

Thus, the appellate court affirmed the lower court's decision finding that the FTCA and California law do not allow for recovery for Ms. Dugard based on the failure of the parole officers to report Mr. Garrido's violations. Had she been able to establish that she was a specifically identifiable victim, she would have established a cause of action, analogous to a private person under California law and the FTCA.

Dissent

The dissent found the majority's comparison of the federal parole officers to private criminal rehabilitation programs inappropriate. Judge Smith agreed that both federal parole and private criminal rehabilitation programs manage the release of incarcerated individuals and their transition back to society. He additionally conceded that public policy interests support the immunity granted to private and public criminal rehabilitation programs. However, he argued that no such policy is applicable to federal probation and parole programs. He stated that probation and parole officers are required to report on the behavior of their supervisees and that this obligation does not prevent the release of prisoners. Federal district judges, not parole or probation officers, determine when prisoners are released. Accordingly, the imposition of mandated reporting requirements on parole officers would have no impact on the operation and success of private rehabilitation programs.

The dissent highlighted a handful of cases regarding duty to warn and duty to protect. In *Poncher v. Brackett*, 55 Cal. Rptr. 59 (Cal. Ct. App. 1966), grandparents were found to have a duty to the previously unidentifiable victim of their violent grandson. In *Tarasoff v. Regents of University of California*, 551 P.2d 334 (Cal. 1976), the court opined that a therapist had a duty to use reasonable care to protect the target of a patient's threats. Similarly, in *Myers v. Quesenberry*, 193 Cal. Rptr. 733 (Cal. Ct. App. 1983), a physician failing to warn an uncontrolled diabetic patient not to drive was found to have a duty to the previously unidentifiable victim of a subsequent car crash.

Although these cases were diverse, they all included medical professionals, and others considered to have "special relationships." Judge Smith outlined "the general rule under California tort law that, where there is a special relationship, there is a duty to warn or control that extends to foreseeable, but not readily identifiable victims, provided that the action

required would be reasonable and not futile." (*Dugard*, p 922–23). He said that when this rule is applied to federal parole officers, they were negligent in carrying out their mandated duties. He further stated that the immunity granted to private rehabilitation centers should be considered an exception to the rule.

Discussion

Although the majority and dissenting opinions in the current case disagree on whether liability should be imposed on Mr. Garrido's parole officers, both opinions highlight important considerations when determining an appropriate duty to warn, regardless of setting.

In California, the determination of duty versus immunity stems from a series of exceptions. A party may be found liable for those actions toward a third party in cases where a "special relationship" exists with the tortfeasor, but only when the relationship confers some ability to control the tortfeasor and the required intervention would not be futile. For example, blanket warnings sent to a community before the release of a criminal would not appreciably alter the behaviors and safety of a community and would therefore be considered futile.

In some cases, as seen in *Dugard*, public policy interests may limit the liability. In the instance of medical providers and therapists, the duty to warn and protect is given some latitude, preserving the therapeutic interests of a confidential patient-provider relationship.

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Miranda Warnings in Noncustodial Interrogation of Juveniles and Voluntariness of Statements Made at the Request of Interested Adults

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Massachusetts Supreme Court Rules that Miranda Warnings Are Not Required in Conjunction with a Juvenile Defendant's Interrogation at Home in His Mother's Presence and that the Mother's Questioning of the Juvenile Defendant Did Not Render His Statements Involuntary or Coerced

In *Commonwealth v. Weaver*, 54 N.E.3d 495 (Mass. 2016), a juvenile defendant appealed his murder conviction, in part, on the superior court's denial of his pretrial motions to suppress statements that he made to police officers in his home, to his mother in his home, and two days later at the police station. The Supreme Judicial Court of Massachusetts affirmed the superior court's rulings.

Facts of the Case

On August 10, 2003, 15-year-old Germaine Rucker was shot and killed. Kentel Myrone Weaver, who was 16 years old at the time of the shooting, was identified as a suspect. His mother, Iris Weaver, agreed to allow detectives to meet with him at their home on August 25, 2003.

On August 25, Ms. Weaver invited the detectives into her home to interview her son. Before the interview, the detectives informed Ms. Weaver and her son of the *Miranda* warnings. The detectives read each of the rights, asked them if they understood their rights, and asked them to initial the form to indicate that their rights had been explained to them. Ms. Weaver and her son verbally acknowledged that they understood the rights and initialed the form. Before questioning, the detectives allowed Ms. Weaver to speak with her son privately. After a few minutes, they returned and the detectives again asked if they understood their rights and if they agreed to speak with the detectives. Ms. Weaver and her son signed the form acknowledging that he had taken advantage of the opportunity to speak with his mother outside the presence of law enforcement.

