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Infants - Criminal Law - Confession by a Juvenile to Police during Custodial Interrogation before Juvenile Court Has Waived Jurisdiction Is Admissible in an Adult Criminal Prosecution

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RECENT CASES

INFANTS—CRIMINAL LAW—CONFESSION BY A JUVENILE TO POLICE DURING CUSTODIAL INTERROGATION BEFORE JUVENILE COURT HAS WAIVED JURISDICTION IS ADMISSABLE IN AN ADULT CRIMINAL PROSECUTION

Appellant, a 16-year-old of subnormal intelligence, accompanied by his parents, met with a police officer[1] at the courthouse for questioning on an assault and robbery in which appellant was a suspect.[2] Before questioning began, the officer gave appellant a standard *Miranda*[3] warning, but did not inform him of the possibility of criminal prosecution as an adult.[4] Appellant and his parents stated that they understood the rights explained by the officer, and appellant admitted involvement in the robbery. Appellant was later given another *Miranda* warning, and after a waiver of those rights, signed a statement implicating himself in the robbery. The juvenile court subsequently waived jurisdiction[5] and referred appellant for prosecution as an adult to the County District Court where he was convicted of aggravated robbery. He appealed. The Minnesota Supreme Court affirmed, *holding* that a confession given by a juvenile during police custodial interrogation prior to juvenile court waiver of jurisdiction is admissible in adult criminal

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1. The police officer was a school liason officer assigned to investigation of crimes which youths attending certain schools were suspected of having committed. As school liason officer, he did not wear a police uniform, display a badge, or drive a police squad car. The officer and appellant had previously met on several occasions and he had agreed to assist appellant in obtaining a job.

2. A warrant had been issued for appellant's arrest, but he and his parents had come to the courthouse voluntarily.

3. Miranda v. Arizona, 384 U.S. 436 (1966). Miranda held that the prosecution may not use statements stemming from custodial interrogation unless the suspect has been informed.

1. of his privilege against self-incrimination.
2. that anything he says may be used as evidence against him.
3. of his right to counsel, and if he cannot afford counsel, counsel will be appointed prior to questioning.

Id. at 444. To be valid, a waiver of these rights must be voluntarily and intelligently made.

4. Appellant contended that the police officer told him he would only be sent back to a juvenile institution if he confessed. The police officer stated that the discussion of possible punishment did not occur until after appellant's confession. The trial court accepted the police officer's version of the incident.

5. M.S.A. § 260.125(1) (1971) allows for children fourteen and over to be referred for prosecution in a criminal court if they have violated a state law or local ordinance and a hearing has been held at which it found that the child is not amenable to juvenile treatment or the public safety will be served by such referral.

proceedings after such waiver. The juvenile must be appraised of his constitutional rights under *Miranda*, voluntarily and intelligently waive those rights, and he must understand the adversary nature of the questioning. *State v. Loyd*, —— Minn. ——, 212 N.W.2d 671 (1973).

When a child commits an offense the state assumes a position as *parens patriae*[6] and cares for the child.[7] Juvenile proceedings are conducted in a non-criminal atmosphere, premised upon the theory that the primary functions are guidance and rehabilitation rather than punishment.[8] In most states children under the jurisdiction of the juvenile court may be transferred to the adult criminal justice system for prosecution.[9] The decision whether to transfer the child to an adult criminal court or to dispose of the case in the juvenile court is critically important.[10] There is a presumption that the child will benefit from the juvenile court proceedings, and only in rare[11] circumstances[12] will he be transferred to an adult criminal court. Before the juvenile court may waive jurisdiction over the child and transfer him for adult prosecution, the juvenile court must conduct a hearing for the purpose of determining whether it would be in the best interests of the child and state to waive or retain jurisdiction.[13] Juvenile jurisdiction is to be waived only when the child is found to be an unfit subject for juvenile rehabilitative measures.[14] The juvenile court must grant the child's counsel access to all pertinent records,[15] and if jurisdiction is waived the court must state its reasons for such action.[16] Juvenile delinquency proceedings which may lead to the child's commitment in a state institution must measure up to standards of due process and fair treatment[17] including: written notice of the specific charges;[18] notification to the child and his parents of the child's right to counsel;[19] appointment of counsel for indigents;[20] the privilege against self-

