4-1-2015

State v. Jensen Respondent's Brief Dckt. 43356

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**No. 43356**
Plaintiff-Respondent,	)	
	)	**Jerome Co. Case No.**
v.	)	**CR-2014-5846**
	)	
DANIEL EARL JENSEN,	)	
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

HONORABLE JOHN K. BUTLER
District Judge

LAWRENCE G. WASDEN
Attorney General
State of Idaho

PAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law Division

JOHN C. McKINNEY
Deputy Attorney General
Criminal Law Division
P. O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

ATTORNEYS FOR
PLAINTIFF-RESPONDENT

JENNY C. SWINFORD
Deputy State Appellate
Public Defender
P. O. Box 2816
Boise, Idaho 83701
(208) 334-2712

ATTORNEY FOR
DEFENDANT-APPELLANT

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STATEMENT OF THE CASE

Nature of the Case

Daniel Jensen appeals from his judgment of conviction for poisoning food, medicine, or wells. Jensen specifically challenges the district court's denials of his motion to declare the automatic waiver provision of I.C. § 20-509 unconstitutional, and his motion to suppress statements made to law enforcement.

Statement of the Facts and Course of the Proceedings

According to the presentence investigation report ("PSI"), the facts underlying Jensen's criminal conduct are as follows:

> On November 28, 2014, Sgt. West was dispatched to 916 Bobcat Drive in the City of Jerome for a report of poisoning. At the residence, Sgt. West met with Jamie Novak. She reported her son was possibly trying to poison her. Novak said she had seen green flakes in her coffee for the past few days and had started getting headaches recently which she said she never usually got. Novak reported that about a week and a half prior, her son, Daniel Jensen, stole some things from their garage. She advised she found them in his room along with a case that contained a green substance inside a black bag. Novak said she believed the green substance was soap. Novak stated she confronted Jensen about the missing items.
>
> Novak reported when she made coffee today; [sic] she observed green flakes in it. She advised Jensen had returned home around 10:30 a.m. after spending time at his father's house. Novak said she and Jensen watched a movie, drank coffee, and hung out a bit during the afternoon. She stated Jensen's friend, Caleb Dumitry, wanted Jensen to go somewhere with him, but that she said he could not. Novak reported she told Jensen that Dumitry was not [sic] longer allowed at her residence after he mouthed off to her which then caused an argument between her and Jensen about Jensen not having any friends. Novak stated Jensen then began choking a cat and said he was going to kill it. She said Jensen then stood up, looked at her, and said, "If I were you I wouldn't drink anymore coffee" before going to his bedroom.
>
> Novak stated that was when it dawned on her that the substance she found in Jensen's bedroom was the same substance she had seen in her

> coffee. She said she retrieved the black bag containing the substance from Jensen's room and determined it was rat poison. Novak reported when she entered Jensen's bedroom, he punched two holes in the wall and told her to stay out of his room. Novak advised she, her boyfriend identified as Jason Knapp, and 11 year old son [M.L.] all consumed the poisoned coffee.
>
> Sgt. West next spoke to Jensen about the incident. Jensen stated he was tired of life and admitted to drinking the poisoned coffee. He admitted to putting the poison in the coffee he obtained from a mouse trap a couple of days prior. Jensen said he put the poison in the coffee because his mother is always holding him down and not letting him go anywhere. Jensen denied he was trying to kill his mother. He was arrested and transported to the Snake River Juvenile Detention Center.

(PSI, p.3.) On December 1, 2014, while Jensen was still incarcerated, Deputy Kirk Thorpe interviewed him for about 40 minutes at the Snake River Detention Center – after Jensen was given, and agreed to waive, his *Miranda*[1] rights. (See generally St. Ex. 3; Supp. Tr., p.18, L.22 – p.19, L.16; p.21, L.22 – p.24, L.12.) During his interview, Jensen admitted that he placed poison in his mother's coffee in an attempt to kill (or "get rid of") her. (See generally St. Ex. 3.)

Jensen was charged with attempted first degree murder for placing rat poison in his mother's coffee,[2] two counts of aggravated battery (for doing the same to [M.L.] and Jason Knapp), and two misdemeanors: malicious injury to property, and possession of tobacco by a minor. (R., pp. 9-11.) The Amended Criminal Complaint invoked I.C. § 20-509, which automatically waives minors between the ages of 14 and 18 into adult court for certain enumerated crimes. (Id.) Prior to the preliminary hearing, Jenson's appointed counsel filed a "Motion to Declare I.C. §§ 20-508, 509 Unconstitutional and

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

[2] A Second Amended Complaint was later filed alleging the same crimes, but clarifying that it was "mice" poison, not rat poison, that Jensen placed in the three victims' coffee. (R., pp.90-92.)

for Order Remanding Case to Juvenile Court," which included a supporting legal analysis. (R., pp.44-82.)

After a preliminary hearing, the magistrate court dismissed the two aggravated battery charges for lack of probable cause (R., pp.102-103), and bound Jensen over to district court for attempted murder in the first degree (R., pp.105-106). The state filed a response to Jensen's motion to declare I.C. §§ 20-508 and 20-509 unconstitutional. (R., pp.125-132.) On January 22, 2015, the district court entered a memorandum decision and order denying Jensen's motion to declare the two waiver statutes unconstitutional. (R., pp.133-138.) Jensen filed a "Motion to Suppress and Brief in Support," seeking to suppress statements he made to law enforcement both before and after his arrest, and the state filed a response. (R., pp.142-146, 151-156.) Despite having ruled on Jensen's motion to declare the waiver statutes unconstitutional, a hearing on that motion was combined with a hearing on his suppression motion, and held on March 31, 2015. (R., pp.157-161.) After the hearing, the court entered a memorandum decision denying Jensen's motion to suppress (R., pp.164-175), and an order denying his motion to declare I.C. §§ 20-508 and 20-509 unconstitutional (R., pp.161-163).

Pursuant to a plea agreement, Jensen entered a conditional plea to an amended charge of (felony) Poisoning Food, Medicine, or Wells (I.C. § 18-5501), reserving his right to appeal from the district court's denial of his two motions, and the state dismissed the misdemeanors. (R., pp.179-182, 196; 5/6/15 Tr., p.4, Ls.18-20.) The state agreed to recommend a "blended" sentence of five years with two years fixed, and to have Jensen committed to the Department of Juvenile Corrections ("DJC"); Jensen could ask

for a withheld judgment and the state would recommend a five-year period of supervised probation. (5/6/15 Tr., p.4, L.18 – p.5, L.13.) The district court ordered Jensen to have a mental health evaluation under I.C. § 19-2522 to assist it in sentencing. (R., p.184.)

In its Amended Judgment of Conviction, the district court determined that a blended sentence was necessary because adult sentencing measures would be inappropriate given Jensen's "maturity level," and conversely, juvenile sentencing options were not appropriate due to the seriousness of the offense. (R., p.201.) The court (a) sentenced Jensen to the custody of the Idaho Department of Correction for a unified five-year term with two years fixed, and (b) suspended imposition of the underlying sentence and retained jurisdiction, committing Jensen "to the dual custody of the Idaho Department of Juvenile Corrections (DJC) and the Idaho Department of Correction (IDOC) in accordance with I.C. § 19-2601A." (R., p.201.) The court further stated in its Amended Judgment of Conviction that it "intends to re-sentence the defendant as an adult after the commitment to the DJC and the Court determines that the defendant has received all that can be offered for rehabilitation within the juvenile justice system or until no later that [sic] age twenty-one (21)." (R., p.201.) Jensen filed a timely notice of appeal. (R., pp.205-208.)

