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COURT OF APPEALS OF NEW YORK

People v. White[1]

(decided March 20, 2008)

Gary White was convicted of second-degree murder.[2] He later appealed to the Appellate Division, Second Department, claiming that because his statements "were the result of a continuing custodial interrogation that began before the administration of *Miranda* warnings" they were involuntary and should be suppressed.[3] The appellate division affirmed the conviction, but held that since the defendant had not made inculpatory statements until after the *Miranda* reading, it was unnecessary to address whether the post-*Miranda* statements stemmed from the pre-*Miranda* investigation.[4] After granting leave to appeal, the Court of Appeals of New York affirmed, but directly addressed whether the defendant's statements were "part of a single continuous chain of events," thereby violating his Fifth Amendment right against self incrimination, and ultimately held that they were not.[5]

White was arrested for domestic violence.[6] His girlfriend informed the arresting officer, Officer Conde, that White was also involved in an unsolved murder.[7] She divulged who White murdered,

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[1] 886 N.E.2d 156 (N.Y. 2008).
[2] *Id.* at 158.
[3] *Id.*
[4] *Id.* 158-59.
[5] *Id.* at 160.
[6] *White*, 886 N.E.2d at 157.
[7] *Id.*

how he did it, and where it took place.[8] After holding White in a cell for over seventeen hours, Detective Sommer and Detective Byrne had White brought into an office for questioning.[9] Sommer presented White with a computer generated picture of Hansen, the victim who White allegedly shot.[10] When White questioned why he was shown the picture, Byrne stated " '[the victim] was either killed in cold blood, or there was a reason for it' " and then asked White if he would " 'like to tell his side of the story.' "[11] White responded that he would explain everything and he was subsequently read his *Miranda* rights.[12] White signed and acknowledged a *Miranda* rights card and "indicated he was willing to speak with the detectives."[13] After the detectives explained "they knew his alibi was fabricated and that he should tell the truth," White admitted that he murdered the victim and provided details.[14] White acquiesced to the detectives' request for a written statement, however he failed to mention the shooting.[15] Confronted with the omission, White gave an additional written statement where he included shooting the victim.[16] White agreed to a taped video confession, at which an assistant district attorney read White his *Miranda* rights.[17] After the defendant was adminis-

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[8] *Id.*
[9] *Id.*
[10] *Id.*
[11] *White*, 886 N.E.2d at 157.
[12] *Id.*
[13] *Id.*
[14] *Id.* at 157-58.
[15] *Id.* at 158.
[16] *White*, 886 N.E.2d at 158.
[17] *Id.*

tered his *Miranda* rights, he requested an attorney for the first time.[18]

During a suppression hearing, the defendant argued that his confession should be suppressed.[19] He reasoned that the police began interrogating him prior to reading him his *Miranda* rights and "there was no attenuation between the initial interrogation, the subsequent administration of *Miranda* rights and the 'Mirandized' statements."[20] At first, the trial court ruled in favor of the defendant, reasoning that the post-*Miranda* statements were tainted by the officer's pre-*Miranda* request for defendant's version of the facts and that because White had been with the same officers who had first accused him, a "15 to 20 minute break . . . was insufficient to purge the taint from the post-*Miranda* statements."[21] In addition, the court questioned whether the defendant's statements were truly voluntary or if they were a result of depriving the defendant with inadequate food or bathroom use.[22] However, after the People sought to reargue their case, the trial court held that the defendant's post-*Miranda* statements were admissible.[23] Accordingly, White was convicted of second-degree murder and sentenced to twenty-two years to life.[24]

The defendant appealed to the Appellate Division, Second Department, arguing that his statements made after the *Miranda* read-

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[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] *White*, 886 N.E.2d at 158.

[22] *Id.* (The court stated that the People did not meet "their burden to prove beyond a reasonable doubt" that the defendant had been supplied with adequate food and use of the bathroom before the investigation began.).

