



## **Warning: School Resource Officers better play it safe and Mirandize students before questioning them**



July 2018

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In *B.A. v. Indiana*, \_\_\_ N.E.3d \_\_\_, 2018 WL 3045662 (Ind. June 20, 2018), the Indiana Supreme Court was asked to consider what constituted “in custody” for purposes of a police interrogation at school. More specifically, the Indiana Supreme Court was asked to decide when students are entitled to Miranda warnings at school. The relevant facts are as follows.

In February 2016, someone scribbled in a pink marker on a Decatur Middle School boys’ bathroom wall: “I will Got A bomb in the school Monday 8th 2016 not A Joke.” School Resource Officer Tutsie “immediately went into investigative mode” and soon narrowed the suspects to two students—including thirteen-year-old B.A. The next Monday, school resource officers and administrators walked through the school and found it safe. When B.A.’s bus arrived, Vice-Principal Remaly and School Resource Officer Lyday removed B.A. from his bus and escorted him to Remaly’s office.

B.A. sat in front of Remaly’s desk while Officer Lyday stood a few feet away. Early in B.A.’s interview, Officer Tutsie came in and took Officer Lyday’s spot while Officer Lyday moved to sit at a conference table behind B.A. Around that same time, a third school resource officer—Officer Wheeler—came in and sat at the conference table. All three officers wore police uniforms. Vice-Principal Remaly led the interview and asked B.A. if he knew why he was there. B.A. maintained that he did not. To see if B.A.’s handwriting matched the bomb threat, Officer Tutsie handed B.A. written sentences and told B.A. how to copy them.

After B.A. copied the sentences, Remaly decided that the handwriting sample matched the threat and asked B.A. why he did it. Then, Officer Lyday interrupted to say, “Come on, man, just—just tell the truth.” B.A. started crying, lowered his head, and said “I don’t know. I’m sorry.” Remaly then ended the interview—which had lasted fifteen minutes—and called B.A.’s mother. When she arrived and asked B.A. what had happened, B.A. told her, “I’m sorry mom, it was a joke” and admitted that it was a dumb thing to do. With these admissions, Remaly suspended B.A. from school, pending expulsion. Remaly then turned B.A. over to the school resource officers who arrested him and took him to the Marion County Juvenile Detention Center.

Thereafter, the State alleged that B.A. was delinquent for committing false reporting (a Level 6 felony if committed by an adult) and for institutional criminal mischief (a Class A misdemeanor if committed by an adult). B.A. moved to suppress the evidence from his interview, arguing that he was entitled to Miranda warnings because he was under custodial interrogation and that officers failed to secure waiver of his Miranda rights under Indiana’s juvenile waiver statute. After a hearing, the juvenile court denied the motion and found B.A. delinquent on both counts.

B.A. appealed, and the Indiana Court of Appeals affirmed the juvenile court’s decision. The Court of Appeals held that Miranda warnings were not required because a school administrator questioned B.A. for an “educational purpose.”

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The Indiana Supreme Court, however, disagreed. The Indiana Supreme Court held that B.A. was in policy custody and was under police interrogation. Therefore, B.A. should have received his Miranda warnings. As result, the Indiana Supreme Court held that B.A.'s statements should have been suppressed, and it reversed his delinquency adjudications.

In reaching this decision, the Indiana Supreme Court explained that Miranda warnings protect students under custodial interrogation. The Indiana Supreme Court noted that, in the modern school setting, schools face the monumental task of shielding students from an array of dangers in order to provide safe learning environments, that partnering with school resource officers is a key part of that effort, and that sworn law enforcement officers protect nearly half of the country's public schools. As such, school resource officers wear many hats. They ensure school safety and mentor and educate students, but they also investigate crimes and make arrests. This means that school discipline sometimes falls under the watchful eye of the police

But, the Indiana Supreme Court opined that, as the law-enforcement presence grows in today's schools, so does the discussion of students' rights. For example, the Indiana Supreme Court noted that, in *J.D.B. v. North Carolina*, 564 U.S. 261 (2011), the United States Supreme Court considered custodial interrogation in schools. In that case, a police officer pulled a thirteen-year-old seventh grader out of class, took him to a conference room, and questioned him for at least half an hour. The Supreme Court held that a juvenile suspect's age is relevant to Miranda's custody analysis as long as it's known by the interviewing officer or would be objectively apparent to a reasonable officer. Although the Supreme Court did not decide whether J.D.B. was under custodial interrogation, the implication is unmistakable: Miranda warnings protect students when they are placed under custodial interrogation at school. Subsequently, state courts across the country have applied the Supreme Court's holding in *J.D.B.* to conclude that students are and are not in custody and, therefore, are and are not entitled to Miranda warnings.

In this case, the Indiana Supreme Court found it notable that there is no "educational purpose" exception to Miranda like the one that the Indiana Court of Appeals applied. Instead, "confessions of juveniles require special caution." In *re Gault*, 387 U.S. 1, 45 (1967). Rather than using special caution, an educational purpose exception would swallow the Miranda rule, leaving less protection for students than for other suspects.

Accordingly, the Indiana Supreme Court emphasized two points. First, Miranda's key exception—for public safety—applies in schools in cases of imminent danger. So, when police face the pressing need to secure the safety of students at school in light of present-day threats, Miranda warnings may be bypassed. Second, the Indiana Supreme Court stated that none of this is to say that schools and their resource officers must avoid placing students under custodial interrogation. Students sometimes commit crimes that school resource officers will have to investigate, often by interviewing suspects. This proper role of resource officers may place students in custody. When it does, officers must give Miranda warnings and follow Indiana's juvenile waiver statute before asking questions. In sum, the Indiana Supreme Court held that Miranda warnings and Indiana's juvenile waiver statute apply when minor students are placed under custodial interrogation.

The Indiana Supreme Court next turned to the more complex discussion: the custodial interrogation test in schools. In developing that test, the Indiana Supreme Court explained that, for there to be custody, the suspect's situation must present the same inherently coercive pressures as the type of station house questioning at issue in *Miranda*. However, the Indiana Supreme Court stated that it could not develop a bright-line test other than the United States Supreme Court's custody spectrum test that the Supreme Court established in *Miranda* for determining whether someone is in custody or not.

Furthermore, the Indiana Supreme Court stated that custody alone does not trigger the requirement that one receive Miranda warning. Rather, a police interrogation must also occur. Interrogation under *Miranda* refers

not only to express questioning, but also to any words or actions on the part of the police that the police should know are reasonably likely to elicit an incriminating response from the suspect. The focus is the suspect's perceptions, not police intent.

In this case, the Indiana Supreme Court found that B.A. was under custodial interrogation and should have received his Miranda warnings. Because B.A. was under custodial interrogation but was not Mirandized, his statements should have been suppressed under both Miranda and Indiana's juvenile waiver statute. The trial court, thus, abused its discretion in admitting the statements. Accordingly, the Indiana Supreme Court reversed B.A.'s delinquency adjudications and remand this case to the juvenile court.