

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, OF THE STATE OF
FLORIDA, IN AND FOR MIAMI DADE COUNTY, FLORIDA**

STATE OF FLORIDA,

CASE NO.: F-23-21321

Plaintiff,

vs.

JUDGE: RICHARD HERSCH

DEREK ROSA,

SECTION: F013

Defendant.

DEREK ROSA'S MOTION TO SUPPRESS RECORDED POLICE INTERROGATION

COMES NOW, Child/Defendant, DEREK ROSA ("Derek"), by and through undersigned counsel and pursuant to the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, Art. I, section 16 of the Florida Constitution, and *Miranda v. Arizona*, 384 U.S. 436 (1966), and hereby respectfully requests that this Honorable Court enter an Order suppressing his post-arrest, post-*Miranda* statements. In support, Derek asserts the following:

1. Derek is charged by Indictment with the First-Degree Murder of his mother, Irina Garcia, the tragic incident occurred on October 12, 2023.

2. Derek turned thirteen years old on August 26, 2023, less than two months prior to the indicted incident in this case.

3. At approximately 11:31 PM of October 12, 2023, Derek called 9-1-1 to report the stabbing death of his mother Irina Garcia. Derek was arrested shortly thereafter when law enforcement arrived on scene.

4. Post arrest, Derek was inside Officer Gutierrez's patrol car, parked at Amelia Oaks Apartment, from approximately 11:52 PM on October 12, 2023, until approximately 2:16 AM on October 13, 2023, thereafter, he was transported to HPD headquarters.

5. At approximately 2:39 AM on October 13, 2023 Hialeah Police Department (HPD) Detectives Joseph Elosegui and Wilber Gonzalez, while in the presence of the assigned State Attorney sitting in the corner to Derek's left, interrogated Derek about the incident.¹

6. Prior to the interrogation, Derek's biological father, and grandmother were on scene at Amelia Oaks Apartment.

7. At the beginning of the interrogation, Det. Gonzalez asked Derek questions concerning his education, and then read his *Miranda* rights. During Det. Gonzalez's reading of *Miranda* rights, Det. Elosegui interrupted to show Derek the *Miranda* waiver form. Det. Elosegui then asked Derek to read the form aloud line-by-line and to initial each line.

8. Once Derek finished reading the final paragraph of the *Miranda* form, Det. Elosegui explained that, before law enforcement asks Derek any questions, they wanted to make sure that he understood his *Miranda* rights. Det. Elosegui then stated: "And if you want a chance to explain yourself, the only way that we would be able to take your statement is if you agree to talk to us without the presence of an attorney. . . . By you signing that, you're wanting to give us a statement without the presence of a lawyer." This is an incorrect statement of law.

9. *Miranda v. Arizona*, 384 U.S. 436 (1966), prohibits the state from using statements "stemming from custodial interrogation of the defendant unless it demonstrates the

¹ It is important to note that until March 2025, the Defense only received and had access to Detective Gonzalez's BWC. Detective Elosegui's BWC was finally turned over *after* Detective Gonzalez's deposition, in March 2025, and Elosegui's comments and perceived initial impressions right after the interview to Assistant State Attorney present during the interview, are of extreme relevance to this Motion.

use of procedural safeguards effective to secure the privilege against self-incrimination.”
Miranda v. Arizona, 384 U.S. 436, 444 (1966).

10. For *Miranda* to apply, the suspect must be in “custody” and be subjected to “interrogation.” *Davis v. State*, 698 So. 2d 1182 (Fla. 1997).

11. Because Derek was arrested and interrogated, there is no question that he was subjected to a custodial interrogation and that *Miranda* applies, even if he was not cuffed.

12. “In order to comply with the dictates of *Miranda*, the accused must be advised before custodial interrogation commences that: (1) the accused has the right to remain silent, (2) that anything the accused says may be used in court, (3) that the accused has the right to have an attorney present during questioning, and (4) that an attorney will be appointed for the accused before questioning if he or she cannot afford one.” *Maxwell v. State*, 917 So.2d 404, 407 (Fla. 5th DCA 2006) (emphasis added).

