Journal of Criminal Law and Criminology

Volume 95
Issue 3 *Spring*

Article 7

Spring 2005

Yarborough v. Alvarado: At the Crossroads of the Unreasonable Application Provision of the Antiterrorism and Effective Death Penalty Act of 1996 and the Consideration of Juvenile Status in Custodial Determinations

Jennifer Park

0091-4169/05/9503-0871
THE JOURNAL OF CRIMINAL LAW & CRIMINOLOGY
Vol. 95, No. 3
Printed in U.S.A.

YARBOROUGH V. ALVARADO: AT THE CROSSROADS OF THE "UNREASONABLE APPLICATION" PROVISION OF THE ANTITERRORISM AND EFFECTIVE DEATH PENALTY ACT OF 1996 AND THE CONSIDERATION OF JUVENILE STATUS IN CUSTODIAL DETERMINATIONS

Yarborough v. Alvarado, 124 S. Ct. 2140 (2004)

I. INTRODUCTION

In *Yarborough v. Alvarado*,[1] the Supreme Court reversed the decision of the Ninth Circuit, finding that the California Court of Appeals had not unreasonably failed to extend Supreme Court precedent in refusing to include juvenile age and experience as factors in the determination of whether Michael Alvarado was in police custody for *Miranda* purposes.[2] Procedurally, the Supreme Court held that the Ninth Circuit erred in its grant of habeas relief, as the non-consideration of Alvarado's underage status and lack of experience in determining custody was not an unreasonable application of clearly established federal law.[3] The Court has considered these two factors in the past, but only in the realm of confessions and in the assessment of defendants' voluntary waivers of their privilege to avoid self-incrimination.[4] Never had juvenile status as a factor in custodial determinations been addressed by the Supreme Court.[5] Thus, given the absence of Supreme Court precedent in this area, the state court's refusal to extend the custodial determination standard to include age and prior experience was not an unreasonable application of federal law, thereby leaving Michael Alvarado without any grounds for relief under 28

[1] 124 S. Ct. 2140 (2004).
[2] *Id.* at 2149.
[3] *Id.* at 2150.
[4] *Id.* at 2151.
[5] *Id.*

U.S.C. § 2254(d).[6] Substantively, setting aside the procedural issue of Supreme Court precedent, the Court again determined that prior history with law enforcement and age should not be factors in the objective determination of whether a juvenile was "in custody" for *Miranda* purposes, contrary to the Ninth Circuit's decision.[7]

This Note, in agreement with the Supreme Court's decision, argues that the California state court was within the limits of habeas corpus jurisprudence in refusing to broaden existing Supreme Court precedent dealing with custodial determinations, and that the state's refusal was not objectively unreasonable. Under the confines of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA),[8] the state court did not err in choosing not to consider Alvarado's age and lack of prior criminal history. Since these two factors are of a material nature, it was under the purview of the Supreme Court to determine whether or not these two factors should have been included, and not any other court.

However, this Note also criticizes the Supreme Court's ultimate conclusion that juvenile status should not be a consideration in the objective determination of whether an individual is "in custody" for the purposes of *Miranda*. The immaturity of adolescents and their lesser ability to make decisions compared to adults has been the impetus behind many social policies and Supreme Court precedent in treating juveniles according to a different standard than adults. Thus with custodial determinations, it would be wrong to apply the same criteria to both adults and minors, and to judge minors against a reasonable person standard that was developed with a reasonable *adult* in mind. The consideration of age would not damage the objective nature of the standard used to determine a suspect's custodial status, as the characteristics of youth are neither unique nor hard to discover.

II. BACKGROUND

A. HABEAS CORPUS AND THE ANTITERRORISM AND EFFECTIVE DEATH PENALTY ACT OF 1996

1. The Attempt to Reform Habeas Corpus Through the AEDPA

Habeas corpus proceedings, though important in assuring that a petitioner's constitutional rights are preserved, are not meant to serve as

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[6] *Id.* at 2152.

[7] *Id.*

[8] Pub. L. 104-106, 110 Stat. 1214 (1996).

opportunities for claims to be relitigated in the forum of the federal courts.[9] Historically, the writ of habeas corpus has been regarded as a means for redress for convictions that violate fundamental fairness[10] and for those who have been grievously wronged.[11] Courts have shown restraint in allowing the use of habeas corpus petitions by imposing exhaustion requirements,[12] limiting a prisoner's ability to make successive claims,[13] and disallowing retroactive application of new constitutional rules.[14] The purpose of these restrictions has been to prevent the relitigation of claims on collateral review and to prevent the degradation of the trial process.[15] Further, there is an interest in upholding the finality of convictions and honoring the courts' good-faith attempts to honor constitutional rights.[16] Limitations by the courts also preserve the scarce resources of the judiciary and save society from footing the burdensome costs associated with allowing habeas corpus petitions to run rampant within the court system.[17]

Despite attempts by the court to prevent the abuse of this writ, decades of habeas rulings unavoidably led to a tangled and unmanageable morass of procedural rules, frictions between federal and state court systems, and increasing costs on the judicial system and society alike.[18] The AEDPA was the result of an effort to reform habeas, and extensively revised the law of habeas corpus as practiced within the federal judicial system.[19] Through this change, Congress hoped to curb delays, avoid retrials on federal habeas, and give effect to judgments made by state courts to the greatest extent possible under the law.[20]

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[9] Brecht v. Abrahamson, 507 U.S. 619, 633 (1993) (citing Barefoot v. Estelle, 463 U.S. 880, 887 (1983)).

[10] *Id.* at 633-34 (citing Engle v. Isaac, 456 U.S. 107, 126 (1982)).

[11] *Id.* at 634 (citing Fay v. Noia, 372 U.S. 391, 440-41 (1963)).

[12] *See* Wainwright v. Sykes, 433 U.S. 72 (1977) (holding that a state claimant must show cause as to why his claim was never raised in state court under direct review and must demonstrate that he suffered from actual prejudice due to the denial of that claim).

[13] *See* McClesky v. Zant, 499 U.S. 467 (1991) (holding that a state claimant must show cause as to why the additional federal claims were never raised in the first petition and must demonstrate that he suffered from actual prejudice due to the denial of that claim).

[14] *See* Teague v. Lane, 489 U.S. 288, 310 (1989) (noting that new constitutional rules of criminal procedure are not to be applied retroactively unless they involve a fundamental right).

[15] *Brecht*, 507 U.S. at 635.

[16] *Id.*

[17] *See* United States v. Mechanik, 475 U.S. 66, 72 (1986).

[18] Barry Friedman, *Failed Enterprise: The Supreme Court's Habeas Reform*, 83 CAL. L. REV. 485, 530 (1995).

[19] 110 Stat. 1214 (1996).

[20] Williams v. Taylor, 529 U.S. 362, 386 (2000) (plurality opinion).

Section 2254(d)(1), through provisions of the AEDPA that limit a federal court's authority to grant habeas writs on behalf of persons in state custody, deals exclusively with the circumstances under which a federal court should grant a state petitioner's habeas application.[21] This section is critical as it serves a gatekeeper function for federal habeas review of state court judgments, by constraining a federal court's jurisdictional authority to three specified standards of review.[22] At the core of the AEDPA lies provisions codified at 28 U.S.C. § 2254(d), which state:

> An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim:
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> (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
>
> (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.[23]

A practical effect of the AEDPA was to impose stringent restrictions on habeas corpus petitioners and to codify the standards of review to be used by federal courts, through sweeping changes in habeas corpus jurisprudence.[24] Prior to the enactment of the AEDPA, classifying the question at issue as one of fact or as one of both law and fact, was essential in federal habeas proceedings because those two types of questions called for strikingly different standards of review.[25] Mixed questions of fact and law were generally reviewed de novo, while state decisions on mere questions of fact were presumed to be correct.[26] But post-AEDPA, a federal court generally would not disturb a state court's reasonable ruling, even if it would have decided the issue differently on de novo review on both mixed questions and questions of fact.[27] As a result, the AEDPA effectively reigned in those courts with the tendency to expand the rights of

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[21] Jude Obasi Nkama, Note, *The Great Writ Encumbered by Great Limitations: Is the Third Circuit's Notice Requirement for Habeas Relief a Structural Bias Against "Persons in Custody?"*, 26 SETON HALL LEGIS. J. 181, 202 (2001).

[22] Allan Ides, *Habeas Standards of Review Under 29 U.S.C. § 2254(d)(1): A Commentary on Statutory Text and Supreme Court Precedent*, 60 WASH. & LEE L. REV. 677, 679 (2003).

[23] 28 U.S.C. § 2254(d) (2001).

[24] Nkama, *supra* note 21, at 200.

[25] Todd E. Pettys, *Federal Habeas Relief and the New Tolerance for "Reasonably Erroneous" Applications of Federal Law*, 63 OHIO ST. L.J. 731, 735-36 (2002).

[26] *Id.* at 736.

