

Gregory DeClue, Ph.D.

Diplomate in Forensic Psychology, American Board of Professional Psychology

Phone (941) 951-6674
Fax (888) 902-4596

Florida Psychology License Number PY0003427
<http://gregdeclue.myakkatech.com>
gregdeclue@mailmt.com

Re: State of Florida v. Joe Suspect
County Case Number:

REPORT OF PSYCHOLOGICAL ASSESSMENT

Name: Joe Suspect
Date of Birth: #/#/1997
Date of Assessment: 2/4/2013
Date of Report: 2/10/13

IDENTIFYING INFORMATION AND REASON FOR REFERRAL

Joe Suspect is a 16-year-old male who was arrested and charged with a sex crime. This evaluation was requested by the Office of the Public Defender.

METHOD

Wechsler Adult Intelligence Scale, Fourth Edition (WAIS-IV)
Woodcock-Johnson Tests of Achievement, Third Edition (WJ-III)
TOMM
Gudjonsson Suggestibility Scale – 2 (GSS-2)
Instruments for Assessing Understanding and Appreciation of *Miranda* Rights (IAUAMR)
Oral *Miranda* Warning Checklist
Psychological Interview
Review of available records, including Discovery documents

NOTICE

This evaluation took place at # County Jail. Joe was alert and cooperative throughout the evaluation process. I explained that I would be conducting a psychological evaluation at the request of his attorney and that I would be preparing a report that initially would go only to his attorney. He agreed to participate in the evaluation under those conditions.

INTERVIEW

Joe was oriented to person, place, and time, and was in good contact with reality. His speech was clear and coherent. His mood was calm and appropriate to the situation.

PSYCHOLOGICAL TESTING

Response Style

Effort

This evaluation of Joe included assessment of response style. On a 50-item forced-choice test, his scores were as follows:

Trial 1	49
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This score clearly shows that Joe was giving a good effort (attempting to provide correct answers) on this test.

Ability

The WAIS-IV is a standardized, objective test of intelligence. Results follow:

Block Design	7	Arithmetic	9
Similarities	9	Symbol Search	9
Digit Span	9	Visual Puzzles	9
Matrix Reasoning	9	Information	6
Vocabulary	9	Coding	13

	Composite Score	Percentile Rank
Verbal Comprehension	89	23
Perceptual Reasoning	90	25
Working Memory	95	37
Processing Speed	105	63
Full Scale IQ	92	30

The above test scores appear to provide an accurate appraisal of Joe's current intellectual functioning. His Processing Speed Index and Working Memory Index are in the average range. His Verbal Comprehension Index, Perceptual Reasoning Index, and Full Scale IQ Score are all near the cutoff between the low-average and average ranges.

Reading, Listening, and Speaking

The WJ-III is used to assess skills in areas such as reading, writing, and arithmetic. In many US school systems, including those in Florida, it is the most widely used instrument of its type. Joe's WJ-III scores follow:

Achievement Tests	AE¹	GE
Letter-Word Identification	15-0	9.5
Reading Fluency	15-3	9.7
Story Recall	10-10	5.4
Understanding Directions	19	13.0
Passage Comprehension	14-8	9.2
Story Recall—Delayed	11-8	6.2
Word Attack	>30	>18.0
Picture Vocabulary	12-9	7.3
Oral Comprehension	14-8	9.2
Reading Vocabulary	12-10	7.4

Clusters

Oral Language	13-6	8.1
Oral Expression	12-4	6.9
Listening Comprehension	15-10	10.4
Broad Reading	15-0	9.5
Brief Reading	14-11	9.4
Basic Reading Skills	20	13.0
Reading Comprehension	13-6	8.0

The above test scores appear to provide an accurate appraisal of Joe's current achievement. The Cluster scores are calculated by combining subtests, and provide a more stable assessment of Joe's current achievement. His oral-expression skills are at a late 6th-grade level, comparable to those of a 12-year-old child. His reading-comprehension and oral-language skills are at a beginning 8th-grade level, comparable to those of a 13-year-old child.

