
14.3 Illegal Confessions or Admissions

The constitutional bases for excluding illegally obtained confessions or admissions are the Fifth and Sixth Amendments to the United States Constitution, made applicable to the states through the Fourteenth Amendment, and article I, sections 19, 23 and 24, of the North Carolina Constitution. In addition to the general reference sources cited at the beginning of this chapter, see Jeff Welty, *The Law of Interrogation in North Carolina* (UNC School of Government, June 2012).

A. Involuntary Confessions

Due process is violated when police coerce a suspect into making a confession. Coercion may include: (i) physical force; (ii) depriving the suspect of food, sleep, or the ability to communicate with the outside world; or (iii) psychological ploys such as threats or promises. Because it is so suspect, an involuntary confession is inadmissible for any purpose, including impeachment. *See Mincey v. Arizona*, 437 U.S. 385 (1978) (confession obtained from hospitalized suspect in great pain not voluntary and not admissible even to impeach); *State v. Pruitt*, 286 N.C. 442 (1975) (confession made in response to inducement of hope that defendant would obtain relief from charged offense not voluntary); *State v. Lynch,* 271N.C. App. 532 (2020) (reviewing cases and finding confession involuntary where police promised leniency and defendant was not predisposed to admit guilt); *State v. Bordeaux*, 207 N.C. App. 645 (2010) (confession not voluntary where defendant confessed after officers promised to testify on his behalf, engendering hope of more lenient punishment, and suggested defendant might still be able to attend college); *compare State v. Wallace*, 351 N.C. 481 (2000) (confession not involuntary where induced by promise that defendant could see his daughter and girlfriend if he confessed); *State v. Cornelius*, 219 N.C. App. 329 (2012) (confessions obtained from hospitalized suspect on medication not involuntary where hospital records and recorded statements supported findings that suspect was alert and oriented); *State v. Hunter*, 208 N.C. App. 506 (2010) (confession not involuntary although the defendant ingested crack cocaine several hours before interrogation).

A court must examine the totality of the circumstances in determining whether a confession is involuntary. *See Malloy v. Hogan*, 378 U.S. 1 (1964); *Bordeaux*, 207 N.C. App. at 655–66 (applying totality of circumstances test and finding confession involuntary).

B. *Miranda* Violations

Generally. A defendant may be able to suppress a statement under the authority of *Miranda v. Arizona*, 384 U.S. 436 (1966), if he or she gives a statement while in police custody in response to interrogation and:

- was not adequately given *Miranda* warnings;
- did not knowingly and voluntarily waive his or her *Miranda* rights; or
- invoked his or her rights and that invocation was not honored by the police.

Requirements of "custody" and "interrogation." As a means of protecting the Fifth Amendment privilege against self-incrimination, a suspect is constitutionally entitled to receive *Miranda* warnings if he or she (i) is in police custody, and (ii) is interrogated by the police.

"Custody" has been defined as either arrest or "a restraint on freedom of movement of the degree associated with formal arrest." *State v. Buchanan*, 353 N.C. 332 (2001) (disavowing former test for custody of whether reasonable person would feel free to leave presence of police, the test used under the Fourth Amendment for determining whether a seizure occurred); *see also State v. Waring*, 364 N.C. 443 (2010) (defendant not in custody during initial questioning at police station; officer first told defendant that he was "being detained" but "was not under arrest" and defendant then voluntarily went to police station, where he was left alone in unlocked interview room with no guard posted); *State v. Hemphill*, 219 N.C. App. 50 (2012) (interrogation was custodial for *Miranda* purposes where defendant was chased, forced to ground with taser, and handcuffed; court finds defendant not prejudiced by failure to suppress statements); *State v. Allen*, 200 N.C. App. 709 (2009) (defendant at hospital for treatment was not in custody to require *Miranda* warnings when officer questioned him). A person is not necessarily in custody within the meaning of *Miranda* when he is in prison and is removed from the general population for questioning about events that occurred outside prison. See *infra* "Interrogation of pretrial detainees and prisoners" in this subsection B.

