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Recent Developments: Pennsylvania v. Muniz: Videotaped Evidence Can Be Admitted at the Criminal Trials of Drunk Drivers

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Court disagreed, and stated that "we are satisfied that the consuming public understands that licenses. . . are issued by governmental authorities and that a host of certificates. . . are issued by private organizations." *Id.* at 2289.

In balancing the State's interest in avoiding misleading consumers with the cost of completely banning advertisements of certification, the Court found that less burdensome alternatives existed. The State could create initial screening criteria for certifying organizations or require disclaimers on attorney advertisements about the organizations or their standards. *Id.* at 2292-93.

It is interesting to note that Rule 2-105(a)(3) allows for attorneys to advertise specialties in patent or trademark law. The Court stated that a complete ban on advertising certifications by the state would be undermined by allowing such exceptions. *Id.* at 2291.

In a dissenting opinion, Justice O'Connor, joined by Chief Justice Rehnquist and Justice Scalia, argued that the State had a legitimate interest in regulating abuse in attorney advertising and that the public could be readily misled by the juxtaposition on the letterhead of petitioner's licensing and his NBTA certification. Therefore, consumers could mistakenly conclude that Peel's services were of higher quality because of his certification and that the State had approved the certification. *Id.* at 2300 (O'Connor, J., dissenting). As such a misleading advertisement, the State had the authority to prevent Peel from advertising his certification. *Id.* at 2301 (O'Connor, J., dissenting).

In *Peel v. Illinois,* the United States Supreme Court upheld an attorney's right to advertise his certification under the first amendment commercial speech standards. States may regulate advertising certifications but may not ban their use altogether. Future advertising by attorneys of their certifications might, therefore, be required to meet minimum state screening requirements or be forced to include restricting language such as disclaimers.

— Joan Ochoa

Pennsylvania v. Muniz: VIDEOTAPED EVIDENCE CAN BE ADMITTED AT THE CRIMINAL TRIALS OF DRUNK DRIVERS

In the drunk driving case of *Pennsylvania v. Muniz,* 110 S. Ct. 2638 (1990), the United States Supreme Court held that evidence obtained by way of videotape was admissible because the questions fell within the "routine booking" exception to *Miranda v. Arizona,* 384 U.S. 436 (1966). The Court also refused to suppress parts of the videotaped evidence concerning statements made during processing, since they were voluntary and not made during custodial interrogation.

Inocencio Muniz was arrested for driving under the influence of alcohol and transported to a booking center after failing three standard field sobriety tests. *Muniz,* 110 S. Ct. at 2642. In line with police procedure, the proceedings at the booking center were videotaped. The attending officer first asked Muniz the standard questions, including his name, address, height, weight, eye color, date of birth, and current age, to which Muniz stumbled over several responses. The officer then asked Muniz if he knew the date of his sixth birthday which Muniz was unable to provide. Finally, Muniz performed the three sobriety tests that he failed earlier and was requested to submit to a breathalyzer test, at which time he made several incriminating statements. *Id.* When Muniz refused to take the breath test, he was advised of his *Miranda* rights for the first time. The videotape of the proceedings was admitted into evidence at his bench trial. Muniz was subsequently convicted of driving under the influence of alcohol. The Superior Court of Pennsylvania reversed his conviction, holding that once Muniz was arrested and taken into custody, all utterances and responses were clearly compelled by the questions presented him during the booking proceedings. Therefore, the Court concluded that his responses and communications were elicited before he received his Miranda warnings and should have been suppressed. *Id.* at 2643.

The Supreme Court granted certiorari to decide whether various incriminating utterances of a drunk driving suspect, made while performing a series of sobriety tests, constitute testimonial responses to custodial interrogation for purposes of the self-incrimination clause of the fifth amendment. *Id.* Eight justices agreed that most of the statements admitted into evidence did not violate the accused's fifth amendment rights, although three reached this conclusion under a different analysis.

The majority opinion began with a discussion of the types of evidence a suspect could not be compelled to produce. The Court noted that *Schmerber v. California,* 384 U.S. 757 (1966), held that the self-incrimination clause did not protect a suspect from being compelled to produce "real or physical evidence." *Muniz,* 110 S. Ct. at 2643. Yet the clause did protect an accused from being compelled to provide evidence of a testimonial or communicative nature. *Id.*

Furthermore, since the utterances were made prior to Muniz's receiving his *Miranda* warnings, the Court also focused on the "informal compulsion exerted by the law enforcement officers during in-custody questioning." *Id.* at 2644 (quoting *Miranda v. Arizona,* 384 U.S. 436, 461 (1966)). Thus, the Court concluded that the case implicated both the "testimonial" and "compulsion" components of the privilege against self-incrimination in the context of pretrial questioning. *Id.*

Next, the Court addressed Muniz's responses to the initial questions regarding name, address, weight, eye color, date of birth, and current age. Although Muniz's responses were incriminating, to violate the self-incrimination clause, they must have been either testimonial or elicited by custodial interrogation. *Id.* "In order to be testimonial, an accused's communication must itself, explicitly or implicitly, relate a factual assertion or disclose information." *Id.* at 2646 (quoting *Doe v. United States,* 487 U.S. 201, 210 (1988)). In comparison, the Court cited numerous types of evidence held not to be testimonial including fingerprinting, photographing, appearing in court, standing, walking, writing, speaking, and being forced to provide a blood sample. Finally, the Court concluded that testimonial evidence encompasses all responses that, if asked of a sworn suspect during a criminal trial, would place the suspect in the cruel trilemma of self accusation, perjury, or contempt.

