North Carolina Central Law Review

Volume 11
Number 1 *Volume 11, Number 1*

Article 10

10-1-1979

Cervantes v. Walker: Custodial Interrogation in Prison

Cy A. Grant

Cervantes v. Walker: Custodial Interrogation in Prison?

In *Miranda v. Arizona*,[1] the Supreme Court held that statements made by a defendant during custodial interrogation may not be used by the prosecution unless effective procedural safeguards were used to secure the privilege against self-incrimination.[2] Subsequent courts have encountered difficulty in applying the *Miranda* "custodial interrogation" standard to determine whether a particular situation required the procedural safeguards. In *Cervantes v. Walker*,[3] the United States Court of Appeals for the Ninth Circuit applied the *Miranda* standard and held that a prison official's questioning of a prisoner concerning marijuana discovered in the prisoner's belongings was not custodial interrogation.[4] The decision diminishes the scope of the *Miranda* decision.

Enrigue Cervantes was incarcerated in the county jail.[5] Due to a recent fight with another inmate, Cervantes was being moved by a deputy sheriff from one jail cell to another.[6] The deputy instructed Cervantes to get his belongings and then took him to the jail library to talk with the shift commander before the move.[7] Cervantes left his belongings on a table outside the library door and entered the library.[8] In accordance with standard jail procedure when moving inmates, the deputy searched Cervantes' belongings and discovered a matchbox containing a green odorless substance suspected to be marijuana.[9] The deputy took the matchbox and contents into the library in order to have Cervantes identify the substance.[10] The library dimensions were about six feet by four feet.[11] In the presence of the shift commander, and at a distance of about one and one-half feet from Cervantes, the deputy opened the matchbox, showed the contents to the petitioner, and asked, "What's this?" Cervantes replied, "That's grass man."[12] The deputy

1. 384 U.S. 436 (1966).
2. *Id.* at 444.
3. 589 F.2d 424 (9th Cir. 1978).
4. *Id.* at 429.
5. *Id.* at 426.
6. *Id.*
7. *Id.*
8. *Id.*
9. *Id.* at 427.
10. *Id.*
11. *Id.*
12. *Id.*

placed Cervantes under arrest.[13] Cervantes' statement to the deputy was admitted at trial.[14] Cervantes was convicted of possessing narcotics in a county jail and sentenced to three years.[15] Cervantes petitioned for a writ of habeas corpus to the United States District Court challenging, *inter alia*, the admission of his statement at trial as violative of his privilege against self-incrimination.[16] The district court dismissed the petition.[17] The Ninth Circuit affirmed.

In *Miranda*, the Supreme Court 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."[18] The Court then set forth the procedual safeguards, now designated as the *Miranda* warnings.[19] The reasoning behind the Court's decision was to combat a situation in which there are inherently compelling pressures that work to undermine the individual's will to resist and to compel him to speak when he would otherwise not do so freely.[20]

The Court defined custodial interrogation as "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."[21]

The Court, however, did not directly address exactly when the right against self-incrimination arose.[22] The reason for the Court's failure to delve into this problem was evident. The facts of *Miranda* and its companion cases did not demand a detailed analysis of the problem.[23] All

13. *Id.*
14. *Id.*
15. *Id.*
16. *Id.*
17. *Id.*
18. 384 U.S. at 444.
19. *Id.* at 479. The Court stated: "He must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to a presence of an attorney, and that if he cannot afford an attorney one will be appointed if he so desires."
20. *Id.* at 467.
21. *Id.* at 444.
22. Professor Graham suggests: "Perhaps the Court was reluctant to completely define 'custodial interrogation' before experience revealed the exact scope of the problem with which the definition would be concerned." Graham, *What is "Custodial Interrogation?": California's Anticipatory Application of Miranda v. Arizona*, 14 U.C.L.A.L. REV. 59, 63 (1966).
23. The Supreme Court combined four cases for hearing on the issue of whether the defendant's constitutional rights had been violated during police interrogation. The four cases involved the admission as evidence of confessions obtained from defendants during police interrogation without the defendants first being apprised of their constitutional rights: Miranda v. Arizona, 98 Ariz. 18, 401 P.2d 721 (1963); Vignera v. New York, 21 A.D.2d 752, 252 N.Y.S.2d 19 (1961); Westover v. United States, 342 F.2d 684 (9th Cir. 1965); People v. Stewart, 62 Cal. 2d 571, 400 P.2d 97 (1965).

of the cases "share[d] salient features—incommunicado interrogation in a police dominated atmosphere."[24] Confusion arose among subsequent court decisions because the Court's definition of custodial interrogation required a warning to be given not only in those cases in which the "salient features" of *Miranda* were present, but in all cases where an individual was "deprived of his freedom of action in any significant way."[25] Thus, subsequent courts encountered difficulty not in determining whether there was an interrogation, which was established in *Escobedo v. Illinois*,[26] but in applying the *Miranda* standard for custody.

