No. 09-11121

In the
Supreme Court of the United States

J.D.B.,
Petitioner,
v.
STATE OF NORTH CAROLINA,
Respondent.

On Writ of Certiorari to the Supreme Court of North Carolina

BRIEF FOR THE RESPONDENT

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QUESTION PRESENTED

Whether a court must consider the age of a juvenile in determining whether he is "in custody" for purposes of *Miranda v. Arizona,* 384 U.S. 436 (1966).

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STATEMENT

1. On September 24, 2005, the Chapel Hill, North Carolina Police Department received a report that two homes in the same neighborhood had been broken into. (J.A. 97a, 106a) Various items, including a digital camera, cell phone, and jewelry were stolen. (J.A. 97a, 106a-107a, 111a-113a, 122a)

Shortly after the break-ins, Chapel Hill Police Officer Andy Ennis stopped and briefly questioned two boys he saw looking into a back window at one of the two homes. (J.A. 107a, 111a) One of the boys, J.D.B., gave Officer Ennis a fictitious first name. (J.A. 107a, 111a, 122a) Officer Ennis also spoke to J.D.B.'s grandmother and aunt, who expressed hostility that J.D.B. had been stopped because they believed the stop was racially motivated. (J.A. 117a, 125a)

On September 26, 2005, Juvenile Investigator Joseph DiCostanzo of the Chapel Hill Police Department was assigned to the case. (J.A. 98a, 106a, 122a) When Investigator DiCostanzo interviewed one of the home owners (Paula Hemmer), she identified J.D.B. as a potential culprit. (J.A. 107a, 122a) Ms. Hemmer informed the investigator that J.D.B. had previously cut her grass, but she no longer employed him for yard services because she had lost her job. (J.A. 107a, 111a) Investigator DiCostanzo then asked Officer Ennis to look through a Smith Middle School year book to see if he could identify the boys he questioned on the day of the break-ins. (J.A. 107a,

122a) Officer Ennis identified a picture of J.D.B. (J.A. 107a, 122a)

On September 29, 2005, Smith Middle School Resource Officer Curt Gurley called Investigator DiCostanzo to inform him that a digital camera found at the school possibly matched the camera stolen during the break-ins. (J.A. 91a, 107a-108a, 122a) J.D.B. was a thirteen-year-old seventh grader enrolled in special education classes at Smith Middle School. (J.A. 143a) Investigator DiCostanzo went to the school and met with Officer Gurley, Assistant Principal David Lyons, and Mr. Lyons' intern. (J.A. 98a, 108a) He advised the school officials that there was information linking J.D.B. to the break-ins and asked them to verify J.D.B.'s date of birth, address, and parent contact information from his school records. (J.A. 124a-125a)

Mr. Lyons stated that he wanted to be involved in the interview of J.D.B. because a parent had found the camera and returned it to the school. (J.A. 108a) Investigator DiCostanzo agreed that Mr. Lyons should be a part of the interview. (J.A. 108a-109a)

Investigator DiCostanzo, Mr. Lyons, Mr. Benson, and Officer Gurley went into a conference room that had a large table with seating for twelve people. (J.A. 109a-110a, 126a) Investigator DiCostanzo first interviewed two female students who had seen J.D.B. with the camera. (J.A.110a, 122a-123a)

J.D.B. was then brought from his last class of the day to the conference room.[1] (J.A. 92a, 98a, 104a, 109a, 126a-127a, 144a)

When J.D.B. entered the room, Investigator DiCostanzo, who was wearing a suit jacket, a tie and slacks, introduced himself as a juvenile investigator with the Chapel Hill Police Department. (J.A. 110a, 127a) Investigator DiCostanzo told J.D.B. that he wanted to follow-up with him about his conversation with police officers the previous weekend and asked if J.D.B. "wanted to talk with [him] about it." (J.A. 110a) J.D.B. responded that he would be willing to talk. (J.A. 110a) J.D.B. explained to the officer that on that day, he was asking people if they needed their yard mowed. While going to various houses, the police stopped him, and J.D.B. then went home. (J.A. 110a)

Before the interview began, Investigator DiCostanzo engaged J.D.B. in "small talk" about sports and his siblings. (J.A. 114a, 127a, 144a) He then asked for more details about what happened over the weekend, such as which house the boys went to first. (J.A. 110a) J.D.B. replied that he and a boy named Jacob first went to Paula Hemmer's house because she was a regular customer, but she was not at home. (J.A. 110a-111a, 145a) After

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[1] The record is unclear as to who brought J.D.B. to the conference room, and the trial court made no factual findings on this specific point.

leaving Ms. Hemmer's house, they went to several other houses and knocked on the front doors. (J.A. 111a) They did not call any of the houses beforehand, but J.D.B. had previously put out some flyers offering to walk his neighbors' dogs. (J.A. 111a, 145a)

Investigator DiCostanzo asked J.D.B. to tell him about the time that Ms. Hemmer came home and found J.D.B. and his brother behind her house. (J.A. 111a, 130a) J.D.B. replied that they were "cutting through" her yard and that he asked Ms. Hemmer if he could cut her grass. Investigator DiCostanzo told J.D.B. that he knew Ms. Hemmer had lost her job and that she told J.D.B. he would not be able to cut her grass for the entire year. J.D.B. did not respond. (J.A. 111a) Investigator DiCostanzo then told J.D.B. he had the camera that was stolen from one of the homes that had been broken into, and Officer Gurley showed it to J.D.B. (J.A. 111a, 116a, 129a-130a, 146a)

At that point, J.D.B. became quiet, and Mr. Lyons encouraged J.D.B. "to do the right thing because the truth always comes out in the end." (J.A. 112a, 129a, 146a) J.D.B. asked "if he got the stuff back was he still gonna be in trouble." (J.A. 112a) Investigator DiCostanzo replied "that it would help to get the items back but that * * * this thing is going to court." (J.A. 112a, 130a) He also explained that a secure custody order could be obtained, "if [he] felt that [J.D.B.] was going to go out and break into

other people's houses again." (J.A. 112a) J.D.B. asked what a secure custody order was, and Investigator DiCostanzo explained "that it's where you get sent to juvenile detention before court." (J.A. 112a, 130a-131a)