Instruments for Assessing Understanding and Appreciation of *Miranda* Rights

Comprehension of Miranda Rights (CMR)

"Development of the CMR began with several objectives: a) To measure understanding of the four primary *Miranda* warnings by way of paraphrased response; b) to develop a standard and reliable method for administering the procedure and obtaining responses;

¹ Age norms were used; that is, Mr. Joe's test performance was compared to that of others his age. AE is the age equivalent, expressed as 'year-month.' GE is the grade equivalent, expressed as 'year.month.'

c) to provide examinees with every possible opportunity to reveal what they understood the warnings to mean; d) to develop an objective scoring system; and e) to develop criterion definitions for scoring of responses that would represent the consensus of opinion of a panel of attorneys and psychologists concerning the essential meaning of each of the *Miranda* warnings.”²

Joe earned a score of 8 (of a possible 8) on the CMR. He showed the ability to explain (paraphrase) the *Miranda* rights in a meaningful way.

Comprehension of Miranda Rights Recognition (CMR-R)

“The purpose of the CMR-R is to assess an examinee’s understanding of each *Miranda* warning by his or her ability to recognize whether or not the particular pre-constructed sentence has the same meaning as the *Miranda* warning statement. It consists of presentation of the *Miranda* warning statements with corresponding statements that the examinee must identify as the ‘same’ as or ‘different’ from the *Miranda* warning statements. All presentations of warnings and items are both oral and in writing on stimulus pages in the test easel.”³

Joe earned a CMR-R score of 10 out of 12. For the most part, he showed the ability to distinguish between two sentences that sounded somewhat similar but have significantly distinct meanings. However, he failed two items that require recognition that there is a difference between “lawyer” and a “social worker.”

Comprehension of Miranda Vocabulary (CMV)

The CMV measure “is an objective method for assessing an individual’s understanding of six critical words that appear in standard *Miranda* warnings.”⁴

Joe showed that he understands the meaning of the words “attorney,” “interrogation,” “appoint,” and “right.” He showed partial understanding of the word “consult.” He did not show understanding of the word “entitled.” His score was 9 out of 12 on the CMV.

Function of Rights in Interrogation (FRI)

The FRI was developed to assess subjects’ “appreciation of the significance of *Miranda* rights in the context of interrogation. ... [A] grasp of the significance of this right requires at least an understanding of the role of the lawyer as an advocate and a sense of the types of questions which police might ask. The FRI is designed to assess this

² Grisso, T. (1998). *Instruments for Assessing Understanding & Appreciation of Miranda Rights* (manual). Sarasota, FL: Professional Resource Press, p. 9.

³ Grisso, 1998, p. 31.

⁴ Grisso, 1998, p. 35.

functional grasp of the warnings as differentiated from an understanding of single words and of *Miranda* phrases.”⁵

Joe earned a raw score of 16 out of 30 on the FRI. He showed some ability to understand how the *Miranda* rights apply in some realistic scenarios. However, he showed a critical lack of understanding in several crucial areas. For example, he did not show understanding of the job of a lawyer in a pre-interrogation consultation with a suspect (Item RC-1), what a lawyer and a suspect should discuss in a pre-interrogation consultation (RC-3), what would happen in an interrogation room if a suspect elected not to talk with the police (RS-3), whether there would be negative consequences in court if a suspect had elected not to talk with police (RS-4), and whether a suspect who had elected not to talk with police would nevertheless have to answer questions in court (RS-5).

Interpretation of IAUAMR Test Scores and Application to Waiver

It is important to recognize that these instruments assess a person’s current abilities; they do not directly address what Joe understood or did not understand at the time the police notified him of his rights.

Suggestibility

The GSS is a performance test of interrogative suggestibility. See Appendix A for a description.

Joe’s scores on the GSS-2 are shown in the following table. Average scores and standard deviations are from adults in the general population.⁶

	Joe’s score	Average score	Standard deviation
Immediate recall	18	21.3	7.1
Delayed recall	10	19.5	7.5
Yield 1	1	4.6	3.0
Yield 2	13	5.6	3.8
Shift	13	2.9	2.5
Total Suggestibility	14	7.5	4.6

In responding to questions on the GSS-2, Joe initially recalled almost as many details of the story as the average person recalls, but after a short delay he recalled fewer than average (see scores on immediate and delayed recall). Upon first being questioned, he did not yield to misleading questions as much as the average person does (see score on Yield 1). However, in response to the subtle pressure of telling him that a number of his answers were wrong, he shifted his answers much more than the average person does, changing most of his answers and yielding to almost all of the misleading ques-

⁵ Grisso, 1998, p. 45.

