Recent Case Report

U.S. v. Colonna

(4th Cir. 2007) __ F.3d __ [2007 WL 4442460]

ISSUE

Was the defendant "in custody" for *Miranda* purposes when FBI agents questioned him outside his home?

FACTS

In the course of an undercover operation, an FBI agent in Virginia gained access to an internet server that contained child pornography. After determining that the server was located in Colonna's home in Chesapeake, agents obtained a warrant to search the premises.

A total of 23 agents executed the warrant at 6:29 A.M.[1] Upon entering, they awakened Colonna's parents who informed them that Colonna was asleep in the third floor attic. With guns drawn, agents went to the attic, kicked open the door, and ordered Colonna to dress and accompany them to the living room where Colonna's parents and younger sister were now being detained. At about this time, Colonna's mother started to light a cigarette, but an agent told her that she could not smoke inside the house. So she went outside, and the rest of the family went with her.

While the search was underway, Colonna agreed to speak with two agents. The interview occurred inside an FBI vehicle parked behind the house. Although the agents did not seek a *Miranda* waiver, they told him he was not under arrest. In the course of the interview, which lasted about three hours, Colonna admitted that he had configured his computer system so that he could "send, receive, and store child pornography videos of underage girls." Meanwhile, agents who were searching one of his computers found that it contained pornographic videos of young girls. As a result, Colonna was charged the transporting and possessing child pornography.

Colonna filed a motion to suppress his statement on grounds that it was obtained in violation of *Miranda.* Specifically, he contended that he was "in custody" for *Miranda* purposes when the agents questioned him, and therefore the agents violated *Miranda* when they failed to obtain a waiver. The district court disagreed, mainly because the agent had told Colonna that he was not under arrest. Consequently, Colonna's statement was admitted into evidence at his trial, and he was convicted.

[1] **NOTE**: An agent testified that the large number of agents was necessary because "the house was of considerable size; three stories high, four bedrooms, and a large detached garage."

DISCUSSION

Officers must, of course, obtain a *Miranda* waiver before questioning a suspect who is "in custody."[2] It is also settled that a suspect who has not been formally arrested is nevertheless "in custody" if a reasonable person in his position would have believed that his freedom had been restricted to the degree associated with an actual arrest.[3]

One circumstance that is especially important in making this determination is the location of the interview. For example, suspects who are questioned in police stations are often found to be in custody because these places are "police dominated" which, from a suspect's standpoint, is a highly coercive circumstance.[4] On the other hand, *Miranda* waivers are seldom necessary when suspects are interviewed at their homes because they are on their own "turf."[5] This is especially true if the suspect was informed that he was not under arrest.[6] It appears that these were the reasons the district judge ruled Colonna was not in custody.

But in making a "custody" determination, the courts must consider the totality of circumstances.[7] And here, the Court of Appeals noted there were several others that would have caused a reasonable person in Colonna's position to believed he was under arrest.

The most important was the manner in which the agents arrived and took control of the family home. As the court pointed out, the house was "inundated" with 23 FBI agents, who awakened Colonna "at gunpoint," told Colonna and his family where to sit, and

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[2] See *Stansbury* v. *California* (1994) 511 U.S. 318, 322 ["An officer's obligation to administer *Miranda* warnings attaches only where there has been such a restriction on a person's freedom as to render him 'in custody.'"]; *Illinois* v. *Perkins* (1990) 496 U.S. 292, 297 ["It is the premise of *Miranda* that the danger of coercion results from the interaction of custody and official interrogation."]; *People* v. *Mayfield* (1997) 14 Cal.4th 668, 732 ["In applying *Miranda*, one normally begins by asking whether custodial interrogation has taken place."].

[3] See *Yarborough* v. *Alvarado* (2004) 541 U.S. 652, 662 ["[C]ustody must be determined based on how a reasonable person in the suspect's position would perceive his circumstances."]; *Berkemer* v. *McCarty* (1984) 468 U.S. 420, 442 ["[T]he only relevant inquiry is how a reasonable man in the suspect's position would have understood his situation."]; *People* v. *Stansbury* (1995) 9 Cal.4th 824, 830 [the issue is "whether a reasonable person in the defendant's position would have felt he or she was in custody."].

[4] See *Miranda* v. *Arizona* (1966) 384 U.S. 436, 456 ["In the incommunicado police-dominated atmosphere, [suspects] succumbed [to coercion]."]; *People* v. *Bennett* (1976) 58 Cal.App.3d 230, 239 [court describes police station as a "cold and normally hostile atmosphere"].

[5] See *Michigan* v. *Summers* (1981) 452 U.S. 692, 702, fn. 15 ["[T]he seizure in this case [in the suspect's home] is not likely to have coercive aspects likely to induce self-incrimination."]; *People* v. *Herdan* (1974) 42 Cal.App.3d 300, 307, fn.9 ["An interrogation at a suspect's home is usually, but not always, deemed noncoercive."].

[6] See *Oregon* v. *Mathiason* (1977) 429 U.S. 492, 495 ["[H]e was immediately informed that he was not under arrest."]; *California* v. *Beheler* (1983) 463 U.S. 1121, 1122; *People* v. *Leonard* (2007) 40 Cal.4th 1370, 1401 ["Detective Reed repeatedly told defendant that he was not under arrest and he was free to end the questioning at any time and leave."]; *People* v. *Aguilera* (1996) 51 Cal.App.4th 1151, 1162-4, fn.7 [telling a suspect that he is free to go "would be a significant indication that the interrogation remained noncustodial."].

[7] See *Yarborough* v. *Alvarado* (2004) 541 U.S. 652, 663 ["Courts must examine all of the circumstances surrounding the interrogation and determine how a reasonable person in the position of the individual being questioned would gauge the breadth of his or her freedom or action."].

"restricted their access to the home." Furthermore, Colonna was "guarded at all times," and he was "bracketed" by two agents when he was questioned.

The court acknowledged that a "you're not under arrest" advisory is significant, but said that it becomes virtually meaningless when, as here, there were overriding coercive circumstances.[8] As the court pointed out, "[T]here is no precedent for the contention that a law enforcement officer simply stating to a suspect that he is 'not under arrest' is sufficient to end the inquiry into whether the suspect was 'in custody' during an interrogation."

Consequently, the court ruled that Colonna was "in custody" when he was questioned. And because he had not waived his *Miranda* rights, his statements to the agents should have been suppressed. POV

[8] See *People* v. *Pilster* (2006) 138 Cal.App.4th 1395, 1405, fn.2 ["Telling a suspect that he is not under arrest does not carry the same weight in determining custody when he is in handcuffs as it does when he is unrestrained."].