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Juvenile Law--Admissibility in Criminal Prosecutions of Confessions Made Prior to Juvenile Court's Waiver of Its Exclusive Jurisdiction

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Wigmore calls this type of argument "a rusty weapon" because it could be used against admitting any witness.¹⁴

The first well-known judicial challenge to the rule was made by Mr. Justice Holmes in the dissent in *Donnelly v. United States*.¹⁵ In that case, at issue was the admissibility of testimony concerning a confession, made by the declarant before he died, that he had committed the murder for which the defendant was being tried. The majority of the Court disallowed the testimony because it was not a declaration against the declarant's pecuniary or proprietary interests. Holmes retorted, "[N]o other statement is so much against [the declarant's] interest as a confession of murder"¹⁶

Because of the inconsistencies in reasoning, the majority rule as applied does not withstand a close examination. Therefore, it is being eliminated by some courts, and the Oklahoma Supreme Court with this recent decision takes its place with the leaders in recognizing a need for the change. As Professor Wigmore said, it cannot be accepted as a settled and universal rule. It requires the rejection of a confession in a criminal trial, no matter how well authenticated, of a deceased, insane or otherwise unavailable witness who has avowed himself to be the true culprit. Yet, "[a]ny rule which hampers an honest man in exonerating himself is a bad rule, even if it also hampers a villain in falsely passing for an innocent."¹⁷

Katherine Lawin

JUVENILE LAW—ADMISSIBILITY IN CRIMINAL PROSECUTIONS OF CONFESSIONS MADE PRIOR TO JUVENILE COURT'S WAIVER OF ITS EXCLUSIVE JURISDICTION. *State v. Loyd*, — Minn. —, 212 N.W. 2d 671 (1973).

In the recent case of *State v. Loyd*¹ the Minnesota Supreme Court unanimously ruled that an extrajudicial confession given by a juvenile,

14. 5 WIGMORE, *supra* note 7, § 1477, at 288.

15. 228 U.S. 243 (1913).

16. *Id.* at 278.

17. 5 WIGMORE, *supra* note 7, § 1477, at 289.

1. *State v. Loyd*, — Minn. —, 212 N.W.2d 671 (1973).

before a juvenile court has waived its exclusive jurisdiction and referred him to be prosecuted as an adult, is admissible in a criminal prosecution. Of course, the juvenile must have been apprised of his constitutional rights and voluntarily and intelligently waived such rights in making the confession.²

Juvenile courts adopt a *parens patriae* relationship with the children before them. The juvenile court systems are aimed at rehabilitation, not punishment. Since the purpose of the proceeding is to encourage the development of an open and confidential relationship between the juvenile and the court, the process is informal, not adversarial. As a consequence of the court's inducing this atmosphere, the courts commonly exclude statements gathered in the juvenile proceeding from being used against the child. A question arises, however, about confessions made by juveniles who are later certified as adults. This problem of the admissibility of an extrajudicial confession made prior to the child's certification as an adult has been faced by several jurisdictions. These jurisdictions have ruled on the admissibility in three separate ways:

- (1) **PER SE EXCLUSION**—The District of Columbia³ has excluded from use in adult prosecutions all confessions of juveniles if the confession was made while the juvenile was in the juvenile court's jurisdiction.
- (2) **EXPRESS WARNING REQUIRED**—The above per se exclusionary rule was modified in Arizona⁴ to allow such juvenile confessions, made while the child was still under the jurisdiction of the juvenile court, only if the child and his parents were expressly warned that criminal prosecution might result.
- (3) **IMPLIED WARNING REQUIRED**—Other states have rejected the strict exclusionary rule without requiring an express warning that adult prosecution may result.⁵ These states rely upon the adversary nature of the out-of-court police interrogation as being sufficient warning to the child.

2. Juveniles as well as adults are entitled to be apprised of their constitutional rights according to the dictates of *Miranda*. In re Gault, 387 U.S. 1 (1967).

3. *Harrison v. United States*, 359 F.2d 214 (D.C. Cir. 1965); *Harling v. United States*, 295 F.2d 161 (D.C. Cir. 1961).

4. *State v. Maloney*, 102 Ariz. 495, 433 P.2d 625 (1967).

5. *People v. Hester*, 39 Ill. 2d 489, 237 N.E.2d 466 (1968); *State v. Gullings*, 244 Ore. 173, 416 P.2d 311 (1966); *Mitchell v. State*, 464 S.W.2d 307 (Tenn. Crim. App. 1971).

These jurisdictions hold that the prohibition against evidence given in juvenile court cases does not extend to police investigations unless the child legitimately believed that a protective non-adversarial relationship existed at the police questioning.

