

COMMONWEALTH OF THE
NORTHERN MARIANA
ISLANDS

vs.

Diego S. CABRERA

DCA No. 85-9009

CTC No. 84-96

District Court NMI
Appellate Division

Decided April 13, 1987

1. Statutes - Construction

A legislative classification is entitled to a strong presumption of validity and may be set aside only if no ground can be conceived to justify it.

2. Statutes - Construction

The meaning of a statute must, in the first instance, be sought in the language in which the act is framed, and if that meaning is clear, and if the law is within the constitutional authority of the law-making body which passed it, the sole function of the courts is to enforce it according to its terms.

3. Criminal Law - Juveniles

To try a juvenile as an adult is not a judgment of guilt or imposition of a penalty; the prosecution must still prove guilt beyond a reasonable doubt.

4. Criminal Law - Juveniles

Treatment as a juvenile is not an inherent right, it is a right created by the legislature and may be restricted in any way not arbitrary or discriminatory.

5. Criminal Law - Juveniles

The protection provided juveniles in criminal proceedings under NMI Constitutional provision centers on

shielding them from the harsh glare of publicity, helping them to avoid the life-long stigma of a criminal record, minimizing their contact with adult criminals, and rehabilitation. NMI Const., Art.1, §4.

6. Criminal Law - Juveniles

Statute required juveniles over the age of 16 to be treated as adults where accused of certain crimes was constitutional. 6 CMC §5103(a).

7. Criminal Law - Juveniles

Court is not required under statute to hold a hearing before treating juvenile over the age of 16 as an adult where they are accused of certain crimes. 6 CMC §5103(a).

8. Criminal Law - Juveniles

There is no requirement that a juvenile defendant be apprised, in addition to Miranda rights, that statements made while in the juvenile system may be used against him or her in an adult proceeding.

9. Criminal Law - Juveniles

During the pre-judicial stages, there is no constitutional or statutory requirement under the laws of the Commonwealth of the Northern Mariana Islands that a parent be present, be separately advised of the child's constitutional rights, or participate in the waiver of those rights.

10. Criminal Law - Juveniles

Where the defendant and his father were both present when the officer first informed the defendant of his rights, and the officer testified that the father appeared to understand the rights given his son, and the father took no steps to stop the questioning, defendant was not denied his right to be informed of his constitutional rights.

11. Appeal & Error - Standard of Review - Motion to Suppress

A finding of fact made by the court at a motion to suppress evidence in a criminal proceeding is subject to reversal only if it is clearly erroneous.

clearly understood his rights, as demonstrated by his responses to questions at the suppression hearing.

12. Criminal Law - Confessions - Voluntariness

The prosecution must prove by a preponderance of the evidence that a statement was made voluntarily. Whether or not a confession was obtained by coercion is determined from the totality of the circumstances and this standard applies in juvenile proceedings.

13. Criminal Law - Confessions - Voluntariness

Psychological coercion is as unconstitutional as physical coercion.

14. Criminal Law - Confessions - Voluntariness

Among the circumstances considered in determining whether given the totality of the circumstances, the juvenile's confession was voluntary are: 1) the age of the minor; 2) the length of the questioning; 3) the youth's education; 4) the prior experience of the youth with the police; and, 5) the presence and/or notification of the juvenile's parents.

15. Criminal Law - Confessions - Voluntariness

From the totality of the circumstances it cannot be said that appellant's statements were coerced or involuntary. where: (1) the defendant was seventeen years and three months old at the time he was questioned, in the 10th grade; (2) he was told he was under arrest for murder, and he was allowed to talk to his father before being questioned, and he was advised of all his rights in the presence of his father and again the next day; and (3) defendant

1 A complaint of delinquency was filed against appellant
2 on November 21, 1984. The complaint was dismissed December 3,
3 1984, on the ground that Title 6 of the Commonwealth Code
4 (C.M.C.) §5102 required that appellant be certified automatically
5 as an adult. Appellant was ordered to stand trial as an adult in
6 accordance with 6 C.M.C. §5103(a) and was charged with first
7 degree murder. On December 18, 1984, the criminal information
8 was amended to include two co-defendants.