Ms. Weaver was present or within earshot throughout the interview. Her son denied involvement in or knowledge of the crime. The detectives told him that they believed he was involved in the shooting and terminated the interrogation shortly thereafter. They informed Ms. Weaver that they did not believe him and asked her to have "a heart to

heart" conversation with him. The detectives did not make promises of leniency and did not suggest specific questions for her to ask. Ms. Weaver nor her son asked to terminate the interview, requested an attorney, or asked the detectives to leave.

Ms. Weaver questioned her son after the detectives left and the next day because she "wanted to have peace." She "brought God into the discussion" because she was motivated to do the right thing in accordance with her personal spiritual beliefs. After extensive questioning, Ms. Weaver prayed before asking her son about his involvement in the crime, and he then admitted that he was involved.

Ms. Weaver believed that her son should confess to the crime and turn himself into the police for the "good of his soul." She formulated a plan in which he would go the police station, tell the detectives "I shot Germaine Rucker," and say nothing more until he had an attorney to represent him. Ms. Weaver contacted the detectives to inform them that she was bringing her son to speak with them. She indicated to the detectives that he was involved in the incident. The detectives did not ask her to bring him to the station.

Shortly after midnight on August 27, 2003, Ms. Weaver and her son went to the police station. She told the detectives that her son wanted to make a statement, that she expected them to take him into custody after his statement, and that she wanted him to have an attorney before they questioned him further. The detectives realized that he was about to confess without a lawyer present but did not tell him to remain silent until they could arrange for an attorney. The detectives read him his *Miranda* warnings. Before they could finish, he said, "I shot Germaine Rucker." He was arrested.

The defendant filed pretrial motions to suppress the statements he made on the grounds that they were involuntary and coerced. The motions were denied by the superior court. He was convicted in 2006 of first-degree murder and unlicensed possession of a firearm; he received a life sentence.

On postconviction appeal, he filed motions for a new trial on the grounds that counsel was ineffective for not consulting with a mental health expert about the voluntariness of his statements. This argument was rejected.

He appealed to the Massachusetts Supreme Court, claiming errors in denial of his motions.

Ruling and Reasoning

Mr. Weaver (now an adult) argued that his statements were involuntary and coerced. The court held that *Miranda* warnings are required only when a defendant is subjected to a custodial interrogation. The court also stated that a defendant's failure to receive or understand *Miranda* warnings or the police's failure to honor *Miranda* rights does not result in suppression of a voluntary statement made in a noncustodial setting. Even if *Miranda* warnings were required, Mr. Weaver had validly waived his *Miranda* warnings because he was allowed to consult with an "interested adult" (i.e., his mother) who was informed of and understood those rights. In addition, his waiver was valid because the interrogation took place at home in the presence of his mother, who had the ability to terminate the interview at any time, without police coercion, and without evidence that his mental state was compromised.

Mr. Weaver argued that his mother coerced him into making a statement and therefore acted as an agent of the police by questioning him and bringing him to the station. The court indicated that his statement was not the product of police interrogation. Because the detectives did not make promises in exchange for Ms. Weaver's help or advise her concerning what questions to ask her son, Ms. Weaver was not an agent of the police. Although Ms. Weaver's exhortations played a significant role in the defendant's decision to confess, the court found that he was not physically or psychologically coerced by his mother to the extent that his ability to make an independent decision was impaired.

The defendant argued that his trial counsel failed to investigate the defense of psychological coercion by not consulting with a mental health expert or presenting expert testimony about the voluntariness of his confession. Ten years after his conviction, Mr. Weaver was evaluated by a psychologist who opined that his statements were not voluntary because he was subjected to parental coercion. The court denied this claim. They stated that the defendant failed to show that the psychologist's testimony would have been admissible, because the methodology used in the evaluation was not generally accepted by the scientific community or was otherwise admissible under the factors set forth in *Commonwealth v. Lanigan*, 641 N.E.2d 1342 (Mass. 1994).

Discussion

The right to avoid self-incrimination and the right to advice of counsel during police questioning (Fifth, Sixth, and Fourteenth Amendments) were extended to juveniles in the U.S. Supreme Court's decisions in *Kent v. United States*, 383 U.S. 541 (1966), and *In re Gault*, 387 U.S. 1 (1967). *Miranda v. Arizona*, 384 U.S. 436 (1966), established that the defendant's waiver of the above-mentioned rights when making a confession must be done "voluntarily, knowingly, and intelligently."