[27] *Id.* at 739.

habeas petitioners, and left the development of the law in the hands of the Supreme Court.[28]

2. *Interpreting the AEDPA's Effect on Habeas Corpus Jurisprudence in* Williams v. Taylor

Although the purpose of the AEDPA's changes to habeas corpus jurisprudence was to clarify the habeas process, the standard of review enacted by the AEDPA was not clear-cut and led many to wonder the extent of the AEDPA's reach.[29] Courts struggled to interpret correctly provisions of the AEDPA, but had particular difficulty determining how much deference federal courts should have of state court adjudications in view of § 2254(d)(1).[30] Since its inception, most cases decided by the Supreme Court concerning this seemingly innocuous subsection provided little or no meaningful interpretation of the newly changed statute.[31] The Supreme Court's first critical interpretation of the AEDPA was in *Williams v. Taylor.*[32] Still, the Supreme Court's *Williams* decision left many important questions unanswered and left an incoherent pattern of precedent, leaving the lower courts to fend for themselves in interpreting the meaning of § 2254(d), particularly those questions related to the scope of the "unreasonable application" standard.[33]

Justice O'Connor, in writing for the majority[34] in *Williams v. Taylor,* expanded the language of § 2254(d)(1) and established that the AEDPA called for a deferential standard of review for habeas jurisprudence.[35] According to the decision, federal courts could grant habeas petitions and set aside state court judgments only if the decision is "contrary to" controlling Supreme Court precedent or if the state court's decision involves an "unreasonable application" of Supreme Court precedent.[36] A state court determination can be found to be "contrary to" the Supreme Court's established precedent under two conditions.[37] The first instance is when the state court arrives at a conclusion contradictory to that reached by

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[28] Ides, *supra* note 22, at 684.

[29] Pettys, *supra* note 25, at 746.

[30] Nkama, *supra* note 21, at 202.

[31] *See* Ides, *supra* note 22, at 680.

[32] 529 U.S. 362 (2000).

[33] Ides, *supra* note 22, at 718.

[34] Justice O'Connor was joined by Chief Justice Rehnquist, Justices Kennedy, Thomas, and Scalia (except as to the footnote).

[35] 529 U.S. at 399-419.

[36] *Id.* at 404-13.

[37] *Id.* at 404-05.

the Supreme Court on a question of law.[38] The second occasion is when the state court is confronted with facts that are materially indistinguishable from a relevant Supreme Court precedent, yet arrives at a result opposite to that reached by the Supreme Court.[39]

Similarly, instances of when a state decision involves an "unreasonable application" of clearly established federal law are also twofold. The first condition is when a state court correctly identifies the governing legal rule, but unreasonably applies it to the facts of the case before them.[40] The alternative circumstance would be when a state court unreasonably extends a legal principle to a new context where it should not apply or unreasonably refuses to extend that principle to a new context where it should apply.[41]

But in its decision, the Court also recognized that the "unreasonable application" classification can be problematic, especially in the instance of a failure to extend existing established precedent or an inappropriate extension of such.[42] Distinguishing what is and is not a reasonable extension (or a refusal to do so) is an inherently difficult task that may never be clear.[43] Though acknowledging the difficulty in making this distinction, the Court did nothing further. Rather, the Court avoided deciding how cases dealing with extensions of legal principle should be treated under § 2254(d)(1), as that question was not yet before the Court.[44]

In the judgment of the *Williams* Court, the "reasonable jurist" standard of determining unreasonable applications was too subjective.[45] The belief was that the test should remain objective and that the standard should require the Court to find that the application of precedent was "objectively unreasonable."[46] Justice O'Connor also stressed that an unreasonable application is different from an incorrect application of federal law.[47] A federal court cannot arbitrarily issue a habeas writ because it decides in its independent judgment that the state court simply applied the federal law erroneously or incorrectly.[48] Rather, the application must also be

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[38] *Id.*
[39] *Id.*
[40] *Id.* at 407.
[41] *Id.*
[42] *Id.* at 408.
[43] *Id.* at 408-09.
[44] *Id.*
[45] *Id.* at 409.
[46] *Id.*
[47] *Id.* at 412.
[48] *Id.* at 411-12.

unreasonable.[49] Thus, based on the Supreme Court's statutory interpretation of the AEDPA and its legislative history, federal courts must give some deference to the determinations of state courts, so long as it does not involve an unreasonable application or is not contrary to clearly established federal law.[50]

Justice Stevens,[51] writing for the plurality in *Williams*, warned lower courts against establishing legal principles in areas where the Court has not "broken sufficient legal ground to establish an asked-for constitutional principle," since those principles would not survive the bar of review set by the AEDPA.[52] By definition, ground breaking legal rules or legal rules that impose new obligations on states or the federal government fall outside the universe of clearly established federal law, defined as precedent existing at the time of the defendant's conviction.[53] In situations where the Supreme Court has set a strict and specific rule of application as precedent, the lower courts must closely follow that directive and are without opportunity to stray very far.[54] However, it is rare for a legal principle to be applicable only to one set of circumstances, as legal principles are generally broad in scope and grant state courts latitude in the interpretation of the law.[55]

Although the AEDPA was intended to establish strict and clear standards of review regarding habeas matters, it was somewhat unsuccessful in doing so. Questions and uncertainties arose with the AEDPA's passage, especially concerning the "unreasonable application" provision it enacted. However, in light of the Supreme Court's decision in *Williams*, the prevailing understanding seems to be that with a greater level of generality of the controlling legal standard, a court's discretion correspondingly increases.

B. "IN CUSTODY" DETERMINATIONS FOR THE PURPOSES OF *MIRANDA*

The debate surrounding statements and confessions made during police interrogations had its beginnings in the Supreme Court's seminal decision in *Miranda v. Arizona*[56] that mandated a warning and waiver

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[49] *Id.*

[50] *Id.* at 386. Justice O'Connor clearly defines clearly established law as "holdings, as opposed to dicta, of [the Supreme] Court's decisions as of the time of the relevant state-court decision." *Id.* at 412.

[51] Justice Stevens was joined by Justices Souter, Ginsburg, and Breyer with respect to Parts II and V.

[52] *Williams*, 529 U.S. at 381.

[53] *Id.*

[54] Pettys, *supra* note 25, at 777.

[55] *Williams*, 529 U.S. at 382.

[56] 384 U.S. 436 (1966).

system based on the Self-Incrimination Clause of the Fifth Amendment.[57] The *Miranda* Court held that prior to custodial questioning, suspects must be warned that they have a right to remain silent, that any statement they make may be used as evidence against them, and that they have a right to the presence of an attorney—retained or appointed by the state free of charge—to advise them before or during the interrogation.[58] But the Court maintained that notification of these constitutional protections is required only during custodial interrogations.[59] A custodial interrogation, as defined by the *Miranda* Court, is questioning by law enforcement officers once an individual has been taken into custody or has been significantly deprived of the freedom of action.[60]

Custodial interrogations are the trigger for the notification of *Miranda* rights, as they are by nature intrinsically hostile to autonomous decision-making by a suspect.[61] The Court recognized that custodial interrogations inevitably create the pressure to speak—a pressure that may induce individuals to make statements they might not have otherwise made.[62] Moreover, the Court reasoned that custodial interrogations exact a heavy burden on individual liberty and take advantage of the weakness of individuals.[63]

The establishment of custodial interrogations as the point for requiring the notification of *Miranda* rights resulted in a flurry of litigation demanding a more closely circumscribed clarification as to what circumstances satisfied "in custody" status for the purposes of *Miranda*.[64] In *Oregon v. Mathiason*,[65] the Supreme Court decided that the petitioner was not in custody after taking into account that the suspect went to the police station voluntarily, was immediately told that he was not under arrest, was allowed to leave, was only interviewed for thirty minutes, and was interviewed in a closed but unlocked room.[66] Interviews conducted by

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[57] *Id.* at 494.

[58] *Id.* at 444.

[59] *Id.*

[60] *Id.*

[61] *Id.* at 458.

[62] *Id.* at 455-56.

[63] *Id.* The Supreme Court based its opinion that interrogations were potentially coercive on police interrogation manuals that detailed the psychologically oppressive tactics used to question suspects. *Id.* at 447-55.

[64] William F. Nagel, *The Difference Between the U.S. Supreme Court and the Colorado Supreme Court on the Test for the Determination of Custody for Purposes of* Miranda, 71 DENV. U. L. REV. 427, 429 (1993).

[65] 429 U.S. 492 (1977).

[66] *Id.* at 493.

law enforcement officials embody a degree of coerciveness. Yet, the *Mathiason* Court still held that being considered a suspect or simply being present at a police station in itself is not coercive enough to warrant the notification of constitutional protections.[67] Rather, a true coercive environment that merits the recitation of *Miranda* rights is one where the individual's freedom to depart or where his freedom of action is restricted in any significant way.[68] Dissenting, Justice Marshall argued that because the suspect had been interrogated in private and in unfamiliar surroundings, factors on which *Miranda* had placed great emphasis. Therefore, the environment was coercive enough to merit *Miranda*-type warnings.[69]

The Supreme Court reaffirmed its *Mathiason* holding in *California v. Beheler*.[70] The *Beheler* Court found that the respondent was not in custody at the time he was interrogated by law enforcement officials based on the facts that: he had come to the police station voluntarily; he was told he was not under arrest; the interview lasted under thirty minutes; he was allowed to go home; and he was arrested five days later.[71] According to the Court, the ultimate inquiry is whether there has been "a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest."[72] Further adding to the *Mathiason* decision, the Court stated that the time between the commission of the crime and when the individual is questioned is irrelevant as a factor for the purpose of *Miranda* warnings.[73]

This "in custody" standard was applied in a new context in *Berkemer v. McCarty*,[74] with the Supreme Court finding that traffic stops are not custodial in nature and therefore not subject to *Miranda*.[75] Although one's freedom is curtailed if detained, the Court found that there were numerous mitigating factors that render traffic stops to be of a non-custodial nature.[76] Traffic stops are brief in nature, and detainees are generally aware that they will soon be able to leave.[77] Moreover, traffic stops are usually in public, non-police dominated settings where usually only one or two police officers are present.[78] These non-custodial characteristics make the safeguards