9 On January 22, 1985, appellant moved to suppress the
10 statements he made on November 16 and 17, 1984. Two grounds were
11 alleged: First, that he did not waive his rights to remain
12 silent and to have assistance of counsel and, second, that if he
13 did waive his rights, it was not done knowingly, intelligently,
14 and voluntarily. A hearing on the motion was held January 30,
15 1985. Written findings denying the motion were issued February
16 22, 1985.

17 Trial began March 4, 1985, and the jury convicted
18 appellant of second degree murder on March 8, 1985. He was
19 sentenced May 22, 1985, to twenty years imprisonment and is
20 presently free and attending school pending appeal.

21 ISSUES

- 22 1. Whether the provision of 6 C.M.C.
23 §5103(a) which automatically certifies
24 as an adult a juvenile between the ages
25 of sixteen and eighteen accused of
26 specified offenses is constitutional.
2. Whether there is an ambiguity between 6

1 C.M.C §§5102 and 5103(a) and, if so, if
2 it is of such dimension as to render
them both unconstitutional.

- 3 3. Whether appellant's two pre-trial
4 confessions properly were ruled
admissible.
- 5 4. Whether appellant made an effective
6 waiver of his rights.
- 7 5. Whether appellant's statements were
8 involuntary because they were obtained
by coercion.

9 DISCUSSION

- 10 1. Whether the provision of 6 C.M.C.
11 §5103(a) which automatically certifies
12 as an adult a juvenile between the ages
of sixteen and eighteen accused of
specified offenses is constitutional.

13 Appellant argues that the due process provisions of
14 both the U.S. Constitution and its CNMI counterpart, together
15 with Article I, §4(j) of the CNMI Constitution ^{1/}, require that a
16 person under the age of eighteen be treated initially as a
17 juvenile. Such treatment should continue unless the juvenile
18 court determines after a preliminary hearing that one of the
19 three types of offenses specified in 6 C.M.C. §5103(a)--- murder,
20 rape, or a traffic offense--- has been committed.

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25 ^{1/} "§4(j) Persons who are under eighteen years of age shall be
26 protected in criminal judicial proceedings and in conditions of
imprisonment."

1 Title 6 C.M.C. §5103 states in part that a "delinquent
2 child" includes any juvenile:

3 (a) Who violates any Commonwealth law,
4 ordinance, or regulation while under the age
5 of 18; provided that a juvenile 16 years of
6 age or older accused of a traffic offense,
murder, or rape shall be treated in the same
manner as an adult.

7 [1-3] The power to enact laws is vested in the CNMI
8 Legislature. Constitution of the Commonwealth of the Northern
9 Mariana Islands, Art. II, §1. A legislative classification is
10 entitled to a strong presumption of validity and may be set aside
11 only if no ground can be conceived to justify it. United States
12 v. Bland, 472 F.2d 1329, 1334 (D.C. 1972); cert. denied, 412 U.S.
13 909 (1973). The meaning of a statute must, in the first
14 instance, be sought in the language in which the act is framed,
15 and if that meaning is clear, and if the law is within the
16 constitutional authority of the law-making body which passed it,
17 the sole function of the courts is to enforce it according to its
18 terms. Caminetti v. United States, 242 U.S. 470, 485 (1917).
19 Bland, supra, is useful because it involved a statute defining
20 "child" so as not to include juveniles sixteen years of age and
21 older who were accused of specified offenses. The court held the
22 statute constitutional, ruling it was neither an arbitrary
23 legislative classification nor a negation of the presumption of
24 innocence. Here, the legislative intent can be justified on the
25 ground that it removes from the juvenile adjudicative process
26 those accused of severe offenses which place them beyond the

1 rehabilitative capacity of the system. Bland also disposes of
2 appellant's contention that being charged as an adult deprived
3 him of the presumption of innocence. To try a juvenile as an
4 adult is not a judgment of guilt or imposition of a penalty; the
5 prosecution must still prove guilt beyond a reasonable doubt.
6 Bland, at 1338.