⁶ Gudjonsson, 1997, p. 21. Joe’s case is in adult court.

tions (see scores on Shift and Yield 2). Overall, Joe showed more suggestibility than the average person does.

Summary Regarding Joe's Personal Characteristics

At the time of the interrogation, Joe was a 14-year-old boy.

Testing (at age 16) shows that his Full-Scale IQ Score is near the cutoff between the low-average and average ranges. His oral-expression skills are at a late 6th-grade level, comparable to those of a 12-year-old child. His reading-comprehension and oral-language skills are at a beginning 8th-grade level, comparable to those of a 13-year-old child. On a test of interrogative suggestibility, he showed much more suggestibility than the average adult does.

ISSUES RELEVANT TO WAIVER OF RIGHTS

As I understand it, the inquiry whether a waiver is coerced has two distinct dimensions:

First, the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception. Second, the waiver must have been made with a full awareness both of the nature of the right being abandoned and the consequences of the decision to abandon it. Only if the "totality of the circumstances surrounding the interrogation" reveals both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the *Miranda* rights have been waived.

At the time of the interrogation, Joe was a 14-year-old boy.⁷ When asked, he said that he did not know why he was at the sheriff's office.⁸ The police did not tell him that he was a suspect in a criminal investigation: "Don't know why you're here at all? Okay. There was an incident that was reported to us that happened at school where your name has been brought up."⁹ The police officer told Joe, "I have to make sure you have the opportunity to have your parents here"¹⁰ "because you're 14,"¹¹ rather than "*because you are a suspect in a criminal investigation*" [NOT SAID].

Joe told the police officer that he had little or no prior experience with the criminal justice system.¹²

Police told Joe that he was not under arrest.¹³ The police officer told Joe, "We have to read you what's called the *Miranda* warnings"¹⁴ "being that you came up here from the

⁷ Interview of Joe Suspect, page 2, line 1.

⁸ Ibid., page 2, line 18.

⁹ Ibid., page 2, lines 19-22.

¹⁰ Ibid., page 2, line 25, to page 3, line 1.

¹¹ Ibid., page 2, lines 24-25.

¹² Ibid., page 3, line 24, and page 4, line 2.

school and we are at the—in a room and you don't know how you get back out to the street,”¹⁵ rather than “*because you are a suspect in a criminal investigation*” [NOT SAID]. Implicitly contradicting the fact that anything Joe said would be used against him, the police officer told Joe, “It's going to be better in your favor ... for you to tell me the truth.”¹⁶

The following are useful in considering whether the record in this case reveals that Joe showed understanding of both the nature of the rights being abandoned and the consequences of the decision to abandon them.

- Appendix B is a Model Oral *Miranda* Warning.
- Appendix C is an example of a *Miranda* warning.
- Appendix D applies the Oral *Miranda* Warning Checklist to the recorded interrogation of Joe.

OPINIONS

1. In my opinion, there is no evidence that, at the time of the interrogation, Joe had full awareness of the rights he was asked to abandon, and of the consequences of making a decision to abandon them. When he was asked to waive the opportunity for his parents to be present, and when he was asked to waive his *Miranda* rights, he was not apprised of the fact that he was a suspect in a criminal investigation. He was advised by the police officer that the best choice for him would be to answer police questions and to tell the truth, and that he had “one chance” to do so. In this case, police failed to provide enough information (that he was a suspect in a criminal investigation) for Joe to make an informed decision about whether to waive his rights.
2. Police misled Joe when the officer told Joe, “It's going to be better in your favor ... for you to tell me the truth,” “You have one chance to make it right and one chance to be truthful,” etc.
3. Joe showed surprise when he was told that he was arrested for rape, and when he was told that he would not be able to go home. This supports the interpretation that this 14-year-old boy did not have sufficient understanding of his situation to make an informed choice or a reasoned decision.