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[67] *Id.* at 495.
[68] *Id.*
[69] *Id.* at 498 (Marshall, J., dissenting).
[70] 463 U.S. 1121 (1983).
[71] *Id.* at 1122.
[72] *Id.* at 1125.
[73] *Id.*
[74] 468 U.S. 420 (1984).
[75] *Id.*
[76] *Id.* at 436.
[77] *Id.* at 437-39.
[78] *Id.*

prescribed by *Miranda* moot, as *Miranda* strives both to ensure that the police do not coerce captive suspects and to relieve the inherently compelling pressures created by the custodial setting.[79] Importantly, the Court established that an individual's awareness of restraint by law enforcement for the purposes of *Miranda* should be viewed from the standpoint of a reasonable person in the interrogatee's position.[80]

Further narrowing the custody standard appropriate in the *Miranda* context, the Supreme Court in *Stansbury v. California*[81] held that law enforcement's consideration of an individual as a suspect is irrelevant, especially when that suspicion is not disclosed.[82] The *Stansbury* Court held this to be irrelevant, as it is the "compulsive aspect of custodial interrogations, and not the strength or content of the government's suspicions . . . which [leads] the Court to impose the *Miranda* requirements with regard to custodial questioning."[83] If in the course of events, an individual discovered that he was a suspect, this revelation shapes custody determinations only to the extent as to how it would affect a reasonable person's assessment of his freedom to end the interview or leave.[84] A clear statement that an individual is a prime suspect is not dispositive of the custody issue, as some suspects are still free to come and go until the police decide to make an arrest.[85] Therefore, courts need to consider the objective circumstances of the situation in making a custodial determination and not the subjective suspicions harbored by the police, unless those suspicions were manifested to the individual under interrogation.[86]

Clarifying even further the terrain of custodial determinations, Justice Ginsberg in her majority opinion in *Thompson v. Keohane*[87] explicitly specified the two essential inquiries that will determine whether a formal arrest was made or whether there was a restraint on the freedom to leave to the degree associated with a formal arrest.[88] First, the circumstances surrounding the interrogation must be established.[89] Second, given those circumstances, it must be determined whether a reasonable person would

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[79] *Id.* at 432 (quotations omitted).
[80] *Id.*
[81] 511 U.S. 318 (1994).
[82] *Id.* at 323.
[83] *Id.*
[84] *Id.* at 325.
[85] *Id.*
[86] *Id.*
[87] 516 U.S. 99 (1995).
[88] *Id.* at 112 (quoting California v. Beheler, 463 U.S. 1121, 1125 (1983)).
[89] *Id.*

have felt that they were not at liberty to end the interrogation and leave.[90] Justice Ginsberg repeatedly identified the crucial question to resolve custodial status as: "if encountered by a reasonable person, would the identified circumstances add up to custody as defined in *Miranda*?"[91]

In these past decisions, the Supreme Court has emphasized time and again the need to analyze the totality of the circumstances surrounding an interrogation. The Supreme Court has consistently considered factors such as the voluntariness of a suspect's appearance at a police station, and has utilized the reasonable person standard to ascertain the perceived level of restraint imposed on the suspect. However, in the history of custodial determination precedent, the Supreme Court had never dealt with juvenile suspects, consequently resulting in the development and application of a custody standard with the adult petitioner in mind.

C. USE OF A JUVENILE'S AGE AS A FACTOR FOR CONSIDERATION

The special status of juveniles has been long-established, as indicated by the creation of the juvenile justice system in the early 1900s and by Supreme Court precedent recognizing that a number of factors differentiate minors from adults, namely life experiences and age.[92] *Haley v. Ohio* was one of the first Supreme Court cases that acknowledged the judicial necessity and responsibility of courts to distinguish juvenile suspects from adult suspects, and established the foundation for subsequent Fifth Amendment cases involving juveniles.[93] Prior to *Haley*, the juvenile court system did not apply the rules governing the arrest and interrogation of adults to juveniles, as it was based on the intent to treat and rehabilitate minors.[94] It was believed that the state, with rights as *parens patriae*, could deny juveniles the procedural rights normally available to adults.[95]

However, this mentality slowly began to change with *Haley*, where a fifteen-year old boy was arrested and made a questionable confession after having been interrogated late at night for five hours without respite and

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[90] *Id.*

[91] *Id.* at 113 (internal quotations omitted). *See* Berkemer v. McCarty, 468 U.S. 420, 442 (1984) (holding that in resolving custodial status, a court must assess "how a reasonable *man* in the suspect's position would have understood his situation") (emphasis added).

[92] Brief of Amici Curiae Juvenile Law Center et al. at 3, Yarborough v. Alvarado, 124 S. Ct. 1706 (2004) (No.02-1684). A number of psychosocial factors, such as "present-oriented thinking, egocentrism, less experience and greater vulnerability to stress and fear than adults, and greater conformity to authority figures" differentiate juveniles from adults. *Id.*

[93] 332 U.S. 596 (1948).

[94] *In re* Gault, 387 U.S. 1, 14 (1967).

[95] *Id.* at 17.

possibly had been beaten by the police.[96] The majority held that the method in which the confession was obtained was contrary to the due process of law guaranteed by the Fourteenth Amendment, and reversed the state court's admission of the boy's confession.[97] According to the Court, a juvenile could not be held to the more exacting standards of maturity, for that which would leave an adult unfazed and unimpressed would overawe and overwhelm an adolescent.[98] This was the first instance in which the Supreme Court determined age to be a critical factor, as youth may cause a juvenile to be more vulnerable and intimidated than an adult may be in the same situation.[99]

A second landmark case for juvenile rights was in *In re Gault*, when the Supreme Court invested minors with constitutional protections routinely afforded to adults by the Fourteenth Amendment.[100] These rights included the right to counsel, the advance notice of charges, the opportunity to confront and cross-examine witnesses, and the privilege against self-incrimination.[101] But, although juveniles were to be accorded the same constitutional protections as that of adults, the Court did not mean to suggest that judges should neglect the emotional and psychological characteristics of juveniles that differentiate them from adults.[102] The Supreme Court still recognized that juvenile status merited a degree of increased care.

This recognition of age as a material factor in matters concerning juveniles continued in *Fare v. Michael C.*[103] In *Fare*, the Court held that in determining the voluntariness of a juvenile's waiver of his *Miranda* rights, courts should apply the "totality of circumstances" test.[104] This totality test requires an examination of all the circumstances surrounding an interrogation, such as the minor's age, experience, schooling, and intellectual capacity, and whether the juvenile is capable of understanding his *Miranda* rights and the ensuing consequences of waiving those rights.[105]

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[96] *Haley*, 332 U.S. at 597-98.

[97] *Id.* at 599.

[98] *Id.*

[99] *See* Amy D. Ronner, *Songs of Validation, Voice, and Voluntary Participation: Therapeutic Jurisprudence, Miranda, and Juveniles*, 71 U. CIN. L. REV. 89, 103 (2002).

[100] 387 U.S. at 1.

[101] *Id.*

[102] *Id.* at 27.

[103] 442 U.S. 717 (1979).

[104] *Id.* at 725.

[105] *Id.*

III. FACTS AND PROCEDURAL HISTORY

A. FACTS

On September 22, 1995, seventeen-year-old Michael Alvarado was involved in an attempted car robbery that ultimately resulted in the murder of Francisco Castaneda.[106] The night of the murder, Alvarado went to a nearby mall with his friends.[107] There, Alvarado met Paul Soto for the first time.[108] Soto suggested that the group steal a truck in the shopping mall's parking lot, and Alvarado agreed to help him.[109] Approaching Francisco Castaneda on the driver's side of the truck, Soto pulled out a .357 Magnum and demanded money and the ignition keys from Castaneda.[110] Meanwhile, Alvarado walked toward the passenger side and crouched down.[111] When Castaneda refused to comply with Soto's demands, Soto shot him.[112] Castaneda was later found dead from a bullet wound.[113] Alvarado had not shot the victim, but aided Soto in hiding the murder weapon.[114]

Approximately one month later, Los Angeles County Sheriff's Detective Cheryl Comstock left a message at Alvarado's home, where he lived with his parents, and also contacted Alvarado's mother at her workplace.[115] Detective Comstock informed Alvarado's mother that the police needed to speak to her son.[116]

Pursuant to this conversation, Alvarado's parents not only brought Alvarado to the Sheriff's station, but also gave the detective their permission to have their son interviewed.[117] Alvarado's request that someone come with him was met with silence; likewise, when Alvarado's parents requested to attend the questioning, their request was similarly dismissed by Detective Comstock.[118] Alvarado's parents were left to wait in the lobby for two and a half hours.[119] Prior to this incident, Alvarado had

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[106] Respondent's Brief at 2, Yarborough v. Alvarado, 124 S. Ct. 1706 (2004) (No. 02-1684).

[107] *Id.*

[108] *Id.*

[109] *Id.*

[110] Yarborough v. Alvarado, 124 S. Ct. 2140, 2144 (2004).

[111] *Id.*

[112] *Id.*

[113] *Id.*

[114] *Id.*

[115] Petitioner's Brief at 3, *Yarborough* (No. 02-1684).

[116] *Id.*

[117] *Id.*

[118] Respondent's Brief at 2-3, *Yarborough* (No. 02-1684).

