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Recent Developments: McIntryre v. State: Totality of the Circumstances Test Uphead in Determining Validity of a Juvenile Miranda Waiver

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Recent Developments

McIntryre v. State: TOTALITY OF THE CIRCUMSTANCES TEST UPHEAD IN DETERMINING VALIDITY OF A JUVENILE *MIRANDA* WAIVER

The Court of Appeals of Maryland in *McIntyre v. State,* 309 Md. 607, 526 A.2d 30 (1987), held that a juvenile's request to see a parent is not a per se request for an attorney. Consequently, once *Miranda* warnings are given, the court of appeals will still apply the totality of the circumstances test to determine if a subsequent confession is voluntary and the *Miranda* waiver valid.

McIntyre involved a fifteen year old who had been arrested and charged with rape. When he was arrested the detectives informed him of his *Miranda* rights "including the right to remain silent, to talk to a lawyer and to have the lawyer present during any police questioning." *Id.* at 609, 526 A.2d at 31. The defendant acknowledged that he comprehended these rights but asked to see his mother. Since he was charged as an adult, the interrogating officer denied his request.

At the police station, the defendant was again advised of his rights and again indicated they were understood. At this time he made another request to see his mother which was also denied. After this refusal, the defendant waived his *Miranda* rights in writing. He then proceeded to make an exculpatory statement which was later used at trial.

During the trial, defense counsel objected to the introduction of the *Miranda* waiver form, stating that McIntyre's "requests [for his mother] were tantamount to a request for counsel because that's how he would have gotten [sic] counsel." *Id.* at 2. The trial court then held a suppression hearing to determine if *Miranda* was properly given and voluntarily waived.

When such a waiver is at issue, the state must prove by a preponderance of the evidence that the statement was voluntary. *See State v. Kidd* 181 Md. 32, 375 A.2d 1105, *cert. denied,* 434 U.S. 1002 (1977). An important factor in proving voluntariness is the absence of police coercion or intimidation, *Colorado v. Connelly,* 107 S.Ct. 515 (1987). Here, the interrogating detective, Myers, testified that the defendant said he understood his *Miranda* rights, appeared nervous but not frightened, was not flustered or excited, and that his request to see his mother was "just a matter of fact question, and not an emotional request." *McIntyre,* 309 Md. at 610, 526 A.2d at 31. Myers also testified that there were not threats or promises made to the defendant to induce him to waive his *Miranda* rights. Furthermore, Myers testified that McIntyre never asked to see an attorney.

The trial court applying the totality of the circumstances test, denied the suppression motion. Additionally, the trial judge stated that a juvenile does not have a right to have a parent present when a statement is made. *Id,* 309 Md. at 611, 526 A.2d at 32.

After conviction, the defendant appealed to the court of special appeals which held that as long as the statement is voluntary, a parent's absence has "no bearing on the admissibility of the voluntary statement." *Id.* Due to the importance of the issue as to whether the denial of parental access to a fifteen year old violates the fifth and sixth amendments, the court of appeals granted certiorari.

The defendant's counsel argued for the adoption of a per se rule, that involves the *Miranda* request for counsel, whenever a juvenile asks to see his parents or another interested adult. The court of appeals rejected this argument stating that the per se rule established in *Miranda* was that a lawyer is the person who is in the best position to protect the fifth amendment rights of a client undergoing custodial interrogation. *Fare v. Michael C,* 442 U.S. 707, 719, *reh'g denied,* 444 U.S. 887 (1979). Therefore, this per se rule distinguishes a request for a probation officer or close friend from a request for counsel. *Id* at 722.

In *Fare,* a sixteen year old under custodial interrogation requested to speak with his probation officer, a person he trusted. The court rejected Fare's per se argument, indicating that probation officers are not usually versed in the law and they could not properly advise the juvenile. This reasoning is similar to the case at bar, where there was "[no] evidence to show that McIntyre's mother would have been able to advise him of his legal rights." *McIntyre,* 309 Md. at 626, 526 A.2d at 39. Another reason for refusing to expand *Miranda's* reach is that a request for any trusted individual could be deemed a request for counsel. This would circumvent part of *Miranda's* goal, which is to allow suspects the opportunity of acquiring *legal* advice. (emphasis added).

