367 P.3d 1
Supreme Court of California
In re JOSEPH H.
No. S227929.
Oct. 16, 2015.

Opinion

Petition for review denied.

LIU, CUÉLLAR, and KRUGER, JJ., are of the opinion the petition should be granted.

Dissenting Statement by LIU, J.

I write to explain why I believe this case merits our review.

Petitioner Joseph H., at age 10, shot and killed his sleeping father and then confessed to a police detective during a custodial interview. A video recording of the interview shows Joseph sitting on a couch next to his stepmother, Krista McCary, whose husband Joseph had just killed. Riverside Police Detective Roberta Hopewell sat in an adjacent chair; she was courteous and not overbearing. At the beginning of the interview, Detective Hopewell informed Joseph of his *Miranda* rights, and he purported to waive them. In a published opinion, the Court of Appeal found that "Joseph's responses indicated he understood" his *Miranda* rights and that he validly waived his rights "despite his young age, his ADHD [attention deficit hyperactivity disorder], and low-average intelligence."

In 2011, Joseph was one of 613 children under the age of 12 arrested for a felony in California. This case raises an important legal issue that likely affects hundreds of children each year: whether and, if so, how the concept of a voluntary, knowing, and intelligent *Miranda* waiver can be meaningfully applied to a child as young as 10 years old. A *Miranda* waiver, to be valid, must be "made voluntarily, knowingly and intelligently." The waiver must be made "with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it." In assessing the validity of a waiver, a reviewing court must "conduct an independent review of the trial court's legal determination" of "whether the *Miranda* waiver was voluntary, knowing, and intelligent under the totality of circumstances surrounding the interrogation."

Juveniles, like adults, may waive their *Miranda* rights. Yet *Miranda* waivers by juveniles present special concerns. The United States Supreme Court has affirmed the "commonsense" conclusion that "children 'generally are less mature and responsible than adults' [citation]; that they 'often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them' [citation]; that they 'are more vulnerable or susceptible to ... outside pressures' than adults. [Citation.] Addressing the specific context of police interrogation,

we have observed that events that 'would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens.'" The "very real differences between children and adults" must be factored into any assessment of whether a child validly waived his *Miranda* rights. "When a juvenile's waiver is at issue, consideration must be given to factors such as 'the juvenile's age, experience, education, background, and intelligence, and ... whether he has the capacity to understand the warnings given him, the nature of his Fifth Amendment rights, and the consequences of waiving those rights.'"

Apart from this case, there does not appear to be any California decision upholding a *Miranda* waiver by a child younger than 12. I am aware of only one reported case upholding a *Miranda* waiver by a child as young as 10.

In this case, Detective Hopewell explained to Joseph his *Miranda* rights and elicited his waiver in the following colloquy:

HOPEWELL: Okay. Now, I'm going to read you something and it's—it's called your Miranda Rights. And, I know you don't understand really what that is. But, that's why your mom's here. Okay? And, she's gonna listen to it and then, she's going to give me your answers. Okay? If you want to answer for you, that's great too. Okay? If you don't understand something, w—when I state something, I want you to tell me. I don't know what you're talking about or I don't understand.

JOSEPH: All right.

HOPEWELL: Okay? All right. Right now, you know you're here because of what happened to your dad?

JOSEPH: Yeah.

HOPEWELL: All right. So, you have the right to remain silent. You know what that means?

JOSEPH: Yes, that means that I have the right to stay calm.

HOPEWELL: That means y—you do not have to talk to me.

JOSEPH: Right.

HOPEWELL: Okay? And, anything you say, will be used against you in a court of law. Do you know what that means? That means that if we have to go to court and tell the judge what, what you did, that whatever you're gonna tell me today, I can tell the judge, "This is what Joseph told me." Okay?

JOSEPH: Okay.

HOPEWELL: You understand that?

JOSEPH: Yeah.

HOPEWELL: Okay. And, you have the right to talk to a lawyer and have a lawyer here with you—an attorney—before I ask you any questions. Do you understand that? And, you shake your head upside uh what does that ...

JOSEPH: Yes.
HOPEWELL: ... mean? What does that mean to you?
JOSEPH: It means, don't talk until that means to not talk till the attorney or ...
HOPEWELL: That means, you have the choice. That you can talk to me with your mom here or you can wait and have an attorney before you talk to me.
JOSEPH: Okay.
HOPEWELL: Okay? But it's your choice and it's your mom's choice. Okay?
JOSEPH: Okay.
HOPEWELL: All right. And, if you can't afford one—'cause I know you don't have a job, no money—um, the court will appoint one, an attorney for you. Before I talk to you about anything. Do you understand that?
JOSEPH: Yeah.
HOPEWELL: Okay. So, with you—you got your mom here. I have some questions that I do want to ask you. What happened with your dad. Do you want to talk to me and tell me what happened?
JOSEPH: Um, first, do you want to know what hap—what we were doing before?
HOPEWELL: Yeah, I want you to tell me everything that was going on. So, do you want to talk to me about that?
JOSEPH: (Nods head in the affirmative.)
[End of colloquy.]