The age of a child subjected to police questioning is relevant to the *Miranda* custody analysis if 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. *J.D.B. v. North Carolina*,564 U.S. 261 (2011). The rationale for this holding is that a reasonable child subjected to police questioning will sometimes feel pressured to submit when a reasonable adult would feel free to go. While *J.D.B.* declined to consider factors other than age, counsel may argue that other personal characteristics, such as low IQ, may similarly affect a person's understanding of his or her freedom of action. *See State v. Quick*, 226 N.C. App. 541 (2013) (State failed to prove that any waiver of *Miranda*

rights was knowing and voluntary where defendant was 18 years old, had limited experience with the criminal justice system, there was a period of time between 12:39 p.m. and 12:54 p.m. where there is no evidence as to what occurred, and the interrogation was not recorded).

"Interrogation" is defined as questioning or its functional equivalent—that is, statements or actions that the officers should have known were reasonably likely to elicit an incriminating response by the subject. *See Rhode Island v. Innis*, 446 U.S. 291, 300–02 (1980); *State v. Hensley*, 201 N.C. App. 607 (2010) (officer's conduct and statements to defendant, including saying the conversation was not "on the record," constituted interrogation to require *Miranda* warnings); *compare State v. Stover*, 200 N.C. App. 506 (2009) (court finds that officer asked defendant why he was hanging out the window to ascertain circumstances rather than to elicit incriminating response; additional, unsolicited statements by defendant were not in response to question asked). There is no violation of the Fifth Amendment when a suspect makes a "spontaneous" statement to police, not in response to interrogation. *See, e.g., State v. Jones*, 161 N.C. App. 615 (2003). Factors that are relevant to the determination of whether police interrogated a suspect, or should have known their conduct was likely to elicit an incriminating response, include: (1) the intent of the police; (2) whether the practice is designed to elicit an incriminating response from the accused; and (3) any knowledge the police may have had concerning the unusual susceptibility of a defendant to a particular form of persuasion. *State v. Fisher*, 158 N.C. App. 133 (2003), *aff'd per curiam*, 358 N.C. 215 (2004); *see also State v. Herrera*, 195 N.C. App. 181 (2009) (police did not interrogate suspect by placing call to suspect's grandmother in Honduras and allowing him to converse with her on speaker phone in presence of officer and interpreter), *rev'd on other grounds by State v. Ray*, 364 N.C. 272 (2010).

Miranda warnings do not apply to a request for consent to search, in part because a request for consent has been held not to constitute an interrogation under *Miranda*. *See State v. Cummings*, 188 N.C. App. 598 (2008) (defendant's motion to suppress evidence seized as a result of consent search of his car denied although officer obtained consent after defendant had invoked *Miranda* rights).

Waiver. Before any custodial statement, made in response to police interrogation, is admissible at trial, the suspect must knowingly and voluntarily waive his or her rights. *See Miranda v. Arizona*, 384 U.S. 436 (1966). As a practical matter, law enforcement officers generally try to obtain an express waiver of rights from a defendant. *See* FARB at 578–79 (recommending this practice to officers). An express waiver may not be necessary, however. *See North Carolina v. Butler*, 441 U.S. 369 (1979) (so stating). For example, in *Berghuis v. Thompkins*, 560 U.S.370 (2010), the Court found that a suspect who had been given *Miranda* warnings and had remained largely silent during a two hour and forty-five minute interrogation waived his rights by responding to a question. The court did not require an express waiver and found instead that the uncoerced statement constituted an implied waiver. The suspect's silence during the bulk of the interrogation did not invoke his right to remain silent. For additional

analysis of the *Berghuis* opinion, see Robert L. Farb, *The United States Supreme Court's Ruling in Berghuis v. Thompkins* (UNC School of Government, June 7, 2010).

Conversely, an express waiver may not be sufficient to show a valid waiver of rights if other evidence, such as evidence of coercion or lack of understanding, shows that the defendant did not waive his or her rights knowingly and voluntarily.

