

IN RE ANDRE M.: ANALYZING THE TOTALITY OF THE CIRCUMSTANCES WHEN A PARENT IS INTENTIONALLY EXCLUDED FROM A JUVENILE INTERROGATION

Ryan Patterson

I. FACTS

In February 2002, Andre M. was sent to the principal's office at Pueblo High School following an alleged fight.¹ At the office, the police interviewed Andre about the fight.² Andre's mother was contacted, and she immediately drove to the school.³ She waited with Andre in the school office and requested to be present if the police conducted further interviews.⁴ Following the first interview with Andre, a sawed-off shotgun was found in the trunk of a student's car.⁵ The police believed the shotgun belonged to Andre.⁶ Andre's mother had to leave the school to pick up her younger daughter, but asked the assistant principal to prohibit further questioning of Andre unless accompanied by the assistant.⁷ The assistant agreed to comply with the request, and Andre's mother left the school grounds. At the time of her departure, she did not know that the police discovered a sawed-off shotgun.⁸

The assistant principal failed to inform the police of the mother's request, and the police began a second interview with Andre.⁹ Andre's mother returned to Pueblo High School twenty minutes later to find her son being interviewed in a room with three police officers, and the assistant principal not present.¹⁰ A single

-
1. *In re Andre M.*, 88 P.3d 552, 553 (Ariz. 2003) (en banc).
 2. *Id.*
 3. *Id.*
 4. *Id.*
 5. *Id.*
 6. *Id.*
 7. *Id.* at 553–54.
 8. *Id.* at 553.
 9. *Id.*
 10. *Id.*

police officer guarded the door to the room, and denied her request to enter.¹¹ Andre's mother stood outside the room for five to ten minutes while the police finished the second interview.¹² During that interview, Andre confessed to owning the sawed-off shotgun and to bringing it to school.¹³

During the juvenile court proceedings, Andre moved to suppress his confession because: (1) he did not "knowingly, intelligently, and voluntarily" waive his Miranda rights; (2) the interview was conducted in an "atmosphere of fear and intimidation"; and (3) the interview was conducted without supervision of his mother or the assistant principal.¹⁴ The juvenile court denied the motion to suppress and placed Andre on probation for one year.¹⁵ The court of appeals affirmed the decision and held that the confession was voluntary based on the totality of the circumstances.¹⁶ The Arizona Supreme Court granted review to decide whether the confession was indeed voluntary and to determine the importance of the mother's exclusion.¹⁷ The court held that the confession was involuntary, vacated the court of appeal's decision, and reversed the judgment of the juvenile court.¹⁸

II. HISTORY OF CUSTODIAL INTERROGATION

The Fifth Amendment to the United States Constitution protects individuals from self-incrimination.¹⁹ In *Miranda v. Arizona*, the United States Supreme Court held that an individual's right against self-incrimination extended to custodial interrogations because of the inherently coercive nature of such interrogations.²⁰ The Court held that Fifth Amendment rights could only be protected during a custodial interrogation if the individual was advised of his or her rights.²¹ One year after *Miranda*, the Supreme Court held that the Fifth Amendment afforded juveniles the same protection during custodial interrogations.²²

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.* at 554.

17. *Id.*

18. *Id.*

19. See U.S. CONST. amend. V. ("No person shall . . . be compelled in any criminal case to be a witness against himself . . .").

20. *Miranda v. Arizona*, 384 U.S. 436, 468 (1966).

21. *Id.* at 479. The court held that an individual must be advised of specific rights prior to a custodial interrogation. The officer must advise the individual that:

"[H]e has the right to remain silent, that anything he says can be used against him in a court of law, that he has 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."

Id.

22. *In re Gault*, 387 U.S. 1, 55 (1967).

After *Miranda*, the Supreme Court developed a two-part test to determine the admissibility of statements made during police interrogations.²³ Statements were deemed admissible if: (1) the individual voluntarily waived the right to remain silent without coercion or deception during the interrogation; and (2) the individual had full awareness of the right abandoned and understood the consequences of abandonment.²⁴ The Court then expanded the two-prong test into a totality of the circumstances approach, where the court evaluates a number of factors.²⁵ In juvenile cases, the Supreme Court held that courts should evaluate the voluntariness of a statement by examining age, education, background, experience, and intelligence.²⁶

III. APPLICATION OF THE TOTALITY OF THE CIRCUMSTANCES TEST IN ARIZONA

In *State v. Jimenez*, the Arizona Supreme Court endorsed the totality of the circumstances approach to determine the voluntariness of a juvenile confession.²⁷ In addition to the factors provided by the Supreme Court, Arizona also considers whether: (1) a child's parents were present at the interrogation; (2) the juvenile had prior exposure to *Miranda* warnings; (3) the juvenile was in good mental and physical health during the interrogations; and (4) the juvenile had a documented mental illness.²⁸ The court recognized, however, that no one factor is outcome determinative since all relevant factors must be assessed in the totality of the circumstances.²⁹

IV. STATE'S BURDEN OF PROOF IN A JUVENILE INTERROGATION

The State has the burden of proof in a juvenile interrogation case.³⁰ Under current Arizona juvenile case law, there is a presumption that statements made during a police interrogation are involuntary.³¹ To overcome this presumption, the State must prove by a preponderance of evidence that the juvenile voluntarily offered the statement.³² If the State is unable to overcome this presumption, the statement should not be admissible as evidence.³³

