

CONFESSIONS AND ADMISSIONS CASE DIGEST

FIRST QUARTER - 2008

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New Case:

1. **People v. Diaz**, ____ Ill. Dec. ____, (1st Dist., No. 1-06-2690, November 5, 2007) **Issue:** Did the police violated the defendant's **Miranda** rights by asking him if he had consumed any alcohol?

IN THE UNITED STATES SUPREME COURT

1. **United States v. Patane, 542 U. S. 630, 159 L. Ed. 72, 124 S. Ct. 2620, (U. S. Sup. Ct., No. 02-1183, June 28, 2004):** The Supreme Court ruled that the failure to give a suspect Miranda warnings does not necessarily require the suppression of the physical fruits of the suspect's un-warned but voluntary statements. Non-testimonial evidence (the murder weapon) gathered as a result of a voluntary statement is admissible even though no Miranda warnings were given the defendant.
2. **Missouri v. Seibert, 542 U. S. 600, 159 L. Ed. 643, 124 S. Ct. 2601, (U. S. Sup. Ct., No. 02-1371, June 28, 2004):** The deliberate failure by the police to advise suspects of their rights when arrested prevents the use of a later confession. The Supreme Court expressly rejects the so-called "two-step" interrogation process where the police first interrogate the suspect without giving him his Miranda warnings, get a confession, then give him his Miranda warnings and then re-interrogate the suspect.
3. **Yarborough v. Alvarado, 541 U. S. 652, 158 L. Ed. 938, 124 S. Ct. 2140, (U. S. Sup. Ct., No. 02-1371, June 28, 2004):** The State Court did not err in failing to consider a 17-year-old's youth and experience when it determined that the youth was not in custody when he was interrogated by the police.
4. **Fellers v. U. S., 540 U. S. 519, 157 L. Ed. 1016, 124 S. Ct. 1019, (U. S. Sup. Ct., No. 02-6320, January 26, 2004)** The absence of an "interrogation" did not foreclose the defendant's claim that his jailhouse statements should have been suppressed as fruits of the statements taken from him at his home.
5. **Chavez v. Martinez, 538 U. S. 760, 155 L. Ed. 984, 123 S. Ct. 1994 (U. S. Sup. Ct., No. 02-5636, May 27, 2003)** Mere compulsive questioning on the part of the police did not violate the defendant's Fifth Amendment rights where the defendant's statements were never used against him in a criminal case. Some form of "legal proceedings" must be initiated before the illegal questioning would constitute a Fifth Amendment violation.
6. **Kaupp v. Texas, 538 U. S. 626, 155 L. Ed. 814, 123 S. Ct. 1843, (U. S. Sup. Ct., No. 02-5636, May 5, 2003)** Where a criminal defendant is arrested without a warrant or probable cause prior to being questioned by the police, his subsequent confession must be suppressed where the People failed to allege any meaningful intervening event between the illegal arrest and the defendant's confession.
7. **Ohio v. Reiner, 532 U. S. 17, 121 S. Ct. 1252, 149 L. Ed 2d 158 (U. S. Supreme Court, No. 00-1028, March 19, 2001) Facts:** The defendant in this case was charged with the murder of his 2-month-old son based upon the shaken baby syndrome. The baby's babysitter was to be called as a witness for the People. She let it be known that she would invoke here Fifth Amendment rights. As a consequence, she was given transactional immunity. The witness then denied that she had any involvement in the baby's death. Thereafter, the defendant was found guilty of involuntary manslaughter. The Ohio Supreme Court reversed the defendant's conviction on the ground that the babysitter was not entitled to immunity because she denied any involvement in the death of the victim. Since the witness claimed her innocence, she was not entitled the Fifth Amendment's protections. This appeal followed. **Issue:** Are all persons entitled to the protections of the Fifth Amendment. **Answer:** The Supreme Court concluded that all persons, even innocent persons, are entitled to remain silent. In the opinion of the Court, being forced to testify might very easily injure even an innocent person.

IN THE ILLINOIS SUPREME COURT

1. **In re Christopher K., 299 Ill. Dec. 213, (Ill. Sup. Ct., No. 98597, December 15, 2005)** **FACTS:** The 16-year-old victim was shot to death. Shortly thereafter, the defendant, who was 14 years old, was arrested. With his mother present, the defendant was interrogated. He was given his Miranda rights and in response he said, “Do I need a lawyer?” The interrogating officers responded by saying, “That’s not my call.” They then allowed the defendant’s mother to speak to him privately and thereafter, the defendant underwent a lineup and was re-interrogated. This time the defendant gave an incriminating statement. **ISSUE:** Did this juvenile invoke his right to an attorney? **ANSWER:** No, the question of this defendant was insufficient to invoke that right. **ISSUE:** Were the police required to ask the defendant if, in fact, he wished to speak to a lawyer? **ANSWER:** No. While it might have been good police practice, it was not constitutionally required. **ISSUE:** Should this defendant’s age have been a determining factor concerning whether he invoke his right to counsel? **ANSWER:** No, it was just one of the many issues to be considered by the Police.

2. **People v. Willis, 294 Ill. Dec. 581, (Ill. Sup. Ct., No. 97454, June 3, 2005)** **FACTS:** The defendant was convicted of felony criminal damage to property after he started a fire in a Chicago apartment building. His conviction was reversed by the appellate court because the defendant’s confession should have been suppressed because it was given by the defendant after he had been detained for more than 48 hours without being taken before a judge for a probable cause hearing. This appeal was then brought before the Illinois Supreme Court. **ISSUE:** Does a violation of this “48 hour rule” mandate the suppression of any confession given after any such violation? **ANSWER:** No. The Supreme Court declared that the true test concerning the admissibility of any confession was whether it was voluntarily given. A violation of this 48 hour rule was merely one item to consider when a court is making any such determination. In short, a violation of this rule does not automatically mandate the suppression of a confession given after any such violation.

3. **People v. Morris, 209 Ill. 2d 137, 807 N. E. 2d 377, 282 Ill. Dec. 753 (Ill. Sup. Ct, No. 87645, March 18, 2004)** **FACTS:** The police pulled up behind two individuals that were parked in a 1995 Chevrolet Impala. The suspects took one look at the police and took off running. The police naturally gave chase. Eventually, the police ran both suspects to ground, handcuffed them, and placed them in police squad cars. The police then re-traced the path of the defendants and found two pistols and a set of car keys. Within a matter of moments, the police were informed that the owner of the car in which the suspects were sitting had been shot to death during a car hijacking. At the scene of the murder various additional items were found that linked the defendants to this murder. Meanwhile, the suspects were transported to the police station where they were interviewed. The defendant in this case gave a series of statements wherein he confessed to the victim’s murder. The People conceded that under the circumstances of this case, the defendant had been arrested without probable cause. **ISSUE:** Does the illegal arrest prevent the defendant’s confessions from being used? **ANSWER:** No. According to the Supreme Court, the police developed probable cause immediately after the defendant’s arrest. This gathering of probable cause allowed the People to successfully argue that the defendant’s statements were attenuated from his illegal arrest. Consequently, those statements were properly used against the defendant.

4. **People v. Braggs, 209 Ill. 2d 492, 810 N. E. 2d 472, 284 Ill. Dec. 682, (Ill. Sup. Ct, No. 95350, December 18, 2003)** **FACTS:** The defendant was accused of killing two people. The police interviewed her and during this interview, the defendant gave a full and complete confession. However, the defendant was mentally retarded. **ISSUE:** Were the defendant’s statements admissible against her. **ANSWER:**

No. The Supreme Court ruled that the issue of whether a person was “in custody” must depend upon the particular characteristics of each suspect (just as they do with juveniles). The suspect in this case was in custody when she was interrogated. The suspect’s mental retardation led the Court to rule this way. Because she was in custody and had not understood her Miranda rights, her Fourth Amendment rights had been violated.

5. People v. Morgan, 197 Ill 2d 404, 758 N. E. 2d 813, 259 Ill. Dec. 405 (Ill. Sup. Ct., No. 88509, October 18, 2001) **Facts:** The defendant was accused of murdering his grandfather and grandmother, his legal guardians. Thereafter, the defendant gave a series of statements without a “concerned adult” being present. **Issue:** Were the defendant’s statements admissible? **Answer:** Yes. Evidence in this case clearly showed that the defendant’s statements were knowingly and intelligently made. His confessions were voluntary.

6. People v. Bolden, 197 Ill. 2d 166, 756 N. E. 2d 812, 258 Ill. Dec. 538 (Ill. Sup. Ct., No. 87117, June 21, 2001) **Facts:** The defendant was suspected of killing two persons and attempting to kill a third. During their investigation, the police asked the defendant to appear in a lineup. The defendant agreed if his counsel could be present. The police agreed. When the defendant was placed in a lineup, the police refused to allow his counsel to witness the lineup. Thereafter, the defendant was charged with first-degree murder. He immediately moved to suppress the lineup identification and argued that the procedure used by the police violated his Fifth Amendment rights. From the denial of his motion and from his subsequent conviction, this appeal followed. **Issue:** Does a suspect have a Fifth Amendment right to have his counsel present at a lineup? **Answer:** No. A line-up is non-testimonial and does not constitute interrogation. Therefore, no Fifth Amendment question is raised. This is true whether or not the defendant is under arrest at the time of the lineup.

7. People v. Nielson, 187 Ill. 2d 271, 718 N. E. 2d 131, 240 Ill. Dec. 650 (Ill. Sup. Ct., No. 83127, June 17, 1999) **Facts:** The defendant in this case was suspected of murdering his ex-wife and her little daughter. During their investigation, the police arrested the defendant and began questioning him. During this questioning, the defendant became very agitated, placed his hands over his ears, looked up at the ceiling, and began repeating, “nah, nah, nah.” The defendant was then returned to his cell. A short time later, while the defendant was sitting in the jail’s exercise room, a deputy sheriff approached him and offered the defendant a cup of coffee. Accepting the coffee, the defendant began to casually talk with the deputy. Their conversation lasted over an hour and consisted of chit-chat about personal matters. Eventually, the defendant himself turned the conversation toward the murders and the deputy confined his remarks to answering the defendant’s questions. Eventually, some two hours after being returned to his cell, the defendant asked that another deputy be present and he, after again receiving his Miranda rights, made a series of incriminating admissions. From his conviction and sentence of death, this appeal followed. **Issue:** Did the defendant ever effectively invoke his right to remain silent? **Answer:** Yes. **Issue:** Was the defendant “interrogated” in the jail exercise yard? **Answer:** No. **Issue:** Was the defendant’s invocation of his right to remain silent “scrupulously honored?” **Answer:** Yes. Sufficient time passed to allow this additional interrogation. **Result:** The defendant’s convictions and sentence of death were affirmed.

