

## MIRANDA WARNINGS

**State v. Machain, 233 Or.App. 65 (2009)**

Oregon Court of Appeals

### FACTS

This case arises as part of a murder conviction. At the time of the murder, Megan was 15 years old and living with her sister and her sister's 14-year-old son, Troy Anderson, the victim. On the afternoon of September 30, 2004, the victim was found in the family home; he had been shot, and he died later that day. Things had been strewn around the home, and money was missing from a safe in Megan's sister's bedroom.

Some neighbors reported hearing loud music and a gunshot that afternoon; another neighbor reported seeing Megan and her friend Irwin walking away from the home in the afternoon, although not necessarily around the time of the shot. Detectives Wheaton and Batsch were assigned to contact Megan and Irwin to see if they had any useful information. Wheaton and Batsch interviewed Megan twice that day—once from 5:00 to 5:35 p.m. at the sheriff's office and once briefly later in the day at the police department. Wheaton provided Miranda warnings each time. Megan does not assign error to the admission of evidence obtained during those interviews.

The next day, October 1, Megan was again interviewed twice. On the afternoon of October 1, Wheaton and Batsch picked up Megan at Irwin's house, where she had spent the night. The detectives asked Megan if she would accompany them to the sheriff's office for another interview, and she agreed to do so.

At the beginning of the interview, Wheaton again provided Miranda warnings, and Megan orally waived the relevant rights. Wheaton thought that Megan appeared tired; in fact, she told him as much early in the interview, which took about two and one-half hours, from about 1:35 p.m. to 4:15 p.m. Wheaton acknowledged that, during that interview, the tone of his questioning changed from being fatherly and friendly; he started feeling that Megan's story had discrepancies.

The interview took place in an interview room and was recorded on both videotape and audiotape. Initially, Wheaton and Batsch conducted the interview, with Wheaton asking most of the questions. Megan asked Wheaton at one point how much longer the interview would take, to which he replied, "Not too much longer." Wheaton and Batsch then left the room. After a break, during which Megan was left alone in the interview room, Wheaton re-entered the room with a different detective, Borigo, and told Megan that "what we're gonna do is just gonna finish up with you. Sometimes it helps us if we get a fresh detective in here. Maybe she's got some questions that we're not asking." It is after this juncture, in Megan's view, that the circumstances became compelling.

Megan again asked, "So, like how much longer do you think?" Wheaton told her that he did not know but did not think it would be too much longer; he added, "I don't want to sit there and tell you ten minutes and then it takes an hour, you know what I mean?" Megan responded, "Yeah. I understand." Megan did not, however, state that she wanted to leave, and Wheaton believed that she was willing to remain and talk.

Wheaton told Megan that "stuff ain't adding up," that there were inconsistencies between Megan's and Irwin's accounts, and that "you need to be a little bit more truthful with us and kinda give us some more." Wheaton and Borigo talked with Megan about polygraph testing, stating that they would probably give her one and that the tests were very accurate and asking if she would have problems passing a polygraph. Borigo stated that she had interviewed Irwin and that "I come listening on [Wheaton's] interview and I hear you lying to him. So, now it's time to tell the truth." Borigo told Megan that a polygrapher was on his way and the DA's office had called the polygrapher "because they know you lied." Megan then answered questions concerning sensitive topics not directly related to the shooting.

After some questions about the safe in Megan's sister's bedroom, Wheaton reminded Megan that she had been fingerprinted and asked her whether her fingerprints would be on the safe. Megan then admitted trying to get into the safe to see what was in it. After some other questions about the condition of the house, the following exchange occurred:

“Wheaton: I'm gonna come right out and ask you. Did, did you try to get in that safe yesterday?”

“[Megan]: Not yesterday.

“Wheaton: Are you sure?”

“[Megan]: Mm, hmm (indicates affirmative).

“Wheaton: And we'll be able to prove that.

“[Megan]: M'kay.

“Wheaton: That's why I ... I want to ... giving you the benefit of the doubt.

