidence. Compare, [People v. McCauley](#), 163 Ill.2d 414, 645 N.E.2d 923 (1994) (implying that due process clause of the Illinois Constitution may require police to honor less-than-articulate request for counsel).

[Moran v. Burbine](#), 475 U.S. 412, 106 S.Ct. 1135, 89 L.Ed.2d 410 (1986) A pre-arraignment confession, preceded by a valid **Miranda** waiver, was properly obtained though: (1) about an hour before the interrogation, police told a public defender (who was asked by defendant's sister to represent him) that the police did not intend to question defendant, and (2) the police did not inform defendant that the attorney was trying to contact him. But see, [People v. McCauley](#), 163 Ill.2d 414, 645 N.E.2d 923 (1994) (Illinois Constitution requires that defendant be advised that an attorney is at the police station and asking to see him).

[Smith v. Illinois](#), 469 U.S. 91, 105 S.Ct. 490, 83 L.Ed.2d 488 (1984) Defendant's statement ("I'd like to do that"), when told of the right to counsel, was not ambiguous or equivocal. Nothing in the response itself, and nothing that defendant had said previously, "cast doubt on the meaning of his statement."

[Oregon v. Bradshaw](#), 462 U.S. 1039, 103 S.Ct. 2830, 77 L.Ed.2d 405 (1983) Defendant was given **Miranda** warnings, denied involvement in the incident in question and requested an attorney. The police then terminated the conversation. Later, as defendant was being transported from the police station to a county jail, he asked, "What is going to happen to me now?" The officer told defendant he did not have to talk, and defendant said he understood. A discussion followed, and defendant agreed to take a polygraph test.

Before the test, defendant was given **Miranda** warnings and signed a written waiver. After the test, in response to the polygraph examiner's doubts about defendant's truthfulness, defendant recanted his prior denials and admitted involvement in the incident.

This did not violate the rule of [Edwards v. Arizona](#). After his request for counsel, defendant "initiated further conversation" by asking "what is going to happen to me now." In addition, defendant's subsequent statements were voluntary and the result of a knowing

waiver of rights. Thus, the statements are admissible. See also, [Wyrick v. Fields](#), 459 U.S. 42, 103 S.Ct. 394, 74 L.Ed.2d 214 (1982).

[Fare v. Michael C.](#), 442 U.S. 707, 99 S.Ct. 2560, 61 L.Ed.2d 197 (1979) An accused's request for his probation officer is not a per se invocation of Fifth Amendment rights, as a request for an attorney would be.

[Brewer v. Williams](#), 430 U.S. 387, 97 S.Ct. 1232, 51 L.Ed.2d 424 (1977) Although defendant had been informed of and appeared to understand his right to counsel, waiver requires not merely comprehension, but also relinquishment. Despite defendant's express and implicit assertions of his right to counsel, the police proceeded to elicit incriminating statements from him without making any effort to ascertain whether defendant wished to relinquish that right. Statements were obtained in violation of the Sixth Amendment.

[Escobedo v. Illinois](#), 378 U.S. 478, 84 S.Ct. 1758, 12 L.Ed.2d 977 (1964) A confession was inadmissible where it was taken from a defendant who requested but was denied counsel.

Illinois Supreme Court

[People v. Hunt](#), 2012 IL 111089 [People v. McCauley](#), 163 Ill. 2d 414, 645 N.E.2d 923 (1994), held that there is no knowing waiver of the right to counsel when police, prior to or during custodial interrogation, refuse an attorney access to a suspect if the suspect has not been informed that the attorney was present and sought to consult with him. This rule is based on the Illinois constitutional guarantees against self-incrimination and to due process. Ill. Const. 1970, art. I, §§2, 10.

[McCauley](#) superimposed a state-specific right onto the existing **Miranda** framework. The constitutional justification for the **Miranda** regime is police custodial interrogation. [McCauley](#) did not reject this foundation by taking the police out of the equation. Accordingly, like a suspect's **Miranda** rights, a suspect's [McCauley](#) right arises only during police custodial interrogation.

Defendant was not subjected to police custodial interrogation when he had a conversation with an undercover informant and fellow inmate. Therefore, both **Miranda** and [McCauley](#) are inapplicable.

The court expressly overruled [People v. Perkins](#), 48 Ill. App. 3d 762, 618 N.E.2d 1275 (5th Dist. 1993), which held that where a suspect has asserted his fifth amendment right to counsel, he cannot be questioned by undercover agents on a separate, unrelated, and uncharged offense while in jail, without the presence of an attorney and an opportunity to waive counsel. As the United States Supreme Court held in [Illinois v. Perkins](#), 496 U.S. 292 (1990), **Miranda** warnings were not required because the defendant was not subjected to police custodial interrogation. It follows that defendant had no fifth amendment right to counsel. It was irrelevant that he requested counsel when he was arrested for an unrelated offense.

[People v. Olivera](#), 164 Ill.2d 382, 647 N.E.2d 926 (1995) Defendant, a 16-year-old youth, was accompanied by both his father and an attorney when he surrendered to police on charges concerning a drive-by shooting on July 31. While the attorney and the father were present, defendant was advised of his **Miranda** rights and said that he did not want to speak to officers except to provide booking information. The attorney and the father left the station, and defendant was subsequently placed in a lineup.

According to testimony the trial court found credible, after the lineup was finished defendant asked, "What happened?" A detective responded that defendant had been "positively identified." When defendant asked what would happen next, the detective readvised defendant of his rights. Defendant then said that he understood his rights and that he had not been alone at the time of the shooting.

A short time later, the detective learned that a drive-by shooting involving a similar car had occurred on July 29, and that the victim had died. The detective then returned to the room where defendant was being held, advised him of his **Miranda** rights and asked whether he had any knowledge of the second offense. Defendant responded with a statement that included several inculpatory remarks about the second offense. Defendant later made one oral and one court-reported statement about the second offense, without asking to consult with an attorney.

An **Edwards** violation occurred. Generally, if the accused responds to **Miranda** warnings by requesting an attorney, interrogation must cease until an attorney is present. Once a suspect expresses a desire to communicate with officers through counsel, officers may resume the interrogation only if: (1) the suspect initiates conversations with the officers that "evin[c]e a willingness and a desire for a generalized discussion about the investigation," and (2) the suspect's remarks, with all the other circumstances, establish a knowing and intelligent decision to waive the previously-invoked right to counsel. Where a defendant's statements can be fairly interpreted as expressing a desire to reopen discussion of the case, the police must repeat the **Miranda** warnings before they engage in express questioning or statements that are reasonably likely to elicit an incriminating response.

Defendant's questions about the lineup did not show that he was willing to reopen the interrogation. To attach such significance to defendant's statements "would render virtually any remark by a defendant, no matter how offhand or superficial, susceptible to interpretation as an invitation to discuss his case in depth."

Furthermore, the detective should have known that telling defendant that he had been identified was reasonably likely to elicit an incriminating response. Therefore, even if defendant's question could have been interpreted as expressing a desire to reopen the investigation, the detective was required to repeat the **Miranda** warnings before responding to the question.

People v. McCauley, 163 Ill.2d 414, 645 N.E.2d 923 (1994) After he was arrested and received **Miranda** warnings, defendant was questioned about a shooting that had occurred the previous day. He did not ask to speak to a lawyer, but gave an alibi for the crime. The officers then left defendant at the police station while they "checked out" his alibi.

While the officers were investigating the alibi, an attorney who had been hired by defendant's family was trying to discover defendant's whereabouts. The attorney telephoned both the station where defendant was being held and another station, but was told that defendant was not at either location. He then went to one of the stations and telephoned the other, but was again told that defendant was not being held.

The attorney then went to the station where defendant was being held and asked to speak to him. A police sergeant responded that the attorney would not be allowed to speak with defendant, that defendant would not be told that the attorney was present and that defendant had not asked for a lawyer. The attorney left the station when it became apparent he would not be allowed to see defendant.

After the attorney left, the interrogating officers returned to the station, told defendant that his alibi did not "check out" and arranged for a lineup. After defendant was identified in the lineup, he was questioned again and repeated his alibi. Early the next

morning, police located the alibi witnesses and discovered that they could not support defendant's claims. They then charged defendant with first degree murder.

Under [Article I, §10 of the Illinois Constitution](#), there cannot be a valid waiver of the right to counsel where police fail to inform the suspect that an attorney is present and attempting to speak with him. The Court rejected the authority of [Moran v. Burbine, 475 U.S. 412 \(1986\)](#), which held that unless the suspect's "capacity" or "ability" to comprehend his Fifth Amendment rights is affected, failing to advise a defendant of his attorney's presence creates no Federal constitutional violation. Instead, under Illinois law a criminal defendant must be informed of his attorney's request to see him:

"when police, prior to or during custodial interrogation, refuse an attorney appointed or retained to assist the suspect access to the suspect, there can be no knowing waiver of the right to counsel if the suspect has not been informed that the attorney was present and seeking to consult with him."

Also, the due process clause of the [Illinois Constitution \(art. I, §2\)](#) requires that police inform a defendant that his attorney is present and asking to see him. The Court also appeared to suggest that due process might require the police to honor a less-than-articulate request for counsel. Compare, [U.S. v. Davis, 512 U.S. 452, 114 S.Ct. 2350, 129 L.Ed.2d 362 \(1994\)](#) (police need not treat an ambiguous reference to counsel as a request for an attorney).

[People v. Young, 153 Ill.2d 383, 607 N.E.2d 123 \(1992\)](#) An Illinois defendant invoked his Fifth and Sixth Amendment rights at a Wisconsin extradition hearing on an Illinois murder charge. During the return trip to Illinois, the Illinois officers initiated questioning of defendant and obtained incriminating statements from him. Illinois officers were not aware of defendant's previous invocation of his rights.

There are two reasons to impute knowledge that a suspect has invoked his Fifth and Sixth Amendment rights - to prevent authorities from circumventing a request for counsel by transferring the suspect to an officer who is not aware of the request, and to give effect to the "bright-line" rule of [Edwards v. Arizona, 451 U.S. 477 \(1981\)](#) (all police-initiated questioning must cease upon a request for counsel.) The "bright-line" rule of Edwards does not apply to a request for counsel made to the trial judge during an extradition hearing. Edwards applies only where defendant requests counsel from authorities who have responsibility for interrogating him.

[People v. Winsett, 153 Ill.2d 335, 606 N.E.2d 1186 \(1992\)](#) Defendant was convicted of attempt murder, solicitation to commit murder and conspiracy to commit murder for his role in finding someone to commit a murder-for-hire. In a statement made after police ignored his request for counsel, defendant identified the actual triggerman. After the trial court granted a motion to suppress the statement on **Miranda** grounds, the defense moved to exclude the triggerman's testimony as a "fruit" of the illegal statement. Although the State admitted learning the triggerman's identity from the statement, the trial court denied the motion.

Defendant filed a post-conviction petition claiming that appellate counsel was ineffective for failing to argue that the triggerman's identity and testimony were fruits of the **Miranda** violation. Given the uncertainty of the law counsel should have raised the issue on direct appeal. However, the "fruit of the poisonous tree" doctrine applies only where police violate an actual constitutional right, and not where they violate only prophylactic rules that are not themselves of constitutional stature. The **Miranda** right to counsel is not a constitutional right; it is merely a prophylactic safeguard intended to protect the Fifth Amendment right against self-incrimination. Therefore, a statement that is voluntary under

the Fifth Amendment may be used to locate third party witnesses and physical evidence even though it was obtained in violation of **Miranda**.

People v. Edwards, 144 Ill.2d 108, 579 N.E.2d 336 (1991) Evidence recovered as the result of information given by defendant during an interrogation that violated the Fifth and Sixth Amendments was properly introduced at trial under the "inevitable discovery" doctrine.

People v. Hicks, 132 Ill.2d 488, 548 N.E.2d 1042 (1989) A defendant who waives the right to counsel as to questioning about one offense may be questioned about other offenses, unless he indicated that his waiver is limited.

People v. Taylor, 76 Ill.2d 289, 391 N.E.2d 366 (1979) Defendant was arrested at 9:30 a.m., given incomplete **Miranda** warnings (he was not advised that if indigent counsel would be appointed) and questioned. Defendant asked to talk to an attorney and was allowed to make a telephone call. The attorney could not be reached, but a message was left for him. The questioning continued.

The attorney returned defendant's call, but declined to take the case. Defendant was upset and crying as he said he "didn't know who to get now." The questioning continued, and a signed statement was obtained at 3:00 p.m. Another signed statement was obtained at 10:45 p.m.

At 10:30 a.m. the following day, defendant was given proper **Miranda** warnings. He made no specific request for counsel and signed a waiver form. An oral statement was then obtained.

The trial court suppressed the first two statements on the ground they were elicited after defendant requested an attorney, but held the third confession admissible because defendant waived his right to counsel. The third statement should also have been suppressed, since the State failed to meet its "heavy burden." See also, **People v. Taylor**, 61 Ill.App.3d 37, 377 N.E.2d 838 (2d Dist. 1978).

People v. Washington, 68 Ill.2d 186, 369 N.E.2d 57 (1977) Defendant was arrested near a crime scene, was taken to the police station and questioned, at various times, over a 24-hour period. The interrogation was stopped at one point when defendant requested counsel, but resumed a few hours later. Defendant signed a waiver of rights form and made certain statements.

The statements were erroneously admitted because they were obtained in violation of defendant's right to counsel. Although a defendant may waive counsel in this type of situation, the State failed to meet the heavy burden of showing that the waiver was made knowingly and intelligently.

People v. Hennenberg, 55 Ill.2d 5, 302 N.E.2d 27 (1973) Confession was inadmissible where defendant was properly warned, but repeatedly told officers that he wanted to consult with a lawyer.

Illinois Appellate Court

People v. Dorsey, 2023 IL App (1st) 200304 Defendant argued that the trial court erred in denying his motion to suppress statements where defendant invoked his right to counsel while in police custody. When an accused has "expressed his desire to deal with the police only through counsel," he may not be subject to additional custodial interrogation until counsel has been made available to him unless he initiates further communication with the

police. **Edwards v. Arizona**, 451 U.S. 477 (1981). Here, it was undisputed that defendant had invoked his right to counsel during custodial interrogation. The issue was whether he had reinitiated communication such that the interrogation which resulted in his subsequent statement was not a violation of his rights.

When a defendant has invoked his right to counsel but subsequently makes a statement, the burden is on the State to show both that defendant reinitiated contact by indicating a desire to discuss the investigation, and that he made a knowing and intelligent waiver of the right to counsel despite his prior invocation of that right., pursuant to **Oregon v. Bradshaw**, 462 U.S. 1039 (1983). Here, the trial court did not err in finding that defendant reinitiated contact when he knocked on the holding cell door and asked the responding officer whether he had been identified in a lineup. And, the officer properly responded that he could not talk to defendant “unless I read you your rights and you want to talk to me,” before proceeding with further questioning.

But, the State failed to meet its burden to show that defendant made a knowing and voluntary waiver of counsel under the facts and circumstances here. Defendant’s initial invocation of his right to counsel came immediately after he was given **Miranda** warnings. After several hours had passed, defendant inquired whether his attorney had arrived, and a couple hours after that, he told the police he wanted to call his attorney. Because defendant’s repeated requests for counsel were essentially ignored, the appellate court concluded that he had not knowingly and intelligently waived his right when he reinitiated contact with investigators. “[A]fter repeatedly seeking counsel for close to 24 hours, defendant did not so much change his mind as give up.” Because the State failed to show a knowing and voluntary waiver of the right to counsel, defendant’s subsequent statements should have been suppressed.

And, the error in denying suppression was not harmless beyond a reasonable doubt. The two eyewitnesses who identified defendant as the offender in pretrial proceedings subsequently recanted their identifications at trial. The pretrial photo lineup was flawed where defendant was the only person with long dreads, especially given that dreads were a distinctive feature of the offenders. Thus, the other evidence against defendant was far from overwhelming. And, most significant, “a confession is the most powerful piece of evidence the State can offer, and its effect on a jury is incalculable.” Not only did the State introduce a recording of defendant’s confession here, but it also emphasized defendant’s statements during closing arguments. Accordingly, the court reversed and remanded for a new trial.

People v. Tucker, 2022 IL App (1st) 172982 The Appellate Court rejected defendant’s claim that the police violated **Edwards v. Arizona**, 451 U.S. 477 (1981), when they interrogated him following his request for counsel. Questioning must stop only when the suspect’s request for counsel is clear and unambiguous and here, the Appellate Court found defendant equivocated when mentioning counsel.

When first asked if he wanted to speak to the detectives or to an attorney, defendant answered, “Attorney, I guess.” The Appellate Court found that, because he qualified his answer by “I guess,” the response was equivocal, and was not a firm, clear invocation of his right.

The detective then asked defendant to clarify what he said, and defendant responded, “Attorney.” However, the detective asked a second followup question – “Attorney. You want a lawyer?” – and defendant answered “I mean,” while shaking his head from side to side. Defendant continued to equivocate – “I mean” and “I guess” – in response to the detective’s requests for clarification. Ultimately, instead of invoking his rights, defendant said, “I want

to talk.” The defendant’s repeated uncertain and equivocal answers led the Appellate Court to conclude that he did not clearly invoke his right to counsel.

People v. Coleman, 2021 IL App (1st) 172416 When an accused invokes his right to counsel during interrogation, the police must immediately cease questioning unless and until the accused initiates further communication. If the police initiate a subsequent conversation without counsel being present, any statements are presumed involuntary and are inadmissible as substantive evidence at trial.

Generally, a trial court’s ruling on a motion to suppress is reviewed under a two-part standard of review. The trial court’s findings of fact are given deference and reversed only if against the manifest weight of the evidence, and the ultimate legal conclusion is reviewed *de novo*. Here, however, the Appellate Court applied a *de novo* standard of review to defendant’s claim that the trial court erred in denying his motion to suppress statement because the trial court’s decision was based solely on the recording of defendant’s interrogation, the facts were undisputed, no live witness testimony was presented, and the court made no credibility findings. In such circumstances, the trial court is not bound by the trial court’s findings, making *de novo* review appropriate.

An effective invocation of the right to counsel requires that the defendant articulate his desire for an attorney in a clear manner free from indecision or double meaning, such that a reasonable officer under the circumstances would understand the statement to be a request for an attorney. The Appellate Court found that defendant unequivocally invoked his right to counsel here where, in response to questioning about whether defendant shot the victim or knew who did, defendant stated, “can I call my lawyer?” The trial court erred when it concluded that defendant’s assertion was ambiguous simply because it was in the form of a question.

And, defendant did not reinitiate contact with the police when, during the same conversation, the police told defendant he could talk to them if he wanted, and in response defendant said he already told them what he knew. Defendant did not initiate this further conversation, the police did. And, defendant’s statements that he already told them what he knew were not a revocation of his invocation of his right to counsel.

Defendant’s confession, made 29 hours after invoking his right to counsel, had to be suppressed because the police failed to honor that invocation. While there was substantial evidence of guilt, admission of defendant’s confession was not harmless beyond a reasonable doubt where his statement contained incriminating evidence that was not established by any other means and where the prosecutor relied on his statement in opening statement and closing argument.

People v. Doehring, 2021 IL App (1st) 190420 Area 5 detectives did not violate defendant’s rights when, upon granting his custodial request to make a phone call, they listened to defendant’s end of the conversation and testified to his statements in court. Defendant had no reasonable expectation of privacy in an open room in a police station. Section 103-3 of the Code of Criminal Procedure, which grants defendant the statutory right to a phone call, has no privacy provision, and the Appellate Court declined defendant’s invitation to read one into the statute. Had the legislature intended to grant the right to a private phone call, they would have said so, as they did for communications between an accused and his attorney under section 103-4, which has an explicit privacy provision.

The detectives did violate defendant’s Fifth Amendment rights, however, when they questioned him after the phone call, despite defendant’s prior invocation of his right to counsel. After the phone call, the detectives asked defendant, who was crying, whether his

mother now knew where he was, and if she was crying as well. In response, defendant punched the wall three times. This response was triggered by improper questioning in violation of [Edwards v. Arizona, 451 U.S. 477 \(1981\)](#). The State argued that the detectives' questions did not constitute an "interrogation" under **Edwards**, because they were not designed to elicit an incriminating response. While this may be true of the first question, the second question – whether his mother was crying – asked with full knowledge that defendant had just incriminated himself during his phone call, was reasonably likely to elicit an incriminating response. However, the error was harmless. While defendant's non-verbal, angry response to the question may fairly be characterized as incriminating, it did not have nearly the weight of a verbal confession of guilt. Moreover, the remaining evidence against defendant was overwhelming.

[People v. Williams, 2021 IL App \(3d\) 180282](#) When approached on the street by a police officer and asked about a robbery, defendant responded that he "would have to speak to [his] attorney." The officer took defendant to the station, where another officer interviewed him in an interrogation room. Defendant again invoked his right to counsel, and the police ended the interrogation. A short time later, defendant re-initiated contact and confessed.

The Appellate Court majority suppressed the statement. The defendant's statement on the street was an unambiguous, unequivocal invocation of his right to counsel. The subsequent interviews therefore violated [Edwards v. Arizona, 451 U.S. 477 \(1981\)](#), whether or not that second officer was aware of the initial invocation. It was also irrelevant that the defendant invoked his right to counsel again prior to ultimately re-initiating contact and confessing to the crime.

Finally, the majority disagreed with the dissent's position, which is that the initial invocation did not inhibit the officers because defendant was not in custody at the time. The dissent pointed to [People v. Villalobos, 193 Ill. 2d 229 \(2000\)](#), which stated: "In order to invoke the **Miranda** right to counsel, an individual must be both in custody and subject to interrogation or under imminent threat of interrogation." But the majority noted that elsewhere in [Villalobos](#), the court stated "[T]he suspect must invoke the right to counsel during custodial interrogation *or when custodial interrogation was imminent.*" (Emphasis added.) Although ambiguous, after analyzing several jurisdictions, the majority concluded that an invocation must be honored by police if the circumstances indicate that a defendant believed that custodial interrogation was imminent. Here, where the police approached defendant on the street, told defendant he was a suspect in a robbery, and asked to speak with him, it was clear defendant's custodial interrogation was imminent. Therefore, the majority concluded he was entitled to the protections of **Edwards**.

[People v. Kadow, 2021 IL App \(4th\) 190103](#) The trial court erred when it denied a motion to suppress statements given by an intellectually disabled defendant. While in custody, the defendant invoked his right to counsel. The detective responded: "You want a lawyer?" before adding, "I am going to call to see if the State's Attorney's Office wants you lodged in jail right now, okay? If you don't want to talk to me." Defendant then insisted on speaking with the detective, waived his rights, and gave inculpatory statements. An expert testified to defendant's "extremely low intellectual functioning," and found he was unfit for trial. The expert also believed that defendant could not understand **Miranda** warnings.

A majority of the Appellate Court held that under these circumstances, the statement should have been suppressed. The police elicited the statement in violation of defendant's right to counsel, without a knowing and understanding waiver of **Miranda** rights.

Defendant's disability was readily apparent to the officers, as defendant could not read his **Miranda** rights, struggled to understand the officers when they issued verbal warnings, and had difficulty writing his own name. The officer's implicit threat of jail time following invocation of the right to counsel violated **Edwards** by re-initiating contact after a request for counsel. It also rendered the statement involuntary, because, although officers are allowed to explain procedures relating to custody post-invocation, this statement implied the request itself necessitated jail time.

People v. Firestine, 2019 IL App (5th) 180264 The police arrested defendant and accused him of shooting his two brothers. During custodial interrogation, an officer provided **Miranda** warnings and asked defendant for "his side of the story." Defendant stated he wanted to know what others had said first. The officer asked if he shot his brother. Defendant responded, "I don't want to answer that question without my lawyer." The officer asked if he shot the other brother, then continued questioning until defendant eventually admitted to both shootings. The trial court suppressed, finding the officer ignored a clear invocation of counsel.

The Appellate Court agreed. Defendant clearly invoked his right to counsel and questioning should have ceased. The State argued that by qualifying his invocation with the words "that question," defendant limited his invocation to the specific question posed. The Court noted that he invoked after the first question and a reasonable officer should have known defendant had declared his desire for counsel during questioning. If the police want to treat a waiver as qualified or limited, they must be able to show that the qualification itself is unambiguous and clearly defined.

People v. Peters, 2018 IL App (2d) 150650 Prior to questioning, defendant was read **Miranda** warnings, and he stated that he could not afford an attorney. The Appellate Court found this was not a clear and unequivocal request for counsel, citing **Lord v. Duckworth, 29 F. 3d 1216 (7th Cir. 1994)**. Defendant's **Miranda** rights were not violated when the police continued questioning him, and trial counsel was not ineffective for not seeking suppression of defendant's statements.

People v. Brickhouse, 2018 IL App (3d) 150807 The police arrested defendant and placed him in an interrogation room. While the detective asked defendant to sign a consent form for videotaping the interrogation, defendant stated, "I can't ask for a lawyer?" The detective responded that they would get to that, but that he first needed his consent to record the interrogation. Defendant signed the consent and the detective immediately **Mirandized** defendant. Defendant signed a **Miranda** waiver and gave an exculpatory statement, followed later by two inculpatory **Mirandized** statements.

The circuit court denied defendant's post-conviction claim of ineffective assistance of counsel after an evidentiary hearing. The Appellate Court affirmed. It held that the defendant's statement was ambiguous and not a clear request for counsel, particularly where it was made prior to **Miranda** warnings. Moreover, it found that the detective did not deny counsel, but rather, within 30 seconds, read defendant his **Miranda** rights. The court further found the statement voluntary. The court also held that counsel's decision was strategic where the initial statement was exculpatory and counsel saw no basis for suppressing the latter statements.

People v. Peck, 2017 IL App (4th) 160410 When a defendant invokes his right to counsel all interrogation must immediately cease until an attorney is present unless the defendant

himself initiates further communication. The term interrogation refers not only to express questioning, but also to any words the police should know are reasonably likely to elicit an incriminating response. In determining whether words are likely to elicit such a response, the focus is primarily upon the perceptions of the defendant rather than the intent of the police.

The police brought defendant to the police station, placed him in an interrogation room and gave him **Miranda** warnings. Defendant immediately said, “I want an attorney.” The officer replied, “Okay, now like I explained to you out there...Persoun [defendant’s girlfriend] is going to be arrested as part of this, okay?” In response, defendant asked what evidence the police had, and this commenced a conversation where defendant eventually confessed. Trial counsel, however, did not file a motion to suppress.

The Appellate Court held that trial counsel was ineffective for failing to file a motion to suppress. From defendant’s perspective, the officer’s statement was reasonably likely to elicit an incriminating response. Defendant only continued to speak after the police threatened his girlfriend. The officer’s statement thus constituted an improper continuation of defendant’s interrogation. And faced with these facts, counsel’s failure to file a motion to suppress fell below an objective standard of reasonableness.

The court also held that defendant was prejudiced by counsel’s deficient performance. The record showed that defendant’s confession had an immense impact on the outcome of the case.

People v. Harris, 2012 IL App (1st) 100678 An individual subjected to custodial interrogation is entitled to have retained or appointed counsel present during the questioning. If the accused requests counsel at any time during the interrogation, she cannot be subject to further questioning unless a lawyer has been made available or the suspect reinitiates conversation. **Edwards v. Arizona**, 451 U.S. 477 (1981).

Whether defendant actually invoked her right to counsel is an objective inquiry, which at a minimum requires some statement that can reasonably be construed as an expression of a desire for counsel. A reference to an attorney that is ambiguous or equivocal, according to a reasonable officer in the circumstances, does not require cessation of questioning.

Here, defendant asked if it was “possible” to “have a few days to get an attorney,” to which the officer responded, “No.” Defendant began to ask, “How long can I —” but was interrupted by the officer who momentarily left the holding cell. On his return, the officer asked whether defendant was requesting an attorney, because if she was they were “done talking.” Defendant responded that she did not know how she could make a call because “all my [phone] numbers is at the county.” Defendant then agreed to answer questions.

Defendant’s query whether it was possible to have some time to get an attorney was an unequivocal invocation of her right to counsel. Any ambiguity in her statement was only with regard to how long it would take and the process of acquiring an attorney, not with regard to whether she wanted one. She answered further questions only at the officer’s prompting. Therefore, the statements made by defendant after her invocation of her right to counsel, including her recorded statements, were inadmissible.

People v. Quevedo, 403 Ill.App.3d 282, 932 N.E.2d 642 (2d Dist. 2010) Under **Davis v. U.S.**, 512 U.S. 452 (1994), a defendant is entitled to the protections of **Miranda** and **Edwards v. Arizona** only if he makes an unambiguous request for counsel. An interrogation need not cease where the suspect makes an ambiguous or equivocal statement that a reasonable officer would not have interpreted as an invocation of the right to counsel.

Here, the defendant expressed some confusion when given **Miranda** warnings. Defendant said that he wanted to “wait until the attorney arrived,” and asked whether “the attorney can come right now?” However, when told that an attorney was not available that night, that he had the right not to talk without an attorney, and that if he requested counsel the officers could not “talk about your side of the story,” defendant agreed to speak without counsel. Defendant subsequently gave inculpatory statements.

The court found that under the circumstances, a reasonable police officer could have interpreted defendant’s statements as inquiries about the availability of an attorney and not as an invocation of the right to counsel. Because defendant agreed to answer the officers’ questions after being told that an attorney was not available that night, the court concluded that defendant decided not to ask for an attorney because none was available immediately.

Because defendant did not make an unambiguous request for counsel, the protections of **Miranda** and **Edwards** were not triggered. Therefore, defendant’s statements were admissible.

People v. Schuning, 399 Ill.App.3d 1073, 928 N.E.2d 128 (2d Dist. 2010) Defendant made a sufficient request for counsel where, while hospitalized in the ICU after undergoing surgery to treat self-inflicted stab wounds, he asked the officer guarding him if he could use the phone to call his attorney. Although the officer said, “Yes,” the nurse said that phones were not allowed in the ICU.

Defendant’s request was made during interrogation or when interrogation was imminent. First, defendant was being guarded by an officer and was unable to leave the ICU. Second, defendant had been interrogated a few hours earlier, and had been told that officers would return to interrogate him again. Finally, police did renew the interrogation the next morning.

The court rejected the argument that defendant was required to make the request for counsel after receiving **Miranda** warnings or while being questioned during the second interrogation. “Under these facts, we cannot agree that the potential for coercion did not continue throughout the first interview, throughout the break in questioning, and throughout the subsequent interviews.”

The request was not ambiguous because defendant did not specifically state why he wanted counsel or that he wanted counsel to be present during any additional interrogation. The request was clear and unambiguous, and was “not tainted with hesitation or uncertainty.” Having just conducted an interrogation, and knowing that further interrogation was imminent, a reasonable officer should have known that defendant wanted counsel’s assistance during interrogation. The court also noted that the officer did not exhibit confusion about the request and did not attempt to clarify defendant’s intent.

People v. Hunt, 403 Ill.App.3d 802, 939 N.E.2d 1039 (1st Dist. 2010) The due process clause of the Illinois Constitution requires that the police inform a suspect that his attorney is present in the police station and asking to see him. Where the police fail to communicate that information, defendant has not validly waived his right to counsel guaranteed by the Illinois constitutional right against self-incrimination. **People v. McCauley**, 163 Ill. 2d 414, 645 N.E.2d 923 (1994).

Defendant was in custody on an unrelated charge. The police transferred him from the county jail to the police station where they arranged a meeting between defendant and a police informant. Their conversations were monitored and recorded by the police with judicial authorization. Shortly after their conversations began, an attorney who represented defendant on his unrelated charge appeared at the station and asked to speak with the

defendant. He was not allowed to speak with the defendant until 45 minutes after his arrival at the station, following which he and defendant informed the police that defendant was invoking his right to remain silent and to consult with counsel. A week later, defendant was brought back to the police station and two more conversations with the informant were monitored and recorded.

Relying on [People v. Perkins](#), 248 Ill.App.3d 762, 618 N.E.2d 1275 (5th Dist. 1993), and [725 ILCS 5/103-2.1](#), the Appellate Court found that defendant was subject to custodial interrogation on both occasions as a matter of state law. Since there was custodial interrogation, the police had no power to prevent or delay communication of defendant and his lawyer during the first interrogation by the informant.

Because defendant invoked his right to counsel at the first interrogation, defendant had a right to consult with his counsel prior to the second interrogation, and was denied that right when there was no consultation. The interrogations were also conducted in violation of defendant's state constitutional right not to be held incommunicado and his state constitutional and statutory rights to counsel. [Ill.Const. 1970, Art. I, §§2, 10](#); [725 ILCS 5/103-4](#).

The Appellate Court affirmed suppression of the last 45 minutes of the first interrogation and the entirety of the interrogations that were conducted a week later.

[People v. Young](#), 365 Ill.App.3d 753, 850 N.E.2d 284 (1st Dist. 2006) There was no clear and unambiguous exercise of the right to counsel where a minor's father asked to call his attorney. First, the statement was ambiguous as to whether the attorney would have represented the father or the minor. Second, a mere request to call an attorney does not necessarily suggest that the suspect is refusing to cooperate unless a lawyer is present.

Furthermore, the right to counsel under **Miranda** is a personal right of the suspect, and cannot be invoked by a third party. Therefore, even if the statement by the father had been a clear and unambiguous attempt to exercise the right to counsel, it would not have invoked the minor's right to counsel.

Also, defendant did not invoke his right to counsel by meeting with the attorney who had been contacted by the father, where defendant did not indicate to the police that he had accepted counsel's representation or intended to answer questions only if the attorney was present.

[People v. Howerton](#), 335 Ill.App.3d 1023, 782 N.E.2d 942 (3d Dist. 2003) The court rejected the argument that defendant failed to unequivocally request an attorney where on five occasions during interrogation, he stated he wanted to terminate the interview or speak to with an attorney. Among defendant's statements were "I want a lawyer," "[g]et me a lawyer", "let me get my lawyer," "can I have a lawyer," and "I'll have to get a lawyer and try it in court." Not only did the officer ignore defendant's repeated assertions of his right to counsel, but at one point asked if defendant was so "stupid" that he wanted to exercise his right to counsel.

[People v. Lira](#), 318 Ill.App.3d 118, 742 N.E.2d 885 (3d Dist. 2001) Under [Edwards v. Arizona](#), 451 U.S. 477 (1981) and its progeny, an interrogation must cease once a suspect has invoked the right to counsel. The suspect may not be reinterrogated unless counsel has been made available or defendant initiates the renewed questioning.

Unlike the Sixth Amendment right to counsel, the Fifth Amendment right to counsel is not offense specific. Thus, an invocation of the Fifth Amendment right to counsel for one offense precludes interviews concerning any other offenses unless counsel is present.

The **Miranda** right to counsel is invoked where a defendant indicates in any manner and at any stage of an interrogation that he wishes to consult with an attorney before speaking. A suspect who submits to an interrogation while accompanied by his attorney has "clearly and personally indicated his desire to be represented by counsel," even where it is counsel who expresses defendant's desire to have counsel present.

The court rejected the argument that even if Iowa police knew defendant had invoked the right to counsel on an Iowa charge, their knowledge could not be imputed to Illinois police who arrived to question defendant about Illinois offenses. Where defendant was in continuous custody in Iowa when he invoked his right to counsel, the invocation of that right occurred during interrogation, defendant was interrogated by an Illinois officer only a few hours later, a tape recording of the earlier conversation could have been checked to determine whether defendant had invoked his right to counsel, and the Illinois officer had reason to expect that defendant might have invoked his right to counsel on the Iowa charge, the officer "should have followed procedures to determine if the defendant had previously requested counsel."

People v. Flores, 315 Ill.App.3d 387, 734 N.E.2d 63 (1st Dist. 2000) Where a criminal defendant exercises his right to counsel during an interrogation, the police cannot renew the interrogation unless defendant himself "initiates further communication, exchanges, or conversations with the police." Where a defendant waives the right to counsel after having invoked that right, the State bears a "heavy burden" to show that the subsequent waiver was knowing and intelligent.

Where defendant's comments do not demonstrate a desire to reopen discussion of the investigation, the officer is prohibited from responding in a manner which, from the suspect's point of view, is likely to elicit an incriminating response.

By asking "what was going on" while being escorted from the restroom to an interrogation room, defendant did not evince a desire to withdraw his earlier invocation of counsel and reopen discussion of the investigation. The officer's response - describing the presence of prosecutors who would decide what charges to file - was improper because it was reasonably likely to provoke an incriminating response.

People v. Anderson, 303 Ill.App.3d 1050, 709 N.E.2d 661 (1st Dist. 1999) Once a criminal suspect exercises his right to counsel during interrogation, further interrogation is prohibited until counsel is made available or defendant initiates further contact with the police.

Where the State claims that a suspect invoked the right to counsel but subsequently withdrew that request, a two-step inquiry is required. First, the State must show that the suspect initiated further communication with police and demonstrated a desire to discuss the matter under investigation. Second, the State must show that defendant's waiver of counsel was knowing and intelligent.

People v. Smith, 306 Ill.App.3d 82, 713 N.E.2d 140 (1st Dist. 1999) The State has the burden to show, by a preponderance of the evidence and under the totality of circumstances, that a suspect validly waived a previous request for counsel.

Defendant reinitiated conversation with the authorities where he asked to talk to the assistant prosecutor who had given him **Miranda** warnings. The officer who was asked to get the prosecutor was not required to give **Miranda** warnings before fulfilling defendant's request; once a suspect reinitiates contact after exercising his right to counsel, the officer must give new **Miranda** warnings only if he says or does anything that "could elicit further comment . . . about the investigation."

People v. Ravellette, 263 Ill.App.3d 906, 636 N.E.2d 105 (4th Dist. 1994) Codefendant Thomas Ravellette testified that after he was given **Miranda** warnings, he was told that his father (Daniel) had already confessed and worked out a deal, and that he only needed to cooperate. When police prepared to take a taped statement, Thomas asked for an attorney. All of the officers except Sergeant Kelly left the room, and Kelly asked why Thomas wanted "to do this" when he was "doing so well." Thomas responded that he was confused and wanted an attorney.

A second officer entered the room to serve a warrant, and Thomas then decided that he was in trouble and should confess. The police told Thomas that he had to reinitiate contact before they could talk to him, and Thomas agreed to confess without consulting counsel.

This violated **Edwards v. Arizona**, 451 U.S. 477 (1981). The officer's inquiry concerning Thomas's reason for exercising his right to counsel was likely to elicit an incriminating response, thus it was improper interrogation under **Edwards**.

The confession of Anthony Ravellette also should have been suppressed. Anthony testified that he requested an attorney the first time he was questioned after his arrest. The officer ended the interrogation, but returned the next day and said that he and Anthony "really should talk." He said that Thomas and Daniel had already confessed and that he had a "sweet deal" for Anthony. The officer then said that Daniel wanted to talk to him about the deal, and Anthony agreed. Daniel told Anthony that he had worked out a deal under which only two robberies would be charged and several other charges would be dropped. The officer who had questioned Anthony was present and indicated his approval of certain aspects of the deal. Anthony decided to cooperate and confessed to several armed robberies.

Daniel testified that the officers had offered a favorable disposition if all three codefendants cooperated, but later told him that Anthony was not cooperating and had requested counsel. Daniel said that he then asked if he could speak with Anthony.

The police knew that if they allowed the brothers to talk, Daniel would attempt to persuade Anthony to withdraw his request for counsel. Because the police reasonably anticipated that an incriminating response would be elicited, the conversation was impermissible interrogation. Therefore, Anthony's subsequent waiver of counsel was invalid.

People v. Carlson, 224 Ill.App.3d 1034, 586 N.E.2d 1368 (2d Dist. 1992) At the police station after his arrest for armed robbery, defendant asked to speak to an attorney. He was handed a telephone and told he could make one call. Defendant called an attorney, but received no answer. A detective then asked defendant what he wanted to do, and defendant asked what his "options" were. The detective said defendant could cooperate and speak with the officers or go complete the booking process. Defendant agreed to talk, was given **Miranda** warnings and gave an inculpatory statement.

This violated **Edwards v. Arizona**, 451 U.S. 477 (1981) (when a defendant invokes his right to have counsel present, all questioning must cease until counsel is present or defendant initiates further conversation about the investigation). Defendant's request for counsel was clear and unambiguous, and was understood by the detectives since they gave him a telephone to call an attorney. Asking the detective about "options" was not a reinitiation of contact.

