STATE OF WISCONSIN

IN SUPREME COURT

Case No. 2023AP2102

In the interest of K.R.C., a person under the age of 18:
STATE OF WISCONSIN,

Petitioner-Respondent,

v.

K.R.C.,

Respondent-Appellant-Petitioner.

On Appeal from a Dispositional Order Entered in the Manitowoc County Circuit Court, the Honorable Jerilyn M. Dietz Presiding

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PETITION FOR REVIEW

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ISSUES PRESENTED

One day while at school, twelve-year-old Kevin[1] was called out of class to the principal's office. The principal directed Kevin to the "school resource" officer's office. Inside the office were two police officers. While one officer interrogated Kevin, the other stood in front of the door. Kevin was never given *Miranda*[2] warnings. The issues presented are:

1. Whether Kevin was "in custody" under the *Miranda* standard and should have been provided *Miranda* warnings.

The circuit court found that a reasonable person in Kevin's position would have felt free to leave, and therefore, he was not in custody. (R.24:38; App.60).

The court of appeals also found that Kevin was not in custody, and affirmed. *State v. K.R.C.*, No. 2023AP2102, unpublished slip op. ¶¶18-26 (Oct. 30, 2024). (App. 11-14).

2. Whether Kevin's inculpatory statements were involuntarily procured by coercive police tactics.

The circuit court found that Kevin's statements were voluntary. (R.24:38; App.60).

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[1] A pseudonym is used in order to preserve confidentiality. *See* Wis. Stat. § 809.19(1)(g).

[2] *Miranda v. Arizona*, 384 U.S. 436 (1966).

The court of appeals also found that Kevin's statements were voluntary, and affirmed. *K.R.C.*, No. 2023AP2102, ¶¶27-34. (App.14-18).

CRITERIA FOR REVIEW

Review is warranted for this Court to apply the *Miranda* "reasonable person" custody standard to a child—something this Court has never done. On two occasions, this Court has addressed voluntariness claims in juvenile confession cases, in *State v. Jerrell C.J.*,2005 WI 105, 283 Wis. 2d 145, 699 N.W.2d 110 and *State v. Raheem Moore*, 2015 WI 54, 363 Wis. 2d 376, 864 N.W.2d 827. However, neither of these cases involved the *Miranda* standard. Instead, both of those juveniles were provided with *Miranda* warnings. While in 2010, the court of appeals applied the *Miranda* standard to a juvenile in *State v. Dionicia M.*, 2010 WI App 134, ¶13, 329 Wis. 2d 524, 791 N.W.2d 236, the case was decided one year before a seminal decision was issued by the United States Supreme Court in *J.D.B.*

In *J.D.B., v. North Carolina*, 564 U.S. 261, 272 (2011), the United States Supreme Court discussed the distinct features of youth and instituted a rule that courts must consider age in the custody determination. The Court recognized that because of children's categorical vulnerabilities, "a reasonable child subjected to police questioning will sometimes feel pressured to submit when a reasonable adult would feel free to go." *Id.* at 272.

There is currently no published case in Wisconsin that applies the *J.D.B.* reasonable child standard. In Kevin's case, the court of appeals mentioned his age in passing, as a factor that weighed toward a finding of custody, but did not meaningfully analyze how his youth would affect an objective perception of the circumstances, for example—how a twelve year old would feel disobeying adult authority figures, including a school principal. This Court should grant review to provide guidance to the lower courts and Wisconsin law enforcement officers on how to evaluate the reasonable person standard when the person is a child.

Review is also warranted to address the role of "school resource officers"[3] in investigating children. This is a timely issue, given the enactment of Wis. Stat. §62.90(8), which requires certain schools to have school resource officers on site, ensuring that this issue will continue to arise, and with more frequency.[4]

In Kevin's case, the court of appeals emphasized that Kevin was not removed from school and was instead interrogated in a police office located in the interior of the school. *K.R.C.*, No. 2023AP2102,

[3] *See* Wis. Stat. § 62.90(8) (defining school resource officer as "a law enforcement officer who is deployed in community-oriented policing and assigned by the law enforcement agency" that employs him or her).

