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**CONFESSIONS AND ADMISSIONS CASELAW**  
**IN THE ILLINOIS APPELLATE COURTS**

**2015 - CASES**

1. **People v. Jerome Weathers**, 2015 IL App. (1<sup>st</sup>) 133264, (1<sup>st</sup> Dist., November 25, 2015) Denial of Permission to File a Successive Post-Conviction Petition - - Reversed and Remanded.

**ISSUE: Post-Conviction Petition (Dismissal): Did the trial court err in denying this defendant's request to file a successive PCP after the defendant argued that he had newly discovered evidence that substantiated his claim that he was coerced by his police interrogators? (Yes).**

**FINDING #1:** The defendant did not forfeit his challenge to People's use of his allegedly physically-coerced confession in obtaining his murder conviction by reframing his challenge, on appeal from his denial of his successive post-conviction petition, as ineffective assistance of counsel rather than maintaining his challenge as a violation of due process, as he had previously argued. The defendant consistently contended that newly discovered evidence supported his claim that his interrogating officers were involved in a pattern of abuse allegations of coercion tactics in multiple other cases, and that the newly discovered evidence corroborated his claim, such that the claim was substantively the same as he had previously raised. **FINDING #2:** The defendant established "cause" required for leave to file his successive post-conviction petition, which was premised on his claim of newly discovered evidence, in the form of a report from a database regarding abuse allegations in other cases against each of his interrogating detectives, in support of his claim of a violation of his due process rights arising from the People's alleged use of his physically-coerced confession to obtain his murder conviction. The defendant's claims of physical coercion had never been reviewed; it was uncontested that the report at issue was released after the defendant's initial post-conviction petition had been fully litigated, and the allegations of abuse enumerated in the report were similar to those claimed by the defendant. 725 ILCS 5/122-1(f). **FINDING #3:** The defendant established "prejudice" required for leave to file a successive post-conviction petition. Here numerous allegations of abuse set forth in the report were similar to those claimed by the defendant, in that he claimed he was struck with a flashlight, stripped of his clothing, and placed in a cold room, and the resulting confession was used as substantive evidence at his trial. 725 ILCS 5/122-1(f)

2. **People v. Sean Tyler**, 2015 IL App. (1<sup>st</sup>) 123470, (1<sup>st</sup> Dist., September 11, 2015) Dismissal of Post-Conviction Petition - - Affirmed in Part and Reversed in Part.

**ISSUE: Post-Conviction Petition (Dismissal): Did the trial court err in dismissing this defendant's PCP wherein the defendant argued that he was beaten by the police into confessing to his alleged offense. (Yes).**

**FINDING:** Newly discovered evidence of the detectives' systemic abuse of suspects and witnesses during other investigations could have created a different result at the defendant's murder trial, so as to support the relaxation of res judicata and the consideration of such evidence in these post-conviction relief proceedings. This was found to be especially true in light of the officers' testimony that the defendant voluntarily reached out to them prior to his arrest. The defendant's testimony that they beat him while he was in custody into confessing to a crime that he did not commit, his cousin's testimony that his defendant's face appeared swollen and that he told her he was beaten, the evidence that the defendant was treated at a hospital for vomiting blood immediately after his confession, and his alibi testimony that he was playing video games at time of crime all contributed to this conclusion.

3. **People v. Harvey Downen**, 2015 IL App. (1<sup>st</sup>) 132046, (1<sup>st</sup> Dist., July 31, 2015) Possession of Contraband in a Penal Institution - - Affirmed.

**ISSUE:** Was this defendant in custody when he made his incriminating statements to a correctional officer? (No)

**RULE #1:** Custodial interrogation entails questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. **RULE #2:** The word “custody” for *Miranda* purposes is a term of art that specifies circumstances that are thought generally to present a serious danger of coercion. **RULE #3:** The initial step in determining whether someone is in custody for *Miranda* purposes is to ascertain whether, in light of the objective circumstances of the interrogation, a reasonable person would have felt he or she was not at liberty to terminate the interrogation and leave. **RULE #4:** When a prisoner is questioned, the determination of custody should focus on all of the features of the interrogation including the language that is used in summoning the prisoner to the interview, and the manner in which the interview is conducted; thus, an inmate is in custody for purposes of *Miranda* only if the totality of circumstances would lead a reasonable inmate in his place to believe that the setting of the interrogation adds new constraints to his freedom. **RULE #5:** *Miranda* is not triggered, and the admonishments are not required, when police conduct general investigatory on-the-scene questioning as to the facts surrounding a crime or other general questioning; in such situations the compelling atmosphere inherent in the process of in-custody interrogation is not necessarily present.

**FINDING:** Defendant was not in custody for *Miranda* purposes when he was questioned regarding shank found in his jail cell, where defendant and his cellmate were brought out of their cell, patted down, and secured with handcuffs as part of a routine search of their cell, officer engaged in a very brief, minute-or-less, conversation with defendant and his cellmate on the scene regarding what the item was and to whom it belonged, which was on-the-scene questioning enabling the officer to determine whether a crime was in progress.

4. **People v. Stephen C. Coleman**, 2015 IL App. (4<sup>th</sup>) 140730, (4<sup>th</sup> Dist., July 20, 2015) Suppression of Evidence - - Affirmed.

**ISSUE:** Was a parolee “in custody” when he was handcuffed and questioned by parole officers? (Yes).

**FINDING:** Defendant, a parolee, was arrested when parole officers handcuffed him and began questioning him about a crime that was independent of a parole violation, and thus officers were required to provide *Miranda* warnings prior to questioning, even though defendant testified that he did not believe he was under arrest when handcuffed; officers had located defendant at his mother's residence to investigate anonymous tips that he was selling drugs, officers separated defendant from the other people in the residence, officers were armed with firearms, and officers handcuffed defendant after they found a large amount of cash in a lockbox.

5. **People v. Robert Marcias**, 2015 IL App. (1<sup>st</sup>) 132039, (1<sup>st</sup> Dist., June 26, 2015) First-Degree Murder and Attempted First-Degree Murder and Aggravated Battery with a Firearm - - Affirmed.

**ISSUE:** Did the trial court properly reject this defendant’s arguments that his statements must be suppressed because the police gave him defective *Miranda* warnings and his statements were the product of police coercion? (Yes).

**RULE #1:** The four essential elements of the warning that is required to be given to a defendant in custody before questioning are: (1) the defendant must be told of his right to remain silent; (2) that anything he says may be used against him; (3) that he has the right to have counsel present before and during questioning; and (4) that he is entitled to have counsel appointed if he cannot afford one.” **RULE #2:** The Supreme Court has “never insisted that *Miranda* warnings be given in the exact form described in that decision.” **RULE #3:** The Court has “stated that ‘the “rigidity” of *Miranda* [does not] exten[d] to the precise formulation of the warnings given a criminal defendant,’ and that ‘no talismanic incantation [is] required to satisfy its strictures.’” **RULE #4:** The factors for a court to consider when determining the voluntariness of an inculpatory statement include the defendant's age, education, background, experience, mental capacity, and intelligence, as well as the defendant's physical and emotional condition at the time of questioning, the duration of the questioning, and whether the defendant was subjected to physical or mental abuse by the police.

**FINDING #1:** The defendant was advised that he had the right to remain silent, that anything he said could be used against him in court, that he had the right to an attorney, and that if he could not afford an attorney, one would be appointed for him. The failure to include that the defendant could have an attorney present before and during questioning

did not render his *Miranda* rights fatally defective. **FINDING #2:** Even if the failure to advise the defendant of his right to have an attorney present before and during questioning were error, any error was cured when the defendant subsequently received his complete *Miranda* rights, which he then waived. **FINDING #3:** The appellate court rejected each of the following arguments of the defendant: his age and parental factor weighed in favor of suppression; his lack of education and lack of prior experience with police interrogation weighed in favor of suppression; his emotional and physical condition at the time of the interrogation weighs in favor of suppression. The defendant also maintained that he was not fed sufficiently while in custody; the detectives engaged in “strong-arm bullying tactics,” “intimidating,” and “despicable” methods of interrogation; he was subject to deceit, trickery, and promises of leniency; his 46-hour detention weighed in favor of suppression.

6. **People v. Matthew Edwards**, 2015 IL App. (3<sup>rd</sup>) 130190, (3<sup>rd</sup> Dist., May 6, 2015) First-Degree Murder and Attempted First-Degree Murder - - Affirmed as Modified.

**ISSUE:** Was this defendant’s statements to the police involuntary due to his age and limited intelligence? (No).

**RULE #1:** In 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. **RULE #2:** No single factor is dispositive in determining whether a juvenile's confession was voluntarily given; rather, the courts must consider the totality of the circumstances surrounding the confession.

**FINDING:** The defendant's confession was voluntary, even though the defendant was 17 years old, suffered from some mental health disorders, did not finish high school, and the police did not contact the defendant's parents or another concerned adult, where the defendant was mature and articulate, the interrogating detectives did not use force or deception, the parties presented conflicting accounts regarding whether the defendant requested to speak with his mother, and the interrogation occurred more than four years prior to the statutory amendment requiring the police contact a parent. 705 ILCS 405/5–120, 405/5–405(2) (2008)

7. **People v. Timothy Neese**, 2015 IL App. (2<sup>nd</sup>) 140368, (2<sup>nd</sup> Dist., April 21, 2015) Suppression of Evidence - - Reversed and Remanded.

**ISSUE:** Did this defendant make his statements to the police during a plea negotiation? (No).

**RULE #1:** Not all statements made by a defendant in the hope of obtaining a concession constitute plea discussions, for purposes of rule governing circumstances under which plea discussions are inadmissible; indeed, there is a difference between a statement made during the course of a plea discussion and an otherwise independent admission, the latter of which is not excluded by the rule. **RULE #2:** In deciding whether a statement was given during the course of a plea discussion, for purposes of rule governing circumstances under which plea discussions are inadmissible, the Appellate Court may consider the nature of the statement, to whom the defendant made the statement, and what was said by the parties to the conversation. **RULE #1:** The rule governing circumstances under which plea discussions are inadmissible is not intended to exclude as evidence mere offers to cooperate with the police, at least where such offers are not accompanied by the rudiments of the plea-negotiation process; one such rudiment, for example, would be the defendant’s willingness to enter a guilty plea in return for concessions by the State. **RULE #3:** Courts should resist an approach that characterizes every conversation between a defendant and the police as a plea negotiation, for purposes of rule governing circumstances under which plea discussions are inadmissible; rather, courts should carefully recognize the investigative role the police perform as compared to the prosecutor. **RULE #4:** Those facing criminal prosecution often seek leniency, and thus not all attendant statements made in the hope of obtaining concessions are plea-related statements under the rule governing circumstances under which plea discussions are inadmissible.

**FINDING #1:** The defendant did not have a subjective expectation that he was involved in a plea discussion when he made his statement that he would confess to taking coins from a washing machine to the police officer, and, thus, did not satisfy the first part of the two-part test for deciding whether particular statements were plea-related for purposes of the

rule governing circumstances under which plea discussions are inadmissible. The defendant never mentioned a plea or otherwise indicated that he expected to plead guilty, and his intent to provide a written statement in exchange for the officer charging him with only a misdemeanor was not evidence of expectation of entering guilty plea to that charge. **FINDING #2:** Even if the defendant had a subjective expectation of negotiating a plea when he made his statement that he would confess, that expectation would not have been reasonable under the totality of facts, and, thus, did not satisfy the second part of the two-part test for deciding whether particular statements were plea-related. Nothing about the conversation would have indicated to a reasonable person in the defendant's position that the officer had the authority to engage in a plea discussion, to offer any plea deal, or to enter into a plea agreement. The officer did not express any such authority, mention a plea, or imply as much during the conversation, and the officer told the defendant that he needed to speak with the State's Attorney's office even before deciding how to charge defendant. **FINDING #3:** The trial court's finding that the police officer actually promised the defendant that he would charge the defendant with a misdemeanor in exchange for the defendant's statement, for purposes of the rule governing circumstances under which plea discussions were inadmissible, was against manifest weight of the evidence. According to the Court, the officer's undisputed testimony established that he at most promised the defendant that he was willing to consider a lesser charge in exchange for the defendant's written statement.

**8. People v. Clifford W. Baker**, 2015 IL App. (5<sup>th</sup>) 110492, (5<sup>th</sup> Dist., February 6, 2015) First-Degree Murder; and Home Invasion - - Affirmed in Part; Vacated in Part; Vacated in Part; and Remanded with Instructions.

**ISSUE:** Was this defendant's statements voluntarily given? (Yes);

**RULE #1:** In reviewing a ruling on the voluntariness of a juvenile confession, the trial court's factual findings will be reversed only if they are against the manifest weight of the evidence, but its decision on the ultimate question of whether a confession was voluntary is subject to de novo review. **RULE #2:** To determine the voluntariness of a confession, courts consider the totality of the circumstances, including factors such as the defendant's age, intelligence, background, experience, education, mental capacity, and physical condition at the time of questioning. **RULE #3:** To determine the voluntariness of a juvenile confession, factors considered by the court include the legality and duration of any detention, the length of any interview, whether there was any physical or mental abuse by police, whether the police made any threats or promises, whether a concerned adult was present either before or during the interrogation, and whether the police made attempts to prevent or frustrate the minor and a concerned adult from conferring. **RULE #4:** The test of voluntariness of a confession is whether the defendant made the statement freely, voluntarily, and without compulsion or inducement of any sort, or whether his will was overcome at the time he confessed, and no single factor is dispositive.

**FINDING:** Juvenile defendant's incriminating statements regarding murders during interview with police from hospital bed were voluntary, although defendant was 15 years old, was sleep-deprived and intoxicated, was taking medication for major depressive disorder, and had just undergone blood draw and catheter placement; one of the police officers present at the interview read *Miranda* warnings to defendant, defendant said he understood them, officers did not engage in coercive or abusive behavior, officers were not adversarial and they did not employ tricks, defendant did not appear confused or physically or mentally distressed during interview, and defendant responded in the affirmative each time one of the officers asked whether he understood what was happening.

## **2014 - CASES**

**1. People v. Oscar Flores**, 2014 IL App. (1<sup>st</sup>) 121786, (1<sup>st</sup> Dist., November 14, 2014) First Degree Murder and Attempt First-Degree Murder - - Reversed and Remanded.

**ISSUE:** Did the police violate this defendant's *Miranda* rights by continuing to interrogate him after he asked for a lawyer? (Yes).

**RULE #1:** Where a defendant challenges the admissibility of his confession through a motion to suppress, the state has the burden of proving the confession was voluntary by a preponderance of the evidence. 725 ILCS 5/114-11(d) **RULE #2:** The concept of voluntariness of a confession includes proof that the defendant made a knowing and intelligent waiver of his privilege against self-incrimination and his right to counsel. **RULE #3:** To protect an individual's right not to be a witness against himself, interrogation must cease once the individual indicates in any manner and at any time prior to or

during a custodial interrogation that he wishes to remain silent. **RULE #4:** Any statement taken from a person by police after the person invokes his privilege against self-incrimination cannot be other than the product of compulsion, subtle or otherwise. **RULE #5:** A defendant may invoke his or her right to silence, so as to require police to end interrogation, either verbally or through nonverbal conduct that clearly indicates a desire to end questioning; if verbal, the demand to end the interrogation must be specific. **RULE #6:** A defendant's statements made after invoking his right to silence are admissible only if police scrupulously honored the defendant's right to cut off questioning. **RULE #7:** In deciding whether police scrupulously honored a defendant's invocation of his right to silence, such that the defendant's post-invocation statements are admissible, a court should consider whether: (1) the interrogator immediately halted the initial interrogation after the defendant invoked his right to remain silent; (2) a significant amount of time elapsed between the interrogations; (3) the defendant was re-Mirandized before the second interrogation; and (4) the second interrogation addressed a crime different from that of the first interrogation, though the fact that the same crime was discussed during both interrogations does not preclude a finding that the defendant's right to silence was scrupulously honored.

**FINDING #1:** Defendant sufficiently invoked his right to silence, and thus police were required to cease interrogation; after police officer gave defendant a *Miranda* warning and asked defendant whether he wanted to talk about statements a co-defendant had allegedly made, defendant answered "not really" and "no," defendant shook his head indicating no and said "no," when asked if he had anything to say about a gun allegedly used in a shooting, and less than three minutes later, defendant said he was not "gonna say nothing about nothing." **FINDING #2:** Police officers did not honor defendant's invocation of his right to silence, and thus defendant's post-invocation statements to police and prosecutor were inadmissible at murder trial; after defendant indicated he did not wish to talk, officers continued to discuss co-defendant's alleged statements and asked defendant for his side of the story, no time elapsed between invocation and continued questioning, officers' continued questioning focused on same crime, defendant remained in interrogation room for two hours after confessing, after which prosecutor arrived and interviewed defendant for another four hours.

**2. People v. Jeremy Green**, 2014 IL App. (3<sup>rd</sup>) 120522, (3<sup>rd</sup> Dist., ~~August 26, 2014~~) Denial of Motion to Suppression -- Affirmed. OPINION MODIFIED UPON DENIAL OF REHEARING: October 2, 2014.

**ISSUE:** Did the People prove that the statements of this defendant were voluntarily given? (Yes).

**RULE #1:** The test for voluntariness of a defendant's statement to police, as required for the statement to be admissible, is whether the defendant made the statement 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. **RULE #2:** Assessment of voluntariness of a defendant's statement to police, as required for the statement to be admissible, is based on the totality of the circumstances.

**FINDING:** Defendant's statement to police was voluntary, as required to be admissible at bench trial on charge of first degree murder, even if defendant made statement after police agreed to let him see his family afterwards, and even though officers used profanity and showed defendant graphic photographs of victim's body during five-hour interrogation; defendant's requests for his family were not made for legal advice, photographs were used to show that the statement of occurrences given by defendant in his initial exculpatory statement were not consistent with the crime scene, and length of interrogation was extended because defendant's version of events continued to change.

**3. People v. Dominique Clayton**, 2014 IL App. (1<sup>st</sup>) 130743, (1<sup>st</sup> Dist., September 30, 2014) Suppression of Evidence -- Affirmed.

**ISSUE:** Was this defendant in custody when she was interrogated concerning multiple homicides? (Yes).

**RULE #1:** Factors relevant to the inquiry into whether an individual was "in custody" within meaning of statute requiring custodial interrogations in murder investigations to be electronically recorded 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 individual; (4) any indicia of a formal arrest procedure, 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. 725 ILCS 5/103-2.1(a) **RULE #2:** No single factor is dispositive, and in each case the court considers all of the circumstances surrounding the questioning to

determine whether it was custodial for purposes of statute requiring custodial interrogations in murder investigations to be electronically recorded. 725 ILCS 5/103-2.1(a)

**FINDING #1:** Defendant was “in custody,” within meaning of statute requiring all custodial interrogations in murder investigations to be electronically recorded, during unrecorded initial interview at police station; although defendant stated in a second interview that she had accompanied police officers to the station voluntarily and of her own free will, defendant was only 17 years old at the time of the interviews, was picked up from her house late at night by at least four officers and was not accompanied by her parents, and waited at the station for one or two hours before she was first interviewed, and the officers did not make it clear that she was free to leave until the second interview concluded at approximately 4:15 a.m. 725 ILCS 5/103-2.1(a) **FINDING #2:** Evidence that defendant was given *Miranda* warnings before her second interview with police officers, which was recorded, along with officers' allusions to her inconsistent statements in her first interview, supported a reasonable inference that defendant was asked questions designed to elicit incriminating statements in the first interview, as required for the interview to be a “custodial interrogation” within meaning of statute requiring all custodial interrogations in murder investigations to be electronically recorded. 725 ILCS 5/103-2.1(a) **FINDING #3:** State forfeited for appeal its argument that defendant's statements made during second and third interviews with police officers were voluntarily given and reliable, and thus State could not overcome the statutory presumption that the statements were inadmissible because the first interview was not recorded; State presented no evidence as to the voluntariness or reliability of the interviews, aside from the interview recordings themselves, and never argued before the trial court that the statements were voluntarily given and sufficiently reliable. 725 ILCS 5/103-2.1(a, f)

**4. People v. Ronald Stolberg, 2014 IL App. (2<sup>nd</sup>) 130963, (2<sup>nd</sup> Dist., September 23, 2014) Involuntary Manslaughter - - Affirmed.**

**ISSUE:** Did this trial court err in refusing to grant this defendant’s motion to suppress evidence abased upon the defendant’s alleged request for counsel? **(No)**.

**RULE #1:** Exclusionary rule bars the prosecution from using statements obtained after a defendant invokes his right to counsel, unless the State can establish that: (1) the defendant initiated further conversations, and (2) he knowingly and intelligently waived the right he had invoked. **RULE #2:** In seeking admission of statements made by a defendant after invoking his right to counsel, the state bears the burden of proving that a defendant initiated further conversations with police officers, in that he evinced a willingness and a desire for a generalized discussion about the investigation. **RULE #3:** The decision to admit a partially inaudible recording rests within the trial court's discretion, and appellate court will not reverse unless the trial court abused that discretion. 725 ILCS 5/103-2.1(b)

**FINDING #1:** Police officers did not violate defendant's right to have counsel present during interrogation, since defendant, after invoking the right, initiated further conversation with officers and knowingly and intelligently waived the right; after invoking his right to counsel, defendant asked why officers were not talking to him, officers explained that they could not speak to him after he invoked his right, and defendant stated that he understood that “the interview is over” when he asked for a lawyer. **FINDING #2:** Partially audible recording of custodial interrogation was admissible at murder trial, even if police officers had been at fault for the poor recording quality, since defendant's statements were voluntary and reliable; there was no argument that defendant was mentally ill, lacked average intelligence, or was under the influence of a substance that could affect the reliability of the statements. 725 ILCS 5/103-2.1(b)

**5. People v. Jeramy Green, 2014 IL App. (3<sup>rd</sup>) 120522, (3<sup>rd</sup> Dist., August 26, 2014) Denial of Motion to Suppression - - Affirmed.**

**ISSUE:** Did the People prove that the statements of this defendant were voluntarily given? **(Yes)**.

**RULE #1:** The test for voluntariness of a defendant's statement to police, as required for the statement to be admissible, is whether the defendant made the statement 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. **RULE #2:** Assessment of voluntariness of a defendant's statement to police, as required for the statement to be admissible, is based on the totality of the circumstances.