8. People v. Chapman, 194 Ill. 2d 186, 743 N. E. 2d 48, 252 Ill. Dec. 474 (Ill. Sup. Ct., No. 85332, December 1, 2000) **Facts:** The defendant was suspected of murdering his ex-wife and his son and throwing their bodies in the Calumet Sag Canal. He was placed under arrest and transported to a police station where he was warned of his Miranda rights. The defendant then gave a series of incriminating statements. He was then moved to a second location for further interrogation. At some time on the second

day of the defendant's incarceration, his attorney arrived at the police station where the defendant was first held and he asked to see his client. The attorney was informed that the defendant was not at that location and he never did get to see the defendant. Eventually, the defendant was charged with multiple murders and he moved to suppress all of his statements. The trial court granted the defendant's motion for all statements the defendant made after his attorney appeared at the police station and demanded to see his client. All of the rest of the defendant's statements were allowed into evidence against the defendant. **Issue:** Exactly which of the defendant's statements should have been suppressed. **Answer:** All of them that were given after his counsel appeared at the police station. **Note:** If there had been proof of "deceitful conduct" on the part of the police, this ruling might have been different.

9. **People v. Villalobos**, 193 Ill. 2d 229, 737 N. E. 2d 639, 250 Ill. Dec. 17 (Ill. Sup. Ct., No. 88323, September 21, 2000) **Facts:** The defendant in this case was arrested on a possession of cannabis charge. At a bond hearing on that arrest, the defendant's attorney had the defendant sign a form that stated: "BE ADVISED, the under-signed defendant serves this NOTICE OF REPRESENTATION on the State, its agents and on all law enforcement officers barring the defendant's participation, without the presence of his or her counsel, in any questioning, identification process or other procedures on any case or matter whatsoever." The defendant never did post bond and he was placed in jail. Thereafter, two police officers questioned the defendant about a recent murder. The defendant was given his Miranda warnings and he agreed to speak with the police. During this interrogation, the defendant confessed to the murder. Thereafter, the defendant was charged with first-degree murder and he moved to suppress his confession. The motion of the defendant was denied and he was convicted. **Issue:** Did the defendant properly invoke his Fifth Amendment rights to remain silent and to counsel in this case? **Answer:** No. There is no such thing as an anticipatory invocation of a defendant's Miranda rights.

10. **In Re G.O.**, 191 Ill. 2d 37, 727 N. E. 2d 1003, 245 Ill. Dec. 269 (Ill. Sup. Ct., No. 87476, March 23, 2000) **Facts:** The defendant, a juvenile, was suspected of murder. During an interrogation, he confessed. **Issue:** Was the defendant's confession voluntary? **Answer:** Yes, considering all of the surrounding circumstances. Even though no "concerned adult" was present, the confession was still good. **Note:** The Supreme Court refused to create a per se rule that required that the juvenile must consult with an adult before any questioning. The Court further refused to mandate that all statements of juveniles must be videotaped.

IN THE ILLINOIS APPELLATE COURTS

YEAR 2007 CASES

1. **People v. Diaz**, ___ Ill. Dec. ___, (1st Dist., No. 1-06-2690, November 5, 2007) **FACTS:** The police stopped the car the defendant was driving after noticing that he was not wearing a seatbelt. Upon approaching the defendant, the arresting officer noticed that he had bloodshot eyes, "mumbled" speech, and a "moderate" odor of alcohol about him. When the defendant exited his car the officer noticed that he had a bit of a "balance issue." The officer then gave the defendant a series of field sobriety tests, which, in the opinion of the officer, the defendant failed. The officer then placed the defendant under arrest and advised him of his Miranda rights. The defendant then informed that officer that he was not going to answer any more questions. For some reason the officer then immediately asked the defendant if he had consumed any alcohol that day. The defendant answered that he had consumed two beers and was going out for more when the officer stopped him. **ISSUE:**

Did the officer violate the defendant's Fifth Amendment rights by asking him if he had consumed any alcohol. ANSWER: Absolutely. The appellate court ruled that "we can imagine no clearer example of a violation of a defendant's right to remain silent." (However, any error was harmless.)

2. People v. Richardson, 314 Ill. Dec. 915, (1st Dist., No. 1-05-2042, September 25, 2007) FACTS: The victim, Diamond Clark, was eleven months old when she was fatally beaten by the defendant, her 16-year-old father on February 9, 2001. The defendant punched, slapped, shook and bit his daughter to death. He inflicted 61 injuries, both internal and external, on his daughter and she died as a result of those injuries. Based upon this conduct, the police arrested the defendant and interrogated him. They videotaped the interrogation. During that interrogation one of the officers noticed that the defendant had a bump over his eye and his eye was swollen. The officer asked the defendant about the injuries and the defendant indicated that it had occurred in the lockup. On the videotape the police asked the defendant no further questions about his injuries. The defendant then made several incriminating statements about the death of his daughter. He was subsequently charged with first degree murder. The trial court denied the defendant's motion to suppress his statements and following a jury trial, he was convicted. **ISSUE:** Should the defendant's confession have been suppressed? **ANSWER:** Yes. The police failed to adequately explain how the defendant was injured.

3. People v. Montgomery, 314 Ill. Dec. 698, (5th Dist., No. 5-06-0344, September 13, 2007) FACTS: The police in Missouri believed that the defendant in this case was involved in a series of burglaries. One of those burglaries had occurred in Illinois. The defendant was transported to a Missouri police station for questioning. At the station, the Missouri police conducted an "informal interview" for several hours. During this interview, the defendant made several admissions. He was not advised of his rights. Thereafter, the defendant was asked if he was then willing to give a "formal statement". The defendant said he would and he was, for the first time, read his Miranda rights. The defendant signed a waiver form and he was then re-interrogated. Again the defendant confessed. The Illinois police were then called and they interrogated the defendant after giving him his rights. Again, he confessed. Prior to his trial in Illinois on a charge of burglary, the defendant moved to suppress his confession. The trial court granted the defendant's motion to suppress and from this ruling the People brought this appeal. **ISSUE:** Were the defendant's Miranda rights violated. **ANSWER:** Yes. This was a Seibert violation.

4. People v. Bennett, 315 Ill. Dec. 256, (1st Dist., No. 1-05-3038, September 12, 2007) FACTS: While on patrol, a police officer heard a radio report of a "man down." The report described the "offender" and stated that he was seen running away. A few minutes later, the officer drove to the area of the report and noticed a man fitting the description of the offender running along the street. The officer then drove up to the man and asked him to walk over to the squad car. The officer exited his car and placed his hand on the man's chest. The man's heart was beating rapidly. The man then said, "I didn't shoot anybody." The officer then placed the man in the back of his squad car and drove to the location of the report. There a witness identified the defendant as the man who shot the victim. The defendant was then arrested and transported to the station for questioning. Eighty-six hours later, the defendant confessed. **ISSUE:** Was this defendant's confession involuntary because the police waited more than 48 hours before taking him before a judge for a probable cause hearing? **ANSWER:** No.

5. People v. Jackson, 311 Ill. Dec. 882, (1st Dist., No. 1-06-0074, May 22, 2007) FACTS: The defendant was suspected of murder. The police picked him up and brought him downtown for questioning. The defendant confessed. Unfortunately, the conduct of the police constituted an arrest and they did not

have probable cause to arrest the defendant until after he confessed. **ISSUE:** Was the defendant's confession sufficiently attenuated from his illegal arrest to allow it to be used against him. **ANSWER:** No. The confession was not the product of the defendant's free will.

6. **People v. Minniti, 311 Ill. Dec. 251, (2nd Dist., No. 2-05-0028, April 30, 2007)** The defendant, a juvenile, was suspect of committing first-degree murder. The police picked him up and questioned him. During their questioning, the police informed that defendant that they had discovered the defendant's DNA inside the body of his victim and that they had satellite imagery showing someone on the night of the murder exiting the defendant's house, entering the victim's house, and then exiting that house and re-entering the defendant's house. Eventually, the defendant confessed to the murder. In point of fact, the police lied about having either DNA evidence or satellite evidence. **ISSUE:** Did the trickery of the police render the defendant's confession involuntary? **ANSWER:** No.

7. **People v. Dennis, 310 Ill. Dec. 662, (2nd Dist., No. 2-04-1161, April 20, 2007)** The police received a report of shots being fired. They investigated and discovered the defendant bleeding from a leg wound. The defendant was taken to a hospital and the police followed. At the hospital, the police repeatedly asked the defendant where his gun was. The defendant eventually admitted his role in the shooting incident. At no time was the defendant ever given his Miranda warnings. **ISSUE:** Did the "Public Safety" exception authorize the police to question the defendant about the whereabouts of his gun without first informing him of his rights? **ANSWER:** Nope.

8. **People v. Lashmet, 311 Ill. Dec. 368, (4th Dist., No. 4-06-0026, April 19, 2007)** The defendant was incarcerated in a county jail. He had invoked his right to counsel. The police placed an informant in the dame jail cell as the defendant. The informant was wearing a wire. The defendant struck up a conversation with the informant and eventually solicited him to commit murder. **ISSUE:** Could the defendant's recorded statements be used against him? **ANSWER:** Yes.

9. **People v. Peterson, 311 Ill. Dec. 329, (4th Dist., No. 4-05-0689, April 18, 2007)** The police received a report of shots being fired. They arrived on the scene and saw the defendant standing outside of a residence. The defendant had blood on his clothes. The officer asked the defendant where the victim was located. The defendant said inside of the house. After confirming that the victim was dead, the officer then when back outside, again approached the defendant, and said, "What happened?" The defendant then told the officer about the shooting. At no time prior to this statement was the defendant read his rights. **ISSUE:** Did the question of the officer violate the defendant's Miranda rights? **ANSWER:** Nope. They were declared to have been "general on-the-scene questioning as to facts surrounding a possible crime." No Miranda rights were required.

