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Hanna M. Sheehan

J.D.B. v. NORTH CAROLINA: AN APPROPRIATE EXPANSION OF *MIRANDA* TO ACCOUNT FOR AGE IN JUVENILE INTERROGATIONS

HANNA MARIE SHEEHAN*

In *J.D.B. v. North Carolina*,[1] the Supreme Court of the United States reevaluated the *Miranda*[2] in-custody test with respect to juvenile criminal offenders. The Court determined that age must be considered for *Miranda* purposes when law enforcement officers interrogate juveniles.[3] The Court appropriately changed the rule with regards to juvenile offenders based on the cognitive differences between juveniles and adults, mainly relying on the different cognitive processes and abilities that adults and juveniles employ to comprehend the circumstances surrounding custodial situations.[4] The Supreme Court's rule does not completely destroy the previous *Miranda* rule; rather, it merely adds the single factor of age, and asks how a reasonable person in the defendant's position would view his ability to end the questioning.[5] The Supreme Court appropriately developed a rule that comports with a progressive trend of establishing separate, categorical rules for juveniles.[6] Juveniles should be considered under different paradigms because of their physical under-development and decreased capacity to evaluate, process, and understand situations where

*Hanna Marie Sheehan is a third-year law student at the University of Maryland Francis King Carey School of Law, where she is an associate editor of the *Maryland Law Review*. She wishes to thank Professor David Gray for his guidance and comments throughout the writing process. She would also like to thank the editorial staff of the *Maryland Law Review* for their positive comments and insights throughout the editing process. Finally, she would like to extend her deepest gratitude to all of her friends and family who offered her their support and encouragement.

1. 131 S. Ct. 2394 (2011).
2. Miranda v. Arizona, 384 U.S. 436 (1966).
3. *J.D.B.*, 131 S. Ct. at 2399.
4. *See infra* Part IV.A.
5. *See infra* Part IV.B.
6. *See infra* Part IV.C.1.

their rights may be compromised.[7] While the Court intended the rule from *J.D.B.* to apply to any instance in which a juvenile is questioned in a custodial setting, it is possible to apply this rule to another discrete class of individuals: cognitively deficient adults.[8] Due to the similar comprehensive abilities of cognitively deficient adults and juveniles, the rule appropriately could apply to this group of adult offenders.[9]

I. The Case

On September 24, 2005, two home break-ins occurred in Chapel Hill, North Carolina, resulting in the theft of several items including a camera and jewelry.[10] Later that day, the police stopped and briefly spoke to J.D.B., a thirteen-year-old seventh grader enrolled in special education courses, when he was discovered near one of the targeted residences.[11] After this encounter, the police received information that J.D.B. had been seen in possession of one of the stolen goods, a digital camera, and had passed it along to another student at his middle school.[12] With this information, Officer DiCostanzo of the Chapel Hill Police Department went to J.D.B.'s school to speak with him.[13] After Officer Dicostanzo arrived at the school, a "uniformed school resource officer" removed J.D.B. from class and escorted him to the conference room where the door was subsequently shut but not locked.[14] Three other adults were in the room when J.D.B. arrived with the school officer: Officer DiCostanzo, the assistant principal, and an intern.[15]

Once the door to the room was shut, Officer DiCostanzo asked J.D.B. if he would answer questions regarding the recent break-ins.[16] J.D.B. consented and initially denied any involvement in the crimes;

7. *See infra* Part IV.C.1.

8. *See infra* Part IV.C.2.

9. *See infra* Part IV.C.2.

10. *In re* J.B., No. COA06-662, 2007 WL 1412457, at *1–2 (N.C. Ct. App. May 15, 2007), *aff'd*, 674 S.E.2d 795 (N.C. Ct. App. 2009), *aff'd*, 686 S.E.2d 135 (N.C. 2009), *rev'd*, 131 S. Ct. 2394 (2011).

11. *Id.* at *1.

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

he admitted, however, that he was in the area when the break-ins occurred.[17] At that point in the questioning, Officer DiCostanzo revealed to J.D.B. that the stolen camera had been recovered.[18] Following this revelation, the assistant principal pressured J.D.B. to "'do the right thing' and tell the truth."[19] J.D.B. then inquired if he would "be in trouble" if he gathered and returned the stolen items, to which Officer DiCostanzo replied that it would be beneficial for J.D.B. to return the items but, regardless, "this thing is going to court."[20] Officer DiCostanzo then told J.D.B. that he might be able to seek an order to hold him in juvenile detention until the trial, presumably if he did not return the stolen items.[21]

Next, Officer DiCostanzo informed J.D.B. that "he was not under arrest, that he was free to leave, and that he was not required to speak about the case."[22] Following this statement, Officer DiCostanzo asked J.D.B. if he understood the situation, and J.D.B. nodded his head in consent.[23] Then J.D.B. explained in detail how he and a friend broke into the two houses and stole various items.[24] At Officer DiCostanzo's request, he provided a written statement of these admissions.[25] After J.D.B. wrote down the requested statement, the school bell signaling the end of the day rang, and Officer DiCostanzo informed J.D.B. that "he should leave so that he would not miss his bus."[26] By the time J.D.B. left the office, the interview had been going on for approximately "30 to 45 minutes."[27]

On October 19, 2005, the State filed two juvenile petitions against J.D.B. alleging that he was a delinquent as a result of his

17. *Id.* He told Officer DiCostanzo that he was in the area "going door-to-door trying to be hired to do small jobs." *Id.*

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.* at *2.

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.* Following the conclusion of the interview, Officer DiCostanzo went to J.D.B.'s residence with another officer, spoke with J.D.B. again, acquired a search warrant for J.D.B.'s house and went with J.D.B. around the house and the surrounding area in a search to recover the other stolen items. *Id.*

"breaking and entering and larceny."[28] Prior to the adjudication hearing, J.D.B. moved to suppress the statements he made in the school office under the theory that he was in custody during the interrogation and was not afforded the necessary *Miranda* warnings.[29] The district court ultimately decided that J.D.B. was not in custody during the interrogation and denied his motion to suppress; the district court did not, however, offer its reasoning why J.D.B. was not in custody.[30] At the disposition hearing, J.D.B. admitted the allegations in the petitions but renewed his arguments regarding the motion to suppress; despite this, based on J.D.B.'s admission, the court adjudicated J.D.B. a delinquent juvenile.[31]

On appeal, J.D.B. asked the Court of Appeals of North Carolina to find that the trial court erred in denying his motion to suppress his statements to the police.[32] In evaluating the trial court's decision, the court of appeals defined the in-custody test as requiring an objective evaluation of whether, under the "totality of the[] circumstances, a reasonable person standing in the place of the juvenile would have believed that he was restrained in his movement to the degree associated with a formal arrest."[33] The appellate court ultimately concluded that the trial court must offer definitive findings of fact necessary to support its determination that J.D.B. was not in custody at the time of the interrogation and remanded the case.[34] On remand, the trial court made "findings of fact [and] conclusions of law" to support the denial of J.D.B.'s motion to suppress.[35] J.D.B. again appealed.[36]

On J.D.B.'s second appeal to the Court of Appeals of North Carolina, the court fully evaluated the trial court's findings of fact as well as the legal standard.[37] The court ultimately concluded that the trial court did not commit error with respect to the legal conclusion that

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.* at *3.

32. *Id.*

33. *Id.* at *5 (quoting *In re* W.R., 634 S.E.2d 923, 926–27 (N.C. Ct. App. 2006)) (internal quotation marks omitted).

34. *Id.*

35. *In re* J.D.B., 674 S.E.2d 795, 797 (N.C. Ct. App. 2009), *aff'd*, 686 S.E.2d 135 (N.C. 2009), *rev'd*, 131 S. Ct. 2394 (2011).

36. *Id.* at 798.

37. *Id.* at 800–01.

J.D.B. was not in custody for the purposes of *Miranda* when Officer DiCostanzo interrogated him at school.[38] The state appellate court stated that numerous factors contributed to this determination: J.D.B. was not locked in the room and therefore maintained his freedom to leave, he was not constrained, he was not placed under arrest, and Officer DiCostanzo told him that he did not have to answer any of the questions posed to him.[39] The majority decision also stated that age by itself does not play a role in determining whether an individual has been placed in custody for *Miranda* purposes.[40] The state appellate court determined that "a reasonable person in J.D.B.'s position would not have believed himself to be in custody or deprived of his freedom of action in some significant way" for the purposes of *Miranda* and affirmed the lower court's decision.[41]

In dissent, Judge Beasley disagreed with the majority's ruling that J.D.B. had not been in custody for the purposes of *Miranda*.[42] Judge Beasley stated that the court must evaluate "the circumstances surrounding the interrogation and . . . the effect those circumstances would have on a reasonable person."[43] She then stated she would consider a juvenile's age as a factor in the "reasonable person" test because age may influence the individual's belief of whether he is in custody.[44] Judge Beasley would have held that J.D.B. was in custody because "a uniformed school resource officer" had taken him to the school office, the door to the office was closed after he entered, and "four adults were in the room" when Officer DiCostanzo questioned J.D.B.[45] Primarily, she focused on the facts that after J.D.B. answered the questions posed to him, he was not released to class, and the of-

38. *Id.* at 799–800.

39. *Id.* at 799.

40. *Id.* at 800. The majority stated, however, that "an individual's subnormal mental capacity and age are factors to be considered when determining whether a knowing and intelligent *waiver* of rights has been made." *Id.*

41. *Id.* at 800–01.

42. *Id.* at 801 (Beasley, J., dissenting).

43. *Id.* at 802 (citing State v. Garcia, 597 S.E.2d 724, 733 (N.C. 2004)).

