

In re J.W.

(2020) 56 Cal.App.5th 355

Issue

Must officers obtain a *Miranda* waiver before asking an arrested minor his age if his age is an element of the crime for which he was arrested?

Facts

LAPD officers on patrol noticed that a 16-year old boy, identified here as J.W., ran when he saw them approaching. As he ran, he discarded a backpack that he had been wearing. After apprehending him, an officer searched the backpack and found a loaded, semi-automatic handgun. During booking, J.W. was asked his age and he said he was 16-years old. As the result, he was charged with being a minor in possession of a firearm.¹

At trial, prosecutors were able to prove that J.W. was a minor by presenting testimony from the arresting officer who said that, when asked his age, J.W. said he was sixteen. The defense objected on grounds the officer did not obtain a *Miranda* waiver before asking the question, but the objection was overruled. As the result, the juvenile court sustained the allegation and placed J.W. on probation. He appealed the denial of his motion to suppress his age.

Discussion

It is settled that officers must *Mirandize* an arrestee before asking questions that are reasonably likely to elicit an incriminating response. There is, however, an exception to this rule, known as the “routine booking question” exception, by which officers need not *Mirandize* an arrestee before asking questions seeking basic identifying data or biographical information that was necessary to complete the booking or pretrial services process; e.g., suspect’s name, address, place of birth, phone number, occupation, social security number, employment history, arrest record, spouse’s name.²

J.W. argued that this exception does not apply when, as here, the answer to the question constituted an element of the offense for which he was arrested. This argument was based on the California Supreme Court’s ruling in *People v. Elizalde*³ that, unless the suspect has been *Mirandized*, answers to questions pertaining to an arrestee’s gang affiliation cannot be used against him when gang affiliation is an element of the crime with which he was charged. The court, however, rejected this argument because (1) a person’s age is a fundamental element of a person’s identity, and (2) “the most logical way” for officers to obtain this information is by asking about it. Consequently, the court affirmed the ruling of the juvenile court. **POV**

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¹ See Pen. Code § 29610.

² See *Pennsylvania v. Muniz* (1990) 496 U.S. 582, 603; *Rhode Island v. Innis* (1980) 446 U.S. 291, 301; *People v. Farnam* (2002) 28 Cal.4th 107, 180.

³ (2015) 61 Cal.4th 523