[4] Wisconsin's largest school district, Milwaukee Public Schools, was required to hire at least 25 school resource officers by January 1, 2024. https://www.fox6now.com/news/mps-school-resource-officers-requirement-2024

unpublished slip op. ¶23. (App.12-13). Yet, law enforcement should not be permitted to skirt *Miranda* simply because they position themselves in a school.

This case presents real and significant questions of federal constitutional law. *See* Wis. Stat. § 809.62(1r)(a). Additionally, a decision by this Court will help develop the law by applying the *Miranda* standard to juveniles, and considering the role of "school resource officers" in juvenile interrogations. A decision on these important legal issues will have statewide impact. *See* Wis. Stat. § 809.62(1r)(c).

STATEMENT OF THE CASE AND FACTS

Twelve-year-old Kevin was called out of class to the principal's office. The principal told him to go to the "school resource officer" office. There, Officer Briana Propson was waiting to interrogate him about an accusation that he touched another boy in the groin. (R.24:4-6; App.26-28). Officer Propson was filling in for the usual school officer that day. (24:4; App.27). She described the office as "a very small tight office" that was almost like a "closet." (R.24:5; App.27). The door was closed. (R.24:10; App.32). Officer Propson was wearing an outer carrier vest with police insignia, over more casual clothes. (R.24:7-8; App.29-30).[5] A second officer, Officer Tobison, was also present inside the office. (R.24:6; App.28). He was

[5] Officer Propson testified that the policy had changed and now she wore a full uniform in school. (24:7; App.29).

dressed in full uniform and "positioned" in front of the door. (R.24:6, 20; App.28, 42).

Kevin sat down in a chair. (R.24:6; App.28). Officer Propson began interrogating him. Officer Propson was aware that Kevin was in seventh grade, which would make him twelve or thirteen. (R.24:9; App.31). There was a 9x11 sign written in blue and purple marker taped on the wall, stating, "[y]ou are in here voluntarily unless told otherwise. You are being filmed and can leave at any time!" (R.24:11; App.33).[6] (exhibit). Officer Propson did not mention the sign to Kevin and there is no evidence that he saw the sign. (R.24:21; App.43).

Officer Propson told Kevin that the incident was "witnessed" by someone. (R.24:24; App.46). However, in truth, there were no witnesses or camera footage. (R.24:24-25; App.46-47). Thus, Officer Propson admitted that she was not being completely truthful with Kevin. (R.24:25; App.46). She pointedly told Kevin that she knew that "it happened." (R.24:25; App.47). Officer Propson testified that Kevin told her "he accidently, possibly, hit Jackson" in the groin area. (R.24:10; App.32).

Officer Propson never asked Kevin if he wanted to leave. (R.24:22; App.44). She did not tell him that he had a right to remain silent. (R.24:22; App.44). She did not tell him that any statements he made could be used against him in court. (R.24:22-23; App.44-45).

[6] A photo of the sign was received into evidence as Exhibit 1. (R.24:12; App.34) (R.21).

She did not tell him that he had a right to an attorney. (R.24:23; App.45). She did not provide him with the police department's *Miranda* warning and waiver form. (R.24:23; App.45). The questioning lasted approximately ten minutes. (R.24:10; App.32).

Kevin was initially allowed to leave, but less than an hour later was taken into the student services office for a second round of questioning. (R.24:12; App.34). This was a larger area, just outside the school resource officer's office. (R.24:13; App.35). Officer Tobison was present, along with the assistant principal, and possibly the head of student services. (R.24:13; App.35). Kevin was seated in a cubical area. (R.24:14; App.36). Officer Propson and the assistant principal were standing next to him. (R.24:14; App.36). During the questioning, the assistant principal asked most of the questions, but Officer Propson also asked some questions. (R.24:14; App.36).

