Recent Case Report

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U.S. v. Warren

(3rd Cir. 2011) 642 F.3d 182

Issue

Did an officer properly advise a suspect of his *Miranda* rights before questioning him?

Facts

After arresting Warren for possessing crack cocaine with intent to distribute, an officer drove him to the police station and sought a *Miranda* waiver. Although the officer did not read the *Miranda* rights from a card, he testified that he informed Warren of the following:

(1) He had a right to remain silent.
(2) Anything he said could be used against him in court.
(3) He had the right to an attorney.
(4) If he could not afford to hire an attorney, one would be appointed to represent him without charge before any questioning.

The officer did not, however, expressly inform Warren that he had a right to have an attorney present during questioning. Warren waived his rights and made an incriminating statement. When his motion to suppress the statement was denied, he pled guilty.

Discussion

Warren argued that his statement should have been suppressed because the officer neglected to inform him that he had a right to the presence of an attorney during questioning. This argument was based on a passage in the Supreme Court's ruling in *Miranda* v. *Arizona* that one of the *Miranda* rights is "the right to consult with a lawyer and to have the lawyer with him during interrogation."[1] More recently, however, the Supreme Court ruled that officers need not recite the *Miranda* warnings exactly as they were enumerated in the *Miranda* decision. Instead, what is required is that officers "reasonably convey" the *Miranda* rights.[2]

The question, then, was whether the officer's admonition that Warren had a "right to have an attorney" reasonably conveyed the *Miranda* right that Warren had a right to have an attorney during questioning. The court ruled it did, pointing out that the officer "warned Warren of his right to counsel without any reference to whether it commenced or ceased at any particular time," and that he also told Warren that if he "cannot afford to hire an attorney, one will be appointed to represent you without charge before any questioning if you wish." Taken as a whole, said the court, these words could reasonably

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[1] (1966) 384 U.S. 436, 471.

[2] *Duckworth* v. *Eagan* (1989) 492 U.S. 195, 203. ALSO SEE *People* v. *Wash* (1993) 6 Cal.4th 215, 236-37 ["The essential inquiry is simply whether the warnings reasonably convey to a suspect his rights as required by *Miranda*."]; *People* v. *Samayoa* (1997) 15 Cal.4th 795, 830 ["[A reviewing court] must determine whether the warnings reasonably would convey to a suspect his or her rights as required by *Miranda*."].

be interpreted "as indicating merely that Warren's right to pro bono counsel became effective before he answered any questions."

Accordingly, the court ruled that Warren's motion to suppress his statement was properly denied.

Comment

As we have often said, officers should ordinarily read the *Miranda* warnings from a standard *Miranda* card or form so as to eliminate the legal problems that result when, as in *Warren*, officers read the warnings from memory and forget something or mix things up. Even if the error does not result in the suppression of a statement, it will needlessly consume court and prosecution resources that must be utilized to resolve the matter; e.g., research, briefing, argument, appeal. This was also of concern to the court in *Warren* which said "the fact that this [interview] occurred in the police station—a setting where a card imprinted with the *Miranda* warning should be readily available—is disconcerting, considering the resources that have been expended to consider a claim that could have been preempted with minimal care and effort." POV