People v. Foster, 199 Ill.App.3d 372, 556 N.E.2d 1289 (4th Dist. 1990) Defendant's statements that he wanted to speak to his wife before cooperating with police were not an exercise of the right to counsel (the wife was not an attorney), and were not a demand to terminate the interview (defendant did not clearly indicate that he was attempting to end the interrogation).

People v. Jackson, 198 Ill.App.3d 831, 556 N.E.2d 619 (1st Dist. 1990) After his arraignment and the appointment of counsel in an unrelated case, police questioned defendant about the offenses in the instant case. He was given **Miranda** warnings and made incriminating statements. The trial court denied defendant's motion to suppress these statements.

Requesting and receiving counsel on an unrelated charge is not an invocation of defendant's Fifth Amendment right on all charges. Thus, defendant could validly waive the right to have counsel present during questioning on the new charge. See also, **People v. Bryant**, 202 Ill.App.3d 290, 559 N.E.2d 930 (1st Dist. 1990).

People v. Sullivan, 209 Ill.App.3d 1096, 568 N.E.2d 447 (4th Dist. 1991) Defendant invoked his right to counsel at the police station. While he was waiting to be transported to jail, two officers spoke to defendant. They asked defendant about another suspect in the case and told defendant that he needed to talk in order to help himself. This violated **Edwards v. Arizona**, 451 U.S. 477 (1981), (once defendant requested counsel, all police-initiated interrogation was required to cease), because police initiated the conversation after defendant's request for counsel.

People v. Farrell, 181 Ill.App.3d 446, 536 N.E.2d 476 (4th Dist. 1989) Defendant's statement at arraignment that he intended to hire counsel but was not in a position to give counsel's name to the court was not a request for counsel. Therefore, it was proper for police to give defendant **Miranda** warnings and question defendant upon his waiver of rights without counsel present. Ultimately, defendant did not retain counsel and an attorney was appointed for him.

People v. Warner, 146 Ill.App.3d 370, 496 N.E.2d 1010 (1st Dist. 1986) When an accused invokes his right to an attorney during police questioning, rather than solely his right to silence, "his later waiver of the right to counsel upon police-initiated reinterrogation will not be given legal cognizance; instead it will be deemed involuntary as a matter of law."

People v. Bates, 103 Ill.App.3d 205, 478 N.E.2d 1106 (1st Dist. 1985) Defendant's statement must be suppressed where he was interrogated after he asserted his right to counsel. Interrogating officer's lack of knowledge of defendant's request for counsel did not justify the uncounseled interrogation.

People v. James, 100 Ill.App.3d 986, 427 N.E.2d 606 (4th Dist. 1981) Defendant's "waiver" of counsel was ineffective where police did not make counsel available upon the initial request and defendant did not initiate further communications. See also, **People v. Parham**, 141 Ill.App.3d 149, 490 N.E.2d 65 (1st Dist. 1986).

§10-4(d)

Interrogation After Request to Remain Silent

United States Supreme Court

Salinas v. Texas, 570 U.S. 178, 133 S.Ct. 2174, 186 L.Ed.2d 376 (2013) Defendant agreed to accompany police officers to the police station, and voluntarily answered questions about a murder without being placed in custody or receiving **Miranda** warnings. When the officer

asked whether ballistics testing would show that shell casings found at the scene matched defendant's shotgun, defendant failed to answer. After a few moments of silence, the officer asked additional questions which defendant answered.

At defendant's murder trial, the prosecutor argued that defendant's reaction to the officer's question during the interview was evidence of his guilt. The prosecutor argued that an "innocent person" in the same position would have denied committing the offense.

Defendant argued that the Fifth Amendment right against self-incrimination prohibited the prosecutor from eliciting and commenting about defendant's silence during police questioning. A plurality of three justices (Alito, Roberts, and Kennedy) rejected this argument, finding that to exercise the Fifth Amendment privilege one must expressly raise the privilege at the time of the questioning. In the plurality's view, the Fifth Amendment provides only a right against self-incrimination, not an "unqualified right to remain silent." Thus, whether a citizen has a constitutional right to refuse to answer questions "depends on his reasons for doing so, and courts need to know those reasons to evaluate the merits of a Fifth Amendment claim." Here, the interview was voluntary and defendant was free to leave at any time. Under these circumstances, defendant was required to expressly claim the Fifth Amendment privilege unless he was deprived of the ability to voluntarily do so. The court found that defendant was not limited in claiming the privilege, as it would have been a "simple matter" to state that he was not answering the questions on Fifth Amendment grounds. His failure to do so meant that the Fifth Amendment did not preclude the prosecutor's use of and comment on his silence.

The plurality declined to adopt hold that the Fifth Amendment privilege need not be explicitly invoked in situations where the interrogating official has reason to suspect that the answer he seeks will be incriminating. The plurality found that such an exception would unduly "burden the Government's interests in obtaining information and prosecuting criminal activity," and would be difficult to reconcile with [Berghuis v. Thompkins, 560 U.S. 370 \(2010\)](#), which held that during an custodial interrogation which was conducted after **Miranda** warnings had been given, the defendant failed to invoke the Fifth Amendment privilege by refusing to respond to police questioning for nearly three hours.

In a concurring opinion, Justices Thomas and Scalia declined to decide whether the defendant invoked the Fifth Amendment privilege, and found that even if the privilege had been invoked a prosecutor does not violate the Fifth Amendment by commenting on silence during a noncustodial interview. The concurring justices believed that [Griffin v. California, 380 U.S. 609 \(1965\)](#), which held that the Fifth Amendment prohibits a prosecutor or judge from commenting on a defendant's failure to testify, "lacks foundation in the Constitution" and therefore should not be extended to prohibit comment on noncustodial silence.

In a dissenting opinion, Justices Breyer, Ginsburg, Sotomayor, and Kagan found that Supreme Court precedent prohibits a prosecutor from penalizing an individual for exercising his Fifth Amendment privilege. The dissenters argued that there is no ritualistic formula for exercising the Fifth Amendment, and that commenting on a citizen's silence in response to questioning is improper whether or not the Fifth Amendment privilege is specifically cited, unless the circumstances clearly suggest that the silence was not based on an exercise of the Fifth Amendment privilege.

Because defendant had been made aware that he was a suspect even though he was not placed in custody, was not represented by counsel, and was asked a question which made it clear that police were attempting to determine whether he was guilty, it was reasonable to infer that his silence was an exercise of his Fifth Amendment right.

Berghuis v. Thompkins, 560 U.S. 370, 130 S.Ct. 2250, 176 L.Ed.2d 1098 (2010) Under **Miranda v. Arizona**, a suspect who is subjected to custodial interrogation has the right to remain silent and the right to the presence of counsel. An invocation of the right to counsel is sufficient to end the interrogation only if it is clear and unambiguous. (See **Davis v. U.S.**, 512 U.S. 452 (1994)). Although the court had never set standards for the specificity required to invoke the right to silence, it held in this case that there is no “principled reason” to adopt different standards for invoking the right to counsel and the right to silence.

The court added that requiring an unambiguous invocation of the right to silence results in an objective inquiry of the sufficiency of a request and relieves law enforcement agents of the difficult task of determining what the suspect meant by an unclear statement. Finally, suppression of statements made after ambiguous references to the right to silence would add only marginally to the protection of **Miranda**, but would place a significant burden on society’s interest in prosecuting crimes.

Thus, a suspect does not invoke the right to silence by merely refusing to speak. When a suspect makes an incriminatory statement after an extended period of silence in response to police questioning, the relevant issue is whether the suspect waived his **Miranda** rights before making the statement.

Here, defendant did not exercise the right to silence by remaining silent during most of a three-hour interrogation (defendant occasionally responded “yes,” “no,” or “I don’t know” to police questioning, but otherwise did not speak). Because the defendant did not exercise his right to silence, the officers were not required to end the interrogation.

Although defendant’s refusal to speak during the interrogation did not invoke the right to silence, a statement which he eventually made in response to police questioning was admissible only if he waived his **Miranda** rights.³ A waiver must be voluntary in the sense that it is the product of a free and deliberate choice and made with full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it.

A waiver need not be express, however, and may be inferred from the defendant’s behavior. Thus, “a suspect who has received and understood the **Miranda** warnings, and has not invoked his **Miranda** rights, waives the right to remain silent by making an uncoerced statement to the police.”

Here, there was no evidence that defendant failed to understand his rights, and no evidence that his statement was coerced. In addition, his answers to the officer’s questions constituted a “course of conduct indicating waiver” of the right to silence; had defendant “wanted to remain silent, he could have said nothing in response to [the officer’s] questions, or he could have unambiguously invoked his **Miranda** rights and ended the interrogation.”

The court also rejected the argument that police must obtain a **Miranda** waiver before they even begin custodial questioning.

Because defendant waived his right to silence by responding to the officer’s questions, and there was no evidence that defendant failed to understand the **Miranda** warnings or that his statement was involuntary, his responses to the officer’s questions were not inadmissible on the grounds they had been obtained in violation of **Miranda**. (See also **COUNSEL**, §13-4(b)(4)).

Michigan v. Mosley, 423 U.S. 96, 96 S.Ct. 321, 46 L.Ed.2d 313 (1975) Defendant was arrested for robbery, taken to the police station and given **Miranda** warnings. He declined to answer any questions. Some two hours later, while defendant was still in custody, a different police officer gave new **Miranda** warnings and questioned defendant concerning a murder. A confession was obtained and was used at trial.

The confession was not obtained in violation of **Miranda**. Where a person exercises his right to silence, the police are not forever prohibited from resuming questioning. The test is whether the accused's "right to cut off questioning" was "scrupulously honored." Here, defendant's right was honored: "The police here immediately ceased the interrogation, resumed questioning only after the passage of a significant period of time and the provision of a fresh set of warnings, and restricted the second interrogation to a crime that had not been a subject of the earlier interrogation."

The police did not persist in efforts to wear down defendant's resistance and make him change his mind. The Court also stressed that this case did not involve the procedure required where a person in custody asks to consult with a lawyer.

Other Federal Court

U.S. v. Ramsey, 992 F.2d 301 (11th Cir. 1993) Defendant invoked his right to silence when he looked away when asked if he wanted to make a statement, and a **Miranda** violation occurred when a second officer renewed the conversation. One way of exercising the right to silence is to refuse to speak.

U.S. v. Montana, 958 F.2d 516 (2d Cir. 1992) Defendant's refusal to answer non-incriminating pedigree questions at booking was an invocation of his Fifth Amendment privilege against self-incrimination. Therefore, a police officer violated defendant's right to remain silent by stating that any cooperation would be reported to the prosecutor.

U.S. ex rel. Doss v. Bensinger, 463 F.2d 576 (7th Cir. 1972) After petitioner was advised of his rights and chose to remain silent, police continually confronted him, imploring him to talk in the absence of counsel. In addition, they arranged confrontation with his codefendant in order to elicit incriminating testimony. Evidence obtained was not admissible.

Illinois Supreme Court

People v. Cox, 2023 IL App (1st) 170761 Defendant argued that the trial court erred in not suppressing his videotaped statement because the police failed to scrupulously honor his exercise of his right to remain silent. The appellate court reversed and remanded for a new trial.

The court first noted that where, as here, the decision on a motion to suppress is based on video recordings of the interrogation and not on live testimony, the appropriate standard of review is *de novo* because the appellate court is reviewing the exact same evidence as the trial court had before it. The video recording of defendant's interrogation showed that defendant told detectives, "I don't wanna answer no more questions, 'cause I can't help you. And I don't wanna dig myself into a hole." The detectives then left the room. Two different detectives reinitiated questioning four hours later, without providing new **Miranda** warnings. Defendant subsequently made incriminating statements.

Defendant unequivocally invoked his right to remain silent when he stated, "I don't wanna answer no more questions." The appellate court noted that the police immediately halted the interrogation and that a significant amount of time elapsed before the detectives initiated the second interrogation. But, defendant was not given fresh **Miranda** warnings, and the second interrogation involved the same subject matter as the first. Accordingly, the court concluded that defendant's right to remain silent was not scrupulously honored, and his subsequent statements should have been excluded. Given that the State's case relied heavily on defendant's statements, the error was not harmless beyond a reasonable doubt.

People v. Nielson, 187 Ill.2d 271, 718 N.E.2d 131 (1999) By placing his hands over his ears, turning his head to the ceiling, and chanting "nah, nah, nah, nah" when an agent asked about the murders of defendant's ex-wife and her daughter, defendant clearly indicated a desire to cut off questioning. Therefore, he exercised his right to silence.

Once a suspect exercises his right to silence during custodial interrogation, the admissibility of subsequent statements depends on whether the right to cut off questioning was "scrupulously honored." Factors to be considered in making this determination include whether: (1) the police immediately halted the interrogation; (2) a significant amount of time elapsed before any subsequent interrogation; (3) a fresh set of **Miranda** warnings were given before additional interrogations; and (4) the second interrogation concerned a different crime. However, the mere fact that interrogations involve the same crime does not necessarily preclude a finding that the right to remain silent was scrupulously honored.

Although a deputy spoke to defendant in the exercise yard, that conversation was not "interrogation" where the subjects included the deputy's new house, recent vacation, family and new boat, and defendant's tattoo. The deputy's "brief comments concerning his role in the investigation and his relationship with the victims," made in response to defendant's inquiry about what would happen to him, were not interrogation because they were not the sort of "coercive police practice" from which a criminal suspect needs to be protected.

Thus, the second "interrogation" began only when the agent who originally interviewed defendant returned some two hours after defendant exercised his right to silence. Because a significant amount of time elapsed between the interrogations and defendant received two sets of fresh **Miranda** warnings, defendant's exercise of his right to silence was scrupulously honored.

People v. Cole, 172 Ill.2d 85, 665 N.E.2d 1275 (1996) Defendant's statement, "I don't want to talk to you guys," made to an FBI agent who expressed doubts about the truthfulness of defendant's videotaped statements, was an exercise of the right to silence only as to the FBI agents. Thus, the trial court properly admitted a statement defendant subsequently made in response to interrogation by Missouri state police officers, where defendant waived **Miranda** before making those statements.

People v. Young, 153 Ill.2d 383, 607 N.E.2d 123 (1992) Defendant's invocation of his right to silence during his extradition hearing in Wisconsin was not effective with regard to questioning by Illinois police about the Illinois murder charge that was the subject of that hearing.

People v. R.C., 108 Ill.2d 349, 483 N.E.2d 1241 (1985) Respondent was arrested for burglary. Upon being given **Miranda** warnings he said he did not wish to talk to the officer. The officer replied that respondent had that right but that he had been identified by an accomplice and a policeman. The officer then asked about certain jewelry taken in the burglary, and respondent inquired whether returning it would make a difference. Respondent then admitted the burglary and directed the officer to the stolen property. Respondent's statement was unlawfully obtained.

Illinois Appellate Court

People v. Reichert, 2023 IL App (5th) 180537 The appellate court affirmed the denial of a suppression motion which alleged that the police failed to honor defendant's request to

remain silent. Defendant argued that his interview statements of “Can we get off the record then because I’m not going to say anything else on the record. And that’s the honest God’s truth,” and his statement a minute later that “I’m not saying nothing right now though,” clearly invoked his right to remain silent. The appellate court disagreed. Defendant merely placed a condition on his continued cooperation. He had received proper **Miranda** warnings and signed a written waiver. Under these circumstances, the police could deny the requested condition and continue the interrogation.

People v. Ward, 2023 IL App (1st) 190364 Defendant was convicted of first degree murder and two counts of aggravated battery with a firearm arising from a 2013 shooting which resulted in the death of 15-year-old Hadiya Pendleton and injuries to two other teens, Lawrence Sellers and Sabastian Moore. The appellate court reversed and remanded for a new trial, concluding that the trial court erred in failing to suppress defendant’s custodial statements because they were taken in violation of his right to remain silent.

Defendant’s interrogation began shortly after midnight, with the giving of **Miranda** warnings. After a little more than an hour of questioning, defendant stated, “I ain’t got nothin’ else to say.” Questioning stopped, and detectives left the room. Approximately 90 minutes later, the detectives returned and questioned defendant again. That questioning lasted about 45 minutes, at which time defendant said, “[I] [g]ot nothin’ to say.” The detectives again left the room. Approximately three hours later, after defendant was fingerprinted, the same two detectives attempted to initiate additional questioning, and defendant indicated he did not want to say anything else. Up to this point, defendant had not made any incriminating statements. Approximately five hours later, and twelve hours after the interrogation first began, a second pair of detectives questioned defendant. They did not provide defendant fresh **Miranda** warnings, and defendant ultimately made the inculpatory statements at issue here.

On these facts, the court concluded that defendant had repeatedly invoked his right to remain silent. Although defendant’s invocations did not come immediately after he was given **Miranda** warnings, the court relied on **People v. Cox, 2023 IL App (1st) 170761**, in holding that a delay between warnings and invocation is not the determinative factor. More telling here was the response of defendant’s interrogators. After each invocation, the detectives halted their questioning and left the room for some time, indicating that they plainly understood defendant’s comments to be an invocation of his right to remain silent.

Once a defendant has invoked his right to silence, interrogation may be resumed and subsequent statements may be admissible only if the defendant’s right to remain silent was “scrupulously honored.” Here, the State argued only that defendant had not invoked his right to silence and did not even suggest that his invocation had been scrupulously honored. Accordingly, the court held that defendant’s statements should have been suppressed.

Additionally, the court rejected the State’s harmless error argument. While defendant’s confession was not the focus of the State’s closing argument at trial, closing arguments are not evidence. And, more importantly, the question was not whether the State believed at trial that the evidence was sufficient to convict without defendant’s confession, but rather whether the State could “prove beyond a reasonable doubt that the jury verdict would have been the same absent the error.” Given that confessions carry significant weight, and that the trial evidence here was sufficient but not overwhelming, the court held that this was not “one of those rare cases” where it was beyond reasonable doubt that the jury would have found defendant guilty absent his confession.

People v. Flores, 2014 IL App (1st) 121786 To protect a defendant’s constitutional right to silence, interrogation must cease once the defendant indicates in any manner and at any time prior to or during custodial interrogation that he wishes to remain silent. Once a defendant has asked to remain silent, his post-request responses to further interrogation may not be used to cast retrospective doubt on the clarity of his initial request.

Here the police failed to honor defendant’s invocation of his right to remain silent. After giving defendant his **Miranda** rights, the police told defendant that a co-defendant had made statements inculcating defendant and asked if he wanted to talk about that. Defendant responded, “Not really. No.” The police did not cease interrogation at that point, but instead continued to describe co-defendant’s incriminating statements and to question defendant. Defendant again voiced his desire to remain silent, eventually saying that he was not “gonna say nothing about nothing.”

The questioning continued off and on for the next hour or so, until defendant eventually confessed. A few hours later, an assistant State’s attorney interrogated defendant and obtained a videotaped confession.

Defendant’s initial answer (“Not really. No.”) was a clear and unequivocal statement that he did not want to waive his right to remain silent. It was not, as the State argued, limited to his desire to comment on his co-defendant’s statements. Defendant thus unambiguously invoked his right to silence.

Any statements made after a defendant invokes his right to silence are admissible only if the authorities scrupulously honored his right to cut off questioning. To decide whether the authorities properly honored that right, courts ask whether: (1) they immediately halted the initial interrogation; (2) significant time elapsed between the interrogations; (3) they gave defendant new **Miranda** warnings; and (4) the second interrogation addressed a different crime.

Defendant’s initial confession to the police should have been suppressed because they did not scrupulously honor his right to silence. The police did not immediately halt questioning, but instead continued to discuss his co-defendant’s statements and ask defendant for his side of the story. No time elapsed between defendant’s invocation and the continued questioning. The police did not give defendant new **Miranda** warnings. And they continued to question him about the same crime.

Defendant’s statements to the ASA were also inadmissible and should have been suppressed. The ASA arrived and interrogated defendant approximately four hours after his initial confession and gave defendant new **Miranda** warnings. The second and third parts of the test were thus satisfied. But the first and fourth parts of the test were not. The police did not immediately cease interrogation after defendant invoked his right to silence and the ASA questioned defendant about the same crime. The authorities thus did not scrupulously honor defendant’s invocation of his right to silence.

People v. Rubio, 392 Ill.App.3d 914, 911 N.E.2d 1216 (2d Dist. 2009) Noting that the Illinois Supreme Court has found that the “manifest weight of the evidence” standard of review, in which reviewing courts defer to the trial court, is based solely on the trial court’s superior position from which to assess credibility, the Appellate Court concluded that the *de novo* standard of review applies where a trial court finding is based solely on documentary evidence rather than live testimony. Because the trial court’s factual rulings appeared to have been based solely on the contents of a video recording of defendant’s interrogation, and all defense arguments on appeal concerned matters portrayed in the video, the cause was reviewed *de novo*.

However, applying the *de novo* standard, the Appellate Court affirmed the trial court's ruling that defendant made a knowing waiver of his **Miranda** rights.

The court rejected defendant's argument that he invoked his right to silence during the interrogation because in three instances, he responded to police questioning by stating, "I can't talk." Although in isolation such statements might have conveyed the impression that defendant wanted to invoke his right to silence, in the context of the statements, as well as the defendant's mannerisms, the statements conveyed that defendant was hesitant to confess but willing to continue speaking with police.

People v. Hernandez, 362 Ill.App.3d 779, 840 N.E.2d 1254 (1st Dist. 2005) After defendant was arrested, he gave a statement concerning the offense and agreed to give a videotaped statement. After the Assistant State's Attorney reviewed defendant's statements and advised defendant of his Miranda rights, she asked, "Do you wish to talk to us now?" Defendant responded, "No, not no more." The Assistant State's Attorney then asked, "Do you wish to talk to us now about what we previously spoken to [sic]?" Defendant answered, "Yes." Defendant then gave a videotaped statement discussing his role in the offense.

Defense counsel was ineffective for failing to move to suppress the videotaped statement on the ground that it was procured after defendant invoked the right to silence. Defendant's language here was clear and unequivocal.

A motion to suppress would have been successful. Statements made after the invocation of the right to silence are admissible only if the interrogator scrupulously honored defendant's right to cut off questioning. In deciding whether the right to silence was honored, courts should consider whether: (1) the interrogator immediately halted the interrogation; (2) a sufficient period of time elapsed before interrogation was renewed; (3) defendant was given new Miranda warnings; and (4) the second interrogation concerned a different crime. None of these factors were present in this case.

People v. Strong, 316 Ill.App.3d 807, 737 N.E.2d 687 (3d Dist. 2000) Defendant invoked his right to silence where he specifically stated that "he did not want to say any more." The court rejected the argument that defendant's subsequent statement was volunteered and not in response to interrogation. After defendant said that he that he did not want to talk, an officer took him to a separate room, said that another suspect had incriminated him, and added that "this would be his time to help himself . . . since [the other suspect] was saying this, maybe he was lying."

People v. Jackson, 180 Ill.App.3d 78, 535 N.E.2d 1086 (3d Dist. 1989) Defendant agreed to accompany a police officer to the police station, where she was advised of her rights and signed a written waiver. During questioning, however, defendant told the officer that she did not wish to speak any further and wanted to go home. At that point, defendant was told she was under arrest for murder and was not free to go. Defendant was then questioned for several hours and made a taped confession.

When defendant told the police that she wanted to stop talking and go home, "she invoked her right to remain silent and questioning should have terminated." Defendant's taped confession was admissible to impeach defendant on cross-examination, however, because a voluntary statement obtained in violation of **Miranda** may be properly used to impeach.

People v. Brown, 171 Ill.App.3d 993, 525 N.E.2d 1119 (1st Dist. 1988) An assistant State's Attorney gave defendant **Miranda** warnings and ascertained that he understood his rights. Then the following occurred:

"Q. All right. Understanding these rights do you wish to talk to us now?"

A. No.

Q. Pardon me?

A. I didn't understand.

Q. Understanding these rights, do you wish to talk to us now?"

A. Well, I already told you what happened.

Q. All right. After you told me before about what happened I informed you that I was going to call a court reporter and we were going to take it down in writing, is that correct?"

A. Yes, sir.

Q. Now I've advised you of your rights. Understanding these rights do you wish to talk to us now about the incident involved on the 30th of June 1983 involving the shooting death of Renaldo Reyes?"

A. Yes."

Defendant's right to remain silent was violated by the continued questioning after he had invoked that right. Defendant's "no" response was direct, decisive and unambiguous.

People v. Travis, 170 Ill.App.3d 873, 525 N.E.2d 1137 (4th Dist. 1988) A defendant's failure to sign a waiver form, by itself, does not establish that he wanted to stop the interrogation.

People v. Warner, 146 Ill.App.3d 370, 496 N.E.2d 1010 (1st Dist. 1986) Once a suspect invokes his right to silence, his subsequent waiver of that right will be legally valid if the waiver is knowing, intelligent, and voluntary.

People v. Davis, 105 Ill.App.3d 549, 433 N.E.2d 1376 (4th Dist. 1982) Upon his arrest, defendant was give **Miranda** warnings. He shook his head in a negative fashion and refused to sign a waiver form. Notwithstanding, he was interrogated further and made statements. The trial judge denied defendant's motion to suppress, stating that under *Miranda* the only time interrogation must cease is "when the person being interrogated says I want to talk to a lawyer."

The trial judge applied the wrong standard. The **Miranda** decision itself holds that interrogation must cease when the individual indicates "in any manner" that he does not wish to be interrogated. Reversed and remanded for reconsideration under the proper standard.

People v. Savory, 82 Ill.App.3d 767, 403 N.E.2d 118 (3d Dist. 1980) Police acted improperly by interrogating defendant on the morning after he had exercised his right to remain silent.

The mere lapse of time, plus the giving of **Miranda** warnings, is insufficient to show an effective waiver. "Where the defendant . . . has exercised his right to remain silent, the record should show at the minimum that before re-interrogation was commenced, the defendant had changed his mind, and that there was some reason for his change of mind before the resumption of questioning could be deemed voluntary."

People v. Vaisvilas, 70 Ill.App.3d 18, 387 N.E.2d 1021 (1st Dist. 1979) Where defendant had previously refused to talk and the police knew that defendant's attorney was coming to the station to meet with defendant, the trial court properly suppressed statements made in response to enticing and intimidating comments by the police.

People v. Faison, 78 Ill.App.3d 911, 397 N.E.2d 1233 (3d Dist. 1977) Defendant was advised of his **Miranda** rights and was asked questions by an officer who was reading from a printed form. After defendant indicated that he understood his rights and did not want to answer questions, the officer continued to read the remaining questions from the form (whether defendant had been struck, threatened or promised rewards). Defendant was handed the form and read it. After hesitating, he said that he would answer a few questions. A confession was then obtained.

Defendant's right to remain silent was not scrupulously honored. Once an individual exercises his right to remain silent, interrogation may be resumed only after a complete cessation of questioning for a significant time and only if **Miranda** warnings have been repeated. The officer should not have asked additional questions after defendant indicated that he did not want to answer questions.

§10-5

Voluntariness

§10-5(a)

Generally

United States Supreme Court

Arizona v. Fulminante, 499 U.S. 279, 111 S.Ct. 1246, 113 L.Ed.2d 302 (1991) Admission of an involuntary confession is subject to a harmless error analysis. Because of the devastating impact of a confession on the jury, the risk that the jury will base its verdict solely on the confession and the inherent unreliability of a coerced confession, however, reviewing courts must "exercise extreme caution" before determining that the State's use of an involuntary confession was harmless.

Colorado v. Connelly, 479 U.S. 157, 107 S.Ct. 515, 93 L.Ed.2d 473 (1986) A confession cannot be held to be involuntary under the Due Process Clause unless it was caused by coercive police activity. Thus, a statement that is coerced by a private party or made because of a defendant's mental deficiency is not involuntary and need not be suppressed.

Crane v. Kentucky, 476 U.S. 683, 106 S.Ct. 2142, 90 L.Ed.2d 636 (1986) At trial, a defendant has the right to introduce evidence concerning the circumstances of his confession even though the judge found, at a pretrial hearing, that the confession was voluntary. Such evidence is relevant to credibility as well as voluntariness. See also, **People v. Monroe**, 95 Ill.App.3d 807, 420 N.E.2d 544 (1st Dist. 1981).

Lego v. Twomey, 404 U.S. 477, 92 S.Ct. 619, 30 L.Ed.2d 618 (1972) When a confession is challenged as involuntary, the prosecution must prove at least by a preponderance of evidence that it was voluntary.

Factors to consider in determining whether confession is voluntary:

(1) Secret inquisition, **Ashcraft v. Tennessee**, 322 U.S. 143, 64 S.Ct. 921, 88 L.Ed. 1192 (1944);

(2) Compulsion, **Brown v. Mississippi**, 297 U.S. 278, 56 S.Ct. 461, 80 L.Ed.2d 682 (1936);

(3) Duration of questioning, [Spano v. New York](#), 360 U.S. 315, 79 S.Ct. 1202, 3 L.Ed.2d 1265 (1959);

(4) Use of fear, [Malinski v. New York](#), 324 U.S. 401, 65 S.Ct. 781, 89 L.Ed. 1029 (1945);

(5) Threats, [Lynumn v. Illinois](#), 372 U.S. 528, 83 S.Ct. 917, 9 L.Ed.2d 922 (1963);

(6) Age of accused, [Haley v. Ohio](#), 332 U.S. 596, 68 S.Ct. 302, 92 L.Ed. 224 (1948).

[Sims v. Georgia](#), 385 U.S. 538, 87 S.Ct. 639, 17 L.Ed.2d 593 (1967) It is a constitutional rule that a jury is not to hear a confession until the trial judge has determined that it was freely and voluntarily given. Although the judge need not make formal findings of fact or write an opinion, his conclusions that the confession is voluntary must appear from the record with unmistakable clarity.

[Pinto v. Pierce](#), 389 U.S. 31, 88 S.Ct. 192, 19 L.Ed.2d 31 (1967) It was not error to hold a voluntariness hearing in the presence of the jury where there was no objection to the procedure and the confession was found to be voluntary.

[Jackson v. Denno](#), 378 U.S. 368, 84 S.Ct. 1774, 12 L.Ed.2d 908 (1964) Trial court must determine the voluntariness of a confession before submitting it to the jury.

[Boles v. Stevenson](#), 379 U.S. 43, 85 S.Ct. 174, 13 L.Ed.2d 109 (1964) It is a denial of due process for a trial judge to deny defendant's motion to strike a confession without comment or hearing. The remedy is a remand for a voluntariness hearing rather than reversal of the conviction. See also, [People v. King](#), 61 Ill.2d 326, 335 N.E.2d 417 (1975).

Illinois Supreme Court

[People v. Murdock](#), 2012 IL 112362 After he was convicted of murder, defendant filed a post-conviction petition alleging that trial counsel was ineffective for failing to file a motion to suppress statements. After conducting a third stage evidentiary hearing, the trial court denied the petition. The Appellate Court reversed the trial court's order and remanded the cause for a suppression hearing.

On remand, the post-conviction court refused to suppress defendant's statement. The Appellate Court affirmed, and the defendant appealed. The Supreme Court did not reach the issue of ineffective assistance, but found that the post-conviction court did not err by denying the motion to suppress. Whether a confession is voluntary depends on the totality of the circumstances, including such factors as the defendant's age, intelligence, background, experience, education, mental capacity, and physical condition at the time of the questioning, the duration and legality of the detention, and whether there were threats, promises, or physical or mental abuse by the police. No single factor is dispositive. Instead, voluntariness depends on whether the defendant made the statement freely and voluntarily without compulsion or inducement, or whether his will was overborne at the time of the statement.

The taking of a juvenile's confession is especially sensitive, requiring that the greatest care be taken to assure that the confession was not coerced or suggested. An important consideration for juvenile confessions is whether a concerned adult was present during the interrogation. [705 ILCS 405/5-405\(2\)](#) codifies the "concerned adult" factor by requiring that a law enforcement officer who makes a warrantless arrest of a minor must make a reasonable attempt to notify a parent or other legally responsible person and must take the minor to the nearest juvenile police officer. The "concerned adult" factor is particularly important where

the juvenile has trouble understanding the interrogation process or asks to speak with the concerned adult, or where the concerned adult is prevented by police from speaking with the minor.

Whether the juvenile was allowed to confer with a concerned adult, and whether police interfered with such consultation, are important factors concerning voluntariness. However, a confession is not involuntary merely because a minor was denied an opportunity to confer with a concerned adult.

The lower court did not err by denying the motion to suppress. The officer made no promises to the defendant, the defendant appeared to be in good condition and of normal intelligence and capacity for a 16-year-old, and there was no evidence of physical or mental abuse. Furthermore, although defendant was detained for some seven hours, he was only interrogated for about three hours and 15 minutes.

The statement was not rendered involuntary by the failure of officers to allow defendant's grandfather to speak with defendant. It was unclear from the record why the grandfather was at the station, and the officer who spoke to the grandfather testified that neither defendant nor the grandfather asked to see the other. The court acknowledged that the officer should have informed the grandfather that he could speak with defendant if he desired, but in the absence of a request to do so "this is not a situation where a police officer affirmatively refused to let a concerned adult see a juvenile defendant."

Nor was the statement involuntary because the interrogation was conducted in the absence of a youth officer. Under Illinois law, two lines of cases have developed concerning the role of a juvenile officer. The first line holds that a juvenile officer's role is to ensure that a juvenile's parents have been notified of the arrest and that the juvenile has been given **Miranda** rights, fed, given access to restroom facilities, and not coerced. The second line of cases holds that a juvenile officer must take a more active role on behalf of the minor's interests and affirmatively protect the minor's rights. The court concluded that it need not resolve the conflict between the two lines of authority because the officer in question, although trained as a juvenile officer, was acting as the chief investigator and not as a juvenile officer. The court stressed that an officer cannot act as both an investigator and juvenile officer in the same case.

However, the court concluded that the juvenile officer's absence was mitigated because defendant received **Miranda** warnings and was properly treated, offered food, given access to the restroom, and not subjected to physical or mental abuse. Thus, the statement was voluntary despite the absence of a juvenile officer.

In dissent, Justices Burke, Theis and Freeman criticized the court for misconstruing the issue as a Fifth Amendment argument rather than the claim that was raised in the post-conviction petition – whether trial counsel was ineffective for failing to file a motion to suppress. The dissenters also found that the Appellate Court erred by remanding the cause for a suppression hearing rather than ruling on the propriety of the trial court's order denying post-conviction relief. Finally, the dissenters criticized the majority for ignoring the evidence presented at the third stage post-conviction hearing, which showed the circumstances surrounding the defense counsel's failure to file a motion to suppress and that such failure constituted ineffective assistance of counsel.

The dissenters also found that the statement was involuntary where the grandmother was denied her request to speak to the defendant before or during the interrogation, no juvenile officer was present in the room with the defendant, defendant had no criminal history or experience with the criminal justice system, defendant was detained for several hours, and the videotape on which the court relied to find that the defendant did not appear to be under duress was made several hours after the statement in question.

People v. Wrice, 2012 IL 111860 Under **People v. Wilson**, 116 Ill.2d 29, 506 N.E.2d 571 (1987), use of a coerced confession as substantive evidence of guilt cannot be harmless error. Here, the court noted that **Wilson** was based on United States Supreme Court precedent, and that in **Arizona v. Fulminante**, 499 U.S. 279 (1991), a plurality of the court concluded that admission of a coerced confession was subject to the harmless error rule.

In view of the factual situation and divided opinion in **Fulminante**, the court declined to abandon **Wilson** entirely. Instead, the court modified the rule to hold that use of a *physically* coerced confession as substantive evidence of guilt cannot be harmless error. The court found that, as reflected by Justice White's concurring opinion in **Fulminante**, use of a physically coerced confession is inconsistent with the thesis that the American justice system is accusatory rather than inquisitorial. The court also noted that it was not required to decide whether the **Wilson** rule could stand as a matter of State constitutional law, because defendant claimed only that his rights had been violated under the federal constitution.

The court rejected the State's argument that in **People v. Mahaffey**, 194 Ill.2d 154, 794 N.E.2d 251 (2000), it held that use of a coerced confession is subject to the harmless error rule. First, whether harmless error review applied was not before the court in **Mahaffey**. **Second, Mahaffey** is overruled to the extent that it can be read as implicitly adopting harmless error review for the admission of coerced confessions.

The court rejected the State's argument that defendant was barred from arguing that his confession should have been suppressed as the product of police violence where he has consistently maintained that he did not confess. Under Illinois law, a defendant may argue, as an alternative, that his confession should be suppressed, even if he also asserts that he did not confess at all. Evidence of coercion is not rendered irrelevant merely because the defendant denies confessing.

Because defendant alleged that newly discovered evidence showed that his confession was the product of police torture, and the State conceded that defendant had shown "cause" for failing to raise the issue in prior post-conviction proceedings, the trial court's order denying leave to file a subsequent post-conviction petition was reversed and the cause remanded for the appointment of post-conviction counsel and second stage proceedings.

People v. Richardson, 234 Ill.2d 233, 917 N.E.2d 501 (2009) When a defendant challenges the admissibility of an inculpatory statement on voluntariness grounds, the State bears the burden of proving voluntariness by a preponderance of the evidence. Where the suspect was injured while in police custody, however, the State must show by clear and convincing evidence that the injuries were not inflicted as a means of inducing the statement. To carry this burden, more than a mere denial of police coercion is required.

Where defendant challenged the voluntariness of his inculpatory statements and it was undisputed that he suffered a black eye while in police custody, the State was required to prove by clear and convincing evidence that the eye injury was not inflicted to induce the statement. The State satisfied this burden where the officers who obtained defendant's statement did not merely deny that they had mistreated him or claim that they did not know how the injury had been inflicted, but related defendant's statements that the lockup keeper had assaulted him, that he had been treated fine at the station where the interrogation occurred, and that his statement had nothing to do with his eye injury.

In addition, the inculpatory statements were made several hours after the injury was suffered, defendant did not make an inculpatory statement at the first interrogation after the injury, the videotape of the final statement showed that defendant and his mother appeared "cool, calm, and collected" throughout his videotaped statement, and defendant testified at

trial that his inculpatory statement was voluntary. Under these circumstances, the trial court acted properly by denying the motion to suppress.

People v. Ballard, 206 Ill.2d 151, 794 N.E.2d 788 (2002) Although 725 ILCS 5/109-1(a) requires that a person who is arrested with or without a warrant must be taken "without unnecessary delay before the nearest and most accessible judge in that county," the failure to comply with §109-1(a) does not necessarily mean that an otherwise voluntary confession is inadmissible. Any delay in taking defendant before a magistrate is but one fact to be considered in determining whether a statement was given voluntarily. Furthermore, once a defendant who is in lawful custody knowingly waives his **Miranda** rights and is willing to talk to police, officers need not interrupt the interrogation to present defendant to a judge, so long as the length of the interrogation is not unreasonable and defendant's statements are voluntary.

In addition, presentment to a judge need be performed only with such reasonable promptness as the circumstances permit. Whether there was unnecessary delay is determined from the facts and circumstances of each case; however, case law suggests that a twenty-four to thirty-six hour-delay is not unreasonable.

In re G.O., 191 Ill.2d 37, 727 N.E.2d 1003 (2000) Whether a confession is voluntary depends on the totality of the circumstances, including: (1) the declarant's age, intelligence, background, experience, mental capacity, education and physical condition, (2) the legality and duration of the detention leading to the statement, (3) the duration of any questioning, and (4) any physical or mental abuse, including threats or promises. Where the confession of a juvenile is concerned, the court must also consider whether the minor was denied the opportunity to confer with a parent or other concerned adult before or during the interrogation. However, the court refused to adopt a per se rule that a minor's confession must be suppressed if there was a denial of an opportunity to confer with an adult.

The totality of circumstances indicated that the confession was voluntary. Although respondent had just turned 13 and had no previous contact or experience with the criminal justice system, his mother said that he was "intelligent and did very well in school." Respondent was not provided an opportunity to confer with a concerned adult; however, he never asked to do so, and police did not frustrate any attempt by respondent's mother to see him. Also, an officer phoned the mother before the minor was questioned and informed her that she could come to the station.

The arrest was proper, the minor was repeatedly informed of his **Miranda** rights, and the trial court found that the minor understood his rights. Although the minor remained at the station for several hours, he was questioned for only short periods of time, was not handcuffed, was provided soda and access to bathroom facilities, and was not subjected to threats or promises. Under these circumstances, the confession was the result of the minor's free will.

