Recent Case Report

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U.S. v. Craighead

(9th Cir. 2008) __ F.3d __ [2008 WL 3863709]

ISSUE

Was Craighead "in custody" for *Miranda* purposes when he was questioned at his home while officers were executing a search warrant?

FACTS

FBI agents obtained a warrant to search for child pornography at Craighead's home on an Air Force base in Arizona. The warrant was executed at 8:40 A.M. by five FBI agents, two Air Force investigators, and a sheriff's detective. After introducing herself and the detective to Craighead, the lead FBI agent told him that he was free to leave, that he was not under arrest, and that he would not be arrested that day. She also asked if he was willing to speak with her and the detective, and he said yes. Because other officers were searching the home, the three of them went to a storage room in the back of the house where, in the words of the agent, "they could have a private conversation."

In the course of the interview, which took 20-30 minutes, Craighead admitted that he had downloaded the child pornography that was subsequently found on his computer. He had not been *Mirandized*. As promised, the officers did not arrest Craighead that day. He was, however, subsequently charged with possession of child pornography, to which he pled guilty after the district court denied his motion to suppress his admission.

DISCUSSION

Craighead argued that he was "in custody" for *Miranda* purposes when he was questioned and, therefore, the agent's failure to obtain a waiver rendered his statement inadmissible. The Ninth Circuit agreed.

It is settled that officers must obtain a *Miranda* waiver before interrogating a suspect who is "in custody." It is also settled that a suspect who has not been arrested will be deemed "in custody" if a reasonable person in his position would have believed he was under arrest or that his freedom was restricted to the degree associated with an arrest.[1]

In making this determination, one circumstance that is especially significant is the location of the interview. This is because some places can be intimidating, some are neutral, while others may help reduce or even eliminate coercion. For example, police interview rooms are considered "inherently coercive,"[2] while suspects' homes are inherently hospitable. Nevertheless, the court ruled that the interview in Craighead's

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[1] See *California* v. *Beheler* (1983) 463 U.S. 1121, 1125 ["the ultimate inquiry" is whether there was a "restraint on freedom of movement of the degree associated with a formal arrest"]; *Berkemer* v. *McCarty* (1984) 468 U.S. 420, 440 [*Miranda* applies when "a suspect's freedom of action is curtailed to a degree associated with formal arrest"].

[2] *People* v. *Celaya* (1987) 191 Cal.App.3d 665, 672. ALSO SEE *People* v. *Bennett* (1976) 58 Cal.App.3d 230, 239 [court describes police station as a "cold and normally hostile atmosphere"].

home was "custodial" because the atmosphere was "police dominated," and because Craighead did not believe he was free to leave.

In discussing the "police dominated" atmosphere, the court said, "When a large number of law enforcement personnel enter a suspect's home, they may fill the home," and "the presence of a large number of visibly armed law enforcement officers goes a long way towards making the suspect's home a police-dominated atmosphere."

Although Craighead was not handcuffed, the court concluded that he was effectively restrained in the storage room because he testified that the detective "appeared to him to be leaning with his back to the door in such a way as to block Craighead's exit from the room"; and that Craighead "did not feel he had the freedom to leave the storage room because, in order to get to the room's only door, he 'would have either had to have moved the police detective or asked him to move.'" The court also noted that, while Craighead was taller and heavier than the detective, Craighead had testified that he "found him to be 'physically intimidating' because 'he represents law enforcement.'"

As noted, the FBI agent told Craighead that he was not under arrest and that he would not be arrested that day—and he wasn't. But the court discounted the significance of this circumstance because Craighead testified he did not think the FBI agent could speak for the members of the other two law enforcement agencies who were present. Thus, Craighead thought they would have prevented him from leaving if he had tried.

Based on these circumstances, the court ruled that the interview in Craighead's home "was custodial," and because Craighead had not waived his *Miranda* rights, his admission should have been suppressed.

COMMENT

There are several things about the court's analysis that are troublesome. In determining whether a suspect was "in custody," it is significant—often decisive—that an officer notified him that he was free to leave the location of the interview.[3] As the Ninth Circuit observed in *U.S.* v. *Crawford*, "Perhaps most significant for resolving the question of custody, Defendant was expressly told that he was not under arrest."[4] In fact, the Eighth Circuit has pointed out that "no governing [federal] precedent holds that a person was in custody after being clearly advised of his freedom to leave or terminate questioning."[5]

The court in *Craighead,* however, seemed confused as to how to apply this principle to situations in which the interview occurred at a place the suspect did not *want* to leave. Said the court, "If a reasonable person is interrogated inside his own home and is told he is 'free to leave,' where will he go? The library? The police station?"

The answer, of course, is that it doesn't matter *where* he goes—what counts is whether a reasonable person under the circumstances would have felt free to walk away or otherwise terminate the interview. The United States Supreme Court made this clear in 1991 in the case of *Florida* v. *Bostick*[6] when it ruled that Bostick, a passenger on a bus,

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[3] See *Oregon* v. *Mathiason* (1977) 429 US 492, 495 ["[H]e was immediately informed that he was not under arrest."]; *California* v. *Beheler* (1983) 463 US 1121, 1122 ["the police specifically told Beheler that he was not under arrest."].

[4] (9th Cir. en banc 2004) 372 F.3d 1048, 1060.

[5] *U.S.* v. *Czichray* (8th Cir. 2004) 378 F.3d 822, 826; *U.S.* v. *Brave Heart* (8th Cir. 2005) 397 F.3d 1035, 1039. Quote edited.

