

April 12, 2011

Miranda Offers Little Protection for Chatty Suspects in New Mexico

There are some widely held misconceptions regarding a defendant's Miranda rights. Defendants often complain that police questioned them without the presence of an attorney. What they do not understand is that a police officer may question them without an attorney so long as they are not in custody.

"In custody" is in fact fairly narrowly construed. A suspect is considered to be in custody if there was no freedom to leave. If the suspect was not free to leave and the police continue to question him or her, then this would be considered a custodial interrogation.

There is a careful distinction made by the courts between a custodial interrogation and investigative questioning. Police officers are free to ask an individual questions, even when that person is a suspect, so long as the questioning is voluntary. Once the questioning passes into the domain of involuntary questioning, Miranda rights kick in. At that point, the suspect must be read his or her rights which include the right to an attorney.

Whether or not the questioning is involuntary thereby constituting a custodial interrogation is measured by whether a reasonable person would believe he is free to terminate the questioning. In some cases, this matter is quite easily resolved. In others, the "reasonable man" would have to quite bold to simply leave the scene.

For instance, in the 2009 New Mexico Court of Appeals case of State v. Smile, the defendant pulled up voluntarily in his vehicle, voluntarily left his vehicle, and then voluntarily walked 50 feet toward the officers yelling out that he heard the officers were looking for him. He then commenced to confess a number of acts, including suggestions of future violence, sufficient for conviction for felony domestic violence under the aggravated stalking statutes. All of this was done voluntarily by the defendant almost in a bragging tone as if to say "look at all the hell I have put her through and the hell to come if she does not come around." Needless to say Mr. Smile was convicted of aggravated stalking and his Miranda appeal was denied.

Contrast this to the 1998 New Mexico Supreme Court case of State v. Munoz. In that case, the defendant, as a suspect in a murder case, was taken by FBI investigators from his home in an officer's vehicle. The defendant was driven a mile or so from his home and questioned for an hour and forty minutes by the FBI officers. He ultimately

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confessed to the crime. The Court in Munoz found that despite the nature of the questioning, it remained strictly voluntary. The defendant was free to terminate the questioning and exit the vehicle or in the alternative not get in the vehicle to begin with. As such, the questioning was voluntary and not a custodial interrogation. There was therefore no obligation to advise the defendant of his Miranda rights and his confession was fully admissible.

In either case, the defendants in both the Smile and Munoz cases would have done well to shut up and ask for an attorney. In fact, any suspect or defendant would be well to shut up and ask for an attorney. It is a risky gamble to assume that confessions made to police will somehow be excluded due to Miranda violations. In fact, such evidentiary exclusions are rare. So once again, defendants should "shut up and ask for an attorney." There is certainly no harm there. It is a constitutionally protected right!

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