See also, **People v. McDaniel**, 326 Ill.App.3d 771, 762 N.E.2d 1086 (1st Dist. 2001) (rejecting argument that officers may properly refuse a parent's request to see a child who is in police custody if the child does not want to see the parent; where a parent is present at the police station and asks to see her child, police have an affirmative duty to end any questioning and permit a conference); **In re J.J.C.**, 294 Ill.App.3d 227, 689 N.E.2d 1172 (2d Dist. 1998) (taking an incriminating statement from a juvenile in the absence of counsel "requires great care to assure that the . . . statement was neither coerced, suggested, nor the product of fright or despair"; although there is no per se rule that a parent must be present when a juvenile is interrogated, parents who indicate an interest in the matter by coming to the police station

"should be allowed to confer with [the] child before any questioning occurs"; mere presence of a youth officer does not make juvenile's confession voluntary where the officer took no affirmative action to protect the minor's rights); **People v. Griffin**, 327 Ill.App.3d 538, 763 N.E.2d 880 (1st Dist. 2002) (although youth officers may investigate cases that are unrelated to those in which they are to act as youth officers, they cannot be both a youth officer interested in the juvenile's welfare and an investigator compiling evidence of the crime).

People v. Chapman, 194 Ill.2d 186, 743 N.E.2d 48 (2000) The trial court properly denied a motion to suppress statements due to a three-day delay between the arrest and the preliminary hearing. Such delay is merely one factor to be considered in determining whether a confession is voluntary and does not render a confession inadmissible per se.

Defendant's statements were clearly voluntary: defendant received several sets of **Miranda** warnings, agreed to waive his rights and speak to authorities, did not ask for a lawyer, voluntarily consented to searches, and was not coerced. In addition, defendant was an educated adult, was given opportunities to eat, sleep and use the restroom, was questioned only intermittently, and was not mistreated. Finally, the preliminary hearing was delayed because police were searching for defendant's missing five-month-old son, not in an attempt to obtain a statement before defendant went to court.

People v. Woods, 184 Ill.2d 130, 703 N.E.2d 35 (1998) A confession is admissible only if it was made voluntarily. A confession is voluntary if, based on the totality of the circumstances, it was a product of defendant's rational intellect and free will. Once the defense moves to suppress a confession, the State has the burden to establish voluntariness by a preponderance of the evidence.

Under **People v. Wilson**, 116 Ill.2d 29, 506 N.E.2d 571 (1987), where a defendant shows that he was injured while in police custody, "a heightened burden of proof is imposed upon the State to show by clear and convincing evidence that the injuries were not inflicted" to obtain the confession. To meet this heightened burden of proof, the State must do more than merely deny that the confession was coerced.

People v. Gilliam, 172 Ill.2d 484, 670 N.E.2d 606 (1996) Whether a confession is voluntary depends on whether it was made "freely, voluntarily, and without compulsion or inducement of any sort, or whether the defendant's will was overcome at the time he or she confessed." Voluntariness is determined on the totality of the circumstances, including such factors as: (1) defendant's age, intelligence, background, experience, mental capacity, education, and physical condition, (2) the legality and duration of the detention and duration of questioning, and (3) any physical or mental abuse, including threats or promises. The State has the burden of establishing voluntariness by a preponderance of the evidence, and the trial court's determination will be overturned only if it is contrary to the manifest weight of the evidence. Finally, in reviewing the trial court's finding the entire record, including the testimony at trial, may be considered.

People v. Del Vecchio, 105 Ill.2d 414, 475 N.E.2d 840 (1985) Defendant contended that at his death hearing, it was error to admit an allegedly involuntary confession to a prior crime without conducting a voluntariness hearing.

The Court held that defendant had waived the issue of the confession's voluntariness by pleading guilty to the prior crime. Defendant did not challenge the voluntariness of the prior guilty plea, and a voluntary plea waives all errors that are not jurisdictional. Compare, **People v. McLain**, 32 Ill.App.3d 998, 337 N.E.2d 82 (4th Dist. 1975) (defendant is entitled

to voluntariness hearing before confession to prior crime was introduced at trial, regardless of the fact he pleaded guilty to the prior crime).

People v. Peterson, 74 Ill.2d 478, 384 N.E.2d 348 (1978) An involuntary confession by an alleged probation violator, as well as the fruits of the confession (live witness testimony in this case), are inadmissible in probation revocation proceedings.

People v. Lefler, 38 Ill.2d 216, 230 N.E.2d 827 (1967) The voluntary character of any out-of-court statement by defendant, whether it be a confession or an admission, must be established before the statement may be used for any purpose. See also, **People v. Bryant**, 101 Ill.App.2d 314, 243 N.E.2d 354 (1st Dist. 1968).

People v. Strader, 38 Ill.2d 93, 230 N.E.2d 569 (1967) Defendant's failure to request a hearing on voluntariness before trial was not waiver; a defendant is denied due process if his conviction is founded in part on an involuntary confession.

People v. Davis, 35 Ill.2d 202, 220 N.E.2d 222 (1966) When defendant suffers injuries while in police custody, clear and convincing proof is required to establish that the injuries were not the result of police brutality. Compare, **People v. Clark**, 114 Ill.2d 450, 501 N.E.2d 123 (1986) (injuries were noticed while defendant was in custody — no showing as to when they occurred).

Illinois Appellate Court

People v. Fair, 2024 IL 128373 Defendant was arrested for an armed robbery and murder, was interrogated at Area 2, and made statements implicating himself and two others. Prior to trial, he filed a motion to suppress statements, alleging “physical, mental, and psychological coercion” and denial of counsel, but counsel later withdrew the motion without a hearing. Defendant was convicted of murder. On direct appeal, and again in post-conviction proceedings, defendant alleged ineffective assistance of trial counsel for failing to proceed on the motion to suppress or object to admission of his statements at trial. Both were unsuccessful.

Defendant subsequently brought a claim of torture before the Illinois Torture Inquiry and Relief Commission (TIRC) Act (775 ILCS 40/1, *et seq.*), alleging that during his interrogation he was kicked, threatened with being shot, kept awake, chained to a wall, denied asthma medication and food, and denied a lawyer for a period lasting more than 30 hours. Defendant claimed that ultimately he simply repeated what the police told him to say, but he refused to sign the written statement prepared by the prosecutor following his interrogation.

TIRC found sufficient credible evidence of torture to refer the case for judicial review. The circuit court held a hearing and denied relief, concluding that defendant had failed to provide sufficient evidence of torture and finding that the prosecutor who testified to recording defendant’s unsigned, written statement was “extremely” credible.

The appellate court affirmed, accepting defendant’s claim that he was kicked by a detective, but concluding that allegations he was denied sleep, medication, and food were insufficient. The court held that being denied counsel was “not a consequence of torture” and was not properly considered in TIRC proceedings. Given the prosecutor’s credible testimony, the court found that the State met its burden to show the statement was not the product of torture.

The Supreme Court affirmed, as well. The standard of review of TIRC judicial proceedings on appeal is whether the circuit court's decision was manifestly erroneous. The circuit court judge is in a superior position to evaluate credibility because the judge sees and hears witness testimony in person. Accordingly, the court's determinations will only be reversed if they contain an error that is "clearly evident, plain, and indisputable."

Under the plain language of the Act, the circuit court must decide whether the petitioner has shown by a preponderance of the evidence that (1) torture occurred and (2) resulted in a confession that was (3) used to obtain a conviction. The circuit court does not assess the voluntariness of the statement or consider whether other constitutional claims are established. The Court specifically overruled [People v. Wilson, 2019 IL App \(1st\) 181486](#), which had adopted a contrary standard.

While TIRC is concerned only with claims of torture, the circuit court must still consider the totality of the circumstances in evaluating such claims. The court's review is not limited only to acts of physical abuse. Rather, the court should also consider any alleged violations that would not necessarily qualify as torture if viewed alone. Additionally, the Court noted, courts should be mindful of the history of police torture in Chicago that led to creation of the TIRC procedure in analyzing torture claims.

Applying these standards, the Supreme Court found that the circuit court did not commit manifest error in denying defendant's torture claim. The circuit court made credibility determinations after seeing and hearing witness testimony, putting it in a superior position to do so. The Court declined to disturb those determinations on the record presented here. Accordingly, the denial of defendant's TIRC claim was affirmed.

A dissent agreed with the majority's determination of the applicable standards but would have found manifest error in the circuit court's findings. The dissent noted that defendant testified to abusive behavior by four detectives over the course of a 30-hour custodial interrogation. None of those detectives testified, leaving defendant's claims un rebutted and unimpeached. The dissent would have drawn a negative inference from the detectives' failure to come forward to rebut defendant's claims. Further, records from other cases established that one of the detectives was a known torturer. Additionally, the dissent noted that the prosecutor who did testify was not present during any of the police interrogation and thus was incompetent to testify to whether defendant had been tortured.

[People v. Muhammad, 2023 IL App \(1st\) 220372](#) The Illinois Torture Inquiry and Relief Commission Act ("the Act") establishes a procedure for the investigation and determination of claims of torture by convicted individuals. A claim of torture is an assertion that the person was tortured into confessing to the crime for which he or she was convicted where "the tortured confession was used to obtain the conviction" and where there is some credible evidence that torture occurred. 7725 ILCS 40/5(1). Claims brought under the Act are first reviewed by an eight-member commission and, if at least five of the eight members conclude by a preponderance of the evidence that there is sufficient evidence of torture, the commission refers the matter to the circuit court for further review. The circuit court then conducts an evidentiary hearing, similar to a third-stage post-conviction petition hearing, unless it finds that the commission's determination was against the manifest weight of the evidence.

Here, the commission advanced defendant's claim for a court hearing, but the circuit court declined to hold a hearing. Instead, the court terminated the proceedings based upon its conclusion that defendant's statement, which was used against him at trial, was not a "confession," and thus not subject to challenge under the Act, because defendant's statement did not admit his guilt. Rather, defendant stated that he was a gang member, denied knowledge of the murder at issue, and admitted that he knew there was an arrest warrant

for him when he fled the state. On appeal, defendant challenged the court's failure to hold an evidentiary hearing.

The Act does not define "tortured confession." The commission, by virtue of its rule-making authority, has defined "tortured confession" as "any incriminating statement, vocalization or gesture alleged by police or prosecutors to have been made by a convicted person" that the person alleges was the result of torture. Thus, while a confession is traditionally understood to mean an admission of guilt, it is much broader under the Act, essentially including any statements that can be used against a defendant. The appellate court found the commission's definition reasonable and thus, defendant's statement to the police qualified as a "tortured confession" despite the fact that he did not admit guilt. Accordingly, the court reversed and remanded for an evidentiary hearing.

Additionally, the commission included a possible **Brady** violation in its hearing referral, noting that it had uncovered evidence that the State failed to disclose during defendant's original trial proceedings, specifically that defendant had participated in several lineups in which multiple witnesses did not identify him. The appellate court concluded that this was "closely tethered" to defendant's torture claim and thus was a proper subject for the evidentiary hearing, as well.

Finally, the court, over a dissent, agreed with defendant's argument that the special prosecutor (Milan) appointed for the TIRC proceedings had an actual conflict of interest requiring his removal. At the time of defendant's original prosecution, Milan was supervisor of the Felony Review Unit in the Cook County State's Attorney's Office that charged defendant with first degree murder. That is, Milan initiated the original criminal prosecution at issue here. In TIRC proceedings, Milan would have the power to decide whether to dismiss defendant's case, reprosecute him, or move to terminate the TIRC proceedings, and to exercise those powers Milan would have to judge the validity of his own original decision to prosecute, thereby resulting in an actual conflict. And, while defendant initially had requested Milan's appointment as special prosecutor, this could not be deemed invited error given that Milan's actual conflict was a fundamental error that would undermine confidence in the outcome of the proceedings. Indeed, the initial conflict of the State's Attorney's Office which led to Milan's appointment as special prosecutor actually applied to Milan, himself, given his former position with that office.

People v. Vidaurri, 2023 IL App (1st) 200857 In a successive petition, defendant alleged that his confession was the product of police abuse, primarily by Detective Adrian Garcia. He had alleged in a prior petition that counsel was ineffective for failing to move to suppress the confession, and the State therefore asserted the claim was barred by *res judicata*. Defendant countered that his current claim was supported by new evidence of a pattern and practice of police misconduct. This evidence included affidavits from other victims of abuse, testimony from a lawsuit, a settlement agreement, and a list of several allegations, albeit unfounded, documented by the Citizen's Police Data Project.

Newly discovered evidence of police coercion may provide cause for permitting the filing of a successive post-conviction because such evidence, by its nature, is difficult for *pro se* petitioners to obtain. Here, as in **People v. Blalock, 2022 IL 126682**, the documents in question were external to the defense, and some were in the custody of the police, who have a direct interest in keeping the information from defendants. Thus, defendant met the cause prong.

Defendant could not show prejudice, however. At the pleading stage, defendant establishes prejudice in a "pattern and practice" claim when: (1) the defendant consistently claims he was tortured; (2) his claims of torture were and always had been similar to other

claims depicted in the new evidence; (3) the officers identified in the evidence were the same officers in the defendant's case; and (4) the defendant's allegations were consistent with documented findings of torture against the officers.

Here, the appellate court first found the list of allegations from the CPDP, as well as the evidence about the lawsuit, lacked sufficient detail to be assessed for similarity. As for the remaining evidence, the appellate court found each one individually deficient for several reasons, including a lack of similarity in the details. For example, one former victim of Garcia alleged, as defendant did, that Garcia used coercive techniques while the victim had one hand cuffed to the wall. But other than this "general" similarity, the remaining details of the allegations differed. Importantly, this victim did not allege physical violence, while defendant did.

Another victim's claims were insufficient because five years separated the conduct, the affiant accused "Garcia" without providing a first name, and the types of coercive techniques were not identical where the affiant said he was punched while defendant said he was slapped and defendant alleged sleep deprivation, while the affiant did not.

In sum, the supporting evidence, taken together, did not establish that Garcia engaged in a pattern and practice of abuse where some of the new allegations did not name Detective Garcia, others failed to offer details of his actions, and others lacked sufficient similarity to defendant's allegations of abuse.

People v. Brandon, 2021 IL App (1st) 172411 The trial court erred in denying defendant leave to file a successive post-conviction petition alleging that his confession to a 1991 murder was coerced. Defendant had previously challenged the confession, unsuccessfully, by alleging physical coercion at the hands of Detectives Ricardo Abreu and Terrance O'Connor, but his successive petition was supported by affidavits from others who attested to similar abuse by these same detectives. Defendant also attached documents regarding the exoneration of another individual – Daniel Taylor – upon proof that he had been abused and framed by these detectives and others at Area 6.

Defendant demonstrated cause for not presenting this evidence earlier where it did not come to light until Taylor's exoneration in 2013. Defendant's prior collateral petitions were filed in 2001 and 2010, when this evidence was unavailable to him. While the other individuals who attested to similar abuse had suffered that abuse well-before 2013, it is illogical to think defendant could have discovered that abuse and obtained their affidavits, on his own. "No reviewing court in Illinois has ever accepted the State's logic that, while the proof may be new, the alleged abuse is old, so the proof came too late...."

To establish prejudice with regard to physical coercion of a confession, the question is whether, taken as true, the new evidence documents abuse similar enough to that alleged by defendant that it may show the officers were acting in conformity with a pattern and practice of behavior. The overall strength of the evidence at trial is irrelevant because the use of a physically coerced confession as substantive evidence of guilty is *never* harmless error. Taken as true, the evidence attached to defendant's petition met the prejudice standard in that it demonstrated a pattern of abuse by the same officers occurring close in time to defendant's own alleged abuse.

The Appellate Court reversed and remanded for the appointment of post-conviction counsel and second-stage proceedings on defendant's coerced-confession claim.

People v. Galvan, 2019 IL App (1st) 170150 Defendant was convicted of committing arson and two counts of first-degree murder in 1986, at the age of 18. His conviction was based on his confession, which he had tried to suppress by alleging coercion by interrogating

detectives, including Detective Switski. Defendant filed a successive post-conviction petition alleging actual innocence, and the circuit court granted an evidentiary hearing. At the hearing, several witnesses testified that Switski coerced their confessions around the same time. The circuit court denied the petition, stating that it did not believe any of the witnesses.

The Appellate Court reversed, finding that the question is not whether the witnesses were credible, but whether they would have impeached Switski by showing a pattern of abuse, such that the outcome of the suppression hearing may have been different. Here, the new evidence was conclusive enough to impeach Switski and potentially alter the outcome of the suppression hearing.

People v. Gibson, 2018 IL App (1st) 162177 When detectives invoked the Fifth Amendment during an evidentiary hearing on defendant's torture claim, the circuit court erred in refusing to draw an adverse inference from their silence.

The Illinois Torture Inquiry and Relief Commission (TIRC) had found defendant's claims of abuse by Area 3 officers sufficient to warrant judicial review, and remanded for an evidentiary hearing. The circuit court dismissed the claim. The Appellate Court reviewed defendant's claims that the court erred in refusing to draw adverse inferences from witness silence, and for refusing to admit hearsay, including torture reports.

The Appellate Court first held that TIRC proceedings are civil in nature, and in civil proceedings the court has discretion to draw negative inferences from witness silence. Refusing to do so in this case constituted an abuse of discretion because none of the other State witnesses directly refuted defendant's claims of abuse, and because the integrity of the justice system depends on the integrity of the police officers, particularly in the context of coerced confessions. The police officers' silence in the face of accusations of coercion should have caused the circuit court to take note.

Furthermore, because hearings under the TIRC Act are civil collateral proceedings like post-conviction hearings, the Illinois Rules of Evidence do not apply, and on remand, the circuit court must reconsider its decision to prevent the defendant from admitting hearsay, including the Goldston and Egan-Boyle Reports.

People v. Allen, 2016 IL App (1st) 142125 The Illinois Torture Inquiry and Relief Commission Act provides relief to defendants who allege that their convictions resulted from physically coerced confessions and who provide some credible evidence that torture was committed by Commander Jon Burge or any officer under his supervision. [775 ILCS 40/5\(1\)](#). If the commission finds sufficient evidence of torture it transmits its conclusions to the Cook County circuit court. [775 ILCS 40/50](#).

Defendant applied for relief under the act and the commission determined that there was sufficient evidence of torture to merit judicial review for appropriate relief. But nothing in the commission's findings linked Burge or his subordinates to defendant's confession. The commission sent its conclusions to the circuit court where the State filed a motion to dismiss arguing that the act did not apply because there was no link to Burge or his subordinates. The circuit court agreed and granted the State's motion.

The Appellate Court affirmed the dismissal. The court held that the act is specifically limited to claims of torture by Burge or his subordinates. Since the commission's referral did not show that defendant's confession was factually linked to Burge or his subordinates, the referral was not permitted under the act and was properly dismissed.

Mitchell v. People, 2016 IL App (1st) 141109 The Torture Inquiry and Relief Commission Act (720 ILCS 40) established a commission to investigate claims of torture. A "claim of

torture” is a defendant’s claim that he was tortured into confessing to a crime and “there is some credible evidence related to allegations of torture by Commander Jon Burge or any officer under the supervision of Jon Burge.” 720 ILCS 40/5(1).

Although Burge had been fired by the time the defendants were interrogated, the court held that their cases fell within the jurisdiction of the Act since they alleged that they were tortured by officers who had previously served under Burge’s supervision. The court found that the language of the Act was ambiguous and susceptible of two reasonable interpretations. On the one hand, the phrase “related to allegations” of torture by Burge or those he supervised could be interpreted to include claims of torture by officers formerly under his command. On the other hand, the phrase “under the supervision of” could be interpreted as only encompassing claims of torture by Burge or officers presently under his command at the time the torture took place.

When faced with an ambiguous statute, courts will give substantial weight and deference to the interpretations of the agency charged with administering the statute, even though courts are not bound by such interpretations. Here the committee issued an order concerning its jurisdiction and proposed regulations specifically finding that its jurisdiction included allegations of torture by officers who were previously supervised by Burge.

The court deferred to the committee’s clear interpretation of its jurisdiction and reversed the trial court ruling that the claims fell outside the Act’s jurisdiction. The cases were remanded for further proceedings in accordance with the Act.

People v. Christian, 2016 IL App (1st) 140030. The Torture Inquiry and Relief Commission Act (720 ILCS 40) established “an extraordinary procedure to investigate and determine factual claims of torture.” A “claim of torture” is a defendant’s claim that: he was tortured into confessing to a crime; the confession was used to obtain a felony conviction; and there is some credible evidence relating to allegations of torture by Commander Jon Burge or any officer under his supervision.

The Act established a commission to review torture claims and conduct a formal inquiry into such claims. If at the end of the formal inquiry a majority of the commission members concludes by a preponderance of the evidence that there is sufficient evidence of torture to merit judicial review, the case is referred to the Cook County Circuit Court for a hearing on the claim. The court may then grant such relief as is “necessary and proper.”

Prior to trial, defendant filed a motion to suppress his 1989 confession alleging that it was obtained through physical coercion when one of the officers at Area 2 hit defendant. The officers and the assistant State’s Attorney who took defendant’s confession testified that no one physically coerced defendant. Defendant did not testify. The trial court denied the motion and defendant’s confession was used at trial. Defendant eventually filed a claim of torture with the commission alleging that he was “struck extremely hard in the face” and ordered to give a false confession to the ASA. The commission conducted a formal inquiry and decided that there was sufficient evidence of torture to merit judicial review.

The commission based its decision on the substantial amount of information uncovered about misconduct at Area 2 since the time of defendant’s trial. The commission also found that there were major inconsistencies between defendant’s confession and other evidence in the case. The commission thus concluded that defendant’s claim “exhibits many of the standard characteristics of coerced, false confessions.”

Defendant filed a petition for relief in the circuit court based on the commission’s findings. The court conducted an evidentiary hearing on the claim. Defendant testified that when he was interrogated at Area 2, one of the officers hit him so hard he nearly passed out. The officers told defendant that unless he confessed to the ASA, the beating would continue.

The ASA testified that defendant voluntarily gave a full confession and signed a written summary of the confession. He saw no bruising or marks on defendant's face and defendant told him he had been treated "all right."

The circuit court found "absolutely no credible evidence" of torture and denied defendant's claim. Defendant appealed, arguing that the findings of the commission were entitled to preclusive effect on the circuit court based on the doctrines of collateral estoppel and law of the case. The Appellate Court rejected both arguments.

The doctrine of collateral estoppel prevents the relitigation of issues resolved in an earlier cause of action. Collateral estoppel applies when: (1) the issue decided in the prior adjudication is identical to the one presented in the later case; (2) there was a final judgment on the merits in the prior adjudication; and (3) the party against whom estoppel is asserted was a party in the prior adjudication.

The court held that collateral estoppel did not apply for several reasons. First, collateral estoppel does not apply to the type of non-judicial decision made by the commission. The commission does not conduct any adversarial proceedings and provides no procedural or evidentiary safeguards which are the essential elements of adjudication. Instead the commission serves an investigatory function, looking into claims of torture. Its findings thus do not involve the type of judicial findings necessary for collateral estoppel.

Second, the issue decided by the commission was not identical to the issue presented to the circuit court. The commission merely found that there was sufficient evidence to merit judicial review. The court by contrast was asked to determine whether defendant had been tortured. These were "two different questions determined by two different entities."

Third, the commission's decision was not a final judgment on the merits. A final judgment is a determination of the issues which ascertains and fixes absolutely and finally the rights of the parties. The commission's decision did not ascertain or fix with finality the rights of any parties. It merely sent the case on to the circuit court.

People v. Weathers, 2015 IL App (1st) 133264. Prior to his trial, defendant initially filed a motion to suppress alleging that his confession was the result of physical coercion by the interrogating officers. But when new counsel appeared for defendant, he withdrew the motion to suppress.

On direct appeal, defendant raised no issue about the confession or counsel's withdrawal of the motion. In his first post-conviction petition, filed in October 2009, defendant argued that trial counsel was ineffective for withdrawing the motion because the police failed to give him **Miranda** warnings.

In May 2014, defendant filed a *pro se* motion for leave to file a successive post-conviction petition. Defendant attached portions of the 2012 Illinois Torture Inquiry and Relief Commission (TIRC) report which showed that the officers who obtained his confession were involved in a pattern of coercive tactics in many other cases. Defendant argued that this newly discovered evidence supported his claim that trial counsel had been ineffective for withdrawing his motion to suppress, since it showed that his confession had been coerced and he had been deprived of due process.

The trial court denied defendant's motion, holding that the ineffective assistance argument had been previously raised in the first petition and thus was barred by *res judicata*.

On appeal defendant argued that the evidence in the TIRC report, which was not available when defendant filed his initial post-conviction petition, supported his claim that the State violated his due process rights by using a physically coerced confession at his trial. He therefore established cause because the TIRC report was newly discovered. And he showed prejudice because the use of a physically coerced confession is never harmless error.

The Appellate Court agreed. The TIRC report was not released until after defendant's initial post-conviction petition had been fully litigated. The report showed that the officers involved in obtaining defendant's confession were also involved in similar coercive tactics in other cases. Defendant established cause because this evidence was not available for his initial petition.

Defendant also satisfied prejudice because the use of a physically coerced confession is never harmless error. Defendant's petition alleged that he was physically abused prior to giving a confession, facts that must be accepted as true during this stage. These allegations along with the TIRC report satisfy the prejudice requirement.

The court reversed the denial of leave to file a successive petition and remanded for second stage proceedings with the appointment of counsel.

People v. Hughes, 2013 IL App (1st) 110237 Defendant was arrested and questioned concerning two murders, and gave several statements. The Appellate Court found that the confession to one of the murders was involuntary. Defendant was only 19 years old, had attended school through the ninth grade, and received grades of C's and D's. His juvenile arrests involved UUI and criminal trespass to a vehicle. The record did not show that he had any experience with the criminal justice system that was analogous to the circumstances here. His youth, lack of education, and inexperience with the criminal justice system increased his susceptibility to police coercion. The court rejected the argument that defendant's ability to pronounce words of multiple syllables indicated that he was an intelligent person and had the ability to withstand police coercion.

The coercive atmosphere began when defendant was taken into custody and remained in the back seat of a car handcuffed in an uncomfortable and painful position for at least 90 minutes. He was picked up at 2:00 p.m. and the interrogation did not end until 6:00 a.m. the following day. Over the course of the interrogation, defendant's clarity and cadence of speech, alertness, and concentration deteriorated.

The coercive atmosphere was intensified when, after telling an exhausted defendant to sleep, the detective returned 25 minutes later and told defendant that he was taking him to a polygraph. The police fed defendant only a sandwich and three soft drinks during the entire 14-hour period, a meager amount of food for a large person such as defendant.

The videotape of defendant's detention also shows that defendant smoked marijuana immediately before the polygraph examination. The court concluded that marijuana use militates against a finding of voluntariness as it reduced defendant's ability to resist coercion. Although defendant's use of marijuana was not noted by either party, the involuntariness of the confession was raised in the trial court and the opening brief on appeal, the Appellate Court's *de novo* review of the record included viewing the entire video, and justice sometimes requires that a court raise *sua sponte* an unargued and unbriefed reason to reverse.

Defendant was also told a number of untruths during the interrogation. While interrogators may use subterfuge in limited circumstances to elicit a confession, suppression is appropriate where the State extracts a confession using deceptive interrogation tactics calculated to overcome defendant's free will. Defendant was told several falsehoods, including that his fingerprints were found on the scene, that numerous witnesses placed him on the scene, and that one of the decedents had died of leg wounds. The falsehoods weighed more heavily against a finding of voluntariness they occurred in proximity to defendant being told that he had failed the polygraph after having been told in the pretest interview that the polygraph was infallible and that the polygraph examiner was there to help him by informing the court that he was sorry for what he had done if he showed remorse.

Because the totality of circumstances indicate that defendant's confession to one of the murders was involuntary, the convictions for two counts of murder were reversed and the cause remanded for a new trial.

People v. Patterson, 2012 IL App (1st) 101573 In determining whether a confession is voluntary, courts consider such factors as: (1) the defendant's individual characteristics including age, intelligence, education, physical condition, and experience with the criminal justice system, and (2) the nature of the interrogation including the legality and duration of the detention, the duration of the questioning, and any physical or mental abuse by police. Where a juvenile's confession is involved, additional factors to be considered include the time of day when the questioning occurred and whether a parent or other adult concerned with the juvenile's welfare was present. The voluntariness of a confession is determined by the totality of the circumstances; no single factor is dispositive.

The State failed to show that the 15-year-old suspect's confession was voluntary. The minor, who was questioned late in the evening, had at best limited experience with the police under circumstances in which he would not have learned about the need to protect his rights.

Furthermore, the detective who purported to act as a youth officer helped gather evidence against the minor, made no effort to contact the defendant's parents, and made only a token effort to contact the residential facility at which the minor was staying. The role of a youth officer is to act as a concerned adult interested in the juvenile's welfare, and not to be adversarial or antagonistic toward the juvenile. "Youth officers cannot act in their role as a concerned adult while at the same time actively compiling evidence against [the] juvenile." (Quoting **People v. Griffin**, 327 Ill. App. 3d 538, 763 N.E.2d 880 (1st Dist. 2002)). The court stressed that by failing to contact the minor's parents and making only token efforts to contact the minor's residential facility, the officer effectively prevented any concerned adult from learning of the interrogation and coming to the minor's aid.

Because the State failed to show that the confession was voluntary, the trial court erred by denying the motion to suppress. Defendant's conviction for aggravated criminal sexual assault was reversed and the cause remanded for a new trial.

People v. Valle, 405 Ill.App.3d 46, 939 N.E.2d 10 (2d Dist. 2010) If live testimony plays a role in the trial court's resolution of disputed issues of fact, review of the trial court's judgment is not *de novo*.

At the hearing on defendant's motion to suppress his statements, the trial court heard live testimony related to a disputed issue of fact, i.e., defendant's susceptibility to aggressive or deception interrogation techniques. A full video record existed of defendant's interrogation sessions. Because the videos did not resolve all disputed issues of fact, deference had to be given to the trial court's factual findings on the issue of the voluntariness of defendant's statements.

People v. Westmorland, 372 Ill. App. 3d 868, 866 N.E.2d 608 (2d Dist. 2007) Despite **Colorado v. Connelly**, 479 U.S. 157 (1986), under Illinois law a confession may be deemed involuntary in the absence of police misconduct, based entirely on defendant's personal characteristics.

People v. Braggs, 335 Ill.App.3d 52, 779 N.E.2d 475 (1st Dist. 2002) Under Illinois law a confession may be admitted only if it is "voluntary in a State-law sense." Despite **Colorado v. Connelly**, 479 U.S. 157 (1986) (holding that in the absence of coercive police activity, a statement is not "involuntary" merely because the declarant is mentally incompetent), a

declarant's mental incompetence may render his statement so unreliable as to be inadmissible as a matter of State evidentiary law. In making this determination, the declarant's mental ability is one factor to be considered, along with factors such as familiarity with the English language, age, education and experience.

The order denying defendant's motion to suppress statements, which was made at a discharge hearing after defendant was found unfit to stand trial, was reversed. The cause was remanded for a new hearing on the motion, with instructions to consider the reliability of defendant's statements and whether her mental retardation deprived her of the capacity to understand the meaning and effect of her statements.

People v. Traylor, 331 Ill.App.3d 464, 771 N.E.2d 629 (3d Dist. 2002) Where a defendant establishes that he was injured while in custody, the State must show by clear and convincing evidence that the injuries were not inflicted by police in order to induce a confession. The State may satisfy this burden by presenting evidence that defendant was uninjured at the time of his confession, but suffered the injuries at some later time.

The State failed to meet its burden of proof here. Because defendant was in the presence of officers or in a single-person cell from the time of his arrest until he was booked on the following day, and the booking photograph showed an injury to the bridge of his nose which witnesses agreed had not been present before the interrogation, defendant showed that he had been injured while in police custody.

Because use of a coerced confession as substantive evidence of guilt can never be harmless error, defendant's convictions were reversed and the cause remanded for a new trial.

People v. Escalante, 309 Ill.App.3d 994, 723 N.E.2d 855 (2d Dist. 2000) Voluntariness must be established by a preponderance of the evidence. The State has the burden to establish a prima facie case of voluntariness; once it has carried this burden, the burden of going forward with evidence shifts to the defense. *Prima facie* evidence is "a quantum of evidence sufficient to satisfy the burden of production concerning a basic fact that allows an inference of a presumed fact."

The prosecution failed to present a prima facie case of voluntariness where its witness's testimony was "nothing more than a testimonial denial of defendant's motion" and failed to establish any basis on which the trial court could have inferred that the statements were voluntary. Although the interview took 2½ hours, the State provided "almost no evidence of what occurred during that period, let alone what occurred prior to [the] interview."

People v. Strong, 316 Ill.App.3d 807, 737 N.E.2d 687 (3d Dist. 2000) Whether a confession is voluntary is reviewed de novo. However, the trial court's factual findings will not be reversed unless they are contrary to the manifest weight of the evidence.

In determining whether a confession is voluntary, the court must consider the totality of the circumstances, including defendant's age, intelligence, background, experience, mental capacity, education and physical condition; the legality and duration of the detention; the duration of the questioning; and any physical or mental abuse by police, including threats or promises. No single fact is controlling.

People v. Genus, 74 Ill.App.3d 1002, 393 N.E.2d 1162 (1st Dist. 1979) When defendant moves to suppress a statement as involuntary, the State has the burden of showing voluntariness. Where the State makes a prima facie showing that a confession was voluntary,

the burden of producing evidence to show involuntariness shifts to the defense. The burden shifts back to the State only when defendant has produced evidence.

People v. Barton, 286 Ill.App.3d 954, 677 N.E.2d 476 (5th Dist. 1997) Defendant lacks standing to challenge the voluntariness of another person's statement, unless that statement is being used solely to impeach a defense witness.

In Re Gutierrez, 71 Ill.App.3d 537, 390 N.E.2d 25 (1st Dist. 1979) Trial court erred by failing to hold a hearing on defendant's motion to suppress allegedly involuntary statements at a probation revocation proceeding. Statements, whether exculpatory or inculpatory, cannot be used until found to be voluntary.

People v. Placek, 25 Ill.App.3d 945, 323 N.E.2d 410 (2d Dist. 1975) Trial court's refusal to grant a hearing on the voluntariness of a confession was not error where the motion was made during a bench trial, because defendant's counsel had been aware of the statements long before the case went to trial.

§10-5(b)

Examples: Voluntary Statements

United States Supreme Court

Hutto v. Ross, 429 U.S. 28, 97 S.Ct. 202, 50 L.Ed.2d 194 (1976) A confession is not involuntary merely because it was made as a result of a plea bargain and would not have been made "but for" the plea bargain. Causation, in that sense, is not the test of voluntariness.

Illinois Supreme Court

People v. Murdock, 2012 IL 112362 After he was convicted of murder, defendant filed a post-conviction petition alleging that trial counsel was ineffective for failing to file a motion to suppress statements. After conducting a third stage evidentiary hearing, the trial court denied the petition. The Appellate Court reversed the trial court's order and remanded the cause for a suppression hearing.

On remand, the post-conviction court refused to suppress defendant's statement. The Appellate Court affirmed, and the defendant appealed.

The only witnesses at the suppression hearing were the chief interrogating officer and the defendant. At the third stage evidentiary hearing some three years earlier, the defendant's grandmother testified that she went to the police station while the defendant was being interrogated, but was not allowed to speak to the minor despite her request to do so.

The Supreme Court did not reach the issue of ineffective assistance, but found that the post-conviction court did not err by denying the motion to suppress. Whether a confession is voluntary depends on the totality of the circumstances, including such factors as the defendant's age, intelligence, background, experience, education, mental capacity, and physical condition at the time of the questioning, the duration and legality of the detention, and whether there were threats, promises, or physical or mental abuse by the police. No single factor is dispositive. Instead, voluntariness depends on whether the defendant made the statement freely and voluntarily without compulsion or inducement, or whether his will was overborne at the time of the statement.

The taking of a juvenile's confession is especially sensitive, requiring that the greatest care be taken to assure that the confession was not coerced or suggested. An important consideration for juvenile confessions is whether a concerned adult was present during the interrogation. 705 ILCS 405/5-405(2) codifies the "concerned adult" factor by requiring that a law enforcement officer who makes a warrantless arrest of a minor must make a reasonable attempt to notify a parent or other legally responsible person and must take the minor to the nearest juvenile police officer. The "concerned adult" factor is particularly important where the juvenile has trouble understanding the interrogation process or asks to speak with the concerned adult, or where the concerned adult is prevented by police from speaking with the minor.

Whether the juvenile was allowed to confer with a concerned adult, and whether police interfered with such consultation, are important factors concerning voluntariness. However, a confession is not involuntary merely because a minor was denied an opportunity to confer with a concerned adult.

The court concluded that the issue before it was whether the post-conviction court properly denied the motion to suppress that was held after the Appellate Court's remand, and that it would only consider the evidence presented at the suppression hearing which the Appellate Court ordered. Thus, the court declined to consider the grandmother's testimony at the post-conviction hearing that her request to speak with the defendant during the interrogation was refused.

The court concluded that the lower court did not err by denying the motion to suppress. The court noted that the officer made no promises to the defendant, the defendant appeared to be in good condition and of normal intelligence and capacity for a 16-year-old, and there was no evidence of physical or mental abuse. Furthermore, although defendant was detained for some seven hours, he was only interrogated for about three hours and 15 minutes.

The court rejected defendant's argument that the statement was involuntary because defendant did not have an opportunity to confer with a concerned adult. Defendant argued that he should have been allowed to confer with his grandfather, who according to police officer came to the station, and that a juvenile officer should have been present during the interrogation.

The court concluded that the statement was not rendered involuntary by the failure of officers to allow defendant's grandfather to speak with defendant. It was unclear from the record why the grandfather was at the station, and the officer who spoke to the grandfather testified that neither defendant nor the grandfather asked to see the other. The court acknowledged that the officer should have informed the grandfather that he could speak with defendant if he desired, but in the absence of a request to do so "this is not a situation where a police officer affirmatively refused to let a concerned adult see a juvenile defendant."

Nor was the statement involuntary because the interrogation was conducted in the absence of a youth officer. Under Illinois law, two lines of cases have developed concerning the role of a juvenile officer. The first line holds that a juvenile officer's role is to ensure that a juvenile's parents have been notified of the arrest and that the juvenile has been given **Miranda** rights, fed, given access to restroom facilities, and not coerced. The second line of cases holds that a juvenile officer must take a more active role on behalf of the minor's interests and affirmatively protect the minor's rights. The court concluded that it need not resolve the conflict between the two lines of authority because the officer in question, although trained as a juvenile officer, was acting as the chief investigator and not as a juvenile officer. The court stressed that an officer cannot act as both an investigator and juvenile officer in the same case.

However, the court concluded that the juvenile officer's absence was mitigated because defendant received **Miranda** warnings and was properly treated, offered food, given access to the restroom, and not subjected to physical or mental abuse. Thus, the statement was voluntary despite the absence of a juvenile officer.

In dissent, Justices Burke, Theis and Freeman criticized the court for misconstruing the issue as a Fifth Amendment argument rather than the claim that was raised in the post-conviction petition – whether trial counsel was ineffective for failing to file a motion to suppress. The dissenters also found that the Appellate Court erred by remanding the cause for a suppression hearing rather than ruling on the propriety of the trial court's order denying post-conviction relief. Finally, the dissenters criticized the majority for ignoring the evidence presented at the third stage post-conviction hearing, which showed the circumstances surrounding the defense counsel's failure to file a motion to suppress and that such failure constituted ineffective assistance of counsel.

The dissenters also found that defense counsel was ineffective for failing to file a motion to suppress the statements. The parties agreed that defense counsel's failure to seek to suppress the statement was objectively unreasonable, and the dissenters found that the outcome of the trial would likely have been different had the statement been suppressed because it was the only evidence that the minor had prior knowledge of his companions' intent to commit the offense.

The dissenters also found that the statement was involuntary where the grandmother was denied her request to speak to the defendant before or during the interrogation, no juvenile officer was present in the room with the defendant, defendant had no criminal history or experience with the criminal justice system, defendant was detained for several hours, and the videotape on which the court relied to find that the defendant did not appear to be under duress was made several hours after the statement in question.

The dissenters also stressed that the majority's opinion should not be taken as tacit approval for the Appellate Court's erroneous approach of ordering an unnecessary and improper remand for a suppression hearing instead of reviewing the trial court's order denying post-conviction relief on the ineffective assistance issue.

People v. Richardson, 234 Ill.2d 233, 917 N.E.2d 501 (2009) When a defendant challenges the admissibility of an inculpatory statement on voluntariness grounds, the State bears the burden of proving voluntariness by a preponderance of the evidence. Where the suspect was injured while in police custody, however, the State must show by clear and convincing evidence that the injuries were not inflicted as a means of inducing the statement. To carry this burden, more than a mere denial of police coercion is required.

