

## MIRANDA WARNINGS

### **Permission to Search Car and Miranda Waiver by Spanish Speaking Defendant was Permissible when he Spoke to Officer with Training in Speaking Spanish, Even Though Officer was not Fluent in Spanish.**

State v. Medina, \_\_ N.C. App. \_\_, \_\_S.E.2d.\_\_, (July 20, 2010)

A police officer, who was not fluent in Spanish, but had extensive training in speaking Spanish both in high school and college questioned a Spanish-speaking Defendant and advised him of his Miranda Rights. Defendant responded to questions asked in Spanish with clear answers that extended beyond just “yes” or “no”. Defendant claims that because officer was not fluent in Spanish, defendant’s Miranda Waiver (which was written in Spanish and read with Spanish-speaking officer) was not signed knowingly, willingly, and voluntarily. Defendant also contends that warrantless search of his car was improper, even though he shook his head “yes” that the Spanish-speaking officer could search it when he was asked. Court says that the waiver was knowingly, willingly and voluntarily signed—defendant was carrying on conversations and answering questions asked by the Spanish-speaking officer and indicated that he understood the waiver. The defendant and the officer spoke solely in Spanish dialogue and the defendant was able to correctly answer questions the officer asked. Search of the car was also permissible since the defendant shook his head “yes” when he was asked if it could be searched.

### **After Giving *Miranda* Warnings That Are Understood By The Defendant, Officers May Interrogate A Defendant Who Has Neither Invoked Nor Explicitly Waived His Or Her *Miranda* Rights**

*Berghuis v. Thompkins*, 560 U.S. \_\_, (10 June 2010)

If the prosecution shows that a defendant was given *Miranda* warnings and understood them, a defendant’s uncoerced statements establish an implied waiver of *Miranda* rights. A defendant’s explicit waiver need not precede custodial interrogation. Any waiver, explicit or implied, may be withdrawn by a defendant’s invocation at any time of the right to counsel or right to remain silent. The defendant waived his right to remain silent and his statements were admissible at trial when he ensured officers that he understood English, was read his *Miranda* rights, signed a form waiving them, remained silent through most of his interview with the police, then gave incriminating statements to the police. The Court rejected the defendant’s argument that he invoked his right to remain silent by not saying anything for a sufficient time period during the interrogation. A court may find a legally sufficient waiver of *Miranda* rights following the giving of warnings without an officer’s explicitly discussing a waiver with the defendant, if other factors show an implied waiver. In effect, after giving *Miranda* warnings that are understood by the defendant, officers may interrogate a defendant who has neither invoked nor explicitly waived his or her *Miranda* rights. Despite the Court’s ruling, cautious officers may want to continue obtaining an explicit waiver of *Miranda* rights as reflected in many existing *Miranda* forms. A properly obtained explicit waiver will increase the likelihood—compared to an implied waiver—that a court will find a valid waiver. And

even if there are deficiencies in obtaining an explicit waiver, there still may be sufficient evidence that a court will find a legally sufficient implied waiver.

### **Defendant's Mother Was Not Acting as Agent of Law Enforcement to Require *Miranda* Warnings to Be Given to Defendant**

*State v. Clodfelter*, \_\_\_ N.C. App. \_\_\_, 691 S.E.2d 22 (16 March 2010).

The defendant was convicted of first-degree murder and other offenses. The court ruled, distinguishing *State v. Morrell*, 108 N.C. App. 465 (1993), and *State v. Hauser*, 115 N.C. App. 431 (1994), that the defendant's mother was not acting as an agent of law enforcement to require *Miranda* warnings to be given to the defendant. The mother testified that all the officers asked her to do, and all she in fact did do, was ask her son to tell the truth about his involvement in the murder.

### ***Miranda* Warning Concerning Presence of Lawyer During Interrogation Was Sufficient**

*Florida v. Powell*, 130 S. Ct. 1195, \_\_\_ L. Ed. 2d \_\_\_ (23 February 2010).

A Florida law enforcement officer, when advising a defendant of his *Miranda* rights, told the defendant: "You have the right to remain silent. If you give up the right to remain silent, anything you say can be used against you in court. You have the right to talk to a lawyer before answering any of our questions. If you cannot afford to hire a lawyer, one will be appointed for you without cost and before any questioning. You have the right to use any of these rights at any time you want during this interview." The Court stated, noting its rulings in *California v. Prysock*, 453 U.S. 355 (1981), and *Duckworth v. Eagan*, 492 U.S. 195 (1989), that it has not dictated the words in which the essential information of a *Miranda* warning must be conveyed. Although the officer's warning concerning the presence of a lawyer during interrogation did not track the language in the *Miranda* ruling, the Court ruled that the warning satisfied the requirement that a defendant must be clearly informed that he has the right to consult with a lawyer and to have the lawyer with him during interrogation. Thus, the warning complied with the *Miranda* ruling.

### **Officer's Conduct and Statements to Defendant After Arrest Constituted Interrogation to Require *Miranda* Warnings**

*State v. Hensley*, \_\_\_ N.C. App. \_\_\_, 687 S.E.2d 309 (5 January 2010).

The court ruled that an officer's conduct and statements to the defendant after his arrest constituted interrogation to require *Miranda* warnings. The officer should have known that his conduct and statements were reasonably likely to elicit an incriminating response from the defendant; see the definition of interrogation in *State v. Golphin*, 352 N.C. 364 (2000), and *Rhode Island v. Innis*, 446 U.S. 291 (1980). The defendant took a drug overdose and was taken to a hospital. The following day the officer arrested the defendant at the hospital when informed that he was about to be released. The officer told the defendant (whom he knew from a prior investigation) that he hoped that the defendant would continue to cooperate even though he had been arrested. The officer inquired whether or not the defendant would agree to talk with him the next day if the officer came to work on overtime to obtain a statement from him. The defendant then made an incriminating statement. (See a detailed recitation of the facts in the court's opinion.)

### **Juvenile Questioned in School by Law Enforcement Officer Was Not in Custody to Require Officer to Give *Miranda* Warnings and Statutory Warnings Under G.S. 7B-2101(a)—Ruling of Court of Appeals Is Affirmed**

*In re J.D.B.*, 363 N.C. 664, 686 S.E.2d 135 (11 December 2009), affirming, \_\_\_ N.C. App. \_\_\_, 674 S.E.2d 795 (7 April 2009).

