

Digest: People v. Lessie

Alexandra A. Harman

Opinion by Werdegarr, J., with George, C.J., Kennard, Baxter, Chin, Moreno, and Corrigan, JJ.

Issue

What test should courts apply when determining whether a minor defendant has “knowingly and voluntarily” waived his or her *Miranda* rights?

Facts

Tony Lessie, a sixteen-year-old boy, was charged with second degree murder and convicted at trial.¹ Lessie had been involved in a gang-related shooting in Oceanside, wherein Rusty Seau was shot and killed.² Months after the incident, Lessie was taken into custody, where he twice confessed to shooting Seau—once at the Oceanside Police Department, and a second time while being questioned in juvenile hall.³ Lessie claimed the judgment should be reversed because he never waived his Fifth Amendment rights, and therefore the trial court erred by admitting his confessions into evidence.⁴

At the time, Lessie had finished the tenth grade and worked in retail.⁵ Lessie also had experience with the criminal justice system as a result of two prior arrests, one for burglary and the other for evading police after being stopped in his car with marijuana.⁶ Following the arrest relating to the shooting, Detective Kelly Deveney told Lessie that he would be able to call as many people as he wished when they arrived at the police department.⁷ Deveney also asked Lessie if he would like to contact anyone in particular, and Lessie responded in the

¹ People v. Lessie, 47 Cal. 4th 1152, 1157 (2010).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.* at 1169.

⁶ *Id.*

⁷ *Id.* at 1158.

affirmative identifying that person as his father, although Lessie did not have his father's phone number at the time.⁸

Upon arrival at the Oceanside Police Department, Deveney informed Lessie that she had retrieved his father's phone number, and she asked whether Lessie preferred to call or to have the department call on his behalf.⁹ Lessie stated that he would like to make the phone call himself.¹⁰ After this statement, Deveney, with Detective Gordon Govier in the room, requested that Lessie fill out paperwork and thereafter informed Lessie of his *Miranda* rights.¹¹ When Deveney asked Lessie if he understood what she said, he said "yeah."¹² Next, Deveney began questioning Lessie about his background and the background of the gang members who were present the day of the shooting, without offering Lessie access to a phone.¹³

Subsequently, Deveney told Lessie that various people, including family members, had identified him as the killer.¹⁴ Lessie initially denied his role in the shooting, but then he confessed, stating, "I was there, I was, I was there and I was the shooter."¹⁵ Lessie claimed that the gang members, specifically James Turner, forced him to shoot Seau as a type of initiation, and Lessie thought he would receive serious bodily injury if he did not comply with the instructions.¹⁶ Lessie confessed that upon Turner's command he shot Seau in the back while Seau was retreating.¹⁷ After his confession, Deveney asked if Lessie would like a moment, and Lessie responded that he wanted to call his father.¹⁸ Deveney then stepped out of the room to confer with Govier, and Lessie again asked to call his father.¹⁹ Deveney told Lessie that a phone was being charged in order for him to make a phone call, but before she allowed him to call she continued to ask questions about the other gang members.²⁰ Once the phone

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*; *Miranda v. Arizona*, 384 U.S. 436, 478–79 (1966) (stating that any individual held in custody must be informed of the privilege against "self-incriminatory statements" by being told that he has "the right to remain silent . . . the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires").

¹² *Lessie*, 47 Cal. 4th at 1158–59.

¹³ *Id.* at 1159. Lessie stated that he was not a part of the gang, but he wanted to become a member. *Id.* at 1157.

¹⁴ *Id.* at 1159.

¹⁵ *Id.*

¹⁶ *Id.* at 1157.

¹⁷ *Id.*

¹⁸ *Id.* at 1159.

¹⁹ *Id.*

²⁰ *Id.* at 1160.

was brought inside, Lessie called his father and left a message stating that he was in custody and instructed his father to call him as soon as possible.²¹

Four months passed before Deveney and Govier conducted a second interview, while Lessie was in juvenile hall.²² Again, detectives informed Lessie of his *Miranda* rights.²³ Lessie answered their questions, reiterated his involvement in the shooting, and filled in factual gaps.²⁴

At trial, Lessie argued that *People v. Burton*²⁵ required the court to exclude his confession from trial because he maintained his privilege against self-incrimination during the initial interrogation by requesting to call his father.²⁶ Lessie further argued that the second interrogation at juvenile hall was improper because he never waived his *Miranda* rights, and thus *Edwards v. Arizona*²⁷ prohibited detectives from initiating further questioning.²⁸ Lastly, Lessie motioned for exclusion based on a violation of Welfare & Institutions Code section 627(b) by law enforcement in failing to allow him a phone call within one hour after confinement.²⁹ The trial court rejected all of these arguments and allowed Lessie's confession into evidence at trial.³⁰ The trial court observed that *Burton* was no longer controlling in light of the 1982 Truth-in-Evidence provision in the California Constitution, which precludes a court from excluding "relevant evidence . . . whether heard in juvenile or adult court."³¹ The trial court instead applied *Fare v. Michael C.*³² and *People v. Hector*³³ and denied that Lessie intended to invoke his

²¹ *Id.*

²² *Id.*

²³ *Id.*; *Miranda*, 384 U.S. at 478–79.

