

Police Trickery and Juvenile Suspects: *People v. Mays*

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Introduction

The classic criminal interrogation conjures images of a single lamp in an otherwise dark, smoke-filled room where hard-nosed investigators probe the suspect.¹ The suspect sits nervously under a barrage of inquiries, each one more menacing than the last.² The suspect's resolve finally breaks, and the suspect admits to the crime.³ Although this harsh situation does not always occur, less invasive techniques often cause a suspect to surrender to the inherent pressures of police interrogation.⁴

“A confession is a conviction.”⁵ Given the weight of incriminating statements and the intimidating nature of custodial interrogations, courts have striven to protect suspects from improper influences during police questioning.⁶ However, public safety is crucial, and in an effort to serve this end, law enforcement must sometimes aggressively pursue justice.⁷ Courts have struggled with determining the lawful bounds of interrogation practices.⁸ Furthermore, this problem becomes more complex when the interrogated suspect is a juvenile.⁹

¹ See Richard A. Leo, *The Third Degree and the Origins of Psychological Interrogation in the United States*, in 20 PERSPECTIVES IN LAW & PSYCHOLOGY: INTERROGATIONS, CONFESSIONS, AND ENTRAPMENT 37, 48-49 (G. Daniel Lassiter ed., 2004) [hereinafter PERSPECTIVES] (describing general characteristics of traditional incommunicado interrogation techniques).

² *Id.*

³ *Id.*

⁴ See *Miranda v. Arizona*, 384 U.S. 436, 455-57 (1966) (reviewing police interrogation techniques manuals and concluding that, absent physical coercion, custodial interrogation places immense burden on individuals and exploits individual's weaknesses); *Haynes v. Washington*, 373 U.S. 503, 514 (1963) (noting that police officers are able to use basic techniques of interrogation and incommunicado detention to successfully elicit incriminating statements from criminal suspects).

⁵ JOHN HENRY WIGMORE, 3 EVIDENCE IN TRIALS AT COMMON LAW 292-93 (James H. Chadbourne ed., Little, Brown & Co. 1970) (1940) (discussing history of confession law and how seventeenth century evidence treatises considered defendant's confession, absent any evidence, as guilty verdict);

see U.S. CONST. art. III, § 3, cl. 1 (stating that citizens may be convicted of treason through confession of such acts in open court); LAWRENCE S. WRIGHTSMAN & SAUL M. KASSIN, *CONFESSIONS IN THE COURTROOM 1* (1993) (noting that evidence of defendant's confession is highly impactful on jurors in criminal trials); cf. *Brown v. Mississippi*, 297 U.S. 278, 279 (1936) (noting that state trial court convicted defendant of murder and state supreme court affirmed conviction based solely on defendant's confession).

⁶ See *Miranda*, 384 U.S. at 467 (holding that Fifth Amendment protects individuals against self-incrimination during in-custody criminal interrogations and that law enforcement officials must fully honor this constitutional privilege); *Haynes*, 373 U.S. at 513-14 (vacating judgment and holding that defendant involuntarily confessed when defendant signed written confession after police consistently refused to allow suspect to call his wife); *Lynnum v. Illinois*, 372 U.S. 528, 534 (1963) (vacating judgment and holding that police coerced defendant during interrogation when they told suspect that state would rescind welfare payments if she did not cooperate); *People v. Neal*, 72 P.3d 280, 290-91 (Cal. 2003) (holding that police coerced murder suspect to confess by disregarding suspect's *Miranda* invocations and making implicit threats of harsher punishments if suspect did not cooperate); *People v. Lee*, 115 Cal. Rptr. 2d 828, 837-38 (Ct. App. 2002) (holding that police officers coerced suspect during interrogation when officers told suspect that they would prosecute him for murder unless he inculpated another for crime).

⁷ See *Miranda*, 384 U.S. at 478 (noting that Court did not intend to hamper police function of investigating crimes and acknowledging that obtaining confessions are appropriate part of law enforcement); *Haynes*, 373 U.S. at 514-15 (noting that solving crimes is difficult and requires determination and persistence from all police officers who carry duty of law enforcement); *Lee*, 115 Cal. Rptr. 2d at 837 (noting that California courts have long history of recognizing that police deception is necessary in some instances to pursue truth).

⁸ See *Haynes*, 373 U.S. at 515 (noting difficulty in differentiating between impermissible and permissible police conduct during interrogations, especially where courts are uncertain what effects particular psychological techniques may have); *Culombe v. Connecticut*, 367 U.S. 568, 577-84 (1961) (discussing state courts' struggle with balancing need for police interrogation with overreaching by law enforcement during interrogation); *People v. Andersen*, 161 Cal. Rptr. 707, 714 (Ct. App. 1980) (noting difficulty in conducting police officers' duties of law enforcement and solving crimes and defining what is appropriate and inappropriate police conduct during interrogations).

⁹ Compare *In re Gault*, 387 U.S. 1, 55 (1967) (emphasizing that courts should closely scrutinize record when determining whether juvenile suspect voluntarily made incriminating statements to officers during interrogation), and *Gallegos v. Colorado*, 370 U.S. 49, 54-55 (1962)

In *People v. Mays*, the California Court of Appeal considered whether a fake polygraph examination, with fabricated results indicating that the subject failed, constituted coercion.¹⁰ The court ruled that this method of interrogation did not coerce a juvenile suspect to make subsequent incriminating statements.¹¹ This Note argues that this method of police trickery violates due process protections and offends traditional notions of juvenile justice.¹² Part I explores the background of voluntary confessions and the nexus between this body of law, constitutional due process, and juvenile justice.¹³ Part II discusses the factual and procedural background of *People v. Mays* and the appellate court's decision.¹⁴ Part III argues that the *Mays* court erred in its decision.¹⁵ First, the *Mays* court unsatisfactorily applied the totality-of-circumstances test, which courts apply to determine whether a defendant voluntarily confessed.¹⁶ Second, police fabrication of tangible evidence used to elicit incriminating statements from juveniles during criminal interrogations

(holding that juvenile suspect involuntarily confessed to police during interrogation after hours of police questioning), *with Fare v. Michael C.*, 442 U.S. 707, 725-26 (1979) (holding that proper legal analysis refrains from imposing rigid restraints when dealing with juveniles who knowingly and intelligently waive Fifth Amendment rights and subsequently confess), and *People v. Lara*, 432 P.2d 202, 213 (Cal. 1967) (holding that defendant's age is merely one element among others that courts should consider in determining whether juvenile suspect validly confessed during interrogation).

¹⁰ *People v. Mays*, 95 Cal. Rptr. 3d 219, 223 (Ct. App. 2009).

¹¹ *See id.* (holding that fabricated test results indicating that defendant failed fake polygraph test are not coercive).

¹² *See infra* Part III (analyzing *People v. Mays*, state and federal due process protections in criminal interrogations, and historical basis of American juvenile justice system).

¹³ *See infra* Part I (discussing law pertaining to voluntariness of confessions and juvenile due process protections in criminal interrogations).

¹⁴ *See infra* Part II (discussing *Mays* facts, procedural history, holding, and rationale).

¹⁵ *See infra* Part III (analyzing *Mays* decision, due process protections in criminal interrogations, and traditional values of juvenile justice system).

¹⁶ *See infra* Part III.A (discussing how *Mays* court neglected relevant considerations under totality-of-circumstances test when determining whether *Mays* voluntarily confessed).

violates due process.¹⁷ Third, the *Mays* decision offends the juvenile justice system's objective of rehabilitation by condoning interrogation tactics that unfairly burden generally inexperienced and vulnerable individuals.¹⁸

I. Background

California courts apply the totality-of-circumstances test to determine whether a defendant made an incriminating statement voluntarily.¹⁹ The totality-of-circumstances test has evolved over time.²⁰ It currently examines the conditions surrounding the interrogation and the personal characteristics and background of the defendant.²¹ When the defendant is a juvenile, courts highly scrutinize the defendant's characteristics to ensure consistency with due process and traditional notions of juvenile justice.²² The Supreme Courts of the United States and California have held that using involuntary statements during criminal prosecutions denies defendants their federal and state due process protections.²³

¹⁷ See *infra* Part III.B (discussing juveniles' due process protections in context of police interrogations).

¹⁸ See *infra* Part III.C (discussing history of juvenile justice system and characteristics of juveniles that make them susceptible to pressure and intimidation).

¹⁹ See *People v. Massie*, 967 P.2d 29, 46 (Cal. 1998); *People v. Williams*, 941 P.2d 752, 767 (Cal. 1997); *People v. Sanchez*, 451 P.2d 74, 81 (Cal. 1969); *People v. Mays*, 95 Cal. Rptr. 3d 219, 227 (Ct. App. 2009).

²⁰ *Williams*, 941 P.2d at 767; *Sanchez*, 451 P.2d at 81.

²¹ See *Withrow v. Williams*, 507 U.S. 680, 693-94 (1993); *Williams*, 941 P.2d at 767.

²² See *Gallegos v. Colorado*, 370 U.S. 49, 54-55 (1962); *Haley v. Ohio*, 332 U.S. 596, 600-01 (1948); *People v. Neal*, 72 P.3d 280, 292 (Cal. 2003).

²³ See *Miranda v. Arizona*, 384 U.S. 436, 444 (1966) (holding that prosecutors must only use statements made in criminal interrogations that police obtain through procedural safeguards); *Brown v. Mississippi*, 297 U.S. 278, 286 (1936) (holding that using coerced confessions to convict and sentence defendants denies defendants of due process); *People v. Haydel*, 524 P.2d 866, 868 (Cal. 1974) (ruling that using involuntary confessions in criminal prosecutions offends federal and state due process protections).

A. *The Evolution of the Totality-of-Circumstances Test*

In *People v. Sanchez*, the Supreme Court of California established the standard of review for determining the voluntariness of a confession.²⁴ In *Sanchez*, the state prosecuted prison inmate Armando Sanchez for fatally assaulting Ralph Canning with a deadly weapon.²⁵ The critical issue in the case was whether Sanchez had voluntarily confessed to this crime.²⁶

One day, prisoners found Canning dead, and Sanchez told the officer who first arrived at the scene that he had stabbed Canning.²⁷ Thirty minutes later, four officers beat Sanchez and brought him to the prison captain for interrogation.²⁸ Sanchez then confessed that he had stabbed Canning.²⁹ Based on these facts, the trial court concluded that Sanchez had voluntarily confessed.³⁰ Thus, the court convicted Sanchez of assault with a deadly weapon and sentenced Sanchez to death.³¹ Sanchez directly appealed his conviction to the Supreme Court of California.³²

On appeal, the supreme court independently reviewed the record to determine whether the trial court had properly found that Sanchez had voluntarily confessed.³³ The court ruled that when reviewing facts regarding a confession, courts must consider the totality of the circumstances surrounding the

²⁴ See *Sanchez*, 451 P.2d at 81.

²⁵ *Id.* at 74.

²⁶ See *id.* at 75.

²⁷ *Id.* at 76.

²⁸ *Id.* at 76, 78.

²⁹ *Id.* at 76-77.

³⁰ *Id.* at 80.

³¹ *Id.* at 75, 80.

³² *Id.* at 75.

³³ *Id.* at 80 (citing *Payne v. Arkansas*, 356 U.S. 560, 562 (1958); *Stroble v. California*, 343 U.S. 181, 190 (1952); *Malinski v. New York*, 324 U.S. 401, 404 (1945); *Ashcraft v. Tennessee*, 322 U.S. 143, 147-48 (1944); *Lisenba v. California*, 314 U.S. 219, 237-38 (1941); *Chambers v. Florida*, 309 U.S. 227, 228-29 (1940); *Brown v. Mississippi*, 297 U.S. 278, 287 (1936)) (explaining that Supreme Court of California borrows this practice of independent review from United States Supreme Court).

confession.³⁴ The court provided four factors that appellate courts should consider when determining whether a defendant confessed through rational intellect and free will.³⁵ First, courts should consider the defendant's level of intelligence.³⁶ Second, courts should consider any psychological pressure or physical abuse interrogators inflicted on the defendant.³⁷ Third, courts should consider the presence of any previous coerced confessions.³⁸ Fourth, courts should consider any breaks between the interrogator's application of coercion and the defendant's confession.³⁹

In *Sanchez*, the court took into account these four factors and reasoned that the case's uncontradicted facts showed that the officers coerced Sanchez into confessing.⁴⁰ The court concluded that the prosecution's use of Sanchez's coerced confession at trial deprived Sanchez of his Fourteenth Amendment due process protections.⁴¹ Therefore, the supreme court reversed the trial court's decision.⁴² They held that the prison guards coerced Sanchez to confess, thus rendering his confession involuntary.⁴³

³⁴ *Sanchez*, 451 P.2d at 81; see *Greenwald v. Wisconsin*, 390 U.S. 519, 521 (1968); *Reck v. Pate*, 367 U.S. 433, 440 (1961); *Payne v. Arkansas*, 356 U.S. 560, 567 (1958); *Fikes v. Alabama*, 352 U.S. 191, 197 (1957).

