

New Juvenile Law Bulletin: Applying the Reasonable Child Standard to Juvenile Interrogations After *J.D.B. v. North Carolina*

Nearly five years ago, the U.S. Supreme Court decided [*J.D.B. v. North Carolina*](#), a case arising from the police interrogation of a middle school student in Chapel Hill. In a 5-4 decision, the Court ruled that police officers must consider a juvenile's age when determining whether they must read juveniles their *Miranda* rights before questioning them. The ruling represents a major shift in *Miranda* jurisprudence by establishing a different standard for evaluating police interrogations of juveniles – the *reasonable child* standard. In the years since *J.D.B.*, however, lower courts have not clearly defined how the reasonable child standard impacts the assessment of whether a juvenile was “in custody.” The application of this new standard also raises questions about how North Carolina courts evaluate custody determinations in the school setting. These and other issues are addressed in detail in [“Applying the Reasonable Child Standard to Juvenile Interrogations After *J.D.B. v. North Carolina*”](#) (No. 2016/01).

Pre-*J.D.B.*: The Objective Reasonable Person Test

The *Miranda* decision established the well-known rule that police officers may not question a person who “has been taken into custody or otherwise deprived of his freedom of action in any significant way” without first providing certain warnings related to an individual's Fifth Amendment right to remain silent. *Miranda v. Arizona*, 384 U.S. 436, 444 (1966). In North Carolina, in addition to the regular *Miranda* warnings, juveniles must also be informed of their right to have a parent, guardian, or custodian present during questioning. [G.S. 7B-2101](#). However, the requirement to advise juveniles of both their *Miranda* and juvenile rights arises only when they are “in custody.”

Although the *Miranda* rule involves several inquiries (custody, interrogation, waiver, etc.), whether the juvenile was in custody at the time of the interrogation is perhaps the most heavily litigated issue. For decades, that determination was made using the same objective test that applies to adults – the reasonable person standard. Under this test, an individual is in custody when a reasonable person in the suspect's position would believe that he or she had been formally arrested or restrained to the same degree of a formal arrest. The test requires an evaluation of the totality of the circumstances but primarily depends on how a reasonable person in those circumstances would perceive his or her freedom of movement.

Because the test was characterized as an objective one, it did not take into account the personal characteristics of the suspect, such as age. Prior to *J.D.B.*, the Supreme Court had even suggested that the inclusion of age in the *Miranda* analysis “could be viewed as creating a subjective inquiry.” *Yarborough v. Alvarado*, 541 U.S. 652, 668 (2004). As a result, North Carolina courts evaluated juvenile interrogations according to objective factors such as the numbers of officers present, the location of the interrogation, and the use of restraints on the juvenile without any

consideration of the fact that the person being questioned was a child.

Post-*J.D.B.*: The Reasonable Child Standard

As one of the attorneys handling the case for the State of NC, I remember discussing *J.D.B.* with several of my non-attorney friends and family members who seemed genuinely shocked that juveniles could be questioned by police officers (under any circumstances) without being informed of their rights. Their commonsense reactions to the idea that juveniles were treated much the same as adults during police encounters is the basic premise of the U.S. Supreme Court's decision.

In *J.D.B.*, the U.S. Supreme Court held that "a child's age properly informs the *Miranda* custody analysis," reversing the N.C. Supreme Court on that issue. *J.D.B. v. North Carolina*, 131 S. Ct. 2394, 2399 (2011). The Court reasoned that childhood is an objective factor because it yields "commonsense conclusions about behavior and perception" that apply universally to children as a class, and these conclusions "are self-evident to anyone who was a child once himself, including any police officer or judge." *Id.* at 2403. According to the Court, law enforcement officers and judges need only have "common sense to know that a 7-year-old is not a 13-year-old and neither is an adult." *Id.* at 2407.

J.D.B. represents a significant change in the way courts and police officers must determine whether a juvenile is in custody. Some advocates called the decision a "watershed moment" in juvenile law and predicted that it would be a "game changer" in challenging juvenile confessions (see this [law review article](#)). However, the relatively few North Carolina appellate decisions applying *J.D.B.* have not reflected substantial change in the evaluation of juvenile interrogations. In one case, the court stated that a juvenile's age was not a significant factor at all. [State v. Yancey](#), 221 N.C. App. 397, 400-01 (2012) (holding that a juvenile's age did not alter the court's conclusion that he was not in custody where he was questioned 2 months before his 18th birthday).

[New Bulletin: Applying the Reasonable Child Standard](#)

Under the reasonable child standard, courts and police officers must account for a juvenile's age, if the juvenile's age was known or "objectively apparent" to the interrogating officer. *J.D.B.*, 131 S. Ct. at 2406. *J.D.B.*, however, does not provide specific guidance on how the analysis changes when officers know the juvenile's age. My bulletin attempts to fill the gaps for police officers and courts who must determine how age impacts the *Miranda* custody analysis.

Surveying cases from all jurisdictions in which *J.D.B.* has been applied revealed two basic trends: (1) that while age is not necessarily dispositive, it impacts the custody analysis more significantly for younger juveniles, and (2) that the coercive effect of the other objective circumstances surrounding an interrogation may be heightened when a juvenile's age is considered. In the bulletin, I discuss how age affects the evaluation of specific factors, including:

- the location or physical surroundings of the interrogation,
- whether a parent or other trusted adult was present,
- the presence of other adult participants,
- whether the juvenile was expressly told that he or she was free to leave,
- whether the juvenile voluntarily submitted to the interview,
- the duration of the interview, and
- the nature of the questioning.

Regarding the location of the interrogation, the bulletin addresses whether North Carolina's heightened standard for school interrogations survives after *J.D.B.* The N.C. Supreme Court held in *In re J.D.B.* that juveniles who are interrogated at school must be subject to additional restraint "that goes well beyond the limitations" that are normally present at school. *In re J.D.B.*, 363 N.C. 664, 670 (2009), *rev'd*, 564 U.S. 261 (2011). The court's reasoning was essentially that a juvenile is not in custody for purposes of *Miranda* merely because school attendance is compulsory and students are required to comply with school rules. This part of the court's holding was not addressed by the U.S. Supreme Court in *J.D.B.*, which was reversed solely on the state supreme court's failure to consider the juvenile's age.

Lower courts have continued to apply the additional restraint rule following *J.D.B.* See, e.g., *In re R.B.L.*, ___ N.C. App. ___, 776 S.E.2d 363, *7–8 (July 21, 2015) (unpublished) (15-year-old was not in custody where he was escorted from his classroom to the front office by the principal and an SRO and then questioned by two school officials in the SRO's presence with the door shut and without being told that he was free to leave). In light of *J.D.B.*'s mandate that courts consider a juvenile's age, NC may need to reconsider the evaluation of custody in the school setting. See *J.D.B.*, 131 S. Ct. at 2406 (stating that a "student—whose presence at school is compulsory and whose disobedience at school is cause for disciplinary action—is in a far different position" from that of various adults who may be voluntarily present on school grounds).