Id. at 2648. Thus, the statements were not testimonial. *Id.* at 2649.

However, the Court concluded that when Muniz was asked whether he knew the date of his sixth birthday, he was confronted with the cruel trilemma in a coercive environment created by the custodial interrogation. *Id.* Since his answer was testimonial, it should have been suppressed.

The Court then addressed the State's argument that the initial questioning period did not constitute custodial interrogation or its "functional equivalent." *Id.* at 2650. In *Rhode Island v. Innis,* 446 U.S. 291 (1980), the Supreme Court defined the "functional equivalent" of interrogation as "any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect." *Muniz,* 110 S. Ct. at 2650. Finding that custodial interrogation did exist, it nonetheless held Muniz's answers regarding name, address, weight, eye color, date of birth, and current age admissible as falling within the newly adopted "routine booking" exception, established in *United States v. Horton,* 873 F.2d 180 (8th Cir. 1989), which exempts questions to secure the information necessary to complete booking or pretrial services. *Muniz,* 110 S. Ct. at 2650.

Muniz made additional statements while performing three sobriety tests and while deciding not to take a breathalyzer test. Yet, the Court noted, the statements were made in response to carefully scripted instructions not intended to elicit any verbal responses. *Id.* at 2651. Therefore, the officer's words or actions did not constitute interrogation and even the questions requesting a response were merely "attendant to" legitimate police procedure. *Id.* Hence, Muniz's statements were made voluntarily and thus were admissible. *Id.*

Chief Justice Rehnquist, writing a concurring opinion, agreed that the statements made when the accused was asked the date of his sixth birthday, should not have been suppressed. This result was premised on the grounds that if the police may require Muniz to use his body in order to demonstrate the level of his physical coordination, they should be able to require him to speak or write in order to determine mental coordination. *Id.* at 2653 (Rehnquist, C. J., concurring). Rehnquist disagreed with the recognition of a routine booking exception to *Miranda.* He felt the "booking" questions were not testimonial so there was no need to apply the privilege. *Id.* at 2654 (Rehnquist, C. J., concurring).

Justice Marshall, the sole dissenter, agreed with the majority that Muniz's response to the question regarding the date of his sixth birthday should have been suppressed as the question constituted custodial interrogation prior to receipt of *Miranda* warnings. *Id.* (Marshall, J., dissenting). He disagreed, however, with the recognition of the routine booking exception and believed the Court had misapplied the *Innis* test when considering custodial interrogation. *Id.* at 2655-56 (Marshall, J., dissenting). Marshall believed the routine booking exception would necessitate difficult, time consuming litigation over whether particular questions were routine, necessary for recordkeeping and designed to elicit incriminating testimony. *Id.* at 2655 (Marshall, J., dissenting).

It is apparent that the Supreme Court will continue their conservative outlook with regard to drunk driving prosecutions. As illustrated by this case, if evidence is not obtained by way of custodial interrogation or falls within the routine booking exception to *Miranda,* the courts will allow evidence obtained by way of videotape.

— *Freddie J. Traub*

Williams v. Wilzack: MARYLAND STATUTE ALLOWING INVOLUNTARILY COMMITTED MENTALLY ILL PATIENTS TO BE FORCIBLY MEDICATED VIOLATED PROCEDURAL DUE PROCESS

In *Williams v. Wilzack,* 319 Md. 485, 573 A.2d 809 (1990), the Court of Appeals of Maryland held that § 10-708 of the Maryland Health-General Article, which established procedures for medicating mentally ill patients against their will, lacked the requisite procedural due process protections guaranteed by the state and federal constitutions. Although the decision did not render the statute unconstitutional, it potentially did weaken the ability of psychiatrists to forcibly medicate possibly dangerous patients, even if such medication is approved by a clinical review panel.

Laquinn Williams was committed to a state mental hospital after a judicial determination that he was not criminally responsible. See Md. Health-Gen. Code Ann. § 12-108 (1990). After Williams was diagnosed a paranoid schizophrenic, his doctor prescribed treatment with an antipsychotic drug. Williams objected to taking the medication for fear it would disrupt his thought process, interfere with the exercise of his Sunni Muslim religion, and reduce his ability to assist his attorney in a subsequent release hearing. *Id.* at 490, 573 A.2d at 811. A clinical review panel was convened to review William's decision. Williams and his lawyer were allowed to be present for part of the hearing so that Williams could explain his reasons for objecting. The panel, however, unanimously determined that the medication was the least intrusive way to effectively treat Williams and ordered that he be forcibly medicated. *Id.* at 490, 573 A.2d at 811. Williams was medicated against his will for approximately two weeks until he stated his plans to obtain an injunction to prohibit the medication. The medication was, therefore, temporarily discontinued and another review panel was convened. This second review panel also unanimously recommended that Williams be forcibly medicated. *Id.* at 491, 573 A.2d at 812.

Williams filed an action in the Circuit Court for Montgomery County alleging that the procedures under § 10-708 violated his state and federal constitutional rights to privacy, due process, freedom of speech, thought, and religion. *Id.* The trial court determined that § 10-708 was both constitutional on its face and as applied. As such, the court granted the State's motion for summary judgment and denied William's motion for partial summary judgment. Williams appealed, and the court of appeals granted certiorari before the court of special appeals decided the case. *Id.* at 492, 573 A.2d at 812.

The court of appeals initially explained that without § 10-708, the common law rule as set forth in *Sard v. Hardy,* 281 Md. 432, 379 A.2d 1014 (1977) would apply. The *Sard* rule required that a physician obtain a patient's consent before he treated a patient in a non-emergency situation. *Wil-*