ARTICLES

COMING OF AGE IN THE EYES OF THE LAW: THE CONFLICT BETWEEN *MIRANDA*, *J.D.B.*, AND PUBERTY

David M. N. Garavito* and Mary Kate Koch**

ABSTRACT

Everyone knows that going through puberty is associated with a multitude of changes: physical, mental, hormonal, etc. Fewer people know that when and how fast one goes through puberty can also be associated with changes to one's legal rights. The Supreme Court of the United States held, in the landmark case of J.D.B. v. North Carolina*, that there were many "commonsense conclusions" that could be drawn from how a child's age would affect their interactions with law enforcement. In that case, the Court was deciding whether age should affect whether a child was considered "in custody" of the police, granting them the legal rights associated with custodial interrogation (also known as* Miranda *rights). Surprisingly, however, despite the majority opinion discussing the objective nature of age, and "commonsense conclusions" derived therefrom, the Court did not fully incorporate age into the custody analysis. The Court held that the age only matters in a legal sense either if the officer(s) interacting with that person knows that the person is a child or if the age of the child would be objectively apparent to a reasonable officer. In other words, unless the officer(s) knows that a suspect is a child, the influence of this objective fact about a person depends solely on if that person looks like a child to a "reasonable officer." Although some people find this shortcoming harmless, the Court has inadvertently opened the door for discrimination, both intentional and unintentional. The vast amount of biological and psychological research on puberty has found that when one starts puberty and how fast one goes through puberty depends on multiple factors, including socioeconomic status, race, and sex. Further, additional research on how children are perceived by others shows that children of color are perceived as more mature and more responsible for their actions. In this Article, we provide a brief history of custody and custodial interrogation, including the case of* J.D.B.*, and we summarize existing puberty research to emphasize the seriousness of limiting the legal importance of age based on subjective perceptions.*

* Interprofessional Polytrauma & Traumatic Brain Injury Rehabilitation Research Fellow, Department of Veterans Affairs; B.A., 2015, University of Michigan; M.A., 2017, Cornell University; J.D., 2020, Cornell Law School; Ph.D., 2021, Cornell University. A very special thank you to Amelia Hritz for her advice on this manuscript.

** Postdoctoral Research Associate, Department of Psychology, University of Florida; B.A., 2015, Gonzaga University; M.A., 2018, Cornell University; Ph.D., 2022, Cornell University.

Further, we provide a solution to this problem in the hope of preventing this shortcoming from producing similar gray areas in other legal realms—a process that has already begun.

INTRODUCTION

You have the right to remain silent. Whatever you say can and will be used against you in a court of law. You have the right to an attorney. If you cannot afford an attorney, one will be appointed for you. These statements are well-known in American culture. To some, particularly those versed in law, they may be a reminder of the rights that the law guarantees them during a criminal investigation. To others, particularly some in the general public, hearing these statements is just one part of the often painful process associated with being suspected of a crime. During this investigatory process, the police have extraordinary power—a power that is perhaps most salient during the interrogation of suspects. Recognizing this unique type of power, the Supreme Court of the United States has stated that police interrogations are naturally coercive and include "compelling pressures" that work to the detriment of the suspect.[1] Accordingly, suspects in these coercive environments are guaranteed those certain protections and must be made aware of those protections.[2]

The protections associated with stereotypical police interrogations, set forth by *Miranda v. Arizona*[3] and stated at the start of this Article, are dependent on whether

1. Miranda v. Arizona, 384 U.S. 436, 467 (1966).
2. *Id.*
3. *Id.*

the suspect is considered to be in custody—hence the phrase "custodial interrogation."[4] Custody is determined using an objective test that focuses on the perspective of the suspect being interrogated.[5] If a reasonable person in the suspect's shoes would feel that their freedom has been significantly restricted, then the law would consider that person to be in custody.[6] This test focuses on the totality of the circumstances,[7] and the Court has heard a number of cases aimed at determining whether a particular circumstance should factor into the custody test.[8] When deciding these cases, the Court focuses on two major considerations: using objective circumstances, rather than subjective considerations, and maintaining a quick and efficient test for law enforcement officers to use easily in the field.[9]

Age is one characteristic that has been incorporated into this analysis. Juveniles receive extra protection with regards to the objective custody test. Since the case of *J.D.B. v. North Carolina*,[10] the Court has held that children are distinct from adults in terms of susceptibility to police tactics and submissiveness to police questioning.[11] There, the Court determined that age should be considered when determining whether a suspect is considered in custody and, therefore, protected by *Miranda* rights. This reasoning followed several Court opinions that had highlighted "commonsense conclusions" about the differences between adults and children, resulting in distinct protections of the latter.[12]

However, this extra protection that juveniles receive is, just like the protections set forth in *Miranda*, dependent on particular circumstances. Age may only factor into the custody analysis if either the interrogating officer knew the suspect was a juvenile or a reasonable officer standing in the interrogating officer's shoes would have known that the suspect was a juvenile.[13] Although this may seem like a minor point to many people—including some lawyers—this is a major issue when considering the vast amount of research on pubertal timing (i.e., when puberty starts[14]) and pubertal tempo (i.e., how quickly a person goes through puberty[15]). Both timing and tempo vary from person to person and are influenced by multiple

4. Thompson v. Keohane, 516 U.S. 99, 107 (1995).
5. *Id.* at 112.
6. *Id.*
7. *Id.* at 110 n.11.
8. *E.g.,* Howes v. Fields, 565 U.S. 499 (2012) (holding that restriction of freedom due to imprisonment does not automatically convert a noncustodial situation to a custodial one); Stansbury v. California, 511 U.S. 318 (1994) (holding that an interrogating officer's unstated view about whether the person being interrogated is a suspect is irrelevant to the custody analysis).
9. *Keohane*, 516 U.S. at 115.
10. 564 U.S. 261 (2011).
11. *Id.* at 275.
12. *Id.* at 272–73.
13. *Id.* at 277.
14. Jane Mendle, K. Paige Harden, Jeanne Brooks-Gunn & Julia A. Graber, *Development's Tortoise and Hare: Pubertal Timing, Pubertal Tempo, and Depressive Symptoms in Boys and Girls*, 46 DEV. PSYCH. 1341, 1341–43 (2010) (describing pubertal timing and tempo).
15. *Id.*

variables.[16] Those who start puberty earlier or who progress through puberty faster will be subjectively seen as closer to adults than children in terms of physical appearance.

Unfortunately, race, ethnicity, and sex are important influences on both timing and tempo.[17] In light of this discussion, the most concerning trend is perhaps that females and children of color tend to start puberty earlier.[18] Further, in addition to these physiological differences, there are also differences in how mature these children are perceived to be in the eyes of others. For example, one prominent study—which included a sample of police officers—found that Black male children were seen as older, less childlike, and more responsible for their actions compared to their white counterparts.[19] Similar results have been found with Black girls.[20] These troubling facts necessitate the closing of this custodial loophole in favor of a truly objective rule—what appears to be the Supreme Court's true intention. By removing the subjective perceptions of the officers talking to children, we can eliminate the influence of possible sex-based or race-based biases. The Court could not have intended to open the door for discriminatory application of their rule, and there is no reason why children of color should not fall under the "commonsense conclusions" that the Court discussed in *J.D.B.*[21]

This Article will summarize the conflicts between legal protections for juveniles, the biopsychological aspects of puberty (a major aspect of juvenile life), and the interaction between the two. Part I will provide an overview of law regarding custody and custodial interrogations. We will review the major cases on these subjects and the rights associated with custody. Part II begins the focus on juveniles, reviewing the major cases and legal standards concerning juvenile suspects and custody, centering on the case of *J.D.B.* In Part III, we turn to puberty and discuss its major biological and psychological aspects. There, we explain concepts such as pubertal timing and tempo, as well as group differences due to sex and race, to highlight the complexities of puberty. Finally, in Part IV, we bring together the

16. *See* Yvonne Lee & Dennis Styne, *Influences on the Onset and Tempo of Puberty in Human Beings and Implications for Adolescent Psychological Development*, 64 HORMONES & BEHAV. 250, 253–54 (2013) (detailing various factors that influence puberty's time and tempo).

17. *See* Frank M. Biro et al., *Pubertal Assessment Method and Baseline Characteristics in a Mixed Longitudinal Study of Girls*, 126 PEDIATRICS e583 (2010); *see also* Lee et al., *supra* note 16, at 254 (observing significantly more Black girls achieve breast development quicker than their white counterparts).

18. *See* Biro et al., *supra* note 17; *see also* Jane Mendle, Sarah R. Moore, Daniel A. Briley & K. Paige Harden, *Puberty, Socioeconomic Status, and Depression in Girls: Evidence for Gene × Environment Interactions*, 4 CLINICAL PSYCH. SCI. 3, 8 (2016).