²⁴ *Lessie*, Cal. 4th at 1160.

²⁵ *People v. Burton*, 6 Cal. 3d 375 (1971). See *infra*, note 41 and accompanying text.

²⁶ *Lessie*, Cal. 4th at 1162. In *Burton*, the court formulated a distinct test for cases involving minor defendant's invocation of the Fifth Amendment privilege by holding that a minor maintains this privilege upon a request to see a parent either before or during interrogation. *Id.* at 1163 (quoting *Burton*, 6 Cal. 3d at 383–84).

²⁷ *Edwards v. Arizona*, 451 U.S. 477 (1981). See *infra*, note 28.

²⁸ *Lessie*, 47 Cal. 4th at 1160 (citing *Edwards*, 451 U.S. at 484–85). The court in *Edwards* stated that "an accused . . . having expressed his desire to deal with the police only through counsel, is not subject to further interrogation by the authorities until counsel has been made available to him, unless the accused himself initiates further communication, exchanges, or conversations with the police." *Edwards*, 451 U.S. at 484–85. Thus, Lessie contends that he should not have been subjected to further questioning after the initial meeting with detectives where he requested to call his father.

²⁹ *Lessie*, 47 Cal. 4th at 1161.

³⁰ *Id.* at 1160–61.

³¹ *Id.* at 1160 (citing CAL. CONST. art. I, § 28(f)(2)).

³² *Fare v. Michael C.*, 442 U.S. 707 (1979). See *infra*, note 47 and accompanying text.

³³ *People v. Hector*, 83 Cal. App. 4th 228 (2000).

Fifth Amendment right by requesting to speak with his father because Lessie never explicitly stated such a purpose.³⁴ In finding that Lessie waived his Fifth Amendment rights, *Edwards* could not apply.³⁵ The court also held that the violation of the Welfare and Institutions Code did not justify the remedy of evidence exclusion.³⁶

On appeal, the trial court's conviction was affirmed.³⁷ Lessie petitioned for review, and the Supreme Court granted it.³⁸

Analysis

The court cited *Miranda* to reiterate the foundation for protecting the Fifth Amendment by allowing individuals in custody the right to remain silent and the right to counsel.³⁹ Next, the court looked to the appropriate application of *Miranda* to cases involving minor defendants. The court considered the rationales of *Burton* and *Fare* to determine whether a minor's request to speak with a parent was sufficient to invoke the minor defendant's Fifth Amendment rights.⁴⁰

In *Burton*, the court reversed a sixteen-year-old male's conviction for murder because his confession was wrongly admitted into evidence after the minor had requested and been refused the opportunity to speak with his father.⁴¹ The court in *Burton* stated that a minor defendant may maintain his Fifth Amendment rights by "[a]ny words or conduct which 'reasonably appears inconsistent with a present willingness on the part of the suspect to discuss his case freely and completely with police at that time . . .'"⁴² The *Burton* court held that a minor defendant calling upon a parent while in custody was sufficient to invoke the Fifth Amendment privilege.⁴³

The court reasoned that *Burton* had been limited by the 1982 provision of the state Constitution, entitled Truth-in-Evidence, which prohibited courts from excluding any evidence relevant to criminal proceedings dealing with either adults or minors.⁴⁴

³⁴ *Id.*

³⁵ *Id.* at 1160–61.

³⁶ *Id.* at 1161.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.* at 1162 (citing *Miranda v. Arizona*, 384 U.S. 436, 444–45, 467, 473–74 (1966)).

⁴⁰ *Id.* at 1162–68.

⁴¹ *Id.* at 1162 (citing *People v. Burton*, 6 Cal. 3d 375 (1971)).

⁴² *Burton*, 6 Cal. 3d at 382 (quoting *People v. Randall*, 1 Cal.3d 948, 956 (1970)).

⁴³ *Id.* at 383–84.