The questions were now more direct and confrontational. (R.24:14-15; App.36-37). Officer Propson acknowledged that a person could perceive her voice as raised at this time. (R.24:18; App.40). Officer Propson did not read *Miranda* rights to Kevin. (*See* R.24:16; App.38). She did not tell him he was in custody and not free to leave. (R.24:17; App.39). The interview lasted two or three minutes. (R.24:14; App.36). Kevin acknowledged the accusation and said that it was an accident. (R.24:14; App.16). Officer Propson did not arrest Kevin at that time; however, Kevin was required to stay and serve school suspension. (R.24:16; App.38).

Kevin moved to suppress his statements on two grounds. (16). First, he argued that he was subject to custodial interrogation without *Miranda* warnings. (24:30-32; App.52-53). Second, he argued that his statements were procured involuntarily as a result of coercive police tactics. (R.24:30-32; App.52-53).

The circuit court began by considering the following facts: Kevin walked into the school resource officer's office of his own volition; he was not told he could not leave; he did not ask for a break, water, food, or his parents—and none of these things were denied to him; it was a small office (which the court estimated as 10 feet based on gesturing during testimony); the door was closed; Officer Propson was in street clothes with her vest identifying her as law enforcement; no one's voice was raised during this first round of questioning; and it was not a threatening encounter. (R.24:34-38; App.56-60).

The "biggest question" or "factor" for the court was the second officer, who was fully uniformed and standing in front of the door. (R.24:34; App.56). There was no evidence about whether or not he was introduced or his presence was explained. Even if he had been smiling, the officer "may feel menacing to a person sitting at the table." (R.24:34-35; App.56-57).

The court discussed the sign on the wall, stating that "there's no way for me to know whether he read it." (R.24:35; App.56). The court found, however, "that does weigh toward voluntariness of this interview." (R.24:35-36; App.56-57). The court acknowledged that

Kevin was at school, "[s]o he couldn't leave the premises, but he could have left that office." (24:36; App.58). The court concluded that, "[i]t is a somewhat close case given the factors that I have discussed at length here, but I do therefore respectfully deny the defense's motion, and the statements are admissible." (R.24:38; App.60). The court entered a written order denying the motion. (R.23; App.22).

The court of appeals affirmed in what it agreed was a "somewhat close case." *K.R.C.*, No. 2023AP2102, ¶25 (App.14). It affirmed the circuit court's order on both grounds—that Kevin was not in custody and thus not entitled to *Miranda* warnings; and that his statements were voluntary.[7] *Id.*, ¶2 (App.4).

The court of appeals acknowledged that, "this court must keep Kevin's age—twelve at the time of the interviews—in mind when considering whether a reasonable person in his shoes would have felt free to end the interviews," and as such, "Kevin's youth weighs in favor of a conclusion that he was in custody." *Id.*, ¶22. (App. 12). Then the court of appeals "turn[ed]" to the *Miranda* factors, which include the purpose, location, and duration of the interrogations. The court of appeals considered the fact that: the interrogations concerned a serious matter; they occurred in a small office or cubicle; Officer Propson did not stand over or crowd Kevin; that although a

[7] Kevin also appealed the court's reliance on improper other acts evidence at trial, but does not petition for review of that claim.

"student's freedom of movement in school is somewhat restricted," that "it is nonetheless noteworthy that neither interview took place in a more restrictive setting such as a police station or vehicle"; that "a sign in the office where the first interview occurred alerted Kevin that he could leave at any time"; and the interviews were "very short." *Id.*, ¶23. (App.12-13).

The court of appeals then examined the "degree of restraint" and noted that Kevin was not handcuffed or searched, and that the officers did not draw weapons on him. *Id.*, ¶24. (App. 13). He was not taken off site to a police station. And "although Kevin was not allowed to leave school following each interview, he was not arrested or detained by the officers." *Id.* (App. 13). As such, "there was no restraint on Kevin's freedom of movement comparable to a formal arrest during either interview." *Id.* (App.13).

The court of appeals acknowledged that it was a close case, and was "concerned with the presence of the second officer," who was dressed in full uniform. *Id.* ¶25. (App.14). However, the court of appeals noted that he "did not participate in the questioning but instead stood in front of the closed office door." *Id.* (App. 14). There was also the fact that Kevin was "sent to the officer's office by a school official." *Id.* (App. 14).

