FARE v. MICHAEL C., 442 U.S. 707 (1979)

Argued February 27, 1979.
Decided June 20, 1979.

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

I

Respondent Michael C. was implicated in the murder of Robert Yeager. On the basis of this information, Van Nuys, Cal., police took respondent into custody at approximately 6:30 p. m. on February 4. Respondent then was 16 1/2 years old and on probation to the Juvenile Court. He had been on probation since the age of 12. Approximately one year earlier he had served a term in a youth corrections camp under the supervision of the Juvenile Court. He had a record of several previous offenses, including burglary of guns and purse snatching, stretching back over several years.

Upon respondent's arrival at the Van Nuys station house two police officers began to interrogate him. The officers and respondent were the only persons in the room during the interrogation. The conversation was tape-recorded. One of the officers initiated the interview by informing respondent that he had been brought in for questioning in relation to a murder. The officer fully advised respondent of his Miranda rights. The following exchange then occurred:

> "Q. . . . Do you understand all of these rights as I have explained them to you?
> "A. Yeah.
> "Q. Okay, do you wish to give up your right to remain silent and talk to us about this murder?
> "A. What murder? I don't know about no murder.
> "Q. I'll explain to you which one it is if you want to talk to us about it.
> "A. Yeah, I might talk to you.
> "Q. Do you want to give up your right to have an attorney present here while we talk about it?
> "A. Can I have my probation officer here?
> "Q. Well I can't get a hold of your probation officer right now. You have the right to an attorney.
> "A. How I know you guys won't pull no police officer in and tell me he's an attorney?
> "Q. Huh?
> "A. [How I know you guys won't pull no police officer in and tell me he's an attorney?]
> "Q. Your probation officer is Mr. Christiansen.
> "A. Yeah.
> "Q. Well I'm not going to call Mr. Christiansen tonight. There's a good chance we can talk to him later, but I'm not going to call him right now. If you want to talk to us without an attorney present, you can. If you don't want to, you don't have to.

But if you want to say something, you can, and if you don't want to say something you don't have to. That's your right. You understand that right?
"A. Yeah.
"Q. Okay, will you talk to us without an attorney present?
"A. Yeah I want to talk to you."

Respondent thereupon proceeded to answer questions put to him by the officers. He made statements and drew sketches that incriminated him in the Yeager murder.

Largely on the basis of respondent's incriminating statements, probation authorities filed a petition in Juvenile Court alleging that respondent had murdered Robert Yeager and that respondent therefore should be adjudged a ward of the Juvenile Court. Respondent thereupon moved to suppress the statements and sketches he gave the police during the interrogation. He alleged that the statements had been obtained in violation of Miranda in that his request to see his probation officer at the outset of the questioning constituted an invocation of his Fifth Amendment right to remain silent, just as if he had requested the assistance of an attorney. Accordingly, respondent argued that since the interrogation did not cease until he had a chance to confer with his probation officer, the statements and sketches could not be admitted against him in the Juvenile Court proceedings. In so arguing, respondent relied by analogy on the decision in People v. Burton, where the Supreme Court of California had held that a minor's request, made during custodial interrogation, to see his parents constituted an invocation of the minor's Fifth Amendment rights.

In support of his suppression motion, respondent called his probation officer, Charles P. Christiansen, as a witness. Christiansen testified that he had instructed respondent that if at any time he had "a concern with his family," or ever had "a police contact," he should get in touch with his probation officer immediately. The witness stated that, on a previous occasion, when respondent had had a police contact and had failed to communicate with Christiansen, the probation officer had reprimanded him. This testimony, respondent argued, indicated that when he asked for his probation officer, he was in fact asserting his right to remain silent in the face of further questioning.

In a ruling from the bench, the court denied the motion to suppress On appeal, the Supreme Court of California took the case by transfer from the California Court of Appeal and, by a divided vote, reversed.

II

The rule the Court established in Miranda is clear. In order to be able to use statements obtained during custodial interrogation of the accused, the State must warn the accused prior to such questioning of his right to remain silent and of his right to have counsel, retained or appointed, present during interrogation. "Once [such] warnings have been given, the subsequent procedure is clear."

"If the individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease. At this

> point he has shown that he intends to exercise his Fifth Amendment privilege; any statement taken after the person invokes his privilege cannot be other than the product of compulsion, subtle or otherwise. . . . If the individual states that he wants an attorney, the interrogation must cease until an attorney is present. At that time, the individual must have an opportunity to confer with the attorney and to have him present during any subsequent questioning. If the individual cannot obtain an attorney and he indicates that he wants one before speaking to police, they must respect his decision to remain silent."

A probation officer is not in the same posture with regard to either the accused or the system of justice as a whole. Often he is not trained in the law, and so is not in a position to advise the accused as to his legal rights. Neither is he a trained advocate, skilled in the representation of the interests of his client before both police and courts. He does not assume the power to act on behalf of his client by virtue of his status as adviser, nor are the communications of the accused to the probation officer shielded by the lawyer-client privilege.

Moreover, the probation officer is the employee of the State which seeks to prosecute the alleged offender. He is a peace officer, and as such is allied, to a greater or lesser extent, with his fellow peace officers. He owes an obligation to the State, notwithstanding the obligation he may also owe the juvenile under his supervision. In most cases, the probation officer is duty bound to report wrongdoing by the juvenile when it comes to his attention, even if by communication from the juvenile himself. Indeed, when this case arose, the probation officer had the responsibility for filing the petition alleging wrongdoing by the juvenile and seeking to have him taken into the custody of the Juvenile Court. It was respondent's probation officer who filed the petition against him, and it is the acting chief of probation for the State of California, a probation officer, who is petitioner in this Court today.

In these circumstances, it cannot be said that the probation officer is able to offer the type of independent advice that an accused would expect from a lawyer retained or assigned to assist him during questioning. Indeed, the probation officer's duty to his employer in many, if not most, cases would conflict sharply with the interests of the juvenile.

The fact that the State has created a statutory duty on the part of the probation officer to protect the interests of the juvenile does not render the probation officer any more capable of rendering legal assistance to the juvenile or of protecting his legal rights, especially in light of the fact that the State has also legislated a duty on the part of the officer to report wrongdoing by the juvenile and serve the ends of the juvenile court system.

We hold, therefore, that it was error to find that the request by respondent to speak with his probation officer per se constituted an invocation of respondent's Fifth Amendment right to be free from compelled self-incrimination. It therefore was also error to hold that because the police did not then cease interrogating respondent the statements he made during interrogation should have been suppressed.

IV

We hold, in short, that the California Supreme Court erred in finding that a juvenile's request for his probation officer was a per se invocation of that juvenile's Fifth Amendment rights under Miranda. We conclude, rather, that whether the statements obtained during subsequent interrogation of a juvenile who has asked to see his probation officer, but who has not asked to consult an attorney or expressly asserted his right to remain silent, are admissible on the basis of waiver remain a question to be resolved on the totality of the circumstances surrounding the interrogation. On the basis of the record in this case, we hold that the Juvenile Court's findings that respondent voluntarily and knowingly waived his rights and consented to continued interrogation, and that the statements obtained from him were voluntary, were proper, and that the admission of those statements in the proceeding against respondent in Juvenile Court was correct.

The judgment of the Supreme Court of California is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.