Two homes were broken into and a digital camera was among the items stolen. The juvenile was later seen in possession of the digital camera at school. A law enforcement officer went to the juvenile's school to speak with him. The juvenile was thirteen years old, in seventh grade, and enrolled in special education classes. He was escorted from his class into a conference room to be interviewed. Present were the officer, an assistant principal, a school resource officer, and an intern. The door was closed but unlocked. The officer asked the juvenile if he would agree to answer questions about the break-ins, and the juvenile consented. He initially denied any criminal activity. The assistant principal encouraged him to "do the right thing" and tell the truth. The officer questioned him further and confronted him with the fact that the camera had been found. Upon the juvenile's inquiry whether he would still be in trouble if he gave the items back, the officer responded that it would be helpful, but the matter was still going to court and he may need to seek a secure custody order. The juvenile then confessed to the break-ins. The officer informed the juvenile that he did not have to speak with him and he was free to leave. He asked him if he understood that he was not under arrest and did not have to talk with the officer. The juvenile indicated by nodding "yes." He continued to provide more details concerning where certain stolen items could be located and wrote a statement about his involvement with the crimes. The bell rang signaling the end of the day and he was allowed to leave to catch his bus home. The interview lasted from 30 to 45 minutes. The court ruled that the juvenile was not in custody to require the officer to give *Miranda* warnings and statutory warnings under G.S. 7B-2101(a). The court noted that "custody" involves application of an objective standard whether a reasonable person in the defendant's (juvenile's) position would believe himself in custody or deprived of his freedom of action in some significant way—that is, a formal arrest or a restraint on freedom of movement of the degree associated with a formal arrest. For a student in the school setting to be considered in custody, law enforcement must subject the student to restraint on freedom of movement that goes well beyond the limitations that are characteristic of the general school environment. The court rejected the juvenile's argument that the determination of custody should consider the juvenile's age, noting *Yarborough v. Alvarado*, 541 U.S. 652 (2004), or his status as a special education student.

### **Juvenile Questioned in School by Law Enforcement Officer Was Not in Custody to Require Officer to Give *Miranda* Warnings and Statutory Warnings Under G.S. 7B-2101(a)—Ruling of Court of Appeals Is Affirmed**

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juvenile's inquiry whether he would still be in trouble if he gave the items back, the officer responded that it would be helpful, but the matter was still going to court and he may need to seek a secure custody order. The juvenile then confessed to the break-ins. The officer informed the juvenile that he did not have to speak with him and he was free to leave. He asked him if he understood that he was not under arrest and did not have to talk with the officer. The juvenile indicated by nodding "yes." He continued to provide more details concerning where certain stolen items could be located and wrote a statement about his involvement with the crimes. The bell rang signaling the end of the day and he was allowed to leave to catch his bus home. The interview lasted from 30 to 45 minutes. The court ruled that the juvenile was not in custody to require the officer to give *Miranda* warnings and statutory warnings under G.S. 7B-2101(a). The court noted that "custody" involves application of an objective standard whether a reasonable person in the defendant's (juvenile's) position would believe himself in custody or deprived of his freedom of action in some significant way—that is, a formal arrest or a restraint on freedom of movement of the degree associated with a formal arrest. For a student in the school setting to be considered in custody, law enforcement must subject the student to restraint on freedom of movement that goes well beyond the limitations that are characteristic of the general school environment. The court rejected the juvenile's argument that the determination of custody should consider the juvenile's age, noting *Yarborough v. Alvarado*, 541 U.S. 652 (2004), or his status as a special education student.

**(1) Defendant at Hospital for Treatment Was Not in Custody to Require *Miranda* Warnings When Officer Questioned Him**

**(2) Officer Did Not Violate Defendant's Assertion of Right to Counsel At Police Station When He Informed Defendant of Charge Against Him**

*State v. Allen*, \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_ (3 November 2009).

The defendant was involved in a knife fight in which the victim was killed and the defendant was also stabbed. The defendant went to a hospital for treatment for his wounds (the victim was also taken to the hospital). Officers arrived there and sought to determine what had occurred. An officer spoke to the defendant intermittently for about forty minutes. He was not handcuffed, nor was he told that he could not leave or that he was under arrest. (1) The court ruled that the defendant was not in custody when the officer questioned him at the hospital, and thus *Miranda* warnings were not required. The court noted that any restraint in movement that the defendant may have experienced at the hospital was due to his medical treatment and not the action of law enforcement officers. (2) After being advised of his *Miranda* rights at the police station, the defendant asserted his right to counsel by naming an attorney he wanted to be present before answering questions. During a conversation with the defendant about the officer's unsuccessful efforts to locate the attorney, the officer told the defendant that he was being detained and charged with second-degree murder. The defendant told the officer that he wanted to talk with the officer "right now." The court ruled, relying on *State v. Leak*, 90 N.C. App. 351 (1988), that the officer did not violate the defendant's assertion of the right to counsel when he informed the defendant of the charge against him.

**Correctional Officer's Statements to Prisoner During Transport from One Correctional Facility to Another Constituted "Interrogation" Under *Rhode Island v. Innis* and Thus Prisoner's Response Was Inadmissible Because *Miranda* Warnings Had Not Been Given**

*State v. Rollins*, 189 N.C. App. 248, 658 S.E.2d 43 (18 March 2008), reversed on other grounds, \_\_\_ N.C. \_\_\_, 675 S.E.2d 334 (1 May 2009).

The court ruled that a correctional officer's statements to a prisoner during transport from one correctional to another constituted "interrogation" under *Rhode Island v. Innis*, 446 U.S. 291 (1980), and thus the prisoner's response was inadmissible because Miranda warnings had not been given. The officer initiated questioning related to a murder. By doing so, the officer steered the conversation to a topic which, if discussed by the defendant, was likely to elicit an incriminating statement.

### **Mere Questioning by an Officer in a Patrol Car Does Not Constitute An Arrest or Restraint on Freedom of movement of the Degree Associated with an Arrest to Trigger Miranda Rights.**

*State v. Rooks*, \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_ (Apr. 7, 2009).

In this case, the defendant was asked politely by the detective to enter an unmarked police car and answer questions. He was told that he was not under arrest. The car was unlocked and defendant was left unattended after the officer completed the interview. No evidence was presented indicating that the officer displayed a weapon, or otherwise threatened the defendant. After the Defendant had given a written statement to the detective, the detective left the defendant and went inside. He never increased security over the defendant after the confession. Considering all the facts and circumstances, there are insufficient findings to support a conclusion that there was a formal arrest or restraint on freedom of movement of the degree associated with an arrest to trigger Miranda Rights.

### **Miranda Ruling Was Inapplicable to Officer's Request for Consent Search After Defendant Had Asserted Right to Counsel**

*State v. Cummings*, 188 N.C. App. 598, 656 S.E.2d 329 (5 February 2008).

The defendant was advised of his Miranda rights and waived them. Shortly after questioning began, he requested a lawyer and questioning stopped. However, an officer then asked for the defendant's consent to search his vehicle, which he granted. The court upheld the trial judge's denial of the defendant's motion to suppress evidence seized as a result of the consent search. The court noted that *State v. Frank*, 284 N.C. 137 (1973), had ruled that Miranda warnings are inapplicable to searches and seizures. The court also stated that it found persuasive many federal court cases that have ruled that asking for a consent search is not interrogation under Miranda; for example, *United States v. Shlater*, 85 F.3d 1251 (7th Cir. 1996), and *United States v. McCurdy*, 40 F.3d 1111 (10th Cir. 1994).