ISSUES ON APPEAL

Jensen phrases the issues as follows:

1. Did the district court err by denying Mr. Jensen's motion to declare automatic waiver provision of a juvenile into adult court unconstitutional?

2. Did the district court err by denying Mr. Jensen's motion to suppress?

(Appellant's Brief, p.4 (verbatim).)

The state wishes to rephrase the issues on appeal as follows:

1. Has Jensen failed to establish that the automatic waiver provision of I.C. § 20-509 constitutes cruel and unusual punishment under the Eighth Amendment or violates the Fourteenth Amendment's Due Process Clause?

2. Has Jensen failed to show any error in the district court's denial of his motion to suppress?

ARGUMENT

I.
Jensen Has Failed To Establish That The Automatic Waiver Provision Of I.C. § 20-509 Constitutes Cruel And Unusual Punishment Under The Eighth Amendment Or Violates The Fourteenth Amendment's Due Process Clause

A. Introduction

Idaho Code § 20-509(1), which is part of the Juvenile Corrections Act, provides that any person between the ages of 14 years and 18 years who commits certain enumerated violent offenses "shall be charged, arrested and proceeded against by complaint, indictment or information as an adult." One of these enumerated offenses is attempted murder. I.C. § 20-509(1)(a). Jensen argues that the automatic waiver provision of I.C. § 20-509 violates the Eighth Amendment's proscription against cruel and unusual punishment and the Fourteenth Amendment's Due Process Clause. (See generally Appellant's Brief, pp.5-29.) Jensen's arguments fail because (1) the automatic waiver provision does not constitute "punishment" under the Eighth Amendment, and (2) under the Fourteenth Amendment, it does not involve a liberty interest and passes the rational scrutiny test for due process.

B. Standard of Review

The constitutionality of a statute is a question of law over which the appellate court exercises free review. Doe I v. Doe, 138 Idaho 893, 903, 71 P.3d 1040, 1050 (2003).

C. The Automatic Waiver Provision Of I.C. § 20-509 Does Not Constitute Cruel And Unusual Punishment Under The Eighth Amendment

In Roper v. Simmons, 543 U.S. 551 (2005), the U.S. Supreme Court held that the Eighth Amendment bars capital punishment for children. Next, in Graham v. Florida, 560 U.S. 48 (2010), the Court ruled the Eighth Amendment prohibits a sentence of life

without the possibility of parole for a child who committed a non-homicide offense. In Miller v. Alabama, 132 S.Ct. 2455, 2464 (2012), the Court ruled that mandatory life-without-parole sentences for juveniles violate the Eighth Amendment. Additionally, Jensen cites Montgomery v. Louisiana, __ U.S. __, 136 S.Ct. 718 (2016), which held that Miller must be applied retroactively. Relying on these cases, Jensen argues that Idaho's automatic waiver provision, I.C. § 20-509, inflicts cruel and unusual punishment under the Eighth Amendment[3] because it "subjects juveniles to excessive sanctions by treating them as adults without accounting for their diminished culpability and individual characteristics." (Appellant's Brief, pp.7-8.) Jensen's argument fails.

Instead of citing viable legal authority to support his contention that Idaho's (or any other state's) automatic waiver provision constitutes "punishment" under the Eighth Amendment, Jensen bases his argument on his "youth matters" theme, gleaned from Roper, Graham, and Miller. (See Appellant's Brief, pp.8-14.) However, those cases – dealing with the maximum juvenile punishments of death and (subsequently) life without

[3] As explained by the Idaho Supreme Court in State v. Grazian, 144 Idaho 510, 517, 164 P.3d 790, 797 (2007):

> When reviewing a claim of cruel and unusual punishment the Court uses a proportionality analysis limited to cases which are "out of proportion to the gravity of the offense committed." *State v. Brown,* 121 Idaho 385, 394, 825 P.2d 482, 491 (1992). The Court compares the crime committed and the sentence imposed to determine whether the sentence is grossly disproportionate. *State v. Robertson*, 130 Idaho 287, 289, 939 P.2d 863, 865 (Ct. App. 1997). This gross disproportionality test is equivalent to the standard under the Idaho Constitution which focuses on whether the punishment is so out of proportion to the gravity of the offense to shock the conscience of reasonable people. *Brown*, 121 Idaho at 394, 825 P.2d at 491. An "intra-and inter-jurisdictional" analysis is "appropriate only in the rare case" where the sentence is grossly disproportionate to the crime committed. *State v. Matteson*, 123 Idaho 622, 626, 851 P.2d 336, 340 (1993).

the possibility of parole – are unique to their sobering sentencing issues and irrelevant to the "automatic waiver" issue at hand. As the district court held, Jensen's "reliance upon [Roper, Graham, and Miller] is misplaced since the defendant is not subject to either the death penalty or life without the possibility of parole." (R., p.162.) Inasmuch as Jensen has presented no authority that actually supports his argument that I.C. § 20-509 constitutes "punishment" under the Eighth Amendment, this Court should decline to consider the issue.[4] See State v. Zichko, 129 Idaho 259, 263, 923 P.2d 966, 970 (1996) ("When issues on appeal are not supported by propositions of law, authority, or argument, they will not be considered.").

There is ample authority establishing that the automatic waiver provision of I.C. § 20-509(1) does not constitute "punishment" under the Eighth Amendment. The United States Supreme Court has stated that the Eighth Amendment, applicable to the states through the Fourteenth Amendment, "prohibits the infliction of cruel and unusual punishments *on those convicted of crimes*." Wilson v. Seiter, 501 U.S. 294, 296–97 (1991) (emphasis added). That is, the Eighth Amendment only comes into play after there has been a formal adjudication of guilt, through a criminal prosecution, in accordance with due process of law. See City of Revere v. Massachusetts General Hosp., 463 U.S. 239, 244 (1983). Similarly, in Bell v. Wolfish, 441 U.S. 520, 536 n.16 (1979), the United States Supreme Court explained:

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[4] Jensen appears to argue that by being automatically waived into adult court, he was "punished" because, as a result of that placement, he was later subjected to adult sentencing. (See Appellant's Brief, pp.7-14.) However, he has failed to present any authority to support the argument that the mere automatic waiver into adult court, prior to conviction, constitutes "punishment" under the Eighth Amendment. See Zichko, 129 Idaho at 263, 923 P.2d at 970.

> The Court of Appeals properly relied on the Due Process Clause rather than the Eighth Amendment in considering the claims of pretrial detainees. Due process requires that a pretrial detainee not be punished. A sentenced inmate, on the other hand, may be punished, although that punishment may not be "cruel and unusual" under the Eighth Amendment. The Court recognized this distinction in *Ingraham v. Wright,* 430 U.S. 651, 671-672, n. 40, 97 S.Ct. 1401, 1412-1413 n. 40, 51 L.Ed.2d 711 (1977):
>
> > "Eighth Amendment scrutiny is appropriate only after the State has complied with the constitutional guarantees traditionally associated with criminal prosecutions. *See United States v. Lovett,* 328 U.S. 303, 317-318, 66 S.Ct. 1073, 1079-1080, 90 L.Ed. 1252 (1946). . . . [T]he State does not acquire the power to punish with which the Eighth Amendment is concerned until after it has secured a formal adjudication of guilt in accordance with due process of law. Where the State seeks to impose punishment without such an adjudication, the pertinent constitutional guarantee is the Due Process Clause of the Fourteenth Amendment."[5]

See In re Grand Jury Proceedings, 33 F.3d 1060, 1062 (9th Cir. 1994) ("[T]he Eighth Amendment applies only to punishments imposed after 'a formal adjudication of guilt in accordance with due process of law.'"). In short, the authorities are in agreement that

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[5] In Ingraham v. Wright, 430 U.S. 651, 666-67 (1977), the Supreme Court explained:

> In light of this history, it is not surprising to find that every decision of this Court considering whether a punishment is "cruel and unusual" within the meaning of the Eighth and Fourteenth Amendments has dealt with a criminal punishment. [Citing line of cases.]
>
> These decisions recognize that the Cruel and Unusual Punishments Clause circumscribes the criminal process in three ways: First, it limits the kinds of punishment that can be imposed on those convicted of crimes, . . . ; second, it proscribes punishment grossly disproportionate to the severity of the crime . . . . ; and third, it imposes substantive limits on what can be made criminal and punished as such . . . . We have recognized the last limitation as one to be applied sparingly. "The primary purpose of (the Cruel and Unusual Punishments Clause) has always been considered, and properly so, to be directed at the method or kind of punishment imposed for the violation of criminal statutes . . .."