Ultimately, the court of appeals concluded that the preponderance of the evidence supported the conclusion that Kevin was not in custody, and therefore, police were not required to give him *Miranda* warnings. *Id.*, ¶26. (App.14).

The court of appeals then turned to the issue of voluntariness. The court of appeals acknowledged that "a juvenile directed by a school official to a small office containing two police officers, one of whom proceeds to question him about a serious criminal offense, is likely to experience some increased level of stress and to feel pressured to answer the officer's questions." *Id.*, ¶32. (App.17). However, the court deemed the interviews were brief, Kevin was not physically restrained, he never asked to leave or speak with a parent, the officers were not physically violent, and they did not make any threats or inducements. *Id.*, ¶33. (App. 17).

The court of appeals acknowledged that Officer Propson testified about raising her voice; she admitted being less-than-honest with Kevin about the evidence she possessed; and she did not provide *Miranda* warnings. *Id.*, ¶34. (App.18). However, the court concluded that there was no coercive or otherwise improper police conduct, and therefore, the statements were not involuntary. *Id.*, ¶24. (App.18).

Kevin petitions for this Court's review.

ARGUMENT

I. This Court should grant review to consider how the "reasonable person" custody standard applies when the person is a twelve-year-old child.

A. Twelve-year-old Kevin was "in custody" under the *Miranda* standard and was therefore entitled to *Miranda* warnings.

1. Legal standard and standard of review.

When an individual alleges that they were subject to custodial interrogation, the State carries the burden of countering this allegation, by a preponderance of the evidence. *State v. Armstrong,* 223 Wis. 2d 331, 351, 588 N.W.2d 606 (1999) (overruled on other grounds by *State v. Halverson*, 2021 WI 7, ¶3, 395 Wis. 2d 385, 953 N.W.2d 847).

The circuit court's findings of historical fact are upheld unless clearly erroneous; however, whether a person was entitled to *Miranda* warnings under the circumstances is a question of law, reviewed de novo. *State v. Mosher*, 221 Wis. 2d 203, 211, 584 N.W.2d 553 (Ct. App. 1998).

In *Miranda*, 384 U.S. at 469, the United States Supreme Court set forth procedural safeguards that law enforcement must follow when an individual's

privilege against self-incrimination is in jeopardy.[8] Custodial interrogation "can operate very quickly to overbear the will of [the suspect]." As such, the State may not use statements stemming from a custodial interrogation unless it proves that *Miranda* warnings were provided. *Id.* at 444. The individual must be advised that they have a right to remain silent, that anything they say may be used in court against them, that they are entitled to the presence of an attorney, and that if they cannot afford an attorney, one will be appointed to them. *Id.* at 478-479. *Miranda* protections extend to juveniles in delinquency proceedings. *In re Gault*, 387 U.S. 1, 44 (1967).

Determining whether *Miranda* warnings were required involves application of the "custodial interrogation" standard, which has two parts: interrogation and custody. "Interrogation" is defined as: "any words or action on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect." *Rhode Island v. Innis*, 446 U.S. 291, 301 (1980).[9]

An interrogation is "custodial" when a reasonable person would not feel free to end the encounter and leave, under circumstances presenting

[8] An individual's protection against compelled self-incrimination derives from the Fifth Amendment made applicable to the states under the Fourteenth Amendment, as well as Article 1, § 8(1) of the Wisconsin Constitution.

[9] The State did not dispute that Kevin was subject to interrogation. (*See* Ct. App. Resp. Br. at 7).

the same inherently coercive pressures as a station-house interview. *See Halverson*, 395 Wis. 2d 385, ¶17. This is an objective test, which focuses on what a reasonable person in the individual's position would have known and understood about the situation. *State v. Morgan*, 2002 WI App 124, ¶10, 254 Wis.2d 602, 648 N.W.2d 23.

2. A reasonable child in Kevin's position would not have felt free to leave—and given that he was "in custody," he was entitled to *Miranda* warnings.