Whether a waiver of *Miranda* rights was knowing and voluntary has been the subject of numerous cases, too numerous to cover in this manual. *See, e.g., State v. Quick*, 226 N.C. App. 541 (2013) (State failed to prove that any waiver of *Miranda* rights was knowing and voluntary where defendant was 18 years old, had limited experience with the criminal justice system, there was a period of time between 12:39 p.m. and 12:54 p.m. where there is no evidence as to what occurred, and the interrogation was not recorded); *State v. Robinson*, 221 N.C. App. 509 (2012) (waiver knowing and voluntary based on totality of circumstances despite defendant's limited mental capacity); *State v. Bordeaux*, 207 N.C. App. 645 (2010) (confession was involuntary where defendant received *Miranda* warnings and waived right to remain silent after officers promised to testify on his behalf, engendering a hope of more lenient punishment, and suggested defendant may still be able to attend college); *State v. Mohamed*, 205 N.C. App. 470 (2010) (the defendant's English skills sufficiently enabled him to understand *Miranda* warnings that were read to him where the defendant complied with officer's instructions, wrote his confession in English, and never asked for an interpreter); *State v. Nguyen*, 178 N.C. App. 447 (2006) (defendant's written waiver of *Miranda* rights knowing and voluntary where police officer acted as interpreter); *State v. Crutchfield*, 160 N.C. App. 528 (2003) (defendant moved to suppress statements made while he was in the hospital and under medication on the theory that he did not knowingly and voluntarily waive *Miranda* rights; denial of motion upheld).

Invocation of right to counsel. If a suspect invokes his or her *right to counsel,* the invocation must be honored by police and *all* in-custody interrogation must stop regarding *all* crimes until the suspect is provided with counsel or, as discussed below, there has been a 14-day break in custody. In-custody questioning may resume before then only if the suspect asks to talk further with police. *See Edwards v. Arizona*, 451 U.S. 477 (1981); *State v. Torres*, 330 N.C. 517 (1992), *overruled on other grounds by State v. Buchanan,* 353 N.C. 332 (2001); *State v. Quick*, 226 N.C. App. 541 (2013) (defendant did not initiate communication with police after his initial request for counsel and thus did not waive right to counsel; defendant talked to police only after they told him an attorney could not help him, which police knew or should have known would be reasonably likely to elicit an incriminating response); *State v. Moses*, 205 N.C. App. 629 (2010) (no error to deny defendant's motion to suppress where defendant initially invoked his right to counsel and later reinitiated conversation with officer, who again advised defendant of *Miranda* rights and obtained a written waiver).

In *Edwards*, the U.S. Supreme Court established that once a defendant asserts the right to counsel at a custodial interrogation, an officer may not conduct a custodial interrogation of the defendant until a lawyer is made available for the interrogation or

the defendant initiates further communication with the officer. The rationale behind *Edwards* was that once the defendant invokes the right to counsel, any subsequent waiver of the right to counsel and response to police-initiated custodial interrogation is presumed involuntary. However, in *Maryland v. Shatzer*, 559 U.S. 98 (2010), the U.S. Supreme Court announced a new rule—when there is a break in custody for 14 days or more after a defendant has asserted the right to counsel at a custodial interrogation, an officer may reinitiate custodial interrogation after giving *Miranda* warnings and obtaining a waiver of *Miranda* rights. A two-week break in custody, according to the Court, is sufficient to end the inherently compelling pressures of custodial interrogation. Thus, officers may lawfully approach a defendant, obtain a waiver, and interrogate him or her, even though the defendant told the officers two weeks earlier that he or she did not want to talk to them without having a lawyer present. For further discussion of the impact of *Shatzer*, see Robert L. Farb, *The United States Supreme Court's Ruling in Maryland v. Shatzer* (UNC School of Government, May 10, 2010). For a discussion of the impact of *Shatzer* on questioning of pretrial detainees, see *infra* "Interrogation of pretrial detainees and prisoners" in this subsection B.

As a general matter, a request for counsel must be unambiguous to halt interrogation. *See Davis v. United States*, 512 U.S. 452 (1994); *State v. Little*, 203 N.C. App. 684 (2010) (suspect did not invoke right to counsel by asking detective whether he needed a lawyer); *State v. Dix*, 194 N.C. App. 151, 156–57 (2008) (under circumstances, suspect's statement "I'm probably gonna have to have a lawyer," did not invoke right to counsel); *compare State v. Torres*, 330 N.C. 517 (1992) (in pre-*Davis* case, the court held that when a defendant makes an ambiguous request for counsel, officer must clarify the defendant's request before continuing with the interrogation [although this aspect of the decision has been superseded by *Davis*, the court's holding that the defendant invoked her right to counsel in the circumstances of the case may remain good law—she twice asked officers whether she needed a lawyer and was advised that she did not need one; in *Dix*, 194 N.C. App. at 157, the court noted that the officers in *Torres* dissuaded the defendant from having counsel during the interrogation]).

