

*Estados Unidos de América*

*Área Temática: Aplicación de garantías en procedimientos penales*

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*In re E. T. C., Juvenile, 141 Vt. 375 (1982)*

*Corte Suprema de Vermont*

*24 de junio de 1982*

**Clasificadores:** menor (juvenile), mayor de edad (adult), derecho a la defensa jurídica (right to counsel), autoincriminación (self-incrimination), tutor legal (custodian), hogar comunitario (group home), interrogatorio (questioning, interrogation), custodia (custody), tuición (custody), consulta (consultation), imparcial (impartial), cerciorarse (ascertain), presuntivo (presumed), policía (trooper), declaraciones inculpatorias (inculpatory statements), renunciar con conocimiento de causa (intelligently waive), solicitud de eliminación (motion to suppress), decisión de renunciar (decision to waive), derechos garantizados (rights guaranteed), niño infractor de ley penal (delinquent child), catorce años de edad (fourteen-year-old)

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*Bajo la Constitución del Estado de Vermont, los derechos que la Corte Suprema de los Estados Unidos reconoció en *Miranda v. Arizona* (1966) a todo detenido, a permanecer en silencio y contar con la presencia de un abogado, no se pueden renunciar por un menor de edad en forma voluntaria, inteligente y con conocimiento de causa, si éste no ha podido discutir sobre la conveniencia de esta renuncia, antes de ser interrogado, con un adulto independiente, imparcial y responsable, interesado en su bienestar, como su padre o madre, su guardador legal, o abogado defensor.*

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Tres menores de edad, residentes en un hogar comunitario, bajo la custodia del Departamento de Servicios Sociales y de Rehabilitación del Estado de Vermont, eran sospechosos de haberse introducido en dos condominios ubicados al frente del hogar, cruzando la carretera. El director del hogar, que funcionaba bajo un convenio con el Departamento de Servicios Sociales y de Rehabilitación, fue consultado por la policía y, convencidos todos que los tres adolescentes estaban involucrados, indicó a los funcionarios que regresaran cuando ellos hubieran vuelto de la escuela. Los adolescentes fueron interrogados por la policía separado, en la oficina del director del hogar, y en presencia de éste.

Según la policía, el apelante E.T.C., de catorce años de edad, fue previamente informado, al igual que los demás, de los derechos que *Miranda* le reconocía, declaró comprenderlos, y accedió a hablar. Un oficial declaró a continuación que debía contar con un guardador, y el director del hogar acotó que él era guardador de los jóvenes residentes en el hogar. Sin embargo, el director no conversó con E.T.C. ni averiguó si éste entendía bien sus derechos, ni declaró expresamente que el adolescente había renunciado a sus derechos. Más aún, lo alentó a cooperar y ser franco con la policía,

sugiriendo que así tendría mejor suerte. A continuación, y como resultado del interrogatorio, el adolescente hizo declaraciones inculpatórias para sí mismo. En la próxima audiencia judicial, E.T.C. solicitó la eliminación de sus declaraciones ante la policía, pero el juez consideró que había renunciado voluntariamente a sus derechos y que el director había actuado como su guardador al asistirlo. El joven fue condenado e internado bajo la custodia del Comisionado de Correccionales.

El joven apeló, reclamando la eliminación de sus declaraciones, porque: 1) se había negado su derecho a consultar a un “adulto interesado” (en su bienestar) antes de decidir si renunciar o hacer valer su derecho a un abogado defensor y a no declarar en contra de sí mismo; y 2) porque su renuncia a ambos derechos no había sido voluntaria, inteligente y con conocimiento de causa.

La Corte consideró en primer lugar que, fuera de los derechos reconocidos por *Miranda*, basados en la Constitución Federal, la Constitución del Estado de Vermont, según la interpretación de la propia Corte Suprema de Vermont, amplía estos derechos, al reconocer que, siendo un menor de edad incapaz de elegir entre cursos de acción legal alternativos, sin asistencia adecuada, tiene derecho a que se notifique a su representante y no puede renunciar a sus derechos sin recibir asistencia de su guardador o un asesor responsable. En segundo lugar, citando a la Corte Suprema de Indiana, afirmó que el establecimiento de estándares diferentes a favor de los menores de edad es un principio aceptado por la ley, que reconoce que éstos muchas veces carecen de capacidad y responsabilidad para darse cuenta plenamente de las consecuencias de sus actos, estableciendo incapacidades, por ejemplo, para casarse, adquirir alcohol, donar sangre, por lo cual sería inconsistente e injusto que se les ponga en la misma posición que a un adulto cuando se les plantea la renuncia a importantes derechos en el momento más crítico y en las condiciones que les resultan más ajenas y poco familiares. Así, concluye la Corte, para que un menor de edad renuncie voluntaria e inteligentemente a su derecho, reconocido por la Constitución de Vermont, a no autoincriminarse y contar con asesoría de un abogado, es necesario: 1) que se le dé la oportunidad de consultar con un adulto; 2) que este adulto no sólo esté genuinamente interesado en su bienestar, sino que además sea completamente independiente y desconectado de la parte acusadora, por ejemplo, uno de sus padres, un guardador legal o un abogado defensor; y 3) que este adulto independiente esté informado y consciente sobre los derechos del adolescente.

