

IN THE INTEREST OF GEORGE THOMPSON, A Child, Appellant

Supreme Court of Iowa

241 N.W.2d 2

April 14, 1976, Filed

OPINION: Seventeen-year old Thompson was adjudicated a delinquent for breaking and entering a business establishment in Iowa City. Upon this appeal which raises issues concerning the validity of Thompson's oral confessions and the permissible scope of his cross-examination, we affirm.

At 2:30 A.M. September 3, 1975, Iowa City police received a telephone report from an individual who heard breaking glass or metal indicating a break-in at Blackstone Beauty Shop. Several officers hurried to the scene in police cars. Officer Saylor observed Thompson and two other juveniles emerging from an alley. Located in the alley was the beauty shop back door which had been broken.

At some later point in the investigation a police search of the alley disclosed in a recessed doorway of a nearby building a television stolen from the beauty shop, and the tools apparently used to force the beauty shop door.

The officers took the juveniles to the police station and began questioning them together about why they were out so late. According to officer Saylor, the police thought the boys could have been involved in the break-in but had asked no questions concerning it when one of the three, Ambrisco, said "We did it." The officers responded: "Did what?" to which he replied "We broke into it." Saylor ambiguously testified Thompson agreed by gestures, and words he could not recall, but he did recollect Thompson volunteering, following Ambrisco's admission, that the three of them were together.

The juveniles were then read their constitutional rights from the standard form. Thompson signed a waiver of his rights. Sometime between 4:00 and 5:00 A.M. officer Saylor brought Thompson from his cell to the interrogation room and again advised him of his rights. Thompson then related the "whole story" of the break-in.

Shortly after 8:00 A.M. detective Burns, who was fingerprinting and photographing the juveniles, again advised Thompson of his rights. The latter verbally waived these rights and again confessed his involvement in the crime.

II. Validity of the confession.

Thompson launches a two-pronged attack on the validity of his confession. He first argues for adoption of a rule that a minor should be held incapable of voluntarily and

knowingly waiving his right to remain silent in absence of a parent, adult friend, or lawyer. As a second argument he insists the totality of the circumstances surrounding the confession demonstrates it was involuntarily obtained.

The per se exclusionary rule Thompson first contends for has a logical appeal. The legal safeguards the law provides minors in most civil matters have no counterparts in the criminal law surrounding confessions, where liberty is at stake. It is anomalous that a minor who is civilly non sui juris may nonetheless be held to have waived his constitutional rights in a proceeding affecting his personal freedom.

Two closely related but distinct arguments have been made by those seeking to impose a per se exclusion of juvenile confessions. One argument is that a juvenile's confession should be inadmissible if the police did not obtain the consent of a parent or guardian to the juvenile's waiver of rights.

Another argument, made here, is that a juvenile's confession given without presence of or opportunity to consult with a parent, adult friend or lawyer should be inadmissible per se.

Although the per se rule has received almost unanimous support from commentators, it has been adopted in only two decisions and a few statutes.

It is apparent most courts, required to deal pragmatically with an ever-mounting crime wave in which minors play a disproportionate role, have considered society's self-preservation interest in rejecting a blanket exclusion for juvenile confessions.

Taking into consideration the factors discussed above and the overwhelming weight of case authority, we again decline to adopt the concept every minor is incompetent as a matter of law to waive his rights to remain silent and to an attorney. At the same time, we emphasize the importance of securing for the minor under interrogation the advice and consultation of a parent, guardian, custodian, adult friend, or lawyer.

Turning to the question whether Thompson's confession was voluntary, we consider Thompson's personal characteristics and their cumulative effect on his ability to waive constitutional rights.

Factors which ordinarily play a role in determining the issue of the voluntariness of a confession, in addition to the youth of the accused and his opportunity to consult with a parent, guardian, custodian, adult friend or lawyer are his lack of education, or his low intelligence, the lack of any advice to the accused of his constitutional rights, the length of detention, the repeated and prolonged nature of the questioning, and the use of physical punishment such as the deprivation of food or sleep.

With these standards in mind, we have already noted Thompson was only seventeen. The record reflects he was virtually abandoned by his parents at an early age. Most of the four prior years were spent at the Mount Pleasant Mental Health Center. Before that he was in various institutions and placement situations.

In the spring of 1975 Thompson was, according to an April 1975 social investigation work-up, "sleeping occasionally at the Lutheran Social Services' Boys' Group Home, camping out occasionally, and has been calling attention to himself in the community with misbehavior * * *."

Accompanying psychological and psychiatric reports from 1973 show him to have a full scale I.Q. of only 71. It was observed Thompson's "practical judgment is very low." He has an abnormal electroencephalogram with "two highly significant signs of brain damage and six significant signs." He was able to read at a fourth-grade level. Tests indicated he was frightened, insecure and frustrated. In addition to the abnormal electroencephalogram the diagnosis included "passive aggressive behavior" and borderline mental retardation.

It is true Thompson was advised of his constitutional rights. This, as we have above observed, does not terminate the State's burden to prove the confession was voluntary. It is also true Thompson testified in cross-examination he knew he had a right to talk to a lawyer before he answered any questions. But on this record we find he was denied that right. Thompson's testimony detective Kidwell refused to call attorney Robinson rings true. The State did not call Kidwell as a witness, nor was there any showing he was unavailable. A juvenile with Thompson's characteristics should not be expected to persistently, repeatedly and articulately invoke his constitutional rights before they will be recognized.

The importance of counsel reaches beyond merely advising a client he is not required to answer questions. The requirement of "knowing and intelligent waiver" implies a rational choice based upon some appreciation of the consequences of the decision. The lawyer whom Thompson wanted to call could have advised him concerning probable consequences of confessing.

The record does not reflect Thompson was provided any food. He was obviously without sleep. These factors are also to be weighed in the balance.

Finally, and crucially important, we observe this juvenile's verbal confessions were secured absent any consultation with a parent, guardian, custodian, adult friend or lawyer.

Thompson's interrogation should have ceased when he requested his lawyer be called. Viewing the evidence in the light most favorable to the prosecution, the State did not carry its subsequent heavy burden of proof to show Thompson subsequently waived either his privilege against self-incrimination or his right to counsel.

Considering the totality of the surrounding circumstances, including failure to provide him requested counsel, we hold Thompson's verbal confessions are involuntary. They should not have been considered below and will not be considered here.