**FINDING #1:** The defendant's statement to police was voluntary, as required to be admissible at bench trial on charge of first degree murder, even if defendant made statement after police agreed to let him see his family afterwards, and even though officers used profanity and showed defendant graphic photographs of victim's body during five-hour interrogation; defendant's requests for his family were not made for legal advice, photographs were used to show that the statement of occurrences given by defendant in his initial exculpatory statement were not consistent with the crime scene, and length of interrogation was extended because defendant's version of events continued to change. **FINDING #2:** Statute giving arrestees the right to communicate with an attorney and a family member does not give the defendant the right to have a member of his family present with him during interrogation or even to visit with him while in custody other than at regular visiting periods. 725 ILCS 5/103-3

6. **People v. Ross Follis**, 2014 IL App. (5<sup>th</sup>) 130288, (5<sup>th</sup> Dist., June 6, 2014) Suppression of Evidence - - Affirmed.

**ISSUE:** Did the trial court err when it found that this defendant was in custody when he was interrogated by the police? (No).

**RULE #1:** A trial court's ruling on a motion to suppress presents mixed questions of fact and law on appeal; the appellate court gives deference to the trial court's factual findings and reverses only if they are against the manifest weight of the evidence, but the ultimate question of whether suppression is warranted is reviewed de novo. **RULE #2:** Police only have to supply *Miranda* warnings if the defendant is under "custodial interrogation," which means questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. **RULE #3:** The determination of whether a defendant is under custodial interrogation, for purposes of determining whether police officers are required to provide defendant with *Miranda* warnings, focuses primarily upon the perceptions of the defendant, rather than the intent of the police. **RULE #4:** Whether an interrogation is custodial, for purposes of determining whether police are required to provide a defendant with a *Miranda* warning, is determined by: (1) the totality of the circumstances and (2) how a reasonable person would perceive the situation. **RULE #5:** The following factors are relevant in determining whether a defendant made a statement in a custodial setting, for purposes of determining whether the defendant was entitled to a *Miranda* warning before making the statement: (1) the location, time, length, mood, and mode of the interrogation, (2) the number of police officers present, (3) the presence or absence of family and friends of the accused, (4) any indicia of formal arrest, and (5) the age, intelligence, and mental makeup of the accused.

**FINDING:** Defendant was in custody at time he made incriminating statements during police questioning, for purposes of determining whether police obtained the statements in violation of his right against self-incrimination; defendant was 18 years old and suffered from diminished mental capacity, defendant knew he was being investigated for sexual abuse of the daughter of his father's girlfriend, defendant had been removed from father's home a month prior to questioning, and defendant was taken to police station in a police car and interviewed in a small room for an hour before he made any incriminating statements.

7. **People v. Tashawnda Fort**, 2014 IL App. (1<sup>st</sup>) 120037, (1<sup>st</sup> Dist., April 30, 2014) Denial of Motion to Suppress - - Reversed and Remanded.

**ISSUE:** Did the police violate this defendant's *Miranda* rights by questioning him without informing him of her rights? (Yes).

**RULE #1:** The prosecution may not use statements of the defendant stemming from custodial interrogation unless *Miranda* warnings have been given; a person being questioned by law enforcement officers must first be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed, as long as that person has been taken into custody or otherwise deprived of his freedom of action in any significant way. **RULE #2:** To determine whether police have taken a defendant into custody, the trial court must decide whether a reasonable person in the defendant's circumstances would have felt he or she was not at liberty to terminate the interrogation and leave; the court should consider (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 individual; (4) any indicia of a formal arrest procedure, 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. **RULE #3:** Police do not violate constitutional rights when they ask normal, ordinary questions at the scene of an encounter with civilians; but a question at the scene counts as impermissible interrogation if it is reasonably likely to elicit an incriminating response. **RULE #4:** A police officer's question as to whether a defendant has contraband qualifies as interrogation, likely to elicit an incriminating response.

**FINDING #1:** Police officer engaged in an impermissible custodial interrogation of defendant when, after police forcibly entered her home with guns drawn and gathered most of the persons there into one room, and allowed defendant to attend to her baby only with a police supervisor's permission and with a police escort, and then, without providing *Miranda* warnings, officer asked defendant if police should know about anything she had in her bedroom, because police would find it eventually in the search; reasonable person in defendant's position, innocent of any crime, would not believe she could simply refuse to answer the question and leave the encounter to retrieve her baby. **FINDING #2:** Erroneous admission of defendant's confession into evidence was not harmless beyond a reasonable doubt in cocaine possession prosecution, even though without the confession, police would have found cocaine in defendant's bedroom with her state identification card; without the confession, defendant's attorney might have persuasively argued that other persons in the home involved with narcotics may have tried to hide some cocaine in defendant's room when they heard police entering.

8. **In re J.M.**, 2014 IL App. (1<sup>st</sup>) 120147, (1<sup>st</sup> Dist., April 18, 2014) Denial of Motion to Suppress - - Reversed and Remanded.

**ISSUE: Confessions and Admissions (Voluntary):** Did the police improperly obtain a confession from a mentally handicapped juvenile suspect? (Yes).

**RULE #1:** The issue of whether a *Miranda* waiver is knowing and intelligent is a question of fact and is therefore reviewed on appeal under a manifest weight of the evidence standard. **RULE #2:** Before a defendant's confession can be admitted at trial, the state must prove by a preponderance of the evidence that the defendant validly waived his or her privilege against self-incrimination and his or her right to counsel. **RULE #3:** The mental state necessary to validly waive *Miranda* rights involves being aware at all times of not only the state's intention to use one's statements to secure a conviction, but also the fact that one can stand mute and request a lawyer. **RULE #4:** The critical test used in determining whether an accused knowingly and intelligently waived his or her *Miranda* rights is whether the words in context used, considering the age, background, and intelligence of the individual being interrogated, convey a clear and understandable warning of all his or her rights. **RULE #5:** Whether a waiver of *Miranda* rights is knowing and intelligent is determined by the particular facts and circumstances of each case, including the defendant's background, experience, and conduct.

**FINDING:** Juvenile did not have the ability to understand his *Miranda* rights, and thus did not validly waive those rights prior to police questioning; 13-year-old juvenile had an I.Q. of 54 or 56, had the mental capacity of a seven-year-old, attended special education classes, could not read *Miranda* warning form, could not explain the meaning of the word "silent," and psychologist who examined juvenile determined that juvenile read at the first-grade level, was intellectually in the bottom .04% of the population, and was incapable of reading or understanding his *Miranda* rights.

9. **People v. Raymond Jones**, 2014 IL App. (1<sup>st</sup>) 120927, (1<sup>st</sup> Dist., March 24, 2014) First-Degree Murder - - Affirmed.

**ISSUE: Did the defendant's low IQ prevent him from knowingly waiving his Miranda rights? (No).**

**RULE #1:** It is the state's burden to prove by a preponderance of the evidence that a defendant's confession was given voluntarily, as required for confession to be admissible. **RULE #2:** The voluntariness of a confession, as required for confession to be admissible, depends upon the totality of the circumstances surrounding it, including the presence of *Miranda* warnings, and the defendant's age, intelligence, education, and experience at the time of the detention and interrogation. **RULE #3:** A valid waiver of *Miranda* rights must be knowingly and intelligently made. **RULE #4:** In order for a waiver of *Miranda* rights to be knowing and intelligent, the defendant need not understand far-reaching legal and strategic effects of waiving his or her rights or appreciate how widely or deeply an interrogation may probe; instead, the defendant must, at a minimum, understand basically what those rights encompass and minimally what their waiver will entail. **RULE #5:** In reviewing whether a defendant's confession was voluntary and thus admissible, an appellate court must uphold factual findings unless they are against the manifest weight of the evidence, but the appellate court



reviews de novo the ultimate question of whether the confession was voluntary.

**FINDING:** Defendant's waiver of *Miranda* rights prior to interrogation was knowing and intelligent, as required for defendant's statements to police to be admissible at murder trial; although psychiatrist determined that defendant had an IQ of 77, indicating a borderline intellectual functioning range, defendant was able to recite and explain each of his *Miranda* rights during interview with psychiatrist, recordings of interrogation did not indicate that defendant had any difficulty understanding his rights, and defendant had prior experience in the criminal justice system including a conviction for burglary for which he had been on probation at the time of charged offense.

**10. People v. Christopher Kronenberger**, 2014 IL App. (1<sup>st</sup>) 110231, (1<sup>st</sup> Dist., March 10, 2014) Denial of Motion to Suppress Confession - - Affirmed.

**ISSUE:** Did the trial court properly find that this defendant knowingly waived his *Miranda* rights and the police did not coerce his statements? (Yes).

**RULE #1:** Once a suspect indicates in any manner prior to or during police questioning that he wishes to remain silent, the interrogation must cease. **RULE #2:** An invocation of the right to silence prior to or during police questioning must be unambiguous, unequivocal and clear. **RULE #3:** The right to silence may be invoked either verbally or through conduct that clearly indicates a desire to end all police questioning; if verbal, the individual's demand to end the interrogation must be specific. **RULE #4:** An accused who waives his *Miranda* rights must do so voluntarily, knowingly, and intelligently. **RULE #5:** In determining whether a *Miranda* waiver is valid, the relevant inquiry is: (1) whether there was a free, un-coerced choice, and (2) whether there was awareness of the right and the consequences of abandoning it. **RULE #6:** In determining whether a statement is voluntary, a court must consider the totality of the circumstances of the particular case, and no single factor is dispositive; factors to consider include the defendant's age, intelligence, background, experience, mental capacity, education, and physical condition at the time of questioning, the legality and duration of the detention, the presence of *Miranda* warnings, the duration of the questioning, and any physical or mental abuse by police, including the existence of threats or promises.

**FINDING #1:** Evidence was sufficient to support finding that defendant was sufficiently advised of *Miranda* rights prior to making incriminating statements to police officers during transport and interrogation; one officer testified that he advised defendant of his rights upon arresting him and that he read warning again to defendant at the police station when defendant was removed from interview room for processing, and videotaped interrogation showed other officer giving *Miranda* warnings. **FINDING #2:** Defendant's movement of his head in response to police officer's question whether "you don't want to talk to me anymore" was insufficient to invoke right to remain silent, where it was unclear whether defendant actually nodded or shook his head in response to question. **FINDING #3:** Defendant's answer of "Yeah" when asked by police officer, "Are you done talking to all of us?" was insufficient to invoke right to remain silent; when viewed in context of earlier conversation with officer, it was unclear whether defendant wished to invoke right to remain silent or whether he, after having spoken to officer in earlier conversation, had nothing else to tell the officers. **FINDING #4:** Even if defendant invoked right to remain silent during police interrogation and police officers failed to honor this invocation, defendant's subsequent videotaped confession was admissible, where confession was made after defendant had been re-advised of his rights and he had reinitiated conversation with officers. **FINDING #5:** Statements by police officers during interrogation of murder defendant, that "your silence speaks volumes here" and "[you will] swing for this," did not undermine voluntariness of defendant's waiver of *Miranda* rights in making subsequent statement; remarks, when viewed in context, showed the officers' explanation to defendant that the only version of events that police possessed came from accomplice's father, who placed all the blame for the crime on the defendant. **FINDING #6:** Police officers' remarks, during interrogation of defendant, that defendant might avoid a life sentence and "save" himself if he told officers what happened were not threats that could render defendant's subsequent statement involuntary, in murder case arising out of shooting of victim perpetrated by defendant and accomplice; remarks only highlighted the reality that defendant could avoid the maximum sentence if he were not the shooter. **FINDING #7:** Police officer's statement that he wanted to be able to tell a judge with certainty that defendant was not the shooter did not constitute a promise of leniency that could render defendant's subsequent statement involuntary, in murder case arising out of shooting of victim perpetrated by defendant and accomplice, where there was no suggestion of a specific benefit that would ensue from defendant's confession, and officer informed the defendant that the officer did not "cut deals."

**11. People v. Tony Shanklin**, 2014 IL App. (1<sup>st</sup>) 120084, (1<sup>st</sup> Dist., January 31, 2013) First Degree Murder and Home Invasion - - Affirmed.

**ISSUE:** Did the trial court properly find that this defendant knowingly waived his Miranda rights? **(Yes).**

**RULE #1:** Where a defendant challenges the admissibility of his confession through a motion to suppress, the state has the burden of proving the confession was voluntary by a preponderance of the evidence. **RULE #2:** The concept of “voluntariness” of a confession includes proof that the defendant made a knowing and intelligent waiver of his privilege against self-incrimination and his right to counsel. **RULE #3:** To determine whether a defendant's confession was voluntary, a court considers the totality of the circumstances surrounding it, including the defendant's age, intelligence, education, experience, and physical condition at the time of the detention and interrogation; the duration of the interrogation; the presence of *Miranda* warnings; the presence of any physical or mental abuse; and the legality and duration of the detention.

**FINDING #1:** Trial court could hold *Frye* hearing to determine admissibility, at murder trial, of expert opinion on defendant's suggestibility to interrogation, based on defendant's score on a test measured under the Gudjonsson Suggestibility Scale (GSS), since GSS was a novel scientific theory; although an expert in forensic neuropsychology and an expert in forensic psychology testified that GSS had been in existence over 20 years, expert admitted to reviewing surveys indicating that GSS was not currently being used in forensic psychological examinations and that a psychological book stated that the GSS was “unknown to many psychologists.” **FINDING #2:** Gudjonsson Suggestibility Scale (GSS), a measure of a test subject's suggestibility to interrogation, was not generally accepted or relied on by forensic psychologists when examining American pretrial detainees with an extensive prior criminal history to determine whether they understood their *Miranda* rights and/or to determine whether statements made during police interrogations were voluntary, and thus testimony of examining psychologists as to defendant's GSS score was inadmissible at murder trial; GSS had been widely criticized as not providing an accurate measure of an American subject's suggestibility because GSS had been developed using British and Icelandic subjects, creator of the GSS had stated that validity of the GSS in predicting suggestibility during an actual police interrogation was unknown, and state's expert in forensic psychology testified that in her review of surveys of what doctors in the psychological field were using for testing, the GSS was not mentioned as instrument used by forensic psychologists. **FINDING #3:** Defendant's confession to police was voluntary, as required to be admissible at murder trial, even though examining psychologist testified that defendant had an IQ of 70 and performed in the “impaired” range on neuropsychological screening measures, and even though experts in pharmacology and substance abuse testified that at time of confession defendant had been undergoing severe heroin withdrawal rendering him too sick to participate in any meaningful dialogue or cognitive process; three examining psychologists testified that defendant was able to understand his *Miranda* rights, and expert who reviewed defendant's videotaped confession testified that defendant was not in severe withdrawal at the time.

## **2013 - CASES**

**1. People v. Cavinaugh Hughes**, 2013 IL App. (1<sup>st</sup>) 110237, (1<sup>st</sup> Dist., December 18, 2013) Denial of Motion to Suppress Confessions - - Reversed and Remanded.

**ISSUE:** Did the defendant's age, his intelligence (lack thereof), his drug use, and police trickery render this defendant's confession involuntary? **(Yes).**

**RULE #1:** Because of the unparalleled weight accorded confessions, courts should closely scrutinize them, especially, where police give false assurances to a vulnerable accused during a polygraph exam, and, at trial, the prosecution presents weak corroborative evidence. **RULE #2:** In reviewing a trial court's ruling concerning whether a confession is voluntary, the trial court's factual findings will be reversed only if those findings are against the manifest weight of the evidence; however, the trial court's ruling on whether the confession was voluntary is ultimately subject to de novo review. **RULE #3:** Confessions are examined solely in the light of the voluntary-involuntary test. **RULE #4:** A confession is voluntary if it is the product of free will, rather than the product of the inherently coercive atmosphere; thus, the confession must be the product of a free and unconstrained choice of its maker. **RULE #5:** The totality of the circumstances determines voluntariness of confession. **RULE #6:** The inquiry into voluntariness of confession examines whether a defendant's will

was overborne by the circumstances surrounding the confession; this determination depends upon a weighing of the circumstances of pressure against the power of resistance of the person confessing. **RULE #7:** Factors considered in evaluating whether defendant's will was overborne by the circumstances surrounding the confession 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. **RULE #8:** In evaluating whether defendant's will was overborne by the circumstances surrounding the confession, court may consider the investigator's fraud, deceit, or trickery in obtaining it. **RULE #9:** The People bear the burden of establishing voluntariness of a confession by a preponderance of the evidence. **RULE #10:** The test of whether intoxication alone will negate a waiver of rights presents a high bar: the suppression of a statement is warranted if the evidence plainly shows that a suspect is so grossly intoxicated that he no longer has the capacity to knowingly waive his rights, but less than gross intoxication may still affect a person's will. **RULE #11:** In limited circumstances, interrogators may use subterfuge in attempting to elicit a confession; but, where the State extracts a confession using deceptive interrogation tactics calculated to overcome the defendant's free will, suppression may be appropriate. **RULE #12:** Polygraph results are not admissible evidence due to their insufficient reliability and the possibility that they may be given extraordinary weight. **RULE #13:** The use of polygraph evidence in a criminal trial constitutes reversible error, as its admission undermines the integrity of the judicial process.

**FINDING #1:** Defendant preserved for appeal issue of admissibility of his confession, where defendant filed a written motion specifically setting forth his voluntariness arguments that detectives obtained the confession as a result of psychological, mental, and physical coercion illegally directed against him, and defense counsel focused on the detectives' interrogation during the extradition, and, thus, trial court had an opportunity to review the same essential claim that defendant presented to Appellate Court. **FINDING #2:** Defendant's confession to murder in the first degree was not voluntary, although he could pronounce complex, multisyllabic words and phrases, where defendant, who was 19 years of age at the time of the interrogation, had only attended school to the ninth grade, and had apparently never had a meaningful interaction with the criminal justice system such as undergoing an interrogation and suffering the consequences of his statements, was initially placed in the back seat of a car, handcuffed behind the back in a uncomfortable and painful position for at least an hour and a half, interrogated from around 2:00 p.m. until 6:00 a.m. the next day, during which time his clarity and cadence of speech, alertness, and concentration deteriorated, was only given a sandwich and three soft drinks, which was a meager amount of food for an overweight person held for 14 hours, and smoked marijuana during the interrogation, which likely reduced his ability to resist the detectives' coercion, which included lies that the defendant's fingerprints were found at the scene, numerous witnesses placed him at the scene, and he failed polygraph, which was infallible. **FINDING #3:** Appellate Court could properly consider defendant's use of marijuana while in custody for interrogation immediately before he took a polygraph examination, where video that was in the record showed detective enter interrogation room, smell something, identify the smell as marijuana, and ask defendant about it, and defendant readily admitted to possession and use of the marijuana.

2. **People v. Lafayette Harper**, 2013 IL App. (4<sup>th</sup>) 130146, (4<sup>th</sup> Dist., December 18, 2013) Suppression of Confession - - Reversed and Remanded.

**ISSUE:** Did the trial court properly rule that the statement of the defendant was inadmissible because a partial failure of the audio recording of that statement rendered that statement unreliable? **(No).**

**RULE #1:** A defendant's out-of-court statements generally are not covered by the rules against hearsay and thus are admissible at his trial; however, if a defendant is in custody, he must be given his *Miranda* warnings **RULE #2:** If a defendant receives his *Miranda* warnings and chooses to speak with police officers, his statements are admissible as evidence against him so long as such statements are voluntarily given.

**FINDING:** Statute requiring electronic recording of statements of accused did not require suppression of video recording of murder defendant's statements to police, even though audio portion of 30 minutes of over-100-minute recording was missing due to a technical malfunction, since statements were reliable and voluntary; trial court clearly that malfunction of the recording equipment was accidental, not nefarious, and that police officers were officers of high integrity, and recording itself showed that defendant was not abused or otherwise coerced into making the statements.

3. **People v. Tyrece Goins**, 2013 IL App (1<sup>st</sup>) 113201, (1<sup>st</sup> Dist., October 23, 2013) Aggravated Criminal Sexual Abuse -

- Affirmed.

**ISSUE:** Did this defendant voluntarily waive his *Miranda* rights? (Yes).

**RULE #1:** In reviewing a trial court's ruling on a motion to suppress a defendant's statement to police on the ground that defendant did not knowingly and intelligently waive his *Miranda* rights, an appellate court applies a two-part standard of review; the ultimate question of whether defendant's statement was voluntary is reviewed de novo, while the question of whether a defendant knowingly and intelligently waived the *Miranda* rights is factual in nature and reviewed under a manifest weight of the evidence standard. **RULE #2:** A person accused of a criminal offense is entitled under the Fifth Amendment to the assistance of **RULE #3:** Any statements obtained in derogation of a defendant's *Miranda* rights are inadmissible in a later criminal prosecution unless those rights were voluntarily, knowingly, and intelligently waived. **RULE #4:** A defendant validly waives his *Miranda* rights when he or she (1) freely and deliberately, in other words voluntarily, relinquishes the right and (2) is fully aware of both the nature of the right being abandoned and the consequences of the decision to do so. **RULE #5:** At a hearing on a motion to suppress a defendant's statement to police on the ground that defendant did not knowingly and intelligently waive his *Miranda* rights, the state has the burden of demonstrating, by a preponderance of the evidence, that the *Miranda* waiver was the product of an uncoerced choice and the requisite level of comprehension; once the state has established its prima facie case, the burden shifts to defendant to show that waiver was not knowing, intelligent or voluntary. **RULE #6:** In determining whether a defendant's waiver of his *Miranda* right is knowing and intelligent, a court must look at the specific facts and circumstances, including the defendant's background, experience, and conduct. **RULE #7:** A defendant's limited intellectual capacity must be taken into consideration in determining whether a waiver of *Miranda* rights is valid; this is because it is generally recognized that the mentally retarded are considered more susceptible to police coercion or pressure than people of normal intellectual ability, they are predisposed to answer questions so as to please the questioner rather than to answer accurately, they are more likely to confess to crimes they did not commit, they tend to be submissive, and they are less likely to understand their rights. **RULE #8:** A defendant's mental deficiency, by itself, does not render a statement inadmissible on the ground that the defendant did not validly waive his *Miranda* rights; rather, it is one factor that must be considered along with the totality of circumstances under which *Miranda* rights were waived. **RULE #9:** In order to knowingly and intelligently waive his *Miranda* rights, a defendant need not have the ability to understand far-reaching legal and strategic effects of waiving one's rights but must have the ability to understand the very words used in the warnings.