19. *See, e.g.*, Phillip A. Goff, Matthew Christian Jackson, Brooke Allison Lewis Di Leone, Carmen Marie Culotta & Natalie Ann DiTomasso, *The Essence of Innocence: Consequences of Dehumanizing Black Children*, 106 J. PERSONALITY & SOC. PSYCH. 526 (2014) (finding this result with respect to Black male children).

20. REBECCA EPSTEIN, JAMILIA J. BLAKE & THALIA GONZÁLEZ, GEORGETOWN LAW CENTER ON POVERTY AND INEQUALITY, GIRLHOOD INTERRUPTED: THE ERASURE OF BLACK GIRLS' CHILDHOOD 1 (2017), https://genderjusticeandopportunity.georgetown.edu/wp-content/uploads/2020/06/girlhood-interrupted.pdf (finding the same with respect to Black female children).

21. 564 U.S. 261, 272 (2011).

previous sections by discussing how the biological and psychological effects of puberty conflict with the existing law regarding protections of juveniles, particularly for those from minority populations. We conclude this final part by proposing a framework that seeks to address these issues, closing legal gray areas, and providing clear rules that protect the rights of juveniles.

I. AN OVERVIEW OF CUSTODY AND *MIRANDA* RIGHTS

According to the Supreme Court, for the purposes of a police interrogation, a person is in custody when, "given [the] circumstances [surrounding the interrogation], . . . a reasonable person [would not] have felt he or she [was] at liberty to terminate the interrogation and leave."[22] However, to explain why custody is such a critical concept in criminal law today, it is imperative to first give a brief overview of the rights that a person has when they are in custody and how these rights have changed over time. Only by keeping in mind the rights guaranteed to those in custody can one fully understand the recent focus (and subsequent decisions) on this issue.

A. Legal Rights Associated with Custody

Before the middle of the twentieth century, courts had not talked about custody, nor the rights guaranteed in custody, as much as they do today. Restrictions such as a right to an attorney were seen as crippling to law enforcement, who had filled manuals with various techniques for "effective" interrogation.[23] Suddenly, however, these rights became an important topic of legal discussion, beginning with *Escobedo v. Illinois*.[24]

Escobedo, a twenty-two-year-old man, was arrested on January 30, 1960 in connection with the murder of his brother-in-law.[25] After being arrested, Escobedo refused to make a statement and repeatedly made requests to speak with his attorney.[26] However, the police refused, stating that "although [Escobedo] was not formally charged 'he was in custody' and 'couldn't walk out the door.'"[27] After his attorney arrived, the attorney was repeatedly told that he could not see his client; Escobedo was, in turn, told that his attorney did not want to see him.[28]

During the interrogation, Escobedo was never allowed to consult with his attorney, was visibly upset, was handcuffed, and was kept standing.[29] At one point in the interrogation, a Spanish-speaking officer talked to Escobedo alone.[30] This

22. Thompson v. Keohane, 516 U.S. 99, 112 (1995).
23. Miranda v. Arizona, 384 U.S. 436, 448–56 (1966).
24. 378 U.S. 478 (1964).
25. *Id*. at 478–79.
26. *Id*. at 481–83.
27. *Id* at 479–81.
28. *Id*. at 480–81.
29. *Id*. at 481–82.
30. *Id*.

officer grew up in Escobedo's neighborhood and knew his family, and he allegedly promised that Escobedo could leave if he made a statement identifying a different suspect as the real killer.[31] The officer later denied making such a promise, but Escobedo claimed that he made his statements relying on that promise.[32] Later, when an officer informed Escobedo that the other person claimed that Escobedo was the killer, Escobedo said that the person was lying and agreed to confront that person.[33]

Escobedo was brought to the person and told him "I didn't shoot Manuel, you did it."[34] This was the first admission of knowledge by Escobedo, and Escobedo proceeded to make several other incriminating statements.[35] After this confrontation, a state attorney arrived to take an official statement from Escobedo.[36] Neither the attorney nor anyone else during the interrogation advised Escobedo of his constitutional rights.[37] Motions to suppress the statements at trial were denied, and Escobedo was convicted of murder.[38]

The Supreme Court of Illinois originally reversed the conviction on the basis of the supposed promise by the officer to Escobedo.[39] However, after permitting a rehearing, the conviction was upheld, in part because the denial of Escobedo's request for his attorney did not render his statement inadmissible.[40] The United States Supreme Court subsequently granted a writ of certiorari and held in a 5-4 decision that the statements were not admissible.[41] The Court highlighted the difference between a general inquiry of an unsolved crime and a particularized focus on a specific suspect.[42] According to the Court, when that specific suspect "has been taken into police custody," interrogated with the goal of "eliciting incriminating statements," "requested and been denied an opportunity to consult with his lawyer," and not been "effectively warned . . . of his absolute constitutional right to remain silent," he has been denied his Sixth Amendment right to the assistance of counsel.[43] Accordingly, "no statement elicited by the police during the interrogation may be used against him at a criminal trial."[44]

Escobedo provided some protections for criminal suspects, but the rule was heavily qualified and relied on specific circumstances.[45] For example, what would

31. *Id.* at 482.
32. *Id.*
33. *Id.* at 482–83.
34. *Id.*
35. *Id.* at 483.
36. *Id.*
37. *Id.*
38. *Id.*
39. *Id.*
40. *Id.* at 483–84.
41. *Id.* at 484, 492–95.
42. *Id.* at 490.
43. *Id.* at 490–91.
44. *Id.* at 491.
45. *Id.* at 490–91.

happen when criminal suspects did not know of their various constitutional rights, let alone invoke any of said rights? However, only two years later, *Miranda v. Arizona*[46] once again drastically changed the law governing what protections and information must be provided to criminal defendants.

On March 13, 1963, Ernesto Miranda was arrested at his home for the suspected kidnapping and raping of an eighteen-year-old woman.[47] He was taken to the Phoenix police station and interrogated.[48] The police never told Miranda about his rights, and after two hours of continuous interrogation, he made incriminating statements.[49] Later, those statements were used against him in court.[50] Miranda was found guilty and was sentenced to twenty to thirty years of imprisonment.[51] The Supreme Court of Arizona affirmed his conviction, noting that Miranda never invoked his rights.[52] The Supreme Court of the United States granted cert.

The Court determined that it was unconstitutional "that Miranda was not in any way apprised of his right[s]" during his custodial interrogation.[53] In defining what determined whether a suspect was in custody, the *Miranda* Court held that custody is when an individual is "deprived of his freedom by the authorities in any significant way."[54] Of particular importance to the Court, when considering whether a suspect is in custody, were the rights to consult with an attorney, have an attorney present during the interrogation, and not to be compelled to incriminate oneself.[55] The Court was very concerned with the pressure exerted by police forces and cited the historical abuses by the British government that inspired the protections of the Constitution.[56]

Those concerns were bolstered by the presence of police interrogation manuals that highlighted methods such as secluding and pressuring suspects, as well as using misleading or dishonest tactics to elicit incriminating responses or otherwise lead suspects into making uninformed decisions with serious legal consequences.[57] The Court viewed custodial interrogations as realms in which the police could use their greater power and resources, in addition to practiced psychological manipulations, to lead a reasonable person to waive their constitutional rights. Because of this understanding, the Court made it clear that "the mere fact that [Miranda] signed a statement which contained a typed-in clause stating that he had 'full

46. 384 U.S. 436 (1966).
47. *Id.* at 491–92.
48. *Id.*
49. *Id.*
50. *Id.* at 492.
51. *Id.*
52. *Id.*
53. *Id.*
54. *Id.* at 478.
55. *Id.* at 492.
56. *Id.* at 442–43.
57. *Id.* at 448–56.

knowledge' of his 'legal rights' does not approach the knowing and intelligent waiver required to relinquish constitutional rights."[58]

Summing up their holding, the Court stated that the Fifth Amendment requires that procedural safeguards—such as giving what is now known as the *Miranda* warnings or some equivalent procedure—must be imposed to protect constitutional rights against self-incrimination during custody.[59] Later, in a case called *Dickerson v. United States*,[60] the Court expanded on this holding. The Court held that the decision in *Miranda* was a result of Constitutional interpretation, and, as such, Congress could not overrule that decision via legislation.[61]

B. The History of Custody Litigation

After the decision in *Miranda*, and the elaboration in *Dickerson*, several questions were left unanswered by the Court. The first and, for the sake of this Article, the most important question left to be answered was the following: How does *Miranda*'s definition of custody actually work in practice? If a suspect was not in custody, then there was no custodial interrogation, and the protections set forth in *Miranda* would not apply.[62] Thus, knowing what circumstances constitute custody is essential to figuring out if the police violated a defendant's *Miranda* rights. The first case to broach this subject was *Mathis v. United States*.[63]

