

74263-9

74263-9

FILED  
July 7, 2016  
Court of Appeals  
Division I  
State of Washington

NO. 74263-9-I

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

---

STATE OF WASHINGTON,

Respondent,

v.

ALEX I.,

Appellant.

---

ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR KING COUNTY

---

APPELLANT'S OPENING BRIEF

---

TRAVIS STEARNS  
Attorney for Appellant

WASHINGTON APPELLATE PROJECT  
1511 Third Avenue, Suite 701  
Seattle, WA 98101  
(206) 587-2711

TABLE OF CONTENTS

TABLE OF CONTENTS ..... i

TABLE OF AUTHORITIES ..... iii

A. INTRODUCTION..... 1

B. ASSIGNMENTS OF ERROR ..... 2

C. ISSUES PERTAINING TO THE ASSIGNMENTS OF ERROR  
..... 3

D. STATEMENT OF THE CASE..... 4

E. ARGUMENT ..... 8

1. ALEX’S STATEMENTS WERE IMPROPERLY ADMITTED IN  
THE ABSENCE OF A VALID *MIRANDA* WAIVER THE  
SPECIAL PROTECTIONS PROVIDED TO JUVENILES. .... 8

2. ALEX’S AGE MUST BE TAKEN INTO ACCOUNT WHEN  
DETERMINING WHETHER HE WAS AFFORDED  
SUFFICIENT LEGAL PROTECTIONS DURING HIS  
CUSTODIAL INTERROGATION. .... 9

    a. Because a child will feel pressure to submit to questioning  
    where an adult will not, custodial inculpatory statements made  
    by youth must be analyzed under the reasonable child standard. .  
    ..... 9

    b. Alex is a child who was pressured to submit to questioning that  
    an adult would not submit to..... 11

3. LANGUAGE BARRIERS IMPACTED ALEX’S ABILITY TO  
WAIVE HIS *MIRANDA* RIGHTS. .... 15

    a. The ability to make a knowing and intelligent waiver of  
    *Miranda* rights may be inhibited by language barriers..... 15

    b. Alex is a native Romanian speaker with insufficient knowledge  
    of the English language to waive *Miranda*. .... 15

4. THE STATEMENTS MADE BY ALEX WERE COERCED BY  
THE POLICE. .... 18

a.	Coerced statements lead to false admissions and wrongful convictions. ....	18
b.	The use of psychological and physical pressure should not be excused.....	19
c.	The police employed unreasonable psychological and physical pressure on Alex to induce him to confess. ....	20
F.	CONCLUSION .....	25

## TABLE OF AUTHORITIES

### **Cases**

<i>Arizona v. Fulminante</i> , 499 U.S. 279, 111 S.Ct. 1246, 113 L.Ed.2d 302 (1991).....	19
<i>Colorado v. Connelly</i> , 479 U.S. 157, 107 S.Ct. 515, 93 L.Ed.2d 473 (1986).....	19
<i>Corley v. United States</i> , 556 U.S. 303, 129 S.Ct. 1558, 173 L.Ed.2d 443 (2009).....	18
<i>Eddings v. Oklahoma</i> , 455 U.S. 104, 102 S. Ct. 869, 71 L. Ed. 2d 1 (1982).....	10
<i>Fare v. Michael C.</i> , 442 U.S. 707, 99 S.Ct. 2560, 61 L.Ed.2d 197 (1979).....	9, 10
<i>Haley v. Ohio</i> , 332 U.S. 596, 68 S.Ct. 302, 92 L.Ed. 224 (1948).....	10
<i>In re Gault</i> , 387 U.S. 1, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967).....	9
<i>J.D.B. v. N. Carolina</i> , 564 U.S. 261, 131 S. Ct. 2394, 180 L. Ed. 2d 310 (2011).....	9, 10, 19
<i>Lynumn v. Illinois</i> , 372 U.S. 528, 83 S.Ct. 917, 9 L.Ed.2d 922 (1963) ...	19
<i>Miranda v. Arizona</i> , 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).....	passim
<i>Montgomery v. Louisiana</i> , ___ U.S. ___, 136 S. Ct. 718, 193 L. Ed. 2d 599 (2016), as revised (Jan. 27, 2016).....	11
<i>Schneckloth v. Bustamonte</i> , 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973).....	9
<i>Simmons v. Bowersox</i> , 235 F.3d 1124 (8th Cir.2001).....	10, 11
<i>State v. Arrowood</i> , 375 S.C. 359, 652 S.E.2d 438 (2007).....	20
<i>State v. Broadaway</i> , 133 Wn.2d 118, 942 P.2d 363 (1997).....	19
<i>State v. Earls</i> , 116 Wn.2d 364, 805 P.2d 211 (1991).....	8
<i>State v. Lavaris</i> , 99 Wn.2d 851, 664 P.2d 1234 (1983).....	8
<i>State v. Lopez</i> , 174 Ariz. 131, 847 P.2d 1078 (1992), <i>cert. denied</i> , 549 U.S. 1000, 127 S.Ct. 506, 166 L.Ed.2d 377 (2006).....	20
<i>State v. Prok</i> , 107 Wn.2d 153, 727 P.2d 652 (1986).....	16
<i>State v. Rupe</i> , 101 Wn.2d 664, 683 P.2d 571 (1984).....	20
<i>State v. Teran</i> , 71 Wn.App. 668, 862 P.2d 137 (1993).....	15, 17
<i>State v. Unga</i> , 165 Wn.2d 95, 196 P.3d 645 (2008).....	18
<i>United States v. Brave Heart</i> , 397 F.3d 1035 (8th Cir.2005).....	20

