WISCONSIN COURT

 Case No.:

 Plaintiff,

Vs.

 Minor

**Statement of Facts**

(Insert your facts here)

**Memorandum of Points and Authorities**

1. **OFFICER VIOLATED FOURTH AMENDMENT RIGHTS BECAUSE OFFICER CONDUCTED A TERRY STOP WITHOUT REASONABLE ARTICULABLE SUSPICION**
	1. **Officer seized \_\_\_\_\_\_\_\_\_\_ when officer approached \_\_\_\_\_\_\_\_\_\_.**

The Fourth Amendment of the federal Constitution, and a similar provision in Wisconsin Constitution, prohibit unreasonable seizures. U.S. Const. amend. IV; Wis. Const. art. I, §11. A seizure occurs when taking into account all of the circumstances surrounding the incident, a reasonable person would not have believe he was free to leave. U.S. v. Mendenhall, 446 U.S. 544, 554 (1980). Furthermore, to pass muster under the Fourth Amendment and [Wis. Const. art. I, § 11](https://advance.lexis.com/GoToContentView?requestid=27896218-d9a9-47c2-931a-cccd40dffd3e##), the officer conducting the stop must have, at a minimum, a reasonable suspicion that crime is afoot. [State v. Rutzinski, 241 Wis. 2d 729,(2001)](https://advance.lexis.com/Auth/Replay?targetUrl=/ContentViewExternalAccess%3FdocId%3D%2Fshared%2Fdocument%2Fcases%2Furn%3AcontentItem%3A42NY-P0V0-0039-40MM-00000-00%26Hcsi%3D10983%26title%3DState%20v.%20Rutzinski%2C%20241%20Wis.%202d%20729%26vendorreportId%3D).

[The](https://advance.lexis.com/GoToContentView?requestid=82dda9ec-20fe-4ee9-bfe3-dde7068344a6##) Fourth Amendment is not implicated everytime a police officer approaches an individual to ask a few questions. Without reasonable, articulable suspicion, police may ask questions, request identification, and ask for consent to search, as long as the police do not convey a message that compliance with their requests is required. [State v. Griffith, 236 Wis. 2d 48, 65, (2000)](https://advance.lexis.com/Auth/Replay?targetUrl=/ContentViewExternalAccess%3FdocId%3D%2Fshared%2Fdocument%2Fcases%2Furn%3AcontentItem%3A40KS-M540-0039-44SX-00000-00%26Hcsi%3D10983%26title%3DState%20v.%20Griffith%2C%20236%20Wis.%202d%2048%26vendorreportId%3D)

\_\_\_\_\_\_\_\_ was seized when…(insert facts). Under these circumstances, it is clear that reasonable person of \_\_\_\_\_\_\_’s age would not have felt at liberty to ignore the police and continue on his way. Youth is more than a chronological fact"; the mere condition of youth renders a child "uncommonly susceptible to police pressures." [Jerrell C.J., 283 Wis. 2d 145,](https://advance.lexis.com/GoToContentView?requestid=85abb43b-c9b4-4f3e-9983-2c04be675797##) (2005).

Additionally, \_\_\_\_\_\_\_\_\_’s Fourth Amendment rights were implicated, requiring at least reasonable articulable suspicion for the stop. Instead, the officer stopped \_\_\_\_\_\_ because of a hunch (insert facts). Lastly, officer did not question \_\_\_\_\_\_\_\_\_ for nay other purpose other than determining whether \_\_\_\_\_\_\_\_\_ was personally involved in the \_\_\_\_\_\_\_\_.

* 1. **Officer had no reasonable articulable suspicion to justify the brief investigative stop.**

At its inception, the seizure of was a Terry stop without reasonable articulable suspicion that criminal activity was afoot as required to justify this type of brief investigative stop under Terry v. Ohio, 392 U.S. 1, 22 (1968). Florida v. J.L., U.S. 266, 272 (2000); Alabama v. White, 496 U.S. 325, 330 (1990). A seizure violated the Fourth Amendment for purpose of an investigative stop if based on the totality of the circumstances, the detaining officer does not have a “particularized and objective basis for suspecting the particular person stopped of criminal activity.” United States v. Cortez, 449 U.S. 411, 417-18 (1981). To justify a detention or an investigative stop the officer must have a reasonable suspicion, grounded in specific articulable facts and reasonable inferences from those facts, that an individual is, or was, violating the law. [State v. Harris, 316 Wis. 2d 412, (2009)](https://advance.lexis.com/Auth/Replay?targetUrl=/ContentViewExternalAccess%3FdocId%3D%2Fshared%2Fdocument%2Fcases%2Furn%3AcontentItem%3A4VC8-FH90-TXFY-02N0-00000-00%26Hcsi%3D10984%26title%3DState%20v.%20Harris%2C%202009%20Wisc.%20App.%20LEXIS%207%26vendorreportId%3D), and the officer reasonably suspects, considering the totality of the circumstances, that some type of criminal activity either is taking place or has occurred. [Wis. Stat. § 968.24](https://advance.lexis.com/GoToContentView?requestid=37df969a-ed10-4032-9670-fe7e7bdc157d##).

Moreover, the “legality of a Terry stop and search is not measured by considerations of the good faith or a correct hunch on the part of the police” even if the hunch later turned out to be correct. [State v. Harding, 250 Wis. 2d 355, (2001)](https://advance.lexis.com/Auth/Replay?targetUrl=/ContentViewExternalAccess%3FdocId%3D%2Fshared%2Fdocument%2Fcases%2Furn%3AcontentItem%3A44KX-9C00-0039-44S0-00000-00%26Hcsi%3D10984%26title%3DState%20v.%20Harding%2C%202001%20Wisc.%20App.%20LEXIS%201246%26vendorreportId%3D).