44. *Id.* Judge Beasley pointed out that "[t]o hold otherwise would lead to the absurd result that, when required to determine whether a 'reasonable person in the defendant's situation' would consider himself in custody, courts would apply exactly the same analysis, regardless of whether the individual was eight or thirty-eight years old." *Id.*

45. *Id.* Judge Beasley made this determination with the knowledge that J.D.B. was neither under extra restraints in the interrogatory situation nor locked in the room. *Id.* at 803.

ficer and the assistant principal would not accept the answers he gave them.[46] Finally, Judge Beasley commented that the pseudo-warning that Officer DiCostanzo gave J.D.B. after his self-incriminating statements was not enough to admit the statements under the in-custody analysis because, according to her, J.D.B. was in custody from the moment he walked into the office; therefore, the post-confession recitation of *Miranda* warnings was not sufficient.[47]

Following the decision of the state appellate court, J.D.B. appealed "as of right" under North Carolina law to the Supreme Court of North Carolina.[48] Mirroring Judge Beasley's dissent, J.D.B. argued that he was in custody when he was questioned and that age should be considered for *Miranda* purposes.[49] The state supreme court followed the same line of reasoning the state appellate court did in determining that J.D.B. was not in custody when Officer DiCostanzo interrogated him.[50] The state supreme court disagreed with Judge Beasley's argument that age should be a factor in deciding if a person is in custody; instead, the court found age irrelevant for the in-custody analysis because a consideration of age was contrary to the "objective 'reasonable person'" inquiry necessary for *Miranda* purposes.[51] Consequently, the court affirmed the decision of the state appellate court that J.D.B. was not entitled to the protections of *Miranda*.[52] Two judges filed separate dissenting opinions arguing that J.D.B. was in custody for *Miranda* purposes.[53] The Supreme Court of the United States

46. *Id.*

47. *Id.* at 802–04.

48. *In re* J.D.B., 686 S.E.2d 135, 137 (N.C. 2009), *rev'd*, 131 S. Ct. 2394 (2011).

49. *Id.* In North Carolina, an individual may appeal "as of right" to the Supreme Court of North Carolina "on the basis of the dissenting opinion in the Court of Appeals." *Id.*

50. *Id.* at 137–39.

51. *Id.* at 139–40 (citation omitted).

52. *Id.* at 140.

53. Justices Brady and Hudson disagreed with the majority's opinion and concluded that they would have considered J.D.B. in custody for *Miranda* purposes as a consequence of both his age and the facts found by the trial court. *See id.* at 144–46 (Brady, J., dissenting) (discussing age with respect to the reasonable person standard as well as the extra protections that should be awarded to juveniles as general policy in the legal system); *id.* at 150 (Hudson, J., dissenting) (discussing the reasonable person in the circumstances standard and how age should be a considered factor because it can inform courts how to view the circumstances as well as how to use "commonsense" determinations to evaluate issues regarding behavior and perception). Both dissenters opined that age should be considered as a factor in the in-custody analysis because juvenile constitutional rights must be

granted certiorari "to determine whether the *Miranda* custody analysis includes consideration of a juvenile suspect's age."[54]

II. LEGAL BACKGROUND

The Supreme Court has stated that the constitutional rights of adults being interrogated in custodial situations must be protected.[55] The Court has applied this rule to juvenile defendants as well and has historically viewed juvenile offenders as a special class of individuals that needs protection when being questioned.[56] Elaborating on the protection of individual rights during an interrogation, the Court has formulated a two-part test that may be applied by law enforcement to any situation to assess if an individual is in custody.[57] It has also applied this two-part test to situations involving juvenile offenders.[58] In the past several years, the Supreme Court has carved out categorical rules for juvenile offenders in certain areas involving criminal sentences, utilizing the same reasoning it applies when carving out exceptions for cognitively deficient adults.[59]

A. The Supreme Court Has a History of Protecting the Rights of Individuals Who Are Being Questioned in Custodial Situations, Construing Those Rights Based on Evolutions of the Law

The Supreme Court's jurisprudence reflects the evolution of rights afforded to individuals in custodial situations. The Court definitively stated its position on the need for individuals in custody to be informed of their constitutional rights in *Miranda v. Arizona*[60] and continued to define this right well after that case.[61] Although the Court ultimately settled on a seemingly objective and general "ordinary reasonable person" standard, specific decisions of the Court pri-

protected and because juveniles may be subject to more outside pressures and coercion than would adult offenders in similar circumstances. *Id.* at 145 (Brady, J., dissenting); *id.* at 147 (Hudson, J., dissenting).

54. J.D.B. v. North Carolina, 131 S. Ct. 2394, 2401 (2011).

55. *See infra* Part II.A.

56. *See infra* Part II.A.2.

57. *See infra* Part II.B.

58. *See infra* Part II.B.

59. *See infra* Part II.C.

60. 384 U.S. 436 (1966).

61. *See infra* Part II.A.2.

or to *Miranda* depicted that the Court historically considered juveniles in custodial situations under a different set of standards.[62]

1. *Prior to the Development of the* Miranda *Test, the Supreme Court Determined That the Age of Juvenile Defendants Must Be Considered for Custody Purposes*

Prior to *Miranda*, when admissions of confessions were challenged, courts conducted an individual analysis to determine whether a person was in custody at the time of his confession.[63] The federal courts previously "evaluated the admissibility of a suspect's confession under a voluntariness test" rooted in due process; this test still exists in a limited form today.[64] The due process test required courts to consider whether under the totality of the circumstances, the individual being questioned offered a voluntary confession or statement to the police.[65] The test included an analysis of the individual's subjective mindset concerning the questioning and whether that individual felt overwhelmed in such a circumstance.[66] Although it is no longer applied by the courts, this subjective case-by-case due process test suggests that juveniles were regarded differently from adults in the criminal justice system.[67]

The subjective test was applied in *Haley v. Ohio*,[68] which specifically addressed the rights of juveniles.[69] In *Haley*, a plurality of the Supreme Court determined that, under the Due Process Clause of the Fourteenth Amendment, the confessions of a juvenile, elicited while the individual was isolated and without the benefit of counsel, were inadmissible at trial.[70] The police arrested and then questioned a fifteen-year-old boy, in isolation without any "friend or counsel . . . present," from midnight to 5:00 AM until he "confessed" to murder.[71]

62. *See infra* Part II.A.1.

63. Dickerson v. United States, 530 U.S. 428, 432–34 (2000).

64. *Id.* at 433–34.

65. *Id.* at 434.

66. *Id.*

67. *See* Haley v. Ohio, 332 U.S. 596, 599–601 (1948) (plurality opinion) (discussing the specific implications of considering the age and status of a juvenile for in-custody purposes).

68. 332 U.S. 596 (1948).

69. *Id.* at 599–601.

70. *Id.* at 598–99.

71. *Id.* at 598.

Further, the defendant only received information regarding his constitutional rights immediately before making a written statement of his confession but after several hours of interrogation.[72] The plurality commented on the circumstances under which the juvenile defendant's questioning occurred and stated that "[w]hat transpired would make us pause for careful inquiry if a mature man were involved. And when, as here, a mere child—an easy victim of the law—is before us, special care in scrutinizing the record must be used."[73] The plurality noted that when a juvenile confesses to crimes under such circumstances of isolation and coercion, he may not be subjected to the same "standards of maturity" and understanding as an adult.[74] Comparing adults and juveniles in such predicaments, the plurality stated, situations "[t]hat . . . would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens."[75] Ultimately, the plurality determined that the defendant's confession was inadmissible under the specific circumstances.[76]

Although *Haley* did not become the standard for juveniles because the decision did not garner majority support, the plurality's reasoning offers substantial insight into early decisions that considered age and treated juveniles differently from adults in the criminal justice system.[77] For example, the plurality made a distinction between the capacities of juvenile offenders to understand their personal situations when being questioned by the police and the capacity of adult offenders in the same situation.[78] The plurality also stated that, due to a variety of factors, juveniles require support and counsel if they are to avoid the fear and coercion that may accompany official interrogations; they should be permitted access to these resources so they are

72. *Id.* The statement read as follows:

> [T]he law gives you the right to make this statement or not as you see fit. It is made with the understanding that it may be used at a trial in court either for or against you or anyone else involved in this crime with you, of your own free will and accord, you are under no force or duress or compulsion and no promises are being made to you at this time whatsoever.

Id.

73. *Id.* at 599.

74. *Id.* at 599–600.

75. *Id.* at 599.

76. *Id.* at 601.

77. *Id.* at 599–600.

78. *Id.*

not overwhelmed by the presence of law enforcement.[79] The plurality considered a variety of factors to determine whether the defendant's statements should be allowed into court including: the defendant's age, the hours the questioning took place, the lack of counsel for the defendant, and the overall attitudes of the police officers toward the defendant during the interrogation.[80] Finally, the plurality commented that even though the juvenile allegedly received a reading of his constitutional rights before he validated his written confession, in the absence of counsel or another source to inform him of his freedom to decline to answer any questions, it cannot be determined that he appreciated or understood his actual freedom to end the interrogation or refuse police questioning.[81]

2. Miranda *Warnings Were Developed as a Means to Protect the Rights of Individuals Being Questioned by Law Enforcement*

The Fifth Amendment of the United States Constitution affords an individual the right against self-incrimination,[82] a crucial aspect of an individual's ability to receive due process within the criminal justice system. The Supreme Court's decision in *Miranda* analyzed this Amendment.[83] In *Miranda*, the Court found that the police must inform an individual of his Fifth Amendment rights prior to questioning when they take him into custody.[84] When advising the individual of these rights, the police officer must say,

> that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires."[85]

The Court also explained that an individual maintains the ability to exercise these particular rights throughout the custodial interroga-

79. *Id.* at 600.

80. *Id.* at 600–01.

81. *Id.* at 601.

82. U.S. CONST. amend. V.

83. 384 U.S. 436, 478–79 (1966).

84. *Id.*

85. *Id.* at 479.

tion,[86] but may waive these rights of his own free will.[87] Consequently, if these rights are knowingly and intelligently waived by an individual in custody, then any statements acquired from him during the interrogation following the warnings may be admitted into court.[88]

In the course of developing *Miranda* rights, the Court discussed and analyzed specific policy concerns relating to the protections of the Fifth Amendment. These concerns included an evaluation of the potential for corruption or coercion on the part of the police or others.[89] Specifically, such an evaluation may depend on the surrounding circumstances, such as when an individual is incarcerated, isolated from the general population, or pressured by law enforcement and then questioned for any length of time.[90] The Court discussed the importance of allowing individuals to maintain the right against self-incrimination in the specific circumstances surrounding an interrogation because police officers are trained to use techniques to pressure and persuade the individual to make incriminating statements.[91] Illustrating this concern, the Court commented that "[a]n individual swept from familiar surroundings into police custody, surrounded by antagonistic forces, and subjected to . . . techniques of persuasion . . . cannot be otherwise than under compulsion to speak."[92] The Court also commented on its concern that when a person is "isolated" with the police the "compulsion to speak" and reveal incriminating information may be "greater" than when an individual is surrounded by "impartial observers," such as those found in a courtroom setting, who

86. *Id.* In *Miranda*, the Court defined "custodial interrogation" as "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *Id.* at 444 (footnote omitted).

