**CUSTODIAL STATEMENTS OF MINORS- EPISODE NOTES**

Hello everyone and welcome back to the Good Judge-Ment Podcast. I am Wade Padgett

*And I am Tain Kell.*

A while back, we recorded two episodes dealing with *Jackson v. Denno* hearings and custodial statements in general.

*Oh yeah, episodes 47 and 48. I remember them like they were yesterday.*

In one section, I may have sounded a little salty because we discussed a case where I had been reversed.

*You? Salty? Never.*

Yes, it dealt with an issue involving a custodial statement taken from a minor and whether the *Riley* rule remained viable as a separate standard for evaluating whether a custodial statement was admissible when the person in custody was a minor.

*Yep. I remember. Tanksley v. State – Wade was overturned on appeal.[[1]](#endnote-1) Pretty rare occurrence – kinda’ like Haley’s Comet, Has something changed, Wade?*

Yes, it has. A January 2023 decision by the Supreme Court of Georgia has changed the landscape of the law dealing with custodial statements from minors and that’s our topic for today – custodial statements from minors.

*Does that mean you were actually right all along, Wade?*

Let’s leave that for others to determine, Tain. But maybe….

Before we start discussing the latest case, let’s review what the law had been relating to custodial statements from minors.

In any custodial statement that is challenged, the trial court is required to make a finding that the statement was freely and voluntarily made – usually in the context of a hearing commonly referred to as a *Jackson v. Denno* Hearing.

Under *Miranda* and other cases dealing with custodial statements, the trial court is required to make a very specific finding:

“**I find from a preponderance of the evidence that the defendant was advised of each of his *Miranda* rights, that he understood them, that he voluntarily waived them, and that he thereafter gave his statement freely and voluntarily without any hope of benefit or fear of injury. (If the defendant denies having been advised of any one of his *Miranda* rights or says that he requested an attorney, specific findings as to the point in controversy should also be made)**.”**[[2]](#endnote-2)**

That “suggested” finding that was “suggested” by our appellate courts is specifically set out in our trial notebooks we supply to every new Superior Court judge.

Those findings are generally required for any custodial statement can be admitted in trial – regardless of the age of the defendant

However, when the person making the statement is a minor, a body of law that began with the decision in *Riley v. State[[3]](#endnote-3)* suggested that there were very specific findings that had to be made.

In what became known as “the *Riley* factors,” there were 9 specific findings that had to be analyzed when the person making the statement was a minor:

These are “(1) age of the accused; (2) education of the accused; (3) knowledge of the accused as to both the substance of the charge ... and the nature of his rights to consult with an attorney and remain silent; (4) whether the accused is held incommunicado or allowed to consult with relatives, friends or an attorney; (5) whether the accused was interrogated before or after formal charges had been filed; (6) methods used in interrogation; (7) length of interrogations; (8) whether vel non the accused refused to voluntarily give statements on prior occasions; and (9) whether the accused has repudiated an extra judicial statement at a later date.”[[4]](#endnote-4)

Prior to *Riley*, the Georgia case law was all over the place concerning custodial statements by minors, including some Court of Appeals decisions that automatically excluded all custodial statements made by minors.[[5]](#endnote-5)

The *Riley* Court adopted some case law from the 5th Circuit in establishing those 9 “*Riley* Factors.”[[6]](#endnote-6)

It appeared that the justices on the Ga. Supreme Court began to have serious questions about the continued validity of *Riley* when they decided *State v. Burton* in 2022.[[7]](#endnote-7)

As FOP Ben Studdard noted in a recent publication, in the *Burton* decision, 6 of the 9 justices either concurred or dissented and those opinions suggested that those justices thought that *Riley* should be overruled.

Finally, in *Clark v. State*, an opinion issued in January 2023, *Riley*  was overturned.[[8]](#endnote-8) Kinda’. Stay with us – we will land this plane and it will all make sense

The whole exercise in determining whether any custodial statement is admissible is an analysis of the totality of the circumstances surrounding the making of the statement.

To somehow limit (or expand) the factors that make up the totality of the circumstances when dealing with a juvenile defendant seemed a bit non-sensical.

“This totality-of-the-circumstances approach is adequate to determine whether there has been a waiver even where interrogation of juveniles is involved.”[[9]](#endnote-9)

So why was *Riley* overturned by *Clark*?

In all candor, *Riley* was overturned but the principles behind the decision in *Riley* were reaffirmed. Bear with us – we can explain.

