The Burger Court Opinion Writing Database

Fare v. Michael C.

442 U.S. 707 (1979)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

March 2, 1979

MEMORANDUM TO THE CONFERENCE

Re: 78-334 - Fare v. Michael C.

I conclude to reverse in this case.

Regards,

WEB

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

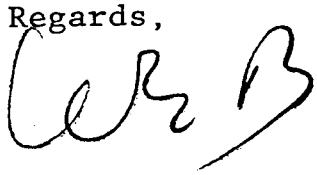
June 12, 1979

Dear Harry:

Re: 78-334 Fare v. Michael C.

I join.

Regards,



Mr. Justice Blackmun

cc: The Conference

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 5, 1979

RE: No. 78-334 Fare v. Michael C.

Dear Thurgood:

You, Lewis, John and I are in dissent in this. Would you undertake the dissent?

Sincerely,

Bill

Mr. Justice Marshall

cc: Mr. Justice Powell
Mr. Justice Stevens

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 13, 1979

RE: No. 78-334 Fare v. Michael C.

Dear Thurgood:

Please join me in the dissenting opinion you have prepared in the above.

Sincerely,

Bill

Mr. Justice Marshall

cc: The Conference

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

May 31, 1979

Re: No 78-334, Fare v. Michael C.

Dear Harry,

I am glad to join your opinion for the Court.

Sincerely yours,

P.S.

Mr. Justice Blackmun

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

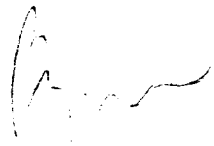
June 4, 1979

Re: No. 78-334 - Fare v. Michael C.

Dear Harry,

I agree.

Sincerely yours,



Mr. Justice Blackmun

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cmc

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 31, 1979

Re: No. 78-334 - Fare v. Michael C.

Dear Harry:

In due course I will circulate a dissent.

Sincerely,

T.M.

Mr. Justice Blackmun

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

No. 78-334

Fare v. Michael C. 11 JUN 1979

MR. JUSTICE MARSHALL, dissenting.

In Miranda v. Arizona, 384 U.S. 436 (1966), this Court sought to ensure that the inherently coercive pressures of custodial interrogation would not vitiate a suspect's privilege against self-incrimination. Noting that these pressures "can operate very quickly to overbear the will of one merely made aware of his privilege," the Court held:

> "If [a suspect in custody] indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease. At this point he has shown that he intends to exercise his Fifth Amendment privilege; any statement taken after the person invokes his privilege cannot be other than the product of compulsion, subtle or otherwise. . . . If the individual states that he wants an attorney, the interrogation must cease until an attorney is present." Id., at 473-474 (footnote omitted).

See also id., at 444-445.

The coerciveness of the custodial setting is of heightened concern where, as here, a juvenile is under

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pp. 1-5

14 JUN 1979

1st PRINTED DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-334

Kenneth F. Fare, Etc., Petitioner, *v.* Michael C. | On Writ of Certiorari to the Supreme Court of California.

[June —, 1979]

MR. JUSTICE MARSHALL, with whom MR. JUSTICE BRENNAN and MR. JUSTICE STEVENS join, dissenting.

In *Miranda* v. *Arizona*, 384 U. S. 436 (1966), this Court sought to ensure that the inherently coercive pressures of custodial interrogation would not vitiate a suspect's privilege against self-incrimination. Noting that these pressures "can operate very quickly to overbear the will of one merely made aware of his privilege," the Court held:

> "If [a suspect in custody] indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease. At this point he has shown that he intends to exercise his Fifth Amendment privilege; any statement taken after the person invokes his privilege cannot be other than the product of compulsion, subtle or otherwise. . . . If the individual states that he wants an attorney, the interrogation must cease until an attorney is present." *Id.*, at 473–474 (footnote omitted).

See also *id.*, at 444–445.