87. *Id.* at 479.

88. *Id.* Otherwise, to admit these statements would be a violation of the right against self-incrimination. *Id.*

89. *Id.* at 476–77.

90. *Id.*

91. *Id.* at 461.

92. *Id.* The Court discussed police officers' techniques of persuasion including "depriv[ing] [the individual] of every psychological advantage" by isolating him in an unfamiliar, private setting, "display[ing] an air of confidence in the suspect's guilt," focusing on questions as to why the individual committed the particular crime to elicit details, showing some hostility when kindness and false understanding of the individual being interrogated fails, acquiring confession via "trickery" or other coercion, and generally subjecting the individual to psychological pressure and tactics that cause him to make some kind of confession to the law enforcement official. *Id.* at 449–57.

may "guard against intimidation or trickery."[93] With these policy concerns in mind, the Supreme Court attempted to balance the needs of the police with the needs of those being questioned and determined that: (1) police officers require a clear set of procedural guidelines for when they must advise individuals of their rights, and (2) the rights of those individuals being questioned need to be protected.[94]

The Court continued on to establish clear guidelines for police officers and courts to determine when statements during custodial interrogations have been appropriately acquired and may be admitted into court.[95] *Miranda* established that law enforcement is only required to read an individual his Fifth Amendment rights if he is actually in custody; if not, then the law enforcement officer has no obligation to do so, and any voluntary statements obtained from the individual may be admitted into court without issue.[96] For example, in *Oregon v. Mathiason*,[97] the Court determined that an adult suspect was never in custody when he went to the station at the request of the police, was not arrested, and was permitted to leave after questioning.[98] An interview of this type does not warrant an issuance of *Miranda* warnings because, although it took place in the station house—an inherently "coercive environment"—the individual being questioned was not in custody.[99] The Court commented that the types of coercive environments that *Miranda* was designed for are those in which "there has been such a restriction on a person's freedom as to render him 'in custody.'"[100] Although most interrogations and interviews with law enforcement take place in circumstances with coercive elements because of the presence of the police officer and because the individual being questioned may be charged with a crime, they do

93. *Id.* at 461.

94. *Id.* at 477–79. The Court noted, however, that officers may continue to "seek out evidence in the field" by collecting preliminary statements, including voluntarily given statements, and other general information. *Id.* at 477–78.

95. *Id.* at 478–79. The Court justified the creation of *Miranda* warnings based on a need for "[p]rocedural safeguards" to protect the rights of individuals in custody. *Id.*

96. *Id.*

97. 429 U.S. 492 (1977).

98. *Id.* at 495.

99. *Id.*

100. *Id.*

not morph into *Miranda* situations unless the custody requirement exists.[101]

The Court later elaborated on the concept of the coercive environment, what accompanies custodial questioning in such an environment, and when particular instances will trigger the requirements outlined in *Miranda*.[102] The Court stated the "relevant inquiry" for in-custody purposes "is how a reasonable man in the suspect's position would have understood his situation."[103] Adding to the in-custody discussion, the Court also determined that the subjective views of the individual being questioned or the views of the police officer performing the questioning are not relevant for *Miranda* purposes.[104] Rather, the need for *Miranda* warnings depends upon the total objective circumstances surrounding the interrogation.[105] The Court commented that an objective factor contributing to the *Miranda* analysis consists of whether the individual has been taken into custody as described by the *Miranda* rule; that is, whether the individual's freedom has been constrained in an overtly substantial way.[106] The test does not require police officers to consider or anticipate "the frailties or idiosyncrasies of every person whom they question."[107] These later decisions directly defined the *Miranda* test as being rooted in objective circumstances[108] and a reasonable person standard.[109]

Shortly after *Miranda*, the Court decided *In re Gault*[110] and held that the right against self-incrimination applied to juvenile and adult offenders.[111] In *Gault*, the defendant was accused of making "[l]ewd [p]hone [c]alls," and, when questioned in a juvenile hearing, made incriminating statements without being informed of his constitutional

101. *Id.*

102. *See* Berkemer v. McCarty, 468 U.S. 420, 433–34 (1984) (holding that any person in custody is entitled to the protections of *Miranda* regardless of the severity of the offense).

103. *Id.* at 442.

104. Stansbury v. California, 511 U.S. 318, 323 (1994) (per curiam).

105. *Id.*

106. *Id.* at 322–24. The Court offered this commentary via a discussion of background cases that all commented on the custody aspect of *Miranda*. *See id.* at 323– 24 (discussing past decisions on the in-custody test).

107. People v. P., 233 N.E.2d 255, 260 (N.Y. 1967).

108. *Stansbury*, 511 U.S. at 323.

109. Berkemer v. McCarty, 468 U.S. 420, 442 (1984).

110. 387 U.S. 1 (1967).

111. *Id.* at 55.

rights; he was then incarcerated in a juvenile detention center based on the court's determination of his status as a juvenile delinquent.[112] In reversing the lower court's decision, the Supreme Court announced that admissions or confessions made by a juvenile at a delinquency hearing may not be used to commit him to a detention center "in the absence of clear and unequivocal evidence that the admission was made with knowledge that he was not obliged to speak and would not be penalized for remaining silent."[113] Focusing mainly on the right against self-incrimination, the Court commented that it would be absurd if the rights protected by *Miranda* were afforded only to adult criminals and not to juvenile offenders.[114] In conclusion, the Court acknowledged that a child may waive the rights protected by *Miranda*, but that an effective waiver may be less clear-cut when the defendant is a juvenile.[115] The Court must determine whether the waiver was legitimate or was forced while the individual was in custody.[116]

B. Miranda *Was Further Interpreted to Include a Two-Part Test That Has Been Applied to Juveniles and Adults and Which Aids Courts and Law Enforcement in Analyzing Whether an Individual Is in Custody*

Nearly three decades after the announcement that suspects must be provided with *Miranda* warnings during an in-custody interrogation, the Supreme Court established a two-part test in *Thompson v. Keohane*.[117] The test was meant to determine whether an individual has in-custody status for *Miranda* purposes. The Court elaborated on the guidelines for the in-custody analysis as follows: (1) under what

112. *Id.* at 4–8.

113. *Id.* at 44, 55. The Court also analyzed the purposes behind the right against self-incrimination with respect to both juveniles and adults and commented that the right is based on the desire and need to ensure that admissions entered into court are "reasonably trustworthy" and "not the mere fruits of fear or coercion" resulting from an interrogation situation. *Id.* at 47. The right against self-incrimination focuses on such concerns because it is essential for the purposes of justice that confessions are "reliable expressions of the truth." *Id.* Otherwise, the State may benefit from admissions not freely offered by the individual being questioned. *Id.*

114. *Id.*

115. *Id.* at 55.

116. *Id.*

117. 516 U.S. 99 (1995).

circumstances did the interrogation occur; and (2) given those particular circumstances, "would a reasonable person have felt he" maintained the ability to end the interrogation and leave.[118] Along with announcing this test, the Court also provided guidelines for its application. The Court stated that the first part of the test applied to the specific facts of the surrounding circumstances, and the second part of the test applied to the "controlling legal standard."[119] In the second prong of the test, the Court determined that the question to ask is whether an objective, reasonable person under the same circumstances would believe he was in custody as described by *Miranda*.[120] After the circumstances of the interrogation are analyzed and evaluated with respect to what a reasonable person would believe, the court determines whether the interrogated individual was in custody for *Miranda* purposes.[121]

Over the past decade, the Court has considered when a juvenile is in custody under the test announced in *Thompson*. For example, in *Yarborough v. Alvarado*,[122] the police called a seventeen-year-old suspected of murder and attempted robbery into the station house; he was transported there voluntarily by his parents.[123] Once there, the parents of the defendant waited in the lobby of the station for the duration of the two-hour interview.[124] The suspect was not read his *Miranda* rights.[125] The Court determined that the defendant was not in custody for *Miranda* purposes because a reasonable person in similar circumstances would have felt he was free to end the questioning and leave the station.[126] The Court provided specific reasons as to why this determination was correct: the police did not take Alvarado to the station or compel him to appear there at a specific time, the police did not threaten him or his freedom of movement, the police did not

118. *Id.* at 112.

119. *Id.* When the Court discussed the "controlling legal standard," it commented that the test involved "a mixed question of law and fact," thus the disputed issues should be viewed as such when they are on appeal or being reviewed. *Id.* at 112–13 (internal quotation marks omitted).

120. *Id.* at 113.

121. *Id.* at 112.

122. 541 U.S. 652 (2004).

123. *Id.* at 656.

124. *Id.*

125. *Id.*

126. *Id.* at 664–65.

place him under arrest, his parents waited at the station for the interview to conclude, he was free to return home at the conclusion of the questioning, and the questioning officer's demeanor and attitude remained sympathetic to the suspect's situation.[127] While the Court based its conclusion on these factors, it did offer the countervailing facts that could have led it to reach the opposite conclusion. Those countervailing facts included: Alvarado was interviewed at the police station, an area commonly associated with in-custody proceedings, the interview lasted approximately two hours,[128] the officer did not tell Alvarado he was free to leave at any time, and his parents asked if they could be present for the interview but were not allowed.[129] Despite the countervailing considerations, the Court ultimately determined that the lower court had not erred in finding that Alvarado had not been in custody for the purposes of *Miranda*.[130]

The Court determined that the defendant's age and inexperience did not need to be analyzed because of the objective nature of the *Miranda* test, which does not compel police officers to account for an individual's psychological mindset, experiences, or age during an interrogation.[131] Further, the Court commented that because of the test's objectivity, Miranda cases differ from those in which juveniles are treated differently than adults.[132] The Supreme Court ultimately concluded that if law enforcement had to treat juveniles differently, the *Miranda* "inquiry" would become focused "too much on the suspect's subjective state of mind and not enough on the 'objective cir-

127. *Id.* To provide an example of the officer's demeanor, the Court stated that the interviewer asked Alvarado, at least twice, if he needed a break. *Id.* at 664.

