

## **U.S. v. Guillen**

(10th Cir. 2021) 995 F.3d 1095

### **Issues**

(1) Did the defendant's father have authority to consent to a search of his son's bedroom? (2) Did agents violate *Miranda* by utilizing an illegal two-step interrogation procedure?

### **Facts**

ATF agents in Albuquerque, New Mexico responded to a 911 call from a woman who said she had just found a bomb under her bed. It turned out that the bomb was an improvised explosive device (IED) consisting of a "pressure cooker sealed with white duct tape and filled with black powder, homemade napalm, and various types of shrapnel." The woman said she suspected the perpetrator was her ex-boyfriend, 18-year old Ethan Guillen.

After defusing the device, ATF agents learned that Ethan lived with his father, so they went to his house and spoke with him. Mr. Guillen said he had recently purchased a pressure cooker for Ethan, but that it was missing. Also missing was Mr. Guillen's soldering iron which, according to agents, was similar in design to one that was used to trigger the device. Mr. Guillen consented to a search of the premises including Ethan's bedroom in which the agents found white duct tape that matched the tape on the device.

After the search, agents interviewed Ethan in the kitchen and confronted him with the incriminating evidence. When asked if he built the device, Ethan "hesitated, took a deep breath, and said: 'Yes, I made it.'" The agents then *Mirandized* him and he freely provided details on how he made the device.

Ethen was charged with possession of an unregistered destructive device and later filed a motion to suppress his confession and the evidence found in the home. When the motion was denied, he pled guilty.

### **Discussion**

Ethan claimed that the warrantless search of his bedroom was unlawful because his father lacked the authority to consent, and that his pre- and post-waiver confessions should have been suppressed because they were obtained in violation of *Miranda*.

**SEARCH OF ETHAN'S BEDROOM:** It is settled that consent to search may be given by someone other than the suspect if officers reasonably believed that the consenting person had actual or apparent authority over the place or thing that was searched. In cases where a parent consented to a search of a minor's bedroom, the courts almost always rule that the parents have apparent authority because of their overriding duty to supervise their minor children. As the California Court of Appeal observed, "Given the legal rights and obligations of parents toward their minor children, common authority over the child's bedroom is inherent in the parental role."<sup>1</sup>

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<sup>1</sup> *In re D.C.* (2010) 188 Cal.App.4th 978, 985. Also see *In re Robert H.* (1978) 78 Cal.App.3d 894, 898 ["Where the police search a minor's home, the courts uphold parental consent on the premise of either the parents' right to control over the minor, or their exercise of control over the premises."].

For these reasons, the court ruled that the search of Ethan's bedroom was lawful. Said the court, "Critical here is the parent-child relationship between Ethan and his father. When a child—even an adult child—lives in a parent's home, the parent is presumed to have actual authority to consent to a search of the entire home."<sup>2</sup>

Nevertheless, Ethan argued that the presumption should not apply here because he "habitually" locked the door to his bedroom. The court responded that, while this circumstance "may shed light on Ethan's personality," it raises "no doubt about [Mr. Guillen's] control over his son's bedroom."

**PRE-WAIVER CONFESSION:** As noted, agents obtained Ethan's first confession ("Yes, I made it.") before they had obtained an express or implied *Miranda* waiver. Officers are not, however, required to obtain a waiver if the suspect was not "in custody." And in most cases, suspects who are interviewed in their homes are not in custody because they cannot reasonably believe that their freedom of action had been curtailed to the degree associated with a formal arrest.

Still, a noncustodial interview may become custodial if the nature of the officers' questions and the manner in which they were asked would have caused a reasonable person to believe that the officers had sufficient grounds to arrest him.<sup>3</sup> And that, said the court, was what happened here. For example, one of the agents told Ethan:

We know that you purchased a pressure cooker and it's gone. We know that a soldering iron was used in this device, and your dad's soldering iron is missing. White [duct] tape, like was found on the device, is found in the backpack. And there's a table that looks like it has black powder burns, and there's burns and fuses on that table.

Consequently, the court concluded that "the accusatory nature of such questioning supports a conclusion that Ethan was in custody when he first confessed" and, therefore, his pre-waiver confession was properly suppressed.

**POST-WAIVER CONFESSION:** After Ethan confessed that he built the bomb, an agent *Mirandized* him and obtained a more detailed confession. Ethan argued that the second confession should have been suppressed because of the direct link with the first one. Although such a link existed, the Supreme Court has ruled that if officers obtain a statement from a suspect in violation of *Miranda*, but later obtain a second statement in full compliance, the second statement will be admissible if officers did not intentionally violate for the purpose of undermining *Miranda*. As the California Supreme Court observed, "Where a prior custodial statement, though obtained without *Miranda* warnings, was otherwise uncoerced, any taint upon a second statement is dissipated by a determination that the post-waiver statement was itself voluntary and obtained without a *Miranda* violation."<sup>4</sup>

There is, however, an exception to this rule. A post-waiver statement will be suppressed if it was obtained by means of a "two step" interrogation procedure. The term "two step" is used to describe a tactic in which officers begin by interrogating the suspect

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<sup>2</sup> Edited.

<sup>3</sup> See *People v. Saldana* (2018) 19 Cal.App.5th 432, 458 [if "police indicate to the defendant their resolute belief he committed the crime, the custody inquiry becomes whether a reasonable person in the defendant's position—having been told by the police that they know he committed the crime—would think he was free to break off the interview and leave"]; *People v. Boyer* (1989) 48 Cal.3d 247, 272 [the officers "led defendant to believe that ... they had the evidence to prove his guilt in court."].

<sup>4</sup> *People v. Storm* (2002) 28 Cal.4th 1007, 1030.

in custody without obtaining a *Miranda* waiver. Then, if he confessed or made a damaging admission, they would *then* seek a waiver. And in many cases, the suspect would waive his rights and repeat his incriminating statement because he will think (erroneously) that his pre-waiver statement could be used against him and, thus, he had nothing to lose by repeating it.<sup>5</sup>

Applying these criteria to the facts in *Guillen*, the court ruled that the agents had not deliberately employed a two-step procedure because the pre-waiver interrogation consisted of a single question: “Did you build it?” Thus, there was insufficient reason to believe that the agents had attempted to obtain a detailed confession or damaging admission they could use a few minutes later to convince Guillen that he had nothing to lose by making a full statement. Said the court, “Had the agents intended to obtain a damning confession first they would have asked about those incriminating details much earlier.”

For these reasons, the court ruled that Ethan’s detailed confession was not obtained in violation of *Miranda* and, therefore, it affirmed his conviction. POV

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<sup>5</sup> See *Missouri v. Seibert* (2004) 542 U.S. 600, 616.