At that point, Investigator DiCostanzo told J.D.B., "you don't have to speak to me; you don't have to talk to me; if you want to get up and leave, you can do so," but added that he hoped J.D.B. would listen to what he had to say. (J.A. 112a) Investigator DiCostanzo also asked J.D.B., "do you understand you're not under arrest and you don't have to talk to me about this," and J.D.B. "nodded his head yes." (J.A. 112a, 121a, 131a) J.D.B. then admitted that he and Jacob went into one of the houses and took a camera and cell phone. (J.A. 112a) He said it was Jacob's idea and that Jacob had the cell phone and charger. (J.A. 113a)

Investigator DiCostanzo asked J.D.B. about the other residence, and J.D.B. replied that Jacob had all the jewelry. (J.A. 113a) Investigator DiCostanzo asked how they got into the houses, and J.D.B. replied that the doors were unlocked. (J.A. 113a) He also stated that he placed the jewelry and other items in a backpack and left it outside his house before the police stopped him later that day. (J.A. 113a)

Investigator DiCostanzo asked J.D.B. to put his statement into writing to make sure he understood it

correctly. (J.A. 113a) J.D.B. wrote: "Sunday me and Jacob went to Paula's house and stole cell phone and camera and he stole some jewelry. The jewelry was taken out of Paula's house and we went back home and put it in the book bag." (J.A. 113a) J.D.B. signed the statement and wrote underneath his signature, "I'm gonna get Jacob to give the jewelry back." (J.A. 113a)

The school bell rang, signaling the end of the school day. (J.A. 113a) Investigator DiCostanzo asked J.D.B. how he normally got home, and J.D.B. stated that he rode the school bus. (J.A. 114a) Investigator DiCostanzo told J.D.B. to go ahead and leave, so he would not miss the bus. (J.A. 132a) He also told J.D.B. that he would see him in a little while because he was going to J.D.B.'s house to speak with his grandmother and aunt. (J.A. 114a, 132a)

J.D.B.'s interview lasted approximately thirty to forty-five minutes. (J.A. 116a) During the interview, J.D.B. "was surprisingly calm, spoke clearly, asked questions when he needed to," and did not attempt to leave the room or ask for a parent to be present. (J.A. 115a-116a) None of the other adults in the room said anything to J.D.B., except for the one instance when Mr. Lyons encouraged him to tell the truth. (J.A. 116a, 154a) The door to the conference room was closed during the interview. (J.A. 141a, 146a)

After the interview, Investigator DiCostanzo believed he had enough information to obtain a search warrant for J.D.B.'s residence. (J.A. 117a) He did not believe the family would consent to a search based upon the hostility they expressed about J.D.B.'s initial encounter with police. (J.A. 117a, 134a)

When Investigator DiConstanzo returned to the police department, his supervisor expressed concern that J.D.B. could potentially go home and destroy evidence. (J.A. 117a-118a) His supervisor also stated that someone needed to inform J.D.B.'s grandmother that a search warrant was being obtained. (J.A. 118a) Investigator DiCostanzo therefore drove Investigator Jay Hunter to J.D.B.'s house to speak with his grandmother, J.D.B.'s legal guardian. (J.A. 118a, 125a, 133a-134a)

When they arrived at J.D.B.'s house, the investigators knocked on the door, but no one answered. (J.A. 118a, 132a-133a) At that time, J.D.B. got off the school bus and invited the officers to come inside and look around, so he could give them the jewelry. (J.A. 118a, 134a-135a) Investigator DiCostanzo told J.D.B. that J.D.B. could not provide consent for a search and asked if J.D.B. would mind staying outside with Investigator Hunter, while he went to get a search warrant. (J.A. 118a, 134a-135a) While Investigator Hunter and J.D.B. waited outside in an open carport, J.D.B. reached into his pocket, pulled out one of Ms.

Hemmer's rings, and gave it to Investigator Hunter. (J.A. 118a, 35a)

When Investigator DiCostanzo returned with the search warrant, J.D.B. took the officers inside his home and led them to where he had hidden the stolen jewelry. (J.A. 118a) J.D.B. told the officers he had thrown some other items on top of a shed at the BP gas station, which was just around the corner, and offered to take them there. (J.A. 118-119a, 137a-138a, 152a) The three of them walked to the gas station, where Investigator DiCostanzo climbed up on the shed and found more jewelry. (J.A. 119a, 137a-138a, 152a)

2. On October 19, 2005, juvenile petitions were filed against J.D.B. in Orange County District Court. Each petition alleged one count of felonious breaking and entering and one count of larceny. (J.A. 6a) On December 1, 2005, J.D.B.'s counsel filed a motion to suppress his statements and the evidence seized by the officers. (J.A. 88a-94a)

The trial court, concluding that J.D.B. was not in custody while questioned by police, denied J.D.B.'s motion to suppress. (J.A. 95a-96a) On January 24, 2006, J.D.B. admitted the allegations in the petitions, but renewed his objection to the denial of his motion to suppress. (J.A. 6a-7a) The trial court entered an order adjudicating J.D.B. a delinquent juvenile, and J.D.B. appealed the order to the North Carolina Court of Appeals. (J.A. 6a-7a)

On May 15, 2007, the North Carolina Court of Appeals issued an opinion remanding the case to the trial court for findings of fact. *In re J.B.*, 644 S.E.2d 270 (N.C. Ct. App. 2007) (unpublished). (J.A. 74a-87a) On October 16, 2007, the trial court entered an order making written findings of fact and conclusions of law to support its denial of J.D.B.'s motion to suppress. (J.A. 97a-102a) Specifically, the trial court found that J.D.B. consented to speak with police; J.D.B. was not in custody when interviewed by Investigator DiCostanzo; and all of the statements made by J.D.B. were voluntary. (J.A. 98a-102a)