128. The Court noted that a two-hour-long this interview is not brief. *Id.* at 665.

129. *Id.*

130. *Id.*

131. *Id.* at 666–69.

132. *Id.* at 667. The Court did not name the specific cases where juveniles were treated differently, but the Court was likely referring to cases in different legal contexts, such as tort and contract law, where juveniles are sometimes evaluated under different standards as a consequence of their age and experience. *See* RESTATEMENT (SECOND) OF CONTRACTS § 14 (1918) ("Unless a statute provides otherwise, a natural person has the capacity to incur only voidable contractual duties until the beginning of the day before the person's eighteenth birthday."); RESTATEMENT (SECOND) OF TORTS § 283A (1965) ("If the actor is a child, the standard of conduct to which he must conform to avoid being negligent is that of a reasonable person of like age, intelligence, and experience under like circumstances.").

cumstances of the interrogation.'"[133] In a separate concurring opinion, Justice O'Connor agreed with the majority's conclusion but signaled the direction in which the Court would eventually head: "There may be cases in which a suspect's age will be relevant to the 'custody' inquiry under *Miranda v. Arizona*."[134]

C. The Supreme Court Has Carved Out Separate, Categorical Rules for Juveniles Through Independent Analysis of the Position of Juveniles in the Context of the Death Penalty and Life in Prison Without Parole and Has Applied this Reasoning to Cognitively Deficient Adult Offenders

The Supreme Court initially established categorical rules for juveniles facing the death penalty and later applied the same reasoning when it limited the imposition of the death penalty on adult offenders with diminished mental capacity.[135] Later, recognizing the limited mental capacity of juveniles and certain adults, the Court further restricted the imposition of the death penalty on juvenile offenders and also limited the possibility of a sentence of life without parole for juvenile offenders who did not commit homicide.[136]

1. The Court's Early Decisions Regarding Juveniles Were Applied to Adult Offenders with Cognitive Deficiencies Due to Their Similarities in Mental Capacity and Development

With its late 1980s decision in *Thompson v. Oklahoma*,[137] the Supreme Court established categorical rules for juveniles in the death penalty context.[138] In *Thompson*, the Court held that juveniles under the age of sixteen at the time of their committed offense may not be sentenced to the death penalty.[139] In making this decision, the Court referenced specific policy, social, and psychological reasons, including the idea that capital punishment for juveniles does not further the goals of the criminal justice system and that juveniles are less culpable for the crimes they commit because they lack the same experience,

133. *Alvarado*, 541 U.S. at 669 (quoting Stansbury v. California, 511 U.S. 318, 323 (1994) (per curiam)).

134. *Id.* (O'Connor, J., concurring) (citation omitted).

135. *See infra* Part II.C.1.

136. *See infra* Part II.C.2.

137. 487 U.S. 815 (1988).

138. *Id.* at 838.

139. *Id.*

education, and intelligence as adults.[140] The Court declined to prohibit execution of individuals under the age of eighteen years,[141] thereby opening the possibility of future litigation in this area.

The Supreme Court applied the reasoning developed in the context of juvenile offenders to justify not imposing the death penalty on cognitively deficient adults.[142] For example, the Supreme Court considered the case of *Atkins v. Virginia*,[143] which involved a "mentally retarded" adult offender sentenced to death.[144] In *Atkins*, the Court determined that sentencing mentally deficient individuals to death went against the Eighth Amendment's "cruel and unusual punishment" clause.[145] In making this decision, the Court applied reasoning similar to that of *Thompson* to adult offenders with cognitive disabilities.[146] Some of the cited factors included mentally deficient adults' "diminished capacities to understand and process information," their lessened ability "to control impulses," and their incapacity to completely understand the overall surroundings and circumstances of a specific situation.[147] The Court also noted that such offenders do not have the same moral culpability as adult offenders with normal cognitive

140. *Id.* at 836–38.

141. *Id.* at 838; s*ee also* Stanford v. Kentucky, 492 U.S. 361, 380 (1989), *abrogated by* Roper v. Simmons, 543 U.S. 551, 574–75 (2005) (holding that the imposition of the death penalty on individuals who committed crimes at sixteen or seventeen years of age does not violate the Eighth Amendment's provision against cruel and unusual punishment).

142. *See* Atkins v. Virginia, 536 U.S. 304, 321 (2002) (denoting mentally deficient adults as a separate class of offenders that may not have the death penalty imposed upon them).

143. 536 U.S. 304 (2002).

144. *Id.* at 308–09. The Court referred to both the American Association on Mental Retardation's definition of mental retardation and the American Psychiatric Association's definition. *Id.* at 308 n.3. According to the Court, the American Association on Mental Retardation defined mental retardation as "refer[ring] to substantial limitations in present functioning. It is characterized by significantly subaverage intellectual functioning, existing concurrently with related limitations in two or more of the following applicable adaptive skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure, and work. Mental retardation manifests before age 18." *Id.* (citation omitted) (internal quotation marks omitted). The Court noted that the American Psychiatric Association's definition of mental retardation is "similar" to the American Association on Mental Retardation's definition. *Id.*

145. *Id.* at 321.

146. *Id.* at 318.

147. *Id.*

abilities.[148] Overall, the Court relied on social policy reasoning as well as psychological data when rendering this decision.[149] The same information was later applied by the Court in criminal cases involving juvenile offenders and certain types of punishments, including capital punishment and life in prison without parole.[150]

2. Drawing on Previous Decisions, the Supreme Court Further Limited the Ability of Any Juvenile Offender to Receive the Death Penalty and also Limited the Possibility of Certain Juveniles Receiving Life Without Parole

The Court again considered the issue of capital punishment with respect to juveniles in *Roper v. Simmons*[151] when it held that the death penalty may never be imposed on individuals under the age of eighteen at the time of their offense.[152] Relying on *Atkins*, and its Eighth Amendment jurisprudence, the Court reasoned that juveniles should not face the death penalty because they lack the same maturity and cognitive ability as most adults, they are more susceptible to outside influences and peer pressure, and their personality and character are not as developed as those of adults.[153] As a result of these factors, the Court concluded that juvenile criminal offenders are not among the worst offenders who merit the death penalty.[154] It also commented that "[t]he differences between juvenile and adult offenders are too marked and well understood to risk allowing a youthful person to receive the death penalty despite insufficient culpability."[155] Further, the Court noted other areas in which juveniles have been restricted as a consequence of their age, commenting that "almost every State prohibits those under 18 years of age from voting, serving on juries, or marrying without parental consent."[156] In *Roper*, the Court ulti-

148. *Id.* at 320.

149. *Id.* at 320–21.

150. *See, e.g.*, Graham v. Florida, 130 S. Ct. 2011, 2034 (2010) (prohibiting the imposition of life without parole on juvenile nonhomicide offenders); Roper v. Simmons, 543 U.S. 551, 578 (2005) (forbidding the imposition of the death penalty on offenders under the age of eighteen).

151. 543 U.S. 551 (2005).

152. *Id.* at 578.

153. *Roper*, 543 U.S. at 568–70.

154. *Id.* at 570, 578.

155. *Id.* at 572–73.

156. *Id.* at 569.

mately created a categorical rule for juveniles, concluding that eighteen is "the age at which the line for death eligibility ought to rest."[157]

The Supreme Court also established specific rules for juveniles who receive life sentences without the possibility for parole. For example, in *Graham v. Florida*,[158] the Court held that a life sentence without the possibility for parole may not be imposed on a juvenile offender who has not committed a homicide.[159] The Court cited reasoning similar to that of *Thompson* and *Roper*, including a juvenile's lack of maturity, diminished responsibility, and susceptibility to outside influences.[160] It was further swayed by the amicus briefs submitted in support of the petitioner, which demonstrated that there are "fundamental differences between juvenile and adult minds," including differences in how behavior is controlled and in how the brain, and therefore the individual, matures.[161] Again, like in *Roper*, the Court acknowledged that it was creating a categorical rule, which, while imperfect, offered a superior alternative to considering juveniles under the established adult standard.[162] In establishing this categorical rule, the Court noted that its decision allows juvenile offenders without a homicide conviction "a chance to demonstrate maturity and reform" because they still maintain the potential to grow and mentally develop.[163]

The Court's development of categorical rules for juveniles in *Roper* and *Graham* signified a movement toward setting aside juveniles as a discrete class within the criminal justice system.[164] In both cases, reliance on the factors of age and experience motivated the Court's decision.[165] Paired with the Court's method of evaluating in-custody situations and *Miranda*, the Court's decisions in *Roper* and *Graham* point to the conclusion that the Court would revisit juvenile *Miranda* rights at some point. In *J.D.B. v. North Carolina*, the Supreme Court did just that.[166]

157. *Id.* at 574.

158. 130 S. Ct. 2011 (2010).

159. *Id.* at 2034.

160. *Id.* at 2026.

161. *Id.*

162. *Id.* at 2030–32.

163. *Id.* at 2032–33.

164. *Id.* at 2034; Roper v. Simmons, 543 U.S. 551, 578 (2005).

165. *Graham*, 130 S. Ct. at 2026–27; *Roper*, 543 U.S. at 569–70.

166. 131 S. Ct. 2394 (2011).

III. THE COURT'S REASONING

In *J.D.B. v. North Carolina*, the Supreme Court held that a child's age informs the custody analysis with respect to the child's *Miranda* rights.[167] Writing for the majority, Justice Sotomayor began by noting that when an individual—adult or otherwise—is in police custody, he is subject to increased pressure as a result of the circumstances and atmosphere of the interrogation.[168] These pressures may result in the utterance of statements not made by free choice.[169] According to the Court, the psychological and physical isolation of being in custody creates an increased risk for juveniles specifically because of their age.[170] Under *Miranda*, warnings must be given prior to custodial police interrogations to reduce the threat they pose to Fifth Amendment protections against self-incrimination.[171] The *Miranda* inquiry focuses on an objective evaluation of how the surrounding circumstances would affect the beliefs of a reasonable person in the suspect's position concerning "his or her freedom to leave."[172] By not considering factors such as the individual's mindset, the majority pointed out that police have clear guidance on when to administer *Miranda* warnings.[173]

The Court did not agree with the State's assertion that a child's age does not need to be considered in the custody analysis.[174] Indeed, the Court commented that under some scenarios, a juvenile's age "'would have affected how a reasonable person' in the suspect's position 'would perceive his or her freedom to leave'" because in some cases where a reasonable adult may feel free to leave, a reasonable child would feel pressure to remain and continue answering questions.[175] The Court then discussed that children generally lack the

167. *Id.* at 2399.