6. *Parens Patriae* literally means "father of his country." In England the king, in the United States, the state. BLACK'S LAW DICTIONARY 1269 (4th ed. rev. 1968).
7. *E.g.*, In Re Gault, 387 U.S. 1, 16 (1967); Pee v. United States, 274 F.2d 556, 558 (D.C. Cir. 1959); State v. Couch, 294 S.W.2d 636, 639 (Mo. 1956).
8. *E.g.*, Kent v. United States, 383 U.S. 541, 554-55 (1966); State v. Gullings, 244 Ore. 173, ——, 416, P.2d 311, 312-13 (1966).
9. *E.g.*, N.D. CENT. CODE § 27-20-34 (1974); M.S.A. § 260.125 (1971); S.D.C.L. § 26-11-4 (1967).
10. Kent v. United States, 383 U.S. 541, 556-57, 560 (1966).
11. Harling v. United States, 295 F.2d 161, 164-65 (D.C. Cir. 1961). Of all North Dakota juvenile court cases, only 1.6% were waived to criminal court in 1971. 1971 JUVENILE COURT STATISTICS 11.
12. Kent v. United States, 383 U.S. 541, 560-61 (1966).
13. Kent v. United States, 383 U.S. 541 (1966).
14. *E.g.*, N.D. CENT. CODE § 27-20-34(d) (1974); M.S.A. § 260.125(1) (1971). *Cf.* In Interest of Patterson, 210 Kan. 245, 499 P.2d 1131 (1972). The gravity of the offense is not the controlling factor in determining waiver.
15. Kent v. United States, 383 U.S. 541, 562 (1966).
16. *Id.* at 561.
17. *Id.* at 562.
18. In Re Gault, 387 U.S. 1, 33 (1967).
19. *Id.* at 41.
20. *Id.*

incrimination;[21] and confrontation and cross-examination of adverse witnesses.[22]

Because of the informal and non-punitive atmosphere of the juvenile court, the child may be induced to make inculpatory statements when he might have exercised his right to remain silent had he known that criminal prosecution could result.[23] Many states have eliminated this danger by prohibiting the admission in any other court of evidence adduced in the juvenile court.[24]

Loyd dealt with the admissibility in a criminal prosecution, of an otherwise valid confession given by a juvenile during police custodial interrogation while the child was within the exclusive[25] jurisdiction of the juvenile court.[26] The court in *Loyd* and the majority of the courts[27] hold that a confession by a juvenile while the child is within the jurisdiction of the juvenile court is admissible as evidence in an adult criminal prosecution after waiver of jurisdiction, if the child had been informed of his constitutional rights[28] and voluntarily and intelligently waived those rights.[29] It has been consistently held that the age of the child or mental subnormality[30] is not ipso facto a bar to an effective waiver of *Miranda* rights.[31] In many jurisdictions neither the child's parents nor counsel must be present for the juvenile to make a valid waiver and confession.[32] The child must waive his rights himself; a waiver by parents and counsel on his behalf is unacceptable.[32a]

One of the first cases to deal with the question of the admissibility of inculpatory statements made while the child was within

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21. *Id.* at 55.

22. *Id.* at 57. *See also* In Re Winship, 397 U.S. 358 (1970) (In juvenile delinquency proceedings the standard of proof is beyond a reasonable doubt).

23. State v. Loyd, ——Minn.——, 212 N.W.2d 671, 674 (1973).

24. *E.g.*, N.D. CENT. CODE § 27-20-33(2) (1974); M.S.A. § 260.211(1) (1971); COLO. R.S. § 22-8-1(3)(b) (1963); *See generally* 1 J. WIGMORE, EVIDENCE § 196(3) (3rd ed. Supp. 1972).