10. **People v. Martinez, 310 Ill. Dec. 711, (1st Dist., No. 1-05-0845, February 22, 2007)** **FACTS:** The victim was shot in the head during a fake drug transaction and arranged robbery. The defendants lured the victim to the scene by promising to sell him a large amount of cannabis. When he arrived at the location of the deal the defendants, while pretending to be police officers robbed him and then shot him dead. The defendant in this case was involved in the robbery. He was arrested and the arresting officers informed the defendant that he had the right to remain silent, that anything he said could be used against him, that he had the right to an attorney, and that if he could not afford one, an attorney would be appointed. The defendant then gave an inculpatory statement to the police **ISSUE:** Did the police violate the defendant's Miranda rights when they failed to specifically inform him that he had a right to consult with an attorney before questioning and to have his attorney present during his questioning. **ANSWER:** No. **ISSUE:** Did the

failure of the authorities to notify the defendant of his right to contact the Mexican consulate violate the defendant's constitutional rights? **ANSWER:** No.

11. People v. Macias, 309 Ill. Dec. 144, (1st Dist., No. 1-04-3743, February 16, 2007) The defendant was suspected of being involved in a gang shooting. He was 18 years old and he had been arrested eight times in the two years prior to this incident. He was arrested and held in custody for a total of 57 hours. He was interrogated a total of three times during his detention and none of them lasted longer than fifteen minutes. The defendant was fully advised of his Miranda rights during his detention and he was allowed to eat and sleep. When interviewed by an Assistant State's Attorney, the defendant stated that he was treated fine and that he had no complaints. At sometime during that detention the defendant made incriminating statements. **ISSUE:** Was the defendant's statement voluntarily made? **ANSWER:** Yes.

12. People v. Simmons, 308 Ill. Dec. 863, (1st Dist., No. 1-05-3618, January 31, 2007) On Saturday, four police officers arrive at the defendant's home and they are invited inside. The officers ask the defendant to accompany them downtown for questioning about a murder. The defendant agrees to accompany the police. Over the next few days, the defendant is kept in a jail cell and interviewed numerous times. The defendant makes a series of incriminating statements. On Tuesday, the defendant is formally arrested. The defendant was charged with first degree murder. Prior to his trial, the defendant moved to quash his arrest and to suppress the statements he made to the police. The trial court granted the defendant's motion to quash his arrest and ruled that the defendant was arrested on Saturday night without probable cause. However, the court also ruled that even though the defendant's arrest was illegal, the statements he made to the police could still be used against him. **ISSUE:** Could the statements of the defendant be used against him despite his illegal arrest? **ANSWER:** **Nope.** The statement of the defendant was obtained by exploiting his illegal arrest.

YEAR 2006 CASES

1. People v. Westmorland, 2006 WL 3704444, (2nd Dist., No. 2-05-1093, December 14, 2006)
FACTS: The defendant, 17-years-old, was suspected of various sex offenses. He was arrested and taken to the police station to be interrogated. The defendant said he wanted to speak with his mother. The police stated that since he was 17 years of age, he did not have the right to have his mother in the room with him during his interrogation. The defendant then confessed to the offenses. **ISSUE:** Did the police violate this defendant's rights by refusing to allow his mother (or any other concerned adult) to be present during his interrogation. **ANSWER:** Yes.

2. People v. Johnson, 307 Ill. Dec. 153, (2nd Dist., No. 2-04-1030, November 20, 2006) The victim was beaten to death with a baseball bat. The 16-year-old defendant was a suspect. He was arrested and taken to the police station for interrogation. His mother accompanied him. At the station the police informed the defendant that several people had implicated him in the murder and that his fingerprints were found at the scene. This was not accurate. Only one person had implicated the defendant; his co-defendant, and no fingerprints had yet been recovered. The defendant argued that his confession should have been suppressed because he was tricked by the police; the juvenile officers did not protect him from these tricks of the police; the police did not share exculpatory evidence with the defendant; he was not informed that he would be tried as an adult until after he confessed; he was not allowed to speak to his mother prior to his interrogation; the police failed to offer him food or drink during his interrogation; and his statement was not reduced to writing. **ISSUE:** Was the defendant's statement voluntarily made? **ANSWER:** Yes.

3. **People v. Moore, 306 Ill. Dec. 350, (3rd Dist., No. 3-05-0533, November 8, 2006)** The defendant was suspected of sexual assault. He was arrested and taken to the police station for an interrogation. The police gave the defendant a Miranda waiver form to sign. On that form was written the following: “A videotape providing a video and audio record of this interview is being made to insure my rights and the accuracy of our conversation. I voluntarily consent to the recording.” The defendant gave a one hour and five minute statement. However, the recording machine malfunctioned and it failed to record the defendant’s statement. **ISSUE:** Could the police who witnessed the defendant’s statement testify concerning what the defendant said? **ANSWER:** Nope. The statement of the defendant was not voluntarily made because the police made a promise to the defendant and then failed to follow through on that promise.

4. **People v. Sams, 305 Ill. Dec. 267, (1st Dist., No. 1-05-2208, August 29, 2006)** The baby of the defendant’s girlfriend had been killed. On September 12, 2002, the defendant voluntarily went to the police station to assist in their investigation. He remained there continuously until late on September 15, 2002. Throughout that time, numerous police officers and assistant state’s attorneys interviewed him. After this 72-hour period, the defendant gave a series of inculpatory statements. **ISSUE:** Were the statements of the defendant voluntarily made? **ANSWER:** No. According to the appellate court, the totality of the circumstances here indicated that the police “wore the defendant down” and created a lack of free will on the part of the defendant. He was unreasonably detained while the police gathered further evidence against him.

5. **People v. Lopez, 305 Ill. Dec. 666, (1st Dist., No. 1-04-2172, September 20, 2006)** **FACTS:** The victim had been stabbed to death. Believing that the defendant might be a possible witness, the police picked him up at his home and transported him to the police station. At the station the defendant denied any knowledge of the murder. Another suspect then implicated the defendant and the defendant, when confronted with this information, gave an incriminating statement. He was then given his Miranda rights and arrested. Thereafter, the defendant gave a written statement. **ISSUE:** Did the police here violate the Seibert rule? Did the police improperly use the “question first – warn later” interrogation technique? **ANSWER:** No. There must be proof of a deliberate strategy to undermine the Miranda rights of the defendant. There was no such proof in this case.

6. **People v. Woodard, 305 Ill. Dec. 82, (1st Dist., No. 1-04-1981, September 20, 2006)** **FACTS:** A young boy had been shot to death. The police learned that the defendant in this case might have been involved. They interrogated her over a period of over 80 hours. During that time, the defendant gave the police various different stories. Only after she eventually gave the police an incriminating statement was the defendant brought before a judge for a probable cause hearing. **ISSUE:** Was the defendant’s statements involuntary because she was held for more than 80 hours before she was provided a probable cause hearing? **ANSWER:** No. The defendant’s own conduct, her changing stories and dead-end leads, perpetuated her own detention. The totality of these circumstances did not indicate that here statements were involuntarily given.

7. **People v. Mitchell, 304 Ill. Dec. 823, (1st Dist., No. 1-02-1244, August 4, 2006)** **FACTS:** The eight-year-old victim in this case was shot to death while she stood outside of a grocery store. The defendant was held for more than 78 hours before he confessed. **ISSUE:** Was the confession involuntary? **ANSWER:** Yes. Considering the defendant’s age, education, experience, mental capacity, intelligence, physical condition at the time of his questioning, and the duration of that questioning, the confession was involuntarily given.

8. **People v. Karim, 304 Ill. Dec. 677, (1st Dist., No. 1-03-1147, July 28, 2006)** **FACTS:** Three men were shot. Two died. The third man identified the defendant in this case as the shooter. The defendant was arrested and interrogated over the next 36 hours before he confessed to the shootings. **ISSUE:** Was this period of detention sufficiently unreasonable so as to render the defendant's confession involuntary? **ANSWER:** No. The length of the detention was, by itself, insufficient to render the confession involuntary. The totality of the circumstances must be considered.

9. **People v. Scott, 304 Ill. Dec. 281, (1st Dist., No. 1-04-2019, June 30, 2006)** **FACTS:** The victim in this case was robbed and murdered. An informant's tip led the police to suspect that the defendant in this case was the murderer. Based upon this tip (and not much else), the defendant was placed under arrest. He was then interrogated and, after he was transported to the murder scene, he confessed. The trial court declared that the police lacked sufficient probable cause to justify the defendant's arrest. **ISSUE:** Were sufficient additional factors present to attenuate the defendant's bad arrest and render his confession admissible? **ANSWER:** No.

10. **People v. Jeffers, 302 Ill. Dec. 670, (2nd Dist., No. 2-05-0390, May 24, 2006)** **FACTS:** The defendant's car skidded into a ditch after a tire went flat. Paramedics were called to assist the defendant. The defendant refused to cooperate and attempted to smoke a cigarette. He became abusive and hostile when the paramedics refused to allow him to smoke. Eventually, the defendant refused any treatment and also refused to sign a release form. Specifically, the defendant stated that he would be arrested as soon as he signed the form. A frustrated and exasperated paramedic responded by stating that the defendant was going to be arrested whether or not he signed the form. Thereafter, a police officer, who had been standing by while this exchange had occurred, tried to talk to the defendant. The defendant said he would not talk to the officer and demanded to speak to his attorney. After asking further questions, the officer placed the defendant under arrest. **ISSUE:** Did this defendant properly invoke his right to an attorney prior to being asked questions by the officer? **ANSWER:** No. When the defendant made his statements, he was yet detained by the police. Consequently, he did not yet have the right to speak to an attorney.

11. **People v. Pankhurst, 302 Ill. Dec. 329, (2nd Dist., No. 2-05-0823, May 10, 2006)** **FACTS:** The principal of a local high school was advised by an undisclosed source that the defendant in this case and another student were in possession of cannabis. The principal and the dean of students summoned the defendant to the principal's office. He was asked to empty his pockets and cannabis was found. The principal then questioned the defendant and he admitted selling cannabis. The principal then ended the interview, called the police, and the defendant was placed under arrest. After receiving Miranda warnings (for the first time), the defendant gave the police another incriminating statement. **ISSUE:** Were the defendant's Miranda rights violated when he spoke with the principal? **ANSWER:** No. For purposes of Miranda, the principal was not an agent of the police when he questioned the defendant. **NOTE:** The concurring Opinion in this case made it very clear that this case does not apply to Fourth Amendment situations.