La Corte concluyó que en este caso, el director del hogar, no prestó atención ni tomó parte en la decisión del joven de renunciar a sus derechos (ni siquiera recordaba si había renunciado), y más aún, que presionó al joven al insinuarle que lo mejor era confesar a la policía, dándole a entender que el resultado sería más favorable para él si seguía ese curso de acción.

La opinión concurrente del juez J. Larrow, aclaró que, coincidiendo en el resultado, no estaba de acuerdo con la idea que la opinión de mayoría daba, en el sentido de que bajo ciertas circunstancias (por ejemplo, si hubiera conversado privadamente con el joven sobre la conveniencia de renunciar a sus derechos), el director del hogar podría haber

sido un adulto idóneo para asistir al joven. Según el juez Larrow, jamás podría serlo, pues su diferencia con el encargado de una prisión es leve a este respecto, y el encargado de una prisión no es alguien a quien los internos consulten sobre sus derechos. Los “zorros no deberían ser objeto de evaluación caso a caso; como una clase deberían ser descalificados como protectores de gallinas”.

**In re E. T. C., Juvenile**

**141 VT. 375**

**Supreme Court of Vermont**

(June 24, 1982, Opinion Filed.)

**JUDGES:** Barney, C.J., Billings and Hill, JJ., and Larrow, J. (Ret.), Specially Assigned. Larrow, J., (Ret., Specially Assigned), concurring in result.

**OPINIONBY:** BILLINGS

**OPINION:** This is an appeal by a fourteen-year-old boy from a juvenile court order committing him as a delinquent child to the custody of the Commissioner of Corrections.

Three juveniles, who resided at a group home in Stowe, Vermont, in the custody of the Department of Social and Rehabilitation Services, were suspected of breaking into two condominiums located across the highway from the group home. The home has a contract with the Department of Social and Rehabilitation Services to care for juveniles adjudicated in need of care and supervision and placed in the custody of the Department. The director, who is the head houseparent, has served as director since 1976 and has lived and worked with the appellant since that time.

The Vermont State Police investigated the break-in and after talking with the director all were convinced that the three juveniles residing at the home were involved. The director arranged for the troopers to return to the home to talk to the suspects after they returned from school. Upon their return the director sent the juveniles to their rooms. Subsequently each of the juveniles was interviewed separately by two troopers in the director's office in the presence of the director or a member of his staff. Upon his entering the room an officer advised each juvenile of his Miranda rights and according to the trooper the juvenile here involved acknowledged that he understood his rights and agreed to speak. After the Miranda rights were given an officer stated that he could have a "custodian" present. At that point the director, who was present at the time this juvenile was interviewed, stated that he was the custodian while they were at the home. At no time prior to the interview did the director consult with the juvenile or ascertain if he understood his rights, although he encouraged the juvenile to cooperate with the police and indicated that things would go easier if he did. The director also expressed his belief that it was in the juvenile's best interest to be "straight." Although present, the director did not participate further in the interview and indicated that he had no recollection if the juvenile actually waived his rights. He made no effort to call anyone to represent the

juvenile or indicate as custodian that he expressly waived the juvenile's rights. As a result of the officer's questioning the juvenile made statements inculcating him in the breaking and entering at the condominiums.

At the subsequent delinquency hearing the juvenile moved to suppress the statements, but after a hearing thereon the trial judge found that there had been a voluntary waiver of rights and that the director had acted as custodian of the juvenile in advising him. From this ruling the juvenile appeals claiming that the confession should have been suppressed: (1) because of the denial of the juvenile's right to consult with an "interested adult" before deciding whether to waive or assert his right to counsel and his privilege against self-incrimination; and (2) because, in the totality of the circumstances, he did not voluntarily, intelligently, and knowingly waive his right to counsel and his privilege against self-incrimination. Because of our disposition of the first issue, we do not consider the second claim of error.