[23] *Id.*

[24] *Id.*

ing were involuntary and should be suppressed.[25] He stated that "they were the result of a continuing custodial interrogation that began before the administration of *Miranda* warnings . . . [because] they were given without a pronounced break."[26] The appellate division affirmed the verdict solely on the fact that all inculparory statements were made after the *Miranda* warnings were given.[27] Therefore, the court determined that the defendant properly waived his rights and found it unnecessary to contemplate if there was a break in events.[28] Upon defendant's appeal, the New York Court of Appeals affirmed, concluding that the lower court's logic was flawed and finding that an inquiry to determine if pre- and post-*Miranda* statements were part of the same "continuous chain of events" must be made regardless of whether the pre-*Miranda* statements were inculpatory.[29] The Court of Appeals held that the pre- and post-*Miranda* actions did "not constitute a single continuous chain of events."[30] Thus, the defendant's choice to confess was not impaired and allowing the post-Mirandized statements to be entered as evidence would not offend due process.[31]

In a dissenting opinion, Justice Pigott declared that under New York law, White's statement should be suppressed.[32] He noted that the state and federal constitutions afford different levels of pro-

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[25] *Id.*
[26] *White*, 886 N.E.2d at 158.
[27] *Id.* at 158-59.
[28] *Id.* at 159.
[29] *Id.*
[30] *Id.* at 160.
[31] *White*, 886 N.E.2d at 160.
[32] *Id.* (Pigott, J., dissenting).

tection in regard to self-incrimination, pointing out that the Fifth Amendment under the New York Constitution grants more protection than the Fifth Amendment under the United States Constitution in cases where consecutive questioning leads to a proper post-Mirandized statement following an improper un-Mirandized statement.[33]

In *White*, the majority noted that although the United States Supreme Court in *Missouri v. Seibert*[34] has stated that " 'the question-first tactic effectively threatens to thwart *Miranda's* purpose of reducing the risk that a coerced confession would be admitted,' "[35] the question of whether Due Process was offended rested on a condition discussed in *Culombe v. Connecticut*,[36] which addressed whether " 'the defendant's will [was] overborne and his capacity for self-determination critically impaired' " when giving the confession.[37]

In determining whether the defendant's right to due process was infringed under either the state or federal constitution, it is essential to first discuss *Miranda v Arizona*.[38] In *Miranda*, the Supreme Court addressed whether statements made to officers, by persons in custody who were not informed of their right to silence were admis-

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[33] *Id.* (citing People v. Bethea, 493 N.E.2d 937 (N.Y. 1986) (explaining that although the New York State Constitution and United States Constitution text is virtually identical in respect to self incrimination, New York has interpreted its constitution to extend broader protection in the realm of self incrimination)); U.S. CONST. amend. V, states, in pertinent part: "No person . . . shall be compelled in any criminal case to be a witness against himself."; N.Y. CONST. art. I, § 6, states, in pertinent part: "No person shall be . . . compelled in any criminal case to be a witness against himself or herself."

[34] 542 U.S. 600 (2004).

[35] *White*, 886 N.E.2d at 160 (quoting *Seibert*, 542 U.S. at 617).

[36] 367 U.S. 568 (1961).

[37] *White*, 886 N.E.2d at 160 (quoting *Culombe*, 367 U.S. at 602).

[38] 384 U.S. 436 (1966).

sible.[39] The Court held that when the defendant's statements stem from a custodial examination, regardless of whether they are inculpatory or not, they may not be used unless he is first warned of his right to remain silent and has waived his "rights, provided the waiver is made voluntarily, knowingly and intelligently. . . . The mere fact that he may have [voluntarily] answered some questions . . . does not deprive him of the right to refrain from answering any further inquiries until he has consulted with an attorney and thereafter consents to be questioned."[40]

Although the officers did not use "overt physical coercion or patent psychological ploys," by failing to inform the defendants of their right to silence and/or counsel, they nevertheless deprived the detainees of their procedural due process by failing to protect the defendants' Fifth Amendment rights.[41] The Court reasoned that because the officers did not take steps to safeguard the defendants' Fifth Amendment right to refrain from self-incrimination, any statements obtained were not a result of a "free choice."[42] Therefore, *Miranda* holds that "unless and until such warnings and waiver are demonstrated by the prosecution at trial, no evidence obtained as a result of interrogation can be used against him."[43] In *White*, the defendant extends the issue faced in *Miranda*, and asks the question: would due

[39] *Id.* at 444.

[40] *Id.* at 444-45.

[41] *Id.* at 457; U.S. CONST. amend XIV, states, in pertinent part: "[N]or shall any state deprive any person of life, liberty, or property without due process of law . . . ."; U.S. CONST. amend. V, states, in pertinent part: "No person . . . shall be compelled in any criminal case to be a witness against himself."