Where defendant challenged the voluntariness of his inculpatory statements and it was undisputed that he suffered a black eye while in police custody, the State was required to prove by clear and convincing evidence that the eye injury was not inflicted to induce the statement. The State satisfied this burden where the officers who obtained defendant's statement did not merely deny that they had mistreated him or claim that they did not know how the injury had been inflicted, but related defendant's statements that the lockup keeper had assaulted him, that he had been treated fine at the station where the interrogation occurred, and that his statement had nothing to do with his eye injury.

In addition, the inculpatory statements were made several hours after the injury was suffered, defendant did not make an inculpatory statement at the first interrogation after the injury, the videotape of the final statement showed that defendant and his mother appeared "cool, calm, and collected" throughout his videotaped statement, and defendant testified at

trial that his inculpatory statement was voluntary. Under these circumstances, the trial court acted properly by denying the motion to suppress.

People v. Slater, 228 Ill.2d 137, 886 N.E.2d 986 (2008) Defendant was questioned three times on the same afternoon. The first interview was intended to obtain defendant's consent so a DCFS investigator and two police officers could talk to defendant's stepdaughter about possible sexual abuse. After the officers concluded that both defendant and the stepdaughter were lying, a second interview was conducted during which defendant disclosed that she was aware of the abuse.

At that point the interview was terminated and defendant was taken to the police station, where she was given **Miranda** warnings and questioned further. Eventually she gave a videotaped confession.

Defendant's statement during the second interview was voluntary. A statement is voluntary if it was made freely, voluntarily, and without compulsion or inducement of any sort. Several factors are utilized to determine voluntariness, including: (1) defendant's age, intelligence, education, experience, and physical condition; (2) the duration of the interrogation; (3) the presence or absence of **Miranda** warnings; (4) any physical or mental abuse; and (5) the legality and duration of the detention.

Any mental deficiencies which defendant had did not appear to affect her ability to communicate, defendant was found fit to stand trial, the second interrogation was of short duration, and defendant was not subjected to any abuse.

People v. Willis, 215 Ill.2d 517, 831 N.E.2d 531 (2005) Under the Fourth Amendment, a defendant arrested without a warrant has the right to a prompt probable cause hearing. A hearing held within 48 hours of a warrantless arrest is generally considered to be prompt, and places on the defense the burden of showing that the delay was unreasonable. Where no hearing is held within 48 hours, the State has the burden to show an emergency or some other extraordinary circumstance which justified the delay.

People v. Morgan, 197 Ill.2d 404, 758 N.E.2d 813 (2001) Whether a confession is voluntary is to be determined under the totality of the circumstances, including defendant's age, intelligence, background, experience, education, mental capacity, and physical condition at the time of questioning. Other factors include the duration and legality of the detention, the duration of the questioning, and any mental or physical abuse by police. A confession made freely and without compulsion or inducement is voluntary.

Defendant's statements were voluntary where defendant was an average student with normal reading, writing and verbal skills, and was not physically or mentally abused. Although an expert testified that defendant was unable to appreciate the gravity of waiving his **Miranda** rights and was "conditioned" to obey authority figures, the court stressed that defendant refused to answer one of the interrogator's questions and had defied authority figures in other situations.

People v. Williams, 181 Ill.2d 297, 692 N.E.2d 1109 (1998) Defendant's statement to a paramedic was voluntary. The record showed that defendant was uncooperative and verbally abusive at the scene, was in stable condition, did not appear to be in shock, was not medicated, and was coherent and able to provide personal information. In addition, a wound inflicted on defendant during his arrest appeared to have stopped bleeding by the time the paramedic asked questions, and when asked why he had shot a police officer "defendant seemed to ponder the question before answering."

People v. Oaks, 169 Ill.2d 409, 662 N.E.2d 1328 (1996) Defendant alleged that his pretrial statements were involuntary because they were obtained after he was "badgered" by three law enforcement officers. Officers did not imply they would help defendant if he confessed, help him escape incarceration, or seek to favorably influence the judge or prosecutor. Instead, officers' statements were no more than accurate explanations of the responsibilities of the investigating officers, recommendations that defendant tell the truth, and accurate statements that the judge and prosecutor would regard false statements unfavorably. The totality of the circumstances, including defendant's age, prior experience with the criminal justice system, and treatment at the police station, indicated that the statements were voluntary.

People v. Crane, 145 Ill.2d 520, 585 N.E.2d 99 (1991) Trial judge did not err in finding a statement voluntary; defendant was given **Miranda** warnings and "nodded affirmatively" when asked if he understood the warnings and wished to talk. Officers did not engage in coercive tactics though they showed defendant a photo of the victim's body (which had been beaten and burned) and told him of the officers' suspicions. The officers and defendant sat silently for several minutes, an officer told defendant to tell them if he did not want to talk, and defendant subsequently gave a statement.

People v. King, 109 Ill.2d 514, 488 N.E.2d 949 (1986) At the suppression hearing, defendant testified that officers who were interrogating him hit him with a baseball bat and a book. Two witnesses testified that when they saw defendant on the day after his arrest, it looked as if he had been injured (defendant's face was swollen and his eyes were red or bruised). Their testimony was contradicted by a photograph of defendant taken that day. A number of police officers testified and denied the alleged mistreatment. The trial judge denied defendant's motion, finding that coercion was not used and that the statements were voluntary.

Defendant's witnesses did not see him until "the afternoon of the day following his arrest, and their accounts of his appearance at that time, even if accurate, do not explain when or how the alleged injuries occurred." Further, the photo undermined their descriptions of defendant's appearance.

People v. Clark, 114 Ill.2d 450, 501 N.E.2d 123 (1986) State was not required to prove by clear and convincing evidence that defendant's injuries were unrelated to the confession where the evidence did not show that the injuries occurred while defendant was in police custody, but only that they were noticed while he was in custody.

People v. Martin, 102 Ill.2d 412, 466 N.E.2d 228 (1984) Defendant's confession was not involuntary though the interrogating officers had falsely told him that an accomplice had "fingered him as the triggerman." Deception, alone, does not render a statement involuntary.

People v. Caballero, 102 Ill.2d 23, 464 N.E.2d 223 (1984) Trial testimony can be considered by a reviewing court in determining whether a motion to suppress a confession was properly denied.

People v. Davis, 95 Ill.2d 1, 447 N.E.2d 353 (1983) Defendant's confession was not involuntary. Defendant's contact with the police was initiated by defendant, he was advised of his **Miranda** rights, and he signed a waiver form. Defendant testified that he had been threatened and coerced, but "there was no corroborating evidence to support this claim." Trial judge was not required to believe defendant.

In addition, the fact that defendant was questioned from 10 p.m. until 4 a.m. the next morning does not indicate that a written statement at 4 a.m. was involuntary.

People v. Kincaid, 87 Ill.2d 107, 429 N.E.2d 508 (1981) Defendant's statements were held to be voluntary though they were obtained about two hours after he had been injected with Haldol, a major tranquilizer.

People v. Aldridge, 79 Ill.2d 87, 402 N.E.2d 176 (1980) Defendant argued that his waiver of counsel and confession were involuntary because he was mentally ill at the time. Based upon the conflicting psychiatric evidence and the testimony of the officers who observed defendant at the time of the confession, the trial judge's finding that defendant's statement was voluntary was not contrary to the manifest weight of the evidence.

In re Lamb, 61 Ill.2d 383, 336 N.E.2d 753 (1975) The totality of circumstances (minor was no stranger to the criminal justice system, was of normal intelligence, was not harassed by police, was able to sleep on and off during the night while handcuffed to a chair, was fed twice during the 26-hour detention, spoke with his mother several times, was repeatedly advised of his rights and never complained of mistreatment to his mother or to Assistant State's Attorney) shows that the minor's statements were voluntary.

A statement which defendant made during an unreasonable delay before the probable cause hearing should be suppressed only if it was involuntary. Whether a confession is voluntary depends on the totality of the circumstances, including defendant's age, intelligence, education, experience and physical condition at the time of the interrogation, the duration of interrogation, the presence or absence of **Miranda** warnings, the presence of any mental or physical abuse, and the legality and duration of the detention.

Defendant was held in custody for some 87 hours before being presented to a judge and made the statement in question only after he had been held for 73 hours and interrogated three times. Defendant was 45 years old, held a master's degree, had previous experience with the police, was given **Miranda** warnings each time he was questioned, did not claim that he had been abused or denied food or drink, and made no complaints about his treatment. "[A]n extraordinarily long delay which itself raises the inference of police misconduct could, at some point, render any confession involuntary. . . This case approaches, but does not cross, that line."

People v. Nicholas, 218 Ill.2d 104, 842 N.E.2d 674 (2005) Defendant who was arrested without a warrant confessed after 35 hours of custody, and received a probable cause hearing after 40 hours of custody.

Defendant was 22, employed and in good physical condition. He was alert and articulate during the period in question, and voluntarily accompanied the police to the police station. **Miranda** warnings were read several times, and defendant's exercise of his right to silence was scrupulously honored until he reinitiated contact with the police. The court noted that there was no evidence of physical or mental abuse, and defendant was given food, drink, cigarettes and restroom breaks. Under these circumstances, the confession was voluntary. Delay in providing probable cause hearing did not require suppression of defendant's voluntary confession.

People v. House, 141 Ill.2d 323, 566 N.E.2d 259 (1990) Defendant was arrested and held for 49 hours in a windowless interview room that was furnished only with a table and two chairs, was allowed to leave the room on three occasions to use the restroom, and was

intermittently questioned throughout the 49-hour period. Circumstances of the confinement were not such as to overcome defendant's free will where he denied involvement for 25 hours and then made an inculpatory statement after being confronted with a witness who claimed to have assisted defendant in the crimes. However, the Court condemned the practice of detaining suspects for lengthy periods in interview rooms that are not equipped as holding cells and also criticized police "brinkmanship," stating that had the circumstances been slightly different, the statements might have been found involuntary.

Illinois Appellate Court

People v. Buschauer, 2022 IL App (1st) 192472 In 2000, defendant called 911 stating that he had found his wife unresponsive in their whirlpool bathtub. She died, and the investigation into her death went cold after a few months. The investigation was reopened several years later, and the police obtained a warrant for defendant's arrest in 2013. Defendant was living in Wisconsin at the time, and detectives went there to interview him. They did not immediately execute the warrant or tell defendant they had it. Defendant spoke with the police for several hours before invoking his right to counsel. At that time he was arrested. Defendant moved to suppress the statements made during the 2013 interrogation, which was denied. Defendant was subsequently convicted of first degree murder at a bench trial.

The appellate court held that trial court did not err in denying defendant's motion to suppress. Defendant was not denied due process by the officers' failure to tell him that they had a warrant for his arrest before they questioned him in Wisconsin. While it would have been useful for defendant to know of the existence of the warrant before deciding to waive his **Miranda** rights and speak with the officers, he had no right to that information. Due process protects against police conduct which interferes with a suspect's constitutional or statutory rights. Because there was no statute or constitutional provision entitling defendant to knowledge of the existence of the arrest warrant, his due process rights were not violated by the detectives' withholding of that information.

The court also concluded that defendant's right to counsel and privilege against self-incrimination were not violated by the officers' failure to disclose the existence of the warrant prior to questioning. Defendant was given **Miranda** warnings, and his waiver of those rights was knowing, voluntary, and intelligent. Defendant was 64 years old with no apparent cognitive difficulty. He was well-educated, and he had previously invoked his **Miranda** rights during the initial investigation into his wife's death in 2000. In reaching this conclusion, the court noted that it was adhering to its prior decision in **People v. Rudd, 2020 IL App (1st) 182037**, that an officer's failure to inform a suspect that the police have a warrant for his arrest does not defeat the validity of an otherwise valid **Miranda** waiver.

Finally, the court stated that it was leaving open the possibility that, "in an appropriate case with fully developed arguments," it could find that the type of deception employed here was forbidden by the Illinois Constitution. Here, however, defendant failed to make a persuasive argument that the Illinois Constitution should be interpreted to provide broader protections than its federal counterpart where defendant made only brief references to relevant portions of the Illinois Constitution but failed to develop any arguments for greater protection.

People v. Rodriguez, 2022 IL App (1st) 200315 Generally, claims of ineffective assistance of counsel for failing to file a motion to suppress must be presented in collateral proceedings because the record is insufficient for review on direct appeal. Here, however, the record was

adequate to review defendant's claim that the **Miranda** warnings he was provided were insufficient because he was not specifically told that he could have counsel present during questioning or that he could stop the questioning at any time. The appellate court rejected defendant's claim, following [People v. Macias, 2015 IL App \(1st\) 132039](#), which specifically held that the failure to tell defendant that he could have an attorney present before and during questioning did not render **Miranda** warnings fatally defective.

Similarly, the Appellate Court concluded that the record contradicted any assertion that defendant's statement was involuntary. While defendant was not particularly well-educated, having attended school only through the sixth grade, he was literate. Any health issues defendant had at the time he was questioned were not so significant as to have impacted the voluntariness of his statement. And, while the police told defendant that a confession would be mitigating, they also told him that he was facing charges and would have to go to court regardless of whether he confessed. Given the totality of the circumstances, defendant failed to show that a motion to suppress would have had a reasonable probability of success. Thus, he failed to demonstrate ineffective assistance of counsel.

[People v. Henslick, 2022 IL App \(4th\) 200481](#) Defendant asked the Appellate Court to suppress his confession to murder, made after a five-hour interrogation, alleging it was involuntary for a variety of reasons.

First, defendant argued that the police “[m]anipulated him out of requesting counsel” by telling him that, although he had a right to have an attorney present during questioning, an attorney would not be provided “in a timely manner,” and then by “distracting” him with a cigarette break and a bathroom break when defendant raised the question of whether he should have a lawyer present. The Appellate Court disagreed because defendant never unambiguously requested counsel. Without a clear request for counsel, police were entitled to proceed with their interrogation. The use of manipulative language designed to dissuade a request from counsel, such as hinting that the request would lengthen the interrogation, is not prohibited as long as there is no unambiguous request for counsel.

Second, defendant argued that his confession was involuntary in part because the police interrogated him for over five hours, asking him at least 66 times why he killed the victim. But while some courts have found such relentless persistence sufficient to overcome the will of the defendant, these courts have done in cases that either preceded **Miranda** or where **Miranda** warnings had not been given. While the Appellate Court acknowledged a particularly overbearing interrogation could overcome the will of even those who understand their right to remain silent, it found it implausible in this case that the numerous exhortations to tell the truth “drained his capacity for freedom of choice.”

Third, defendant argued that the police deprived him of food. The court disagreed, however, that deprivation of a single meal during a five-hour interrogation is reason to find a confession involuntary.

Fourth, defendant cited the officers' suggestions that the failure to confess would result in a harsher punishment. The Appellate Court found that while reliance on false promises can be a factor in the involuntariness analysis, the “threat of punitive sanctions” must be “beyond the threat of conviction at a fair trial.” Moreover, it is generally true that a judge may give a harsher sentence absent an explanation or confession from defendant.

Finally, defendant argued the officers' yelling, cursing, and frustration with defendant added to the coercive atmosphere and prompted an involuntary confession. The Appellate Court did not agree, however, that this belittlement was so extreme and sustained as to critically impair defendant's capacity for self-determination. The Appellate Court concluded that the confession was voluntary.

People v. Edwards, 2021 IL App (3d) 130190-C Seventeen-year-old defendant's statement to police was voluntary. The provision of the Juvenile Court Act requiring that police make reasonable effort to contact a parent upon arresting a minor [705 ILCS 405/5-405(2)] did not apply to defendant because it was not extended to include 17-year-olds until more than four years after defendant's arrest. Further, the record here established that defendant was articulate and responded appropriately to questioning. And, two of the officers involved in questioning defendant were trained juvenile officers. On the whole, the record here showed that the trial court's denial of defendant's motion to suppress his statement was not error.

People v. McArthur, 2019 IL App (1st) 150626-B The trial court properly admitted confessions given by the 17-year-old defendant during the 73 hours between arrest and probable cause hearing. If the confession is voluntary, it is admissible despite a violation of **Gerstein v. Pugh**, 420 U.S. 103 (1975), which requires a probable cause determination within 48 hours of arrest. The trial court's finding of voluntariness was not against the manifest weight of the evidence because the police did not willfully disregard defendant's right to a prompt hearing, but held him in order to continue investigating a criminal sexual abuse to which defendant confessed within five hours of his initial detention. Police repeatedly gave **Miranda** warnings and did not verbally or physically threaten or abuse defendant.

People v. McArthur, 2018 IL App (1st) 150626 The trial court properly admitted confessions given by the 17-year-old defendant during the 73 hours between arrest and probable cause hearing. If the confession is voluntary, it is admissible despite a violation of **Gerstein v. Pugh**, 420 U.S. 103 (1975), which requires a probable cause determination within 48 hours of arrest. The trial court's finding of voluntariness was not against the manifest weight of the evidence because the police did not willfully disregard defendant's right to a prompt hearing, but held him in order to continue investigating a criminal sexual abuse to which defendant confessed within five hours of his initial detention. Police repeatedly gave **Miranda** warnings and did not verbally or physically threaten or abuse defendant.

People v. Campos, 2018 IL App (1st) 152613 Trial counsel was not ineffective for failing to move to suppress statements on the grounds that the lead detective acted as the sole translator for the Spanish-speaking defendant. The existing precedent has found statements translated by the interrogating officer can be both reliable and voluntary, and this case presented no reason to deviate from those cases. Thus, counsel was not ineffective. However, a majority of the court noted in *dicta* that the practice is worth "revisiting" because even officers who speak the same language as the defendant may not be "trained in the idiomatic nuances and variations among different dialects" of that language. Because these nuances could have legal implications, the majority concluded that statements taken from non-English-speaking suspects should be recorded and independently translated.

In re H.D.B., 301 Ill.App.3d 234, 703 N.E.2d 951 (4th Dist. 1998) Statements which a juvenile made at the arrest scene were not involuntary, although **Miranda** warnings should have been given. The officers testified that the minor would have been taken to the police station even had he made no statements, and **Miranda** warnings were given at the station. The trial court's factual finding that the minor and his mother never asked to speak to each other was not manifestly erroneous.

People v. Brown, 301 Ill.App.3d 995, 705 N.E.2d 162 (2d Dist. 1998) A minor's statement was not involuntary although the interrogating officer led the minor and his mother to believe that the questioning would involve only a "minor offense," instead of a fire in which an infant had died. The voluntariness of the statement was not affected although defendant's mother elected not to come to the station after hearing the officer's statements. "[C]riminal suspects do not have the right to be informed of the specific criminal offense or potential criminal offenses for which they may be charged when questioned by the police."

People v. Makes, 103 Ill.App.3d 232, 431 N.E.2d 20 (2d Dist. 1981) Police who told defendant that he would be given a fair trial did not make an offer of leniency that would make defendant's confession involuntary.

People v. Gorham, 66 Ill.App.3d 320, 384 N.E.2d 6 (1st Dist. 1978) It is not psychological coercion for the police to reveal incriminating evidence to defendant.

People v. Sellers, 93 Ill.App.3d 744, 417 N.E.2d 877 (2d Dist. 1981) Police officer's promise to request a low bond for defendant did not invalidate an otherwise voluntary confession.

§10-5(c) Examples Involuntary Statements

§10-5(c)(1)

Examples: Involuntary Statements *by Adults*

United States Supreme Court

Arizona v. Fulminante, 499 U.S. 279, 111 S.Ct. 1246, 113 L.Ed.2d 302 (1991) A confession to a cellmate-informant was involuntary where defendant had been subjected to threats of violence from other inmates, the informant offered to protect defendant if he told the truth about whether he had killed his stepdaughter, and defendant gave a full confession in response to that promise.

New Jersey v. Portash, 440 U.S. 450, 99 S.Ct. 1292, 59 L.Ed.2d 501 (1979) Defendant's testimony before grand jury, given under immunity, may not be used at his criminal trial (even as impeachment). Testimony in response to immunity is coerced and involuntary.

Mincey v. Arizona, 437 U.S. 385, 98 S.Ct. 2408, 57 L.Ed.2d 290 (1978) Defendant's statements were involuntary where he was in a hospital bed encumbered by tubes, needles and breathing apparatus, had been seriously wounded five hours earlier, was in pain, was confused, and had clearly expressed his wish not to be interrogated.

Beecher v. Alabama, 408 U.S. 234, 92 S.Ct. 2282, 33 L.Ed.2d 317 (1972) Oral confession made to doctor at hospital was held to be involuntary since it was part of the stream of events which constituted gross coercion, as determined in prior decision. See, **Beecher v. Alabama**, 389 U.S. 35, 88 S.Ct. 189, 19 L.Ed.2d 35 (1967).

Sims v. Georgia, 389 U.S. 404, 88 S.Ct. 523, 19 L.Ed.2d 634 (1967) Confession produced by violence or threats of violence is involuntary. Warning defendant of his right to silence was

not significant where defendant held in custody for eight hours, was not fed, was held incommunicado and was illiterate with a third grade education.

Garrity v. New Jersey, 385 U.S. 493, 87 S.Ct. 616, 17 L.Ed.2d 562 (1967) Confessions obtained from public officers under threat of removal from office were coerced and could not be used in subsequent criminal proceedings.

Haynes v. Washington, 373 U.S. 503, 83 S.Ct. 1336, 10 L.Ed.2d 513 (1963) A confession obtained after being held incommunicado for 16 hours, and after defendant was told that he could not use the telephone until he cooperated with police and gave a signed confession, was involuntary.

Illinois Supreme Court

People v. Salamon, 2022 IL 125722 At a jury trial, defendant was convicted of first degree murder, armed robbery, and burglary. Prior to trial, defendant sought to suppress his confession. Evidence presented at the hearing on the motion to suppress established that defendant was pulled over and taken into custody while driving home from work. In the squad car, defendant told the police that he wanted to speak to a lawyer. At the police station, defendant was given *Miranda* warnings and again invoked his right to counsel. The police stopped questioning him, but failed to provide defendant with access to a phone despite his repeated requests to call a lawyer. Defendant was handcuffed to a wall in the interrogation room and held there overnight. He was permitted to use the restroom, and was provided with food, water, and contact lens solution. The next day, defendant said he wanted to speak to the detectives. The detectives reentered the interrogation room and told defendant he still would have to wait for a phone call. Defendant then agreed to speak with them. One of the detectives confirmed defendant's version of events and explained that it was "procedure" that an arrestee not be provided telephone access until after booking.

The circuit court denied defendant's motion to suppress, concluding that the totality of the circumstances supported the finding that his statement was voluntary. The court noted that, while the police were "slow in providing a phone call," defendant had been advised of his rights and had waived those rights when he reinitiated contact with the police.

The Supreme Court disagreed and held that defendant's statement was involuntary under the totality of the circumstances. Lengthy *incommunicado* detention is a form of coercion, and here defendant was held for 24 hours, handcuffed to a wall, without access to a phone to contact a lawyer or his family. Further, Illinois provides a statutory right to a phone call in **725 ILCS 5/103-3(a)**. At the time of defendant's arrest, that statute required that an arrestee be provided "a reasonable number of telephone calls" "within a reasonable time." While "reasonable time" is not defined in the statute, the Court concluded that it means something "relatively brief," noting that providing a phone call is only a slight burden on the State. (The statute has since been amended to provide three phone calls, no later than three hours after arrival at the first place of custody.)

Here, Section 103-3(a) was violated, and that violation, along with the lengthy *incommunicado* detention, rendered defendant's statement involuntary. Defendant immediately and consistently invoked his right to counsel, but he was prevented from exercising that right, rendering it meaningless. Other factors, such as defendant's age, mental capacity, and physical condition, did not suggest he was particularly susceptible to coercion, but they also did not negate the coercive impact of the procedure that was employed here. Defendant's statement should have been suppressed.

However, admission of defendant's statement was harmless beyond a reasonable doubt in light of the properly admitted evidence of guilt. A long-time friend testified that Defendant had previously confessed to him and provided details of the incident. And the friend's testimony was corroborated by other evidence.

People v. Easley, 148 Ill.2d 281, 492 N.E.2d 1036 (1992) Defendant, a prison inmate suspected of murdering the Pontiac prison superintendent, was placed in solitary confinement after he exercised his right not to answer questions about the offense. Harry Martin, a former prisoner who was a member of the same prison gang as defendant, came to visit defendant. Martin was actually cooperating with police and wearing an eavesdropping device. Martin told defendant that the gang had hired a well-known Chicago attorney to represent him, but that the attorney would enter the case only after indictments were returned.

Martin then said that the attorney needed to know whether there were witnesses to the murder. Defendant responded that he had filed a grievance. Martin said that the grievance was unimportant but that he needed to know "who else was on this with you." Defendant then implicated himself in the murder.

Defendant's statement was involuntary. A person in prison tends to be anxious and more likely to confide in other inmates, and the State has complete control over a prisoner's environment and can easily exploit such vulnerability. In addition, because Martin asserted that he was representing an attorney who had agreed to take the case, defendant likely believed that cooperating would assist his defense. Furthermore, when defendant changed the subject, Martin insisted that defendant talk about the murder. Finally, Martin knew that defendant was unable to confirm his claim that he was acting on behalf of an attorney.

People v. Strickland, 129 Ill.2d 550, 544 N.E.2d 758 (1989) Defendant's statements were not voluntary where medical treatment for a gunshot wound to finger was initially conditioned on defendant's giving a confession. Even statements made after defendant was taken to hospital were suppressed where there was no break sufficient to insulate those statements from earlier events.

People v. Wilson, 116 Ill.2d 29, 506 N.E.2d 571 (1987) The evidence showed that defendant was injured while in police custody, and the State did not show by clear and convincing evidence that the injuries were not inflicted as a means of producing the confession where the State merely denied coercion. Thus, the confession was properly suppressed as involuntary. See also, **People v. Banks**, 192 Ill.App.3d 986, 549 N.E.2d 766 (1st Dist. 1989).

People v. O'Leary, 45 Ill.2d 122, 257 N.E.2d 112 (1970) Confession and physical evidence obtained after defendant was shot in the face with tear gas were inadmissible.

People v. Duncan, 40 Ill.2d 105, 238 N.E.2d 595 (1968) Confession was inadmissible where 18-year-old defendant was in the "hole" of jail for a number of days, with one meal per day and no regular bed.

People v. Harper, 36 Ill.2d 398, 223 N.E.2d 841 (1967) Voluntary nature of confession was not adequately shown by State where defendant was held 21 days before any hearing and State failed to explain internal bleeding that occurred while defendant was in custody. See also, **People v. Alexander**, 96 Ill.App.2d 113, 238 N.E.2d 168 (1st Dist. 1968).

People v. Davis, 35 Ill.2d 202, 220 N.E.2d 222 (1966) Confession was involuntary where defendant was held for a week without a hearing and suffered unexplained injuries while in custody.

People v. McGuire, 35 Ill.2d 219, 220 N.E.2d 447 (1966) State failed to meet its burden of proving that defendant's confession was voluntary; defendant had history of mental disturbance, there was prolonged interrogation and one policeman said he would like to kill defendant.

Illinois Appellate Court

People v. Kadow, 2021 IL App (4th) 190103 The trial court erred when it denied a motion to suppress statements given by an intellectually disabled defendant. While in custody, the defendant invoked his right to counsel. The detective responded: “You want a lawyer?” before adding, “I am going to call to see if the State’s Attorney’s Office wants you lodged in jail right now, okay? If you don’t want to talk to me.” Defendant then insisted on speaking with the detective, waived his rights, and gave inculpatory statements. An expert testified to defendant’s “extremely low intellectual functioning,” and found he was unfit for trial. The expert also believed that defendant could not understand **Miranda** warnings.

A majority of the Appellate Court held that under these circumstances, the statement should have been suppressed. The police elicited the statement in violation of defendant’s right to counsel, without a knowing and understanding waiver of **Miranda** rights. Defendant’s disability was readily apparent to the officers, as defendant could not read his **Miranda** rights, struggled to understand the officers when they issued verbal warnings, and had difficulty writing his own name. The officer’s implicit threat of jail time following invocation of the right to counsel violated **Edwards** by re-initiating contact after a request for counsel. It also rendered the statement involuntary, because, although officers are allowed to explain procedures relating to custody post-invocation, this statement implied the request itself necessitated jail time.

People v. Wilson, 2019 IL App (1st) 181486 The trial court did not err in suppressing defendant’s statement following an evidentiary hearing held pursuant to the Illinois Torture Inquiry and Relief Commission. The Appellate Court first rejected the State’s argument that the trial court applied an incorrect burden. The trial court correctly found that defendant met his initial burden of showing new evidence – here, corroborated allegations of physical abuse while in custody – would likely result in suppression, and that the State then made a *prima facie* case of voluntariness. Defendant rebutted the State’s case with sufficient evidence to show coercion, and the State was unable to rebut that evidence. As such, the trial court applied the correct burden in arriving at its decision to suppress.

Nor did the trial court commit any substantive errors in suppressing the statements. First, contrary to the State’s claim on appeal, the trial court did not prevent the State from arguing that defendant’s statement, which mitigated his role in the offense, undermined his allegations of coercion. Second, the ruling was not against the manifest weight of the evidence where a “plethora of evidence” corroborated the allegations of torture, while many of the accused officers took the fifth, giving rise to an inference of wrongdoing.

People v. Phillips, 2018 IL App (3d) 130270 The Appellate Court reversed and remanded because defendant’s confession to the murder of his infant son was involuntary and should

have been suppressed. Whether a statement is voluntary depends on the totality of the circumstances.

Several factors weighed in favor of a finding of voluntariness. Defendant was 18 years old, intelligent, and educated, and he had experience with the criminal justice system because he had been interviewed by the police several times already. Likewise, the mid-day interrogation lasted less than four hours and began with defendant's being read **Miranda** warnings.

Other factors supported a finding of involuntariness. The police told defendant that the pending murder charge could "change" if defendant told the truth, which the Appellate Court found to be a specific offer of leniency by the police. Also, a police officer's statement to defendant that his life would not "be long as a baby killer in prison" was found to be a threat of violence amounting to improper coercion.

When the aforementioned factors were considered with numerous comments by the police that they were trying to help defendant and to save his life, along with the invocation of religion and the need for forgiveness, the totality of the circumstances demonstrated that defendant's statement was involuntary.

The dissenting justice noted that general statements that truthfulness and remorse are viewed more favorably are not improper. The "baby killer" statements were not coupled with an offer of protection in exchange for defendant's confession and, if anything, were more likely to discourage a confession. And, references to religion are not inherently coercive.

People v. Sanchez, 2018 IL App (1st) 143899 The Appellate Court reversed a murder conviction where the 18-year-old defendant's coerced, illegal, and false confession should have been suppressed and regardless, the evidence did not just fail to prove guilt beyond a reasonable doubt, it showed that defendant did not commit the crime.

Someone fired four shots into an apartment complex parking lot from the south, and one bullet struck and eventually killed the victim. A half-hour later, the police seized defendant, who was being chased through the complex by members of the victim's gang, and took him to the station. Detectives placed him in a windowless room and interrogated him for 12 hours. For the first several hours, the police did not record the interrogation. They falsely told defendant that his friends implicated him and that GSR tests were positive, and refused multiple requests from the defendant to call his mother. Defendant adamantly denied involvement for over 10 hours, but then agreed that he "accidentally" fired a gun, from a spot inconsistent with eyewitness accounts, after the police promised he could call his mother if he confessed.

At trial, the State relied on the statement and the statement of defendant's friend, Flores, which was given under similar circumstances and implicated defendant, but which was inconsistent with defendant's statement in several respects. The State asked the jury to believe defendant's statement that he fired the gun, but to disbelieve the majority of the statement's details, which were inconsistent with the physical evidence, eyewitness accounts, and Flores' statement. The State also criticized defense counsel in closing for suggesting that the police acted improperly in eliciting defendant's confession. A jury found defendant guilty.

The Appellate Court held that the statement should have been suppressed because: (1) the police lacked probable cause to arrest defendant; (2) they failed to provide **Miranda** rights during initial questioning; (3) they violated [725 ILCS 5/103-2.1\(b\)](#) by failing to record first part of the interrogation and the State could not meet the exception for voluntary and reliable statements; (4) the statement was involuntary where police used deception and conditioned a phone call to his mother on his confession; and (5) the police violated [725 ILCS 5/103-3\(a\)](#) by refusing defendant a phone call.

Regardless, the Appellate Court found insufficient evidence of guilt and strong evidence of innocence. Defendant confessed to shooting from a spot that did not match the location of the shooter. He was found running near the scene 30 minutes later from a different direction despite the fact that his car was parked near the location he said he shot from. His description of the gun did not match Flores' description, and the gun was not found in the pond where they said they left it. Portions of his exculpatory statements were corroborated by physical evidence. GSR tests on defendant were negative. Clearly, the statement was false, and no physical or eyewitness evidence implicated him, so the conviction was reversed outright.

People v. Sandifer, 2017 IL App (1st) 142740 The trial court erred in denying defendant's motion to suppress his confession as involuntary. At the time of his interrogation, the defendant was in the hospital in significant pain from a broken ankle, on morphine and another opiate. Although not all confessions given under the influence of drugs are involuntary, in this case the Appellate Court reviewed defendant's videotaped statement and found that he appeared barely conscious and in enormous pain during the interview. Under these circumstances, his waiver of **Miranda** warnings could not be deemed voluntary.

Although defendant failed to include this issue in his post-trial motion, the Appellate Court rejected the State's forfeiture argument, citing **People v. Cregan, 2014 IL 113600**, which holds that a constitutional issue raised in the trial court is preserved for review regardless of its absence from a post-trial motion. However, the court also found the improper admission of defendant's custodial statement to be harmless error in light of overwhelming evidence that defendant killed his son.

People v. Hughes, 2013 IL App (1st) 110237 Defendant was arrested and questioned concerning two murders, and gave several statements. The Appellate Court found that the confession to one of the murders was involuntary.

In reviewing a trial court's ruling on the voluntariness of a confession, the trial court's factual findings will be reversed only if those findings are against the manifest weight of the evidence. Ultimately, the trial court's ruling on whether the confession was voluntary is subject to *de novo* review.

The totality of circumstances determines voluntariness. The inquiry examines whether a defendant's will was overborne by the circumstances surrounding the confession. Factors considered include: (1) the defendant's age, intelligence, education, experience, and physical condition at the time of the detention and interrogation; (2) the duration of the interrogation; (3) the presence of **Miranda** warnings; (4) the presence of any physical or mental abuse; and (5) the legality and duration of the detention. A court may also consider an interrogator's fraud, deceit or trickery, and threats and promises made to a defendant. The State bears the burden of establishing voluntariness by a preponderance of the evidence.

Defendant was only 19 years old, had attended school through the ninth grade, and received grades of C's and D's. His juvenile arrests involved UUW and criminal trespass to a vehicle. The record did not show that he had any experience with the criminal justice system that was analogous to the circumstances here - being arrested and questioned about two murders. His youth, lack of education, and inexperience with the criminal justice system increased his susceptibility to police coercion. The court rejected the argument that defendant's ability to pronounce words of multiple syllables indicated that he was an intelligent person and had the ability to withstand police coercion.

The coercive atmosphere began when defendant was taken into custody and remained in the back seat of a car handcuffed in an uncomfortable and painful position for at least 90

minutes. He was picked up at 2:00 p.m. and the interrogation did not end until 6:00 a.m. the following day. Over the course of the interrogation, defendant's clarity and cadence of speech, alertness, and concentration deteriorated.

The coercive atmosphere was intensified when, after telling an exhausted defendant to sleep, the detective returned 25 minutes later and told defendant that he was taking him to a polygraph. The police fed defendant only a sandwich and three soft drinks during the entire 14-hour period, a meager amount of food for a large person such as defendant.

The videotape of defendant's detention also shows that defendant smoked marijuana immediately before the polygraph examination. The court concluded that marijuana use militates against a finding of voluntariness as it reduced defendant's ability to resist coercion. Although defendant's use of marijuana was not noted by either party, the involuntariness of the confession was raised in the trial court and the opening brief on appeal, the Appellate Court's *de novo* review of the record included viewing the entire video, and justice sometimes requires that a court raise *sua sponte* an unargued and unbriefed reason to reverse.

Defendant was also told a number of untruths during the interrogation. While interrogators may use subterfuge in limited circumstances to elicit a confession, suppression is appropriate where the State extracts a confession using deceptive interrogation tactics calculated to overcome defendant's free will. Defendant was told several falsehoods, including that his fingerprints were found on the scene, that numerous witnesses placed him on the scene, and that one of the decedents had died of leg wounds. The falsehoods weighed more heavily against a finding of voluntariness they occurred in proximity to defendant being told that he had failed the polygraph after having been told in the pretest interview that the polygraph was infallible and that the polygraph examiner was there to help him by informing the court that he was sorry for what he had done if he showed remorse.

Because the totality of circumstances indicate that defendant's confession to one of the murders was involuntary, the convictions for two counts of murder were reversed and the cause remanded for a new trial.

People v. Haleas, 404 Ill.App.3d 668, 937 N.E.2d 327 (1st Dist. 2010) In criminal proceedings against a police officer, the 5th and 14th Amendments prohibit use of statements which the officer made under threat of suspension or termination for exercising the right to silence. (**Garrity v. New Jersey**, 385 U.S. 493 (1967)). In **Garrity**, state law mandated discharge of police officers who invoked the privilege against self-incrimination when questioned as part of an internal police investigation. Although courts have reached differing conclusions where discharge is not mandatory, the court concluded that **Garrity**-type immunity is triggered when an officer is warned that his employment can be suspended or terminated if he exercises the right to silence when questioned about possible police misconduct. The court concluded that once such warnings are given, any statements obtained are "compelled" under the 5th Amendment.

The court rejected the State's argument that only incriminating statements are protected under **Garrity**. First, the truthfulness of a statement has no bearing on whether it is "compelled." Furthermore, even exculpatory testimony may lead to incriminating evidence.

Because defendant was warned by internal affairs investigators that termination or suspension could be based on any statement he made or on his exercise of the right to silence, his exculpatory statement could not be introduced at his subsequent criminal trial for obstructing justice, official misconduct, and perjury. The trial court's suppression order was affirmed.

However, the trial court erred by dismissing the indictments. Under [Kastigar v. U.S., 406 U.S. 441 \(1972\)](#), a defendant who testifies under a grant of immunity is entitled to dismissal of the charges unless the State shows that the evidence used in the criminal proceeding has a legitimate, independent source from the compelled testimony. The court concluded that the **Kastigar** doctrine applies to statements which are “compelled” under **Garrity**. Thus, the prosecution was required to show an independent source for the evidence it used to obtain indictments against the defendant.

The court concluded that the trial court applied an erroneous standard when it required the State to show not only that the evidence on which the indictment was based was obtained from an independent source, but also that the prosecution had made no “significant non-evidentiary” use of the defendant’s statements in “focusing the investigation, deciding to initiate prosecution, refusing to plea bargain, interpreting evidence, planning cross-examination [or] otherwise generally planning trial strategy.” The court stressed that the purpose of the independent source doctrine is to insure that evidence derived from immunized statements is not presented to the jury, and that extending **Kastigar** to non-evidentiary uses would place the State in a worse position than if no misconduct had occurred.

The cause was remanded for a new hearing on the motion to dismiss the charges.

[People v. Dennis, 373 Ill.App.3d 30, 866 N.E.2d 1264 \(2d Dist. 2007\)](#) Defendant's statements were involuntary. Whether a statement is voluntary depends upon the totality of the circumstances. Among the factors to be considered are defendant's age, intelligence, education, experience, and physical condition; the duration of the interrogation, whether defendant received **Miranda** warnings before giving the statement, whether physical or mental abuse was employed; and the legality and duration of the detention.

Although the record did not reflect defendant's precise mental and physical condition at the time of the interrogation, it was clear that he was bleeding from a gunshot wound and receiving medical treatment. The officer did not ask medical personnel whether questioning was appropriate or whether defendant was in shock or under the influence of medication. In addition, the interrogation lasted for 10 minutes, a significant amount of time in light of the fact that a single question - the location of the weapon used in the shooting - was asked repeatedly. Defendant was not given **Miranda** warnings before the questioning.

[People v. Mitchell, 366 Ill.App.3d 1044, 853 N.E.2d 900 \(1st Dist. 2006\)](#) Under the Fourth Amendment, a suspect who is arrested without a warrant has the right to a prompt probable cause hearing. A hearing which occurs within 48 hours of arrest is generally considered prompt, placing the burden on defendant to show that the delay was unreasonable. Where no probable cause determination occurs within 48 hours, the burden shifts to the State to show an emergency or other extraordinary circumstance which justified the delay.