J.D.B. again appealed the denial of his motion to suppress. (J.A. 11a) On April 7, 2009, a divided panel of the North Carolina Court of Appeals affirmed the trial court's denial of J.D.B.'s motion to suppress. *In re J.D.B.*, 674 S.E.2d 795 (N.C. Ct. App. 2009). (J.A. 48a-73a) On December 11, 2009, the North Carolina Supreme Court issued an opinion affirming the decision of the Court of Appeals. *In re J.D.B.*, 686 S.E.2d 135 (N.C. 2009). (J.A. 6a-47a) The North Carolina Supreme Court concluded that the test for determining whether a suspect is in custody for purposes of *Miranda* warnings is an objective inquiry. *Id.* at 138. Noting that an objective rule provides clear guidance for police, the North Carolina Supreme Court "decline[d] to extend the test for custody to include consideration of the age and academic standing of [the suspect.]" *Id.* at 140. The court held that because J.D.B. was not in

custody at the time of his statements, he was not entitled to the protections of *Miranda*. *Id.* The North Carolina Supreme Court therefore affirmed J.D.B.'s adjudication as a delinquent. *Id.* Three of the justices of the North Carolina Supreme Court dissented based on their belief that age is a relevant consideration in determining whether a suspect would have believed himself to be in custody. *See id.* at 146 (Hudson, J., dissenting).

SUMMARY OF ARGUMENT

The protections afforded by *Miranda v. Arizona*, 384 U.S. 436 (1966), only arise when a suspect is in custody (*i.e.*, when the suspect is under formal arrest or the suspect's freedom of movement is restrained in such a way as to be the functional equivalent of an arrest). Here, the trial court, the North Carolina Court of Appeals and the North Carolina Supreme Court properly held that petitioner was not subjected to a custodial interrogation because he was not placed under formal arrest nor was there a restraint on petitioner's freedom of movement of the degree associated with a formal arrest. Petitioner attacks these determinations, asserting that the North Carolina courts erred by failing to apply a "reasonable juvenile standard" in evaluating whether Petitioner was in custody. Petitioner's argument is inconsistent with this Court's repeated recognition that *Miranda's* custody test is an objective, rather than subjective, determination. The subjective test advocated by petitioner cannot be

readily and consistently applied by law enforcement officers and would undercut the clear and concrete guidelines that this Court's precedents have laid out for officers to follow.

Whether a suspect is in custody depends on "the objective circumstances of the interrogation" and not the subjective views of either the suspect or the police. *Stansbury v. California*, 511 U.S. 318, 323 (1994). Otherwise, police would be placed in the untenable position of having to evaluate the frailties and idiosyncracies of potential suspects interviewed in the course of an investigation. *Berkemer v. McCarty*, 468 U.S. 420, 442 (1984). Personal characteristics such as a suspect's age, prior involvement with law enforcement, intelligence and maturity may ultimately impact how a suspect perceives his present situation, but it is not fair to law enforcement officers to require them to step into the shoes of a suspect and speculate how that unique individual may subjectively evaluate whether he or she is free to leave. Whether police should administer *Miranda* warnings to a suspect should not be tied to what the suspect may be thinking. *Miranda* works because it sets a clear bright-line rule for police to follow: If the objective factors relating to the interrogation (*e.g.*, the length and location of the interrogation, the use of handcuffs or other restraints, and whether the suspect was informed that he or she was free to leave) establish that the suspect is in custody, warnings must be given.

Factors, such as age, which go to how a suspect may internalize and perceive the circumstances of an interrogation should not play a role in the *Miranda* custody determination. Although a suspect's age must be considered in the determining whether a confession was given voluntarily, age should play no role in the *Miranda* analysis. The voluntariness test and the *Miranda* test serve two different purposes. Under the voluntariness test, courts must consider whether a defendant's will was overborne – a determination that can only be made by considering the personal characteristics of the defendant. In contrast, the *Miranda* rule was intended to cut through the difficulties of making such a subjective determination. Under *Miranda*, one size fits all; if there has been a formal arrest or the functional equivalent of an arrest, *Miranda* warnings must be given even if there is absolutely no risk that the defendant's will had been overborne.

Petitioner and his amici assert that this Court's decisions in *Roper v. Simmons*, 543 U.S. 551 (2005), and *Graham v. Florida*, 130 S. Ct. 2011 (2010), require consideration of age in the *Miranda* custody analysis. Neither opinion, however, compels that the objective nature of the *Miranda* test should be abandoned by this Court. Rather, *Simmons* and *Graham* instruct that attempting to evaluate the effect of age is fraught with difficulty and uncertainty. *Simmons* and *Graham* illustrate that law enforcement officers should not be saddled with the difficulty of making such determinations in the

field. Accordingly, the effect of age should be left to courts to determine under the voluntariness test. Petitioner has offered no sound reason for dramatically altering the objective nature of the *Miranda* custody test.

ARGUMENT

AGE IS NOT A RELEVANT CONSIDERATION IN THE OBJECTIVE TEST USED TO DETERMINE CUSTODY FOR *MIRANDA* PURPOSES.

Pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966), law enforcement officers must give certain Fifth Amendment warnings to a person in order for statements made by that person during custodial interrogation to be admissible in the State's case-in-chief. These warnings are required *only* if there has been such a restriction on a person's freedom as to render him or her in custody. *Oregon v. Mathiason*, 429 U.S. 492, 495 (1977) (per curiam).

In this case, the Supreme Court of North Carolina held that petitioner was not entitled to the protections of *Miranda* because he was not in custody. Petitioner now contends the court erred by failing to consider his age as a factor in determining whether he was in custody for *Miranda* purposes.

For nearly half a century, this Court has required law enforcement officers deciding whether a

person is in custody for *Miranda* purposes to consider only those objective circumstances of the interrogation that are readily observable. If the custody test is expanded beyond those circumstances to include personal characteristics like age, officers will have to determine how those personal characteristics subjectively affect the mindset of the person being questioned in order to decide whether *Miranda* warnings are necessary. By requiring consideration of these subjective factors, the clarity of the concrete guidelines now used by officers in determining custody would be compromised significantly without compelling justification.

A. The *Miranda* Rule Was Created To Reduce The Likelihood Of Involuntary Confessions and To Give Law Enforcement Officers And Courts Clear Guidelines To Follow.