³⁵ *Sanchez*, 451 P.2d at 81.

³⁶ *Id.*; see *Payne*, 356 U.S. at 567; *Mallory v. United States*, 354 U.S. 449, 455 (1957); *Fikes*, 352 U.S. at 193; *People v. Lara*, 432 P.2d 202, 217 (Cal. 1967).

³⁷ *Sanchez*, 451 P.2d at 81; see *People v. Jones*, 150 P.2d 801, 805 (Cal. 1944); *People v. Siemsen*, 95 P. 863, 866 (Cal. 1908).

³⁸ *Sanchez*, 451 P.2d at 81; see *Leyra v. Denno*, 347 U.S. 556, 561 (1954); *People v. Brommel*, 364 P.2d 845, 848 (Cal. 1961); *Jones*, 150 P.2d at 805; *People v. Johnson*, 41 Cal. 452, 455 (1871).

³⁹ *Sanchez*, 451 P.2d at 81; see *Brooks v. Florida*, 389 U.S. 413, 414-15 (1967); *Clewis v. Texas*, 386 U.S. 707, 710 (1967); *Leyra*, 347 U.S. at 561; *United States v. Bayer*, 331 U.S. 532, 540-41 (1947).

⁴⁰ *Sanchez*, 451 P.2d at 81 (noting officers' physical abuse, Sanchez's elementary school education, and Sanchez's below-average mental level and intelligence).

⁴¹ *Id.* at 83.

⁴² *Id.*

⁴³ *Id.*

In *Withrow v. Williams*, the United States Supreme Court affirmed the totality-of-circumstances approach, drawing from the Court's jurisprudence concerning confessions.⁴⁴ In *Withrow*, the Court reviewed the district court's holding that police officers' promises of leniency proffered during an interrogation rendered the defendant's subsequent confession involuntary.⁴⁵ The Court ultimately reversed the district court's decision for ruling on a non-pleaded issue, but also ruled that the totality-of-circumstances test applies to voluntariness claims.⁴⁶

In *People v. Williams*, the Supreme Court of California furthered the totality-of-circumstances approach by adopting considerations specified by the United States Supreme Court in *Withrow*.⁴⁷ In *Williams*, the Supreme Court of California ruled that an admission is involuntary if it is the product of coercive police activity.⁴⁸ The *Williams* court noted that trial courts must exclude from the record statements they deem involuntary.⁴⁹ In *Williams*, the state prosecuted Darren Williams for first-degree murder for aiding and abetting a killer who murdered four people.⁵⁰ Before trial, Williams moved to suppress a tape-recorded interrogation containing his admission that he was present during the murders.⁵¹ Williams argued that detectives had coerced this incriminating admission because they promised that the district attorney

⁴⁴ *Withrow v. Williams*, 507 U.S. 680, 693-94 (1993) (drawing from Supreme Court cases including: *Colorado v. Connelly*, 479 U.S. 157, 167 (1986); *Greenwald v. Wisconsin*, 390 U.S. 519, 520-21 (1968); *Clewis*, 386 U.S. at 712; *Reck v. Pate*, 367 U.S. 433, 441 (1961); *Fikes v. Alabama*, 352 U.S. 191, 196 (1957); *Leyra*, 347 U.S. at 561; *Haley v. Ohio*, 332 U.S. 596, 599-601 (1948); and *Ashcraft v. Tennessee*, 322 U.S. 143, 153-54 (1944)).

⁴⁵ *Id.* at 681.

⁴⁶ *Id.* at 693-94, 696-97 (explaining that voluntariness issue was beyond scope of Williams's habeas claim, which was limited to issue of admissibility of incriminating statements).

⁴⁷ *See id.* at 693-94; *People v. Williams*, 941 P.2d 752, 767 (Cal. 1997).

⁴⁸ *Williams*, 941 P.2d at 766; see *Colorado v. Connelly*, 479 U.S. 157, 167 (1986); *People v. Benson*, 802 P.2d 330, 343 (Cal. 1990).

⁴⁹ *Williams*, 941 P.2d at 766.

⁵⁰ *Id.* at 759-60.

⁵¹ *Id.* at 766.

would not seek the death penalty if he cooperated.⁵² However, the trial court denied Williams's motion to suppress the tape recordings and ruled that Williams had voluntarily admitted that he was at the murder scene.⁵³ The jury convicted Williams of four counts of first-degree murder, and the court sentenced him to death.⁵⁴

Williams's case obtained an automatic appeal to the Supreme Court of California because of the trial court's judgment of death.⁵⁵ In its review, the court applied the totality-of-circumstances test adopted from *Withrow*.⁵⁶ The court noted that courts must apply the totality-of-circumstances test when the voluntariness of the defendant's admission or confession is at issue.⁵⁷ The court stated that the totality-of-circumstances test considers the presence or absence of police coercion, and the length, location, and continuity of the interrogation.⁵⁸ Additionally, the court noted that the defendant's maturity, education, physical condition, and mental health are also relevant considerations.⁵⁹ After reviewing these factors, the court held that the record disproved Williams's claims of coercion and affirmed the trial court's decision.⁶⁰ Therefore, when courts apply the totality-of-circumstances test, they examine the conditions surrounding the interrogation and scrutinize the defendant's background, especially in cases involving juveniles.⁶¹

⁵² *Id.*

⁵³ *Id.* at 765-66.

⁵⁴ *Id.* at 759.

⁵⁵ *Id.* at 759 (citing CAL. PENAL CODE § 1239(b) (West 1989)) (stating that, under California law, judgments of death prompt automatic appeal).

⁵⁶ *Id.* at 767 (citing *Withrow v. Williams*, 507 U.S. 680, 693-94 (1993)).

⁵⁷ *Id.*

⁵⁸ *Id.* at 767 (citing *Withrow v. Williams*, 507 U.S. 680, 693-94 (1993)).

⁵⁹ *Id.* (citing *Withrow v. Williams*, 507 U.S. 680, 693-94 (1993)).

⁶⁰ *See id.*

⁶¹ *See Gallegos v. Colorado*, 370 U.S. 49, 54-55 (1962); *People v. Neal*, 72 P.3d 280, 292 (Cal. 2003); *Williams*, 941 P.2d at 767.

B. The Special Status of Minors Under the Law

Courts carefully consider the defendant's characteristics and background when determining whether a juvenile has voluntarily confessed to a crime.⁶² *Haley v. Ohio* is the leading United States Supreme Court case concerning criminal interrogations of juvenile suspects.⁶³ In 1945, police arrested fifteen-year-old John Haley on suspicions of robbery and murder.⁶⁴ Without advising him of his rights, five police officers interrogated Haley for five hours, after which he confessed to the crime.⁶⁵ Police prohibited Haley from meeting with his attorney until three days after the interrogation, and prevented him from seeing his mother until five days after.⁶⁶

At trial, the court admitted Haley's confession into evidence, convicted Haley of murder, and sentenced him to life imprisonment.⁶⁷ The Court of Appeals of Ohio affirmed, and the Ohio Supreme Court dismissed the appeal for lacking

⁶² See *Gallegos*, 370 U.S. at 54-55; *Haley v. Ohio*, 332 U.S. 596, 600-01 (1948); *Neal*, 72 P.3d at 292.

⁶³ See *Haley*, 332 U.S. at 597 (explaining that Court granted certiorari to determine whether *Haley* was consistent with cases addressing voluntary confessions of adults); Michael Wayne Brooks, *Kids Waiving Goodbye to Their Rights: An Argument Against Juveniles' Ability to Waive Their Right to Remain Silent During Police Interrogations*, 13 GEO. MASON L. REV. 219, 225 (2004); Hillary B. Farber, *The Role of the Parent/Guardian in Juvenile Custodial Interrogations: Friend or Foe?*, 41 AM. CRIM. L. REV. 1277, 1282-84 (2004); Paul Marcus, *It's Not Just About Miranda: Determining the Voluntariness of Confessions in Criminal Prosecutions*, 40 VAL. U. L. REV. 601, 628 (2006) (explaining that among cases concerning voluntariness of confessions, *Haley* sets United States Supreme Court precedent with respect to suspect's age); Steven Penney, *Theories of Confession Admissibility: A Historical View*, 25 AM. J. CRIM. L. 309, 344 (1998).

⁶⁴ *Haley*, 332 U.S. at 597.

⁶⁵ *Id.* at 598.

⁶⁶ *Id.* at 600.

⁶⁷ *Id.* at 597-99.

a constitutional issue.⁶⁸ However, the United States Supreme Court granted certiorari and reversed.⁶⁹

The *Haley* Court explained that children become victims of fear and panic when interrogated alone by groups of police officers.⁷⁰ The Court noted that *Haley* required counsel and support during such an interrogation to ensure appropriate legal safeguards.⁷¹ Therefore, the Court reversed *Haley*'s conviction, holding that the police officers' interrogation methods had unconstitutionally denied *Haley* of his due process protections.⁷²

The United States Supreme Court expanded *Haley*'s protections in *Gallegos v. Colorado* by including the Fifth Amendment right against compulsory self-incrimination as an additional basis for maintaining procedural due process protections.⁷³ In *Gallegos*, fourteen-year-old Robert Gallegos confessed to an assault and robbery immediately upon his arrest.⁷⁴ The victim eventually died from injuries he sustained in the assault, and the state charged Gallegos with murder.⁷⁵ Following his arrest, police officers held Gallegos for five days without allowing him to see a lawyer, and Gallegos eventually signed a written confession.⁷⁶

Based on his confession, a jury convicted Gallegos of first-degree murder.⁷⁷ The Supreme Court of Colorado

⁶⁸ *Id.* at 597.

⁶⁹ *Id.*

⁷⁰ *See id.* at 599-600 (explaining that fifteen-year-olds cannot contend with waves of questioning by multiple officers beginning from night until early morning).

⁷¹ *Id.*

⁷² *Id.*

⁷³ *See Gallegos v. Colorado*, 370 U.S. 49, 50-54 (1962) (citing *Haley*, 332 U.S. at 599-600) (stating that suspect at issue in *Gallegos* is similar to suspect at issue in *Haley* and holding in manner consistent with *Haley* decision).

⁷⁴ *Id.* at 50.

⁷⁵ *Id.*

⁷⁶ *Id.* at 49-50.

⁷⁷ *Id.*

affirmed.⁷⁸ However, similar to *Haley*, the United States Supreme Court granted certiorari and reversed.⁷⁹

In its opinion, the Court ruled that due process condemns this manner of obtaining of confessions based on two principles.⁸⁰ First, the Fourteenth Amendment mandates that a court may deprive a person of liberty only where the conviction is consistent with procedural safeguards.⁸¹ Second, the Fifth Amendment prohibits compulsory self-incrimination.⁸² The *Gallegos* Court, following *Haley*, held that depriving Gallegos contact with his mother and attorney violated his procedural due process protections.⁸³ The Court reasoned that juveniles, even more so than adults, need legal advice to understand a confession's consequences.⁸⁴ As such, the Court held that the police had obtained Gallegos's written confession in violation of his constitutional due process protection against compulsory self-incrimination.⁸⁵ Therefore, the Court reversed his conviction.⁸⁶

The Supreme Court of California further developed California's doctrine regarding the voluntariness of defendants' incriminating statements in *People v. Neal*.⁸⁷ At trial, the jury convicted Kenneth Ray Neal of murdering Donald Collins.⁸⁸ Neal lived with Collins.⁸⁹ One evening while Collins watched television, Neal approached Collins from behind and strangled him until he died.⁹⁰ Following his

⁷⁸ *Id.*

⁷⁹ *Id.* at 49, 55.

⁸⁰ *Id.* at 51.

⁸¹ *Id.* (quoting *Chambers v. Florida*, 309 U.S. 227, 237 (1940)).

⁸² *Id.* at 51-52.

⁸³ *See id.* at 53-54 (noting similarities in circumstances between interrogation in *Haley* and interrogation at issue here).