¹³ Ibid., page 4, lines 10-11.

¹⁴ Ibid., page 4, lines 7-8.

¹⁵ Ibid., page 4, lines 3-6.

¹⁶ Ibid., page 14, lines 8-9. See Item B in Appendix D for additional page numbers, line numbers, and quotes.

In summary, Joe was young, immature, unintelligent, and inexperienced. He was not sufficiently informed about his situation and about the consequences of waiving his rights. And he was misled.

Gregory DeClue, Ph.D., ABPP

Appendix A: Suggestibility

Suggestibility

Interrogative suggestibility is defined as “the extent to which, within a closed social interaction, people come to accept messages communicated during formal questioning, as a result of which their behavioral response is affected.”¹⁷ The most distinguishing features of interrogative suggestibility are

- 1) It involves a questioning procedure, which typically takes place within a closed social interaction.
- 2) The questions asked are mainly concerned with past experiences, events, and recollections.
- 3) Interrogative suggestibility contains a component of uncertainty, which is related to the ability of the person to process information cognitively.
- 4) Questioning in a police context commonly involves considerable stress with important consequences for the witness, victim, and suspect.¹⁸

In considering a person’s vulnerability to the pressure of interrogation, two personality constructs that have been considered to be directly relevant are *interrogative suggestibility* and *compliance*.

Neither the concept of interrogative suggestibility nor tools to measure it are new. Experiments to measure interrogative suggestibility via misleading questions were performed in America¹⁹ and Europe²⁰ 100 years ago.²¹ Today the theoretical model with the most research support is that of Gudjonsson and Clark²² and the most empirically validated instruments for measuring interrogative suggestibility are the Gudjonsson Suggestibility Scales (GSSs; GSS-1 and GSS-2).²³

The Gudjonsson-Clark model describes two distinct types of suggestibility: one emphasizes the impact of leading or suggestive questioning on testimony, and the other relates to the extent to which interrogators are able to get interviewees to ‘shift’ (change) unwanted but perhaps accurate answers by challenge and negative feedback. “An interrogator, who communicates negative feedback to a suspect, witness, or victim,

¹⁷ Gudjonsson, G. H. & Clark, N. K. (1986). Suggestibility in police interrogation: A social psychological model. *Social Behavior*, 1, 83-104, p. 84. Cited in Gudjonsson, G. (1997). *The Gudjonsson Suggestibility Scales Manual*. Hove, East Sussex, England: Psychology Press.

¹⁸ Gudjonsson, 1997, p. 1.

¹⁹ Cattell, J. M. (1895). Measurements of the accuracy of recollection. *Science*, 2, 761-766.

²⁰ Binet, A. (1900). *La suggestibilite*. Paris: Doin. See also Binet, A. (1905). La science du temoignage. *Annee Psychologies*, 11, 128-136. Both cited in G. H. Gudjonsson (2003). *The psychology of interrogations and confessions: A handbook*. West Sussex, England: Wiley.

²¹ Gudjonsson, 2003, p. 344.

²² Gudjonsson, G. H. & Clark, N. K. (1986). Suggestibility in police interrogation: A social psychological model. *Social Behavior*, 1, 83-104, p. 84. See also Gudjonsson, 2003.

²³ Gudjonsson, 2003.

may through an interrogative pressure shift unwanted, but perhaps true, responses in favor of untrue or distorted ones.”²⁴ The model recognizes three components as necessary for the suggestibility process: *uncertainty*, *interpersonal trust*, and *expectations*. People enter into the interrogation process with individual differences in each of these components, which affect their vulnerability to the process, and interrogators take steps to increase uncertainty, enhance interpersonal trust, and alter expectations.

People with low intelligence or memory problems are generally more uncertain about the answer to interrogators’ questions and are therefore more prone to change their answers in response to negative feedback. If an interrogator succeeds in getting a suspect to doubt his memories, that enhances the likelihood that the suspect will change his answers to the interrogator’s questions.

Suspects who generally have greater interpersonal trust are more prone to believe that the interrogators’ intentions are genuine and that there is no trickery involved in the questioning. Interrogators who promote trust and use subtle leading questions are more likely to succeed in getting an uncertain suspect to change his responses.