For a discussion of the limits on questioning a defendant who is not in custody and who is protected by the Sixth Amendment right to counsel, see *infra* § 14.3C, Confessions in Violation of Sixth Amendment Right to Counsel.

Invocation of right to silence. If a suspect invokes his or her *right to silence*, the interrogation likewise must stop. Some cases suggest that if a suspect invokes the right to silence only, an officer may later reinitiate interrogation without a break in custody in some circumstances. *See State v. Murphy*, 342 N.C. 813 (1996) (finding on facts presented that reinitiation of interrogation violated defendant's Fifth Amendment rights; officers did not "scrupulously honor" defendant's assertion of right to remain silent); *see also* FARB at 579 (discussing issue); 2 LAFAVE CRIMINAL PROCEDURE § 6.9(f), at 939 (finding it "highly questionable" to permit police to reinitiate interrogation about same crime of defendant who has asserted right to remain silent). The suspect must clearly invoke the right to remain silent. *See State v. Fletcher*, 348 N.C. 292 (1998) (incriminating statements admissible where defendant said that after he got some sleep he

would lead officers to stolen items, the officers took a break, and then they reinitiated interrogation). Remaining silent does not necessarily constitute an assertion of the right to remain silent. In *Berghuis v. Thompkins*, 560 U.S. 370 (2010), the court held that the defendant did not unambiguously assert the right to remain silent where he was mostly silent during two hours and forty-five minutes of interrogation and then made incriminating statements without affirmatively asserting the right to remain silent. *See also State v. Westmoreland*, 314 N.C. 442, 445 (1985) (defendant who remained silent except for occasional brief denials of involvement "only showed that he did not desire to respond to specific questions" and did not thereby assert his right to remain silent); *State v. Bordeaux*, 207 N.C. App. 645 (2010) (following *Berghuis* in dictum).

The defendant's silence itself may be admissible against the defendant where the right is not expressly invoked and when the defendant was not in custody. *See Salinas v. Texas,* 570 U.S. 178 (2013) (where defendant was not in custody and voluntarily answered some questions without invoking his right to silence, his silence in the face of other questions could be used against him at trial); *see also* Jessica Smith, *Use of a Defendant's Pre- and Post-Arrest Silence at Trial*, N.C. CRIM. L., UNC SCH. OF GOV'T BLOG (Feb. 13, 2012).

Impeachment exception. A confession that has been suppressed for a *Miranda* violation, if otherwise voluntary under the Due Process Clause, may still be used to impeach a defendant who takes the stand and testifies on his or her own behalf at trial. *See Harris v. New York*, 401 U.S. 222 (1971); *State v. Bryant*, 280 N.C. 551 (1972); *State v. Burton*, 119 N.C. App. 625 (1995). *But see Missouri v. Seibert*, 542 U.S. 600 (2004) (court holds that deliberate withholding of *Miranda* warnings until after defendant confessed rendered inadmissible subsequent incriminating statements made after warnings were given; court expresses disapproval, in footnote 7, of similar tactic to obtain impeachment evidence).

Interrogation of pretrial detainees and prisoners. In *Maryland v. Shatzer*, 559 U.S. 98 (2010), the U.S. Supreme Court announced that when there is a break in custody for 14 days or more after a defendant has asserted the right to counsel at a custodial interrogation, an officer may reinitiate custodial interrogation after giving *Miranda* warnings and obtaining a waiver of *Miranda* rights. The Court also ruled in *Shatzer* that a return to the general prison population by a prisoner serving his or her sentence may constitute a break in custody. The Court reasoned that a defendant who returns to the general prison population regains the degree of control over his or her life that existed before the interrogation. Thus, the inherently compelling pressures of custodial interrogation end when the defendant returns to his or her "normal life" in prison.

In *Howes v. Fields*, 565 U.S. 499 (2012), the U.S. Supreme Court held that incarceration does not always amount to custody for purposes of *Miranda*. In *Fields*, the Court found that the defendant, an inmate who was serving a prison sentence, was not in custody for *Miranda* purposes when he was taken from his cell to a conference room and questioned for five to seven hours about crimes allegedly committed outside of prison. The Court reasoned that questioning a person who is already serving a prison sentence does not generally involve the shock that accompanies arrest, and a person who is already serving a prison sentence is unlikely to be lured into speaking by a longing for prompt release and

would be likely to know that law enforcement officers lack the authority to alter his sentence. The Court took note of factors such as: the defendant was told that he could leave and go back to his cell whenever he wanted, the conference room door was sometimes open, and the defendant was not restrained.

