

COMMONWEALTH OF PENNSYLVANIA V. JULIUS WASHINGTON, JR., C.P. Franklin County Branch, NO. 73 of 1993.

Criminal Action-seeking to suppress defendant's statement to the police alleging that he waived his constitutional rights involuntarily, unknowingly and unintelligently.

1. The Commonwealth has the burden of proving by a preponderance of the evidence that a person's waiver of their *Miranda* rights has been done so knowingly and intelligently.
2. When *Miranda* rights are waived by a child of tender years, the court must closely scrutinize the facts surrounding such waiver to determine the adequacy of that waiver.
3. A minor does not necessarily lack the ability to fully understand his rights and intelligently waive them.
4. Age, intelligence, mental and physical development, and the presence of an attorney or a parent or other interested adult are all factors which should be considered.
5. Although defendant's mother was subsequently questioned regarding property taken from the victim's house, she satisfies the definition of an "interested adult" because she was never informed that she was a suspect before or while defendant was questioned or making his statement and accompanied her son to the police station.
6. The interested adult must be informed of the rights available to the minor and the consequences that may result from the decision to waive those rights.
7. As defendant was orally read his rights and both defendant and his mother were read the juvenile rights warning sheet and signed them, there is no indication that defendant or his mother did not understand those rights as read to them.
8. Once an interested adult is apprised of the minor's rights, they must be given an opportunity to consult with one another concerning those rights so that the minor can then make an informed decision concerning those rights.
9. As no questioning concerning defendant's involvement in the death in question did not begin until after defendant and his mother were given an opportunity to confer, the court concludes that the minor made an informed decision concerning his rights.
10. It is not necessarily an indication that a defendant does not understand his rights when he responds to questions asked him in monosyllabic responses.

11. A mother's acknowledgement of her child's constitutional rights does not defeat her child's waiver of those rights when he also acknowledged those rights and voluntarily signed a statement of rights and consent to speak.

12. A representation to a juvenile that his case could be handled by the juvenile courts was not an intentional misstatement nor was it an unlawful inducement to coerce a juvenile defendant into waiving his rights as there is a possibility that his case could be handled by a juvenile court although it involves a homicide.

13. A defendant claiming improper inducement by police by informing him that another person was making a statement concerning the events which transpired for which the defendant was being questioned must show that the police statements concerning that other person were false.

John F. Nelson, Esquire, Attorney for the Commonwealth
David S. Keller, Esquire, Attorney for Defendant

OPINION & ORDER

Walker, P.J., September 14, 1994:

FINDINGS OF FACT

The defendant, Julius Washington, Jr., was questioned on the night of August 31, 1992 at the Chambersburg Police Department in connection with a death which occurred earlier in the day. Defendant was transported to the Chambersburg Police Department along with his mother, whom he was living with, so that she would be present during defendant's questioning. Defendant was almost 17 years old at the time of his questioning, and could read, write, and understand the English language. Initially, defendant was questioned only as a potential witness to the death. Upon learning that he may be a suspect in the death, defendant was then read his *Miranda* rights. Both the defendant and his mother were each read the juvenile rights' warning sheet which they then signed. The defendant and his mother were given time to consult in private, and then after they indicated a willingness to speak the questioning continued. Defendant's mother was not a suspect in any criminal activity at the time defendant was questioned although she later became a suspect in criminal

offenses regarding property which had been in the victim's home.

DISCUSSION

It is well founded that the Commonwealth has the burden of proving by a preponderance of the evidence that a person's waiver of their *Miranda* rights has been done so knowingly and intelligently. *New York v. Quarles*, 467 U.S. 649 (1984). However, when those rights are waived by a child of tender years, the court must closely scrutinize the facts surrounding such waiver to determine the adequacy of that waiver. *Commonwealth v. Starkes*, 461 Pa. 178, 335 A.2d 698 (1975). Age, intelligence, mental and physical development and the presence of an attorney or a parent or other interested adult are all factors which should be considered. *Id.* In the present case, the defendant was 16 years 8 months old, there is no evidence of intellectual, mental or physical impairments, and he indicated that he could read, write and understand the English language. Defendant's mother was also present during defendant's questioning and was given the opportunity to talk with her son prior to being questioned about his involvement with the death.

Defendant did not have an attorney present during the reading of his rights; however, his mother was there. She rode along with the defendant to the Chambersburg Police Department the night of his questioning, and was present when he was read the juvenile rights warning sheet. In fact, she along with her son signed that sheet. By signing that sheet, both defendant and his mother indicated that they understood what was contained in that document.

Defendant contends that his mother was not an "interested adult" due to her subsequent questioning regarding property taken from the victim's house. The court rejects this proposition. Defendant's mother was never informed that she was a suspect in the taking of property

from the victim's house before or while the defendant was questioned or making his statement.

Defendant cites several cases in which parents were found to be "uninterested adults." However, the court in each case noted graphic disinterest by the parents. In *Commonwealth v. Henderson*, 266 Pa. Super. 519, 405 A.2d 940 (1979), defendant's stepfather refused to go to the police station where he was being held and stated that he did not want to have anything to do with the child. Once again, in *Commonwealth v. Smith*, 472 Pa. 492, 372 A.2d 797 (1977), the father refused to go with the defendant to the police station even after being told that he could accompany his son. Unlike the cases cited by defendant, defendant's mother did accompany her son to the police station and at that time and during her son's questioning was not informed that she might be a suspect in any criminal activity concerning property at the victim's home.

Although the presence of an interested adult is one factor to be examined in determining the adequacy of a waiver, it is also imperative that the interested adult be informed of the rights available to the minor and the consequences that may result from the decision to waive those rights. *Commonwealth v. Smith*, 472 Pa. 492, 372 A.2d 797 (1979). Defendant was orally read his rights, and both defendant and his mother were read the juvenile rights' warning sheet which they both then signed. There is no indication that defendant or his mother did not understand those rights as read to them.

Once an interested adult is apprised of the minor's rights, they must be given an opportunity to consult with one another concerning those rights so that the minor can then make an informed decision concerning those rights. *Id.* Defendant and his mother were given an opportunity to confer which they did. Only then did questioning concerning defendant's involvement in the death that evening occur.

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inducement. However, defendant cites no authority finding
improper inducement where no misstatements were made.

Just because a minor is involved does not necessarily
necessitate the finding that he lacks the ability to fully
understand his rights and intelligently waive them. Although
defendant was questioned late at night and into the early
hours of the following day, defendant neither indicated that
he was tired or needed a rest, nor did he ask for something to
eat or drink. The totality of the circumstances have been
examined and this court finds that the defendant who was
almost 17 at the time of the questioning and who had the
benefit of conferring with his mother prior to being ques-
tioned voluntarily, knowingly, and intelligently waived his
constitutional rights.