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Constitutional Law - Confronting Accused with Evidence Against Him as "Interrogation" Within the Meaning of Miranda

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CONSTITUTIONAL LAW—CONFRONTING ACCUSED WITH EVIDENCE AGAINST HIM AS "INTERROGATION" WITHIN THE MEANING OF *MIRANDA*—*State v. McLean*, 294 N.C. 623, 242 S.E.2d 814 (1978).

Miranda Gets the Silent Treatment

INTRODUCTION

Hundreds of cases have grappled with the application of the United States Supreme Court's decision in *Miranda v. Arizona.*[1] Many of those cases have dealt with the question of what constitutes "custodial interrogation" requiring "Miranda warnings" by law enforcement officers before statements elicited from a defendant may be used against him.[2]

In *State v. McLean,*[3] the North Carolina Supreme Court held that, under the facts of that case, confronting a defendant with evidence against him does not constitute "interrogation." Therefore, statements made by the defendant properly were admitted against him even though he had not been advised of his rights under *Miranda.*

THE CASE

The State tried and convicted the defendant on an indictment charging him with second degree rape. The rape occurred in a parking lot behind an apartment building. A few hours after the rape, a friend of the victim found a driver's license, a checkbook bearing the name "Robert McLean, Jr." and a cap in the parking lot. These items were turned over to the police when the rape was reported.

A warrant for the defendant's arrest on the rape charge was obtained on May 10, 1977. Sometime prior to May 13, 1977, the defendant was arrested and placed in jail on an entirely unrelated charge. The subsequent events were reported by the court as follows:

> At about 7:55 a.m. on 13 May, Detective Holder went to the jail. He had in his pocket at the time the arrest warrant charging defen-

1. 384 U.S. 436 (1966).

2. "Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed." *Id.* at 444.

3. 294 N.C. 623, 242 S.E.2d 814 (1978).

dant with rape. Officer Holder walked into the room carrying in his hand a work pad and a check which was found at the scene of the rape in the rear parking lot of 1832 Wilshire Avenue. He also had the cap found at the scene. The check had the name "Robert McLean, Jr." on it and was on top of the work pad in plain view. Officer Holder did not speak. He placed his work pad and the check on top of a desk in plain view of defendant but said nothing. Defendant reached over, looked at the check, took hold of it and said, "This is my check. I wrote this check when I did not know how to write checks. However, the check is good." Officer Holder said nothing. When defendant observed the cap he looked at Officer Holder, began to act nervous, his hand began to quiver, and he said "What's that man?" Officer Holder said nothing. A few seconds passed and the officer lit a cigarette. Defendant asked for a cigarette and the officer gave him one. In the words of Officer Holder: "Few more seconds passed as we were smoking the cigarettes and before I started to leave the room he stated 'I liked to have been a free man.'" Shortly thereafter, at 8:15 a.m., Officer Holder read the warrant charging defendant with rape and advised defendant of his constitutional rights. Defendant refused to sign a waiver. No interrogation thereafter took place.[4]

At trial the defendant challenged the competency of Officer Holder's testimony as to the defendant's statements. The trial judge found that defendant's statements were voluntary and not in response to any in-custody interrogation. The statements were admitted in evidence.

BACKGROUND

Miranda v. Arizona[5] held that: "The prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination."[6] The court set forth with particularity the warnings which the defendant must be given before interrogation may take place if any statements elicited are to be admissible at trial.[7]

The rationale of *Miranda* was that the Fifth Amendment prohibition against compelling the accused to incriminate himself extended to an accused who was in custody. Since custodial surround-

4. *Id.* at 626, 242 S.E.2d at 816.
5. 384 U.S. 436 (1966).
6. *Id.* at 444.
7. *Supra* note 2.

ings are inherently compulsory, adequate procedural safeguards are necessary to insure that any statement made by an accused is truly the product of his free will rather than the inherently compelling atmosphere of police custody.[8]

Only statements elicited by interrogation from a defendant who is in custody must be preceded by warnings designed to inform the accused of his rights.[9] Voluntary statements by an accused remain admissible under *Miranda*. *Miranda* designated "custody" as the point at which the privilege against self-incrimination begins to operate[10] and "interrogation" as the conduct which is prohibited unless the required warnings are given.

Miranda did not provide a clear definition of what constitutes "interrogation" for purposes of applying the warnings required. At one point the court said, "By custodial interrogation, we mean *questioning initiated by law enforcement officers* after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way."[11] The court then proceeded to discuss at length the psychological techniques of interrogation.[12] The opinion is unclear as to what conduct other than questioning might be considered "interrogation." State courts are divided on what conduct other than questioning constitutes "interrogation."[13]

ANALYSIS

The North Carolina Supreme Court in *State v. McLean*[14] elected to decide what constitutes "interrogation" for *Miranda* pur-

8. The court said that procedural safeguards are necessary to dispel the compulsion inherent in custodial surroundings in order for a statement obtained from a defendant to be truly the product of his free choice. 384 U.S. at 458. However, it is clear from a reading of the decision as a whole that the fact of custody alone is not sufficient to render otherwise voluntary statements involuntary. Some type of interrogation must also take place. There is not a right to *Miranda* warnings merely because the defendant is in custody.