<i>United States v. Gonzales</i> , 749 F.2d 1329 (9th Cir.1984) .....	15
<i>United States v. Heredia-Fernandez</i> , 756 F.2d 1412 (9th Cir.1985) ...	15
<i>United States v. Walton</i> , 10 F.3d 1024, 1029 (3d Cir.1993) .....	20

**Other Authorities**

Drizin, Steven & Richard Leo, <i>The Problem of False Confessions in the Post-DNA World</i> , 82 N.C.L.Rev. 891 (2004).....	18
Godsey, Mark A., <i>Reliability Lost, False Confessions Discovered</i> , 10 Chap. L.Rev. 623 (2007).....	19
Grisso, Thomas, et al, <i>Interrogation of Juveniles: An Empirical Study of Procedures, Safeguards, and Rights Waiver</i> , Law and Human Behavior, 1, 321 (1977) .....	14
Leo, Richard A. et al., <i>Bringing Reliability Back In: False Confessions and Legal Safeguards in the Twenty-First Century</i> , 2006 Wis. L.Rev. 479 (2006) .....	19
Owen-Kostelnik,, Jessica, N. Dickon Reppucci, & Jessica R Meyer, <i>Testimony and Interrogation of Minors: Assumptions about Maturity and Morality</i> , American Psychologist, 61, 286 (2006).....	14
Rogers, Richard, et al, <i>The Comprehensibility and Content of Juvenile Miranda Warnings</i> , Psychology, Public Policy, and Law, 63 (2008) .....	14

**Rules**

JCrR 2.11 .....	16
-----------------	----

**Constitutional Provisions**

Const. art. I, § 9 .....	8
U.S. Const. amend. V .....	8

## A. INTRODUCTION

Alex I. was a seventeen year old boy when he was stopped by the police in a heightened traffic stop, removed from his vehicle at gunpoint and immediately placed into handcuffs. Alex is a native Romanian speaker. He speaks English with difficulty.

As his cousin was being arrested, he told the officers of his recently broken wrist. The cousin was threatened when the officer told him the wrist might get broken again that night. And while most of the interactions between Alex and the police were recorded, the *Miranda* warnings and Alex's questions about them were not. The officer who gave these warnings was found to be not credible with regard to other testimony he provided to the court.

Alex was not afforded the protections required to ensure the statement he made were voluntary. Instead, Alex was subject to both psychological and physical pressure to confess. Placed into the back of the police car while still in handcuffs, after potentially hearing the threats made to his cousin, Alex was told to "man up." It was intimated to him that his parent's car would not be impounded and that he should stop being a "kid" and confess. The statements made by Alex were the result of coercion and should be suppressed.

## B. ASSIGNMENTS OF ERROR

1. The State failed to meet its burden of establishing what protections were provided to Alex I. because of his status as a child.

2. The court failed to address what legal protections should have been afforded to the child defendant Alex I. during his custodial interrogation and whether a reasonable child would make a statement under the psychological and physical pressures exerted upon Alex I.