(Quoting Powell v. Texas, 392 U.S. 514, 531-532 (1968) (plurality opinion)).

the Eighth Amendment's cruel and unusual punishment provision applies only to persons who have been convicted of a crime. When Jensen was automatically waived into adult court, he had not been convicted, therefore, he was not "punished" for Eighth Amendment purposes.

Jensen lastly argues that "the statute allows the district court to impose an adult penalty on a juvenile without considering the juvenile's youth and attendant characteristics." (Appellant's Brief, p.13.) If by "adult penalty" Jensen is referring to the automatic waiver provision of I.C. § 20-509, he wrongly equates the two, as previously discussed.

However, if Jensen is suggesting the district court was permitted to "sentence" him without considering his "youth and attendant characteristics[,]" he is incorrect, and has presented no authority to support such a notion. Indeed, prior to sentencing, the district court ordered Jensen to have a mental health evaluation under I.C. § 19-2522 to assist it in its sentencing determination (R., p.184), and at sentencing, the court ordered a "blended" sentence partly because it concluded adult sentencing measures were inappropriate given Jensen's "maturity level" (R., p.201). The court sentenced Jensen to the custody of IDOC for a unified five-year term, all suspended, and retained jurisdiction while committing Jensen "to the dual custody" of DJC and the IDOC under I.C. § 19-2601A. (R., p.201.) The court said it intended "to re-sentence [Jensen] as an adult after the commitment to the DJC *and the Court determines that the defendant has received all that can be offered for rehabilitation within the juvenile justice system* or until no later that [sic] age twenty-one (21)." (R., p.201 (emphasis added).) See State v. Pauls, 140 Idaho 742, 101 P.3d 235 (Ct. App. 2004) (explaining the three sentencing

options under I.C. § 20-509 – adult, juvenile, or blended)). Any claim that the district court was permitted to sentence Jensen without considering his "youth and attendant characteristics" would be entirely misplaced.

In short, Jensen's argument fails because, having not been found guilty of any criminal act when he was automatically waived into adult court pursuant to I.C. § 20-509, he was not "punished" within the meaning of the Eighth Amendment's proscription against cruel and unusual punishment. See U.S. v. David H., 29 F.3d 489, 491 (9th Cir. 1994) ("The mandatory transfer provision of § 5032 does not prohibit or sanction conduct. It merely establishes a basis for district court jurisdiction of prosecutions to which it applies."). Jensen has failed to show that the automatic waiver provision of I.C. § 20-509 even implicated the Eighth Amendment, much less violated it.

D. The Automatic Waiver Provision Of I.C. § 20-509 Does Not Violate The Fourteenth Amendment's Due Process Clause

Jensen next contends that the automatic waiver provision of I.C. § 20-509 violates his due process rights under the Fourteenth Amendment. (Appellant's Brief, pp.14-19.) Jensen's due process argument has no merit.

The Fourteenth Amendment provides, in pertinent part, that "[n]o state shall make or enforce any law which shall ... deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." The concept of substantive due process has been understood to embody the requirement that a statute bear a reasonable relationship to a permissible legislative objective. State v. Reed, 107 Idaho 162, 167, 686 P.2d 842, 847 (Ct. App. 1984) (citations omitted).

In order for the state to prevail on a substantive due process claim, the state action that deprives a person of life, liberty, or property must not be arbitrary, capricious, or without a rational basis. Pace v. Hymas, 111 Idaho 581, 586, 726 P.2d 693, 698 (1986). Conversely, a substantive due process violation will not be found if the state action "bear[s] a reasonable relationship to a permissible legislative objective." In re McNeely, 119 Idaho 182, 189, 804 P.2d 911, 918 (Ct. App. 1990) (citing Reed, 107 Idaho at 167, 686 P.2d at 847).

"Legislative acts that do not impinge on fundamental rights or employ suspect classifications are presumed valid, and this presumption is overcome only by a 'clear showing of arbitrariness and irrationality.'" Kawaoka v. City of Arroyo Grande, 17 F.3d 1227, 1234 (9th Cir. 1994). Moreover, "in a substantive due process challenge, [the courts] do not require that the [government's] legislative acts actually advance its stated purposes, but instead look to whether 'the governmental body *could* have had no legitimate reason for its decision.'" Id. (citations omitted). Additionally, "[i]f it is 'at least fairly debatable' that the [government's] conduct is rationally related to a legitimate governmental interest, there has been no violation of substantive due process." Halverson v. Skagit County, 42 F.3d 1257, 1262 (9th Cir. 1994) (quoting Kawaoka, 17 F.3d at 1234).

Jensen's "due process" argument has been rejected by the Idaho Court of Appeals, which has repeatedly ruled that Idaho's statutory automatic waiver provision is constitutional, the seminal case being State v. Anderson, 108 Idaho 454, 700 P.2d 76 (Ct. App. 1985). "The rule of stare decisis dictates that we follow controlling precedent unless it is manifestly wrong, unless it has proven over time to be unjust or unwise, or

unless overruling it is necessary to vindicate plain, obvious principles of law and remedy continued injustice." State v. Clontz, 156 Idaho 787, 789, 331 P.3d 529, 531 (Ct. App. 2014) (quotations, citations, and brackets omitted). None of the arguments advanced by Jensen support overturning Anderson and its progeny.

In Anderson, the defendant was a juvenile who had participated with four other juveniles in the beating death of another youth. The Court of Appeals specifically held that Idaho Code § 16-1806A, the former automatic waiver provision (now I.C. § 20-509), did not infringe the constitutional right to due process, explaining:

> Anderson's conduct was excepted from YRA jurisdiction at its occurrence; he had no statutory right to be proceeded against as a minor. Anderson acquired no expectation, from either legislation or state conduct furthering prosecution of the crime that he would be charged in juvenile court. Accordingly his right to due process was not infringed when he was charged with a crime excluded from YRA jurisdiction.
>
> Anderson also argues that section 16-1806A violates the due process clause by creating an irrebutable presumption regarding his ability to be rehabilitated. . . . Anderson believes section 16-1806A, by excepting his conduct from YRA jurisdiction, in effect creates an irrebutable presumption that he cannot be rehabilitated. He argues that such a presumption, by foreclosing his opportunity to demonstrate a rehabilitative character, infringes upon rights guaranteed by the due process clause. We are not persuaded. The cases cited by Anderson . . . . do not support his proposition. . . . *As we have already discussed, Anderson never was entitled in this case to the advantaged position granted to those within the purview of the YRA. A demonstration by Anderson that he can be rehabilitated would not entitle him to a YRA proceeding. We find no infringement of the rights accorded Anderson under the due process clause*.

Anderson, 108 Idaho at 457-458, 700 P.2d at 79-80 (emphasis added).