### **Confessions And Incriminating Statements -- Miranda Warnings -- Vietnamese Translation**

*State v. Nguyen*, 178 N.C. App. 447 (2006)

The trial court's conclusion that a Vietnamese defendant's waiver of his Miranda rights was knowing and voluntary was supported by the findings, to which he did not assign error. Although defendant finds fault with the use of a police officer to translate rather a certified interpreter, there

was no evidence that the officer was deceitful or acted improperly; furthermore, the officer was raised in Vietnam and could communicate clearly with defendant.

**(1) Confessions And Incriminating Statements -- Miranda Warnings -- Flawed Translation To Spanish**

**(2) Confessions And Incriminating Statements -- Knowing Waiver Of Rights--Borderline IQ -- Spanish Only Speaker**

*State v. Ortez, 178 N.C. App. 236 (2006)*

(1) The Spanish translations of Miranda warnings used here contained grammatical errors, but reasonably informed defendant of his rights. (2) The trial court's unchallenged findings of fact support its conclusion of a knowing waiver of rights by a defendant with borderline or low average intellectual function who spoke only Spanish.

**Constitutional Law--Right to Remain Silent--Miranda Protections Not Applicable When Questioned by Neither an Officer nor Someone Acting as an Agent**

*State v Pittman, 174 NCA 745 (2005)*

The trial court did not commit plain error in a first-degree kidnapping of a child, conspiracy to commit kidnapping, and attempted first-degree murder case by **allowing the child's mother to testify regarding defendant's failure to respond to questions she asked him in letters concerning why he kidnapped their daughter**, because: (1) the mother's testimony did not reference any silence of defendant in response to questioning by law enforcement, and Miranda's protections apply only when a defendant is subject to custodial interrogation; (2) the mother's questions were posed by her and the record contains no indication that she was acting at the behest of law enforcement; and (3) **even if Miranda were applicable, defendant chose not to remain silent when he voluntarily wrote back to the mother.**

**Confessions And Incriminating Statements -- Miranda Rights -- Mentally Retarded Defendants**

*State v. Andrews, 170 N.C. App. 68 (2005)*

The trial court did not err in a first-degree felony murder and conspiracy to commit robbery case by denying defendant's motion to suppress his statement to the police allegedly obtained in violation of his Miranda rights even though defendant had **an IQ of 61**, because the findings all support the conclusion that the statement was voluntarily given and that defendant knowingly waived his Miranda rights.

**(2) Confessions And Incriminating Statements--Miranda Warnings--Public Safety Exception**

*State v. al-Bayyinah, 359 N.C. 740 (2005)*

(1) The trial court did not abuse its discretion in a prosecution for first-degree murder and attempted robbery by admitting statements made by defendant to an officer just after his arrest that he couldn't understand being released from prison without a job and being expected to make

a living, that he committed the robbery with an accomplice, that he wanted to go back to the correctional facility, and that he didn't belong in society. These statements were probative of defendant's motive and intent. (2) The trial court did not err in a prosecution for first-degree murder and attempted armed robbery by admitting a statement made without Miranda warnings where defendant was pursued into a wooded thicket by an unarmed officer with a tracking dog, the officer asked defendant where the knife was, and defendant said that he did not have a knife. One of the Miranda exceptions is for public safety. Under the circumstances in this case, the question was necessary to secure the officer's safety.

### **Confessions and Incriminating Statements--post-Miranda statements--voluntariness**

*State v. Houston, 169 N.C. App. 357 (2005)*

The trial court did not err in a trafficking in cocaine by possession of more than 200 but less than 400 grams case by allowing the introduction of **defendant's incriminating post-Miranda statements that were allegedly induced by the hope of some benefit**, because: (1) defendant was a thirty-year-old high school graduate with significant knowledge and experience with the criminal justice system based upon his numerous prior arrests, defendant was advised of and waived his Miranda rights both orally and in writing, and defendant did not appear scared or intimidated during the one hour to one hour and fifteen minutes interview and at no time asked for a break or to speak to an attorney; (2) the officers did not discuss what the specific rewards or benefits of cooperation might be, nor did they tell defendant that his sentence would be reduced or the amount of his release bond was dependent on his cooperation; and (3) **a suggestion of hope created by statements of law enforcement officers that they would talk to the District Attorney regarding defendant's cooperation where there was no indication that preferential treatment might be given in exchange for cooperation did not render the inculpatory statements involuntary.**

### **Failure to Give a Defendant Miranda Warnings Did Not Require Suppression of Firearm Obtained as a Result of Defendant's Unwarned But Voluntary Statement**

*United States v. Patane, (28 June 2004).*

An officer arrested the defendant at his residence for violating a restraining order involving his exgirlfriend. When another officer began to give Miranda warnings, the defendant interrupted the officer, asserting he knew his rights, and neither officer attempted to complete the Miranda warnings. Because one of the officers had been previously informed that the defendant, a convicted felon, illegally possessed a Glock pistol, he asked the defendant about it. The defendant, after persistent questioning, told the officer that the pistol was in his bedroom. The officer received consent from the defendant to retrieve the pistol. The pistol was admitted at his trial, and he was convicted of possession of a firearm by a convicted felon. An opinion representing the views of three Justices and announcing the judgment of the Court ruled, distinguishing *Dickerson v. United States*, 530 U.S. 428 (2000) (Miranda announced a constitutional rule that Congress may not supersede legislatively), that the Fifth Amendment's self-incrimination privilege is not implicated by the admission into evidence of the physical fruit of a

voluntary statement taken in violation of the Miranda ruling. An opinion representing the views of two other Justices and concurring in the judgment stated that it agreed with the opinion announcing the judgment of the Court that the nontestimonial physical fruit of the defendant's unwarned statement, the Glock pistol, was admissible-although it did not necessarily agree with all of the statements in the opinion. [Author's note: *State v May*, 334 N.C. 609, 434 S.E.2d 180 (1993) (physical evidence discovered as a result of a voluntary statement taken in violation of Miranda is admissible), is consistent with this ruling.]