3. The State failed to meet its burden of establishing Alex I. understood and validly waived his right to remain silent.

4. The psychological and physical pressures exerted upon Alex I. coerced him into making his statement.

5. The court entered Finding of Fact 18 in error because the record did not establish the procedures which would dictate only one suspect should be removed at a time were followed in this case.

6. The court entered Findings of Fact 20-23 in error because the record does not indicate *Miranda* warnings were properly provided to Alex I.

### C. ISSUES PERTAINING TO THE ASSIGNMENTS OF ERROR

1. Children who are interrogated by police are more likely to succumb to police pressure than adults. The State has the responsibility to establish a youth was provided with special protections before making statements which are the result of police interrogation. Does the failure of the State to meet its burden of establishing Alex I. was provided with these special protections because of his status as a youth require suppression?

2. The court failed to make findings regarding the special protections provided to Alex I. because of his status as a youth. Does the failure of the court to make findings with regard to Alex I.'s status as a juvenile require remand?

3. Language barriers may render a statement involuntary and not freely made. Is suppression required where the record fails to establish Alex I. had a sufficient understanding of English to comprehend the advisement and voluntarily waive his right to remain silent?

4. Statements made as a result of coercion are likely to lead to false admissions and wrongful convictions. Is suppression required

where Alex I. was compelled into making a statement because of psychological and physical coercion?

5. The record establishes that proper police procedure would have required only one person to be removed from the car at a time during an arrest. That procedure was not followed. Was Finding of Fact 18 entered in error because the record establishes this procedure was not followed and more than one of the suspects was out of the car and unrestrained at the same time during the arrest procedure?

7. Findings of Fact 20-23 entered in error because the record does not support the findings. Instead, the officer testifying with regard to *Miranda* warnings did not have a meaningful independent recollection of his conversation with Alex I. and was not credible with regard to other testimony he provided to the court.

#### D. STATEMENT OF THE CASE

Alex I. was a seventeen year old boy when he was arrested. CP 1. He had no apparent prior interactions with the police. He is from Moldova. RP 15. His native language is Romanian. RP 41. His parents both required interpreters to understand English. RP 3, 41.

Alex was stopped by police officer Randy Jensen while driving his parents' red minivan. RP 22-23. The police were investigating what

they believed to be a report of shoot at car windows. RP 22. In the car with Alex were two older family members, a cousin and a brother. RP 25, 39, 46.

The youths were ordered out of their car at gun point, in what was described as a heightened traffic stop. RP 74, 131. This meant that each occupant was removed from the car at gunpoint and placed into handcuffs. RP 71. The record does not indicate that, per procedure, they were removed individually. RP 129.

When Alex's cousin informed the officers that he had recently broken his wrist, Sergeant Craig Sjolín threatened him, stating "it might get broken again." RP 59. The threat was recorded by Officer Jensen, who was in the process of arresting Alex at the same time and certainly close by.

While much of the interaction between Alex and the officers was recorded, the *Miranda* and juvenile warnings provided to Alex and the questions he might have had regarding those warnings were not. Sergeant Sjolín did not have any meaningful independent memory of what he said about the warnings or whether Alex expressed any confusion about the warnings. RP 123. While the police testified they provided a juvenile warning, there is no record of what that warning

actually was. RP 122. The sergeant was also found to be incredible with regard to his testimony about the use of force and coercion when arresting the boys. CP 27 (Finding of Fact 15).

Because much of the interaction between Alex and the arresting officers was recorded, the trial court was able to hear what was said. From the beginning, it was apparent the officers were aware of Alex's age. Officer Jensen took advantage of Alex's youth, telling him to "man up" and tell the truth. RP 30. When Alex would not make a statement, the officers said to Alex that "he doesn't know what being a man is." RP 34. Alex was then accused of being just a kid. RP 35.

The officers also intimated that Alex's parents would not have their car impounded if Alex confessed, asking Alex whether his father liked the van and then telling him it would be impounded. RP 33. When Alex equivocated on his statement, Officer Jensen again told Alex that it was because of him that his mother would be without the van for at least a week. RP 43.

The statement made by Alex was a central part of his trial. The only eyewitness to the windows of the cars being shot out by a BB gun was Alina Gogu, who was in a car when it was hit by a BB pellet. RP 160. She was not able to identify who shot at the car, but was able to

provide a description of the vehicle when she made a call to 911. RP 161. In addition, the police seized BB guns and pellets from the vehicle after Alex had been arrested and had made his inculpatory statement. RP 93. Other than Ms. Gogu, the only other witnesses at Alex's trial were police officers.