As in Anderson, Jensen "never was entitled . . . to the advantaged position granted to those within the purview of the [Juvenile Corrections Act]," therefore, there was "no infringement of the rights accorded [Jensen] under the due process clause." Id. See State v. Hernandez, 133 Idaho 576, 582 n.5, 990 P.2d 742, 748 n.5 (Ct. App. 1999)

("It should be observed that the State was not required to obtain a waiver of juvenile court jurisdiction before proceeding in adult court on the attempted first degree murder charge."); State v. McKeown, 108 Idaho 452, 453, 700 P.2d 74, 75 (Ct. App. 1985) ("We also hold that McKeown did not have a right under the YRA to be proceeded against as a juvenile."). Based on the fact that Jensen was never entitled to be charged or tried as a juvenile, he never had a liberty interest in being placed in the juvenile court system; therefore, his due process rights could not have been violated by his automatic waiver into adult court under I.C. § 20-509.

The Court of Appeals in Anderson also held that (former) Idaho Code § 16-1806A did not violate the equal protection clause of the Fourteenth Amendment by treating minors who commit certain violent criminal acts differently, since the "classification created by the legislature bears a rational relationship to an important legislative objective." Id. at 458, 700 P.2d at 80. The Court reasonably explained, "We believe that, by enacting I.C. § 16-1806A, the legislature clearly intended certain violent criminal acts, when committed by minors, should be excluded from YRA jurisdiction." Id. at 457, 700 P.2d at 79. The Court applied these same holdings in two companion cases to Anderson, McKeown, 108 Idaho 452, 700 P.2d 74, and State v. Matthews, 108 Idaho 453, 700 P.2d 75 (Ct. App. 1985), and later in State v. Juhasz, 124 Idaho 851, 853, 865 P.2d 178 (Ct. App. 1993), and State v. Espinoza, 127 Idaho 194, 898 P.2d 1105 (Ct. App. 1995).

Jensen advances a similar argument that he presented in regard to his Eighth Amendment claim – that Roper, Graham, Miller, and Montgomery, supra, have transformed the law to "warrant[] the reexamination of the constitutionality of I.C. § 20-

509 under the due process clause." (Appellant's Brief, p.15.) Jensen contends that "*Roper*, *Graham*, and *Miller* establish that juveniles have a liberty interest in not being treated automatically as adults in the criminal justice system[,]" citing a law review article to support his claim. (Appellant's Brief, p.16.) Because the Roper line of cases specifically dealt with the constitutionality of sentences involving the death penalty and life without the possibility of parole for crimes committed by juveniles, they are irrelevant to determining whether Idaho's automatic waiver provision violates due process under the Fourteenth Amendment. More specifically, Roper, Graham, Miller, and Montgomery do not support Jensen's bare assertion that he had a liberty interest in being charged and tried as a juvenile. That those cases found "youth" to be an important factor in deciding whether sentences of death and (later) life without the possibility of parole for juveniles are unconstitutional does nothing to show that Jensen had a liberty interest in being charged and tried in juvenile court. Apart from the general truism that "youth matters" – which can be applied to any legal issue involving juveniles – Jensen has not explained specifically how the four U.S. Supreme Court cases support his claim that he had liberty interest in being tried as a juvenile. (See R., p.162 (district court order stating that Jensen's reliance on Roper, Graham, and Miller "is misplaced since the defendant is not subject to either the death penalty or life without the possibility of parole")); see Zichko, 129 Idaho at 263, 923 P.3d at 970. Jensen's argument should therefore be rejected.

Finally, Jensen argues that, even if he had no "liberty interest in JCA jurisdiction, I.C. § 20-509 still violates the due process clause under the rational basis test." (Appellant's Brief, p.18.) Jenson argues that the "legislature's purpose was to subject

certain juveniles to harsh adult penalties . . . with the prevailing penological goal likely being incapacitation [sic] *to protect society from these alleged violent offenders*." (Appellant's Brief, p.18 (citation omitted).) But, the goal of protecting society is obviously a valid one, and accomplishing that by keeping violent offenders separated for a period of time by incarceration (not "incapacitation") is a rational way of obtaining that goal. It is a matter of common sense that the more serious and violent offenders should face more serious consequences in order to protect society. Despite Jensen's argument, the Idaho Legislature's intent to exclude juveniles who commit "certain" violent crimes (see I.C. § 20-509(1)) from the Juvenile Corrections Act "bear[s] a reasonable relationship to a permissible legislative objective." In re McNeely, 119 Idaho at 189, 804 P.2d at 918 (citing Reed, 107 Idaho at 167, 686 P.2d at 847.) Jensen has therefore failed to show that the district court erred in denying his motion to declare I.C. § 20-509 unconstitutional on due process grounds.

II.
Jensen Has Failed To Show Any Error In The District Court's Denial Of His Motion To Suppress

A. Introduction

On November 28, 2014, after Jensen's mother, Jamie Novak, reported to law enforcement that she thought Jensen may have tried to poison her coffee, Deputy Mathew West and Deputy Chad Kingsland drove separately to Novak's home, where Deputy West questioned Jensen about his mother's report, without giving Jensen *Miranda* warnings. (Prelim. Tr., p.7, L.15 – p.8, L.11; Supp. Tr., p.5, L.25 – p.11, L.21.) Deputy West discussed the incident with Jensen while Jensen stood on the front porch

of the residence with a friend, and after Jamie Novak went into the house with Deputy Kingsland following an exchange of words she had with Jensen. (Supp. Tr., p.7, L.19 – p.16, L.17.) Deputy West arrested Jensen after he made several admissions during the questioning on the porch that lasted about 10 to 12 minutes. (Supp. Tr., p.9, Ls.23-25; PSI, p.3.) On December 1, 2014, while Jensen was still incarcerated, Deputy Kirk Thorpe interviewed him for about 40 minutes at the Sheriff's office after Jensen was given, and agreed to waive, his *Miranda* rights. (See generally St. Ex. 3.) During that interview, Jensen admitted that he placed rat poison in the coffee container in an attempt to get rid of his mother. (Id.)

Jensen filed a motion to suppress both sets of statements to law enforcement (R., pp.142-146), and, after a hearing, the district court denied the motion, concluding that, contrary to Jensen's arguments, (1) "Jenson was not in custody for purposes of *Miranda* while he was being questioned by Sgt. West[,]" (R., p.172), and (2) "the evidence presented by the State clearly indicates that [Jensen] understood his *Miranda* rights and that he made a knowing, intelligent and voluntary waiver of his *Miranda* rights when he agreed to speak with Deputy Thorpe" (R., p.174).

On appeal, Jensen again argues "he was subject to 'custodial interrogation' during the first questioning and his *Miranda* waiver was not knowing, voluntary, and intelligent during the second questioning." (Appellant's Brief, pp.19-20.) Jensen has failed to show any error in the district court's denial of his suppression motion. For its response, and in addition to the analysis that follows, the state relies upon the district court's Memorandum Decision Re: Defendant's Motion to Suppress (R., pp.164-175), incorporated by reference herein, and attached as Appendix A.

B. Standard Of Review

The standard of review of a suppression motion is bifurcated. When a decision on a motion to suppress is challenged, the appellate court accepts the trial court's findings of fact which are supported by substantial evidence, but freely reviews the application of constitutional principles to the facts as found. State v. Ballou, 145 Idaho 840, 186 P.3d 696 (Ct. App. 2008) (citing State v. Atkinson, 128 Idaho 559, 561, 916 P.2d 1284, 1286 (Ct. App. 1996).