[119] *Id.*

neither a history of criminal acts, nor was he ever questioned by the police.[120]

Alvarado was led through a locked lobby door, down a hallway, and into a back interview room containing a table and two chairs.[121] On his way into the interrogation room, Alvarado overheard a detective refer to him as a suspect.[122] Prior to the start of his interrogation, Alvarado had not been informed as to whether he was under arrest or not.[123] Nor was he ever told that he had the liberty to leave at any time.[124] Rather, it was not until the near end of his interrogation, after Detective Comstock elicited the information she wanted from Alvarado, that she gave any indication that Alvarado was free to leave the police station.[125]

The interview was conducted exclusively by Detective Comstock and two hours of the interview were recorded on tape.[126] Upon questioning, Alvarado initially offered an account of his activities the night Castaneda was found murdered which did not include any reference to the shooting or the hiding of the gun.[127] Comstock expressed disbelief at Alvarado's version of events and urged him to tell the "truth" as she knew it from various witness accounts stating quite the opposite.[128] She repeatedly assured Alvarado that she was only giving him an opportunity to tell the truth, and that "she knew he didn't have any intention of anything happening, and that maybe he wasn't thinking clearly because he had been drinking."[129]

Alvarado then acknowledged being present when the carjacking took place, but denied any knowledge as to what exactly happened or who had a gun.[130] Comstock then prodded Alvarado further by appealing to his sense of honesty and the need to bring the man who shot Castaneda to justice.[131] Alvarado then admitted that he had tried to help Soto steal Castaneda's truck and that he had helped hide the gun after the murder.[132] But Alvarado also explained to the detective that he had not expected Soto to kill

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[120] Alvarado v. Hickman, 316 F.3d 841, 844 (9th Cir. 2003).

[121] Respondent's Brief at 3, *Yarborough* (No. 02-1684).

[122] *Id.*

[123] *Id.*

[124] *Id.*

[125] Petitioner's Brief at 3, *Yarborough* (No. 02-1684).

[126] Respondent's Brief at 3, *Yarborough* (No. 02-1684).

[127] Alvarado v. Hickman, 316 F.3d 841, 844 (9th Cir. 2003).

[128] Respondent's Brief at 3, *Yarborough* (No. 02-1684).

[129] *Id.* at 3-4.

[130] Yarborough v. Alvarado, 124 S. Ct. 2140, 2145 (2004).

[131] *Id.*

[132] *Id.*

anyone.[133] It was at this point of the interview, after Alvarado had made these incriminating and non-*Mirandized* statements that Detective Comstock offered the use of a phone and asked if Alvarado needed a break.[134] When Comstock was finished with her questioning, she escorted Alvarado back to his parents and told him he was free to leave.[135] Approximately two months later, Detective Comstock notified Alvarado's parents of the issuance of a warrant for Alvarado's arrest.[136] Alvarado surrendered to the police the next morning.[137]

Prior to his trial, Alvarado moved to exclude evidence of his statements, arguing that not only should he have been interviewed in his parents' presence, but that since his interview was of a custodial nature, he should have been advised of his constitutional rights under *Miranda*.[138] However, his motion was denied by the trial court after a hearing on the issue.[139] An edited tape of Alvarado's statements was played at trial and Alvarado took the witness stand in his defense.[140] Alvarado was convicted of first degree murder and attempted robbery, but on trial counsel's motion, the Superior Court reduced the conviction to second degree murder.[141] Alvarado was sentenced to a term of fifteen years to life.[142]

B. PROCEDURAL HISTORY

Alvarado appealed his convictions, once again arguing that his statements to Detective Comstock should have been excluded because he was subjected to a custodial interrogation without being advised of his *Miranda* rights.[143] The California Court of Appeals relied on the custody test established in *Thompson v. Keohane,*[144] which requires a court to consider first the circumstances surrounding the interrogation and then to determine whether a reasonable person in the petitioner's situation would have felt at liberty to leave.[145] The state court concluded that Alvarado was

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[133] *Id.*

[134] Respondent's Brief at 4, *Yarborough* (No. 02-1684).

[135] *Id.* at 5.

[136] *Id.*

[137] *Id.*

[138] Petitioner's Brief at 4, *Yarborough* (No. 02-1684).

[139] Appellee's Brief at 6, Alvarado v. Hickman, 316 F.3d 841 (9th Cir. 2003) (No. 00-56770).

[140] Petitioner's Brief at 4, *Yarborough* (No. 02-1684).

[141] Yarborough v. Alvarado, 124 S. Ct. 2140, 2146 (2004).

[142] *Id.*

[143] Petitioner's Brief at 4, *Yarborough* (No. 02-1684).

[144] 516 U.S. 99, 112 (1995).

[145] *Yarborough*, 124 S. Ct. at 2146.

not in custody during his interview and thus *Miranda* warnings were unwarranted, thereby dismissing Alvarado's claim.[146] The California Supreme Court denied Alvarado's petition for review.[147]

Alvarado filed a petition for habeas corpus pursuant to 28 U.S.C. § 2254 in the United States District Court for the Central District of California in March 2000, again alleging that his statements were obtained in violation of *Miranda*.[148] The district court denied Alvarado's petition with prejudice.[149] The district court found Alvarado's statements to have been properly admitted, since he was not in custody at the time of his interrogation and that a reasonable person would have felt free to leave during the interrogation.[150] The district court also held that the California court's rejection of Alvarado's earlier claim precluded relief under § 2254(d) since the state court ruling was not contrary to, nor an unreasonable application of, clearly established federal law as determined by the Supreme Court.[151] Alvarado's request for a certificate of appealability was subsequently denied.[152]

Faced with the rejection of his petition by the district court, Alvarado once again appealed, and the Ninth Circuit Court of Appeals granted Alvarado's certificate of appealability with respect to the issue of whether Alvarado's statements were indeed properly admitted.[153] It reversed the decision of the lower court, holding that juvenile status and lack of experience with law enforcement alters the "in custody" determination for *Miranda* purposes and therefore should have been taken into account by the state courts.[154] The Ninth Circuit determined that it was unreasonable to conclude that a reasonable seventeen-year-old, with no prior history of arrest or police interviews, would have felt at liberty to terminate the interrogation and leave.[155] Coupled with other factors such as parental involvement in arranging for Alvarado's interview, Detective Comstock's refusal to allow Alvarado's parents attend the interview, and the length of

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[146] Petitioner's Brief at 4, *Yarborough* (No. 02-1684).

[147] *Id.* at 5.

[148] *Yarborough*, 124 S. Ct. at 2146; Alvarado v. Hickman, 316 F.3d 841, 845 (9th Cir. 2003).

[149] *Alvarado*, 316 F.3d at 845.

[150] *Id.*

[151] Petitioner's Brief at 5, *Yarborough* (No. 02-1684).

[152] *Alvarado*, 316 F.3d at 845.

[153] *Id.*

[154] *Id.* at 844.

[155] *Id.* at 851.

the interview, the court of appeals found that Alvarado had been in custody of the police and thus should have been read his *Miranda* rights.[156]

The Ninth Circuit acknowledged that no previous Supreme Court had required a juvenile's age and experience to be considered in a custody determination.[157] But, previous Supreme Court precedent had also held juveniles to be more susceptible to police coercion during custodial interrogations than similarly-situated adults.[158] The Ninth Circuit used this precedent to justify the use of age and circumstances of a juvenile defendant as relevant factors in determining whether a confession or a waiver of constitutional rights was voluntarily given.[159] Extrapolating this line of reasoning, the Ninth Circuit found no reason why similar safeguards should not and would not apply to an "in custody" determination.[160]

The court of appeals also tackled the issue of whether Alvarado could obtain relief in light of the deference a federal court must give to a state court determination on habeas review.[161] On this issue, the Ninth Circuit held that relief was available despite § 2254(d), because the state court's failure to address how Alvarado's juvenile status affected the "in custody" determination was an unreasonable failure to extend a clearly established legal principle to a new context.[162] According to the Ninth Circuit, the relevance of juvenile status in Supreme Court case law as a whole should have compelled the extension of the principle that juvenile status is relevant to the context of *Miranda* custody determinations.[163]

The Supreme Court granted certiorari to determine two issues: whether a court must consider the age and experience of a juvenile when applying the objective custody determination test for *Miranda* purposes, and whether a state court's refusal to "extend" the rule of Supreme Court precedent to a new context suffices as an "objectively unreasonable" application of clearly established Supreme Court precedent under 28 U.S.C. § 2254(d).[164]

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[156] *Id.* at 847-49.

[157] *Id.* at 843 (citing *In re* Gault, 387 U.S. 1, 45 (1967); Haley v. Ohio, 332 U.S. 596, 599-601(1948)).

[158] *Id.* at 848.

[159] *Id.*

[160] *Id.* at 843.

[161] *Id.* at 851-52.

[162] *Id.* at 853.

[163] *Id.*

[164] *Id.* at 841.