**When Officer as Part of Interrogation Technique Deliberately Failed to Give Required Miranda Warnings and Obtained a Confession, Then Twenty Minutes Later Gave Miranda Warnings and Obtained a Confession, Neither the First Nor Second Confessions Were Admissible**

*Missouri v. Seibert, Sup Ct. (28 June 2004).*

An officer arrested the defendant for her involvement with a unlawful burning of a mobile home and the resulting death of a person inside. As part of a interrogation technique, the officer deliberately failed to give the defendant Miranda warnings, interrogated her for 30 to 40 minutes, and obtained a confession. The defendant was then given a twenty-minute break. The same officer then gave Miranda warnings to the defendant, obtained a waiver, interrogated her again (referring in this second interrogation to her statements she had made in the first interrogation), and obtained another confession. The trial judge suppressed the first confession but admitted the second confession. The issue before the United States Supreme Court was the admissibility of the second confession. Distinguishing *Oregon v. Elstad*, 470 U.S. 298 (1985) (second voluntary incriminating statement obtained with Miranda warnings and waiver at police station was admissible even though it occurred after the defendant had made voluntary incriminating statement at his house that was inadmissible under Miranda because warnings had not been given), an opinion announcing the judgment of the Court and representing the views of four Justices (a plurality opinion) ruled that the second confession was inadmissible. The opinion stated that it would have been reasonable for the defendant to regard the two interrogation sessions as a continuum in which it would have been unnatural to refuse to repeat at the second interrogation what had been said before. These circumstances challenged the comprehensibility and efficacy of the Miranda warnings given before the second interrogation such that a reasonable person in the defendant's shoes would not have understood the warnings to convey a message that she retained a choice about continuing to talk. A fifth Justice concurred in the judgment that the second confession was inadmissible, although he disagreed with the reasoning of the plurality opinion. He stated that the admissibility of post-Miranda warning statements should continued to be governed by *Oregon v. Elstad* except if the second statement is obtained in the twostep interrogation technique deliberately used in this case to undermine the Miranda warning. In such a case, post-Miranda warning statements that are related to the substance of the pre-Miranda warning statements must be excluded unless curative measures are taken before the post-Miranda warning statement is made. The curative measures discussed in his opinion were not taken in this case, so he

concluded that the second confession was inadmissible. [Author's note: When a fifth vote is necessary to support a judgment of the Court, the concurring opinion defines the scope of the ruling. See, e.g., *Chandler v. Florida*, 449 U.S. 560 (1981).]

## **(2) Court States That Defendant's Age or Inexperience with Law Enforcement Are Not Factors in Determining Whether Custody Exists Under Miranda**

*Yarborough v. Alvarado*, 541 U.S. 652 (June 1, 2004)

An officer was investigating the involvement of the defendant, a 17 year old, in committing a murder. In response to the officer's request, the parents of the defendant brought him to the sheriff's facility for questioning. Without giving Miranda warnings and without the parents' presence, the officer questioned the defendant for about two hours. A state appellate court ruled that the defendant was not in custody to require Miranda warnings. A federal appellate court ruled that the state court ruling unreasonably applied federal law under the federal habeas corpus standard, 28 U.S.C. § 2254(d)(1). The United States Supreme Court reversed the federal appellate court. **(1)** The Court examined its rulings on custody under Miranda and the facts of this case and ruled that the state appellate court ruling on custody was not an unreasonable application of federal law under the federal habeas corpus standard. **(2)** The Court states that a defendant's age or inexperience with law enforcement are not factors in determining whether custody exists under Miranda. The Court noted that whether custody exists involves an objective, not subjective, test.

## **Evidence and Witnesses § 1263 (NCI4th) - juvenile confession - Miranda and statutory rights - express waiver not required**

*State v. Flowers*, 128 N.C. App. 697 (1998)

The trial court did not err in the prosecution of a juvenile as an adult for armed robbery and assault by denying defendant's motion to suppress his confession where defendant argues that he never expressly waived his rights. The rule in North Carolina that a person could waive his Miranda rights only by an express statement has long since been repudiated and no statute requires an express waiver of juvenile rights.

## **Confessions And Incriminating Statements--Custody--Miranda Warnings--Statement To A Superior Officer In The Armed Forces**

*State v. Walker*, 167 N.C. App. 110 (2004)

The trial **court did not err** in a robbery with a dangerous weapon and assault with a deadly weapon inflicting serious injury case by **admitting evidence of defendant Walker's statement made to a superior officer in the armed forces without Miranda warnings**, because: 1) the evidence does not indicate that defendant was in custody at the time he was discussing the

incidents of 7 April 2004 with his superior; 2) there was no testimony that defendant felt he could not leave or that he had to answer his superior's questions; 3) the superior was simply inquiring into why defendant was being questioned; and 4) even assuming arguendo that defendant's statements to his superior were made during a custodial investigation, the admission of defendant's statements were harmless beyond a reasonable doubt when the statement was substantially identical to defendant's own testimony at trial.

**(1) Confessions and incriminating statements--motion to suppress--miranda warnings--  
Voluntariness**

**(2) Confessions And Incriminating Statements--Motion To Suppress--Miranda Warnings--  
Voluntariness**

**(3) Constitutional Law--Right To Counsel--Separate Charges**

*State v. Strobel, 164 N.C. App. 310 (2004)*

(1) The trial court did not err by denying defendant's motion to suppress a statement given by her to the police, because: 1) it is not essential that Miranda warnings be given orally rather than in written form, although the better practice would be to give the accused both; 2) although defendant contends she did not read the voluntary statement form before she signed it, it is presumed that the accused has read it or has knowledge of its contents unless it is shown that defendant was willfully misled or misinformed by the opposing party; 3) defendant's statement amounted to an equivocal request for an attorney, a detective attempted to clarify whether defendant wanted an attorney and gave her every opportunity to contact her attorney, and defendant never availed herself of these opportunities; and 4) the lack of evidence that defendant felt threatened or was being coerced supports the trial court's conclusion that defendant's statement was voluntary. [See Farb p. 26] (2) The trial court did not err by denying defendant's motion to suppress a statement given by her to the police, because: 1) it is not essential that Miranda warnings be given orally rather than in written form, although the better practice would be to give the accused both; 2) although defendant contends she did not read the voluntary statement form before she signed it, it is presumed that the accused has read it or has knowledge of its contents unless it is shown that defendant was willfully misled or misinformed by the opposing party; 3) defendant's statement amounted to an equivocal request for an attorney, a detective attempted to clarify whether defendant wanted an attorney and gave her every opportunity to contact her attorney, and defendant never availed herself of these opportunities; and 4) the lack of evidence that defendant felt threatened or was being coerced supports the trial court's conclusion that defendant's statement was voluntary. [See Farb p. 26] (3) It was permissible for the police to question defendant about a robbery charge outside the presence of the attorney who had been appointed to represent her in the conspiracy to commit robbery charge, because: 1) robbery and conspiracy to commit robbery are separate crimes; and 2) defendant's Sixth Amendment right to counsel had not attached to the robbery with a dangerous weapon charge.

**Confessions And Incriminating Statements--Motion To Suppress--Custody--Miranda Warnings**

*State v. Garcia, 358 N.C. 382 (2004)*

The trial court did not err in a first-degree murder case by denying defendant's motion to suppress an inculpatory statement made at the police station because defendant was not in custody and Miranda warnings were not required where: 1) defendant was not under arrest and defendant's movement was not restrained to the degree associated with a formal arrest at the time he made the contested statement; 2) after reviewing the totality of circumstances surrounding defendant's interview, the four factors defendant identifies including three pat-downs, a closed interview room door, a detective's statement that defendant's girlfriend had "given him up," and the fact that defendant would not have been able to leave either police car on his own because the rear doors of police vehicles lock automatically, did not render him in custody; 3) non-communicated subjective suspicions and non-communicated subjective intent of individual officers have no bearing on Miranda analysis; and 4) defendant's case is **not analogous to State v. Buchanan, 355 N.C. 264, when there was no abruptly elevated security in defendant's case nor did the defendant make the same type of incriminating initial confession.**

#### **Confessions And Incriminating Statements--Noncustodial Interrogation--Defendant's Age-- Statutory Rape--Miranda Warnings Not Required**

*State v. Clark, 161 N.C. App. 316 (2003)*

The trial court did not err in a statutory rape case by concluding that defendant's responses to questions asked by the police about his age were not given while in custody and thus did not require Miranda warnings, because: 1) defendant was questioned at home in his living room as part of the investigatory process prior to being charged or arrested; and 2) defendant's freedom of movement was not restrained to the degree normally associated with a formal arrest and he was made aware that he was not under arrest or in custody.