7 [4] Treatment as a juvenile is not an inherent right.
8 Woodward v. Wainwright, 556 F.2d 781, 785 (5th Cir. 1977). It is
9 a right created by the legislature and may be restricted in any
10 way not arbitrary or discriminatory. Id. A legislature may
11 determine that the juvenile system is ill-suited for certain
12 youths and that they pose a greater threat to society than can be
13 coped with by the juvenile system. Id. The CNMI statute can be
14 upheld using the identical rationale.

15 [5] Article I, §4 of the Commonwealth Constitution does not
16 provide the support appellant claims. The protection provided
17 juveniles in criminal proceedings centers on shielding them from
18 the harsh glare of publicity, helping them to avoid the life-long
19 stigma of a criminal record, minimizing their contact with adult
20 criminals, and rehabilitation. Analysis of the Constitution of
21 the Commonwealth of the Northern Mariana Islands (1976), pp.
22 19-20. Specifically, appellant's situation was expressly
23 contemplated:

24 This section does not prevent the legislature
25 from directing that certain offenders who are
26 under the age of 18 may be tried as adults in
specified circumstances.

1 Id., at p. 20.

2 [6] Accordingly, we find that Title 6 C.M.C. §5103(a)
3 satisfies the language, intent and requirements of Article I,
4 §4(j) of the Commonwealth Constitution.

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6 2. Whether there is an ambiguity between 6
7 C.M.C §§5102 and 5103(a) and, if so, if
8 it is of such dimension as to render
9 them both unconstitutional.

10 Appellant contends that the automatic certification
11 language of 6 C.M.C §5103(a) is rendered ambiguous by §5102,
12 which states:

13 An offender 16 years of age or over may,
14 however, be treated in all respects as an
15 adult if, in the opinion of the Court, his or
16 her physical and mental maturity so
17 justifies.

18 Appellant does not believe that §5103(a) clearly
19 exempts him from §5102, despite the seeming conclusiveness of the
20 language. He argues that because §5102 implicitly requires a
21 hearing before a juvenile can be tried as an adult, and because
22 §5103(a) does not, there is no clear mandate that a juvenile must
23 be tried as an adult when charged with murder. Too, automatic
24 certification under §5103(a) renders meaningless Article I, §4(j)
25 of the Commonwealth Constitution.

26 [7] There is no discernible ambiguity between the two
sections. The CNMI Legislature mandated automatic certification
as an adult for juveniles charged with specified offenses. It
then allowed the juvenile court discretion to treat juveniles

1 charged with other offenses as adults if their maturity warrants
2 it. The requirement of a hearing indeed is implicit in this
3 latter category. Further, it is required by Kent v. United
4 States, 383 U.S. 541 (1966). There, the Court held that a
5 statute requiring a full investigation by the juvenile court
6 before a waiver of its jurisdiction meant an inquiry into the
7 facts, the desirability, and propriety of a juvenile court
8 proceeding in a particular case. Kent, at 553, 562.

9 Non-discretionary statutes such as §5103(a) have been
10 addressed in the first section above. The distinctions between
11 the two statutes at issue are clear, unequivocal, and
12 constitutional.

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14 3. Whether a juvenile defendant must be
15 advised that his or her statements may
16 be used later in an adult proceeding.

17 Appellant first argues that Article I, §4(j) of the
18 Commonwealth Constitution was violated by allowing into evidence
19 at his trial as an adult the two confessions he made while he was
20 in the juvenile justice system. He urges that the §4(j) mandate
21 that juveniles "be protected in criminal judicial proceedings"
22 prohibits use of the statements when defendant and his parents
23 were not advised by the government that the statements could be
24 used against him in adult proceedings. Further, to allow use of
25 the statements would undermine the integrity and rehabilitative
26 purpose of the juvenile process.

Appellee replies that, absent a Commonwealth

1 constitutional requirement that a juvenile be informed that he or
2 she may be charged as an adult, appellant is entitled to be
3 informed only of his constitutional rights as per United States
4 v. Miranda, 384 U.S. 436 (1966). Appellee points out that advice
5 of rights was given not once, but twice. Both waiver forms
6 indicated the statements could be used "in court"; there was
7 nothing limiting their use to juvenile proceedings. Furthermore,
8 Article I, §4(j) of the Constitution does not apply here, as
9 revealed in the Analysis of the Constitution, referred to above.