IV. SUMMARY OF OPINIONS

A. THE MAJORITY OPINION

Writing for the majority, Justice Kennedy[165] held that the state appellate court did not unreasonably apply clearly established law, and that a juvenile's age and prior history with law enforcement should not be factors in an objective determination of whether a suspect is in custody for *Miranda* purposes.[166] The majority's first step in its reversal of the decision of the Ninth Circuit was to determine the relevant clearly established law, defined as Supreme Court holdings at the time of the pertinent state court ruling.[167] In trying to decipher the precise test at issue, the majority detailed the history of the changes in the law, from *Miranda*'s definition of custodial interrogation as circumstances where freedom of action has been deprived in a significant way,[168] to *Thompson v. Keohane*'s establishment of the two-part custody test as whether "there was a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest."[169] According to the majority, determining whether a person is "in custody" for the purposes of *Miranda* is a clear and established objective test.[170] The established custody test requires an evaluation of the circumstances surrounding the interrogation, and then an inquiry of whether a reasonable person would have felt at liberty to end the interrogation and leave.[171]

Addressing the procedural issue of whether there was an unreasonable failure to extend Supreme Court precedent in excluding age and experience in Alvarado's custodial determination, the Court found that the word "unreasonable," for the purposes of evaluating a court's application of a federal law, depended in part on the specificity of the relevant legal rule.[172] Thus, the more general the rule, the more leeway courts have in reaching outcomes in case-by-case determinations.[173] Given that the custody test is a general one and demands a degree of discretion, the range of reasonable (and thus acceptable) applications is wide and varied.[174] This is especially

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[165] Justice Kennedy's majority was joined by Chief Justice Rehnquist, Justices O'Connor, Scalia, and Thomas.

[166] Yarborough v. Alvarado, 124 S. Ct. 2140 (2004).

[167] *Id.* at 2147 (citing Williams v. Taylor, 529 U.S. 362 (2000)).

[168] *Id.* (citing Miranda v. Arizona, 384 U.S. 436, 444 (1966)).

[169] *Id.* at 2149 (citing Thompson v. Keohane, 516 U.S. 99 (1995)).

[170] *Id.* at 2151.

[171] *Id.*

[172] *Id.* at 2149.

[173] *Id.*

[174] *Id.*

true with age and experience as factors, since previous applications of the *Miranda* custody determination test by the Supreme Court never mentioned or mandated the consideration of a juvenile defendant's age or experience.[175]

Justice Kennedy acknowledged that certain aspects of Alvarado's case made the determination of whether Alvarado was actually in custody difficult to ascertain, but the Court ultimately determined that the state court's application of the Supreme Court's existing custody standard was reasonable.[176] Given the general nature of the custody test and the absence of a requirement to consider age and prior history in custodial determination precedent, the state court's application of existing federal law fit within the matrix of prior Supreme Court decisions.[177] The majority found that in determining that Alvarado was not in custody, the state court adjudication did not involve an unreasonable application of clearly established law, and that the Ninth Circuit's extension of Supreme Court precedent in this situation was wholly inappropriate.[178] The Court reasoned that allowing habeas courts to introduce rules not clearly established under the guise of "extensions" would undermine § 2254(d).[179]

In its judgment that a juvenile's age should not serve as a factor in the determination of whether that juvenile is in the custody of law enforcement officials, the majority delineated a conceptual difference between the *Miranda* custody test and the line of Supreme Court cases that considered age and experience in its determinations.[180] The majority argued that the *Miranda* custody test is an objective test designed to provide clear guidance to the police, and the introduction of age and experience into a police officer's analysis would only serve to muddy the clarity of *Miranda*'s rule.[181]

Justice Kennedy believed that inserting age and experience considerations into the mix would render the analysis by police officers highly speculative and overly burdensome.[182] One argument was that police officers often will not know a suspect's interrogation history going into an interview room.[183] Moreover, Justice Kennedy argued that even if

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[175] *Id.* at 2151.
[176] *Id.* at 2150.
[177] *Id.*
[178] *Id.* at 2151.
[179] *Id.*
[180] *Id.*
[181] *Id.*
[182] *Id.*
[183] *Id.* at 2152.

the suspect's past history were known, there is no guarantee as to how those experiences will play into the suspect's perception of his ability to leave the interrogation at will.[184] Trying to decipher how a suspect's past experiences will play into his reaction during the current interrogation would require the police to make speculative judgments, which is not the intent of the *Miranda* custody test.[185] Such an inquiry turns too much on the individual's subjective state of mind and not enough on the objective circumstances of the interrogation.[186] The objective *Miranda* custody determination therefore is arguably different from the doctrinal tests that depend on a suspect's mindset, which *do* take a suspect's age and experience into consideration.[187]

B. CONCURRING OPINION

In a concurring opinion, Justice O'Connor furnished another reason to support the reversal of the Ninth Circuit's decision.[188] Justice O'Connor conceded that there are instances where a suspect's age may be relevant to a *Miranda* custody inquiry.[189] However, she did not believe Alvarado's case was such a situation, as he had been nearly eighteen years of age at the time of his interrogation.[190] Thus, Alvarado's close proximity to adulthood would make it difficult for police to discern whether Alvarado was even a juvenile.[191]

Justice O'Connor also stated that even if the police were aware of a suspect's age, there would still be problems in trying to ascertain what bearing age has on the likelihood that the suspect would feel free to leave.[192] Especially in the present case, with a subject five months short of his eighteenth birthday, his reaction to police questioning could vary widely and he might even be expected to behave like an adult.[193]

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[184] *Id.*
[185] *Id.*
[186] *Id.*
[187] *Id.* at 2151.
[188] *Id.* at 2152 (O'Connor, J., concurring).
[189] *Id.* (O'Connor, J., concurring).
[190] *Id.* (O'Connor, J., concurring).
[191] *Id.* (O'Connor, J., concurring).
[192] *Id.* (O'Connor, J., concurring).
[193] *Id.* (O'Connor, J., concurring).

C. DISSENTING OPINION

The dissenting opinion, authored by Justice Breyer,[194] stated that the circumstances surrounding Alvarado's interrogation clearly established that Alvarado was "in custody" when he was questioned by the police.[195] The dissent agreed with the Ninth Circuit's assessment that the state courts had unreasonably applied clearly established federal law.[196]

Given the circumstances of having been brought to the police station by his parents at the request of the police, having his request for his parents to attend the interview denied, being led into a small interrogation room, being questioned for at least two hours, and being confronted with claims that there was strong evidence of his participation in a murder, no reasonable person would have believed that he was free to pick up and leave in the middle of the questioning.[197] The facts of this case would lend themselves to a finding of custody, especially since Alvarado himself never directly volunteered to appear at the police station or to participate in this questioning.[198] In fact, the dissent argued that Alvarado was never in control over his own situation since other parties had control over Alvarado's movements, and not Alvarado himself, at all times during this ordeal.[199]

According to the dissent, there was nothing in the law to suggest that a judge might be prevented from taking Alvarado's juvenile status into account.[200] Supreme Court precedent indicated that a "reasonable person" standard must be applied, but there was no indication that a reasonable person must be a "statistically determined average person—a working, married, 35-year old female with a high school degree."[201] Conversely, the "reasonable person" standard may appropriately account for certain personal characteristics.[202] The *Miranda* rule had been kept as an objective rule so as to avoid judicial inquiry into subjective states of mind.[203] But, it was not intended to ignore objective circumstances known both to the

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[194] Justice Breyer's dissent was joined by Justices Stevens, Souter, and Ginsburg.

[195] *Yarborough*, 124 S. Ct. at 2152 (Breyer, J., dissenting).

[196] *Id.* (Breyer, J., dissenting).

[197] *Id.* at 2153 (Breyer, J., dissenting).

[198] *Id.* (Breyer, J., dissenting).

[199] *Id.* at 2153-54 (Breyer, J., dissenting).

[200] *Id.* at 2155 (Breyer, J., dissenting).

[201] *Id.* (Breyer, J., dissenting).

[202] *Id.* (Breyer, J., dissenting).

[203] *Id.* (Breyer, J., dissenting).

officer and to the suspect, and that are relevant to the analysis of how a person would understand his situation.[204]

Justice Breyer went on to state that youth is not a special quality, but a widely shared characteristic that elicits general and common-sense conclusions about adolescent behavior and perception.[205] In this case, Alvarado's youth was a circumstance that was known by the police prior to the start of the interrogation.[206] If anything, the dissent considered age to be an objective circumstance and thought that the Court should be loathe to ignore such widely shared characteristics "on the ground that only a (large) minority of the population possesses them."[207] Furthermore, the dissent brought to light the fact that the majority made no real argument and gave no explanation as to why any court would believe that the objective fact of a suspect's age could *never* be relevant.[208]

V. ANALYSIS

The Supreme Court was correct in determining that the state court's decision not to include a juvenile's age and prior experience with law enforcement fit within the boundaries of previous Supreme Court precedent concerning custodial determinations for the purposes of *Miranda.* The inclusion of these two factors would have been an unreasonable extension of clearly established law, even though the Supreme Court had previously included these factors in other standards of analysis.[209] A juvenile's age and prior experience are material circumstances and thus the decision to include them into the custodial determination analysis was the Supreme Court's to make and no other.[210] Looking beyond this procedural determination, however, the Supreme Court should have admitted the consideration of a juvenile's age into custodial determinations and was

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[204] *Id.* (Breyer, J., dissenting).

[205] *Id.* (Breyer, J., dissenting).

[206] *Id.* (Breyer, J., dissenting).

[207] *Id.* (Breyer, J., dissenting).

[208] *Id.* (Breyer, J., dissenting).

[209] *See, e.g., In re* Gault, 387 U.S. 1 (1987); New Jersey v. T.L.O., 469 U.S. 325 (1985) (upholding warrantless searches by school officials of students' belongings); Schall v. Martin, 467 U.S. 253, 265 (1984) ("[J]uveniles, unlike adults, are always in some form of custody."); Gallegos v. Colorado, 370 U.S. 49 (1962); May v. Anderson, 345 U.S. 528, 536 (1953) (Frankfurter, J., concurring); Haley v. Ohio, 332 U.S. 596 (1948).