#### **Confessions And Incriminating Statements--Miranda Warnings--Motion To Suppress--Custodial Interrogation**

*State v. Smith, 160 N.C. App. 107 (2003)*

The trial court did not err in a first-degree kidnapping, second-degree kidnapping, assault with a deadly weapon with intent to kill inflicting serious injury, common law robbery, felonious breaking or entering, and possession of a firearm by a convicted felon case by denying defendant's motion to suppress his 7 May 2001 statement to a detective, because: 1) defendant was not interrogated within the meaning of Miranda and Innis when a detective posed no questions to defendant but instead defendant questioned the detective, and defendant's statement was made after the detective responded to defendant's question; 2) the detective's factually correct answer called for no response on the part of defendant; and 3) there was no evidence that suggested either any prior knowledge on the part of the detective that defendant was unusually susceptible to any particular form of persuasion or that the detective's response was designed to elicit an incriminating response.

#### **Confessions And Incriminating Statements--Statements By Marine To Platoon Commander-- Miranda Warnings**

*State v. Davis, 158 N.C. App. 1 (2003)*

**Statements made by a Marine to his Platoon Commander without Miranda warnings were inadmissible as the product of a custodial interrogation**, but admission of the statements was harmless in light of other testimony. Under the totality of the circumstances, including the rules and regulations governing the military, a reasonable person in defendant's circumstances would have believed that he effectively had no freedom of movement.

**(1) Confessions and Incriminating Statements--motion to suppress--failure to give Miranda warnings--inmate**

**(2) Constitutional Law--right to remain silent--custody**

**(3) Confessions and Incriminating Statements--motion to suppress--failure to give Miranda warnings**

*State v. Fisher, 158 N.C. App. 133 (2003)*

**(1)** The trial court did not err in a first-degree murder case by denying defendant's motion to suppress his statement to a jail sergeant given without Miranda warnings while defendant was an inmate, because: 1) defendant was at all times free not to talk and return to his cell, and defendant exercised both of these rights at different points during the interview; 2) defendant initiated the meeting with the sergeant; 3) defendant's presence was not required, and at no time was defendant physically restrained from leaving the sergeant's office; and 4) defendant was thus not in custody for purposes of Miranda. **(2)** Although defendant contends the trial court erred in a first-degree murder case by concluding that a jail sergeant was not required to terminate her interrogation of defendant once defendant invoked his right to remain silent, defendant was not in custody for purposes of Miranda and the sergeant was not prohibited from inquiring into the motivation behind defendant's sudden change of heart regarding the fact that he had previously **stated he wanted to make a confession to the pertinent crime and then changed his mind.** **(3)** The trial court did not err in a first-degree murder case by denying defendant inmate's motion to suppress his statement to an officer on 14 July 1999 even though defendant did not receive any Miranda warnings prior to the officer interviewing him, because: (1) Miranda warnings are only required when a criminal defendant is subjected to custodial interrogation; and (2) defendant was not in custody when he asked to speak with the officer, remained at all times free to terminate the conversation with the officer, and in fact did so once he was told that another officer would take his statement the following day.

**Confessions And Incriminating Statements - Voluntariness - Waiver Of Miranda Rights – Mental Capacity**

*State v. Mahatha, 157 N.C. App. 183 (2003)*

The trial court did not err in a first-degree murder and robbery with a dangerous weapon case by denying defendant's motion to suppress post-arrest inculpatory statements he made to police even though defendant contends they were made involuntarily and obtained in violation of Miranda, because: (1) four officers who interviewed defendant testified that a Miranda waiver was obtained and the interview was conducted under noncoercive conditions; (2) evidence was presented that defendant understood his Miranda rights and that he was not intoxicated or otherwise impaired

when he made his Miranda waiver and statements; (3) the trial court's findings and the evidence permitted a conclusion that defendant had sufficient mental capacity to waive his Miranda rights and voluntarily make inculpatory statements; (4) the totality of circumstances surrounding defendant's post-arrest statements support the trial court's conclusion that the statements were made pursuant to defendant's knowing, intelligent, and voluntary waiver of his Miranda rights including that interrogations of longer duration than the one at hand have been held to be not so lengthy as to render them coercive, defendant made no complaints of being hungry and was provided with drinks and bathroom breaks, the police did not make any threats of physical violence against defendant or promises to him in exchange for his Miranda waiver and statement, and defendant had some familiarity with the criminal justice system; (5) evidence of an officer's deception or trickery leading defendant to mistakenly believe that his fingerprints had been recovered from the victim officer's holster was insufficient standing alone to render defendant's inculpatory statements inadmissible; and (6) the actions of the police in not allowing an attorney to see defendant even though he was appointed by the public defender to represent defendant did not invalidate defendant's Miranda waiver or statements when defendant never requested an attorney.

### **Confessions And Incriminating Statements--Custodial Interrogation--Motion To Suppress-Failure To Give Miranda Warnings**

*State v. Crudup, 157 N.C. App. 657 (2003)*

The trial court erred in a felonious possession of cocaine case by denying defendant's motion to suppress incriminating statements made without Miranda warnings in response to police questioning while he was handcuffed and detained, and defendant is entitled to a new trial because: 1) the totality of circumstances revealed that defendant was in custody when he was immediately handcuffed and detained as a possible burglary suspect; 2) defendant was being interrogated when a reasonable officer would have known that any response to the pertinent questions would have incriminated defendant; 3) defendant was not subjected to general on-the-scene questioning and the circumstances of this case exceeded the narrow scope of the public safety exception; and 4) the error was not harmless when the State's evidence of constructive possession rested upon defendant's unconstitutionally procured statement claiming possession of the items in an apartment which rested on defendant's physical presence in a house where he did not reside.