⁴⁴ *Lessie*, 47 Cal. 4th at 1163 (quoting CAL. CONST. art. I, § 28(f)(2)) (stating that "[t]he 1982 Truth-in-Evidence provision provides that 'relevant evidence shall not be excluded in any criminal proceeding, including pretrial and post conviction motions and

Despite this limitation, the court acknowledged the need to follow the U.S. Supreme Court's decision in *Miranda*, which "bind[s] the state courts under the federal Constitution's supremacy clause despite the Truth-in-Evidence provision."⁴⁵ The court then recognized that although *Burton* had never been "expressly overruled," the U.S. Supreme Court's decision in *Fare* proves that *Burton* is no longer good law.⁴⁶

In *Fare*, the U.S. Supreme Court reversed a lower court's decision to exclude a sixteen-year-old's confession in a case where the minor defendant's request to see his probation officer had been denied prior to the interrogation that elicited his confession.⁴⁷ The lower court in *Fare* had applied the *Burton* rationale in stressing that a minor's relationship with his or her probation officer is similar to that of a "personal advisor who would understand his problems and needs and on whose advice the minor could rely."⁴⁸ The U.S. Supreme Court reversed the lower court's decision based on the rationale that an attorney is situated to provide unique assistance within the criminal justice system that neither a probation officer nor another adult of close relation to a minor can provide.⁴⁹ The high court further reasoned that when a minor makes no explicit request to speak with an attorney:

[T]he determination whether statements obtained during custodial interrogation are admissible against the accused is to be made upon an inquiry into the totality of the circumstances surrounding the interrogation, to ascertain whether the accused in fact knowingly and voluntarily decided to forgo his rights to remain silent and to have the assistance of counsel.⁵⁰

The court used this rationale to address Lessie's argument distinguishing the situation in *Fare*, where a minor defendant requested to speak with his probation officer, from the situation in *Burton*, where the minor requested to speak with a parent.⁵¹ The court stated that the rationale in *Fare* cannot be read so narrowly as to not extend to the situation presented by *Burton*.⁵² The court further identified the other factors to be considered under the totality of the circumstances approach, including an

hearings, or in any trial or hearing of a juvenile for a criminal offense, whether heard in juvenile or adult court." (internal citations omitted)).

⁴⁵ *Lessie*, 47 Cal. 4th at 1164 (internal citations omitted).

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.* at 1165 (quoting *In re Michael C.*, 21 Cal. 3d 471, 476 (1978)).

⁴⁹ *Id.* at 1165 (citing *Fare v. Michael C.*, 442 U.S. 707, 722 (1979)).

⁵⁰ *Id.* at 1165–66 (quoting *Fare*, 442 U.S. at 724–25).

⁵¹ *Id.* at 1165.

⁵² *Id.*

“evaluation of 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.”⁵³

Lastly, the court reiterated the difficulties courts have encountered in attempting to reconcile *Burton* and *Fare*.⁵⁴ The court also acknowledged the need for courts to proceed cautiously in determining whether a minor acts knowingly and voluntarily.⁵⁵ Ultimately, the court reasoned that, in light of the California Constitution’s Truth-in-Evidence provision and the federal law according to both *Miranda* and *Fare*, the totality of the circumstances test is appropriate.⁵⁶

Based on the totality of the circumstances test, the court considered both Lessie’s request to see his father as well as his background, education, and age.⁵⁷ Accordingly, the court reasoned that Lessie did not invoke his Fifth Amendment rights because he explicitly stated that he understood his *Miranda* rights as read to him, he had prior experience with the criminal justice system that did not indicate otherwise, and he never indicated any explicit intention to seek counsel or to remain silent.⁵⁸

Holding

The court affirmed the Court of Appeal’s decision. The court held that the appropriate test to apply to determine whether a minor defendant knowingly and voluntarily waived his Fifth Amendment right is the totality of the circumstances test from *Fare*.⁵⁹ While the court did not give weight to a violation of a defendant’s right to make a telephone call within one hour of confinement, the court considered the purpose of a defendant’s statement that might indicate a desire to maintain his Fifth Amendment rights in addition to the relevant circumstances.⁶⁰ In this case, the court decided that Lessie made no such indication by merely requesting to speak with his father in light of the fact that Lessie had prior experience with the criminal justice system.⁶¹ Thus, based on the relevant circumstances, the

⁵³ *Id.* at 1167 (quoting *Fare*, 442 U.S. at 725).

⁵⁴ *Id.* at 1167–68.

⁵⁵ *Id.* at 1166–67.

⁵⁶ *Id.* at 1168.

⁵⁷ *Id.* at 1169.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.* at 1170.

⁶¹ *Id.* at 1169–70.

2011]

People v. Lessie

523

court found that Lessie knowingly and voluntarily waived his Fifth Amendment right because: (1) he was informed of his *Miranda* rights and confirmed that he understood them; (2) he possessed a background consistent with such an understanding due to his prior arrests and education level; (3) he gave no explicit indication that he desired to invoke his Fifth Amendment right; and (4) he agreed to answer interrogation questions.⁶²

Legal Significance

The court's decision limits the manner in which courts may interpret a minor defendant's invocation of his or her Fifth Amendment rights during interrogation by overruling the *Burton* decision. A minor's request to speak with a parent will no longer suffice as an automatic invocation of the privilege. Instead, under the totality of the circumstances test, courts are granted the flexibility to consider the relevant circumstances surrounding an interrogation in addition to statements made by a minor defendant. In this case, the court rejected the rule in *Burton* and adopted the totality of the circumstances approach from *Fare*.

⁶² *Id.*