Delay in the probable cause hearing is one factor to be considered in determining whether a confession obtained during the delay is voluntary. Here, defendant's confession, which he made after 100 hours of custody following a warrantless arrest, was involuntary.

There was no emergency or extraordinary circumstance excusing the delay in the probable cause hearing. Defendant was questioned at least nine times before he made an incriminating statement, and was not allowed to call his mother until he had been in custody for 72 hours. Defendant had a warrant on another case, but was not taken to court on that warrant although his attorney had been told that he would be brought to court and was waiting for him. The court also noted that officers did not learn of the unrelated warrant until defendant had been in custody for some 50 hours.

The only event which justified a delay in the probable cause hearing was defendant's attempted suicide after he learned that he had been identified in a lineup; however, the attempt occurred after 78 hours of custody, long past the 48-hour threshold.

People v. Wead, 363 Ill.App.3d 121, 842 N.E.2d 227 (1st Dist. 2005) Confession of homeless drug user was involuntary where he was arrested without probable cause, had only a second grade education, was unable to read or write, and was in poor health. Defendant was detained for 54 hours before confessing, asked a prosecutor whether it would be a good idea to get an attorney, was given limited food and use of a restroom, and was not permitted to sleep.

People v. Strong, 316 Ill.App.3d 807, 737 N.E.2d 687 (3d Dist. 2000) By continuing to question defendant after he said that he did not want to talk and threatening to jail defendant's companions and send a baby to DCFS, the officers rendered defendant's confession involuntary.

People v. Harbach, 298 Ill.App.3d 111, 698 N.E.2d 281 (2d Dist. 1998) Based on the totality of the circumstances, defendant's statements were involuntary. "[A] major factor" in the court's ruling was that even after defendant invoked his right to silence, authorities neglected to advise him that his parents had posted his bond. The court also noted defendant's lack of sleep and inexperience with the criminal justice system, a "second police contact coming hard on the heels of defendant's refusal to talk," the "blatant ploy" of serving an "important paper" after defendant refused to talk to the officers, and the absence of any evidence that defendant received **Miranda** warnings before the officers asked to speak with him.

People v. Arkebauer, 198 Ill.App.3d 470, 555 N.E.2d 1162 (5th Dist. 1990) A Macon County prosecutor and the State Police promised defendant that he would not be prosecuted for solicitation or conspiracy to commit murder if he cooperated in the investigation of a third person's plot to murder his wife. Defendant cooperated and made various incriminating statements.

Defendant was subsequently prosecuted for the above offenses in Shelby County. Before trial, defendant filed a motion to suppress his statements. Defendant's statements were involuntary because defendant believed he had been offered immunity and was not told that the promise was good only in Macon County.

People v. Shaw, 180 Ill.App.3d 1091, 536 N.E.2d 849 (1st Dist. 1989) A police officer's promise to help defendant get psychiatric counseling overbore defendant's will and induced him to make a statement.

People v. Reed, 123 Ill.App.3d 52, 462 N.E.2d 512 (1st Dist. 1984) Defendant's oral statements were involuntary where he was handcuffed to a wall for many hours, was not permitted normal sleeping conditions, was not afforded regular and decent food while in custody, was not permitted to visit with his family and friends as he requested, and repeatedly asked to cease talking to police. Defendant's later statements to an assistant State's Attorney were also involuntary because there was little, if any, change in the coercive circumstances that led to the first statement.

People v. Czaja, 97 Ill.App.3d 958, 423 N.E.2d 1143 (1st Dist. 1981) The trial court suppressed a statement defendant made at his house at the time of arrest, but denied

suppression of a confession given later at the police station. The trial court's finding was against the manifest weight of the evidence:

"The interrogation conducted at the police station forty-five minutes after the beating defendant received at his grandmother's house, administered by some of the same policemen who were now asking the questions and, according to the defendant, were threatening to give him more of the same, must be deemed part of the continuing stream of events which rendered the [first confession] involuntary."

People v. Overturf, 67 Ill.App.3d 741, 385 N.E.2d 166 (3d Dist. 1979) Defendant was arrested for burglary and, with the State's Attorney's consent, was told that in return for a guilty plea to this burglary and his help in clearing up other burglaries, the State would recommend a one-to-three-year sentence. Defendant subsequently confessed to an armed robbery, with which he was charged in this case. At the suppression hearing, the interrogating officer testified that he believed he used the term "other burglaries" but that he might have referred to other crimes. He advised defendant that the robbery would not be included in the above bargain. Defendant testified that he believed the armed robbery confession to be part of the bargain the State offered. The trial court suppressed the confession, and the State appealed.

Defendant may well have reasonably believed that the State's promise applied generally to criminal offenses or he may have been confused in believing the bargain extended to armed robbery, thus suppression was appropriate.

People v. Rhoads, 72 Ill.App.3d 288, 391 N.E.2d 512 (1st Dist. 1979) Defendant's statement was involuntary where a police officer promised that "if you talk to us we'll see that you get some help," and police delayed overnight before providing defendant with medical treatment for burns he had suffered. Subsequent statements also were inadmissible because they were tainted by the earlier statements.

People v. Starling, 64 Ill.App.3d 671, 381 N.E.2d 817 (5th Dist. 1978) Defendant, an 18-year-old with no previous experience in the criminal justice system, was awakened and arrested at 5:30 a.m., with only a few hours sleep. He was taken to the police station and told that he might as well tell everything because the police already knew he had been involved in the incident. After being given **Miranda** warnings, defendant replied "okay" when his father told him not to say anything until he had an attorney. The father was then asked to leave the interrogation room, and questioning continued. Defendant's confession was involuntary.

People v. Koesterer, 44 Ill.App.3d 468, 358 N.E.2d 295 (5th Dist. 1976) Confession held involuntary where it was induced by the promise of the State's Attorney that he would not oppose recognizance bond, which would have allowed defendant to enroll in a drug rehabilitation program in California.

Also, the trial judge applied the wrong standard where he failed to take into account the possible effect of drugs taken by defendant on the voluntariness of the confession, and did not consider the giving of **Miranda** warnings as only one factor (though an important one) in his determination. Instead, the judge merely determined whether the confession was obtained by force or promises of leniency and whether **Miranda** warnings were given.

People v. Styles, 75 Ill.App.2d 481, 220 N.E.2d 885 (1st Dist. 1966) Confession was involuntary where it was procured by pressure, hope, fear or other undue means.

§10-5(c)(2)

Examples: Involuntary Statements *by Minors*

United States Supreme Court

Gallegos v. Colorado, 370 U.S. 49, 82 S.Ct. 1209, 8 L.Ed.2d 325 (1962) Confession was involuntary where juvenile was held incommunicado for five days. See also, **Davis v. North Carolina**, 384 U.S. 737, 86 S.Ct. 1761, 17 L.Ed.2d 895 (1966); **Clewis v. Texas**, 386 U.S. 707, 87 S.Ct. 1338, 18 L.Ed.2d 423 (1967); **Greenwald v. Wisconsin**, 309 U.S. 519, 88 S.Ct. 1152, 20 L.Ed.2d 77 (1968).

Illinois Supreme Court

In re D.L.H., Jr., 2015 IL 117341 A person is in custody for **Miranda** purposes where the circumstances surrounding the interrogation would cause a reasonable person, innocent of wrongdoing, to believe that he was not at liberty to terminate the interrogation and leave. Courts look to several factors in making this determination: (1) the location, time, mood, and mode of questioning; (2) the number of officers present; (3) the presence of family and friends; (4) any indicia of a formal arrest procedure, such as the show of weapons or force, physical restraint, booking, or fingerprinting; (5) how the defendant arrived at the interrogation site; and (6) the age, intelligence, and mental makeup of the defendant. The reasonable person standard is modified to take account of a defendant's juvenile status.

The Court found that under the facts of this case, the nine-year-old defendant, who had significant intellectual impairments, was not in custody for purposes of **Miranda**. The interrogations took place in familiar surroundings - at the kitchen table of his home. Only one officer was present. He wore his service weapon but was not in uniform. And he used a conversational tone during the questioning. Defendant's father was present. The interrogations each lasted 30-40 minutes and took place in the early evening.

Defendant's age, intelligence and mental makeup favored a finding of custody, but was only one factor, and defendant did not ask the Court to adopt a bright-line rule that all nine-year-old defendants are necessarily and always in custody. The officer was unaware of defendant's intellectual impairments and the **Miranda** custody analysis does not require officers to consider circumstances that are unknowable to them. Accordingly, defendant was not in custody and **Miranda** warnings were not required.

In determining whether a statement is voluntary, courts consider the totality of the circumstances, including the characteristics of the defendant and the details of the interrogation. Defendant's characteristics include: age, intelligence, background, experience, mental capacity, education, and physical condition at the time of the questioning. Details of the interrogation include: legality and duration of the detention, duration of the questioning, provision of **Miranda** warnings, physical or mental abuse, threats or promises, and the use of trickery, deception, or subterfuge.

In the case of a juvenile, the presence of a concerned adult is a relevant factor, and "the greatest care must be taken to assure that the admission is voluntary." In light of these concerns, the Court viewed a defendant's age as a key factor in deciding whether statements were voluntary. Unlike the **Miranda** custody analysis, which considers a hypothetical reasonable juvenile, the voluntariness analysis asks whether the statements of a particular juvenile were voluntary.

Here defendant gave two statements after two separate interrogation sessions. The Court found that the first statement was voluntary, while the second statement was not.

At the time of the suppression hearing, the trial court had already found defendant unfit to stand trial since he was unable to understand the nature and purposes of the proceedings or assist in his defense. The expert who interviewed defendant and prepared a fitness report concluded that defendant's cognitive abilities were only at the seven-to-eight year-old level. The Court found that these characteristics of defendant would "color the lens" through which it would view the circumstances of the interrogations.

Concerning the first interrogation and statement, the Court found that despite defendant's young age and "even younger mental age," the statement was voluntary. The questioning was non-custodial, of short duration, and was conducted in a conversational and non-accusatory manner. The officer made no threats and his questions did not suggest answers. Defendant's father was at his side and provided "sage advice" about not making any admissions.

The Court, however, found that the second statement was not voluntary. Before the second interrogation began, the officer asked defendant's father to move away from the kitchen table where the interrogation was taking place. Although the officer continued using a conversational tone, he gave two long monologues designed to play on defendant's fear that his father or other relatives would go to jail, and falsely assured defendant that no consequences would attach to an admission of guilt. Although an adult might have been left "cold and unimpressed" by the officers tactics, the Court found that a nine-year-old with defendant's level of intellectual functioning would have been far more vulnerable to these tactics.

The Court suppressed the second statement and remanded the cause to the Appellate Court to conduct a harmless error analysis on the erroneous admission of that statement.

People v. Simmons, 60 Ill.2d 173, 326 N.E.2d 383 (1975) Trial court must use "special care" in assessing voluntariness of statement where defendant was 16 years old and borderline mentally retarded.

Illinois Appellate Court

People v. Plummer, 2021 IL App (1st) 200299 Defendant was found guilty of murder and attempt murder based on a 1991 shooting that occurred when defendant was 15 years old. The evidence against him consisted of a lineup identification and his custodial statement, which was taken at Area 3. Defendant alleged at trial, and in a 1999 post-conviction petition, that during his nearly 40 hours at Area 3, Detective Kill and another detective coerced his confession through threats and physical violence.

In the instant successive petition, defendant alleged: (1) newly discovered evidence showing that Detectives Kill and Boudreau (whom defendant now alleged was the second interrogating detective) were involved in a pattern and practice of torture, physical abuse, and other acts of coercion in Areas 2 and 3 around the time of defendant's interrogation; and (2) the State committed a **Brady** violation when it withheld exculpatory evidence regarding this practice and pattern of torture and physical coercion. Defendant supplemented his **Brady** claim with allegations of an undisclosed federal investigation involving decedent, which would have alerted the defense to an alternate suspect. The circuit court dismissed the petition at the second stage.

The Appellate Court reversed. Defendant's claims were not subject to *res judicata* because they were supported by newly discovered evidence. He cited prior examples of abuse by Detectives Kill and Boudreau, and while several of the examples pre-dated defendant's petition, the reports that documented these complaints and gave them credibility, such as

the 2006 Report of the Special Prosecutor, were not produced until years after defendant's initial petition. The new evidence was material and conclusive because the alleged pattern of abuse – which involved the same officers and some of the same techniques defendant cited in his previous testimony and filings – could be used to impeach Detective Kill's credibility and bolster defendant's credibility. This proposed evidence would therefore significantly undercut confidence in the guilty verdict.

The Appellate Court disagreed with the State's claim that the record still showed a voluntary confession. The State noted that defendant confessed to an ASA, not the detectives, and that he stated he was "treated fine." He also had no visible injuries in his mugshots. But none of these facts conflict with defendant's claim that he was threatened and beat about the abdomen by detectives prior to his meeting with the ASA. The Appellate Court admonished the lower court that "the only thing that is required for a court to reconsider the voluntariness of a confession is a 'pervasive pattern of criminal conduct by police officers.'" Defendant here presented ample evidence of a pattern of systemic abuse by Detectives Kill and Boudreau, and therefore deserved an evidentiary hearing.

The Appellate Court also found a substantial showing of a **Brady** violation. The evidence of the federal investigation was newly discovered where defendant produced an affidavit from another suspect who was interviewed by Detective Kill at the time of defendant's interrogation. The affidavit explained that Kill told the suspect about the investigation into the decedent, who was a drug dealer feuding with an associate against whom he was to testify. Neither defendant nor counsel were at fault for not uncovering this information earlier, as the defense cannot be expected to ask witnesses every perceivable question to elicit information that is not forthcoming.

The information was material and conclusive not only because it gave rise to an alternative suspect, but also because it directly rebutted Detective Kill's testimony that he was not involved in the investigation into the decedent. Evidence of a federal investigation into decedent, which revealed that defendant was a drug dealer who had wronged a fellow dealer, constituted sufficient evidence of an alternate suspect with a strong motive to kill the decedent. Where the evidence was material, favorable to the defense, and not disclosed, an evidentiary hearing was required.

People v. O'Neal, 2021 IL App (4th) 200014 The 16 year-old defendant voluntarily waived his **Miranda** rights prior to his custodial interrogation, and his confession was given voluntarily.

The interrogating officer provided defendant a form entitled "Custodial Interview Advice Juvenile" which contained the **Miranda** warnings. He asked defendant if he could read, then read the rights as defendant followed along. The officer asked if defendant understood each right, and defendant affirmed that he did. The Appellate Court found that this procedure ensured a voluntary and knowing waiver given that the record showed defendant to be intelligent, articulate, and "almost 17" (defendant was four months shy of his 17th birthday.) Although defendant cited secondary sources suggesting juveniles had difficulty understanding **Miranda** warnings, the court noted that these sources were not presented at the trial level and regardless, concluded that to apply their reasoning would create a presumption of involuntariness in every case where a juvenile waived **Miranda**.

As for the voluntariness of the confession, defendant alleged that his will was overborne because he did not consult with a concerned adult, he was interrogated over a period of 13 hours, and the interrogating officer used threats and promises of leniency. The Appellate Court noted, however, that the trial court properly found that defendant was

interrogated for about 2.5 hours out of the 13 hours of confinement, and did not find this to be an unreasonable amount of time likely to cause an involuntary confession.

With regard to the presence of a concerned adult, defendant alleged his mother was not allowed to confer with him before he made statements to police and his DJO left after defendant was Mirandized. But the Appellate Court found that the police immediately contacted defendant's mother upon taking him into custody, and that when initially asked if he wanted his mother in the room, defendant declined. Eventually defendant changed his mind and defendant's mother was immediately brought into the room. And while the DJO was not present for the investigation, he told defendant that he could request his presence if defendant had any questions. The Appellate Court also rejected the notion that the DJO could not be a concerned adult due to his role in the investigation, distinguishing **People v. Griffin**, 327 Ill. App. 3d 538 (2002), where the DJO was interrogating witnesses. Here, the DJO merely obtained a witnesses' contact info from a cell phone.

Further, the Appellate Court found no improper threats or promises of leniency. The officer repeatedly exhorted defendant to tell the truth, and suggested several times that by telling the truth he could be a "witness" rather than a "defendant" and that he could go home rather than go to jail. But the officer did not offer a specific benefit, which is required to show an improper promise of leniency.

Taking all other factors into consideration, the Appellate Court found the confession voluntary despite defendant's lack of experience with the criminal justice system. He was legally detained, and had the benefit of a DJO before the interrogation. By his own choice he did not have his mother present during some of the questioning, but he did have either his mother or grandmother present during much of the interview. Defendant was 16 years old, but only four months shy of his seventeenth birthday. He was educated, intelligent, and a good student. While at the station, he was allowed to eat, use the restroom, use his mother's and grandmother's cell phones, and take breaks during questioning. He was not restrained during the interrogation and exhibited sound mental capacity. The court affirmed the denial of the motion to suppress.

People v. Walls, 2020 IL App (2d) 130761-B Where defendant committed murder at age 16, but was not interrogated until he turned 17, the law is not clear that he is entitled to juvenile protections during police interrogation. The Appellate Court declined to take a position, noting that defendant received the juvenile protections, such as juvenile **Miranda** warnings and the presence of a juvenile advocate.

In determining whether the defendant's confession was voluntary, the Appellate Court disregarded defendant's claims that detectives rehearsed with him prior to the recording, promised he could not be imprisoned beyond age 21, and denied him access to his mother. The trial court credited the detective's denial of these claims at the suppression hearing, and the Appellate Court would not overrule those credibility findings.

On the other hand, the detective admitted on the stand that he told defendant that transfer to adult court in a murder prosecution is a "possibility," despite the fact that it is automatic. Also, the juvenile advocate did not correct the inaccuracy; in fact, the advocate offered no assistance and at one point seemed to help the detective elicit more information from defendant. Deception is just one factor in the voluntariness analysis, however. And the Illinois Supreme Court has held that a statement is voluntary even when the advocate acts in an adversarial role. **People v. Murdock**, 2012 IL 112362. Finally, while defendant argued his low IQ should be a factor, this fact was elicited at sentencing, and thus could not be used to overturn a trial court's findings at a suppression hearing. Under the totality of the circumstances, the Appellate Court found the confession voluntary.

People v. Wilson, 2020 IL App (1st) 162430 The 16-year-old, intellectually-disabled defendant lacked the ability to understand his **Miranda** warnings, and therefore did not knowingly and intelligently waive his rights before giving his custodial statement. The trial court should have suppressed his statements to the police. The remaining evidence was insufficient to convict him of being accountable for the murder, so the Appellate Court reversed defendant's conviction outright.

The suppression hearing revealed that defendant had an IQ around 70, and learning disabilities, but that he responded in the affirmative after a detective asked if he understood each **Miranda** warning. When told of his right to free counsel, defendant indicated he did not understand, but after the detective repeated the warning, defendant agreed. After each sides' expert provided contradictory opinions on whether defendant could understand the warnings, the trial court based its ruling on its own interpretation of the videotaped statement. The court concluded that because defendant expressed confusion over one warning, he was willing to seek clarification if he did not understand his rights. Thus, the trial court found the statement admissible.

In finding the trial court's ruling was against the manifest weight of the evidence, the Appellate Court considered the "double whammy" of defendant's youth and intellectual disability. In such cases, courts must review the circumstances of the waiver with the "utmost scrutiny." Here, a review of the relevant factors showed the ruling could not survive this scrutiny. For example, although defendant had prior contact with the police, there was no specific evidence that he heard **Miranda** warnings before. And while defendant indicated he understood each warning, the Appellate Court deemed his answers perfunctory and mechanical. Defendant indicated that he did not understand one right until clarified by the officer, but contrary to the trial court's finding, this equivocation was insufficient to establish full understanding. The court noted that subsequent to this interrogation, the legislature altered the **Miranda** procedure for juveniles to simplify the warnings, precisely because juveniles frequently waive their rights without understanding them. Based on these factors, the court could not find evidence of defendant's understanding, and thus it held there was not a knowing and voluntary waiver.

The Court then rejected the State's argument that the error was harmless. Defendant was convicted for participating in the principal's plan to rob the driver of a car. A witness placed defendant in the car, but this witness also said defendant appeared to be "shocked" when he exited the car. Defendant's statement indicated that he knew the third-party wanted to rob the victim. But no other evidence supported the notion that he aided and abetted with the intent to promote the crime. Nor was there sufficient evidence of a common design, even taking into consideration the fact that defendant fled the scene and did not tell the police.

People v. Travis, 2013 IL App (3d) 110170 Receiving a confession from a juvenile is a sensitive concern. If counsel is not present when an admission is obtained, the greatest care must be taken to assure that the admission was voluntary, in the sense not only that it was not coerced or suggested, but also that it was not the product of ignorance of rights or of adolescent fantasy, fright or despair.

When determining whether a juvenile's confession was voluntarily given, relevant considerations include: (1) the juvenile's age, intelligence, background, experience, education, mental capacity, and physical condition at the time of questioning; (2) the duration of the detention, including whether the police physically or mentally abused the juvenile or employed trickery or deceit in obtaining the confession; and (3) whether the juvenile had an opportunity to speak with a parent or other concerned adult prior to or during the

interrogation, including whether the police prevented or frustrated such opportunities. No single factor is dispositive.

Considering the totality of circumstances, the court concluded that defendant's confession during the fifth, recorded interview by the police was involuntary. Defendant's basic needs were met during the interrogation. The testimony and videotapes indicate that the 15-year-old defendant was of normal intelligence and mental capacity, he was familiar with the criminal and juvenile processes, and the five interviews, conducted over an approximately six-hour period, were relatively brief.

Nevertheless, defendant was of a young and impressionable age, he was groggy after being awakened by detectives for the fifth interview, and no juvenile officer was physically present at that interview, unlike the previous three interviews. Most important, the detective erroneously led defendant to believe that he would remain in juvenile court and would get a "clean slate" when he turned 17, if he took responsibility by confessing to the shooting. In fact, defendant had to be tried as an adult as the offense was first-degree murder and defendant was 15 years old. [705 ILCS 405/5-130\(1\)\(a\)](#).

People v. Patterson, [2012 IL App \(1st\) 101573](#) In determining whether a confession is voluntary, courts consider such factors as: (1) the defendant's individual characteristics including age, intelligence, education, physical condition, and experience with the criminal justice system, and (2) the nature of the interrogation including the legality and duration of the detention, the duration of the questioning, and any physical or mental abuse by police. Where a juvenile's confession is involved, additional factors to be considered include the time of day when the questioning occurred and whether a parent or other adult concerned with the juvenile's welfare was present. The voluntariness of a confession is determined by the totality of the circumstances; no single factor is dispositive.

The State failed to show that the 15-year-old suspect's confession was voluntary. The minor, who was questioned late in the evening, had at best limited experience with the police under circumstances in which he would not have learned about the need to protect his rights.

Furthermore, the detective who purported to act as a youth officer helped gather evidence against the minor, made no effort to contact the defendant's parents, and made only a token effort to contact the residential facility at which the minor was staying. The role of a youth officer is to act as a concerned adult interested in the juvenile's welfare, and not to be adversarial or antagonistic toward the juvenile. "Youth officers cannot act in their role as a concerned adult while at the same time actively compiling evidence against [the] juvenile." (Quoting **People v. Griffin**, [327 Ill. App. 3d 538](#), [763 N.E.2d 880 \(1st Dist. 2002\)](#)). The court stressed that by failing to contact the minor's parents and making only token efforts to contact the minor's residential facility, the officer effectively prevented any concerned adult from learning of the interrogation and coming to the minor's aid.

Because the State failed to show that the confession was voluntary, the trial court erred by denying the motion to suppress. Defendant's conviction for aggravated criminal sexual assault was reversed and the cause remanded for a new trial.

People v. Richardson, [376 Ill.App.3d 537](#), [875 N.E.2d 1202 \(1st Dist. 2007\)](#) Juvenile was injured while in police custody and before he gave a videotaped confession which was the subject of a motion to suppress. Defendant told a prosecutor who was interviewing him that his eye had been injured while he was in the lockup and was not related to the statement, and the interrogating officers denied that the confession was coerced. The record showed that juveniles are only in lockup long enough to be fingerprinted and are not housed there.

The State failed to meet its burden to show by clear and convincing evidence that the injury was not inflicted as a means of obtaining the confession. None of the officers attempted to gain any additional information from defendant after being told that he had been injured in the lockup, and no reference to the injury appeared in any reports. "There simply was no evidence presented by the State . . . that explained how or why defendant was injured in police custody." Defendant's admission in the videotaped statement - that he had been punched in the eye in the lockup - did not establish that the injury was not related to his confession.

People v. Griffin, 327 Ill.App.3d 538, 763 N.E.2d 880 (1st Dist. 2002) The 15-year-old minor's confession was involuntary although defendant was of average intelligence, had two previous contacts with the police, received **Miranda** warnings before questioning, and was not abused or mistreated. Defendant was only one week past his 15th birthday, was deprived of the assistance of any concerned adult, was arrested late at night, and was interrogated in the early morning hours and through the next day. In addition, police frustrated attempts by the minor's parents to see him.

A youth officer who actively investigated the case and gathered evidence against defendant was not an adult who was concerned for defendant's welfare, but instead "contributed to the coercive atmosphere surrounding [defendant's] confession." Although youth officers may investigate cases that are unrelated to those in which they are to act as youth officers, they cannot be both a youth officer interested in the juvenile's welfare and an investigator compiling evidence of the crime.

People v. McDaniel, 326 Ill.App.3d 771, 762 N.E.2d 1086 (1st Dist. 2001) Defendant's confession was involuntary where he was only 14, had minimal prior contact with the criminal justice system, and was arrested at his mother's home at 2 a.m. Although defendant's mother came to the station and asked to see her son, she was not allowed to do so for several hours, and only after defendant made an oral confession.

Where a parent is present at the police station and asks to see her child, police have an affirmative duty to end any questioning and permit a conference (even if the child does not want to see the parent). In addition, although a youth officer was assigned to the case and was present during the interrogation, she failed to protect defendant's rights where she never spoke to him or his mother and remained silent throughout the interrogation.

People v. Robinson, 301 Ill.App.3d 634, 704 N.E.2d 968 (2d Dist. 1998) A statement given at police headquarters by a 14-year-old defendant was involuntary. The minor was mentally retarded, suffered from attention deficit hyperactive disorder, and according to expert testimony was incapable of understanding **Miranda** warnings and knowingly waiving his rights. In addition, the minor was not allowed to confer with his mother, who both asked the arresting officer whether she needed to accompany defendant to the station and called the station to speak to the interrogating officer after being told that her presence was unnecessary. The officer admitted that he failed to tell the mother that the minor would be asked to waive his rights once he reached the station.

In addition, the minor did not meet with a juvenile officer before the questioning. Finally, defendant's prior experiences with police, in which he was taken to the police station, admonished and released, would not have prepared him for a **Miranda** waiver and interrogation.

In re J.J.C., 294 Ill.App.3d 227, 689 N.E.2d 1172 (2d Dist. 1998) The minor's statements were involuntary. The arresting officer denied the mother's requests to stay with the minor on the way to the police station, and transported the minor in handcuffs and in a squad car. Upon arriving at the station officers commenced interrogation "without any apparent concern" about the whereabouts of the parents or whether they were coming to the station. The parents came to the station and asked to see their son, but were required to wait until he gave a statement.

The minor did not elect not to consult with his parents when he stated that the charge was "none of their . . . business." Although a juvenile's desire not to have his parents present "is certainly a factor in determining voluntariness, it is no more than . . . one factor." The minor's statement did not necessarily mean that he did not want to consult with his parents; however, it did "support the proposition that the police subjected the respondent to the same routine interrogation of an adult suspect without any special regard for his youth."

Also, the minor was learning disabled and his prior contacts with police were minimal "station adjustments" which would not have given him "the sophistication or insight of how to conduct himself while being interrogated by police in a criminal sexual assault case."

The mere presence of a youth officer does not necessarily make a juvenile's confession voluntary, particularly where the officer took no affirmative action to protect the minor's rights.

In re L.L., 295 Ill.App.3d 594, 693 N.E.2d 908 (2d Dist. 1998) Statements were involuntary where a 13-year-old special education student was taken from his home late at night, although the officers knew that his parents were available, and was interrogated for nearly three hours in the middle of the night. The minor was not allowed to confer with his parents when they came to the station and asked to see him, and at one point during the interrogation asked if his parents were coming.

In re Lashun H., 284 Ill.App.3d 545, 672 N.E.2d 331 (1st Dist. 1996) Obtaining an incriminating statement from a juvenile in the absence of counsel is a "sensitive concern requiring great care to assure that the juvenile's confession was neither coerced or suggested, nor a product of fright or despair."

Defendant was 14 years old, was learning disabled and had no relevant prior experience with the criminal justice system. In addition, he was arrested in a show of force during which police entered the house with their guns drawn. Furthermore, defendant and his mother were separated, police repeatedly denied the mother's requests to see her son, and one detective testified that he knew the mother had asked to see the minor but refused to allow her to attend the interrogation. Although there is no per se right for a juvenile to consult with a parent or to have the parent present during questioning, the presence or absence of a parent, as well as the intentional frustration of a parent's attempt to confer with her child, are relevant factors in evaluating the voluntariness of a confession.

Further, the actions of the police, particularly in misrepresenting to a youth officer that defendant's mother had been called, established that the detectives "did not want [the youth officer] to permit respondent's mother to confer with her son and to be present during the interrogation but instead attempted to create a coercive environment and extract a confession from respondent. . . ." The mere presence of a youth officer does not necessarily render a confession voluntary.

Also, the police failed to either reduce defendant's alleged statement to writing or call an assistant prosecutor from the felony review section of the State's Attorney's office. The failure to take either step "leads to the inference that the police knew respondent's confession

was tenuous and were concerned that they could not get respondent to consistently repeat his confessions." See also, [In re V.L.T.](#), 292 Ill.App.3d 728, 686 N.E.2d 49 (2d Dist. 1997) (confession of 10-year-old held involuntary).

[People v. Higgins](#), 239 Ill.App.3d 260, 607 N.E.2d 337 (5th Dist. 1993) Defendant was 17 years old, had an IQ of 67, and was in special education classes. Police obtained a confession after telling defendant that he had failed a polygraph examination and falsely telling him that his fingerprints had been found at the scene.

Although statements made after a suspect is told that he failed a polygraph are not automatically inadmissible, such a statement to a person of reduced mental capacity and increased suggestibility may amount to coercion. Similarly, falsely stating that defendant's fingerprints had been found at the scene was a "mentally coercive tactic."

[People v. Knox](#), 186 Ill.App.3d 808, 542 N.E.2d 910 (1st Dist. 1989) 15-year-old defendant was arrested at about 9:15 p.m., at the home where he lived with his parents and five other children. The detective indicated to defendant's father that he could accompany them. The father, who was taking care of younger children, declined. The detective told the father where defendant was being taken.

Defendant was given **Miranda** warnings and interviewed for about 45 minutes before he confessed. An assistant State's Attorney was called and arrived at the station about midnight. The prosecutor gave defendant **Miranda** warnings, interviewed him for about 15 to 20 minutes and obtained a signed confession about 2 a.m.

The detective testified that he knew defendant was 15, and that he notified the Youth Division between 9:45 and 10:00 p.m. but that no juvenile officer was present during the interviews. The detective could not recall whether defendant had asked if his mother was coming to or at the station, and admitted that defendant's mother may have been at the station, though he did not recall seeing her.

Defendant's mother testified that she went to the station about 10 p.m. She inquired at the desk about her son and was directed to the detective division. The detective told her there was nothing she could do and that she might as well go home since her son had confessed. She also testified that defendant's father was unable to accompany defendant to the station because he was taking care of their other children.

The statements were obtained before defendant had the opportunity to confer with an adult interested in his welfare. Police contributed to this situation by eliminating any opportunity defendant had to speak with his mother, who testified she had waited at the station for about an hour before the detective said that her presence was inconsequential. The mother's testimony was not contradicted, since the detective could not recall whether she was at the station. Defendant's statement was involuntary. See also, [People v. Montanez](#), 273 Ill.App.3d 844, 652 N.E.2d 1271 (1st Dist. 1995) (in determining whether a confession by a juvenile is voluntary, a critical factor is whether the minor was allowed to see a parent); [People v. R.B.](#), 232 Ill.App.3d 583, 597 N.E.2d 879 (1st Dist. 1992).

[People v. Berry](#), 123 Ill.App.3d 1042, 463 N.E.2d 1044 (4th Dist. 1984) Defendant's statement was involuntary based upon defendant's age, subnormal intelligence and lack of experience in criminal affairs. See also, [People v. T.S.](#), 151 Ill.App.3d 344, 502 N.E.2d 761 (4th Dist. 1986).

[People v. Redmon](#), 127 Ill.App.3d 342, 468 N.E.2d 1310 (1st Dist. 1984) State failed to prove that defendant's confessions were voluntary; defendant was 17 years old, had a limited mental ability and showed "obvious confusion concerning his rights." See also, [People v.](#)

Fuller, 292 Ill.App.3d 651, 686 N.E.2d 6 (1st Dist. 1997) (defendant was a disturbed 14-year-old, no adult interested in defendant's welfare was present during the interrogation, and neither the youth officer nor defendant's mother were contacted until after a confession was obtained).

People v. Stone, 6 Ill.App.3d 654, 378 N.E.2d 263 (5th Dist. 1978) Defendant was 17 years of age with a lower than average I.Q. and a serious learning disability. His arrest was ordered at midnight, and the interrogation commenced about 3:20 a.m. Defendant had twice asserted his right to remain silent, but then asked to phone his juvenile parole officer for advice. The parole officer told defendant it would be in his best interest to cooperate with the police. Under the circumstances, defendant's confession was involuntary.

§10-6

Statements After Unlawful Arrest

§10-6(a)

Generally

United States Supreme Court

Kaupp v. Texas, 538 U.S. 626, 123 S.Ct. 1843, 155 L.Ed.2d 814 (2003) A confession obtained as a result of an illegal arrest must be suppressed unless it was an act of free will sufficient to "purge the primary taint of the unlawful invasion." The State has the burden to establish that a confession was not the fruit of an illegal arrest. The mere fact that **Miranda** warnings are given does not necessarily break the causal connection between an illegal arrest and a confession.

New York v. Harris, 495 U.S. 14, 110 S.Ct. 1640, 109 L.Ed.2d 13 (1990) A warrantless entry into a defendant's home, in violation of **Payton v. New York**, 445 U.S. 573 (1980), does not require suppression of defendant's statements made outside of the home (here, at the police station).

Fahy v. Connecticut, 375 U.S. 85, 84 S.Ct. 229, 11 L.Ed.2d 171 (1963) A confession or admission induced by illegally seized evidence is not admissible in a criminal trial.

Lanier v. South Carolina, 474 U.S. 25, 106 S.Ct. 297, 88 L.Ed.2d 23 (1985) A confession obtained after defendant's illegal arrest is not admissible merely because it was voluntary. The mere fact that a confession is voluntary does not purge the taint of the illegal arrest.

Brown v. Illinois, 422 U.S. 590, 95 S.Ct. 2254, 45 L.Ed.2d 416 (1975) The giving of **Miranda** warnings after an unlawful arrest does not, per se, dissipate the taint of the unlawful arrest. The question is whether the statement was sufficiently an act of free will to purge the primary taint. The burden is on the State to prove admissibility, and along with the **Miranda** warnings other factors must be considered, including the temporal proximity of the arrest and statement, the presence of intervening circumstances, and the purpose and flagrancy of the official misconduct.

Wong Sun v. U.S., 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963) Statements made by suspect after an illegal entry into his home are fruits of the primary illegality.

Illinois Supreme Court

People v. Johnson, 237 Ill.2d 81, 927 N.E.2d 1179 (2010) Defendants alleged that statements he made at the police station were the fruits of an illegal arrest because police handcuffed and secured him in a squad car while conducting a warrantless search of a vehicle in which he had recently been a passenger. The court held that even if defendants was subjected to an improper detention, the statements made at the police station were sufficiently attenuated from the illegal conduct to be admissible.

Factors to be considered in determining whether a statement is attenuated from the effect of an illegal arrest include the proximity in time between the illegal arrest and the statement, the presence of intervening circumstances, the flagrancy of the police misconduct, and whether **Miranda** warnings were given between the illegal conduct and the time the statements were made. The passage of time is an ambiguous factor which may or may not be significant, depending on the circumstances.

Here, there was no indication how much time passed between the detention and the statements at the station. However, defendant was formally arrested and taken to the police station based on independent probable cause - the discovery of a firearm during the search. Thus, there was clearly an intervening event which broke the causal connection between the arguably illegal detention and defendant's statement.

Furthermore, defendant received **Miranda** warnings before he gave statements at the police station, and any police misconduct was not "flagrant." Under these circumstances, the taint of any illegal conduct during the search of the vehicle was clearly attenuated.

The court also held that defendant had no legitimate expectation of privacy in the car, and therefore could not challenge the search of the vehicle based on the 4th Amendment. (See **SEARCH & SEIZURE**, §§ 44-1(c)(1), 44-2). (See also, **VERDICTS**, § 55-3(a)).

People v. White, 117 Ill.2d 194, 512 N.E.2d 677 (1987) Confrontation of defendant with untainted evidence, which induces a voluntary desire to confess, may be a legitimate intervening circumstance.

People v. Neal, 111 Ill.2d 180, 489 N.E.2d 845 (1985) Two detectives who were investigating a murder went to defendant's home to interview him. Defendant invited the detectives in, and they told him what they were investigating. Defendant then voluntarily went with the detectives to their car, out of his wife's presence, for additional questioning. In the car, defendant was given **Miranda** warnings and told the detectives that he was the one who "did it." Later, defendant gave a detailed confession at the police station. There was no illegal arrest, and defendant's statements were voluntary.

People v. Eddmonds, 101 Ill.2d 44, 461 N.E.2d 347 (1984) Defendant voluntarily accompanied officers to the police station, and a reasonable man in defendant's position would have believed that he was free to leave. Thus, defendant's statements were not the fruit of an unlawful arrest.

People v. Townes, 91 Ill.2d 32, 435 N.E.2d 103 (1982) Acting without probable cause, police went to defendant's home and told him they "wished to speak to him" at the police station concerning an entry into an apartment and an assault on a woman. Defendant was given the choice of accompanying the officers in the police car or driving his own car to the station. He chose to accompany the officers, and they arrived at the station about 9:30 a.m. Defendant

was given **Miranda** warnings, and a series of interviews were conducted. During the final interview session, which ended about 10:10 p.m., defendant made incriminating statements.

Defendant's detention "resembled a traditional arrest, and the circumstances indicate that a reasonable person would not have believed he was free to leave." Defendant's seizure without probable cause was illegal. In addition, the statements obtained during the lengthy interrogation were the product of the unlawful detention; administering **Miranda** warnings did not purge the taint of the illegal detention.

Illinois Appellate Court

People v. Hopkins, 363 Ill.App.3d 971, 845 N.E.2d 661 (1st Dist. 2005) A voluntary statement that is obtained after an illegal arrest need not be suppressed if it is sufficiently attenuated from the arrest. Four factors are considered in determining whether a confession is sufficiently attenuated: (1) whether **Miranda** warnings were given; (2) any lapse of time between the arrest and the statement; (3) whether intervening circumstances broke the causal connection between the taint of the illegal arrest and the confession; and (4) whether the police misconduct was flagrant. Here, three of the factors were apparent from the record - defendant received **Miranda** warnings, the police did not engage in misconduct, and six hours passed between the arrest and the statement.

However, the record was insufficient to determine whether intervening circumstances broke the causal connection between the arrest and the statement. Although the police received new information from a codefendant after the illegal arrest, it was not clear whether defendant was ever confronted with that information. The court rejected the State's argument that new information could be an intervening circumstance sufficient to dissipate the taint even if defendant was not made aware of the information, and remanded the cause for an attenuation hearing.

People v. Bramlett, 341 Ill.App.3d 638, 793 N.E.2d 203 (1st Dist. 2003) A confession may be admissible, although it occurred after an illegal arrest, if it was sufficiently an act of free will to be purged of the taint of the illegal arrest. Among the factors to be considered in determining whether the taint of an illegal arrest has been attenuated are: (1) the proximity in time between the arrest and confession, (2) the presence of any intervening circumstances, (3) the purpose and flagrance of the officer's conduct, and (4) whether **Miranda** warnings were given. The State bears the burden of demonstrating by clear and convincing evidence that a statement was free from the taint of an illegal arrest.

