

Competence to Waive Miranda Rights

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Capital Murder Defendant Did Not Knowingly and Intelligently Waive *Miranda* Rights

In *Garner v. Mitchell*, 502 F.3d 394 (6th Cir. 2007), the U.S. Court of Appeals for the Sixth Circuit reversed an inmate's convictions and death sentence after concluding that the inmate did not knowingly and intelligently waive his *Miranda* rights. The court granted the inmate a conditional writ of *habeas corpus* and remanded the case to district court with instructions that the inmate be released from custody unless a new trial commenced within 180 days of the court's judgment. In rendering its opinion, the court discussed the matter of intelligent and knowing waivers of *Miranda* rights and the use of related assessment instruments.

Facts of the Case

On January 25, 1992, William Garner, then 19 years old, found Addie Mack's purse containing her keys and identifying information, including her home address. He went to her home, intending to steal whatever items he came across. He went through the rooms of her apartment and noticed six children sleeping. He took several of her possessions and then returned to the apartment and set multiple fires in an attempt to destroy evidence. One of the children escaped out a window, but the other five died in the fire.

The next day, police searched Mr. Garner's residence and recovered several of Ms. Mack's belongings. The police arrested him and informed him of his *Miranda* rights. While at police headquarters, he told the police that he understood his *Miranda* rights and agreed to waive those rights. He then provided a taped confession describing the events of the previous night.

Mr. Garner was charged with five counts of aggravated murder, one count of aggravated burglary, two counts of aggravated arson, one count of theft, and one count of receiving stolen property. He pleaded no contest to the charges of theft and receiving stolen property, and, in October 1992, a jury convicted him on all remaining charges. He was sentenced to death on each of the five counts of aggravated murder. In addition, he was sentenced to 10 to 25 years in prison for aggravated burglary and aggravated arson and 2 years in prison for theft and receiving stolen property, to be served consecutively.

On direct appeal, the Ohio Court of Appeals affirmed Mr. Garner's convictions and sentence, as did the Ohio Supreme Court. The United States Supreme Court denied *certiorari*. He twice filed petitions for postconviction relief. Both times, the state trial court denied the petitions, the Ohio Court of Appeals affirmed, and the Ohio Supreme Court declined to hear either of the cases.

In 1998, Mr. Garner filed a petition for a writ of *habeas corpus* in the federal district court raising 23 grounds for relief. The district court denied all of the claims and dismissed the petition. He raised four issues on appeal to the Sixth Circuit Court of Appeals, arguing that the federal district court erred in denying him *habeas* relief because: (1) he did not knowingly and intelligently waive his *Miranda* rights before speaking with police; (2) his state trial counsel was ineffective for failing to investigate and argue his *Miranda* claim; (3) the state trial court erred by not providing him with experts to assist with his *Miranda* claim; and (4) the process by which the jury list was selected discriminated against African Americans.

Ruling

The Sixth Circuit concluded that Mr. Garner did not knowingly and intelligently waive his *Miranda* rights before speaking with police, and thus, admission of his statement at trial was unconstitutional. Because the court granted *habeas* relief on his *Miranda* claim, the other three claims were not addressed.

Reasoning

In *Miranda v. Arizona*, 384 U.S. 436 (1966), the U.S. Supreme Court concluded that during custodial interrogation, a suspect is entitled to the Fifth Amendment right against self-incrimination and the right to have counsel present during such interrogation. The Court held that before questioning, a sus-

pect must be informed of these rights. It went on to note that a suspect may waive these rights, “provided the waiver is made voluntarily, knowingly and intelligently.”

Mr. Garner argued that he had waived his *Miranda* rights unknowingly and unintelligently. He did not contend that he had waived his rights involuntarily, and the Sixth Circuit referred to *Colorado v. Connelly*, 479 U.S. 157 (1986), among other cases, in pointing out that an involuntary confession is not necessarily also made unknowingly or unintelligently. Further, in clarifying aspects of a knowing and intelligent waiver, the court pointed to *Moran v. Burbine*, 475 U.S. 412 (1986), in which the Supreme Court defined “the requisite level of comprehension” to waive *Miranda* rights as “a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it” (*Moran*, p 421). To determine whether a suspect has knowingly and intelligently waived *Miranda* rights, a court must appraise the “totality of the circumstances” including the suspect’s “age, experience, education, background and intelligence” and “whether he has the capacity to understand the warnings given him, the nature of his Fifth Amendment rights, and the consequences of waiving those rights” (*Fare v. Michael C.*, 442 U.S. 707 (1979), p 725).

In examining the relevant facts, the court considered that Mr. Garner was 19 years old at the time of the offense. Throughout his upbringing, he had endured physical and sexual abuse and neglect. He had consistently performed poorly in school and did not advance beyond the seventh grade. In 1992, the year of the offense, he received a score of 76 on the Wechsler Adult Intelligence Scales-Revised, placing him in the borderline range of intellectual functioning. In addition, he exhibited evidence of a learning disability, attention deficit disorder, and organic brain impairment.

