

CONFESSIONS

In re L.A.W., 233 Or.App. 456 (2010) (rev. den.)

Oregon Court of Appeals

FACTS

L.A.W. was a 12-year-old middle school student of average intelligence who had serious emotional problems. A 10-year-old girl told her mother that he had put his finger in her vagina. A plainclothes police detective and a Department of Human Services Child Welfare caseworker took the girl's statement, and then went to L.A.W.'s school to interview him. With the help of school personnel, they took L.A.W. to a room in the school that was used for counseling; it had glass windows covered by shades and was near the school office. L.A.W., the plainclothes detective, the school resource officer (a uniformed police officer), and the caseworker sat together around a desk, and the detective interviewed L.A.W.

The detective started the interview by reading L.A.W. his *Miranda* rights from a printed card. Then he asked if L.A.W. if he understood his rights, and L.A.W. said "Yeah." He asked if L.A.W. had any questions, and L.A.W. said "No." The detective handed L.A.W. the card, and then asked him to sign a statement on the card that said he understood his rights and didn't have any questions. L.A.W. signed the card.

Then the detective told L.A.W. about the girl's allegations. L.A.W. denied that he had done anything. The detective responded that 10-year-old girls don't make things like that up, but that if L.A.W. was sorry or had made a mistake, the detective would put that in his report. L.A.W. then said he had done it, saying that she asked him to do it and threatened to stop playing video games with him if he refused. After an interview of 30-35 minutes, L.A.W. was arrested. The detective did not raise his voice during the interview. As L.A.W. was being taken out of the room, he appeared to faint, but the detective rebuked him and he started walking again.

The state attempted to bring L.A.W. within the juvenile court's jurisdiction, alleging that he had committed what would be unlawful sexual penetration in the first degree if he were an adult. ORS 419C.005(1) allows the juvenile court to take jurisdiction over youths who have committed acts that would be crimes if committed by adults. L.A.W. argued that his confession during the interview should be suppressed (that is, the state should not be allowed to use it to help prove he is guilty) because he had not voluntarily, knowingly, and intelligently waived his constitutional right not to incriminate himself. The juvenile court found that his waiver was voluntary, but not knowing and intelligent, and suppressed the evidence of his confession. The state is appealing that decision.

HANDOUT QUESTIONS

1. If you were the accused minor, L.A.W., what arguments would you make in order to have the evidence suppressed?
2. If you were the state, what arguments would you make in order to have the evidence allowed?
3. If you were on the Oregon Court of Appeals, how would you rule? Explain.
4. In your deliberations as a member of the Oregon Court of Appeals, explain how the following facts would or would not affect your ruling in question #3.
 - a. L.A.W.'s age, 12.
 - b. The alleged¹ victim's age, 10.
 - c. The fact that L.A.W.'s parents were not present at the interview.
 - d. L.A.W.'s emotional problems.
 - e. The detective's failure to explain to L.A.W. what the rights meant, other than reading them as a list.
5. After reading the actual case, answer the following:
 - a. How did the Court of Appeals actually rule?
 - b. What reasons did the Court of Appeals give for its decision?
 - c. How did your decision compare or contrast with what the Court of Appeals decided?
 - d. Do you think your decision was better than the one the Court of Appeals actually reached? Explain.

¹ Since this is an exclusionary rule case, no determination of L.A.W.'s guilt or innocence has been made.

ISSUES

Did L.A.W. voluntarily, knowingly, and intelligently waive his constitutional right against self-incrimination?

WHAT HAPPENED IN JUVENILE COURT?

The trial has been postponed in order to decide whether L.A.W.'s statements should be suppressed. L.A.W. made a pre-trial motion to have his confession suppressed, or excluded, because he claimed it was taken in violation of his constitutional rights. Once that issue has been decided, the state will decide whether to move forward with a trial. When an accused person claims his right against self-incrimination was violated during an interrogation, the state has the burden of proving that, under the totality of the circumstances, her waiver of that right was voluntary, knowing, and intelligent. This inquiry has two parts: voluntariness, and knowingness/intelligence.

The juvenile court found that the state did meet its burden of proving that the waiver was voluntary, that is, not coerced. It relied on the fact that the interview took place at school, that L.A.W. was removed from class by school personnel (rather than police), that the detective was not in uniform, that L.A.W. would have been used to seeing the uniformed school resource officer, that the detective did not raise his voice, and that the interview took 30-35 minutes. The court also found that the detective did not make any express or implied threats or promises. Therefore, it found that L.A.W. had not been coerced, and that his waiver was voluntary.

The juvenile court found that the state did not meet its burden in proving that the waiver was knowing and intelligent. It considered L.A.W.'s age, 12, and the fact that he had not been involved with law enforcement before. It also considered the report of a psychologist who examined L.A.W. The psychologist found that L.A.W. was of average intelligence but that he had "serious emotional problems." He said he was not sure whether L.A.W. had understood the *Miranda* warnings and that 12 year olds in general do not understand them. The court noted that the detective simply read the rights to L.A.W., rather than explaining them or asking L.A.W. to explain what he thought the detective's statements meant in order to check his comprehension. Finally, the court discounted the state's evidence that L.A.W. had watched television shows that depicted police officers reading rights to adult suspects. Given the totality of those circumstances, the court found L.A.W.'s waiver was not knowing and intelligent.

Because the waiver was not knowing and intelligent, the court suppressed the evidence, and the state appealed that suppression.

HOW DID THIS CASE REACH THE OREGON COURT OF APPEALS?

The court found that his waiver was voluntary, but not knowing and intelligent, and suppressed his confession. The state is appealing that decision in order to get the evidence introduced so it can proceed with a trial.

