Recent Case Report

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People v. Tom

(2012) __ Cal.App.4th __ [2012 WL 899572]

Issue

Was a motorist who caused a fatal traffic accident "in custody" for *Miranda* purposes because he was required to remain at the scene?

Facts

At about 8 P.M. Richard Tom was driving his Mercedes E320 northbound on Woodside Road in Redwood City at a speed estimated by police at 67 m.p.h. and possibly "much higher." The speed limit is 35. Meanwhile, Loraine Wong was driving her Nissan Maxima westbound on Santa Clara Avenue and was about to make a left turn onto Woodside. In the back seat were Ms. Wong's two daughters, 10-year old Kendall and 8-year old Sydney.

After looking for approaching traffic and seeing none, Ms. Wong entered the intersection, at which point her car was broadsided by Mr. Tom's Mercedes. The result was "major, total damage" to the Maxima including a "massive intrusion" into the left rear passenger compartment where Sydney was sitting in a booster seat. She was killed. Kendall suffered major injuries. There was no evidence that Mr. Tom applied his brakes before the crash.

One of the first officers to arrive saw that paramedics were attending to Mr. Tom who was still seated in his car. Sometime later, Mr. Tom exited his vehicle and walked around the scene with his girlfriend. Following that, he asked an officer if he could walk home because he lived "only a half-a-block away." The officer told him that "he had to stay at the scene because the investigation was still in progress." Sometime after that, Mr. Tom was observed sitting in another car at the scene; the car belonged to a friend who, as officers later learned, had just had dinner and drinks with Mr. Tom.

Sgt. Alan Bailey arrived on the scene and told another officer to place Mr. Tom in a patrol car and "ask" him if he would go to the station to give a statement and take a voluntary blood test. Mr. Tom agreed and was driven to the police station; he was not handcuffed, and his girlfriend was allowed to accompany him. Shortly after they arrived, officers detected an odor of alcohol on Mr. Tom's breath and arrested him.

He was charged with, among other things, gross vehicular manslaughter while intoxicated. During his trial, the prosecutor was allowed to present evidence of Mr. Tom's "I don't care" attitude by eliciting testimony that he never inquired about the condition of Ms. Wong or her two daughters. He was convicted of vehicle manslaughter with gross negligence.

Discussion

Mr. Tom argued that the court erred by admitting testimony of his pre-arrest silence, claiming that he was "in custody" for *Miranda* purposes and, therefore, such testimony violated his Fifth Amendment right to remain silent.[1] The question, then, was essentially whether he was "in custody" at the crash scene.

[1] See *Griffin* v. *California* (1965) 380 U.S. 609; *Doyle* v. *Ohio* (1976) 426 U.S. 610.

It is settled that custody results if a suspect reasonably believed that he was under arrest or that his freedom had been restricted to the degree associated with an arrest.[2] Citing the following circumstances, the court then determined that Mr. Tom was in custody at some point before he was driven away:

- An officer told him that he must remain at the scene.
- He "was held at the scene for approximately an hour of a half."
- During that time, "the atmosphere surrounding defendant's detention became increasingly coercive."
- He was asked to accompany officers to the police station for questioning.
- He sat in the back of a police car.
- He was not told that he was free to leave.

Having concluded that these circumstances rendered Mr. Tom "in custody" for *Miranda* purposes, the court ruled that the admission of testimony that he did not ask about the condition of Ms. Wong and her two daughters violated his Fifth Amendment right to remain silent. For that reason it ordered that Mr. Tom's conviction be reversed.

Comment

To our knowledge, this is the first case in which a court ruled that a motorist who had been involved in a major traffic accident was "in custody" because he was required to remain at the scene. While there might be situations in which such a ruling would be appropriate, this is certainly not one of them.

At the outset, it is important to note that, although traffic violators and other detainees are not free to leave, they are not automatically in custody. This is because, unlike interrogations at police stations, detentions do not ordinarily occur behind closed doors and they are usually relatively brief and not coercive. As the United States Supreme Court noted in a DUI case, "The comparatively nonthreatening character of detentions of this sort explains the absence of any suggestion in our opinions that [detentions] are subject to the dictates of *Miranda*."[3]

As noted, the court explained that a significant reason for its decision was that Mr. Tom was "held at the scene" for about 90 minutes before he was transported to the police station. Although it is true that a 90-minute detention would hardly qualify as "brief," it is apparent that Mr. Tom was not being "held" throughout this period (if at all). For example, during some of that time he was being treated by paramedics. After that, he walked around with his girlfriend and later sat inside a friend's car.

Furthermore, the abstract length of the detention is not the critical factor. Instead, the issue is whether the wait was necessary because of the surrounding circumstances. This is especially significant where, as here, the length of the detention was attributable to the

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[2] See *Yarborough* v. *Alvarado* (2004) 541 U.S. 652, 662 ["custody must be determined based on how a reasonable person in the suspect's position would perceive his circumstances"]; *People* v. *Stansbury* (1995) 9 Cal.4th 824, 830 [issue is "whether a reasonable person in the defendant's position would have felt he or she was in custody"].