⁸⁴ *See id.* at 54 (contrasting fourteen-year-old Gallegos with adult that is knowledgeable of consequences of admissions).

⁸⁵ *See id.* at 54-55 (explaining that allowing Gallegos's conviction to stand would treat him as if he had no constitutional rights).

⁸⁶ *Id.* at 55.

⁸⁷ *People v. Neal*, 72 P.3d 280, 292 (Cal. 2003).

⁸⁸ *Id.* at 283.

⁸⁹ *Id.*

⁹⁰ *Id.*

arrest, officers interrogated Neal about the murder, and he confessed twice.⁹¹

Before trial, Neal moved to suppress his confessions, alleging that police officers had coerced him to confess during the interrogation.⁹² The trial court denied this motion, and prosecutors introduced Neal's confessions at trial.⁹³ The jury found Neal guilty, and the court convicted him of second-degree murder.⁹⁴ The appellate court affirmed Neal's conviction, agreeing with the trial court that he had voluntarily confessed.⁹⁵

On Neal's second appeal, the Supreme Court of California applied the totality-of-circumstances test to determine the voluntariness of his confessions.⁹⁶ The supreme court adopted the view that courts must evaluate certain characteristics of defendants when considering the voluntariness of incriminating statements.⁹⁷ These characteristics include the defendant's age, background, experience, intelligence, and education.⁹⁸ Contrasting with the lower courts, the supreme court considered all the circumstances surrounding Neal's confessions, held that Neal had involuntarily confessed, and reversed Neal's conviction.⁹⁹ Where courts reapply the totality-of-circumstances test and determine that the defendant had involuntarily confessed, due process renders such confessions inadmissible.¹⁰⁰

⁹¹ *Id.* at 282.

⁹² *People v. Neal*, No. F036055, 2002 WL 491443, at *1 (Cal. Ct. App. Apr. 2, 2002), *rev'd*, 72 P.3d 280 (Cal. 2003).

⁹³ *Neal*, 72 P.3d at 288.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.* at 290.

⁹⁷ *Id.* at 292; *see Fare v. Michael C.*, 442 U.S. 707, 725 (1979).

⁹⁸ *Neal*, 72 P.3d at 292.

⁹⁹ *Id.* at 282.

¹⁰⁰ *Jackson v. Denno*, 378 U.S. 368, 385-86 (1964); *Gallegos v. Colorado*, 370 U.S. 49, 54-55 (1962); *Haley v. Ohio*, 332 U.S. 596, 600-01 (1948); *Brown v. Mississippi*, 297 U.S. 278, 285-86 (1936); *Neal*, 72 P.3d at 288-89.

C. Due Process Protections

Federal and state constitutional due process affords protections to defendants during criminal interrogation.¹⁰¹ Courts have deemed criminal interrogations inherently coercive in nature, and, thus, scrutinize methods of police trickery employed in interrogations.¹⁰² *Chambers v. Florida* exemplifies the United States Supreme Court's due process concerns regarding criminal interrogations.¹⁰³

In *Chambers*, the Supreme Court considered whether officers deprived four murder suspects' due process safeguards during an interrogation.¹⁰⁴ In 1939, the trial court sentenced four African-American men to death for the murder of an elderly Caucasian man.¹⁰⁵ On appeal, the Supreme Court held that the police officers did not afford the four suspects their due process rights.¹⁰⁶ During the interrogation, police threatened the suspects with mob violence and questioned them for over a week before the suspects confessed to the murder.¹⁰⁷ The Court ruled that the Due Process Clause of the Fourteenth Amendment guarantees procedural standards

¹⁰¹ U.S. CONST. amend. XIV, § 1 (stating that no State can deprive liberty without due process of law); CAL. CONST. art. I, § 7(a) (stating that persons may not be deprived of property without due process of law); see *Brown*, 297 U.S. at 285-86 (holding that confessions obtained by coercion, brutality, or violence, used as basis for conviction and sentence, constitutes denial of due process under Fourteenth Amendment); *People v. Weaver*, 29 P.3d 103, 126 (Cal. 2001) (ruling that confessions deemed involuntary under totality-of-circumstances test are inadmissible under due process clauses of both federal and state constitutions).

¹⁰² See *Miranda v. Arizona*, 384 U.S. 436, 457-58 (1966) (noting high potential for coercion in criminal interrogations because of inherently intimidating environment and suspect's unfamiliarity with setting); *Orantes-Hernandez v. Smith*, 541 F. Supp. 351, 373 (C.D. Cal. 1982); *In re Deborah C.*, 635 P.2d 446, 449 (Cal. 1981).

¹⁰³ See *Miranda*, 384 U.S. at 446 n.6; *Jackson*, 378 U.S. at 408; *Chambers v. Florida*, 309 U.S. 227, 235-36 (1940) (explaining that framers of Constitution intended that due process provision of Fourteenth Amendment would guarantee suspects safeguards in criminal interrogations).

¹⁰⁴ *Chambers*, 309 U.S. at 227.

¹⁰⁵ *Id.* at 227 n.2.

¹⁰⁶ *Id.* at 242.

¹⁰⁷ *Id.* at 229-35.

to protect suspected criminals from powerful authorities.¹⁰⁸ The Court determined that the method in which the officers obtained the defendants' confessions offended due process, and overturned the four convictions.¹⁰⁹

Similarly, courts have held that using fabricated evidence of a suspect's guilt during interrogations is per se coercive and violates a suspect's due process protections.¹¹⁰ For example, in *State v. Cayward*, police officers interrogated nineteen-year-old Paul Cayward for sexually assaulting his five-year-old niece.¹¹¹ Police officers fabricated two scientific reports indicating that semen found on the victim's undergarments belonged to Cayward.¹¹² Police showed these reports to Cayward during the interrogation to induce a confession, and Cayward eventually succumbed.¹¹³ At an evidentiary hearing, the trial court suppressed Cayward's confession, finding that the practice of doctoring such evidence violated Cayward's constitutional due process rights.¹¹⁴ The state appealed, but the appellate court affirmed, stating that fabricated tangible evidence used in interrogations violates due process protections.¹¹⁵ In contrast, the *Mays* court declined to apply a rule deeming fabricated tangible evidence per se coercive.¹¹⁶

¹⁰⁸ *Id.* at 236.

¹⁰⁹ *Id.* at 241-42.

¹¹⁰ *State v. Cayward*, 552 So. 2d 971, 972 (Fla. Dist. Ct. App. 1989); *see State v. Patton*, 826 A.2d 783, 791-92 (N.J. Super. Ct. App. Div. 2003) (discussing police-fabricated audiotape containing fictitious information from informant indicating that victim told informant that she and defendant argued prior to her murder); Marcus, *supra* note 63, at 614.

¹¹¹ *Cayward*, 552 So. 2d at 972.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.* at 974.

¹¹⁶ *See People v. Mays*, 95 Cal. Rptr. 3d 219, 229 (Ct. App. 2009) (explaining that courts are capable of determining voluntariness of confessions without adopting bright-line rule establishing that fabricated tangible evidence is coercive per se).

II. *People v. Mays*: Police-Fabricated Evidence and the Subsequent Incriminating Statements of Juvenile Suspects

In *People v. Mays*, state prosecutors charged Darius Mays with the murder of Sheppard Scott.¹¹⁷ On the day of the murder, Scott and his girlfriend, Yalandria Narcisse, were in a car ordering food at a fast-food drive-through in Sacramento, California.¹¹⁸ Meanwhile, two males, one wearing an orange jacket, the other wearing a grey sweatshirt, were standing outside an adjacent convenience store.¹¹⁹ These males approached Scott's vehicle and inquired if he had any marijuana.¹²⁰ The conversation between Scott and the two males briefly escalated when Scott said no, got out of the car, and declared gang affiliation.¹²¹ Scott eventually returned to his vehicle, but as he drove away, someone yelled, causing Scott to stop the car.¹²² The grey-clad male approached Scott's vehicle to apologize, reached in to shake Scott's hand, and Scott reciprocated.¹²³ The grey-clad male then pulled out a gun, shot Scott six times, and ran away with the orange-clad male.¹²⁴

Following this incident, police officers questioned Mays about his possible involvement in Scott's homicide.¹²⁵ During the interrogation, Mays requested to take a polygraph test.¹²⁶ However, the detectives decided to administer a fake polygraph test.¹²⁷ The police officers applied wires to Mays's body, and an officer impersonated a polygraph examiner by asking Mays questions regarding the Scott homicide.¹²⁸ Before, during, and immediately after this fake polygraph

¹¹⁷ *Id.* at 223.

¹¹⁸ *Id.*

¹¹⁹ *Id.* at 223-24.

¹²⁰ *Id.* at 223.

¹²¹ *Id.*

¹²² *Id.* at 223-24.

¹²³ *Id.* at 224.

¹²⁴ *Id.*

¹²⁵ *Id.* at 222.

¹²⁶ *Id.* at 226.

¹²⁷ *Id.*

¹²⁸ *Id.*

examination, Mays denied any involvement in the homicide.¹²⁹ After the fake polygraph examination, police officers presented fabricated test results to Mays.¹³⁰ The officers told Mays that he had failed the test and suggested that the results were probably due to him feeling guilty about being present at Scott's murder.¹³¹ Shortly after this remark, Mays did not confess to the homicide, but he did admit that he was present at the scene of the crime.¹³² At the time of the interrogation, Mays was seventeen years old and without legal counsel.¹³³

In addition to Mays's confession, the trial court examined circumstantial evidence.¹³⁴ Surveillance cameras at the scene captured images of the grey- and orange-clad males, but the images were unclear, and did not capture the shooting.¹³⁵ Additionally, Narcisse and two other eyewitnesses stated that the shooter fired the gun with his right hand.¹³⁶ Notably, Mays presented evidence that he is left-handed.¹³⁷ Furthermore, Narcisse stated that the shooter was about five-feet one-inch tall and had gold teeth.¹³⁸ Mays presented evidence that he is five-feet seven-inches tall and does not have gold teeth.¹³⁹ Narcisse also identified the shooter from a book of mug shots, but did not identify Mays.¹⁴⁰ In a subsequent inquiry, police showed Narcisse a photo line-up and Narcisse focused on Mays.¹⁴¹ Of the three

¹²⁹ *Id.* at 229.

¹³⁰ *Id.* at 226.

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.* at 223 (noting that Mays's age precludes death sentence); Appellant's Petition for Review at *8, *People v. Mays*, 95 Cal. Rptr. 3d 219 (Ct. App. 2009) (No. S173629), 2009 WL 1968261 (June 9, 2009).

¹³⁴ *See Mays*, 95 Cal. Rptr. 3d at 224-27 (detailing eyewitness testimony).

¹³⁵ *Id.* at 224.

¹³⁶ *Id.* (detailing testimony from two eyewitnesses who were both at crime scene and saw African American male firing into Scott's vehicle with his right hand).

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.* at 226.

¹⁴¹ *Id.*

other eyewitnesses, two provided a somewhat different description of the shooter, and only one identified Mays as the possible shooter.¹⁴²

Following its consideration of Mays' admission and the parties' evidence, the jury found Mays guilty of first-degree murder.¹⁴³ The trial court sentenced Mays to life in prison without the possibility of parole, plus twenty-five years to life for an additional gun charge.¹⁴⁴ Mays appealed his conviction, arguing that the police had coerced him into making incriminating statements by faking a polygraph test and fabricating test results.¹⁴⁵

On appeal, Mays argued that the police officers' actions constituted coercion, rendering his statements involuntary.¹⁴⁶ The appellate court disagreed, reasoning that the mock polygraph was unlikely to produce a false confession because the police said nothing about the test's accuracy.¹⁴⁷ The court added that the police officers' trickery was not coercive because Mays never admitted that he was involved in the crime.¹⁴⁸ The court noted that Mays only admitted to being present at the scene of the crime, demonstrating that the deception did not overpower Mays's will.¹⁴⁹ Therefore, the appellate court affirmed the trial court's decision and held that Mays voluntarily made his incriminating statements.¹⁵⁰

¹⁴² See *id.* at 224-25 (detailing testimony from three eyewitness, two of which could not identify shooter when police presented them with photographic lineup).

¹⁴³ *Id.* at 227.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.* at 222-23.

¹⁴⁶ *Id.* at 223, 229.

¹⁴⁷ *Id.* at 229.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* at 230.