Although juveniles are entitled to *Miranda* warnings during custodial interrogations (e.g., at the police station), the court opined that they are not required during interrogations in noncustodial settings (e.g., in the home with the parent). In *Commonwealth v. Sneed*, 796 N.E.2d 1284 (Mass. 2003), the court stated that whether an interrogation is custodial is decided by the objective circumstances of the interrogation and not the subjective views of the interrogating officers or the person being questioned. According to *Commonwealth v. Morse*, 691 N.E.2d 566 (Mass. 1998), this inquiry focuses on whether a reasonable person in Mr. Weaver's position would believe that his freedom was restricted to the degree of being formally arrested. Given that Mr. Weaver had been questioned (1) at his home on a date and time of his convenience; (2) in his mother's presence; (3) in an informal, rather than aggressive manner; and (4) with the ability to terminate the interview at any time, the court opined that his questioning was not custodial and he was not entitled to *Miranda* protections. Nonetheless, they found that his waiver of his *Miranda* rights was valid. This decision could imply that officers who choose to question juveniles informally at home or at school may decrease the chance that the court will later invalidate and suppress such confessions.

In *Haley v. Ohio*, 332 U.S. 596 (1948), the U.S. Supreme Court established the concept of the "interested adult." The ruling was intended to protect juveniles from coercion and to ensure that they understood their rights. Questioning her son and encouraging him to confess did not make Ms. Weaver a "disinterested adult," did not make her an agent of the police, and did not amount to coercion to invalidate the voluntariness of his statements. The court recognized that a relative's involvement in questioning about a crime can be coercive, but they concluded that, in this case, Mr. Weaver's will was not so

overborne that he lost his ability to make an independent decision. The presence of an “interested adult” does not automatically safeguard the juvenile’s interests or reduce the chance of unknowingly assisting the police in obtaining a confession. An interested adult is not a proxy for a lawyer and need not make decisions that an attorney would make in advising the juvenile to waive or enforce his rights.

Mr. Weaver raised the claim that parental coercion rendered his confession involuntary. Parental coercion has not been investigated as thoroughly as police coercion and could represent a new area of research. Future research may identify factors that either influence or protect against parental coercion of children in relation to matters of the law and how parental coercion is similar or different from police coercion.

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Disability Claims Under ERISA

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Reviews of the Employee Retirement Income Security Act (ERISA) Disability Claims Require a Deliberate and Reasoned Decision-Making Process

In *Okuno v. Reliance Standard Life Insurance Company*, 836 F.3d 600 (6th Cir. 2016), the Sixth Circuit held that the administrator of a long-term disability benefits plan acted improperly when it applied the plan’s one-year mental health limitation to a long-term disability claim and that further examination was needed to determine whether Ms. Okuno’s physical ailments were disabling when considered apart from any mental health component.

Facts of the Case

Seven months into her employment, Patti Okuno, a senior management level art director for a retail

clothing company, began experiencing symptoms of vertigo, severe headaches, memory loss, and abdominal pain. She had a history of fibromyalgia and degenerative disk disease that did not prevent her from working. After a lengthy medical workup, she was given diagnoses of narcolepsy, Crohn’s disease, and Sjögren’s syndrome.

Ms. Okuno became unable to work and went on short-term disability. When her short-term benefits were exhausted, she applied for benefits through her employer’s long-term disability plan administered by Reliance Standard Life Insurance Company (Reliance). Reliance denied her claim under the pre-existing condition limitation, determining that her disability was the result of her pre-existing fibromyalgia. Ms. Okuno appealed, citing that the medical evidence reflected that she was not disabled by her pre-existing condition, but rather by newly diagnosed Crohn’s disease, narcolepsy, and Sjögren’s syndrome. To support her claim, she offered additional medical records and letters from her treating physicians. Reliance reconsidered Ms. Okuno’s claim with the assistance of an independent internist who specialized in sports medicine and preventative/occupational medicine. Reliance upheld the denial of Ms. Okuno’s claim based on the pre-existing condition limitation.

Ms. Okuno appealed a second time, this time supplying a letter from her neurologist affirming her newly diagnosed conditions. Reliance relied on a second record review, this time by an independent internal medicine physician with experience as a director of a sleep disorders clinic.

Reliance affirmed its original decision that Ms. Okuno was not totally disabled by the newly diagnosed conditions. Reliance judged Ms. Okuno to be impaired due to “depression and anxiety” and approved her claim for benefits for a 12-month period under the mental or nervous disorders limitation in the plan.

This determination constituted a new decision on the part of Reliance, Ms. Okuno was given the opportunity to file a third appeal. She challenged the independent reviewer’s findings and repeated her claim that she was disabled due to the newly diagnosed conditions. Reliance obtained yet another record review, this time by a registered nurse. Reliance stated that Ms. Okuno’s records supported the presence of a psychiatric component, that payment un-