Due to the insufficiency of the record, the court could not determine whether the illegal arrest was sufficiently attenuated to render defendant's confession admissible. The cause was remanded for an attenuation hearing.

People v. Centeno, 333 Ill.App.3d 604, 777 N.E.2d 529 (1st Dist. 2002) Even where no formal arrest has occurred, detention for interrogation violates the Fourth Amendment unless there is probable cause to believe that the suspect has committed a crime. In determining whether a suspect has been illegally detained, courts must consider the police conduct as a whole, including: (1) the time, place, length, mood and mode of interrogation; (2) the placement of the suspect in relationship to the officers while at the station; (3) the number of police officers present; (4) whether any indicia of formal arrest or physical restraint occurred; (5) the intent, knowledge and investigative focus of the officers; and (6) any statements or non-verbal conduct by police relating to defendant's freedom to leave.

Defendant was improperly detained where he was brought to the station for questioning, and after denying involvement in the crime was left in a small, windowless room

in the detective area for nearly eight hours while officers investigated. At no time was defendant told he was free to leave. The investigation was "aimed at mustering up evidence that could be used to confront defendant, who was readily accessible in a station house interview room, and compel a confession."

A reviewing court may consider both evidence introduced at trial and that presented at the suppression hearing if it upholds the trial court's denial of a motion to suppress.

People v. Elliot, 314 Ill.App.3d 187, 732 N.E.2d 30 (2d Dist. 2000) Eleven police officers went to an apartment to execute a search warrant, and after breaking down the front door entered a bathroom and found defendant sitting on a toilet. After advising defendant of her **Miranda** rights, one of the officers asked, "[D]o you have any drugs on you?" Defendant replied, "[T]hey are not mine." The officer asked for the drugs, and defendant gave him a cigarette pack which she removed from her bra.

The officer found cocaine inside the pack. Defendant denied knowing what was in the pack and claimed that she had found it on the floor of the bathroom.

The police lacked any reason to detain defendant while she was subjected to custodial interrogation. Although the officers had probable cause to search the apartment, that probable cause did not extend to defendant, who was not in possession of or in the vicinity of drugs and who cooperated fully. Similarly, the interrogation was not justified under **Terry v. Ohio**, 392 U.S. 1 (1968); because the officers could point to nothing suspicious about defendant beyond her presence in an alleged "crack house," they had no reasonable basis to believe she was committing a crime.

Nor was the detention authorized because defendant occupied premises for which a search warrant was being executed. First, the term "occupant" is defined as "resident"; defendant clearly was not a resident of the house. Second, the right to detain occupants while a warrant is executed authorizes only detention, not "custodial interrogation."

Finally, the contraband was clearly a fruit of the improper interrogation. Among the factors to be considered in determining whether the taint of a constitutional violation has been attenuated are the length of time between the violation and the discovery of the evidence, the presence of any intervening circumstances, the purpose and flagrancy of the police misconduct, and whether **Miranda** warnings were given. The evidence was obtained within seconds after the interrogation, and the purpose of the interrogation was investigatory. Although the officers provided **Miranda** warnings, such warnings alone do not automatically purge the taint of a Fourth Amendment violation.

People v. Jennings, 296 Ill.App.3d 761, 695 N.E.2d 1303 (1st Dist. 1998) A statement made after an illegal arrest is admissible if it was "sufficiently an act of free will to purge the primary taint" of the unlawful arrest. Whether sufficient attenuation exists depends on four factors: (1) whether **Miranda** warnings were given; (2) the proximity in time between the arrest and the statement; (3) the presence of any intervening circumstances; and (4) the purpose and flagrancy of the police misconduct.

The flagrancy of the police misconduct and the presence or absence of intervening circumstances are normally the most important in determining whether attenuation has been demonstrated. A statement is less likely to be a product of defendant's free will if the police acted flagrantly in making the arrest. Police act "flagrantly" when "the investigation was carried out in such a manner to cause surprise, fear, and confusion or where it otherwise has a 'quality of purposefulness,' i.e., where the police embark upon a course of illegal conduct in the hope that some incriminating evidence . . . might be found."

The burden of demonstrating attenuation rests with the State. Where there is no dispute concerning facts or credibility, the trial court's ruling on attenuation is reviewed de novo.

People v. Wallace, 299 Ill.App.3d 9, 701 N.E.2d 87 (1st Dist.1998) Although the 15-year-old defendant voluntarily accompanied officers to the police station, a reasonable, innocent man of defendant's age, and with the same lack of criminal background, would not have thought he was free to leave where he was held in an interview room, with the door possibly locked, for eight hours. Thus, the situation "escalated to an involuntary seizure prior to his formal arrest."

Because the State did not claim that there was probable cause to arrest before defendant made an inculpatory statement, the trial court erred by admitting the statement without first holding an attenuation hearing.

A defendant's age is to be given special weight in determining whether an arrest occurred, even though this defendant initially told police that he was 17 and failed to disclose his true age until he was formally arrested. "[T]he fact remains that defendant was a 15-year-old minor throughout his questioning by police."

§10-6(b)

Examples: Attenuation Sufficient

United States Supreme Court

Rawlings v. Kentucky, 448 U.S. 98, 100 S.Ct. 2557, 65 L.Ed.2d 633 (1980) While police were lawfully in a residence, they smelled marijuana smoke. Some officers detained the people present, including defendant, while other officers went to obtain a search warrant. After the warrant was obtained, the occupants were given **Miranda** warnings. A search was conducted, and controlled substances were seized from a purse of a person sitting near defendant. Defendant stated that the substances were his. At trial, defendant contended that his statement claiming ownership of the drugs was the fruit of his unlawful detention.

Even assuming the detention violated the Fourth Amendment, the totality of the circumstances showed that defendant's statement was an act of free will unaffected by the initial detention. The relatively short period of time between the detention and statements (45 minutes) was outweighed by several factors: the atmosphere of the detention was congenial, the statement was spontaneous, the police conduct was not conscious or flagrant misconduct, and defendant never argued that his statement was involuntary. In addition, defendant received **Miranda** warnings.

Illinois Supreme Court

People v. Johnson, 237 Ill.2d 81, 927 N.E.2d 1179 (2010) Defendants alleged that statements he made at the police station were the fruits of an illegal arrest because police handcuffed and secured him in a squad car while conducting a warrantless search of a vehicle in which he had recently been a passenger. The court held that even if defendants was subjected to an improper detention, the statements made at the police station were sufficiently attenuated from the illegal conduct to be admissible.

Factors to be considered in determining whether a statement is attenuated from the effect of an illegal arrest include the proximity in time between the illegal arrest and the statement, the presence of intervening circumstances, the flagrancy of the police misconduct, and whether **Miranda** warnings were given between the illegal conduct and the time the

statements were made. The passage of time is an ambiguous factor which may or may not be significant, depending on the circumstances.

Here, there was no indication how much time passed between the detention and the statements at the station. However, defendant was formally arrested and taken to the police station based on independent probable cause - the discovery of a firearm during the search. Thus, there was clearly an intervening event which broke the causal connection between the arguably illegal detention and defendant's statement.

Furthermore, defendant received **Miranda** warnings before he gave statements at the police station, and any police misconduct was not "flagrant." Under these circumstances, the taint of any illegal conduct during the search of the vehicle was clearly attenuated.

The court also held that defendant had no legitimate expectation of privacy in the car, and therefore could not challenge the search of the vehicle based on the 4th Amendment. (See **SEARCH & SEIZURE**, §§ 44-1(c)(1), 44-2). (See also, **VERDICTS**, § 55-3(a)).

People v. Gabbard, 78 Ill.2d 88, 398 N.E.2d 574 (1979) Defendant's confession following his unlawful arrest was properly admitted into evidence. The arrest was not for the crime defendant subsequently confessed to, and was not made for the purpose of questioning defendant. In addition, defendant was given **Miranda** warnings, the interrogating officer was not acquainted with the arrest, defendant was identified in a lineup, and defendant was willing to cooperate in exchange for a deal.

Illinois Appellate Court

People v. Thomas, 186 Ill.App.3d 782, 542 N.E.2d 881 (1st Dist. 1989) Confronting defendant with his codefendant's statement was sufficient to purge the taint of an illegal arrest.

§10-6(c)

Examples: Attenuation Insufficient

United States Supreme Court

Taylor v. Alabama, 457 U.S. 687, 102 S.Ct. 2664, 73 L.Ed.2d 314 (1982) Defendant's confession must be suppressed because it was obtained six hours after his illegal arrest and was not sufficiently purged of the taint of that arrest.

Dunaway v. New York, 442 U.S. 200, 99 S.Ct. 2248, 60 L.Ed.2d 824 (1979) Defendant's confession must be suppressed as the fruit of his unlawful arrest. The confession was obtained less than two hours after the arrest, there were no intervening factors, and the arrest was without probable cause and made for the purpose of obtaining a confession.

Illinois Supreme Court

People v. Holveck, 141 Ill.2d 84, 565 N.E.2d 919 (1990) During a traffic stop, defendant was asked to go to the police station 'to get a matter cleared up.' Though he was allowed to drive his own car, he had to follow one police car while a second police car followed defendant. Defendant was taken directly to the police station, was placed in an interrogation room under police guard, was given **Miranda** warnings and was questioned. About 10 minutes into the interrogation, defendant made incriminating statements. The giving of **Miranda** warnings was not sufficient to purge the taint of the illegal arrest.

People v. Franklin, 115 Ill.2d 328, 504 N.E.2d 80 (1987) The fact that defendant took a polygraph examination and was told that he had failed was not an intervening circumstance sufficient to purge the taint of an illegal arrest. The polygraph test itself was conducted as a result of the illegal detention.

Illinois Appellate Court

People v. Gutierrez, 2019 IL App (3d) 180405 At an attenuation hearing, the court looks to four factors to determine whether a defendant's statement is sufficiently attenuated from an unlawful arrest: (1) whether **Miranda** warnings were given; (2) the temporal proximity between the unlawful arrest and the statement; (3) the presence of intervening circumstances; and (4) the purposefulness and flagrancy of the police misconduct.

Here, while defendant was given **Miranda** warnings before the statement, the other three factors weighed against a finding of attenuation. Six hours passed between the arrest and the statement, but defendant was in custody that entire time. The police misconduct was flagrant where officers violated the fourth amendment by arresting defendant in his home without a warrant or probable cause during the early morning hours. And, confronting defendant with his co-defendant's statement could not serve as an intervening circumstance where that statement was illegally obtained through an improper question-first, warn-later technique. The Appellate Court reversed the trial court's attenuation finding and remanded for a new trial.

People v. Hernandez, 2017 IL App (1st) 150575 To determine whether a statement is attenuated from an illegal arrest, court's consider four factors: (1) proximity in time between the arrest and the statement; (2) presence of intervening circumstances; (3) **Miranda** warnings; and (4) flagrancy of police misconduct. The presence of intervening circumstances and the flagrancy of police misconduct are the most important of the these factors.

For purposes of its analysis, the Appellate Court accepted the trial court's factual findings from the attenuation hearing. The trial court found that (1) the duration of defendant's interrogation was short, lasting less than six hours; (2) the phony gunshot residue test, in which the officers staged a fake gunshot residue test to convince defendant that he had residue on his hands, was the event which prompted defendant to confess; (3) the officers gave defendant **Miranda** warnings and defendant agreed to speak to them during the detention; and (4) the officers' tone of voice was cordial and defendant was not handcuffed. The trial court concluded that defendant's statement was sufficiently attenuated from the illegal arrest. The Appellate Court disagreed, finding that defendant's statement was not attenuated.

As to the first factor, temporal proximity, the court found that the six-hour lapse of time between defendant's arrest and his confession was so short that it did not permit any attenuated reflection.

As to the second factor, intervening circumstances, the court found that the phony gunshot residue test could not be a proper intervening circumstance. First, it was a form of interrogation that was a consequence of the illegal arrest. And second the phony test was itself a form of misconduct. It thus could not purge the taint of the illegal arrest.

As to the third factor, **Miranda** warnings, the court gave them little weight since the warnings occurred at the very beginning of the six-hour interrogation and were not repeated.

As to the fourth factor, the court agreed that the trial court had properly considered the officers' cordial tone during the detention and interrogation, but found that the trial court had not properly considered the flagrancy of the police misconduct during the arrest when over 20 officers arrived at defendant's residence and handcuffed him. The court also found

that the officers lacked probable cause at the time of the arrest and were on an expedition to find it.

The court suppressed defendant's statement and remanded for a new trial.

People v. Gempel, 2016 IL App (3d) 140833 Defendant lived next door to the victim of a homicide. The victim died from multiple stab wounds and the police saw scratches on defendant's face. The police also learned that defendant often borrowed money from the victim and didn't like it when she asked to be repaid.

Defendant went voluntarily to the police station to answer questions. The police gave defendant **Miranda** warnings and told him he was not under arrest. Defendant repeatedly denied any involvement in the offense. After 20 minutes, defendant said that he wanted to leave and wanted a lawyer. The police continued to question defendant, and he again requested to leave and get a lawyer. The police continued to question defendant, and defendant continued to profess his innocence.

Eventually the police left the room and then returned, arrested defendant, and took him into custody. A day later, the police obtained DNA evidence from material underneath the victim's finger nails, but the DNA did not match defendant. On the following day, defendant, still in custody, asked to speak with the police. After giving defendant new **Miranda** warnings, defendant made inculpatory statements.

The trial court found that defendant had been illegally arrested and that his statements were not sufficiently attenuated from the arrest to be admissible. On appeal, the State conceded that the police illegally arrested defendant but argued that the statements were attenuated.

Courts consider four factors in attenuation analysis: (1) flagrancy of police misconduct; (2) intervening circumstances; (3) proximity of time between arrest and statements; and (4) **Miranda** warnings. Applying the four factors to this case, the Appellate Court concluded that defendant's statements were not sufficiently attenuated from the illegal arrest. All four factors weighed against attenuation.

First, the police misconduct was flagrant. During the initial interrogation, before the police arrested defendant, the police continued to interrogate defendant even after he had invoked his **Miranda** rights and requested to speak with an attorney. The police also engaged in purposeful misconduct when they arrested defendant without probable cause hoping that other evidence would turn up.

Second, there were no intervening circumstances, such as the discovery of new evidence supporting probable cause, that would have severed the causal connection between the arrest and the statements. Although the State did obtain DNA results from material found under the victim's fingernails, it did not match defendant and thus did not provide probable cause.

Third, defendant was detained for nearly 37 hours before he made his statements. This prolonged detention may have aggravated the taint of the illegal arrest and compelled defendant to confess.

Fourth, the police gave defendant **Miranda** warnings on several occasions, but they also continually disregarded defendant's request for counsel and to remain silent.

Since all four factors favored defendant, the court held that the State failed to meet its burden of showing that the statements were sufficiently attenuated from the taint of the illegal arrest. The trial court's suppression of the statements was affirmed.

People v. Hunt, 381 Ill.App.3d 790, 886 N.E.2d 409 (1st Dist. 2008) Under the County Jail Act and Illinois precedent, the sheriff has authority to transfer a prisoner when a facility is

insufficient or the prisoner's life or health is in danger. However, a court order is required for police officers to move a defendant being held on a bail order to some other location for questioning concerning an unrelated crime.

Defendant, who was in Cook County custody on a no bail order, did not consent to being moved to a Chicago police station for questioning on an unrelated crime. The officer who ordered defendant moved testified that defendant had no choice whether to go, and defendant testified that he repeatedly told the officers he did not want to talk to them without his attorney present. On one occasion when defendant learned that he was about to be moved, he called his attorney and asked the attorney to come to the station where the questioning was to occur. Defendant did not give written consent to accompany the officers to the police station.

While at the police station, defendant made statements to an inmate who was cooperating with police. Those statements were fruits of the illegal transfer from the county jail, and should have been excluded from evidence.

People v. Jackson, 374 Ill.App.3d 93, 869 N.E.2d 895 (1st Dist. 2007) There was insufficient evidence of attenuation to justify admission of defendant's confessions. Although defendant was given **Miranda** warnings more than once and "perhaps several times," **Miranda** warnings cut "both ways" by indicating either that the suspect voluntarily waived his rights and agreed to give a statement, or that officers refused to accept the suspect's denials of guilt and continued the questioning until obtaining a confession. Thus, the presence of **Miranda** warnings does not clearly favor either suppression or attenuation.

Further, defendant had been in custody for some 51 hours before he confessed. Also, after defendant agreed to come to the station to answer questions, he was locked in an interview room for 30 - 60 minutes. He was then questioned and required to surrender his shirt for gunshot residue analysis. Officers then left defendant in the room while they interviewed other witnesses. They returned several times over the next 50 hours to conduct short interrogations, then left defendant while they performed additional investigation.

Lapse of time between an arrest and a statement is an ambiguous factor concerning attenuation, because it may support the inference that intervening circumstances prompted the confession, or may indicate that the illegal detention caused the suspect to confess. Because defendant was questioned eight times over 50 hours, with each session lasting only a short amount of time and proceeding in a "clock-work fashion" despite defendant's denials of any involvement in the murder, the 50 hour-lapse weighs against attenuation.

Further, the unanticipated and unplanned involvement of a detective whom defendant had known previously was not a sufficient intervening circumstance to demonstrate attenuation. Although defendant asked to talk to the detective when he saw her at the station, their encounter was "an integral part" of the illegal arrest because she spoke with defendant only after talking to the investigating officer, giving defendant **Miranda** warnings, urging him to tell the truth, and offering to protect him from retaliation by "his boys." Defendant then confessed in response to interrogation by the investigating officer and the detective. Under these circumstances, the confessions were obtained through exploitation of the illegal detention, and were not independent of it.

Finally, the police misconduct was purposeful and flagrant because officers detained defendant for more than 50 hours while they attempted to develop probable cause and obtain evidence to show that defendant was involved in the crime.

People v. Simmons, 372 Ill.App.3d 735, 867 N.E.2d 507 (1st Dist. 2007) To establish that a suspect's statement is sufficiently attenuated from the effect of an illegal arrest to be

admitted, courts examine four factors: (1) whether **Miranda** warnings were given; (2) the time lapse between the arrest and the confession; (3) the existence of any intervening circumstances; and (4) the purpose and flagrancy of the official misconduct. The trial court's finding concerning attenuation will not be overturned unless it is manifestly erroneous.

First, although defendant received three sets of **Miranda** warnings during the 38 hours between his arrest and confession, the presence of **Miranda** warnings "may not be the most relevant of factors" in determining attenuation.

Second, the passage of 38 hours between defendant's arrest and confession could weigh both for and against attenuation. On one hand, defendant was not subjected to continuous interrogation. On the other hand, he was left alone and deprived of his possessions with no knowledge as to how long he was to remain at the station.

Defendant was treated as a suspect when he was brought to the station - he was read **Miranda** rights, placed in a jail cell with his belongings confiscated, and not questioned for an entire day. Defendant testified that he did not tell the officers he wanted to stay at the station or that he was afraid of the person whom police said he wanted to avoid. The two witnesses whose statements were used to confront defendant were found only by exploiting the illegal arrest.

Finally, the court concluded that the police misconduct was both purposeful and flagrant. Defendant was arrested on Saturday night, placed in a jail cell with his belongings taken from him, and not interviewed again until Monday morning. The trial court's finding of attenuation was reversed and the cause remanded for further proceedings.

People v. Scott, 366 Ill.App.3d 638, 852 N.E.2d 531 (1st Dist. 2006) To show that a confession is sufficiently attenuated to be admissible, the State must show by clear and convincing evidence that the statement was a product of defendant's free will and made independently of the taint of the illegal arrest. Several factors are to be considered, including: (1) the proximity in time between the arrest and the confession; (2) the presence of any intervening circumstances; (3) the focus and flagrancy of the police misconduct; and (4) whether defendant received **Miranda** warnings. The most important factors are the existence of intervening circumstances and the severity of the police misconduct.

First, the mere fact that **Miranda** warnings are given after an illegal arrest does not remove the taint of that arrest.

Second, although 48 hours elapsed between the illegal arrest and defendant's first admission of guilt, defendant was interrogated intermittently during that time. A lapse of time between the arrest and the statements may dissipate the taint of an illegal arrest because it allows defendant to reflect on his situation. Because defendant was in custody during the lapse and subjected to at least intermittent questioning, the lapse of time did not necessarily provide such an opportunity.

Third, there were no intervening circumstances to dissipate the taint of the unlawful arrest. Although confronting a defendant with untainted evidence which implicates him in the crime may be an intervening circumstance, and defendant made a statement after he was transported to and shown the crime scene, the crime scene contained no physical evidence which implicated defendant. In addition, had it not been for the illegal arrest, defendant "most likely would not have been" in a position where he could have been confronted with the crime scene.

Finally, police exploited the illegal arrest by taking defendant to the crime scene. Because there was no evidence to corroborate a discredited, anonymous tip concerning defendant's alleged participation in the offense, and the officer who transported defendant to

the crime scene admitted that he did so in the hope of eliciting a confession, the officer engaged in intentional misconduct.

Because two factors – the flagrancy of the police misconduct and the absence of intervening factors – weigh against a finding of attenuation, the trial court erred by finding that the State had satisfied its burden to show that the statements were sufficiently attenuated from the illegal arrest to justify their admission.

People v. Clay, 349 Ill.App.3d 517, 812 N.E.2d 473 (1st Dist. 2004) Statements made in police custody by a person who has been arrested without probable cause are admissible at trial if events subsequent to the arrest sufficiently attenuate the effect of the illegal arrest. At least four factors are considered: (1) the proximity in time between the arrest and the confession, (2) the presence of intervening circumstances, (3) the purpose and flagrancy of the police misconduct, and (4) whether **Miranda** warnings were given. The presence or absence of intervening circumstances and the purpose and flagrancy of the police misconduct are especially important. The prosecution bears the burden of demonstrating attenuation.

Although the connection between an illegal arrest and a statement may be attenuated where defendant is confronted by legally seized evidence, confronting a suspect with evidence that has been illegally obtained cannot remove the taint of an illegal arrest. Where police obtain statements from an illegally arrested defendant by confronting him with both legally and illegally obtained evidence, the statements must be suppressed unless the prosecution can prove that the illegally obtained evidence did not influence the suspect's decision to speak.

The taint of defendant's illegal arrest was not attenuated where he made a statement only after he was confronted with a statement which had been illegally obtained from a codefendant. The trial court suppressed the codefendant's statement in the latter's trial, defendant gave the statement in question immediately after seeing the codefendant's statement, and defendant had been illegally detained for more than two days by the time he made the statement. In addition, the police misconduct was flagrant because police made widespread arrests as a "fishing expedition" in the hope of obtaining evidence, and because the record suggested that police obtained the codefendant's confession by the use of force.

People v. Jennings, 296 Ill.App.3d 761, 695 N.E.2d 1303 (1st Dist. 1998) Defendant's statement was not sufficiently attenuated from his illegal arrest to be admitted. First, the mere giving of **Miranda** warnings is insufficient to purge the taint of an illegal arrest. Second, only 2½ hours separated the arrest and the statement.

Third, the police misconduct was "flagrant" - the illegal arrest "was undertaken for the purpose of obtaining incriminating evidence related" to a murder. Although only one of defendant's companions had a gun, defendant and two other boys were taken into custody despite the absence of probable cause. One of the officers testified that the boys were taken to the station "with the intent to question them about" the gun and a recent homicide, and the detectives consulted with a witness to the murder to obtain evidence before questioning defendant.

Nor were there sufficient intervening circumstances to sever the connection between the illegal arrest and the incriminating statement. Although being confronted with untainted evidence may be an intervening circumstance that causes a suspect to confess voluntarily, defendant was confronted with both untainted evidence and tainted evidence, and the tainted evidence could not be said to have played only a "de minimis role" in defendant's decision to admit to a crime.

People v. Sneed, 274 Ill.App.3d 274, 653 N.E.2d 1340 (1st Dist. 1995) A six-hour delay between an illegal arrest and defendant's statement was not an attenuating factor; "this lapse of time could only have amplified the coercion of the custodial setting." The only intervening event was the administration of **Miranda** warnings, defendant was only 15 years old and had been taken from school in a squad car, and the police failed to contact youth officers who were located in the same police station.

People v. Turner, 259 Ill.App.3d 979, 631 N.E.2d 1236 (1st Dist. 1994) Defendant came to the police station at 12:30 a.m., after he received a message to contact two officers. He was placed in an interview room, given **Miranda** warnings and questioned about a murder. He gave an alibi.

Believing the alibi to be false, the officers went to defendant's home at 2:30 a.m. They told defendant's parents that defendant was cooperating in the investigation of a murder and asked to see his bedroom. The officers could not recall whether they said that defendant had given permission for a search of his room, although the parents testified that the officers did make such a claim. The officers took a pair of shoes that appeared to contain bloodstains and a drawing of a woman who had been repeatedly stabbed, and returned to the station.

One officer claimed that defendant was again interviewed for approximately 20 minutes at 3:30 a.m. but offered no further information. However, the police reports did not refer to a 3:30 a.m. interview, and the second officer could not recall such an interview.

The officers questioned defendant again at 8 a.m., and said that his alibi did not "check out" and that human blood had been found on his shoes. During subsequent interrogations, defendant confessed to the murder.

There was no reason to believe that the alleged 3:30 a.m. conversation occurred. Only one police officer testified about the interview, and he gave no details except to claim that defendant offered no additional information. Another officer gave testimony corroborating defendant's claim that he had pretended to be asleep when the officers came to the interview room at 3:30 a.m. and that they left without talking to him. Since there was no indication that the 3:30 a.m. interview occurred, defendant's 8 a.m. statement was not sufficiently attenuated from the illegal search to be admissible. Therefore, defendant's inculpatory statements should have been suppressed.

A statement is to be suppressed where illegally-seized evidence was a factor in defendant's decision to confess, even if other factors were also present. While knowledge that his alibi had been proven false might have played some part in defendant's decision to confess, it was likely that the seizure of the bloodstained shoes also played a role. See also, **People v. Reynolds**, 257 Ill.App.3d 792, 629 N.E.2d 559 (1st Dist. 1994).

People v. Beamon & Moore, 255 Ill.App.3d 63, 627 N.E.2d 316 (1st Dist. 1993) Defendant Moore was arrested at 8:30 a.m. on the day after the murder in question. At the police station, he denied any knowledge of the murder and claimed that he had been drinking at Beamon's house. Police then arrested Beamon and brought him to the police station. In response to questioning, Beamon said that he had been sick with the flu on the previous day and that he had not seen Moore for weeks.

When told that Moore had given a conflicting statement, Beamon agreed to submit to a polygraph examination. When told that the results indicated that he was being untruthful, Beamon admitted that he had been present during the offense. He was returned to the police station for further questioning, and two hours later gave a statement placing responsibility for the murder on Moore.

The officers then confronted Moore with Beamon's statement. At this point, about 10 hours after his arrest, Moore admitted his involvement in the offense. Both men subsequently made additional statements. Under these circumstances, defendant was arrested without probable cause, and the State failed to establish that the statements were not fruits of the illegal arrests.

Under [Brown v. Illinois, 422 U.S. 590 \(1975\)](#), four factors are to be considered in determining whether a statement is a product of an illegal arrest: the proximity in time between the arrest and statement, the presence of intervening circumstances, the purpose and flagrancy of the police misconduct and whether **Miranda** warnings were given. The most important factor is the presence or absence of intervening circumstances, and the mere passage of time does not necessarily justify a finding that the taint of the arrest has been dissipated.

The taint of an illegal arrest cannot be removed by confronting the arrestee with illegally-obtained evidence. See also, [People v. Austin, 293 Ill.App.3d 784, 688 N.E.2d 740 \(1st Dist. 1997\)](#) (confrontation with statement of another illegally-arrested suspect).

Similarly, the polygraph examination of Beamon was not an intervening circumstance. A polygraph examination is itself a type of interrogation, and a suspect's submission to interrogation does not purge the taint of an illegal arrest. Furthermore, although the defendants were advised of their **Miranda** rights after their arrests, **Miranda** warnings alone do not break the connection between an illegal arrest and a subsequent statement.

[People v. Vega, 250 Ill.App.3d 106, 620 N.E.2d 1189 \(1st Dist. 1993\)](#) Police officers came to 16-year-old defendant's home and told him to accompany them to the police station. When defendant's mother asked whether he could be questioned at home, the officers responded that the police station would be better. The officers also said that defendant would be home in less than two hours, when the mother had to leave for work.

At the station, defendant was isolated in an interview room. He was questioned and gave a statement denying that he had been present during the shooting in question. In response, he was shown a police report in which an unnamed witness said that defendant had been at the scene. Defendant again denied any involvement.

About two hours later defendant spoke by telephone to his mother and said that he wanted to come home. She told him to obey the officers so that he would be allowed to leave. Before the conversation, a police officer had asked the mother to persuade defendant to take a lie detector test. To this point, defendant had refused to take the test.

After the conversation, defendant said that he "might" take the polygraph. He was transported to the polygraph center, but upon arriving refused to submit to the test. However, he offered to point to the name of the shooter in the police report he had been shown earlier.

Defendant pointed to the name "Robert Sanchez," and when asked how he knew Sanchez was the shooter responded, "I know because I was with him before, during and after the incident." At this point, approximately four hours had passed since defendant's arrest.

Defendant was given **Miranda** warnings and told that he was under arrest. The officers testified that until this time, they had believed that defendant was merely a witness. Defendant was returned to the police station, and he gave three additional statements over the next 11½ hours.

Defendant was arrested illegally at his home because a reasonable person would have believed that he was not free to leave. The trial court held an attenuation hearing, found that the taint had not been dissipated, and entered a suppression order.

Although the officers doubted defendant's exculpatory story, they failed to administer **Miranda** warnings during the first four hours after his arrest. No significant intervening circumstances occurred during the four-hour period between the arrest and the first statement. The fact that defendant talked on the phone to his mother was not a sufficient intervening factor to dissipate the taint of the illegal arrest. Far from dissipating the taint of the arrest, the conversation should be viewed as an improper attempt to coerce an inculpatory statement. The police misconduct was flagrant because the only purpose of the illegal arrest was to elicit an unlawful statement.

Also, defendant's second, third and fourth statements were the fruits of the original statement because there was no evidence of any intervening circumstances between the statements.

People v. Thomas, 123 Ill.App.3d 857, 463 N.E.2d 832 (1st Dist. 1984) Before defendant's trial for murder, the trial judge found that an arrest was unlawful due to the absence of probable cause.

Defendant was arrested at his place of employment and was given **Miranda** warnings. The police seized defendant's car. Defendant was in custody for over 38 hours before a confession was obtained. During that time, defendant answered the questions of the police (denying guilt), allowed the police to search his apartment (where blood was observed on the wall), was taken to the area where the body was found and took a polygraph test (which he was told he failed).

Under these circumstances, there were no factors which served to attenuate the confession from the illegal arrest. Further, the length of time between the arrest and the confession, during which defendant was repeatedly questioned by different officers and confronted with illegally seized evidence, "was an aggravating factor rather than one tending to dissipate the taint of the illegal arrest."

People v. Garcia, 94 Ill.App.3d 940, 419 N.E.2d 542 (1st Dist. 1981) Defendant was arrested without probable cause. Statements made by defendant (the first being within two hours of his arrest), and his actions in showing the police the location of the body, must be suppressed because they were made in temporal proximity to the arrest and were the direct result thereof.

People v. Quarles, 88 Ill.App.3d 340, 410 N.E.2d 497 (3d Dist. 1980) Based on a telephoned complaint, defendant was arrested for the attempted burglary of an apartment. After defendant's arrest, a detective investigated the complaint and found that there was no substance to it. The detective then asked defendant about an unrelated burglary of a restaurant, and defendant confessed.

Although defendant was lawfully arrested for the attempted burglary of the apartment, he should have been released once the detective discovered there was no substance to the charge. Instead, the detective retained defendant in custody and questioned him about the restaurant burglary. The retention was an unlawful arrest for which there was no probable cause. Defendant's confession was the result of the unlawful arrest and must be suppressed.

People v. Nash, 78 Ill.App.3d 172, 397 N.E.2d 480 (1st Dist. 1979) A statement made by defendant about two hours after his unlawful arrest, and a gun recovered as a result of the statement, were properly suppressed because there were no intervening circumstances to

attenuate the taint of the unlawful arrest. An additional statement made six hours after the arrest was also properly suppressed because it was induced by the unlawfully seized gun.

People v. Jacobs, 67 Ill.App.3d 447, 385 N.E.2d 137 (3d Dist. 1979) Defendant, a 15-year-old, was pursued into Iowa by Illinois police and arrested at gunpoint without a warrant. He was then returned to an Illinois police station and advised of his rights. Police told defendant about another boy who had received only three or four years imprisonment for murder, and one officer stated that he would "do everything he could to help" defendant. Defendant confessed.

Defendant's arrest in Iowa is governed by Iowa law. Under Iowa law, a person arrested by an out-of-state officer must be taken before a magistrate and, upon a finding that the arrest was lawful, held for the issuance of an extradition warrant. Because the Illinois officers "blithely and summarily ignored" the Iowa law, defendant's arrest was unlawful.

The giving of **Miranda** warnings did not remove the taint of the unlawful arrest. The circumstances of defendant's arrest, the four-hour interrogation, "the promises and statements of the interrogators," and defendant's age and mental deficiencies indicated that defendant's confession "cannot be considered a product of his own free will."

People v. Williams, 53 Ill.App.3d 266, 368 N.E.2d 679 (1st Dist. 1977) State failed to establish the existence of intervening circumstances which dissipated the taint of an unlawful arrest: there was no significant lapse of time between the arrest and confession, the only intervening circumstance was the giving of **Miranda** warnings (which does not in itself attenuate the taint), and there was "obvious impropriety" by the police in making an arrest without probable cause. See also, **People v. McMahan**, 83 Ill.App.3d 137, 403 N.E.2d 781 (3d Dist. 1980).

People v. Robbins, 54 Ill.App.3d 298, 369 N.E.2d 577 (5th Dist. 1977) Confession obtained from defendant, following an unlawful search of his room and seizure of cannabis, should have been suppressed as the fruit of the unlawful search. Though defendant received **Miranda** warnings and the police conduct was not flagrant, defendant confessed "only because he had already been caught red-handed."

§10-7

Impeachment with Inadmissible Statements

United States Supreme Court

James v. Illinois, 493 U.S. 307, 110 S.Ct. 648, 107 L.Ed.2d 676 (1990) Defendant's statement, which was suppressed as the fruit of an illegal arrest, could not be used by the State to impeach the testimony of a defense witness other than defendant.

New Jersey v. Portash, 440 U.S. 450, 99 S.Ct. 1292, 59 L.Ed.2d 501 (1979) Involuntary statements may not be used to impeach an accused. See also, **Mincey v. Arizona**, 437 U.S. 385, 98 S.Ct. 2408, 57 L.Ed.2d 290 (1978); **People v. Cooper**, 96 Ill.App.3d 607, 421 N.E.2d 934 (5th Dist. 1981).

Oregon v. Hass, 420 U.S. 714, 95 S.Ct. 1215, 43 L.Ed.2d 570 (1975) Statements made by defendant after **Miranda** warnings were given and after he requested to telephone his attorney could properly be used to impeach his trial testimony, although they were not

admissible in the State's case in chief. There was no evidence or suggestion that defendant's statements were involuntary or coerced.

Harris v. New York, 401 U.S. 222, 91 S.Ct. 643, 28 L.Ed.2d 1 (1971) The State may use a statement obtained without proper **Miranda** warnings to impeach a testifying defendant, where such statements are inconsistent with his trial testimony and were not coerced or involuntary. See also, **People v. Doss**, 26 Ill.App.3d 1, 324 N.E.2d 210 (2d Dist. 1975).

Michigan v. Tucker, 417 U.S. 433, 94 S.Ct. 2357, 41 L.Ed.2d 182 (1974) The testimony of a State witness, who was found as a result of a statement defendant made to police without sufficient **Miranda** warnings, was properly admitted. The requirements of **Miranda** were complied with, since the statement taken in violation of **Miranda** was not admitted.

Illinois Supreme Court

People v. Easley, 148 Ill.2d 281, 592 N.E.2d 1036 (1992) Defendant was not required to testify in order to preserve his argument that the trial court erred by allowing his pretrial statement to be used as impeachment. The trial court actually ruled on the merits of the constitutional issues raised, and federal case law requiring that a defendant testify in order to preserve a claim of improper impeachment is based on the Federal Rules of Evidence and not on constitutional considerations.

Illinois Appellate Court

People v. Maron, 2019 IL App (2d) 170268 The trial court had discretion to consider defendant's illegally obtained confession at his sentencing hearing. Defendant pled guilty to three offenses. While he was in custody for these offenses, and represented by counsel, detectives asked him about a fourth uncharged offense, then continued to elicit statements concerning the charged offenses. Counsel was not present and not notified.

At sentencing, the State conceded that the statements would not have been admissible had the case proceeded to trial. Nevertheless, the State argued and the sentencing court agreed that the statements could be used at sentencing. The Appellate Court affirmed. It rejected defendant's contention that a statement taken in violation of the Sixth Amendment must always be suppressed at a sentencing hearing, and it found that the trial court properly applied the exclusionary-rule balancing test applicable to the use of such statements at a sentencing hearing. Given the lax evidentiary standards at sentencing, the overriding goal of crafting an appropriate sentence with as much relevant and reliable information as possible, and the minimal deterrent value in excluding the video at sentencing, the trial court did not abuse its discretion in admitting the statements.

People v. Morris, 2013 IL App (1st) 110413 Before his trial for first degree murder, defendant successfully moved for suppression of a video statement which he made following his arrest. The suppression was based on a violation of **Miranda**. There was no allegation that the statement was involuntary.

In the suppressed confession, defendant admitted throwing a metal pole or dumbbell at the decedent. In addition, an eyewitness testified that he saw defendant throw the dumbbell, and a search of defendant's car after the offense disclosed a dumbbell.

The defendant filed a motion *in limine* asking that the trial court prohibit the State from introducing evidence of the confession as impeachment. Defense counsel stated that defendant would not testify, but that the defense would call as expert witnesses medical

personnel who treated defendant at the Cook County Jail. The expert witnesses would testify that they diagnosed defendant with “Hill-Sachs deformity,” a shoulder condition that would have prevented defendant from throwing the dumbbell.

The trial court denied the motion *in limine*. Although defense counsel represented in an offer of proof that the experts would testify that they based their diagnosis on physical observations of defendant and examination of x-rays rather than by relying on defendant’s statements, the trial court ruled that the State could use the suppressed confession to impeach the experts concerning defendant’s physical ability to throw a dumbbell. After the motion *in limine* was denied, the defendant elected not to call the experts to testify.

On appeal, defendant argued that the trial court erred by ruling that defendant’s suppressed confession could be used to impeach expert defense witnesses concerning their diagnoses of defendant and their opinions of his ability to throw a dumbbell.

1. The court rejected the State’s argument that the issue was not properly before the court because the defendant failed to call the experts after his motion *in limine* was denied. Under [Luce v. U.S.](#), 469 U.S. 38 (1984) and its progeny, a defendant who fails to testify waives any issue concerning the denial of a motion *in limine* to bar use of his prior convictions as impeachment.

The court concluded that **Luce** does not apply here. First, the trial court made a definitive ruling that the expert witnesses could be impeached with defendant’s statements, and the State made clear that it would impeach the experts if they testified. Second, the ruling did not turn on factual considerations, but involved a legal issue - whether an expert witness’s testimony may be impeached with a defendant’s suppressed statement. Third, the record was sufficient to permit the court to consider the issue. Under these circumstances, the issue was properly before the court although defendant did not call the experts to testify.

2. On the merits, the court concluded that the trial court abused its discretion by denying the motion *in limine*. An abuse of discretion occurs when the trial court’s decision is arbitrary, fanciful, unreasonable, or would not be adopted by any reasonable person.

Under the exclusionary rule, evidence seized in violation of a defendant’s constitutional rights is generally inadmissible at trial. However, an exception to the exclusionary rule permits the admission of illegally obtained evidence for the limited purpose of impeaching the credibility of the defendant’s testimony at trial.

In [James v. Illinois](#), 493 U.S. 307 (1990), the U.S. Supreme Court declined to extend this exception to permit use of a defendant’s suppressed statement to impeach the testimony of witnesses other than the defendant, finding that such use would not promote the truth-seeking function of a criminal trial and would significantly undermine the deterrent effect of the exclusionary rule. The **James** court also noted that the threat of being prosecuted for perjury is sufficient to deter false testimony by a witness who is not the accused, and that impeachment with a third party’s statement is unnecessary. Furthermore, allowing impeachment of witnesses other than the accused with a suppressed statement might chill some defendants from presenting a defense through the testimony of others.