**FINDING:** Battery defendant knowingly and intelligently waived his *Miranda* rights before making statement to police; although defendant had an IQ of 61 and had been diagnosed with mild mental retardation, state's examining psychologist opined that mild retardation would not preclude defendant from understanding *Miranda* warnings, two other examining psychologists testified that during their interviews, defendant's responses indicated an ability to understand his rights, defendant was 20 years old at time of police questioning, had attended high school through the 11th grade and was living independently, and police officers testified that defendant had been given several *Miranda* warnings and had acknowledged that he understood his rights.

**4. People v. Rodney Miller, 2013 IL App (1<sup>st</sup>) 110879, (1<sup>st</sup> Dist., June 28, 2013) Aggravated Possession of a Stolen Vehicle - - Reversed and Remanded.**

**ISSUE:** Counsel (Effectiveness): Did the defendant's counsel provide ineffective assistance by failing to move to suppress the statement the defendant gave to the police following his arrest? (Yes).

**FINDING #1:** Here the officer attempted to stop the defendant for a moving violation. The defendant sped up to a high speed and crashed. He then attempted to flee on foot but fell to the ground as officer approached him with his gun drawn. The officer then placed the defendant in custody, and asked defendant why he was fleeing and if the car was stolen. These facts convinced the appellate court that the defendant was subject to a custodial interrogation under *Miranda* at the time he made an admission. **FINDING #2:** In this case the appellate court ruled that the defendant's admission was the product of a custodial interrogation. Further, the evidence in this case was close. According to the appellate court, the suppression of the statement would have called much of the arresting officer's testimony into question and the trial court's finding of guilt on charge of aggravated possession of a stolen motor vehicle came down to a credibility determination concerning whether the defendant actually knew that the vehicle was stolen. Therefore, the Court concluded that the trial

counsel's decision to not follow through on this defendant's pro se motion to suppress his pre-*Miranda* admission was not a reasonable strategic decision but, rather, was ineffective assistance of counsel.

**5. People v. Jarriet Brannon**, 2013 IL App (2<sup>nd</sup>) 111084, (2<sup>nd</sup> Dist., May 6, 2013) Unlawful Possession of a Controlled Substance - - Affirmed.

**FACTS:** The police arrested and searched the defendant. An Officer discovered several foil packets containing heroin and showed them to a second officer. That Officer asked the defendant, "Are you going to continue to lie to us about what you are doing?" The defendant responded, "No ... it's my stuff." Neither officer had advised defendant of his *Miranda* rights prior to his making this statement. The officers had the defendant transported to the police station. Once they arrived there, they met with the defendant in an interview room. They then advised the defendant of his *Miranda* rights and obtained his written waiver. Following the *Miranda* procedure, the officers interrogated the defendant for about 20 minutes regarding his involvement with the heroin. The defendant revealed that he and the driver went to the food store and purchased the heroin. The defendant further stated that he intended to keep some of the heroin for his own use and sell the rest to support his habit.

**ISSUE:** Did the defendant's attorney provide ineffective assistance by failing to move to suppress the statement the defendant gave to the police? (**No**. The statement was illegally obtained but no reversible error occurred.)

**APPEAL:** The Appellate Court held that: (a) any deficiency in the defense counsel's failure to move to suppress the defendant's pre-*Miranda* statement did not prejudice the defendant and thus was not ineffective assistance; and (b) the *Miranda* warning given after the defendant made unwarned statement was effective, and thus suppression of defendant's post-warning statements was not required.

**6. In re M.W.**, 2013 IL App (1<sup>st</sup>) 103334, (1<sup>st</sup> Dist., March 1, 2013) Attempted First Degree Murder, Vehicular Hijacking, Possession of a Stolen Motor Vehicle, and Aggravated Battery - - Affirmed.

**ISSUE:** Did this juvenile knowing waive his *Miranda* rights? (**Yes**).

**FINDING:** The Court held that though the defendant had attention deficit disorder and a learning disability, a clinical psychologist who examined defendant at defense counsel's request testified that the defendant's learning disability did not appear to significantly affect defendant's functional communication skills and was insufficient to affect his ability to knowingly and intelligently waive his *Miranda* rights. The psychologist further testified that the defendant had street smarts. Although the psychologist's examination occurred a year after the crimes were committed, the Court held that the lapse in time did not seriously discredit the psychologist's findings. Additionally, in this case the police interrogation of the defendant only lasted several minutes, the police took great care in advising the defendant of his rights, and the defendant's mother accompanied him for the entirety of the questioning. Therefore, the appellate court ruled that this sixteen-year old defendant knowingly and intelligently waived his *Miranda* rights.

**7. People v. Monta Travis**, 2013 IL App (3<sup>rd</sup>) 110170, (3<sup>rd</sup> Dist., February 28, 2013) First Degree Murder and Armed Robbery - - Reversed and Remanded.

**ISSUES:** 1) Were the defendant's two unrecorded statements inadmissible because they were not recorded? (**No**); 2) Was the defendant's recorded statement involuntarily given? (**Yes**).

**RULE #1:** Factors relevant to the inquiry into whether an individual was in custody, for purposes of Juvenile Court Act provision requiring electronic recording of custodial interrogation of minor at police station, 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 individual; (4) any indicia of a formal arrest procedure, 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. 705 ILCS 405/5-401.5(a). **RULE #1:** The reading of *Miranda* rights does not by itself create a custodial situation. **RULE #1:** 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. **RULE #1:** When determining whether a juvenile's confession was voluntarily given, no single factor is dispositive; rather, courts must consider the totality of the circumstances surrounding the confession. **RULE #1:** To constitute an offer of leniency that renders a confession inadmissible, a police statement must be coupled with a suggestion of a specific benefit that will follow if the defendant confesses. **RULE #1:** There is no requirement that a juvenile officer must be present when the police question a juvenile, but the presence of a juvenile officer or lack thereof is a significant factor in the analysis of whether a juvenile's confession was coerced.

**FINDING #1:** Two unrecorded interviews of 15-year-old defendant were noncustodial, for purposes of Juvenile Court Act provision requiring electronic recording of custodial interrogation of minor at police station; defendant voluntarily went to police station, defendant was placed in an unlocked room, first interview occurred within 10 minutes and was for a brief period of time, second interview occurred shortly thereafter and again was brief, defendant did not ask to see his mother and his mother did not ask to see defendant, and there was no indicia of formal arrest with the possible exception of defendant being read his *Miranda* rights.

**FINDING #1:** Confession of 15-year-old defendant to the crimes of first degree murder and armed robbery was involuntary; confession occurred during defendant's fifth interview with police after he voluntarily went to police station, defendant's last three interviews were recorded, defendant was visibly uncomfortable during the fourth interview when officer employed an aggressive and antagonistic style, defendant was groggy and cold when fifth interview began, fifth interview began after defendant had been at police station for almost six hours, officer assured defendant at the fifth interview that if he took responsibility for his actions he would remain in juvenile court even though under the Juvenile Court Act 15-year-olds charged with murder had to be tried as adults, and juvenile officer present during earlier interviews was not physically present in the room when defendant confessed.

## YEAR – 2012 - CASES

1. **People v. Annette Harris**, 2012 IL App (1<sup>st</sup>) 100678, (1<sup>st</sup> Dist., August 30, 2012) Felony Murder - - Reversed and Remanded. **ISSUES:** 1) Suppression of Evidence (Videotaping): Should the defendant's statements be suppressed because the People failed to videotape them? (Yes); 2) Suppression of Evidence (Miranda): Did the defendant invoke his right to counsel when he asked of it was "possible" to "have a few days to get an attorney?" (Yes) **ISSUE:** Should the defendant's statements be suppressed because the People failed to videotape them? **FINDING:** Defendant was subject to a custodial interrogation when she gave her inculpatory statements to police concerning the victim's murder, and since the statement was not electronically recorded, as required by statute, it was not admissible during felony murder trial unless the State could establish that the statement was voluntary and reliable, and thus remand was required to allow the trial court to determine whether defendant's unrecorded statement was voluntary and reliable. **ISSUE:** Did the defendant invoke his right to counsel when he asked of it was "possible" to "have a few days to get an attorney?" **FINDING:** Evidence supported finding that defendant invoked her right to counsel during police interrogation, and thus the statements she provided to police after she invoked her right to counsel were presumptively involuntary and had to be suppressed; defendant asked police if it would be "possible" to "have a few days to get an attorney," and she stated that she did not know how to contact an attorney because her cellular telephone numbers were unavailable.

2. **People v. Donald Harrell**, 2012 IL App (1<sup>st</sup>) 103724, (1<sup>st</sup> Dist., July 18, 2012) Suppression of Evidence and Denial of a Motion to Suppress - - Affirmed. **ISSUE:** Should the statements made to the police be suppressed because the defendant was improperly arrested by the police outside of their jurisdiction? (Yes) **ISSUE:** Should the statements made to the police be suppressed because the defendant was improperly arrested by the police outside of their jurisdiction? **FINDING:** The appellate court held that the police officers of their employing city did not have authority to arrest the defendant for drug possession in an extra-jurisdictional city, where the cities did not share a border, and the defendant's alleged acts, the police surveillance, the stop and search of the defendant and his home, and the defendant's arrest all occurred outside officers' employing jurisdiction. Further, the Court held that the officers' stop of the defendant was an arrest, not mere investigatory stop. The officers detained the defendant and others who had been riding in vehicle, following officers' surveillance to investigate information from confidential informant regarding alleged drug sales. The defendant testified that three police officers approached his vehicle with their weapons drawn and that he and other vehicle occupants were handcuffed. Finally, the defendant was detained and moved back to the front of his home, where he remained for 20 minutes, and his stop was not preceded by any suspicious activity.

**3. People v. Ronald Patterson**, 2012 IL App (1<sup>st</sup>) 101573, (1<sup>st</sup> Dist., June 29, 2012) Aggravated Criminal Sexual Assault - - Affirmed.

**ISSUE:** Was the juvenile defendant's statement properly used against him? (No. The police failed to provide the juvenile with a "concerned adult" during his questioning and the juvenile officer improperly helped compile evidence against the juvenile.)

**FACTS:** The defendant was 15 when the police questioned him. The questioning did not last long and no evidence indicates any mental or physical abuse of the defendant. However, the defendant had severely limited intelligence and education. The defendant had, at most, some minimal contact with the police and not in a setting where he would have learned about his need to protect his rights. Patterson also had considerable experience with adults disciplining him for inappropriate aggressive behavior, but the discipline included no exposure to a real threat of prison time. Because of Patterson's youth, limited intelligence, and lack of exposure to the criminal justice system, the presence during questioning of an adult concerned with his welfare takes on special significance. Here the police arrested the defendant and took him to the police station. An officer, who had taken part in the investigation by interviewing the victim, acted as the youth officer. The officer called the defendant's caseworker, on a Sunday and long after office hours, and left messages. No officer made any effort to contact the defendant's parents, and no officer made any further effort to find a concerned adult to help the defendant. The questioning began two minutes after the juvenile officer left a message for the defendant's caseworker. During this questioning the defendant made an incriminating statement. This statement was used against him at his trial. **QUESTION:** Should the defendant's statement have been used against him? **FINDING:** The Court found that the juvenile officer failed to fulfill his duties. The officer did not remain a neutral observer but, rather, worked against the defendant's interests. While an investigator's role is to interrogate witnesses and collect evidence, it is clear that the role of a youth officer is to act as a concerned adult interested in the juvenile's welfare. A youth officer cannot be adversarial or antagonistic toward the juvenile. Thus, these roles are inherently incompatible. Youth officers cannot act in their role as a concerned adult while at the same time actively compiling evidence against that juvenile." Here, the officer helped compile evidence against the defendant, and that work inherently conflicted with his role as a youth officer. Moreover, the officer did not even fulfill the most basic of a youth officer's tasks, as he made no effort to contact the defendant's parents, and made only a token effort to contact the defendant's caseworker who might have helped the defendant. Deciding not to contact Patterson's parents, when they likely would not learn of the arrest and questioning without information from the police, effectively prevented the parents from helping the defendant. Weighing all the facts and considering the appropriate factors, the Court found that the prosecution did not show that the defendant confessed freely and voluntarily. Therefore, it held that the trial court erred when it denied the motion to suppress the defendant's statement.

**4. People v. Frederick Walker**, 2012 IL App (1<sup>st</sup>) 083655, (1<sup>st</sup> Dist., June 12, 2012) First Degree Murder; Aggravated Criminal Sexual Assault and Home Invasion - - Affirmed in Part; Vacated in Part.

**ISSUE:** Did the defendant's low mental capacity render his statements involuntary? **FINDING:** (*No*) The appellate court held that the evidence was sufficient to establish that the confession of the defendant was knowing and voluntary. The Court held that though the defendant's score of 80 on the IQ test was between the mentally defective range and low-average range of functioning, there was no evidence that the defendant did not understand his *Miranda* rights. Further, there was evidence that the defendant was familiar with the criminal justice system and willingly and actively took part in his defense. Finally, the Court declared that there was no evidence other than the defendant's testimony to support the defendant's claim that a detective held a gun to his head in order to force him to give a statement. **FINDING:** The appellate court ruled that the trial court did not abuse its discretion by admitting other crime evidence that the defendant burglarized the victim's home eight days before her murder. The defendant claimed that his confession was the result of coercion, but he admitted in his confession that he also committed the earlier burglary. The evidence of the burglary corroborated the defendant's confession and established its accuracy, and in light of the overwhelming nature of other properly admitted evidence admission of the other crime evidence did not prejudice the defendant. **FINDING:** The appellate court also ruled that the trial court did not abuse its discretion by admitting other crime evidence that defendant had an altercation with his mother at police station prior to his arrest. The defendant claimed that his confession was coerced because police officer kned him and sprayed him with mace, but the evidence established that the defendant was kned and sprayed with mace because of the altercation rather than to coerce a confession, and the People did not focus on the altercation in closing argument thus reducing the possible prejudicial effect of the evidence.

5. **People v. Steven Zirko**, 2012 IL App (1<sup>st</sup>) 092158, (1<sup>st</sup> Dist., June 5, 2012) First Degree Murder and Solicitation of Murder - - Affirmed. **ISSUE:** Did the trial court err in refusing to grant the defendant's motions to suppress the statements he gave to the police because he had invoked his right to counsel and the police prevented his counsel from speaking with him? **(No) FINDING:** The appellate court noted that the police said they informed the defendant of his rights and allowed the defendant's attorney to speak with him. The defendant testified that they did not. The appellate court ruled that the question of witness credibility was for the trial court when considering the defendant's motion to suppress statements made during a custodial interrogation.

6. **People v. LaFayette Harper**, 2012 IL App (4<sup>th</sup>) 110880, (4<sup>th</sup> Dist., May 25, 2012) Suppression of Evidence - - Reversed and Remanded. **ISSUE:** Did the trial court properly suppress the recording of this defendant's statements when, due to a malfunction, part of the audio recorded was inaudible? **FINDING: (No)** The appellate court held that the statute requiring the electronic recording of the statements of accused did not require the automatic suppression of a video recording and the transcript of the police interrogation of the defendant, based on fact that the audio was missing from the recording for 30 minutes out of 105 minutes of the interrogation. Here the trial court had found that the recording had not been intentionally altered.

7. **People v. Raymond Lee**, 2012 IL App (1<sup>st</sup>) 101851, (1<sup>st</sup> Dist., April 24, 2012) First Degree Murder; Robbery; Arson; Home Invasion; and Residential Burglary - - Affirmed as Modified. **ISSUE:** Did the trial court err in denying this defendant's motion to suppress after he alleged that he had been physically abused and then promised leniency prior to his confession?

**FINDING #1: (No)** Here the officer who arrested the defendant testified that the defendant never invoked his right to counsel during the arrest. The detectives testified that the defendant agreed to speak with them, and, after waiving his *Miranda* rights, provided them with an alibi. According to the detectives, the defendant did waive his right to remain silent or to request the presence of an attorney. Further, the Court held that the trial record indicated that an assistant state's attorney advised the defendant of his *Miranda* rights during an interview. The defendant acknowledged he understood those rights and waived them by giving incriminating statements about the murders and he never invoked his right to counsel or informed the ASA that he had previously asked the police for an attorney. Therefore, the appellate court ruled that the evidence in this case supported the conclusion that the defendant did not unambiguously invoke his rights to remain silent and to counsel during his police interrogation. **FINDING #2:** The appellate court also ruled that the evidence in this case supported the conclusion that the defendant's incriminating statement was not a product of physical or psychological coercion by the police. The Court held that although the defendant alleged that a detective slapped him, snapped a weight lifting belt to intimidate him, and taunted him with the possibility that he would get the death penalty, the detectives denied ever striking or observing anyone strike the defendant during his time in custody or that they snapped a weight lifting belt. Further, the defendant told an assistant state's attorney (ASA) that he had been treated "okay" by the police. Additionally, the defendant had been given food and drink. Finally, the defendant never told the ASA that any threats or promises were made by the police. Based upon these facts, the appellate court ruled that the defendant gave his incriminating statement freely and voluntarily, and no force was used to obtain his confession. **FINDING #3:** The appellate court noted that although the detective asked the defendant "isn't it better to be known as a robber instead of a murderer of old men?" that statement did not constitute a promise of leniency because it lacked any suggestion of a specific benefit that would ensue from the defendant's confession. Here the detectives denied making or seeing anyone make a promise of a lesser charge. The assistant states attorney testified that the defendant never informed him of any threats or promises made by the police. The defendant demonstrated during his confession how he used a steam iron to beat one of the murder victims, and the autopsy revealed that one of the victim's eyes was torn by a blow, and one of the causes of his death was blunt trauma to the head. Therefore, the appellate court held that the trial court's finding of incredibility regarding the defendant's claim that he was promised that he would be charged with strong-arm robbery, rather than homicide was supported by the record. **FINDING #4:** The appellate court noted that the defendant was given *Miranda* warnings multiple times prior to his videotaped statement to an assistant states attorney. The interview sessions were relatively brief, never exceeding 45 minutes of police interrogation. They were sufficiently punctuated by long periods of time in between sessions, and the defendant was 21 years of age, had obtained his GED at the time of his arrest, and had previous experience with the criminal justice system. Further, the defendant was not physically or psychologically coerced by the police into making a statement. Therefore, the Court ruled that the trial court's determination that the defendant's confession was voluntary was not against the manifest weight of the evidence even though the defendant had been in custody for 46 hours at the time he began making his incriminating statements.



**8. People v. Dante Brown**, 2012 IL App (1<sup>st</sup>) 091940, (1<sup>st</sup> Dist., April 16, 2012) First-Degree Murder - - Affirmed. **ISSUES:** Confessions and Admissions: Was the defendant's "cognitive disabilities" sufficient to render his confession involuntary? **FINDING #1: (No)** The appellate court held that the trial court's statement, at the conclusion of a hearing on the defendant's motion to suppress his recorded statement about his involvement in murders, that it was "the defense's burden to show a violation of *Miranda*" did not show that the trial court improperly shifted the burden of proof to the defendant. According to the Court, the recorded statement was introduced at the start of the hearing. The recorded statement clearly showed that the defendant was informed of his constitutional rights and then waived them. The appellate court ruled that the recorded statement satisfied the People's initial burden of showing a valid *Miranda* waiver, and the burden thus properly shifted to the defendant to show that his waiver was not knowing, intelligent, or voluntary, i.e., "to show a violation of *Miranda*." **FINDING #2:** The appellate court ruled that the trial court could find that the defendant knowingly and intelligently waived his *Miranda* rights, even though an expert in educational psychology and special education testified that the defendant's full scale IQ score was 64, which was within the range of scores establishing mental retardation, and that the defendant did very poorly on the verbal portion of a test designed to evaluate a person's ability to understand *Miranda* warnings. Here the defendant was both informed of and waived his *Miranda* rights on multiple occasions, and the expert's testimony was equivocal and ultimately inconclusive, given in part that the expert could not conclude that the defendant did not in fact understand the *Miranda* warnings given to him.

**9. In re Kenneth W.**, 2012 IL App (1<sup>st</sup>) 101787, (3<sup>rd</sup> Dist., February 17, 2012) Adjudication of Delinquency - - Affirmed. **ISSUE:** Did the trial court err in finding that the juvenile defendant properly waived his *Miranda* rights? **APPEAL: (No)** The Appellate Court held that the trial court's finding that juvenile made a knowing, intelligent, and voluntary waiver of his *Miranda* rights was not against the manifest weight of the evidence. "Trial court's finding that 15-year-old juvenile made a knowing, intelligent, and voluntary waiver of his *Miranda* rights was not against the manifest weight of the evidence, despite one psychologist's testimony that juvenile could not have voluntarily waived his *Miranda* rights; trial court found the conflicting testimony of a second psychologist more persuasive, juvenile was not on any medication or being treated for any psychosis or psychiatric condition on the day of the police interview, and he was not exhibiting any psychiatric symptoms, juvenile denied ever having had any of those symptoms, juvenile's parent was present during the interview, juvenile received both the standard *Miranda* rights and more simplified explanations, juvenile maintained a C average in school, which he improved to a B average in the semester following the police interview, and juvenile was never placed in special education."

**10. People v. Bruce Graves**, 2012 IL App (4<sup>th</sup>) 110536, (4<sup>th</sup> Dist., January 31, 2011) Aggravated DUI - - Affirmed. **ISSUE:** Did the police improperly eavesdrop on this defendant by tape recording him while he sat in the back of a police squad car? **APPEAL: (No)** The Appellate Court held that the eavesdropping statute did not bar admission of videotape of defendant in back seat of police car following defendant's arrest. "Here, we find no violation of the eavesdropping statute. First, as the State points out, Walls informed defendant at the beginning of the traffic stop that he was being audio and video recorded. Defendant did not object to those recordings, giving his implied consent. See *People v. Ceja*, 204 Ill.2d 332, 349, 273 Ill. Dec. 796, 789 N.E.2d 1228, 1240 (2003) (finding consent under the eavesdropping statute may be either express or implied). Defendant argues that his consent when initially stopped should not extend to the period of time after his arrest and when he was placed in the back of the squad car. However, the record reflects that all of the recordings occurred within a relatively short period of time and throughout the duration of the traffic stop. The recordings of which defendant complains began at the scene of the stop. Once defendant was aware that he was being recorded, there was no reason for him to believe that the recording had ceased. Under these circumstances, we find consent. Additionally, the exemption found in section 14-3(h) of the eavesdropping statute applies to the facts presented. The record shows the audio recordings at issue were made simultaneously with video recordings, conversations on the recordings occurred between defendant and identified police officers, and defendant was stopped for investigation of an offense under the Code. Defendant argues that the exemption does not apply to postarrest recordings because the police were no longer conducting an investigatory stop. We disagree and find that defendant's arrest did not necessarily signal the end of the police officer's investigation."