To determine if a waiver is valid, it must be done voluntarily and without police coercion of any kind. *North Carolina v. Butler,* 441 U.S. 369, 373, (1979). To determine voluntariness, the totality of the circumstances test is used, even where a juvenile is involved. *Fare, supra,* 442 U.S. at 724-5. The factors examined are: the suspects age, intelligence, education, experience, suggestibility, and mental and physical health; the police officer's treatment of the suspect; and the methods and length of interrogation. *Lodowski v. State,* 307 Md. 233, 254-55, 513 A.2d 299 (1986).

In the present case, the trial record reflected that the defendant understood his rights, was not confused, the questioning was brief, the statement was exculpatory, he was of normal intelligence to understand his rights, no threats or promises were made and probably most importantly, there was never a request to see an attorney. *McIntyre,* 309 Md. at 526 A.2d 38. The court noted that age is a factor, but "age in itself, does not render a confession involuntary." *Miller v. State,* 251 Md. 362, 379, 247 A.2d 520 (1968). The court further observed that a child who is arrested must have his parents notified, but declined to rule on whether a child who is charged as an adult has such a right.

The court of appeals did observe that a few jurisidictions do equate a "juvenile's request to see their parents with requests to consult an attorney." *See, e.g., People v. Burton,* 6 Cal. 3d 375, 491 P.2d 793, 99 Cal. Rept 1 (1971).

Nevertheless, the court rejected the per se approach and decided to continue using the totality of the circumstances test

because it allows for consideration of other factors which serve to better protect the interests of society and of justice. *McIntyre,* 309 Md. at 622, 623, 526 A.2d at 37. (citing from *Com v. Christmas,* 502 Pa. 213, 465 A.2d 989, 992 (1983)). Applying this test, the court found that the defendant's "mere requests to see his mother, [under] the circumstances, [did not] factually constitute an invocation of his right to remain silent, "nor did it invoke his right to counsel." *Id* at 625, 526 A.2d at 39.

There was a lengthy and strongly worded dissent filed by Judge Adkins. The dissent argued that even if a juvenile appears mature, etc., he cannot be held to understand the full ramifications of being arrested. Other jurisdictions provide safeguards for juveniles including a per se rule invalidating waivers, *See, e.g., People v. Burton, supra* and special legislation, *See, e.g.* Conn. Gen. Stat. Ann. §§466-136 and 466-137 (West 1987). (holding inadmissible confessions, statements or admissions made by a juvenile unless made in the presence of a parent or guardian) *McIntyre,* 309 Md. at 629, 526 A.2d at 40 (Adkins, J. dissenting). The dissent was adamant that *McIntyre's* repeated requests for his mother should have been treated as a request for a lawyer.

Furthermore, even by using the totality of the circumstances test, the state failed to show that *McIntyre* had the necessary intelligence, knowledge, maturity or any previous experience with the criminal justice system. 309 Md. at 635, 526 A.2d at 44. The court observed that *Lodowski* dictates an adequate record is of utmost importance to determine if there was a constitutional waiver or rights. *Id* at 636, 526 A.2d at 44. Since the trial record was notably scant, the dissent urged that the conviction be reversed and a new trial be held.

The court of appeals' ruling appears to be stating that when a juvenile is charged as an adult, he or she will be considered an adult even under the totality of the circumstances test. Also, the court will not consider age by itself, but will look to other outside factors in determining if a valid waiver of *Miranda* rights has been made.

—Robert Feldman

Booth v. Maryland: VICTIM IMPACT STATEMENTS INADMISSABLE AT SENTENCING HEARING IN CAPITAL MURDER CASE

In *Booth v. Maryland,* 107 S.Ct. 2529 (1987), the Supreme Court of the United States in a 5-4 decision, delivered by Justice Powell, rejected the introduction of victim impact statements (VIS) at the sentencing phase of a capital murder trial. The Court reasoned that such information was irrelevant to the blameworthiness of a particular defendant and therefore violative of the eighth amendment's prohibition against cruel and unusual punishment. In rejecting the consideration of the VIS, the Court invalidated a Maryland statute to the extent that it mandated the compilation of a VIS in all felony cases.

