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TDC Tip

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Interviewing Juvenile Suspects

By Charles Gillingham

"Can I call my father?"

In California, that statement, made prior to, or after Miranda warnings, was an invocation of the Fifth Amendment right to remain silent when made by a juvenile.

Two weeks ago the California Supreme Court looked at a confession to murder made by a 16 year-old suspect. They changed the rule.

Prior to the decision in *People v. Lessie* 2010 WL 308813, the California rule was that a request by a minor for a parent, in the absence of any other evidence, constituted a request by the minor to remain silent. Thankfully, that is no longer the rule.

FACTS

Tony Lessie was tried and convicted in adult court for a gang related homicide. At the time of the murder Lessie was 16 years-old. Lessie was identified as the shooter in the murder. Lessie was arrested at his aunt and uncle's home and brought in for questioning. Prior to being admonished, the officers told Lessie he would be allowed to make as many phone calls as he wanted when they got to the station. One of the officers stated that clearly his aunt and uncle knew he was in custody and whether Lessie wanted to notify anyone else of his arrest.

INVOCATION?

Before being given his Miranda warnings, Lessie stated that he would like to call his father. The call was not made at that time. Lessie would argue at trial that asking to call his father was an invocation of the right to remain silent.

The officers then admonished Lessie. Lessie waived his rights and impliedly gave a voluntary detailed statement. The officers then took a break and again Lessie asked to call his father. Lessie left a message for his father. And questioning resumed.

SECOND CONVERSATION

Four months later the officers went to juvenile hall, where Lessie was being housed, re-advised Lessie of his rights and questioned him. Lessie gave more details about co-participants in the murder and he again confessed.

THE LAW

Lessie argued that his confession should be suppressed because he asked for his father. His argument had some merit.

The California Supreme Court instituted a rule in the 70's that stated a request for a parent by a minor in the absence of compelling evidence to the contrary constituted an invocation of the right to remain silent. What that meant was that a request for a parent was the equivalent of stating one wished to remain silent.

The decision in Lessie simply brings California in line with the United States Supreme Court. The US Supreme Court in *Fare v. Michael C.* (1979) 442 U.S. 707, 99 S.Ct. 2560, 61 L.Ed.2d 197 required 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. (*Fare*, at pp. 724-725.)

TOTALITY OF CIRCUMSTANCES

What the California Supreme Court did here was to abandon the rule that when a minor asks for a parent before or during questioning that request is deemed an invocation. Instead they looked to the United States Supreme Court decision in *Fare*. The USSC set out some factors to consider when questioning a minor who asks for her parents.

The court said to look at the following:

1. age
2. experience in the justice system
3. education
4. background
5. intelligence
6. capacity to understand the warnings given and the consequence of waiver

When asked to interrogate a minor who asks for a parent, it is important to first, clarify the request by the minor. Insure that they wish to speak with a parent before continuing. Second, consider the above factors to insure that if you choose to continue questioning the statement will be admissible. Third, clearly document what you thought the minor meant when they mentioned or asked for a parent. It is no longer the rule of California that when a minor asks for a parent, the minor is asserting the right to remain silent.

Chuck Gillingham is a veteran prosecutor. He is also an instructor for the California District Attorneys' Association and for Santa Clara University School of Law.

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