The court took testimony regarding the admissibility of the statement at the same time as it heard testimony for the trial, reserving its finding on whether the statement should be admitted until after all of the evidence had been received. RP 7, 246. The court did make clear when evidence was being presented for purposes of the CrR 3.5 hearing and when it was being taken for trial. RP 9.

The court found the statement to be admissible, issuing written findings of fact. CP 26-30. The court found Alex guilty of two gross misdemeanors, malicious mischief in the third degree and reckless endangerment. CP 34.

## E. ARGUMENT

### **1. ALEX’S STATEMENTS WERE IMPROPERLY ADMITTED IN THE ABSENCE OF A VALID *MIRANDA* WAIVER THE SPECIAL PROTECTIONS PROVIDED TO JUVENILES.**

The Fifth Amendment to the United States Constitution states “[n]o person ... shall be compelled in any criminal case to be a witness against himself.” U.S. Const. amend. V; *see also Miranda v. Arizona*, 384 U.S. 436, 444, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

Article I, § 9 of the Washington State Constitution states “[n]o person shall be compelled in any criminal case to give evidence against himself.” The protection provided by the state provision is coextensive with that provided by the Fifth Amendment. *State v. Earls*, 116 Wn.2d 364, 374–75, 805 P.2d 211 (1991).

Custodial interrogation is inherently coercive. *State v. Lavaris*, 99 Wn.2d 851, 857, 664 P.2d 1234 (1983) (citing *Miranda*, 384 U.S. at 457). To determine whether a particular statement is admissible, the court will examine the totality of the circumstances surrounding the interrogation to ascertain whether the accused in fact knowingly and voluntarily decided to waive the rights to remain silent and to have the assistance of counsel. *Fare v. Michael C.*, 442 U.S. 707, 724–25, 99

S.Ct. 2560, 61 L.Ed.2d 197 (1979); *Schneckloth v. Bustamonte*, 412 U.S. 218, 226, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973).

When the suspect is a child, the totality of circumstances analysis requires an assessment of the person's age, education, experience, intelligence, background, comprehension of *Miranda* rights, and appreciation of the consequences of waiver. *Michael C.*, 442 U.S. at 725; *see also J.D.B. v. N. Carolina*, 564 U.S. 261, 264, 131 S.Ct. 2394, 180 L. Ed. 2d 310 (2011). The burden is on the government to demonstrate a juvenile has voluntarily waived his rights. *Michael C.*, 442 U.S. at 724.

**2. ALEX'S AGE MUST BE TAKEN INTO ACCOUNT WHEN DETERMINING WHETHER HE WAS AFFORDED SUFFICIENT LEGAL PROTECTIONS DURING HIS CUSTODIAL INTERROGATION.**

*a. Because a child will feel pressure to submit to questioning where an adult will not, custodial inculpatory statements made by youth must be analyzed under the reasonable child standard.*

“It is beyond dispute that children will often feel bound to submit to police questioning when an adult in the same circumstances would feel free to leave.” *J.D.B.*, 564 U.S. at 264. Courts have a responsibility to examine confessions of a juvenile with special care. *In re Gault*, 387 U.S. 1, 45, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967); *Haley*

*v. Ohio*, 332 U.S. 596, 599, 68 S.Ct. 302, 92 L.Ed. 224 (1948); *Simmons v. Bowersox*, 235 F.3d 1124, 1133 (8th Cir.2001). In *J.D.B.*, the Supreme Court found that because of a juvenile's increased susceptibility to coercion, age must be considered when a judge determines what legal protections are to be afforded to the child during a custodial interrogation. *J.D.B.*, 564 U.S. at 277. A "reasonable child" who is subject to police questioning will sometimes feel pressured to submit when a "reasonable adult" would not. *Id.* at 272. *J.D.B.* builds upon the long held rule that courts must consider an individual's age, experience, intelligence, education, background, and whether they have the capacity to understand the warnings given, their Fifth Amendment rights, and the consequences of waiving these rights. *Michael C.*, 442 U.S. at 725. For children, *J.D.B.* makes clear court must conduct an analysis of whether the child acted as a "reasonable child." *J.D.B.*, 546 U.S. at 272.