As this Court has consistently recognized, the coerciveness of the custodial setting is of heightened concern where, as here, a juvenile is under investigation. In *Haley* v. *Ohio*, 332 U. S. 596 (1948), the plurality reasoned that because a 15½-year-old minor was particularly susceptible to overbearing interrogation tactics, the voluntariness of his confession could

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HAB

Mar The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Blackmun

Circulated: 30 MAY 1979

Recirculated: _____

No. 78-334 Fare v. Michael C.

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

In Miranda v. Arizona, 384 U.S. 436 (1966), this Court established certain procedural safeguards designed to protect the rights of an accused, under the Fifth and Fourteenth Amendments, to be free from compelled self-incrimination during custodial interrogation. The Court specified, among other things, that if the accused indicates in any manner that he wishes to remain silent or to consult an attorney, interrogation must cease, and any statement obtained from him during interrogation thereafter may not be admitted against him at his trial. Id., at 444-445, 473-474.

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Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

STYLISTIC CHANGES pp. 5 and 16

From: Mr. Justice Blackmun

Circulated: _____

Recirculated: 1 JUN 1979

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78–334

Kenneth F. Fare, Etc., Petitioner, *v.* Michael C. | On Writ of Certiorari to the Supreme Court of California.

[June —, 1979]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

In *Miranda* v. *Arizona,* 384 U. S. 436 (1966), this Court established certain procedural safeguards designed to protect the rights of an accused, under the Fifth and Fourteenth Amendments, to be free from compelled self-incrimination during custodial interrogation. The Court specified, among other things, that if the accused indicates in any manner that he wishes to remain silent or to consult an attorney, interrogation must cease, and any statement obtained from him during interrogation thereafter may not be admitted against him at his trial. *Id.,* at 444–445, 473–474.

In this case, the State of California, in the person of its acting chief probation officer, attacks the conclusion of the Supreme Court of California that a juvenile's request, made while undergoing custodial interrogation, to see his *probation officer* is *per se* an invocation of the juvenile's Fifth Amendment rights as pronounced in *Miranda.*

I

Respondent Michael C. was implicated in the murder of Robert Yeager. The murder occurred during a robbery of the victim's home on January 19, 1976. A small truck registered in the name of respondent's mother was identified as having been near the Yeager home at the time of the killing, and a

HA

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 20, 1979

MEMORANDUM TO THE CONFERENCE

Re: Cases Held for No. 78-334, Fare v. Michael C.

1. No. 77-6956, Chaney v. Wainwright

In this case, petitioner seeks certiorari to review the judgment of CA 5 affirming the refusal of the DC (SD Fla, Roettger, DJ) to issue a writ of habeas corpus relieving petitioner from his state conviction for felony murder.

Petitioner left his home in New York and headed for Florida sometime in the late spring of 1970. At this time he was over 17 1/2 years of age, having been born July 12, 1952. He was accompanied by a younger youth of 15, and by an older man, one Thompson. Petitioner left home without speaking with his mother, though he left a message for her that he was going to Detroit; he did not mention Florida.

In Florida, petitioner and the other boy helped Thompson rob an insurance collector on May 5, 1970. Thompson took the collector into the woods and shot him to death after the robbery. Petitioner and the other boy then assisted Thompson in the killing of two female students in Boca Raton on May 14. The three drove the girls' car to South Carolina. There, on May 15, in the course of robbing a store while petitioner waited in the getaway car, Thompson and the other boy got into a shootout with the owners. One of the owners was killed and Thompson himself was shot. Petitioner and the younger boy were apprehended later the same morning at a road block and taken into the custody of South Carolina police. At the time of this arrest, petitioner was 17 years, 10 months of age.

According to petitioner, he immediately asked the police for permission to call his mother. The officers at the scene told him to wait and ask the sheriff. Petitioner later testified that the sheriff refused to allow him to call his mother until he had told the police what they wanted to know, after several hours of interrogation on the afternoon of the day he was arrested. Petitioner also later testified that he told the sheriff that he wanted to talk with his mother so she could obtain a lawyer for him.

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 4, 1979

78-334 Fare v. Michael C.

Dear Thurgood:

Although Bill Brennan has assigned the writing of a dissent in this case to you, I have gone ahead with a separate dissent solely on the facts.