25. M.S.A. § 260.111(1) (1971) states:

> Except as provided in section 260.125, the juvenile court has original and exclusive jurisdiction in proceedings concerning any child who is alleged to be delinquent. . . .

Id.

26. State v. Loyd, ——Minn.——, 212 N.W.2d 671, 674 (1973).

27. People v. Lara, 67 Cal. 2d 365, 432 P.2d 202, 62 Cal. Rptr. 586 (1967), *cert. denied*, 392 U.S. 945 (1968); State v. Orteger, 77 N. Mex. 7, 419 P.2d 219 (1966); Commonwealth v. Porter, 449 Pa. 153, 295 A.2d 311 (1972); Mitchell v. State, 464 S.W.2d 307 (1971).

28. In Re Gault, 387 U.S. 1 (1967). Juveniles as well as adults must be appraised of their *Miranda* rights before custodial interrogation.

29. Arnold v. State, 265 So. 2d 64 (Fla. 1972); People v. Baker, 9 Ill. App. 3d 654, 292 N.E.2d 760 (1973); Coney v. State, 491 S.W.2d 501 (1973).

30. *E.g.*, People v. Baker, 9 Ill. App. 3d 654, 292 N.E.2d 760 (1973); Commonwealth v. Darden, 441 Pa. 41, 271 A.2d 257 (1970), *cert. denied* 401 U.S. 1004 (1971).

31. *But cf.* Commonwealth v. Cobbs, 452 Pa. 397, 305 A.2d 25 (1973). Confessions of juveniles must be scrutinized with greater care than those of adults.

32. Commonwealth v. Porter, 449 Pa. 153, 295 A.2d 311 (1972); People v. Hester, 39 Ill. 2d 489, 237 N.E.2d 466 (1968). *Contra*, U.S. *ex rel* B. v. Shelly, 305 F. Supp. 55 (E.D.N.Y. 1969), *modified* 430 F.2d 215 (1970); McClentock v. State, 253 Ind. 333, 253 N.E.2d 233 (1969).

32a. *See* Brookhart v. Janis, 384 U.S. 1 (1966).

the jurisdiction of the juvenile court was *Harling v. United States*.[33] *Harling* held that all statements made by a juvenile during custodial interrogation before the juvenile court has waived jurisdiction are inadmissible as evidence in a subsequent criminal prosecution.[35]

Although the Supreme Court[36] and state courts[37] have denied admission of inculpatory statements which were obtained by police misconduct, the jurisdictions which have rendered decisions on the admissibility of an otherwise valid confession have unanimously rejected the per se exclusionary rule of *Harling*.[38]

The Arizona Supreme Court in *State v. Maloney*[39] adopted a modified *Harling* exclusionary rule. *Maloney* held that a child's inculpatory statement to police while the child was within the jurisdiction of the juvenile court was admissible in a criminal court only if the child and his parents are advised of the child's *Miranda* rights before questioning and are expressly informed of the possibility that the child may be remanded for trial as an adult.[40]

In *State v. Gullings*[41] the Supreme Court of Oregon held that inculpatory statements made by juveniles during police custodial interrogation are admissible in criminal prosecutions after waiver of jurisdiction if the child is advised of his *Miranda* rights and it is made clear to the child that criminal prosecution may result. No express statement that criminal prosecution may result is required if the "information is secured in a setting that is so patently adversarial as to be understood by the child."[42] However, since the waiver of rights signed by the child stated that any information secured could be used against him in a criminal prosecution,[43] the police in *Gullings* did expressly warn the child of the possibility of criminal prosecution.

Other jurisdictions require only a *Miranda* warning and a proper

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33. 295 F.2d 161 (D.C. Cir. 1961); *accord* Kent v. United States, 383 U.S. 541, 544 n.2 (1966); Harrison v. United States, 359 F.2d 214 (D.C. Cir. 1966).