Mathis was convicted of two counts stemming from fraudulent claims for a tax refund in the years of 1960 and 1961.[64] Mathis's conviction rested, in part, on statements made to a government agent while Mathis was in prison serving a state sentence.[65] At no point did the government agent give Mathis his *Miranda* warnings before eliciting the incriminating statements.[66] Mathis tried to suppress his statements at trial because of the lack of any sufficient warnings.[67] The District Court denied those motions, and the Court of Appeals affirmed.[68] The Supreme Court, however, reversed the prior holdings.[69] The Supreme Court noted the two arguments that the federal government was making in support of the prior holdings.[70] First, routine tax investigations are not criminal in nature and may not result in

58. *Id.* at 492.
59. *Id.* at 478–79.
60. 530 U.S. 428 (2000).
61. *Id.* However, the Court stopped short of deciding that the Constitution required the warnings in *Miranda*, only holding that the ruling was one based in the Constitution.
62. *Miranda*, 384 U.S. at 477–78.
63. 391 U.S. 1 (1968).
64. *Id.* at 2.
65. *Id.*
66. *Id.* at 2–3.
67. *Id.* at 3.
68. *Id.*
69. *Id.*
70. *Id.* at 4.

criminal proceedings.[71] Thus, *Miranda* did not apply.[72] Second, the agent did not put Mathis in prison; his custodial status was due to state actors and a separate state offense.[73] Thus, again, the government argued that *Miranda* did not apply.[74] Rejecting both arguments by the government, the Court consequently reversed the prior decisions and remanded, holding that the lower courts should not have allowed the introduction of the statements because they were given without adequate warnings.[75]

In its opinion, the Court found no reason to make the protections of *Miranda* dependent on the specific crime about which a suspect was being questioned.[76] In fact, the Court stated that "such a distinction . . . goes against the whole purpose of the Miranda decision which was designed to give meaningful protection to Fifth Amendment rights."[77] In the eyes of the Court, nothing in *Miranda* suggested that protections would depend on the reason why the person was in custody.[78] The Court concluded its holding by restating the rule as stated in *Miranda*: when one is "taken into custody or otherwise deprived of his freedom by the authorities in any significant way and is subjected to questioning," they must receive adequate notice of their rights.[79]

The Court reached a similar decision in *Orozco v. Texas*.[80] Orozco had gotten into a fight with a man outside of a cafe in Dallas shortly before midnight.[81] The man was then shot and killed, and Orozco left the scene.[82] Orozco returned to his boardinghouse to sleep, and, around 4 a.m., four police officers arrived.[83] A woman allowed the police officers to enter, the officers entered Orozco's bedroom, and they woke him up to question him. The trial court established that, after giving his name, Orozco was "under arrest" and not free to leave.[84] The officers confirmed that Orozco owned a pistol and that he had been present at the cafe that night. Orozco was asked twice about where his pistol was, after which he admitted that it was in the washing machine.[85] Ballistics tests confirmed that the gun from the washing machine was the same that killed the victim.[86]

71. *Id.*
72. *Id.*
73. *Id.*
74. *Id.*
75. *Id.* at 4–5.
76. *Id.*
77. *Id.* at 4.
78. *Id.* at 5.
79. *Id.*
80. 394 U.S. 324 (1969).
81. *Id.* at 325.
82. *Id.*
83. *Id.*
84. *Id.*
85. *Id.*
86. *Id.*

At Orozco's trial, the court allowed one of the officers—over the objection of Orozco's lawyer—to provide Orozco's statements about his gun and his presence at the scene of the crime,[87] despite the testimony showing that Orozco was interrogated without being provided any *Miranda* warnings.[88] The Texas Court of Criminal Appeals affirmed this conviction, holding that the test in *Miranda* did not preclude the admission of the statements into evidence.[89] However, the United States Supreme Court disagreed.[90] The Court considered the State's argument that Orozco was not in custody because he was in familiar surroundings, and agreed that *Miranda* highlighted the isolation and imposing surroundings typically associated with police stations.[91] Nevertheless, the Court clarified that this phrasing does not change the main point of the opinion: "the absolute necessity for officers interrogating people 'in custody' to give the described warnings."[92] According to testimony, Orozco was under arrest and not free to leave when he was interrogated.[93] *Miranda* requires warnings when a person is interrogated "in custody at the station or otherwise deprived of his freedom of action in any significant way."[94] Thus, the Court reversed the conviction, holding that the statements should not have been admitted into evidence.[95]

However, the Court did not always hold in favor of the suspects who were being interrogated. For example, in *Oregon v. Mathiason*,[96] the Court further clarified—and narrowed—the standard for custody. In *Mathiason*, an officer was investigating a burglary.[97] The victim told the officer that Mathiason, who was on parole and knew the victim's son, was the only person she suspected.[98] The officer left his card at the defendant's apartment along with a note asking Mathiason to call the officer.[99] The next day, Mathiason called the officer.[100] The officer asked if there was a place that would be convenient to meet, but Mathiason said he had no preference.[101] Mathiason subsequently agreed to meet the officer at the state patrol office, two blocks from Mathiason's apartment, later that day.[102]

87. *Id.* at 325–26.
88. *Id.* at 326.
89. *Id.*
90. *Id.*
91. *Id.*
92. *Id.* at 326–27 (citing Mathis v. United States, 391 U.S. 1 (1968)).
93. *Id.* at 327.
94. *Id.* (quoting Miranda v. Arizona, 384 U.S. 436, 477 (1966)).
95. *Id.*
96. 429 U.S. 492 (1977) (per curiam).
97. *Id.* at 493.
98. *Id.*
99. *Id.*
100. *Id.*
101. *Id.*
102. *Id.*

The two met in the building, shook hands, went into a nearby room, and closed the door.[103] The officer told Mathiason, sitting at the opposite side of a desk, that he was not under arrest and that he wanted to talk about the burglary.[104] The officer stated that Mathiason left fingerprints at the scene—a fact which was not true.[105] Mathiason then admitted that he had taken the property.[106] The entire meeting lasted about five minutes.[107]

After Mathiason's confession, the officer told Mathiason of his *Miranda* rights and took a taped confession.[108] After taping the confession, the officer told Mathiason that he was not under arrest at this time and that the officer would "[refer] the case to the district attorney for him to determine whether criminal charges would be brought."[109] Until then, the officer told Mathiason that he was free to return to his job and his family.[110]

After Mathiason was arrested and convicted, the Supreme Court of Oregon reversed the conviction, holding that Mathiason was in custody during the meeting due to the coercive nature of the circumstances and was, thus, entitled to the protections of *Miranda*.[111] The court saw the environment as coercive for a number of reasons: Mathiason was brought to a closed office within the State Police building, the officer told him that he was a suspect and was lied to about the presence of incriminating evidence, and Mathiason was a parolee.[112] To the Oregon Supreme Court, the facts that Mathiason voluntarily came to the office and was told that he was not under arrest did not change this conclusion.[113]

The Supreme Court of the United States, however, reversed the Oregon Supreme Court's judgment.[114] The Court emphasized the previous standards regarding custody and that there must be a significant deprivation of freedom.[115] The Court cited previous holdings in *Mathis*[116] and *Orozco*[117] as clarifying and strengthening this rule.[118] Here, the Court found that any questioning was done within a context where Mathiason was without restraints on his freedom to end the interaction and leave.[119] The Court found several facts particularly persuasive:

103. *Id.*
104. *Id.*
105. *Id.*
106. *Id.*
107. *Id.*
108. *Id.* at 493–94.
109. *Id.* at 494.
110. *Id.*
111. *Id.*
112. *Id.*
113. *Id.*
114. *Id.* at 496.
115. *Id.* at 494.
116. Mathis v. United States, 391 U.S. 1, 5 (1968).
117. Orozco v. Texas, 394 U.S. 324, 327 (1969).
118. *Mathiason,* 429 U.S. at 494–95.
119. *Id.* at 495.

