Recent Case Report

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People v. Lessie

(2010) __ Cal.4th __ [2010 WL 308813]

Issue

Does a minor invoke his *Miranda* rights by requesting to speak with a parent?

Facts

As part of an initiation into a street gang, 16-year old Tony Lessie shot and killed a young man in Oceanside. A few months later, Oceanside police detectives developed probable cause and arrested Lessie for the murder.

When Lessie arrived at the police station, Det. Kelly Deveney asked if he wanted her to notify his father, or whether he wanted to make the call himself. Lessie responded, "I'd like to call him." He then waived his *Miranda* rights and confessed. About four months later, Det. Deveney went to juvenile hall and, after obtaining another *Miranda* waiver, asked Lessie some more questions about the murder. He repeated his earlier confession and provided additional details.

Both of Lessie's confessions were admitted against him at trial, and he was convicted of second degree murder.

Discussion

Lessie argued that his confessions should have been suppressed because they were obtained in violation of *Miranda*. In particular, he contended that, although he had waived his rights, he had effectively invoked them beforehand by requesting to speak with his father. The court disagreed.

Lessie's argument was based on the California Supreme Court's 1971 decision in *People* v. *Burton* in which the court ruled that, under California law, a minor's request to speak with a parent must be deemed a *Miranda* invocation unless there was some evidence "demanding a contrary conclusion."[1] But the law has changed a lot since *Burton* was decided. And the biggest change occurred 11 years later when, in response to *Burton* and other ill-advised cases from the 1970s-era California Supreme Court, the state's voters passed Proposition 8 which provided that evidence can be suppressed only if it was obtained in violation of federal constitutional law—not independent California law. Consequently, the issue in *Lessie* was whether a minor's request to speak with a parent constitutes an invocation under federal law.

The court had no trouble finding the answer. In *Fare* v. *Michael C.* the U.S. Supreme Court addressed the issue of whether a *Miranda* invocation automatically results when a minor requests to speak with a probation officer. And the Court ruled it did *not*; that, in determining whether a minor or an adult invoked his *Miranda* rights, the courts must consider the totality of circumstances—not just one. Said the Court, "Where the age and experience of a juvenile indicate that his request for his probation officer *or his parents* is, in fact, an invocation of his right to remain silent, the totality approach will allow the

[1] (1971) 6 Cal.3d 375.

court the necessary flexibility to take this into account in making a waiver determination."[2] Consequently, the California Supreme Court in *Lessie* ruled that a minor's requests to speak with a parent does not constitute a *Miranda* invocation unless there were additional circumstances that demonstrated an intent by the minor to not undergo questioning in the absence of the parent. Said the court:

> *Burton's* special rule for minors is inconsistent with the high court's subsequent decision in *Fare* v. *Michael C.* which requires courts to determine whether a defendant—minor or adult—has waived the Fifth Amendment privilege by inquiring into the totality of the circumstances surrounding the interrogation.[3]

Having determined that Lessie had not automatically invoked his *Miranda* rights by asking to speak with his father, the court then looked to see whether there was reason to believe he intended to invoke; i.e., whether his subsequent *Miranda* waiver was not knowing and intelligent. Among other things, it pointed out that he was 16 years old, he had completed the 10th grade, he had held jobs in retail stores, and he was "no stranger to the justice system," having been previously arrested for burglary. He had also served time in juvenile hall for possession of marijuana and fleeing from police. Said the court, "Nothing in this background, or in the transcript of defendant's interrogation, suggests his decision to waive his *Miranda* rights was other than knowing and voluntary."

As a result, the court ruled that Lessie's confessions were obtained in compliance with *Miranda* and that they were properly received in evidence.

Comment

Three other things should be noted about this opinion. First, the court summarily dismissed Lessie's argument that implied *Miranda* waivers are invalid; i.e., it rejected the argument that suspects must expressly state that they had decided to waive their rights. Instead, it affirmed the rule that an implied *Miranda* waiver will suffice, and that an implied waiver will ordinarily result if the suspect freely responded to questioning after, (1) he was correctly advised of his rights, and (2) he said that he understood those rights,[4] both of which happened in *Lessie*. Said the court, "While defendant did not expressly waive his *Miranda* rights, he did so implicitly by willingly answering questions after acknowledging that he understood those rights."

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[2] (1979) 442 U.S. 707, 725. Emphasis added.

[3] **NOTE**: There is, in fact, a direct link between *Burton* and *Fare*: In *Fare*, the Court overturned another wayward decision by the 1970s California Supreme Court—*In re Michael C.* (1978) 21 Cal.3d 471—in which the court decided to expand *Burton* by ruling that a minor's request to speak with a probation officer also constituted a *Miranda* invocation. Such an expansion, said the Court in *Fare*, was unwarranted because "there is nothing inherent in the request for a probation officer that requires us to find that a juvenile's request to see one necessarily constitutes an expression of the juvenile's right to remain silent."

[4] See *People* v. *Johnson* (1969) 70 Cal.2d 541, 558 ["Once the defendant has been informed of his rights, and indicates that he understands those rights, it would seem that his choosing to speak and not requesting a lawyer is sufficient evidence that he knows of his rights and chooses not to exercise them."]; *People* v. *Sully* (1991) 53 Cal.3d 1195, 1233 ["*Johnson* remains good law on this point; the court's finding of waiver was justified by the undisputed facts, i.e., that defendant, a former police officer, was informed of his *Miranda* rights, expressly affirmed his understanding of those rights, and then proceeded to answer questions and to make statements he knew were being tape-recorded."].

Second, the court pointed out that the detectives would not have been able to question Lessie before allowing him to speak with his father if Lessie had said "that he wanted to speak with his father before answering questions." In addition, they could not talk to him at all if he said he wanted his father to call an attorney on his behalf.

Third, the court noted that the officers technically violated Welfare and Institutions Code § 627(b) by not advising Lessie of his right to make completed phone calls to a designated adult and to an attorney within an hour of his arrest. But the court explained that, because this is not a federal constitutional right, evidence cannot be suppressed as the result of such a violation. POV