Miranda, however, discussed situations that were not custodial interrogations. Such situations were designated as on-the-scene questioning. The *Miranda* opinion stated:

> Our decision is not intended to hamper the traditional function of police officers in investigating crime. . . . When an individual is in custody on probable cause, the police may, of course, seek out evidence in the field to be used at trial against him. Such investigation may include inquiry of persons not under restraint. General on-the-scene questioning of citizens in the fact-finding process is not affected by our holding.[27]

In applying the *Miranda* standard, the courts developed various tests. Most courts turned to variations of an objective test: whether a reasonable man similarly situated would believe that he was "in custody" or "otherwise deprived of his freedom of action in any significant way."[28] In *People v. Arnold*,[29] the California Supreme Court, using a four-factor test,[30] found the questioning of a defendant at the prosecuting attor-

---

24. 384 U.S. at 445.

25. *Id.* at 444.

26. 378 U.S. 478 (1964).

27. 384 U.S. at 477. *See, e.g.*, United States v. Messina, 388 F.2d 393 (2d Cir. 1968), *cert. denied*, 390 U.S. 1026 (1968) (where police interviewed a defendant on a park bench and in a restaurant); United States v. Essex, 275 F. Supp. 393 (E.D. Tenn. 1967) (where defendant invited two federal agents into her living room); Tillery v. State, 3 Md. App. 142, 238 A.2d 125 (1968) (where an officer questioned defendant in the hospital merely as a victim of a shooting and was unaware that defendant had been shot attempting a robbery); Commonwealth v. Barclay, 212 Pa. Super. 25, 240 A.2d 838 (1968) (where an officer interviewed defendant in defendant's living room in the presence of both his wife and father, informing him that he had a complaint that defendant was involved in a "drag race"). The elimination of on-the-scene questioning from the auspice of custodial interrogation minimized only slightly the subsequent problem of whether an individual was "deprived of his freedom of action in any significant way." 384 U.S. at 444.

28. *See* Smith, *The Threshold Question in Applying Miranda: What Constitutes Custodial Interrogation?*, 25 S.C.L. REV. 699 (1974); Annot., 31 A.L.R.3d 565 (1970).

29. 66 Cal. 2d 438, 448-49, 426 P.2d 515, 521, 58 Cal. Rptr. 115, 121 (1967). The defendant testified that she believed she had no other alternative than to comply with the directive summoning her for interrogation. Thus, the Court found that once she had arrived at her summoner's office, "she might reasonably have believed that if she had attempted to leave during the course of the interrogation the district attorney would have arrested her or told police officers to physically detain her."

30. *Id.* at 443, 426 P.2d at 520, 58 Cal. Rptr. at 120. The Court's test is whether a reasonable

ney's office to be custodial interrogation where the prosecuting attorney had strong reason to believe that the defendant was guilty. In *People v. Yukl*,[31] employing the objective standard of a "reasonable man innocent of any crime," the New York Court of Appeals found that statements made by defendant at the police station were voluntary; thus, *Miranda* warnings were not required. In *United States v. Del Soccorro Castro*,[32] also using a four-factor test,[33] the Fifth Circuit held that questioning of a defendant in an air-terminal customs office was custodial interrogation. Other courts employ a more subjective test. In *United States v. Harrison*,[34] the district court, finding custodial interrogation, held that a parolee who was questioned at police headquarters was entitled to *Miranda* warnings prior to such questioning. Still other courts have not applied a specific test, but have examined the environment in which the questioning took place.[35] The Eighth Circuit in *Utsler v. Erickson*,[36] held that questioning of defendant in an automobile-stop situation did not require *Miranda* warnings because the questioning was routine.

The Supreme Court has approached the question on a case-by-case basis, examining the totality of the circumstances. In *Orozco v. Texas*,[37] the Court made it clear that custodial interrogation could take place outside of the police station. The Court found that the defendant

---

person would have believed that he could not leave freely. The Court considers four factors in making that determination: (1) language used to summon him; (2) the surroundings of the interrogation; (3) the extent to which he is confronted with evidence of his guilt; and (4) pressure exerted to detain him.