Mathiason voluntarily came to the station, was immediately informed that he was not under arrest, and left after thirty minutes.[120] The Court further refined the relevant legal doctrine by stating that a "noncustodial situation is not converted to one in which *Miranda* applies simply because . . . even in the absence of any formal arrest or restraint on freedom of movement, the questioning took place in a 'coercive environment.'"[121] According to the Court, almost all discussions with police officers will be somewhat coercive given that the officers are law enforcement agents.[122] *Miranda*'s protections require custodial interrogation, which has a higher bar than an average police interview, whether in a police station or not.[123] The Court concluded by emphasizing *Miranda*'s focus on protecting suspects from coercive environments created by state actors where reasonable people would feel that they have been deprived of their freedom.[124] The Court also noted that the fact that the officer lied to Mathiason about the discovery of his fingerprints had no relevance to whether Mathiason was in custody.[125]

II. ADDING YOUTH TO THE CUSTODIAL EQUATION

Although the above cases seem to suggest that the majority of legal questions concerning whether a defendant is in custody stem from the circumstances in which that suspect was interrogated, other issues have emerged. One major question has been about the reasonable person standard and its applicability to custody. More specifically, what characteristics may significantly alter circumstances (or the perception thereof) to such an extent that the situation merits using an altered (and presumably more just) standard of "a reasonable person with X characteristic"? Further, should the custody analysis factor in those characteristics (and to what degree)? The first characteristic posed to the Court was age—the focus of this Article. Nevertheless, despite age seeming like an important and relatively simple (at least compared to intellectual disabilities, for example) characteristic, the treatment of age, starting with *Yarborough v. Alvarado*,[126] has been far from clear.

A. Youth and Custody

Age was first brought to the Supreme Court's attention in *Alvarado*.[127] Michael Alvarado was five months shy of his eighteenth birthday when he agreed to help

120. *Id.* Regarding the length of the interview, it is particularly interesting that the Court decided that this was an important factor as to whether an interrogation merited *Miranda* warnings given that few, if any, would know how long the interview was going to take before said interview began.

121. *Id.*

122. *Id.*

123. *Id.*

124. *Id.* at 495.

125. *Id.* at 495–96.

126. 541 U.S. 652 (2004).

127. *Id* at 666.

his friend Paul Soto try to steal a truck in a shopping mall parking lot.[128] Soto used his gun (a .357 Magnum) and demanded that the driver of the car, Francisco Castaneda, give Soto all of his money and the keys to the truck.[129] While this exchange was occurring, Alvarado hid at the passenger side door of the truck.[130] Castaneda refused to hand over his belongings, and Soto shot Castaneda, killing him.[131] Alvarado and Soto hid the gun and fled.[132]

The Los Angeles County Sheriff's Department assigned Cheryl Comstock as the lead detective on the case.[133] About one month after the shooting, Comstock attempted to contact Alvarado at his home before reaching Alvarado's mother at work.[134] Comstock said that she wished to speak with Alvarado; Alvarado's parents then brought him to the station.[135] Although Alvarado's parents apparently asked to be present during the interview, they were denied.[136] The interview began in a small room at around 12:30 p.m. and was recorded by Comstock.[137] The interview lasted about two hours, with only Comstock and Alvarado in the room.[138] At no point was Alvarado given his *Miranda* warnings.[139]

Alvarado said that on the day in question he had been drinking alcohol at a friend's house with others.[140] He said that, as the night went on, some people went to the nearby shopping mall to use the phones there but that the group later returned to the friend's house and went to bed.[141]

Comstock kept pressing Alvarado and claimed that witnesses had come forward who had contradicted Alvarado's story.[142] Comstock then said:

> You can't have that many people get involved in a murder and expect that some of them aren't going to tell the truth, okay? Now granted if it was maybe one person, you might be able to keep your fingers crossed and say, god [sic] I hope he doesn't tell the truth, but the problem is is [sic] that they have to tell the truth, okay? Now all I'm simply doing is giving you the opportunity to tell the truth and when we got that many people telling a story and all of a sudden you tell something way far-fetched different.[143]

128. *Id.* at 655–56.
129. *Id.* at 656.
130. *Id.*
131. *Id.*
132. *Id.*
133. *Id.*
134. *Id.*
135. *Id.*
136. *Id.*
137. *Id.*
138. *Id.*
139. *Id.*
140. *Id.*
141. *Id.*
142. *Id.* at 657.
143. *Id.*

After this exchange, Alvarado began changing aspects of his story.[144] After more pressure from Comstock, Alvarado admitted that he had agreed to help another man try to steal the truck.[145] Each time Alvarado showed hesitation, Comstock used one of many various methods to press for more information from Alvarado.[146] Eventually, Alvarado named Paul Soto as the trigger man and admitted that he both knew Soto was armed and also helped hide the murder weapon.[147] During the interview, Comstock asked Alvarado on two separate occasions if he needed a break, but Alvarado declined her offer.[148] After the interview, both returned to the lobby of the sheriff's station, and Alvarado's father drove him home.[149] Soto and Alvarado were both charged with first-degree murder and attempted robbery several months later.[150]

Alvarado and Soto were tried together.[151] During the trial, Alvarado unsuccessfully attempted to suppress his interview statements from evidence.[152] In denying his motion, the trial court held that the interview was noncustodial, rendering *Miranda* inapplicable.[153] Alvarado testified in his own defense, stating that he was present in the parking lot of the mall when a gun went off nearby and denying that he had made earlier statements to the contrary.[154] The prosecution relied heavily on Alvarado's interview with Comstock, playing excerpts from the audio recording to counter Alvarado's testimony.[155] On cross-examination, Alvarado described the interview as "a pretty friendly conversation" and that he did not "feel coerced or threatened in any way" during the interview.[156] In the end, the jury convicted Soto and Alvarado of first-degree murder and attempted robbery.[157] Because of his lesser role in the crime, the trial judge reduced Alvarado's conviction to second-degree murder and sentenced him to 15-years-to-life.[158]

The appellate court affirmed, holding that Alvarado was not in custody because the totality of the circumstances were such that a reasonable person would have felt at liberty to leave.[159] Thus, *Miranda* warnings were not required.[160] In its holding, the court noted that Comstock never used intense or aggressive tactics and that

144. *Id.*
145. *Id.* at 658.
146. *Id.* at 657–58.
147. *Id.* at 658.
148. *Id.*
149. *Id.*
150. *Id.*
151. *Id.*
152. *Id.*
153. *Id.*
154. *Id.*
155. *Id.*
156. *Id.*
157. *Id.*
158. *Id.* at 658–59.
159. *Id.* at 659.
160. *Id.*

Comstock never told Alvarado that he could not leave.[161] The California Supreme Court denied discretionary review.[162] Alvarado filed a petition for a writ of habeas corpus in the United States District Court. Fortunately for Alvarado, state court determinations regarding whether a person was in custody are a "mix of fact and law" and, therefore, do not receive the typical presumption of correctness that other factual determinations receive in habeas cases.[163] Although the District Court agreed with the state courts that Alvarado was not in custody, the Court of Appeals for the Ninth Circuit reversed.[164] The Court of Appeals focused entirely on Alvarado's youth and inexperience in its holding.[165] The Ninth Circuit had previously factored in a suspect's youth when evaluating the voluntariness of confessions and waivers of the privilege against self-incrimination.[166] Similarly, the court also held that youth and inexperience should play a factor in analyzing custody and whether a reasonable person would feel free to leave.[167] The court justified this holding by claiming that minors, especially those with no criminal records, would be more likely to 1) feel coerced by police and 2) be affected by police tactics. Thus, there is a greater likelihood that minors conclude they are under arrest compared to experienced adults.[168] Recognizing these effects, the court argued for greater protections for juvenile defendants.[169] Further, the Ninth Circuit held that deference required by the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") did not bar the relief sought by Alvarado because of prior Supreme Court case law regarding juveniles.[170] California appealed.

In reviewing the Ninth Circuit's decision, the Supreme Court began by examining the legal precedents regarding custodial interrogations, emphasizing that the test for custody is an objective totality of the circumstances test from the perspective of the person being interrogated.[171] After reviewing the law, the Court turned to the second part of the Ninth Circuit's holding—that AEDPA did not bar relief.[172] AEDPA sets a standard for extreme deference to state courts in federal habeas petitions, stating that, as a general rule, any "application . . . on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings . . . ."[173] However, the Circuit Court in this case had relied on one of two exceptions

161. *Id.*
162. *Id.*
163. Thomspon v. Keohane, 516 U.S. 99, 112–13 (1995).
164. *Alvarado*, 541 U.S. at 659.
165. *Id.* at 659–60.
166. *Id.* at 660.
167. *Id.* at 659–60.
168. *Id.* at 660.
169. *Id.*
170. *Id.*
171. *Id.* at 660–63.
172. *Id.* at 663–64.
173. 28 U.S.C. § 2254(d) (1996).

to this general rule, namely that a federal habeas writ may be granted if the state court proceedings "involved an unreasonable application of . . . clearly established Federal law, as determined by the Supreme Court of the United States . . . ."[174] The Circuit Court, relying on recent Supreme Court cases that highlighted the importance of juvenile status, held that the state court had acted unreasonably by not extending the line of cases establishing the legal importance of one's juvenile status to custodial interrogation.[175]