[42] *Miranda*, 384 U.S. at 458.

[43] *Id.* at 479.

process allow the admissibility of a statement obtained after *Miranda* warnings were given but stemming from an interrogation that began without them?

In determining if due process had indeed been offended by allowing the defendant's confessions, the majority in *White*, referred to the Supreme Court decisions in *Seibert* and *Culombe*.[44]

In *Culombe*, the Supreme Court addressed when the use of a defendant's confession violates the Due Process Clause of the Fourteenth Amendment.[45] The Court stated that the well established test of "voluntariness" remains the threshold question when determining a constitutional infringement.[46] The Court further explained that " 'voluntariness' . . . concerns [the] mental state" of the defendant resulting from the psychological factors of each case.[47] The psychological factors are determined by applying the defendant's reactions to the external facts of the case.[48] "[W]here . . . the uncontested external happenings, coercive forces set in motion by state law enforcement officials . . . are powerful enough to draw forth a confession," the confession is involuntary.[49] In *Culombe*, an adult with the mental capacity of a nine-year-old[50] was questioned for over four days regarding his involvement in a murder.[51] During this time, the defendant was not warned of his right to remain silent, denied his re-

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[44] *White*, 886 N.E.2d at 160.
[45] *Culombe*, 367 U.S. at 568-69.
[46] *Id.* at 602.
[47] *Id.* at 603.
[48] *Id.* at 604.
[49] *Id.* at 605.
[50] *Culombe*, 367 U.S. at 605.
[51] *Id.* at 631.

quest for an attorney, interrogated with his wife and sick child present, and subjected to intimidation.[52] When the defendant finally signed a confession it was "clear that . . . [his] will was broken."[53] The Court held that his confession was involuntary and if used against him would be a violation of due process.[54]

In *Seibert*, before administering *Miranda* rights, police interrogated the defendant regarding her involvement in a murder.[55] After repeatedly denying the accusations, the officers finally elicited a confession.[56] Then, the officers read the defendant her *Miranda* rights and asked her to repeat the confession she had just given.[57] The United States Supreme Court, in a plurality decision, held that the confessions were inadmissible because they originated from a coerced and un-Mirandized statement.[58] Although the Court disagreed on whether the intent of the officers should be considered, they did agree that the central question in determining if Mirandized statements are admissible is whether the questioned person had a real choice in agreeing to give the statement.[59] The Court held that the defendant did not, reasoning that although she was read *Miranda* rights it was involuntary because the admission occurred only after exhaustive interrogation.[60] Furthermore, not only did the same officer question her pre- and post-*Miranda*, but he referred back to the

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[52] *See id.* at 630-34.
[53] *Id.* at 634.
[54] *Id.* at 635.
[55] *Seibert*, 542 U.S. at 604-05.
[56] *Id.* at 605.
[57] *Id.*
[58] *Id.* at 606.
[59] *Id.* at 611-12.
[60] *Seibert*, 542 U.S. at 616.

prior statement she had given.[61] It would not appear to a reasonable person that the accused could change her statement.[62] In fact, the officers had been trained to use this "question-first" technique because it was likely to procure a post-*Miranda* admission.[63]

In contrast to *Seibert*, the Supreme Court in *Oregon v. Elstad*[64] concluded that due process is satisfied when *Miranda* warnings are given to a suspect, even if they are given after an un-Mirandized voluntary confession.[65] The Court reasoned that *Miranda* warnings give the suspect the choice to refrain from speaking.[66] Therefore, if a suspect makes a choice to speak, he is acting on his own "free will," and any conditions which prevented the admissibility of the unwarned statements are removed.[67]

In *Elstad*, two police officers went to the home of a teenage boy with a warrant for his arrest in connection with a neighborhood robbery.[68] While one officer was in the kitchen explaining the situation to his mother, the other officer questioned the defendant about his involvement, to which Michael replied, " '[y]es, I was there.' "[69] When the officers brought the defendant to the station house they read him his *Miranda* rights, which he waived, and then he gave an admission.[70] However, the defendant later moved to suppress his