10 [8] There is no requirement, and we do not hold, that a
11 juvenile defendant be apprised, in addition to Miranda rights,
12 that statements made while in the juvenile system may be used
13 against him or her in an adult proceeding.

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15 4. Whether appellant made an effective
16 waiver of his constitutional rights.

17 [9] Appellant argues that both he and his parents were
18 required to be informed of his constitutional rights. Appellant
19 further maintains his rights could not be deemed waived absent an
20 express finding by the trial court that such waiver was made
21 intelligently, knowingly, and voluntarily by both appellant and
22 his parents. Appellant is mistaken as to his rights being
23 extended to his parents. During the pre-judicial stages, there
24 is no constitutional or statutory requirement under the laws of
25 the Commonwealth of the Northern Mariana Islands that a parent be
26 present, be separately advised of the child's constitutional

1 rights, or participate in the waiver of those rights. The
2 police, exercising an abundance of caution, extended to the
3 father the courtesy of being present while his son was being
4 advised of his Miranda rights. By no means was the father's
5 presence legally required. Still, appellant urges to elevate
6 that courtesy to a legal requirement. With this we cannot agree.
7 As to the second contention, the record shows that the trial
8 court did make an express finding that appellant's waiver
9 satisfied constitutional standards.

10 Appellant was arrested November 16, 1984, and taken to
11 the police station for questioning. He met briefly with his
12 father before questioning began. His father was present
13 throughout the time appellant was being advised of his rights.
14 The father appeared to understand the rights given to his son.
15 Appellant was advised of his rights in both Chamorro and English
16 and he initialled each of the nine parts of the "constitutional
17 rights" form and then signed the completed form. There is
18 evidence that appellant's father played a major role in his
19 decision to talk about the crime. Lt. Camacho testified that the
20 father told appellant to change from "no" to "yes" his response
21 on the form as to whether he was willing to make a statement.
22 This was done in a "forceful" manner. Appellant then confessed
23 orally and in writing. Appellant was confined overnight and
24 questioned again the next day. Before questioning began he again
25 was advised of his rights and again confessed. Appellant's
26 parents were not notified that a second statement was going to be

1 taken from defendant; they arrived unexpectedly. Appellant had
2 signed the waiver form already and questioning was about
3 half-completed. His father was present during the latter half of
4 the questioning on the second day. Neither appellant nor his
5 parents ever requested that questioning cease.

6 At the conclusion of questioning appellant was released
7 without bail to the custody of his parents. Juvenile proceedings
8 were initiated, then dismissed, and adult proceedings began.

9 A hearing to suppress both confessions was held January
10 30, 1985. At the hearing, defendant, represented by counsel,
11 demonstrated that he had fully comprehended his rights when they
12 were read to him before he was questioned:

13 Q. Now, let's start with paragraph 4. You
14 have the right to remain silent, you do
15 not have to talk to me unless you want
16 to do so. Do you understand that?

17 A. Yes.

18 Q. Did you understand that?

19 A. Yeah.

20 Q. What does it mean?

21 A. I'm not -- I don't have to talk if I
22 don't want to.

23 Q. Okay. If you don't want to you don't
24 have to talk, is that what you...?

25 A. Yeah.

26 Q. No. 5. Did Sgt. Camacho read everything
in English?

A. English and Chamorro.

Q. If you don't want to talk to me, I must

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advise you that whatever you say can and will be used as evidence against you in court. Did you understand that?

A. (Inaudible.)

* * * *

Q. Now, did you understand what he meant by that?

A. Yes.

Q. What did you understand about it?

A. If I talk, if I say anything, he can use in court.

* * * *

Q. No. 7 -- or No. 6. You have the right to consult with a lawyer and have a lawyer present with you while you are being questioned. You may stop talking to me at anytime and demand a lawyer at anytime. Did you understand that?