ARGUMENTS

L.A.W.'s Argument:

1. L.A.W. did not voluntarily waive his right not to incriminate himself, therefore his confession should be suppressed; and
2. L.A.W. did not knowingly and intelligently waive his right not to incriminate himself, therefore his confession should be suppressed

State's Argument:

1. L.A.W. voluntarily, knowingly, and intelligently waived his right not to incriminate himself, therefore, his confession should be admitted into evidence.

WHO WON?

The state won. The Court of Appeals found that L.A.W.'s confession was voluntary, knowing, and intelligent, and that it could therefore be admitted as evidence against him.

HOW THE COURT EXPLAINED ITS DECISION

Like the juvenile court, the Court of Appeals looked at the issues of voluntariness and knowingness/intelligence separately. It affirmed the juvenile court on the issue of voluntariness, but reversed on the issue of knowingness/intelligence.

The court's reasoning on voluntariness, or lack of coercion, was similar to the juvenile court's reasoning. The court noted that L.A.W. was 12 at the time of the confession and that he suffered from serious emotional problems. But it also reasoned that his intelligence and educational experience were average, and that there was no evidence in the record that he was unable to understand oral or written information. The court pointed out that he said he understood his rights and signed the card when asked to do so. The court reviewed the psychologist's testimony and rejected the idea that, as a general rule, 12 year olds cannot understand *Miranda* warnings. It reasoned that the psychologist had failed to explain how L.A.W.'s emotional problems prevented him from understanding the detective's statements.

The court disagreed with the juvenile court the issue of knowingness and intelligence. It started by reviewing the rule for knowing and intelligent waivers, "under the totality of the circumstances, youth knew that he could choose not to speak with the detective, to speak only with counsel present, and to discontinue talking at any time." The court laid out several factors that are helpful in the inquiry: the minor's age, physical condition, experiences, level of education, background, and intelligence. To explain how it applied those factors, the court discussed two similar cases, *Deford* and *Cecil*.

In *Deford*, an 11-year-old boy waived his *Miranda* rights. He offered evidence that he had the mental capacity of a 7-year-old, could not think abstractly or reason, did not read well, and had a borderline low IQ. He produced expert testimony that he did not understand he could have an attorney present. But the state also produced an expert, who disagreed and testified that

the boy understood the warnings. It offered evidence that the police officer had read the warnings to the boy one at a time and asked the boy to paraphrase each warning, which the boy did correctly. Further, the boy testified he thought he was going to be arrested, and he had been read his *Miranda* rights before during prior contact with police. The court found that under the totality of the circumstances, the boy had knowingly and intelligently waived his rights.

In the second case, *Cecil*, the defendant was 12 years old. He testified at trial that he did not understand the warnings, but when the state cross-examined him, he admitted that he had understood them. Even though his psychologist testified that he could not assert his rights, was just above borderline intelligence, and had a learning disability, the court found the his waiver was knowing and intelligent.

The court noted that the juvenile court had relied on the fact that the plainclothes detective did not use the *Deford* method of giving *Miranda* warnings, that is, asking questions and then having the youth paraphrase the information to make sure he understood it. However, the court said that method was not required for a valid waiver. The court reiterated that the rule is simply that the waiver must be knowing and intelligent based on the totality of the circumstances.

In reviewing the totality of the circumstances, and in light of *Deford* and *Cecil* the court noted L.A.W.'s oral and written acknowledgment of the warnings, his average intelligence, and his lack of learning disabilities. It also pointed out his age, average level of education, and his ability to understand and respond to the detective's questions. It discounted his psychologist's testimony, because the psychologist said that 12 year olds generally could not understand the warnings (a conclusion the court had rejected in prior cases), rather than explaining why L.A.W. specifically could not understand the warnings. Thus, the court decided his waiver was knowing and intelligent, and reversed the juvenile court. The state can now use the confession as evidence against L.A.W. in a trial.

APPLICATION

1. This opinion is significant for two concepts:
 - a. When a young minor without parents or an attorney present waives his or her rights to remain silent and have an attorney present during questioning, police have very little responsibility for making sure the minor understands the rights he or she is waiving. It is enough for the police officer read out all the warnings and then get a “yes” or “no” response, unless there is other evidence that the minor did not understand the warnings.
 - b. A minor’s psychological problems are not relevant to the waiver inquiry unless they are very closely tied to an inability to understand the *Miranda* warnings.
2. Many students have seen television shows in which police cannot talk to a minor without parents being present. Do the students agree with the court that a 12 year old of normal intelligence fully understands the long-term consequences to speaking to police without an attorney? Do adults understand the consequences?
3. Discuss which of the following facts would have made a difference in L.A.W.’s case. Remember the test for knowing and intelligent waiver is the totality of the circumstances, so no one fact decides the question. The factors the court noted as important are: age, physical condition, experiences, level of education, background, and intelligence.
 - a. L.A.W. was 6 years old.
 - b. L.A.W.’s psychologist testified that he had a cognitive disability that made it impossible for him to understand the warnings.
 - c. L.A.W.’s father had been beaten by police officers in front of him. A psychologist testified that he had Post-Traumatic Stress Disorder as a result of the incident, and was terrified of all police officers.
 - d. L.A.W. introduced evidence that he was severely intellectually disabled (intellectual disability was previously referred to as mentally retardation), but no evidence that his disability made him incapable of understanding the warnings.
 - e. L.A.W. was a member of an isolated community and had been homeschooled for most of his life; he had just entered public school. He introduced evidence that his education had been sub-standard.
 - f. L.A.W. was caught molesting the girl and badly beaten by her father. The police came to his hospital room while he was sedated to question him.
 - g. L.A.W. was a recent immigrant from a country in which citizens have the right to remain silent but are often punished for asserting it.