31. 25 N.Y.2d 585, 256 N.E.2d 172, 307 N.Y.S. 857 (1969), *cert. denied*, 400 U.S. 851 (1970).

32. 573 F.2d 213, 216 (5th Cir. 1978). The Court's decision hinged on the defendant's testimony that she did not believe she was free to leave, which was buttressed by the customs officer's request that she accompany him to a confined area some distance from their initial encounter.

33. *Id.* at 215. The Fifth Circuit's test is comprised of four factors: (1) probable cause to arrest; (2) the subjective intent of the interrogator to hold the suspect; (3) the subjective belief of the suspect concerning the status of his freedom; and (4) whether the investigation has focused on the suspect.

34. 265 F. Supp. 660 (S.D.N.Y. 1967).

35. United States v. Thomas, 396 F.2d 310, 314 (2d Cir. 1968). The Court held that exculpatory statements made by the defendants at the time they were approached on a street by detectives were made in the process of an on-the-scene questioning, and were admissible on the basis of noncompliance with *Miranda*. United States v. Gibson, 392 F.2d 373, 376 (4th Cir. 1968). The Court held that the atmosphere surrounding a defendant, who was questioned on the street by an officer who received an anonymous tip that the defendant was driving a stolen automobile, was not coercive, and statements freely made by the defendant were admissible, even in the absence of *Miranda* warnings.

36. 440 F.2d 140, 143 (8th Cir. 1971). The Court held, "[t]he police in investigating a probable offense may ask preliminary questions on identification and the recent whereabouts of persons under suspicion in order to proceed with the investigation and quickly eliminate those who appear to be beyond suspicion."

37. 394 U.S. 324 (1969). The Court rested its decision on the *Miranda* opinion, which declared that the warnings were required when the person being interrogated was . . . otherwise deprived of his freedom of action in any significant way. Thus, the Court found that the defendant had been significantly deprived of his freedom of action in a significant way because the officer

was "in-custody" when questioned by four officers in his bedroom at four in the morning concerning his presence at the scene of a homicide. In *Mathis v. United States*,[38] the Court held that a defendant questioned in a jail cell by Internal Revenue agents about a matter unrelated to his confinement constituted custodial interrogation. In *Beckwith v. United States*,[39] however, the Court found that a defendant was not "in-custody" when questioned at another's house by federal agents concerning income tax violations, even though the questioning had reached the accusatory stage. In *Oregon v. Mathiason*,[40] the Court did not find custodial interrogation where the defendant, a parolee, was questioned by an officer at police headquarters behind closed doors.

The Supreme Court has begun to narrow the scope of *Miranda*, as evinced by *Beckwith* and *Mathiason* where all possible tests were ignored. Other *Miranda* based decisions also demonstrate a limiting of *Miranda*. In *Harris v. New York*,[41] the Court held that statements which were inadmissible in the prosecution's case-in-chief because of insufficient warnings could be used to impeach the defendant's trial testimony. In *Michigan v. Tucker*,[42] statements made by defendant following insufficient warnings were used to locate an individual who was allowed to give testimony that incriminated the defendant. The Court found that the use of the testimony did not violate defendant's fifth amendment rights. In *Oregon v. Hass*,[43] statements made by the defendant following a request to consult with an attorney were used to impeach his testimony, even though *Miranda* ruled that if an accused "states that he wants an attorney, the interrogation must cease until an

---

testified that the defendant was under arrest and not free to leave, although the defendant had not been so informed.

38. 391 U.S. 1, 4 (1968). Here the Court assumed that the defendant was "in-custody." The only issue raised was whether the *Miranda* holding only applied to the questioning of one who is "in-custody" in connection with the very case under investigation. The Court held that *Miranda* was not so limited, for "nothing in the *Miranda* opinion called for a curtailment of the warnings to be given to a person to be based on the reason why the person is in custody."

39. 425 U.S. 341, 347 (1976). The Court held that although the investigation had "focused" on the defendant, he was not in the requisite custodial environment described by *Miranda*.

40. 429 U.S. 492, 495 (1977). The Court held that "*Miranda* warnings are required only where there has been such a restriction on a person's freedom as to render him 'in-custody.' It was that sort of coercive environment to which *Miranda* by its terms was made applicable, and to which it is limited." The Court found that because the defendant was free to leave at any time, and because he was told prior to the questioning that he was not under arrest, the questioning was not custodial; thus, no warnings were required.