168. *Id.* at 2401.

169. *Id.*

170. *Id.*

171. *Id.*

172. *Id.* at 2402 (quoting Stansbury v. California, 511 U.S. 318, 325 (1994) (per curiam)).

173. *Id.* The Court discussed how the objectivity of the test avoids burdening police with the job of trying to figure out the idiosyncrasies of every individual whom they question and how those characteristics may affect that person's state of mind as he is being questioned. *Id.*

174. *Id.*

175. *Id.* at 2402–03 (quoting *Stansbury*, 511 U.S. at 325).

same responsibility, experience, and judgment skills as adults, therefore making them more prone to influence by external pressures.[176] Further, in other areas of law, such as in contract and tort law, children are not expected to maintain the same capacity as adults or to exercise appropriate judgment and complete understanding of the events occurring around them.[177]

The Court then stated that "[s]o long as the child's age was known to the officer at the time of the interview, or would have been objectively apparent to any reasonable officer," including age as a factor in the custody analysis does not create issues with the objective reasonable person standard so as to make it functionally inoperable.[178] In many instances involving juvenile suspects or offenders, the analysis of whether they were in custody would make no sense without some consideration of their age.[179] The Court continued that it would not be appropriate to evaluate J.D.B.'s position from that "of a reasonable person of average years" because J.D.B.'s age necessarily affected how he viewed the circumstances of his interrogation.[180]

Next, the Court rejected the State's reasons as to why a juvenile's age should not be considered.[181] The Court rooted its reasoning primarily in an analysis of how a juvenile's cognitive abilities, maturity, and understanding differ from those of an adult.[182] Finally, the Court reversed the judgment of the Supreme Court of North Carolina and

176. *Id.* at 2403.

177. *Id.* at 2403–04.

178. *Id.* at 2404.

179. *Id.* at 2405.

180. *Id.*

181. *Id.* at 2406. The State argued: "age is a personal characteristic," as opposed to a circumstance external to the interrogation, and considering it results in the reasonable person test becoming too individually subjective; "age is irrelevant" because it focuses too closely on how a suspect may internalize a situation, and the in-custody test should not focus on the individual's internalization of the interrogation but rather on how the interrogation would be viewed objectively; consideration of age will make it more difficult for the police and courts to apply the "one-size-fits-all reasonable-person test;" and finally that excluding age from the in-custody analysis does not present a threat to juveniles' constitutional due process rights because the due process test of voluntarily given statements accounts for age. *Id.* at 2406–08.

182. *Id.* at 2403–05.

remanded the case for "proceedings not inconsistent with this opinion.[183]

In dissent, Justice Alito, joined by Chief Justice Roberts, Justice Scalia, and Justice Thomas, decried the majority's opinion as "fundamentally inconsistent" with the main justification for the *Miranda* rule—that is, the need for a clear and easily applicable rule for all cases.[184] Justice Alito's dissent essentially followed the same lines of reasoning adopted by the Supreme Court of North Carolina and the Court of Appeals of North Carolina: Age should not be considered because the *Miranda* rule and the objective reasonable person standard require courts to ignore personal, external, and individualized characteristics.[185] He also commented that many individuals will differ from the "hypothetical reasonable person," but that does not require a departure from the original test because these individuals have other legal recourse in claiming their confession was coerced or extracted involuntarily.[186] Specifically, Justice Alito disagreed with the majority's decision for three reasons: (1) many minors subjected to police questioning are near the "age of majority" and therefore the original *Miranda* rule would not be a "bad fit;" (2) the original *Miranda* in-custody rule is well-suited for juveniles because, although many police interrogations of juveniles occur in a "school setting," the rule has always taken the setting into account; and (3) in cases "where the suspect is especially young," such as in *J.D.B.*, courts can instead evaluate the "incriminating statements" made under the "constitutional voluntariness standard" to ensure that they were not acquired by inappropriate means.[187]

Justice Alito then discussed the history and purpose of *Miranda*, stating that the *Miranda* rule was intended to dispose of the confusing subjective "voluntariness" test that considered "[a]ll manner of individualized, personal characteristics" of the suspect, including education, mental health status, intelligence, and age.[188] He recommended

183. *Id.* at 2408.

184. *Id.* (Alito, J., dissenting).

185. *Compare id.* at 2408–09, *with In re* J.D.B., 674 S.E.2d 795, 800-01 (N.C. Ct. App. 2009), *aff'd*, 686 S.E.2d 135 (N.C. 2009), *rev'd*, 131 S. Ct. 2394 (2011), and *In re* J.D.B., 686 S.E.2d 135, 139–40 (N.C. 2009), *rev'd*, 131 S. Ct. 2394 (2011).

186. *J.B.D.*, 131 S. Ct. at 2409.

187. *Id.*

188. *Id.* at 2410. Justice Alito continued on to comment that after *Miranda*, the "[p]ersonal characteristics of suspects have consistently been rejected or ignored as irrele-

that rather than consider the age of an individual and risk muddling the *Miranda* test, courts should focus on the voluntariness of juveniles' statements; he believed that the "voluntariness inquiry" would adequately account for juvenile offenders "unique needs" as a consequence of being "mere children."[189] Justice Alito concluded that the "new, 'reality'-based approach" adopted by the majority would eventually create a loss of the standard's "clarity and ease of application."[190]

IV. ANALYSIS

In *J.D.B. v. North Carolina*, the Supreme Court extended the *Miranda* rule to include a consideration of age where juvenile offenders are concerned.[191] The Court's decision in *J.D.B.* relied on its previous decisions that considered juveniles a separate class of individuals.[192] The rule announced in *J.D.B.* appropriately considers the cognitive limitations of juveniles and allows courts and law enforcement officials to view juvenile offenders under the appropriate in-custody standard.[193]

Contrary to what the dissent in *J.D.B.* posited, the majority's decision does not destroy the *Miranda* rule, or obscure the two-part test to determine if an individual is in custody.[194] Rather, the rule announced in *J.D.B.* merely expands the test for one class of offenders: juveniles.[195] The Supreme Court's decision in *J.D.B.* marks an appropriate, progressive move to further establish categorical rules for juvenile offenders because of their marked differences compared to average adult offenders.[196] The reasoning behind *J.D.B.* may be appropriately applied to cognitively deficient adults due to the similarities that this class shares with juvenile offenders.[197]

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vant under a one-size-fits-all reasonable-person standard" and, as such, the test should not be changed now to consider even the characteristic of age. *Id.* at 2411, 2418.

189. *Id.* at 2418.

190. *Id.*

191. *See infra* Part IV.A.

192. *See infra* Part IV.A.1.

193. *See infra* Part IV.A.2.

194. *See infra* Part IV.B.

195. *See infra* Part IV.B.

196. *See infra* Part IV.C.1

197. *See infra* Part IV.C.2.

A. *The Supreme Court's Decision in* J.D.B *Has Positively Changed the Application of* Miranda *to Juveniles*

In *J.D.B.*, the Court appropriately formulated a test that accounts for the differences between juvenile and adult offenders in custodial situations and revived the historical arguments as to why juveniles should be treated differently.[198] The Supreme Court's decision in *J.D.B.* to expand the *Miranda* test to account for age will better protect the constitutional rights of juvenile offenders.[199]

1. *The Majority's Modification of the* Miranda *Rule Signifies Not Only a Reliance by the Court on Historical Arguments Concerning the Differences Between Adults and Juveniles but also Depicts the Evolving Manner in Which Juveniles Are Regarded in the Criminal Justice System*

In *J.D.B.*, the Supreme Court expanded on the application of the right against self-incrimination by adding age to the "reasonable person" analysis.[200] The Court recognized the need to evaluate the cognitive abilities of juveniles when it discussed how the specific context and surroundings of an interrogation may affect a juvenile offender's belief that he may leave the interrogation when it compared the juvenile's belief to an adult offender's belief that he may depart from the same situation.[201] The Court referenced *Haley v. Ohio* as an example of a case that appropriately categorized the experiences of juveniles as compared with adults.[202] That is, the Court in *Haley* was correct to note that what "would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens."[203]

198. *See infra* Part IV.A.1.

199. *See infra* Part IV.A.2.

200. J.D.B. v. North Carolina, 131 S. Ct. 2394, 2399 (2011).

201. *Id.* at 2403. The Court specifically discussed how the experiences of an adult may inform the individual that an interrogation is occurring and he need not feel pressured by the surrounding circumstances, whereas the experiences of a juvenile may result in the child being overwhelmed by the pressures and formalities associated with the interrogation process. *Id.*

202. *Id.* at 2397; Haley v. Ohio, 332 U.S. 596, 599 (1948).

203. *Haley*, 332 U.S. at 599.

Developmental evidence supports this assertion and suggests that juveniles lack the same cognitive processing abilities as adults.[204] Specifically, juveniles may be less inhibited in their actions and words as a consequence of a surge in neurological development through their mid- and late-teenage years.[205] Paired with this decreased inhibition, juveniles are "more prone to erratic behavior than adults" and process situations that may be emotionally charged, such as an interrogation, differently than adults would.[206]

It is useful to evaluate the circumstances surrounding J.D.B.'s questioning in light of *Haley* and specific cognitive evidence. J.D.B.'s perception of the situation may be gathered from his specific statement to Officer DiCostanzo concerning "whether he would still be in trouble" if he returned the stolen items and his confession when Officer DiCostanzo brought up the threat of being placed in a juvenile detention center.[207] It is likely that any juvenile under the circumstances of an interrogation in a closed room, where he was being urged by an adult in a position of authority to "do the right thing," would be influenced by the fear and pressure of the situation.[208] Such fear and pressure may compel the juvenile to act on his first impulse

204. *See* Mary Beckman, *Crime, Culpability, and the Adolescent Brain*, 305 SCI. 596 (2004) (discussing how the brain is still developing in the middle-to-late teenage years and the differences between adult and juvenile brains and cognitive function).

