

Recent Case Report

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People v. Gomez

(2011) __ Cal.App.4th __ [2011 WL 383876]

Issue

When a booking officer questions an arrestee about his gang affiliation and status without first obtaining a *Miranda* waiver, are the arrestee's answers admissible in court under *Miranda's* booking question exception?

Facts

At about 1 A.M., four men accosted a man outside the man's apartment in Riverside, flashed gang signs, severely beat him, then stole his truck. A little later, a Riverside police officer spotted the truck parked on a street about two miles away. And there were four men standing around it, "pulling stuff" out and tossing it to the ground. The officer detained the men and subsequently arrested them when the victim was brought to the scene and positively identified them as the assailants. One of the men was Gomez.

During booking, a Riverside County sheriff's deputy asked Gomez his name, date of birth, and whether he had any gang affiliations. Gomez said he was affiliated with the gang Arlanza. The deputy then asked if he was an active member, an associate, or a former member. He said he was an active member.

Gomez was subsequently charged with, among other things, carjacking, assault with a deadly weapon, and active participation in a criminal street gang. At Gomez's trial, his statements to the deputy were used by the prosecutor to help prove that he was an active gang participant. He was convicted and sentenced to 23 years in prison.

Discussion

Gomez contended that his statements should have been suppressed because the deputy had not obtained a *Miranda* waiver before questioning him. Although *Miranda* waivers are ordinarily required before officers interrogate arrestees, it is settled that a waiver is not necessary when the purpose of the questioning was to obtain basic identifying data or other biographical information that is needed to complete the booking or pretrial services process; e.g., arrestee's name, address, date and place of birth, phone number, occupation, social security number, employment history, arrest record.¹

Although the courts sometimes say that such information is admissible under the "routine booking search exception" to *Miranda*, in reality it is admissible because an officer's act of seeking basic identifying information from an arrestee is not reasonably likely to elicit an incriminating response and, therefore, does not constitute "interrogation" under *Miranda*.²

¹ See *Pennsylvania v. Muniz* (1990) 496 U.S. 582, 601-602.

² See *Rhode Island v. Innis* (1980) 446 U.S. 291, 301 ["the definition of interrogation can extend only to words or actions on the part of police officers that they *should have known* were reasonably likely to elicit an incriminating response"].

In *Gomez*, however, the deputy's questions were—whether he knew it or not—reasonably likely to result in an incriminating response; i.e., Gomez's admission that he was an active gang member. In addition, as the deputy testified, he did not ask the questions for the purpose of obtaining basic identifying data but, instead, to make sure that Gomez was separated from members of rival gangs. Consequently, the issue in the case was whether such an inquiry is exempt from *Miranda*.

The court ruled it is—but only if prosecutors can prove that the questions were (1) reasonably necessary for a legitimate jail administrative purpose, and (2) were not a pretext to obtain incriminating information. Said the court, "In determining whether a question is within the booking question exception, courts should carefully scrutinize the facts surrounding the encounter to determine whether the questions are legitimate booking questions or a pretext for eliciting incriminating information."

In *Gomez*, it was apparent that the first requirement was satisfied because, according to the court, "[i]t is reasonable to take steps to ensure that members of rival gangs are not placed together in jail cells." The other issue—whether the questioning was a pretext to obtain incriminating information—was not as easily resolved because, as the court observed, "Given the prevalence of gang-related offenses, questions about an arrestee's gang affiliation are, by their nature, more likely to be incriminating than basic identifying questions about one's name, address, and age."

Nevertheless, the court concluded that there was no reason to believe that the deputy was fishing for incriminating information because (1) he was not involved in the investigation of the crime, and (2) he asked the questions in conjunction with the booking process. Said the court, "The 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."³

Accordingly, the court ruled that Gomez's answers to the deputy's inquiries fell within *Miranda's* routine booking question exception, and were thus properly admitted at his trial. POV

³ **NOTE:** Another relevant circumstance, said the court, was whether the booking officer was aware that the arrestee's answers to his questions were reasonably likely to elicit an incriminating response as to the crime for which he was arrested. In *Gomez*, the deputy testified that, while he had a "receiving sheet," he did know that the crimes were gang-related. In any event, the court ruled that such a circumstance, while relevant, is "not necessarily determinative."