13. The *Miranda* Court “presumed that interrogation in certain custodial circumstances is inherently coercive and . . . that statements made under those circumstances are inadmissible unless the suspect is specifically warned of his *Miranda* rights and freely decides to forgo those rights.” *New York v. Quarles*, 467 U.S. 649, 654 (1984).

14. Where a statement is obtained from a suspect without an attorney being present, “a heavy burden rests on the [prosecution] to demonstrate that the defendant knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel. . . . [A] valid waiver will not be presumed simply from the silence of the accused after warnings are given or simply from the fact that a confession was in fact eventually obtained.”
Miranda, 384 U.S. at 475.

15. “Only if the ‘totality of the circumstances surrounding the interrogation’ reveals both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the *Miranda* rights have been waived. Thus, ‘any evidence that the accused was threatened, tricked, or cajoled into a waiver will, of course, show that the defendant did not voluntarily waive his privilege.’” *Youngblood v. State*, 9 So. 3d 717, 720 (Fla. 2d DCA 2009) (internal citations omitted).

16. In determining whether a juvenile voluntarily, knowingly, and intelligently waived *Miranda* rights,

“[A] court must employ a totality of the circumstances’ test, which involves evaluation of factors including ‘(1) the manner in which the *Miranda* rights were administered, including any cajoling or trickery; (2) the suspect’s age, experience, background and intelligence;” (3) whether the suspect’s parents were contacted and the juvenile given an opportunity to consult with parents or an attorney before questioning; (4) whether the questioning took place in the police station; and (5) whether the interrogators secured a written *Miranda* waiver.

Hall v. State, 248 So.3d 1227, 1230 (Fla. 1st DCA 2018) (quoting *Miranda*, 384 U.S. at 575; internal citations omitted).

17. Although, as a general rule, the State must establish its burden by a preponderance of the evidence, *Ramirez v. State*, 739 So. 2d 568, 575 (Fla. 1999), some courts have held that the State’s burden is heavier when the suspect is a juvenile. *B.M.B. v. State*, 927 So. 2d 219 (Fla. 2d DCA 2006) (citing *J.G. v. State*, 883 So.2d 915, 923 (Fla. 1st DCA 2004)).

18. Derek was barely thirteen years old and had no experience with the criminal justice system.

19. Irrespective of law enforcement’s theory of the case, the following are facts surrounding this interview:

a. Derek was barely thirteen when this interview took place.

- b. Derek had just undergone a traumatic event, and in fact was Baker Acted only hours after his custodial interview.
- c. Derek never underwent toxicology screening prior to his interview.
- d. All law enforcement present was visibly armed.
- e. Derek was not even allowed to wash his hands after using the bathroom.
- f. This interview took place over three hours after being handcuffed and kept in the back of a police car at the same complex he was apprehended, while for hours observing the unfolding of police “investigation”.
- g. At the police station, Derek was offered and in fact given both candy and Taco Bell by law enforcement.
- h. In spite of known suicidal ideations, Derek was never seen by a medical professional prior to his interview.

20. Throughout the interrogation, Derek made statements signaling his lack of maturity, experience, and intelligence. First, when asked to place his initials on the *Miranda* waiver form, Derek stated, “I don’t have initials.” Second, Derek asked, “what is an attorney?” Third, Derek did not know his own address or phone number.

21. When asked to read the Miranda Form out loud, Derek had trouble reading and pronouncing the word “coercion”.²

Elosegui: Coercion.

Derek: C-o-er-cion.

Elosegui: That’s that we’re forcing you to do something. [indiscernible] Whatever you’re doing you’re doing on your own voluntarily basis, making an educated decision for yourself, okay?

Derek: Okay.

² The BWC is the best evidence, and speaks for itself.

22. Derek's jail records likewise indicate a significant lack of maturity. Both correctional officers and medical staff have noted that Derek is immature even for his age. Indeed, medical staff has referred Derek for further evaluation due to his age and "potential lack of appreciation of the allegation(s) against him."

23. Prior to the interrogation, Derek was not given the opportunity to speak with a parent (present and available the entire time) or attorney.