A mental health expert for the defense reviewed reports of prior mental health experts and interviewed Mr. Garner. In doing so, he concluded that the defendant’s borderline intelligence, organic brain impairment, impulsivity, and abusive background raised serious questions regarding his ability to understand and appreciate the implications of waiving his *Miranda* rights and recommended further assessment. Approximately six years after his arrest, Dr. Caroline Everington evaluated him and administered the “Grisso test,” an instrument designed to

assess specifically a defendant’s understanding and appreciation of *Miranda* rights (Grisso T: Instruments for Assessing Understanding and Appreciation of Miranda Rights, Sarasota, FL: Professional Resource Press, 1998). On each component of the test, except for the section related to recognition, he scored below persons in his age and IQ range. Everington concluded in her unrebutted opinion that his performance on the Grisso test suggested that he did not have a full comprehension of *Miranda* warnings or his right to remain silent during interrogation.

The state argued that Everington’s affidavit and report were of limited value because of limitations of the Grisso test in Mr. Garner’s case, including the timing of the test’s administration (six years after the offense) and the language differences between the words used in the test and those utilized in the *Miranda* warning given to him.

The Sixth Circuit determined that, despite the state’s arguments about the limitations of the Grisso test, Mr. Garner’s young age at the time of the offense, his poor education, his deficits in intellectual functioning, his limited prior experience with the legal system, and the unrefuted expert opinion all implied that he did not knowingly and intelligently waive his *Miranda* rights. The Sixth Circuit found that the district court had erred in relying on the observations of prior experts as conclusive and taking statements in their reports out of context. In addition, the uncontested expert opinion suggested that evidence of his having told police that he understood his rights and that the waiver should not be given much weight toward determining that his waiver was knowing and intelligent, in light of the susceptibility of persons with mental disabilities toward the perceived wishes of authority figures. Thus, the court concluded that the preponderance of the evidence revealed that he did not knowingly and intelligently waive his *Miranda* rights. In addition, the court clarified that a person with similar cognitive limitations does not, *per se*, lack the capacity to waive *Miranda* rights.

Dissent

The dissent contended that invalidating the waiver of *Miranda* rights on the basis of a retrospectively applied Grisso test examined on appeal would risk calling into question the bulk of statements by persons in custody, thus placing unreasonable demands on police to ensure a suspect’s understanding

of his *Miranda* rights and the implications of waiving those rights before questioning. The dissent argued that the majority's opinion and the weight given to this test are likely to create a "powerful litigation tool" and preclude police from interrogating suspects who are unable to convey effectively what they understand.

Discussion

Garner may be viewed as one circuit court's expansion of *Miranda*. Even though police read Mr. Garner his *Miranda* rights in a seemingly simplified manner, and he told the police that he understood those rights and the waiver, the court retrospectively concluded that his young age, abusive background, low IQ, and poor performance on the Grisso test showed he lacked the capacity to waive his *Miranda* rights.

The *Miranda* Court sought to dissuade police misconduct during custodial interrogation by disallowing into evidence statements made by suspects who were not informed of their rights and who did not voluntarily, knowingly, and intelligently waive those rights. In this case, even in the absence of police misconduct, the court found that a defendant's inability to waive his *Miranda* rights knowingly and intelligently resulted in an unconstitutional use of his statements at trial. This case highlights the balancing act between promoting desirable police procedures (like obtaining confessions) and protecting the liberty interests of individuals. One can see how rulings like *Garner* might lead to more direct involvement of mental health professionals in appraising a suspect's understanding of his *Miranda* rights and the implications of waiving those rights, both before and after police interrogation. *Garner* reminds evaluators to consider both the possible difficulties with retrospective mental state assessments and the potential limitations of any structured instruments used.

Waiver of Postconviction Relief (PCR) and PCR Counsel

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A Convicted Capital Defendant's Lack of Understanding of the Procedural Posture of His or Her Case May Be Enough to Indicate That the Individual's Waiver of Rights in Postconviction Relief Proceedings Was Not Made Knowingly, Intelligently, and Voluntarily

In *Reed v. Ozmint*, 647 S.E.2d 209 (S.C. 2007), the Supreme Court of South Carolina considered whether the lower court had erred in determining that Mr. Reed was "mentally competent" and that his waiver of appellate review of the denial of his petition for postconviction relief (PCR) was "knowing, intelligent, and voluntary." The court further considered whether it should grant his request to relieve counsel. The court determined that Mr. Reed was mentally competent to waive his right to appeal the denial of his PCR application, because he met both the cognitive and assistance prongs of the *Singleton v. State*, 437 S.E.2d 53 (S.C. 1993), standard. Nonetheless, it denied his request to waive appellate review of his PCR petition because his decision was not knowing, intelligent, and voluntary. Specifically, whereas experts testified he was not exhibiting signs of mental illness severe enough to interfere with his mental competency, his appeal request was not unequivocal, because he had, at the same time, requested review of substantive issues regarding his original trial. His request to waive counsel was also denied because his request for review of these substantive issues showed that he did not understand the procedural posture of his case, indicating that his waiver was not knowingly and intelligently made. Consequently, his request to waive his appeal was denied, and his appeal was set to continue with the assistance of his attorney.

Facts of the Case

In 1994, James Earl Reed was charged with the murder of his ex-girlfriend's parents. In 1996, he was convicted of both murders and sentenced to death. His direct appeals and application for PCR were denied. He then filed a notice of appeal of the decision to deny his PCR request. At the same time, he wrote to the chief justice professing his innocence, stating that he wanted to waive his appeals and asking that his execution date be set. He also contacted opposing counsel stating that he had fired his attorney and was requesting assistance, which the South Carolina Su-