Although the United States Supreme Court has limited the Fifth and Sixth Amendment Miranda rights of a juvenile under the United States Constitution to silence, consultation with an attorney, and the presence of an attorney at any interrogation the juvenile agrees to, *Fare v. Michael C.*, 442 U.S. 707 (1979), this Court has long recognized the existence of a related but independent right under chapter I, article 10 of the Vermont Constitution, *State v. Hobbs*, 2 Tyl. 380, 382-83 (Vt. 1803). Being free, as we are, to interpret the precise meaning of our own constitutional equivalent so long as no federal proscriptions are transgressed, *State v. Ludlow Supermarkets, Inc.*, 141 Vt. 261, 268, 448 A.2d 791, 794-95 (1982), and recognizing the inability of a juvenile to choose, without advice, among alternative courses of legal action, we have approved the summoning of a juvenile's representative prior to questioning, *State v. Crepeault*, 126 Vt. 338, 341, 229 A.2d 245, 247, cert. denied, 389 U.S. 915 (1967), appeal dismissed, 390 U.S. 38 (1968), and have held that a minor accused of a crime cannot waive counsel without a guardian or a responsible advisor, *In re Dobson*, 125 Vt. 165, 167, 212 A.2d 620, 621 (1965).

Although our prior cases apply only to waivers in court, we now hold that the same principles apply to police interrogation of juvenile suspects. The reasons for this application are well summarized by the Indiana Supreme Court:

The concept of establishing different standards for a juvenile is an accepted legal principle since minors generally hold a subordinate and protected status in our legal system. There are legally and socially recognized differences between the presumed responsibility of adults and minors. Indeed the juvenile justice system . . . is substantially different in philosophy and procedure from the adult system. This State, like all the others, has recognized the fact that juveniles many times lack the capacity and responsibility to realize the full consequences of their actions. As a result of this recognition minors are unable to execute a binding contract, unable to convey real property, and unable to marry of their own free will. It would indeed be inconsistent and unjust to hold that one whom the State deems incapable of being able to marry, purchase alcoholic beverages, or even donate their own blood, should be compelled to stand on the same footing as an

adult when asked to waive important . . . rights at a time most critical to him and in an atmosphere most foreign and unfamiliar.

Lewis v. State, 259 Ind. 431, 437-38, 288 N.E.2d 138, 141-42 (1972) (citations omitted).

Therefore, the following criteria must be met for a juvenile to voluntarily and intelligently waive his right against self-incrimination and right to counsel under chapter I, article 10 of the Vermont Constitution: (1) he must be given the opportunity to consult with an adult; (2) that adult must be one who is not only genuinely interested in the welfare of the juvenile but completely independent from and disassociated with the prosecution, e.g., a parent, legal guardian, or attorney representing the juvenile; and (3) the independent interested adult must be informed and be aware of the rights guaranteed to the juvenile. Commonwealth v. Barnes, 482 Pa. 555, 560, 394 A.2d 461, 464 (1978); Commonwealth v. Roane, 459 Pa. 389, 394, 329 A.2d 286, 288 (1974); Lewis v. State, supra, 259 Ind. at 439, 288 N.E.2d at 142.

In the present case the director of the group home did not, on the record here, participate in the juvenile's decision to waive his rights. Although present it was shown that he was not paying attention and could not remember if the juvenile in fact waived his rights. See Commonwealth v. Smith, 472 Pa. 492, 499-502, 372 A.2d 797, 800-02 (1977). Nor did the director independently consult with the juvenile or ascertain if the juvenile understood the alternatives open to him. The only conversation was in the atmosphere of the interrogation room. There was no meaningful consultation by the director with the juvenile as this could only occur in the absence of police pressures. Hall v. State, 264 Ind. 448, 452, 346 N.E.2d 584, 587 (1976). A private consultation should be provided. Commonwealth v. Roane, supra, 459 Pa. at 396, 329 A.2d at 289. Moreover, the director coerced the juvenile by implying it was best to "come clean" with the police, raising the inference that the result would be more favorable to the juvenile if he followed that course of action.

Under these circumstances, the trial court was in error in not granting the juvenile's motion to suppress inculpatory statements. Waiver will not be presumed from a silent record absent a showing at least of the assistance of an independent, impartial, responsible, interested adult consulting with the juvenile.

Reversed, order adjudicating the juvenile to be a delinquent vacated and remanded.

**CONCURBY:** LARROW

**CONCUR:** Larrow, J. (Ret., Specially Assigned) (Concurring in result).

I am in full agreement with the result reached by the majority in this case, and with the minimum protections afforded a juvenile being subjected to police interrogation. I also agree that the actions of the director houseparent, or lack thereof, do not meet the standards enunciated. But I cannot agree with the implication that a person in the status of

the director here could ever be held to possess the independence and impartiality which the majority holding requires.

I am willing to "invade the thicket" into which we here venture. Fundamental fairness requires it. But such invasion should, if at all possible, leave a clear trail for future interrogations to follow. The indicated course of conduct should not vary from case to case, and adequate protection for the juvenile should not be afforded mere lip service. No "director" or "houseparent" employed by or under contract with the state can, in my view, be considered either impartial or independent. He differs only in slight degree from the prison warden, and very few of them are, from my observation, consulted by the prison inmate working on his habeas corpus.

It should be made clear that the status of the "director," in itself, precludes any finding by the trial court that minimum protection standards have been met. Foxes should not be subject to individual evaluation; as a class they should be disqualified as poultry custodians.