“[Megan]: M'kay.

“Wheaton: I'm not as ... saying you're involved in anything else. I am strictly asking you if you tried to get in that safe yesterday?”

“[Megan]: No.

“Wheaton: Be honest.

“[Megan]: I'm pretty sure maybe the day before I tried.

“Wheaton: Okay. Now, pretty sure isn't a good answer.

“[Megan]: Okay. Yeah. I did it like the day before, so...

“Wheaton: Are you sure it wasn't yesterday?”

“[Megan]: <Inaudible>.

“Borigo: They're processing the prints right now, Jeff.

“Wheaton: Okay.

“Borigo: We'll know momentarily.

“[Megan]: I'm pretty sure it wasn't yesterday. It could have been. Wait, let me think ... what did I do yesterday...

“Borigo: I'm vibrating, just a sec. I'll be right back. That could be them, Jeff.

“Wheaton: Okay.

“[Megan]: Let's see ... okay, yeah, yesterday.”

Megan began describing her efforts to get into the safe. Wheaton and Borigo told Megan that they were not investigating a theft and that she needed to be honest about the safe. Wheaton told Megan that he thought that she had stolen the money from the safe and then ransacked the house to make it look like someone had broken in. Megan responded, “But, why would I do something like that to Troy?” Both Wheaton and Borigo responded that they were not talking about Troy and that the house was a separate incident. Megan then admitted that she took money from the safe. Wheaton suggested that Megan “probably [felt] pretty good about getting that off [her] chest.”

After the discussion of the safe, Wheaton and Borigo told Megan that the Oregon State Police Crime Lab was processing the scene and would be able to figure out “everything.” Wheaton suggested to Megan that “there's circumstances for everything.” The following discussion ensued:

“Wheaton: And that's why we're talking about Troy. There's a reason what happened there. Don't know the facts yet, because you haven't come out and told us yet. But there's a reason. There's accidents. There's self defenses. There's a reason people do this. So...

“Borigo: You didn't want this to happen, did you? It was the crime lab again. Megan, look me in the eye.

“Wheaton: What was the reason you shot him?

“Borigo: You didn't mean it to happen and I believe that with all of my heart. They're picking [Irwin] back up again. Okay?

“[Megan]: ‘Kay.

“Wheaton: Why did you do it?

“Borigo: I'm gonna give you the opportunity now to tell what happened. Because we know what happened now. My last phone call. You need to be honest now.

“[Megan]: ‘Kay.

“Wheaton: Why ...

“Borigo: You need to be honest.

“Wheaton: There's a reason. Why did you do it?”

Several times, as Megan began to talk about the shooting, Borigo and Wheaton directed her to look at them. Megan, who was crying during this portion of the interview, stated that another person, Curtis, had shot the victim. She attributed Curtis's alleged actions to his concern that Troy knew that Megan and Irwin had stolen money, a portion of which had gone to Curtis. Although she denied shooting the victim, Megan eventually acknowledged that she was present when he was shot. Wheaton told Megan that the polygrapher would know if she was lying when she denied shooting the victim, and Borigo suggested that ballistics and an autopsy would match.

Article I, section 12, of the Oregon Constitution provides, “No person shall \* \* \* be compelled in any criminal prosecution to testify against himself.” On appeal, Megan contends that she was questioned under circumstances requiring Miranda warnings and that this case should be remanded for findings about whether she knowingly and intelligently waived the rights described in those warnings.

### **HANDOUT QUESTIONS**

- 1) Imagine you are the police officers in this case. Why would you question Megan the way you did?
- 2) Imagine you are Megan in this case. Would you feel coerced to answer the officers' questions?
- 3) What are the police officers' interests in not informing Megan of her Miranda rights?
- 4) What are Megan's interests in asserting her rights? In answering the questions?
- 5) Did the police fudge the truth? Is there ever a situation where that is ok?
- 6) Now that Megan has already been convicted, what should the trial court do on remand? What can they do?

