

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

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COMPLETE TITLE OF CASE:

IN THE INTEREST OF: J.L.H.

JUVENILE OFFICER

Respondent

v.

J.L.H.,

Appellant

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DOCKET NUMBER WD77850

DATE: March 8, 2016

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Appeal From:

Circuit Court of Jackson County, MO  
The Honorable John M. Torrence, Judge

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Appellate Judges:

Alok Ahuja, Chief Judge, Victor C. Howard, Thomas H. Newton, Lisa White Hardwick, James Edward Welsh, Mark D. Pfeiffer, Karen King Mitchell, Cynthia L. Martin, Gary D. Witt, Anthony R. Gabbert, Judges, and Joseph M. Ellis, Senior Judge.

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Attorneys:

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**MISSOURI APPELLATE COURT OPINION SUMMARY  
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

IN THE INTEREST OF: J.L.H.  
JUVENILE OFFICER, Respondent v. J.L.H., Appellant.

**WD77850**

**Jackson County**

Before En Banc Judges: Alok Ahuja, C. J., Victor Howard, Thomas Newton, Lisa White Hardwick, James Welsh, Mark Pfeiffer, Karen King Mitchell, Cynthia Martin, Gary Witt, Anthony Rex Gabbert, JJ, and Joseph Ellis, Sr. J.

**En Banc Majority Opinion by Judge Thomas Newton:**

Based on a parking attendant's tip, uniformed, off-duty police officers working as security at an outdoor urban shopping and entertainment district began following J.L.H., who had allegedly been seen with a gun. He stood out from his companions because he was wearing a yellow hoodie, an identifying characteristic of the tip. He began walking away from the group after he was spotted by police and started running when they ordered him to stop. He was caught after a chase that ended as he stopped and lay down in response to a command to show his hands. He was handcuffed, frisked, and held by one of the officers. After some five to eight minutes, he was asked, when surrounded by police, where he had thrown the gun. Other officers, who had been searching along the path he had taken, found a gun in the bush where J.L.H. said he had thrown it. The only evidence linking J.L.H. to the handgun was his statement to police, who did not give him the warnings required by section 211.059 of the Juvenile Code before asking where he had thrown it.

Those warnings require police to tell a juvenile in custody that he has the right to remain silent, that anything he says can be used against him, that he has the right to consult with an attorney who will be paid for if he cannot afford one, and that he has the right to have a parent, guardian, or custodian present when questioned.

The juvenile officer filed a motion to modify a prior juvenile disposition involving J.L.H., asserting that the fourteen-year-old had violated a statute that forbids the transfer of a concealable firearm without a permit. J.L.H. asked the juvenile court to suppress his statement (to not allow it to be used against him as evidence during the juvenile-adjudication hearing) about the gun's location because he had not been given his *Miranda* warnings or the warnings required by section 211.059. The juvenile court refused and allowed the statement to be used as evidence during the adjudication hearing. So ruling, the court decided to apply a public-safety exception adopted by the U.S. Supreme Court under the U.S. Constitution's Fifth Amendment, allowing the answers of un-Mirandized adult suspects to be admitted into evidence against them if the circumstances under which they are questioned involve a public-safety risk. The court decided that the evidence showed that J.L.H. would have been found guilty if tried as an adult of violating the concealable firearm law. J.L.H. appeals.

**REVERSED.**

**En Banc Majority holds:**

In his first point, J.L.H. argues court error in overruling his motion to suppress his statement to officers and later admitting that statement over objection because his statement was obtained by police who questioned him while in their custody in violation of section 211.059. We agree.

Federal constitutional law allows the self-incriminating statements of un-Mirandized adult suspects to be used against them in court under the public-safety exception, but section 211.059 must be interpreted independently of federal constitutional decisions. The General Assembly has the authority to provide greater, but not lesser, protections than the federal constitution requires, and it is clear that by enacting warnings requirements for juveniles in 1989 without expressly including the public-safety exception in section 211.059, some five years after the U.S. Supreme Court adopted that exception to the *Miranda* warnings, the General Assembly purposely provided greater protections to juveniles. This broader protection can also be seen in the 211.059 subsection that requires the juvenile in custody to be told that he has the right to have a parent or other friendly adult with him during questioning. Before that subsection was adopted, the Missouri Supreme Court had decided that the constitution did not require the presence of a parent or other friendly adult when a child in custody is questioned. By rejecting this approach, the General Assembly recognized that the Juvenile Code permissibly operates independently of constitutional protections. Our supreme court has similarly recognized in several decisions that where a Juvenile Code provision applies, it is unnecessary to reach related constitutional questions.

