People v. Elizalde

(2013) 222 Cal.App.4th 351

Issue

When an inmate is booked into jail, must officers obtain a *Miranda* waiver before asking questions about his gang affiliation?

Facts

Jose Mota was a member of the Varrio Frontero Loco subset of the Sureño street gang in Contra Costa County. During a three-month period, members of the gang murdered at least three people who they believed were members of a rival Sureño subset in Richmond. Mota and Elizalde became suspects and were eventually arrested.

When Mota arrived at the Contra Costa County Jail for booking, he told a classification deputy, "I'm a gang banger, but I'm not a murderer." Another classification deputy asked him the name of his gang, and Mota said it was "VFL" which, as noted, was a subset of the Sureños. The deputy later testified that he needed to know the name of Mota's gang to make sure that he was not housed with members of rival gangs.

Mota was subsequently charged with three murders and a sentencing enhancement for committing the crimes in the furtherance of street gang activity. At trial, prosecutors were permitted to use Mota's classification statement to prove that the gang enhancement was applicable. The jury found Mota guilty of conspiracy to commit three murders, and affirmed the gang allegation.

Discussion

On appeal to the California Court of Appeal, Mota contended that his statements to the classification deputy should have been suppressed because he had not waived his *Miranda* rights beforehand. The court agreed.

It is settled that officers must obtain a *Miranda* waiver before interrogating a suspect who is in custody. Furthermore, the term "interrogation" has been broadly defined as any questioning that is "reasonably likely to elicit an incriminating response."[1] Also broadly defined is the term "incriminating response" which consists of any statement that might be used against the suspect in court.[2] Thus, at first glance it would appear that the deputy should have obtained a waiver from Mota before asking about his gang affiliation.

There are, however, exceptions to the waiver requirement. And one of them, known as the "routine booking question" exception, is that a waiver is not required before officers seek basic biographical information that is needed to complete the booking or pretrial services process; e.g., suspect's name, address, date of birth, place of birth, phone number, occupation, social security number, employment history, arrest record, spouse's name.[3] Nor is a waiver required before an officer asks questions that are reasonably necessary for a jail administrative purpose.[4]

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[1] *Rhode Island v. Innis* (1980) 446 U.S. 291, 301.

[2] See *Rhode Island v. Innis* (1980) 446 U.S. 291, 301, fn.5.

[3] See *Pennsylvania v. Muniz* (1990) 496 U.S. 582, 601; *Rhode Island v. Innis* (1980) 446 US 291, 301; *People v. Farnam* (2002) 28 Cal.4th4 107, 180.

[4] See *People v. Gomez* (2011) 192 Cal.App.4th 609, 634 [the plurality in *Pennsylvania v. Muniz* 496 U.S. 582 "indicated that the booking question exception applies not only to biographical data, but more broadly to questions "reasonably related to the *police's administrative concerns.*"].

For example, in *People v. Williams*[5] the defendant had been charged with murdering Maria Corrieo and another Hispanic woman. Prior to trial, he was transferred to Folsom Prison where, as he was being processed, an inmate named Sergio Corriero saw him. Corriero was the son and brother of the two murder victims and he knew that Williams was charged with the crimes. So Sergio approached Williams and said "You're a dead man, motherfucker." Williams then told a correctional officer that "they're going to stab me," but refused to say who "they" were. The officer then asked, "why are they going to stab you?" and Williams replied, "Because I killed two Hispanics." At Williams' murder trial, this statement was used against him and he was convicted.

Like Mota, Williams contended that the statement was obtained in violation of *Miranda* but the California Supreme Court disagreed, saying, "The officers were appropriately responding to defendant's own security concern, and would not reasonably have expected him to produce a confession … The questioning was part of a routine, noninvestigative prison process, well within the scope of the booking exception."

In another case, *People v. Gomez,*[6] the defendant was being booked into the Riverside County Jail for carjacking when a deputy asked him if he was member of a gang. He replied that he was "affiliated with Arlanza." This statement was used at trial to help prove that the carjacking was committed for the benefit of a street gang. On appeal from his conviction, Gomez argued that the statement was obtained in violation of *Miranda* but the court disagreed, saying "[t]he questions appear to have been asked in a legitimate booking context, by a booking officer uninvolved with the arrest or investigation of the crimes, pursuant to a standard booking form."

In *Elizalde*, however, the court ruled that Mota's statement should have been suppressed. Although it took note of both *Williams* and *Gomez*, it ruled that *Miranda's* routine booking question exception did not apply because it was "unlikely that the deputy would be unaware of the possibility that Mota might be a gang member and thus particularly likely to give an incriminating response."[7]

Comment

There are several problems with the court's analysis in this case. First, it repeatedly said the deputy's question did not fall within the booking question exception because it was reasonably likely to elicit an incriminating response; e.g., "Here, the deputy who asked Mota whether he belonged to a gang should have known that question was reasonably likely to elicit an incriminating response" and "[A] law enforcement professional should have known that an incoming inmate's admission of gang membership could well be incriminating." It is true that an incriminating response was reasonably likely—maybe even probable. But that is irrelevant because, if the question had not been reasonably likely to elicit an incriminating response, it would not have constituted "interrogation" which would have meant that *Miranda* was inapplicable and