### **(1) Confessions And Incriminating Statements--Possession Of Crack Cocaine--Officer's Statement--Interrogation--Defendant's Response--Absence Of Miranda Warnings--Harmless Error**

### **(2) Confessions and Incriminating Statements--voluntariness--coercion--failure to give Miranda warnings--exclusionary rule--motion to suppress cocaine**

*State v. Phelps, 156 N.C. App. 119 (2003)*

(1) An officer's post-arrest statement to defendant that defendant "needed to let me know right now before we went past the jail door if he had any kind of illegal substance or weapons on him, that it was an automatic felony no matter what it was" constituted interrogation within the meaning of the Miranda decision because the officer knew or should have known that his statement was reasonably likely to evoke an incriminating response, and defendant's response

that he had crack cocaine in his pocket was improperly admitted in defendant's trial because the officer failed to give defendant the Miranda warnings prior to the custodial interrogation. However, the admission of defendant's statement was harmless error because 1) the illegal substance was found in the pocket of the coat worn by defendant, and there was no evidence to suggest that defendant did not own the coat or that the coat had only recently come into his possession; and 2) there is no reasonable possibility that the exclusion of defendant's statement would have resulted in a different verdict. (2) The trial court did not err in a felony possession of cocaine case by denying defendant's motion to suppress cocaine obtained as a result of an alleged coerced statement without the benefit of a Miranda warning when an officer had a friendly conversation with defendant during the ride to jail explaining to defendant that defendant needed to let the officer know if defendant had any illegal substances or weapons on him and defendant told the officer he had crack cocaine in his coat pocket, because: 1) there was not any evidence of coercion on the part of the officer when during the ride to jail and prior to searching defendant, the officer did not threaten or promise defendant anything, and defendant was calm during the ride to the jail and while admitting to the officer that he had cocaine in his pocket; and 2) even if defendant's statement was coerced, the cocaine would have been admissible under the inevitable discovery doctrine which allows admission of evidence which was illegally obtained when the evidence ultimately or inevitably would have been discovered by lawful means since defendant's clothing would have been searched and the cocaine would have been found at the jail in accordance with police procedure.

### **Confessions And Incriminating Statements--"Secure Custody"--Custodial Interrogation--Absence Of Miranda Warnings--Harmless Error**

*State v. Johnston, 154 N.C. App. 500 (2002)*

A defendant was in custody for Miranda purposes when he was ordered out of his vehicle at gunpoint, handcuffed, placed in the back of a patrol car, and questioned by detectives. Despite being told that he was in "secure custody" rather than under arrest, defendant's freedom of movement was restrained to the degree associated with a formal arrest. Therefore, the trial court erred by admitting a statement made by defendant in response to interrogation without Miranda warnings, "So what if I threw the shotgun out," but this error was harmless in light of the other overwhelming evidence of defendant's guilt.

### **(1) Confessions and Incriminating Statements--motion to suppress--failure to give Miranda warnings--no arrest or restraint**

### **(2) Confessions and Incriminating Statements--motion to suppress--voluntariness**

*State v. Barden, 356 NC 316 (2002)*

(1) The trial court did not err in a capital first-degree murder prosecution by denying defendant's motion to suppress evidence of statements he made to police on 5 April 1998 and 16 April 1998 and by allowing the subsequent admission of those statements into evidence at trial even though defendant was not given Miranda warnings, because the totality of circumstances shows that defendant was not in custody in that a reasonable person in defendant's position would not have believed that he was under arrest or that he was restrained to a degree that would cause him to believe he was formally arrested when: 1) for both interviews, defendant voluntarily drove his

own car to meet police for questioning; 2) defendant was repeatedly informed both before he agreed to talk with investigators and after he arrived for questioning that he was not under arrest and was free to leave at any time; 3) at no point during the interaction between defendant and the police was defendant ever restrained or confined to the degree associated with a formal arrest; and 4) at the conclusion of each interview, defendant was allowed to go. (2) The trial court did not err in a capital first-degree murder prosecution by denying defendant's motion to suppress evidence of statements he made to police on 5 April 1998 and 16 April 1998 even though defendant contends they were not voluntary, because: 1) defendant was offered drinks and cigarettes during one of his interviews; 2) defendant was allowed to use the restroom without being escorted by an officer; 3) defendant was not restrained or handcuffed during either session; 4) neither interview was prolonged; and 5) the record is devoid of any suggestion of physical threats to or pressure exerted on defendant to obtain a statement.

### **Confessions And Incriminating Statements--Interrogation--Not In Custody--Miranda Warnings Not Required**

*State v. Trull, 153 N.C. App. 630 (2002)*

The trial court did not err in an attempted first-degree murder, possession of a handgun by a felon, and discharging a firearm into occupied property case by denying defendant's motion to suppress statements he made to the police when defendant had not been given Miranda warnings, because: 1) with respect to statements made to an officer during the ride to the station or while waiting in the interview room, defendant was not interrogated by that officer and therefore Miranda does not apply; and 2) although defendant was interrogated with respect to statements made to two other officers, he was not in custody during the interrogation and was not therefore entitled to Miranda warnings.

### **Confessions And Other Incriminating Statements--Miranda Warnings--Defendant Not Told He Could Leave--Not In Custody**

*State v. Linton, 145 N.C. App. 639 (2001)*

The trial court did not err in a prosecution for the first-degree sexual offense of a child and attempted first degree rape of a child by admitting a statement which defendant contended he gave to police without Miranda warnings while he was in custody. Defendant went to the police station of his own volition and gave a statement without any promises being made; while he did not know that he was a suspect and contends that no one told him that he was free to go, he was not in custody and Miranda warnings were not required.

### **(1) Confessions And Incriminating Statements--Miranda Warnings--Lapse Of Time Until Questioning**

### **(2) Confessions And Incriminating Statements--Promises And Coercive Environment--Statement Not Induced**

### **(3) Confessions And Incriminating Statements--Promises Or Threats--Statements About Defendant's Child**

### **(4) Confessions And Incriminating Statements--Environment--Not Coercive**

*State v. Stephenson, 144 N.C. App. 465 (2001)*

(1) The trial court did not err in a prosecution for robbery and first-degree murder by denying defendant's motion to suppress her statements because she was not properly advised of her constitutional rights where, assuming that she was in custody and that Miranda warnings were required, warnings given at 6:30 p.m. were still in effect at the time of defendant's questioning 30 to 45 minutes later and at the time of her inculpatory oral statement one and a half hours later. (2) Statements given by the defendant in a prosecution for first-degree murder and robbery were not induced by promises and a coercive environment where the officers were merely speaking in generalities and asking defendant to tell the truth, and there was evidence to support the finding that officers had made no promises of leniency. (3) Statements by officers to a robbery and murder defendant regarding her child did not amount to promises or threats regarding defendant's child where the detective told her that he had seen defendant's closeness with her child and that the child deserved a better life. (4) A robbery and first-degree murder defendant was not questioned in a coercive environment where defendant was not physically or mentally impaired and showed a willingness to talk to the officers; she never asked for a lawyer, asked to go home, or requested to remain silent; she was never handcuffed, physically restrained or threatened, and the officers were in plain clothes; she was told that she was free to leave and that the interview was to be entirely voluntary; the officers did not accuse her of lying and did not yell at her or show anger; and defendant's requests to smoke and use the telephone were allowed.