#### **YEAR 2011 CASES**

**1. People v. Eric Vaughn**, 2011 IL App (1<sup>st</sup>) 092834, (1<sup>st</sup> Dist., November 23, 2011) Criminal Sexual Assault, Sexual Abuse, and Sexual Relations within Families - - Affirmed. **ISSUE:** Did the police corroborate the defendant's

confession? **FINDING: (Yes)** Defendant's trial testimony sufficiently corroborated his out-of-court admission to assistant state's attorney (ASA) that he inserted his finger into 14-year-old victim's vagina on certain date, so as to prove the corpus delicti of offense of criminal sexual assault; defendant testified on cross-examination that he put his finger inside victim's vagina on the date when victim stayed over at his house after they went to get contact lenses, which was the date at issue, and no redirect was taken to clear up any alleged confusion as to the date in question.

2. **People v. Jenna Jordan**, 2011 IL App (4<sup>th</sup>) 100629, 4<sup>th</sup> Dist., (No. 4-10-0629, November 14, 2011) Suppression of Evidence - - Affirmed. **ISSUE: Was the defendant in custody when he made his incriminating statements during a traffic stop?** **FINDING: (Yes)** Defendant was in custody, for *Miranda* purposes, when questioned by police officer following traffic stop, and thus her inculpatory statements were not admissible during prosecution for possession of cannabis with intent to deliver; defendant was detained in the back seat of squad car while full search of driver's vehicle occurred, officer threatened to extend the detention by indicating he intended to send for drug sniffing dogs, defendant was isolated from the driver of vehicle for 27 minutes before she made her inculpatory statement, and although defendant was told she was not in any trouble, that assertion was contradicted by officer asking questions that were designed to elicit incriminating responses.

3. **People v. Christina Beltran**, 2011 IL App. (2<sup>nd</sup>) 090856, (2<sup>nd</sup> Dist., No. 2-09-0856, August 23, 2011) First-Degree Murder - - Affirmed. **FACTS:** The defendant's daughter died. The defendant had a psychotic breakdown and was hospitalized. The police questioned her about the death of her daughter. She made incriminating statements. **ISSUES: Was this defendant in custody when she was questioned by the police?** **FINDING: (No)** The defendant was not in custody when she was questioned. Since the defendant was not in custody, the police did not violate the "question first, warn later" rule by informing her of her rights and questioning her a second time.

4. **People v. Michael Crenshaw**, 2011 IL App. (4<sup>th</sup>) 09098, (4<sup>th</sup> Dist., No. 4-09-0908, 2011 IL App (4<sup>th</sup>) 090908, August 10, 2011) Criminal Sexual Assault - - Affirmed. **ISSUES: Did the trial court err in refusing to grant this defendant's motion to suppress his confession based upon his intoxication?** **FINDING: (No)** Evidence supported finding that defendant's confession to police was voluntary, even though defendant argued that he was intoxicated after ingesting sleeping pills and other drugs; police officers testified that defendant never needed assistance walking or using the bathroom, that he looked tired but continued to respond to the officers' questions, and that defendant was enraged in the interview and communicated well, and defendant claimed that he took an overdose of drugs in an attempt to commit suicide before officers picked him up, but he hid the suicide notes and did not give them to anyone until three days after he was released from jail.

5. **People v. Jenell Land**, 2011 IL App (1<sup>st</sup>) 101048, (1<sup>st</sup> Dist., No. 1-10-1048, June 24, 2011) **FACTS:** The defendant was arrested for aggravated cruelty to a Companion Animal. When the arresting officer advised the defendant of her rights, she swore at him. Thereafter, the defendant made incriminating statements to the police. **ISSUE: Did the trial court err in refusing to grant the defendant's motion to suppress the statement she made to the police because the defendant was not paying attention when she was read her Miranda rights?** **ANSWER: No**

6. **People v. Allan Havlin**, 409 Ill.App.3d 427, (3<sup>rd</sup> Dist., No. 3-09-0939, April 18, 2011) **FACTS:** The defendant, a passenger in a vehicle stopped for a traffic violation. During a search of the vehicle, officer found drugs. They questioned the defendant regarding the ownership of drugs found in vehicle. The defendant was not placed in a locked squad car, was not handcuffed and was not told that he was under arrest. The two officers present did not display weapons or restrain vehicle occupants by force, the defendant had not been separated from his companions, and officers had not issued a traffic citation for a serious driving offense and had only provided a verbal warning to the driver for a minor infraction. **ISSUE: Was this defendant in custody when he admitted possessing illegal drugs?** **ANSWER: No.**

7. **People v. Jose Rivera**, 409 Ill.App.3d 122, (2<sup>nd</sup> Dist., No. 1-09-2472, April 7, 2011) **FACTS:** The defendant was arrested on numerous sex offenses and demanded an attorney. Thereafter, the police interrogated the defendant and he made numerous admissions. **ISSUE: Did the Police violate the defendant's right to counsel by re-interrogating him after he had asked for counsel?** **ANSWER: No.** The defendant reinitiated contact with the police. **ISSUE: Did the Police improperly comment on the defendant's invocation of his right to remain silent when they said the defendant's interrogation was "terminated?"** **ANSWER: No.** References made by a detective and the State's Attorney, during their testimony, that the defendant had "terminated" his interview did not constitute comments on the defendant's post-arrest silence and, therefore, did not constitute plain error. **ISSUE: Did the People improperly introduce into evidence this**

defendant's plea-related discussions? **ANSWER:** Yes. The defendant's statements to the police were plea-related custodial statements and, thus, were inadmissible.

### YEAR 2010 CASES

1. **People v. Darius Polk**, 407 Ill. App. 3d 80, (1<sup>st</sup> Dist., No. 1-08-0867, December 30, 2010) **FACTS:** The defendant was suspected of murder. He was brought in for questioning. After being advised of his rights, the defendant gave a statement. Thereafter, the defendant moved to suppress his statements. **ISSUE #1:** Did the defendant understand his rights? **ANSWER:** Yes. Defendant executed valid waiver of his *Miranda* right to remain silent, for purposes of first-degree murder prosecution, where, in response to police officer's explanation of defendant's rights, defendant initially made a gesture that could have been interpreted as a "no" when asked if he understood rights but then indicated that he understood officer's further explanation of rights, defendant asked officer a question about his right to an attorney and officer had conversation with defendant about right to attorney, defendant did not ask any questions about his right to remain silent after indicating that he understood that right, defendant began responding to officer's questions and actively participated in interview, defendant knowingly and voluntarily made a statement to police, and there was no evidence that defendant was coerced, threatened, or injured. **ISSUE #2:** Did the defendant unambiguously invoke his right to counsel? **ANSWER:** No. Defendant did not unambiguously invoke his right to counsel, and thus suppression of defendant's subsequent statement to police officer was not required in first-degree murder prosecution, where defendant stated that he wanted to call his aunt to try to get himself a lawyer, when asked whether he wanted a lawyer defendant responded that he just wanted to see if his aunt had money for one, and defendant specifically rejected a court-appointed attorney. **ISSUE #3:** Did the police coerce this confession? **ANSWER:** No.

2. **People v. Ernesto Valle**, 405 Ill. App. 3d 46, (2<sup>nd</sup> Dist., No. 2-08-838, October 21, 2010) **FACTS:** The defendant was suspected of murder. He was brought in for questioning. After being advised of his rights, the defendant gave a statement. Thereafter, the defendant moved to suppress his statements. **ISSUE #1:** Did the defendant show that he was unusually susceptible to police interrogation? **ANSWER:** No. Murder defendant's obedience and desire to please the police was insufficient to find that he was unusually susceptible to type and degree of deception and implications of leniency employed by police during defendant's interrogation, as required to support finding that his confession was involuntary; officers suggested to defendant that the shooting might have been self-defense, an accident, or otherwise excusable, that someone at party was wearing a wire that picked up defendant bragging about the shooting, and that if defendant would not tell the truth, they would have to play the tape in court, and defendant would then be "fucked." **ISSUE #2:** Did the trickery of the police and their aggressive interrogation tactics render the defendant's confession involuntary? **ANSWER:** No.

3. **People v. John Haleas**, 404 Ill. App. 3d 668, (1<sup>st</sup> Dist., No. 1-09-3353, October 13, 2010) **FACTS:** The Internal Affairs Division of the police department suspected that a police officer, the defendant in this case, acted improperly. The defendant was questioned by IAD and he gave a statement. Thereafter, prosecutors attempted to use this statement against the officer. **ISSUE:** Could this defendant's statements be used against him? **ANSWER:** No. The Court ruled that because the statements were made under a threat of being fired from his employment, the statements were involuntarily given.

4. **People v. Tavares Hunt**, 403 Ill. App. 3d 802, (1<sup>st</sup> Dist., No. 1-06-0824, August 19, 2010) **FACTS:** The police suspected that the defendant in this case committed murder. The defendant was questioned by the police and he invoked his right to counsel. With the cooperation of a jail inmate, the police obtained a judicial overhear authorization and wired the inmate up. Thereafter, the inmate engaged the defendant in a conversation and during that conversation the defendant made incriminating statements. **ISSUE:** Could this defendant's statements be used against him? **ANSWER:** No. The Court ruled that under Illinois law (not federal law) the conversation in this case would be considered to be an interrogation that violated the Illinois Constitution's right to remain silent.

5. **People v. Karen Frank-McCarron**, 403 Ill. App. 3d 383, (3<sup>rd</sup> Dist., No. 3-08-0366, July 29, 2010) **FACTS:** The defendant, a pathologist, had an autistic daughter. One day she suffocated her daughter by placing a plastic bag over her head and attempted to make it look as if the child died in her sleep. After confessing her acts to her husband, the police spoke with the defendant without first advising her of her rights. She admitted killing her daughter. Subsequently, the police advised her of her rights and again questioned her. Again she made incriminating statements. **ISSUE #1:** Did the

police violate this defendant's Fifth Amendment rights by questioning her without first advising her of her rights? **ANSWER: No.** The Court ruled that the defendant was not in custody at that time. Defendant was not in custody at time she made her first statement to police, and therefore defendant was not entitled to receive *Miranda* warnings for purposes of murder prosecution, where defendant was in the hospital at the time of the statement, defendant was transported to hospital in an ambulance, defendant was accompanied by her mother and one police officer who did not ask any questions at the time of transport, defendant was not restrained in any way, and defendant agreed to the interview by police after confessing to numerous family members. **ISSUE #2: Did the police use the illegal, "question first – warn later" interrogation technique on this defendant the second time they spoke to her?** **ANSWER: No.** Under the "question first, warn later technique," police officers elicit an incriminating statement from an individual without having given *Miranda* warnings and then read the individual his or her *Miranda* warnings, and again obtain the incriminating statement; when police deliberately use this technique, the statement obtained after *Miranda* warnings were read will be excluded from evidence, unless some curative measure was taken. Police did not deliberately use a "question first, warn later" technique in violation of *Miranda* when eliciting second incriminating statement from defendant for purposes of murder prosecution; in the time after the incident and leading up to the statement, police were not forceful in attempting to obtain statement from defendant, police intended to obtain just one statement, only reason police sought and obtained second statement was because first statement was mistakenly not recorded, and assistant State's Attorney requested second, recorded statement.

**6. People v. Noel Quevedo 403 Ill. App. 3d 282, (2<sup>nd</sup> Dist., No. 2-08-0569, July 16, 2010) **FACTS:**** The defendant was the father of the 8-month-old victim. Following the death of the victim, the police suspected that he died as a result of being shaken. Through an interpreter they spoke with the defendant. Although the defendant asked some questions about having an attorney present during his questioning, he never unambiguously asked to speak to an attorney. **ISSUE: Did the defendant properly invoke his right to counsel?** **ANSWER: No.** The Court ruled that the defendant made no specific demand. Murder defendant did not make an unambiguous request for counsel, and thus, detectives were free to elicit his inculpatory statements; first interview began with detectives explaining to defendant that he had right to consult with attorney, defendant said that he understood his right to counsel, defendant executed the *Miranda* waiver, defendant's statement that "we're still going to wait until the attorney arrives" could be interpreted by officers as question about availability of attorney rather than unambiguous request for one, and unavailability of attorney at beginning of interview caused defendant to not ask for one.

**7. People v. Gary Schuning, 399 Ill. App. 3d 1073, (2<sup>nd</sup> Dist., No. 2-09-0194, April 9, 2010) **FACTS**** Three persons were stabbed during an altercation. Two of those persons died and the third, the defendant in this case, was taken to a local hospital. Based upon their belief that the defendant was suspected of having killed the two individuals, the police placed a twenty-four-hour guard upon the defendant. At the hospital an officer informed the defendant that the police were going to execute a search warrant on the property of the defendant. The defendant then asked the officer if he could call his attorney. The officer said that he could but a nurse in the intensive care unit where the defendant was located informed the officer and the defendant that no phone was available. The officer made no attempt to provide the defendant with a telephone. Therefore, the defendant was unable to make his call. Thereafter, several police officers re-interrogated the defendant several times and he made a series of incriminating statements. Prior to his trial on murder charges, the defendant moved to suppress his statements. The trial court ruled that the defendant's first statement to the police could be used against him. However, any statements the defendant made after he was denied an opportunity to call his attorney could not be used. From this ruling the People brought this appeal. **ISSUE: Did the police violate this defendant's right to have an attorney prior to any questioning?** **ANSWER: Yes.** Defendant's request to call his attorney was made while an interrogation was imminent as required to invoke right to counsel under *Miranda*, although he was not being interrogated at the time of the request; defendant was at all times admitted to hospital intensive care unit and guarded by a police officer, defendant was unable to leave, officers initially questioned defendant and informed him they were going to speak with him again, defendant had no indication as to when the officers would return, and the officers did return and resume questioning less than 24 hours after the initial questioning. Fact that defendant, who was subjected to periods of interrogation while hospitalized in an intensive care unit and guarded by a police officer, invoked his right to counsel under *Miranda* during a break in direct interrogation did not invalidate invocation of such right; defendant was in custody the entire time and under imminent threat of further interrogation. Defendant's request to call his attorney, while in custody in hospital intensive care unit, was an unambiguous invocation of his right to counsel, even if he did not specify why he wished to call attorney; defendant had just been interrogated by police less than three hours earlier and had been told that police would want to further question him later, and defendant asked unequivocally to call his lawyer without inquiring whether he should call a lawyer or pondering whether he needed counsel.

8. **People v. Andrew Smith, et al., 399 Ill. App. 3d 534, (3<sup>rd</sup> Dist., No. 3-09-0524, April 1, 2010)** **FACTS** The defendants in this case were police officers who were accused of numerous criminal offenses following the arrest of the victim. Prior to their trials, their employer, a Police Department, ordered these officers to appear before a board of enquiry and testify concerning their conduct. They were threatened with the termination of their employment if they refused. The defendant's complied with the demands of their employer and, thereafter, the People sought to obtain copies of these statements. **ISSUE:** Could the prosecution obtain copies of these statements? **ANSWER:** No. Statements that police officers, who were subsequently prosecuted for official misconduct, aggravated battery, mob action, battery and obstruction of justice, gave to city police department during internal investigation, were coerced and involuntary, and thus protected from disclosure under *Garrity* immunity when State served subpoena duces tecum seeking records of the internal investigation, where such police officers signed statements titled "*Garrity* Warnings" prior to providing statements, warnings stated that officers were compelled to provide the statements as a condition of employment, and officers were faced with the option of either incriminating themselves or losing their means of livelihood.

9. **In re Tyler G., 407 Ill.App.3d 1089, (4<sup>th</sup> Dist., No. 4-09-0353, March 9, 2010)** **FACTS** A police officer questioned the defendant, a 13-year-old minor, about his involvement in a burglary. The officer did not read respondent a Miranda warning prior to the start of questioning. The questioning took place at the defendant's residence, where he lived with his grandmother. The officer interviewed the defendant, in the presence of his grandmother, for approximately 30 minutes in the kitchen of the residence. According to the officer, the defendant initially indicated that he had not been involved in the burglary. However, after a few minutes he admitted entering the victims' residence and taking some jewelry and a bicycle. The officer did not arrest the defendant at that time. Instead, he was allowed to remain home with his grandmother. **ISSUE:** Was this defendant in custody when he was questioned by the officer? **ANSWER:** No. Evidence supported finding that juvenile was not in custody when he made statements to police officer, and thus officer was not required to provide juvenile with *Miranda* warnings; juvenile was questioned in his residence, the questioning was of limited duration and only lasted for 30 minutes, juvenile's grandmother, who was his primary caretaker, was present during the questioning, juvenile was not physically restrained, and no formal booking procedure took place after the questioning until more than one hour later when officer called juvenile's grandmother and asked her to bring him to the police station.

#### **YEAR 2009 CASES**

1. **People v. Paul Salgado, 336 Ill. Dec. 604, (1<sup>st</sup> Dist., No. 1-08-2832, October 17, 2009)** **FACTS:** The police suspected that the defendant shot the victim to death. They placed him under arrest and transported him to the police station. There they interrogated him. During this interview, the defendant was confronted with the confession of his co-defendant. He confessed. The probable was, however, the police lacked probable cause to under arrest when he was first picked up. **ISSUE:** Could the statements of the defendant be used against him even though the defendant had been illegally arrested? **ANSWER:** Yes. The appellate court ruled that the co-defendant's confession, and other circumstances, created sufficient independent probable cause to remove the taint of the defendant's original illegal arrest and allow the confession to be used against this defendant.

2. **People v. Carl Armstrong, 395 Ill. App. 3d 606, (1<sup>st</sup> Dist., No. 1-08-0901, November 2, 2009)** **FACTS:** The police suspected that the defendant shook his baby son and thereby caused the child serious injury. In fact, the baby was suspected of being brain-dead. The police interrogated the defendant and he confessed. Shortly thereafter, the baby was declared to be brain-dead. **ISSUE:** Could the statements of the defendant be used against him even though those statements were not digitally recorded? **ANSWER:** Yes. The defendant was interrogated prior to the police being informed that the child was brain-dead. Therefore, his statements could be used against him even though they were not digitally recorded.

3. **People v. Micah Anderson, 395 Ill. App. 3d 241, (1<sup>st</sup> Dist., No. 1-06-1118, September 28, 2009)** **FACTS:** The police believed that the defendant in this case was a potential witness to a murder. The police asked the defendant to come down to the station for an interview. The defendant agreed. At the station the police questioned the defendant. During this questioning, the defendant revealed details of the murder. There the defendant stayed overnight as the police gathered evidence concerning the murder. During a further interview, the defendant gave the police an incriminating statement. **ISSUE:** Was the statements of the defendant inadmissible because they were the product of the defendant's illegal detention? **ANSWER:** No. The defendant was not arrested until after he gave his incriminating statement.

Therefore, his statement could be used against him.

4. **People v. Johnathan Crotty, 394 Ill. App. 3d 651, (2<sup>nd</sup> Dist., No. 2-07-0194, September 10, 2009) FACTS:** The defendant was suspected of delivering illegal drugs. He was arrested and requested counsel. The then asked that a police detective talk to him. The detective spoke with the defendant and the defendant asked about the process he was going to go through. The detective informed the defendant of what was going to happen without re-advising him of his rights. The defendant then said that he wanted to make a statement. **ISSUE: Did the detective violate the defendant's right to counsel by speaking with him after he had asked for counsel and failing to immediately re-advise the defendant of his rights prior to speaking with him?** **ANSWER:** This appellate court ruled the rights of the defendant were not violated merely because the police failed to re-advise him of his rights prior to speaking with him.

5. **People v. Brandon Miller, 393 Ill. App. 3d 1060, (2<sup>nd</sup> Dist., No. 2-07-0391, August 20, 2009) FACTS:** The defendant was suspected of committing a hate crime after he spray-painted anti-Semitic and anti-homosexual messages on a home. He was arrested and requested counsel. While he was being booked, the defendant asked an officer why his car was being towed. The officer informed the defendant that if he was going to talk, he needed to be re-informed of his rights. The officer read the defendant his rights again and the defendant agreed to talk. **ISSUE: Did the detective violate the defendant's right to counsel by speaking with him after he had asked for counsel?** **ANSWER:** The appellate court ruled that the defendant reinitiated contact with the police by asking a question that was related to his arrest. The police officer in this case correctly then re-advise the defendant of his rights before answering the defendant's question.

6. **People v. Jason Barnett, 393 Ill. App. 3d 556, (3<sup>rd</sup> Dist., No. 3-08-0672, August 19, 2009) FACTS:** The defendant was suspected of aggravated DUI. He was arrested and placed in a squad car. He was never advised of his rights. While he was being transported to the police station, the officer who was driving the squad car started asking the defendant questions. Once they arrived at the station the officer started the defendant's 20-minute observation period. During this period, the officer continued to speak with the defendant. During the ride to the station and during the observation period the defendant made statements that incriminated him. **ISSUE: Did the officer violate the defendant's rights by speaking with him without first informing him of his rights?** **ANSWER:** The appellate court ruled that the defendant underwent a custodial interrogation without being informed of his rights. Therefore, his statements were suppressed.

7. **People v. Cindy Bauer, 393 Ill. App. 3d 414, (2<sup>nd</sup> Dist., No. 2-07-1180, September 6, 2009) FACTS:** A fire burned a building down. The fire appeared to be deliberately set. The defendant and two other persons lived in the building and had access to it. Shortly before the fire, the defendant had a fight with one of the residents of the building. The doors to the building were locked. Two of the residents of the building jumped out of a second-story window to escape the fire. The defendant was nowhere to be found when the fire department and the police arrived on the scene. Following her arrest, the defendant gave a statement. She then moved to suppress that statement and argued that: 1) the police had promised her leniency in exchange for her statement (this the police denied); 2) the police did not mention the seriousness of her offense; and 3) the police held her for two days before she gave a statement. **ISSUE: Was the defendant's statement voluntarily given?** **ANSWER: Yes.** After considering all of the facts surrounding the interrogation of this defendant, the appellate court concluded that she voluntarily gave her statement. Evidence was sufficient to establish to establish, at hearing on motion to suppress made by defendant subsequently convicted of aggravated arson, that statement defendant made to police officers following her arrest was voluntary; there was evidence that before each interrogation by defendant was provided *Miranda* warnings and that defendant was given food and allowed to sleep while at the police station, officers testified that defendant did not request to speak with an attorney, officers denied that defendant gave her statement only after they promised that they would seek to ensure that the charges against her were lessened so that she would receive no more than probation or one year in jail, and defendant did not contend that due to her age, intelligence, education, experience or physical condition that she was unable to appreciate the nature of the seriousness of her offense.