*J.D.B.* acknowledges a fact the non-judicial world has understood for a long time: youth do not have the education, judgment, and experience of adults. *See J.D.B.*, 564 U.S. at 272. They are not simply "miniature adults." *Id.* (citing *Eddings v. Oklahoma*, 455 U.S. 104, 115-16, 102 S. Ct. 869, 71 L. Ed. 2d 1 (1982)). Youth lack the

maturity to vote, sign contracts, and drink alcohol. They have significant restrictions placed upon their ability to drive. They may not marry without consent. Youth must have co-signers before they are able to rent property and usually must agree to additional fees before they can rent a car. These observations restate what “any parent knows – indeed what any person knows – about children generally.” *J.D.B.*, 564 U.S. at 273 (citing *Roper v. Simmons*, 543 U.S. 551, 569, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005)). Youth are constitutionally different from adults in their level of culpability. *Montgomery v. Louisiana*, \_\_\_ U.S. \_\_\_, 136 S. Ct. 718, 724, 193 L. Ed. 2d 599 (2016), as revised (Jan. 27, 2016). When analyzing their decision to provide a statement during interrogation, the analysis must focus on whether a “reasonable child” would have confessed under the circumstances of the interrogation.

*b. Alex is a child who was pressured to submit to questioning that an adult would not submit to.*

When Alex was interrogated, he was 17 years old. CP 1, CP 28-29. He was in the company of older family members. RP 30, 33, 34. He lived with his mother, whom he was released to after his arrest and interrogation. RP 44. During the course of this pending matter, schooling appeared to be an issue for Alex. RP 277. When asked about where he went to school, Alex said “I have home school.” RP 288. In

clarifying this, the court was able to deduce that Alex meant he was home schooled. RP 288.

Alex's age was apparent to the police when they were interrogating him. Alex told the police he was practicing to get his driver's license, telling the police "I want to make a license." RP 25, 34. In trying to get Alex to speak, the police focused on his age, trying to get him to "man up." RP 30. The officer drew a distinction between himself as an adult and Alex as a child, telling Alex "he doesn't know what being a man is." RP 34.

The officers in fact taunted Alex about his youth to get him to confess, as is apparent from the following colloquy.

UNIDENTIFIED OFFICER He's a kid.

OFFICER JENSEN: So --

UNIDENTIFIED OFFICER: So, he doesn't know what being a man is.

OFFICER JENSEN: So, are -- do you want to man up and talk -- tell me the truth, or are we done talking? Because it doesn't say "stupid" across my forehead. I've been a cop long enough. I've been an adult long enough. I can read right through lies. If -- if we're done talking, then fine, I've got other work I can go do. But, if you want to start owning up to what you guys were doing and start taking responsibility, this is your one opportunity.

RP 34-35.

While the court made written findings regarding the voluntariness of the confession, the court failed to identify the special protections Alex should have received during this interrogation due to his status as a juvenile. The failure to address these protections, instead examining Alex in much the same regard as if he were an adult, requires a new CR 3.5 hearing.

There is limited testimony regarding what sort of warnings and protections were given to Alex. The officer who provided the warnings to Alex was found not to be credible in his testimony about his treatment of another suspect. CP 27 (Finding of Fact 15). The officer also stated he had did not have “much independent memory” of whether Alex expressed confusion regarding the warnings. RP 123. When asked whether Alex had any questions regarding the warnings, the officer stated he could not remember. RP 123. And while the officer stated he provided juvenile warnings to Alex, there is no record of what these warnings actually were. RP 121.

It is clear Alex youth was taken advantage of by the police during the interrogation. Alex was told to “man up.” RP 30, 34. The officers told him he was just a “kid.” RP 34. The police also told him that to a man he should “tell us the truth, and be respectful and honest.”

RP 34. Finally, they exploited his relationship with his parents, intimating his parent's vehicle would not be impounded if he told them what they wanted to hear. RP 43.

Alex's confession is consistent with findings regarding the likelihood of youth to confess. Research has indicated that only about ten percent of juveniles exercise their right to remain silent. *See*, Thomas Grisso, et al, *Interrogation of Juveniles: An Empirical Study of Procedures, Safeguards, and Rights Waiver*, Law and Human Behavior, 1, 321–342 (1977); Jessica Owen-Kostelnik, N. Dickon Reppucci, & Jessica R Meyer, *Testimony and Interrogation of Minors: Assumptions about Maturity and Morality*, American Psychologist, 61, 286–404 (2006). This data has led social scientists to question “whether juvenile waiver of *Miranda* rights constitute meaningful decisions or legal expediencies.” Richard Rogers, et al, *The Comprehensibility and Content of Juvenile Miranda Warnings*, Psychology, Public Policy, and Law, 63-87, 65 (2008).