34. Harling v. United States, 295 F.2d 161 (D.C. Cir. 1961). "It would offend these principles of fundamental fairness to allow admissions made by the child in the non-criminal and non-punitive setting of juvenile proceedings to be used for the purpose of securing his criminal conviction and punishment. . . ." *Id.* at 163.

35. Harling v. United States, 295 F.2d 161, 164 (D.C. Cir. 1961). *But cf.* Riddick v. United States, 326 F.2d 650 (D.C. Cir. 1963); State v. Kramer, 72 Wash. 2d 904, 435 P.2d 970 (1967), *cert. denied* 393 U.S. 833 (1968).

36. Gallegos v. Colorado, 370 U.S. 49 (1962); Haley v. Ohio, 332 U.S. 596 (1948).

37. People v. Townsend, 33 N.Y.2d 37, 300 N.E.2d 722, 347 N.Y.S.2d 187 (1973).

38. State v. Loyd, ——Minn.——, 212 N.W.2d 671 (1973); State v. Sinderson, 455 S.W.2d 486 (Mo. 1970); State v. Gullengs, 244 Ore. 173, 416 P.2d 311 (1966); Mitchell v. State, 3 Tenn. Crim. App. 494, 464 S.W.2d 307 (1971).

39. 102 Ariz. 495, 433 P.2d 625 (1967). *Accord* State v. Councilman, 105 Ariz. 145, 460 P.2d 640 (1969); State v. Caro, 103 Ariz. 37, 436 P.2d 586 (1968).

40. State v. Hardy, 107 Ariz. 583, 491 P.2d 17 (1971), overruled *Maloney* to the extent that *Maloney* required parental presence and consent for an effective waiver of *Miranda* rights.

41. 244 Ore. 173, 416 P.2d 311 (1966). *Accord* State v. Prater, 77 Wash. 2d 526, 463 P.2d 640 (1970); State v. Davis, 3 Wash. App. 684, 477 P.2d 44 (1970).

42. 244 Ore. 173, ——, 416 P.2d 311, 314 (1966).

43. *Id.* at ——, 416 P.2d at 312.

waiver of those rights to make a child's inculpatory statement admissible in a criminal prosecution after waiver of jurisdiction by the juvenile court.[44]

The Minnesota Supreme Court held in *Loyd* that neither the doctrine of "fundamental fairness,"[45] nor M.S.A. § 260.211[46] barred the admission in a criminal prosecution of inculpatory statements made during police custodial interrogation while the juvenile is under the exclusive jurisdiction[47] of the juvenile court. "The statutory prohibition is of evidence given in the juvenile court—which does not include police investigatory activities involving juveniles."[48] Although the *Loyd* decision purported to follow *Gullings*,[49] *Loyd* gives the trial court more latitude in determining whether a juvenile's inculpatory statement is admissible in a criminal prosecution. The *Gullings* court held that for such statements to be admissible it must be "made clear to the juvenile that criminal responsibility can result."[50] *Loyd* held that awareness of possible criminal responsibility is necessary, but such awareness may often be imputed to a juvenile by the fact that the police are conducting the interrogation.[51]

Under the *Loyd* court's decision in *State v. Hogan*,[52] parental presence is not necessary for a juvenile's valid waiver of his *Miranda* rights.[53]

The Supreme Court has recognized that formidable doubt has been cast upon the reliability of confessions by children.[54] The *Harling* court recognized the danger in allowing the admission of inculpatory statements in criminal proceedings when it said:

> Moreover, if admissions obtained in juvenile proceedings *before* waiver of jurisdiction may be introduced in adult proceedings *after* waiver, the juvenile proceedings are made to