Prior to the creation of the *Miranda* rule, courts only "evaluated the admissibility of a suspect's confession under a voluntariness test." *Dickerson v. United States*, 530 U.S. 428, 433 (2000). Pursuant to this due process voluntariness test, a court determines whether a "defendant's will was overborne at the time he confessed," *Lynumn v. Illinois*, 372 U.S. 528, 534 (1963), by engaging in "a weighing of the circumstances of pressure against the power of resistance of the person confessing." *Stein v. New York*, 346 U.S. 156, 185 (1953).

The due process voluntariness test considers "both the characteristics of the accused and the details of the interrogation." *Schneckloth v. Bustamonte*, 412 U.S. 218, 226 (1973). Relevant factors to consider in determining voluntariness under the test include: the youth of the accused, *Haley v. Ohio*, 332 U.S. 596, 599 (1948) (plurality opinion); lack of education, *Payne v. Arkansas*, 356 U.S. 560, 566-67 (1958); low intelligence, *Fikes v. Alabama*, 352 U.S. 191, 198 (1957); length of detention, *Chambers v. Florida*, 309 U.S. 227, 238-39 (1940); repeated and prolonged nature of the questioning, *Ashcraft v. Tennessee*, 322 U.S. 143, 153-54 (1944); and the use of physical punishment, *Reck v. Pate*, 367 U.S. 433, 441-44 (1961).

To supplement the voluntariness test, this Court created the *Miranda* rule, *Michigan v. Mosley*, 423 U.S. 96, 112 (1975), in part because "the advent of modern custodial police interrogation brought with it an increased concern about confessions obtained by coercion." *Dickerson*, 530 U.S. at 434-35. The rule is a prophylactic rule "designed to counteract the 'inherently compelling pressures' of custodial interrogation," *McNeil v. Wisconsin*, 501 U.S. 171, 176 (1991), and to thereby "reduce the likelihood of involuntary confessions." 2 Joseph G. Cook, *Constitutional Rights of the Accused* § 6.38 (3d ed. 1996).

This Court also created the *Miranda* rule to provide clear guidelines for law enforcement officers

because the voluntariness test alone had been "difficult * * * for law enforcement officers to conform to, and for courts to apply in a consistent manner." *Dickerson*, 530 U.S. at 444. In contrast to the voluntariness test, "*Miranda*'s holding has the virtue of informing police and prosecutors with specificity as to what they may do in conducting custodial interrogation." *Fare v. Michael C.*, 442 U.S. 707, 718 (1979). The rule's "concrete constitutional guidelines for law enforcement agencies and courts," *Miranda*, 384 U.S. at 442, greatly simplify the initial threshold determination of whether a suspect should be warned about his or her constitutional rights.

The *Miranda* rule is "not intended to hamper the traditional function of police officers in investigating crime." *Miranda*, 384 U.S. at 477. Indeed, society has a "legitimate and substantial interest in securing admissions of guilt." *Moran v. Burbine*, 475 U.S. 412, 427 (1986). Without police questioning of suspects, "the security of all would be diminished" because "those who were innocent might be falsely accused, those who were guilty might wholly escape prosecution, and many crimes would go unsolved." *Bustamonte*, 412 U.S. at 225.

This Court has stated:

> [F]ar from being prohibited by the Constitution, admissions of guilt by wrongdoers, if not coerced, are inherently

> desirable. In addition to guaranteeing the right to remain silent unless immunity is granted, the Fifth Amendment proscribes only self-incrimination obtained by "genuine compulsion of testimony." Absent some officially coerced self-accusation, the Fifth Amendment privilege is not violated by even the most damning admissions.

United States v. Washington, 431 U.S. 181, 187 (1977) (quoting *Michigan v. Tucker*, 417 U.S. 433, 440 (1974)). While the *Miranda* rule recognizes that "the interrogation process is 'inherently coercive,'" *Burbine*, 475 U.S. at 426, this Court has further recognized that "[t]he Constitution does not prohibit every element which influences a criminal suspect to make incriminating admissions." *Washington*, 431 U.S. at 187.

B. The Custody Test Is An Objective Test That Considers Circumstances Of The Interrogation Easily Perceived By The Parties.

In light of the purposes of the *Miranda* rule – to reduce the likelihood of involuntary confessions and to give law enforcement officers concrete guidelines to follow – and in contrast to the voluntariness test, the custody test under *Miranda* is "an objective test." *Thompson v. Keohane*, 516 U.S. 99, 112 (1995). In this objective test, "the only relevant inquiry is how a reasonable man in the suspect's position

would have understood his situation." *Berkemer v. McCarty*, 468 U.S. 420, 442 (1984).

In determining how a reasonable person would have understood his or her situation, the "ultimate inquiry is simply whether there [was] a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest." *California v. Beheler*, 463 U.S. 1121, 1125 (1983) (per curiam) (quotations and citation omitted). "[T]he initial determination of custody depends on the *objective circumstances of the interrogation*, not on the subjective views harbored by either the interrogating officers or the person being questioned." *Stansbury v. California*, 511 U.S. 318, 323 (1994) (emphasis added); *see also Beheler*, 463 U.S. at 1125 n.3 (rejecting the argument that the respondent, who had been drinking and was emotionally distraught, was in custody because he lacked awareness of the consequences of his participation in the interview). Further, the test for custody does not "'place upon the police the burden of anticipating the frailties or idiosyncracies of every person whom they question.'" *McCarty*, 468 U.S. at 442 n.35 (quoting *People v. P.*, 233 N.E.2d 255, 260 (N.Y. 1967)).

Because of the objective nature of the custody test, this Court has not considered the personal characteristics of the suspect in determining whether there was a restraint on freedom of movement of the degree associated with a formal arrest. In deciding whether "indicia of arrest [are]

present" such that a suspect is in custody, *Beheler*, 463 U.S. at 1123, this Court instead has considered various objective facts related to the interrogation itself that can be easily perceived by both the suspect and law enforcement officers. These include: where the interrogation took place, *see Beckwith v. United States*, 425 U.S. 341, 343-44 (1976) (holding questioning at suspect's home was non-custodial); the use of force or restraints, *see New York v. Quarles*, 467 U.S. 649, 655 (1984) (holding questioning was custodial in part because the suspect was handcuffed); the length of questioning, *see McCarty*, 468 U.S. at 441 (holding traffic stop was not custodial due in part because of short time period between stop and formal arrest); the number of officers present, *see Quarles*, 467 U.S. at 655 (holding questioning was custodial in part because the suspect was surrounded by four officers); and communications made to the accused indicating whether he or she was free to leave, *see Stansbury*, 511 U.S. at 325 ("An officer's knowledge or beliefs may bear upon the custody issue if they are conveyed, by word or deed, to the individual being questioned.").