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circumstances requiring Miranda warnings and that this case should be remanded for findings about whether she knowingly and intelligently waived the rights described in those warnings.

## ISSUE

Did the police place Megan in compelling circumstances which required Megan to be given Miranda warnings?

## WHAT HAPPENED AT TRIAL

The court denied Megan's motion to suppress evidence obtained during the first October 1 interview. The court concluded that Megan was not in compelling circumstances and that Miranda warnings therefore were not required. The trial court concluded that, under the totality of the circumstances, Megan was not in compelling circumstances during that interview. In a letter opinion, the court stated that, “[a]lthough the interview did become somewhat more confrontational during the period in question, [Megan] was free to terminate the questioning at any time, and there is nothing about the length of the process that is significant.”

## HOW DID THIS CASE REACH THE OREGON COURT OF APPEALS

Defendant [Megan] appeals her murder conviction, ORS 163.115 [murder statute], assigning error to the denial of her motion to suppress statements she made during an interview with police officers.

## ARGUMENTS

### **Megan’s argument:**

Megan contends that the circumstances of the interview were compelling. She emphasizes that she had been given a ride to the police station by officers and was reliant on them for transportation, that the interview occurred at the police station, that she was not told that she was free to leave, and that the questions became increasingly accusatory, as officers told Megan that “CSI and stuff” would reveal everything.

### **The State’s argument:**

The state, in turn, emphasizes that, although Megan was told that she did not have to talk with the officers if she did not want to, she never attempted to end the interview and the officers did not limit her ability to do so; that the interview was about two and one-half hours long; and that Megan's ability to leave was not restricted. In the state's view, although Megan was asked questions that assumed her guilt, such questioning, by itself, is insufficient to create compelling circumstances.

## WHO WON?

Megan won, sort of. The court agreed that the circumstances of the October 1 interview were compelling and that Megan should have been informed of her Miranda rights. The case was remanded to determine if Megan effectively waived her Miranda rights.

## HOW THE COURT EXPLAINED ITS DECISION

Article I, section 12, of the Oregon Constitution provides, “No person shall \* \* \* be compelled in any criminal prosecution to testify against himself.” To protect that right, “before questioning, police must give Miranda warnings to a person who is in full custody or in circumstances that create a setting which judges would and officers should recognize to be compelling.” *State v. Roble–Baker*, 340 Or. 631, 638, (2006) (citations and internal quotation marks omitted). Whether the circumstances at issue were compelling depends



on how a reasonable person in the position of the person being questioned would have understood his or her situation. *State v. Shaff*, 343 Or. 639, 645 (2007). In determining whether an encounter between police officers and a defendant evolved into a compelling setting, the court considers these nonexclusive factors:

- (1) the location of the encounter;
- (2) the length of the encounter;
- (3) the amount of pressure exerted on the defendant; and
- (4) the defendant's ability to terminate the encounter.

Those factors are neither the exclusive factors that this court will consider, nor are they to be applied mechanically. Rather, in determining whether the police placed a defendant in compelling circumstances, this court will consider all the circumstances, and its overarching inquiry is whether the officers created the sort of police-dominated atmosphere that Miranda warnings were intended to counteract.” *Roble–Baker*, 340 Or. at 640–41 (citations omitted).

In *Roble–Baker*, the defendant was found to be in compelling circumstances. She was questioned at police headquarters for five to six hours, and detectives did not honor her two requests to end the interview. Rather, detectives had created a situation in which the defendant was essentially required to remain at police headquarters to await the arrival of her minor child. When the defendant left the interview room and went out to a smoking area, detectives followed her outside and then asked her questions that assumed her guilt. *Id.* at 642–43.