[210] *See* Williams v. Taylor, 529 U.S. 362, 381 (2000). A rule like this would break new legal ground or impose new obligations on the states. *Id.*

wrong to exclude it in the determination of custody for Alvarado and for all future custodial determinations henceforth.[211]

A. THE STATE COURT'S REFUSAL TO INCLUDE THE CONSIDERATION OF A JUVENILE'S AGE AND PRIOR HISTORY WAS NOT AN UNREASONABLE FAILURE TO EXTEND ESTABLISHED FEDERAL LAW

The law possesses an undeniable elastic quality, and it is that elasticity that permits judges to hold a certain degree of discretion in making decisions. However, there are limits to the extent to which the law may be stretched. In situations where the Supreme Court has set a strict and specific rule of application as precedent, lower courts must closely follow that directive.[212] Prior to the inception of the AEDPA, federal courts were given the authority to determine the merits of mixed questions of law and fact, de novo.[213] Hence, a federal court was not obligated to attach any binding weight to a mixed question such as the one faced by the Supreme Court in *Yarborough v. Alvarado*. However, with the enactment of the AEDPA, federal courts were subsequently obligated to afford state decisions a measure of deference, except in the event that a state court unreasonably extended or unreasonably failed to extend Supreme Court precedent.[214] Thus, the more the governing legal directive embodies

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[211] While youth should be a factor in determining whether a juvenile was in custody for *Miranda* purposes, a suspect's prior experience with law enforcement should not be, as it would make the custodial determination test too subjective. Experience lends itself to being a subjective rather than an objective consideration, since degrees of experience vary from person to person. Moreover, the way in which an individual draws on their personal experiences to deal with a situation is a function dependent on that individual's unique personality.

Studies have also shown that there is no clear difference between non-offenders and those with prior criminal offense histories in the comprehension of *Miranda* rights, which leads to the belief that prior experience does not necessarily have any bearing on a person's understanding of the interrogation process. Thomas Grisso, *Juvenile's Capacities to Waive Miranda Rights: An Empirical Analysis*, 68 CAL. L. REV. 1134, 1156, 1166 (1980). Additionally, knowledge about the workings of the criminal justice system can be gained not only through personal experience, but through information gleaned from others. GEORGE W. O'CONNOR & NELSON A. WATSON, INT'L ASS'N OF CHIEFS OF POLICE, JUVENILE DELINQUENCY & YOUTH CRIME: THE POLICE ROLE—AN ANALYSIS OF PHILOSOPHY, POLICY AND OPINION 57 (1964). This connotes that prior experience with law enforcement is not necessarily a material nor useful consideration in the determination of custody, and would only serve to make the custodial determination standard subjective in nature, which the Supreme Court was seeking to avoid in *Yarborough*.

[212] Pettys, *supra* note 25, at 777.

[213] *Williams*, 529 U.S. at 362.

[214] *Id.*

general terms, the more the range of acceptable outcomes under that directive increases and the higher the likelihood that a federal court will find that precedent has been unreasonably extended decreases.[215] As a result, state court rulings are more likely to be left undisturbed.[216]

In the case of Michael Alvarado, it is debatable as to whether the established custodial determination inquiry is one that is so specific that an extension of that standard would be considered unreasonable and merits review, or if it is general enough that state courts would have the discretion to enter new considerations (or not) into the standard. Seemingly, the Supreme Court has basically declined to adopt bright-line rules in determining whether a person was in custody.[217] This leads to the perception that the custodial determination inquiry is a general standard allowing for some leeway for the state court to consider factors not specifically specified by the Supreme Court in previous decisions. However, the Supreme Court has found extensions of precedent unreasonable when extending it would require courts to predict the occurrence of future events and would provoke litigation on peripheral matters.[218] Consequently, Alvarado's habeas petition should not have been granted.

1. The Ninth Circuit's Extrapolation of Past Supreme Court Precedent was Unreasonable Due to the Material Nature of Juvenile Age and Experience in Custodial Determinations and Because Such an Extension Would Have Created a New Legal Rule

The Supreme Court has long accounted for juvenile status and has recognized the resulting immaturity and inability of juveniles to handle stress and decision-making in an adult-like manner.[219] This understanding of juvenile behavior has led the Court many times to award minors greater constitutional protections or to impose more stringent limitations on certain liberties.[220] The very nature of the juvenile's age was considered a material circumstance that warranted a different level of inquiry or a different

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[215] Pettys, *supra* note 25, at 793.

[216] *Id.*

[217] Berkemer v. McCarty, 468 U.S. 420, 437 (1984).

[218] Pettys, *supra* note 25, at 753 (quoting Ramdass v. Angelone, 530 U.S. 156 (2000)); Simmons v. South Carolina, 512 U.S. 154 (1994).

[219] *See, e.g.*, *In re* Gault, 387 U.S. 1 (1987); New Jersey v. T.L.O., 469 U.S. 325 (1985) (upholding warrantless searches by school officials of students' belongings); Schall v. Martin, 467 U.S. 253, 265 (1984) ("[J]uveniles, unlike adults, are always in some form of custody"); Gallegos v. Colorado, 370 U.S. 49 (1962); May v. Anderson, 345 U.S. 528, 536 (1953) (Frankfurter, J., concurring); Haley v. Ohio, 332 U.S. 596 (1948).

[220] *See, e.g.*, *Gault*, 387 U.S. at 1; *Haley*, 332 U.S. at 596.

outcome from that of an adult.[221] On this basis, an extrapolation of established precedent to include juvenile status in the determination of custody status could be seen as being reasonable, although the issue had never been before the Supreme Court prior to *Yarborough*.[222]

However, permitting the inclusion of a material factor such as juvenile status would have substantially changed the landscape of custodial determinations and would have wrongly vested the development of this area of the law in the California state courts, rather than with the Supreme Court. Lower courts must refrain from making judgments on material circumstances that would significantly alter the scope of the existing standard, as it is outside the bounds of their authority and would result in an unreasonable extension of established federal law.[223] If the Supreme Court has not broken sufficient legal ground to establish a clear constitutional principle, then lower courts cannot take it upon themselves to establish such a principle.[224] Moreover, the Supreme Court has previously found that even when a pending case was readily distinguishable from a fact-specific Supreme Court precedent, a refusal to extend that precedent was not objectively unreasonable.[225]

In addition, the very fact that different states have adopted different stances in the debate to include juvenile age and experience demonstrates that the Ninth Circuit's extrapolation of custodial determination inquiries to include these two factors is not a straightforward one.[226] Since the Supreme Court has included the consideration of juvenile status in other determinations, it is reasonable to assume that consideration could and should also be included in the judgment of custodial status for *Miranda* purposes. Yet, if this assumption were so clear-cut and unambiguous, such a split would not exist among the states, or even within the different levels of the judicial system within the state. This disagreement among the states concerning juvenile status demonstrates that this is an unsettled issue, and the expansion of this legal directive concerning this particular factor should be left to the Supreme Court.

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[221] *See Gault*, 387 U.S. at 1; *Haley*, 332 U.S. at 596.

[222] *See supra* note 219.

[223] Williams v. Taylor, 529 U.S. 362 (2000).

[224] Ides, *supra* note 22, at 701.

[225] *Id.* at 718 (citing Penry II, 532 U.S. 782 (2001)).

[226] Only a minority of states have adopted an approach that considers juvenile status. These states are Colorado, Connecticut, Hawaii, Indiana, Iowa, Massachusetts, Montana, New Mexico, North Carolina, Oklahoma, Texas, Vermont, and West Virginia. Maria E. Touchet, Note, *Children's Law: Investigatory Detention of Juveniles in New Mexico: Providing Greater Protection Than Miranda Rights for Children in the Area of Police Questioning—State of New Mexico v. Javier M.*, 32 N.M. L. REV. 393, 408 n.52 (2002).

Any expansion of the existing custodial determination standard to include juvenile status by any court other than the Supreme Court would be inappropriate.[227] First, in the absence of Supreme Court precedent in the matter of juvenile status in this type of scenario, any rulings made by the lower courts would result in the creation of a new rule. A case announces a "new rule" when it breaks new ground or imposes a new obligation on the states or the federal government.[228] Thus, an expansion of the custodial standard by the Ninth Circuit would require other states to also account for a defendant's juvenile status, which only the Supreme Court has the authority to do.[229] Second, requiring state courts to anticipate extensions of Supreme Court precedent to novel contexts would defeat the AEDPA's goal of providing notice to the state courts of the rules they must apply, thereby leading to a divergence on the application of the law. It would also defeat Congress's purposes in limiting the basis for collateral attacks on holdings articulated by the Supreme Court.[230] Thus, the state court was right to apply the custody determination as the Supreme Court had in the past—without including Alvarado's age as a factor.

B. YOUTH *SHOULD* BE A FACTOR IN DETERMINING WHETHER A JUVENILE WAS IN CUSTODY FOR THE PURPOSES OF *MIRANDA*

1. The Consideration of a Juvenile's Age Would Not be Burdensome on Police Procedure

The *Yarborough* Court's decision not to include a juvenile's age and experience in custodial determination inquiries was driven by the desire to maintain the clarity and objectiveness of the test.[231] To the Court, the inclusion of such considerations would create a burden on law enforcement officials to anticipate the frailties and idiosyncrasies of every suspect based on the suspect's age and experience and alter the test so that the ultimate inquiry is no longer focused on external objective indicia of arrest but on the suspect's subjective state of mind.[232] But in the quest to preserve the clarity of the *Miranda* rule and to avoid placing a burdensome inconvenience on law enforcement officials, the Supreme Court has adopted

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[227] *Williams*, 529 U.S. at 362.