-
23. *Moran v. Burbine*, 475 U.S. 412, 421 (1986).
 24. *Id.*
 25. *Fare v. Michael C.*, 442 U.S. 707, 725 (1979).
 26. *Id.*
 27. *State v. Jimenez*, 799 P.2d 785, 791 (Ariz. 1990).
 28. *Id.* at 792.
 29. *Id.*
 30. *In re Andre M.*, 88 P.3d 552, 554 (Ariz. 2003) (en banc).
 31. *Id.* (quoting *Jimenez*, 799 P.2d at 789–90.)
 32. *Id.*
 33. *See id.*

V. THE ARIZONA SUPREME COURT'S ANALYSIS OF THE TOTALITY OF THE CIRCUMSTANCES IN ANDRE'S INTERROGATION

Andre argued that the police created a coercive environment by denying his mother access to the interrogation room.³⁴ Since his confession was a product of the coercive environment, Andre believed the statements were inadmissible.³⁵ Andre wanted the Arizona Supreme Court to adopt a per se rule for juvenile interrogations: if the police deliberately exclude a parent from the interrogations, any statements made during that interrogation are inadmissible.³⁶ In contrast, the State argued that the court of appeals correctly applied the totality of the circumstances when it found the confession voluntary.³⁷ The State pointed to Andre's age, intelligence, the location of the interview, and the length of the interview to show that the environment was not coercive and that Andre "knowingly, voluntarily, and intelligently" waived his Fifth Amendment rights.³⁸ The court refused to establish a per se rule about exclusion, but nonetheless, it disagreed with the court of appeal's totality of the circumstances analysis.³⁹

The Arizona Supreme Court recognized that a parent's presence during a juvenile interrogation helps satisfy the *Moran* two-part test.⁴⁰ A parent's presence protects the juvenile from the coercive environment of interrogations and a parent's presence protects the juvenile by ensuring that the juvenile has proper knowledge of his or her Fifth Amendment rights and the consequence of abandoning those rights.⁴¹ Since a parent's presence can serve a vital purpose, the court held that a confession is less likely to satisfy the two-pronged *Moran* test if a parent is excluded from the interrogation.⁴² Additionally, the court held that the deliberate exclusion of Andre's mother from the interrogation was a "significant factor" in assessing the totality of the circumstances.⁴³ Since Andre's mother attempted to enter the interrogation and was deliberately denied admission, the court found that the State had a greater burden of proof.⁴⁴

The court ultimately determined that the juvenile court erred in admitting Andre's statements.⁴⁵ The State had not met its burden of proof because it was unable to produce tape recordings of the interrogation, evidence that Andre

34. *Id.* at 555.

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.* at 556. Andre was sixteen and one-half years old at the time of the interrogation and was of normal intelligence. *Id.* Also, the interrogation occurred at the high school not at the police station, which would suggest a more coercive environment, and the interrogation lasted a relatively short time. *Id.*

39. *Id.* at 555.

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.*

received age-appropriate *Miranda* warnings, or a written waiver by Andre of his Fifth Amendment rights.⁴⁶ These facts, coupled with the “negative inference” from the intentional exclusion of Andre’s mother, led the Arizona Supreme Court to hold that the statement was involuntary and that the statement should have been inadmissible at trial.⁴⁷

Even though the Arizona Supreme Court held that the confession was involuntary, the juvenile court decision was not automatically overturned.⁴⁸ The juvenile court’s decision to admit the confession could have been harmless error, meaning there was sufficient evidence to convict Andre without his confession.⁴⁹ If the Arizona Supreme Court believed the admission was harmless, the juvenile court’s decision should be affirmed despite improperly admitting the confession.⁵⁰ The court did *not* find the admission harmless.⁵¹ Rather, the court held that without the admission of the statement, the state had no evidence linking Andre to the gun.⁵² Absent the confession, the Arizona Supreme Court noted that the juvenile court could not have properly convicted Andre.⁵³

VI. PARENTAL PRESENCE IS NOT NECESSARY IN EVERY SITUATION

The Arizona Supreme Court acknowledged that there are situations where parents should be excluded from interrogations.⁵⁴ Two examples where parents should be excluded are if the police interrogation involves questions about parental activity or if the juvenile insists that his or her parents be excluded from the interrogation.⁵⁵ In both of these situations, the court stated that the State must still establish “good cause for barring a parent” as part of the State’s burden of proof.⁵⁶

VII. CONCLUSION

The Arizona Supreme Court held that there is a strong presumption that a statement made during a custodial interrogation is involuntary if the juvenile’s parents are absent.⁵⁷ In light of such a presumption, police officers must recognize the importance of contacting a juvenile’s parents prior to any interrogations.

46. *Id.* at 556. The court said that the State was unable to provide such evidence. *Id.* In cases where the court holds that a confession is voluntary, the State typically produces such evidence. *Id.*

47. *Id.*

48. *Id.* at 557.

49. *Id.* (quoting *State v. Davolt*, 84 P.3d 456, 470 (Ariz. 2004) (“Error is harmless if the reviewing court can say beyond a reasonable doubt that the error did not contribute to the verdict”)) (citations omitted).

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.* at 555.

55. *Id.*

56. *Id.* at 556.

57. *Id.* at 555.

Additionally, while the court acknowledged that a *per se* rule is inappropriate, the strong presumption dictated by the court might influence school districts to adopt a policy requiring schools to notify the juvenile's parent prior to police investigation.⁵⁸ While such a policy would ensure protection for the juvenile, the court held that the totality of the circumstances analysis still applies, so no single action by police officers or the school district can ensure that all confessions will be voluntary and admissible in court.⁵⁹

58. *Id.*

59. *Id.* at 557.