People v. Elizalde

(2015) __ Cal.4th __ [2015 WL 3893445]

Issue

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

Facts

The Sureños street gang in Contra Costa County had started to "deteriorate" after its leader fled the county to avoid arrest for murder. So the gang's new leader figured that he could boost morale amongst his troops by ordering them to go out and murder some members of their rival gang, the Norteños. So, over a three-month period, they murdered three people who may or may not have been Norteños. In the course of the investigation, detectives determined that Jose Mota was involved in two of the murders, so they arrested him for conspiracy to commit murder.

During booking at the county jail, a sheriff's deputy asked Mota certain "standard booking questions," including whether he was a member of a street gang. The purpose of this question was to make sure that Mota, if he was a member, would not be housed with a member of a rival gang who would probably try to kill him. Mota replied that he was an active member of the Sureños and, at trial, prosecutors used this admission to help prove the gang-conspiracy charge. Mota was convicted and sentenced to life in prison.

The Court of Appeal ruled, however, that Mota's answer to the question should have been suppressed because the deputy had not obtained a *Miranda* waiver beforehand. The prosecution appealed to the California Supreme Court.

Discussion

It is settled that officers must obtain a *Miranda* waiver before "interrogating" a suspect who is "in custody."[1] It is also clear that a question constitutes "interrogation" if it was reasonably likely to elicit an incriminating response.[2] Thus, at first glance it would appear that the deputy had violated *Miranda* because Mota was under arrest for gang-related crimes and therefore his admission to gang membership would be incriminating.

There are, however, several exceptions to this requirement, and two of them were pertinent here. The first is the so-called "routine booking question" exception which applies when a deputy is merely seeking the type of basic biographical information that is necessary for purposes of booking. Such questions typically include name, address, date of birth, and occupation.[3] Although it is arguable that gang affiliation constitutes basic biographical information (in many cases it constitutes the arrestee's "occupation"), the court in *Elizalde* ruled that such questions do not qualify as "routine" because, said the

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[1] See *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."].

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

[3] See *Pennsylvania v. Muniz* (1990) 496 U.S. 582, 601; *People v. Panah* (2005) 35 Cal.4th 395, 471 ["compliance with *Miranda* is excused where the purpose of police questioning is to protect life or avoid serious injury and the statement is otherwise voluntary."].

court, "the state can book, arraign, and identify a suspect's relatives for visitation purposes without knowing the arrestee's gang affiliation."

The second exception is known as the "public safety exception, and it applies if the answer to the question was reasonably necessary to avert a significant threat. As the court observed in 2005, "[C]ompliance with *Miranda* is excused where the purpose of police questioning is to protect life or avoid serious injury and the statement is otherwise voluntary."[4] Moreover, this exception applies even when the person in danger was a suspect, a prisoner, or member of the jail staff.[5]

Accordingly, the prosecution argued that the question about Mota's gang affiliation fell within the public safety exception because Mota's life would have been in jeopardy if he was housed in a unit with a member of a rival gang, such as a Norteño. It also pointed out that the question was not asked as part of a criminal investigation" and it was asked "under circumstances lacking the inherently coercive features of custodial interrogation." Nevertheless, the court ruled the question about Mota's gang affiliation did not qualify as a "public safety" question because the threat to Mota was not "imminent."

The court did acknowledge that such a question might be reasonably necessary for public safety purposes because deputies "have an important institutional interest in minimizing the potential for violence within the jail population and particularly among rival gangs, which spawn a climate of tension, violence and coercion." Accordingly, it said that deputies may continue to ask such questions, but it's still a violation of *Miranda*, which means the answer will be suppressed unless they had obtained a *Miranda* waiver or unless the threat was more "imminent" than the threat to Mota.[6]

Comment

Like the Court of Appeal, the California Supreme Court focused almost exclusively on whether the deputy's question constituted a routine booking question. But we think the central issue in this case was whether the question fell within the public safety exception. In fact, that was the basis of the trial court's ruling that Mota's response was admissible. As the judge observed:

> If the jail were to house rival gang members together at random it would pose a grave risk to both the inmates and staff. So I find that it is a fundamental and

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[4] *People v. Panah* (2005) 35 Cal.4th 395, 471. Also see *New York v. Quarles* (1984) 467 U.S. 649, 656 ["[W]e do not believe that the doctrinal underpinnings of *Miranda* require that it be applied in all its rigor to a situation in which police officers asked questions reasonably prompted by a concern for the public safety."].