Given the incomplete record regarding warnings and the failure of the State to establish that Alex received any further protections based upon being a juvenile, this Court should reverse the trial court's ruling that Alex's statements were voluntary.

### **3. LANGUAGE BARRIERS IMPACTED ALEX'S ABILITY TO WAIVE HIS *MIRANDA* RIGHTS.**

*a. The ability to make a knowing and intelligent waiver of Miranda rights may be inhibited by language barriers.*

A suspect's ability to make a knowing and intelligent waiver of his *Miranda* rights may be limited by language barriers. *State v. Teran*, 71 Wn.App. 668, 672, 862 P.2d 137 (1993) (waiver will be valid if warnings are given in the person's "native tongue" and the person claims to understand the rights). Language barriers are among the factors a court should consider when determining whether a person was properly advised of their *Miranda* rights. *United States v. Gonzales*, 749 F.2d 1329, 1335–36 (9th Cir.1984); *see also United States v. Heredia-Fernandez*, 756 F.2d 1412, 1415 (9th Cir.1985).

*b. Alex is a native Romanian speaker with insufficient knowledge of the English language to waive Miranda.*

Alex is not a native English speaker, having naturalized to the United States from Moldova. RP 15. Alex's parents do not speak English and required translation when being spoken to in English, both at their home and in court. 1 RP 3, 41.

It was apparent Alex struggled with English during both the course of the interrogation and when Alex was in court. Alex stated "I

want to make a license” when asked by the police what he was doing when he was stopped on the night of his arrest. RP 34. The officer then stated “I don’t understand.” RP 34. Alex stumbled through his answer again, this time stating “I – I want to drive – I was practicing to drive.” RP 34.

The officer also observed Alex speaking in another language when Alex spoke with his brother in another language while in the police car. RP 46. Alex also spoke with his mother in another language. RP 47. The officer in fact admitted some of the communication between himself and Alex was difficult. RP 47.

When asked at sentencing whether he wished to make a statement, Alex declined. RP 283. When the court did ask him a question about his schooling, Alex again was not able to explain that he was home schooled, instead stating “I have home school.” RP 288. Again, the court had to follow up to ensure Alex was actually saying what the court thought he was trying to communicate. RP 288.

To be sustained, *Miranda* warnings must be given in “words easily understood.” *State v. Prok*, 107 Wn.2d 153, 156, 727 P.2d 652 (1986) (citing JCrR 2.11(c)(1)). It is important to emphasize again that the State was unable to elicit testimony regarding the substance of the

juvenile warnings or whether Alex had any questions regarding those warnings. RP 123.

Based upon this incomplete record, the court found Sergeant Sjolín had read *Miranda* warnings to Alex, including juvenile warnings. CP 27 (Finding of Fact 20). The court also mistakenly found he understood his rights and never requested an attorney or interpreter. CP 27 (Finding of Fact 21-23). The record does not support these findings. The officer who testified with regard to the warnings was not credible with regard to his use of force. CP 27 (Finding of Fact 15). He also did not have an independent memory of providing Alex with warnings or any questions he might have had. RP 123.

Instead, the State failed to create a sufficient record to satisfy its burden, especially for a juvenile with limited English skills. No apparent attempt was made to find a Romanian speaker or provide the warnings in Romanian, as is frequently done with non-native speakers from other countries. See, e.g., *Teran*, 71 Wn.App. at 672. Instead, the recording from the night indicates Alex had difficulty communicating in English. This record is supported by his trouble communicating in court.

Without a credible recollection of the conversation Alex had with the officer who provided him with *Miranda* warnings, this Court should not be satisfied the State has met its burden. Because of the significant credibility questions regarding the testimony of the officer with regard to his use of coercion and force and because of his lack of an independent recollection of the warnings he provided to Alex, this court should order reversal.