C. The District Court Correctly Determined That Jensen Was Not In Custody When He Made Incriminating Statements To Deputy West

The district court held that Jensen's statements to Deputy West on November 28, 2014, were made when Jensen was not in custody for purposes of *Miranda*; therefore, *Miranda* warnings were not required to be given to Jensen in order for those statements to be admissible at trial. (R., pp.170-172 (Appendix A, pp.7-9).) Jensen has failed to show any error in the district court's ruling.

"The requirement for *Miranda* warnings is triggered by custodial interrogation." State v. Beck, 157 Idaho 402, 407, 336 P.3d 809, 814 (Ct. App. 2014) (citing State v. Medrano, 123 Idaho 114, 117, 844 P.2d 1364, 1367 (Ct. App. 1992)). "The United States Supreme Court equated custody with a person being deprived of his or her freedom by the authorities in any significant way." Id. at 408, 336 P.3d at 815 (citing Miranda v. Arizona, 384 U.S. 436, 478 (1966)). "This test has evolved to define custody as a situation where a person's freedom of action is curtailed to a degree associated with formal arrest." Id. (citing Berkemer v. McCarty, 468 U.S. 420, 440 (1984); State v. Myers, 118 Idaho 608, 610, 798 P.2d 453, 455 (Ct. App. 1990)). "The initial

determination of custody depends on the objective circumstances of the interrogation, not on the subjective views harbored by either the interrogating officers or the person being questioned." Id. (citing Stansbury v. California, 511 U.S. 318, 323 (1994)). To determine whether a suspect is in custody, "the only relevant inquiry is how a reasonable person in the suspect's position would have understood his or her situation." Id. (citing Berkemer, 468 U.S. at 442 (1984); Myers, 118 Idaho at 611, 798 P.2d at 456).

"A court must consider all of the circumstances surrounding the interrogation." Id. (citing Stansbury, 511 U.S. at 322; State v. James, 148 Idaho 574, 577, 225 P.3d 1169, 1172 (2010)). The Idaho Court of Appeals laid out possible factors to be considered:

> Factors to be considered may include the degree of restraint on the person's freedom of movement (including whether the person is placed in handcuffs), whether the subject is informed that the detention is more than temporary, the location and visibility of the interrogation, whether other individuals were present, the number of questions asked, the duration of the interrogation or detention, the time of the interrogation, the number of officers present, the number of officers involved in the interrogation, the conduct of the officers, and the nature and manner of the questioning.

Id. (citing Berkemer, 468 U.S. at 441-442; James, 148 Idaho at 577-578, 225 P.3d at 1172-1173). "The burden of showing custody rests on the defendant seeking to exclude evidence based on a failure to administer *Miranda* warnings." Id. (citing James, 148 Idaho at 577, 225 P.3d at 1172).

Here, the district court properly considered all of the "circumstances surrounding the interrogation" and concluded that Jensen was not in custody when he spoke to

Deputy West. (See R., pp.164-166, 170-172 (Appendix A, pp.1-4, 7-9).) The court explained [with bracketed references to the record]:

> At the time of the encounter with Sgt. West, Jensen was on the front porch of his residence and got out of his chair to speak with Sgt. West; Sgt. West did not require he remain seated. [Supp. Tr., p.7, Ls.17-22; p.10, Ls.1-5; p.15, Ls.5-11.] Also during this encounter Jensen was with his friend Caleb Dumitry, who was standing alongside him. [Supp. Tr., p.7, Ls.19-22; p. 10, Ls.6-8; p.11, Ls.11-15.] By all accounts the conversation was calm and casual and Jensen was in a familiar environment. [Supp. Tr., p.12, Ls.5-11; p.15, Ls.9-12.] Jensen was not in any way physically restrained nor did Sgt. West say or do anything that would have suggested he was not free to leave. [Supp. Tr., p.11, L.23 – p.12, L.4; p.15, Ls.13-23.] This conversation only lasted approximately 10 minutes and was of a short duration. [Supp. Tr., p.9, Ls.22-25.] While two officers arrived at the residence, they parked on the street without the use of their overheads [Supp. Tr., p.12, L.24 – p. 13, L.11], and it appears that only one officer was actually present during the questioning of Jensen, since Kingsland had gone into the residence with Jensen's mother [Supp. Tr., p.12, Ls.12-17; p.16, Ls.13-21].
>
> By all accounts Jensen was not in custody for purposes of *Miranda* while he was being questioned by Sgt. West. Therefore, the defendant's motion to suppress his statements to Sgt. West is DENIED.

(R., pp.171-172 (Appendix A, pp.8-9).) In sum, based on the testimony before it at the suppression hearing, the district court found that Deputy West did not verbally or physically restrict Jensen's movements in any way: the questioning of Jensen was calm and casual, with a friend present, and for only a short time; the questioning took place in Jensen's own environment (the porch of his home); and the deputies made no show of force (such as emergency lights) when they arrived.

In challenging the district court's finding that he was not in custody for the purposes of *Miranda*, Jensen contends that due to his age and other circumstances, "it is reasonable to conclude that [he] felt 'pressured to submit' even if a 'reasonable adult would feel free to go.'" (Appellant's Brief, p.24.) Jensen cites the following

circumstances: (1) his "status as a juvenile[,]" (2) he was "questioned without a parent or other adult present[,]" (3) Deputy West testified that "Mr. Jensen was not free to leave[,]" and (4) Jensen could not go inside his home to avoid questioning because "another officer was inside with his mother – and he could not leave the porch." (Appellant's Brief, p.24.) Closer examination of those factors do not show that a reasonable person in Jensen's position would have understood that his freedom of action was "curtailed to a degree associated with formal arrest." Beck, 157 Idaho at 407, 336 P.3d at 814 (citing Berkemer, 468 U.S. at 440).

Although Jensen was a juvenile, he was an older juvenile at age $17^1/_2$ when he was questioned by Deputy West on November 28, 2014. (St. Ex. 3, 5:20-5:35; see PSI, p.2 (d/o/b of 5/13/97). Rather than being involuntarily separated from his mother and left alone during the questioning, Jensen's friend, Caleb Dumitry, stood with him on the porch during questioning, and even became involved in the conversation between Deputy West and Jensen. (Supp. Tr., p.11, Ls.7-18.) The reason Jensen was questioned by Deputy West is because Jensen had reportedly just tried to kill his mother by putting rat poison in her coffee. Jensen's complaint that he was deprived of his mother's presence while being questioned about how he had just tried to permanently deprive himself of her presence is specious. In addition, the reason Jensen's mother went into the house was because she and Jensen exchanged words on the porch when the deputies arrived – perhaps having something to do with Jensen lacing her coffee with rat poison.[6] Deputy West testified that he *would have* prevented

[6] Deputy West testified that he did not remember what started the argument between Ms. Novak and her son, Jensen. (Supp. Tr., p.14, Ls.11-16.)

Jensen from leaving, but he (as the district court fairly inferred from his testimony) did not say or do anything to suggest that Jensen he was not free to leave (R., p.171; Supp. Tr., p.11, L.23 – p.12, L.4; p.15, L.13-23), and there is no indication he told Jensen to remain on the porch or to not enter the house (see generally Supp. Tr., pp.5-17). Regardless, the deputy's subjective views are not relevant to whether Jensen was in custody. See Myers, 118 Idaho at 610, 798 P.2d at 455 (custody is not determined by "the subjective views harbored by either the interrogating officers or the person being questioned").

Even if Deputy West had temporarily "seized" Jensen for questioning pursuant to Terry v. Ohio, 392 U.S. 1 (1968), Jensen's statements in that setting do not require *Miranda* warnings to be admissible at trial. The U.S. Supreme Court has specifically rejected this argument, holding that the "temporary and relatively non-threatening detention involved in a . . . Terry stop . . . does not constitute *Miranda* custody."[7] Maryland v. Shatzer, __ U.S. __, 130 S.Ct. 1213, 1224 (2010).