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[61] *Id.* at 616-17.
[62] *Id.* at 616-18.
[63] *Id.* at 609.
[64] 470 U.S. 298 (1985).
[65] *Id.* at 310-11.
[66] *Id.*
[67] *Id.*
[68] *Elstad*, 470 U.S. at 300-01.
[69] *Id.* at 301-02.
[70] *Id.*

statements on the theory that his post-Mirandized statements were involuntary.[71] He reasoned that he had " ' let the cat out of the bag' " when the officer questioned him at his house, therefore, he felt he had no choice but to later admit to the robbery.[72] The Court concluded that "[t]he relevant inquiry [was] whether, in fact, the second statement was also voluntarily made."[73] The Court determined that the second statement was voluntary because it followed a "voluntary and knowing waiver."[74] The Court held that a suspect, who has previously answered uncoercive questioning, without being read his *Miranda* rights, is not later barred from waiving his rights and confessing after *Miranda* rights have been properly administered.[75]

The Fourteenth Amendment's due process clause requires that the guarantee of justice and liberty, which it provides, is extended to criminal proceedings.[76] In *Lyons v. Oklahoma*, the Supreme Court stated that the key to admissibility of a statement is whether it is voluntary.[77] The Court reasoned that if a "confession was the unavoidable outgrowth" of coercion it would be inadmissible.[78] However, if "evidence would justify a determination that the effect of a prior coercion was dissipated before the second confession" it would be considered voluntary and would not be repugnant to due process.[79]

Similarly, the New York Court of Appeals has also noted the

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[71] *Id.* at 302-03.
[72] *Id.* (citing United States v. Bayer, 331 U.S. 532 (1947)).
[73] *Elstad*, 470 U.S. at 318.
[74] *Id.*
[75] *Id.* at 318.
[76] Lyons v. Oklahoma, 322 U.S. 596, 601 (1944).
[77] *Id.* at 603.
[78] *Id.*
[79] *Id.* at 604.

importance of a voluntary confession. In *People v. Anderson*,[80] the court stated that "it has come to be accepted that the requirement for voluntariness of confessions, though heavily influenced by the privilege against self incrimination, is essentially a matter of due process."[81] In *Anderson*, a twenty-one-year-old suspect was arrested without cause and held for nineteen hours without food or sleep.[82] After continual interrogation with access to no one other than police officers, he succumbed to their demand for a confession.[83] The court held that the confession was involuntary, and therefore offended due process.[84]

However, a defendant who first declines to answer questions when interrogated in violation of *Miranda* can change his mind and then give an admissible statement. In *People v. Kinnard*,[85] the suspect did just that.[86] The Court of Appeals again looked to voluntariness and held that when a suspect, after refusing to speak, changes his mind spontaneously without provocation, the statement is admissible.[87]

In *People v. Paulman*,[88] the Court of Appeals addressed "whether two statements defendant made after he was given *Miranda* warnings and waived his right to remain silent should have been sup-

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[80] 364 N.E.2d 1318 (N.Y. 1977).
[81] *Id.* at 1319 (citing Malloy v. Hogan, 378 U.S. 1 (1964)).
[82] *Id.*
[83] *Id.* at 1320.
[84] *Anderson*, 364 N.E.2d at 1322.
[85] 467 N.E.2d 886 (N.Y. 1984).
[86] *Id.* at 887.
[87] *Id.*
[88] 833 N.E.2d 239 (N.Y. 2005).

pressed due to the prior, unwarned statement."[89] The court held that the post-*Miranda* statements "were properly received as evidence."[90]

In *Paulman*, officers investigated an allegation that the defendant sexually abused a four-year-old girl.[91] At the onset of the investigation, the defendant told the officers that while the girl was nude he "accidentally" touched her private area while tickling her, and also rubbed his penis against her while in bed.[92] In addition, he informed the officers that he had sexual intercourse with a thirteen-year-old girl who resided in his complex.[93] The defendant agreed to accompany the officers to the station for more questioning.[94]

Upon arriving at the barracks, Trooper Oliver instructed the defendant to wait for Investigator Christopher Baldwin, and in the meantime he advised the defendant to take notes regarding his " 'best recollection of what . . . happened.' "[95] After the defendant finished writing his statement, he was read his *Miranda* rights by Investigator Baldwin.[96] The defendant waived his rights, and then not only "made a series of oral admissions," but also signed a *Miranda* waiver and "initialed each page . . . [of the] question-and-answer statement" that Baldwin had typed up.[97]