III. Analysis

The main issue in *Mays* was the impact of police use of fabricated documents to elicit incriminating statements from a juvenile criminal suspect.¹⁵¹ In *Mays*, the California Court of Appeal erred by holding that the method of trickery police employed in Mays's interrogation was not coercive.¹⁵² First, the court inadequately applied the totality-of-circumstances test and concentrated on an unnecessarily narrow set of concerns.¹⁵³ Second, the court failed to recognize that using fabricated evidence of guilt in the criminal interrogation of a juvenile offends due process.¹⁵⁴ Third, the court's approval of fabricated evidence of guilt in the criminal interrogation of a juvenile is inconsistent with traditional notions of juvenile justice.¹⁵⁵

A. *The Court of Appeal Inadequately Applied the Totality-of-Circumstances Test*

In *People v. Williams*, the Supreme Court of California provided the framework for analyzing the voluntariness of admissions in interrogations.¹⁵⁶ The court ruled that an admission is involuntary if it is the product of coercive police

¹⁵¹ See *id.* at 223 (noting that Mays argued that court erred by admitting Mays's incriminating statements because police coerced him through use of fake polygraph test and fabricated results); *cf.* *State v. Cayward*, 552 So. 2d 971, 973-74 (Fla. Dist. Ct. App. 1989) (holding that police use of fabricated evidence during interrogation to elicit confessions violates due process); *State v. Patton*, 826 A.2d 783, 802 (N.J. Super. Ct. App. Div. 2003) (holding that police use of fabricated evidence to elicit confessions from criminal suspects violates due process).

¹⁵² See *infra* Part III (analyzing *Mays* decision, due process protections with respect to juvenile interrogations, and traditional notions of juvenile justice).

¹⁵³ See *infra* Part III.A (analyzing *Mays* court's application of totality-of-circumstances test).

¹⁵⁴ See *infra* Part III.B (analyzing basis for due process protections of juveniles during interrogation).

¹⁵⁵ See *infra* Part III.C (arguing that police use of fabricated tangible evidence to elicit incriminating statements from juveniles offends rehabilitative goal of juvenile justice system).

¹⁵⁶ *People v. Williams*, 941 P.2d 752, 766-67 (Cal. 1997); see *People v. Massie*, 967 P.2d 29, 46 (Cal. 1998); *Mays*, 95 Cal. Rptr. 3d at 227.

activity.¹⁵⁷ Upon the direction of the United States Supreme Court, the *Williams* court adopted the totality-of-circumstances test in determining the voluntariness of a defendant's incriminating statement.¹⁵⁸ The totality-of-circumstances test considers the presence or absence of police coercion, and the context of the interrogation, including its length, location, and continuity.¹⁵⁹ The test also considers the defendant's maturity, education, physical condition, and mental health.¹⁶⁰

The issue in *Mays* was whether Mays made involuntary incriminating statements because of police coercion in using the fake polygraph test and its fabricated results.¹⁶¹ The *Mays* court considered the element of police coercion in its discussion regarding the fake polygraph test and fabricated results.¹⁶² However, the court overlooked

¹⁵⁷ *Williams*, 941 P.2d at 766; see *Colorado v. Connelly*, 479 U.S. 157, 167 (1986); *People v. Benson*, 802 P.2d 330, 343 (Cal. 1990).

¹⁵⁸ *Williams*, 941 P.2d at 767; see *Withrow v. Williams*, 507 U.S. 680, 693-94 (1993); *People v. Bradford*, 929 P.2d 544, 566 (Cal. 1997).

¹⁵⁹ *Withrow*, 507 U.S. at 693-94; *Williams*, 941 P.2d at 767; see *Connelly*, 479 U.S. at 167; *Reck v. Pate*, 367 U.S. 433, 441 (1961); *Leyra v. Denno*, 347 U.S. 556, 561 (1954); *Ashcraft v. Tennessee*, 322 U.S. 143, 153-54 (1944).

¹⁶⁰ *Withrow*, 507 U.S. at 693-94; *Williams*, 941 P.2d at 767; see *Greenwald v. Wisconsin*, 390 U.S. 519, 521 (1968) (per curiam); *Clewis v. Texas*, 386 U.S. 707, 712 (1967); *Fikes v. Alabama*, 352 U.S. 191, 196 (1957); *Haley v. Ohio*, 332 U.S. 596, 599-601 (1948).

¹⁶¹ *Mays*, 95 Cal. Rptr. 3d at 223, 239; cf. *People v. Lee*, 115 Cal. Rptr. 2d 828, 835-36 (Ct. App. 2002) (considering whether defendant voluntarily confessed after police told defendant that polygraph examination results and other evidence linked defendant to homicide at issue); *In re Garth D.*, 127 Cal. Rptr. 881, 887-88 (Ct. App. 1976) (considering whether police statements to sixteen-year-old suspect suggesting that taking polygraph examination might exonerate him from crime constituted coercion).

¹⁶² See *Mays*, 95 Cal. Rptr. 3d at 227-30 (discussing whether police administration of fake polygraph test and fabrication of results constituted police coercion); cf. *Wyrick v. Fields*, 459 U.S. 42, 48-49 (1982) (reviewing circuit court's holding that presenting polygraph results to criminal suspect during interrogation is inherently coercive); *United States v. Haswood*, 350 F.3d 1024, 1027-29 (9th Cir. 2003) (discussing whether authentic polygraph examination initiated by police constituted police coercion when defendant subsequently confessed after failing examination).

relevant considerations under the totality-of-circumstances test, including Mays's maturity, education, and mental state, as well as the interrogation's length and location.¹⁶³

With respect to his maturity, the court was aware that Mays was seventeen years old.¹⁶⁴ Yet, the court never considered his age or maturity in its discussion of the context surrounding the interrogation.¹⁶⁵ Instead, the court mentioned that Mays sold drugs, was a gang member, and had prior juvenile court visits for absconding from police officers while

¹⁶³ See *Mays*, 95 Cal. Rptr. 3d at 227-30 (discussing voluntariness of Mays's incriminating statements made after police administered mock polygraph and produced fabricated results, but overlooking relevant considerations under totality-of-circumstances test). *But cf.* *People v. Richardson*, 183 P.3d 1146, 1167-69 (Cal. 2008) (considering police deception, interrogation length and location, and defendant's intelligence in determining whether defendant voluntarily confessed after requesting polygraph examination); *In re Garth D.*, 127 Cal. Rptr. at 886-87 (explaining that although no single factor in totality-of-circumstances test renders confession involuntary, defendant's juvenile status warrants sharp scrutiny).

¹⁶⁴ See *Mays*, 95 Cal. Rptr. 3d at 223 (noting that Mays's criminal charges warranted death penalty, but that his age precluded that punishment). *But cf.* *Haley*, 332 U.S. at 599-600 (discussing importance of considering juvenile defendant's age in determining whether defendant voluntarily confessed during interrogation); *In re Shawn D.*, 24 Cal. Rptr. 2d 395, 212 (Ct. App. 1993) (considering that suspect was sixteen years old at time of interrogation in discussion regarding whether suspect voluntarily confessed).

¹⁶⁵ See *Mays*, 95 Cal. Rptr. 3d at 227-30 (determining whether Mays voluntarily made incriminating statements without considering his age or maturity). *But cf.* *Yarborough v. Alvarado*, 541 U.S. 652, 673-75 (2004) (Breyer, J., dissenting) (arguing that age is highly relevant factor in determining whether suspect voluntarily agreed to police interrogation); *Withrow*, 507 U.S. at 693 (noting that defendant's maturity is relevant when determining whether defendant voluntarily confessed); *Fare v. Michael C.*, 442 U.S. 707, 725 (1979) (noting that totality-of-circumstances approach mandates inquiry into all circumstances surrounding interrogation including juvenile's age); *In re Gault*, 387 U.S. 1, 45 (1967) (noting that Court has emphasized that confessions and admissions of juveniles require special caution); *In re Aven S.*, 1 Cal. Rptr. 2d 655, 660 (Ct. App. 1991) (holding that youth of suspect demands that courts carefully scrutinize entire record for evidence of coercion).

driving.¹⁶⁶ As seen in *Williams*, however, such factors are irrelevant considerations when analyzing a suspect's age and maturity under the totality-of-circumstances test.¹⁶⁷

Furthermore, the *Mays* court failed to consider Mays's intelligence and level of education.¹⁶⁸ Mays was a special education student who attended a school in juvenile hall.¹⁶⁹ Notably, Mays never graduated high school.¹⁷⁰ Additionally,

¹⁶⁶ *Mays*, 95 Cal. Rptr. 3d at 226; see *In re Eduardo G.*, 166 Cal. Rptr. 873, 879-80 (Ct. App. 1980) (noting that prior exposure to police and courts may be relevant in determining whether juvenile defendant voluntarily confessed during police interrogation). *But cf. In re Aven S.*, 1 Cal. Rptr. 2d at 660 (analyzing whether juvenile voluntarily confessed during interrogation regarding murder, but noting that juvenile's experience in justice system carried no weight in totality-of-circumstances analysis).

¹⁶⁷ See *People v. Williams*, 941 P.2d 752, 767 (Cal. 1997) (listing elements to consider under totality-of-circumstances test); cf. *Yarborough*, 541 U.S. at 668-69 (holding that juvenile defendant's prior history with law enforcement is irrelevant when determining whether juvenile was in custody for *Miranda* purposes). *But cf. Mays*, 95 Cal. Rptr. 3d at 226 (reciting trial testimony which revealed that Mays had prior history with Juvenile Court, sold drugs, and was member of street gang).

¹⁶⁸ See *Mays*, 95 Cal. Rptr. 3d at 227-30 (determining whether Mays voluntarily made incriminating statements without considering his education or intelligence). *But cf. People v. Neal*, 72 P.3d 280, 292-93 (Cal. 2003) (considering defendant's level of education and extremely low intelligence in determining whether defendant voluntarily confessed during interrogation); *People v. Esqueda*, 22 Cal. Rptr. 2d 126, 145, 148 (Ct. App. 1993) (considering, among other factors, that twenty-nine-year-old defendant had seventh grade education in arriving at holding that defendant involuntarily confessed to murder); *In re Shawn D.*, 24 Cal. Rptr. 2d at 212 (noting in discussion regarding whether suspect voluntarily confessed that although suspect had experience with police, suspect was also young, unsophisticated, and naïve).

¹⁶⁹ Appellant's Petition for Review, *supra* note 133, at *8; cf. *Clewis v. Texas*, 386 U.S. 707, 712 (1967) (holding that defendant involuntarily confessed and noting that length of interrogation takes on considerable weight because of defendant's fifth grade education); *Neal*, 72 P.3d at 292-93 (considering defendant's failure to graduate from continuation high school in determining whether defendant voluntarily confessed during interrogation).

¹⁷⁰ Appellant's Petition for Review, *supra* note 133, at *8; cf. *Schneckloth v. Bustamonte*, 412 U.S. 218, 248 (1973) (noting Court's established definition of voluntariness has always considered evidence of minimal schooling); *Clewis*, 386 U.S. at 712 (noting adult defendant's fifth grade

Mays believed that polygraph tests are completely accurate, a belief that should have prompted the court to inquire into his intelligence.¹⁷¹

Moreover, the court did not address Mays's mental state at the time of the interrogation.¹⁷² Mays requested to speak with his parents, but the interrogators insisted that he speak to the police instead, which undoubtedly made Mays feel isolated.¹⁷³ In addition, testimony indicates that Marcos Adams admitted that he was the orange-clad person and stated

education in deciding that defendant involuntarily confessed); *Neal*, 72 P.3d at 292-93 (noting defendant's failure to graduate from continuation high school when applying totality-of-circumstances test).

¹⁷¹ See *Mays*, 95 Cal. Rptr. 3d at 226, 229-30 (discussing Mays's testimony that he made his statements because he felt defeated after police faked polygraph test and merely stated what police wanted to hear); *cf.* *United States v. Scheffer*, 523 U.S. 303, 309-11 (1998) (noting that scientific community lacks consensus regarding polygraph evidence's reliability and that this ambiguity is reflected in state and federal court decisions excluding polygraph evidence); *United States v. Cordoba*, 104 F.3d 225, 227-29 (9th Cir. 1997) (discussing court's hesitancy to admit polygraph evidence because of its problematic nature in interfering with deliberative process).

¹⁷² See *Mays*, 95 Cal. Rptr. 3d at 227-30 (determining whether Mays voluntarily made incriminating statements without considering his mental state at time of interrogation). *But cf.* *People v. Dykes*, 209 P.3d 1, 27 (Cal. 2009) (considering defendant's unbalanced mental state and vulnerability to coercion in determining whether defendant voluntarily confessed during interrogation); *People v. Smith*, 150 P.3d 1224, 1239 (Cal. 2007) (considering defendant's mental state during interrogation and defendant's history of physical, psychological, and sexual abuse in determining whether defendant voluntarily made incriminating statements during interrogation).

