

## A Juvenile's Request for a Parent During Custodial Interrogation Must Be Unambiguous

In December, the North Carolina Supreme Court filed its long-awaited opinion in [State v. Saldierna](#), \_\_\_ N.C. \_\_\_, 794 S.E.2d 474 (December 21, 2016), a juvenile interrogation case heard by the court on February 16, 2016. This decision marks the first time the court has addressed the rights of a juvenile during a custodial interrogation since [J.D.B. v. North Carolina](#), 564 U.S. 261 (2011), the landmark U.S. Supreme Court case which made age a relevant factor in the *Miranda* custody test (and reversed the state supreme court on this issue). *Saldierna* did not directly involve whether the juvenile was in police custody, since he was clearly under arrest. The issue, instead, was whether a juvenile must make a clear and unambiguous request in order to exercise the juvenile's statutory right to have a parent present during a custodial interrogation. The Supreme Court said yes, reversing the Court of Appeals on this question. This post discusses whether the ruling can be reconciled with *J.D.B.* and Juvenile Code statutes governing custodial interrogations.

### Juvenile Rights under G.S. 7B-2101 and *J.D.B. v. North Carolina*

In North Carolina, all juveniles (persons under the age of 18) must be advised of certain rights under [G.S. 7B-2101\(a\)](#) before being subjected to custodial interrogation by a law enforcement officer. Those rights include:

1. the right to remain silent;
2. notification that any statement the juvenile makes may be used against the juvenile;
3. the right to the presence of a parent, guardian, or custodian during questioning; and
4. the right to consult with an attorney and to have one appointed, if the juvenile wants representation.

Also, before admitting any statements by a juvenile during custodial interrogation, the court must find that the juvenile knowingly, willingly, and understandingly waived the juvenile's rights. [G.S. 7B-2101\(d\)](#).

These rights are commonly referred to as "juvenile *Miranda* warnings" because they mirror the rights guaranteed to all suspects under *Miranda v. Arizona*, 384 U.S. 436 (1966), with the exception of the right to have a parent present. The right to parental presence during custodial interrogation is an additional protection designed "to help the juvenile understand his situation and the warnings he is being given so that he can make a knowing and intelligent decision about whether he should waive his right to be silent." [In re M.L.T.H.](#), 200 N.C. App. 476, 488 (2009).

For juveniles under the age of 16, any statements made during custodial interrogation are inadmissible in court unless a parent, guardian, custodian, or attorney was present during questioning. [G.S. 7B-2101\(b\)](#). Previously, the law permitted juveniles to waive the right to parental

presence at age 14, but in 2015, the legislature raised the age limit for such waivers from 14 to 16. See [N.C. Sess. Laws 2015-58, sec. 1.1](#), eff. Dec. 1, 2015. The Court of Appeals viewed this legislative change as evidence that the General Assembly, like the U.S. Supreme Court in *J.D.B.*, recognized that the unique qualities associated with youth make juveniles especially vulnerable during custodial interrogations. See [State v. Saldierna](#), \_\_ N.C. App. \_\_, 775 S.E.2d 326, 334 (2015).

In *J.D.B.*, the U.S. Supreme Court held that a child's age matters in assessing the rights of juveniles during custodial interrogations. 564 U.S. at 265. That is, in determining whether *Miranda* warnings are required, a police officer must consider how a juvenile's age influences the juvenile's belief that he or she is "in custody." The court explained that a child's age "generates commonsense conclusions about behavior and perception" including that children are less mature and less responsible than adults, they lack the experience, perspective, and good judgment to recognize and avoid bad choices, and are more likely to submit to authority figures. *Id.* at 272. As a result, the court saw no reason for police officers and lower courts to "blind themselves" to this "commonsense reality" in determining how an officer may interrogate a juvenile. *Id.* at 265. (See my bulletin, [Applying the Reasonable Child Standard to Juvenile Interrogations After J.D.B. v. North Carolina](#), for a more detailed analysis of this topic).

The additional protections provided to juveniles by [G.S. 7B-2101](#) and *J.D.B.* reflect that different rules are required for juveniles during custodial interrogations because of their unique status. The question in *Saldierna* was whether a juvenile's unique status also requires the application of different rules to determine whether the juvenile has *invoked* his or her juvenile rights.

### **The Facts in *State v. Saldierna***

The juvenile, age 16, was arrested for his alleged involvement in recent burglaries of Charlotte area homes. The arresting officers took him to a police station where a detective provided him with copies of a Juvenile Waiver of Rights Form in both English and Spanish. The detective also read the *Miranda* and juvenile rights to him in English and the juvenile initialed the English version of the form indicating that he desired to answer questions without a lawyer, parent, or guardian present. He then asked, "Um, can I call my mom," and the interrogating officer allowed the juvenile to use her cell phone to make the call. The juvenile did not reach his mother but spoke to someone else before returning to the booking area where the interrogation resumed. During the interrogation, the juvenile confessed. \_\_ N.C. at \_\_, 794 S.E.2d at 475-76.

The trial court denied the juvenile's motion to suppress his confession on grounds that it was obtained in violation of his *Miranda* rights and his juvenile rights under [G.S. 7B-2101\(a\)\(3\)](#). The court concluded that after the juvenile "knowingly, willingly, and understandingly waived his juvenile rights," he simply asked to call his mother, which he was permitted to do, but did not make an unambiguous request to have her present. The juvenile later pled guilty to felony breaking and entering and conspiracy charges and reserved the right to appeal the denial of his motion to

suppress. *Id.* at 476.