In light of *Fields*, the State could argue that officers may reinitiate interrogation of a prisoner without giving *Miranda* warnings and without waiting 14 days as long as the prisoner is questioned in a noncustodial setting. Thus, defense counsel must be prepared to show that the defendant was "in custody while in custody," pointing to factual circumstances such as the setting in which the interrogation takes place and whether the defendant was given the opportunity to return to the general population.

Both *Shatzer* and *Fields* distinguished inmates who are serving a sentence from those in pretrial custody. Under the reasoning of these decisions, a pretrial detainee's return to his or her jail cell following assertion of his *Miranda* rights should not constitute a break in custody permitting reinterrogation; nor should interrogation of a pretrial detainee be considered noncustodial.

Juvenile warnings. Before interrogating a juvenile, law enforcement officers must inform the juvenile of his or her rights under G.S. 7B-2101. In addition to the usual *Miranda* rights, a juvenile must be advised of the right to have a parent or guardian present during questioning.

A "juvenile" is any person under eighteen years of age who is not emancipated, married, or in the military. If the suspect is under eighteen, juvenile rights must be given even though the suspect may be old enough to be prosecuted in superior court. *See State v. Fincher*, 309 N.C. 1 (1983) (seventeen-year-old entitled to statutory juvenile warnings); *State v. Brantley*, 129 N.C. App. 725 (1998) (right to statutory warning applies to all juveniles).

If the juvenile is less than 16 years old, a parent, guardian, custodian, or attorney must be present when the juvenile is interrogated; otherwise any statement made by the juvenile is inadmissible against him or her. A parent, guardian, or custodian of the juvenile present at a juvenile's interrogation must be advised of the juvenile's rights but may not waive any rights on the juvenile's behalf. *See* G.S. 7B-2101(b).

The age of a child subjected to police questioning is also relevant to the *Miranda* custody analysis. *See J.D.B. v. North Carolina*, 564 U.S. 261 (2011), discussed *supra* under "Requirements of 'custody' and 'interrogation'" in this subsection B.

For a further discussion of interrogation of juveniles, see NORTH CAROLINA JUVENILE DEFENDER MANUAL § 11.3, Bases for Motions to Suppress Statement or Admission of Juvenile; § 11.4, Case Law: Motions to Suppress In-Custody Statement of Juvenile (UNC School of Government, Oct. 2017).

Warnings to noncitizens. *See State v. Herrera*, 195 N.C. App. 181 (2009) (violation of Vienna Convention on Consular Relations, requiring notification to arrested foreign national of right to have consul of his or her country notified of arrest, does not provide remedy of suppression of confession), *rev'd on other grounds by State v. Ray*, 364 N.C. 272 (2010).

C. Confessions in Violation of Sixth Amendment Right to Counsel

Generally, the Sixth Amendment right to counsel attaches at the initial appearance before a magistrate—that is, when a defendant has been arrested and taken to a magistrate by law enforcement—and the right exists at any critical stage thereafter, including interrogation. *See Rothgery v. Gillespie County*, 554 U.S. 191 (2008). Thus, following the initial appearance, a defendant has a Sixth Amendment right to have counsel present at any interrogation by the police, regardless of whether the defendant is in custody. The Sixth Amendment right to counsel may attach before the initial appearance before a magistrate, as when the case begins by indictment, which signals the initiation of adversary criminal proceedings and triggers Sixth Amendment protections. *See Rothgery*, 554 U.S. at 198 (citing *Kirby v. Illinois*, 406 U.S. 682 (1972)). The Sixth Amendment right to counsel is "offense specific"; thus, law-enforcement officers do not violate a defendant's Sixth Amendment rights by questioning an in-custody defendant about crimes unrelated to the charged offense. (Officers still must comply with the Fifth Amendment for any custodial interrogation. *See supra* § 14.3B, *Miranda* Warnings.) If the person is not in custody, but the Sixth Amendment right to counsel has attached, police likewise may ask questions about unrelated crimes. *See McNeil v. Wisconsin*, 501 U.S. 171 (1991); *State v. Williams*, 209 N.C. App. 441 (2011) (no Sixth Amendment violation for officers to speak with defendant about robbery and murder where defendant had not been formally charged with those crimes and was in custody on unrelated charges).