Under the totality of the circumstances, no reasonable child in Kevin's position would have felt free to end the encounter and leave. Factors that a court will consider in determining custody include: the purpose, place and length of interrogation; the degree of restraint; and the individual's freedom to leave. *State v. Martin*, 2012 WI 96, ¶ 35, 343 Wis. 2d 278, 816 N.W.2d 270.

Here, because Kevin was just twelve years old, the objective standard includes consideration of his age. *J.D.B.,* 564 U.S. at 271-274. Admissions and confessions of juveniles must be treated with "special caution." *Gault*, 387 U.S. at 45. Children "cannot be judged by the more exacting standards of maturity." *Haley v. Ohio*, 332 U.S. 596, 599-600 (1948). If a juvenile's age is known to the police at the time of interviewing, this fact must be considered. *J.D.B.,* 564 U.S. at 274.

Here, the purpose and place are factors that weigh heavily toward a finding of custody. Kevin was being accused of a sexual assault. He was interrogated in a police officer's office. He was not *asked* whether the incident happened; he was *told* "it happened." (R.24:25; App.47) (emphasis added).

The degree of restraint was also significant. The court will consider factors such as: whether the suspect is handcuffed; whether a weapon is drawn; whether a frisk is performed; the manner in which the suspect is restrained; whether the suspect is moved to another location; whether questioning took place in a police vehicle; and the number of officers involved. *State v. Gruen*, 218 Wis. 2d 581, 594-596, 582 N.W.2d 728 (Ct. App. 1998).

Kevin was removed from class and told to go speak to the school resource officer. (R.24:5-6; App.27-28). He was secluded in the office with the door closed. (R.24:10; App.32).[10] There were two officers involved. Officer Tobison was in full uniform. (R.24:10; App.32). *See State v. Ezell*, 2014 WI App 101, ¶¶2, 13, 357 Wis. 2d 675, 855 N.W.2d 453 (the fact that the officers' handcuffs and badge were visible weighed toward custody). Although Officer Propson was not in full uniform, her clothing contained insignia indicating that she was a police officer. (R.24:8; App.30).

[10] Officer Propson attributed the closed door to a desire for privacy. (R.24:10; App.32). However, the analysis focuses "on the perspective of the suspect, not the subjective intent of the police officers." *Armstrong*, 223 Wis. 2d, at 357. There is no evidence that she told Kevin that the door was closed for privacy.

Officer Tobison was positioned between Kevin and the door. (R.24:20; App.42). To exit the room, Kevin would have had to go through Officer Tobison. The office was also "tight," which would have made the presence of two officers all the more imposing to a smaller child. (*See* R.24:8; App.30).

The handwritten sign on the wall is either irrelevant or factors toward a finding of custody. The handwritten sign stated, "[y]ou are in here voluntarily unless told otherwise. You are being filmed and can leave at any time!" (R.24:11; App.33).[11] (R.21) (exhibit). Officer Propson never pointed out the sign to Kevin or discussed it with him. (R.24:21; App.43). There is no evidence that Kevin saw the sign, contrary to the court of appeals statement that the sign "alerted Kevin" that he could leave. *K.R.C.*, No. 2023AP2102, unpublished slip op. ¶23. (App.12-13). This ignores the circuit court's finding that "there's no way for me to know whether he [Kevin] read it." (R.24:35; App.54).

Additionally, the sign states the caveat "unless told otherwise." (R.21). The principal told Kevin to go speak with Officer Propson. Thus, even if he had seen the sign (and, again, there is no evidence that he did see it), a reasonable child would not have felt free to disregard the direction they were given to go to the office based on a vague, handwritten sign on the wall.

A reasonable child under these circumstances would not have felt free to leave. In general, Kevin was

[11] A photo of the sign was received into evidence as Exhibit 1. (R.21).

not free to leave the building. These were school hours, and children are legally required to attend school. In addition, Officer Propson never told Kevin that he was free to leave the office, or asked him if he wanted to leave. (R.24:17; App.39). After his first admission, Kevin was allowed to leave the office, but his freedom was short lived. Less than an hour later, he was taken in for a second interview in the student services office. (R.24:13; App.35). Although the area was larger, at least one additional authority figure—the assistant principal—was present. (R.24:14-15; App.36-37). The adults were standing, while Kevin was sitting, in a cubicle. (R.24:14; App.36).