The Court of Appeals reversed the trial court's denial of the juvenile's motion to suppress. Although the court agreed that the juvenile's request to call his mother was ambiguous, it held that due to his status as a juvenile, the interrogating officers had a duty to clarify whether he was invoking his statutory right to have a parent present before proceeding with the interrogation. [State v. Saldierna](#), \_\_\_ N.C. App. \_\_\_, 775 S.E.2d 326, 334 (2015). Quoting extensively from the *J.D.B.* opinion, the court emphasized "the special vulnerability of juveniles subjected to custodial interrogations." *Id.* at 333 (quoting *J.D.B.*, 564 U.S. at 271-73). The court found that by providing juveniles with the additional right to have a parent present, [G.S. 7B-2101](#) recognizes that this vulnerability renders them "particularly dependent on their parents (or other responsible adults)" during police encounters. *Id.*

The Court of Appeals went on to hold that because the statutory right to have a parent present during questioning goes beyond the rights guaranteed by *Miranda*, the federal rule requiring that a suspect's invocation of his or her *Miranda* rights must be unambiguous did not apply. See *Davis v. United States*, 512 U.S. 452, 459 (1994) (a defendant's invocation of the right to counsel must be clear and unambiguous and officers have no duty to clarify an ambiguous statement). Instead, the court found that by enacting [G.S. 7B-2101](#), the legislature intended for "law enforcement officers [to] proceed with great caution in determining whether a juvenile is attempting to invoke this right." *Saldierna*, \_\_\_ N.C. App. at \_\_\_, 775 S.E.2d at 333.

### **The Supreme Court Majority Ruling in *Saldierna***

The Supreme Court majority reversed the decision of the Court of Appeals, rejecting its conclusion that a different rule should apply in determining whether a juvenile has invoked the right to have a parent present. Because the court found that a juvenile's statutory right to parental presence during custodial interrogation is analogous to the constitutional right to counsel, it held that the same standards must apply. *Saldierna*, \_\_\_ N.C. at \_\_\_, 794 S.E.2d at 478.

The court noted that it had previously applied federal *Miranda* precedent to a case involving a juvenile's statutory rights under G.S. 7A-595 (the predecessor statute to G.S. 7B-2101). See *State v. Smith*, 317 N.C. 100, 106 (1986) (holding, based on *Edwards v. Arizona*, 451 U.S. 477 (1981), that when a juvenile invokes the right to have a parent or guardian present, all questioning must cease until the requested person is provided or the juvenile reinitiates the conversation). Likewise, the court pointed to its decision in *State v. Golphin*, 352 N.C. 364, 451-52 (2000), which held that a juvenile defendant must unambiguously invoke the *Miranda* right to remain silent, based on the U.S. Supreme Court's ruling in *Davis*.

Relying upon *Davis*, the court held that the juvenile's statement, "Um, can I call my mom," was not a clear and unambiguous request to have his mother present during the interrogation. *Saldierna*, \_\_\_ N.C. at \_\_\_, 794 S.E.2d at 479. Because the court held that the juvenile's rights

under [G.S. 7B-2101\(a\)\(3\)](#) were not violated, it reversed and remanded the case to the Court of Appeals to determine the second prong of the inquiry – whether the juvenile’s waiver of rights was made “knowingly, willingly, and understandingly” under [G.S. 7B-2101\(d\)](#).

**In a lengthy dissenting opinion**, Justice Beasley found that the juvenile’s request to call his mother was an unambiguous invocation of his statutory right to have a parent present during the interrogation. *Id.* at 479-480 (J. Beasley, dissenting) However, assuming the request was ambiguous, she agreed with the Court of Appeals that officers must ask clarifying questions when a juvenile is attempting to invoke his or her statutory rights, noting that children are more vulnerable during interactions with the police due to their immaturity and inability to fully understand their rights. She emphasized that the “[adult] standard expects far too much of the typical juvenile being held in police custody” and is inconsistent with the legislature’s attempt to provide greater protections to juveniles in [G.S. 7B-2101](#). *Id.* at 484 (J. Beasley, dissenting)

Justice Beasley’s conclusion appears to be supported by research showing that many juveniles find the *Miranda* warnings to be confusing and don’t understand how to assert them. (See this [article](#) in the ABA Journal discussing such research)

### **Can *Saldierna* be Reconciled with *J.D.B.* and G.S. 7B-2101(c)?**

*Saldierna* did not directly implicate *J.D.B.*’s holding that a juvenile’s age is a factor in the *Miranda* custody analysis. Still, the court’s ruling appears to be inconsistent with *J.D.B.*’s broader message – kids are different and officers must account for these differences during custodial interrogations. As it now stands, *Saldierna* holds that when evaluating whether a juvenile has properly invoked his or her juvenile rights, the adult standard applies. However, under *J.D.B.*, courts must apply a “*reasonable child*” standard in determining whether the juvenile was ever entitled to any rights in the first place.

The *Saldierna* opinion also fails to mention [G.S. 7B-2101\(c\)](#), which provides that:

If the juvenile indicates **in any manner** (emphasis added) and at any stage of questioning pursuant to this section that the juvenile does not wish to be questioned further, the officer shall cease questioning.

Neither appellate court in *Saldierna* discussed this part of the statute, which appears to reflect the legislature’s intention to give juveniles greater flexibility to invoke their statutory right to remain silent during a custodial interrogation. In other words, contrary to the requirement of an unambiguous invocation of *Miranda* rights, the Juvenile Code allows a juvenile to invoke his or her statutory right to remain silent *in any manner*. Although this section appears to speak more directly to the right to remain silent, it is reasonable to assume that the legislature intended for the same rule to apply to a juvenile’s invocation of any of the rights guaranteed by G.S. 7B-2101.

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As for Saldierna, his appeal isn't over yet since the Court of Appeals will now decide whether his waiver of rights was valid. In light of the court's original decision regarding his invocation of the right to a parent, I'm sure that the juvenile's request to call his mother will weigh heavily in the court's decision.