Under an earlier U.S. Supreme Court decision, *Michigan v. Jackson*, 475 U.S. 625 (1986), law enforcement officers were prohibited from initiating contact with a defendant who had exercised his Sixth Amendment rights after they had attached—that is, law enforcement could not question the defendant about the charges, whether he was in or out of custody, if the defendant had requested that the court appoint counsel on the charges. However, in *Montejo v. Louisiana*, 556 U.S. 778 (2009), the U.S. Supreme Court overruled *Michigan v. Jackson* and took a different approach to police questioning after the attachment of Sixth Amendment protections. *Montejo* held that officers may initiate contact with and question a defendant whose Sixth Amendment right has attached, even if the defendant has requested and received appointed counsel in court, provided that officers advise the defendant of the right to counsel (essentially, through *Miranda*-style warnings) and the defendant knowingly and voluntarily waives that right. (Officers still may be prohibited from interrogating an in-custody defendant who has asserted his or her right to counsel under the Fifth Amendment. *See supra* § 14.3B, *Miranda* Warnings.)

The "impeachment exception" (discussed *supra* in § 14.3B, *Miranda* Warnings) applies when the defendant's rights have been violated under the Sixth Amendment. *See Kansas*

v. Ventris, 556 U.S. 586 (2009) (defendant's incriminating statement to a jailhouse informant, assumed to have been obtained in violation of the defendant's Sixth Amendment right to counsel, was admissible on rebuttal to impeach the defendant's trial testimony in conflict with the statement).

For a further discussion of the impact of *Montejo* on police questioning after attachment of the Sixth Amendment right to counsel. see Robert L. Farb, *The United States Supreme Court Ruling in Montejo v. Louisiana* (UNC School of Government, May 30, 2009).

D. Confession as Fruit of Illegal Arrest

If a suspect is illegally seized in violation of his or her Fourth Amendment rights and, as a result of that seizure, gives a statement, the statement is ordinarily inadmissible as the "fruit of the poisonous tree." *See Brown v. Illinois*, 422 U.S. 590 (1975); *Dunaway v. New York*, 442 U.S. 200 (1979); *State v. Graves*, 135 N.C. App. 216 (1999); *see also supra* § 14.2G, "Fruits" of Illegal Search or Arrest.

E. Evidence Derived from Illegal Confession

Involuntary confessions. An "involuntary" confession—that is, a confession obtained in violation of due process—"taints" any further confession and any evidence obtained as a result of the confession. *See* 3 LAFAVE, CRIMINAL PROCEDURE § 9.5(a), at 527–28; *Michigan v. Tucker*, 417 U.S. 433 (1974); *see also supra* § 14.2G, "Fruits" of Illegal Search or Arrest.

Confessions in violation of *Miranda*. If a confession is obtained in violation of the *Miranda* rule, but is not "involuntary" under the Due Process Clause, the "fruit of the poisonous tree" principle generally does not apply; failure to administer *Miranda* warnings does not automatically create a coercive atmosphere. *See Oregon v. Elstad*, 470 U.S. 298 (1985). Thus, derivative evidence, such as subsequent statements or physical evidence, obtained as the result of an unwarned but otherwise voluntary confession is not barred. *See id.* (unwarned confession did not taint later warned confession); *State v. Hicks*, 333 N.C. 467 (1993) (following *Elstad*); *State v. Goodman*, 165 N.C. App. 865 (2004) (where defendant's statements were obtained in violation of his *Miranda* rights, physical evidence, including a body discovered as a result of statements, did not have to be suppressed); *see also* 3 LAFAVE, CRIMINAL PROCEDURE § 9.5(a), at 528–33 (discussing inapplicability of the fruit of the poisonous tree doctrine to *Miranda* violations).

The U.S. Supreme Court has condemned the "ask first, warn later" two-step interrogation technique in which law enforcement officers interrogate the defendant without giving *Miranda* warnings, obtain a confession, and subsequently give the defendant *Miranda* warnings and ask him or her to repeat the confession. *See Missouri v. Seibert*, 542 U.S. 600 (2004) (confession held inadmissible where detectives deliberately withheld *Miranda* warnings, questioned defendant until she confessed to murder, and then, after a 15- to 20-minute break, gave defendant *Miranda* warnings and led her to repeat prior confession).