C. The Effect Of Age Is A Subjective Factor, The Consideration Of Which Would Significantly Reduce The Clarity Of Guidelines By Which Officers Decide Whether Warnings Are Necessary.

While officers may in some instances – as in this case – know the age of the person they are questioning, the subjective effect of that person's age on his or her perception of custody is internal to that person rather than a factor that can be easily perceived by the officers. *See Yarborough v. Alvarado*, 541 U.S. 652, 669 (2004) (O'Connor, J., concurring) ("Even when police do know a suspect's age, it may be difficult for them to ascertain what bearing it has on the likelihood that the suspect would feel free to leave."). As a result, "consideration of a suspect's individual characteristics – including his age – could be viewed as creating a subjective inquiry. Cf. *Mathiason*, 429 U.S., at 495-96 (noting that facts arguably relevant to whether an environment is coercive may have 'nothing to do with whether [a suspect] was in custody for purposes of the *Miranda* rule')." *Alvarado*, 541 U.S. at 668 (plurality opinion).

In implementing *Miranda*, this Court recognized "the importance of a workable rule to guide police officers, who have only limited time and expertise to reflect on and balance the social and individual interests involved in the specific circumstances they

confront." *Quarles*, 467 U.S. at 658 (quotations and citations omitted). Because *Miranda* was intended to give law enforcement officers clear guidelines to use in the field, this Court has "over the years refused to sanction attempts to expand [the] *Miranda* holding." *Id.* at 658. For that reason, "the simplicity and clarity of the holding of *Miranda*" should not be compromised "[a]bsent a compelling justification." *McCarty*, 468 U.S. at 432.

Easily perceived circumstances external to the person being interviewed can be assessed quickly by officers. It is not difficult for officers to understand the effect of handcuffs on a suspect, a locked door, or even the impact that hours of questioning would have on a person's view of whether he or she was free to leave.

By contrast, how a thirteen-year-old suspect would react to certain circumstances compared to a seventeen-year-old suspect would be difficult for officers to determine without knowing more about the mindset of that person. *See* Wayne R. LaFave, *Criminal Procedure* § 6.6(c) (3d ed. 2007) ("[I]t is generally unwise to formulate rules for the police in terms of what someone else is thinking."). A thirteen-year-old suspect who has considerable experience with the criminal justice system might react much differently from a seventeen-year-old with no similar experience, but this Court already has held that whether a suspect has this type of experience is not a factor in the custody test. *See*

Alvarado, 541 U.S. at 668 (holding that "reliance on Alvarado's prior history with law enforcement was improper not only under the deferential standard * * *, but also as a *de novo* matter").

It is true that some courts have held that age should be considered in the custody test.[2] However, these courts have failed to recognize the diminished clarity of the guidelines for custody determinations when the subjective factor of the effect of age is added to the custody test.

Although many courts have not addressed or have not resolved the issue of whether the effect of

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[2] *See, e.g., In re Jorge D.*, 43 P.3d 605, 608-09 (Ariz. Ct. App. 2002) ("We conclude that the objective test for determining whether an adult was in custody for purposes of Miranda, * * * applies also to juvenile interrogations, but with additional elements that bear upon a child's perceptions and vulnerability, including the child's age, maturity and experience with law enforcement and the presence of a parent or other supportive adult."); *People v. Howard*, 92 P.3d 445, 450 (Colo. 2004) ("The age of the juvenile is a factor to be considered by the court, though it will not constitute the determinative factor in a finding of custody."); *In re Joshua David C.*, 698 A.2d 1155, 1162 (Md. 1997) ("In regard to juveniles, we have added the caveat that 'it is reasonable * * * for courts to apply a wider definition of custody for Miranda purposes' * * * * Indeed, in determining whether a juvenile's statement was made while in custody, the court must consider additional factors, such as the juvenile's education, age, and intelligence.").

age should be considered in the custody test,[3] courts in at least seven jurisdictions in addition to North Carolina have concluded that age is not a relevant factor.[4] These courts have correctly recognized that

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[3] *See, e.g., In re Tyler F.*, 755 N.W.2d 360, 371 (Neb. 2008) (declining to resolve the issue of whether age should be considered in the custody test, but noting that "it would be difficult to take a suspect's age into account in any principled manner").

[4] *See, e.g., State v. Turner*, 838 A.2d 947, 963 (Conn. 2004) (disagreeing with the defendant's contention that his youth and unfamiliarity with the legal system should be considered in determining whether he was in custody because "when determining whether a *reasonable person* would have felt that he or she was free to leave, courts are to apply an *objective*, rather than a subjective, standard"), *cert. denied*, 543 U.S. 809 (2004); *In re J.F.*, 987 A.2d 1168, 1175 (D.C. 2010) (declining to consider the juvenile's age); *People v. Croom*, 883 N.E.2d 681, 689 (Ill. App. Ct.) ("Given the Supreme Court's emphasis on objectiveness, we decline to consider defendant's age when determining whether he was in custody for *Miranda* purposes."), *appeal denied*, 889 N.E.2d 1118 (Ill. 2008); *State v. Bogan*, 774 N.W.2d 676, 681 n.1 (Iowa 2009) (determining that a fourteen-year-old juvenile was in custody without consideration of his age because this Court questioned "whether age is a factor to consider under a federal constitutional analysis"); *State v. Morton*, 186 P.3d 785, 794 (Kan. 2008) ("Allowing the suspect's individual characteristics to be a part of the custody analysis, even if styled as an objective test – what would a reasonable person of the suspect's age, experience level, etc. have believed – would ruin [the clarity of the rule], as it would require police officers to consider a suspect's mindset when faced with deciding whether they

considering the effect of age in the custody test would render the test subjective and would require law enforcement officers to speculate about a suspect's state of mind before questioning.

