

Commonwealth v. Guthrie

Last week a very disappointing and I think legally flawed juvenile case dealing with the public safety exception to Miranda, custody issues and an opportunity to consult with an interested adult, was decided by the appeals court – Commonwealth v. Guthrie G. To get a copy of the decision click here:

<http://www.sociallaw.com/slip.htm?cid=16185&sid=119>. I think the dissent got it right.

This was an interlocutory appeal, by the Commonwealth, of the allowance of the juvenile's motion to suppress evidence (a gun and its parts) and statements made at the police station. This opinion seems to say that anytime a gun is involved the public safety exception applies.

Facts: The father of the juvenile co-defendant told the police his son and the juvenile (age 14) might be in possession of a gun. The father saw the two teenagers working on what appeared to be a gun in the father's tool shed. When the boys saw the father they took off. The co-defendant later told the police and his father that he believed the gun was a bb gun and it's at the juvenile's house. Three uniformed police officers go to the juvenile's house and the juvenile "invites" them into the living room or kitchen area. An officer asked about the gun and at first the juvenile denied any knowledge and then said he had a BB gun. The police asked to see the gun, the juvenile went to his bedroom, and one officer followed the juvenile while another officer stood at the threshold of the bedroom. The juvenile got the gun and one of the officers saw gun parts in the trash can in the bedroom; other gun parts were found under the bed. The juvenile was home alone the whole time.

The juvenile was brought to the police station and told to call his mother who turned out to be unavailable. The juvenile's father came to the police station and an officer read the Miranda warnings to both of them. The father signed the Miranda form and was present during questioning. The juvenile testified that he understood the warnings. The juvenile told the police he had the gun for two days and found it at the side of a road.

The motion judge found that Miranda warnings should have been provided at the house because the juvenile was in custody. However, the appeals court held that the public safety exception to Miranda applied to this case. "A fourteen year old who flees with a gun triggers the heightened public safety concerns and the limited public safety exceptions set out in New York v. Quarles, 467 U.S. 649 (1984) and Commonwealth v. Alan A. 47 Mass. App. Ct. 271 (1999)." The court reasoned that the police did not know where the gun could be since the boys ran for several miles from one house to another, and the police did not know if the gun was still in the juvenile's house, even though the co-defendant told them it was in the juvenile's house.

The motion judge also found that the juvenile did not consent to the search of his bedroom, yet the court found that the juvenile did consent even though there was ambiguous testimony on this issue. The juvenile testified that when the police asked to see the BB gun, "I said, yes and brought them to see it." He also testified "they asked me if I could go get it and one of them would come with me..." The police testified "...he went to his room... I followed for officer safety." According to the appeals court this testimony was enough to support a finding that the juveniles consent was freely and voluntarily given. While the age of the juvenile is a factor (although I don't see where the

court considered the juvenile's age or the fact that he was alone with three uniformed police officers) the court states it does not preclude a finding of consent. The appeals court further states that the motion judge's finding of no consent was of no legal significance – the officers could not allow the juvenile to get the gun by himself and put themselves at risk. “[T]he failure of the juvenile to consent to their accompanying him was of no legal or even practical consequence given his volunteering to get the gun.”

The appeals court also disagreed with the motion judge's finding that there was no meaningful consultation between the juvenile and his father at the police station. Citing Commonwealth v. Philip S. 414 Mass. 804 (1993), the court stated that the police do not have to give juveniles over age 14 an unsolicited opportunity to consult. The court further stated that the father or juvenile could have asked for to talk privately. The court stated, “[t]he warnings themselves are meant to promote at least a moment of reflection by both the juvenile and a parent or other interested adult, as are the follow-up questions about their understanding of those rights and the signing of the waiver form. The presence of the parent and child together also facilitates a request by one or both of them for consultation after the warnings have been read if there is uncertainty in their minds.” This statement is not supported, in the opinion, by any case law or research of juveniles' understanding of the warnings. The court concludes that they had an opportunity to consult and chose not to use it!

The dissent makes many thoughtful (and I think correct) comments on all of the issues in this case. The public safety exception to Miranda applied to the facts in this case but only insofar as ascertaining whether the gun was in a public place. Once the juvenile told the police the gun was in the house, they should have taken the juvenile into custody, conduct a sweep and secure the home while they obtained a search warrant. The dissent considered the age of the juvenile (barely 14), the fact that he was alone, three uniformed officers come to his house, and the investigation was focused on the juvenile in considering whether the juvenile consented to the search and found juvenile in this position would not have felt his cooperation was optional. Also, the juvenile's actions were a mere acquiescence to a show of authority. Lastly, as to the juvenile's opportunity to consult with an adult, the dissent stated that most juveniles do not understand the significance and protective function of Miranda; and reasoned that in order for the opportunity to consult to be genuine “(1) the parent and the juvenile must be informed of the nature of the charges facing the juvenile; and (2) the parent must be physically present with the juvenile for a sufficiently long period of time prior to a waiver of Miranda rights, as would permit consultation should they wish to engage in it. This was not done in the present case.

~ Wendy