12. **People v. Young, 302 Ill. Dec. 847, (1st Dist., No. 1-04-2176, April 24, 2006)** The defendant in this case, a juvenile, was suspected of shooting a person to death. After an investigation, the police placed this defendant under arrest. Subsequent to his arrest, after being read his Miranda rights, the defendant was interrogated by the police. During this interrogation, the defendant's father was present. After the police began their interrogation, the defendant's father indicated that he wanted to call his lawyer. The defendant's father made his telephone call and then left the police station. Thereafter, an attorney appeared at the police station and asked to see the defendant's father. The attorney then spoke with the defendant for a few

minutes. At no time did the defendant indicated that the attorney was his lawyer. Eventually, the police completed their interrogation of the defendant. The defendant then made an incriminating statement. **ISSUE:** Was the defendant's Miranda rights violated in this case? **ANSWER:** No. The defendant here did in unequivocally invoke his right to counsel and the defendant's father did not have that right, even if this defendant was a juvenile.

13. People v. Salgado, 304 Ill. Dec. 16, (1st Dist., No. 1-04-0856, March 31, 2006) In February of 1992, the victim, a bartender, was fatally shot after the owner of the bar refused to serve a drink to an under-age patron. The police were called and they began to suspect that the defendant in this case was involved in the murder. They picked him up and interrogated him. Prior to his interrogation, the defendant was properly read his Miranda rights. Thereafter, he was interrogated a number of times by the police. Prior to those interrogations, the defendant was again read his rights. He argued, however, that he did not knowingly and intelligently waive his rights because the "blatant incompetence" of the Spanish translator caused his warnings to have been inaccurate. **ISSUE:** Was the alleged inaccuracy of the defendant's subsequent warnings sufficient to render his statements involuntary? **ANSWER:** No. The defendant initially received accurate warnings. He admitted this fact and that he understood his rights. Thereafter, he was not entitled to additional warnings. Therefore, the accuracy of those warnings did not render his statements involuntary.

14. People v. Slywka, 301 Ill. Dec. 770, (1st Dist., No. 1-03-1410, March 31, 2006) In 1992, the defendant, then a juvenile, shot the victim. Based upon this conduct, the defendant was charged with aggravated battery and armed violence and adjudicated delinquent. He was committed to the juvenile division of the Department of Corrections in 1993 and paroled in 1994. The victim lay in a coma until October of 2000, when he died as a result of his wounds. The defendant was then charged with first-degree murder. During the defendant's trial, a juvenile probation officer was called to testify. She stated that she had conducted a court-ordered pre-sentence social investigation report on the defendant prior to his 1993 delinquency adjudication. During that interview, the defendant admitted shooting the victim. **ISSUE:** Was the used of the defendant's social investigation report a violation of Miranda? **ANSWER:** Yes.

15. People v. McCree, 300 Ill. Dec. ___, (1st Dist., No. 1-04-1049, March 14, 2006) **FACTS:** The defendant was suspected of first-degree murder. He stabbed the women with whom he was smoking crack cocaine. Evidently, the defendant believed that the victim was going to steal his drugs. The police arrested the defendant and transported him to the local police station. The defendant alleged that they beat him in the process. The arresting officers denied that this ever occurred. At the station, the police began their interrogation of the defendant. Some 27 hours later, the defendant confessed. **ISSUE:** What does it take to render a confession such as this involuntary? **ANSWER:** A 27-hour detention, by itself, was not enough.

16. People v. Kruger, 300 Ill. Dec. 675, (4th Dist., No. 4-03-1018, March 10, 2006) The defendant was arrested for being a felon in possession of a firearm. An attorney was appointed to represent him. The gun the defendant possessed was linked to a recent murder. Thereafter, without notifying his counsel, the defendant was called before a grand jury to answer questions about the murder. He denied any connection with or knowledge of the murder. Subsequently, this grand jury testimony was introduced against the defendant at his murder trial. **ISSUE:** Was this defendant's Sixth Amendment right to counsel violated by these "unique" circumstances? **ANSWER:** Yes. The defendant's testimony before the grand jury was "coerced" by his subpoena and his right to counsel was "circumvented" by being called before the grand jury.

YEAR 2005 CASES

1. **People v. Wead, 299 Ill. Dec. 488, (1st Dist., No. 1-02-1878, December 23, 2005)** The defendant was suspected of first-degree murder. Based upon their suspicions, the police stopped the defendant on the street and asked him to come down to the police station for questioning. The defendant agreed and he hopped into the back of the police squad car. At the station the police interrogated the defendant for 54 hours. The defendant finally confessed and he was charged with first degree murder. **ISSUE:** Was the defendant's confession admissible against him at his murder trial? **ANSWER:** No. The defendant was "arrested" at the police station when he was not free to leave. This arrest was made without probable cause. Since no evidence was introduced to "break the chain" between the defendant's illegal arrest and his subsequent confession, that confession was inadmissible against him.

2. **People v. Welch, 303 Ill. Dec. 397, (5th Dist., No. 5-03-0681, December 16, 2005)** **FACTS:** A robbery occurred in Madison County. The defendant in this case was a suspect. He was interviewed by the police and released. The next day the defendant called the police and stated that he had received advice from an attorney who was representing him in a civil case and that he did not wish to speak to the police any more. However, the next day, the defendant again called the police and told them that he wished to continue to cooperate with them. That same day, a warrant for the defendant's arrest was issued in Madison County. He was arrested in St. Clair County on that warrant. During an interrogation in St. Clair County, the defendant admitted to committing a robbery there. Sixteen days later the Madison authorities went to the defendant while he was still jailed in St. Clair County, gave him his Miranda rights, and interrogated him. He gave a confession to the Madison County robbery. **ISSUE:** Did the authorities err by failing to bring this defendant before a judge within 48 hours of his arrest and if they did, should his confession be suppressed? **ANSWER:** No. This defendant was arrested on a warrant. The 48 hour rule only applies to warrantless arrests. **ISSUE:** Did the authorities violate the defendant's right to remain silent after he had informed them that he did not wish to speak to them. **ANSWER:** No. The 16-day period between the time the defendant allegedly invoked his right to remain silent and the re-interrogation of the defendant by the Madison County authorities was sufficient to prove that the authorities "scrupulously honored" the defendant's Fifth Amendment rights.

3. **People v. Hernandez, 298 Ill. Dec. 819, (1st Dist., No. 1-04-0074, December 8, 2005)** **FACTS:** This defendant was suspected of assisting in the murder of the victim, Roy George. It seems that the victim and his friend were attacked by a group of Satan Disciples street-gang members. During this attack, someone took a piece of asphalt and broke it over George's head. George died as a result of this blow. The defendant was the one who hit the victim. He was arrested and interrogated on videotape. During that videotaped interrogation, an assistant State's Attorney asked the defendant the following question, "Understanding these rights, do you wish to talk to us now?" The defendant responded by saying, "No, not no more." Naturally, this caused some confusion on the part of the State's Attorney. She then asked the following question, "Do you wish to talk to us now about what we previously spoken to (sic)?" To this question, the defendant responded, "Yes." He then went on to explain his role in the victim's murder. **ISSUE:** Was the defendant's answer to the question of the State's Attorney sufficient to invoke his right to remain silent pursuant to the Fifth Amendment? **ANSWER:** Yes. The State's Attorney's follow-up question did not cure this problem.

4. **People v. Sterling, 293 Ill. Dec. 766, (1st Dist., No. 1-03-3285, May 2, 2005)** **FACTS:** The defendant was found guilty of robbing and murdering his victim. On appeal he argued that his counsel was ineffective because he failed to move to suppress the statements he gave to the police. Specifically, the defendant

argued that his confessions should have been suppressed because he was held for 96 hours without being taken before a trial judge for a probable cause hearing. **ISSUE:** Does the fact that the defendant's "48-hour rule" rights were violated mandate that his confessions be suppressed. **ANSWER:** Not necessarily. The appellate court noted that in this case the defendant gave his statements before the 48-hour rule was violated. Because sufficient evidence was admitted to indicate that the defendant voluntarily gave these statements, the mere fact that the 48-hour rule was later violated did not mandate the suppression of the defendant's statements.

YEAR 2004 CASES

1. **People v. Cook**, 352 Ill. App. 3d 108, 815 N. E. 2d 879, 287 Ill. Dec. 245, (1st Dist., No. 1-01-1688, August 27, 2004) **FACTS:** The defendant was suspected of shooting the victim to death. He was arrested and interrogated numerous times. Eventually, the defendant gave an incriminating statement. **ISSUE:** Did the fact that the defendant may not have been read his Miranda rights before every interrogation mandate that his confession be declared to be inadmissible? **ANSWER:** No. The appellate court concluded that a defendant does not necessarily have to be so instructed before every interrogation. The true test is whether the totality of the circumstances indicated that the defendant's confession was voluntarily given. The appellate court declared that the possible lack of a Miranda rights reading in this case did not render the defendant's confession inadmissible. (The defendant's 65 previous arrests might have had something to do with the appellate court's decision.) **ISSUE:** Did the defendant's physical condition render his confession involuntary? **ANSWER:** No. According to this Court, the defendant was not that badly injured.

2. **People v. Klimawicze**, 352 Ill. App. 3d 13, 815 N. E. 2d 760, 287 Ill. Dec. 116, (1st Dist., No. 1-00-3531, August 17, 2004) **FACTS:** The mother of the defendant in this case was found stabbed to death. The police believed that the defendant was involved in that murder. Based upon this suspicion, they arrested her. Unfortunately, the police lacked probable cause to justify that arrest. Once at the police station, the police interrogated the defendant's co-defendants and they both rolled over on the defendant. The defendant, after being advised of these statements, gave a statement of her own. **ISSUE:** Was the defendant's statement admissible against her? **ANSWER:** Yes. The totality of the circumstances indicated that the defendant's statement was sufficiently attenuated from her illegal arrest to be used against her.