¹⁷³ See Appellant's Petition for Review, *supra* note 133, at *25-26; *cf.* CAL. WELF. & INST. § 627(b) (2008) (requiring that police advise juveniles in custody of right to make two telephone calls: one to guardian or other responsible adult, another to attorney); *Gallegos v. Colorado*, 370 U.S. 49, 54 (1962) (explaining that juvenile defendant's vulnerability during interrogation would have diminished if he had access to attorneys or parents prior to interrogation); *Haley v. Ohio*, 332 U.S. 596, 599-601 (1948) (explaining that juvenile defendant cannot contend with hours of police interrogation when police prevented juvenile from seeing his mother and attorney until days following arrest).

that the grey-clad person was not Mays.¹⁷⁴ In light of this admission, Mays presumably requested the polygraph test to prove his innocence, but then became troubled when the examiner presented results reflecting otherwise.¹⁷⁵ However, the court disregarded Adams's admission as well as testimony indicating that two individuals had intimidated Mays prior to the interrogation.¹⁷⁶ Mays testified that Scott's killer found him after the incident and threatened him, presumably to ensure that Mays did not report him to authorities.¹⁷⁷ Mays also discovered that the victim's brother was searching for him because he thought that Mays was involved in the shooting.¹⁷⁸ These factors likely affected Mays's mental state during the

¹⁷⁴ See *Mays*, 95 Cal. Rptr. 3d at 226-27 & n.5 (explaining that Adams admitted he was wearing orange and that Jon Jon, not Mays, was wearing grey); Appellant's Petition for Review, *supra* note 133, at *38-39 (noting that prosecution disclosed Adams's admission — that he was involved in homicide but Mays was not — after trial court entered verdict, but before appeal). *But cf.* *People v. Lee*, 115 Cal. Rptr. 2d 828, 837 (Ct. App. 2002) (holding that police coerced suspect to incriminate another person by suggesting that suspect would be prosecuted for murder unless he named another person as murderer).

¹⁷⁵ See *Mays*, 95 Cal. Rptr. 3d at 226 (noting that Mays admitted that he was at crime scene after feeling defeated after police showed him that he failed his polygraph examination); *cf. Lee*, 115 Cal. Rptr. 2d at 835-36 (finding that police officers' emphasis on defendant's failed polygraph examination and threats of prosecution during interrogation rendered defendant's subsequent implication of another for murder involuntary); *National News Briefs; DNA Evidence Leads to Release of Inmate*, N.Y. TIMES, Jan. 17, 2001, at A16 (reporting that judge ended Christopher Ochoa's lifetime sentence after DNA evidence proved his innocence, and noting that Ochoa confessed to murder because of police coercion).

¹⁷⁶ See *Mays*, 95 Cal. Rptr. 3d at 226-27 (noting that Adams did not testify at Mays's trial); *cf. Lee*, 115 Cal. Rptr. 2d at 835-36 (holding that combination of using polygraph results indicating defendant's guilt, and police threats that defendant must choose between prosecution or revealing true murderer, was coercive); *In re Garth D.*, 127 Cal. Rptr. 881, 888 (Ct. App. 1976) (noting courts' presumption that threats and violence render subsequent incriminating statements inadmissible even where defendant makes statements under non-coercive circumstances away from such improper influences).

¹⁷⁷ *Mays*, 95 Cal. Rptr. 3d at 226; see *supra* note 176 (referencing decisions concerning threats of violence and subsequent confessions made during criminal interrogation).

¹⁷⁸ *Mays*, 95 Cal. Rptr. 3d at 226; see *supra* note 176.

interrogation, yet the court failed to address them in its totality-of-circumstances analysis.¹⁷⁹

Lastly, the court failed to consider the circumstances surrounding Mays's interrogation.¹⁸⁰ The court provided no insight into the details inside the interrogation room.¹⁸¹ Instead, the court merely explained that the officers' trick was not coercive because the fabricated results merely showed wavy lines with notes indicating that Mays intended to lie.¹⁸² However, Mays explained that he falsely admitted to being present at the crime scene because he felt defeated after the polygraph test.¹⁸³ At trial, Mays testified that after he saw the fabricated polygraph test results, he merely told the police

¹⁷⁹ See *supra* notes 172-78 and accompanying text (discussing factors affecting Mays's mental state).

¹⁸⁰ See *Mays*, 95 Cal. Rptr. 3d at 227-30 (discussing voluntariness of Mays's incriminating statements made after police administered mock polygraph and produced fabricated results); *People v. Neal*, 72 P.3d 280, 290-92 (Cal. 2003) (discussing circumstances surrounding interrogation in determining whether defendant voluntarily confessed to murder); *People v. Andersen*, 161 Cal. Rptr. 707, 716 (Ct. App. 1980) (noting that court must analyze entire interrogation in its attendant circumstances when determining whether police coerced defendant to confess during interrogation).

¹⁸¹ See *Mays*, 95 Cal. Rptr. 3d at 230.

¹⁸² *Id. But cf. In re Shawn D.*, 24 Cal. Rptr. 2d 395, 403-04 (Ct. App. 1993) (holding that sixteen-year-old defendant involuntarily confessed after police falsely told defendant that other suspects implicated him for burglary and other evidence corroborated his guilt); *People v. Esqueda*, 22 Cal. Rptr. 2d 126, 146-47 (Ct. App. 1993) (holding that totality of circumstances shows that defendant involuntarily confessed after police conducted lengthy interrogation and employed lies, trickery, and threats to elicit defendant's confession); *People v. Azure*, 224 Cal. Rptr. 158, 163-64 (Ct. App. 1986) (holding that police deception regarding statements of witnesses implicating defendant was coercive), *overruled on other grounds* by *People v. Campos*, 228 Cal. Rptr. 470, 475 (Ct. App. 1986).

¹⁸³ *Mays*, 95 Cal. Rptr. 3d at 226; *cf. Miranda v. Arizona*, 384 U.S. 436, 469 (1966) (noting that circumstances surrounding police interrogation can operate very quickly to overbear will of criminal suspect, even after police notify suspect of Fifth Amendment privilege); *Andersen*, 161 Cal. Rptr. at 713 (noting that when police officers apply sufficient pressures to suspects during criminal interrogation, most persons will confess, even to untrue events).

what they wanted to hear.¹⁸⁴ The police trickery, coupled with Mays's mental state, should have prompted the court to conduct a more fact-intensive analysis.¹⁸⁵

However, *Mays* proponents might argue that the absence of police coercion sufficiently renders a defendant's incriminating statements voluntary.¹⁸⁶ These proponents note that police activity is coercive when it overpowers a defendant's will.¹⁸⁷ The facts of the case provide examples that suggest that the police did not overpower Mays's will.¹⁸⁸ First, during Mays's interrogation, police officers made no representations regarding the polygraph's accuracy.¹⁸⁹

¹⁸⁴ See *supra* note 183.

¹⁸⁵ See *Neal*, 72 P.3d at 290 (applying independent standard of review of all circumstances in reviewing trial court's determination of voluntariness of defendant's confessions); *People v. Jones*, 949 P.2d 890, 899 (Cal. 1998) (requiring independent review of trial court decision when determining whether defendant voluntarily confessed and whether deception employed by police officers during interrogation constituted coercion); *People v. Benson*, 802 P.2d 330, 343 (Cal. 1990) (reviewing determination of trial court regarding issue of voluntariness of defendant's confession requires independent standard of review of record in its entirety).

¹⁸⁶ See *Mays*, 95 Cal. Rptr. 3d at 227-30 (analyzing facts of case and considering only element of police coercion in deciding that Mays's incriminating statements were voluntary); cf. *People v. Richardson*, 183 P.3d 1146, 1167-68 (Cal. 2008) (holding defendant's confession voluntary after considering whether police coerced defendant by falsely stating during interrogation that witnesses saw defendant leaving victim's residence shortly after murder); *People v. Dominick*, 227 Cal. Rptr. 849, 857-59 (Ct. App. 1986) (holding defendant's incriminating statements voluntary after considering whether police coerced defendant by falsely stating during interrogation that one victim survived and identified defendant as assailant).

¹⁸⁷ *Mays*, 95 Cal. Rptr. 3d at 227; see *Schneckloth v. Bustamonte*, 412 U.S. 218, 225-26 (1973); *People v. Smith*, 150 P.3d 1224, 1238 (Cal. 2007); *People v. Massie*, 967 P.2d 29, 46 (Cal. 1998).

¹⁸⁸ *Mays*, 95 Cal. Rptr. 3d at 227.

¹⁸⁹ *Id.* at 229; cf. *Smith*, 150 P.3d at 1241-42 (holding that police did not coerce defendant by using sham neutron-proton negligence intelligence test during interrogation); *People v. Parrison*, 187 Cal. Rptr. 123, 126-27 (Ct. App. 1982) (holding that police did not coerce defendant during attempted-murder interrogation by stating that fake hand-swab test results indicated that defendant used firearm earlier that evening).

Therefore, *Mays* proponents may conclude that the police officers did not coerce Mays to believe that polygraph tests were completely accurate.¹⁹⁰ Secondly, Mays consistently denied that he was involved with the murder and merely admitted that he was present at the scene of the crime.¹⁹¹ As such, the fabrication was not coercive because if police overpowered his will, Mays would have confessed to the murder.¹⁹² Thirdly, *Mays* proponents note that Mays requested the polygraph, rather than police officers initiating the test.¹⁹³ This initiative indicates Mays's willingness to discuss the matter and further highlights that police did not pressure Mays to take the exam.¹⁹⁴ *Mays* proponents support their position with a multitude of California, federal, and other state cases holding defendants' admissions voluntary despite

¹⁹⁰ *Mays*, 95 Cal. Rptr. 3d at 229; *cf. Smith*, 150 P.3d at 1241-42 (holding that police deception notifying defendant that sham negligence-intelligence test indicated that defendant recently used firearm did not coerce defendant to make subsequent incriminating statements); *Parrison*, 187 Cal. Rptr. at 126-27 (holding that police subterfuge notifying defendant that fake hand-swab test indicated that defendant recently used firearm did not coerce defendant to make subsequent incriminating statements).

¹⁹¹ *Mays*, 95 Cal. Rptr. 3d at 229.

¹⁹² *Id.*; *see Smith*, 150 P.3d at 1242 (noting that police officers' attempt to elicit confession from defendant by using deception was not coercive because defendant steadfastly denied involvement in crime); *Parrison*, 187 Cal. Rptr. at 127 (holding that police deception was not coercive because defendant merely made incriminating statements, indicating that police deception did not overbear defendant's will).

¹⁹³ *Mays*, 95 Cal. Rptr. 3d at 229; *cf. Edwards v. Arizona*, 451 U.S. 477, 484-85 (1981) (holding that police must cease interrogation if suspect invokes Fifth Amendment right to attorney unless suspect initiates further communication, exchanges, or conversation with police); *People v. Davis*, 208 P.3d 78, 124 (Cal. 2009) (adopting *Edwards* rule that after suspect in criminal interrogation invokes right to counsel, officers may resume interrogation if suspect initiates further discussions with police).

¹⁹⁴ *Mays*, 95 Cal. Rptr. 3d at 229; *cf. People v. Barreto*, 64 Cal. Rptr. 211, 220 (Ct. App. 1967) (ruling that officer administration of lie detector tests on willing criminal suspect with statement to suspect that results reveal dishonesty is not coercive); *People v. Serrano*, 788 N.Y.S.2d 272, 273 (App. Div. 2005) (holding that defendant voluntarily confessed after he went to police on his own accord, took polygraph exam, and officers deceptively informed him that he failed).

police deception during interrogation.¹⁹⁵ Therefore, these proponents argue that Mays's statements were voluntary and not coerced.¹⁹⁶

However, a court's sole reliance on the absence of police coercion under the totality-of-circumstances test is incorrect, especially when the suspect is a juvenile.¹⁹⁷ A juvenile's special status under the law requires that courts give greater emphasis to the minor's individual characteristics when applying the totality-of-circumstances test.¹⁹⁸ Although

¹⁹⁵ *Mays*, 95 Cal. Rptr. 3d at 227-29; see *Amaya-Ruiz v. Stewart*, 121, F.3d 486, 495 (9th Cir. 1997) (holding that defendant voluntarily confessed during interrogation after police falsely told defendant that eyewitness identified him); *People v. Jones*, 949 P.2d 890, 901 (Cal. 1998) (holding that defendant voluntarily confessed during interrogation after officer suggested he could provide more evidence than he truly could); *People v. Sobchik*, 644 N.Y.S.2d 370, 372 (App. Div. 1996) (holding that defendant voluntarily confessed where police applied polygraph equipment onto defendant but did not turn on machine); *State v. Farley*, 452 S.E.2d 50, 61 (W. Va. 1994) (holding that defendant voluntarily confessed after police misrepresented defendant's performance on polygraph test).