205. *Id.* at 596–97. This development is characterized by what has been labeled as a reorganization and "pruning" of neurons that "shape[s] the brain's neural connections for adulthood" and results in a decrease of impulsivity as well as better integration of information from the surrounding environment. *Id.* This reorganization is signified throughout adolescence by an increase in development of white matter in the brain and a recession of gray matter. *Id.*

206. *Id.* at 599. Specifically, the amygdala, "a brain region that processes emotions," functions differently in juveniles than it does in adults. *Id.* Research indicates that juveniles process fear and other emotions differently than adults do because of their decreased cognitive inhibition, which may contribute to different responses in environments where strong emotions are present. *Id.*

207. *J.D.B.*, 131 S. Ct. at 2399–400 (internal quotation marks omitted).

208. *See* Beckman, *supra* note 204, at 597 (elaborating via experiment on how the adolescent brain responds differently to outside stimuli than the adult brain does); Catherine Sebastian et al., *Development of the Self-Concept During Adolescence*, 12 TRENDS IN COGNITIVE SCI. 441, 443 (2008) (discussing how when compared to adults, adolescents have an increased awareness of others' perspectives, leading them to interpret social encounters differently).

and confess, whether he committed a crime or not.[209] The possibility of being "evaluated" by others in the room[210] may also increase pressure for the juvenile to do what he perceives to be the right thing under the circumstances and to state what he thinks the adults wish to hear. The juvenile's cognitive capacity may not allow him to stop the questioning on his own because he feels as though he must answer the questions posed by his interrogators in order to please them and escape the situation.[211] These cognitive processes and the surrounding circumstances, therefore, make it reasonable to assume that a juvenile in a position similar to that of J.D.B. is unlikely to realize that he may decline to answer any questions posed to him. Without considering age in regard to the individual's in-custody status, a law enforcement officer may not realize that a juvenile would consider himself in custody and thus the officer may commit a mistake that would render the juvenile's statements inadmissible at trial.[212]

2. *The Supreme Court Correctly Expanded the* Miranda *Standard to Include an Evaluation of Age, While the Dissent Failed to Recognize That Such a Rule Does Not Completely Destroy the Traditional* Miranda *Test*

The Court correctly determined in *J.D.B.* that juveniles must be evaluated differently than adults in interrogation situations because of differences in mental capacity, judgment, and understanding.[213] The circumstances when a juvenile has waived his *Miranda* rights must be scrutinized differently because the cognitive abilities of juveniles are different than those of adults, especially where outside pressures are

209. *See* Beckman, *supra* note 204, at 597 ("[T]eens' impulse control is not on a par with adults'."); Sebastian et al., *supra* note 208, at 443 (noting that children are more self-conscious than adults).

210. *See* Sebastian et al., *supra* note 208, at 443 (discussing the "imaginary audience," a phenomenon in adolescents whereby they "believe that others are constantly observing and evaluating them, even if this is not actually the case" (citation omitted)).

211. *See id.* at 444 (explaining the enhanced need among adolescents for positive social feedback).

212. *See id.* at 2401 (explaining that, under the *Miranda* test, "if a suspect makes a statement during custodial interrogation, the burden is on the Government to show, as a prerequisit[e] to the statement's admissibility as evidence . . . that the defendant voluntarily, knowingly and intelligently waived his rights [against self-incrimination]" (alteration in original) (citations omitted) (internal quotation marks omitted)).

213. *Id.* at 2403–04.

apparent.[214] The Supreme Court's adoption of such a rule, and the policy reasons behind it, comports with early cases in which the Court encountered the issue of youthful offenders receiving, or not receiving, readings of their rights when being questioned.[215]

Conversely, the dissent characterized the Supreme Court's previous view on how to evaluate questioning of juveniles in custodial or potentially custodial situations as problematic because it shifted the in-custody test by considering individual, external characteristics.[216] The dissent described the proper *Miranda* test as a "one-size-fits-all reasonable-person" test that must be adhered to regardless of any characteristics of the offender or any surrounding circumstances.[217] Nevertheless, Justice Alito admitted that "many suspects who are under 18 will be more susceptible to police pressure than the average adult."[218] Findings from developmental studies support this assertion as well.[219] Despite this acknowledgment, the dissent entered into a misguided discussion of how much farther the *Miranda* test may be expanded now that the majority has essentially opened the door to considering subjective factors.[220] Regardless, the majority's arguments prevailed and, coupled with developmental research data, provide a clear set of reasons as to why juveniles should be afforded a different rule where *Miranda* rights are concerned.[221]

214. *See* Sebastian et al., *supra* note 208, at 443 (noting that children are more self-conscious than adults); *see also* Brief of Center on Wrongful Convictions of Youth et al. as Amici Curiae in Support of Petitioner at 20, J.D.B. v. North Carolina, 131 S. Ct. 2394 (2011) (No. 09-11121) ("[J]uveniles are uniquely susceptible to making unreliable statements during the pressure-cooker of police interrogation.").

215. *See supra* Part II.A.1 (discussing the Court's historical treatment of juveniles for in-custody purposes).

216. *J.D.B.*, 131 S. Ct. at 2409 (Alito, J., dissenting).

217. *Id.* Justice Alito's dissent made no mention of how *not* accounting for age can cause problems for law enforcement officials; instead, he discussed what he believed to be the operational flaws associated with the new rule. *See id.* at 2418 (concluding the new formulation of the *Miranda* test for juveniles will result in a loss of the test's straightforward and easy application).

218. *Id.* at 2413.

219. Beckman, *supra* note 204, at 597 (analyzing why adults generally have better impulse control than juveniles).

220. *J.D.B.*, 131 S. Ct. at 2413–15.

221. *See id.* at 2398–99 (majority opinion) (holding that "a child's age properly informs the *Miranda* custody analysis"); *see also supra* Part III (discussing the Court's reasoning).

B. *The Supreme Court's Decision in* J.D.B. *Does Not Destroy the Ability of Police Officers to Implement the Two-Part Test from* Thompson *to Effectively Question Juveniles*

The Court's addition of age still comports with the two-part test announced in *Thompson v. Keohane* for determining whether an individual is in custody for *Miranda* purposes.[222] The Court simply added another factor for officers to consider during custodial interrogations; it does not require officers to consider any subjective characteristics of the individual.[223] After *J.D.B.*, the proper application of the *Thompson* test would require an officer to: (1) evaluate the circumstances of the interrogation;[224] and, (2) given that set of circumstances, determine whether a reasonable person *of the same age* as the juvenile would believe he could stop the interrogation and leave.[225]

Under this test, a situation might arise where a juvenile would not need to be Mirandized because, under the circumstances, even an individual of his age would understand the situation and would not feel compelled to remain present for questioning.[226] An analysis of

222. Thompson v. Keohane, 516 U.S. 99, 112 (1995); *see also supra* text accompanying note 118 (describing the two-part test). Applying the second part of this test, the Court noted that "[i]n some circumstances, a child's age 'would have affected how a reasonable person' in the suspect's position 'would perceive his or her freedom to leave.'" *J.D.B.*, 131 S. Ct. at 2402–03 (citation omitted).

223. *J.D.B.*, 131 S. Ct. at 2404. The Court stated that the inclusion of age in "the custody analysis requires officers neither to consider circumstances 'unknowable' to them, nor to 'anticipat[e] the frailties or idiosyncrasies' of the particular suspect whom they question." *Id.* (alteration in original) (citations omitted).

224. *See id.* at 2411 (Alito, J., dissenting) ("Relevant factors . . . include[] . . . where the questioning occurred, how long it lasted, what was said, any physical restraints placed on the suspect's movement, and whether the suspect was allowed to leave when the questioning was through." (footnotes omitted)).

225. *See id.* at 2398–99 (majority opinion) (holding that "age properly informs the *Miranda* custody analysis"); note 118 and accompanying text (outlining *Thompson*'s two-part test).

226. For example, imagine a circumstance where a police officer asked a child a question on the street and the child somehow incriminated himself. Add to this the fact that the child was perhaps walking to the bus stop and the officer walked along with him for a chat and the child got onto the bus and left. The child was never detained, never placed anywhere without his consent and merely answered questions that the officer posed to him. This may be a more feasible situation for an older youth (perhaps in his late teens) than for a young child who may feel he must talk to the police officer or face punishment.

one of the Court's previous decisions, *Yarborough v. Alvarado*, depicts how the revised *Thompson* standard would apply to an already decided case.[227] The Court's original decision in *Alvarado* informed courts and law enforcement officials about when a juvenile may think he is not in custody because he, or his legal guardians, voluntarily submitted to questioning.[228] Employing the revised *Thompson* standard in these circumstances, it is evident that the juvenile did not use his own capacity to submit to interrogation. The decision of the parents validated the questioning as appropriate, and the juvenile could view the adult presence as an extra safeguard.[229] Under these circumstances, the juvenile offender may not be found in custody because a reasonable person of the same age would feel he could stop the interrogation.

While *Alvarado* demonstrates how the revised *Thompson* standard could be applied, *J.D.B.* elaborates on how this revised standard is necessary to avoid absurd results. The circumstances in *J.D.B.* differed from the circumstances in *Alvarado* for several reasons: J.D.B.'s guardians were not called into the school or at all; J.D.B. was questioned in an official setting but was not taken to the station house; he did not independently leave class when summoned to the office, rather the school security guard accompanied him as an escort; and he was free to leave at the end of the interrogation after he gave Officer DiCostanzo his statement.[230] Under these operative facts, the Supreme Court asked, as it must under *Miranda* and *Thompson*, how the ideal "reasonable person of average years" would understand such a situation if he occupied J.D.B.'s position.[231] Specifically, the Court queried,

> how would a reasonable adult understand his situation, after being removed from a seventh-grade social studies class by a uniformed school resource officer; being encouraged by his assistant principal to "do the right thing"; and being warned

227. *Alvarado* was decided under the original *Thompson* standard; it provides a good example of how the test was applied and how the revised *Thompson* test may be applied in a similar situation.

228. *Id.* at 663–65.

229. *See id.* at 664–65 (describing how the presence of Alvarado's parents in the lobby of the police station weighed in favor of Alvarado being found not in custody).