A. Yes.

Q. And, did he also explain that to you in Chamorro?

A. Yes.

* * * *

Q. No. 7. Did Sgt. Camacho advise you about No. 7? Did he say that if you want a lawyer but are unable to pay for one, a lawyer will be appointed to represent you free of any cost to you. Did you understand that?

A. Yes.

Q. And, when you said you understood that you put your initials, D.S.C., and the word, yes?

1 A. (Inaudible.)

2 COURT: The defendant has nodded his head
3 in the affirmative as the answer.

4 Q. No. 8. The service of the public
5 defender or his representative are
6 available for this purpose without
7 charge. Did Sgt. Camacho advise you of
8 that in English and Chamorro?

9 * * * *

10 A. Yes.

11 Q. Okay, did you understand that?

12 A. No.

13 Q. What didn't you understand about it?

14 A. Everything.

15 Q. Now, did you understand that explanation
16 in Chamorro, when he explained it in
17 Chamorro?

18 A. Yes.

19 * * * *

20 Q. No. 9. It says, knowing these rights,
21 do you want to talk to me without having
22 a lawyer present? Did you understand
23 that question?

24 A. Yes.

25 (Tr., pp. 26-30.)

26 The motion to suppress was denied.

Appellant relies primarily on Application of Gault, 387
U.S. 1 (1967), to support the proposition that both the juvenile
defendant and his or her parents must be apprised of the
juvenile's constitutional rights. Gault involved a fifteen year
old juvenile who had been committed to a children's home after a

1 juvenile court judge found him to be a delinquent child
2 habitually involved in immoral matters within the meaning of the
3 Arizona statute. Gault, at 4-9. The entire course of those
4 proceedings was characterized by informality approaching whim.
5 The U.S. Supreme Court on appeal concerned itself only with
6 problems relating to the "proceedings by which a determination
7 (was) made as to whether a juvenile (was) a delinquent." Gault,
8 at 13. The Court stated that it "was not...concerned with the
9 procedures or constitutional rights applicable to the
10 pre-judicial stages of the juvenile process." Gault, at 13.
11 This latter statement is particularly important here.

12 Nevertheless, Gault offers some guidance. Specificial-
13 ly, the court confronted the question of admissions made by a
14 juvenile while in custody. After a prolonged review of the
15 positive and negative aspects of allowing such admissions the
16 Court cited as "authoritative" Standards for Juvenile and Family
17 Courts:

18 Before being interviewed [by the police], the
19 child and his parents should be informed of
20 his right to have legal counsel present and
to refuse to answer questions...if he should
so decide.

21 Gault, at 49.

22 An additional factor favoring this practice was found,
23 and it is similar to appellant's situation:

24 [W]hen Gerald Gault was interrogated
25 concerning violation of a section of the
26 Arizona Criminal Code, it could not be
certain that the juvenile court judge would
decide to "suspend" criminal prosecution in

1 court for adults by proceeding to an
2 adjudication in juvenile court.

3 Gault, at 51.

4 [10] This Court believes it would be a sounder practice to
5 require that both a child and his or her parents be advised of
6 the child's constitutional rights prior to interrogation.^{2/}
7 However, it is not necessary to reach that issue and, according-
8 ly, we do not. Here, appellant and his father were both present
9 when the officer first informed appellant of his rights. The
10 officer testified that the father appeared to understand the
11 rights given his son. The father took no steps to stop the
12 questioning. Although Gault does not address pre-judicial
13 occurrences its rationale perhaps should be extended to
14 situations such as encountered here. However, that is the
15 function of the Legislature and not this Court. We do not find
16 that the Constitution as written can be construed so broadly as
17 to allow the interpretation appellant desires.

18 [11] Appellant also contends that his parents were not
19 advised of his rights prior to the second episode of questioning,
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23 ^{2/} Some states require the presence of a parent or other
24 "interested adult" when the child waives his or her constitution-
25 al rights. See, e.g., Commonwealth v. McCutchen, 343 A.2d 669
26 (Pa. 1975); cert. denied, 424 U.S. 934 (1975) and cases
following; and, People v. Burton, 6 Cal.3d 375, 99 Cal.Rptr. 1
(1971).