3. However, the court concluded that the error was harmless beyond a reasonable doubt because the defendant’s offer of proof was weak, counsel never outlined exactly what the experts’ opinions would be, and defendant was tried on an accountability theory under which he need not have thrown the dumbbell in order to be convicted. In addition, whether defendant threw the dumbbell was at best a minor part of the State’s case, and three eyewitnesses identified defendant as participating in the offense. Under these circumstances, defendant would have been found guilty beyond a reasonable doubt even had the medical experts testified that he was unable to throw the dumbbell.

People v. Lawson, 327 Ill.App.3d 60, 762 N.E.2d 633 (1st Dist. 2001) Although a suppressed statement may be used to impeach prior inconsistent testimony by defendant, suppressed statements are not admissible for "general impeachment of a defendant's credibility." The rationale for allowing impeachment with suppressed statements is to prevent a defendant from exploiting a suppression order by giving perjured testimony at trial. Expanding the exception to cover "general impeachment" would "render meaningless the restrictions imposed by our Supreme Court and the Supreme Court of the United States limiting the use of suppressed evidence against a defendant on cross-examination to situations where it relates to that defendant's testimony on direct examination."

People v. Finkey, 105 Ill.App.3d 230, 434 N.E.2d 18 (4th Dist. 1982) A statement obtained in violation of **Miranda** was properly used to rebut expert testimony that defendant suffered from pathological intoxication.

People v. Jackson, 180 Ill.App.3d 78, 535 N.E.2d 1086 (3d Dist. 1989) A statement obtained in violation of **Miranda** was properly introduced to impeach defendant's testimony.

§10-8

Use of Defendant's Silence and Failure to Testify

§10-8(a)

Defendant's Silence

United States Supreme Court

Salinas v. Texas, 570 U.S. 178, 133 S.Ct. 2174, 186 L.Ed.2d 376 (2013) Defendant agreed to accompany police officers to the police station, and voluntarily answered questions about a murder without being placed in custody or receiving **Miranda** warnings. When the officer asked whether ballistics testing would show that shell casings found at the scene matched defendant's shotgun, defendant failed to answer. After a few moments of silence, the officer asked additional questions which defendant answered.

At defendant's murder trial, the prosecutor argued that defendant's reaction to the officer's question during the interview was evidence of his guilt. The prosecutor argued that an "innocent person" in the same position would have denied committing the offense. Defendant argued that the Fifth Amendment right against self-incrimination prohibited the prosecutor from eliciting and commenting about defendant's silence during police questioning.

A plurality of three justices (Alito, Roberts, and Kennedy) rejected this argument, finding that to exercise the Fifth Amendment privilege one must expressly raise the privilege at the time of the questioning. In the plurality's view, the Fifth Amendment provides only a right against self-incrimination, not an "unqualified right to remain silent." Thus, whether a citizen has a constitutional right to refuse to answer questions "depends on his reasons for doing so, and courts need to know those reasons to evaluate the merits of a Fifth Amendment claim." Here, the interview was voluntary and defendant was free to leave at any time. Under these circumstances, defendant was required to expressly claim the Fifth Amendment privilege unless he was deprived of the ability to voluntarily do so. The court found that defendant was not limited in claiming the privilege, as it would have been a "simple matter" to state that he was not answering the questions on Fifth Amendment grounds. His failure to do so meant that the Fifth Amendment did not preclude the prosecutor's use of and

comment on his silence.

The plurality declined to adopt hold that the Fifth Amendment privilege need not be explicitly invoked in situations where the interrogating official has reason to suspect that the answer he seeks will be incriminating. The plurality found that such an exception would unduly “burden the Government’s interests in obtaining information and prosecuting criminal activity,” and would be difficult to reconcile with [Berghuis v. Thompkins](#), 560 U.S. 370 (2010), which held that during an custodial interrogation which was conducted after **Miranda** warnings had been given, the defendant failed to invoke the Fifth Amendment privilege by refusing to respond to police questioning for nearly three hours.

In a concurring opinion, Justices Thomas and Scalia declined to decide whether the defendant invoked the Fifth Amendment privilege, and found that even if the privilege had been invoked a prosecutor does not violate the Fifth Amendment by commenting on silence during a noncustodial interview. The concurring justices believed that [Griffin v. California](#), 380 U.S. 609 (1965), which held that the Fifth Amendment prohibits a prosecutor or judge from commenting on a defendant’s failure to testify, “lacks foundation in the Constitution” and therefore should not be extended to prohibit comment on noncustodial silence.

In a dissenting opinion, Justices Breyer, Ginsburg, Sotomayor, and Kagan found that Supreme Court precedent prohibits a prosecutor from penalizing an individual for exercising his Fifth Amendment privilege. The dissenters argued that there is no ritualistic formula for exercising the Fifth Amendment, and that commenting on a citizen’s silence in response to questioning is improper whether or not the Fifth Amendment privilege is specifically cited, unless the circumstances clearly suggest that the silence was not based on an exercise of the Fifth Amendment privilege.

Because defendant had been made aware that he was a suspect even though he was not placed in custody, was not represented by counsel, and was asked a question which made it clear that police were attempting to determine whether he was guilty, it was reasonable to infer that his silence was an exercise of his Fifth Amendment right.

[Wainwright v. Greenfield](#), 474 U.S. 284, 106 S.Ct. 634, 88 L.Ed.2d 623 (1986) Defendant's post-arrest silence, following **Miranda** warnings, may not be used by the State to prove defendant's sanity. See also, [People v. Stack](#), 112 Ill.2d 301, 493 N.E.2d 339 (1986) (defendant's acknowledgment of **Miranda** rights may not be used to show that he is sane).

[Fletcher v. Weir](#), 455 U.S. 607, 102 S.Ct. 1309, 71 L.Ed.2d 490 (1982) **Doyle** applies only where defendant remains silent after receiving **Miranda** warnings. See also, [People v. Homes](#), 274 Ill.App.3d 612, 654 N.E.2d 662, (1st Dist. 1995).

[Jenkins v. Anderson](#), 447 U.S. 231, 100 S.Ct. 2124, 65 L.Ed.2d 86 (1980) At his trial for murder, defendant testified that he had acted in self-defense. On cross-examination, the prosecutor questioned defendant about his failure to mention the self-defense claim during the two weeks between the killing and his arrest. In closing argument, the prosecutor also commented on defendant's prearrest silence.

The above cross-examination and argument did not violate the Fifth and Fourteenth Amendments. **Doyle** does not apply to prearrest silence, since the government did not induce defendant to remain silent by informing him that he need not speak. See also, [People v. Johnson](#), 170 Ill.App.3d 828, 525 N.E.2d 546 (4th Dist. 1988).

[Anderson v. Charles](#), 447 U.S. 404, 100 S.Ct. 2180, 65 L.Ed.2d 222 (1980) At defendant's trial for murder, a police officer testified that after defendant was arrested and given

Miranda warnings, he said that he had stolen a certain automobile from a location about two miles from the local bus station. On direct examination at trial, defendant testified that he had obtained the auto from a parking lot right next to the bus station. On cross-examination, the prosecutor asked, "[D]on't you think that it's rather odd that if [his direct testimony] were the truth that you didn't come forward and tell anybody at the time you were arrested, where you got that car?"

The above cross-examination was not an improper comment on post-arrest silence. "**Doyle** does not apply to cross-examination that merely inquires into prior inconsistent statements." See also, **Smith v. Cadagin**, 902 F.2d 553 (7th Cir. 1990) (where after his arrest defendant characterized the incident as one that "got out of hand," and at trial described it as a "practical joke," it was proper on cross-examination to bring out that defendant had not described the incident as a "practical joke" after his arrest).

Doyle v. Ohio, 426 U.S. 610, 96 S.Ct. 2240, 49 L.Ed.2d 91 (1976) Due process is violated where the State impeaches a defendant's testimony at trial with his post-arrest, post-**Miranda** silence. Such silence is ambiguous and may be the result of having been warned that silence is protected.

U.S. v. Hale, 422 U.S. 171, 95 S.Ct. 2133, 45 L.Ed.2d 99 (1975) Defendant's silence, after being given **Miranda** warnings following arrest, may not be used to impeach his testimony at trial. Defendant's silence is not sufficiently probative of an inconsistency with his in-court testimony to warrant admission.

Grunewald v. U.S., 353 U.S. 391, 77 S.Ct. 963, 1 L.Ed.2d 931 (1957) It was prejudicial error for the prosecutor to bring out on cross-examination that before the grand jury, defendant had pleaded his privilege against self-incrimination to some of the questions he answered at trial. Error was not cured by jury instruction that the Fifth Amendment claim only reflected credibility and not guilt or innocence.

Greer v. Miller, 483 U.S. 756, 107 S.Ct. 3102, 97 L.Ed.2d 618 (1987) **Doyle** was not violated by prosecutor's single question on cross-examination about why defendant had not told his exculpatory story upon arrest; an immediate objection was sustained, and a curative instruction was given to the jury.

Illinois Supreme Court

People v. Pinkett, 2023 IL 127223 Defendant was charged with aggravated fleeing from a peace officer after the police attempted to pull over defendant and two companions' speeding motorcycles for 13 miles. Defendant ultimately pulled into a Walmart and was arrested inside. The question at defendant's trial was whether defendant knowingly fled the police, or whether, because of the loudness of the motorcycles, his earplugs, and his lack of rear view mirrors, he was unaware of their presence.

In its opening statement, the State argued that defendant knew he was being pursued because he did not ask why a plain-clothes officer was detaining him in the Walmart. The defense objected and moved for a mistrial. The trial court denied the motion based on **People v. Givens**, 135 Ill. App. 3d 810 (1985), which held that postarrest, pre-**Miranda** silence is not constitutionally protected.

At trial, evidence showed a plain-clothes officer responded to a call stating that one of the fleeing motorcyclists was inside the Walmart. The officer described going into the

Walmart bathroom and finding defendant in “biker attire.” The officer said “Hey, what’s up,” and defendant, appearing “somewhat nervous,” left. The officer followed him, identified himself as a deputy sheriff, grabbed a knife hanging from defendant’s belt, and said “We need to walk out of here without making a scene.”

The State asked the testifying officer if defendant asked why he was being detained. The officer responded no, and that he found it odd that the defendant didn’t object to a person in plain clothes grabbing his knife and detaining him. In closing, the State argued that defendant’s failure to ask why he was being detained undermined his defense, because, despite defendant’s right to silence, a “normal person” who was unaware he was being chased by police would have asked why he was being detained.

Defendant was found guilty, but the appellate court reversed, finding evidentiary error where postarrest, pre-**Miranda** silence was used for substantive purposes rather than impeachment. A dissent found the error harmless.

The supreme court agreed that the trial court erred when it denied the motion for a mistrial. Under [Illinois Rule of Evidence 401](#), evidence must be relevant to be admissible, and even before **Miranda**, Illinois courts have held postarrest silence is irrelevant. [People v. Rothe](#), 358 Ill. 52 (1934); [People v. Lewerenz](#), 24 Ill. 2d 295, 299 (1962). Postarrest silence is “insolubly ambiguous” because it can never be known if it represents a defendant exercising his right to silence, or betraying a lack of surprise and consciousness of guilt.

Where a motion for a mistrial has been denied, an appellant must demonstrate both prejudice, and that admonishments and curative instructions from the circuit court could not remedy the error. Here, defendant was prejudiced when the State suggested that defendant’s silence was tantamount to a tacit admission. But tacit admissions require accusations, and defendant wasn’t informed of the charges at the time of his silence. Further, the error was not cured by instructions, where the trial court provided only a general admonishment that opening statements do not constitute evidence, and no curative instruction was provided at the time of the statement.

Finally, the error was not harmless. Evidentiary errors are harmless where there is “no reasonable probability” of acquittal absent the error. The appellate court correctly applied the factors used in [Doyle v. Ohio](#), 426 U.S. 610, 617-18 (1976), and they weighed in favor of retrial: the error was introduced by the State, it impacted defendant’s right to a fair trial, the trial court passed on its opportunity to grant a mistrial, and the evidence was used to imply guilt. Finally, the remaining evidence was not overwhelming. Despite the fact that the motorcyclists led police on a 13-mile police chase involving speeds over 21 miles per hour over the limit, the evidence suggested defendant may have not been aware of the police given the loud bikes, earplugs, lack of mirrors, the lack of evasive maneuvers, and defendant’s decision to stop at a stop sign during the chase. Also, defendant’s statement that he entered Walmart to buy zip ties was corroborated by the officer, who noticed something dragging from the motorcycle.

[People v. Patterson](#), 217 Ill.2d 407, 841 N.E.2d 889 (2005) The court rejected the argument that prosecutorial misconduct occurred where the prosecutor: (1) commented on defendant’s right to remain silent, and (2) implied when questioning the State’s DNA expert that the evidence was available for the defense to conduct its own analysis. Under [Doyle v. Ohio](#), 426 U.S. 610 (1976), the prosecution may not comment on the silence of a defendant who has invoked the right to remain silent.

Doyle does not apply where defendant waives his right to silence but refuses to answer some questions. In addition, the statement implying that the defense could have

conducted DNA testing was invited by defense counsel's cross-examination, which attempted to cast doubts on the results of the State's testing. Also, defense counsel forcibly argued to the jury that the State had the burden of proof on the question of guilt, preventing the jury from concluding that the defense chose not to conduct testing because it feared the possible result.

People v. Hart, 214 Ill.2d 490, 830 N.E.2d 527 (2005) A detective's testimony that defendant "did not deny being involved" in a crime was not an improper comment on post-arrest silence. Because defendant continued to speak to the officer, including asking what the officer could do in return for cooperation, it is at least arguable that defendant did not exercise his right to silence. In any event, any **Doyle** violation was harmless.

Five factors are to be considered in determining whether a **Doyle** violation is harmless beyond a reasonable doubt: (1) the identity of the party which elicited the testimony about defendant's silence; (2) the intensity and frequency of the references to defendant's silence; (3) the use which the prosecution made of defendant's silence; (4) the trial court's opportunity to grant a mistrial or give a curative jury instruction; and (5) any other evidence of guilt.

People v. Nitz, 143 Ill.2d 82, 572 N.E.2d 895 (1991) At defendant's trial for murder, the State introduced defendant's post-arrest statement that the police had arrested the wrong person, that he knew who the "real killer" was, that he would not reveal the killer's identity and that he would speak only through his attorney. On recross-examination, defendant testified that the "real killer" was "Danny Walker."

The State erroneously used defendant's post-arrest silence:
"The prosecutor improperly used defendant's post-arrest silence by pointing out that defendant never told the police at the time he was arrested that Walker was the 'real killer.' The State certainly was entitled to bring out any statements defendant made at the time of his arrest. . . . But, by questioning the police and defendant on whether defendant, in fact, told the police who the 'real killer' was, the State struck at the heart of defendant's right to remain silent after being read his **Miranda** warnings."

However, the issue was not preserved in the trial court, and no plain error occurred where the evidence was not closely balanced.

People v. Herrett, 137 Ill.2d 195, 561 N.E.2d 1 (1990) Prosecutor's comments (about what defendant failed to tell the police and what an innocent man would have said) violated **Doyle**. Although defendant did not remain silent after his arrest, he did not testify at trial. Thus, there was nothing to impeach. Also, the statements defendant made to the police were not inconsistent with the defense theory at trial.

People v. Lucas, 132 Ill.2d 399, 548 N.E.2d 1003 (1989) It was improper to introduce evidence that when he was questioned by the police, defendant asked to speak with an attorney. The reasoning of **Doyle** also applies to defendant's request to speak to an attorney. See also, **People v. Kennedy**, 33 Ill.App.3d 857, 338 N.E.2d 414 (4th Dist. 1975).

People v. Pegram, 124 Ill.2d 166, 529 N.E.2d 506 (1988) Even where the subject of defendant's post-arrest silence is broached by defendant's attorney, the prosecutor may not inquire or comment on defendant's failure to offer his exculpatory explanation at the time of arrest or before trial.

People v. Green, 74 Ill.2d 444, 386 N.E.2d 272 (1979) The prosecutor's remarks during cross-examination and closing argument constituted improper comments on defendant's post-arrest silence. Although defendant made some post-arrest statements, they were not inconsistent with his trial testimony.

People v. Rehbein, 74 Ill.2d 435, 386 N.E.2d 39 (1978) During cross-examination, the prosecutor impeached defendant by way of prior inconsistent statements. He also asked defendant whether he "had earlier told the police officer the story he was now telling at trial." The references to defendant's pretrial silence (or what he did not say to the police officer) were not impermissible comments on silence under **Doyle**, since the references were made in the context of proper impeachment by prior inconsistent statements.

People v. Rothe, 358 Ill. 52, 192 N.E. 777 (1934) Testimony concerning defendant's refusal to talk is prejudicial, and is not material or relevant to the issues being tried. See also, **People v. Anderson**, 113 Ill.2d 1, 495 N.E.2d 485 (1986).

People v. Aughinbaugh, 36 Ill.2d 320, 223 N.E.2d 117 (1967) Defendant's silence may be introduced as a tacit admission where he remained silent in the face of an accusation of guilt. However, such evidence should be received with caution and only when it affirmatively appears that defendant was being asked about the crime on trial. It is the assumption that one similarly situated would ordinarily deny the imputation of guilt that renders admissible defendant's failure to do so. See also, **People v. Morgan**, 44 Ill.App.3d 459, 358 N.E.2d 280 (5th Dist. 1976); **People v. Taylor**, 153 Ill.App.3d 710, 506 N.E.2d 321 (4th Dist. 1987).

Illinois Appellate Court

People v. Serritella, 2022 IL App (1st) 200072 At defendant's murder trial, the teenage victim's mother testified that she received a telephone call from defendant several years after the murder had occurred. During the call, the mother told defendant that she had "a gut feeling" that he killed her son and asked him why he had done so. After a short pause, defendant responded that he had never met her son and did not kill him. A recording of the call was admitted into evidence at defendant's trial. In closing, the prosecutor argued that defendant's silence before answering was indicative of his consciousness of guilt. Defendant argued that admission of the victim's mother's accusation was unfairly prejudicial, irrelevant, and not based on personal knowledge. The court rejected these arguments, noting that the trial judge at a bench trial is presumed to consider only proper evidence.

After briefing, defendant was given leave to cite additional authority, specifically **People v. Allen**, 2022 IL App (1st) 190158, which he relied upon to support an additional argument that admission of the recording violated the tacit admission rule. The court found this argument forfeited. The State had consistently argued that defendant's pause showed consciousness of guilt, and defendant chose not to raise the tacit admission rule at any time prior to the motion to add authority. The tacit admission rule was well-established at the time of trial, and thus defendant could have raised it in the trial court or in the original briefing in the Appellate Court.

The court went on to find that even if it overlooked forfeiture, defendant's argument was without merit. Under the tacit admission rule, a defendant's silence may be introduced as a tacit admission of guilt if a statement is made that incriminates the defendant such that the natural reaction of an innocent person would be to deny it, and instead defendant is silent. The victim's mother's statement was accusatory, and defendant clearly paused before

responding rather than immediately denying the accusation. And, defendant did not know the call was being recorded and had not yet been arrested, so his pause could not be attributed to his contemplating the exercise of his **Miranda** rights.

People v. Taylor, 2019 IL App (3d) 160708 Arresting officer's mere mention of **Miranda** warnings during his trial testimony did not violate defendant's right to remain silent or the prohibition on evidence of post-arrest silence. There was no evidence that defendant exercised his right to remain silent, and no argument that the jury could infer anything from such silence.

People v. Ruiz, 2019 IL App (1st) 152157 Defendant's silence when accused of criminal activity may be admitted as a tacit, or implied, admission where (1) defendant heard the accusative statement, (2) he had the opportunity to respond, and (3) the natural reaction of an innocent person would have been to deny the accusation. While this rule has been rejected in some jurisdictions, it remains valid in Illinois.

Defendant's failure to deny his co-arrestee's accusation that "you guys" take things "too far" should not have been admitted under the tacit admission rule. Defendant was in police custody, knew the police could hear him, and may have known he was being recorded, so he did not have an "unencumbered" chance to respond. While defendant did engage in conversation with the co-arrestee, that did not mean he was comfortable responding to every statement that was made. However, the error in admitting defendant's silence under the tacit admission rule was harmless, and defendant's conviction was affirmed.

People v Olaska, 2017 IL App (2d) 150567 As a general matter, it is improper for the State to use defendant's post-arrest silence against him, even as impeachment. The State violated this principle by questioning the arresting officer as to whether defendant had inquired about the welfare of the injured persons. "The questions were at best an oblique pass at defendant's frame of mind" and were improper. Defense counsel objected to this line of questioning at trial, and the trial court instructed the jury to disregard the questions and answers. That instruction, coupled with the overwhelming evidence of guilt in this case, rendered the error harmless.

People v. Pace, 2015 IL App (1st) 110415 A trial court violates a defendant's privilege against self-incrimination during sentencing where the court believes defendant's silence shows that he lacked remorse and uses defendant's silence as an aggravating factor in imposing sentence.

Here defendant declined to exercise his right of allocution at sentencing. In imposing sentence, the trial court stated that it would consider "the defendant's right of allocution, which he did not avail himself of." The Appellate Court held that based on this statement, the "record affirmatively shows that defendant was punished for choosing to remain silent during the sentencing hearing."

Defendant's sentence was vacated and remanded for a new sentencing hearing.

People v. Quinonez, 2011 IL App (1st) 092333 Under federal constitutional law, the State violates due process by impeaching a defendant with his or her post-arrest, post-**Miranda** warning silence. Under federal law, the due process prohibition applies only to silence which occurs after **Miranda** warnings have been given. By contrast, Illinois evidentiary law prohibits impeachment of a criminal defendant with any post-arrest silence, whether or not

Miranda warnings were given. Under Illinois evidentiary law, the fact that an accused exercised the right not to make a statement is irrelevant and immaterial to any issue at trial.

Illinois recognizes two exceptions to the general rule prohibiting impeachment with post-arrest silence. First, silence may be used as impeachment if the defendant testifies at trial that he made an exculpatory statement at the time of his arrest. Second, post-arrest silence is admissible where defendant makes a statement after his arrest and at trial gives testimony that is inconsistent with the post-arrest statement. Moreover, in contrast to post-arrest silence, a defendant's silence before his arrest may be used as impeachment.

Here, the State improperly impeached defendant with his post-arrest silence. The arresting officer testified that as defendant was "immediately" arrested when he dropped a bag as police approached, and defendant testified that he was handcuffed and placed in a squad car as soon as police arrived. The court rejected the State's argument that defendant's failure to tell police officers that a second man had placed contraband in defendant's pocket was an "act" rather than silence, and thus fell within the second exception to the Illinois rule - for making a post-arrest statement that is manifestly inconsistent with subsequent trial testimony. The court stressed that the second exception applies only where the defendant actually makes a statement which turns out to be inconsistent with his subsequent testimony. The failure to make a statement does not qualify for the second exception; post-arrest silence is necessarily ambiguous and cannot be deemed to be inconsistent with a subsequent statement.

A conviction need not be reversed due to improper impeachment with post-arrest silence if the error is harmless beyond a reasonable doubt. Where a defendant's testimony is significant to the defense, however, the improper use of post-arrest silence cannot be deemed harmless. Because defendant's explanation of the offense was critical to his defense in this case, the improper impeachment was not harmless.

People v. Sanchez, 392 Ill.App.3d 1084, 912 N.E.2d 361 (3d Dist. 2009) Because the defendant's post-arrest silence is neither material nor relevant to proving or disproving a charged offense, Illinois evidentiary law prohibits the impeachment of a defendant with his or her post-arrest silence, regardless whether the silence occurred before or after **Miranda** warnings were given. Furthermore, constitutional error occurs where the defendant is impeached with post-arrest silence which occurred after **Miranda** warnings were given.

However, a defendant who gives exculpatory testimony that is manifestly inconsistent with statements he made after his arrest may be cross-examined about the inconsistency.

As a matter of plain error, the State committed reversible error by using post-arrest silence to impeach a defendant who did not testify. Because defendant's alibi defense was presented through the testimony of other witnesses, the State was entitled to impeach those witnesses. However, it had no basis to impeach a non-testifying defendant.

Defendant's convictions were reversed and the cause remanded for a new trial.

People v. Eghan, 344 Ill.App.3d 301, 799 N.E.2d 1026 (2d Dist. 2003) At a trial for unlawful possession of less than 15 grams of cocaine, the trial court erred by admitting evidence that defendant refused to take a drug test after his arrest. That evidence did not violate defendant's Fourth Amendment rights (because there was no seizure) or Fifth Amendment rights (because the refusal to take a drug test is not a compelled communication). However, admission of such evidence was improper and unduly prejudicial because it allowed the jury to infer guilt from defendant's exercise of his rights.

Although defendant was not advised that he had a right to refuse a drug test, he received **Miranda** warnings which included admonitions about the right to remain silent.

Thus, he was "effectively informed . . . that he did not have to cooperate with the police or provide them with potentially incriminating information." Because defendant's refusal to consent to a drug test may have been a consequence of the admonishment concerning the right to silence, the trial court abused its discretion by admitting the evidence.

People v. Clark, 335 Ill.App.3d 758, 781 N.E.2d 1126 (3d Dist. 2002) Under federal constitutional law, a criminal defendant's silence cannot be used as impeachment where the silence occurred after defendant received **Miranda** warnings. However, the admissibility of post-arrest, pre-**Miranda** silence is determined by State law.

Under Illinois evidentiary law, a defendant may not be impeached with post-arrest silence, whether or not **Miranda** warnings were given. The prosecutor committed plain error by questioning defendant about his failure to deny his guilt after his arrest.

People v. Wanke, 311 Ill.App.3d 801, 726 N.E.2d 142 (2d Dist. 2000) Under **People v. Stack**, 112 Ill.2d 301, 493 N.E.2d 339 (1986) and **People v. Anderson**, 113 Ill.2d 1, 495 N.E.2d 485 (1986), the prosecution errs by using a defendant's invocation of his right against self-incrimination to disprove a claim of insanity by showing that defendant was lucid enough to exercise his constitutional rights. Whether or not a defendant received **Miranda** warnings, it is fundamentally unfair to use the exercise of a constitutional right to show sanity.

People v. Powell, 301 Ill.App.3d 272, 703 N.E.2d 934 (4th Dist. 1998) Although the "admission by silence" doctrine applies "under certain circumstances in criminal cases," its application is restricted. Thus, "such evidence should be received with caution and only when the conditions upon which it becomes admissible are clearly shown to exist."

The Seventh Circuit has made "a strong case" for the argument that the constitution prohibits application of the "tacit admission" rule to the questioning of criminal suspects by police officers. (See **U.S. ex rel. Savory v. Lane**, 832 F.2d 1011 (7th Cir. 1987)). The court declined "to go that far," however, holding that it is "possible - even if highly unlikely - that a scenario could arise in which a defendant's tacit admission might be probative."

Where the prosecution seeks to introduce an admission by silence it must establish that under the totality of the circumstances, defendant heard the statement in question, understood it, had the opportunity to deny it, and failed to do so. The trial court must also determine that an innocent person more likely than not that would have denied the statement if he believed it to be untrue.

Here, defendant's refusal to answer police questioning about whether he had committed crimes against his wife "was probative of nothing," as it "may have been motivated by nothing more than his prior experience or the advice of counsel."

People v. Bunning, 298 Ill.App.3d 725, 700 N.E.2d 716 (4th Dist. 1998) Plain error occurred where a police officer testified that during interrogation, defendant exercised his rights to silence and counsel. It is error for the State to introduce a defendant's exercise of his rights, both because such evidence violates due process and the right against self-incrimination and because it is not material or relevant to the issues at trial. Although the testimony here occurred during cross-examination by defense counsel, the witness's answer was not responsive to counsel's question, which concerned only the length of the interrogation. Furthermore, although defense counsel may have declined to move to strike the answer to avoid calling more attention to the statement, "[i]t was ineffective assistance . . . not to raise this issue in some fashion," such as a motion for mistrial outside the jury's presence or by including the issue in the post-trial motion.

People v. Simmons, 293 Ill.App.3d 806, 689 N.E.2d 418 (2d Dist. 1998) It is improper for a prosecutor to comment on defendant's post-arrest silence except: (1) as impeachment where defendant testifies at trial that he gave an exculpatory statement to the police, or (2) where defendant testifies at trial in a manner that is inconsistent with a statement he made after the arrest. Where defendant did not claim that he made an exculpatory statement upon his arrest and did not testify inconsistently with any prior statement, neither exception applied.

Defense counsel did not "open the door" to the prosecutor's comments by asking whether the arresting officer questioned defendant about the owner of a gun. Because counsel did not ask whether defendant made any comments, he did not invite questioning concerning defendant's failure to make a post-arrest statement.

People v. Lackland, 248 Ill.App.3d 426, 618 N.E.2d 508 (1st Dist. 1993) Defendant was given **Miranda** warnings upon his arrest for armed robbery, and at the police station refused to give his name, address, height, weight and date of birth. During closing argument, the State's Attorney contended that defendant's silence at the station was proof of his guilt.

As a matter of plain error, the prosecutor's closing argument violated **Doyle**. The question did not fall within the "routine booking question" exception of **Pennsylvania v. Muniz**, 496 U.S. 582 (1990), because defendant was given **Miranda** warnings before the "routine" questions were asked, and the State attempted to use defendant's silence, rather than his substantive answers, as evidence of guilt.

People v. Ridley, 199 Ill.App.3d 487, 557 N.E.2d 378 (1st Dist. 1990) Defendant, upon his arrest, told the police that he "had absolutely no knowledge of this incident and did not participate in it in any way, shape, or form." Defendant testified at trial and presented an alibi defense. During rebuttal closing argument, the prosecutor stated that if defendant "was really with his friends on the morning of the crime [as he testified], he would have told the police where he was and who he was with."

It was plain error for the prosecutor to comment on defendant's silence. If a defendant's trial testimony is inconsistent with his statement to the police, the State may impeach the trial testimony by using defendant's failure to give the same statements to the police. Here, however, defendant's statement to the police denying guilt was not inconsistent with his trial testimony - an alibi defense. See also, **People v. Tate**, 63 Ill.App.3d 119, 379 N.E.2d 693 (1st Dist. 1978).

People v. Moody, 199 Ill.App.3d 455, 557 N.E.2d 335 (1st Dist. 1990) Upon his arrest, defendant immediately asserted his right to counsel and declined to make any statements to the police. Defendant testified at trial, and on cross-examination the prosecutor brought out that defendant had not given the authorities the information about which he testified. The prosecutor commented further in closing argument.

The cross-examination and comments in closing argument constituted reversible error. Since defendant consistently refused to answer the authorities' questions before trial, there were no prior statements that were manifestly inconsistent with his trial testimony. Thus, there were no statements that could properly be used for impeachment.

People v. Johnson, 170 Ill.App.3d 828, 525 N.E.2d 546 (4th Dist. 1988) The evidence at defendant's trial for driving a motorcycle while his license was suspended showed that defendant's motorcycle was found lying in a field. Defendant was covered with mud and blood.

A police officer testified that at the hospital, defendant said, "I just flipped my bike into a muddy field."

The State produced no witnesses who saw defendant driving the motorcycle. Defense witnesses, including defendant, testified that someone else had been driving the motorcycle and that defendant was merely a passenger.

On direct examination of a police officer, the prosecutor brought out that while defendant was being driven to a police station, he made "no indication that he was not driving [the motorcycle]." A defense objection was sustained, and the jury was instructed to disregard the testimony.

The officer also testified that defendant was brought in for questioning and given **Miranda** warnings. The prosecutor asked whether defendant had said anything about who was driving the motorcycle. A defense objection was sustained, and the jury was instructed to disregard evidence of defendant's silence. When the examination continued, the prosecutor again attempted to elicit testimony of defendant's failure to say that anyone else was driving. A defense objection was sustained.

During closing argument, the prosecutor stated:

"Now we have got the time of the scene where [defendant] makes no indication to anyone that he was not driving. He's being placed under arrest for driving while he's suspended and he never says, 'I wasn't driving.'"

Under **Doyle**, a defendant's post-arrest silence may not be used to impeach an exculpatory story told for the first time at trial. Statements made by defendant before his arrest were inconsistent with his trial testimony and were properly introduced. However, the prosecutor's questions and closing argument as to the absence of any post-arrest statement by defendant were "highly improper," since defendant had invoked his right to remain silent after being placed under arrest and there were no post-arrest statements that were inconsistent with his trial testimony.

People v. McMullen, 138 Ill.App.3d 872, 486 N.E.2d 412 (2d Dist. 1985) At his trial for burglary, defendant testified that he thought he was helping a friend move some of the friend's belongings and did not know that the items placed in his truck were stolen. Following his arrest, he was told by the friend that the property was stolen. A police officer testified that when he served defendant with the burglary complaint, defendant said he "should be getting a complaint for possession of stolen property instead of burglary."

On cross-examination of defendant, the prosecutor asked, "You did not tell the officer at that time that, look, you shouldn't charge me with burglary because I don't know what's going on here?" Defendant said no. In closing argument the prosecutor stated:

"Now, if you were placed in the position as this defendant and had nothing to do with this, did not know what was going on, what would you tell the officer when he files a Complaint charging you with burglary? You would tell the officer, 'Hey, I shouldn't be charged with anything.'"

The cross-examination and closing argument were improper because under Illinois evidentiary law, "evidence of a defendant's post-arrest silence is inadmissible because such evidence is neither material nor relevant, having no tendency to prove or disprove the charge against a defendant." No exception to the foregoing rule was present in this case — particularly, defendant's statement to the officer (that he "should be getting a complaint for possession of stolen property") was consistent with his testimony that he first learned that the property was stolen when he was arrested.

People v. Warner, 121 Ill.App.3d 322, 459 N.E.2d 1053 (1st Dist. 1984) At defendant's jury trial, the complainant testified that when he viewed a lineup in which defendant participated, defendant refused to say "Hey you" (the words spoken by the offender). A defense objection was overruled. In addition, a police officer testified about defendant's refusal, and in closing argument the prosecutor stated that the inference to be drawn was that "he thought his voice would be recognized." Defendant's refusal to speak came after he had been advised of his right to remain silent. Nothing in the record indicated that police informed defendant that this right did not include the right to refuse to participate in a voice identification test. Reversed and remanded for a new trial.

People v. Adams, 102 Ill.App.3d 1129, 430 N.E.2d 267 (2d Dist. 1981) At her murder trial, defendant testified that she acted in self-defense. Following defendant's testimony, the State presented evidence that defendant had not told police about self-defense until several hours after her arrest. In addition, in closing argument the prosecutor commented on defendant's post-arrest silence. The evidence and comment on defendant's post-arrest silence violated **Doyle**. See also, **People v. Miles**, 82 Ill.App.3d 922, 403 N.E.2d 587 (1st Dist. 1980).

People v. Earl, 89 Ill.App.3d 980, 412 N.E.2d 645 (3d Dist. 1980) At defendant's trial for burglary, a police officer testified that he searched defendant's car and discovered currency similar to that taken during the burglary. The officer also testified that defendant did not give any explanation for the presence of the currency in his car. This testimony was "fundamentally unfair and a deprivation of due process of law." See also, **People v. Malkiewicz**, 86 Ill.App.3d 417, 408 N.E.2d 47 (2d Dist. 1980).

People v. Deberry, 46 Ill.App.3d 719, 361 N.E.2d 632 (4th Dist. 1977) Defendant's silence had little if any probative value, where there was no showing that he knew he was being asked about the crime for which he was on trial. It was also "plain error" to allow a police officer to testify that defendant remained silent after being arrested and given **Miranda** warnings.

People v. Moss, 54 Ill.App.3d 769, 370 N.E.2d 89 (1st Dist. 1977) A defense witness, as compared to defendant himself, may properly be impeached with his post-arrest silence.

People v. Craigwell, 40 Ill.App.3d 889, 353 N.E.2d 101 (1st Dist. 1976) The State's impeachment of defendant with his silence at the crime scene, after he had been given **Miranda** warnings, violated due process.

People v. Hellemeyer, 28 Ill.App.3d 491, 328 N.E.2d 628 (5th Dist. 1975) Error occurred where the "record suggests that the prosecution in the instant case purposely elicited testimony which suggested that the defendants exercised their privilege to remain silent during police custodial interrogation."

People v. Kennedy, 33 Ill.App.3d 857, 338 N.E.2d 414 (4th Dist. 1975) It was plain error for prosecutor to bring out during police officer's testimony, and to comment in closing argument, that defendant asked to consult with counsel and declined to submit a voice exemplar after being given **Miranda** warnings.

People v. Owens, 32 Ill.App.3d 893, 337 N.E.2d 60 (4th Dist. 1975) After defendant was

arrested, he was taken to a hospital and placed in a lineup before the victim, who later died. The trial court allowed a police officer to testify concerning the victim's identification of defendant, on the basis that defendant's failure to respond to the victim's accusation was an admission by silence.

This was a violation of defendant's Fifth Amendment rights. Defendant had continually denied guilt from the moment of his arrest; defendant's lawyer testified that he advised defendant to say nothing; and before the lineup police had advised defendant several times of his right to remain silent.

§10-8(b) **Defendant's Failure to Testify**

United States Supreme Court

U.S. v. Robinson, 485 U.S. 25, 108 S.Ct. 864, 99 L.Ed.2d 23 (1988) Prosecutor's comment in closing argument (that defendant "could have taken the stand and explained it to you") was not improper; it was in response to defense counsel's argument that the government had denied defendant the opportunity to explain his actions.

Griffin v. California, 380 U.S. 609, 85 S.Ct. 1229, 14 L.Ed.2d 106 (1965) The Fifth Amendment prohibits the court or prosecution from commenting on a defendant's failure to testify. See also, **People v. Stock**, 56 Ill.2d 461, 309 N.E.2d 19 (1974).

Stewart v. U.S., 366 U.S. 1, 81 S.Ct. 941, 6 L.Ed.2d 84 (1961) Defendant's failure to testify at earlier trial could not be brought out. Cautionary instruction could not cure error.

Raffel v. U.S., 271 U.S. 494, 46 S.Ct. 566, 70 L.Ed.2d 1054 (1938) Defendant at first trial did not testify in the face of government agent's testimony that defendant made certain admissions of guilt. At second trial, defendant testified and denied the admissions. Defendant's silence at his first trial could be shown to discredit his testimony at the second trial, on the theory that the silence itself constituted an admission as to the truth of the agent's testimony.

Illinois Supreme Court

People v. Herrett, 137 Ill.2d 195, 561 N.E.2d 1 (1990) The prosecutor's comments in closing argument, which referred to defendant's failure to explain his presence at the residence where he was arrested, were impermissible comments on defendant's failure to testify.

People v. Bean, 109 Ill.2d 80, 485 N.E.2d 349 (1985) Defendant was tried jointly with a codefendant and was convicted of various offenses, including murder. Defendant did not testify.

During opening statements, counsel for the codefendant pointed out that his client was going to testify "because an innocent man can't wait to tell his story. And a guilty man will never take the stand." After an objection by defendant was overruled, codefendant's counsel added that "the murderer will never take the stand." During trial, the codefendant's theory was that Bean was the murderer and that the codefendant was not even at the crime scene.

The above comments violated the Fifth and Fourteenth Amendments. The comments also were held to violate Ch. 38, §155-1, which provides that the court shall not permit any

reference or comment to be made to or upon a defendant's failure to testify. Statute is not limited to comments by the prosecutor or the judge, but prohibits "any reference."

People v. Ramirez, 98 Ill.2d 439, 457 N.E.2d 31 (1983) Defendant did not testify at his death penalty sentencing hearing, although he had testified at the guilt stage of trial. It was reversible error for the prosecutor to comment on defendant's failure to testify (i.e., "He has sat before you . . . and offered no explanation for the murder"), and for the judge to refuse to instruct the jury not to consider defendant's decision not to testify. Defendant did not waive his privilege to remain silent at sentencing by testifying at the guilt stage.

§10-9

Use of Defendant's Prior Testimony and Plea Discussion Statements

United States Supreme Court

U.S. v. Kahan, 415 U.S. 239, 94 S.Ct. 1179, 39 L.Ed.2d 297 (1974) At arraignment, defendant requested the appointment of counsel and stated, in response to a direct question, that he had no funds. He failed to disclose that he had access to and control of savings accounts from which he had made frequent withdrawals.