[6] (1991) 501 US 429.

was not seized for Fourth Amendment purposes when two officers entered during a stopover and obtained his consent to search his luggage. Like Craighead, Bostick argued that a person cannot feel free to leave a place he does not want to leave. But the Court simply pointed out that "the mere fact that Bostick did not feel free to leave the bus does not mean that the police seized him."

In any event, the court in *Craighead* thought that the agent's "free to leave" advisory had little, if any, meaning in this case because Craighead testified that the "prevailing mood" had left him with "the impression" that he wasn't free to go. According to the court, he felt that, "even if the FBI agent had permitted him to leave, he would have been stopped by the Air Force investigators or the sheriff's detective." Expanding on Craighead's feelings, the court said he "was unclear as to whether the agencies were acting in coordination," and that the presence of the different agencies "led him to doubt whether [the agent] spoke for all of the agencies" when she told him that he was free to leave.

There are three problems with the court's analysis of this issue. First, Craighead's feelings and beliefs are irrelevant. What matters is how the circumstances would have appeared to a "reasonable person" in his position. As the United States Supreme Court explained in *Stansbury* v. *California, Miranda* "custody" depends on "the objective circumstances of the interrogation, not on the subjective views harbored by either the interrogating officers or the person being interrogated."[7] And in *Berkemer* v. *McCarty* the Court said, "[T]he only relevant inquiry is how a reasonable man in the suspect's position would have understood his situation."[8]

Thus, the court in *Craighead* based its decision on information it was required to disregard, and it disregarded "the only relevant inquiry": What would a reasonable person believe if he was told by an FBI agent that he was "free to leave?" If it had addressed this question, it might have concluded that most people—especially most reasonable people—have confidence that FBI agents are honest; and that when an agent tells them they are free to leave, they can believe him.

Second, the court ruled that a person whose home is "crawling" with law enforcement officers "may not feel that he can successfully terminate the interrogation if he knows that he cannot empty his home of his interrogators until they have completed their search." But, again, the issue is not whether the suspect can order the officers to leave, but whether *he* is free to leave or refuse to answer their questions.

Third, even if Craighead's feelings were somehow relevant, the record indicates that he was lying when he testified he did not believe he was free to leave. Not only was such a belief unsupported by the surrounding circumstances, the trial judge who had listened to his testimony at the motion to suppress determined that Craighead was not a credible witness. Specifically, the court concluded that he had lied when he testified that the FBI agent never told him he was free to leave.

As noted, the court also ruled that Craighead was "in custody" because the atmosphere in his house was "police dominated." Said the court, "[O]ur analysis considers the extent to which the circumstances of the interrogation turned the otherwise

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[7] (1994) 511 U.S. 318, 323.

[8] (1984) 468 US 420, 442. ALSO SEE *Yarborough* v. *Alvarado* (2004) 541 US 652, 662 ["[C]ustody must be determined based on how a reasonable person in the suspect's position would perceive his circumstances."]; *Thompson* v. *Keohane* (1995) 516 US 99, 112 [the issue is "would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave"].

comfortable and familiar surroundings of the home into a 'police-dominated atmosphere.'" Apart from the fact that Craighead's surroundings remained "comfortable and familiar" (Craighead was on his own "turf"—the officers were strangers in an unfamiliar place[9]) the United States Supreme Court has ruled that an interview does not become custodial merely because it occurred in a police station which, after all, is the most police-dominated location on the planet.[10]

Another circumstance cited by the court in *Craighead* as proof of coercion was that the detective was armed. In fact, it mentioned this three times: ". . . and, we would add, he was armed," "[at] the door stood an armed detective," "an armed guard by the door." The court's fixation on this circumstance was silly. As the United States Supreme Court has pointed out, "That most law enforcement officers are armed is a fact well known to the public. The presence of a holstered firearm thus is unlikely to contribute to the coerciveness of the encounter absent active brandishing of the weapon."[11]

Finally, the court said that Craighead was "directed" to accompany the agent and the detective to the storage room. It appears the court was mistaken. The record indicates it was Craighead's idea—not the officers'—to conduct the interview there. As Craighead testified at the motion to suppress, he "did not want to leave his house entirely because he did not want to leave the officers alone with his belongings," and he "did not want to leave his dog unattended." POV

[9] See *U.S.* v. *Czichray* (8th Cir. 2004) 378 F.3d 822, 826 ["When a person is questioned 'on his own turf,' we have observed repeatedly that the surroundings are not indicative of the type of inherently coercive setting that normally accompanies a custodial interrogation."]; *U.S.* v. *Sutera* (8th Cir. 1991) 933 F.2d 641, 647 ["While a person may be deemed to be in custody even in his own home, it is not the type of coercive setting normally associated with custodial interrogation."]; *U.S.* v. *Newton* (2nd Cir. 2004) 369 F.3d 659, 675 ["[A]bsent an arrest, interrogation in the familiar surroundings of one's own home is generally not deemed custodial."].

[10] See *California* v. *Beheler* (1983) 463 U.S. 1121, 1124 ["*Miranda* warnings are not required simply because the questioning takes place in the station house, or because the questioned person is one whom the police suspect."]; *Oregon* v. *Mathiason* (1977) 429 U.S. 492, 495 ["Nor is the requirement of warnings to be imposed simply because the questioning takes place in the station house."].

[11] *United States* v. *Drayton* (2002) 536 U.S. 194, 204.