

Recent Case Report

People v. Lessie

(2008) 161 Cal.App.4th 1085

ISSUE

Did a 16-year old murder suspect invoke his *Miranda* rights when he told officers that he wanted to talk to his father?

FACTS

During a gang fight in Oceanside, someone fired a shot that killed one of the participants. About three months later, Oceanside detectives learned that the shooter might have been 16-year old Tony Lessie. They also learned that Lessie was living with his aunt and uncle in Hemet, and that he was arrestable on a probation violation warrant. So they went to Hemet and arrested him.

While driving him back to Oceanside, a detective asked if there was anyone, in addition to his aunt and uncle, who should be notified about his arrest. Lessie said that his father should be notified, but that he didn't know his father's phone number.

When they arrived in Oceanside, Lessie was placed in an interview room and was told by the detective that she had found his father's phone number. She asked if he wanted her to notify him or whether Lessie wanted to make the call himself. Lessie said he'd like to call.

The detective then advised him of his *Miranda* rights and, after determining that he understood them, started asking questions about a man named Turner who was also a suspect in the murder. Lessie said that he had lived with Turner in Oceanside, but that he decided to go live with his aunt and uncle because Turner was a gang member and was involved in "some fraudulent dealings."

The detective then asked Lessie about the gang fight and murder. At first Lessie denied that he was even present. But then the detective asked if he would be surprised to know that "some people in your family have said that you told them [about your involvement]?" Lessie responded, "Well to just scratch everything, to just come clean with it: I was there, I was, I was there and I was the shooter." He then explained that Turner had "ordered" him to shoot as part of a gang "initiation thing."

During a break that occurred shortly afterwards, Lessie was permitted to make several phone calls, although he was apparently unable to reach his father until later that day.

Lessie was tried as an adult, and his statement to the detective was used against him. He was convicted of second-degree murder.

DISCUSSION

Although Lessie waived his *Miranda* rights, and although he did not expressly say he was invoking, he argued that he had effectively invoked his right to remain silent when he told the detective that he wanted to talk with his father. This argument was based on the 1971 case of *People v. Burton* in which the California Supreme Court ruled that,

because of the close relationship between parents and their children, a juvenile's request to speak with a parent is a strong indication that he intended to invoke.¹

While the court in *Burton* did not technically rule that such a request constitutes a per se invocation, that was its practical affect. And if there was any doubt, the court eliminated it in 1978 when it ruled in *People v. Michael C.* that an invocation resulted automatically when a minor asked to speak with his probation officer.²

If *Burton* and *Michael C.* were the law today, Lessie's admission would certainly have been suppressed. But they're not. In 1979, the United States Supreme Court reversed *Michael C.* and, in the process, gutted *Burton*. The case was *Fare v. Michael C.*³ and the Court made it clear that a minor who freely waives his *Miranda* rights does not later invoke them by saying he wants to talk with someone other than an attorney. Instead, said the Court, an invocation can result only if the request, when considered in light of the surrounding circumstances and the minor's age and experience, demonstrated an intention to terminate the interview.

Applying this standard to the facts in *Lessie*, the court ruled that it was apparent that Lessie had not intended to invoke because he had been given "full and adequate admonitions," he confirmed that he understood his rights, he freely answered the detective's questions, and he said nothing to indicate he wanted to postpone the interview until he could talk to his father.

The court also noted that, based on Lessie's age and experience, it appeared that he knew what he was doing. Said the court, "Lessie was 16 years old at the time of the interviews, he had completed the tenth grade and, at the time of his arrest, was on probation and essentially on the run so he would not have to face being in custody for a second time. Because of such earlier dealings with the law, we may presume that Lessie was not naïve or inexperienced with respect to police procedures."

Consequently, the court ruled that Lessie's request to speak with his father was not an invocation. His conviction was affirmed.⁴ POV

¹ (1971) 6 Cal.3d 375, 383-4 ["[A minor's] request to see one of his parents, made at any time prior to or during questioning, must, in the absence of evidence demanding a contrary conclusion, be construed to indicate that the minor suspect desires to invoke his Fifth Amendment privilege."].

² (1978) 21 Cal.3d 471, 474 ["Defendant's request to see his probation officer at the commencement of interrogation negated any possible willingness on his part to discuss his case with the police; it thereby invoked his Fifth Amendment privilege."].

³ (1979) 442 U.S. 707.

⁴ **NOTE:** Lessie also argued that his statements should have been suppressed because the detective did not comply with Welfare & Institutions Code § 627(b) by advising him of his statutory right to make at least two completed phone calls. Although the court rejected this argument, it did not explain why. It is possible that the detective had, in fact complied because, on the trip back to Oceanside she told Lessie that, when they arrived, "he could make as many phone calls as he wanted to whomever he wanted." Furthermore, it is apparent that, as the result of Proposition 8, statements cannot be suppressed as the result of a violation of a statute based on independent state grounds, such as W&I Code § 627. See *People v. McKay* (2002) 27 Cal.4th 601, 608.