8. **People v. Jose Jardon, 393 Ill. App. 3d 725, (1<sup>st</sup> Dist., No. 1-07-0145, July 28, 2009) FACTS:** The defendant was suspected of committing murder. Without probable cause the defendant was placed under arrest and brought to the police station for questioning. At the station the police interrogated the defendant and he confessed. **ISSUE: Could the police use the defendant's recorded statement against him even though the defendant had been illegally arrested prior to giving that statement?** **ANSWER: Yes.** The appellate court concluded that the taint of the defendant's arrest was purged when the police developed probable cause to arrest the defendant following his arrest but before he was interrogated.

Defendant's confession was sufficiently attenuated from illegal arrest, so as to be admissible at murder trial; defendant was advised of *Miranda* rights prior to giving statements, defendant had adequate time to consider the situation and his decision to give videotaped statement, there was no indication that defendant was subjected to coercive conduct prior to giving his statement, police obtained independent, intervening probable cause prior to defendant's statements through witness statement identifying defendant as the shooter, police officers' belief that there was probable cause to arrest defendant was not entirely unreasonable, police conscientiously followed up on all leads, and there was no evidence that defendant gave videotaped confession only because he had given a previous oral inculpatory statement.

**9. People v. Sandra Vasquez, 393 Ill. App. 3d 185, (2<sup>nd</sup> Dist., No. 2-07-1204, July 14, 2009) FACTS:** A traffic accident caused the death of a person. The defendant was suspected of aggravated DUI. She had been taken to a local hospital for treatment and two police officers interviewed her there. During this interview, the defendant made several incriminating statements. **ISSUE: Did the officers violate the defendant's rights by interrogating her at the hospital?** **ANSWER:** The appellate court ruled that the defendant was not in custody when she was questioned by the police. Therefore, her Fifth Amendment rights were not violated. **ISSUE: Did the police violate the defendant's Sixth Amendment rights?** **ANSWER:** The Court ruled that while the defendant had been issued several traffic tickets, her sixth amendment right to counsel had not yet attached before she was questioned.

**10. People v. Maria Peo, 391 Ill. App. 3d 815, (2<sup>nd</sup> Dist., No. 2-06-0481, May 20, 2009)** A police officer stopped a car for failing to signal a turn. The car contained three individuals, with the defendant seated in the front passenger seat. After the vehicle's driver was arrested for driving on a revoked license, the officer removed the passengers, searched the vehicle incident to the arrest, and found three glass smoking pipes. The officer then took defendant and the other passenger into custody. At that point, they were not free to leave. When the officer first removed the defendant from the car, she was complaining that she was not feeling well. After he found the pipes and placed her in custody, she continued to complain about feeling sick. The defendant was hunching forward and saying "my stomach, I'm not feeling well." Based on his experience, the officer thought that she was on drugs. He asked her, "What's wrong?" She replied, "I have been using crack cocaine, prescription medication and been drinking. I think I may be overdosing because my chest and stomach is [sic] hurting." At this point, the officer had not yet given the defendant her *Miranda* warnings. **ISSUE: Did the officer violate this defendant's *Miranda* rights?** **ANSWER: No.** The appellate court concluded that the officer was merely asking a "clarifying" question following the defendant's volunteered statement. Therefore, the officer's question did not constitute interrogation.

**11. People v. Jeanette Daniels, 391 Ill. App. 3d 750, (1<sup>st</sup> Dist., No. 1-06-3514, May 15, 2009):** The victim, a 29-year-old male, was confronted by the mother of a young child. The mother accused the victim of molesting the child. As a result of these accusations, the victim was beaten and sodomized to death by a group of people. The police believed that one of those persons was the defendant in this case. They interrogated her and digitally recorded her confession. Following a bench trial, the defendant was convicted of aggravated kidnapping. **ISSUE: Did the defendant knowingly waive her rights?** **ANSWER: No.** The appellate court concluded that after considering the mental capacity of the defendant and the circumstances of her interrogation, it was clear that the defendant simply did not understand the abstract nature of the *Miranda* warnings. Therefore, she could not possibly have knowingly waived those rights.

**12. People v. Mark Outlaw, 388 Ill. App. 3d 1072, (4<sup>th</sup> Dist., No. 4-08-0350, March 25, 2009):** The defendant was placed under arrest for a narcotics violation. A police officer approached the defendant and asked if wanted to cooperate with a police drug unit. The defendant replied that he would talk to the police about his cooperation but he wanted his attorney present. The police ended all questioning of the defendant. When an officer approached the defendant in order to obtain booking information, the defendant asked him about cooperating and then waived his right to counsel. Thereafter, the defendant made an incriminating statement. **ISSUE: Did the officer interrogate this defendant by asking him booking questions?** **ANSWER: No.** **ISSUE: The police knew that the defendant was represented by an attorney on another criminal matter. Did the police have a duty to contact that attorney prior to speaking with the defendant?** **ANSWER: No.** The defendant's Six Amendment right to counsel is case specific. The police could interrogate the defendant about an unrelated offense without that attorney's knowledge or presence. **ISSUE: Did the defendant initiate the communication with the police in this case?** **ANSWER: Yes.**

**13. People v. Nicole Harris, 389 Ill. App. 3d 107, (1<sup>st</sup> Dist., No. 1-06-3086, March 13, 2009):** On the evening in question the defendant's four-year-old son was strangled to death. At the hospital where the child was brought, the police questioned the defendant about the child's death and asked her to come down to the police station. She agreed. At the

station the police continued their questioning and, during this questioning, the defendant broke down and admitted killing her son. According to the police, the defendant was immediately informed of her rights and she waived them. The defendant was then interrogated again and she again admitted her guilt. After being charged with murder, the defendant filed a motion to suppress and argued that she had never been informed of her rights prior to both of her confessions. The trial court believed the testimony of the police and disbelieved the arguments of the defendant. **ISSUE:** Under these facts, was the defendant in custody when she gave her first confession? **ANSWER:** No. **ISSUE:** Did the police properly advise the defendant of her rights? **ANSWER:** The trial court believed they did and the majority of this appeal court affirmed that finding. **ISSUE:** Did the police in this case employ the illegal “question first – warn later” interrogation technique? **ANSWER:** No. The defendant offered no proof that the police deliberately employed this technique.

**14. People v. Rene Amigon, 388 Ill. App. 3d 903, (1<sup>st</sup> Dist., No. 1-06-3528, February 18, 2009):** On October 20, 1995, the defendant in this case, an 18-year-old member of the Latin Kings street gang, shot at Alphonso Ruiz, a member of the Two-Six, a rival gang. The People's evidence against the defendant included testimony from Ruiz and the court-reported statement the defendant made on October 27, 1995. The defendant received a 30-year sentence for aggravated battery with a firearm for the Ruiz shooting. Although Ruiz survived the shooting, a bullet severed his spinal cord, rendering him quadriplegic. On March 13, 2001, Ruiz went into cardiac arrest. He was taken to the hospital, where he died the following day of pneumonia. He was 22 years old. Upon learning of Ruiz's death, the People charged the defendant with Ruiz's murder. Prior to his murder trial, the defendant moved to suppress his 1995 court-reported statement on the basis that it did not comply with section 103-2.1(b) of the Code of Criminal Procedure of 1963 (725 ILCS 5/103-2.1(b) (West 2006)) because it was not electronically recorded. **ISSUE:** Could the defendant's statements be used against him even though they were not electronically recorded? **ANSWER:** Yes. The mandatory electronic recording provisions were not in effect at the time the statements were taken. The Court ruled that these provisions are to applied only after the effective date of the Public Act that created them.

**15. People v. Victor Velez, 388 Ill. App. 3d 493, (1<sup>st</sup> Dist., No. 1-06-0912, February 4, 2009):** The police suspected the defendant of murder. They asked him to come down to the police station for questioning. He agreed. At the station the defendant made a series of incriminating statements and was placed under arrest. The defendant hired an attorney and that attorney advised the defendant not to speak to the police or answer any further questions. Thereafter, the defendant asked to speak to a police detective. The detective reminded the defendant that he was represented by counsel and asked the defendant if he still wanted to talk. The defendant said he did. The defendant then made additional incriminating statements. **ISSUE:** Could the defendant's statements be used against him? **ANSWER:** Yes. The defendant initiated a conversation with the police after being fully advised of his rights.

**16. People v. Spyridon Botsis, 388 Ill. App. 3d 422, (1<sup>st</sup> Dist., No. 1-07-3118, February 2, 2009):** The defendant in this case fainted while driving his car. His car crossed the highway centerline and collided with another car. An occupant of the other car was killed. A police officer drove to the hospital to interview the defendant. The officer found the defendant in a hospital bed. He was strapped to a backboard during this questioning. The officer questioned the defendant about the accident without first advising him of his Miranda rights. During this questioning, the defendant admitted that he had passed out while driving on three prior occasions. **ISSUE:** Could the defendant's admissions about his prior fainting incidents be used against him on charges of reckless homicide? **ANSWER:** Yes. No evidence was admitted in this case to indicate that the defendant was “in custody” when he was questioned by the officer. Therefore, the statements were admissible.

#### **YEAR 2008 CASES**

**1. People v. Rafael Ayala, 326 Ill. Dec. 296, (1<sup>st</sup> Dist., No. 1-07-0782, December 4, 2008) **Facts:**** The defendant stabbed his girlfriend to death. He then called the police. When the police arrived, the defendant admitted that he had killed his girlfriend. Prior to his trial for first-degree murder, the defendant's attorney did not move to suppress the statements the defendant had made to the police. Following his conviction, the defendant complained that his counsel erred in failing to move to suppress his statements because he, the defendant, had ingested a great deal of cocaine prior to the murder and the police read him his rights in English and he only spoke Spanish. **ISSUE:** Were the defendant's statements inadmissible because he was under the influence of cocaine when he made them? **ANSWER:** No. The evidence against the defendant did not indicate that he was impaired in any way. **ISSUE:** Did the police improperly fail to read the defendant his rights in Spanish? **ANSWER:** No. The police indicated that the defendant understood English



and the defendant was informed of his rights in Spanish at the jail and then gave a similar confession.

2. **People v. Lona Griffin 385 Ill. App. 3d 202, (4<sup>th</sup> Dist., No. 4-05-1016, September 30, 2008)** **Facts:** The infant son of the defendant was suffocated to death. The police asked the defendant to come down to the police station to answer questions about her baby's death. The defendant agreed but asked that her father be present. The police refused to allow the defendant's father to be present during her interrogation. Prior to this first interrogation, the police did not inform the defendant of her rights. After the defendant made various incriminating statements, the police informed her of her rights and immediately continued to interrogate the defendant. During this interrogation, the defendant confessed to killing her baby. **Issue:** Was this defendant in custody when she was transported to the police station for questioning? **Answer:** Yes. The appellate court concluded that under these circumstances, the defendant was in custody even though the police repeatedly told her she was free to go at any time. **Issue:** Did the police in this case use the illegal "question first – warn later" interrogation technique? **Answer:** Yes. The appellate court determined that the police violated the Seibert rule in this case.

3. **People v. Terrance Johnson 2008 WL 4163686, (1<sup>st</sup> Dist., No. 1-06-0833, September 8, 2008)** **Facts:** The defendant was arrested for murder. He was interrogated and gave an incriminating statement. The defendant then moved to suppress his recorded statement and argued that his right to counsel had been violated because he had demanded his right to counsel before he was interrogated. The People presented evidence that indicated that they had no record of the defendant's attorney visiting the defendant on the day he confessed. The defendant then called his attorney and the attorney testified that he did. The problem was that the defendant's attorney did not follow the well established rules and sign in at the police station. The trial court believed the police and disbelieved that defendant. It therefore denied the defendant's motion to suppress. **Issue:** Did the trial court err when it denied the defendant's motion to suppress his statement? **Answer:** No. The appellate court concluded that under these circumstances, the trial court was correct in finding that the testimony of the police was more believable than the testimony of the defendant's attorney.

4. **People v. Chad Hostetter 384 Ill. App. 3d 700, (4<sup>th</sup> Dist., No. 4-07-0018, August 13, 2008)** **Facts:** The defendant was arrested for DUI. He was advised of his rights and he was asked to take a breathalyzer test. He refused. Based upon this conduct, the defendant was charged with DUI. At his trial, a police officer testified that when the defendant was asked to take the breathalyzer test, the defendant responded that he would only do so if he were allowed to speak to his attorney first. The police refused to allow the defendant to speak to his attorney and, therefore, the defendant refused to take the test. **Issue:** Did the trial court err when it allowed the police officer to testify that the defendant requested to speak to his attorney prior to taking the breathalyzer test? **Answer:** No. The appellate court concluded that under these circumstances, the request to take the breathalyzer test did not constitute a "custodial interrogation." Therefore, the defendant did not have a right to speak to his attorney prior to deciding on whether or not to take the test. Since the defendant did not exercise his right to silence by asking to speak to his attorney, the police did not violate that right of the defendant by testifying about the defendant's request to speak to his attorney.

5. **In re Dante W. 383 Ill. App. 3d 401, (1<sup>st</sup> Dist., No. 1-06-0010, June 16, 2008)** **Facts:** The defendant 15-year-old minor with "limited mental capacity" was suspected of first-degree murder aggravated vehicular hijacking. The police arrested and interrogated the defendant. Prior to his interrogation, the police advised him of his rights. During this interrogation, the defendant made various incriminating statements. **Issue:** Did the People prove that the defendant in this case knowingly and intelligently waived his rights? **Answer:** Yes. The trial court was in the best position to determine whether or not the defendant properly waived his rights.

6. **In re Marvin M., 383 Ill. App. 3d 693, (2<sup>nd</sup> Dist., No. 2-06-0746, June 13, 2008)** **Facts:** The 14-year-old defendant in this case was suspected of shooting the 13-year-old victim during a gang shooting. The police went to the home of the defendant and spoke to his mother. They informed her that the defendant might have been involved in gang activity. The officer did not tell the defendant's mother that the defendant was suspect of having committed murder. The police then picked the defendant up and transported him to the police station. A police detective, who was also a juvenile officer, talked to the defendant. The officer made sure that the defendant could read, write, and speak English. He also learned that the defendant had no previous experience with the police. The officer also informed the defendant of his rights. Several investigating officers informed the defendant of his rights and interrogated him. During this interrogation the defendant made incriminating statements. Based upon this and other evidence, the defendant was charged with aggravated battery and the aggravated discharge of a firearm. **Issue:** Was the defendant coerced into confessing? **Answer:** No. **Issue:** Did the police improperly prevent the defendant's mother from being present during his

interrogation? **Answer:** No. **Issue:** Did the juvenile officer improperly act both as an investigating officer and a juvenile officer? **Answer:** No. **Issue:** Did the police improperly use trickery to obtain his confession? **Answer:** No.

7. **People v. Jeremy Calhoun, 382 Ill. App. 3d 1140, (4<sup>th</sup> Dist., No. 4-07-0288, June 13, 2008)** **Facts:** The defendant in this case was suspected of committing aggravated battery of a child after the victim, the defendant's child, was discovered to have "shaken-baby syndrome." The police met the defendant at the hospital and asked him to accompany them to the police station for an interview. At this time the police believed that the defendant might be a witness to the injuries suffered by the victim. During this interview, the police asked the defendant if he had shaken the victim. To this question the defendant responded, "A little." A police officer then advised the defendant of his rights. When the defendant was asked if he understood each of his rights, the defendant nodded his head to indicate that he did. He did not respond verbally. The defendant again admitted shaking the victim "once or twice before." The defendant was then placed under arrest and taken to jail. **Issue:** Did the People offer sufficient evidence to prove that the defendant knowingly and voluntarily waived his rights? **Answer:** Yes. **Issue:** Did the police improperly use the "question first – warn later" method of interrogating this defendant? **Answer:** No.

8. **People v. Ralph Hopkins, 382 Ill. App. 3d 435, (1<sup>st</sup> Dist., No. 1-07-0224, May 27, 2008)** **Facts:** The defendant in this case was suspected of committing attempted armed robbery. However, he was arrested without probable cause. A co-defendant was also arrested. The co-defendant gave the police a statement in which he implicated the defendant in the attempted armed robbery. The police then showed the defendant his co-defendant's statement and the defendant confessed. At no time did the People provide evidence which would prove that the statement of the co-defendant was legally obtained. **Issue:** Was the statement of the co-defendant sufficient to overcome the taint of the defendant's illegal arrest and allow the use of the defendant's statement against him? **Answer:** Yes. This was found to be so even though the People did not prove that the co-defendant's statement was legally obtained. The Court ruled that the People do not have the burden of proving that the co-defendant's statement was legally obtained.

9. **People v. Erika Lindmark, 382 Ill. App. 3d 638, (4<sup>th</sup> Dist., No. 4-07-0535, April 3, 2008)** **Facts:** A police officer pulled the defendant over after he saw the car she was driving turn and strike a raised median with all four tires. The officer noticed that the defendant was wearing several strands of beads that local bars give out around Mardi Gras. The defendant's eyes were watery and red, and her speech was slightly slurred. The defendant admitted having three drinks and the odor of alcohol emanated from the open window of the defendant's car. The officer then had the defendant perform various pre-exit and field-sobriety tests, including HGN. The officer then placed the defendant under arrest for DUI. **Issue:** Did the People offer sufficient evidence to support the trial court's finding that the defendant's statements were voluntarily made? **Answer:** Yes. This court rejected the argument of the defendant that she did not understand her rights, that the police officer failed to show that she affirmatively waived her rights or that the waiver of her rights was involuntary because she was cold.

10. **People v. James Degorski, 382 Ill. App. 3d 135, (1<sup>st</sup> Dist., No. 1-07-2784, March 31, 2008)** **Facts:** Seven workers were murdered in a Brown's Chicken restaurant in Palatine, Illinois. The defendant was suspected of being involved in the commission of those murders. Two witnesses were found who stated that the defendant admitted to them his involvement in the murders. The defendant was asked by the police to accompany them to the police station for questioning. The defendant agreed to be questioned. At the police station the defendant was twice fully advised of his rights. He then admitted his role in the murders. The police then asked the defendant if he would allow them to record his confession. The defendant consented and a recording was made of his confession. However, prior to this recording, the defendant was not again informed of his rights. **Issue:** Did the failure of the People to re-inform the defendant of his rights prior to tape recording his statement render his confession inadmissible? **Answer:** No. This court ruled that the defendant had previously been twice properly informed of his rights. While the better practice might have been to re-advise the defendant of his rights, the defendant's confession was not rendered inadmissible because the People failed to do so.

11. **People v. Loewenstein, 318 Ill. Dec. 459, (4<sup>th</sup> Dist., No. 4-05-0692, February 15, 2008)** **Facts:** The defendant was suspected of aggravated discharge of a firearm and the illegal possession of a firearm by a felon. A police officer obtained the defendant's permission to search his safe. He questioned the defendant about the contents of the safe without first giving the defendant his Miranda warnings. The defendant made some incriminating statements to the officer prior to the officer's search of the safe. Thereafter, two police officers interrogated the defendant. This time they properly informed the defendant of his rights. Again the defendant made some incriminating statements. **Issue:** Did the police

illegally use the “question first – warn later” technique of interrogation prohibited by Seibert? **Answer:** No. The police did not deliberately use this illegal interrogation technique.

12. **People v. Croom, 318 Ill. Dec. 450, (4<sup>th</sup> Dist., No. 4-06-0927, February 15, 2008)** **FACTS:** The sixteen-year-old defendant was suspected of killing the three-year-old child of his girlfriend. Two police officers who were investigating the death of the victim drove to the location of the defendant in a police van. They invited the defendant to enter the van and talk to the officers. The defendant accepted the invitation of the police. During this “interview,” the defendant was never advised of his Miranda rights. The defendant made some incriminating statements during this interview and led to his arrest. **Issue:** Was the defendant’s Miranda rights violated when he was questioned in the van? **Answer:** No. The defendant was not in custody when he was questioned.

### YEAR 2007 CASES

1. **People v. Diaz, 316 Ill. Dec. 187, (1<sup>st</sup> Dist., No. 1-06-2690, November 5, 2007)** **FACTS:** The police stopped the car the defendant was driving after noticing that he was not wearing a seatbelt. Upon approaching the defendant, the arresting officer noticed that he had bloodshot eyes, “mumbled” speech, and a “moderate” odor of alcohol about him. When the defendant exited his car the officer noticed that he had a bit of a “balance issue.” The officer then gave the defendant a series of field sobriety tests, which, in the opinion of the officer, the defendant failed. The officer then placed the defendant under arrest and advised him of his Miranda rights. The defendant then informed that officer that he was not going to answer any more questions. For some reason the officer then immediately asked the defendant if he had consumed any alcohol that day. The defendant answered that he had consumed two beers and was going out for more when the officer stopped him. **ISSUE:** Did the officer violate the defendant’s Fifth Amendment rights by asking him if he had consumed any alcohol. **ANSWER: Absolutely.** The appellate court ruled that “we can imagine no clearer example of a violation of a defendant’s right to remain silent.” (However, any error was harmless.)

2. **People v. Richardson, 314 Ill. Dec. 915, (1<sup>st</sup> Dist., No. 1-05-2042, September 25, 2007)** **FACTS:** The victim, Diamond Clark, was eleven months old when she was fatally beaten by the defendant, her 16-year-old father on February 9, 2001. The defendant punched, slapped, shook and bit his daughter to death. He inflicted 61 injuries, both internal and external, on his daughter and she died as a result of those injuries. Based upon this conduct, the police arrested the defendant and interrogated him. They videotaped the interrogation. During that interrogation one of the officers noticed that the defendant had a bump over his eye and his eye was swollen. The officer asked the defendant about the injuries and the defendant indicated that it had occurred in the lockup. On the videotape the police asked the defendant no further questions about his injuries. The defendant then made several incriminating statements about the death of his daughter. He was subsequently charged with first degree murder. The trial court denied the defendant’s motion to suppress his statements and following a jury trial, he was convicted. **ISSUE:** Should the defendant’s confession have been suppressed? **ANSWER:** Yes. The police failed to adequately explain how the defendant was injured.

