**STATE OF ILLINOIS**

**IN THE CIRCUIT COURT OF THE 18TH JUDICIAL CIRCUIT**

**COUNTY OF DU PAGE**

PEOPLE OF THE STATE OF ILLINOIS )

PLAINTIFF, )

)

) CRIMINAL

VS. ) No. 08 CF 3231

)

)

SENECA BERRY )

DEFENDANT. )

**MOTION TO SUPPRESS STATEMENTS**

NOW COMES the Defendant, SENECA BERRY, by Defendant's attorney, Robert A. Miller Public Defender, and moves this Court to suppress as evidence herein any and all confessions, statements, admissions, whether inculpatory or exculpatory, and whether written or oral, made by the Defendant prior, at the time of, or subsequent to Defendant's arrest in the above-entitled cause. In support of this motion, Defendant states as follows:

1. The Defendant was arrested on or about November 24, 2008, for the offense of Murder and Armed Robbery.

2. That at the time of Defendant's arrest, the Defendant was 15 years old.

3. That within hours of the Defendant's arrest, he allegedly made inculpatory statements to the police.

4. When a defendant moves to suppress his confession, the State has the burden of establishing that the confession was voluntary. [*People v. Woods,* 184 Ill.2d 130, 145, 234 Ill.Dec. 423, 703 N.E.2d 35 (1998)](http://web2.westlaw.com/find/default.wl?tf=-1&serialnum=1998199064&rs=WLW8.11&ifm=NotSet&fn=_top&sv=Split&tc=-1&findtype=Y&ordoc).

5. A confession is voluntary when, based on the totality of the circumstances, the accused's will was not overborne at the time he confessed. [*People v. Kincaid,* 87 Ill.2d 107, 117, 57 Ill.Dec. 610, 429 N.E.2d 508 (1981)](_).

6. In determining the voluntariness of a confession, the court considers the totality of the circumstances, including the defendant's age, intelligence, background, experience, mental capacity, education, physical condition, and experience with the criminal justice system, the legality of the detention, the duration of the detention, the duration of questioning, and any promises, threats, deceit, and physical or mental abuse by police. [*People v. Gilliam,* 172 Ill.2d 484, 500-01, 218 Ill.Dec. 884, 670 N.E.2d 606 (1996)](_h).

7. When the defendant is a juvenile, additional factors such as whether a parent or other interested adult was present are considered important in determining the voluntariness of a confession, but no one fact is dispositive. [*People v. Haynie,* 347 Ill.App.3d 650, 653, 283 Ill.Dec. 146, 807 N.E.2d 987 (2004)](_h).

8. Because the taking of a juvenile's confession is a sensitive concern, “the ‘greatest care’ must be taken to assure that the confession was not coerced or suggested that “it was not the product of ignorance of rights or of adolescent fantasy, fright or despair.” [*In re G.O.,* 191 Ill.2d 37, 54, 245 Ill.Dec. 269, 727 N.E.2d 1003 (2000)](_h).

9. The Defendant was not allowed to speak with his mother during the interrogation process.

10. The Defendant's mother was present at the Hanover Park Police Station for several hours, and repeatedly asked to speak to her son, Seneca Berry, and to be present with him during questioning.

11. As for the refusal by the police to let the defendant's mother see him, Illinois courts have explained that “the presence or absence of a parent is only one factor in determining whether a confession was voluntary within the totality of the circumstances” and in Illinois, a juvenile does not have a *per se* right to consult with a parent before or during police questioning. [*Hopkins,* 247 Ill.App.3d at 962, 187 Ill.Dec. 688, 618 N.E.2d 279](http://web2.westlaw.com/find/default.wl?tf=-1&serialnum=1992202570&rs=WLW8.11&ifm=NotSet&fn=_top&sv=Split&tc=-1&findtype=Y&ordoc).

12. The Juvenile Court Act of 1987 requires that a parent or a guardian and a juvenile officer are to be notified when a minor is taken into custody. [705 ILCS 405/2-6](http://web2.westlaw.com/find/default.wl?tf=-1&rs=WLW8.11&ifm=NotSet&fn=_top&sv=Split&tc=-1&docname=ILSTCH705S405%2f2-6&ordoc=201)(a) (West 2004).

13. There is no requirement that a juvenile officer be present when a minor is questioned, although it is a significant factor in the totality of the circumstances analysis. [*People v. Griffin,* 327 Ill.App.3d 538, 547, 261 Ill.Dec. 631, 763 N.E.2d 880 (2002)](http://web2.westlaw.com/find/default.wl?tf=-1&serialnum=2002088010&rs=WLW8.11&ifm=NotSet&fn=_top&sv=Split&tc=-1&findtype=Y&ordoc).

14. Ultimately, in determining whether a juvenile defendant's statement is reliable and admissible, the court should consider whether the defendant had an opportunity to confer with an interested adult, either a parent or a juvenile officer. [*People v. Montanez,* 273 Ill.App.3d 844, 854, 210 Ill.Dec. 295, 652 N.E.2d 1271 (1995)](http://web2.westlaw.com/find/default.wl?tf=-1&serialnum=1995140010&rs=WLW8.11&ifm=NotSet&fn=_top&sv=Split&tc=-1&findtype=Y&ordoc).

WHEREFORE, the Defendant asks that this Court suppress as evidence herein any and all confessions, statements, admissions, or tests, inculpatory or exculpatory, made by her at about the time of and subsequent to her formal arrest.

CYNTHIA WARREN, Defendant

By\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Robert A. Miller, Her Attorney

Public Defender

Robert A. Miller 100121

DuPage County Public Defender's Office

503 N. County Farm Road

Wheaton, IL 60187

630.407.8300.