The Supreme Court disagreed.[176] The Supreme Court held that the state court was reasonable in its application of established federal law, pointing out that "fair-minded jurists could disagree over whether Alvarado was in custody."[177] By meeting the standard of reasonableness, the Court stated that no federal relief could be granted.[178] The Court also pointed out that applying the relevance of juvenile status from other Supreme Court cases to a new context as being "clearly established" would undermine existing law concerning federal habeas petitions.[179] Lastly, the Court discussed the issue of age briefly, distinguishing the custody test from other tests in which age should logically factor.[180] The Court highlighted the need for providing clear guidance to police and that the custody test was always meant to be an objective test.[181] Of course, while these arguments made sense with regards to experience that a suspect might have with interrogations or police custody, it is unclear how the Court's arguments actually dealt with the issue of age, an objective fact that is simple to uncover. A similar argument was made by the dissent, and similar questions came up again in the Court's next major case on juveniles and custody (with a slightly different outcome).[182]

B. J.D.B. v. North Carolina

J.D.B. was a thirteen-year-old, seventh-grade student who lived in Chapel Hill, North Carolina.[183] The police questioned J.D.B. concerning two home break-ins after he had been seen near a residence in the neighborhood where those crimes occurred.[184] The police also spoke to J.D.B.'s aunt, as well as his grandmother, who was his legal guardian.[185] After this initial questioning, police learned that J.D.B. had been seen at his middle school in possession of a digital camera that

174. 28 U.S.C. § 2254(d)(1) (1996).
175. *Alvarado*, 541 U.S. at 666.
176. *Id*. at 665–66.
177. *Id*. at 664.
178. *Id*. at 665–66.
179. *Id*. at 666.
180. *Id*. at 666–68.
181. *Id*. at 668
182. *Id*. at 674–75 (Breyer, J., dissenting).
183. J.D.B. v. North Carolina, 564 U.S. 261, 265 (2011).
184. *Id*.
185. *Id*.

matched the description of a camera that had been among the stolen items.[186] Police investigator DiCostanzo went to the school to question J.D.B. a second time.[187] DiCostanzo arrived at the school and informed the school resource officer, the assistant principal, and an administrative intern that he would be asking J.D.B. about the break-ins.[188] DiCostanzo asked school administrators to verify J.D.B.'s age, address, and parent contact information, but J.D.B.'s grandmother, his legal guardian, was not contacted.[189]

A uniformed school resource officer removed J.D.B. from his social studies class and escorted him to a school conference room.[190] DiCostanzo, the assistant principal, and an administrative intern were waiting in the conference room for J.D.B.[191] The door to the conference room was shut, and J.D.B. was questioned for thirty to forty-five minutes. At no point was J.D.B. given *Miranda* warnings nor was he informed that he was free to leave if he wanted.[192] J.D.B. was also not given the opportunity to speak to his grandmother.[193]

At first, the discussion began with talk of sports and J.D.B.'s family.[194] Then, with permission of J.D.B., the discussion shifted to "the events of the prior weekend."[195] J.D.B. said that he had been near where the crimes occurred because he was seeking work mowing lawns. He denied any wrongdoing.[196] DiCostanzo pressed J.D.B. on his search for work and asked him about an incident where a victim returned home to find J.D.B. behind her house.[197]

Finally, DiCostanzo confronted J.D.B. with the stolen camera.[198] At this point, the assistant principal urged J.D.B. to "do the right thing," and he cautioned J.D.B. that "the truth always comes out in the end."[199] J.D.B. responded by inquiring whether he would "still be in trouble" if he returned any stolen goods.[200] DiCostanzo told J.D.B. that returning the items would be helpful but informed him that "this thing is going to court" regardless.[201] Further pressing J.D.B., DiCostanzo said "[W]hat's done is done[;] now you need to help yourself by making it right."[202]

186. *Id.*
187. *Id.*
188. *Id.*
189. *Id.*
190. *Id.* at 265–66.
191. *Id.* at 266.
192. *Id.*
193. *Id.*
194. *Id.*
195. *Id.*
196. *Id.*
197. *Id.*
198. *Id.*
199. *Id.*
200. *Id.*
201. *Id.*
202. *Id.*

DiCostanzo then warned J.D.B. that DiCostanzo may seek a secure custody order to prevent J.D.B. from breaking into other homes.[203] J.D.B. asked what a secure custody order was.[204] DiCostanzo explained that the order would send J.D.B. "to juvenile detention before court."[205] When J.D.B. was informed of the possibility of juvenile detention, he immediately confessed.[206] J.D.B. admitted that he and a friend were responsible for the break-ins.[207] It was only after this moment that DiCostanzo told J.D.B. that he was allowed to refuse to answer questions and that he was free to leave at any time.[208] J.D.B. indicated that he understood what DiCostanzo said and proceeded to give more information, including where the stolen items were kept.[209] DiCostanzo requested that J.D.B. write and sign a statement about what he had said.[210] Finally, after the school bell rang, and the school day was over, J.D.B. was allowed to leave and take the bus home.[211]

Two juvenile petitions were filed against J.D.B.; both contained one count of breaking and entering and another count of larceny.[212] The defense counsel moved to suppress J.D.B.'s statements and the evidence derived from those statements.[213] In the motion, the defense attorney argued that J.D.B. had been "interrogated by police in a custodial setting without being afforded *Miranda* warning[s]," and that his confessions were involuntary.[214] After a suppression hearing, the trial court denied the motion, holding that J.D.B. was not in custody during the schoolhouse interrogation and that his statements were voluntary.[215] Consequently, the evidence was allowed over the objection by the defense counsel and J.D.B. was adjudicated delinquent.[216] A divided panel of the North Carolina Court of Appeals affirmed; the North Carolina Supreme Court also affirmed, holding that J.D.B. was not in custody when he confessed, "'declin[ing] to extend the test for custody to include consideration of the age . . . of an individual subjected to questioning by police.'"[217]

The Supreme Court of the United States granted certiorari to, once again, debate the *Miranda* custody analysis and the consideration of a juvenile suspect's age.[218]

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203. *Id.*
204. *Id.* at 266–67.
205. *Id.* at 267.
206. *Id.*
207. *Id.*
208. *Id.*
209. *Id.*
210. *Id.*
211. *Id.*
212. *Id.*
213. *Id.*
214. *Id.* at 267–68.
215. *Id.* at 268.
216. *Id.*
217. *Id.* (quoting *In re* J.D.B., 686 S.E.2d 135, 140 (N.C. 2009)).
218. *Id.*

The Court began by recognizing the coercive nature of interrogations.[219] "By its very nature, custodial police interrogation entails 'inherently compelling pressures.'"[220] These pressures, the Court acknowledged, are strong enough to compel adult offenders to admit to crimes that they did not commit.[221] These pressures, which "blur[] the line between voluntary and involuntary statements," led to the Court's creation of the prophylactic measures in *Miranda*.[222] After pointing out these concerns, the Court discussed the test for determining whether a person is in custody.[223] Bringing up *Thompson v. Keohane*, the Court broke down the test into two parts: "[W]hat were the circumstances surrounding the interrogation[?] . . . [G]iven those circumstances, would a reasonable person have felt he or she was at liberty to terminate the interrogation and leave[?]"[224] Regarding what circumstances to consider, the Court emphasized the need to include any and all circumstances that would affect a reasonable person's perception of their freedom to leave.[225] In contrast, subjective views of the officers or suspects are "irrelevant" to the test.[226] The Court framed the objective nature of the custody test as being overall beneficial, giving clear guidance to the police.[227] Because police must make "in-the-moment judgments" regarding when to administer Miranda warnings, focusing on only objective circumstances and the reasonable person "avoids burdening police with the task of anticipating the idiosyncrasies of every individual suspect and divining how those particular traits affect each person's subjective state of mind."[228]

After setting up this legal framework, the Court addressed the merits of the case.[229] Immediately, the Court denied the arguments put forth by the State that age should never factor into custody analysis.[230] Modifying the test to account for age would not, in the Court's opinion, destroy the objective nature of the test.[231] The Court pointed out, citing past cases involving issues of age (including *Alvarado*), that a child's age is more than a "chronological fact"[232] and is associated with "commonsense conclusions about behavior and perception."[233] These conclusions, about maturity, responsibility, vulnerability, etc., have been incorporated into legal precedent before and "restate . . . what any person knows . . . about