Basic principles require that we apply statutes as they are written and not as they might have been written. We cannot incorporate unwritten conditions, exceptions, or limitations into the plain and unambiguous command of section 211.059. We must presume that the General Assembly knew when it enacted the law that a public-safety exception existed to the *Miranda* warnings, and we must presume that the General Assembly does not enact laws without a reason. It did not include the public-safety exception in section 211.059, but it did adopt the *Miranda* warnings for juveniles despite that the Fifth Amendment privilege against self-incrimination had already been recognized by the U.S. Supreme Court as applying to juveniles. Codification of that right would have been an unnecessary act if the State is correct and section 211.059 codified the U.S. Supreme Court's constitutionally based *Miranda* warnings tenets.

Section 211.059 does not contain a provision outlining consequences for its violation, but other sections of the Juvenile Code similarly lack express sanctions. Still, the Missouri Supreme Court has found that failure to strictly and literally comply with sections requiring the presence of a lawyer or parent during certain proceedings constitutes reversible error. The protections of those sections are qualitatively indistinguishable from the protections afforded to juveniles under section 211.059; thus, the juvenile court's denial of J.L.H.'s motion to suppress his statement during an unlawful custodial interrogation constitutes reversible error. Children are different from adults, and our General Assembly has recognized this difference by adopting special procedures to benefit and protect juveniles. We cannot legislate by reading an unexpressed public-safety exception into section 211.059. We grant point one and do not reach points two and three, because we reverse the juvenile court's adjudication and disposition.

### **Concurring Opinion by Chief Judge Alok Ahuja:**

The author concurs in the majority opinion, but writes separately to explain his view that the result would be the same even if the Court were to apply the remedial analysis of the U.S. Supreme Court's Fifth Amendment decisions, as the dissent advocates.

### **Dissenting Opinion by Judge Mark D. Pfeiffer:**

The author would hold that an unwarned statement, made by a juvenile in custody, in response to a limited question asked for the purpose of preserving public safety in the face of exigent circumstances, does not warrant suppression under either *Miranda v. Arizona*, 384 U.S. 436 (1966), or section 211.059.

The prophylactic *Miranda* warnings are not rights protected by the Constitution. They are measures to ensure that the right against compulsory self-incrimination is protected. Accordingly, the failure to administer *Miranda* warnings is not, in itself, a violation of the Fifth Amendment. The Supreme Court in *New York v. Quarles*, 467 U.S. 649, 654 (1984), declared a “public safety” exception to the mandate of *Miranda*. And in *Dickerson v. United States*, the Court noted that modifications to *Miranda*, such as *Quarles*, “are as much a normal part of constitutional law as the original decision.” 530 U.S. 428, 441 (2000).

Accordingly, the decision in *Quarles* precludes J.L.H.’s claim that suppression is warranted under *Miranda*. Though J.L.H. was not given his *Miranda* warnings, despite being in custody when asked about the gun, the officers had every reason to believe that J.L.H. had recently discarded the weapon in a very public location with many children present; thus, the weapon posed an exigent threat to public safety, and the protection afforded by *Miranda* was not required.

In Missouri, section 211.059 contains the mandatory warnings when *juveniles* are taken into custody. Although the statute reflects the same warnings required by the *Miranda* decision, it is broader than *Miranda* in that it also requires a warning that the juvenile “has a right to have a parent, guardian or custodian present during questioning.” Section 211.059, while a prophylactic rule to protect a juvenile’s right against compelled self-incrimination, is independent of the *Miranda* decision and provides no remedy within its statutory framework. J.L.H. sought suppression of his statement as a remedy. Accordingly, the issue is whether the judicially created exclusionary rule should be applied in the circumstances of this case.

The author would evaluate the precedent from the United States Supreme Court instructing how and when courts may use the remedy of suppression and apply that precedent to the factual and procedural circumstances of this case. In doing so, neither purpose of the exclusionary rule (the assurance of reliable evidence and deterrence of official misconduct) would be served by its judge-made remedial application in the context of the purported violation of J.L.H.’s section 211.059 rights. Likewise, neither purpose of the Juvenile Code (the child’s welfare and the best interests of the state) would be served by suppressing J.L.H.’s statement to law enforcement about the location of a gun that posed an exigent threat to the public’s safety.

Accordingly, the exclusionary rule should not be applied as a judge-made remedy—under section 211.059—for J.L.H. in this case.

The author would affirm the juvenile court’s ruling denying J.L.H.’s motion to suppress and would affirm the juvenile court’s adjudication and disposition ruling.

Opinion by Thomas H. Newton, Judge	March 8, 2016
Concurring opinion by Alok Ahuja, Chief Judge	March 8, 2016
Dissenting opinion by Mark D. Pfeiffer, Judge	March 8, 2016

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