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44. People v. Lara, 67 Cal. 2d 365, 432 P.2d 202, 62 Cal. Rptr. 586 (1967), *cert. denied*, 392 U.S. 945 (1968); Mitchell v. State, 3 Tenn. Crim. App. 494, 464 S.W.2d 307 (1971).
45. ——Minn.——, 212 N.W.2d 671, 676-77 (1973).
46. ——Minn.——, 212 N.W.2d 671, 677 (1973). M.S.A. § 260.211(1) (1971) reads in part " . . . any evidence given by the child in the juvenile court shall not be admissible as evidence against him in any case or proceeding in any other court, . . ."
47. M.S.A. § 260.111 (1971) states that the juvenile court has original and exclusive jurisdiction over minors, until waiver of jurisdiction by that court.
48. ——Minn.——, 212 N.W.2d 671, 677 (1973).
49. State v. Gullings, 244 Ore. 173, 416 P.2d 311, 313 (1966).
50. *Id.* at 313.
51. ——Minn.——, 212 N.W.2d 671, 677 (1973).
52. ——Minn.——, 212 N.W.2d 664 (1973).
53. Ferguson & Douglas, *A Study of Juvenile Waiver*, 7 SAN DIEGO L. REV. 39 (1970), reprinted in JUVENILE COURT JOURNAL 13 (Spring 1970). When the fact that parental presence is not necessary for a valid waiver of *Miranda* rights is coupled with the results of a recent test disclosing that 96% of those juveniles tested (14-year-olds), did not understand their *Miranda* rights although they had waived them, the danger of the child making an improper waiver is substantial. *Id.* at 54.
54. In re Gault, 387 U.S. 1, 52 (1967); *See Miranda Guarantees In the Juvenile Court*, 7 SANTA CLARA LAW. 114, 127 (1966); *The Juvenile Offender and Self-Incrimination*, 40 WASH. L. REV. 189, 200-01 (1965).
55. Harling v. United States, 295 F.2d 161, 164 (D.C. Cir. 1961) (emphasis in original).

> serve as an adjunct to and part of the adult criminal process. This would destroy the Juvenile Court's *parens patriae* relation to the child and would violate the non-criminal philosophy which underlies the Juvenile Court Act.[55]

A few jurisdictions, including North Dakota, have enacted statutes prohibiting the use of a juvenile's inculpatory statements obtained during police custodial interrogation in adult criminal prosecutions. In 1969 the North Dakota state legislature adopted the Uniform Juvenile Court Act,[56] which provides for the juvenile courts and governs their procedure.[57] The Uniform Juvenile Court Act was drawn up to fully meet the mandates of the recent Supreme Court decisions[58] and to preserve the basic objectives of the juvenile court.[59] North Dakota juvenile law restricts the admissibility in criminal prosecutions of inculpatory statements given before the juvenile court waiver of jurisdiction to an extent approaching the per se exclusionary rule expressed in *Harling*. North Dakota Century Code § 27-20-34 (4) reads:

> Statements made by the child after being taken into custody and prior to the service of notice under subsection 1[60] or at the hearing under this section are not admissible against him over objection in the criminal proceedings following the transfer.

The danger of a child making an inculpatory statement that is the product of an improper[61] waiver of *Miranda* rights is avoided since such statements are not admissible in a criminal proceeding over objection if the statements are made prior to the written notice that a hearing for the purpose of determining waiver of jurisdiction will be held.[62] Inculpatory statements made after a child's otherwise valid waiver of *Miranda* rights are not admissible if he was unaware

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56. The Uniform Juvenile Court Act, S.L. 1969, ch. 289, effective July 1, 1969, repealed all prior juvenile court law, N.D. CENT. CODE §§ 27-16-1 through 27-16-41 (1960). The Uniform Juvenile Court Act was enacted as N.D. CENT. CODE §§ 27-20-01 to -59 (1974). The Uniform Juvenile Court Act was approved by the National Conference of Commissions on Uniform State Laws, and the American Bar Association, in 1968. At present North Dakota is the only state to have adopted the Uniform Juvenile Court Act. Vermont adopted a preliminary draft of the Act on July 1, 1968. VT. STAT. ANN. tit. 33 §§ 631-666 (1974). Georgia has adopted a substantial portion of the Uniform Juvenile Court Act, but with numerous omissions, variations, and additional material. GA. CODE ANN. §§ 24A-101 to 24A-4001 (1973).