During its case in chief, the government was allowed to present defendant's statements as to lack of funds. The statements were admitted as false exculpatory statements evincing defendant's consciousness that the bank deposits were incriminating, and as evidence of willfulness in making statements before the grand jury with knowledge of their falsity.

Use of the statements was upheld. The principle set out in **Simmons v. U.S.** is not to be converted into a license for false representations on the issue of indigency, free from the risk that the claimant will be held accountable for his falsehood.

U.S. v. Mezzanatto, 513 U.S. 196, 115 S.Ct. 797, 130 L.Ed.2d 697 (1995) Federal Rule of Evidence 410 and Federal Rule of Criminal Procedure 11(e)(6), which provide that statements made in the course of plea discussions may not be introduced against defendant at trial, may be waived by defendant. Also, a prohibition against use of statements made during plea negotiations is not a fundamental evidentiary rule essential to a reliable fact-finding process and permitting waiver will not unduly discourage guilty pleas or encourage prosecutorial overreaching. A defendant's agreement to waive the protection of the above rules is enforceable unless it was entered unknowingly or involuntarily.

Simmons v. U.S., 390 U.S. 377, 88 S.Ct. 967, 19 L.Ed.2d 1247 (1968) When a defendant testifies in support of a motion to suppress evidence on Fourth Amendment grounds, his testimony may not thereafter be admitted against him at trial on the issue of guilt, unless he makes no objection.

Illinois Supreme Court

People v. Rivera, 2013 IL 112467 Supreme Court Rule 402(f) provides that "[i]f a plea discussion does not result in a plea of guilty, or if a plea of guilty is not accepted or is withdrawn, or if judgment on a plea of guilty is reversed on direct or collateral review, neither the plea discussion nor any resulting agreement, plea, or judgment shall be admissible against the defendant in any criminal proceeding."

A two-part test is applied to determine whether a particular statement is plea related. First, the court considers whether the accused exhibited a subjective expectation to negotiate a guilty plea. Second, the court considers whether this expectation was reasonable under the totality of circumstances.

Not all statements made by a defendant in the hope of obtaining concessions are plea discussions. Whether a statement is a plea discussion or an admission turns on the factual circumstances of each case. Before a discussion can be considered plea related, it must contain the rudiments of the negotiation process, *i.e.*, it must exhibit a willingness by defendant to enter a plea of guilty in return for concessions by the State. Where the defendant's subjective expectations to engage in plea negotiations are not explicit, the objective circumstances surrounding the statement take precedence in evaluating whether the statement was plea related.

Defendant made statements on two occasions while he was in police custody before any charges had been filed. Neither statement shows a subjective intention by defendant to negotiate a guilty plea.

First, defendant asked a detective what "guarantees would he have" if he confessed and was told he would have none. Defendant did not specify what "guarantees" he was seeking or explain what his confession would entail. He did not ask to speak with a prosecutor. He never said he was willing to plead guilty or discussed pleading guilty. Not all statements made in the hopes of obtaining some concession are plea related. Rule 402(f) was not intended to exclude mere offers to cooperate with the police.

Second, defendant told a prosecutor he wanted to know that he had guarantees that he was not going to jail if he spoke to him and the prosecutor told him he could not give him any guarantees. Again, defendant did not offer to plead guilty or even to confess. Defendant may have meant to provide a statement exonerating himself.

Even if defendant had intended to negotiate a guilty plea, his expectation would not have been reasonable where both the detective and the prosecutor told defendant they could not offer him any guarantees.

Therefore, defendant's statements were independent admissions that were admissible at trial.

People v. Ramirez, 98 Ill.2d 439, 457 N.E.2d 31 (1983) It was proper for the prosecutor to read portions of defendant's trial testimony into evidence at the death penalty sentencing hearing. Since defendant voluntarily testified at trial, such testimony could be introduced even though defendant chose not to testify at the sentencing hearing.

People v. Hill, 78 Ill.2d 465, 401 N.E.2d 517 (1980) Following defendant's arrest, he talked with an assistant state's attorney and said, "I want to talk a deal." The assistant responded, "I guess I could talk a deal with you, but the only person who could approve a deal would be the State's Attorney himself, but I can talk to you." Defendant then made certain admissions that were introduced against him at his trial for murder.

The above admissions by defendant constituted statements made in the course of plea negotiations. Thus, they could not be properly used against him at trial. (See [Illinois Supreme Court Rule 402\(f\)](#)).

Further, despite overwhelming evidence of a defendant's guilt, the use of such an admission has a "devastating effect" and is so prejudicial as to require reversal.

People v. Friedman, 79 Ill.2d 341, 403 N.E.2d 229 (1980) Defendant's unsolicited statement to an investigator of the Attorney General's office was a plea-related discussion and was inadmissible at trial.

During the conversation, defendant inquired about "making a deal" and stated generally the terms on which he would be willing to bargain. "The fact that the party to whom the statements were made did not have actual authority to enter negotiations is not, standing by itself, sufficient to render the statement admissible."

People v. Sturgis, 58 Ill.2d 211, 317 N.E.2d 545 (1974) Testimony of defendant or documents attested to by him in conjunction with his motion to suppress may not be used by the State in its case in chief at trial, but may be used as impeachment if defendant testifies at trial. See also, **People v. Wolfram**, 12 Ill.App.3d 262, 298 N.E.2d 188 (1st Dist. 1973).

Illinois Appellate Court

People v. Eubanks, 2020 IL App (3d) 180117 Defendant entered into a plea agreement with the State which required that he provide a truthful statement and testify against his codefendants. He provided a videotaped statement and pled guilty, but ultimately withdrew the plea. Defendant sought to suppress his statement under the fifth and fourteenth amendments. His motion was denied and the matter proceeded to a stipulated bench trial at which defendant was convicted. On direct appeal, defendant argued that his statement was made during plea negotiations and was therefore inadmissible. The Appellate Court could not determine whether the statement was made pursuant to plea negotiations and recommended that defendant raise the issue in a post-conviction petition.

In post-conviction proceedings, defendant asserted ineffective assistance of trial counsel for failing to move to suppress his statement under Rule 402(f), which provides that if a plea is withdrawn, plea discussions and the resulting agreement are not admissible against defendant. Defendant argued that his video statement was part of the plea discussions within the meaning of Rule 402(f). Following an evidentiary hearing, defendant's petition was denied, and the Appellate Court affirmed.

The Appellate Court held that defendant's video statement was given as a result of the plea agreement, but it was not made during plea discussions. Therefore, Rule 402(f) did not apply to exclude defendant's statement. The statement was not a condition precedent to the plea agreement; had defendant not provided a truthful statement, he simply would have been in breach of the agreement.

The dissenting justice would have barred use of the statement on the basis that Rule 402(f) does not distinguish between statements made during plea negotiations and statements offered pursuant to such negotiations.

People v. Neese, 2015 IL App (2d) 140368 Under Supreme Court **Rule 402(f)**, if a plea discussion does not result in a guilty plea then any such discussion is not admissible against the defendant. But not all statements made by a defendant hoping to obtain a concession constitute plea discussions. Any person who voluntarily speaks to the police probably hopes to benefit, and **Rule 402(f)** was not designed to discourage legitimate interrogation. **Rule 402(f)** thus does not exclude mere offers to cooperate with the police unless such offers are accompanied by the rudiments of the plea-negotiation process.

Courts employ a two-part test for deciding whether particular statements are part of plea discussions: (1) whether the defendant had a subjective expectation to negotiate a plea, and (2) whether his expectation, assuming it existed, was objectively reasonable.

Here, an officer called defendant about the theft of coins from an apartment building. Defendant stated that he wanted to speak in person to the officer and the complainant. The officer told defendant that if he came to the station and gave a full written confession, he

would consider, but not guarantee, charging him with a misdemeanor. When defendant agreed to come to the station, the officer asked him what he would say. Defendant admitted that he took the coins.

The Appellate Court, employing the two-part test, held that [Rule 402\(f\)](#) did not apply to defendant's statements. First, there was no evidence defendant subjectively expected that he was involved in a plea discussion. He never mentioned a plea or indicated that he expected to plead guilty. Second, any belief would not have been reasonable since there was no indication that the officer had the authority to enter into a plea agreement, especially since the officer never mentioned a plea during the conversation.

The Appellate Court reversed the trial court's order suppressing defendant's statements.

People v. Ousley, 297 Ill.App.3d 758, 697 N.E.2d 926 (3d Dist. 1998) The trial judge committed plain error by admitting a statement defendant made during an aborted guilty plea hearing. Admission of the statement violated Supreme Court [Rule 402\(f\)](#), which provides that where a guilty plea is not accepted, "neither the plea discussion nor any resulting agreement, plea, or judgment shall be admissible against the defendant in a criminal proceeding."

People v. Connolly, 186 Ill.App.3d 429, 542 N.E.2d 517 (4th Dist. 1989) At defendant's trial for burglary, the State introduced the testimony of a police officer that following his arrest, defendant inquired as to whether "deals" were made in the county. Although not a clear statement of defendant's willingness to bargain, the statement could have been construed as an admission of guilt. Its introduction was improper under Supreme Court [Rule 402\(f\)](#).

People v. Wilkerson, 123 Ill.App.3d 527, 463 N.E.2d 139 (4th Dist. 1984) A defendant's trial testimony may be properly introduced against him at a later trial. See also, [People v. Lee](#), 88 Ill.App.3d 396, 410 N.E.2d 646 (2d Dist. 1980).

People v. Hardiman, 85 Ill.App.3d 347, 406 N.E.2d 842 (5th Dist. 1980) Following defendant's arrest, he wrote a letter to a probation officer offering to plead guilty to the offense charged in exchange for a guarantee of parole. The State was allowed to use this letter to impeach defendant on cross-examination.

The letter was part of a plea discussion; thus, its use at trial violated Supreme Court [Rule 402\(f\)](#). Based on the facts of this case, "it was not unreasonable for defendant to have concluded that [the probation officer] was a man of some authority, possessed of the power to negotiate a plea."

People v. Benniefield, 88 Ill.App.3d 150, 410 N.E.2d 455 (1st Dist. 1980) The State's cross-examination of defendant, concerning statements he made during plea negotiations, was reversible error, rejecting the State's contention that statements made during plea bargaining, though not admissible in the State's case in chief, should be allowed to impeach a defendant on cross-examination.

Issue was reached as "plain error," since defendant failed to object to the cross-examination and failed to include the issue in his post-trial motion.

People v. Glidewell, 17 Ill.App.3d 735, 308 N.E.2d 218 (4th Dist. 1974) A confession that also contained references to plea negotiations was read to the jury. The reading of the plea negotiation references was reversible error.

§10-10

Use of Codefendants' Statements

United States Supreme Court

Samia v. United States, 599 U.S. __ (2023) The State tried three co-defendants for offenses relating to the murder-for-hire of real estate agent Catherine Lee. The State alleged that co-defendant Hunter hired co-defendants Stillwell and defendant to kill Lee. The State theorized that Stillwell and defendant posed as home buyers, and while Lee drove them to visit properties in a van, defendant shot Lee. The State sought to introduce Stillwell's confession at trial. In this confession, Stillwell admitted he was in the van when defendant shot Lee. The State agreed to redact the confession so that it said Stillwell was in the van when "the other person" shot Lee. The jury was instructed to consider this evidence only for purposes of Stillwell, not defendant or Hunter. All three were convicted of all counts.

Defendant alleged on appeal that the introduction of Stillwell's statement violated the confrontation clause. The Second Circuit affirmed, and the Supreme Court also affirmed. The court first found that Stillwell's statement was "testimonial." But a testimonial statement violates the confrontation clause only when used "against the accused." Defendant argued that the confession clearly implicated him, as the other evidence at trial showed he was the only other person in the van.

Sixth amendment jurisprudence has long permitted a non-testifying co-defendant's confession to be admitted at a joint trial as long as the jury is properly instructed not to consider it against the non-confessing defendant. But an exception exists for confessions which implicate the co-defendant directly. **Bruton v. United States**, 391 U.S. 123. Such confessions are inadmissible regardless of jury instructions, as the risk of prejudice is too great.

In **Richardson v. Marsh**, 481 U.S. 200, the court limited this exception to confessions that are incriminating on their face. If the confession only implicates defendant when linked with other evidence in the case, an instruction may be sufficient to protect defendant's sixth amendment rights. However, in **Gray v. Maryland**, 523 U. S. 185, 194, the court found that simply deleting the defendant's name from a confession, and leaving a blank space, is too obviously accusatory and would violate **Bruton**.

Here, by replacing defendant's name with "the other person," the trial court complied with these precedents and avoided a confrontation clause violation. The court redacted defendant's name in accordance with **Bruton**, and did so in a way that was not as obvious as the redaction in **Gray**. The neutral reference to "the other person" was not akin to an obvious blank or the word "deleted." Because the confession only indirectly implicated defendant, it did not run afoul of the confrontation clause.

The three dissenting justices would have found no practical difference between this case, **Bruton**, and **Gray**. In all three, it's obvious the confession refers to the defendant.

Crawford v. Washington, 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004) A testimonial hearsay statement may not be introduced against defendant at trial unless the declarant testifies or the declarant is unavailable as a witness and defendant has had a prior opportunity to cross-examine the declarant about the statement.

Lilly v. Virginia, 527 U.S. 116, 119 S.Ct. 1887, 144 L.Ed.2d 117 (1999) A plurality of the court held that the Confrontation Clause is violated by admitting, as a declaration against

penal interest, a codefendant's statement which inculcates defendant and lacks particularized guarantees of trustworthiness.

Gray v. Maryland, 523 U.S. 185, 118 S.Ct. 1151, 140 L.Ed.2d 294 (1998) The **Bruton** rule applies where the confession of a nontestifying codefendant is admitted after being redacted by the substitution of symbols, a blank space, the word "deleted," or some other method that leaves "an obvious indication of deletion." Because the codefendant's confession was redacted in a manner that left references to a codefendant and failed to remove all references to the existence of multiple perpetrators, **Bruton** was violated. See also, **People v. Williams**, 182 Ill.2d 171, 695 N.E.2d 380 (1998) (federal and state constitutions were violated by admission of the redacted statement of a nontestifying codefendant which made no direct reference to defendant by either his name or nickname, but in view of the evidence made it clear that defendant was the unnamed person to whom the statement referred).

Cruz v. New York, 481 U.S. 186, 107 S.Ct. 1714, 95 L.Ed.2d 162 (1987) Statement of a nontestifying codefendant may not be introduced at a joint trial, even if defendant's own statements are similar to or "interlock" with the codefendant's.

Richardson v. Marsh, 481 U.S. 200, 107 S.Ct. 1702, 95 L.Ed.2d 176 (1987) Defendant was jointly tried with a codefendant. The State was allowed to introduce the confession of the nontestifying codefendant, which had been redacted to omit any reference to defendant. In addition, the jury was instructed not to use the confession against defendant in any way.

Use of the above codefendant's confession did not violate the confrontation clause or **Bruton**; the statement was redacted not only to eliminate the name of defendant but also any reference to her existence, and the jury received a limiting instruction.

Bruton is limited to codefendant statements that are on their face incriminating to the other defendant. **Bruton** does not apply to statements which become incriminating only when linked with other evidence at trial.

Lee v. Illinois, 476 U.S. 530, 106 S.Ct. 2056, 90 L.Ed.2d 514 (1986) At a joint bench trial for murder, the confession of the codefendant, who did not testify, was introduced by the State and was considered by the trial judge as substantive evidence of defendant's guilt. A codefendant's confession inculcating defendant is "presumptively unreliable," and its substantive use against defendant violates the right of confrontation. A codefendant's confession detailing defendant's conduct or culpability is "less credible than ordinary hearsay evidence," due to the codefendant's "strong motivation to implicate the defendant and to exonerate himself" and the "desire to shift or spread blame, curry favor, avenge himself, or divert attention to another." Thus, "when one person accuses another of a crime under the circumstances in which the declarant stands to gain by inculcating another, the accusation is presumptively suspect and must be subjected to the scrutiny of cross-examination."

Tennessee v. Street, 471 U.S. 409, 105 S.Ct. 2078, 85 L.Ed.2d 425 (1985) Defendant testified that his confession, introduced by the State, was obtained by a sheriff who read an accomplice's confession and directed defendant to say the same thing. The State then called the sheriff, who denied defendant's claim. The sheriff read the accomplice's confession and pointed out the differences between it and defendant's confession. The trial judge instructed the jury that the accomplice's confession was admitted only for the purpose of rebuttal and not to prove its truthfulness.

Use of the accomplice's confession for the nonhearsay purpose of rebutting defendant's testimony did not violate the confrontation clause, and the instructions were appropriate to limit the jury's use of the evidence.

Schneble v. Florida, 405 U.S. 427, 92 S.Ct. 1056, 31 L.Ed.2d 340 (1972) "**Bruton** error" held harmless. See also, **Brown v. U.S.**, 411 U.S. 223, 93 S.Ct. 1565, 36 L.Ed.2d 208 (1973); **People v. Janes**, 138 Ill.App.3d 558, 486 N.E.2d 317 (2d Dist. 1985).

Bruton v. U.S., 391 U.S. 123, 88 S.Ct. 1620, 20 L.Ed.2d 476 (1968) A defendant's right of cross-examination is violated by the prosecution's use, at a joint trial, of a non-testifying codefendant's confession inculcating the accused. Jury instructions to disregard the statement as to defendant were not sufficient to cure the prejudice. See also, **People v. Johnson**, 13 Ill.2d 619, 150 N.E.2d 597 (1958).

Illinois Supreme Court

People v. Cruz, 121 Ill.2d 321, 521 N.E.2d 18 (1988); **People v. Hernandez**, 121 Ill.2d 293, 521 N.E.2d 25 (1988) Defendants Cruz and Hernandez were jointly tried before a jury and were convicted of murder and several other offenses. A third defendant was also tried at the joint trial, but the jury could not reach a verdict in regard to the charges against him.

Both defendants were denied fair trials because out-of-court statements of each were introduced at trial. The statements of both defendants were redacted to eliminate the names of the codefendants, and in place of the names the terms "friends" and "named individuals" were used.

The redactions were insufficient. The State called certain witnesses for the sole purpose of showing that the three codefendants were friends, and in closing argument the prosecutor implied that the friendship of the defendants allowed the jury to consider the statements against the other defendants. This was found to be a deliberate attempt to circumvent **Bruton**.

Also, the prosecutor brought out the fact that the statements had been redacted. "Informing jurors that statements have been redacted can itself be grounds for a mistrial and, in this case, put the jurors on notice that the testimony was being edited to protect someone involved in the trial, encouraging them to speculate as to the missing names." (**Cruz**) "On notice that the defendants' admissions were being edited, it was not difficult for the jurors to recognize the connection between the prosecutor's repeated elicitation of testimony that the three defendants were friends, and the use of 'friends' in testimony regarding [the] statements." (**Hernandez**)

Because the evidence against defendants was not overwhelming, and despite the giving of limiting instructions, the use of the above statements was prejudicial error.

People v. Duncan, 124 Ill.2d 400, 530 N.E.2d 423 (1988) At a joint trial, the State's introduction of the statements of the nontestifying codefendant, even with limiting instructions, deprived defendant of a fair trial. Essentially, the statements of the codefendant named the murder victim and "Bill" (defendant's first name is William) as the two people who stood in his way of taking over the local drug traffic. The statements also said that the codefendant would procure drugs from someone who would bring them from Kansas City.

Other evidence showed that defendant was acquainted with a Kansas City drug dealer and had brought drugs back from Kansas City. It was the State's theory that the codefendant made a deal with defendant regarding drugs, and that they then murdered the deceased.

The codefendant's statements, coupled with the other evidence, incriminated defendant and were improperly admitted.

Also, introduction of the codefendant's statements violated Illinois evidentiary law, as set out in prior decisions:

"Illinois courts have for about a century warily approached the admissibility of nontestifying codefendants' statements and have done so quite independently of the Federal constitutional doctrine underlying both **Bruton** and **Richardson**."

See also, **Crawford v. Washington**, 541 U.S. 36 (2004).

People v. Johnson, 116 Ill.2d 13, 506 N.E.2d 563 (1987) It was reversible error for police officers to testify that codefendants, who did not testify, implicated defendant in the crimes. See also, **Crawford v. Washington**, 541 U.S. 36 (2004); **People v. Burns**, 171 Ill.App.3d 178, 524 N.E.2d 1164 (1st Dist. 1988).

Illinois Appellate Court

People v. Rebollar-Vergara, 2019 IL App (2d) 140871 At defendant's murder trial, evidence showed that on the night of the offense he and Garcia left a party and went to a convenience store. Defendant was a former Latin King, and thought Garcia was a Latin King, but he did not know him very well. They encountered the victim, a suspected rival, argued with him, and followed him out of the store. Defendant intended to fight him, and did not know Garcia was armed. Suddenly, Garcia shot and killed the victim. Garcia confessed, stating that he alone shot the victim, and that defendant should not be charged with murder. The defense moved to admit Garcia's statement that defendant should not be charged, but the trial court denied the request.

The Appellate Court affirmed, finding that the statement met only one **Chambers** factor – it was made shortly after the offense. The court found the statement was not corroborated, because surveillance video showed defendant walking side-by-side with Garcia during the shooting. The statement was not self-incriminating, because whether defendant was charged or not did not bear on Garcia's guilt. The statement lacked trustworthiness given Garcia's incentive to protect a member of his gang and his later recantation his confession.

People v. Lucious, 2016 IL App (1st) 141127 The State charged defendant and his co-defendant with aggravated robbery which required proof that defendant or co-defendant indicated verbally or by their actions that they were armed. (720 ILCS 5/18-1(b)) At a joint bench trial, the State introduced evidence that co-defendant admitted to police that he told the victim "Don't make him [defendant] shoot you." In finding both defendants guilty, the trial court cited co-defendant's statement as evidence supporting the aggravated robbery charge. Defendant's counsel did not object to the court's reliance on this evidence.

The confrontation clause is violated when a trial court presiding over a joint bench trial expressly relies on a co-defendant's statement as evidence of defendant's guilt. The Appellate Court held that counsel was ineffective for failing to object to the trial court's consideration of the co-defendant's out-of-court statement as evidence against defendant. The court acknowledged that at a joint bench trial the trial court is expected to be able to consider the evidence against each defendant separately. But here the trial court expressly considered co-defendant's statement as evidence of defendant's guilt. Once that occurred, trial counsel had a duty to object to the trial court's improper use of the evidence. Counsel's failure to do so constituted ineffective assistance.

People v. Santiago, 409 Ill.App.3d 927, 949 N.E.2d 290 (1st Dist. 2011) Just as evidence of a co-defendant's confession is inadmissible as evidence of defendant's guilt, evidence that a co-defendant pleaded guilty or was convicted is inadmissible as evidence of defendant's guilt. A defendant is entitled to have his guilt or innocence determined based on the evidence against him without being prejudged according to what has happened to another. **People v. Sullivan**, 72 Ill.2d 36, 377 N.E.2d 17 (1978).

The court held that this rule was not violated where the prosecutor elicited from the co-defendants that they had pleaded guilty, but in the context of admitting statements that they had made at their plea hearings acknowledging the accuracy of their post-arrest statements. The post-arrest and guilty-plea statements inculcating defendant were admitted as substantive evidence pursuant to 725 ILCS 5/115-10.1 as they were inconsistent with the co-defendants' testimony at trial. The State never argued to the jury or even suggested that the co-defendants' guilt was evidence of defendant's guilt.

Justice Robert E. Gordon specially concurred. It was error, although harmless, to elicit evidence of co-defendants' guilty pleas, where it was not necessary to elicit that evidence in order to introduce the prior inconsistent statements they made at the plea hearing.

People v. Collins, 184 Ill.App.3d 321, 539 N.E.2d 736 (1st Dist. 1989) Prior to their joint trial for murder and other offenses, three codefendants moved for severance on the basis that all had made statements incriminating each other. The trial judge denied the motion on the ground that the statements were "interlocking." At the jury trial, the written statements of the three codefendants were introduced. One defendant testified, but the other two did not.

Statements of a codefendant may not be introduced even if they are "interlocking." Also, under **People v. Duncan**, 124 Ill.2d 400, 530 N.E.2d 423 (1988), the introduction of the codefendants' statements violated Illinois evidentiary law.

People v. Quick, 308 Ill.App.3d 474, 720 N.E.2d 1137 (3d Dist. 1999) The Confrontation Clause was violated by admission of another suspect's taped statement accusing defendant of the crime, where the declarant was granted immunity but refused to answer any questions when called at defendant's trial. The statement was not accompanied by sufficient indicia of trustworthiness - by the time the codefendant inculpated defendant "he would have reasonably believed himself to be a suspect in the shooting," the statement admitted the declarant was an accessory but placed primary blame for the offense on defendant, the declarant had no motive to protect defendant, and the statement was made in response to leading questions.

The error was not harmless where the statement was the primary evidence identifying defendant as the shooter and the only evidence linking defendant to the type of weapon fired and shell casings recovered at the scene. In addition, the remaining evidence was largely circumstantial.

People v. Davenport, 301 Ill.App.3d 143, 702 N.E.2d 335 (1st Dist. 1998) Defendant argued that he was denied a fair trial because he could not cross-examine a codefendant concerning his tattoos, which the codefendant was required to display to the jury while a witness associated the tattoos with a gang. The introduction of tattoos on a codefendant's body was found to be demonstrative evidence rather than testimony, and therefore falls outside the right to confrontation.

However, the court criticized the State for requiring the codefendant to physically exhibit the tattoos in open court, stating that it "certainly had less inflammatory means of presenting the tattoos to the jury, such as by photographs."

People v. Reeves, 271 Ill.App.3d 213, 648 N.E.2d 278 (1st Dist. 1995) At defendant's trial for first degree murder and aggravated arson, the trial court allowed Willie Williams to testify that a few days after the offenses, he engaged in a conversation with defendant's codefendant. Williams testified that he then called a police detective and said that his friends had committed the murders. The State argued that Williams's testimony was not a **Bruton** violation because the substance of the codefendant's statement was never revealed.

As a matter of plain error, it was held that the substance of the codefendant's statements had been revealed when the prosecutor referred to Williams's statements in opening and closing argument and specifically said that the codefendant had implicated both himself and defendant. In addition, the substance of the statement was revealed by Williams's testimony that after he talked with the codefendant, he told police that he knew something about the murders.

People v. Brown & Harper, 253 Ill.App.3d 165, 624 N.E.2d 1378 (1st Dist. 1993) Because each defendant had given a statement accusing the other, simultaneous trials were held before separate juries. However, an assistant prosecutor confused the defendants' statements, and informed Harper's jury of matters contained only in Brown's statement. The prosecutor also confused the statements and other evidence during closing argument, and made assertions to Harper's jury which were based on evidence presented only to Brown's jury.

The joint jury procedure is not unconstitutional where defendant has a complete opportunity to present his defense, nothing occurs to confuse the jury or affect its ability to be impartial, and the trial judge adequately prepares the jury for the procedure. However, reversible error occurs where, as here, evidence admissible only as to one defendant is presented to the other jury.

People v. Colbert, 240 Ill.App.3d 511, 608 N.E.2d 491 (1st Dist. 1992) At defendant's trial for murder, the State introduced a confession in which a codefendant claimed that he had performed the shooting at defendant's direction. In testifying about the statement, the officer substituted the word "friend" whenever the confession mentioned defendant's name. When the statement was published to the jury, "friend" was substituted for the names of defendant and a third person.

Admission of the statement violated defendant's right to confrontation. The statement indicated that the "friend" who ordered the shooting was driving a yellow Chevrolet, and the State introduced testimony that defendant owned a seventies-model Chevrolet. Under these circumstances, the jury would necessarily conclude that the "friend" was defendant. Because the State's attempted redaction of the statement did not remove all references to defendant, admission of the statement was reversible error.

People v. Moman, 201 Ill.App.3d 293, 558 N.E.2d 123 (1st Dist. 1990) Defendant and a codefendant were jointly tried and convicted of armed robbery. Both defendants testified at trial, and both made pretrial statements that were introduced by the State. The statements were substantially similar or "interlocking."

Admission of the codefendant's statement did not violate the Sixth Amendment, because the codefendant testified at trial and was subject to cross-examination.

However, the admission of the codefendant's statement did violate Illinois evidentiary law. Under Illinois law, a codefendant's statement is not admissible, regardless whether he testifies or whether such statement "interlocks" with defendant's own statement. However,

the error was harmless based on the testimony of the victim and defendant's confession, which corroborated the victim's testimony.

People v. Jones, 169 Ill.App.3d 883, 524 N.E.2d 593 (1st Dist. 1988) Defendants Jones and Nowden were jointly tried before a jury. Both defendants made out-of-court statements that were introduced at trial. Jones testified at trial, but Nowden did not.

Jones was denied a fair trial by the introduction of Nowden's statement. Jones did not confess, and there was virtually no physical evidence connecting him to the crimes. Nowden's statement was the only evidence that placed Jones at the crime scene. Consequently, the introduction of Nowden's statement was prejudicial to Jones.

However, Nowden was not prejudiced by the introduction of Jones' statement. Jones testified at trial and was subject to cross-examination regarding his statement. Also, **Jones** denied the truth of his statement incriminating Nowden, and did not otherwise incriminate Nowden. See also, **Crawford v. Washington**, 541 U.S. 36 (2004) (defendant's confrontation clause rights are violated by the introduction testimonial hearsay of a non-testifying individual).

People v. Pettis, 104 Ill.App.3d 275, 432 N.E.2d 935 (1st Dist. 1982) **Bruton** rule is applicable at bench trials. Here, the presumption that the trial judge only considered proper evidence was rebutted, because the codefendant's statement was the only evidence on one element of the crime.

People v. Henderson, 95 Ill.App.3d 291, 419 N.E.2d 1262 (3d Dist. 1981) At defendant's trial for theft, the prosecutor was allowed to cross-examine the codefendant concerning the latter's plea of guilty. The codefendant was asked if he recalled at his guilty plea proceeding, the prosecutor gave a factual basis which included the fact that defendant and the stolen property were present in the codefendant's car. The codefendant acknowledged that the prosecutor had given such a synopsis and that he had not voiced disagreement.

The above examination was improper. Statements made by the prosecutor at a guilty plea cannot be deemed statements or admissions by the co-defendant, who had made no affirmative statements incriminating defendant. The codefendant's failure to disagree with the factual basis does not constitute an implied admission, since the prosecutor's synopsis was not of "such character as naturally to call for a response." Finally, the codefendant did not assent to the accuracy of the synopsis, but only that testimony of defendant's presence would be presented. See also, **People v. Trayler**, 200 Ill.App.3d 86, 559 N.E.2d 286 (3d Dist. 1990).

People v. Brown, 7 Ill.App.3d 748, 289 N.E.2d 452 (4th Dist. 1972) Admission of a statement by codefendant, which was inculpatory to defendant, was prejudicial error even without an objection. See also, **People v. Hopkins**, 124 Ill.App.2d 415, 259 N.E.2d 577 (5th Dist. 1970).

§10-11

Statements Made During Mental Examinations

United States Supreme Court

Kansas v. Cheever, 571 U.S. 87, 134 S. Ct. 596, 187 L. Ed. 2d 519 (2013) Under the Fifth Amendment, when a criminal defendant neither initiates a psychiatric evaluation nor

introduces any psychiatric evidence, his compelled statements to a psychiatrist cannot be used against him. [Estelle v. Smith](#), 451 U.S. 454 (1981). But if defendant introduces psychiatric evidence related to his mental-status defense, the Fifth Amendment allows the prosecution to present evidence from a court-ordered psychiatric evaluation to rebut that defense. [Buchanan v. Kentucky](#), 483 U.S. 402 (1987).

Defendant offered expert testimony that his methamphetamine use rendered him incapable of forming the requisite *mens rea* to support his voluntary-intoxication defense. The prosecution rebutted the testimony of the defense expert with the testimony of its own expert, who had conducted a court-ordered evaluation of the defendant.

Because a defense expert who examined the defendant testified that defendant lacked the requisite mental state to commit the charged offense, the prosecution was entitled to offer its expert evidence in rebuttal. This rule harmonizes with the principle that when a criminal defendant chooses to testify, the Fifth Amendment does not allow him to refuse to answer related questions on cross-examination. When a defendant presents evidence through a psychological expert who has examined him, the government likewise is permitted to use the only effective means of challenging that evidence—testimony from an expert who has examined defendant. Any other rule would undermine the adversarial process.

This rule is not limited to rebut evidence of a mental disease or defect. It extends to any mental-status defense, which includes those based on psychological expert evidence as to a defendant's *mens rea*, mental capacity to commit the offense, or ability to premeditate. It is not limited to affirmative defenses, it does not depend on whether the evaluation was jointly requested, and it is irrelevant that the mental condition is temporary rather than permanent.

[Estelle v. Smith](#), 451 U.S. 454, 101 S.Ct. 1866, 68 L.Ed.2d 359 (1981) Statements that defendant made to a psychiatrist at a court ordered examination may not be used at the penalty phase of a capital trial, unless before the interview defendant was advised of his right to remain silent and that his statements could be used against him. "A criminal defendant, who neither initiates a psychiatric evaluation nor attempts to introduce any psychiatric evidence, may not be compelled to respond to a psychiatrist if his statements can be used against him at a capital sentencing proceeding."

In addition, defendant's Sixth Amendment right was violated by the State's failure to give defense counsel advance warning of the psychiatric examination. Compare, [People v. West](#), 137 Ill.2d 558, 560 N.E.2d 594 (1990).

Illinois Supreme Court

[People v. Haynes](#), 192 Ill.2d 437, 737 N.E.2d 169 (2000) Appellate counsel was not ineffective on direct appeal for failing to argue that defendant's statements to a State psychiatrist should have been excluded under [Estelle v. Smith](#), 451 U.S. 454 (1981), because defendant had not been advised of his **Miranda** rights. **Estelle** was distinguishable on at least three grounds.

First, in [Estelle](#) the expert acted as an agent of the State in eliciting incriminating statements without providing **Miranda** warnings. Here, the subject matter in question was introduced before the witness testified, mostly by defendant himself. The court stated, "[W]e cannot discern how defendant's right against self-incrimination was violated by [the State expert's] testimony when defendant, of his own volition, had already placed this information into the record."

Second, in [Estelle](#) the statements were used at sentencing to carry the State's burden of proof to obtain a death sentence. Here, the evidence was admitted only at a fitness hearing.

Finally, in [Estelle](#) defense counsel was not notified of the psychiatric examination. Here, defense counsel initiated the request for a fitness examination. "[W]e have previously held that [Estelle](#) 'seemingly excepts defense-initiated examinations from the scope of the rule.'"

[People v. Mahaffey](#), 166 Ill.2d 1, 651 N.E.2d 1055 (1995) There is no constitutional right to have defense counsel present during a psychiatric examination conducted by the prosecution's expert as part of a fitness inquiry, affirming [People v. Larsen](#), 74 Ill.2d 348, 385 N.E.2d 679 (1979), Although [Estelle v. Smith](#), 451 U.S. 454 (1981) did not expressly rule on this question, the [Estelle](#) court recognized that valid diagnostic reasons exist for refusing to allow counsel to attend a psychiatric examination.

Defendant also argued that at the second stage of his death hearing, the trial court erroneously admitted evidence obtained during a psychiatric interview at which defendant did not receive **Miranda** warnings. Although [Estelle](#) requires such warnings, no reversible error occurred where defendant waived the issue by failing to object to the expert's testimony at the sentencing hearing. In addition, the fitness determination was sought by defense counsel, and [Estelle](#) "seemingly excepts defense-initiated examinations from the scope of its rule."

[People v. Wilson](#), 164 Ill.2d 436, 647 N.E.2d 910 (1994) A mental health counselor who visited defendant in jail was not required to give **Miranda** warnings. [Estelle](#) does not apply unless the counselor's visit is the result of a court order.

[People v. Kashney & Lee](#), 111 Ill.2d 454, 490 N.E.2d 688 (1986) During separate trials of the defendants the State introduced, for impeachment purposes, statements made by defendants to court-appointed psychiatrists who examined them to determine their fitness for trial. Pursuant to statute, statements made during a court-ordered fitness examination can be utilized by the State for only one purpose - to rebut the defenses of insanity or drugged or intoxicated condition.

In [Lee](#), defendant's statement was improperly introduced. Lee did not raise the affirmative defense of insanity by introducing expert testimony that he suffered from post-traumatic stress syndrome. The record showed that defendant testified, denied the offense (rape) and claimed that the sexual intercourse was consensual. The defense called a psychiatrist "to explain why he might verbally abuse the complainant during what he claimed was consensual intercourse and why, as a result, the complainant might accuse him of rape." Also, on cross-examination of this psychiatrist, "the State established that the defendant was not legally insane at the time of the offense charged."

In [Kashney](#), however, defendant waived the statutory protection by introducing the substance of statements he made during his fitness examinations, regardless of whether he raised the defense of insanity.

[People v. Allen](#), 107 Ill.2d 91, 481 N.E.2d 690 (1985) Statements defendant made to a psychiatrist during a compulsory examination under the Sexually Dangerous Persons Act "may not be used against him in any subsequent criminal proceedings." See also, [Allen v. Illinois](#), 478 U.S. 364, 106 S.Ct. 2988, 92 L.Ed.2d 296 (1986).

Illinois Appellate Court

People v. Hillier, 392 Ill.App.3d 66, 910 N.E.2d 181 (3d Dist. 2009)

Hillier was convicted of predatory criminal sexual assault. He argued that the trial court violated Illinois law and the Fifth Amendment by compelling him to submit to a sex offender evaluation which concluded that he fell in a “high category” of recidivism, a factor that the trial court expressly used to enhance his sentence.

Under Illinois law, a felony sex offender who is being considered for probation must submit to a sex offender evaluation as part of the presentence investigation. 20 ILCS 4026/16; 730 ILCS 5/5-3-2(b-5). Defendant argued that because he was convicted of predatory criminal sexual assault of a child, a non-probationary Class X felony, the trial judge had no statutory authority to order him to submit to the evaluation.

The court rejected this claim, noting that no Illinois statute prohibits a trial court from ordering a sex offender evaluation in a case where probation is not an available sentence. The statute governing presentence reports “specifically allows the trial court to order supplementary information to be included in a presentence report . . . and . . . we see no reason to disallow a sex offender evaluation in non-probationary cases if the trial court deems it helpful in sentencing a defendant.”

Defendant also contended that error occurred because he was not advised that any statements made during the evaluation could be used against him at sentencing. The court rejected this argument, finding that unlike **Estelle v. Smith**, 465 U.S. 430 (1981), which involved a pretrial competency evaluation, defendant “was ordered to participate in the evaluation after he was convicted.” In addition, defendant was informed of the purpose of the evaluation, and the results were used solely for the stated purpose.

The majority opinion also cited several decisions holding that **Miranda** warnings are not required prior to presentence interviews or psychosexual evaluations.

Justice McDade dissented, finding that defendant’s statutory and constitutional rights had been violated. Justice McDade would have held that sex offender evaluations in non-probationary cases cannot be ordered without an express grant of authority from the legislature, and that the general language found in the presentence investigation statute is “not broad enough to encompass a sex offender evaluation.”

Justice McDade also believed that the Fifth Amendment is violated where a defendant is compelled to submit to a sex offender evaluation without being told that he may refuse to cooperate or that any information learned can be used to increase his sentence, and an increased sentence is subsequently based on negative information revealed in the evaluation. Under **Estelle**, “a criminal defendant may not be compelled to respond to a psychiatrist if his statements can be used against him at a sentencing proceeding.”

Finally, Justice McDade believed that an **Apprendi** violation occurred. Although the trial court “sentenced the defendant within the applicable statutory range . . . there was no doubt . . . that the trial judge imposed a harsher sentence by relying on facts in the evaluation which were not established beyond a reasonable doubt.”

People v. Slywka, 365 Ill.App.3d 34, 847 N.E.2d 780 (1st Dist. 2006) Defendant's Fifth Amendment right against self-incrimination was violated where statements which he made years earlier - to an official who was conducting a dispositional report for juvenile offenses arising from the same conduct - were introduced at an adult trial for murder. (Defendant was adjudicated delinquent for armed violence and aggravated battery, but was acquitted of attempt murder. After the victim died, defendant was prosecuted as an adult for murder).

People v. Marlow, 303 Ill.App.3d 568, 708 N.E.2d 579 (3d Dist. 1999) Although statements made to a psychiatrist during a compulsory examination may not be used against defendant

in subsequent criminal proceedings, any error was waived where the defense failed to object and in fact stipulated to admission of the evidence.

Updated: April 4, 2024