3. **People v. Montgomery, 314 Ill. Dec. 698, (5<sup>th</sup> Dist., No. 5-06-0344, September 13, 2007)** **FACTS:** The police in Missouri believed that the defendant in this case was involved in a series of burglaries. One of those burglaries had occurred in Illinois. The defendant was transported to a Missouri police station for questioning. At the station, the Missouri police conducted an “informal interview” for several hours. During this interview, the defendant made several admissions. He was not advised of his rights. Thereafter, the defendant was asked if he was then willing to give a “formal statement”. The defendant said he would and he was, for the first time, read his Miranda rights. The defendant signed a waiver form and he was then re-interrogated. Again the defendant confessed. The Illinois police were then called and they interrogated the defendant after giving him his rights. Again, he confessed. Prior to his trial in Illinois on a charge of burglary, the defendant moved to suppress his confession. The trial court granted the defendant’s motion to suppress and from this ruling the People brought this appeal. **ISSUE:** Were the defendant’s Miranda rights violated. **ANSWER:** Yes. This was a Seibert violation.

4. **People v. Bennett, 315 Ill. Dec. 256, (1<sup>st</sup> Dist., No. 1-05-3038, September 12, 2007)** **FACTS:** While on patrol, a police officer heard a radio report of a “man down.” The report described the “offender” and stated that he was seen running away. A few minutes later, the officer drove to the area of the report and noticed a man fitting the description of the offender running along the street. The officer then drove up to the man and asked him to walk over to the squad car. The officer exited his car and placed his hand on the man’s chest. The man’s heart was beating rapidly. The man then said, “I didn’t shoot anybody.” The officer then placed the man in the back of his squad car and drove to the location of

the report. There a witness identified the defendant as the man who shot the victim. The defendant was then arrested and transported to the station for questioning. Eighty-six hours later, the defendant confessed. **ISSUE:** Was this defendant's confession involuntary because the police waited more than 48 hours before taking him before a judge for a probable cause hearing? **ANSWER:** No.

5. **People v. Jackson, 311 Ill. Dec. 882, (1<sup>st</sup> Dist., No. 1-06-0074, May 22, 2007)** **FACTS:** The defendant was suspected of murder. The police picked him up and brought his downtown for questioning. The defendant confessed. Unfortunately, the conduct of the police constituted an arrest and they did not have probable cause to arrest the defendant until after he confessed. **ISSUE:** Was the defendant's confession sufficiently attenuated from his illegal arrest to allow it to be used against him. **ANSWER:** No. The confession was not the product of the defendant's free will.

6. **People v. Minniti, 311 Ill. Dec. 251, (2<sup>nd</sup> Dist., No. 2-05-0028, April 30, 2007)** The defendant, a juvenile, was suspect of committing first-degree murder. The police picked him up and questioned him. During their questioning, the police informed that defendant that they had discovered the defendant's DNA inside the body of his victim and that they had satellite imagery showing someone on the night of the murder exiting the defendant's house, entering the victim's house, and then exiting that house and re-entering the defendant's house. Eventually, the defendant confessed to the murder. In point of fact, the police lied about having either DNA evidence or satellite evidence. **ISSUE:** Did the trickery of the police render the defendant's confession involuntary? **ANSWER:** No.

7. **People v. Dennis, 310 Ill. Dec. 662, (2<sup>nd</sup> Dist., No. 2-04-1161, April 20, 2007)** The police received a report of shots being fired. They investigated and discovered the defendant bleeding from a leg wound. The defendant was taken to a hospital and the police followed. At the hospital, the police repeatedly asked the defendant where his gun was. The defendant eventually admitted his role in the shooting incident. At no time was the defendant ever given his Miranda warnings. **ISSUE:** Did the "Public Safety" exception authorize the police to question the defendant about the whereabouts of his gun without first informing him of his rights? **ANSWER:** Nope.

8. **People v. Lashmet, 311 Ill. Dec. 368, (4<sup>th</sup> Dist., No. 4-06-0026, April 19, 2007)** The defendant was incarcerated in a county jail. He had invoked his right to counsel. The police placed an informant in the dame jail cell as the defendant. The informant was wearing a wire. The defendant struck up a conversation with the informant and eventually solicited him to commit murder. **ISSUE:** Could the defendant's recorded statements be used against him? **ANSWER:** Yes.

9. **People v. Peterson, 311 Ill. Dec. 329, (4<sup>th</sup> Dist., No. 4-05-0689, April 18, 2007)** The police received a report of shots being fired. They arrived on the scene and saw the defendant standing outside of a residence. The defendant had blood on his clothes. The officer asked the defendant where the victim was located. The defendant said inside of the house. After confirming that the victim was dead, the officer then when back outside, again approached the defendant, and said, "What happened?" The defendant then told the officer about the shooting. At no time prior to this statement was the defendant read his rights. **ISSUE:** Did the question of the officer violate the defendant's Miranda rights? **ANSWER:** Nope. They were declared to have been "general on-the-scene questioning as to facts surrounding a possible crime." No Miranda rights were required.

10. **People v. Martinez, 310 Ill. Dec. 711, (1<sup>st</sup> Dist., No. 1-05-0845, February 22, 2007)** **FACTS:** The victim was shot in the head during a fake drug transaction and arranged robbery. The defendants lured the victim to the scene by promising to sell him a large amount of cannabis. When he arrived at the location of the deal the defendants, while pretending to be police officers robbed him and then shot him dead. The defendant in this case was involved in the robbery. He was arrested and the arresting officers informed the defendant that he had the right to remain silent, that anything he said could be used against him, that he had the right to an attorney, and that if he could not afford one, at attorney would be appointed. The defendant then gave an inculpatory statement to the police **ISSUE:** Did the police violate the defendant's Miranda rights when they failed to specifically inform him that he had a right to consult with an attorney before questioning and to have his attorney present during his questioning. **ANSWER:** No. **ISSUE:** Did the failure of the authorities to notify the defendant of his right to contact the Mexican consulate violate the defendant's constitutional rights? **ANSWER:** No.

11. **People v. Macias, 309 Ill. Dec. 144, (1<sup>st</sup> Dist., No. 1-04-3743, February 16, 2007)** The defendant was suspected of being involved in a gang shooting. He was 18 years old and he had been arrested eight times in the two years

prior to this incident. He was arrested and held in custody for a total of 57 hours. He was interrogated a total of three times during his detention and none of them lasted longer than fifteen minutes. The defendant was fully advised of his Miranda rights during his detention and he was allowed to eat and sleep. When interviewed by an Assistant State's Attorney, the defendant stated that he was treated fine and that he had no complaints. At sometime during that detention the defendant made incriminating statements. **ISSUE:** Was the defendant's statement voluntarily made? **ANSWER:** Yes.

**12. People v. Simmons, 308 Ill. Dec. 863, (1<sup>st</sup> Dist., No. 1-05-3618, January 31, 2007)** On Saturday, four police officers arrive at the defendant's home and they are invited inside. The officers ask the defendant to accompany them downtown for questioning about a murder. The defendant agrees to accompany the police. Over the next few days, the defendant is kept in a jail cell and interviewed numerous times. The defendant makes a series of incriminating statements. On Tuesday, the defendant is formally arrested. The defendant was charged with first degree murder. Prior to his trial, the defendant moved to quash his arrest and to suppress the statements he made to the police. The trial court granted the defendant's motion to quash his arrest and ruled that the defendant was arrested on Saturday night without probable cause. However, the court also ruled that even though the defendant's arrest was illegal, the statements he made to the police could still be used against him. **ISSUE:** Could the statements of the defendant be used against him despite his illegal arrest? **ANSWER:** **Nope.** The statement of the defendant was obtained by exploiting his illegal arrest.

### YEAR 2006 CASES

**1. People v. Westmorland, 2006 WL 3704444, (2<sup>nd</sup> Dist., No. 2-05-1093, December 14, 2006)** **FACTS:** The defendant, 17-years-old, was suspected of various sex offenses. He was arrested and taken to the police station to be interrogated. The defendant said he wanted to speak with his mother. The police stated that since he was 17 years of age, he did not have the right to have his mother in the room with him during his interrogation. The defendant then confessed to the offenses. **ISSUE:** Did the police violate this defendant's rights by refusing to allow his mother (or any other concerned adult) to be present during his interrogation. **ANSWER:** Yes.

**2. People v. Johnson, 307 Ill. Dec. 153, (2<sup>nd</sup> Dist., No. 2-04-1030, November 20, 2006)** The victim was beaten to death with a baseball bat. The 16-year-old defendant was a suspect. He was arrested and taken to the police station for interrogation. His mother accompanied him. At the station the police informed the defendant that several people had implicated him in the murder and that his fingerprints were found at the scene. This was not accurate. Only one person had implicated the defendant; his co-defendant, and no fingerprints had yet been recovered. The defendant argued that his confession should have been suppressed because he was tricked by the police; the juvenile officers did not protect him from these tricks of the police; the police did not share exculpatory evidence with the defendant; he was not informed that he would be tried as an adult until after he confessed; he was not allowed to speak to his mother prior to his interrogation; the police failed to offer him food or drink during his interrogation; and his statement was not reduced to writing. **ISSUE:** Was the defendant's statement voluntarily made? **ANSWER:** Yes.

**3. People v. Moore, 306 Ill. Dec. 350, (3<sup>rd</sup> Dist., No. 3-05-0533, November 8, 2006)** The defendant was suspected of sexual assault. He was arrested and taken to the police station for an interrogation. The police gave the defendant a Miranda waiver form to sign. On that form was written the following: "A videotape providing a video and audio record of this interview is being made to insure my rights and the accuracy of our conversation. I voluntarily consent to the recording." The defendant gave a one hour and five-minute statement. However, the recording machine malfunctioned and it failed to record the defendant's statement. **ISSUE:** Could the police who witnessed the defendant's statement testify concerning what the defendant said? **ANSWER:** **Nope.** The statement of the defendant was not voluntarily made because the police made a promise to the defendant and then failed to follow through on that promise.

**4. People v. Sams, 305 Ill. Dec. 267, (1<sup>st</sup> Dist., No. 1-05-2208, August 29, 2006)** The baby of the defendant's girlfriend had been killed. On September 12, 2002, the defendant voluntarily went to the police station to assist in their investigation. He remained there continuously until late on September 15, 2002. Throughout that time, numerous police officers and assistant state's attorneys interviewed him. After this 72-hour period, the defendant gave a series of

inculpatory statements. **ISSUE:** Were the statements of the defendant voluntarily made? **ANSWER:** No. According to the appellate court, the totality of the circumstances here indicated that the police “wore the defendant down” and created a lack of free will on the part of the defendant. He was unreasonably detained while the police gathered further evidence against him.

5. **People v. Lopez, 305 Ill. Dec. 666, (1<sup>st</sup> Dist., No. 1-04-2172, September 20, 2006)** **FACTS:** The victim had been stabbed to death. Believing that the defendant might be a possible witness, the police picked him up at his home and transported him to the police station. At the station the defendant denied any knowledge of the murder. Another suspect then implicated the defendant and the defendant, when confronted with this information, gave an incriminating statement. He was then given his Miranda rights and arrested. Thereafter, the defendant gave a written statement. **ISSUE:** Did the police here violate the Seibert rule? Did the police improperly use the “question first – warn later” interrogation technique? **ANSWER:** No. There must be proof of a deliberate strategy to undermine the Miranda rights of the defendant. There was no such proof in this case.

6. **People v. Woodard, 305 Ill. Dec. 82, (1<sup>st</sup> Dist., No. 1-04-1981, September 20, 2006)** **FACTS:** A young boy had been shot to death. The police learned that the defendant in this case might have been involved. They interrogated her over a period of over 80 hours. During that time, the defendant gave the police various different stories. Only after she eventually gave the police an incriminating statement was the defendant brought before a judge for a probable cause hearing. **ISSUE:** Was the defendant’s statements involuntary because she was held for more than 80 hours before she was provided a probable cause hearing? **ANSWER:** No. The defendant’s own conduct, her changing stories and dead-end leads, perpetuated her own detention. The totality of these circumstances did not indicate that her statements were involuntarily given.

7. **People v. Mitchell, 304 Ill. Dec. 823, (1<sup>st</sup> Dist., No. 1-02-1244, August 4, 2006)** **FACTS:** The eight-year-old victim in this case was shot to death while she stood outside of a grocery store. The defendant was held for more than 78 hours before he confessed. **ISSUE:** Was the confession involuntary? **ANSWER:** Yes. Considering the defendant’s age, education, experience, mental capacity, intelligence, physical condition at the time of his questioning, and the duration of that questioning, the confession was involuntarily given.

8. **People v. Karim, 304 Ill. Dec. 677, (1<sup>st</sup> Dist., No. 1-03-1147, July 28, 2006)** **FACTS:** Three men were shot. Two died. The third man identified the defendant in this case as the shooter. The defendant was arrested and interrogated over the next 36 hours before he confessed to the shootings. **ISSUE:** Was this period of detention sufficiently unreasonable so as to render the defendant’s confession involuntary? **ANSWER:** No. The length of the detention was, by itself, insufficient to render the confession involuntary. The totality of the circumstances must be considered.

9. **People v. Scott, 304 Ill. Dec. 281, (1<sup>st</sup> Dist., No. 1-04-2019, June 30, 2006)** **FACTS:** The victim in this case was robbed and murdered. An informant’s tip led the police to suspect that the defendant in this case was the murderer. Based upon this tip (and not much else), the defendant was placed under arrest. He was then interrogated and, after he was transported to the murder scene, he confessed. The trial court declared that the police lacked sufficient probable cause to justify the defendant’s arrest. **ISSUE:** Were sufficient additional factors present to attenuate the defendant’s bad arrest and render his confession admissible? **ANSWER:** No.

10. **People v. Jeffers, 302 Ill. Dec. 670, (2<sup>nd</sup> Dist., No. 2-05-0390, May 24, 2006)** **FACTS:** The defendant’s car skidded into a ditch after a tire went flat. Paramedics were called to assist the defendant. The defendant refused to cooperate and attempted to smoke a cigarette. He became abusive and hostile when the paramedics refused to allow him to smoke. Eventually, the defendant refused any treatment and also refused to sign a release form. Specifically, the defendant stated that he would be arrested as soon as he signed the form. A frustrated and exasperated paramedic responded by stating that the defendant was going to be arrested whether or not he signed the form. Thereafter, a police officer, who had been standing by while this exchange had occurred, tried to talk to the defendant. The defendant said he would not talk to the officer and demanded to speak to his attorney. After asking further questions, the officer placed the defendant under arrest. **ISSUE:** Did this defendant properly invoke his right to an attorney prior to being asked questions by the officer? **ANSWER:** No. When the defendant made his statements, he was yet detained by the police. Consequently, he did not yet have the right to speak to an attorney.

11. **People v. Pankhurst, 302 Ill. Dec. 329, (2<sup>nd</sup> Dist., No. 2-05-0823, May 10, 2006)** **FACTS:** The principal of a

local high school was advised by an undisclosed source that the defendant in this case and another student were in possession of cannabis. The principal and the dean of students summoned the defendant to the principal's office. He was asked to empty his pockets and cannabis was found. The principal then questioned the defendant and he admitting selling cannabis. The principal then ended the interview, called the police, and the defendant was placed under arrest. After receiving Miranda warnings (for the first time), the defendant gave the police another incriminating statement. **ISSUE:** Were the defendant's Miranda rights violated when he spoke with the principal? **ANSWER:** No. For purposes of Miranda, the principal was not an agent of the police when he questioned the defendant. NOTE: The concurring Opinion in this case made it very clear that this case does not apply to Fourth Amendment situations.

**12. People v. Young, 302 Ill. Dec. 847, (1<sup>st</sup> Dist., No. 1-04-2176, April 24, 2006)** The defendant in this case, a juvenile, was suspected of shooting a person do death. After an investigation, the police placed this defendant under arrest. Subsequent to his arrest, after being read his Miranda rights, the defendant was interrogated by the police. During this interrogation, the defendant's father was present. After the police began their interrogation, the defendant's father indicated that he wanted to call his lawyer. The defendant's father made his telephone call and then left the police station. Thereafter, an attorney appeared at the police station and asked to see the defendant's father. The attorney then spoke with the defendant for a few minutes. At no time did the defendant indicated that the attorney was his lawyer. Eventually, the police completed their interrogation of the defendant. The defendant then made an incriminating statement. **ISSUE:** Was the defendant's Miranda rights violated in this case? **ANSWER:** No. The defendant here did in unequivocally invoke his right to counsel and the defendant's father did not have that right, even if this defendant was a juvenile.

**13. People v. Salgado, 304 Ill. Dec. 16, (1<sup>st</sup> Dist., No. 1-04-0856, March 31, 2006)** In February of 1992, the victim, a bartender, was fatally shot after the owner of the bar refused to serve a drink to an under-age patron. The police were called and they began to suspect that the defendant in this case was involved in the murder. They picked him up and interrogated him. Prior to his interrogation, the defendant was properly read his Miranda rights. Thereafter, he was interrogated a number of times by the police. Prior to those interrogations, the defendant was again read his rights. He argued, however, that he did not knowingly and intelligently waive his rights because the "blatant incompetence" of the Spanish translator caused his warnings to have been inaccurate. **ISSUE:** Was the alleged inaccuracy of the defendant's subsequent warnings sufficient to render his statements involuntary? **ANSWER:** No. The defendant initially received accurate warnings. He admitted this fact and that he understood his rights. Thereafter, he was not entitled to additional warnings. Therefore, the accuracy of those warnings did not render his statements involuntary.

**14. People v. Slywka, 301 Ill. Dec. 770, (1<sup>st</sup> Dist., No. 1-03-1410, March 31, 2006)** In 1992, the defendant, then a juvenile, shot the victim. Based upon this conduct, the defendant was charged with aggravated battery and armed violence and adjudicated delinquent. He was committed to the juvenile division of the Department of Corrections in 1993 and paroled in 1994. The victim lay in a coma until October of 2000, when he died as a result of his wounds. The defendant was then charged with first-degree murder. During the defendant's trial, a juvenile probation officer was called to testify. She stated that she had conducted a court-ordered pre-sentence social investigation report on the defendant prior to his 1993 delinquency adjudication. During that interview, the defendant admitted shooting the victim. **ISSUE:** Was the used of the defendant's social investigation report a violation of Miranda? **ANSWER:** Yes.

**15. People v. McCree, 300 Ill. Dec. 290, (1<sup>st</sup> Dist., No. 1-04-1049, March 14, 2006)** **FACTS:** The defendant was suspected of first-degree murder. He stabbed the women with whom he was smoking crack cocaine. Evidently, the defendant believed that the victim was going to steal his drugs. The police arrested the defendant and transported him to the local police station. The defendant alleged that they beat him in the process. The arresting officers denied that this ever occurred. At the station, the police began their interrogation of the defendant. Some 27 hours later, the defendant confessed. **ISSUE:** What does it take to render a confession such as this involuntary? **ANSWER:** A 27-hour detention, by itself, was not enough.

**16. People v. Kruger, 300 Ill. Dec. 675, (4<sup>th</sup> Dist., No. 4-03-1018, March 10, 2006)** The defendant was arrested for being a felon in possession of a firearm. An attorney was appointed to represent him. The gun the defendant possessed was linked to a recent murder. Thereafter, without notifying his counsel, the defendant was called before a grand jury to answer questions about the murder. He denied any connection with or knowledge of the murder. Subsequently, this grand jury testimony was introduced against the defendant at his murder trial. **ISSUE:** Was this defendant's Sixth

Amendment right to counsel violated by these “unique” circumstances? **ANSWER:** Yes. The defendant’s testimony before the grand jury was “coerced” by his subpoena and his right to counsel was “circumvented” by being called before the grand jury.

### YEAR 2005 CASES

1. **People v. Wead, 299 Ill. Dec. 488, (1<sup>st</sup> Dist., No. 1-02-1878, December 23, 2005)** The defendant was suspected of first-degree murder. Based upon their suspicions, the police stopped the defendant on the street and asked him to come down to the police station for questioning. The defendant agreed and he hopped into the back of the police squad car. At the station the police interrogated the defendant for 54 hours. The defendant finally confessed and he was charged with first degree murder. **ISSUE:** Was the defendant’s confession admissible against him at his murder trial? **ANSWER:** No. The defendant was “arrested” at the police station when he was not free to leave. This arrest was made without probable cause. Since no evidence was introduced to “break the chain” between the defendant’s illegal arrest and his subsequent confession, that confession was inadmissible against him.

2. **People v. Welch, 303 Ill. Dec. 397, (5<sup>th</sup> Dist., No. 5-03-0681, December 16, 2005)** **FACTS:** A robbery occurred in Madison County. The defendant in this case was a suspect. He was interviewed by the police and released. The next day the defendant called the police and stated that he had received advice from an attorney who was representing him in a civil case and that he did not wish to speak to the police any more. However, the next day, the defendant again called the police and told them that he wished to continue to cooperate with them. That same day, a warrant for the defendant’s arrest was issued in Madison County. He was arrested in St. Clair County on that warrant. During an interrogation in St. Clair County, the defendant admitted to committing a robbery there. Sixteen days later the Madison authorities went to the defendant while he was still jailed in St. Clair County, gave him his Miranda rights, and interrogated him. He gave a confession to the Madison County robbery. **ISSUE:** Did the authorities err by failing to bring this defendant before a judge within 48 hours of his arrest and if they did, should his confession be suppressed? **ANSWER:** No. This defendant was arrested on a warrant. The 48-hour rule only applies to warrantless arrests. **ISSUE:** Did the authorities violate the defendant’s right to remain silent after he had informed them that he did not wish to speak to them. **ANSWER:** No. The 16-day period between the time the defendant allegedly invoked his right to remain silent and the re-interrogation of the defendant by the Madison County authorities was sufficient to prove that the authorities “scrupulously honored” the defendant’s Fifth Amendment rights.

