

Handout: Case Study: R. v. C.L.M.*



The Facts

Fourteen-year-old C.L.M. was charged with second degree murder. She had been arrested at about 11 p.m. one evening and taken into custody. She smelled of alcohol but didn't appear intoxicated. She was given the standard police warnings and caution that an adult would receive before she fell asleep in her jail cell.

She was awakened by police about five hours later and taken to a videotaping room where she was advised of her rights in detail. She was given an opportunity to speak with a lawyer and did so briefly. She indicated clearly that she wanted to talk to her mother or other family member and two attempts to contact her mother and one attempt to contact her stepfather were unsuccessful.

The police then told her they didn't know what more could be done at the moment and advised her that it was up to her whether she wanted to tell the police now or later what had happened. They asked her what she wanted to do, but she didn't answer them. Instead she simply began telling them about her movements the night before. The police then began asking her detailed questions, which she answered. The police went on to suggest some scenarios and indicated that they thought that she was lying. She then asked again to call her mother. The police left the room and gave her an opportunity to do so. Attempts to reach her mother were again unsuccessful.

At trial, the prosecution wanted to use the videotaped statement against the accused and contended that the statement was admissible. C.L.M.'s defence lawyer argued that the statement was inadmissible, saying that the accused young person had not waived her right to consult with a parent or other adult relative and to make her statement in the presence of such a person.

The Law

Section 146(2) of the YCJA states:

No oral or written statement made by a young person ... to a peace officer or to any other person who is, in law, a person in authority, on the arrest or detention of the young person or in circumstances where the peace officer or other person has reasonable grounds for believing that the young person has committed an offence is admissible against the young person unless...

(c) the young person has, before the statement was made, been given a reasonable opportunity to consult

(i) with counsel, and

(ii) with a parent or, ... in the absence of a parent and an adult relative, any other appropriate adult chosen by the young person...; and

(d) if the young person consults a person in accordance with paragraph (c), the young person has been given a reasonable opportunity to make the statement in the presence of that person.



Questions to Consider

1. The accused young person had the opportunity to speak with a lawyer and did so. Do you think that the police should still have waited for her to speak with a parent or other adult before taking a statement? Why or why not?
2. Do you think the accused waived her right to consult with a parent or other adult or to have them present when she gave her statement? What should a young person have to do to waive these rights?
3. Do you think the statement should be admissible?

The Decision

The Court held that the videotaped statement was inadmissible as evidence at trial.

The Reasons

The Judge stated that the right to talk to a parent or adult and to have that parent or adult present when making any statement is a “fundamental right that is not satisfied by the right to counsel.” He went on to say that because the accused was only 14 years of age, it is unlikely that she fully appreciated the benefits of legal counsel. As well, she may have felt uncomfortable talking on the phone to a stranger.

The police knew that she wanted to talk to her mother or another adult. There was no pressing need to get a statement from her in the middle of the night; the police had the young person in custody and could have waited for morning to allow her to reach her mother or other adult before taking a statement. The Judge further stated that he was “convinced, on the basis of her demeanor and conduct during the interview as evidenced by the videotape, that had she been asked directly if she was waiving her right to consult with an adult and to have that adult present, she would have answered in the negative.”

The Judge noted that the relevant section of the YCJA “exists to protect all young people, particularly the shy and the frightened, the nervous and the naïve... [but the requirements] must be complied with whether the authorities are dealing with the nervous and the naïve or the street-smart and worldly-wise.”

- * Although this case was decided under the *Young Offenders Act*, the wording of the relevant section remains unchanged under the YCJA. [R. v. C.L.M., Saskatchewan Court of Queen’s Bench, March 16, 2000].