41. 401 U.S. 222, 226 (1971). The Court stated: "The shield provided by *Miranda* cannot be perverted into a license to use perjury by way of a defense, free from the risk of confrontation with prior inconsistent utterances."

42. 417 U.S. 433, 448 (1974). The Court held that defendant's statements during the police interrogation were not involuntary or the result of police coercion, therefore not depriving him of his privilege against self-incrimination.

43. 420 U.S. 714 (1975).

attorney is present."[44]

Cervantes follows the Supreme Court's trend of limiting the reach of *Miranda*. Judge Wallace, writing for the majority, applied the *Miranda* standard to the facts of the case and found that Cervantes was not "in-custody" or "significantly deprived of freedom of action," but concluded that the questioning was more akin to on-the-scene questioning than interrogation.[45]

In reaching the decision, Judge Wallace rejected Cervantes' argument that *Mathis v. United States*[46] held that any questioning during prison confinement constituted custodial interrogation. He reasoned that such an interpretation would be contrary to the meaning and spirit of *Miranda* because it would disrupt prison administration and eliminate on-the-scene questioning in the prison setting.[47]

Judge Wallace dismissed Cervantes' argument that the circumstances of his questioning met the Ninth Circuit's traditional test for finding custodial interrogation: "whether a reasonable man would have believed that he could not leave freely."[48] The Judge did this by noting that the free to leave test obviously was not practical when applied to prisoners,[49] and he proceeded to develop another standard. To develop this modified standard of the objective test, he relied on *Oregon v. Mathiason*,[50] which held that "for custodial interrogation to be found there must have been such a restriction on a person's freedom as to render him in custody."[51] Using *Mathiason*'s restriction concept, Judge Wallace modified the court's traditional test to read, "whether a reasonable person would believe there had been a restriction of his freedom over and above that in his normal prisoner setting."[52]

Judge Wallace applied the modified test to Cervantes' situation and found that the pressure exerted to detain him was not sufficient to have caused a reasonable person to believe that his freedom of movement was further diminished.[53] Judge Wallace found that the marijuana was uncovered in a routine search and that the questioning which took place in the library was a spontaneous reaction to the discovery.[54] He

44. 384 U.S. at 474.
45. 589 F.2d at 429.
46. 391 U.S. 1 (1968). *See* note 38 *supra*.
47. 589 F.2d at 427.
48. *Id. See* note 30 *supra*.
49. Judge Wallace stated, "When prison questioning is at issue, however, this 'free to leave' standard ceases to be a useful tool in determining the necessity of *Miranda* warnings. It would lead to the conclusion that all prison questioning is custodial because a reasonable prisoner would always believe he could not leave the prison freely." 589 F.2d at 428.
50. 429 U.S. 492 (1977).
51. *Id. See* note 40 *supra*.
52. 589 F.2d at 428.
53. *Id.* at 429.
54. *Id.*

thus ruled that under the circumstances neither the prison setting nor the presence of the deputy or the shift commander were factors which would trigger the requirement of *Miranda* warnings.[55] Rather, he held that it was an instance of on-the-scene questioning.[56]

Judge Anderson, in dissent, found the modified test to be unrealistic and unworkable; but even under this test, the facts of the case demonstrated that Cervantes was subjected to custodial interrogation.[57]

Judge Wallace summarily distinguished prior cases where custodial interrogation was found in a prison setting without fully analyzing the opinions, especially *Mathis*. In *Mathis*, the Supreme Court's decision did not rest solely on the fact that the interrogator was not a prison official, but included the factor that the questioning was for the purpose of eliciting information which could be used in a criminal prosecution.[58] The deputy's questioning of Cervantes was analogous to the questioning in *Mathis*. Cervantes was confronted with a substance suspected to be marijuana and asked to identify it, thus, an instance of eliciting statements which could be used in a criminal prosecution. This confrontation and questioning was what Judge Anderson referred to in his dissent when he stated, "the questioning had reached the accusatory stage."[59] Though Judge Wallace overlooked this fact, it was not solely sufficient to require *Miranda* warnings, especially in light of the Supreme Court's decisions in *Beckwith* and *Mathiason*.

