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POST J.D.B: WHERE DO WE GO FROM HERE?

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The Supreme Court in 2010 decided to extend *Miranda v. Arizona* with *J.D.B. v. North Carolina* case. *J.D.B.* held that “a child’s age properly informs the *Miranda* custody analysis, so long as the child’s age was known to the officer at the time of police questioning, or would have been objectively apparent to a reasonably officer.”¹ This case showed that the Supreme Court recognized that minors lack the same capacity to understand things the way adults can.

The minor at the center of the *J.D.B.* case was a thirteen-year old boy from North Carolina who was convicted of breaking and entering as well as larceny. He was in the seventh-grade at the time of the incident. Investigator DiCostanzo came to the school after a tip that the stolen digital camera from one of the houses was seen in the minor’s possession. DiCostanzo knew the age of the minor because he asked the school to verify his birthday, address and parent contact information.² Neither DiCostanzo, nor the school administrators made an attempt to contact J.D.B.’s grandmother who was his legal guardian.

J.D.B. was questioned behind closed doors with two police officers and two school administrators. He was not allowed to call his grandmother nor was he given his *Miranda* warnings; moreover no one told him that he was free to leave. The officers started the conversation with small talk before they proceeded to question the minor about the break-ins. The assistant principal who was present at the interrogation, urged

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the minor to do the right thing. J.D.B. continued to deny any involvement in crime until DiCostanzo mentioned sending him to juvenile detention.

The Court has decided to consider age when police officers are to give the Miranda warning, but what does it mean for the juvenile justice system or society as a whole. In Gault, the Court “recognized that juveniles deserve heightened protection, which the Court termed ‘differences in technique—but not in principle,’ in ‘administering the privilege.’” Some states have adopted a common law rule to ensure that their juveniles are protected in their juvenile justice system, such as Massachusetts Supreme Judicial Court and the Kansas Supreme Court used the finding of the a psychologist Thomas Grisso to develop a state law that a parent or other concerned adult must be present during police interrogation of a juvenile, and that juvenile must be permitted to consult with the adult. Thomas Grisso had a study published in Juveniles’ Wavier of Rights: Legal and Psychological Competence, which reported finding of an empirical study that took place over three years about delinquent youth and adult criminal offenders that examined their ability to comprehend the words and phrases used in customary Miranda warnings and to comprehension the nature and significance of the rights itemized in the warning. These studies found the following:

‘As a class, juveniles of age 14 and below demonstrate incompetence to waive their rights to silence and legal counsel. This conclusion is generally supported across measures of both understanding and perception in our studies, and in relation to both absolute and relative (adult norms) standards.’

3 Id.
4 Id. at 2400.
6 Id. at 139.
‘As a class, juveniles of age 15 and 16 who have IQ scores of 80 or below lack the requisite competence to waive their rights to silence and counsel.’

‘About one-third to one half of juveniles 15 and 16 years of age with the IQ scores about 80 lack the requisite competence to waive their rights when competence is defined by absolute standards (that is, the satisfaction of scoring criteria for adequate understanding). As a class, however, this group demonstrates a level of understanding and perception similar to that of 17-21 years old adults for whom the competence to waive their rights is presumed in the law.’

Justice Sotomayor [in the J.D.B. case] took the steps of entirely reframing the facts about adolescent capacity as generally known ‘commonsense propositions,’ which ‘the literature confirms’ but for which ‘citation to social science and cognitive science authorities is unnecessary.’

Many other states have already used the social science authorities when deciding on decisions pertaining to juveniles.

The Courts articulates that an officer has to make sure the confession from a minor is “voluntary, knowing, and intelligent” but in order for a confession to be voluntary it has to be knowing and intelligent first but the notion of another person’s intelligence is very subjective. The voluntariness route had appeared to become a dead end because the amorphous nature of the involuntariness standard gave the lower courts free rein and these courts generally used their discretion to uphold confessions, particularly when the crime charged was a serious one.

Society has to start somewhere to help the courts with the children. School is the best place to start especially because of the increase violence and presence of police officers in elementary and high schools in the last few years. The increase of police officers in schools has more so been in the poverty stricken neighborhoods. “Minority

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9 Id. at 156.
10 Id. at 133.
youths arguably stand a greater chance of being incarcerated than of obtaining a college degree and entering the economic mainstream.”\textsuperscript{11} If we apply this factor to the new age analysis of Miranda rights, it still does not give a child all the protection they would need in a situation of being questioned by the police. For instance, if the accused is a young African-American male and the officers are two white Americans who never lived in a poverty stricken neighborhood, the officers with the minor more than likely would be different than if he was a white youth. Information that these African-Americans youth learn from their surrounding is that the police are bad and are trouble. There has been a lot of evidence over the years showing that poverty neighborhood lacks the necessary resources or the same resources as the more prominently white neighborhoods. Because these neighborhoods lack some resources, the parents may be working all day and the child is left on its own to find out what they need to succeed in the world. The schools in these neighborhoods have fewer teachers and underpaid staff, not to say the staff is not underpaid in some white neighborhoods as well. All African-Americans do not live in these neighborhoods. “But no one can dispute that African-Americans, as a group, are more likely than not to experience the racial disparities—in education, health care, economics, involvement with criminal justice system—that characterize the color line.”\textsuperscript{12} With this being an issue, by just telling the minors their Miranda Rights as soon as the police encounter a minor will not be satisfactory to the scope of protecting the minor’s rights. When a parent or concerning adult is required to be present, it is a higher chance that they will be able to understand to obtain counsel. If not anything parents are the authority figures that children are more afraid of. If in a room is the parent, a lawyer and

\textsuperscript{12} Id. at 837.
police officer, then it might also be a more likely chance that minor will confess but it will be a legal way of receiving a confession from the minor. The police would not have to manipulate the minors anymore. Barry C, Feld, explains, “the juvenile court affirmed the responsibility of families to raise their children while expanding the state’s prerogative to act as parens patriae, or “super parent,” and to exercise flexible social control in the “best interest” of young people.”13 The best interest of the child would be to protect the rights of the child, when the police interrogate these minors in previously mentioned conditions the officers are only looking out for the state best interest. I understand that we as a country should not allow minors to get away with committing crimes without a consequence but there is a way to do this and still not violate their rights. This country has found a way to punish adults for crimes without violating their rights and they should do the same for minors.

There are a lot of studies that prove that there is a big disparity in various areas for whites and blacks, such as education, healthcare, criminal justice system and many more. This is more of a reason that the Courts should understand we need to help the children with more than just the police officers knowing the child’s age. For instance, if a child looks older than their actual age the police officer can use the excuse that they reasonably did not know that the child was a minor. Then police should always ask for identification before they proceed with any other steps, at least this will eliminate the reasonable should have know that the person was a minor aspect of the new Miranda Rights analysis. A person is allowed a telephone call when they are arrested and this should be the same procedure for a minor who is about to get questioned by the police.

Every solution that the Courts think of will not be flawless and this is no difference. Even by adding the extra protection of allowing minors to call a parent or guardian will have flaws but it still will be a stepping stone solutions. Majority of the parents will know what to do regarding speaking to an attorney, even if they found out that you are allowed a lawyer just from watching all the various law shows on television. It is a higher chance that they will protect their children’s rights than the children not having an extra added protection from the police.