[3] *Berkemer* v. *McCarty* (1984) 468 US 420, 440. Also see *People* v. *Clair* (1992) 2 Cal.4th 629, 679 ["Generally, however, [custody] does not include a temporary detention for investigation."]; *People* v. *Forster* (1994) 29 Cal.App.4th 1746, 1753 [detention in public area of government office]; *People* v. *Epperson* (1986) 187 Cal.App.3d 115, 119 [detention in hotel hallway]; *U.S.* v. *Booth* (9th Cir. 1981) 669 F.2d 1231, 1237 ["even though one's freedom of action may be inhibited to some degree during an investigatory detention, *Miranda* warnings need not be given prior to questioning"].

actions of the suspect; i.e. he had caused an accident with one fatality and one serious injury.[4] Moreover, it is apparent that officers who have arrived at the scene of such an accident will have many things on their minds and many duties to perform, the *least* of which is to quickly question the driver who caused the accident so that he will not be inconvenienced any further. In fact, any motorist who caused such an accident would reasonably expect to be kept at the scene for a lengthy interview *after* the officers had attended to the victims and concluded their preliminary investigation. Furthermore, in the case of a fatal accident, the motorist would understand that such a preliminary investigation would ordinarily be somewhat lengthy. And yet, the court in *Tom* ignored these considerations and concluded that the officer's act of telling Mr. Tom that they "needed him to remain at the scene" would have generated such coercion—either alone or with the other listed circumstances—as to render Mr. Tom in custody. There is absolutely no legal precedent for such a conclusion.

The court also described the atmosphere at the scene as "increasingly coercive." But the facts do not support such a characterization. What, we ask, was coercive about permitting Mr. Tom to walk freely around the scene with his girlfriend? Was it coercive for the officers to allow him to sit for a while inside his friend's car? Was it improper for them to ask Mr. Tom to accompany them to the police station for questioning? The California Supreme Court definitively answered the latter question in another *Miranda* case, *People* v. *Stansbury,* when it ruled that merely asking the defendant "if he would come to the police station" would have conveyed to him that he "was not a suspect and was not in custody."[5]

Finally, the court thought it significant that the officers neglected to tell Mr. Tom that he was "free to leave." But Mr. Tom was *not* free to leave—and for good reason: he had just caused a fatal accident and they needed to interview him *after* completing their other duties.[6] It is possible that the court meant to fault the officers for not telling Mr. Tom that he could refuse their request to go to the police station. But it is undisputed that the officers "asked" him to accompany them to the station and that he agreed to do so. Thus, when this issue arose in a related Fourth Amendment context, the California Supreme

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[4] See *U.S.* v. *Sharpe* (1985) 470 U.S. 675, 687-68 ["Clearly this case does not involve any delay unnecessary to the legitimate investigation of the law enforcement officers. Respondents presented no evidence that the officers were dilatory in their investigation. The delay in this case was attributable almost entirely to the evasive actions of Savage, who sought to elude the police as Sharpe moved his Pontiac to the side of the road."].

[5] (1995) 9 Cal.4th 824, 832. Also see *U.S.* v. *Lamy* (10th Cir. 2008) 521 F.3d 1257 1264 ["Lamy was asked, not ordered, to accompany the agents to the vehicle. He did so of his own volition. This voluntary decision to accompany police argues against police domination."].

[6] **NOTE**: The court said that its ruling was mandated by the U.S. Supreme Court's decision in *Berkemer* v. *McCarty* (1984) 468 U.S. 420, 440 in which the Court ruled that a man who was stopped for DUI was not "in custody" for *Miranda* purposes because the stop was "temporary and brief." Claiming that *Berkemer* "controls our analysis," the court in *Tom* ruled that Mr. Tom was "in custody" largely because his detention was not "temporary and brief." The court, however, failed to consider two things: First, it ignored the fact that an officer's duties at the scene of a fatal automobile accident are much more demanding and time-consuming that those attendant to a simple DUI investigation. Second, the idea that a search or seizure is necessarily unlawful because it is unlike a search of seizure that the U.S. Supreme Court previously upheld has been repudiated by the Court. See *U.S.* v. *Knights* (2001) 534 U.S. 112, 117 [the Court uses the term "dubious logic" to describe a ruling "that an opinion upholding the constitutionality of a particular search implicitly holds unconstitutional any search that is not like it"].

Court observed that "when a person of normal intelligence" is asked to give his consent, he will "reasonably infer he has the option of withholding that consent if he chooses."[7]

The only circumstance that was arguably coercive was that an officer asked Tom to sit in a patrol car. But this hardly renders his status as "custodial" because (1) there is nothing in the case to indicate that Mr. Tom was *ordered* to sit in the car; (2) Mr. Tom was not handcuffed; and (3), as the court observed in *People* v. *Natale*, "A suspect's mere presence in a patrol car does not unambiguously state that the elements of an arrest have been satisfied."[8]

Because the court's ruling in this case constitutes an extreme and unwarranted expansion of *Miranda,* we expect that the Attorney General's Office will seek review by the California Supreme Court. POV

[7] *People* v. *James* (1977) 19 Cal.3d 99, 116. Also see *United States* v. *Drayton* (2002) 536 U.S. 194, 206 [asking suspects "if they objected" to the search indicated they were "free to refuse"].

[8] (1978) 77 Cal.App.3d 568, 572. Also see *People* v. *Lloyd* (1992) 4 Cal.App.4th 724, 734 ["Once it was discovered that someone was still inside the business, it was reasonable for the police to temporarily detain Lloyd in the car until they could stabilize the situation"]; *U.S.* v. *Rodriguez* (7th Cir. 1987) 831 F.2d 162, 166 ["[S]itting in a patrol car for several minutes was merely a normal part of traffic police procedure for identifying delinquent drivers"]; *U.S.* v. *Stewart* (7th Cir. 2004) 388 F.3d 1079, 1084 ["The permissible scope of a *Terry* stop has expanded in recent years to include … temporary detentions in squad cars"].