#### **Confessions And Incriminating Statements--Miranda Warnings--Test For Custody**

*State v. Buchanan, 353 N.C. 332 2001*

A ruling by the trial court suppressing a first-degree murder defendant's statement was remanded where the trial court mistakenly applied the "free to leave" test in determining whether defendant was in custody for purposes of Miranda. The appropriate inquiry is whether, based on the totality of the circumstances, there was a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest. The broader "free to leave" test and "restraint on freedom of movement of the degree associated with formal arrest" are not synonymous; circumstances supporting an objective showing that one is "in custody" might include a police officer standing guard at the door, locked doors, or handcuffs. Moreover, the subjective unspoken intent of a law enforcement officer, provided it is not communicated or manifested to the defendant in any way, and the subjective interpretation of a defendant are not relevant to the objective determination of whether the totality of the circumstances support the conclusion that defendant was in custody. ( See Farb's text in August 2001 Update p.4)

#### **Confessions And Incriminating Statements--Miranda Warnings--Not In Custody**

*State v. Briggs, 137 N.C. App. 125 (2000)*

Even though the State concedes defendant made his incriminating statements during an interrogation, the trial court did not err in an extortion case by denying defendant's motion to suppress his incriminating statements to a correction unit manager and an assistant superintendent for operations at a correction institute because: 1) an inmate is not automatically in custody for the purposes of Miranda because of his incarceration; and 2) defendant was free to not talk and to return to his cell at any time.

**(1) Confessions And Incriminating Statements--Miranda Warnings--Booking Process--Statutory Rape--Defendant's Date Of Birth**

**(2) Confessions And Incriminating Statements--Miranda Warnings--Booking Process--Statutory Rape--Defendant's Date Of Birth**

*State v. Locklear, 138 N.C. App. 549 (2000)*

(1) The trial court erred in a first-degree statutory rape case under N.C.G.S. § 14-27.7A(a) by admitting the investigating officer's testimony of defendant's statement of his date of birth during the booking process without the benefit of the Miranda warnings because: 1) Miranda applies to the gathering of biographical information necessary to complete the booking process if the questions posed by the police are designed for the purpose of eliciting a response they know or should know is reasonably likely to be incriminating; 2) defendant's age was an essential element of the crime charged; and 3) the investigating officer knew or should have known that her question regarding defendant's date of birth would elicit an incriminating response. **But see State v Banks 322 NC 753 1988.** (2) The trial court erred in a first-degree statutory rape case under N.C.G.S. § 14-27.7A(a) by admitting the investigating officer's testimony of defendant's statement of his date of birth during the booking process without the benefit of the Miranda warnings because: 1) Miranda applies to the gathering of biographical information necessary to complete the booking process if the questions posed by the police are designed for the purpose of eliciting a response they know or should know is reasonably likely to be incriminating; 2) defendant's age was an essential element of the crime charged; and 3) the investigating officer knew or should have known that her question regarding defendant's date of birth would elicit an incriminating response.

**Confessions And Incriminating Statements - Delay - Voluntariness - Miranda Warnings - No Fruit Of The Poisonous Tree**

*State v. Wallace, 351 N.C. 481 (2000)*

The trial court did not err by denying defendant's motion to suppress his pretrial statements to police in a case involving defendant's convictions for nine counts of first-degree murder, eight counts of first-degree rape, one count of second-degree rape, two counts of first-degree sexual offense, two counts of second degree sexual offense, one count of assault with a deadly weapon, and five counts of robbery with a dangerous weapon, because: 1) the delay in taking defendant before a judicial official was not unnecessary within the meaning of N.C.G.S. §15A-501(2) in light of the number of crimes to which defendant confessed, the amount of time necessary to record the details of the crimes, the investigators' accommodation of defendant's request to sleep; furthermore, there was no indication that taking defendant to the Law Enforcement Center before he saw a magistrate caused him to confess, no indication that police asked defendant about any of the crimes to which he later confessed before he was read his Miranda rights, and no indication that any portion of his confession was a result of the delay during which he discussed unrelated subjects with investigators; 2) defendant's later confessions could not be termed "fruit of the poisonous tree" since there was no prior inadmissible statement or evidence to function as the "poisonous tree"; and 3) investigators did not improperly induce defendant to confess based on their statements that they would attempt to contact defendants' girlfriend and the mother of his

child since they made the statement only in response to defendant's request to see his girlfriend and hold his child, defendant admitted his confession was not given in exchange for the request to see his girlfriend and child, and investigators advised defendant that the police had no control over whether they would come to the station.

### **Defendant Not In Custody - Miranda Warnings Not Required**

*State v. Campbell, 133 N.C. App. 531 (1999)*

A defendant in a burglary and statutory rape prosecution was not in custody and Miranda warnings were not required where defendant took affirmative steps to contact the police after they contacted him and made an appointment to meet at the police station at a time convenient to him; defendant arrived at the station under his own volition and agreed to speak with the officers; at no time was he searched, handcuffed, or restricted in his movement; officers told him he was free to leave before questioning began; he was told on at least four occasions during questioning that he was free to leave and asked whether he understood; he replied in the affirmative each time; these exchanges occurred before defendant spoke with the officers, before he incriminated himself, and before he wrote the confession

### **Interrogation - Defendant Not In Custody – Miranda Warnings Not Required**

*State v. Green, 129 N.C. App. 539 (1998)*

Defendant was not in custody during seven hours of interrogation at the sheriff's department prior to his arrest, and his statements made during that time were admissible in his murder trial even though Miranda warnings had not been given to him, where defendant willingly accompanied officers to the sheriff's department; officers told defendant at the outset and again later that he was not under arrest; defendant was not handcuffed or restrained in any way; officers showed defendant the location of the restroom and lounge and offered him food and beverages; defendant had a calm and cooperative demeanor and did not appear to be under the influence of an intoxicating substance; officers asked defendant at the conclusion of his initial remarks if he was "doing all right" and he responded that he was "all right"; defendant was given breaks and coffee; defendant was not guarded or accompanied by any officer when he used the restroom during one break; and officers did not attempt to perform invasive procedures during defendant's interrogation.

### **Statements To Police - Absence Of Miranda Warnings - Defendant Not In Custody**

*State v. Mcneill, 349 N.C. 634 (1998)*

The trial court did not err by denying defendant's motion to suppress his first and second statements to the police because he had not been advised of his Miranda rights where defendant voluntarily drove to the police department for questioning as a potential witness; the first interview lasted approximately thirty minutes, was not confrontational, and did not produce any incriminating statements by defendant; the second interview occurred a short time later after defendant voluntarily agreed to answer a few more questions, and defendant was not restrained in

any way and did not ask to leave; and the trial court correctly determined that defendant was not in custody at the time his first two statements were given to the police.