1 that they were not present during questioning, and that his
2 second confession was far more injurious to his case. The trial
3 court's factual finding that his second confession was a
4 continuance of the first and equally voluntary finds support in
5 the record. As noted earlier, appellant was informed again of
6 his rights and initialled and then signed a multi-question form.
7 As illustrated earlier, the trial court heard testimony and
8 specifically considered defendant's mental capacity and state of
mind before ruling the admissions voluntary, intelligent, and
10 knowing. Such a finding of fact is subject to reversal only if
11 it is clearly erroneous. United States v. Doe, 764 F.2d 695, 697
12 (9th Cir. 1985). We hold that the trial court's finding was not
13 clearly erroneous.

14
15 5. Whether appellant's statements were
16 involuntary because they were obtained
by coercion.

The final issue is whether or not appellant's
11 confessions were voluntary in light of the father's "forceful
12 manner" in telling appellant to change from "no" to "yes" his
13 response indicating whether he wished to make a statement. There
14 was no evidence that the father threatened his son with physical
15 violence or that, indeed, any manner of threat was made.

16 [12] The prosecution must prove by a preponderance of the
17 evidence that a statement was made voluntarily. Lego v. Twomey,
18 404 U.S. 477, 490 (1972). Whether or not a confession was
19 obtained by coercion is determined from the totality of
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1 the circumstances. Schneckloth v. Bustamonte, 412 U.S. 218, 228
2 (1973). The same standard applies for juveniles. Fare v.
3 Michael C., 442 U.S. 707, 725 (1979).

4 [13.14] Psychological coercion is as unconstitutional as
5 physical coercion. Lynum v. Illinois, 372 U.S. 528, (1963).
6 Involuntary statements offend the community's sense of fairness
7 and decency and are inadmissible. Rogers v. Richmond, 365 U.S.
8 534, 540-541 (1961); Blackburn v. Alabama, 361 U.S. 199, 206
9 (1960). Excluding involuntary statements is intended to curb
10 coercive conduct. Spano v. New York, 360 U.S. 315, 320-321
11 (1959). The United States Supreme Court has not held that the
12 presence or notification of parents is necessary for a valid
13 confession or that a voluntary and effective waiver is impossible
14 without them. The test is whether, given the totality of the
15 circumstances, the juvenile's confession was voluntary. Gallegos
16 v. Colorado, 370 U.S. 49, 55 (1962). Among the circumstances
17 considered are: 1) the age of the minor; 2) the length of the
18 questioning; 3) the youth's education; 4) the prior experience of
19 the youth with the police; and, 5) the presence and/or
20 notification of the juvenile's parents.

21 [15] Here, appellant was seventeen years three months old at
22 the time he was questioned. The length of the questioning was
23 not stressed by either party and there is no indication it was
24 excessive. Defendant waived his rights before questioning began.
25 Defendant was in the 10th grade at the time he was questioned.
26 There is no indication that he had previously had experience with

1 the police. When defendant was taken in he was told he was under
2 arrest for murder. He was allowed to talk to his father prior to
3 being questioned and he was advised of all his rights in the
4 presence of his father on November 16, 1984. He was advised of
5 his rights again the next day. Appellant clearly understood his
6 rights, as demonstrated by his responses to questions at the
7 suppression hearing. He twice signed a constitutional rights
8 form. He testified he had not been forced by anyone to talk or
9 give a written statement.

10 From the totality of the circumstances it cannot be
11 said that appellant's statements were coerced or involuntary.
12 The authorities appear to have been scrupulous in their dealings
13 with appellant. Although the father's role was perhaps
14 unfortunate and no doubt derived from a heartfelt belief that his
15 son could not be guilty of so heinous a crime, there is no
16 support in the law for a finding that the father's comments
17 amounted to coercion.

18 For the reasons stated above, the judgment of the trial
19 court is AFFIRMED.

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21 
22 JUDGE ALEX R. MUNSON

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24 JUDGE ALFRED LAURETA

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JUDGE WILLIAM D. KELLER