Kevin was subject to custodial interrogation, and given that Officer Propson failed to give him *Miranda* warnings, his statements must be suppressed.

B. The court of appeals failed to apply a "reasonable child" standard to Kevin when it concluded that he was not in custody.

The United States Supreme Court held in *J.D.B.* that a child's age is an objective factor that must be considered in the *Miranda* custody analysis because children perceive police interrogation differently than adults. *J.D.B.*, 564 U.S. at 264.

The facts of *J.D.B.* are similar to the facts of Kevin's case. J.D.B. was a thirteen-year-old child in the seventh grade, suspected of being involved in two break-ins. *Id.* at 265. A detective went to the school and told the school administrators and school

resource officers (SROs) that he wanted to question J.D.B. *Id*. A uniformed officer removed J.D.B. from class and escorted him to a conference room, where the detective and two school administrators questioned him for thirty-to-forty-five minutes. *Id*. at 265-266. No *Miranda* warnings were given. *Id*. at 266.

The United States Supreme Court held that courts and police must factor the age of juvenile suspect in the custody determination because of the "very real differences between children and adults." *Id*. at 281. Children are generally less mature and responsible than adults and are more vulnerable to outside pressures. *Id*. at 272. There is a heightened risk of false confessions from youth. *Id*. at 269. As such, "a reasonable child subjected to police questioning will sometimes feel pressured to submit when a reasonable adult would feel free to go." *Id*. at 272. The Court determined that the lower courts had failed to consider the perspective of a "reasonable child," and remanded for further consideration. *Id*. at 281.

In Kevin's case, the court of appeals gave a nod to *J.D.B.* and noted Kevin's age as a factor, but did not give it meaningful consideration. *K.R.C.*, No. 2023AP2102, unpublished slip op. ¶¶20, 22. (App.12). Instead, the court of appeals proceeded as though Kevin were a mini-adult—failing to consider relevant dynamics such as the authoritative atmosphere of a school, and a twelve year old's willingness to submit to adult directives.

Simply acknowledging that Kevin was twelve years old is not sufficient *application* of the reasonable child standard. As the Supreme Court instructed in *J.D.B.*, the relevant circumstances of an interrogation are not to be isolated and evaluated "one by one[,]" but, rather, each objective circumstance, including age, must be understood as impacting how the other factors or circumstances are "internalize[d] and perceive[d]" by the suspect. *Id.* at 278. The age of the child is not just one factor to be rattled off; it is a lens through which all of the factors are considered.

The court of appeals failed to properly apply the *J.D.B.* standard, and this Court should grant review to correct the erroneous ruling and provide guidance to the lower courts and law enforcement about how to apply *J.D.B.'s* reasonable child standard.

C. Kevin's statements were additionally involuntarily procured by coercive police tactics.

1. Legal standard and standard of review.

The State carries the burden of proof by a preponderance of the evidence to establish that statements were voluntarily given. *State v. Vice*, 2021 WI 63, ¶29, 397 Wis. 2d 682, 961 N.W.2d 1. The Due Process clause of the Fourteenth Amendment forbids the State from using involuntary statements against an accused. *State v. Jiles*, 2003 WI 66, ¶32, 262 Wis. 2d 457, 663 N.W.2d 798. Statements are involuntary if they are the "result of conspicuously

unequal confrontation in which the pressures brought to bear on the defendant by representatives of the State exceeded the defendant's ability to resist." *State v. Hoppe*, 2003 WI 43, ¶36, 261 Wis. 2d 294, 661 N.W.2d 407.

In determining voluntariness, a court considers an individual's personal characteristics and police pressures, within a totality of the circumstances test. *Id.*, ¶¶38-39. The test "reflects a recognition that the amount of police pressure that is constitutional is not the same for each defendant." *Id.*, ¶40. A prerequisite for a finding of involuntariness is "coercive or improper police conduct." *Id.* Police pressure may be coercive in one setting and not another, depending on the susceptibility of the individual. *Agnello*, 269 Wis. 2d 260, ¶10.