¹⁹⁶ *Mays*, 95 Cal. Rptr. 3d at 230; cf. *Smith*, 150 P.3d at 1241-42 (holding that defendant voluntarily confessed and police did not coerce defendant after falsely telling defendant that tests indicated that defendant had recently fired gun); *People v. Thompson*, 785 P.2d 857, 874-75 (Cal. 1990) (holding that defendant voluntarily confessed after detectives falsely told defendant that physical evidence of tire tracks and soil samples connected his car to crime scene); *Parrison*, 187 Cal. Rptr. at 126-27 (holding that defendant voluntarily confessed and police did not coerce defendant when they falsely told defendant that hand-swab test indicated that he recently fired weapon).

¹⁹⁷ See *In re Aven S.*, 1 Cal. Rptr. 2d 655, 659-60 (Ct. App. 1991); *In re Michael B.*, 197 Cal Rptr. 379, 385 (Ct. App. 1983) (emphasizing that courts need to closely scrutinize all circumstances in instances involving young juveniles and other juveniles susceptible to pressures of police interrogation); *In re Anthony J.*, 166 Cal. Rptr. 238, 244 (Ct. App. 1980) (noting that prosecution's burden of showing that defendant voluntarily made incriminating statements is greater where police interrogated juvenile defendant).

¹⁹⁸ See *In re Aven S.*, 1 Cal. Rptr. 2d at 659-60 (noting that federal and state courts emphasize importance of juvenile suspect's age in determining whether juvenile voluntarily confessed); *In re Michael B.*, 197 Cal Rptr. at 385 (stressing need to closely examine all circumstances surrounding police interrogations involving juveniles susceptible to intimidation); *In re Anthony J.*, 166 Cal. Rptr. at 244 (noting that burden of proof is greater

the defendant in *Neal* was eighteen, this case is illustrative of the Supreme Court of California's application of the totality-of-circumstances test with young defendants.¹⁹⁹ In *Neal*, the court addressed the voluntariness of the defendant's incriminating statements under the totality-of-circumstances test.²⁰⁰ The court explained that it is crucial to evaluate a defendant's age, education, experience, intelligence, and background when weighing the voluntariness of incriminating statements.²⁰¹ Accordingly, the court addressed the fact that Neal was eighteen years old at the time of the interrogation.²⁰² The court noted that Neal failed to graduate high school, had minimal life experience and low intelligence, and grew up in

when showing that juvenile defendant voluntarily made incriminating statements during police interrogation).

¹⁹⁹ See *People v. Neal*, 72 P.3d 280, 282 (Cal. 2003) (listing defendant's youth first, among other personal characteristics, as relevant considerations in holding that defendant involuntarily confessed to murder); cf. *Mays*, 95 Cal. Rptr. 3d at 226 (noting that defendant's age of seventeen precluded death penalty, but did not preclude court from trying defendant as adult). See generally CAL. WELF. & INST. CODE § 607(a)-(b) (2009) (providing that juvenile court may retain jurisdiction over some defendants until age twenty-one and others until twenty-five).

²⁰⁰ *Neal*, 72 P.3d at 292; cf. *People v. Coffman*, 96 P.3d 30, 76 (Cal. 2004) (applying totality-of-circumstances test to determine voluntariness of defendant's incriminating statements and citing *Neal*); *People v. Sapp*, 73 P.3d 433, 455 (Cal. 2003) (explaining that when determining whether defendant voluntarily confessed, court must consider totality of circumstances and citing *Neal*).

²⁰¹ *Neal*, 72 P.3d at 292; see *Fare v. Michael C.*, 442 U.S. 707, 725 (1979) (explaining that courts must consider totality of circumstances, especially those distinctive concerns of experience and education when defendant is young); *People v. Hector*, 99 Cal. Rptr. 2d 469, 474 (Ct. App. 2000) (noting that courts should consider juvenile's age, education, intelligence, experience, and background when determining voluntariness of defendant's statements).

²⁰² *Neal*, 72 P.3d at 292. Compare *Mays*, 95 Cal. Rptr. 3d at 227-30 (analyzing record to determine whether juvenile defendant voluntarily confessed during criminal interrogation, while never taking defendant's age into account), with *supra* note 198 (citing decisions in which courts emphasize importance of age when conducting totality-of-circumstances analysis in determining whether juvenile suspect voluntarily confessed during criminal interrogation).

an abusive environment.²⁰³ Finally, the court reviewed the conditions of the interrogation in light of Neal's personal characteristics.²⁰⁴

The *Neal* decision highlights how the *Mays* court inadequately applied the totality-of-circumstances test.²⁰⁵ The *Neal* court reviewed the entire record independently, following a precedent set by both the Supreme Courts of California and the United States.²⁰⁶ Instead of performing this prescribed level of review, the *Mays* court restricted its review of the trial court's decision to the undisputed facts.²⁰⁷ As such, the *Mays* court disregarded relevant considerations

²⁰³ *Neal*, 72 P.3d at 292-93; cf. *Michael C.*, 442 U.S. at 725-26 (noting that juvenile defendants present courts with special concerns when applying totality-of-circumstances analysis, thus courts should consider juveniles' limited experience and education and immature judgment); *In re Shawn D.*, 24 Cal. Rptr. 2d 395, 403 (Ct. App. 1993) (noting that when police interrogated defendant, he was sixteen years old, unsophisticated, naïve, and suffered from post-traumatic stress disorder).

²⁰⁴ *Neal*, 72 P.3d at 292-93; cf. *Haley v. Ohio*, 332 U.S. 596, 599-600 (1948) (analyzing circumstances surrounding police interrogation in light of fifteen-year-old suspect's personal characteristics); *In re Shawn D.*, 24 Cal. Rptr. 2d at 403 (considering details of interrogation after considering sixteen-year-old suspect's personal characteristics).

²⁰⁵ Compare *Neal*, 72 P.3d at 289 (noting that court's determination of voluntariness of suspect's admission considers totality of circumstances, rather than basing decision on one significant fact), and *People v. Jones*, 949 P.2d 890, 899 (Cal. 1998) (requiring independent review of issue of voluntariness of confessions and whether police activity constitutes coercion), with *Mays*, 95 Cal. Rptr. 3d at 227 (limiting review of trial court's determination that *Mays* voluntarily made incriminating statements to police officers during interrogation to undisputed facts).

²⁰⁶ *Neal*, 72 P.3d at 290; see *Arizona v. Fulminante*, 499 U.S. 279, 287 (1991); *Schneckloth v. Bustamonte*, 412 U.S. 218, 226 (1973); *Clewis v. Texas*, 386 U.S. 707, 708 (1967); *Davis v. North Carolina*, 384 U.S. 737, 741-42 (1966); *People v. Benson*, 802 P.2d 330, 343 (Cal. 1990); *People v. Kelly*, 800 P.3d 516, 543 (Cal. 1990) (Mosk, J., concurring); *People v. Sanchez*, 451 P.2d 74, 80 (Cal. 1969) (explaining that basis for independent review rests upon principle that use of involuntary confession in federal or state criminal prosecution constitutes denial of due process).

²⁰⁷ *Mays*, 95 Cal. Rptr. 3d at 227; see *People v. Farnam*, 47 P.3d 988 (Cal. 2002); *People v. Weaver*, 29 P.3d 103, 127 (Cal. 2001); *People v. Howard*, 749 P.2d 279, 287-88 (Cal. 1988); *People v. Hogan*, 647 P.2d 93, 104 (Cal. 1982) *overruled by* *People v. Cooper*, 809 P.2d 865, 903 (Cal. 1982).

pertaining to Mays's background, maturity, education, intelligence, and mental state.²⁰⁸ The *Neal* court's approach involved an analysis of all circumstances surrounding the interrogation and defendant, instead of merely focusing on the element of police coercion.²⁰⁹ Therefore, the *Mays* court inadequately administered the totality-of-circumstances test because the court limited its review to the undisputed facts.²¹⁰

B. Police Use of Fabricated Tangible Evidence on Juveniles During Criminal Interrogations Violates Due Process

Federal and state constitutional due process affords protections during criminal interrogation.²¹¹ These procedural

²⁰⁸ See *Mays*, 95 Cal. Rptr. 3d at 227-30 (determining whether Mays voluntarily made incriminating statements after police administered mock polygraph and produced fabricated results, and neglecting relevant considerations under totality-of-circumstances test). *But cf.* *People v. Richardson*, 183 P.3d 1146, 1167-69 (Cal. 2008) (considering defendant's intelligence, length and location of interrogation, and police deception in determining voluntariness of defendant's confession); *In re Garth D.*, 127 Cal. Rptr. 881, 886-87 (Ct. App. 1976) (explaining that no single factor in totality-of-circumstances test renders confession involuntary).

²⁰⁹ See *Richardson*, 183 P.3d at 1168 (noting that determining voluntariness requires review of all surrounding circumstances, regardless of weight of any particular factor); *Neal*, 72 P.3d at 289 (noting that court's determination of voluntariness of suspect's admission does not turn on one significant fact, but on totality of circumstances); *People v. Williams*, 941 P.2d 752, 767 (Cal. 1997) (noting that United States Supreme Court intended for courts to consider totality of circumstances when making determinations regarding voluntariness of suspect's incriminating statement).

²¹⁰ See *supra* notes 205-09 and accompanying text (comparing Supreme Court of California's totality-of-circumstances approach in *Neal* with appellate court's approach in *Mays*).

²¹¹ U.S. CONST. amend. XIV, § 1 (stating that State may not deprive persons of liberty without due process of law); CAL. CONST. art. I, § 7(a) (stating that state may not deprive persons of liberty without due process of law); see *Brown v. Mississippi*, 297 U.S. 278, 286 (1936) (holding that admitting evidence of suspect's confession at trial violates due process when police obtained confession by force); *Herbert v. Louisiana*, 272 U.S. 312, 316-17 (1926) (holding that Fourteenth Amendment requires that state actions maintain consistency with fundamental principles of liberty and justice); *People v. Ditson*, 369 P.2d 714, 727 (Cal. 1962) (reasoning that courts exclude involuntary confessions from entering into evidence to prevent police from using physical violence and undue pressure during

safeguards, such as reversing a criminal conviction founded on an involuntary confession, ensure fundamental fairness and protect the integrity of the justice system.²¹² In *Chambers*, the Supreme Court ruled that the Fourteenth Amendment's framers guaranteed procedural standards to protect criminal suspects from persons of power and authority.²¹³ The Court noted that those who have suffered most from coercive interrogations have typically been the indigent, the uneducated, and the defenseless.²¹⁴ Mays embodies these characteristics.²¹⁵ During his interrogation, Mays was a

interrogations); *People v. Goldstein*, 191 P.2d 102, (Cal. Ct. App. 1948) (ruling that Fourteenth Amendment guarantees procedural standards in all courts for those accused of crimes).

²¹² See *Blackburn v. Alabama*, 361 U.S. 199, 206-07 (1960) (noting that Supreme Court enforces attitude of society that important human values are sacrificed where government agencies elicit confessions from criminal suspects against their will); *Watts v. Indiana*, 338 U.S. 49, 55 (1949) (holding that due process precludes police procedures which violate notions of justice and overturns convictions based on such procedures to assure fairness before curtailing liberty); *Lisenba v. California*, 314 U.S. 219, 236 (1941) (explaining that due process protections aim to prevent fundamental unfairness in using evidence); *Chambers v. Florida*, 309 U.S. 227, 238-39 (1940) (holding that no involuntary confession obtained by police officers may be introduced into evidence in criminal prosecutions that result in conviction).

²¹³ *Chambers*, 309 U.S. at 236; see *Blackburn*, 361 U.S. at 206-07 (recognizing that due process protects accused during interrogation by rendering confessions involuntary and inadmissible at trial if police physically or psychologically coerce suspect to confess); *People v. Montano*, 277 Cal. Rptr. 327, 336 n.5 (Ct. App. 1991) (noting that police violate Fourteenth Amendment when eliciting incriminating statements from suspects through coercion).