(Insert Facts on whether there was objectively reasonable, articulable suspicion to support the stop)

* 1. **Officer did not have probable cause when he seized .**

When facts are known to tan arrestign officer that would persuade

someone of “reasonable caution” that the person to be arrested has committed a crime, probable cause exists. Dunaway v. New York, 442 U.S. 200, 208, n.9 (1979); Illinois v. Gates, 462 U.S. 213, 243 (1983); City of Wis. Dells v. Roeder, 326 Wis. 2d 266 (2010). There was no probable cause for an arrest because…(insert facts)

1. **\_\_\_\_\_\_\_\_’S ALLEGED STATEMENTS TO OFFICER MUST BE SUPPRESSED.**
	1. **The statements were Fruit of a Violation of the Fourth Amendment.**

 Where evidence seized in violation of the Fourth Amendment is sought to be admitted in a juvenile or criminal prosecution, the only suitable remedy is to apply the exclusionary rule to the evidence. Wong Sun v. United Staes, 371 U.S. 471, 486 (1963). Accordingly, because \_\_\_\_\_\_’s detention was in violation of the Fourth Amendment, all evidence seized during this unlawful detention must be suppressed.

 Furthermore, statements made during an illegal detention, even though the statements are voluntarily given, are inadmissible “if they are the product of the illegal detention.” Florida v. Royer, 460 U.S. 491, 501 (1983); see also Dunaway v. New York, 442 U.S. 200, 218-19 (1979); Brown v. Illinois, 422 U.S. 590, 601-02 (1975). In this case, (insert facts). Because \_\_\_\_\_\_\_’s statements were, “not the product of an independent act of free will,” Royer, 460 U.S. at 501, the statements must be suppressed along with the evidence seized during the detenion.

* 1. **\_\_\_\_\_\_\_’s Fourteenth Amendement Due Process rights were violated because his statements were not voluntary.**

 The prosecution must show that the staements made by \_\_\_\_\_ were a product of rational intellect and free will. Mincey v. Arizona, 437 U.S. 385, 398 (1978). has a constitutional right to a fair hearing on this matter at which the government bears the burden of providing the voluntariness of her statements by a preponderance of the evidence. See Lego v. Twomey, 404 U.S. 477, 489 (1972); Jackson v. Denno, 378 U.S. 368, 376-77 (1964).

In assessing voluntariness, a court should consider the “totality of the circumstances”. Colorado v. Connelly, 479 U.S. 158, 176 (1986). In this case (insert facts why is was not product of rational intellect and free will). Statements given and items seized during a period of illegal detention are inadmissible. State v. Matejka, 230 Wis. 2d 748, (1999). (insert facts to why detention illegal and therefore statements not voluntary, and therefore not admissible).

* 1. **The alleged statemetns must be suppressed as they were obtained in violation of \_\_\_\_\_\_\_’s Fifth Amendment Rights as set forth in Miranda v. Arizona.**

 Where a defendant is in custody and subjected to interrogation, or its functional equivalent, he must be clearly informed that he has the right to remain silent, the right to have counsel present, and that any statement he makes may be used a evidence agaisnt him.. Miranda v. Arizona, 384 U.S. 436, 444 (1966). If he is not informed of these rights, any statements made durign the interrogation cannot be used against him. Id. Custody is imposed once an investigating officer physically depreives a suspect of his freedom of action in any significant way or reasonably leads the suspect to believe that he is so deprived. Id. The functional equivalent or interrogation occurs when a alw enforcement officer uses words or actions that the officer knows are reasonably likely to elicit an incriminationg response. Rhode Island v. Innis, 446 U.S. 291, 301 (1980).

When police officer gives Miranda warnings mid-interrogation, after the defendant has already gien an unwarned confession, the confession repeated after the Miranda warning is inadmissible. Missouri v. Seibert, 542 U.S. 600, 612, 617 (2004). Here…(insert facts)

 People must prove that the statement \_\_\_\_\_ made was after \_\_\_\_\_\_ was read his Miranda rights, and that \_\_\_\_\_\_\_ knowingly, intelligently, voluntarily waived those rights. North Carolina v. Butler, 441 U.S. 369, 373 (1979); Fare v. Michael, 442 U.S. 707, 724 (1979). Whether the accused made such a waiver is determined by the facts and circumstances of the case, including the background and experience of the accused. Butler, 441 U.S. at 374-75. In assessing whether a juvenile properly waived his rights, the court must condier the juvenile’s age, experience, background, and intelligence as part of the totality of the circumstances. Fare, 442 U.S. at 725. \_\_\_\_\_\_\_’s age and education level made him highlty susceptible to police coercion. See J.D.B. v. North Carolina, 131 S. Ct. 2394, 2404 (2011). (insert facts of D’s age and education). (did officer made efforts to ensure D understood his rights?). (can state meet burden to prove D waived his Fifth Amendment rights?).

* 1. **All evidence obtained from \_\_\_\_\_\_’s unlawful detention is a fruit of that stop and must be suppressed.**

 Where illegality is established for a stop, by, for instance, violating the Fourth Amendment, all evidence seized from that stop by exploitation of that illegality is “fruit of the poisonou tree”, unless the evidence was obtained by, “…means sufficiently distinguishable to be purged of the primary taint.” Wong Sun, 371 U.S. at 488. Here…(insert facts).

1. **Conclusion**