3. **People v. Gonzalez**, 351 Ill. App. 3d 192, 813 N. E. 2d 299, 286 Ill. Dec. 242, (2nd Dist., No. 2-02-1218, July 15, 2004) **FACTS:** Four persons were shot during a shooting in a public park. The sixteen-year-old mildly retarded defendant in this case was a suspect in those shootings. He was arrested and transported to the police station. Once there, the defendant gave two incriminating statements. **ISSUE:** Was the fact that the defendant was mildly retarded render his statements involuntary? **ANSWER:** No. The totality of the circumstances illustrated that the defendant's statements were voluntarily given. **ISSUE:** Did the failure of the police to contact the defendant's parents require that his statements be suppressed? **ANSWER:** No. Again, a trial court must consider the totality of the circumstances. In this case, the statements of the defendant were not suppressed.

4. **People v. Nicholas**, 351 Ill. App. 3d 433, 813 N. E. 2d 1057, 286 Ill. Dec. 364, (1st Dist., No. 1-02-0828, July 9, 2004) **FACTS:** The defendant was a suspect in the murder of his own mother. He was arrested and underwent a series of interrogations over a number of hours. Eventually, the defendant gave two oral admissions. Instead of taking the defendant before a judge, the police classified their investigation as "ongoing" and decided to continue to detain him. Thereafter, the defendant confessed. **ISSUE:** Was the

defendant's confession admissible against him at his trial? **ANSWER:** No. The violation of the defendant's right to be brought before a judge results in the suppression of any statement made by the defendant after that violation.

5. People v. Clay, 349 Ill. App. 3d 517, 812 N. E. 2d 473, 285 Ill. Dec. 653 (1st Dist., No. 1-01-3462, June 21, 2004) **FACTS:** Three men robbed a currency exchange and shot and killed a store clerk. A wallet was found outside of the exchange shortly after the robbery. The police traced the wallet to a Jerry Clay (the defendant's brother) and they staked out Jerry Clay's house. Subsequently, Jerry Clay, Tony Williams, and the defendant were arrested for the robbery and murder. Jerry Clay rolled over on the defendant and the defendant, after hearing about Jerry's confession, admitted his involvement in the crime. Unfortunately, both the defendant and Jerry Clay were later found to have been arrested without probable cause. (The wallet was insufficient to sustain the defendant's arrest.) **ISSUE:** Was the defendant's statement admissible against him at his trial? **ANSWER:** No. The police can not use illegally obtained evidence to prove attenuation between the defendant's illegal arrest and his subsequent statements.

6. People v. Wilberton, 348 Ill. App. 3d 82, 809 N. E. 2d 745, 284 Ill. Dec. 179 (1st Dist., No. 1-03-0093, April 20, 2004) **FACTS:** Two gang members were killed during a shooting. The defendant in this case and a man named Derrold Davis were arrested by the police. Davis rolled over on the defendant. The defendant, after being informed of the Davis statement and after failing a polygraph test, admitted his involvement in the crimes. Unfortunately, it seems that the police lacked probable cause to arrest the defendant. **ISSUE:** Was the defendant's statement admissible against him at trial. **ANSWER:** Yes. The Court ruled that the Davis statement and the defendant's failure to pass the polygraph test sufficiently purged the taint of the defendant's illegal arrest and rendered his subsequent statement admissible against him.

7. People v. Haynie, 347 Ill. App. 3d 650, 807 N. E. 2d 987, 283 Ill. Dec. 146 (1st Dist, No. 1-01-4427, March 26, 2004) **FACTS:** The 16-year-old defendant was a suspect in a double homicide. At around 7 p.m., the day after the shooting the defendant was taken to the police station. He participated in three lineups. Within 20 minutes of his arrival at the station, several attempts were made to locate the defendant's mother. Eventually, around 3 a.m., the defendant's mother arrived and she was asked to sit in on the interrogation of her son. She agreed. While she watched, an assistant state's attorneys interviewed the defendant. Also present was a police youth officer. During this fifteen minute interrogation the defendant confessed that he shot the victims and he agreed to give a videotaped statement to that effect. At his subsequent trial, the defendant was convicted of two counts of first-degree murder and he received a sentence of natural life in prison. On appeal, the defendant argued that he had received ineffective assistance of counsel because his trial counsel had failed to move to quash his confession. **ISSUE:** Was the defendant's confession involuntary because of his age, the length of his detention prior to his confession and his lack of sleep? **ANSWER:** No. Using the totality of the circumstances test, the appellate court ruled that the defendant's confession was not involuntary. **ISSUE:** Did the fact that the police youth officer in this case also participated in the investigation of the murders by interviewing witnesses and conducting lineups invalidate the confession? **ANSWER:** No. The appellate court noted that the officer did not do both jobs at the same time. When he was acting as a youth officer, the officer did protect the interests of the defendant. Consequently, the defendant's confession was not involuntary due to the conduct of the officer.

8. People v. Ragusa, 346 Ill. App. 3d 176, 804 N. E. 2d 692, 281 Ill. Dec. 727 (2nd Dist, No. 2-02-1131, February 6, 2004) **FACTS:** The defendant in this case was charged with numerous drug offenses after the police executed a search warrant on the defendant's home. After speaking with his uncle, the defendant informed the police that he was willing to cooperate and speak to the police about "other deliveries and

possible cooperation.” The interviewing officer then said that if the defendant “wanted to do some work for us, that would be possible.” In fact, the interviewing officer wrote in his police report that the defendant had agreed to cooperate in exchange for reduced charges. Based upon these conversations, the defendant admitted that he had intended to sell some of the drugs. In fact, in an attempt to assist the police, the defendant made a few telephone calls in an attempt to set up a sale of the drugs. At the defendant’s subsequent trial, the People were allowed to introduce evidence of the defendant’s admissions that he intended to sell the drugs. **ISSUE:** Could the People properly use the defendant’s statements against him at his trial. **ANSWER:** No. According to the appellate court, the defendant’s statements were made when the defendant was attempting to negotiate a plea agreement. Since these statements were plea related, they should not have been used against the defendant.

YEAR 2003 CASES

1. **People v. Carrero, 345 Ill. App. 3d 1, 801 N. E. 2d 1084, 280 Ill. Dec. 139 (1st Dist, No. 1-01-0164, December 9, 2003)** **FACTS:** The victim parked his car and started to walk into a hardware store. As he was walking, he was confronted by a masked man who was armed with a sawed-off shotgun. The masked man took the victim’s money and his car. The police were called and they quickly located the defendant’s car. The driver of the car (the defendant in this case) fled in the stolen car. The police gave chase. Eventually, the defendant jumped out of the car and fled on foot. The police tackled him and brought him downtown for questioning. During a subsequent interrogation the defendant gave various conflicting statements. The next day, four pictures of the defendant’s face were taken. They showed various injuries to the defendant’s face. Thereafter, the defendant argued that he had been physically coerced into giving his statements. A hearing was held and the police explained that the defendant’s injuries resulted from his capture. The trial court bought this explanation. **ISSUE:** Was the trial court’s decision erroneous? **ANSWER:** No. The People had met their burden of explaining how the defendant received his injuries.

2. **People v. Parker, 344 Ill. App. 3d 728, 801 N. E. 2d 162, 279 Ill. Dec. 870 (3rd Dist, No. 3-02-0373, December 5, 2003)** **FACTS:** The defendant entered the victim’s home, strangled her and took her credit cards and car. Thereafter, an arrest warrant was issued for the defendant and he was apprehended in Iowa. Illinois police officers traveled to Iowa to interview the defendant. He invoked his right to counsel and all questioning ceased. An Iowa police officer then approached the defendant and commenced to read him his arrest warrant. (This was done pursuant to Iowa law). During this reading, the defendant asked to see the Illinois officers. He then waived his Miranda rights and gave a full confession. **ISSUE:** Did the Iowa officer violate the defendant’s Miranda rights by reading him his arrest warrant? **ANSWER:** No. The mere reading of the arrest warrant did not constitute an “interrogation” and since the officer was required to inform the defendant of the contents of the warrant, his reading of the warrant would not be considered to be likely to invoke an incriminating response from the defendant.

3. **People v. Rish, 344 Ill. App. 3d 1105, 802 N. E. 2d 826, 280 Ill. Dec. 575 (3rd Dist, No. 3-01-0161, November 11, 2003)** **FACTS:** The victim was kidnapped and buried alive. He died and the defendant in this case was arrested and interrogated. A counsel was appointed to assist the defendant pursuant to Miranda. During four days of interrogations, the defendant gave eight inconsistent statements. Unfortunately, the defendant’s counsel was a close personal friend of the victim and he had represented one of the police officers investigating this incident. Further, the counsel failed to inform the defendant of these potential conflicts. The defendant filed a post-conviction petition following his conviction for first degree murder and argued that he

had been denied due process. The defendant's petition was denied without a hearing. **ISSUE:** Did the trial court err in refusing to hold a hearing on the defendant's motion. **ANSWER:** Yes. The defendant was entitled to effective counsel during his interrogations. Any conflict may have rendered that assistance ineffective. **CONCLUSION:** The defendant was entitled to a hearing.

4. **People v. Briseno, 278 Ill. Dec. 641 (1st Dist, No. 1-02-1995, September 26, 2003)** **Facts:** On the morning in question, the police were conducting a roadblock. The defendant pulled up and he was ordered to step out of his mini-van. As he did, the police smelled the strong smell of burning cannabis. They immediately asked the defendant if he had been smoking "grass." He admitted that just prior to driving his mini-van, he had smoked a joint. Based upon this admission and other evidence, the defendant was arrested for DUI. The trial court denied the defendant's motion to suppress his statement and he was subsequently convicted as charged. **ISSUE:** Was the defendant's Miranda rights violated when the police asked the defendant if he had smoked cannabis? **ANSWER:** No. The brief and public nature of the defendant's stop convinced the appellate court that the defendant was not in police custody for purposes of Miranda when he was questioned.

5. **People v. Kellerman, 342 Ill. App. 3d 1019, 797 N. E. 2d 726, 278 Ill. Dec. 131 (3rd Dist., No. 3-01-0713, September 4, 2003)** **Facts:** The defendant pled guilty to a charge of arson in exchange for a sentence of 12 years' imprisonment. Thereafter, the defendant filed a post-trial motion and moved to withdraw his guilty plea. In his motion he argued that his counsel had been ineffective for failing to challenge his recorded confession. It seems that in order to convince the defendant to cooperate, the police informed the defendant that the State's Attorney was on the telephone and that he had said that he was ready to offer a plea bargain of three or four years in exchange for the defendant's confession. At least, that was what the defendant alleged. **ISSUE:** Did the trial court err in dismissing the defendant's post-trial motion without a hearing? **ANSWER:** Yes. If in fact the defendant was found to be telling the truth, his confession would have been involuntary. He was entitled to a hearing on this matter.