²¹⁴ *Chambers*, 309 U.S. at 238; see *Miranda v. Arizona*, 384 U.S. 436, 455 (1966) (noting that police officers inherently exploit suspect's weaknesses during criminal interrogations, even when refraining from physical brutality); *Ward v. Texas*, 316 U.S. 547, 555 (1942) (noting that Court has set aside criminal convictions based on confessions extorted from ignorant suspects who have been subjected to undue influences during interrogation).

²¹⁵ See *People v. Mays*, 95 Cal. Rptr. 3d 219, 226 (Ct. App. 2009) (noting that during interrogation, Mays repeatedly requested polygraph exam without presence or assistance from legal counsel or other adult); Appellant's Petition for Review, *supra* note 133, at *8 (noting that Mays was seventeen when police interrogated him, had no previous experience

seventeen-year-old gang member without the benefit of counsel.²¹⁶ Furthermore, Mays thought that polygraph tests were completely accurate and requested one, presumably to prove his innocence.²¹⁷ This evidence suggests that during the interrogation, Mays was uneducated and defenseless.²¹⁸ As such, due process affords protections to protect juveniles like Mays during criminal interrogations.²¹⁹ Thus, the *Mays* court erred in affirming Mays's conviction, as this ruling endorsed

with interrogation, and was in special education but never graduated high school); *cf.* *People v. Neal*, 72 P.3d 280, 292-93 (2003) (noting that police interrogated eighteen-year-old suspect who failed to graduate high school, grew up in abusive environment, and had minimal experience and low intelligence).

²¹⁶ *See Mays*, 95 Cal. Rptr. 3d at 222, 226 (noting that Mays was seventeen when police interrogated him, and that Mays testified at trial that he was involved in gangs); *cf.* *Haley v. Ohio*, 332 U.S. 596, 599-600 (1968) (noting that police interrogated juvenile suspect alone); *Neal*, 72 P.3d at 292 (noting that police interrogated eighteen-year-old suspect who did not have legal counsel).

²¹⁷ *See Mays*, 95 Cal. Rptr. 3d at 229 (noting that Mays testified that he believed that polygraph results are completely accurate); *cf.* *United States v. Penick*, 496 F.2d 1105, 1106 (7th Cir. 1974) (noting court's reversal of guilty verdict after defendant requested and took polygraph examination which indicated that he was truthful); *Commonwealth v. Lockley*, 408 N.E.2d 834, 836 (Mass. 1980) (reversing defendant's guilty verdict and noting that defendant requested to take polygraph examination prior to trial); *Commonwealth v. Juvenile*, 313 N.E.2d 120, 122 n.1 (Mass. 1974) (noting that lower court vacated juvenile defendant's guilty verdict for murder and that, prior to trial, juvenile requested polygraph examination), *overruled on other grounds by Commonwealth v. Mendes*, 547 N.E.2d 35, 36 (Mass. 1989).

²¹⁸ *See supra* notes 214-17 (comparing Mays's circumstances during interrogation with other defendants' circumstances during interrogation).

²¹⁹ *See Haley*, 332 U.S. at 599-600 (noting that lower court should not have judged fifteen-year-old defendant in same manner as adult when determining whether defendant voluntarily confessed during police interrogation); *In re Gault*, 387 U.S. 1, 55 (1967) (holding that Constitution protects juveniles from self-incrimination and noting that special problems may arise where police interrogate juveniles); *Gallegos v. Colorado*, 370 U.S. 49, 54-55 (1962) (stating that courts should not compare juvenile suspects with adults when determining whether suspect knowingly and voluntarily made incriminating statements).

the due process violation of using fabricated documents to elicit incriminating statements from a juvenile.²²⁰

Mays proponents might argue that under *Edwards v. Arizona*, due process requires an interrogation to cease when the suspect requests legal counsel, unless the suspect reinitiates communication.²²¹ Thus, if a suspect requested legal counsel during an interrogation but continued discussing the matter with police, further interrogation would not violate due process.²²² Similarly, *Mays*'s interrogation accorded with due process because *Mays* waived his *Miranda* rights and reinitiated communication by requesting the polygraph examination, thus allowing for further interrogation.²²³

²²⁰ See *State v. Cayward*, 552 So. 2d 971, 973-74 (Fla. Dist. Ct. App. 1989) (holding that police use of fabricated evidence as criminal interrogation tactic to elicit confessions violates due process under federal and state constitutions); *supra* note 212 (citing Supreme Court decisions regarding due process safeguards that protect criminal suspects from unjust police interrogation). *But see Mays*, 95 Cal. Rptr. 3d at 229 (discussing why court refuses to apply bright-line rule making fake polygraph results coercive per se).

²²¹ *Edwards v. Arizona*, 451 U.S. 477, 484 (1981) (holding that suspects are not subject to further interrogation upon request of legal counsel unless suspect initiates further conversation); see *People v. Neal*, 72 P.3d 280, 289-90 (Cal. 2003) (adopting *Edwards* rule and holding that defendant involuntarily initiated second interview with detectives); *People v. Storm*, 52 P.3d 52, 61-62 (Cal. 2002) (adopting *Edwards* rule and holding that police may re-contact suspect where sufficient breaks in custody extinguish coercive effects of custody which *Edwards* rule protects against).

²²² *Connecticut v. Barrett*, 479 U.S. 523, 526 (1987) (holding suspect's multiple verbal confessions willful where suspect initiated conversation with police after requesting legal counsel but before signing written statements); *Edwards*, 451 U.S. at 484 (holding that resuming interrogation after suspect initiates further conversation does not violate due process); *People v. Mickey*, 818 P.2d 84, 100 (Cal. 1991) (affirming trial court's decision that police did not violate due process after resuming interrogation because defendant stated that he would like to continue speaking).

²²³ See *Mays*, 95 Cal. Rptr. 3d at 229 (explaining that *Mays* initiated request for polygraph examination); cf. *Edwards*, 451 U.S. at 484-85 (holding that police must cease interrogation upon suspect's invocation of *Miranda* rights unless suspect subsequently waives those rights by initiating further communication); *People v. Brown*, 173 Cal. Rptr. 877, 885 (Ct. App. 1981) (holding that police did not coerce suspect when

Therefore, despite the fact that police faked Mays's polygraph examination, this trickery, by itself, does not violate due process or render his confession involuntary.²²⁴ Employing trickery to coerce involuntary statements would be unlawful, but the police, instead, only conducted the fake polygraph examination after Mays voluntarily requested the test.²²⁵ As such, the officers utilized lawful deception to trick Mays because this deception was not likely to make an innocent person confess.²²⁶

However, this argument fails because although some juveniles may confess voluntarily without counsel, courts must consider a juvenile's ability to comprehend the meaning of confessing.²²⁷ In *Haley*, the Supreme Court emphasized

suspect made incriminating statements after police noted suspect's untruthfulness during voluntary polygraph examination).

²²⁴ See *People v. Thompson*, 785 P.2d 857, 874 (Cal. 1990) (holding defendant's incriminating statement voluntary where police elicited defendant's statement by falsely telling defendant that forensics test linked his vehicle with crime scene); *People v. Chutan*, 85 Cal. Rptr. 2d 744, 747 (Ct. App. 1999) (ruling that showing police deception alone does not sufficiently render suspect's confession involuntarily); *People v. Long*, 86 Cal. Rptr. 227, 230-31 (Ct. App. 1977) (holding that defendant voluntarily confessed after police attempted to elicit incriminating statements by falsely telling defendant that his accomplice confessed).

²²⁵ *Mays*, 95 Cal. Rptr. 3d at 229; see *Illinois v. Perkins*, 496 U.S. 292, 297 (1990) (holding that law enforcement officer working undercover as fellow inmate was not required to provide Miranda warning to suspect); *Brown*, 173 Cal. Rptr. at 885 (noting that if defendant willingly takes lie detector test, neither its application nor any statements that defendant was untruthful demonstrates coercion).

²²⁶ See *People v. Jones*, 949 P.2d 890, 901 (Cal. 1998) (holding that police deception was permissible where it would not cause suspects to produce untrue statements); *Thompson*, 785 P.2d at 874 (noting that police deception does not inherently invalidate defendant's confession); *Chutan*, 85 Cal. Rptr. 2d at 747 (ruling that police trickery does not invalidate subsequent confessions unless trickery is likely to produce false confessions); *People v. Parrison*, 187 Cal. Rptr. 123, 126 (Ct. App. 1982) (ruling that police subterfuge is not per se impermissible because deception does not necessarily constitute coercion).

²²⁷ See *Gallegos v. Colorado*, 370 U.S. 49, 54-55 (1962) (finding that rendering fourteen-year-old defendant's confession voluntary, where juvenile could not understand consequences of confessing, would treat juvenile as if he had no constitutional rights); *Haley v. Ohio*, 332 U.S. 596,

that a defendant's youth raises concerns regarding whether the juvenile knowingly waived his right to remain silent.²²⁸ Additionally, the *Haley* Court explained that juveniles require more safeguards because of the power disparity between a juvenile and police officers.²²⁹ Furthermore, the *Gallegos* Court explained that courts should not compare juveniles with adults because juveniles may need legal advice to understand a confession's consequences.²³⁰ Thus, courts must consider a juvenile's background and determine whether the juvenile understood his or her legal rights.²³¹

The *Mays* court failed to consider whether Mays grasped the weight of requesting a polygraph and the value of legal counsel.²³² Prior to the polygraph examination, Mays

600-01 (1948) (holding that defendant confessed involuntarily because defendant required counsel to protect his due process rights given circumstances surrounding interrogation); *People v. Lara*, 432 P.2d 202, 215 (Cal. 1967) (creating general rule from holdings in *Haley* and *Gallegos*, and noting that suspect's age, intelligence, education, and experience are also relevant to determining confession's validity).

²²⁸ *Haley*, 332 U.S. at 600-01 (explaining that *Haley*'s age, interrogation duration, and lack of legal counsel to advise him makes voluntariness of confession questionable); *see supra* note 198 (citing to decisions which emphasize significance of suspect's age in determining whether juvenile voluntarily confessed).

²²⁹ *Haley*, 332 U.S. at 599; *see* 18 U.S.C.A. § 5033 (1990) (requiring arresting officer to advise juvenile of rights in manner comprehensible to juvenile and to notify juvenile's parents or guardians that juvenile is in custody); CAL. WELF. & INST. CODE § 627(b) (2008) (requiring that officers advise juveniles in custody of right to make telephone calls to guardian or other responsible adult and to attorney); *United States v. Juvenile*, 229 F.3d 737, 744-45 (9th Cir. 2000) (holding that arresting officer violated federal law by explaining juvenile's rights four hours after arrest and by failing to notify juvenile's parents about arrest).

²³⁰ *Gallegos*, 370 U.S. at 54; *see supra* note 229 (citing case law and federal and state statutory provisions reflecting policy that law provides juveniles with legal safeguards that take into account their age).

²³¹ *See supra* note 227 (citing Supreme Court decisions emphasizing that courts must consider juvenile's ability to comprehend meaning of confessing).

²³² *People v. Mays*, 95 Cal. Rptr. 3d 219, 229 (Ct. App. 2009) (emphasizing that Mays, not police officers, initiated request for polygraph examination). *But cf. In re Gault*, 387 U.S. 1, 55 (1967) (holding that courts must take great care in assuring that juveniles validly waived

requested to speak to with his stepfather to request a lawyer.²³³ Instead of granting Mays's request, the interrogating detective asked Mays what he wanted to do with a lawyer.²³⁴ Although Mays understood that he required legal assistance, he could not answer, indicating that he did not comprehend the purpose legal counsel serves during interrogation.²³⁵ Thus,

Miranda rights in absence of legal counsel during interrogation); *In re Michael B.*, 197 Cal. Rptr. 379, 385-86 (Ct. App. 1983) (ruling that courts must carefully scrutinize juveniles' purported waiver of right against self-incrimination because juveniles' immaturity and vulnerability greatly disadvantage them in interrogation).

²³³ Appellant's Petition for Review, *supra* note 133, at *26. Specifically, Mays and Detective Husted said the following during the interrogation:

D. Mays: Look. Can I — can I call my dad so I can have lawyer come down 'cause I'm — I'm telling you, I'm —

Det. Husted: Call who?

D. Mays: My — my step-dad 'cause I'm — I'm going to tell you I'm going to pass that [polygraph] test a hundred percent.

Det. Husted: Okay. Well, we don't need your step-dad right now.