9. What constitutes "custody" for purposes of *Miranda* has been the issue in many cases. The question is beyond the scope of this note. The cases on the point are collected in Annot., 31 A.L.R.3d 565 (1970).

10. 384 U.S. at 478.

11. *Id.* at 444 (emphasis added; footnote omitted).

12. *Id.* at 448-58. It would appear that the court did not intend to confine "interrogation" to verbal questioning in light of its concern with the psychological techniques used in modern police investigation. The court has subsequently held that a declaratory statement by a police officer to a defendant constituted interrogation. Brewer v. Williams, 430 U.S. 424 (1977).

13. The *McLean* decision cites several examples. 294 N.C. at 629, 242 S.E.2d at 818.

14. 294 N.C. 623, 242 S.E.2d 814 (1978).

poses on a case by case basis, rather than by adopting any particular definition or test.[15] The court offered no explanation of its conclusion that the officer's acts did not constitute interrogation stating that "[the officer] did not ask questions or engage in conduct which, in our view, is inquisitional in nature."[16] The court refused to give any insight as to what factors it would consider in determining what conduct would constitute interrogation.

A policy of post hoc determinations and no announced criteria by which such determinations will be made certainly provides the court with ample flexibility in formulating its standards. This same flexibility, however, presents the North Carolina bench and bar with certain difficulties in determining at what point confronting the defendant becomes inquisitional in nature so as to mandate the *Miranda* warnings. The court made clear that future cases may involve conduct which will constitute "interrogation" even though no questions are asked.[17]

The *McLean* decision may be analyzed with reference to three elements involved in confronting a defendant with evidence: (1) the length of time during which the confrontation takes place; (2) the causal connection between the confrontation and any statements elicited; (3) the intent of the law enforcement officer in causing the confrontation.

The confrontation in *McLean* took place over a period of approximately twenty minutes. If "interrogation" occurs without *Miranda* warnings, then its duration is irrelevant since any statement elicited would be inadmissible. Thus, the question is whether the length of time during which the confrontation takes place has any bearing on whether such conduct constitutes interrogation. Certainly if a defendant were repeatedly confronted with incriminating evidence over a prolonged period of time, this should be a factor to be considered to determine if interrogation has occurred. The length of the confrontation should also shed some light on the intent of the police officer in staging the confrontation. However, the court did not discuss that issue, and the facts make it clear that the police officer had more than ample time to serve the warrant if that were his only intent.[18] Thus, while the length of time may become a factor in future cases, apparently it was not a factor in the *McLean* case.

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15. *Id.* at 629, 242 S.E.2d at 818.

16. *Id.*

17. *Id.* at 630, 242 S.E.2d at 818.

18. The officer in *McLean* asserted that his intent was to ascertain the true identity of the defendant. Record at 7, 40, State v. McLean, 294 N.C. 623, 242 S.E.2d 814 (1978).

The existence of a causal connection between the police officer's conduct and the defendant's statements is not the sole factor in determining whether interrogation has occurred. If the defendant in *McLean* had not been confronted with the evidence against him, he would not have made a statement. The defendant made his statements in direct response to the evidence placed in front of him. When the defendant was advised of his rights, he refused to waive them and made no further statement.

If one looks to the facts of this case to determine the police officer's intent in staging the confrontation, clearly his intent was to elicit a statement from the defendant.[19] The officer had the warrant for defendant's arrest in his pocket when he went to the jail. He went to the jail for the purpose of seeing the defendant. He placed the evidence in plain view of the defendant and never spoke a word in response to defendant's questions. Thus, apparently the court did not feel that the intent of the officer to elicit information was a determining factor.

Since none of the factors discussed above constitutes a determining factor in deciding what constitutes interrogation, and the court does not discuss the reasons why it held the officer's conduct not to be inquisitional in nature, the case provides no guidelines as to what will be treated as interrogation in future cases.

The dissent[20] takes the view that the officer's conduct was intended to elicit an incriminating statement and placed the accused under a compulsion to speak, thus constituting interrogation. The dissent further noted that the practical effect of the majority opinion would be to encourage the police to devise ways to evade the requirements of *Miranda*.[21]

CONCLUSION

The supreme court's decision in *McLean* is inconsistent with the clear intent of the *Miranda* decision to protect the privilege against self-incrimination against the inherently compelling atmosphere of custodial surroundings. *McLean* encourages law enforcement officers to devise means of indirectly interrogating defendants without advising them of their constitutional rights. The case offers

19. Even if the officer's assertion that his purpose was to ascertain the identity of the defendant is true, *id.*, *supra* note 18, his effort was still an attempt to elicit incriminating information since the items he used were the same items which tended to connect the defendant with the crime scene.

20. 294 N.C. at 635, 242 S.E.2d at 821.

21. *Id.* at 636, 242 S.E.2d at 822.

little guidance to lawyers and judges for the decision of future cases.

The dissent takes the better view that if the purpose is to elicit information, no matter what form it takes, then the defendant must be given *Miranda* warnings if his statements are to be admitted at trial.

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