[5] (2013) 56 Cal.4th 165.
[6] (2011) 192 Cal.App.4th 609.
[7] **NOTE**: The court also ruled that Mota's statement was harmless error, and it therefore affirmed his conviction. This ruling, however, was irrelevant to our discussion of the issue.

the court's entire discussion of *Miranda* and its exceptions would have been an exercise in futility.[8]

Second, *Miranda's* booking question exception permits questions that call for biographical data, which includes such things as the arrestee's name, address, date of birth, place of birth, phone number, and occupation.[9] But in ruling that questions about gang affiliation do not constitute biographical data, the court ignored the fact—and we think it is commonly recognized as a fact—that, for members of street gangs, their gang affiliation is one of the most important and prominent features of their identity (and in many cases it is also their "occupation"). It would therefore fall squarely within any reasonable definition of "biographical."

Third, the court summarily dismissed another *Miranda* exception that was even more pertinent to the facts of this case than the booking question exception. It is known as the "public safety" exception and it essentially states that a *Miranda* waiver is not required before officers ask questions that were reasonably necessary to protect the public from harm.[10] Significantly, this exception is not limited to harm to the general public or law-abiding citizens—it applies equally when the person at risk was a criminal such as Mota.[11] In fact, the record demonstrates that the trial judge in *Elizalde* had actually based his ruling on this exception because, in denying Mota's motion to suppress, he observed that the Contra Costa County Jail "housed a large population of gang members, so many that they created a serious and real risk to the safety of inmates in rival gangs as well as to the deputies themselves."

In support of its argument that the public safety exception applied, prosecutors cited the case of *U.S. v. Washington* in which the Ninth Circuit said:

> The record in the instant case shows that agents routinely obtain gang moniker and gang affiliation information for the United States Marshals and Metropolitan Detention Center in order to ensure prisoner safety. The question regarding Washington's gang moniker therefore was a routine booking question.[12]

Although the Ninth Circuit recognized that questions about gang affiliation and monikers are asked "routinely" by U.S. Marshals for prisoner safety—and "therefore" the question about Washington's gang moniker did not violate *Miranda*—the court in *Elizalde* ignored that part of the *Washington* decision. Instead, it responded by casually switching the subject back to the booking question exception, saying that the Ninth Circuit was "of no assistance to the People" because "certainly the fact of gang membership is not 'routine' identifying information."

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[8] See *Rhode Island v. Innis* (1980) 446 U.S. 291, 301. ALSO SEE *New York v. Quarles* (1984) 467 U.S. 649 [the answer to the question where's the gun? was certain to elicit an incriminating response].

[9] See *Pennsylvania v. Muniz* (1990) 496 U.S. 582, 601; *Rhode Island v. Innis* (1980) 446 U.S. 291, 301.

[10] See *New York v. Quarles* (1984) 467 U.S. 649, 656.

[11] See *People v. Stevenson* (1996) 51 Cal.App.4th 1234, 1239 ["when it is the arrestee's life which is in jeopardy, the police are equally justified in asking questions directed toward providing lifesaving medical treatment to the arrestee"]; *People v. Gomez,* "It is reasonable to take steps to ensure that members of rival gangs are not placed together in jail cells."]; *U.S. v. Lackey* (10th Cir. 2003) 334 F.3d 1224, 1227-28 ["It is irrelevant that the principal danger in this case was the risk of injury to the officers or Defendant himself, rather than ordinary members of the 'public'"].

[12] (9th Cir. 2006) 462 F.3d 1124, 1133.

Fourth, the court apparently sought to avoid the real-life consequences of its ruling by admitting that, although the deputy violated *Miranda* by asking the question, his decision to do so was objectively reasonable and even praiseworthy. Here are the court's words: "*We fully expect the police to continue to [ask safety questions] upon booking in order to protect jail personnel and inmates from harm."* But the question arises: Has the suppression sanction become so twisted that it can now be imposed on an officer whose conduct was not only objectively reasonable, but was so appropriate that the court "fully" encouraged other officers to do exactly the same? To this question, the court exercised its right to remain silent.[13]

Fifth, the court faulted the trial judge for forcing Mota "to choose between incriminating himself or risking serious physical injury." That Mota had to make this choice might have been unfortunate, but it was not the trial judge who forced him to make it. On the contrary, it was Mota's choice—and he made it the moment he joined a street gang. POV

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[13] See *Davis v. United States* (2011) __ US __ [131 S.Ct. 2419, 2426] ["The [exclusionary] rule's sole purpose, we have repeatedly held, is to deter future Fourth Amendment violations."]; *Michigan v. Tucker* (1974) 417 U.S. 433, 447 ["By refusing to admit evidence gained as a result of such conduct, the courts hope to instill in those particular investigating officers, or in their future counterparts, a greater degree of care toward the rights of an accused."]; *Pep[;e v. Osuna* (1986) 187 Cal.App.3d 845, 855 ["The goal of the exclusionary rule is to protect all members of society by inducing those we employ to enforce our laws to conduct themselves in a reasonable manner."].