The *Loyd* case involved the interpretation of a Minnesota state statute⁶ which reads in part, "The disposition of the child or any evidence given by the child in the juvenile court shall not be admissible as evidence against him in any case or proceeding in any other court"

In the *Loyd* case, the appellant was a 16-year-old who had been tried as an adult and found guilty of aggravated robbery. The youth previously had been in trouble with the police, was on juvenile parole, and was acquainted with the arresting officer.

The officer gave Loyd a standard *Miranda*⁷ warning, but did not expressly inform him of the possibility that he might be prosecuted as an adult. In the presence of his parents⁸ the defendant waived his rights and confessed the robbery. He subsequently signed a confession.

At trial, a conflict arose as to the time of a conversation between Loyd and the arresting officer concerning Loyd's possible punishment. Defendant alleged that the officer told him, before the confession, that he would only be sent back to a state (juvenile) training center. The officer maintained that such a discussion did not occur until after the confession. On this important issue relating to inducement of the confession the trial court accepted the officer's version of the incident.

Nearly two months after the arrest and confession, the juvenile court waived its exclusive jurisdiction over Loyd and referred him for prosecution as an adult.⁹ Defendant attempted to suppress the confession. The motion failed, and its denial was the main basis of the appeal.

The decision of the state supreme court to allow the confession in the adult proceeding is important for the distinction it made between the treatment of a juvenile by a juvenile court and by the police. The court asserted the general rule that between a juvenile and the juvenile

6. MINN. STAT. ANN. § 260.211, subdiv. 1 (1971).

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

8. Parental or attorney presence is required by statute in Oklahoma. OKLA. STAT. tit. 10, § 1109(a) (1973).

9. MINN. STAT. ANN. § 260.125 (1971).

court a *parens patriae* relationship exists. The court said, however, there is no such relationship between the juvenile and the police. A police interrogation is patently unlike the juvenile court proceeding. The police interrogation may well be so adversarial as to be understood as such even by the child. Therefore, statements made during police interrogations are not protected although the same statements would be protected if made in a juvenile court. Defendant Loyd's prior familiarity with police interrogations was accepted as evidence of his awareness of this adversarial relationship.

Oklahoma has not yet ruled on a factual situation similar to that in *Loyd*. Like Minnesota, Oklahoma has a statute that demands exclusion of any evidence given in a juvenile cause.¹⁰ Oklahoma juvenile courts may also waive their jurisdiction and certify a child for prosecution as an adult.¹¹

There are no reported cases in Oklahoma determining whether a juvenile's confession made prior to certification is admissible in his criminal trial.

If the juvenile waives his *Miranda* rights and confesses to the police, prior to the juvenile court's waiving of its exclusive jurisdiction, then Oklahoma will have to decide the scope of exclusion demanded by its statute.

As with the other jurisdictions, the Oklahoma courts will have a choice of three interpretations of the statute: per se exclusion, requiring an express warning, or requiring an implied warning.

The third alternative was the one adopted by the Minnesota court. It is this writer's opinion that requiring only an implied warning is fair and is the most practical of the choices. It protects the child from deception without burdening the police with additional technical warning requirements. Of course, requiring only the implied warning would more often result in permitting the use of the confessions than would application of the other tests. This does not seem unfair since juveniles certified to be tried as adults in Oklahoma¹² must exhibit a certain "sophistication and maturity,"¹³ know right from wrong, and be accountable for their actions.¹⁴

10. OKLA. STAT. tit. 10, § 1127(a) (1973).

11. OKLA. STAT. tit. 10, § 1112(b) (1973).

12. See generally Clark, *Certification of Minors for Criminal Prosecution*, 44 OKLA. B. ASS'N J. 1807 (1973).

13. OKLA. STAT. tit. 10, § 1112(b)(6) (1973).

14. *Freshour v. Turner*, 496 P.2d 389 (Okla. Crim. App. 1972).

Such a certified juvenile would seem to have sufficient awareness of potential criminal responsibility to put him on notice that no *parens patriae* relationship exists between himself and the interrogating police. "No 'principles of fundamental fairness' are offended when the information is secured in a setting that is so patently adversarial as to be understood by the child."¹⁵

The Oklahoma statute is unclear as to whether all evidence gathered while the juvenile court has jurisdiction is proscribed from use in a subsequent criminal trial, or if only that evidence brought to light in the juvenile court itself should be so disallowed. The former interpretation would mandate the per se exclusionary rule discussed above. Such a burdensome rule would allow confessed criminals to suppress their confessions which were intelligently made to police. Oklahoma would do well to follow the Minnesota Supreme Court and allow the use in criminal prosecutions of confessions made by juveniles to police prior to the juvenile court's waiver of its exclusive jurisdiction, at least when the juvenile is impliedly warned about the adversary nature of the proceeding.

Robert D. Frank

15. *State v. Gullings*, 244 Ore. 173, 178, 416 P.2d 311, 313 (1966).