Requiring consideration of the subjective effect of age on a person's view of custody would greatly diminish the clarity of the guidelines upon which law enforcement officers rely in making on-the-spot determinations of whether to give *Miranda* warnings. Without a compelling reason to add the subjective factor of the effect of age to the custody test, "the simplicity and clarity of the holding of *Miranda*" should not be compromised. *McCarty*, 468 U.S. at 432.

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are required to give *Miranda* warnings."), *cert. denied*, 129 S. Ct. 903 (2009); *In re W.B. II*, 2009 Ohio 1707, at P23 (Ohio Ct. App., 4th Dist. 2009) (stating that prior to *Alvarado*, the court considered factors "that are prone to result in a subjective analysis, *i.e.* the age, mentality and prior criminal experience of the accused * * * [but] we now renounce the subjective factors that we identified * * * and restrict our analysis to an objective test."); *CSC v. State*, 118 P.3d 970, 977-78 (Wyo. 2005) ("We cannot overstate the importance of having an objective test to guide the police in determining a suspect's custodial status. * * * It would be a great handicap to law enforcement to require them to speculate about the suspect's state of mind before deciding how they may interrogate him.").

D. The Objective *Miranda* Custody Test Differs From Tests In Other Contexts That Depend On A Person's Actual Mindset.

Petitioner and his amici note that age is considered in "reasonable person" tests in other areas of criminal law and in some civil law contexts. However, "[t]here is an important conceptual difference between the *Miranda* custody test and the line of cases from other contexts considering age and experience." *Alvarado*, 541 U.S. at 667.

The effect of age in these criminal and civil "reasonable person" tests is part of the deliberative after-the-fact assessment of the person's actions. The *Miranda* custody test, on the other hand, requires an on-the-spot determination of how a reasonable person would perceive the circumstances and does not involve the person's actions or personal characteristics. *See Alvarado*, 541 U.S. at 667 ("[T]he objective *Miranda* custody inquiry could reasonably be viewed as different from doctrinal tests that depend on the actual mindset of a particular suspect, where we do consider a suspect's age and experience."). If the *Miranda* custody test were otherwise, the on-the-spot determination in identical situations would always change based on the personal characteristics of the person being interviewed. This could not be the correct interpretation of the custody test as set out by this Court.

Unlike the objective question of whether a person is in custody, the question of whether a person voluntarily waived his *Miranda* rights by its very nature requires an inquiry into the thought processes and internal knowledge of the suspect inasmuch as a waiver of *Miranda* rights is valid only if "knowingly and intelligently" made. *Miranda*, 384 U.S. at 444. For that reason, the determination of whether a juvenile voluntarily waived his *Miranda* rights includes "inquiry into all the circumstances surrounding the interrogation" including "evaluation of the juvenile's age, experience, education, background, and intelligence, and into whether he has the capacity to understand the warnings given him, the nature of his Fifth Amendment rights, and the consequences of waiving those rights." *Michael C.*, 442 U.S. at 725; *see also North Carolina v. Butler*, 441 U.S. 369, 374-75 (1979) (holding "the question of waiver must be determined on the particular facts and circumstances surrounding that case, including the background, experience, and conduct of the accused").

Likewise, this Court has stated that "[a]ny knowledge the police may have had concerning the unusual susceptibility of a defendant to a particular form of persuasion might be an important factor in determining" whether an interrogation has occurred. *Rhode Island v. Innis*, 446 U.S. 291, 302 n.8 (1980). Assuming the effect of age is an "unusual susceptibility to a particular form of persuasion," it makes sense that the question of whether there has

been an interrogation for *Miranda* purposes concerns the mindset of the person being questioned because "'[i]nterrogation,' as conceptualized in the *Miranda* opinion, must reflect a measure of compulsion above and beyond that inherent in custody itself." *Id.* at 300. By contrast, the *Miranda* custody test takes into consideration only objective circumstances that are readily observable and not the unusual susceptibilities of the person being questioned. *See McCarty*, 468 U.S. at 442 n.35 (noting that the test for custody has not taken into account the "frailties or idiosyncracies" of those questioned).

Tests used to determine whether a person acted in self-defense or under duress necessarily take into account the age of the actor. This is so because the focus of the inquiry, again, is on the mindset of that person in acting as he or she did. *See, e.g.*, *State v. Marshall*, 692 P.2d 855, 857 (Wash. Ct. App. 1984) (holding the "juvenile status of a defendant is part of his situation and relevant to a determination of whether he acted reasonably" for purposes of showing self-defense).

In tests in which the focus is on the reason why a person acted as he or she did, it is appropriate to consider that person's state of mind. When the test is an objective one like the *Miranda* custody test, however, the issue is not why someone acted as they did. Therefore, state of mind is irrelevant.

E. Requiring The Consideration Of Age In The Custody Test would Open The Door To Consideration Of Myriad Other Subjective Circumstances.

If the effect of age is considered in custody determinations, then other subjective personal characteristics would presumably also bear on the custody analysis, including the suspect's education, intelligence, mental infirmities, cultural background, and any particular vulnerabilities he or she may have. Indeed, it would be impossible to know the effect of a suspect's age without considering how other personal characteristics would affect his or her view of custody.

In conducting an efficient and productive criminal investigation, officers should not be expected to factor in all possible subjective factors internal to the suspect that might have bearing on that person's beliefs about whether he or she was free to leave. *See Miranda*, 384 U.S. at 468-69 ("Assessments of the knowledge the defendant possessed, based on information as to his age, education, intelligence, or prior contact with authorities, can never be more than speculation; a warning is a clearcut fact.") (footnote omitted). Even if an officer had a psychiatric background and could determine these internal characteristics of a person and assess how they would affect that person's beliefs, this would greatly slow any investigation.