In *Booth,* the victims, Irvin and Rose Bronstein were robbed and brutally murdered in their West Baltimore home by John Booth and Willie Reid. Booth, a neighbor of the elderly couple apparently entered the home to steal money in order to purchase heroin. Due to Booth's fear of identification by the victims, he and Reid gagged the Bronsteins and then stabbed them repeatedly with a kitchen knife. Two days later, the Bronsteins' son discovered the bodies of his murdered parents.

A jury found Booth guilty of two counts of first-degree murder, two counts of robbery and conspiracy to commit robbery. Prior to the sentencing phase of the trial, the State Division of Parole and Probation submitted a presentence report which described Booth's background, employment history, education, and criminal record. Pursuant to Md. Ann. Code art. 41, § 4-609(c) (1986), the presentence report included a VIS, describing the detrimental effects of the crime on the victim's family and society in general.

Defense counsel moved to suppress the VIS on the ground that it was "irrelevant and unduly inflammatory, and that therefore its use in a capital case violated the Eighth Amendment of the Federal Constitution." *Booth,* 107 S.Ct. at 2532. Denying the motion, the trial court submitted the information to the jury, who subsequently sentenced Booth to death. On automatic appeal, the Court of Appeals of Maryland affirmed both the conviction and the sentencing decision. *Booth v. State,* 306 Md. 172, 507 A.2d 1098 (1986). The court, relying on *Lodowski v. State,* 302 Md. 691, 490 A.2d 1228 (1985) concluded that the VIS was not an arbitrary factor in the sentencing process, but rather an informative technique by which the sentencing body could measure the full extent of the harm caused by the perpetrator of the crime.

The United States Supreme Court granted certiorari and reversed the decision of the Court of Appeals of Maryland. Justice Powell distinguished between the use of a VIS in an ordinary civil or criminal case as opposed to the unique circumstance of a capital sentencing hearing.

A VIS, in the vast majority of cases, provides the jury with two types of information. Initially, it describes the personal characteristics of the victim and the emotional impact of the crime(s) on the family. Secondly, it sets forth the family members' opinions and characterizations of the crimes and the defendant. *Booth,* 107 U.S. at 2533. In *Booth,* the VIS was based on interviews with the Bronsteins' son, daughter, son-in-law and granddaughter. The interviewer, an employee of the Division of Parole and Probation, compiled the information, comments and reactions of the family and prepared a VIS which was then considered by the jury during their deliberation of Booth's sentence.

The Court, in evaluating all plausible arguments as to the relevancy and effectiveness of the VIS, discusses several potentially unconstitutional results which illustrated the danger of allowing juries to consider this information. First, the Court noted that the function of the sentencing jury is to "express the conscience of the community on the ultimate question of life or death." *Witherspoon v. Illinois,* 391 U.S. 510, 519 (1968). In so doing, the jury is required to focus on the particular defendant as a "uniquely individual human bein[g]." *Woodson v. North Carolina,* 428 U.S. 280, 304 (1976). Applying this rationale, the Court explained that "the focus of a VIS is not on the defendant, but on the character and reputation of the victim and the effect on his family. These factors may be wholly unrelated to the blameworthiness of a particular defendant. *Booth,* 107 S.Ct. at 2534. "Allowing the jury to rely on a VIS therefore could result in imposing the death sentence because of factors about which the defendant was unaware, and that were irrelevant to the decision to kill." *Id.* Consequently, the Court found that the nature of the information contained in a VIS created an impermissible risk that the capital sentencing decision would be made in an arbitrary manner.

Secondly, the Court addressed the dangers of imposing the death penalty based ont he ability of the family members to articulate their grief and the extent of their loss. "[I]n some cases the victim will not leave behind a family, or the family members may be less articulate in describing their feelings even though their sense of loss is equally severe." *Id.* The fact that the imposition of the death penalty could turn on such unfair distinctions posed constitutional problems for the Court.

Finally, the Court examined the difficulty of rebutting the implications of the VIS, without shifting the focus of the sentencing hearing away from the defendant. "Presumably the defendant would have the right to cross-examine the declarants,