Maybe it is best to quote a paragraph from the *Clark* decision to begin the explanation:

Because the totality-of-the-circumstances test set forth in *Riley* and its progeny is consistent with United States Supreme Court precedent, we reaffirm that test today. But, as discussed more below, language in *Riley* and many of the cases that followed it also suggested that assessing the totality of the circumstances required applying a specific nine-factor framework. Because requiring application of a fixed set of factors is inherently in tension with a totality-of-the-circumstances test, we disapprove any such language. (emphasis added)[[10]](#endnote-10)

The cases that followed *Riley* had suggested that the 9 factors listed in *Riley* were rigid and some decisions suggested that the *Riley* factors were really the only factors to be considered when the person making the custodial statement was a minor.

The Ga. Supreme Court held that any rule that limited a totality of the circumstances analysis to 9 specific factors renders it not a “totality of the circumstances” analysis.

The *Clark* Court concluded by saying:

“Moreover, we make clear that Georgia trial courts should no longer look to that [*Riley*] framework for determining, under the totality of the circumstances, whether a juvenile knowingly and voluntarily waived his rights under *Miranda*. Rather, as we have explained above, the totality-of-the-circumstances test requires trial courts to consider all of the relevant circumstances surrounding a juvenile's interview with law enforcement officials to determine whether the State has met its burden of showing that the juvenile knowingly and voluntarily waived his rights.”

Stated another way, the trial court must look at the totality of the circumstances – everything – not just the 9 factors that made up *Riley*.

That means that the age of the defendant is relevant – so is the defendant’s level of education. And everything else included in the old *Riley* standards are all relevant.

But they are no longer exclusive or the only things to be considered when deciding whether a custodial statement is admissible.

There is one more section of the *Clark* decision that bears some discussion. After discussing all of the facts surrounding the making of the custodial statement by the juvenile defendant, the Court noted:

Although the [trial] court did not expressly acknowledge other factors that may have been pertinent in analyzing the totality of the circumstances, ‘we generally do not require trial courts to make specific, on-the-record findings about each aspect of the totality of the circumstances they evaluate or to make “explicit factual findings or credibility determinations on the record.’”[[11]](#endnote-11)

When we began this episode, we discussed the specific findings of fact that were “suggested” by our appellate courts when making a determination that a custodial statement was admissible. Those “suggested findings” are somewhat conclusory.

The *Clark* decision reaffirms that the trial court does not have to make specific findings about the totality of the circumstances, only that all of the circumstances were considered.

The record itself will show what those circumstances were.

So, that’s all for our episode dealing with custodial statements of minors.

*While Riley was overturned by Clark, the 9 Riley factors are not irrelevant*

They are just no longer exclusive. Those 9 factors should be considered as part of the overall determination of the totality of the circumstances.

*But your order does not have to recite all of the factors you considered when ruling on the admissibility of a custodial statement.*

The outline is full of case citations and that outline can be found at **goodjudgepod.com**.

Reach out to us on goodjudgepod@gmail.com with all of your podcast topic ideas

**I’m Wade Padgett**

*And I’m Tain Kell…The boy band NSYNC has a unique name. They came up with the name as an amalgamation of the last letter of each of the 5 members’ first names.  Justi****N****, Chri****S****, Joe****Y****, Jaso****N****, and J****C****. (I hope people listen to these crazy music trivia things we do at the end of each episode.)*

1. *Tanksley v. State*, 351 Ga. App. 877 (2019). [↑](#endnote-ref-1)
2. *Bryant v. State*, 268 Ga. 664, 666 (1997); *Brown v. State*, 294 Ga. 677, 680 (2014) [↑](#endnote-ref-2)
3. *Riley v. State*, 237 Ga. 124 (1976). [↑](#endnote-ref-3)
4. *Riley*, at 128. [↑](#endnote-ref-4)
5. *Riley*, at 128, disapproving *Freeman v. Wilcox*, 119 Ga. App. 325 (1969). [↑](#endnote-ref-5)
6. *Riley*, at 128, quoting *West v. US*, 399 F.2d 467, 469 (1968). [↑](#endnote-ref-6)
7. *State v. Burton*, 314 Ga. 637 (2022). [↑](#endnote-ref-7)
8. *Clark v. State*, S22A0950, 2023 WL 212506 (Ga. 1/18/2023). [↑](#endnote-ref-8)
9. *Clark*, supra, quoting *Fare v. Michael C.,* 442 U.S. 707, 725 (1979). [↑](#endnote-ref-9)
10. *Clark*, at \*7 of slip opinion. [↑](#endnote-ref-10)
11. *Clark*, at \*10 of slip opinion, citing *Lester v. State*, 310 Ga. 81, 86 (2020). [↑](#endnote-ref-11)