D. Mays: I know. He got my lawyer.

Det. Husted: Who's your lawyer?

D. Mays: My — my step-dad got a lawyer for me.

Det. Husted: Okay. So what do you want to do with him?

D. Mays: I'm going to — can — can you call him and have my lawyer down here?

Id. (quoting interrogation transcript). Under California law, however, juveniles have the right to speak to a parent or an attorney when in police custody. *See* CAL. WELF. & INST. CODE § 627(b) (2008) (requiring that officers advise juveniles in custody of right to make telephone calls to parents and attorney); *People v. Burton*, 491 P.2d 793, 798 (Cal. 1971) (holding that juvenile's request for parent at any time during custodial interrogation constitutes invocation of *Miranda* rights).

²³⁴ Appellant's Petition for Review, *supra* note 133, at *26. *But cf. supra* note 233 (citing California statute and supreme court decision affirming juvenile's right to call parents or attorney after police take juvenile into custody).

²³⁵ *See* Appellant's Petition for Review, *supra* note 133, at *26 (noting that interrogation transcript reflected that Mays was unable to respond to detective's question); *cf. Fare v. Michael C.*, 442 U.S. 707, 725 (1979) (holding that whether juvenile understood consequences of waiving *Miranda* rights factors into analysis of whether juvenile voluntarily confessed); *Gallegos*, 370 U.S. at 54-55 (noting that juvenile confession is

interrogators violated Mays's due process rights by preventing him from contacting his parents to obtain legal counsel.²³⁶ The *Mays* court erred by overlooking this violation and holding Mays accountable for statements made after police disregarded his indirect request for an attorney.²³⁷

C. *Mays* Offends Traditional Notions of Juvenile Justice

At its inception, the juvenile justice system focused on rehabilitation rather than punishment.²³⁸ States enacted juvenile courts in the late nineteenth century under the principle of *parens patriae*, where states served as guardians to delinquent juveniles.²³⁹ Juvenile courts conducted civil

involuntary if juvenile was unable to understand consequences of confessing).

²³⁶ Appellant's Petition for Review, *supra* note 133, at *26 (noting that interrogating officer understood Mays's request to speak with his father to request legal counsel as request for legal counsel, yet interrogation continued); *see* *Edwards v. Arizona*, 451 U.S. 477, 484-85 (1981) (holding that interrogation must end if suspect invokes Fifth Amendment right to attorney unless suspect initiates further communication, exchanges, or conversation with police); *People v. Davis*, 208 P.3d 78, 124 (Cal. 2009) (adopting *Edwards* rule that after suspect in criminal interrogation invokes right to counsel, interrogation must cease unless suspect initiates further discussions with police).

²³⁷ *See Michael C.*, 442 U.S. at 725 (holding that juvenile's understanding of consequences of waiving *Miranda* rights factors into analysis of whether juvenile voluntarily confessed); Appellant's Petition for Review, *supra* note 133, at *26-27 (noting that prior to polygraph examination, Mays requested to speak with his father who could retrieve legal counsel, and detectives circumvented his request); *supra* note 227 (noting decisions stating that courts must consider juvenile's ability to comprehend gravity of confessing in determining whether juvenile voluntarily waived *Miranda* rights and voluntarily confessed).

²³⁸ *See Brooks*, *supra* note 63, at 225 (describing background of juvenile justice system); Farber, *supra* note 63, at 1280-81 (providing background on juvenile adjudications and proceedings in juvenile justice system); Julian W. Mack, *The Juvenile Court*, 23 HARV. L. REV. 104, 106-07 (1909); Alan J. Tomkins et al., *Subtle Discrimination in Juvenile Justice Decisionmaking: Social Scientific Perspectives and Explanations*, 29 CREIGHTON L. REV. 1619, 1622-23 (1996) (providing history and goals of juvenile court).

²³⁹ *See In re Turner*, 145 P. 871, 872 (Kan. 1915) (explaining that *parens patriae* means father of his country, originally applied to monarchies, and used to refer to state's power of guardianship over disabled persons);

proceedings and were not subject to the due process protections afforded to criminal cases.²⁴⁰ *Haley* marked the Supreme Court's expansion of juvenile rights by embracing heightened constitutional due process protections for juveniles.²⁴¹

The constitutional due process protections of juveniles stem from their inexperience and vulnerability to oppression.²⁴² For example, in criminal interrogations, juveniles are susceptible to giving false confessions because

Brooks, *supra* note 63, at 225; Jennifer J. Walters, Comment, *Illinois' Weakened Attempt to Prevent False Confessions by Juveniles: The Requirement of Counsel for the Interrogations of Some Juveniles*, 33 LOY. U. CHI. L.J. 487, 493 (2002).

²⁴⁰ See Chester James Antieau, *Constitutional Rights in Juvenile Courts*, 46 CORNELL L.Q. 387, 387-93 (1961); Marlene Arnold, *Juvenile Justice in Transition*, 14 UCLA L. REV. 1144, 1144-46 (1957); Robert G. Caldwell, *The Juvenile Court: Its Developments and Some Major Problems*, 51 J. CRIM. L. CRIMINOLOGY & POLICE SCI. 493, 501-02, 507-11 (1961).

²⁴¹ See *New Jersey v. T.L.O.*, 469 U.S. 325, 341-43 (1985) (holding that Fourth Amendment protects juveniles from unreasonable search and seizure at school); *Breed v. Jones*, 421 U.S. 519, 531-33, 541 (1975) (holding that prosecution in criminal court following adjudication proceeding in juvenile court on same matter violates juveniles' Fifth Amendment protection from double jeopardy); *McKeiver v. Pennsylvania*, 403 U.S. 528, 545-51 (1971) (holding that trial by jury at adjudicative stage not required by constitution because such formalism creates system contrary to juvenile court's goal of rehabilitation); *In re Winship*, 397 U.S. 358, 368 (1970) (holding that Fourteenth Amendment Due Process Clause requires that juries convict juveniles upon proof beyond reasonable doubt, rather than by preponderance of evidence); *In re Gault*, 387 U.S. 1, 31-42, 44-57 (1967) (holding that due process entitled minors in juvenile courts right to notice, counsel, protections against self-incrimination, and confrontation and cross-examinations of witnesses); *Kent v. United States*, 383 U.S. 541, 562 (1966) (holding that juveniles have right to waiver hearings that are consistent with due process and fair treatment); *Haley v. Ohio*, 332 U.S. 596, 600-01 (1948) (extending due process protections to juveniles subject to criminal interrogation); Brooks, *supra* note 63.

²⁴² See *Gallegos v. Colorado*, 370 U.S. 49, 54 (1962) (explaining that juveniles are incomparable with adults because they do not know consequences of their confessions as well as adults); *Haley*, 332 U.S. at 599 (explaining that juvenile suspect is no match against waves of police interrogation); *People v. Lara*, 432 P.2d 202, 212 (Cal. 1967) (recognizing that minors have privileged status in law to protect them from suffering unfair treatment when dealing with adults because of their immaturity).

they have difficulty withstanding stress and intimidation from adults.²⁴³ Thus, interrogations involving juveniles begin with a great power disparity between the juvenile and the police.²⁴⁴ Police use of fabricated evidence of guilt during a juvenile's interrogation can only broaden this power disparity.²⁴⁵ Moreover, police fabrication of documents to elicit confessions offends the idea of justice and violates due process, regardless of the age of the suspect.²⁴⁶ Civilized society condemns the act of knowingly fabricating documents or evidence against a criminal suspect, because it is inconsistent with notions of fairness and justice.²⁴⁷ As such,

²⁴³ See Steven A. Drizin & Beth A. Colgan, *Tales from the Juvenile Confession Front: A Guide to How Standard Police Interrogation Tactics Can Produce Coerced and False Confessions from Juvenile Suspects*, PERSPECTIVES *supra* note 1, at 127, 143-51 (describing instances where courts reversed juveniles' convictions upon finding that police interrogators coerced juveniles to falsely confess to crimes); Christine S. Scott-Hayward, *Explaining Juvenile False Confessions: Adolescent Development and Police Interrogation*, 31 LAW & PSYCHOL. REV. 53, 54-58 (2007) (explaining that of 125 documented false confessions between 1971 and 2002, sixty-three percent of them came from defendants twenty-five years of age or younger); *supra* note 242 (citing United States and Supreme Court of California decisions recognizing that due process requires that law protect juveniles because they are susceptible to intimidation from adults).

²⁴⁴ See *supra* notes 242-43 and accompanying text.

²⁴⁵ See *Miranda v. Arizona*, 384 U.S. 436, 457 (1966) (noting that environment of criminal interrogations is inherently intimidating); *Lara*, 432 P.2d at 212 (recognizing that law protects minors from suffering unfair treatment when dealing with adults because of their immaturity); *State v. Cayward*, 552 So. 2d 971, 973-74 (Fla. Dist. Ct. App. 1989) (creating bright-line rule that police use of manufactured documentation as criminal interrogation tactic to elicit confessions violates due process under federal and state constitutions).

²⁴⁶ See *Cayward*, 552 So. 2d at 974; *Sherriff, Washoe County v. Bessey*, 914 P.2d 618, 620 (Nev. 1996) (adopting rule that that intentionally fabricated documentation extrinsic to facts of alleged offense that are reasonably likely to produce untrue statements are coercive per se); *State v. Patton*, 826 A.2d 783, 802 (N.J. Super. Ct. App. Div. 2003).

²⁴⁷ *Cayward*, 552 So. 2d at 974; see *Miranda*, 384 U.S. at 483 n.54 (explaining that advising criminal suspects of their rights, and having law enforcement maintain ethics and adhere to democratic traditions, are integral to upholding civil liberties); *Patton*, 826 A.2d at 804 (creating bright-line rule precluding use of police-fabricated evidence during

police fabrication of false documents to induce juvenile confessions offends our traditional notions of justice and due process.²⁴⁸ Therefore, because *Mays* justifies this very practice, the decision offends both due process and juvenile justice principles.²⁴⁹

Conclusion

Despite the *Mays* court's inadequate totality-of-circumstances analysis, the Supreme Court of California denied *Mays*'s petition for review.²⁵⁰ Other courts, however, should disregard *Mays* when determining whether police have coerced a juvenile into making incriminating statements by fabricating documents alleging the juvenile's guilt.²⁵¹ A juvenile's experience, mental state, education, and intellect are all highly relevant to a totality-of-circumstances analysis, and courts should consider these factors in detail.²⁵² Additionally, given the inherent power disparity between police officers and juveniles, using fabricated evidence of guilt in a juvenile's criminal interrogation offends due process.²⁵³ Finally, the *Mays* decision conflicts with traditional notions of juvenile justice, which aim to rehabilitate minors rather than punish

interrogation because it violates state and federal due process and protects integrity of constitution); *State v. Farley*, 452 S.E.2d 50, 60 n.13 (W. Va. 1994) (citing *Cayward*, 552 So.2d at 974) (noting that telling defendant that he failed polygraph examination is unlikely coercive, whereas fabricating false polygraph results to obtain confession would be coercive per se).

²⁴⁸ See *Cayward*, 552 So. 2d at 974; *supra* notes 242-47 and accompanying text.

²⁴⁹ See *People v. Mays*, 95 Cal. Rptr. 3d 219, 229-30 (Ct. App. 2009) (holding that fabricated test results indicating that defendant failed fake polygraph test is not coercive); *supra* note 248 and accompanying text.

²⁵⁰ *Mays*, 95 Cal. Rptr. 3d at 229-30, 2009 Cal. LEXIS 8335 (2009) (denying petition for review).

²⁵¹ See *supra* Part III (arguing that using fabricated documents alleging juvenile's guilt to elicit confessions during interrogation violates due process protections and offends traditional notions of juvenile justice).

²⁵² See *supra* Part III.A (discussing totality-of-circumstances analysis as applied in *Mays*).

²⁵³ See *supra* Part III.B (discussing constitutional due process protections, police interrogation and juvenile suspects, and court decisions addressing use of fabricated evidence during interrogation).

them.²⁵⁴ To protect juveniles' due process rights, the Supreme Court of California should abolish *Mays's* rationale by rendering police use of fabricated evidence during interrogation unconstitutional.²⁵⁵

²⁵⁴ See *supra* Part III.C (discussing foundations of juvenile justice system).

²⁵⁵ See *supra* Part III.B-C (arguing that *Mays* court erred in approving tactic of fabricating documentation to elicit incriminating statements because it violates due process and frustrates juvenile justice system's goals).