My Conference notes indicate that you and Bill will dissent on a more fundamental ground, namely, that interrogation should have ceased in any event when respondent requested permission to see his probation officer. This is too close to a new per se rule for me, and so my dissent is based solely on the facts of this particular case.

If I can join any part of your dissent, I certainly will.

Sincerely,

Lewis

Mr. Justice Marshall

cc: Mr. Justice Brennan

lfp/ss

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lfp/ss 6/5/79

78-334 Fare v. Michael C.

MR. JUSTICE POWELL, dissenting.

Although I agree with the Court that the Supreme Court of California misconstrued Miranda v. Arizona, 384 U.S. 436 (1966),1/ I would not reverse the California court's judgment in view of the facts and circumstances of this case. This Court repeatedly has recognized that "the greatest care" must be taken to assure that an alleged confession of a juvenile was voluntary. See, e.g., In re Gault, 387 U.S. 1, 55 (1967); Gallegos v. Colorado, 370 U.S. 49, 54 (1962); Haley v. Ohio, 332 U.S. 596, 559-600 (1948)(plurality). Respondent was a young person, 16 years old, at the time of his arrest and the prolonged interrogation at the stationhouse that occurred shortly thereafter. Although respoondent had had prior brushes with the law, and was under supervision by a probation officer, the taped transcript of his interrogation - as well as his testimony at the suppression hearings - demonstrates that he was immature, emotional,2/ and uneducated, and therefore was likely to be

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Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Powell

Circulated: 12 JUN 1979

Recirculated: _____

1st Printed DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-334

Kenneth F. Fare, Etc., Petitioner, *v.* Michael C. | On Writ of Certiorari to the Supreme Court of California.

[June —, 1979]

MR. JUSTICE POWELL, dissenting.

Although I agree with the Court that the Supreme Court of California misconstrued *Miranda* v. *Arizona*, 384 U. S. 436 (1966),[1] I would not reverse the California court's judgment. This Court repeatedly has recognized that "the greatest care" must be taken to assure that an alleged confession of a juvenile was voluntary. See, *e. g.*, *In re Gault*, 387 U. S. 1, 55 (1967); *Gallegos* v. *Colorado*, 370 U. S. 49, 54 (1962); *Haley* v. *Ohio*, 332 U. S. 596, 559–600 (1948) (plurality). Respondent was a young person, 16 years old at the time of his arrest and the subsequent prolonged interrogation at the stationhouse. Although respondent had had prior brushes with the law, and was under supervision by a probation officer, the taped transcript of his interrogation—as well as his testimony at the suppression hearing—demonstrates that he was immature, emotional,[2] and uneducated, and therefore was likely

omission

[1] The California Supreme Court, purporting to apply *Miranda* v. *Arizona*, 384 U. S. 436 (1966), stated that:

"Here . . . we face conduct which, regardless of considerations of capacity, coercion or voluntariness, per se invokes the privilege against self-incrimination." 21 Ca. 3d 471, 477, 146 Cal. Rptr. 358, 362, 579, 362 P. 2d 7, 10. I agree with the Court's opinion today that *Miranda* cannot be read as support for any such *per se* rule.

[2] The juvenile court judge observed that he had "heard the tapes" of the interrogation, and was "aware of the fact that Michael [respondent] was crying at the time he talked to the police officers." App. 53.

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 31, 1979

Re: No. 78-334 - Fare v. Michael C.

Dear Harry:

Please join me.

Sincerely,

Mr. Justice Blackmun

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 31, 1979

Re: No. 78-334 - Fare v. Michael C.

Dear Harry:

Please join me.

Sincerely,

WHR

Mr. Justice Blackmun

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P.S. Dear Harry (for HAB only): Thirty-six pages and not a mention of Johnson v. Zerbst. Congratulations!

WHR

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 13, 1979

Re: 78-334 - Fare v. Michael C.

Dear Thurgood:

Please join me in your dissenting opinion.

Respectfully,

John

Mr. Justice Marshall

Copies to the Conference