6. **In re Donald, 343 Ill. App. 3d 237, 796 N. E. 2d 670, 277 Ill. Dec. 584 (3rd Dist., No. 3-02-0716, August 29, 2003)** **FACTS:** The minor defendant in this case, a sixteen-year-old, was suspected of committing the sexual exploitation of a child after he exposed himself to a six-year-old girl. During their investigation of this alleged offense, the police decided to interrogate the defendant. During this interrogation the defendant's parents were not present. (There was some question concerning whether the parents asked to be present.) Thereafter, the defendant confessed. A petition to have the minor adjudicated delinquent was then filed. The defendant then moved to suppress the statements he made to the police. **ISSUE:** Did the failure of the police to allow the defendant's parents to witness his interrogation and confession render that confession involuntary? **ANSWER:** No. The issue of the presence of the defendant's parents was only one circumstance to be considered by the trial court when considering the voluntariness of the defendant's confession. The totality of the circumstances in this case did show that the defendant's confession was voluntary.

7. **People v. Bramlett, 341 Ill. App. 3d 638, 793 N. E. 2d 203, 275 Ill. Dec. 1 (1st Dist., No. 1-99-3768, June 30, 2003)** **FACTS:** The victim in this case was shot to death. While one detective was interrogating the prime suspect in the shooting, three other detectives went to the apartment of the defendant in this case where they placed him under arrest. At some time during these activities the prime suspect confessed to his part in the shooting and implicated the defendant. Meanwhile, the defendant was transported downtown and interrogated. He confessed. The problem here was the People offered no proof to show that the three officers knew that the their prime suspect had confessed prior to their arrest of the defendant. Consequently, they were unable to offer up any proof of probable cause sufficient to justify the defendant's arrest. Therefore, that arrest was declared to have been illegal. **ISSUE:** Was the defendant entitled to have his confession suppressed due to his illegal

arrest? **ANSWER:** Not necessarily. The People were entitled to have an attenuation hearing in order to show that sufficient independent factors intervened to allowed the use of the defendant's confession.

8. **People v. Redmond, 341 Ill. App. 3d 498, 793 N. E. 2d 744, 275 Ill. Dec. 973 (1st Dist., No. 1-01-0405, June 30, 2003)** **FACTS:** The defendant was a suspect in a fatal shooting . After being arrested at his home, he was transported to the police station. He was kept there for 52 hours and repeatedly interrogated. Eventually, the defendant gave an incriminating statement. **ISSUE:** Should the defendant's statement have been suppressed because the circumstances surrounding that confession rendered it involuntary? **ANSWER:** No. The evidence was, at best, conflicting concerning exactly what the defendant underwent during his interrogation. Consequently, his confession did not need to be suppressed. **COMMENT:** This is a very good case to illustrate the necessity of winning on the trial level. The trial court found in the People's favor and the appellate court refused to disturb that ruling.

9. **People v. Graham, 339 Ill. App. 3d 1049, 791 N. E. 2d 724, 274 Ill. Dec. 632 (4th Dist., No. 4-01-0550, June 20, 2003)** **FACTS:** The defendant was a prime suspect in a home invasion and first degree murder. While he was in jail on an unrelated drug offense, the police interrogated him about this murder. When the police informed the defendant that his co-defendant was "helping himself" by talking with the State's Attorney, the defendant also demanded to speak with the State's Attorney. The State's Attorney was "unavailable" and so the defendant talked with the police and eventually made an incriminating statement. **ISSUE:** By asking to see the State's Attorney, did the defendant invoke his Fifth Amendment right to counsel? **ANSWER:** No. The defendant did not wish to see the State's Attorney so that the State's Attorney would protect his constitutional rights. Consequently, his request to speak to the State's Attorney did not constitute an invocation of his right to counsel. **ISSUE:** Was the defendant's Sixth Amendment right to counsel violated when his counsel in his pre-existing drug case was not informed that the defendant was being interrogated about the home invasion and murder? **ANSWER:** No. The Sixth Amendment right to counsel is case specific. That counsel represented the defendant on the drug case, not this murder investigation.

10. **People v. Woods, 338 Ill. App. 3d 78, 787 N. E. 2d 836, 272 Ill. Dec. 650 (1st Dist, No. 1-01-3661, March 19, 2003)** **FACTS:** The victim in this case, a seven-month-old baby, died as a result of "shaken baby syndrome" injuries. Suspected of committing the murder, the defendant was brought in for questioning. While the defendant was at the police station and, in between police interrogations of the defendant, an attorney showed up at the station and demanded to speak to his client. The police refused to allow the attorney to see or speak to the defendant and, at that moment, failed to inform the defendant that an attorney was present and wished to talk to him. Subsequently, the attorney left a note for the defendant and then he left the police station. The note was never given to the defendant. Subsequently, the police informed the defendant that the attorney had earlier been at the station. Thereafter, the defendant was again interrogated and during this interrogation, he confessed. The defendant's motion to suppress this statement was denied and he was subsequently convicted of first degree murder. **ISSUE:** Were the defendant's Fifth Amendment rights violated by the conduct of the police in this case. **ANSWER:** Yes, without any doubt. **ISSUE:** Did the fact that the defendant was not being interrogated when the attorney appeared at the police station or the fact that the defendant was informed that an attorney had been at the station to see him earlier justify the trial court's denial of his motion to suppress? **ANSWER:** No. Neither of these facts had sufficient legal significance to overcome the violation of the defendant's Fifth Amendment rights. **RESULT:** As a result of this violation, the defendant's waiver of his Miranda rights were found to be not knowingly or intelligently made. His conviction was reversed and his confession was suppressed.

11. **People v. Gorgis**, 337 Ill. App. 3d 960, 787 N. E. 2d 329, 272 Ill. Dec. 514 (1st Dist., No. 1-00-3759, March 19, 2003) **FACTS:** The defendant was accused of first degree murder and aggravated discharge of a firearm. During an interrogation, the defendant made a full confession. Prior to his trial, the defendant moved to suppress his confession and argued that the police falsely promised a reduction in the charges against him if he confessed and the assistant State's Attorney falsely informed him that if he cooperated he could only be charged with manslaughter. Based upon these allegations, the defendant argued that due to his "vulnerable mental state" the physical and psychological coercion of the police and the State's Attorney rendered his confession involuntary. **ISSUE:** Was the defendant's confession rendered involuntary by the tactics of the authorities and the condition of the defendant's mental state? **ANSWER:** The test is the totality of the circumstances. In this case the trial court was in the best position to judge those circumstances. The court rejected the defendant's arguments and the appellate court did not disagree.

12. **People v. James**, 337 Ill. App. 3d 532, 786 N. E. 2d 251, 271 Ill. Dec. 993 (2nd Dist., No. 2-01-0699, March 14, 2003) **FACTS:** The car the defendant was riding in was stopped by the police based upon a traffic violation. The driver of the car was intoxicated. He was arrested and transported to the police station. The defendant, who was also intoxicated, was told he was free to leave and the police even offered to call him a cab. (They refused to allow the defendant to drive the car away or to walk to a nearby friend's house.) As the defendant was preparing to leave area, the police asked him if he had any weapons in the car. The defendant informed the police that he had an unloaded pistol on the car's back seat. The police retrieved the pistol, discovered that it was, in fact, loaded, and placed the defendant under arrest. **ISSUE:** Was the defendant entitled to Miranda warnings before the police could ask him any questions under the circumstances of this case? **ANSWER:** The appellate court described the conduct of the police in this case as "roadside questioning" conducted during a routine traffic stop. According to the appellate court, such questioning was not custodial in nature and, therefore, no Miranda warning were necessary.

13. **People v. Jones**, 337 Ill. App. 3d 546, 786 N. E. 2d 243, 271 Ill. Dec. 985 (2nd Dist., No. 2-01-0777, March 13, 2003) **FACTS:** The defendant was placed under arrest after he was found to have been driving on a revoked driver's license. The police searched the passenger compartment of the defendant's car pursuant to his arrest. During that search a loaded handgun was discovered in the locked glove compartment of that car. Upon discovering the firearm, the arresting officer walked over to the defendant and informed him of the discovery of the gun. The defendant then responded, "Why did you go into the locked glove box without a warrant?" **ISSUE:** Was the defendant denied his Fifth Amendment rights when the police informed him of finding his gun without first giving him his Miranda rights? **ANSWER:** The appellate court determined that the statement of the police officer to the defendant that the gun had been discovered was "purely informational." Specifically, the Court ruled that the comment of the officer was not the type of statement that "would be reasonably likely to elicit an incriminating response." Therefore, no Miranda warnings were necessary.

14. **People v. Howerton**, 335 Ill. App. 3d 1023, 782 N. E. 2d 942, 270 Ill. Dec. 383 (3rd Dist., No. 3-02-0059, January 3, 2003) **FACTS:** The defendant in this case was accused of murder. He was arrested and interrogated. No less than five times during his interrogation did the defendant request counsel. Each time the police ignored the defendant's requests. Eventually, the defendant confessed to the murders. **ISSUE:** Were the People able to use the defendant's statements? **ANSWER:** No way. How did the Court know that the defendant asked for counsel five times? His interrogation was videotaped.

YEAR 2002 CASES

1. **People v. Bowman**, 335 Ill. App. 3d 1142, 782 N. E. 2d 333, 270 Ill. Dec. 139 (5th Dist., No. 5-01-0340, December 27, 2002) **FACTS:** Two women were murdered in 1978. The police suspected the defendant in this case. A police detective allegedly devised a scheme whereby a jailhouse snitch would induce the defendant to confess to the murders in order to be kept in the County Jail. The snitch would then, as soon as he was released from the jail, help the defendant escape. The defendant confessed and the snitch never did help the defendant. The defendant immediately recanted his confessions. Too late. The defendant was charged with the murders. He pleads guilty pursuant to an Alford plea (whereby the defendant agrees to plead guilty but does not admit his guilt). Twenty-one years later a local newspaper reveals the alleged scheme and the defendant moves to withdraw his guilty plea. **ISSUE:** Was the alleged scheme in this case enough to render the defendant's confessions involuntary? **ANSWER:** The appellate court thought so.