24. The interrogation was conducted at the police station, a setting which is inherently coercive. *See, e.g., Miranda*, 384 U.S. at 461; *Quarles*, 467 U.S. at 656.

25. While incarcerated for the alleged offense at issue in this case, Metrowest Detention Center ("MWDC") referred Derek for evaluation, based on his age, charges, and diagnosis of autism spectrum disorder ("ASD"). Individuals with ASD often exhibit an increased level of vulnerability, as well as impairments in social cognition, which may result in difficulty understanding legal rights, especially *Miranda* rights. *See, e.g., Lindsay M. Salseda, et al., An Evaluation of Miranda Rights and Interrogation in Autism Spectrum Disorders*, RESEARCH IN AUTISM SPECTRUM DISORDERS 5:1 (2011).

26. In addition, Derek has previously been diagnosed with attention-deficit/hyperactivity disorder ("ADHD"). Individuals with ADHD often have deficits in reading comprehension, listening comprehension, complex attention skills, and verbal memory, which may affect the ability to understand *Miranda* rights. *See, e.g., R. Rogers & D.W. Shuman, FUNDAMENTAL OF FORENSIC PRACTICE: MENTAL HEALTH AND CRIMINAL LAW* (Spring Publishing 2005); N. Obolensky, *Working Memory and Executive Functioning in Adults with Attention-Deficit Hyperactivity Disorder Without Comorbidity*, DISSERTATION ABSTRACTS INTERNATIONAL 66, 6287 (2006).

27. At an evidentiary hearing held on December 15, 2023, Kimberly Charles testified that she teaches Derek language arts, social studies, and reading. Ms. Charles testified that she believes Derek has a learning disability because he frequently tells her that he does not understand the educational materials and that she has to explain further.

28. Most importantly, Det. Elosegui incorrectly advised Derek that he could not speak with law enforcement with an attorney present. Det. Elosegui advised Derek that, if he wanted a chance to explain himself, “the only way” he could do so is if he agreed to speak with law enforcement without the presence of an attorney. This is an incorrect statement of law. Derek also had the right to speak with detectives with an attorney present. *See Miranda*, 384 U.S. at 474.

29. “*Miranda* requires a clear, understandable warning from law enforcement officers that conveys all of a defendant's rights.” *Roberts v. State*, 874 So.2d 1225, 1228 (Fla. 4th DCA 2004). Indeed, courts have found *Miranda* warnings inadequate for “failing to inform [a suspect] that he had a right to have counsel present during interrogation.” *Id.* at 1229 (emphasis added).

30. Thus, law enforcement misled Derek into believing that he could only explain himself if he waived his right to have an attorney during the interrogation. Such an “inadequacy militate[s] against a finding that the defendant knowingly and intelligently waived his *Miranda* rights.” *Id.* at 1228-29.

31. Further, there was in fact an attorney-witness present during Derek’s custodial interview, when Derek signaled to law enforcement he did not know what an attorney was, law enforcement could have easily pointed to the individual in the room, and explained her position to Derek.

32. Therefore, the totality of the circumstances clearly demonstrate that Derek did not voluntarily, knowingly, and intelligently waive his *Miranda* rights.

33. Accordingly, this Court should suppress Derek's recorded interrogation with law enforcement and preclude the State from introducing the recorded police interrogation into evidence and from eliciting testimony concerning Derek's statements during the interrogation.

34. During a hearing for this Motion, the Defense intends to call *all* individuals that were present during Derek's interview. In addition, the Defense intends to use as evidence, all involved BWC, Forms, in addition to any and all evidence relevant to the disposition of this Motion.

35. The Defense reserves the right to argue other items ore tenus.

WHEREFORE, undersigned counsel respectfully requests that this Honorable Court grant Defendant's Motion to Suppress Recorded Police Interrogation, alternatively, Defense requests the appropriate hearing on this matter.

Respectfully Submitted,

/s/ DAYLISET RIELO

DAYLISET RIELO
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing is electronically filed with the Clerk of Court which will electronically deliver a copy to: Office of the State Attorney (Jonathan Borst, Esq), 1350 NW 12th Avenue, Miami, Florida 33136 on this 28th day of May, 2025.

/s/ DAYLISET RIELO

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