For the above reasons, including those set forth in the district court's Memorandum Decision Re: Defendant's Motion to Suppress, Jensen has failed to show any error in the court's determination that, "[b]y all accounts Jensen was not in custody for purposes of *Miranda* while he was being questioned by Sgt. West." (R., p.172 (Appendix A, p.9).)

[7] According to Terry, a seizure occurs "when the officer by means of physical force or show of authority, has in some way restrained the liberty of a citizen." 392 U.S. at 19 n.6.

D. The District Court Correctly Determined That Jensen Understood His *Miranda* Rights And Knowingly, Intelligently, And Voluntarily Waived Those Rights When He Was Questioned By Deputy Thorpe

The district court denied Jensen's motion to suppress statements he made while in custody to Deputy Thorpe on December 1, 2014, ruling that Jensen "understood his *Miranda* rights and that he made a knowing, intelligent and voluntary waiver of his *Miranda* rights when he agreed to speak with Deputy Thorpe." (R., p.174.) On appeal, Jensen contends that "the waiver of his *Miranda* rights were [sic] involuntary under the circumstances[,]" arguing that, as a juvenile, he was generally "less mature and responsible than adults," he had no parent present at the interview, his parents were not informed about the interview in advance, Jensen was not told he could speak with his parents, Jensen showed he did not "understand the severity of the situation" by asking Deputy Thorpe about where he could be released, and since he had previously made statements to Deputy West, he did not "appreciate the consequences of providing additional statements to the police." (Appellant's Brief, pp.27-28.) Jensen's arguments fail.

With the addition of several points of consideration, the state fully relies upon the district court's factual rendition and well-reasoned analysis set forth in its Memorandum Decision Re: Defendant's Motion to Suppress (R., pp.164-175 (Appendix A, pp.1-12)), as if fully set forth herein, for its response to Jensen's argument.

According to State's Exhibit 3, Jensen's interview with Deputy Thorpe lasted just under 40 minutes, not one hour as the deputy estimated at the suppression hearing – not a period of time that would be considered onerous regardless. (See Supp. Tr., p.20, Ls.1-3; St. Ex. 3.) In regard to Jensen's youthful immaturity, as previously discussed,

he was 17½ years old at the time of the interview – almost an adult. As the district court explained, the failure of a parent to be present for the interview, although "perhaps a factor to be considered in the totality of the circumstances . . . does not by itself render the waiver invalid." (R., p.173 (Appendix A, p.10).) Coupled with the fact that Jensen was almost an adult at the time of the interview, the absence of a parent is less of a factor than if Jensen were younger. Also, as the victim of Jensen's crime, it would have not only been awkward for his mother to be present at the interview, but may (arguably) have been viewed as a way to exert parental pressure on Jensen to make further admissions.

Jenson's question to Deputy Thorpe about where he would live if released was logical, given that his attempt to poison his mother with rat poison probably precluded him from returning to her home. Lastly, Jensen's "cat-out-of-the-bag" argument -- that once he made admissions to Deputy West, he was more susceptible to making further admissions to Deputy Thorpe -- is irrelevant to whether Jensen waived his *Miranda* rights knowingly, intelligently, and voluntarily.

Based on the district court's well-reasoned analysis in its Memorandum Decision Re: Defendant's Motion to Suppress (R., pp.164-174 (Appendix A)), and the above additional points, Jensen has failed to show any error in the court's determination that Jensen understood his *Miranda* rights and knowingly, voluntarily, and intelligently waived them prior to his interview with Deputy Thorpe on December 1, 2014. Accordingly, Jensen has failed to show that the district court erred in denying his motion to suppress the statements he made during that interview.

CONCLUSION

The state respectfully requests that this Court affirm the district court's decisions denying Jensen's motion to declare I.C. § 20-509 unconstitutional, and motion to suppress, and affirm his judgment of conviction and sentence.

DATED this 2nd day of May, 2016.

/s/ John C. McKinney
JOHN C. McKINNEY
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 2nd day of May, 2016, served a true and correct copy of the foregoing BRIEF OF RESPONDENT by emailing an electronic copy to:

JENNY C. SWINFORD
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/ John C. McKinney
JOHN C. McKINNEY
Deputy Attorney General

JCM/dd

APPENDIX A

4-1-15

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF JEROME

STATE OF IDAHO, Plaintiff,	)	
vs.	)	Case No. CR-2014-5846
DANIEL E. JENSEN, Defendants.	)	

MEMORANDUM DECISION RE: DEFENDANT'S MOTION TO SUPPRESS

On March 31, 2015 the Defendant's Motion to Suppress his statements to law enforcement came on regularly for hearing. The State was represented by Paul R. Kroger, Jerome County Deputy Prosecutor and the defendant was present and represented by Stacey DePew, Jerome County Public Defender.

The Court having considered the testimony, exhibits admitted into evidence, briefs and arguments of counsel, took the matter under advisement for a written decision.

I.

FACTUAL AND PROCEDURAL BACKGROUND

On November 28, 2014 Jerome County Sheriff's deputies responded to the residence of Jamie Novak (Novak) for an alleged attempted poisoning of Novak by her son, Daniel E. Jensen

(Jensen). Sgt. Matthew West and Deputy Chad Kingsland responded to the residence. When they arrived Jensen and Caleb Dumitry were sitting on the front porch of the residence and Novak was in the doorway of the residence. Sgt. West engaged Jensen in a conversation concerning the alleged poisoning of his mother. Sometime later Jensen was arrested and was transported to the Snake River Detention Center (SRDC) because he was a juvenile of the age of 17.

On December 1, 2014 Jensen was interviewed at the SRDC by Deputy Kirk Thorpe who at the time was assigned to the investigative division of the Sheriff's Office. Deputy Thorpe reviewed with Jensen his *Miranda* Rights and Jensen acknowledged and signed a *Miranda* Rights form and agreed to speak with Deputy Thorpe.

Jensen was ultimately charged various crimes, including Attempted Murder in the First Degree, a felony, and was bound over to District Court after a preliminary hearing. On March 13, 2015 the defendant filed a Motion to Suppress his statement to law enforcement contending that his statements made to Sgt. West were made without an advisement of his *Miranda* Rights and that his statements to Deputy Thorpe were made without a knowing and voluntary waiver of his *Miranda* Rights.

II.

TESTIMONY AND EXHIBITS

MATTHEW WEST:

Sgt. Matthew West is a Jerome County Sheriff's Office Patrol Supervisor. On November 28, 2014 he was dispatched to 916 Bobcat Dr., Jerome in reference to a poisoning. Sgt. West had phone contact with Novak, the reporting party and Jensen's mother, for several minutes prior to his arrival during which time Novak informed Sgt.West that Jensen, a minor of 17-years-of-age, was currently at the home and that she thought he had attempted to poison her by placing green

flakes in her coffee. Sgt. West testified that he had the impression that Novak wanted him to speak to Jensen regarding the incident though he never specifically received express permission from Novak to speak with Jensen.

Sgt. West and Deputy Kingsland dispatched in separate vehicles to the 916 Bobcat residence. Upon arrival both officers parked their vehicles on the street near the residence but neither had their overhead lights activated. Both offices approached the home at approximately the same time and made contact with Novak (standing in the front doorway), Jensen (seated on the porch to the left / West of the front door), and Jensen's friend, Caleb Dumitry (also seated on the porch to Jensen's left).