2. **Village of Algonquin v. Tilden**, 335 Ill. App. 3d 332, 780 N. E. 2d 832, 269 Ill. Dec. 360 (2nd Dist., No. 2-02-0055, December 6, 2002) **FACTS:** The defendant was found slumped over the steering wheel of her car. Her eyes were glassy and bloodshot. Her speech was stuttered and slurred. When questioned by the police, the defendant admitted having several vodkas that evening. Based upon this evidence, the defendant was charged with DUI. Thereafter, she received notice of the summary suspension of her driving privileges. She moved to rescind her summary suspension. At the defendant's summary suspension hearing, the trial court suppressed the defendant's statements to the police on the ground that the police had failed to give the defendant her Miranda warnings. Additionally, when the People attempted to call the defendant to testify at her rescission hearing, the trial court refused to require the defendant to testify and ruled that she could properly invoke her Fifth Amendment rights and refuse to do so. **ISSUE:** Was the defendant entitled to Fifth Amendment protections at her hearing to rescind her summary suspension? **ANSWER:** No. Such a hearing is civil in nature and the Fifth Amendment does not apply. However, any evidence produced as a result of these hearings could not be used against the defendant at her subsequent DUI trial.

3. **People v. Quezada**, 335 Ill. App. 3d 233, 780 N. E. 2d 790, 269 Ill. Dec. 318 (2nd Dist., No. 2-01-0235, November 27, 2002) **FACTS:** The 15-year-old defendant was suspected of murder. He was arrested and questioned. One hour later the police called the defendant's father. Additionally, a Youth Officer, who was present during the defendant's questioning, assisted the police in obtaining a series of incriminating statements from the defendant. **ISSUE:** Did the fact that the police waited an hour to call the defendant's father render the defendant's statements inadmissible? **ANSWER:** No. Even though the Illinois Juvenile Court Act requires that the police "immediately" contact the parents of a detained minor (Section 5-405), this fact alone did not mandate the suppression of the defendant's statements. **ISSUE:** How about the "help" the Youth Officer gave the police in questioning the defendant. **ANSWER:** The appellate court determined that the trial court did not err in suppressing the statements that the Youth Officer assisted in getting from the defendant.

4. **People v. Hamilton**, 328 Ill. App. 3d 195, 764 N. E. 2d 1240, 262 Ill. Dec. 123 (1st Dist., No. 1-97-3926, February 20, 2002) **FACTS:** The police arrested the defendant without probable cause. They then interviewed him and he gave them a series of incriminating statements. **ISSUE:** Were these statements admissible against the defendant? **ANSWER:** Yes. The evidence in this case did clearly show that the defendant was falling all over himself to cooperate with the police. The People were able to prove by clear and convincing evidence that the defendant's statements were the product of his own free will.

5. **People v. Schoening**, 333 Ill. App. 3d 28, 775 N. E. 2d 243, 266 Ill. Dec. 681 (2nd Dist., No. 2-01-0233, August 21, 2002) **FACTS:** The defendant was on the scene when the police came to arrest his girlfriend. He interfered with their attempts and was placed in cuffs. Eventually, the defendant was released and the police asked the defendant to identify himself for their police reports. The defendant gave the police a false name. The defendant's girlfriend "corrected" the defendant and the police then ran a computer check and discovered that the defendant was a convicted felon. The police then noticed that the defendant possessed firearms inside of his home. Based upon this information, he was placed under arrest. **ISSUE:** Were the defendant's Miranda rights violated? **ANSWER:** No.

6. **People v. Traylor**, 331 Ill. App. 3d 464, 771 N. E. 2d 629, 264 Ill. Dec. 925 (3rd Dist., No. 3-00-0672, June 14, 2002) **FACTS:** The defendant was in police custody. After a series of interviews, the police were able to obtain incriminating statements from the defendant. However, a photograph of the defendant was taken and it revealed that the defendant suffered some injuries during the time he was in police custody. At a hearing to suppress these statements, the police testified and simply denied threatening or coercing the defendant. **ISSUE:** Were the defendant's statements admissible against him? **ANSWER:** No. The simple denials by the police that the defendant was not threatened or coerced was insufficient. The People had to prove how the defendant received his injuries.

YEAR 2001 CASES

1. **People v. Mendez**, 322 Ill. App. 3d 103, 749 N. E. 2d 391, 252 Ill. Dec. 290 (1st Dist., No. 1-00-2178, May 2, 2001) **Facts:** The defendant was arrested for possession of cocaine. At the scene of his arrest, the defendant invoked his right to remain silent. Two hours later, at the police station, an assistant State's Attorney again questioned the defendant after warning him of his Miranda rights. During this interview, the defendant made incriminating admissions. **Issue:** Was the defendant's invocation of his Fifth Amendment rights "scrupulously honored?" More to point, was two hours time between the defendant's invocation of this rights and the second interview long enough? **Answer:** Yes.

2. **People v. Fuller**, 319 Ill. App. 3d 180, 743 N. E. 1094, 252 Ill. Dec. 938 (5th Dist., No. 5-00-0143, February 7, 2001) **Facts:** The defendant was placed under arrest by a security agent for Famous Barr after that agent witnessed the defendant "under ringing" a number of sales. After the defendant was detained, the store agent questioned the defendant and the defendant admitted his crime to the agent. After the defendant was charged with retail theft, he moved to suppress the statements he made to the agent because he had never been warned concerning his Miranda rights. The trial court agreed with the defendant and ordered the statements suppressed. **Issue:** Was the security agent acting as an agent of the police when he detained the defendant. **Answer:** No. No evidence was offered to show such a relationship. In fact, the agent was acting pursuant to an Illinois statute that authorizes a merchant to detain persons suspected of thief. **Issue:** Was the agent then working "under color of law" which would require that Maranda warning be given. **Answer:** No. Merely acting pursuant to a statute did not constitute acting under color of law.

3. **People v. Lee**, ___ Ill. App. 3d ___, 781 N. E. 2d 310, 269 Ill. Dec. 513 (1st Dist, No. 1-99-2626, February 6, 2001) **Facts:** The defendant, a minor, was suspected of murder. The police wished to interview him. His mother was called and informed of the defendant's situation. While they waited for the defendant's mother to appear, the police went ahead and interrogated the suspect. He gave a series of incriminating statements. When his mother appeared, the defendant again confessed. **Issue:** Were the defendant's statements admissible

against him? **Answer:** Yes. The presence or absence of a parent was a factor to consider when determining the voluntariness of a juvenile's confession, however, there is no per se requirement that a parent or guardian be present. The totality of the circumstances in this case did show that the defendant's statements were voluntarily made.

4. **People v. Lira**, 318 Ill. App. 3d 118, 742 N. E. 2d 885, 252 Ill. Dec. 347 (3rd Dist., No. 3-99-0673, January 5, 2001) **Facts:** The defendant submitted to an Iowa interrogation while accompanied by his counsel. During this interview, the defendant confessed to an Iowa crime. Later that same day, he was interviewed by Illinois police while he was under arrest in Iowa. This time, the defendant was not accompanied by counsel. During this second interview, the defendant confessed to an Illinois crime. Later, the defendant was charged with aggravated battery with a firearm in Illinois. The trial court granted the defendant's motion to suppress based upon a finding that the defendant's Fifth Amendment right to counsel had been violated. **Issue:** Did the defendant personally invoke his right to counsel in the Illinois case. **Answer:** Yes. The defendant's act of having his counsel present during the Iowa interrogation constituted an invocation of his right to counsel in the Illinois interrogation. **Issue:** Was the defendant's Iowa interview a custodial interrogation? **Answer:** Yes. This ruling was not manifestly erroneous. **Issue:** Were the Illinois police responsible for knowing that the defendant had already invoked his right to counsel? **Answer:** Yes.

5. **People v. Carroll**, 318 Ill. App. 3d 135, 742 N. E. 2d 1247, 252 Ill. Dec. 383 (3rd Dist., No. 3-00-0066, January 4, 2001) **Facts:** The defendant in this case was suspected of killing his brother in 1962. In furtherance of this suspicion, the police picked the defendant up (at an elderly care facility in Quincy, believe it or not) and began questioning him. They informed the defendant that he was not under arrest, nor in custody, and that he was free to leave at any time. At that time the defendant given his Miranda warnings. During his interrogation, the defendant gave four separate verbal statements. Each successive statement was a little more incriminating. Finally, the police got what they wanted and they asked the suspect if he minded if they tape-recorded his final statement. He was again advised that he was free to go. The defendant allowed the police to tape-record his final statement and he was then photographed and taken back to his retirement home. Subsequently, the defendant was charged with first degree murder. He moved to suppress. The trial court ruled that the defendant was not in custody during his four verbal statements but he was during his tape-recorded statement. The court, therefore, suppressed the recorded statement but not the verbal statements. This appeal followed. **Issue:** When was the defendant in this case "in custody?" **Answer:** When his recorded statement was made, but not his verbal statements. According to the appellate court, the test of whether a suspect is in custody must be an objective one. Would a reasonable person believe that he was being detained?

YEAR 2000 CASES

1. **People v. DeSantis**, 319 Ill. App. 3d 795, 745 N. E. 2d 1, 253 Ill. Dec. 227 (1st Dist., No. 1-99-1256, December 22, 2000) **Facts:** The defendant was suspected of obstructing justice for leaving Illinois and concealing himself with the intention of obstructing the prosecution of three individuals who were charged with attempted murder, aggravated battery and hate crimes based upon the beating of a black child. Eventually, the defendant returned to Illinois and called the police. They picked him up and transported him to the local police station. There he talked with several police officers. While the defendant spoke with the police, his attorney arrived at the station and asked to see the defendant. The police refused to cease their interview of the defendant. Eventually, the defendant admitted witnessing the above described offenses. **Issue:** Was the defendant in custody in this case? **Answer:** No. **Issue:** Was the defendant's Fifth Amendment rights

violated when he was not allowed to talk to his attorney when he showed up at the police station? **Answer:** No. No custody - No violation.

See People v. Govea, 299 Ill. App. 3d 76 (1999) The defendant had no right to raise an alleged violation of a third party's Fifth Amend rights.