Relevant personal characteristics include: age, education and intelligence; physical and emotional condition; and prior experience with law enforcement. *Hoppe*, 261 Wis. 2d. 294, ¶39. The individual's personal characteristics are balanced against the police pressures and tactics used to induce the statements, such as: the length of the questioning; any delay in arraignment; the general conditions under which the statements took place; any excessive physical or psychological pressure brought to bear on the defendant; any inducements, threats, methods or strategies used by the police to compel a response; and whether the defendant was informed of the right to counsel and right against self-incrimination. *Id.*

A two-step standard of appellate review applies. *State v. Agnello,* 2004 WI App 2, ¶8, 269 Wis. 2d 260, 674 N.W.2d 594. The circuit court's findings of fact are upheld unless they are clearly erroneous, while application of the constitutional legal standard is de novo. *Id*.

2. Kevin's statements were involuntary.

Given the totality of the circumstances, including Kevin's personal characteristics and the pressures brought to bear on him, Kevin's statements were involuntary as a matter of law.

Admissions and confessions of juveniles must be treated with "special caution." *Gault*, 387 U.S. at 45. Kevin was only twelve years old. He was not accompanied by a parent. He was not asked whether he wanted a parent present. (*See* R.24:31; App.34). In *State v. Jerrell C.J.*, 2005 WI 105, ¶21, 283 Wis. 2d 145, 699 N.W.2d 110, this Court emphasized that special caution will be taken when an interrogation occurs in the absence of a parent, lawyer or other friendly adult. Kevin had no prior experience with law enforcement. (*See* R.24:31; App.53). He was never told that he was free to leave or provided with *Miranda* warnings.

Significant pressures were brought to bear on Kevin. He was directed to go to the office by a school authority figure. The office was tight. (R.24:5; App.27). He was outnumbered by police officers. Officer Tobison was in full uniform and "positioned" in front of the door. (R.24:20; App.42). Officer Propson was accusatory, telling Kevin that "it happened," demonstrating that she was not open to hearing a denial, and was instead presuming his guilt. (*See* R.24:25; App.47). Officer Propson told Kevin that the alleged incident was "witnessed." (R.24:24; App.46). Yet, there were no witnesses, nor was the incident caught on camera. (R.24:24-25; App.46-47). Thus, Officer Proposed testified she was not being completely truthful at that point. (R.24:25; App.46). *See Frazier v. Cupp*, 394 U.S. 731, 739 (1969) (although misrepresentations by police alone are not grounds for reversal, they are relevant to the analysis). Again, the sign on the wall is essentially irrelevant, because Officer Propson did not mention the sign to Kevin and there is no evidence that he saw the sign. (R.24:21; App.43).

Kevin was not actually free to leave after the initial interrogation; instead, he was summoned for a second interrogation with Officer Propson less than one hour later. (R.24:12; App.34). At that time, there was at least one other authority figure, the assistant principal, in the room, and possibly the head of student services as well. (R.24:13; App.35). The adults were standing over Kevin while he was seated in a cubicle. (R.24:14; App.36). Officer Propson acknowledged that others could perceive her voice as raised, and that she

asked direct and confrontational questions. (R.24:15, 18; App.37, 40).

The length of interrogations cannot be dismissed as "brief." *K.R.C.*, No. 2023AP2102, unpublished slip op. ¶33. (App. 17). Ten-to-thirteen minutes might feel brief to an adult in a casual setting, but it would not feel brief in a confined, closet-sized office being interrogated about a sexual assault while an armed officer is positioned in front of the exit. These circumstances would be overwhelming for an adult, and exponentially more so for a child.

Although statements will not be suppressed as involuntary unless there is an "essential link between coercive activity of the State, on the one hand, and a resulting confession by a defendant, on the other," (*Colorado v. Connelly*, 479 U.S. 157, 167 (1986)), police conduct does not need to be egregious or outrageous to be coercive. *Hoppe*, 261 Wis. 2d. 294, ¶58.