Judge Wallace, however, incorrectly applied the court's modified objective test to the facts of the case. Though the test was modified, the factors which the court considered in applying the test remained the same: the language used to summon him, the surroundings of the interrogation, the extent to which he is confronted with evidence of his guilt, and the pressure exerted to detain him.[60]

Applying the factors to the instant case, Cervantes was subjected to custodial interrogation. First, not only was Cervantes verbally summoned to leave his cell, he was escorted by a prison official to the library.[61] Second, Cervantes' surroundings were not that of his familiar jail cell but the confines of a four foot by six foot library which contained himself and two prison officials.[62] Third, Cervantes was literally

55. *Id.*
56. *Id.*
57. *Id.* Judge Anderson stated that "the accusatory state was reached. . . . Even if this new test should prove to be valid, the facts here bring Cervantes within the 'additional imposition on his limited freedom of movement' and *Miranda* warnings were required."
58. 391 U.S. at 3.
59. 589 F.2d at 429. *See* note 49 *supra*.
60. *Id.* at 428.
61. *Id.* at 426.
62. *Id.* at 426, 427.

confronted with the evidence of his guilt and asked to identify it.[63] Fourth, no apparent physical pressure was exerted to detain Cervantes,[64] but he realized that he could not leave without the officials' permission. Thus, these factors, when considered with the additional fact that Cervantes was a prisoner, a position of subservience to prison officials, it was obvious that a reasonable person would believe that there had been a restriction of his freedom over and above that of his normal prisoner setting. Moreover, an examination of the above facts in light of the purpose of *Miranda*, to "combat" a situation in which there are "inherently compelling pressures which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely,"[65] points out that Judge Wallace's ruling flies in the face of *Miranda*, as well. Cervantes was interrogated in "privacy" and in "unfamiliar surroundings," factors on which *Miranda* placed great stress.[66]

Judge Wallace's attempt to obviate the fact that this was custodial interrogation by labeling the entire occurrence as on-the-scene questioning lacked precedence.[67] Prior decisions finding on-the-scene questioning follow a distinct pattern. There was either an interrogation and no coercive environment[68] or there was a coercive environment and no interrogation, merely unsuspecting questioning.[69] There are no cases that have found on-the-scene questioning where both of these elements were present. As one legal scholar noted, "the interplay between interrogation and custody makes the 'interrogation' more menacing than it would be without the custody and the 'custody' more intimidating than it would be without the interrogation."[70] Judge Wallace ignored the fact that Cervantes was no longer in his natural surroundings: his prison cell, prison yard, or at work. At the point when Cervantes en-

63. *Id.* at 427.
64. *Id.*
65. 384 U.S. at 467.
66. *Id.* at 449-50.
67. 589 F.2d at 429.
68. Allen v. United States, 390 F.2d 476 (D.C. Cir. 1968) (officer stopped defendant's automobile and questioned him at the site; the Court found on-the-scene questioning). Lowe v. United States, 407 F.2d 1391 (9th Cir. 1969) (auto-stop situation; questioning took place at the site; the Court found on-the-scene questioning). United States v. Clark, 425 F.2d 827 (3d Cir. 1970) (questioning of defendant on the street was found to be on-the-scene questioning); People v. Yukl, 25 N.Y.2d 585, 256 N.E.2d 172, 307 N.Y.S. 857 (1969), *cert. denied*, 400 U.S. 851 (1970) (another case of on-the-scene questioning which occurred on the street). *See* Smith, *supra* note 28; Annot., 31 A.L.R.3d 565 (1970).
69. United States v. Wiggins, 509 F.2d 454 (D.C. Cir. 1975) (defendant questioned at police station. Defendant was at the station on a matter unrelated to officer's questioning. Court found on-the-scene questioning because officer sought defendant only as a possible witness of informant, not a suspect).
70. Kamisar, *Brewer v. Williams, Massiah, and Miranda: What is "Interrogation"?* 67 GEO. L.J. 1, 63 (1978).

tered the library with the shift commander, the first element, coercive environment, was satisfied. When the deputy asked Cervantes, "What's this?" the second element, interrogating question, had been met. Therefore, a finding of on-the-scene questioning was incorrect.

The Court of Appeals for the Ninth Circuit failed to follow precedent for finding custodial interrogation in the prison setting. The *Cervantes* decision so narrowed the scope of the *Miranda* rule as to allow prison officials unlimited discretion in questioning prisoners. By misapplying the modified test and ignoring the purpose of *Miranda*, the court has gone so far as to give prison officials a privilege to ignore a prisoner's fifth amendment right. This decision, however, was not surprising; it was only another example of the Supreme Court's established trend of gradually diminishing the effectiveness of *Miranda*.

CY A. GRANT