Prior to trial, the defendant argued that all four of his state-

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[89] *Id.* at 241.
[90] *Id.*
[91] *Id.*
[92] *Id.*
[93] *Paulman*, 833 N.E.2d at 241.
[94] *Id.*
[95] *Id.*
[96] *Id.*
[97] *Id.* at 241-42.

ments should be suppressed.[98] He reasoned that his oral and handwritten statements were not preceded by *Miranda* warnings. In addition, although the oral statement to Baldwin and the signed typewritten statement followed *Miranda* warnings, they should both be suppressed because they were "tainted by the prior, unwarned custodial interrogation."[99]

The suppression court rejected the defendant's argument and at trial all evidence was admitted, resulting in a conviction.[100] The Appellate Division, Fourth Department, affirmed, holding that only the handwritten statement should have been suppressed, but that it resulted in no more than harmless error.[101] The defendant appealed to the Court of Appeals, stating that his initial comments should be suppressed, and contending that the other three statements were a result of the police failing to read his *Miranda* rights before eliciting the handwritten statement, and should therefore be suppressed.[102] The Court of Appeals affirmed, holding that the statements the defendant made after receiving *Miranda* warnings did not result as part of the same chain of events resulting from the un-Mirandized handwritten statement.[103] In *Paulman*, the defendant's first admissions were purely voluntary. His due process rights were not affected because the defendant was not in custody at the time of his first admission, therefore, no process was due prior to the admission.

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[98] *Paulman*, 833 N.E.2d at 242.
[99] *Id.*
[100] *Id.*
[101] *Id.* at 243.
[102] *Id.* at 242.
[103] *Paulman*, 833 N.E.2d at 247.

In *Paulman*, the court relied heavily on its earlier decision in *People v. Chapple*,[104] which held that that when an admission is made after *Miranda* warnings are given, but are still part of the same "single continuous chain of events" that began with an un-Mirandized interrogation, it is "inadmissible because it is not truly voluntary."[105] The post-Mirandized statement will only be admissible if "there is such a definite, pronounced break in the interrogation that the defendant may be said to have returned, in effect, to the status of one who is not under the influence of questioning."[106]

The New York rule outlined in *Chapple* became even more clearly articulated in *People v. Bethea*,[107] where the Court of Appeals clarified that when "the close sequence between the unwarned custodial statement" and the statement following the *Miranda* warnings, the second statement must be suppressed.[108] In *Bethea*, police officers stopped two suspects and began to question them without reading the *Miranda* warnings.[109] After obtaining a statement, the officers brought the suspect to the precinct where the suspect repeated the statement following the administration of the *Miranda* warnings.[110]

In *Bethea*, the court noted the differences between the warnings required by the New York Constitution as described in *Chapple*, and the warnings required by the United States Constitution as read

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104 341 N.E.2d 243 (N.Y. 1975).
105 *Id.* at 245.
106 *Id.* at 245-46.
107 493 N.E.2d 937 (N.Y. 1986).
108 *Id.* at 939.
109 *Id.* at 938.
110 *Id.*

in *Elstad*.[111] The court clarified that "as a matter of State constitutional law," *Chapple* must be followed.[112]

After comparing both the U.S. Constitution and the New York Constitution, it is apparent that New York guarantees a higher level of protection to ensure that the defendant's decision to incriminate himself is truly voluntary. New York ensures this by demanding that post-Mirandized statements are only admissible if there is a pronounced break between the un-Mirandized interrogation and the post-Mirandized statement. The approach under the Federal Constitution is more relaxed, allowing any statements following an un-Mirandized interrogation to be admissible by reading the Miranda rights, so long as there was no coercion involved in making the statement. As *Paulman* stated, the New York Court of Appeals was so adamant in this distinction, that they wrote the decision in *Bethea* to ensure that more was required under the New York Constitution than *Elstad* required.[113] In other words, the court wanted to clarify that merely uttering warnings "would [not] be sufficient to justify the admission of subsequent statements."[114] For a *Miranda* warning to satisfy due process in New York, there must be adequate assurance that the defendant was effectively warned of his right against self incrimination and if the pre-interrogation and post-*Miranda* statements are part of the same "single continuous chain of events," then the assurance is inadequate.[115] Although the wording of both constitutions is practi-

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[111] *Id.* at 939.
[112] *Bethea*, 493 N.E.2d 937 at 939.
[113] *Paulman*, 833 N.E.2d at 244 (citing *Bethea*, 493 N.E.2d 937).
[114] *Id.*
[115] *Id.*

cally indistinguishable, New York has interpreted its Due Process Clause to require that *Miranda* rights be given at the onset of an investigation.[116] Only if there is a pronounced break before the Mirandized statement is made can it be admissible in New York.[117] So the question becomes when is there a "single continuous chain of events?"

