Recent Case Report

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Camreta v. Greene

(May 26, 2011) __ U.S. __ [2011 WL 2039369]

Issue

Must officers obtain either a court order or parental consent before interviewing a child at school about a report of parental abuse?

Discussion and Comment

In 2010, a panel of the Ninth Circuit announced its controversial ruling in the case of *Camreta* v. *Greene,*[1] a dubious decision in which the court reached the following conclusions: (1) A child is "detained" under the Fourth Amendment when a school guidance counselor escorts the child to a school office for an interview with officers about reported parental abuse. (2) Officers are not permitted to question the child unless they obtain parental consent or a court order. In addition to its brazen senselessness, the court's decision raised eyebrows because made it difficult or impossible for officers to investigate these types of crimes since (a) a parent who has abused a child is unlikely to consent to such an interview, and (b) there is no apparent authority by which courts can order a child to participate in one.

On October 12, 2010, the United States Supreme Court announced it would review the ruling, and on May 26, 2011 it published its decision. But, for reasons that seem trivial in light of the horrible implications of the Ninth Circuit's decision, the Supreme Court elected not to overturn it in the usual manner. Instead, it simply vacated it, rendering it a nullity but leaving nothing in its place. As the Court explained, its ruling "strips the decision below of its binding effect." While it was disappointing that the case was not given a more graphic annihilation, the Supreme Court did the next best thing by abolishing it, an action it has rarely taken.[2]

So the question now is whether the Ninth Circuit's discredited opinion will have any residual effect. Especially important is whether school administrators in California will now, as they did before, routinely permit officers to interview children at school about suspected abuse by a parent. (Sadly, we have heard that some schools within the Ninth Circuit's jurisdiction responded to its decision by refusing to permit such interviews without a court order, having apparently concluded that avoiding potential lawsuits was more important than protecting their students from parental abuse.)

While we won't know for some time how California's schools and law enforcement agencies will respond to the Supreme Court's action, here are a few things that should be noted. First, schools cannot prohibit officers from interviewing children who are believed to have been the victims of parental abuse. On the contrary, the California Penal Code specifically states that such a child "may be interviewed during school hours, on school premises."[3]

Second, even though it is absurd to suggest that a student is "detained" if he is escorted to an office by a school employee, officers should naturally take steps to reduce any stress resulting from such an interview and to establish a more comfortable atmosphere in which to speak with the child. To this end, interviews should ordinarily be conducted by school resource officers, as they are a familiar presence to most students

and, just as important, are generally viewed as protective—not threatening.[4] If, however, a resource officer is not available, the interview should be conducted by only one or—at most—two officers, and they should be in plain clothes.[5] Third, a member of the school staff should be present. In fact, a student who is interviewed by officers at school has a legal right to have a staff member present, and the Penal Code requires that officers notify the student of this right.[6]

Fourth, officers should begin by making it clear to the student that she is not in trouble, that they just want to talk with her, and that she can leave whenever she wants. Finally, officers should consider recording these interviews (secretly, if possible, so as not to heighten the anxiety level) in order to have proof of the following: (1) they did not employ coercive or suggestive interviewing methods, (2) they advised the child that she did not have to talk with them, (3) they informed the child of her right to have a member of the school staff present, and (4) the precise duration of the interview. POV

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[1] (9th Cir. 2009) 588 F.3d 1011.
[2] See *U.S.* v. *Munsingwear, Inc.* (1950) 340 U.S. 36.
[3] See Pen. Code § 11174.3(a) ["Whenever a representative of a government agency investigating suspected child abuse or neglect or the State Department of Social Services deems it necessary, a suspected victim of child abuse or neglect may be interviewed during school hours, on school premises, concerning a report of suspected child abuse or neglect that occurred within the child's home or out-of-home care facility. The child shall be afforded the option of being interviewed in private or selecting any adult who is a member of the staff of the school, including any certificated or classified employee or volunteer aide, to be present at the interview. A representative of the agency investigating suspected child abuse or neglect or the State Department of Social Services shall inform the child of that right prior to the interview . . ."].
[4] See Ed. Code § 49350.5 [school resource officer program demonstrates "a collaborative and integrated approach for implementing a system of providing safe and secure school environments between the school districts and local law enforcement agencies"].
[5] **NOTE**: It should be noted that some counties have special facilities at which trained personnel conduct these types of interviews; e.g., Alameda County's CALICO center.
[6] See Pen. Code § 11174.3(a).