3. **People v. Hernandez, 298 Ill. Dec. 819, (1<sup>st</sup> Dist., No. 1-04-0074, December 8, 2005)** **FACTS:** This defendant was suspected of assisting in the murder of the victim, Roy George. It seems that the victim and his friend were attacked by a group of Satan Disciples street-gang members. During this attack, someone took a piece of asphalt and broke it over George’s head. George died as a result of this blow. The defendant was the one who hit the victim. He was arrested and interrogated on videotape. During that videotaped interrogation, an assistant State’s Attorney asked the defendant the following question, “Understanding these rights, do you wish to talk to us now?” The defendant responded by saying, “No, not no more.” Naturally, this caused some confusion on the part of the State’s Attorney. She then asked the following question, “Do you wish to talk to us now about what we previously spoken to (sic)?” To this question, the defendant responded, “Yes.” He then went on to explain his role in the victim’s murder. **ISSUE:** Was the defendant’s answer to the question of the State’s Attorney sufficient to invoke his right to remain silent pursuant to the Fifth Amendment? **ANSWER:** Yes. The State’s Attorney’s follow-up question did not cure this problem.

4. **People v. Sterling, 293 Ill. Dec. 766, (1<sup>st</sup> Dist., No. 1-03-3285, May 2, 2005)** **FACTS:** The defendant was found guilty of robbing and murdering his victim. On appeal he argued that his counsel was ineffective because he failed to move to suppress the statements he gave to the police. Specifically, the defendant argued that his confessions should have been suppressed because he was held for 96 hours without being taken before a trial judge for a probable cause hearing. **ISSUE:** Does the fact that the defendant’s “48-hour rule” rights were violated mandate that his confessions be suppressed. **ANSWER:** Not necessarily. The appellate court noted that in this case the defendant gave his statements before the 48-hour rule was violated. Because sufficient evidence was admitted to indicate that the defendant voluntarily gave these statements, the mere fact that the 48-hour rule was later violated did not mandate the suppression of the defendant’s statements.

### YEAR 2004 CASES



1. **People v. Cook**, 352 Ill. App. 3d 108, 815 N. E. 2d 879, 287 Ill. Dec. 245, (1st Dist., No. 1-01-1688, August 27, 2004) **FACTS:** The defendant was suspected of shooting the victim to death. He was arrested and interrogated numerous times. Eventually, the defendant gave an incriminating statement. **ISSUE:** Did the fact that the defendant may not have been read his Miranda rights before every interrogation mandate that his confession be declared to be inadmissible? **ANSWER:** No. The appellate court concluded that a defendant does not necessarily have to be so instructed before every interrogation. The true test is whether the totality of the circumstances indicated that the defendant's confession was voluntarily given. The appellate court declared that the possible lack of a Miranda rights reading in this case did not render the defendant's confession inadmissible. (The defendant's 65 previous arrests might have had something to do with the appellate court's decision.) **ISSUE:** Did the defendant's physical condition render his confession involuntary? **ANSWER:** No. According to this Court, the defendant was not that badly injured.

2. **People v. Klimawicze**, 352 Ill. App. 3d 13, 815 N. E. 2d 760, 287 Ill. Dec. 116, (1st Dist., No. 1-00-3531, August 17, 2004) **FACTS:** The mother of the defendant in this case was found stabbed to death. The police believed that the defendant was involved in that murder. Based upon this suspicion, they arrested her. Unfortunately, the police lacked probable cause to justify that arrest. Once at the police station, the police interrogated the defendant's co-defendants and they both rolled over on the defendant. The defendant, after being advised of these statements, gave a statement of her own. **ISSUE:** Was the defendant's statement admissible against her? **ANSWER:** Yes. The totality of the circumstances indicated that the defendant's statement was sufficiently attenuated from her illegal arrest to be used against her.

3. **People v. Gonzalez**, 351 Ill. App. 3d 192, 813 N. E. 2d 299, 286 Ill. Dec. 242, (2nd Dist., No. 2-02-1218, July 15, 2004) **FACTS:** Four persons were shot during a shooting in a public park. The sixteen-year-old mildly retarded defendant in this case was a suspect in those shootings. He was arrested and transported to the police station. Once there, the defendant gave two incriminating statements. **ISSUE:** Was the fact that the defendant was mildly retarded render his statements involuntary? **ANSWER:** No. The totality of the circumstances illustrated that the defendant's statements were voluntarily given. **ISSUE:** Did the failure of the police to contact the defendant's parents require that his statements be suppressed? **ANSWER:** No. Again, a trial court must consider the totality of the circumstances. In this case, the statements of the defendant were not suppressed.

4. **People v. Nicholas**, 351 Ill. App. 3d 433, 813 N. E. 2d 1057, 286 Ill. Dec. 364, (1st Dist., No. 1-02-0828, July 9, 2004) **FACTS:** The defendant was a suspect in the murder of his own mother. He was arrested and underwent a series of interrogations over a number of hours. Eventually, the defendant gave two oral admissions. Instead of taking the defendant before a judge, the police classified their investigation as "ongoing" and decided to continue to detain him. Thereafter, the defendant confessed. **ISSUE:** Was the defendant's confession admissible against him at his trial? **ANSWER:** No. The violation of the defendant's right to be brought before a judge results in the suppression of any statement made by the defendant after that violation.

5. **People v. Clay**, 349 Ill. App. 3d 517, 812 N. E. 2d 473, 285 Ill. Dec. 653 (1st Dist., No. 1-01-3462, June 21, 2004) **FACTS:** Three men robbed a currency exchange and shot and killed a store clerk. A wallet was found outside of the exchange shortly after the robbery. The police traced the wallet to a Jerry Clay (the defendant's brother) and they staked out Jerry Clay's house. Subsequently, Jerry Clay, Tony Williams, and the defendant were arrested for the robbery and murder. Jerry Clay rolled over on the defendant and the defendant, after hearing about Jerry's confession, admitted his involvement in the crime. Unfortunately, both the defendant and Jerry Clay were later found to have been arrested without probable cause. (The wallet was insufficient to sustain the defendant's arrest.) **ISSUE:** Was the defendant's statement admissible against him at his trial? **ANSWER:** No. The police cannot use illegally obtained evidence to prove attenuation between the defendant's illegal arrest and his subsequent statements.

6. **People v. Wilberton**, 348 Ill. App. 3d 82, 809 N. E. 2d 745, 284 Ill. Dec. 179 (1st Dist., No. 1-03-0093, April 20, 2004) **FACTS:** Two gang members were killed during a shooting. The defendant in this case and a man named Derrold Davis were arrested by the police. Davis rolled over on the defendant. The defendant, after being informed of the Davis statement and after failing a polygraph test, admitted his involvement in the crimes. Unfortunately, it seems that the police lacked probable cause to arrest the defendant. **ISSUE:** Was the defendant's statement admissible against him at trial? **ANSWER:** Yes. The Court ruled that the Davis statement and the defendant's failure to pass the polygraph test sufficiently purged the taint of the defendant's illegal arrest and rendered his subsequent statement admissible against him.

7. **People v. Haynie, 347 Ill. App. 3d 650, 807 N. E. 2d 987, 283 Ill. Dec. 146 (1<sup>st</sup> Dist, No. 1-01-4427, March 26, 2004)** **FACTS:** The 16-year-old defendant was a suspect in a double homicide. At around 7 p.m., the day after the shooting the defendant was taken to the police station. He participated in three lineups. Within 20 minutes of his arrival at the station, several attempts were made to locate the defendant's mother. Eventually, around 3 a.m., the defendant's mother arrived and she was asked to sit in on the interrogation of her son. She agreed. While she watched, an assistant state's attorneys interviewed the defendant. Also present was a police youth officer. During this fifteen-minute interrogation the defendant confessed that he shot the victims and he agreed to give a videotaped statement to that effect. At his subsequent trial, the defendant was convicted of two counts of first-degree murder and he received a sentence of natural life in prison. On appeal, the defendant argued that he had received ineffective assistance of counsel because his trial counsel had failed to move to quash his confession. **ISSUE:** Was the defendant's confession involuntary because of his age, the length of his detention prior to his confession and his lack of sleep? **ANSWER:** No. Using the totality of the circumstances test, the appellate court ruled that the defendant's confession was not involuntary. **ISSUE:** Did the fact that the police youth officer in this case also participated in the investigation of the murders by interviewing witnesses and conducting lineups invalidate the confession? **ANSWER:** No. The appellate court noted that the officer did not do both jobs at the same time. When he was acting as a youth officer, the officer did protect the interests of the defendant. Consequently, the defendant's confession was not involuntary due to the conduct of the officer.

8. **People v. Ragusa, 346 Ill. App. 3d 176, 804 N. E. 2d 692, 281 Ill. Dec. 727 (2<sup>nd</sup> Dist, No. 2-02-1131, February 6, 2004)** **FACTS:** The defendant in this case was charged with numerous drug offenses after the police executed a search warrant on the defendant's home. After speaking with his uncle, the defendant informed the police that he was willing to cooperate and speak to the police about "other deliveries and possible cooperation." The interviewing officer then said that if the defendant "wanted to do some work for us that would be possible." In fact, the interviewing officer wrote in his police report that the defendant had agreed to cooperate in exchange for reduced charges. Based upon these conversations, the defendant admitted that he had intended to sell some of the drugs. In fact, in an attempt to assist the police, the defendant made a few telephone calls in an attempt to set up a sale of the drugs. At the defendant's subsequent trial, the People were allowed to introduce evidence of the defendant's admissions that he intended to sell the drugs. **ISSUE:** Could the People properly use the defendant's statements against him at his trial. **ANSWER:** No. According to the appellate court, the defendant's statements were made when the defendant was attempting to negotiate a plea agreement. Since these statements were plea related, they should not have been used against the defendant.

#### YEAR 2003 CASES

1. **People v. Carrero, 345 Ill. App. 3d 1, 801 N. E. 2d 1084, 280 Ill. Dec. 139 (1<sup>st</sup> Dist, No. 1-01-0164, December 9, 2003)** **FACTS:** The victim parked his car and started to walk into a hardware store. As he was walking, he was confronted by a masked man who was armed with a sawed-off shotgun. The masked man took the victim's money and his car. The police were called and they quickly located the defendant's car. The driver of the car (the defendant in this case) fled in the stolen car. The police gave chase. Eventually, the defendant jumped out of the car and fled on foot. The police tackled him and brought him downtown for questioning. During a subsequent interrogation the defendant gave various conflicting statements. The next day, four pictures of the defendant's face were taken. They showed various injuries to the defendant's face. Thereafter, the defendant argued that he had been physically coerced into giving his statements. A hearing was held and the police explained that the defendant's injuries resulted from his capture. The trial court bought this explanation. **ISSUE:** Was the trial court's decision erroneous? **ANSWER:** No. The People had met their burden of explaining how the defendant received his injuries.

2. **People v. Parker, 344 Ill. App. 3d 728, 801 N. E. 2d 162, 279 Ill. Dec. 870 (3<sup>rd</sup> Dist, No. 3-02-0373, December 5, 2003)** **FACTS:** The defendant entered the victim's home, strangled her and took her credit cards and car. Thereafter, an arrest warrant was issued for the defendant and he was apprehended in Iowa. Illinois police officers traveled to Iowa to interview the defendant. He invoked his right to counsel and all questioning ceased. An Iowa police officer then approached the defendant and commenced to read him his arrest warrant. (This was done pursuant to Iowa law). During this reading, the defendant asked to see the Illinois officers. He then waived his Miranda rights and gave a full confession. **ISSUE:** Did the Iowa officer violate the defendant's Miranda rights by reading him his arrest warrant? **ANSWER:** No. The mere reading of the arrest warrant did not constitute an "interrogation" and since the officer was required to inform the defendant of the contents of the warrant, his reading of the warrant would not be considered to be

likely to invoke an incriminating response from the defendant.

3. **People v. Rish**, 344 Ill. App. 3d 1105, 802 N. E. 2d 826, 280 Ill. Dec. 575 (3<sup>rd</sup> Dist, No. 3-01-0161, November 11, 2003) **FACTS:** The victim was kidnapped and buried alive. He died and the defendant in this case was arrested and interrogated. A counsel was appointed to assist the defendant pursuant to Miranda. During four days of interrogations, the defendant gave eight inconsistent statements. Unfortunately, the defendant's counsel was a close personal friend of the victim and he had represented one of the police officers investigating this incident. Further, the counsel failed to inform the defendant of these potential conflicts. The defendant filed a post-conviction petition following his conviction for first degree murder and argued that he had been denied due process. The defendant's petition was denied without a hearing. **ISSUE:** Did the trial court err in refusing to hold a hearing on the defendant's motion. **ANSWER:** Yes. The defendant was entitled to effective counsel during his interrogations. Any conflict may have rendered that assistance ineffective. **CONCLUSION:** The defendant was entitled to a hearing.

4. **People v. Briseno**, 278 Ill. Dec. 641 (1<sup>st</sup> Dist, No. 1-02-1995, September 26, 2003) **Facts:** On the morning in question, the police were conducting a roadblock. The defendant pulled up and he was ordered to step out of his mini-van. As he did, the police smelled the strong smell of burning cannabis. They immediately asked the defendant if he had been smoking "grass." He admitted that just prior to driving his mini-van, he had smoked a joint. Based upon this admission and other evidence, the defendant was arrested for DUI. The trial court denied the defendant's motion to suppress his statement and he was subsequently convicted as charged. **ISSUE:** Was the defendant's Miranda rights violated when the police asked the defendant if he had smoked cannabis? **ANSWER:** No. The brief and public nature of the defendant's stop convinced the appellate court that the defendant was not in police custody for purposes of Miranda when he was questioned.

5. **People v. Kellerman**, 342 Ill. App. 3d 1019, 797 N. E. 2d 726, 278 Ill. Dec. 131 (3<sup>rd</sup> Dist., No. 3-01-0713, September 4, 2003) **Facts:** The defendant pled guilty to a charge of arson in exchange for a sentence of 12 years' imprisonment. Thereafter, the defendant filed a post-trial motion and moved to withdraw his guilty plea. In his motion he argued that his counsel had been ineffective for failing to challenge his recorded confession. It seems that in order to convince the defendant to cooperate, the police informed the defendant that the State's Attorney was on the telephone and that he had said that he was ready to offer a plea bargain of three or four years in exchange for the defendant's confession. At least, that was what the defendant alleged. **ISSUE:** Did the trial court err in dismissing the defendant's post-trial motion without a hearing? **ANSWER:** Yes. If in fact the defendant was found to be telling the truth, his confession would have been involuntary. He was entitled to a hearing on this matter.

6. **In re Donald**, 343 Ill. App. 3d 237, 796 N. E. 2d 670, 277 Ill. Dec. 584 (3<sup>rd</sup> Dist., No. 3-02-0716, August 29, 2003) **FACTS:** The minor defendant in this case, a sixteen-year-old, was suspected of committing the sexual exploitation of a child after he exposed himself to a six-year-old girl. During their investigation of this alleged offense, the police decided to interrogate the defendant. During this interrogation the defendant's parents were not present. (There was some question concerning whether the parents asked to be present.) Thereafter, the defendant confessed. A petition to have the minor adjudicated delinquent was then filed. The defendant then moved to suppress the statements he made to the police. **ISSUE:** Did the failure of the police to allow the defendant's parents to witness his interrogation and confession render that confession involuntary? **ANSWER:** No. The issue of the presence of the defendant's parents was only one circumstance to be considered by the trial court when considering the voluntariness of the defendant's confession. The totality of the circumstances in this case did show that the defendant's confession was voluntary.

7. **People v. Bramlett**, 341 Ill. App. 3d 638, 793 N. E. 2d 203, 275 Ill. Dec. 1 (1<sup>st</sup> Dist., No. 1-99-3768, June 30, 2003) **FACTS:** The victim in this case was shot to death. While one detective was interrogating the prime suspect in the shooting, three other detectives went to the apartment of the defendant in this case where they placed him under arrest. At some time during these activities the prime suspect confessed to his part in the shooting and implicated the defendant. Meanwhile, the defendant was transported downtown and interrogated. He confessed. The problem here was the People offered no proof to show that the three officers knew that their prime suspect had confessed prior to their arrest of the defendant. Consequently, they were unable to offer up any proof of probable cause sufficient to justify the defendant's arrest. Therefore, that arrest was declared to have been illegal. **ISSUE:** Was the defendant entitled to have his confession suppressed due to his illegal arrest? **ANSWER:** Not necessarily. The People were entitled to have an attenuation hearing in order to show that sufficient independent factors intervened to allowed the use of the defendant's confession.

8. **People v. Redmond**, 341 Ill. App. 3d 498, 793 N. E. 2d 744, 275 Ill. Dec. 973 (1<sup>st</sup> Dist., No. 1-01-0405, June 30, 2003) **FACTS:** The defendant was a suspect in a fatal shooting. After being arrested at his home, he was transported to the police station. He was kept there for 52 hours and repeatedly interrogated. Eventually, the defendant gave an incriminating statement. **ISSUE:** Should the defendant's statement have been suppressed because the circumstances surrounding that confession rendered it involuntary? **ANSWER:** No. The evidence was, at best, conflicting concerning exactly what the defendant underwent during his interrogation. Consequently, his confession did not need to be suppressed. **COMMENT:** This is a very good case to illustrate the necessity of winning on the trial level. The trial court found in the People's favor and the appellate court refused to disturb that ruling.

9. **People v. Graham**, 339 Ill. App. 3d 1049, 791 N. E. 2d 724, 274 Ill. Dec. 632 (4<sup>th</sup> Dist., No. 4-01-0550, June 20, 2003) **FACTS:** The defendant was a prime suspect in a home invasion and first degree murder. While he was in jail on an unrelated drug offense, the police interrogated him about this murder. When the police informed the defendant that his co-defendant was "helping himself" by talking with the State's Attorney, the defendant also demanded to speak with the State's Attorney. The State's Attorney was "unavailable" and so the defendant talked with the police and eventually made an incriminating statement. **ISSUE:** By asking to see the State's Attorney, did the defendant invoke his Fifth Amendment right to counsel? **ANSWER:** No. The defendant did not wish to see the State's Attorney so that the State's Attorney would protect his constitutional rights. Consequently, his request to speak to the State's Attorney did not constitute an invocation of his right to counsel. **ISSUE:** Was the defendant's Sixth Amendment right to counsel violated when his counsel in his pre-existing drug case was not informed that the defendant was being interrogated about the home invasion and murder? **ANSWER:** No. The Sixth Amendment right to counsel is case specific. That counsel represented the defendant on the drug case, not this murder investigation.

10. **People v. Woods**, 338 Ill. App. 3d 78, 787 N. E. 2d 836, 272 Ill. Dec. 650 (1<sup>st</sup> Dist, No. 1-01-3661, March 19, 2003) **FACTS:** The victim in this case, a seven-month-old baby, died as a result of "shaken baby syndrome" injuries. Suspected of committing the murder, the defendant was brought in for questioning. While the defendant was at the police station and, in between police interrogations of the defendant, an attorney showed up at the station and demanded to speak to his client. The police refused to allow the attorney to see or speak to the defendant and, at that moment, failed to inform the defendant that an attorney was present and wished to talk to him. Subsequently, the attorney left a note for the defendant and then he left the police station. The note was never given to the defendant. Subsequently, the police informed the defendant that the attorney had earlier been at the station. Thereafter, the defendant was again interrogated and during this interrogation, he confessed. The defendant's motion to suppress this statement was denied and he was subsequently convicted of first degree murder. **ISSUE:** Were the defendant's Fifth Amendment rights violated by the conduct of the police in this case. **ANSWER:** Yes, without any doubt. **ISSUE:** Did the fact that the defendant was not being interrogated when the attorney appeared at the police station or the fact that the defendant was informed that an attorney had been at the station to see him earlier justify the trial court's denial of his motion to suppress? **ANSWER:** No. Neither of these facts had sufficient legal significance to overcome the violation of the defendant's Fifth Amendment rights. **RESULT:** As a result of this violation, the defendant's waiver of his *Miranda* rights were found to be not knowingly or intelligently made. His conviction was reversed and his confession was suppressed.

11. **People v. Gorgis**, 337 Ill. App. 3d 960, 787 N. E. 2d 329, 272 Ill. Dec. 514 (1<sup>st</sup> Dist., No. 1-00-3759, March 19, 2003) **FACTS:** The defendant was accused of first degree murder and aggravated discharge of a firearm. During an interrogation, the defendant made a full confession. Prior to his trial, the defendant moved to suppress his confession and argued that the police falsely promised a reduction in the charges against him if he confessed and the assistant State's Attorney falsely informed him that if he cooperated he could only be charged with manslaughter. Based upon these allegations, the defendant argued that due to his "vulnerable mental state" the physical and psychological coercion of the police and the State's Attorney rendered his confession involuntary. **ISSUE:** Was the defendant's confession rendered involuntary by the tactics of the authorities and the condition of the defendant's mental state? **ANSWER:** The test is the totality of the circumstances. In this case the trial court was in the best position to judge those circumstances. The court rejected the defendant's arguments and the appellate court did not disagree.

12. **People v. James**, 337 Ill. App. 3d 532, 786 N. E. 2d 251, 271 Ill. Dec. 993 (2<sup>nd</sup> Dist., No. 2-01-0699, March 14, 2003) **FACTS:** The car the defendant was riding in was stopped by the police based upon a traffic violation. The driver of the car was intoxicated. He was arrested and transported to the police station. The defendant, who was also intoxicated, was told he was free to leave and the police even offered to call him a cab. (They refused to allow the

defendant to drive the car away or to walk to a nearby friend's house.) As the defendant was preparing to leave area, the police asked him if he had any weapons in the car. The defendant informed the police that he had an unloaded pistol on the car's back seat. The police retrieved the pistol, discovered that it was, in fact, loaded, and placed the defendant under arrest. **ISSUE:** Was the defendant entitled to Miranda warnings before the police could ask him any questions under the circumstances of this case? **ANSWER:** The appellate court described the conduct of the police in this case as "roadside questioning" conducted during a routine traffic stop. According to the appellate court, such questioning was not custodial in nature and, therefore, no Miranda warning was necessary.

**13. People v. Jones, 337 Ill. App. 3d 546, 786 N. E. 2d 243, 271 Ill. Dec. 985** (2<sup>nd</sup> Dist., No. 2-01-0777, March 13, 2003) **FACTS:** The defendant was placed under arrest after he was found to have been driving on a revoked driver's license. The police searched the passenger compartment of the defendant's car pursuant to his arrest. During that search a loaded handgun was discovered in the locked glove compartment of that car. Upon discovering the firearm, the arresting officer walked over to the defendant and informed him of the discovery of the gun. The defendant then responded, "Why did you go into the locked glove box without a warrant." **ISSUE:** Was the defendant denied his Fifth Amendment rights when the police informed him of finding his gun without first giving him his Miranda rights? **ANSWER:** The appellate court determined that the statement of the police officer to the defendant that the gun had been discovered was "purely informational." Specifically, the Court ruled that the comment of the officer was not the type of statement that "would be reasonably likely to elicit an incriminating response." Therefore, no Miranda warnings were necessary.

