In the Matter of B.M.B
Kansas Supreme Court
March 13, 1998

(In the most significant Miranda or interrogation case from the state supreme court in many years, the Kansas High Court, in a unanimous decision, dramatically and drastically changes Kansas custodial juvenile interrogation law and, for the first time, adopts a bright-line rule that anyone under the age of 14 must be given an opportunity to consult with his or her attorney or their parent or guardian whether the juvenile will waive his or her rights to an attorney and to remain silent. Both the parent and the juvenile must be advised of the juvenile's Fifth and Sixth Amendment rights. Otherwise, no statement or confession from the juvenile can be used.)

B.M.B., a ten year old boy at the time of the alleged crime, was convicted of rape in March, 1997, after Wichita police charged him with sexually assaulting a four year old girl by penetrating her with a finger while the two and her seven year old brother played in a pile of sand.

On appeal, the Kansas Supreme Court overturned that conviction, which had generated a storm of public protest in Wichita, and ruled that children under 14 cannot waive Miranda rights before consulting with a parent, guardian or lawyer.

The little girl, according to her parents and a neighbor man working nearby, fled screaming into her home, following a few minutes of play with B.M.B. and her brother. She was crying and upset and the four year old girl claimed that the boy had tried to put his finger up my butt. The parents found blood in the crotch of her panties and called the Wichita Police Department. Then, at the suggestion of the police, they took her to a hospital for examination. A nurse later testified she found vaginal laceration and bruising during that examination.

After B.M.B. was identified, a detective tried to telephone B.M.B.'s mother on three consecutive occasions to arrange an interview. Each time he left messages with an unidentified person asking B.M.B.'s mother to call him. She never returned the calls and, on the fourth day, the detective learned B.M.B. was being taken to Arkansas the next day to spend the summer with an uncle. Therefore, without further delay, the detective went to the grade school where B.M.B. attended the fourth grade.

The detective identified himself as a police officer and informed school officials it was necessary that B.M.B. accompany him to the Exploited and Missing Child Unit, because he needed to talk to B.M.B. about something that had happened.

Initially, B.M.B. was upset and cried, not wishing to leave the school. After a 20 minute drive to the police station, however, he was apparently calm.

The detective later testified he considered B.M.B. to be under arrest at this time, although he did not so advise the boy.

At the police station the detective advised B.M.B. of his Miranda rights, going over each sentence with him and having the boy initial each sentence, before signing the wavier. He asked the boy if he wanted his mother present during the interview and the boy said he did not.

The interview started at 9:55 a.m. and was ended at 10:33 a.m., with a seven minute intermission therein at which time the detective left to take a phone call from B.M.B.'s mother.

The detective did not tell B.M.B. his mother had called or that she was enroute until after B.M.B. made incriminating statements and asked to be returned to school.

The defense, and later the Supreme Court of Kansas, relied heavily on the opinion of a pediatric psychiatrist from Oklahoma who was extremely critical of the detective's interview of B.M.B., albeit it only lasted thirty-one minutes.

In examining the transcript of the taped interview, the psychiatrist called the overall interview ... at best, incompetent; at worst, reprehensible and ... probably the worst I've seen in my career. He called the interview technique and tactics inappropriate for a juvenile and he used descriptive terms such as ... coercive questioning, suggestive and leading questioning, pressured situations...

This type of interview technique - if what one wants is a confession, this type of interview technique with ten year old children will get it. It will unfortunately, in my opinion, get it from the guilty and get it from the innocent ... perhaps as many as half of all children interviewed in this way would have given some minimal agreement to what was being suggested to them with this level of pressure and coercion.

The defense and the Supreme Court of Kansas also relied heavily on the fact that other states (the public defender claims 18 and the Court names 16) do prohibit police from questioning juveniles without first consulting parents.

The Court cites Colorado, Connecticut, Iowa, Montana, North Carolina, Oklahoma and West Virginia as having accomplished the prohibition through statutes and Missouri, Massachusetts, New York, Pennsylvania, Louisiana, Vermont, Indiana, Georgia and Florida as having created judicial restrictions through case law.

Specifically, the Court refers to In re K.W.B., 500 S.W. 2d, Missouri Court of Appeals, 1973, as one of the strictest such rulings around the nation. Our Court here interprets Missouri's K.W.B. as holding that any juvenile, regardless of age, must have his or her parent actually present during questioning.

The prosecution and trial court had relied on the leading juvenile interrogation case, State v. Young, 220 Kansas 541 (1976) wherein the Kansas Supreme Court identified the key factors in the totality of the circumstances in determining voluntariness of a juvenile confession as:

the age of the minor;

the length of the questioning;

the youth's education;

the youth's prior police experience;

and the youth's mental state.

By those factors, the prosecution and district court had found B.M.B.'s confession voluntary. The Kansas Supreme Court here says, We do not overrule the holding in Young, but limit its application to a juvenile 14 years of age or older.

For all intents and purposes, the State and trial court treated B.M.B. as if he were an adult or at least a much older teenager. In viewing the record, it is clear that the trial court gave only lip service to the Young factors and ignored whether in fact B.M.B. comprehended his rights or his situation. We cannot ignore the immaturity and inexperience of a child under 14 years of age and the obvious disadvantage such a child has in confronting a custodial police interrogation ... We hold, therefore, that a juvenile under 14 years of age must be given an opportunity to consult with his or her parent, guardian or attorney...

Interestingly, one rather relevant case is not cited or discussed anywhere in the B.M.B. opinion. In Fare v. Michael C., 439 U.S. 1310 (1979) the U.S. Supreme Court upheld the juvenile murder suspect's waiver of Miranda rights and resulting confession by applying the totality of circumstances test which included consideration of age, experience, background and intelligence. That fairly mature, street smart, oft-arrested 16 year old had requested the presence of his probation officer, but not a parent or attorney. The officer declined Michael's request for the probation officer to be present and proceeded with the interrogation and confession when Michael waived his right to an attorney and to remain silent.

We have relied on Fare v. Michael C. in Kansas since 1979. Despite B.M.B., perhaps we still can with those juveniles 14 and older in custodial interrogations.

(Bottom line? Due to space restraints I have not included herein any of the actual interrogation script. If you want a copy of the portion included in the Supreme Court opinion itself, drop me a line and I'll send it to you. The point is not whether you agree with the pediatric psychiatrist's opinion regarding the interview, and many do not, the reason for this decision is now irrelevant. The rule coming out of it is relevant. If the custodial interviewee is under 14, you must ensure the juvenile consults with a parent or guardian, if not an attorney, prior to questioning. And there's legislation being discussed, as I write this, which, if it passes, would provide far more restrictive restraints on juvenile interrogation than even this case! Stay tuned.)