57. N.D. CENT. CODE §§ 27-20-01 to 59 (1974).

58. Prefatory Note, Uniform Juvenile Court Act, 9 (U.L.A.) 397, 398 (1973).

59. *Id.*

60. N.D. CENT. CODE § 27-20-34(1) (1971). The applicable portion provides that:

> Notice in writing of the time, place, and purpose of the hearing is given to the child and his parents, guardian, or other custodian at least three days before the hearing; . . .

61. For a "proper" waiver of *Miranda* rights it is necessary that those rights be intelligently and voluntarily waived. Miranda v. Arizona, 384 U.S. 436, 444 (1966).

62. N.D. CENT. CODE § 27-20-34(4) (1974).

that he may be transferred for criminal prosecution.[63] Another important factor of this section is that in presenting his case against transfer, the child will not be hampered by the prospect that what is presented in the hearing will be used against him in a criminal prosecution.[64] Such evidence is inadmissible in a subsequent criminal prosecution.[65]

In Minnesota a child of subnormal intelligence may legally waive his *Miranda* rights without parental presence or advice of counsel. Under *Loyd,* inculpatory statements stemming from this questionable waiver may be used in an adult criminal prosecution. Fairness requires that the child and his parents be aware of the possibility of criminal prosecution before making inculpatory statements which may be admissible in a criminal court. To avoid impairment of the juvenile court's *parens patriae* function the juvenile proceedings must be insulated from the adult criminal justice system. For the non-punitive and rehabilitative atmosphere of the juvenile court to function properly, the atmosphere must be one of trust and free disclosure between the child and representatives of the juvenile court.[66] Recent studies have indicated that few adult criminal convictions are lost as a result of inadmissible confessions because improved police techniques of evidence gathering are replacing reliance on the confession.[67] The exclusionary rules of the North Dakota Century Code (Uniform Juvenile Court Act) should not hamper the state in prosecuting cases transferred from the juvenile court. With the greatly increased mobility of families and children, there is a need for interstate cooperation in the handling of delinquent children. North Dakota's enactment of the Uniform Juvenile Court Act has assured the state and its citizens of juvenile law providing the youthful offender with the constitutional safeguards of due process while retaining the benefits of *parens patriae.*[68]

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63. *Id.* The child and his parents would be aware of the possibility of criminal prosecution after the receipt of the written notice of the transfer hearing as provided for in N.D. CENT. CODE § 27-20-34 (1)(c) (1974).

64. N.D. CENT. CODE § 27-20-34(4) (1974). *See* Commissioner's Note, 9 Uniform Juvenile Court Act (U.L.A.) 430, 431 (1973).

65. *See also* N.D. CENT. CODE § 27-20-27(2) (1974) (valid out of court confession must be corroborated to support a finding of delinquency); *accord* In Re W.J. 116 N.J. Super, 462, 282 A.2d 770 (1971). *See also* N.D. CENT. CODE § 27-20-3(2) (1974) (disposition of child and evidence adduced in juvenile court may not be admitted in any other court, exception).

66. State v. Loyd, ——Minn.——, 212 N.W.2d 671, 674 (1973).

67. *See* Wald, Ayres, Hess, Schantz, Whitebread, *Interrogation in New Haven: The Impact of Miranda,* 76 YALE L.J. 1519, 1578-1600 (1967); Seeburger & Wettick, *Miranda in Pittsburgh—A Statistial Study,* 29 U. PITT. L. REV. 1 (1967).

68. For analysis of the Uniform Juvenile Court Act in its entirety see *The Uniform Juvenile Court Act,* 48 N.D. L. REV. 93 (1971-1972); In re R.Y. 189 N.W.2d 644 (N.D. 1971).