219. *Id.* at 269.
220. *Id.* (quoting Miranda v. Arizona, 384 U.S. 436, 476 (1966)).
221. *Id.*
222. *Id.* (quoting Dickerson v. United States, 530 U.S. 428, 435 (2000)).
223. *Id.* at 270.
224. *Id.* (quoting Thompson v. Keohane, 516 U.S. 99, 112 (1995)).
225. *Id.* at 270–71.
226. *Id.* at 271.
227. *Id.*
228. *Id.*
229. *Id.*
230. *Id.* at 271–72.
231. *Id.* at 272.
232. *Id.* (quoting Eddings v. Oklahoma, 455 U.S. 104, 115 (1982)).
233. *Id.* (quoting Yarborough v. Alvarado, 541 U.S. 652, 674 (Breyer, J., dissenting)).

children generally."[234] Further, the Court drew on old English law, which distinguished youth from other classes of individuals for similar reasons.[235] Thus, it found these "differentiating characteristics of youth are universal."[236]

The Court then discussed the logistics of incorporating age into the objective custody analysis.[237] First, the Court mentioned that objective tests in civil law suits already reflect this reality.[238] Negligence suits incorporate the expectations of children when determining what an objectively reasonable person would do in the circumstances.[239] Next, the Court distinguished age from other factors which legal parties have tried to incorporate into the objective analysis.[240] Unlike those factors such as arrest history, age is associated with objective conclusions, and thus, considering juvenile status in the custody analysis would not require inquiring into subjective perceptions of suspects.[241] Going further, the Court stated that "the custody analysis would be nonsensical absent some consideration of the suspect's age."[242] Specifically, the Court cited this case as a "prime example."[243] Preventing the inclusion of age here, in the Court's eyes, would mandate a court to examine how an adult would

> understand his situation, after being removed from a seventh-grade social studies class by a uniformed school resource officer; being encouraged by his assistant principal to "do the right thing"; and being warned by a police investigator of the prospect of juvenile detention and separation from his guardian and primary caretaker[.][244]

This situation, the Court stated, would be absurd.[245] Without accounting for age, "the coercive effect of the schoolhouse setting is unknowable."[246]

The Court next discussed this holding and its relevance for *Alvarado*.[247] The Court pointed out that *Alvarado* focused on the objectively reasonable application of existing federal law given the deferential standard of review set forth by AEDPA.[248] That holding did not concern whether accounting for age in the objective analysis could be "correct."[249] In fact, the Court pointed out that Justice

234. *Id.* at 272–73.
235. *Id.* at 273.
236. *Id.*
237. *Id.*
238. *Id.* at 274.
239. *Id.*
240. *Id.* at 275.
241. *Id.*
242. *Id.*
243. *Id.*
244. *Id.* at 275–76.
245. *Id.* at 276.
246. *Id.*
247. *Id.*
248. *Id.*
249. *Id.*

O'Connor's concurring opinion in that case even stated that a suspect's age may, should the Court be presented with such a question, "be relevant to the 'custody' inquiry."[250] Now that the question before the Court actually concerned the incorporation of age and juvenile status into custody analysis, the outcome was different from *Alvarado*.[251] The Court held that "so long as the child's age was known to the officer at the time of police questioning, or would have been objectively apparent to a reasonable officer, its inclusion in the custody analysis is consistent with the objective nature of that test."[252] The Court concluded by stating that a child's age is not determinative and may not be significant in every case.[253] However, incorporating a child's age into this analysis was necessary to account for "a reality that courts cannot simply ignore."[254] After rejecting the State's final arguments against incorporating youth into the custody analysis, the Court remanded the case to state courts in order to determine whether J.D.B. was in custody, considering all circumstances, including age.[255]

*C. Changes Post-*J.D.B

Since *J.D.B.*, multiple states have incorporated the Court's decision into recent legal decisions.[256] For example, the Supreme Court of Indiana held that a thirteen-year-old juvenile suspect was in custody because a uniformed officer escorted him to the school office, the office was an unfamiliar place to the juvenile, multiple officers often stood between the juvenile and the only exit, no one told the juvenile that he was free to call his mother or to take a break, no one called the juvenile's mother before or during the interview, and the officers knew that the juvenile was a young middle school student and that a reasonable person in his shoes would have been more vulnerable to pressure compared to older teenagers or adults.[257] In contrast, the Supreme Court of Connecticut held that a juvenile suspect was not in custody because, among other circumstances, he was sixteen and the police came to his house.[258]

This decision also raised new questions, such as whether the influence of other biological or psychological factors could, or should, affect the custody analysis.

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250. *Id.* at 277 (quoting Yarborough v. Alvarado, 541 U.S. 652, 669 (2004) (O'Connor J., concurring)).
251. *Id.*
252. *Id.*
253. *Id.*
254. *Id.*
255. *Id.* at 277–81.
256. *See, e.g.*, *In re* Joseph H., 188 Cal. Rptr. 3d 171, 183–84 (2015) (holding that a ten-year-old suspect's *Miranda* rights were violated during questioning but that the error was harmless because the suspect had admitted to the crime, unsolicited, to responding officers on multiple occasions); People v. D.L.H., Jr. (*In re* D.L. H., Jr.), 32 N.E.3d 1075, 1079, 1087–89 (Ill. 2015) (holding that a mentally disabled nine-year-old was not in custody because the two interviews were under forty minutes long and took place in the child's home, only one armed but non-uniformed detective was present, and the child's father was at the interviews).
257. B.A. v. State, 100 N.E.3d 225, 233–34 (Ind. 2018).
258. State v. Castillo, 186 A.3d 672, 684–85 (Conn. 2018).

J.D.B. makes assumptions that there are class characteristics about juveniles which merit inclusion into legal analyses—so what about classes other than juveniles? For example, intellectual disability already plays a role in criminal law.[259] Moreover, at least one state court has suggested that mental disability would eventually factor into objective custody analysis,[260] though the Supreme Court has not yet addressed this issue.

Regardless of the treatment of classes similar to juveniles, *J.D.B.* still did not solve all of the issues surrounding age and custody. Specifically, the Court confusingly created a grey area where the appearance of adulthood supersedes the "chronological fact"[261] of age. Before delving into the severity of this oversight, and the consequences that it may have on juveniles (both of which are discussed in Part IV), one must understand the science behind puberty and adolescent development.

III. PUBERTY: TIMING AND TEMPO

Puberty creates a period of developmental contrast, during which youth who are the same chronological age can look extremely different from each other depending on the relative timing and tempo of their physical changes. Youth who appear more physically mature than their same-age peers may be at greater risk for negative psychosocial outcomes, including, perhaps, increased contact with the criminal justice system.[262] In addition, group trends in puberty across sex, race, and socioeconomic status ("SES") may exacerbate the effects of early pubertal timing.[263] Thus, the "in-the-moment judgments" the Court believed officers should make about age can have devastatingly disparate consequences.

A. A General Overview of Puberty

Puberty is a universal developmental process that is characterized by a suite of hormonal, physical, and social changes that mark the transition from childhood to adolescence.[264] Physical changes associated with puberty begin around six to eight years of age when increases in adrenal and gonadal hormones lead to a series of observable physical changes such as changes in skin, height, body hair, voice, and secondary sex characteristics.[265] Puberty-related increases in hormones can occur before physical changes are visibly apparent. This physical transition typically

259. *See generally, e.g.*, Atkins v. Virginia, 536 U.S. 304 (2002).

260. Commonwealth v. Martinez, 89 Va. Cir. 166, 175 (Va. Cir. Ct. 2014).

261. J.D.B. v. North Carolina, 564 U.S. 261, 272 (2011) (quoting Eddings v. Oklahoma, 455 U.S. 104, 115 (1982)).

262. Erika E. Forbes & Robert E. Dahl, *Pubertal Development and Behavior: Hormonal Activation of Social and Motivational Tendencies*, 72 BRAIN & COGNITION 66, 66 (2010).

263. *See, e.g.*, Eleanor Seaton & Rona Carter, *Perceptions of Pubertal Timing and Discrimination Among African American and Caribbean Black Girls*, 90 CHILD DEV. 480 (2019); Ying Sun, Fiona K Mensah, Peter Azzopardi, George C. Patton & Melissa Wake, *Childhood Social Disadvantage and Pubertal Timing: A National Birth Cohort from Australia*, 139 PEDIATRICS e20164099 (2017).

264. *See* Forbes et al., *supra* note 262, at 66.