Here, in light of Kevin being twelve years old; the absence of a parent or other friendly adult; his lack of prior experience with law enforcement; the seriousness of the accusation; the accusatory nature of the questioning; the presence of two officers, one of whom was fully-uniformed and blocking the closed door; the subsequent presence of at least one school authority figure; and the repeated nature of the interrogations, the statements should be deemed involuntary.[12]

[12] The State did not argue that the admission of the statements was harmless error.

II. This Court should grant review to consider the application of the *Miranda* standard to interrogations of children that occur inside school buildings by "school resource" police officers.

This Court should accept review to consider whether and when a child is in custody under *Miranda* when questioned by a school resource officer (SRO) at school. Other courts that have considered the issue have generally held that—when an SRO is involved—the more involvement the SRO has, the more likely that *Miranda* warnings will be necessary. "On one end of the custodial spectrum, it is near-universally agreed that a meeting solely between a student and school officials generally will not qualify as a custodial interrogation." *In the Matter of D.A.H.*, 857 S.E. 2d 771, 781 (Ct. App. N.C. 2021). (collecting cases).

"On the other end of the spectrum, an interview that features heavy SRO involvement or direction will often qualify as a custodial interrogation." *Id.* (citing *In the Interest of R.H.*, 791 A.2d 331 (Penn 2002). Then, "between those two ends of the spectrum" lie cases where the SRO is present but does not participate. *Id. See also*, *N.C. v. Commonwealth*, 396 S.W.3d 852, 863 (KY 2013) (student was in custody when questioned by a principal in the principal's office while an SRO was present).

Kevin's case is at the far end of the custody spectrum; the officers were in full control of the interrogation. The fact that the police office happened

to be situated in a school does not lessen the coercive impact. Instead, additional coercive dynamics exist, for example, here the principal called Kevin out of class and instructed Kevin to go see Officer Propson. Compulsory education laws mean that a child cannot simply leave school premises, and had Kevin done so, he would have been disciplined.

In *J.D.B.*, the United States Supreme Court called attention to the dynamics of the school setting, where a student's "presence at school is compulsory and whose disobedience at school is cause for disciplinary action." 564 U.S. at 276. The court of appeals stated that "although Kevin was not allowed to leave school following each interview, he was not arrested or detained by the officers." *K.R.C.*, No. 2023AP2102, unpublished slip op. ¶24. (App. 13). But Kevin was called out of class. Where would a child in these circumstances believe they were supposed to go if they could not be in class and could not leave the building?

Ultimately, even though they are given a special title, "school resource officer," these are actual, sworn officers. They wear police officer uniforms and often carry many of the same tools and weapons that other officers wear on different assignments. There is no material difference between these officers and their counterparts who work outside of school walls when it comes to protecting an individual's constitutional rights. They should not be given a free pass on *Miranda* warnings. As advocates of school resource officers argue that cooperation between schools and

police serves the "educational and safety needs of our children, this cooperation must be consistent with the Fifth Amendment's guarantee against self-incrimination." *D.A.H.*, 857 S.E. 2d at 781.

This Court should grant review to consider the dynamics of an interrogation that occurs on school grounds with the involvement of a "school resource" police officer.

CONCLUSION

For the reasons stated above, K.R.C. respectfully asks the court to grant his petition for review.

Dated this 27th day of November, 2024.

Respectfully submitted,

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CERTIFICATION AS TO FORM/LENGTH

I hereby certify that this petition conforms to the rules contained in s. 809.19(8)(b), (bm) and 809.62(4). The length of this petition is 5,601 words.

CERTIFICATION AS TO APPENDIX

I hereby certify that filed with this petition is an appendix that complies with s. 809.19(2)(a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; (3) a copy of any unpublished opinion cited under s. 809.23(3)(a) or (b); and (4) portions of the record essential to an understanding of the issues raised, including oral or written rules or decisions showing the circuit court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or judgment entered in a judicial review or an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using one or more initials or other appropriate pseudonym or designation instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Dated this 27th day of November, 2024.

Signed:
Electronically signed by
Colleen Marion
COLLEEN MARION
Assistant State Public Defender