

## NMDPS - MIRANDA – CHILD (DWI)

In San Juan County, a sixteen-year-old Child (a legal term for those under the age of eighteen) was stopped for running a stop sign. Detecting the odor of burnt marijuana, the Child was given field tests which he failed. The Child was read the Implied Consent Act, given a blood test, and arrested for DWI. Miranda warnings were not given.

NMSA 1978, Section 32A-2-14 (C)(D) states that when children are detained, subject to an investigatory detention, the first two Miranda rights must be read: the right to remain silent and anything said may be used against them. If a child is not advised of these rights, “any statement or confession” by the child will be inadmissible.

Failure to read Miranda, which seeks to uphold the right against self-incrimination, can mean testimony (a statement or confession) is inadmissible. Miranda, however, does not apply to physical evidence: blood, fingerprints, hair samples, etc. And so we ask: are the field tests, blood test results, and consent to take those tests physical evidence or testimonial?

Court of Appeals held evidence was physical, not testimonial. A field test is evidence of lack of motor coordination. Counting backwards or reading the alphabet is evidence of a person’s physical condition. Consent to the Implied Consent Act is a simple yes or no answer and not testimonial. Evidence, being physical, was admissible. State v. Randy J. (2011).

- - - ADA Elliott Guttman, Law Enforcement Academy



So...you wanna play rough huh?