### **Capital Murder - Miranda Warning - Appointment Of Counsel - Statement That Defendant Might Have To Reimburse State - Subsequent Confession Admissible**

*State v. Cummings, 346 N.C. 291 (1997)*

The trial court did not err in a capital prosecution for first-degree murder by not suppressing defendant's confessions because they were obtained after a law enforcement officer chilled defendant's exercise of his right to counsel by statements that defendant might have to pay the State for his lawyer. While advising defendant of his rights, the detective marked out the words "at no cost" in the sentence on the Miranda form regarding the provision of a lawyer and explained that it would be at no cost if defendant was found innocent, but that there was a chance the State would require reimbursement if he was found guilty. The detective effectively informed defendant that an attorney would be appointed for him before questioning, if he so desired; Miranda does not require that the officer inform an indigent defendant that an attorney would be appointed for him at no cost. The additional information supplied by the detective was accurate in that, while legal assistance is unconditional once indigency is established, the State reserves a general lien against defendant's future earnings if defendant is convicted and should later become able to pay. N.C.G.S. § 7A-451.

### **Miranda Warnings - Request For Counsel- Subsequent Incriminating Statements - Conversation Not Initiated By Defendant**

*State v. Munsey, 342 N.C. 882 (3-8-1996)*

The trial court properly suppressed incriminating statements made by defendant on 11 June 1993 on the ground that defendant did not initiate the dialogue with officers after defendant requested an attorney where defendant was arrested and given the Miranda warnings; defendant told officers he would like to have a lawyer; an officer unsuccessfully attempted to contact an attorney requested by defendant; defendant then asked the officer to call his brother and said "that would do instead of" the attorney; defendant's brother was contacted and visited defendant in jail; defendant answered that he would talk with the sheriff and another officer when they asked him if he was then ready to talk with them

### **Pre-Arrest Statements At Police Station Defendant Not In Custody Miranda Warnings Not Required**

*State v. Bates, 343 N.C. 564 (1996)*

Defendant was not in custody at the time he made three prearrest statements to law officers so that Miranda warnings were not required and those statements thus did not taint a subsequent statement made by defendant after he had been given the Miranda warnings where the trial court made findings supported by evidence that the defendant agreed to talk with law enforcement officers and agreed to go to the Sheriff's Department; defendant drove to the Sheriff's Department, accompanied by a friend; when defendant arrived, he spoke with three law enforcement officers; the officers thanked defendant for coming to the Sheriff's Department and told defendant that he was not under arrest and was free to leave at any time; the officers spoke to defendant for

approximately forty minutes, during which time defendant told three different stories about what happened on the night in question; thereafter, defendant went to the bathroom alone; after defendant returned from the bathroom, the officers asked defendant if he would tell the truth, and defendant said that he would; defendant was then advised of his Miranda rights, and defendant signed a written waiver of those rights; and defendant was given a drink and cigarettes throughout the interview.

### **Inculpatory Statements - Pat-Down Search – Traffic Violation - Miranda Warnings Not Given**

*State v. Benjamin, 124 N.C. App. 734 (1996)*

The trial court did not err in denying defendant's motion to suppress defendant's inculpatory statement which was made subsequent to defendant being stopped for a traffic violation and after he was asked, "What is that?" during a pat-down search. Defendant's motion was made on the ground that his Miranda warnings were not given as soon as defendant was not free to leave. The fact that a defendant is not free to leave does not necessarily constitute custody for purposes of Miranda.

### **Questioning by officer – No Miranda warnings**

*State v. Brooks, 337 N.C. 132 (1994) Rev'd Ct Appeals 111 N. C. APP. 558*

An SBI agent was not required to give a defendant eventually indicted on cocaine charges Miranda warnings before asking the location of a gun where the agent did not "stop" the defendant, but merely walked up to the defendant, who was sitting in his vehicle, shined a light into the interior, and, upon seeing the empty holster on the seat beside the defendant, acted quite reasonably and properly in asking the defendant about the location of defendant's gun.

### **(2) Miranda Warnings - Assertion Of Right To Counsel – Further Communication [Communication] Initiated By Defendant -Additional Warnings Unnecessary**

*State v. Harris, 338 N.C. 129 (1994)*

### **Statement to SBI Agent - Miranda Warnings Not Given - No Custodial Interrogation**

*State v. Wiggins, 334 N.C. 18 (1993)*

### **Incriminating Statement - No Custodial Interrogation - Miranda Warnings Not Required**

*State v. Lane, 334 N.C. 148 (1993)*

Defendant's first incriminating statement during an interview by SBI investigators was not the result of custodial interrogation for Miranda purposes where the trial court found that defendant was told that he was free to leave on several occasions during the interview, that defendant did not ask to leave or request an attorney at any time, and that defendant was not placed under arrest after making his first statement but was taken home by the SBI investigators. Therefore, this statement was admissible even though defendant was not given the Miranda warnings.

### **(2) Murder - Multiple Confessions - Miranda Violation In First - Second Admissible**

*State v. Hicks, 333 N.C. 467 (1993)*

(1) A confession made before Miranda warnings were given should have been suppressed in a murder prosecution where officers asked defendant to take a polygraph test to "clear his name" and transported defendant over an hour's drive away from his home in Mocksville to an S.B.I. office in Hickory for the purpose of administering a polygraph test; defendant never was taken home or offered transportation home even though he refused to take the polygraph on three separate occasions during two hours of questioning (2) The trial court properly admitted evidence concerning a murder defendant's second confession, made voluntarily after a waiver of rights, where a first confession was taken in violation of Miranda. Although defendant was in custody when he made his first, unwarned incriminating statement, that confession was made without coercion or other circumstances intended to undermine the exercise of his free will. Therefore, under *Oregon v. Elstad*, 470 U.S. 298, the officers' failure to advise defendant of his Miranda rights before he made his first confession did not taint his subsequent waiver of his constitutional rights.

### **Custodial Interrogation - No Miranda Warnings - Public Safety Exception**

*State v. Garcia-Lorenzo, 110 N.C. App. 319 (1993)*

### **Failure To Follow Miranda Procedure – Statement Inadmissible - Subsequent Statement Not Tainted**

*State v. Gish, 111 N.C. App. 165 (1993)*

### **Confession Of Mentally Retarded Defendant - Waiver Of Miranda Rights - Sufficiency Of Findings**

*State v. Brown, 112 N.C. App. 390 (1993)*

### **Murder - Incriminating Statement - No Miranda Warning -Not In Custody**

*State v. Mahaley, 332 N.C. 583 (1992)*

The trial court did not err by concluding that a murder defendant was not in custody for Miranda purposes when she gave three statements at the police station where the police first spoke with defendant at her home; she agreed to accompany them to the police station, where she was interviewed; defendant was returned to her home; her home was searched for the second time and she agreed to return to the police department for another interview; and defendant was interviewed for a third time when an officer approached her in the snack room of the police station approximately two hours after the second interview and told her that he believed that she knew more than she was telling. The court's findings were amply supported by substantial evidence tending to show that defendant never indicated that she wanted to terminate an interview, that the officers continuously informed the defendant that she was free to leave at any time during the interviews, and that she understood that she was free to go and was not required to make a statement.