Sgt. West then introduced himself and stated they he wanted to talk to Jenson. Shortly after his arrival Novak and Jensen began arguing. Sgt. West could not recall what prompted the argument or the exact nature of the disagreement; however he did testify that words were exchanged and Deputy Kingsland escorted Novak inside the home where they remained in an effort to keep things from escalating the already tense situation. Once Novak and Kingsland were inside, Sgt. West began asking Jensen questions about putting rat poison in his mother's coffee, if he had consumed any of the coffee, and whether he intended to cause harm to his mother. At some point Dumitry also involved himself in the conversation. Sgt. West testified that the tenor of conversation was causal and respectful and that during the 10-12 minutes of questioning Jensen and Dumitry both stood up on the porch approximately 4-5 feet away from him. Jensen did not appear nervous and did not move around during the contact.

Sgt. West testified that despite the casual nature of the conversation he would not have let Jensen leave if he had attempted to do so. Despite Sgt. West's subjective intention of detaining Jensen for investigatory purposes, he never advised Jensen of his *Miranda* rights or his right to

have a parent present during questioning because "he was merely investigating a report" and Jensen was not in cuffs or otherwise physically detained, and Jensen never asked if he was free to leave or stated that he did not want to talk to law enforcement.

KIRK THORPE:

Deputy Kirk Thorpe is a Jerome County Sheriff's Office Patrol Officer, though at the time of this incident he was working with the investigations division and was the officer directed to interview Daniel Jensen the morning of Monday, December 1, 2014 at the Snake River Detention Center following his arrest on Friday, November 28, 2014.

Deputy Thorpe testified that the interview took place in a room next to the control center. Only he and the defendant were in the room and the defendant (though in detention clothing) was not physically restrained and appeared very calm under the circumstances. Deputy Thorpe made an audio recording of the one (1) hour interview and testified that he believed that the interview room also contained security cameras which recorded video—though he was unable to confirm whether the cameras recorded audio and video.

At the very beginning of the interview Deputy Thorpe introduced himself as a law enforcement officer, determined that Jensen was 17-years-old and could read, write, and understand English. He then advised Jensen of his *Miranda* rights by placing a "Jerome County sheriffs Officer *Miranda* Waiver" form containing those rights in front of Jensen and reading each right to him. Following each right Deputy Thorpe asked if Jensen understood that right and whether he had any questions. He then had Jensen initial next to the right just discussed indicating that he understood that right. The form also contains a *Miranda* Waiver which Jensen read and thereafter initialed.

After advising Jensen of his *Miranda* rights, the only question which the defendant posed was what his custody status was likely to be in the future. Deputy Thorpe informed Jensen that it primarily depended upon him whether he was returned to the custody of one of his parents, put in a foster home, or remained in State's custody. At no time during the *Miranda* advisements, waiver, or subsequent interview did Deputy Thorpe inform Jensen that he had right to have a parent present during questioning or that he did not have to speak to him in order to possibly be released back into the custody of one of his parents. Thereafter Deputy Thorpe conducted an interview and Jensen provided answers to some questions but remained non responsive to others.

Deputy Thorpe also testified that he never informed Jensen's parents that he intended to interview him, nor could he remember if he had phone contact with Novak regarding the incident before or after he conducted the interview.

EXHIBITS

The following exhibits were admitted into evidence without objection:

State's Exhibit No. 1- Google earth photo of 916 Bobcat Dr., Jerome, Idaho.

State's Exhibit No. 2- Certified Records of JV 2014-135, including:
Affidavit in support of Juvenile Petition filed 9/11/2014;
Juvenile Rights From dated 9/11/2014
Disposition under the Juvenile Corrections Act entered 10/2/2014.

State's Exhibit No. 3- Audio recording of Deputy Thorpe's interview of Daniel Jensen on December 1, 2014.

State's Exhibit No. 4- Jerome County Sheriff's Office *Miranda* Waiver initialed by Daniel Jensen

III.

MIRANDA STANDARD

"At a suppression hearing, the power to assess the credibility of witnesses, resolve factual conflicts, weigh evidence, and draw factual inferences is vested in the trial court." *State v.*

LeClercq, 149 Idaho 905, 907, 243 P.3d 1093 (Ct. App. 2010) (citing *State v. Veldez-Molina*, 127 Idaho 102, 106, 897 P.2d 993 (1995)).

The requirement of an advisement of ones' *Miranda* rights is only required for custodial interrogations. In *Miranda v. Arizona*, 384 U.S. 436 (1966), the United States Supreme Court held that statements by defendants "in custody" or when their freedom of action "is curtailed to a degree associated with formal arrest" are not admissible and will be suppressed unless police have first advised the defendant of his right to remain silent and the right to counsel before undertaking a custodial interrogation. *See also State v. Albaugh*, 133 Idaho 587, 591 (Ct. App. 1999). "The determination of whether a person is in custody for *Miranda* purposes is a mixed question of law and fact." *State v. Frank*, 133 Idaho 364, 369, 986 P.2d 1030 (Ct. App. 1999). The requirement of *Miranda* warnings only applies to "custodial interrogations" and it is the burden of the defendant to establish that he was in custody. *State v. James*, 148 Idaho 574, 577, 225 P.3d 1169, 1172 (2010). In determining whether a suspect is in custody, an objective test is applied. The relevant inquiry is "how a reasonable man in the suspect's position would have understood his situation." *Berkemer v. McCarty*, 468 U.S. 420, 442 (1984); *State v. Silva*, 134 Idaho 848, 854 (Ct. App. 2000); *see also, State v. Doe,* 137 Idaho 519, 523, 50 P.3d 1014, 1018 (2002). The custody test "is not based upon the subjective impressions in the minds of either the defendant or the law enforcement officer." *State v. Frank*, 133 Idaho 364, 369 (Ct. App. 1999) (quoting *State v. Massee*, 132 Idaho 163, 165 (Ct. App. 1998)). The totality of the circumstances must be examined, which may include the location of the interrogation, the conduct of the officers, the nature and manner of the questioning, the time of the interrogation, and other persons present. *State v. Dice*, 126 Idaho 595, 887 P.2d 1102 (Ct. App. 1994); *State v. Medrano*, 123 Idaho 114, 117-18, (Ct. App. 1992).

Under those circumstances where *Miranda* warnings are required and where the defendant is interviewed by law enforcement after being advised of his *Miranda* rights, the State has the burden of proof on whether an individual made a knowing, voluntary, and intelligent waiver of his or her *Miranda* rights and must prove such a waiver by a preponderance of the evidence. *State v. Dunn*, 134 Idaho 165, 169, 997 P.2d 626, 630 (Ct. App. 2000). The Court must look to the "totality of the circumstances" and in doing so the factors that must be considered to determine if statements to law enforcement are voluntary consist of (1) whether *Miranda* warnings were given; (2) the youth of the accused; (3) the accused's level of education or low intelligence; (4) the length of detention; (5) the repeated and prolonged nature of the questioning; and (6) the deprivation of food or sleep. *Doe*, 137 Idaho at 523, 50 P.3d at 1018.

IV.