[228] Butler v. McKellar, 494 U.S. 407, 412 (1990).

[229] *Williams*, 529 U.S. at 362.

[230] Petitioner's Brief at 18, Yarborough v. Alvarado, 124 S. Ct. 2140 (2004) (No. 02-1684).

[231] *Yarborough*, 124 S. Ct. at 2151.

[232] *Id.*

an oversimplified standard that completely leaves the notion of justice and fairness for juveniles by the wayside.

The Supreme Court's *Miranda* decision evoked great outrage and protest from the law enforcement community, who postulated that *Miranda* would result in the large-scale release of guilty criminals.[233] Despite these protests, law enforcement has coped well with these required warnings—rather than dismantling the criminal justice system, *Miranda* has instead aided police officers in carrying out their duties and procuring non-coerced confessions while upholding the suspect's constitutional rights.[234] Similarly, it is possible that the consideration of a suspect's age in custodial determinations may potentially lead to an increased burden on the procedure and process of law enforcement officers and draw their ire. However, this burden is not so great that it would stall or greatly hinder the administration of justice. In fact, it is the omission of age as a factor that would create the injustice.

In excluding age in Alvarado's custody determination to maintain the test's objectiveness, Justice Kennedy argued that such an exclusion was justified since the inclusion of age would not further the clarity of the *Miranda* rule, based on the Supreme Court's decision in *Berkemer*.[235] *Berkemer*, according to Justice Kennedy, discounted the need to consider age because it would require police officers to make guesses as to the circumstances at issue before deciding how they may interrogate a suspect.[236] But, this argument is faulty and out of context. In *Berkemer*, the central issue was whether only suspects of felony offenses were entitled to the notification of their *Miranda* rights.[237] The *Berkemer* Court disagreed and held that *Miranda* rights are applicable to *all* types of infractions of the law, without exception.[238] To apply *Miranda* only to felony offenses would pose an insurmountable burden on police officers when interrogating suspects.[239] First, such an application would place an unreasonable expectation on the police to make guesses as to the nature of the criminal conduct at issue, since it is likely that a police officer is often unaware at the time of arrest whether a misdemeanor or a felony was committed.[240] Second, circumstances after a crime has been committed can change so that

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[233] Touchet, *supra* note 226, at 407.

[234] *Id.*

[235] *Yarborough*, 124 S. Ct. at 2151.

[236] *Id.* (citing Berkemer v. McCarty, 468 U.S. 420, 430-31 (1984)).

[237] *Berkemer*, 468 U.S. at 429.

[238] *Id.* at 434.

[239] *Id.* at 430-31.

[240] *Id.*

what was once a misdemeanor becomes a felony.[241] As a result, such an application would ultimately require the police to predict the course of future events.[242] Hence, the circumstances that the *Berkemer* Court was referencing are facts that may not always be known to police officers at the time of interrogation, or facts that are susceptible to change.[243]

To apply *Berkemer* in this way to *Yarborough* was inappropriate since age is a characteristic that remains constant during a police interrogation and is an objectively knowable and easily discoverable fact. In the case of Michael Alvarado, Detective Comstock twice demonstrated her awareness of Alvarado's juvenile status: when she asked the parents to bring Alvarado to the station and when she asked the parents for permission to question Alvarado.[244] Furthermore, it is also important to keep in mind that juvenile status is not a peculiar mental or emotional condition unique to a specific individual requiring police officers to account for that particular child's subjective cognizance of the situation or specific vulnerabilities.[245] Therefore, the inclusion of juvenile status in custody tests would not jeopardize the objectiveness of the test.

Police consideration of a suspect's juvenile status is unlikely to be an incredible burden on law enforcement officials. Police interrogators are already encouraged to learn whatever information is available regarding the suspect's background to prepare for the interrogation of a juvenile.[246] Such awareness of a juvenile suspect's background is deemed to provide considerable assistance in the interrogation of a youthful subject.[247] Law enforcement agencies acknowledge the difference between adults and juveniles and recommend all officers receive training in the handling of juvenile cases.[248] Many interrogation techniques, including the approach taken by Detective Comstock in questioning Alvarado, are intentionally designed to elicit information, and their use is recommended with juveniles.[249]

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[241] *Id.* at 431.

[242] *Id.*

[243] *Id.* at 430-32.

[244] Petitioner's Brief at 3, Yarborough v. Alvarado, 124 S. Ct. 2140 (2004) (No. 02-1684).

[245] Respondent's Brief at 18, *Yarborough* (No. 02-1684).

[246] FRED INBAU ET AL., CRIMINAL INTERROGATION AND CONFESSIONS 298 (4th ed. 2001).

[247] *Id.*

[248] O'CONNOR & WATSON, *supra* note 211, at 59.

[249] INBAU ET AL., *supra* note 246, at 298-303. Detective Comstock appealed to Alvarado's sense of truth and to being helpful to the police, and also took the strategy of focusing on Soto's crimes rather than Alvarado's. Yarborough v. Alvarado, 124 S. Ct. 2140, 2149-50 (2004). Other techniques that Detective Comstock used during her interview with

Awarding greater safeguards to juveniles in the form of factoring age into custodial determinations can be more of a benefit than a liability to the criminal justice system. With the inclusion of age into custody tests, there would be no burden to law enforcement, as there would be less of a need to determine if the current interaction with a juvenile suspect amounts to a custodial interrogation. Taking these extra precautions from the beginning would not be terribly burdensome, especially in light of the fact that current police procedure already encourages the consideration of a suspect's age.[250] In the long term, scarce and precious judicial resources would be preserved with the lessening of collateral litigation such as this, where courts are called upon to determine whether a juvenile was in custody of the police and thus entitled to be informed of his or her *Miranda* rights.

2. The Differences Between Adolescents And Adults Warrants the Consideration of Age

The creation of the juvenile justice system was based on the premise and understanding that juveniles are physically, mentally, and intellectually different from adults.[251] The lack of maturity and real world experience of juveniles leads them to assess situations differently from adults and results in an increased vulnerability.[252] Adolescents also may sometimes be unaware of risks perceived by adults or may calculate differently the potential magnitude of a given risk.[253] Paternalistic policies and case precedent applying differing standards for juveniles and adults exist because of the societal acceptance that "developmentally linked traits and responses systematically affect the decision making of adolescents in a way

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Alvarado were: presenting the interrogation as an opportunity for Alvarado to explain his side of the story while offering reasons for the commission of the crime, placing primary blame on other participants of the offense, and presenting or alluding to evidence that "speaks for itself" as to the suspect's guilt. Respondent Brief at 3-4, *Yarborough* (No. 02-1684). These tactics are recommended in police interrogation manuals as a means of persuading a suspect of the futility of resisting to tell the truth. INBAU ET AL., *supra*, at 290-92. Thus, Detective Comstock was using the very techniques used on suspects during custodial interrogations, while questioning Alvarado.

[250] INBAU ET AL., *supra* note 246, at 298-303.

[251] Lisa M. Krzewinski, Note, *But I Didn't Do It: Protecting the Rights of Juveniles During Interrogation*, 22 B.C. THIRD WORLD L.J. 355 (2002).

[252] NAT'L RES. COUNCIL & INST. OF MED., JUVENILE CRIME, JUVENILE JUSTICE, PANEL ON JUVENILE CRIME: PREVENTION, TREATMENT & CONTROL 16 (Joan McCord et al. eds., 2001).

[253] Elizabeth Scott et al., *Evaluating Adolescent Decision Making in Legal Contexts*, 19 LAW & HUM. BEHAV. 221, 231 (1995) (citing a 1992 study conducted by Lita Furby and Ruth Beyth-Marom).

that may incline them to make choices that threaten harm to their own and others' health, life, or welfare, to a greater extent than do adults."[254]

These societal assessments of the greater vulnerabilities and immaturity of adolescents are supported by scientific evidence. Emerging research using magnetic resonance imaging of the brain demonstrates cognitive and emotional differences between juveniles and adults.[255] While juveniles process emotionally charged information in the part of the brain responsible for instinct and gut reactions, adults process this same information in the "rational" frontal section of the brain.[256] An adolescent's cognitive capacities may be akin to those of an adult, but other developmental dimensions of the brain are slower to progress, resulting in immature judgment and poor decision-making.[257] Thus, juveniles may be physiologically less capable than adults of reasoning logically in the face of particularly strong emotions.[258]

Juveniles are also at a societal disadvantage in interrogation situations because of their increased vulnerability to the coercive pressures of adult authority figures.[259] Children and juveniles are taught to answer questions directed to them by adults.[260] Most adolescents have the understanding that they are expected to respond to the police and that they do not have much choice in the matter.[261] A study conducted by King and Yuille found that when a status differential existed in the interview context, lower status individuals were more likely to defer to the authority of higher status individuals.[262] Being that police officers possess a higher status than regular adults, the status gap between juveniles and police officers is even wider than the gap between a juvenile and an ordinary adult, thereby making juveniles feel even more vulnerable in an interrogation situation.

Additionally, juveniles tend to undergo feelings of intense self-consciousness which lead them to believe that others are constantly watching and evaluating them.[263] Youth have less experience, including

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[254] *Id.* at 227.

[255] NAT'L RES. COUNCIL, *supra* note 252, at 16.

[256] *Id.*

[257] Jeffrey Fagan, *Atkins, Adolescence, and the Maturity Heuristic: Rationales for a Categorical Exemption for Juveniles from Capital Punishment*, 33 N.M. L. REV. 207, 236-37 (2003).

[258] NAT'L RES. COUNCIL, *supra* note 252, at 16.