**4. THE STATEMENTS MADE BY ALEX WERE COERCED BY THE POLICE.**

*a. Coerced statements lead to false admissions and wrongful convictions.*

The pressure of custodial interrogation is so immense that it “can induce a frighteningly high percentage of people to confess to crimes they never committed.” *Corley v. United States*, 556 U.S. 303, 320-21, 129 S.Ct. 1558, 173 L.Ed.2d 443 (2009) (citing Steven Drizin & Richard Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C.L.Rev. 891, 906–907 (2004)). “We must disabuse ourselves of the notion that an innocent person would not confess to a crime he or she did not commit.” *State v. Unga*, 165 Wn.2d 95, 121, 196 P.3d 645 (2008) (citing Richard A. Leo et al., *Bringing Reliability Back In: False Confessions and Legal Safeguards in the Twenty-First*

*Century*, 2006 Wis. L.Rev. 479, 514–16 (2006) (citing numerous studies on false confessions); Mark A. Godsey, *Reliability Lost, False Confessions Discovered*, 10 Chap. L.Rev. 623, 628 (2007) (noting the “pervasive” problem of false confessions) (additional citations omitted)). “That risk is all the more troubling—and recent studies suggest, all the more acute—when the subject of custodial interrogation is a juvenile.” *J.D.B.*, 564 U.S. at 269.

*b. The use of psychological and physical pressure should not be excused.*

No matter how mature, intelligent, or comfortable a suspect is during the interrogation, the interrogator's use of physical or psychological pressure to obtain a confession will not be excused. *See, e.g., Lynumn v. Illinois*, 372 U.S. 528, 83 S.Ct. 917, 9 L.Ed.2d 922 (1963). A statement that is the result of “coercive police activity” is not voluntary. *Colorado v. Connelly*, 479 U.S. 157, 167, 107 S.Ct. 515, 93 L.Ed.2d 473 (1986). A statement will be found to be coerced where the totality-of-the-circumstances demonstrate the statement was coerced by any promise or by the exertion of any improper influence. *State v. Broadaway*, 133 Wn.2d 118, 132, 942 P.2d 363 (1997); *Arizona v. Fulminante*, 499 U.S. 279, 285, 111 S.Ct. 1246, 113 L.Ed.2d 302 (1991). Where coercion has been found, the court must then determine

whether the person's will was overborne by the promise. *Broadaway*, 133 Wn.2d at 132, 942 P.2d 363; *see also State v. Rupe*, 101 Wn.2d 664, 678–79, 683 P.2d 571 (1984); *United States v. Walton*, 10 F.3d 1024, 1029 (3d Cir.1993).

In determining whether a statement has been coerced, both the conduct of law enforcement in exerting pressure on a person to confess and the ability of that person to resist the pressure are important. *United States v. Brave Heart*, 397 F.3d 1035, 1040 (8th Cir.2005). A statement may not be the result of “any sort of threats or violence”, or obtained by “any direct or implied promises.” *State v. Arrowood*, 375 S.C. 359, 367, 652 S.E.2d 438 (2007). “Promises of benefits or leniency, whether direct or implied, even if only slight in value, are impermissibly coercive.” *State v. Lopez*, 174 Ariz. 131, 138, 847 P.2d 1078 (1992), *cert. denied*, 549 U.S. 1000, 127 S.Ct. 506, 166 L.Ed.2d 377 (2006).

*c. The police employed unreasonable psychological and physical pressure on Alex to induce him to confess.*

The statement made by Alex was the result of coercion. Alex was removed from his car at gunpoint, as part of a heightened traffic stop. RP 75, 131. The officers approached his car with their guns drawn, ready to engage a potentially dangerous suspect. RP 131. Each

of the boys in the car were handcuffed. RP 71. Alex was warned of his right to remain silent while still in handcuffs. RP 51.

Sergeant Sjolín testified about procedures involved when making a heightened traffic stop. He testified those procedures were not followed and that the arrest was “a disaster as far as tactics are concerned.” RP 126. The officer did not testify that procedure was followed. Instead, the officers were dealing with “more than one suspect at a time.” RP 129. Verbal commands were “back and forth” and people were “confused.” RP 129. Nonetheless the trial court found that per procedure, the boys arrested by the police would have been taken out of the car at different times. CP 27 (Finding of Fact 18). This finding is not supported by the record and was entered in error.

While taking the boys into custody, Alex’s cousin informed the officer his hand was broken. RP 59. The following conversation took place between the officer and Alex’s cousin when he did.