Consideration of other personal characteristics would especially be wide open if this Court were to adopt a "reasonable juvenile" standard rather than continuing to apply a "reasonable person" standard. If the effect of one's juvenile status can be considered in determining whether that person is in custody, then it is logical that the effect of many personal characteristics of a suspect could be included in the test by placing the word "reasonable" in front of them – *e.g.*, a "reasonable high school dropout standard" or a "reasonable ex-convict standard."

One of the reasons for the creation of the *Miranda* rule was that the voluntariness test was difficult for officers and courts to apply. To engraft the same requirements of consideration of personal characteristics onto the custody test that apply in the voluntariness test would result in "the simplicity and clarity of the holding of *Miranda*" being impaired without "compelling justification." *McCarty*, 468 U.S. at 432.

F. *SIMMONS* AND *GRAHAM* HAVE NO APPLICATION TO THIS CASE.

Petitioner's reliance on *Roper v. Simmons*, 543 U.S. 551 (2005), and *Graham v. Florida*, 130 S. Ct. 2011 (2010), *see* Pet. Br. 26, is misplaced. Those decisions deal only with the *culpability* of juveniles, and, in any event, show that law enforcement officers should not be required to make on-the-spot

assessments of the effect of age on a suspect's view of custody.

In *Simmons*, this Court held that defendants who committed their crimes as a juvenile cannot be sentenced to death. In *Graham*, this Court further held that juveniles who committed crimes other than homicides cannot be sentenced to life imprisonment without parole. In both cases, this Court ruled that juveniles were less culpable for their crimes because they "are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure." *Simmons*, 543 U.S. at 569. Petitioner cites these cases in support of his contention that the frailties and vulnerabilities of minors are so readily apparent that age must be factored into a *Miranda* custody determination.

Simmons and *Graham* have no application to this case. The question of whether a juvenile is in custody for *Miranda* purposes is an objective test that deals with the beginning of the judicial process, not a question related to the culpability of minors at the end of the judicial process.

Another reason *Simmons* and *Graham* have no application is that those cases impose categorical prohibitions. Recognizing the difficulty that a jury would have in distinguishing "between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption," this

Court in *Simmons* rejected a case-by-case determination of whether a death sentence was appropriate for a juvenile. *Simmons*, 543 U.S. at 573.

Petitioner and his amici propose that law enforcement officers in the field make exactly the same type of case-by-case analysis of the effect of age that this Court found too difficult for a jury to make even after the fact. *Simmons* and *Graham* teach that the effect of age simply is too difficult for officers to easily and quickly assess and should instead be left to courts to assess when applying the voluntariness test.

G. To The Extent That Juveniles Are More Vulnerable To Pressure Than Adults, The Voluntariness Test Takes This Into Account.

This Court has made it clear that *Miranda* does not dispense with the requirement that a confession be voluntary in order to be admitted into evidence. *Dickerson*, 530 U.S. at 444. Therefore, a suspect's rights remain protected – even where he or she is not in custody – by application of the voluntariness test. One of the personal characteristics of a suspect considered in the due process voluntariness test is age. *See Gallegos v. Colorado*, 370 U.S. 49, 54 (1962) (considering strongly the youth and immaturity of fourteen-year-old in determining voluntariness of confession); *Haley*, 332 U.S. at 599 (stating that

"special care in scrutinizing the record must be used" when voluntariness of a confession by a child is at issue).

Because there remains a possibility that a confession could be coerced even during non-custodial interrogation, a juvenile defendant may still allege that his will was overborne and his confession involuntary under the voluntariness test.[5] *See Beckwith*, 425 U.S. at 348 (holding that when a voluntariness claim is made, it is the duty of the appellate court "to examine the entire record and make an independent determination of the ultimate issue of voluntariness"). To the extent that juveniles may need special protection due to their age, they are therefore protected by the voluntariness test without transforming the *Miranda* custody test into something it is not.

As petitioner and his amici note, a number of States have by statute afforded juveniles additional protection during interrogation. Petitioner contends this is recognition by State legislatures of "the need to ensure that juveniles were made aware of their Fifth Amendment rights and, due to their age, assisted in exercising them." Pet. Br. 15. Not so.

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[5] Although petitioner raised a voluntariness claim in the trial court in addition to his *Miranda* claim, he did not bring forward that issue in the Supreme Court of North Carolina.

The overwhelming majority of the States that provide additional protections to juveniles do so in the custodial setting,[6] recognizing that some juveniles may need parental involvement or accommodations to fully understand their rights when in custody.[7] Those laws, by their nature, only

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[6] Although not bound to follow the *Miranda* custody test in interpreting their own statutes, these States have used the test as the trigger for application of additional protections for juveniles because it is easier for officers in these States to have one custody test rather than multiple ones. In light of the additional protections afforded a juvenile by these States after a determination that he or she is in custody, it is especially important for officers to have concrete guidelines to make the determination.

[7] *See, e.g.*, Ala. Code § 12-15-202 (Supp. 2010) (providing certain rights for juveniles in custody); Colo. Rev. Stat. § 19-2-511 (2010) (providing that statements of a juvenile made as a result of custodial interrogation are not admissible unless a parent or guardian was present); Kan. Stat. Ann. § 38-2333 (Supp. 2009) (providing that if a juvenile is under fourteen no confession "resulting from interrogation while in custody or under arrest" is admissible unless made following consultation between the juvenile's parent or attorney); Me. Rev. Stat. Ann. tit. 15 § 3203-A(2-A) (2003) (prohibiting a law enforcement officer from questioning a juvenile who has been arrested before making reasonable efforts to contact the juvenile's legal custodian); Mo. Rev. Stat. § 211.059 (2010) (providing that juveniles "taken into custody" have a right to have parent, guardian, or custodian present during questioning); N.Y. Fam. Ct. Act § 305.2 (2008) (prohibiting question of child in custody if child and parent have not been advised of child's rights); N.C. Gen. Stat. § 7B-2101 (2009) (providing that a

apply once the juvenile is found to be in custody under the objective test. They do not purport to add the effect of age to the consideration of custody for the purposes of *Miranda*.