[259] Barbara Kaban & Ann E. Tobey, *When Police Question Children: Are Protections Adequate?*, 1 J. CTR. FOR CHILD. & CTS. 151, 156 (1999).

[260] *Id.*

[261] *Id.*

[262] *Id.*

[263] David Elkind, *Egocentrism in Adolescence*, 38 CHILD. DEV. 1025, 1029-30 (1967).

interpersonal experiences, to draw on than adults, and so on average they will have a lesser capacity to respond and react in new and stressful situations.[264] Even more compelling, studies have shown that minors are especially vulnerable to interrogative pressure, as measured by the tendency to change previous answers following negative feedback, validating the notion that minors are at risk of succumbing to the will of the interrogator in high-pressure and extended interviews.[265] Therefore, a reasonable juvenile would likely feel the scrutiny of the police in an already high pressure situation even more intensely than an adult.

Existing laws and Supreme Court precedent also acknowledge the difference between adolescents and adults.[266] Juveniles are prohibited from certain activities because of their age. Minors under the age of eighteen are deprived of the right to vote, to drink alcoholic beverages, to marry, to buy pornography, to gamble, or to enter into contracts, among other activities. Arguably, such policies are in place because of a societal acknowledgment of a minor's diminished capacity to understand and process information, to engage in logical reasoning, and to control their impulses, among other things.[267] These characteristics of youth which compel society to apply differing standards of treatment to juveniles also justify the need for the consideration of age in custodial determinations and the administration of justice.

Laws that prohibit certain activities for a portion of the population based solely on age are able to remain objective and workable through the strict adherence to the set age limit. Thus, regardless of Alvarado's proximity to his eighteenth birthday, Alvarado was still considered a juvenile in the eyes of the law. In her concurrence, Justice O'Connor raised the issue that Alvarado was not truly a juvenile, since he was actually

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[264] LAURENCE STEINBERG & ROBERT SCHWARTZ, DEVELOPMENTAL PSYCHOLOGY GOES TO COURT IN YOUTH ON TRIAL: A DEVELOPMENTAL PERSPECTIVE ON JUVENILE JUSTICE 26 (Thomas Grisso & Robert Schwartz eds., 2000).

[265] THE CAL. SCH. OF PROF'L PSYCHOL., HANDBOOK OF JUVENILE FORENSIC PSYCHOLOGY 68 (Neil G. Ribner ed., 2002) (citing a study of sixty-five juveniles by Richardon, Gudjonsson, and Kelly in 1995).

[266] Brief of Juvenile Law Center et al. as Amici Curiae in Support of Respondent at 7, Yarborough v. Alvarado, 124 S. Ct. 2140 (2004) (No. 02-1684). For example, the Supreme Court has upheld state statutes that restrict the sale of obscene material to minors, *Ginsberg v. New York*, 390 U.S. 629, 637 (1968), and has made legal distinctions between adolescents and adults involving abortion rights, *Bellotti v. Baird*, 443 U.S. 622 (1979). Furthermore, "state legislatures have enacted laws establishing minimum ages for a wide range of life's activities, including marriage, driving, purchasing alcoholic beverages, and compulsory school attendance." Brief of Juvenile Law Center et al. as Amici Curiae in Support of Respondent at 14, *Yarborough* (No. 02-1684).

[267] Fagan, *supra* note 257, at 235-36.

seventeen years and six months old.[268] In her opinion, because Alvarado was so close to his eighteenth birthday, he was rightly treated as an adult.[269]

Admittedly, Alvarado was indeed very close to what is considered the societal standard of the age of maturation. But laws that impose age minimums do not become any more lenient the closer a minor is to his eighteenth birthday. A seventeen-and-a-half-year-old will not be allowed to vote or buy cigarettes until the very day of his eighteenth birthday, nor will a twenty-and-a-half-year-old be given the leniency to gamble or drink alcohol. Allowing reasoning such as that of Justice O'Connor would lead the Court down a slippery slope. Law enforcement and the courts would be left scratching their heads, trying to determine the point at which a juvenile can legally be considered an adult. It would introduce subjective opinion into custodial determinations, as police officers would need to ascertain if the juvenile at issue behaves in an adult-like manner or like a normal adolescent. Thus, the fact that Alvarado was six months shy of his eighteenth birthday should not be the reason as to why his juvenile status was not considered in determining whether he was in custody.

Age should be a consideration in custodial determinations, because it affects the way an individual perceives his current surroundings, and because age affects and influences other factors considered important to the determination of custody.[270] For example, the Supreme Court in prior custody status cases has looked to factors such as the voluntariness of a suspect's appearance at a police station.[271] The underage status of a suspect can affect the issue of whether a suspect's appearance at a police station is voluntary, since juveniles are usually in the custody of their parents or an adult caretaker. Thus an adolescent's appearance cannot be considered wholly voluntary if he was forced to be there by his guardians. The issue of Alvarado's minor status is consistently evident, from the fact that at no point was Alvarado wholly in control of his movements. Detective Comstock contacted the parents instead of Alvarado himself, and Alvarado was brought to the police station in the custody of his parents.[272] Upon his arrival, the detective asked Alvarado's parents—not Alvarado—for permission to interview Alvarado.[273] When Alvarado's parents requested admission into their son's interview, they were rebuffed, as was Alvarado's

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[268] *Yarborough*, 124 S. Ct. at 2152 (O'Connor, J., concurring).

[269] *Id.* (O'Connor, J., concurring).

[270] Kaban & Tobey, *supra* note 259, at 151.

[271] *See, e.g.*, California v. Beheler, 463 U.S. 1121 (1983); Oregon v. Mathiason, 429 U.S. 429, 493 (1977).

[272] Petitioner's Brief at 3, *Yarborough* (No. 02-1684).

[273] *Id.*

similar request.[274] These facts tend to demonstrate that Alvarado was never in control of his own situation, and that his custody was transferred over from his parents to Detective Comstock. This is an issue that would not typically arise when considering the custodial status of an adult suspect; it highlights the significant effect age has on the factors that are analyzed to determine an individual's custodial status for *Miranda* purposes.

3. Adolescents Should be Judged Against a "Reasonable Adolescent" Standard Rather Than a "Reasonable Person" Standard

Miranda warnings and the "in custody" determination test were created with adults in mind. *Miranda* mandates law enforcement to inform suspects of constitutional privileges which were initially awarded only to adults. It was not until *In re Gault* that juveniles were awarded these same constitutional rights.[275] Similarly, the standard for determining custody status and the development of the reasonable person standard was enacted with the adult offender in mind.[276] By applying the reasonable person standard to Alvarado's situation, the court was applying an adult standard to a juvenile. Given the marked differences in maturity between adults and juveniles and a sure difference in the perception of surroundings, it seems illogical to apply the same standard to both adults and juveniles alike. By virtue of the Supreme Court's decision in this case, lower courts in subsequent cases will be required to apply this reasonable person standard, which was developed with the adult suspect in mind, to all juveniles. Regardless of whether these minors are ten or seventeen, the determination of whether these juveniles were in custody will be made based on the standard of a reasonable 'person', or in actuality a reasonable adult.

Even the majority in *Yarborough* stated that it is possible to subsume a subjective factor into an objective test by making that factor more specific in its formulation.[277] It also failed to state a concrete reason in disallowing a reasonable adolescent standard given the evidence supporting the differences between adults and adolescents. Therefore, the Ninth Circuit appropriately styled its inquiry of custody for the purposes of *Miranda* as

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[274] *Id.*

[275] 387 U.S. 1 (1967).

[276] *See* Thompson v. Keohane, 516 U.S. 99 (1995); Stansbury v. California, 511 U.S. 318 (1994); Berkemer v. McCarty, 468 U.S. 420 (1984); Minnesota v. Murphy, 465 U.S. 420 (1984); California v. Beheler, 463 U.S. 1121 (1983); Oregon v. Mathiason, 429 U.S. 492 (1977).

[277] Yarborough v. Alvarado, 124 S. Ct 2140, 2151 (2004).

an objective test by considering what a reasonable seventeen year old with no prior history of arrest or police interviews would perceive.[278]

VI. CONCLUSION

Existing Supreme Court precedent concerning custodial determinations for *Miranda* purposes had never before addressed the issue of juvenile age and prior history with law enforcement. Coupled with the material nature of these factors, the Supreme Court was correct in its ruling that the state's refusal to extend precedent to include age and history in custodial determinations was not objectively unreasonable. The decision to include or exclude the consideration of age and a suspect's criminal history is only the responsibility of the Supreme Court.

However, on the substantive matter of whether a juvenile's age should be included in the custodial inquiry, the Court was wrong to conclude that juvenile status should not be a consideration. The Supreme Court and society at large have long recognized a cognitive and physiological difference between adults and adolescents that warrants the disparate treatment of the two groups. The Supreme Court's fears that the consideration of a juvenile's age would change the custodial determination inquiry into a subjective test and would result in an insurmountable burden to law enforcement are unfounded. Age is not a characteristic unique only to certain individuals, and its inclusion would not lessen the objectiveness of the custodial analysis. Moreover, police procedures already take juvenile status into account to help them in the interrogation process. In the absence of a supportable basis for rejecting the consideration of age into custodial determinations, and evidence demonstrating a societal and legal differentiation between adults and juveniles, the Supreme Court was wrong to exclude juvenile status in Alvarado's custody determination, and for all future custody determinations.

Jennifer Park

[278] Alvarado v. Hickman, 316 F.3d 841, 854-55 (9th Cir. 2003).