OFFICER JENSEN: Okay. Okay, stop. Move to your left out of the street. Keep walking to the left, keep going, keep going. Stop. Start walking backward.

MR. LONGO: My right wrist is broken, sir.

SGT. SJOLIN: Well, it might get broken again.

RP 59.

While the officer denied he made this statement in order to threaten or coerce the youths, his explanation was not found to be credible by the court. RP 205, CP 27 (Finding of Fact 15). And while the court could not find this statement was actually heard by Alex, it was certainly heard by the recorder which was being used by the officer who took Alex into custody. RP 204, CP 17 (Finding of Fact 16).

This was not the only coercive or intimidating statement made by the police before Alex was interrogated. Alex was told that he was not a “man” if he did not confess. RP 30. To get him to confess, at least two officers told Alex to “man up.” RP 30, 34. When he did not immediately make a statement, the officers told him he was just a “kid,” and that to be a man he should “tell us the truth, and be respectful and honest.” RP 34.

The officers also made threats with regard to the vehicle Alex was driving, suggesting that if he made a statement, it would not be impounded.

OFFICER JENSEN: Does your dad like his van?

UNIDENTIFIED OFFICER: No, we’re going to impound that van.

RP 33.

When Alex equivocated on his statement, the officers again highlighted how Alex had hurt his parents, by telling Alex how he had screwed up and that his mother would not be able to have her vehicle for at least a week. RP 43.

While the officer stated the only threat he made to Alex was that if he did not make a statement he was going to go back to drinking his coffee because it was getting cold, the record does not support this assertion. RP 37. From the moment the boys were removed from the car, they were subject to a coercive environment. The officers threatened to break Alex's cousin's wrist. Alex was placed into handcuffs and told to "man up." When he did not make the statement the police wanted him to make, they implied his parent's car would be impounded.

For a child, these are unreasonable psychological and physical pressures. This is especially true for an older child, who wants to act like a man and is already under the pressure and humiliation of accusations of juvenile delinquency which could have been a potentially serious crime. While shooting a BB gun at car windows should not be excused, it is the type of crime which would be committed by youth. It is an impulsive act, with no purpose other than

to vandalize. Those committing the acts did not appear to think about the consequences.

The statements made by Alex should be suppressed. They were made in a coercive environment. Alex was subject to both psychological and physical coercion. As a result, the trial court erred in failing to suppress Alex's statements.

F. CONCLUSION

When the police interrogate a youth, age must be taken into account in determining what special protections should be afforded to the juvenile. Because the police did not afford the protections to Alex I. he was due, the evidence against Alex should have been suppressed.

Additionally, the failure of the police to properly advise Alex of his *Miranda* warnings in language he could understand renders the statement involuntary.

Finally, the coercive effect of the psychological and physical pressures placed on Alex before he made his statement make this statement involuntary and inadmissible.

For these reasons, Alex I. respectfully requests this Court reverse the decision of the trial court finding the statement made by Alex to be admissible and order suppression.

DATED this 7th day of July 2016.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'T. Stearns', with a long horizontal flourish extending to the right.

TRAVIS STEARNS (WSBA 29935)  
Washington Appellate Project (91052)  
Attorneys for Appellant

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE**

---

STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
	)	NO. 74263-9-I
v.	)	
	)	
ALEX I.,	)	
	)	
Juvenile Appellant.	)	

---

**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 7<sup>TH</sup> DAY OF JULY, 2016, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] KING COUNTY PROSECUTING ATTORNEY	( )	U.S. MAIL
[paoappellateunitmail@kingcounty.gov]	( )	HAND DELIVERY
APPELLATE UNIT	(X)	AGREED E-SERVICE
KING COUNTY COURTHOUSE		VIA COA PORTAL
516 THIRD AVENUE, W-554		
SEATTLE, WA 98104		

[X] ALEX I.	(X)	U.S. MAIL
24620 RUSSELL RD	( )	HAND DELIVERY
APT R-302	( )	_____
KENT, WA 98032		

**SIGNED** IN SEATTLE, WASHINGTON THIS 7<sup>TH</sup> DAY OF JULY, 2016.

X \_\_\_\_\_ 

**Washington Appellate Project**  
701 Melbourne Tower  
1511 Third Avenue  
Seattle, WA 98101  
Phone (206) 587-2711  
Fax (206) 587-2710