**14. People v. Howerton, 335 Ill. App. 3d 1023, 782 N. E. 2d 942, 270 Ill. Dec. 383** (3<sup>rd</sup> Dist., No. 3-02-0059, January 3, 2003) **FACTS:** The defendant in this case was accused of murder. He was arrested and interrogated. No less than five times during his interrogation did the defendant request counsel. Each time the police ignored the defendant's requests. Eventually, the defendant confessed to the murders. **ISSUE:** Were the People able to use the defendant's statements? **ANSWER:** No way. How did the Court know that the defendant asked for counsel five times? His interrogation was videotaped.

#### **YEAR 2002 CASES**

**1. People v. Bowman, 335 Ill. App. 3d 1142, 782 N. E. 2d 333, 270 Ill. Dec. 139** (5<sup>th</sup> Dist., No. 5-01-0340, December 27, 2002) **FACTS:** Two women were murdered in 1978. The police suspected the defendant in this case. A police detective allegedly devised a scheme whereby a jailhouse snitch would induce the defendant to confess to the murders in order be kept in the County Jail. The snitch would then, as soon as he was released from the jail, help the defendant escape. The defendant confessed and the snitch never did help the defendant. The defendant immediately recanted his confessions. Too late. The defendant was charged with the murders. He pleads guilty pursuant to an Alford plea (whereby the defendant agrees to plead guilty but does not admit his guilt). Twenty-one years later a local newspaper reveals the alleged scheme and the defendant moves to withdraw his guilty plea. **ISSUE:** Was the alleged scheme in this case enough to render the defendant's confessions involuntary? **ANSWER:** The appellate court thought so.

**2. Village of Algonquin v. Tilden, 335 Ill. App. 3d 332, 780 N. E. 2d 832, 269 Ill. Dec. 360** (2<sup>nd</sup> Dist., No. 2-02-0055, December 6, 2002) **FACTS:** The defendant was found slumped over the steering wheel of her car. Her eyes were glassy and bloodshot. Her speech was stuttered and slurred. When questioned by the police, the defendant admitted having several vodkas that evening. Based upon this evidence, the defendant was charged with DUI. Thereafter, she received notice of the summary suspension of her driving privileges. She moved to rescind her summary suspension. At the defendant's summary suspension hearing, the trial court suppressed the defendant's statements to the police on the ground that the police had failed to give the defendant her Miranda warnings. Additionally, when the People attempted to call the defendant to testify at her rescission hearing, the trial court refused to require the defendant to testify and ruled that she could properly invoke her Fifth Amendment rights and refuse to do so. **ISSUE:** Was the defendant entitled to Fifth Amendment protections at her hearing to rescind her summary suspension? **ANSWER:** No. Such a hearing is civil in nature and the Fifth Amendment does not apply. However, any evidence produced as a result of these hearings could not be used against the defendant at her subsequent DUI trial.

**3. People v. Quezada, 335 Ill. App. 3d 233, 780 N. E. 2d 790, 269 Ill. Dec. 318** (2<sup>nd</sup> Dist., No. 2-01-0235, November 27, 2002) **FACTS:** The 15-year-old defendant was suspected of murder. He was arrested and questioned. One hour later the police called the defendant's father. Additionally, a Youth Officer, who was present during the

defendant's questioning, assisted the police in obtaining a series of incriminating statements from the defendant. **ISSUE:** Did the fact that the police waited an hour to call the defendant's father render the defendant's statements inadmissible? **ANSWER:** No. Even though the Illinois Juvenile Court Act requires that the police "immediately" contact the parents of a detained minor (Section 5-405), this fact alone did not mandate the suppression of the defendant's statements. **ISSUE:** How about the "help" the Youth Officer gave the police in questioning the defendant. **ANSWER:** The appellate court determined that the trial court did not err in suppressing the statements that the Youth Officer assisted in getting from the defendant.

4. **People v. Hamilton**, 328 Ill. App. 3d 195, 764 N. E. 2d 1240, 262 Ill. Dec. 123 (1<sup>st</sup> Dist., No. 1-97-3926, February 20, 2002) **FACTS:** The police arrested the defendant without probable cause. They then interviewed him and he gave them a series of incriminating statements. **ISSUE:** Were these statements admissible against the defendant? **ANSWER:** Yes. The evidence in this case did clearly show that the defendant was falling all over himself to cooperate with the police. The People were able to prove by clear and convincing evidence that the defendant's statements were the product of his own free will.

5. **People v. Schoening**, 333 Ill. App. 3d 28, 775 N. E. 2d 243, 266 Ill. Dec. 681 (2<sup>nd</sup> Dist., No. 2-01-0233, August 21, 2002) **FACTS:** The defendant was on the scene when the police came to arrest his girlfriend. He interfered with their attempts and was placed in cuffs. Eventually, the defendant was released and the police asked the defendant to identify himself for their police reports. The defendant gave the police a false name. The defendant's girlfriend "corrected" the defendant and the police then ran a computer check and discovered that the defendant was a convicted felon. The police then noticed that the defendant possessed firearms inside of his home. Based upon this information, he was placed under arrest. **ISSUE:** Were the defendant's Miranda rights violated? **ANSWER:** No.

6. **People v. Traylor**, 331 Ill. App. 3d 464, 771 N. E. 2d 629, 264 Ill. Dec. 925 (3<sup>rd</sup> Dist., No. 3-00-0672, June 14, 2002) **FACTS:** The defendant was in police custody. After a series of interviews, the police were able to obtain incriminating statements from the defendant. However, a photograph of the defendant was taken and it revealed that the defendant suffered some injuries during the time he was in police custody. At a hearing to suppress these statements, the police testified and simply denied threatening or coercing the defendant. **ISSUE:** Were the defendant's statements admissible against him? **ANSWER:** No. The simple denials by the police that the defendant was not threatened or coerced was insufficient. The People had to prove how the defendant received his injuries.

### **YEAR 2001 CASES**

1. **People v. Mendez**, 322 Ill. App. 3d 103, 749 N. E. 2d 391, 252 Ill. Dec. 290 (1<sup>st</sup> Dist., No. 1-00-2178, May 2, 2001) **Facts:** The defendant was arrested for possession of cocaine. At the scene of his arrest, the defendant invoked his right to remain silent. Two hours later, at the police station, an assistant State's Attorney again questioned the defendant after warning him of his Miranda rights. During this interview, the defendant made incriminating admissions. **Issue:** Was the defendant's invocation of his Fifth Amendment rights "scrupulously honored?" More to point, was two hours time between the defendant's invocation of this rights and the second interview long enough? **Answer:** Yes.

2. **People v. Fuller**, 319 Ill. App. 3d 180, 743 N. E. 1094, 252 Ill. Dec. 938 (5<sup>th</sup> Dist., No. 5-00-0143, February 7, 2001) **Facts:** The defendant was placed under arrest by a security agent for Famous Barr after that agent witnessed the defendant "under ringing" a number of sales. After the defendant was detained, the store agent questioned the defendant and the defendant admitted his crime to the agent. After the defendant was charged with retail theft, he moved to suppress the statements he made to the agent because he had never been warned concerning his Miranda rights. The trial court agreed with the defendant and ordered the statements suppressed. **Issue:** Was the security agent acting as an agent of the police when he detained the defendant? **Answer:** No. No evidence was offered to show such a relationship. In fact, the agent was acting pursuant to an Illinois statute that authorizes a merchant to detain persons suspected of thief. **Issue:** Was the agent then working "under color of law" which would require that Miranda warning be given? **Answer:** No. Merely acting pursuant to a statute did not constitute acting under color of law.

3. **People v. Lee**, 335 Ill.App.3d 659, 781 N. E. 2d 310, 269 Ill. Dec. 513 (1<sup>st</sup> Dist, No. 1-99-2626, February 6, 2001) **Facts:** The defendant, a minor, was suspected of murder. The police wished to interview him. His mother was called and informed of the defendant's situation. While they waited for the defendant's mother to appear, the police went ahead and interrogated the suspect. He gave a series of incriminating statements. When his mother appeared, the

defendant again confessed. **Issue:** Were the defendant's statements admissible against him? **Answer:** Yes. The presence or absence of a parent was a factor to consider when determining the voluntariness of a juvenile's confession, however, there is no per se requirement that a parent or guardian be present. The totality of the circumstances in this case did show that the defendant's statements were voluntarily made.

4. **People v. Lira**, 318 Ill. App. 3d 118, 742 N. E. 2d 885, 252 Ill. Dec. 347 (3<sup>rd</sup> Dist., No. 3-99-0673, January 5, 2001) **Facts:** The defendant submitted to an Iowa interrogation while accompanied by his counsel. During this interview, the defendant confessed to an Iowa crime. Later that same day, he was interviewed by Illinois police while he was under arrest in Iowa. This time, the defendant was not accompanied by counsel. During this second interview, the defendant confessed to an Illinois crime. Later, the defendant was charged with aggravated battery with a firearm in Illinois. The trial court granted the defendant's motion to suppress based upon a finding that the defendant's Fifth Amendment right to counsel had been violated. **Issue:** Did the defendant personally invoke his right to counsel in the Illinois case. **Answer:** Yes. The defendant's act of having his counsel present during the Iowa interrogation constituted an invocation of his right to counsel in the Illinois interrogation. **Issue:** Was the defendant's Iowa interview a custodial interrogation? **Answer:** Yes. This ruling was not manifestly erroneous. **Issue:** Were the Illinois police responsible for knowing that the defendant had already invoked his right to counsel? **Answer:** Yes.

5. **People v. Carroll**, 318 Ill. App. 3d 135, 742 N. E. 2d 1247, 252 Ill. Dec. 383 (3<sup>rd</sup> Dist., No. 3-00-0066, January 4, 2001) **Facts:** The defendant in this case was suspected of killing his brother in 1962. In furtherance of this suspicion, the police picked the defendant up (at an elderly care facility in Quincy, believe it or not) and began questioning him. They informed the defendant that he was not under arrest, nor in custody, and that he was free to leave at any time. At that time the defendant was given his Miranda warnings. During his interrogation, the defendant gave four separate verbal statements. Each successive statement was a little more incriminating. Finally, the police got what they wanted and they asked the suspect if he minded if they tape-recorded his final statement. He was again advised that he was free to go. The defendant allowed the police to tape-record his final statement and he was then photographed and taken back to his retirement home. Subsequently, the defendant was charged with first degree murder. He moved to suppress. The trial court ruled that the defendant was not in custody during his four verbal statements but he was during his tape-recorded statement. The court, therefore, suppressed the recorded statement but not the verbal statements. This appeal followed. **Issue:** When was the defendant in this case "in custody?" **Answer:** When his recorded statement was made, but not his verbal statements. According to the appellate court, the test of whether a suspect is in custody must be an objective one. Would a reasonable person believe that he was being detained?

### YEAR 2000 CASES

1. **People v. DeSantis**, 319 Ill. App. 3d 795, 745 N. E. 2d 1, 253 Ill. Dec. 227 (1<sup>st</sup> Dist., No. 1-99-1256, December 22, 2000) **Facts:** The defendant was suspected of obstructing justice for leaving Illinois and concealing himself with the intention of obstructing the prosecution of three individuals who were charged with attempted murder, aggravated battery and hate crimes based upon the beating of a black child. Eventually, the defendant returned to Illinois and called the police. They picked him up and transported him to the local police station. There he talked with several police officers. While the defendant spoke with the police, his attorney arrived at the station and asked to see the defendant. The police refused to cease their interview of the defendant. Eventually, the defendant admitted witnessing the above described offenses. **Issue:** Was the defendant in custody in this case? **Answer:** No. **Issue:** Was the defendant's Fifth Amendment rights violated when he was not allowed to talk to his attorney when he showed up at the police station? **Answer:** No. No custody - No violation.

See **People v. Govea**, 299 Ill. App. 3d 76 (1999) The defendant had no right to raise an alleged violation of a third party's Fifth Amend rights.

2. **People v. Ripplinger**, 316 Ill. App. 3d 1261, 739 N. E. 2d 71, 250 Ill. Dec. 610 (5<sup>th</sup> Dist., No. 5-99-0122, October 25, 2000) **Facts:** The defendant was driving his pickup truck late at night when it suddenly veered off of the road and rolled over. The passenger in the defendant's truck was ejected and killed. The defendant was severely injured. As a result of his injuries, the defendant was transported to a hospital in Missouri. Three days later, two police detectives arrived at the hospital and questioned the defendant. During this questioning, the defendant admitted that he had been drinking and that he had consumed "too much." Based upon this and other evidence, the defendant was charged with reckless homicide. He moved to suppress and that motion was denied. He was subsequently convicted and this appeal

followed. **Issue:** Was the defendant “in custody” when the detectives questioned him? **Answer:** No. The defendant was never placed under formal arrest. Further, the circumstances of this case did not indicate an “informal” arrest.

3. **People v. Flores**, 315 Ill. App. 3d 387, 734 N. E. 2d 63, 248 Ill. Dec. 355 (1<sup>st</sup> Dist., No. 1-98-2036, July 14, 2000) **Facts:** The defendant in this case, Santos “Shorty” Flores was suspected of committing armed robbery and first degree murder. He was arrested and interrogated. During this interrogation, the defendant stated that he did not want to speak to the police without an attorney present. The interrogation ceased. Thereafter, the defendant asked to use the bathroom. On the way back, the defendant saw a number of persons in a nearby room. He asked a jailer “what was going on.” The jailer responded by stating that there were a number of State’s Attorneys in that room who were reviewing the case and they were deciding who was going to be charged with what. The defendant then immediately stated, “Get those State’s Attorneys in. I want to talk to them.” The defendant then gave a statement in which he made a number of incriminating admissions. The defendant then moved to suppress his statements. His motion was denied and he was convicted of murder and armed robbery. **Issue:** Was the defendant’s invocation of his right to remain silent “scrupulously honored?” **Answer:** No. The jailer’s answer was “likely to elicit an incriminating response” on the part of the defendant.

4. **People v. Berry and Berry**, 314 Ill. App. 3d 1, 731 N. E. 2d 853, 247 Ill. Dec. 80 (1<sup>st</sup> Dist., Nos. 1-98-0359 & 1-98-0708 cons., May 30, 2000) **Facts:** The police were investigating a murder and an armed robbery. Allen and Bobby Berry were their prime suspects. Eventually, the police arrested both Berry boys and took them downtown for interrogation. Both suspects gave incriminating statements. However, while the police had probable cause sufficient to justify the arrest of Allen Berry, they lacked probable cause to support Bobby’s arrest. Notwithstanding his illegal arrest, the trial court refused to suppress Bobby Berry’s statements to the police. Following his convictions for murder and armed robbery, this appeal followed. **Issue:** May the People ever use the statement of a suspect that had been illegally arrested? **Answer:** Yes. Such a statement can be used if the People can prove that it was the “product of the defendant’s free will.” **Result:** In this case the police were able to prove up sufficient “intervening circumstances” to allow the use of the defendant’s statements. (i.e. his brother’s confession.)

Also see: **People v. Jennings**, 296 Ill. App. 3d 761 (1998) Did the police exploit the suspect’s illegal arrest? **People v. Pierson**, 166 Ill. App. 3d 558 (1988) Clear and convincing evidence is needed to prove that the statements were the product of the defendant’s free will. **Brown v. Illinois**, 422 U. S. 590 (1975) The Courts must consider: (1) was the defendant given his Miranda warnings; (2) the time between the arrest and the statement; (3) any intervening circumstances; and (4) the purpose and flagrancy of any “official misconduct.”; **People v. Wright**, 294 Ill. App. 3d 606 (1998) The defendant’s statement was admissible despite his illegal arrest due to independent probable cause for his arrest based upon his brother’s confession.

5. **People v. Pitchford**, 314 Ill. App. 3d 72, 731 N. E. 2d 323, 246 Ill. Dec. 795 (1<sup>st</sup> Dist., No. 1-96-2120, May 30, 2000) **Facts:** The defendant was suspected of the offense of first degree murder and aggravated discharge of a firearm. The police received a call from a person identifying herself as the defendant’s attorney. She informed the police that the defendant was going to surrender himself and that the police were not to interrogate the defendant unless she was present. The defendant never did surrender himself. Eventually, he was arrested. After he was given his Miranda warnings, the defendant gave an incriminating statement. Following his conviction for murder, attempted murder, and aggravated discharge of a firearm, this appeal followed. **Issue:** May an attorney protect his client’s rights from long distance? **Answer:** No. In this case the police did not deny the defendant access to his attorney nor did they refuse to inform the defendant that his attorney was present.

Note the following cases. **People v. McCauley**, 163 Ill. 2d 414 (1994) The police erred in refusing to allow the defendant to see his attorney who was present at the police station. Also **People v. Milestone**, 283 Ill. App. 3d 682 (1996) The police erred in refusing to allow the defendant to speak to his attorney who telephoned the police station and asked to speak to his client.

6. **People v. Escalante**, 309 Ill. App. 3d 994, 723 N. E. 855, 243 Ill. Dec. 552 (2<sup>nd</sup> Dist., No. 2-98-0592, January 19, 2000) **Facts:** The defendant in this case was suspected of the unlawful use of weapons. After a two and one-half hour interrogation, the defendant confessed. Prior to his trial, the defendant moved to suppress his statement on the ground that it was elicited from him as “the direct result of mental coercion, promises, or threats, and was, therefore, involuntary.” At the defendant’s hearing, the arresting officer testified and stated that he never threatened or coerced the defendant.” Based upon this testimony, the trial court granted the defendant’s motion. This appeal followed. **Issue:** Did the People offer



sufficient evidence to rebut the defendant's allegation of coercion? **Answer:** No. The appellate court ruled that all the officer did was deny that he coerced the defendant. This was not enough. The officer failed to testify as to what exactly went on during the defendant's interrogation.

**Result:** The appellate court ruled that the trial court did not err in granting the defendant's motion to suppress.

### YEAR 1999 CASES

1. **People v. Whipple**, 307 Ill. App. 3d 43, 716 N. E. 2d 806, 240 Ill. Dec. 212 (3<sup>rd</sup> Dist., No. 3-98-0272, July 27, 1999) **Facts:** The defendant was arrested for DUI and transported to the police station. At the station, the arresting officer requested that the defendant submit to a breath/alcohol test. The defendant demanded the right to speak to his lawyer before answering the officer. The officer informed that defendant that he had no such right and observed the defendant for the statutory time period. The defendant during this time, repeatedly requested to speak to his lawyer. At the end of the statutory time, the officer declared that the defendant had refused to take the test. After recording the defendant's refusal, the defendant was advised of his Miranda rights and he once again asked to speak to his lawyer. The defendant then called his lawyer and then asked the officer if he could now take the test. The officer responded that he could not and thereafter, the defendant received notice of the summary suspension of his driving privileges. The defendant moved to rescind his summary suspension and the trial court, after a hearing, granted the defendant's motion, finding that the breathalyzer amounted to a custodial interrogation and the defendant was, therefore, entitled to counsel. This appeal followed. **Issue:** Was the defendant entitled to speak to his counsel before he decided whether or not to take the breathalyzer test? **Answer:** No. The refusal to take a breathalyzer test is not a constitutionally protected right. **Result:** The rescission of the defendant's summary suspension was reversed.

2. **People v. Torres**, 306 Ill. App. 3d 301, 714 N. E. 2d 534, 239 Ill. Dec. 615 (1<sup>st</sup> Dist., No. 1-97-0828, June 28, 1999) **Facts:** The defendant was placed under arrest in a bar. As he was being led away, he called over his shoulder (maybe to the bartender), "Call my lawyer. His number is \*\*\* \*\*\*\*." **Issue:** Does the defendant's act of calling out for someone to call his lawyer constitute an invocation of his right to remain silent and to an attorney? **Answer:** No, because in this case, the defendant was unable to positively prove that the police heard and understood his call. **Issue:** Does the fact that the defendant never executed a formal written waiver of his Miranda rights require that his statements be suppressed? **Answer:** No. That was only one element among many for the trial court to decide this issue. The court must look at the "Totality of the Circumstances." **Result:** The trial court was correct in refusing to suppress the evidence and the defendant's convictions were affirmed.

3. **People v. Smith**, 306 Ill. App. 3d 82, 713 N. E. 140, 238 Ill. Dec. 894(1<sup>st</sup> Dist., No. 1-98-1316, June 8, 1999) **Facts:** The defendant in his case was seen running from a railroad yard where a railroad car had been burglarized. In fleeing from the scene, the defendant struck and killed a pedestrian. He was thereafter arrested and transported to the police station. At the station he was placed in a holding cell. He was given his Miranda rights and he asked to speak to an attorney. A short time later, the defendant was allowed to use the bathroom. On the way back from the bathroom, the defendant asked to speak to an Assistant State's Attorney. The police officer, without saying a word, located the Attorney and the Attorney, after re-informing the defendant of his Miranda rights, interviewed the defendant. During this interview, the defendant made various incriminating admissions. Thereafter, he was charged with first-degree murder and burglary. The defendant's motion to suppress was denied and he was convicted as charged. This appeal followed. **Issue:** Did the defendant clearly indicate a willingness and desire to initiate further discussion with the authorities? **Answer:** Yes. **Issue:** Did the officer who located the Assistant State's Attorney err in failing to immediately re-inform the defendant of his Miranda rights? **Answer:** No. The officer did not verbally communicate with the defendant. Consequently, no interrogation occurred. **Result:** The defendant's convictions were affirmed.

4. **People v. Rivera**, 304 Ill. App. 3d 124, 709 N. E. 2d 710, 237 Ill. Dec. 455 (3<sup>rd</sup> Dist., No. 3-97-1013, April 7, 1999) **Facts:** Through a confidential informant, the police became aware that a drug deal would be going down in a nearby airport parking lot. The police staked out the parking lot and when the defendant drove his truck into the lot, six or seven police officers in four or five squad cars surrounded the defendant and ordered him out of his truck. **Issue:** Was the defendant in this case in custody the moment he stepped out of his car and into the arms of the police? **Answer:** Yes. **Issue:** Was the defendant "interrogated" when he was asked "Is this cocaine," with reference to a bag found inside the

defendant's car? **Answer:** Yes. **Result:** The defendant should have been given his Miranda rights. His statement admitting that cocaine was inside the bag should have been suppressed. This was not harmless error.