265. *See, e.g.*, *id.* at 67–68.

coincides with five to seven years of active hormonal flux.[266] These hormonal changes play a significant role in the internal changes in cognition and emotional intensity that are associated with puberty.[267]

Although the process of puberty is universal, its experience is highly individual. In puberty literature, individual differences in puberty are frequently characterized in terms of pubertal timing (i.e., the timing of physical changes in relation to one's peers).[268] Pubertal timing can significantly affect subjective experience of puberty. For example, being the first in your class to start developing may lead to changes in how older peers and adults perceive you, and it may make you feel isolated from peers who have not started changing yet. Empirical investigations have generally indicated that youth who mature earlier than their peers (i.e., early pubertal timing) are more at-risk for a range of deleterious psychosocial outcomes such as depressive symptoms and contact with the juvenile justice system.[269] Given that early-maturers start puberty earlier, they may also look more physically developed, and thus older, than their actual chronological age or their same-age peers. The discrepancy between chronological age and visible physical maturity can create opportunities for early-maturers to experience mismatched expectations from adults due to their visual appearance.[270] Further, physical and cognitive development is not necessarily synchronous during puberty.[271] Accordingly, early-maturing youth may not have as many cognitive resources available as their peers when managing a dramatically changing emotional and social landscape during puberty. This may lead to them being more susceptible to the influence of older peers and may affect decision-making.[272]

In addition to pubertal timing, the experience of puberty can also be affected by how long it takes to pass through the stages of development after the onset of puberty (i.e., pubertal tempo).[273] Youth may have an easier time navigating changes when they come at a manageable pace versus rapidly going through dramatic physical changes. Indeed, research has found that youth who progress rapidly through

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266. *See* Lee et al., *supra* note 16; Jennifer H. Pfeifer & Nicholas B. Allen, *Puberty Initiates Cascading Relationships between Neurodevelopmental, Social, and Internalizing Processes across Adolescence*, 89 BIOLOGICAL PSYCHIATRY 99 (2021).

267. *See* Forbes et al., *supra* note 262, at 67; *see also* Sonya Negriff, Elizabeth J. Susman & Penelope K. Trickett, *The Developmental Pathway from Pubertal Timing to Delinquency and Sexual Activity from Early to Late Adolescence*, 40 J. YOUTH & ADOLESCENCE 1343, 1343 (2011) (indicating that early pubertal maturation is associated with problem behaviors).

268. *See* Forbes, *supra* note 262, at 69; Josie M. Ullsperger & Molly A. Nikolas, *A Meta-Analytic Review of the Association between Pubertal Timing and Psychopathology in Adolescence: Are There Sex Differences in Risk?*, 143 PSYCH. BULL. 903, 903 (2017).

269. *See, e.g.*, Mendle et al., *supra* note 14 at 1341; Negriff et al., *supra* note 267, at 1343, 1354.

270. *See* Xiaojia Ge, Gene H. Brody, Rand D. Conger, Ronald L. Simons & Velma McBride Murry, *Contextual Amplification of Pubertal Transition Effects on Deviant Peer Affiliation and Externalizing Behavior among African American Children*, 38 DEVELOPMENTAL PSYCH. 42, 43 (2002).

271. *See* Lee et al., *supra* note 16, at 257–58.

272. *See id.*

273. *See* Mendle et al., *supra* note 14, at 1342.

puberty once it starts (i.e., rapid pubertal tempo) may be at greater risk for negative psychosocial outcomes.[274] Given present research, mismatched perceptions of how old youth are given their physical appearance may be driven by *when* changes start occurring, but the effects may be more acute depending on the tempo at which these changes occur. For instance, an early-maturing boy who rapidly appears fully developed in height, body hair, and voice may be more likely to be perceived as older than an early-maturing boy who has only developed body hair. There is a dearth of research to support these claims beyond hypothetical.

B. Variations in Puberty Based on Race, Sex, and Other Variables

Beyond the general trends of puberty are meaningful differences in how puberty unfolds and the negative outcomes associated with the process of puberty according to variations in group trends. In particular, some youth may be more likely to experience early maturation and look older than their chronological age depending on sex, race, and SES factors.[275]

First, biological girls tend to mature earlier than biological boys.[276] Further, girls, compared to boys, tend to be at greater risk for most negative psychosocial outcomes (such as depression, disordered eating, and academic difficulties) associated with early pubertal timing and pubertal development in general.[277] However, this does not mean that early-maturing boys do not experience negative psychosocial outcomes.[278] Instead, they simply tend to experience similar negative outcomes related to timing as girls do (such as depression and anxiety) but at a relatively smaller magnitude.[279] This trend is driven in part by the fact that girls who appear older than their chronological age may be more likely to interact with older peers who connect them with deviant activities.[280]

Second, Black youth tend to mature earlier than their white peers.[281] Perhaps more salient to the present discussion is that Black youth are consistently perceived as older than their chronological age as compared to same-age white peers.[282] Black boys in particular are perceived as older and more responsible for their actions than white boys by the age of ten years old.[283] Likewise, Black girls

274. *Id.*

275. *See* Lee et al., *supra* note 16, at 250.

276. *See id.* at 252–53.

277. *See* Mendle et al., *supra* note 18, at 1–2*; see also* Mendle et al., *supra* note 14, at 1341–42 (associating early pubertal timing in girls with psychological risks such as depression, anxiety, eating disorders, and delinquency).

278. Boys seem to be more affected by tempo rather than timing. Mendle et al., *supra* note 14, at 1350. Nevertheless, some studies find no sex differences in negative outcomes of early pubertal timing, so the effect is likely outcome-specific. *See, e.g.*, Ullsperger et al., *supra* note 268, at 925.

279. *See* Mendle et al., *supra* note 14, at 1349–50.

280. Negriff et al., *supra* note 267, at 1344.

281. *See* Lee et al., *supra* note 16, at 254*; see also* Biro et al., *supra* note 17, at e586 (detailing statistics regarding the connection between race and early maturation).

282. *See, e.g.*, Goff et al., *supra* note 19, at 526.

283. *Id.* at 529.

between the ages of ten to fourteen years old are perceived as more adult, in less need of protection, and as less innocent than same-age white girls.[284] Given that Black youth tend to mature earlier than white youth and Black youth are already perceived to be older than same-age white peers, Black youth who experience early pubertal maturation may be at particular risk for mismatched perceptions from adults.

Finally, lower socioeconomic status has been associated with the onset of puberty at earlier ages for youth.[285] Empirical work has found that childhood environments interact with genetic factors that signal the need for earlier maturation when a number of early life stressors, such as poverty, are present.[286] This pattern was evidenced in both Black and white girls,[287] and it is possible that this trend may exacerbate the previously discussed trends with Black youth, who already tend to mature earlier and be perceived as older than their white peers.

IV. CONFLICTS AND RESOLUTION: *J.D.B.* VERSUS BIOLOGY AND A FRAMEWORK FOR CHANGE

As mentioned earlier, the Court in *J.D.B.* did not eliminate all potential problems with regards to age and custody. Specifically, one large issue remains: the limitations on when age will actually factor into custody analyses. The Court chose interesting wording when creating their new rule. The Court did not hold that age, even if only for minors, should always factor into the objective custody analysis. *J.D.B.* requires that, for age to factor in, the age of the suspect must either be known by the interrogating officer(s) or be objectively apparent to a reasonable officer.[288] Given that the rest of the test is objective and focused on the perspective of a reasonable person being questioned, it is odd that the Court added a subjective element based on the knowledge or subjective perception of the questioning officer(s).

A. Issues and Incompatibilities

The rule created by the Court has a striking blind spot: What happens to a juvenile who looks like an adult? Unless the officer in question learns or should have known that the suspect is a child in that case, age will not factor into the custody test. And given that pubertal timing and tempo vary to a significant degree and are influenced by multiple outside variables,[289] this opens the door for a massive

284. *See* Epstein et al., *supra* note 20, at 1.

285. *See* Tamarra James-Todd, Parisa Tehranifar, Janet Rich-Edwards, Lina Titievsky & Mary Beth Terry, *The Impact of Socioeconomic Status across Early Life on Age at Menarche Among a Racially Diverse Population of Girls*, 20 ANNALS EPIDEMIOLOGY 836, 836 (2010); *see also* Lee et al., *supra* note 16, at 252 (discussing an early study of the timing of onset of puberty in children of lower socio-economic backgrounds in the United States).

286. *See* Mendle et al., *supra* note 18, at 8.

287. *See* James-Todd et al., *supra* note 285, at 838–39.