In three States, statements of some juveniles are inadmissible even if made during non-custodial interrogation if a parent or attorney is not present.[8]

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juvenile in custody must be advised of his rights including the right to have a parent, guardian, or custodian present and that no in-custody admission or confession of a juvenile under fourteen may be admitted unless made in the presence of a parent, guardian, custodian, or attorney); Tex. Fam. Code Ann. § 51.095 (d) (2008) (providing for restrictions on the use of statements by children made while in custody).

[8] *See, e.g.*, Conn. Gen. Stat. § 46b-137 (2009) (providing that an admission by a child under the age of sixteen to a police officer or Juvenile Court official is inadmissible unless the statement was made in the presence of the child's parent or guardian after the child and the parent or guardian were advised of the child's rights); N.M. Stat. § 32A-2-14(F) (2010) (providing that "no confessions, statements or admissions may be introduced against a child under the age of thirteen years on the allegations of the petition" and that "[t]here is a rebuttable presumption that any confessions, statements or admissions made by a child thirteen or fourteen years old to a person in a position of authority are inadmissible"); W. Va. Code § 49-5-2 (2009) (providing that except for *res gestae*, extrajudicial statements made by juveniles under age sixteen are inadmissible unless made in the presence of any attorney or parent or guardian and only after the juvenile has been

These statutes are the product of legislative judgment, not a constitutional mandate. *See Oregon v. Hass*, 420 U.S. 714, 719 (1975) ("[A] State is free *as a matter of its own law* to impose greater restrictions on police activity than those this Court holds to be necessary upon federal constitutional standards.").

H. The Location Of The Interview In This Case Does Not Impact Whether Age Should Be Considered In The Custody Determination.

Petitioner and his amici emphasize that he was interviewed at school. The impact of the school setting on whether petitioner was in custody is not before this Court, for petitioner's Question Presented asks only "[w]hether a trial court may consider a juvenile's age in a Fifth Amendment *Miranda* custody analysis." Pet. Br. i. That juveniles may be questioned at school has no bearing on whether age should be considered in determining whether a person is in custody for purposes of *Miranda*. The effect of age, even in a school setting, is not an objective circumstance that is readily observable by officers, even if the officer knows the age of the student.

Petitioner asserts that officers could have taken advantage of his age by interviewing him or her at

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informed of his or her rights).

school. *See* Pet. Br. 27. Even if this Court were to consider the setting in which the statements in this case were made, the questioning of petitioner by law enforcement officers in a school setting did not make the interview custodial.

It is true that the setting in which an interview takes place can have a bearing on whether a suspect was in custody. *See Beckwith*, 425 U.S. at 343-44 (holding questioning at suspect's home was non-custodial). At a police station, for instance, there undoubtedly is a certain amount of inherent coerciveness. Even so, questioning at a police station is not so inherently coercive that a person is automatically in custody. *See Mathiason*, 429 U.S. at 495 (holding that a non-custodial setting is not converted to a custodial one "simply because a reviewing court concludes that, even in the absence of any formal arrest or restraint on freedom of movement, the questioning took place in a 'coercive environment'" like a police station). Additional objective indicia of arrest are required in order to show restraint on freedom of movement of the degree associated with a formal arrest.

While it is true that students must follow certain rules when at school,[9] the school setting itself is a

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[9] Amicus American Civil Liberties Union argues petitioner may have been subject to prosecution under N.C. Gen. Stat. § 14-288.4(a)(6) if he had refused to answer the investigating officer's questions after an assistant principal

familiar one to a student. *See Mathiason*, 429 U.S. at 498 (Marshall, J., dissenting) (noting that *Miranda* placed great stress on being interrogated in "unfamiliar surroundings"). In that respect, it is less inherently coercive than a police station. *Cf. CSC v. State*, 118 P.3d at 977 (finding that the coercive elements of a police interview "were reduced by the fact that it took place at CSC's school, a location which was familiar to him, rather than at the police station); *People v. Savory*, 435 N.E.2d 226, 230 (Ill. App. Ct. 1982) (finding that a room adjacent to the principal's office was a "less coercive environment than a police station"). The interviewing of a student at school by a law enforcement officer does not automatically make questioning custodial.

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told him to "do the right thing." Br. for American Civil Liberties Union, at 10. That statute defines disorderly conduct as "a public disturbance intentionally caused by any person" who "[d]isrupts, disturbs or interferes with the teaching of students at any public or private educational institution or engages in conduct which disturbs the peace, order or discipline at any public or private educational institution or on the grounds adjacent thereto." In order for a person to be guilty of disorderly conduct on this basis, there must be a showing of "substantial interference with, disruption of and confusion of the operation of the school in its program of instruction and training of students there enrolled." *In re Eller*, 331 N.C. 714, 718, 417 S.E.2d 479, 482 (1992). Refusing to answer a police officer's questions, as petitioner had a right to do, would not qualify as "substantial interference" with operation of the school.

The record in this case shows that the investigating officer came to petitioner's school because he received a telephone call from the school informing him that an item taken during the break-ins had been recovered there. (J.A. 108a, 122a-123a) In addition, there were two other witnesses at the school whom the investigating officer interviewed. (J.A. 110a) When the officer began the interview of petitioner, he asked petitioner if he would agree to answer questions about the recent break-ins, and petitioner agreed. (J.A. 98a) At another point in the interview, the officer told petitioner he was free to leave. (J.A. 99a) And, in fact, petitioner later did leave. (J.A. 100a)

The clear implication of the officer asking petitioner if he would agree to answer questions and the officer's subsequent statement that petitioner was free to leave was that petitioner could have chosen not to answer questions and presumably could have returned to the classroom where he had been prior to the interview. While petitioner may not have been free to leave the school grounds because school regulations required him to remain, he would have been free to leave the interview and return to his classroom where no officers would be present.

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Requiring officers in the field to assess the subjective effect of a person's age on that person's

view of custody will diminish significantly the clarity of the guidelines by which the officers must decide whether a person is in custody. Because the *Miranda* custody test always has been intended to be a workable rule for officers, there simply is no "compelling justification" to compromise the clarity of the guidelines. *McCarty*, 468 U.S. at 432.

CONCLUSION

The decision of the Supreme Court of North Carolina should be affirmed.

Respectfully submitted,

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