Uncertainty and interpersonal trust are necessary but not sufficient to get people to yield to suggestions, because a person could just say “I don’t know” in response to the interrogator’s questions. People are less likely to do so, and therefore more likely to accept the interrogator’s cues to change their answers, if they believe that:

1. they must provide a definite answer,
2. they should know the answer to the question, and
3. they are expected to know the answer and be able to give it.

The theory postulates that most people would be susceptible to suggestions if the necessary conditions of uncertainty, interpersonal trust, and heightened expectations are present. The extent to which interviewees yield to suggestion is a function of their cognitive appraisal of the interrogative situation and the coping strategies they are able to adopt. A coping strategy that helps interviewees resist suggestions involves being able to look objectively and critically at the situation and not commit oneself to an answer unless one is absolutely sure of the facts. A coping strategy that is amenable to suggestion involves an unrealistic appraisal of the situation and the reluctance to admit the fallibility of one’s memory when uncertain.²⁵

Can individual differences in interrogative suggestibility be measured reliably? Yes, they can, using the Gudjonsson Suggestibility Scales, which “were developed for two different purposes. First, the scales were intended to be used for research in order to further our understanding of interrogative suggestibility and its mediating variables and mechanisms. Second, the scales were intended for forensic and clinical applications. The primary application was to establish an instrument that could identify people who

²⁴ Gudjonsson, 2003, p. 347.

²⁵ Gudjonsson, 2003, p. 350.

were particularly susceptible to erroneous testimony during questioning. In other words, the emphasis was on the measurement of individual differences."²⁶ GSS 1 and GSS 2 have very similar norms and can be used interchangeably. The tests have impressive reliability, measured in terms of internal consistency, alternate-form, test-retest, and inter-rater reliability.²⁷

In administering the GSS, the examiner reads a narrative paragraph to the subject and asks the subject to report all that he can recall, immediately and after a delay of about 50 minutes. Then the subject is asked 20 questions, 15 of which are subtly misleading. The subject is then told that he made a number of errors (whether he really did or not) and it is therefore necessary to ask all the questions once more. Responses are objectively scored in several ways, including *Yield 1*, *Shift*, *Yield 2*, and *Total Suggestibility*. Yield 1 refers to the number of suggestions (leading questions) to which the subject yields prior to negative feedback. Shift refers to the number of times there has been a distinct change in the subject's answers following negative feedback. Yield 2 refers to the number of suggestions to which the subject yields after negative feedback. Total Suggestibility is the sum of Yield 1 and Shift; it gives an indication of the subject's overall level of suggestibility.

²⁶ Gudjonsson, 2003, p. 362.

²⁷ Gudjonsson, 2003, pp. 364-366.

Appendix B: Model Oral *Miranda* Warning

We would like to talk to you today. We would like to ask you some questions. You do not have to talk to us. You do not have to be here today. You do not have to stay here. You can leave if you want. You can leave any time you want. If you do not talk to us, that cannot be used against you in court. If you do talk to us, anything you say can be used against you in court.

Now, I'm going to read you your rights. These are important rights. The U.S. Supreme Court says that these apply to every suspect in a criminal case. Right now, you are a suspect in a criminal case, and that's why I'm going to read you your rights.

It is important that you understand your rights. I know you're probably feeling nervous right now. I'm going to read these to you slowly and carefully. I'm going to ask you to tell me in your own words what each right means. So, I'll read each right to you. And then I would like you to show me whether you understand or not. Tell me in your own words what the right is. Ready?

You have the right to remain silent. Tell me in your own words what that means. ... And being silent is your right. You don't have to talk to us. And if you don't talk to us, we can't hold that against you. We can't use it against you in any way. You can say no right now, and that's it. We'll stop. We will not hold it against you that you chose not to talk to us. If you do choose to talk to us, at any time you can say the magic words. "Stop, I don't want to talk anymore." And that's it. We'll stop. And we won't hold that against you.

Anything you say can and will be used against you in court. Tell me in your own words what that means. ... So, if you do talk to us, anything you say can be used against you in court.