230. *J.D.B.*, 131 S. Ct. at 2399–400.

231. *Id.* at 2405.

> by a police investigator of the prospect of juvenile detention and separation from his guardian and primary caretaker?[232]

The Court correctly recognized that J.D.B.'s situation would be "absurd[]" to an adult and therefore the test for juveniles must be altered to account for these differences.[233]

C. *The Supreme Court's Decision in* J.D.B. *Adhered to the Progressive Trend of Establishing Categorical Rules for Juvenile Offenders and May Be Applied to Another Class of Offenders*

The Court's alteration of the *Miranda* test in *J.D.B.* adds the factor of age for courts and law enforcement to consider, and requires a focus on psychological developmental and cognitive data.[234] The Court's decision in *J.D.B.* indicates a continuing trend of recognizing juveniles' stage of development and of creating categorical rules for juvenile offenders.[235] Further, based on the Court's reasoning in *J.D.B.*, the test formulated by the Court could apply to another discrete category of offenders: cognitively deficient adults.[236]

1. *The Supreme Court's Decision in* J.D.B. *Adhered to the Positive Trend of Defining Juveniles as a Separate Class which Must Be Considered Differently Under Existing Legal Principles in the Criminal Justice System*

As the Court articulated in *J.D.B.* and other decisions, juveniles must be afforded differential treatment within the criminal justice system.[237] The decision in *J.D.B.* marks a positive milestone in juvenile criminal justice policy: the recognition that juvenile offenders must be viewed under a separate *Miranda* rule than the rule applied to adults.[238] Such a rule allows the criminal justice system to operate on a more individual level and account for the special position of juve-

232. *Id.*

233. *Id.*

234. *See supra* Part IV.A.

235. *See infra* Part IV.C.1.

236. *See infra* Part IV.C.2.

237. *See, e.g.*, J.D.B. v. North Carolina, 131 S. Ct. 2394, 2399 (2011); Roper v. Simmons, 543 U.S. 551, 578 (2005); Graham v. Florida, 130 S. Ct. 2011, 2034 (2010).

238. *J.D.B.*, 131 S. Ct. at 2399; *cf. id.* at 2409 (Alito, J., dissenting) (arguing that the *Miranda* test is properly a one-size-fits-all analysis).

nile offenders.[239] While some juveniles have vast experiences with the criminal justice system, many others do not have those experiences, and therefore they may not realize their rights in an interrogation situation.[240] Although the possibility exists that this new rule may cause police officers to Mirandize individuals they normally would not,[241] consideration of age for custody purposes does not put undue burden on police officers. Likely, many officers already make such judgment calls concerning the age of individual juvenile offenders they are about to question; such a determination informs the officers of whether the child's guardian needs to be contacted and how the interrogation should proceed.[242] Further, the rule benefits police officers because it encourages them to Mirandize individuals and ensures that collected statements will not be summarily rejected for lack of following procedures.[243] Overall, the rule announced in *J.D.B.* has positive policy implications, providing juveniles with better protection of their rights and furthering the Supreme Court's trend of establishing separate rules for juveniles.[244]

The rule in *J.D.B.* reinforces the *Roper* and *Graham* rules that treat juveniles differently.[245] All three of these rules were created through the same lines of reasoning: Individuals under the age of eighteen do not maintain the same cognitive processing capacity as adults and therefore should not be treated in exactly the same way as adult of-

239. *See* Brief for the Am. Psychol. Ass'n, and the Mo. Psychol. Ass'n as Amici Curiae Supporting Respondent at 4–15, *Roper*, 543 U.S. 551 (No. 03-633) (discussing juveniles as a group and how their developmental position affects their ability to comprehend and understand their situation and involvement within the criminal justice system).

240. *J.D.B.*, 131 S. Ct. at 2402–08 (majority opinion).

241. *See* Robert Barnes, *Child Suspects' Age Crucial to Reading of Rights, Justices Rule*, WASH. POST, June 16, 2011, at A2 (reporting on the concern that the Court's decision would cause police officers to give more warnings than necessary).

242. *See* Brief of Juv. L. Ctr. et al. as Amici Curiae in Support of Petitioner at 21–31, *J.D.B.*, 131 S. Ct. 2394 (No. 09-11121) (describing existing requirements for police officers to consider age).

243. *See J.D.B.* 131 S. Ct. at 2408 (acknowledging that the consideration of age erects a barrier to the admission of a defendant's incriminating statements at trial).

244. *See id.* at 2399 (protecting juveniles in interrogatory situations); Graham v. Florida, 130 S. Ct. 2011, 2034 (2010) (prohibiting the imposition of life without parole on a juvenile offender who did not commit a homicide); Roper v. Simmons, 543 U.S. 551, 578 (2005) (forbidding the imposition of the death penalty on offenders under the age of eighteen).

245. *J.D.B.*, 131 S. Ct. at 2399; *Graham*, 130 S. Ct. at 2034; *Roper*, 543 U.S. at 578.

fenders.[246] Rather, based on the developmental differences between juveniles and adults, juveniles should be afforded more protections within the criminal justice system because they may fail to comprehend and react to certain situations in the same way as adults.[247] Developmental research also provides further insight as to why juveniles should be treated differently than adult offenders in the criminal arena: Because of differences between the developing juvenile brain and the adult brain, juveniles are more likely to engage in risky and impulsive behavior, the consequences of which they may not recognize until well after the fact.[248] While such developmental differences should not provide juveniles a "free-pass" to commit crime, it makes sense to evaluate juvenile offenders under a different standard. The creation of rules like those found in *J.D.B.*, *Roper*, and *Graham* provide very limited, yet appropriate, accommodations for juvenile offenders.[249] While these rules may seem more lenient or subjective for juveniles, they still hold them to a standard by which they may be brought into court and punished for their crimes.[250] Ultimately, the creation of these "categorical" rules provides law enforcement and courts with better guidelines on how to appropriately evaluate juvenile offenders within the criminal justice system.

2. *Although the Supreme Court's Alteration of the* Miranda *Test Does Not Open It to Many Additional Subjective Standards for Adult Offenders, the Rule Announced in* J.D.B. *Could Apply to Adult Offenders Suffering from Cognitive Disabilities*

The change in the *Miranda* analysis with respect to juveniles does not open the *Miranda* test to the addition of other elements with respect to normal adult offenders.[251] Moreover, it appears the Court still intended for other procedural rules from adult cases to apply to

246. *J.D.B.*, 131 S. Ct. at 2404–05; *Graham*, 130 S. Ct. at 2026–27; *Roper*, 543 U.S. at 569–70.

247. Beckman, *supra* note 204, at 597.

248. Daniel Romer, *Adolescent Risk Taking, Impulsivity, and Brain Development: Implications for Prevention*, 52 DEVELOPMENTAL PSYCHOBIOLOGY 263, 263–64 (2010).

249. *See supra* note 244.

250. None of the rules in *J.D.B.*, *Roper*, or *Graham* seek to absolve juveniles from crimes; they merely afford juveniles extra protection within the justice system by accounting for their age. *See supra* note 244.

251. *See* J.D.B. v. North Carolina, 131 S. Ct. 2394, 2402 (2011) (discussing the continuing objectivity of the *Miranda* test).

juvenile offenders.[252] Thus, the addition of age merely informs the *Miranda* analysis in juvenile cases.[253] The majority defended its position when it commented that "a child's age differs from other personal characteristics that, even when known to police, have no objectively discernible relationship to a reasonable person's understanding of his freedom of action."[254] Like an adult offender, courts and law enforcement do not need to consider the juvenile's prior experience within the criminal justice system; they merely need to evaluate if, at the time of the questioning, the child's age was known or would have been known under the circumstances to a "reasonable officer."[255] The Court also stated that the new rule applies specifically to juveniles and does not result in the wholesale destruction of the *Miranda* analysis imagined by the dissent.[256] The majority stated, in short, that the rule announced in *J.D.B.* does not change the *Miranda* analysis for adult offenders.

While the decision in *J.D.B.* comports with the Supreme Court's other decisions regarding juveniles and only adds a single factor to the *Miranda* analysis, it is possible that cognitively deficient adults could invoke the rule in *J.D.B.*[257] In particular, the rule may be applied to those individuals who have disorders that are characterized by a lack of inhibition or inability to control impulsive behavior.[258] For example, the following scenario may be imagined: An offender who

252. *Id.* at 2406 (discussing the newly formulated rule and how age may not be determinative in some cases). The Court further refuted the State's and the dissent's arguments by stating that the addition of age does not open the door for a further consideration of other subjective characteristics for *Miranda* purposes. *Id.* at 2406–08.

253. *Id.* at 2399.

254. *Id.* at 2404.

255. *Id.* at 2404–06.

256. *Id.* at 2406–07.

257. Such a scenario may be imagined in a case such as *Atkins v. Virginia,* where the Court based its decision on evidence supporting decreased metal capacity of cognitively deficient adults. 536 U.S. 304, 320–21 (2002).