Cf. Bobby v. Dixon, 565 U.S. 23 (2011) (per curiam) (second, warned confession to murder not suppressed where defendant denied involvement in murder during unwarned interrogation and then reversed course and confessed after *Miranda* warnings).

Confessions in violation of Sixth Amendment right to counsel. *See* 3 LAFAVE, CRIMINAL PROCEDURE § 9.5(a), at 532 (taking position that fruit-of-poisonous tree doctrine may still bar evidence discovered as result of statements taken in violation of Sixth Amendment right to counsel).

F. Codefendant's Confession

Generally, one defendant does not have standing to assert constitutional violations in the taking of another defendant's confession and cannot move to suppress the other defendant's confession on those grounds. *See, e.g.*, *Miranda v. Arizona*, 384 U.S. 436 (1966) (discussing the privilege against self-incrimination as an individual's substantive right). Still, the portions of an accomplice's confession that are not genuinely self-inculpatory (for example, "I did it"), but are blame-shifting (for example, "he did it" or "we did it"), are ordinarily not admissible against the non-confessing defendant. Any extrajudicial statement, such as a confession to police or to a lay witness, must meet two basic requirements, discussed below, to be admissible against a criminal defendant. If the statement does not meet these requirements, the defendant who is being blamed may make a motion in limine before trial to exclude the statement and object at trial to its introduction.

First, an out-of-court statement must satisfy the Confrontation Clause of the Sixth Amendment to the U.S. Constitution, as interpreted in *Crawford v. Washington*, 541 U.S. 36 (2004), and article I, section 23 of the North Carolina Constitution. An extrajudicial confession that names or blames an accomplice, particularly if made to the police, will ordinarily constitute "testimonial" statements and will be barred by the Confrontation Clause.

Second, the statement must satisfy North Carolina's hearsay and other evidence rules. Blame-shifting confessions typically will not fall within the scope of a hearsay exception under North Carolina's evidence rules. For a discussion of Confrontation Clause and hearsay restrictions on the admission of codefendants' statements, see *supra* § 6.2E, Blame-Shifting and Blame-Spreading Confessions.

If the codefendants are tried separately, the State ordinarily will be unable to introduce the blame-shifting portions of a confession in light of Confrontation Clause and hearsay restrictions. Thus, the defendant may find it advantageous to move for severance where the confession of a codefendant will be prejudicial to the defendant's case. In a joint trial, if the State wants to offer a codefendant's confession against that codefendant, the State must "sanitize" the confession by removing all direct or indirect references to individuals other than the codefendant who made the confession before the confession may be admitted into evidence. *See Bruton v. United States*, 391 U.S. 123 (1968); *Gray v. Maryland*, 523 U.S. 185 (1998) (replacing defendant's name with a blank space or

"deleted" not sufficient redaction); *State v. Gonzalez*, 311 N.C. 80 (1984) (error to admit statement by one codefendant saying "I didn't rob anyone, they did"); G.S. 15A-927(c)(1) (codifies *Bruton* rule). For further discussion of the *Bruton* rule on redacting codefendants' statements at joint trials, see *supra* § 6.2E, Blame-Shifting and Blame-Spreading Confessions.

G. Recording of Statements

G.S. 15A-211, enacted in 2007, requires electronic recording of custodial interrogations in homicide investigations at any place of detention. Effective for offenses committed on or after December 1, 2011, the statute was expanded to require electronic recording of custodial interrogations conducted at any place of detention for investigations related to any Class A, B1, or B2 felony and any Class C felony of rape, sex offense, or assault with a deadly weapon with intent to kill inflicting serious injury. The amended statute also requires electronic recording of all custodial interrogations of juveniles in criminal investigations conducted at any place of detention. The juvenile provision is not limited to specific offenses. The provision does not define "juvenile" and may apply to any person under the age of 18. *See* G.S. 7B-101(14) (defining juvenile for purposes of Juvenile Code as person under age 18); *see also State v. Fincher,* 309 N.C. 1 (1983) (applying statutory juvenile warning requirements to defendants under age 18). For a further discussion of the legislation, see John Rubin, *2007 Legislation Affecting Criminal Law and Procedure*, ADMINISTRATION OF JUSTICE BULLETIN No. 2008/01, at 5–6 (UNC School of Government, Jan. 2008), and John Rubin, *2011 Legislation Affecting Criminal Law and Procedure* at 35, no. 63 (UNC School of Government, Dec. 12, 2011).