*Shaff*, on the other hand, illustrates circumstances that were not compelling. There, two police officers went to the defendant's home in response to a report that a woman in the home was injured. One officer spoke with the defendant, who, at the end of the conversation, admitted that he and the woman had had a fight and that he had hit her. 343 Or. at 641–43. Although the officer falsely suggested to the defendant that the woman had reported an assault, the court emphasized that

“what matters is not whether evidence of guilt was apparent to the suspect; rather, it is whether the officers used that evidence in a coercive manner. In this case, [the officer] raised the issue whether the argument had become physical only twice during his approximately 10–minute conversation with defendant. The first time, the officer did not pursue the point after defendant's denial. The second time the officer raised the issue, he did so only after seeing, and noting, the woman's obvious injuries. The officer's questions were not coercive, aggressive, or repetitive. Indeed, the last question that the officer asked was sympathetic. Given the location of the encounter, the brief time that it lasted, and the absence of any ‘heightened level of activity’ by the officers, evidence that an assault had occurred (whether apparent to defendant or reflected in the officer's questions) is not sufficient to say that the officers had placed defendant in compelling circumstances that required Miranda warnings under the Oregon Constitution.”

Here, Megan was interviewed at the sheriff's office for about two and one-half hours. Although the length of the interview was less than the five- or six-hour interview in *Roble–Baker*, it was substantially longer than the 10–minute interview at issue in *Shaff*. The interview was Megan's third in less than 24 hours. Megan appeared tired and, early in the interview, stated that she felt tired.

The pressure exerted on Megan escalated during the interview and grew to a significant level by the time that officers began asking questions specifically about the shooting. After being told that her account of events was inconsistent with Irwin's and that the story was not adding up, Megan was told that she would be given a polygraph and that a polygrapher had been called in already “because they know you lied.” She then answered questions that delved into extremely personal, sensitive topics. After she denied opening her sister's safe, she was told that detectives would be able to prove whether she had tried to get into the safe on the day of the murder and that the fingerprints on the safe were being processed during the interview. When Borigo

announced that she might be about to receive more information from the crime lab, Megan admitted that she had tried to get into the safe.

The detectives then turned to questions directly relating to the shooting. Those questions assumed Megan's guilt and were interspersed with statements that the detectives were, during the interview, receiving more information and either knew or soon would know "everything." The detectives also repeatedly directed Megan to look at them and to tell the truth.

Unlike Shaff and Saunders, where officers confronted the defendants with evidence of guilt briefly and noncoercively, the detectives here repeatedly told Megan that they would be able to disprove any falsehood, that they knew that she was lying, and that she needed to tell the truth and "be honest now." The detectives, who had told Megan that they would be able to figure out "everything" and that "we know what happened now," repeatedly asked questions that assumed Megan's guilt. Under the circumstances, a reasonable person in Megan's position would have understood herself to be compelled to answer the detectives' questions during the interview. In short, the detectives "created the sort of police-dominated atmosphere that Miranda warnings were intended to counteract." *Roble-Baker*, 340 Or. at 641, 136 P.3d 22.

## APPLICATION

This opinion is important for students in the following ways:

- 1) Students should understand situations in which they do not have to speak to police. Students should also understand that the police do not always have their best interests in mind.
- 2) Police must make a conscious effort to make certain that suspects understand their rights fully.

Students should understand their rights in a situation like Megan's. It is important that students know their Miranda rights and how to assert them.

### **Miranda warnings:**

- (1) the right to remain silent;
- (2) that anything the suspect says can be used against him;
- (3) that the suspect has the right to have an attorney present before and during the questioning and
- (4) the suspect has the right to have a "free" attorney appointed to represent them before and during the questioning if the suspect cannot afford to hire an attorney.

Must only be warned of the rights when in custody and being interrogated.

Recent Supreme Court decision:

*J.D.B. v. North Carolina* 131 S.Ct. 2394 (2010). Majority states that age of the person being interrogated can play into the custody analysis. Dissent thinks that this is a slippery slope and may mean that intelligence, mental capacity, etc. could be considered.

Ask students the following:

- 1) Do you think age should matter when determining if a person thinks they are free to leave?
- 2) Does this rule make the job of the police easier or harder?
- 3) Why might police not want to inform students of their Miranda rights?