2. **People v. Ripplinger**, 316 Ill. App. 3d 1261, 739 N. E. 2d 71, 250 Ill. Dec. 610 (5th Dist., No. 5-99-0122, October 25, 2000) **Facts:** The defendant was driving his pickup truck late at night when it suddenly veered off of the road and rolled over. The passenger in the defendant's truck was ejected and killed. The defendant was severely injured. As a result of his injuries, the defendant was transported to a hospital in Missouri. Three days later, two police detectives arrived at the hospital and questioned the defendant. During this questioning, the defendant admitted that he had been drinking and that he had consumed "too much." Based upon this and other evidence, the defendant was charged with reckless homicide. He moved to suppress and that motion was denied. He was subsequently convicted and this appeal followed. **Issue:** Was the defendant "in custody" when the detectives questioned him? **Answer:** No. The defendant was never placed under formal arrest. Further, the circumstances of this case did not indicate an "informal" arrest.

3. **People v. Flores**, 315 Ill. App. 3d 387, 734 N. E. 2d 63, 248 Ill. Dec. 355 (1st Dist., No. 1-98-2036, July 14, 2000) **Facts:** The defendant in this case, Santos "Shorty" Flores was suspected of committing armed robbery and first degree murder. He was arrested and interrogated. During this interrogation, the defendant stated that he did not want to speak to the police without an attorney present. The interrogation ceased. Thereafter, the defendant asked to use the bathroom. On the way back, the defendant saw a number of persons in a nearby room. He asked a jailer "what was going on." The jailer responded by stating that there were a number of State's Attorneys in that room who were reviewing the case and they were deciding who was going to be charged with what. The defendant then immediately stated, "Get those State's Attorneys in. I want to talk to them." The defendant then gave a statement in which he made a number of incriminating admissions. The defendant then moved to suppress his statements. His motion was denied and he was convicted of murder and armed robbery. **Issue:** Was the defendant's invocation of his right to remain silent "scrupulously honored?" **Answer:** No. The jailer's answer was "likely to elicit an incriminating response" on the part of the defendant.

4. **People v. Berry and Berry**, 314 Ill. App. 3d 1, 731 N. E. 2d 853, 247 Ill. Dec. 80 (1st Dist., Nos. 1-98-0359 & 1-98-0708 cons., May 30, 2000) **Facts:** The police were investigating a murder and an armed robbery. Allen and Bobby Berry were their prime suspects. Eventually, the police arrested both Berry boys and took them downtown for interrogation. Both suspects gave incriminating statements. However, while the police had probable cause sufficient to justify the arrest of Allen Berry, they lacked probable cause to support Bobby's arrest. Notwithstanding his illegal arrest, the trial court refused to suppress Bobby Berry's statements to the police. Following his convictions for murder and armed robbery, this appeal followed. **Issue:** May the People ever use the statement of a suspect that had been illegally arrested? **Answer:** Yes. Such a statement can be used if the People can prove that it was the "product of the defendant's free will." **Result:** In this case the police were able to prove up sufficient "intervening circumstances" to allow the use of the defendant's statements. (i.e. his brother's confession.)

Also see: People v. Jennings, 296 Ill. App. 3d 761 (1998) Did the police exploit the suspect's illegal arrest? People v. Pierson, 166 Ill. App. 3d 558 (1988) Clear and convincing evidence is needed to prove that the statements were the product of the defendant's free will. Brown v. Illinois, 422 U. S. 590 (1975) The Courts must consider: (1) was the defendant given his Miranda warnings; (2) the time between the arrest and the statement; (3) any intervening circumstances; and (4) the purpose and flagrancy of any "official misconduct.";

People v. Wright, 294 Ill. App. 3d 606 (1998) The defendant's statement was admissible despite his illegal arrest due to independent probable cause for his arrest based upon his brother's confession.

5. **People v. Pitchford**, 314 Ill. App. 3d 72, 731 N. E. 2d 323, 246 Ill. Dec. 795 (1st Dist., No. 1-96-2120, May 30, 2000) **Facts:** The defendant was suspected of the offense of first degree murder and aggravated discharge of a firearm. The police received a call from a person identifying herself as the defendant's attorney. She informed the police that the defendant was going to surrender himself and that the police were not to interrogate the defendant unless she was present. The defendant never did surrender himself. Eventually, he was arrested. After he was given his Miranda warnings, the defendant gave an incriminating statement. Following his conviction for murder, attempted murder, and aggravated discharge of a firearm, this appeal followed. **Issue:** May an attorney protect his client's rights from long distance? **Answer:** No. In this case the police did not deny the defendant access to his attorney nor did they refuse to inform the defendant that his attorney was present.

Note the following cases. People v. McCauley, 163 Ill. 2d 414 (1994) The police erred in refusing to allow the defendant to see his attorney who was present at the police station. Also People v. Milestone, 283 Ill. App. 3d 682 (1996) The police erred in refusing to allow the defendant to speak to his attorney who telephoned the police station and asked to speak to his client.

6. **People v. Escalante**, 309 Ill. App. 3d 994, 723 N. E. 855, 243 Ill. Dec. 552 (2nd Dist., No. 2-98-0592, January 19, 2000) **Facts:** The defendant in this case was suspected of the unlawful use of weapons. After a two and one-half hour interrogation, the defendant confessed. Prior to his trial, the defendant moved to suppress his statement on the ground that it was elicited from him as "the direct result of mental coercion, promises, or threats, and was, therefore, involuntary." At the defendant's hearing, the arresting officer testified and stated that he never threatened or coerced the defendant." Based upon this testimony, the trial court granted the defendant's motion. This appeal followed. **Issue:** Did the People offer sufficient evidence to rebut the defendant's allegation of coercion? **Answer:** No. The appellate court ruled that all the officer did was deny that he coerced the defendant. This was not enough. The officer failed to testify as to what exactly went on during the defendant's interrogation. **Result:** The appellate court ruled that the trial court did not err in granting the defendant's motion to suppress.

YEAR 1999 CASES

1. **People v. Whipple**, 307 Ill. App. 3d 43, 716 N. E. 2d 806, 240 Ill. Dec. 212 (3rd Dist., No. 3-98-0272, July 27, 1999) **Facts:** The defendant was arrested for DUI and transported to the police station. At the station, the arresting officer requested that the defendant submit to a breath/alcohol test. The defendant demanded the right to speak to his lawyer before answering the officer. The officer informed that defendant that he had no such right and observed the defendant for the statutory time period. The defendant during this time, repeatedly requested to speak to his lawyer. At the end of the statutory time, the officer declared that the defendant had refused to take the test. After recording the defendant's refusal, the defendant was advised of his Miranda rights and he once again asked to speak to his lawyer. The defendant then called his lawyer and then asked the officer if he could now take the test. The officer responded that he could not and thereafter, the defendant received notice of the summary suspension of his driving privileges. The defendant moved to rescind his summary suspension and the trial court, after a hearing, granted the defendant's motion, finding that the breathalyzer amounted to a custodial interrogation and the defendant was, therefore, entitled to counsel. This appeal followed. **Issue:** Was the defendant entitled to speak to his counsel before he decided whether or not to take

the breathalyzer test? **Answer:** No. The refusal to take a breathalyzer test is not a constitutionally protected right. **Result:** The rescission of the defendant’s summary suspension was reversed.

2. **People v. Torres**, 306 Ill. App. 3d 301, 714 N. E. 2d 534, 239 Ill. Dec. 615 (1st Dist., No. 1-97-0828, June 28, 1999) **Facts:** The defendant was placed under arrest in a bar. As he was being led away, he called over his shoulder (maybe to the bartender), “Call my lawyer. His number is *** ***.” **Issue:** Does the defendant’s act of calling out for someone to call his lawyer constitute an invocation of his right to remain silent and to an attorney? **Answer:** No, because in this case, the defendant was unable to positively prove that the police heard and understood his call. **Issue:** Does the fact that the defendant never executed a formal written waiver of his Miranda rights require that his statements be suppressed? **Answer:** No. That was only one element among many for the trial court to decide this issue. The court must look at the “Totality of the Circumstances.” **Result:** The trial court was correct in refusing to suppress the evidence and the defendant’s convictions were affirmed.

3. **People v. Smith**, 306 Ill. App. 3d 82, 713 N. E. 140, 238 Ill. Dec. 894(1st Dist., No. 1-98-1316, June 8, 1999) **Facts:** The defendant in his case was seen running from a railroad yard where a railroad car had been burglarized. In fleeing from the scene, the defendant struck and killed a pedestrian. He was thereafter arrested and transported to the police station. At the station he was placed in a holding cell. He was given his Miranda rights and he asked to speak to an attorney. A short time later, the defendant was allowed to use the bathroom. On the way back from the bathroom, the defendant asked to speak to an Assistant State’s Attorney. The police officer, without saying a word, located the Attorney and the Attorney, after re-informing the defendant of his Miranda rights, interviewed the defendant. During this interview, the defendant made various incriminating admissions. Thereafter, he was charged with first-degree murder and burglary. The defendant’s motion to suppress was denied and he was convicted as charged. This appeal followed. **Issue:** Did the defendant clearly indicate a willingness and desire to initiate further discussion with the authorities? **Answer:** Yes. **Issue:** Did the officer who located the Assistant State’s Attorney err in failing to immediately re-inform the defendant of his Miranda rights? **Answer:** No. The officer did not verbally communicate with the defendant. Consequently, no interrogation occurred. **Result:** The defendant’s convictions were affirmed.

4. **People v. Rivera**, 304 Ill. App. 3d 124, 709 N. E. 2d 710, 237 Ill. Dec. 455 (3rd Dist., No. 3-97-1013, April 7, 1999) **Facts:** Through a confidential informant, the police became aware that a drug deal would be going down in a nearby airport parking lot. The police staked out the parking lot and when the defendant drove his truck into the lot, six or seven police officers in four or five squad cars surrounded the defendant and ordered him out of his truck. **Issue:** Was the defendant in this case in custody the moment he stepped out of his car and into the arms of the police? **Answer:** Yes. **Issue:** Was the defendant “interrogated” when he was asked “Is this cocaine,” with reference to a bag found inside the defendant’s car? **Answer:** Yes. **Result:** The defendant should have been given his Miranda rights. His statement admitting that cocaine was inside the bag should have been suppressed. This was not harmless error.

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