Here the petition for review and supporting letters contend that as a matter of "social science and cognitive science" as well as "what 'any parent knows'—indeed, what any person knows—about children generally," it is doubtful that Joseph understood or was capable of understanding the nature of *Miranda* rights and the consequences of waiving those rights. The petition further contends that the presence of Joseph's stepmother Krista during the interview does not aid the validity of the waiver because Krista had a conflict of interest and, in any event, sat silently and gave no advice as Joseph waived his rights.

Having reviewed the transcript and video of the interview, I believe the issue of whether Joseph validly waived his *Miranda* rights subsumes several questions worthy of our review: (1) whether there is an age below which the concept of a voluntary, knowing, and intelligent waiver has no meaningful application, (2) whether and, if so, how the *Miranda* warnings and waiver decision can realistically be made intelligible to very young children, and (3) what role parents, guardians, or counsel should play in aiding a valid waiver decision by such children, and under what conditions a parent or guardian would be unable to play that role.

In evaluating whether this case merits our review, I note that other state high courts have addressed these issues by formulating standards and procedures specific to young children. (See,

e.g., *State v. Presha* (2000) 163 N.J. 304, 748 A.2d 1108, 1117–1118 [adopting a "bright-line rule" that "[w]hen the juvenile is under the age of fourteen, the adult's absence will render the young offender's statement inadmissible as a matter of law-unless the adult is truly unavailable, in which case, the voluntariness of the waiver should be determined by considering the totality of circumstances"]; *Matter of B.M.B.* (1998) 264 Kan. 417, 955 P.2d 1302, 1312–1313 [concluding that for children under 14 "the totality of the circumstances is not sufficient to ensure that the child makes an intelligent and knowing waiver of his rights," and holding that "a juvenile under 14 years of age must be given an opportunity to consult with his or her parent, guardian, or attorney as to whether he or she will waive his or her rights to an attorney and against self-incrimination"]; *Commonwealth v. A Juvenile (No. 1)* (1982) 389 Mass. 128, 449 N.E.2d 654, 657 ["We conclude that, for the Commonwealth successfully to demonstrate a knowing and intelligent waiver by a juvenile, in most cases it should show that a parent or an interested adult was present, understood the warnings, and had the opportunity to explain his rights to the juvenile so that the juvenile understands the significance of waiver of these rights. For the purpose of obtaining the waiver, in the case of juveniles who are under the age of fourteen, we conclude that no waiver can be effective without this added protection.... For cases involving a juvenile who has reached the age of fourteen, there should ordinarily be a meaningful consultation with the parent, interested adult, or attorney to ensure that the waiver is knowing and intelligent. For a waiver to be valid without such a consultation the circumstances should demonstrate a high degree of intelligence, experience, knowledge, or sophistication on the part of the juvenile."].)

The proper application of *Miranda* to children in Joseph's age range likely affects hundreds of cases each year, even though few such cases result in a trial and appeal. For these reasons, I vote to grant review.

Finally, it bears mention that consideration of special safeguards for young children need not await judicial action. Many states have found the issue worthy of legislative attention. (See 705 Ill.Comp.Stat. 405/5–170 [child under age 13 suspected of serious crimes must be represented by counsel throughout the entire custodial process, including the reading of *Miranda* rights]; Iowa Code § 232.11 [child under 16 cannot waive right to counsel without written consent of the child's parent]; Mont.Code § 41–5–331 [child under 16 can waive rights only with a parent's agreement; when a parent does not agree, the child can waive only after consulting with counsel]; N.M. Stat. § 32A–2–14(F) [prohibiting admission of a statement by a child under 13 in the adjudicatory phase of a delinquency proceeding, and presuming that a child of age 13 or 14 is incapable of making a valid *Miranda* waiver]; Wash. Rev.Code § 13.40.140(10) [parent must waive rights when a child is under 12]; Colo.Rev.Stat. § 19–2–511 [for children under 18, a parent or the child's counsel must be present and informed of the

child's rights for any custodial statement to be admissible; the child and parent may waive parental presence in writing]; Conn. Gen.Stat. § 46b–137 [no statement of a child made during custodial interrogation is admissible in juvenile court unless a parent is present and advised of the child's rights]; Ind.Code § 31–32 [child's rights can be waived only by a parent or counsel unless the child has been emancipated]; N.C. Gen.Stat. § 7B–2101 [child under 14 cannot waive *Miranda* rights unless a parent or attorney is present]; Okla. Stat. tit. 10A, § 2–2–301 [advisement of rights of child 16 or younger attendant to custodial interrogation must take place in the presence of a parent, guardian, or counsel].) Our Legislature may wish to take up this issue in light of this court's decision not to do so here. (See Cal. Const. art. I, § 28, subd. (f)(2).)