258. An expansion of the test announced by the majority in *J.D.B.* is imagined by Justice Alito, who decried the majority's decision as opening up the floodgates to a loss of "clarity and ease of application" of the *Miranda* standard. *J.D.B.*, 131 S. Ct. at 2418 (Alito, J., dissenting). The majority of the Court did make reference to the mental capacities of juvenile offenders when compared to normal adult offenders; thus it is easy to draw similarities between juvenile offenders and cognitively deficient adult offenders. *Id.* at 2403 (majority opinion).

has an IQ that would classify that individual as cognitively deficient[259] commits an offense; to use the example from *J.D.B.*, he commits a burglary. His cognitive impairment causes him to have psychological and intellectual abilities similar to that of a child,[260] and the individual does not understand why he is called into his supervisor's office at work the next day (or asked to come to the police station of his own accord). Like *J.D.B.*, he is seated in a room with one or more police officers, and maybe even other authority figures he is familiar with, such as a supervisor or manager. Then he is asked a battery of questions in a closed setting. Feeling confused, pressured, and overwhelmed by the situation, the individual is coerced into confessing to the crime without ever receiving any reading of his rights.[261] Similar to *J.D.B.*, this individual is charged with the confessed crime and must appear before a court. At this point, the facts in this fictional case appear similar to those of J.D.B.'s except with regard to the alleged offender's physical age. While the alleged offender is physically over the age of eighteen, his mental state and cognitive understanding may be compared to that of J.D.B.'s; that is, the alleged offender belongs to a group that is characterized by being easily susceptible to suggestion and coercion.[262]

After the hypothetical offender's arrest, he meets with his attorney who, realizing his client's plight, wishes to utilize the rule from *J.D.B.* and exclude his client's statements based on his lack of understanding of the situation when he made his confession.[263] At this point, a judge would need to consider whether the rule in *J.D.B.* should be extended to include "psychologically juvenile" adult of-

259. For a definition, see *supra* note 144.

260. *See* Saul M. Kassin et al., *Police-Induced Confessions: Risk Factors and Recommendations*, 34 L. & HUM. BEHAV. 3, 20–21 (2010) (equating the cognitive abilities of mentally deficient adult offenders with the cognitive abilities of juvenile offenders in interrogation situations); Michael J. O'Connell et al., Miranda *Comprehension in Adults with Mental Retardation and the Effects of Feedback Style on Suggestibility*, 29 L. & HUM. BEHAV. 359, 359–60 (2005) (discussing the limited abilities of cognitively deficient adults to fully understand their constitutional rights in an interrogation situation).

261. O'Connell et al., *supra* note 260, at 359–60.

262. *Id.* at 360–61.

263. *See* Kassin et al., *supra* note 260 at 8–9, 20–21 (discussing the inability of both cognitively deficient adults and juveniles to fully or even partially understand *Miranda* warnings and the situations in which they are administered).

fenders.[264] Similarities may be drawn between the hypothetical offender and a juvenile offender in the same situation based on the cognitive data and characteristics of juveniles cited by the Supreme Court in *J.D.B.*[265] Indeed, reasoning applied to cognitively deficient adults has often been applied to juveniles.[266] Under this reasoning, it would follow that juvenile offenders and cognitively deficient adult offenders fall into the same class: a class composed of individuals who, although they may have different physical ages, have similar cognitive ages and abilities and therefore should be afforded the same *Miranda* protections under the law.[267] Without such protections, cognitively impaired individuals often do not recognize their ability to invoke their constitutional rights or may be pressured into making inappropriate or false confessions that are later used against them in court.[268] Extending the test formulated in *J.D.B.* to cognitively impaired adults would provide an extra layer of protection to them, thereby affording them justice within the criminal justice system.[269]

Two potential issues arise when the rule from *J.D.B.* is applied to adult offenders: (1) how will police officers know they are questioning

264. For support of this proposition, the judge would likely want to refer to the discussion of the cognitive abilities of juveniles in *J.D.B.* as well as secondary sources that support comparisons between juvenile offenders and adults with cognitive deficiencies. *See* J.D.B. v. North Carolina, 131 S. Ct. 2394, 2403–04 (2011) (analyzing how a juvenile's cognitive capacity differs from that of an adult); *see also supra* note **Error! Bookmark not defined.** (providing an example of secondary sources that compare cognitively deficient adults to juveniles).

265. *See J.D.B.*, 131 S. Ct. at 2403–04 (providing characteristics of juveniles).

266. *Compare* Atkins v. Virginia, 536 U.S. 304, 321 (2002) (deciding that cognitively deficient adult offenders may not be sentenced to the death penalty), *with* Roper v. Simmons, 543 U.S. 551, 559–60, 578 (2005) (adopting *Atkins*'s reasoning and determining that the death penalty may never be imposed on juveniles).

267. *See* Kassin et al., *supra* note 260, at 8–9, 20–21 (discussing the similarities between juvenile offenders and adult offenders with cognitive disabilities in custodial, interrogatory situations).

268. *See, e.g.*, Robert Perske, *False Confessions from 53 Persons with Intellectual Disabilities: The List Keeps Growing*, 46 INTELL. & DEVELOPMENTAL DISABILITIES 468 (2008) (offering examples of fifty-three false confessions acquired from individuals with various cognitive deficiencies while in custody).

269. *See* Kassin et al., *supra* note 260, at 30–31 (discussing two other methods for protection: (1) mandatory attorney presence during questioning, and (2) specialized training of law enforcement officials and other individuals involved in the criminal justice system who come into contact with cognitively deficient adults).

a cognitively deficient adult, and (2) how will the application of the *J.D.B.* rule affect the ability of police to acquire confessions from guilty individuals and convicted criminals? While these two issues are important to contemplate, appropriate remedial measures may be taken to diminish the impact of *J.D.B.* in the interrogation of cognitively impaired adults.[270]

With regard to the first issue, police departments maintain a number of options to educate officers on how to identify adults with potential cognitive or psychological deficiencies.[271] For example, police departments could ask each individual taken into custody to complete a short intake sheet before questioning commences.[272] Although the possibility exists that such education may not always be enough to allow officers to easily identify adults suffering from mental disabilities, it would provide officers with the ability to discern whether an individual who appears cognitively "normal" is really operating under a diminished capacity.[273] Opponents of the application of the *J.D.B.* rule may view this measure as placing too much responsibility on the officers performing the questioning; such education, however, may decrease the skepticism that surrounds "voluntary" confessions, however, and may result in more appropriate convictions and fewer false confessions on the part of individuals who suffer from cognitive deficiencies.[274] Further, specialized training for police officers would afford them the opportunity to appropriately interrogate cognitively

270. *See* Kassin et al., *supra* note 260, at 25 (stating that there is renewed support for the reform of the interrogation process and renewed interest in preventing false confessions).

271. *See* Caroline Everington & Solomon M. Fulero, *Competence to Confess: Measuring Understanding and Suggestibility of Defendants with Mental Retardation*, 37 MENTAL RETARDATION 212, 218–19 (1999) (emphasizing the importance of educating law enforcement officers to understand the characteristics of mental retardation); *see also Information for Law Enforcement and Magistrates*, THE ARC NORTH CAROLINA, http://www.arcnc.org/law-enforcement-and-magistrates (last visited Oct. 3, 2012) [hereinafter Training Materials] (providing a list of resources that law enforcement agencies may use for identification training, including a handout that lists common traits, attributes, and behaviors that individuals with cognitive disabilities exhibit).

272. *See* Training Materials, *supra* note 271 (containing a handout with an intake sheet attached that may be manipulated depending on department needs).

273. *Id.*

274. Kassin et al., *supra* note 260, at 9.

impaired individuals and, as a result, it may curb the abuses of power during the interrogation process.[275]

With regard to the second factor, reform measures may be undertaken by the entire justice system to ensure that inappropriate confessions are not acquired from cognitively deficient adults.[276] Such suggested reform measures include: mandatory taping of all formal interrogations,[277] the presence of an attorney or guardian at all interrogations,[278] a revamping of specific interrogation techniques employed by law enforcement officials,[279] as well as other techniques and measures.[280] While opponents of the application of the *J.D.B.* rule to adults may not be completely placated by these measures and may argue that they defeat the purposes of *Miranda* and unnecessarily complicate the justice system, such innovations and developments are necessary in order to protect all individuals who enter the system.[281] Further, such measures do not *per se* change the *Miranda* analysis but instead add more safeguards and checks to the criminal justice sys-

275. *See* Everington & Fulero, *supra* note 271, at 212, 218–19 (emphasizing the need for heightened scrutiny of confessions given by cognitively deficient adults); *see also* Kassin, et al., *supra* note 260, at 12–13 (discussing the abuse of power by law enforcement officers during interrogations).

276. *See* Kassin et al., *supra* note 260, at 25 (noting the "renewed calls for caution regarding confessions and the reform of interrogation practices").

277. *Id.* at 25–27. In February 2011, the American Bar Association approved the Uniform Electronic Recordation of Custodial Interrogations Act, which was created by the National Conference of Commissioners on Uniform States Laws. ABA House of Delegates Resolution 109C, *Report: Uniform Electronic Custodial Interrogations Act* (2011). This Act purports to require the "electronic recording of the entire custodial interrogation process by law enforcement," but also permits states to decide what types of crimes this Act applies to and how the recording will be accomplished. *Id.* The goal of this Act is to decrease the instance of false confessions and to improve the integrity of the criminal justice system as a whole. *Id.*

278. Kassin et al., *supra* note 260, at 30.

279. *Id.* at 27–30.

280. Other techniques may include continuing or extra education and training for law enforcement on how to address interrogation situations in which they may be questioning a cognitively deficient adult. *See supra* text accompanying notes 271–273; *see also* Training Materials, *supra* note 271.

281. *See* Everington & Fulero, *supra* note 271, at 212–13, 217–19 (describing the vulnerabilities of suspects with mental retardation and suggesting protections); Kassin et al., *supra* note 260, at 30–31 (describing two ways to protect vulnerable suspect populations during interrogations).

tem, therefore enhancing the credibility of confession evidence.[282] Overall, such remedies provide guidelines and issues for law enforcement and courts to consider and aid law enforcement's job of acquiring confessions and convicting criminals.[283]

V. CONCLUSION

In *J.D.B. v. North Carolina*, the Supreme Court expanded the *Miranda* in-custody test for *juveniles* to include a consideration of age.[284] The Court appropriately expanded the *Miranda* test by relying upon the differences between adult and juvenile offenders and by referencing historical arguments that supported this expansion.[285] The rule announced in *J.D.B.* neither destroys the *Miranda* test nor the two-step *Thompson* test for in-custody determinations; rather, it merely expands the rule for one class of offenders.[286] Overall, with *J.D.B.*, the Court continued to move in a forward direction by considering juveniles' cognitive limitations and by establishing separate categories of rules for juvenile offenders.[287] Finally, there are limited instances when the rule in *J.D.B.* may be applied to another discrete class of offenders, specifically cognitively deficient adults.[288]

282. *See* Kassin et al., *supra* note 260, at 9 (discussing the skepticism of confession evidence).

283. *See id.* at 31 (arguing that more attention to the problem of false confessions, coupled with reform efforts, will better enable police to make accurate decisions).

284. J.D.B. v. North Carolina, 131 S. Ct. 2394, 2399 (2011)

285. *See supra* Part IV.A.

286. *See supra* Part IV.B.

287. *See supra* Part IV.C.1.

288. *See supra* Part IV.C.2.