ANALYSIS

A. Questioning by Sgt. West on November 28, 2014

On November 28, 2014 Sgt. Matthew West and Deputy Chad Kingsland arrived at the Novak residence to investigate the report the Jensen had attempted to poison his mother. When Deputies arrived the defendant and his friend Dumitry were seated on the front porch of the residence and Novak was in the doorway of the residence. Sgt. West began to ask questions and the defendant and Novak began to argue. Deputy Kingsland went into the residence with Novak and Sgt. West remained on the porch with Jensen and Dumitry. Sgt. West asked Jensen about putting rat poison in some coffee; if he drank the coffee; and if he was attempting to cause harm. He spent approximately 10 to 12 minutes on the porch conversing with Jensen, with Dumitry present. While they were talking Jensen was standing on the porch within 4-5 feet of Sgt. West. Sgt. West was aware that Jensen was 17 years of age. Sgt. West described the conversation as

being of a "causal nature" and it was not heated or disrespectful. Further, the defendant did not appear to be nervous. Jensen made no attempt to leave or end the encounter, although Sgt. West admitted that had Jensen attempted to leave the area he would have been detained. However, the defendant was never told he had to stay or that he was not free to leave. The Court of Appeals in *State v. Silver,* 155 Idaho 29, 32, 304 P.3d 304, 307 (Ct. App. 2013) (internal citations omitted) stated:

> A court must consider all of the circumstances surrounding the interrogation. This generally involves a consideration of whether the circumstances surrounding the interrogation have created a "police-dominated atmosphere," and whether the circumstances involve the type of "'inherently compelling pressures' that are often present when a suspect is yanked from familiar surroundings in the outside world and subjected to interrogation in a police station." Specific factors to be considered may include the degree of restraint on the person's freedom of movement including whether the person is placed in handcuffs, whether the subject is informed that the detention is more than temporary, the location and visibility of the interrogation, whether other persons were present, the number of questions asked, the duration of the interrogation or detention, the time of the interrogation, the number of officers present, the number of officers involved in the interrogation, the conduct of the officers, and the nature and manner of the questioning.

At the time of the encounter with Sgt. West, Jensen was on the front porch of his residence and got out of his chair to speak with Sgt. West; Sgt. West did not require he remain seated. Also during this encounter Jensen was with his friend Caleb Dumitry, who was standing alongside him. By all accounts the conversation was calm and casual and Jensen was in a familiar environment. Jensen was not in any way physically restrained nor did Sgt. West say or do anything that would have suggested he was not free to leave. This conversation only lasted approximately 10 minutes and was of a short duration. While two officers arrived at the residence, they parked on the street without the use of their overheads, and it appears that only one officer was actually present during the questioning of Jensen, since Kingsland had gone into the residence with Jensen's mother.

By all accounts Jensen was not in custody for purposes of *Miranda* while he was being questioned by Sgt. West. Therefore, the defendant's motion to suppress his statements to Sgt. West is DENIED.

B. December 1, 2014 Interview.

On December 1, 2014 there is no dispute that Jensen was in custody and that he was housed at the SRDC. Jensen was interviewed by Deputy Kirk Thorpe and the interview was recorded. (State's Exhibit No. 3). Deputy Thorpe began the interview by advising Jensen of his *Miranda* rights. Thorpe asked Jensen if he understood what he was charged with and Jensen indicated a battery charge.[1] Thorpe was aware that the defendant was 17 years of age. Thorpe asked the defendant as to whether he was able to read and write and whether he sufficiently understood the English language which Jensen answered in the affirmative. Thorpe then presented Jensen with a *Miranda* Rights Form and went over each of Jensen's rights to make sure Jensen understood his rights. (State's Exhibit No. 4). The evidence also shows that Jensen had some prior experience with law enforcement and his rights in juvenile cases, although it is not clear that he was previously familiar with his *Miranda* Rights. (State's Exhibit No. 2). Thorpe stressed with the defendant that if he had any questions about his rights that he could ask him and Thorpe would further explain his rights. Jensen indicated that he understood his rights and further indicated that he was willing to talk without an attorney. Jensen then initialed each of the *Miranda* rights and signed the *Miranda* Rights Form and agreed to speak with Deputy Thorpe.[2] The defendant's parents (as a juvenile's parents) were not present to the interview nor was Jensen advised that they could be present. Deputy Thorpe testified that the interview lasted

[1] At the time of this interview he had been charged in a Juvenile Petition and one of the charges was Aggravated Battery.

[2] The only question that Jensen had was what would happen to him after his court hearing and Thorpe indicated various things that could happen concerning placement but also indicated he did not know what would happen after his court appearance. Jensen had no questions concerning his rights.

approximately one (1) hour. According to Deputy Thorpe, the defendant remained calm though out the advisement of his rights and the interview.

Jensen signed the *Miranda* Rights form wherein he waived his right to remain silent and agreed to speak with Deputy Thorpe. (State's Exhibit No. 3). The written *Miranda* waiver is "strong proof of a voluntary waiver" but the State still has the burden to prove a "knowing, intelligent, and voluntary" waiver of *Miranda*. *Doe,* 137 Idaho at 523, 50 P.3d at 1018.

> To determine whether a juvenile has voluntarily waived his *Miranda* rights, a court must consider 'the juvenile's age, experience, education, background, and intelligence,' and 'whether he had the capacity to understand the warnings given him, the nature of his Fifth Amendment rights, and the consequences of waiving those rights.'"

Id., 50 P.3d at 1018 (internal citations omitted).

It is true that the defendant's parents were not present at the time of this interview and while there is no constitutional right to have a parent present, it is perhaps a factor to be considered in the totality of the circumstances; however, the failure of a parent to be present for the interview does not by itself render the waiver invalid. In *State v. Doe*, the juvenile's parents were not present for the interview. *Id.* at 521, 50 P.3d 1016.

The interview occurred at approximately 9:30 a.m. on December 1, 2014. Deputy Thorpe indicates to the defendant that he got arrested "this weekend" and asked Jensen if he understood his charge, to which he responded "battery." Deputy Thorpe then asked Jensen if he is familiar with *Miranda* rights. He asked Jensen if he has ever seen any shows on television where individuals were advised of their right to remain silent. To which Jensen responded "yeah." Thorpe then tells Jensen that he needs to go over the defendant's *Miranda* rights because before he can speak to him, he must understand his rights. Jensen understood that Thorpe was a law enforcement officer. He told Jensen that by initialing the various rights he was not confessing but was only saying that he understood his rights and if he did not understand he would further

explain his rights. He then asked Jensen if he reads, writes, and understands the English language. Jensen indicated that he did understand. It is clear from the audio recording that Jensen understood his rights; that the conversation between Thorpe and Jensen was calm and not adversarial and there is no evidence to suggest that Jensen was deprived of sleep or food. It is also clear that he appeared alert, understood what was happening, and that he was aware that he did not have to speak with law enforcement unless he wanted to. Thorpe did not down play the importance of the *Miranda* rights and in fact made it clear that he could not speak to Jensen unless Jensen understood his rights and was willing to speak of the events. There is no evidence that the defendant's free will was overborne by Deputy Thorpe.

The evidence presented by the State clearly indicates that the defendant understood his *Miranda* rights and that he made a knowing, intelligent and voluntary waiver of his *Miranda* rights when he agreed to speak with Deputy Thorpe. Therefore, the motion to suppress the defendant's statements in the December 1, 2015 interview is DENIED.

V.

CONCLUSION AND ORDER

For the reasons set forth above, the defendant's motion to suppress his statements on November 28, 2014 and December 1, 2014 is DENIED.

IT IS SO ORDERED.

DATED this 1 day of April, 2015

John K. Butler, District Judge

CERTIFICATE OF MAILING/DELIVERY

I, undersigned, hereby certify that on the 15th day of April, 2015 a true and correct copy of the foregoing MEMORANDUM DECISION RE: DEFENDANT'S MOTION TO SUPPRESS was mailed, postage paid, and/or hand-delivered to the following persons:

Paul R. Kroger
Jerome County Deputy Prosecutor

Stacey Depew
Jerome County Public Defender

Deputy Clerk

JEROME COUNTY, IDAHO • SEAL OF THE DISTRICT COURT