288. J.D.B. v. North Carolina, 564 U.S. 261, 277 (2011).

289. *See generally* Lee et al., *supra* note 16.

exception, and possibly unintentional discriminatory effects. Further, this language about the subjective appreciation of age was not simply dicta that has no legal consequence. Several state courts have emphasized this specific language when referencing *J.D.B.*[290]

To give a recent example, in *Commonwealth v. Evelyn*,[291] the Supreme Judicial Court of Massachusetts (the highest court in that state) dealt with a criminal case where this legal gray area significantly influenced the outcome. This case concerned the arrest and conviction of Tykorie Evelyn, a seventeen-year-old Black American.[292] On the evening of January 9, 2017, two police officers were patrolling Boston in their marked police cruiser.[293] The officers received a notification that shots had been fired and that three people had run from the area.[294] No descriptions of the suspects were given.[295] The officers, under the mistaken belief that the crime occurred in a different part of the city, headed northwest of the location of the shooting, where gang-activity had previously been reported.[296] Thirteen minutes after, and about one-half mile away from the shooting, the officers saw Evelyn walking down the street.[297] There were no other pedestrians in the area as far as the officers can see.[298] The officers drove closer to Evelyn to get a better view. In doing so, they noticed he seemed to be holding a pistol-sized object in his right jacket pocket.[299]

The officers could see that Evelyn was Black and not older than twenty-one years of age.[300] One officer called out to Evelyn, who responded by asking what the officers wanted.[301] He also began to walk at a faster pace.[302] When the officer asked if Evelyn had seen or heard anything about recent crimes, Evelyn mumbled a response that the officers could not decipher.[303] The officers continued to drive next to Evelyn for one hundred yards.[304] Evelyn did not make eye contact, turned the right side of his body away from the officers, and began looking around in various directions.[305] The non-driving officer got out of the cruiser, causing Evelyn to

290. *See, e.g.*, State v. Yancey, 727 S.E.2d 382, 385 (N.C. Ct. App. 2012)*; In re* K.C., 32 N.E.3d 988, 993 (Ohio Ct. App. 2015).
291. 152 N.E.3d 108 (Mass. 2020).
292. *Id.* at 113.
293. *Id.* at 114.
294. *Id.* at 115.
295. *Id.*
296. *Id.*
297. *Id.*
298. *Id.*
299. *Id.*
300. *Id.*
301. *Id.*
302. *Id.*
303. *Id.*
304. *Id.*
305. *Id.*

flee.[306] Both officers, one on foot and the other in the cruiser, pursued Evelyn.[307] After parking and getting out of the cruiser, the driving officer saw Evelyn take an object out of his right pocket.[308] The officer drew his weapon and ordered Evelyn to stop, which he did.[309] The officers later found a pistol on the sidewalk where Evelyn had been running.[310] At trial, the judge denied Evelyn's motion to suppress the evidence and ruled that Evelyn was not seized by police officers until he was ordered at gunpoint to stop.[311]

Although this case did not involve custodial interrogation, the Supreme Court's language in *J.D.B.* played a significant role in another way.[312] Evelyn, citing *J.D.B.*, claimed that he was unlawfully seized when the first officer got out of the police cruiser and that his age and race should factor into the seizure analysis.[313] Seizure analysis is very similar to custody analysis: "[a] person is seized 'only if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he [or she] was not free to leave.'"[314] Both analyses focus on objective factors and the totality of the circumstances surrounding interactions with the police.[315] The Supreme Judicial Court of Massachusetts, although it highlighted several key differences, agreed that the inquiries were very similar.[316] Consequently, this court decided to extend the consideration of age to the seizure analysis.[317] However, this court, in extending the holding and analysis from *J.D.B.*, also adopted the subjective gray area from the Supreme Court's original ruling.[318] Later on, the Supreme Judicial Court of Massachusetts relied on this gray area.[319] This court found that there was insufficient evidence that the officers knew or should have known that Evelyn was a juvenile.[320] As such, age could not be factored into the analysis.[321]

In the above case, the Supreme Court's specific language in *J.D.B.* caused similar gray areas to emerge in other areas of criminal law. It is not uncommon for

306. *Id.*
307. *Id.*
308. *Id.*
309. *Id.*
310. *Id.*
311. *Id.* at 113, 116.
312. *Id.* at 117–18.
313. *Id.* at 117.
314. *Id.* at 116, 118 (second alteration in original) (citing Michigan v. Chesternut, 486 U.S. 567, 573 (1988)).
315. *Id.* at 118.
316. *Id.*
317. *Id.*
318. *Id.* at 118–19.
319. *Id.* at 119.
320. *Id.*
321. *Id.* The court also decided not to rule on the issue of race. *Id.* at 121. Regardless of these rulings, the court held in favor of the defendant. *Id.* at 122. The court held that Evelyn's behavior, including turning and walking away from the officers, communicated his desire to terminate the interaction. *Id.* at 121–22. By continuing to follow and question Evelyn and then getting out of the cruiser, the officers communicated that Evelyn was not free to leave and was seized. *Id.* at 122.

courts to expand rules to apply to related areas, and this case warns us of a potentially dangerous snowball effect, particularly for juveniles of color. Evelyn was a Black male, and research has already shown that pubertal timing is earlier for Black children compared to white children[322] and that Black youth are perceived as more mature compared to similarly aged white children.[323] Evelyn likely would not have been granted any leniency from the *J.D.B.* ruling if there had been a custody issue simply because of characteristics (his sex, race, and puberty in general) that were out of his control and a caveat to an otherwise solid holding that plays off of those characteristics. The conclusion for people like Evelyn is simply this: if they simply looked their age, their age would be a legitimate legal shield. This contrasts heavily with the "commonsense conclusions" described in *J.D.B.* concerning the facts of youth.[324]

B. A Framework for Addressing Minors and Custody

To correct these gaps and legal gray areas, a few things must first be considered. First, there is no definite way to identify how old someone is on appearance alone, children or otherwise. Second, this problem is made more difficult given that not all people (though particularly children) always carry identification on them. Lastly, the legal system and law enforcement both benefit from simple, straightforward rules and application. Considering all this, the simplest solution would be to have the following rule: either find proof of age (or know it via previous interactions, etc.) or provide *Miranda* warnings as if the person was a minor. Law enforcement officers do not need to worry about whether someone looks like an adult or child. Instead, if an officer knows that the person is an adult via proof or previous interaction, then that person will be treated as an adult. Otherwise, the suspect should be treated like a minor for the sake of determining custody.

This new rule would not be without limitation or opposition, of course. The most obvious critique would be that treating an adult suspect whose age is unknown as a minor would unnecessarily benefit adult criminals. Having no proof of age and being otherwise unknown to law enforcement would earn the suspect extra protections undeservedly. However, this critique is rather trivial; in these scenarios (no proof of adulthood and the person is unknown to the interrogating officer), treating an adult like a child would only result in providing *Miranda* warnings at an earlier time. Given that *Miranda* warnings exist to make all potential suspects (adults and children) aware of their rights, treating an adult like a child and giving preemptive *Miranda* warnings is far less damaging than treating a child like an adult and conducting what would be a custodial interrogation for a child without providing them with *Miranda* warnings.

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322. *See* Lee et al., *supra* note 16, at 254; *see also* Biro et al., *supra* note 17, at e586 (finding that Black female children exhibited earlier onset of pubertal maturation than white female children).

323. *See, e.g.*, Goff et al., *supra* note 19, at 529.

324. J.D.B. v. North Carolina, 564 U.S. 261, 272 (2011).

Additional critics might claim that an even simpler rule would be to go by whatever the suspects claim their ages are. However, this rule would result in a similar gray area to the existing rule, as children may lie and claim that they are older when confronted about committing certain crimes (e.g., possession of alcohol). Although it may solve the potential problem of an adult being treated like a child, and it may protect some children that may be vulnerable under the existing rule, the possibility of children being treated as adult suspects simply because of the fear of being punished is an arguably absurd tradeoff in exchange for a simpler rule.

CONCLUSION

When the *J.D.B.* holding was released, some hailed it, and similar cases, as ushering in a new era for the rights of juvenile defendants.[325] Nevertheless, this ruling was not perfect, particularly for those with a knowledge of child development and puberty. Further, the Court's inclusion of subjective perceptions opened the door for unintentional—in addition to intentional—discriminatory application, given the effects of sex and race on perceptions of age. This Article has provided a general overview of *Miranda* rights, custody, and puberty, including pubertal tempo and timing, in order to highlight the serious gap in the Court's holding in *J.D.B.* Further, we proposed a simple and straightforward rule to replace the current, flawed one. By removing the subjective perceptions inherent in the *J.D.B.* holding, we better fulfill the reasoning behind the Court's holding. The Court, in its original reasoning, described the objective facts of youth and the "commonsense conclusions" derived therefrom.[326] If the Court found that these facts were important enough to factor into the custody analysis, it would not be logical to also intend to make the consideration of these objective facts and conclusions dependent on a suspect's physical appearance. By adopting a rule to assume a suspect is a child unless proven otherwise, the only potential consequence is that more suspects will be made aware of their *Miranda* rights. In exchange, the rights of suspects who are minors will be better protected, and the legal system and law enforcement officers will not be unduly burdened.

325. *See, e.g.,* Hillary B. Farber, J.D.B. v. North Carolina*: Ushering in a New "Age" of Custody Analysis Under* Miranda, 20 J.L. & POL'Y 117, 119–21 (2011).

326. *J.D.B.*, 564 U.S. at 272–73.