You have the right to talk to a lawyer for advice before you are asked any questions. Tell me in your own words what that means. ... So you could say, "Stop, I want to talk to a lawyer." Those are magic words, too. And if you say those magic words, "Stop, I want to talk to a lawyer," we will stop. We won't ask you any more questions. We won't say or do anything to try to get you to talk more. And the fact that you told us to stop cannot be used against you. You can say that before we ever start. If you do, we won't ask you any questions. You can say that right now, and we will stop right now. Or if you do agree to start answering questions, it is up to you when we stop. All you have to do is say those magic words. "Stop, I want to talk to a lawyer."

Also, you have the right to have a lawyer present with you during questioning. Tell me in your own words what that means. ... So, if you want to have a lawyer present right now while we talk, that's fine. Or if you want to talk to a lawyer first, and then also have a lawyer present while we talk, that's fine, too. And if you choose to talk to a lawyer or to have a lawyer present while we talk, that's fine. That's a fine way for you to cooperate with us in the investigation. There is nothing uncooperative about talking with a

lawyer. There is nothing uncooperative about having a lawyer present while you talk to us. If you'd like to have a lawyer present, we won't hold that against you in any way. You have the right to the advice and presence of a lawyer even if you cannot afford to hire one. Tell me in your own words what that means. ... So if you do not have the money to pay for a lawyer, you can still say, "Stop, I want a lawyer." And we stop. And you get a lawyer for free. And you can talk to the lawyer and decide whether you want to talk to us. And if you do decide to talk to us, you can have a lawyer present, even if you don't have the money to pay for a lawyer.

If you talk to me, you do not have to answer every question. Tell me in your own words what that means. ... So if I ask you something that you don't want to answer, all you have to say is, "I don't want to answer that." Or "I don't want to talk about that." And we won't hold it against you.

You have the right to stop this interview at any time. Tell me in your own words what that means. ... Like I said, just say the magic words. "Stop, I don't want to talk anymore." Or "Stop, I want a lawyer." And we'll stop. And we won't hold it against you. Now, do you understand all of those rights? Do you have any questions? ... Like I said, you don't have to talk to us. And we won't hold it against you if you don't talk to us. Do you want to talk to us now? [If yes] If you understand each of these rights, please put your initials next to each right. But listen, if you put your initials there, that means that we went over these rights, *and you're saying that you understand the right*. So, here's the first one. You have the right to remain silent. *If you understand that*, please put your initials here, next to that one. [Continue for each of the rights.]

And now I'm asking you, having these rights in mind, do you want to talk to us? ... Do you have any more questions? Okay, then, if you want to talk to us, then sign here. Your signature here means that you understand the rights, and you are choosing to talk to us. ... Okay, now remember, you can talk to us as long as you want. But any time you want to stop, all you have to do is say the magic words.

Okay, here we go.

Appendix C: Excerpt from Transcript of the Interrogation of L

Note: This is an *example* of a *Miranda* warning from an interrogation by the Sarasota Police Department. The Flesch-Kincaid reading level is 3.7.

Detective G: There's a couple things that we want you to know. I understand that since you've been here you've been great. You've been talking to everybody and trying to tell your side of the story. Our job is to gather all of the facts, okay, and try to put this whole picture together. It's kind of like a big jigsaw puzzle. We try to put it together. We had to talk to a bunch of people and get a whole bunch of information and you're kind of the last person on the list to talk to, so we can get your side. But there's some things I want to go over first before we talk about any of that stuff. How old are you?

L: Seventeen.

Detective G: Okay, um, do you go to school?

L: No.

Detective G: ... How far did you go in school? ... What kind of grades did you get? ... Do you drive? ... Did you ever get a driver's license? ... Have you ever been in trouble with the police before? ... Have you ever been to court before? ... Do you think you understand the court system a little bit? ... I'm sure you've watched television and seen different things. When somebody gets arrested for a crime, there's certain rights that they have. I'm gonna go over those rights with you because I want to make sure that you understand them. The first right that they talk about is: I understand that I have a right to remain silent. Do you understand that?

L: Mm-hm [yes].

Detective G: What does that mean?

L: I'm not s'pose to say anything.

Detective G: Is it you're not supposed to say anything or you don't have to say anything?

L: I don't have to say anything.

