Recent Case Report

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U.S. v. Ellison

(1st Cir. 2010) __ F.3d __ [2010 WL 1493847]

Issue

Were officers required to obtain a *Miranda* waiver before questioning a county jail inmate about a crime for which he was not in custody?

Facts

Ellison was being held at a county jail in New Hampshire, having been charged with attempting to set fire to the home of his ex-girlfriend, Robin Theriault. While awaiting trial, Ellison sent word that he wanted to talk to the Concord police about two robberies that had occurred in that city.

The meeting took place in the jail's library. After Ellison's handcuffs were removed, a Concord police detective told him that he did not have to answer any questions, and that he could leave the library whenever he wanted by pressing a button on a table to summon guards. Ellison then consented to a recorded interview. The detective did not *Mirandize* him.

In the course of the interview, Ellison described a robbery and an attempted robbery that were, in fact, under investigation by Concord police. He then said that the perpetrator was Theriault, his ex-girlfriend, and he recounted how the crimes had occurred. As he did so, Ellison essentially confessed to being an accessory to both crimes. As a result, he was charged with both and, when his motion to suppress his statement was denied, he pled guilty.

Discussion

Ellison contended that his statement was obtained in violation of *Miranda*. Specifically, he argued that a person who is "in custody" at a county jail is automatically "in custody" for *Miranda* purposes. And because officers are required to obtain a *Miranda* waiver before interrogating any suspect who is in custody,[1] the detective's failure to obtain a waiver rendered his statement inadmissible.

Ellison is the latest in a series of cases in which the courts have had to determine whether an incarcerated suspect was "in custody" for *Miranda* purpose when he was questioned about a crime for which he was not being held; i.e., a crime he committed before he was jailed, or a crime he committed in the institution. In most of these cases, the suspect was serving time in prison, not county jail. And the courts have almost always ruled that the inmate is not "in custody" for *Miranda* purposes so long as his freedom of movement was not restricted to an extent "over and above those normally associated with his inmate status."[2]

These courts have reasoned that prison inmates live in a custodial atmosphere that is quite unlike the intimidating environment that the *Miranda* warning and waiver procedure was designed to alleviate; i.e., "police-dominated" and "unfamiliar

[1] See *People* v. *Mayfield* (1997) 14 Cal.4th 668, 732.
[2] See *People* v. *Fradiue* (2000) 80 Cal.App.4th 15, 21.

surroundings" controlled by officers who "appear to control [the suspect's] fate."[3] Recently, the U.S. Supreme Court gave its approval to this approach, saying that "lawful imprisonment imposed upon conviction of a crime does not create the coercive pressures identified in *Miranda*."[4]

The question in *Ellison*, then, was whether this reasoning also applies when officers are questioning an inmate in a county jail. Ellison argued it did not because, unlike prison inmates, the fates of county jail prisoners—at least those who are awaiting trial—are still in the hands of local authorities. "It is true," responded the court, "that the condition of someone being held while awaiting trial, like Ellison, is not exactly the same as the convict's position, since the suspect might reasonably perceive that the authorities have a degree of discretion over pretrial conditions, at least to the point of making recommendations to a court."

Nevertheless, the court concluded—as did the California Court of Appeal in 2007[5]—that that there is no principled reason for ruling that all jail inmates awaiting trial are "in custody" as the term is used in *Miranda*. Instead, as in the state prison cases, it ruled that the question must be decided by examining the surrounding circumstances to determine whether they "would be likely to create the atmosphere of coercion subject to *Miranda* concern." Although this decision is made by considering the totality of circumstances, as a practical matter the courts have almost always ruled that inmates were not in custody when the following circumstances existed:

- The questioning took place in familiar and uncoercive surroundings such as a library, hospital, or visiting area; as opposed to an interview room or private office.
- The suspect not handcuffed during questioning, and was not otherwise restrained to a degree beyond that which is inherent in the facility.
- The officers informed the suspect that he could terminate the interview at any time, and that he could leave the room in which the interview was occurring whenever he wanted.[6]

Having noted that all three of these circumstances existed, the court in *Ellison* ruled "[t]here is no reason to find the concern of coercion behind *Miranda* implicated here." Accordingly, it ruled that Ellison's confession was not obtained in violation of *Miranda* and was, therefore, admissible. POV

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[3] *Miranda* v. *Arizona* (1966) 384 US 436, 445, 456, 450. ALSO SEE *People* v. *Clark* (1993) 5 Cal.4th 950, 985; *Saleh* v. *Fleming* (9th Cir. 2008) 512 F.3d 548, 551 ["[I]ncarceration does not ipso facto render an interrogation custodial, and that the need for a *Miranda* warning to the person in custody for an unrelated matter will only be triggered by some restriction on his freedom of action in connection with the interrogation itself."]; *U.S.* v. *Turner* (9th Cir. 1994) 28 F.3d 981, 983 ["We have declined to establish a per se rule that a defendant is in 'custody' for *Miranda* purposes simply because that defendant is in prison."]; *Cervantes* v. *Walker* (9th Cir. 1978) 589 F.2d 424, 428; *Georgison* v. *Donelli* (2nd Cir. 2009) 588 F.3d 145, 157 ["[T]he mere fact of incarceration does not necessarily require that an individual be in the sort of custody that warrants *Miranda* warnings before an interview."].

[4] *Maryland* v. *Shatzer* (2010) __ US __ [130 S.Ct. 1213, 1224].

[5] See *People* v. *Macklem* (2007) 149 Cal.App.4th 674.

[6] See *California* v. *Beheler* (1983) 463 US 1121; *People* v. *Macklem* (2007) 149 Cal.App.4th 674, 696 ["Macklem was given the opportunity to leave the room if he requested to do so"]; *Cervantes* v. *Walker* (9th Cir. 1978) 589 F.2d 424, 427-28; *U.S.* v. *Turner* (9th Cir. 1994) 28 F.3d 981, 983-84.