[5] See *People v. Williams* (2013) 56 Cal.4th 165, 188 ["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."]; *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. Cressy* (1996) 47 Cal.App.4th 981, 989 ["[The officer's inquiry] must be narrowly tailored to prevent potential harm."]; *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'"].

[6] **NOTE**: Although the court ruled that Mota's statement was obtained in violation of *Miranda*, it affirmed his conviction because of the overwhelming evidence of his gang affiliation rendered the error harmless.

> essential obligation of the sheriff's department to determine whether it is dangerous to house any inmate with any other inmate or any gang member with any rival gang member.

As noted, the California Supreme Court ruled that the threat to Mota was not sufficiently "imminent" to qualify as a public safety question. For what it's worth, we disagree. In the seminal public safety case, *New York v. Quarles,*[7] the threat was actually *less* imminent than the threat in *Elizalde*. In *Quarles*, New York police officers who had just arrested a rape suspect in an A&P supermarket, and they had reason to believe he had just hidden a gun somewhere in the store. So, without obtaining a *Miranda* waiver, an officer asked him where he had put the gun, and Quarles told him. The U.S. Supreme Court ruled that, although the question constituted custodial interrogation which triggered *Miranda*, the answer was admissible because the officer "needed an answer to his question not simply to make his case against Quarles but to insure that further danger to the public did not result from the concealment of the gun in a public area."

The court in Elizalde sought to distinguish *Quarles* by saying that "the legitimate need to ascertain gang affiliation is not akin to the imminent danger posed by a unsecured weapon." And yet, it seems that the immediacy of the danger in Elizalde was greater than that in Quarles. When Quarles was asked the question (Where's the gun?) he had already been arrested, handcuffed and pat searched; and there were very few, if any, shoppers in the store because it was 12:30 A.M.[8] Furthermore, there were four officers on the scene and they had no reason to believe that Quarles had an accomplice.[9] Finally, the officers knew approximately where Quarles had hidden the gun because one of them was either watching or chasing him from the time he entered the store. Despite this, the Court ruled the danger was sufficiently imminent.

In contrast, the deputy in *Elizalde* needed to know if Elizalde was a member of a gang because he knew that Mota might be killed or severely injured if he was placed in a unit or pod occupied by an inmate who belonged to a rival gang. And this threat would have existed the moment Mota was housed with the other inmates—maybe minutes or even seconds later!

The court did say, however, that booking deputies may continue to ask arrestees about their gang affiliation, it's just that their answers to these questions will be suppressed. Interestingly, the dissent in *Quarles* made this same suggestion: Why not just suppress Quarles' answer to the question about the gun, while acknowledging that the officer who asked the question did nothing wrong? But the majority rejected this approach, saying that the courts should not ordinarily suppress evidence that an officer had obtained in an objectively reasonable manner. Said the Court, "But absent actual coercion by the officer, there is no constitutional imperative requiring the exclusion of the evidence." POV

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[7] (1984) 467 U.S. 649.
[8] See *People v. Gilliard* (1987) 189 Cal.App.3d 285, 291 ["there was no imminent urgency; the supermarket was almost deserted"].
[9] **NOTE**: In his dissenting opinion, Justice Marshall said, "Contrary to the majority's speculations, Quarles was not believed to have, nor did he in fact have, an accomplice to come to his rescue."