Detective G: Okay. So if you want to say something you could, but if you didn't want to, you also have that right.

L: Okay.

Detective G: I understand that anything I say can be used against me in a court of law. Do you understand that?

L: Mm-hm [yes].

Detective G: What does that mean?

L: That mean anything I say, that could be brought up again in court.

Detective G: Correct. I understand that I have a right to talk to an attorney and have him or her present with me while I'm being questioned. Do you understand that?

L: Mm-hm [yes].

Detective G: What does that mean to you?

L: That I could hire a lawyer and that, um, discussing it, he be right there.

Detective G: He could be with you, or she could be with you, when you're talking.

L: Mm-hm [yes].

Detective G: Okay. I understand that if I want an attorney and cannot afford one that an attorney will be appointed to represent me free of charge before any questioning. Do you understand that?

L: Mm-hm [yes].

Detective G: What does that mean?

L: Like a public defender.

Detective G: Okay, um, if you came in here today and you had no money to afford, to pay for an attorney, would you still have the right to have one before we talked?

L: Mm. I don't know. Yeah. I don't know.

Detective G: Okay. Let's go over that. It says [pointing to the page] if I want an attorney and cannot afford one that an attorney will be appointed to represent me free of charge before any questioning.

L: Okay.

Detective G: Okay. So in other words if you came in here and you didn't have the money for an attorney but you wanted one, you could get one before you talked. Is that right or wrong?

L: Right.

Detective G: Okay. And feel free to correct me if I say something that's not correct. Okay. I understand that at any time I can decide to exercise these rights and not answer any questions or make any statements. Do you understand that?

L: Yeah.

Detective G: What does that mean?

L: If you ask me a question, that I don't have to answer it.

Detective G: Correct. If we talked for however long we talked and all of a sudden you decided, you know what, I don't want to talk anymore, do you have that right?

L: Mm-hm [yes].

Detective G: Yes you do. Okay. Understanding these rights explained to me, I wish to make a statement at this time. Would you like to talk about what happened today?

[L answers yes or no at that point.]

Appendix D: Oral *Miranda* Warning Checklist

Did the suspect show, in his or her own words, understanding of the following (If so, list page and line numbers from the transcript.):

1) I am/am not free to leave.

No.

2) I do not have to talk to the police.

No.

3) If I do talk to the police, anything I say can be used against me in court.

No.

4) If I do not talk to the police, my choice not to do so cannot be used against me in court.

No.

5) I can talk to an attorney.

No.

6) If I cannot afford an attorney, an attorney will be provided for free.

No.

7) I can talk to an attorney before I decide whether to talk to the police.

No.

8) If I decide to talk to the police, I can talk to an attorney before talking to the police.

No.

9) If I decide to talk to the police, I can talk to an attorney while I talk to the police.

No.

10) If I decide to talk to the police, I do not have to answer every question. I can choose not to answer any question. If I choose not to answer a question, that cannot be used against me in court.

No.

- 11) If I decide to talk to the police, I can decide at any time to stop talking to the police, and the decision to stop talking cannot be used against me in court.

No.

- 12) If I say, "I do not want to talk to you anymore," the police will stop asking me questions and the interview is over.

No.

- 13) If I say, "I want a lawyer," the police will stop asking me questions and the interview is over.

No.

- A) Did the police make any statements before, during, or after advising the suspect of *Miranda* warnings that directly contradict any of the above? (If so, list page and line numbers from the transcript.)

Time	Page	Line	By	Quote	Contradicts

- B) Did the police make any statements before, during, or after advising the suspect of *Miranda* warnings that (perhaps implicitly) may contradict any of the above? (If so, list page and line numbers from the transcript.)

Time	Page	Line	By	Quote	Contradicts
	14	8		It's going to be better in your favor now that we're involved for you to tell me the truth.	3
	22	17		Like I said a while ago, as far as being 100 percent truthful with things, that matters as far as how we look at things.	3
	28	8		Remember I told you about being truthful?	3
	31	23		And remember what I'm telling you about, you know, telling me the truth.	3
	34	3		You have one chance to make it right and one chance to be truthful.	3

	41	25		This is your chance to be truthful.	3
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