Until *White*, this question seemed to be answered by considering the list of factors annunciated in *Paulman*.[118] The factors included: the lapse in time between the occurrence of the *Miranda* violation and the admission which followed; the presence of police personnel when the statement was taken; whether there was a change of venue during the interrogation; the circumstances, such as the level, to which, the interrogation was unacceptable; and whether the defendant was willing to offer information to police before the *Miranda* violation.[119] Although "[n]o one factor is determinative, ... [t]he purpose of the inquiry is to assess whether there was a sufficiently 'definite, pronounced break in the interrogation' to dissipate the taint from the *Miranda* violation."[120]

The problem with the factors listed in *Paulman* is that when applied, results can vary drastically. In fact, the analysis in *White* illuminates the shortcomings of the application. The majority applied the factors enunciated in *Paulman* and held that the circumstances of the present case did not comprise "a single continuous chain of

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[116] *Id.*
[117] *Id.*
[118] *White*, 886 N.E.2d at 159.
[119] *Id.* (citing *Paulman*, 833 N.E.2d at 245).
[120] *Paulman*, 833 N.E.2d at 245 (citing *Chapple*, 341 N.E.2d 243).

events."[121] In sharp contrast, the dissent applied the same factors from *Paulman* and concluded that the events were not separated by a pronounced break and, therefore, deemed the defendant was entitled to suppress his post-*Miranda* statements.[122]

The blurry line articulated in *Chapple*, that a defendant is exercising his free choice if he "may be said to have returned, in effect, to the status of one who is not under the influence of questioning,"[123] seems to have left the courts to decipher its meaning without any clear guidelines. It is hard to say whether the *Bethea* Court succeeded in expanding the Due Process Clause protection beyond what was afforded in *Elstad*. In fact, depending on the justice presiding, the mere utterance of *Miranda* warnings may still be enough to cure a New York pre-*Miranda* violation.

The *Paulman* factors should be read broadly when determining whether a break in an interrogation is sufficient to cure a proper un-Mirandized investigation followed by a Mirandized admission. Unless the application of the factors support a conclusion that the defendant only gave his confession because his will was overborne, it should be deemed admissible. At the heart of this constitutional struggle is finding a balance between protecting a defendant from an unfair prosecution and ensuring that justice prevails. As the number of necessary procedural safeguards against self incrimination continues to increase, so does the defendant's chances of escaping punishment due to a technicality. Therefore, as long as the safeguards

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[121] *See White*, 886 N.E.2d at 159-60.
[122] *Id.* at 161-62 (Pigott, J., dissenting).
[123] *Chapple*, 341 N.E.2d 245-46.

given, such as *Miranda* warnings, were effective in allowing a defendant to make a voluntary decision to confess, he should not later be able to escape punishment based on a technicality, as the defendant in *White* tried to do. In *White*, the majority correctly decided that the break was sufficient to cure the *Miranda* violation, since an application of the *Paulman* factors did not indicate that the defendant's will was overborne.[124] Applying the *Paulman* factors narrowly, as Justice Pigott's dissent suggests, would result in defendants having an overabundant amount of room to argue the technicalities of their admissions. Hence, following the dissent's analysis would hinder justice, since more voluntary confessions would likely be suppressed.[125]

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[124] *White*, 886 N.E.2d at 160.

[125] *White*, 886 N.E.2d at 160; Thomas P. Windom, Note, *The Writing On The Wall:* Miranda's *"Prior Criminal Experience Exception,"* 92 VA. L. REV. 327, 361-63 (2006) (stating that by excluding a defendant's admission, that was voluntarily made when his will was not overborne, merely because of a technicality is against public policy. Such evidence helps the jury to discover truth and to bar such evidence will allow guilty criminals to go free).

DOUBLE JEOPARDY

United States Constitution Amendment V:

[N]or shall any person be subject for the same offence to be twice put in jeopardy of life or limb . . . .

New York Constitution article I, section 6:

No person shall be subject to be twice put in jeopardy for the same offense . . . .