



Police Law Bulletin



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NORTH CAROLINA COURT OF APPEALS



Defendant In Custody For *Miranda* Purposes When Interrogated During Confinement Under A Civil Mental Commitment Order

State v. Hammonds, No. 389A15-2 (29 September 2017).

On December 10, 2012, a man stole Stephanie Gaddy's purse in a parking lot while threatening her with a handgun.

Shortly after 1:00 p.m. on December 11, Defendant Tae Kwon Hammonds was taken to the emergency room at a local hospital following an intentional overdose. An involuntary commitment order was issued finding that defendant was "mentally ill and dangerous to self or others." As directed in the order, the Sheriff's Office took defendant into custody that same day.

After surveillance footage identified defendant as a suspect in the robbery, investigators learned that he was confined at the hospital under the involuntary commitment order. On December 12, while defendant was hospitalized under that order, he was questioned by detectives for about an hour and a half. Without informing him of his *Miranda* rights, the officers elicited self-incriminating statements from defendant during the interview. Defendant was discharged from the hospital later that evening and transported to a treatment facility.

A grand jury subsequently indicted defendant for robbery with a dangerous weapon. Defendant moved to suppress all statements he made to police during the December 12 interview asserting that he was in custody when the statements were taken and he was not informed of his *Miranda* rights. The trial court denied defendant's motion. Defendant was convicted by a jury and sentenced to 60-80 months of imprisonment. Defendant appealed to the North Carolina Court of Appeals but the majority found there was no error in the denial of his motion. Defendant appealed to the North Carolina Supreme Court.

In *Miranda*, the United States Supreme Court recognized the "inherently compelling pressures" exerted upon an individual during an in-custody interrogation by law enforcement officers. As a result, the Court prescribed procedural safeguards designed "to combat these pressures and to permit a full opportunity to exercise the Fifth Amendment privilege against self-incrimination." These safeguards require that a

defendant 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 the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires.

A *Miranda* warning is only required, however, when an individual is subjected to “custodial interrogation.” Custodial interrogation occurs when questioning is 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. Courts consider whether, based on the totality of the circumstances, there was a formal arrest or a restraint on freedom of movement of the degree associated with a formal arrest.

In the case at hand, defendant’s freedom of movement was severely restricted by the involuntary commitment order. In addition, the officers not only failed to inform defendant that he was free to terminate the questioning, more importantly, they communicated to him that they would leave only after he spoke to them about the robbery stating that, “as soon as he talked, they could leave.”

The court concluded based upon these facts that defendant was subjected to a custodial interrogation and thus, was entitled to *Miranda* warnings. Accordingly, the trial court erred in denying his motion to suppress.

Defendant’s Statements to Police Were Spontaneous Utterances and Not the Result of “Interrogation” Conducted in Violation of Defendant’s Fifth Amendment *Miranda* Rights

State v. Moore, No. COA16-999 (18 July 2017).

On May 21, 2015, Carrboro Police Officer D. Deshaies was on patrol. As he drove past a Kangaroo gas station and convenience store, he noticed a man getting out of the driver’s side of a silver Nissan Altima. He recognized the man from other encounters during the previous two years, and noticed that the man was wearing a white cloth on his head. A month earlier, Officer Deshaies had attempted to stop a similar car for speeding but the car fled and, because the officer was unable to identify the driver, no one was charged as a result of that incident. At that time, the officer had noted that the Altima had a 30 day temporary tag. Officer Deshaies pulled into the parking lot of the store and, after checking the license tag number, learned that the car had been issued a license plate about ten days earlier. Officer Deshaies suspected that the Altima was the same vehicle that he had tried to stop a month earlier. He contacted other officers, and they agreed to watch the vehicle and stop it if the driver violated any traffic laws. After the Altima left the parking lot, it drove past Officer Deshaies above the legal speed limit. When Officer Deshaies activated his blue light and siren, the car accelerated rapidly away from him. Officer Deshaies followed the car for several miles, during which time he saw it run a red light and accelerate to speeds of over 110 mph. Officer Deshaies chased the car for several minutes before his supervisor directed him to discontinue the pursuit. Officer Deshaies then returned to the Kangaroo store. The clerk told the officer that he knew a person who fit defendant’s description, and that he would recognize the person if he saw him again. The following day, Officer Deshaies returned to the Kangaroo store to view and copy the store’s surveillance video. The footage included images of a man with a white cloth on his head getting out of the driver’s side of the car, and then getting back into the driver’s side of the car before it left the parking lot. Officer Deshaies identified this man as defendant.

On May 22, Officer Suitt, who had learned that there were outstanding warrants for defendant’s arrest, saw defendant walking down the road. Officer Suitt, who testified that he and defendant had attended high school together, arrested defendant without incident. As Officer Suitt was transporting defendant, another officer spoke to Officer Suitt over the police radio in the car, and asked Officer Suitt if he had information about the location of the vehicle that was involved in the incident. Defendant spoke up from the back seat of the patrol vehicle and said that the car was in a secret location. Defendant also told

Officer Suitt that he had sped away from the officers the night before because he feared being charged with impaired driving.

Defendant was later indicted for felony fleeing to elude arrest, resisting an officer, reckless driving to endanger, driving without a license, speeding, and failing to heed a law enforcement officer's blue light and siren. Prior to trial, defendant made a motion to suppress the incriminating statements he had made to Officer Suitt while being transported in his police vehicle. The trial court denied defendant's motion. A jury found defendant guilty of all the offenses. Defendant appealed arguing that the trial court erred in denying his motion because the statements he made were in response to police interrogation or its functional equivalent, in violation of the 5th Amendment.

In *Miranda v. Arizona*, 384 U.S. 436, 444, 16 L. Ed. 2d 694, 707 (1966), the United States Supreme Court held that prior to any custodial questioning, a defendant must be warned of and waive their constitutional rights. But *Miranda* also held that "any statement given freely and voluntarily without any compelling influences is...admissible in evidence." *Miranda*, 384 U.S. at 478, 16 L. Ed. 2d at 726. In the present case, there was no dispute that defendant made incriminating statements to Officer Suitt while he was in custody and before he had been apprised of his *Miranda* rights. Thus, the issue was whether defendant was subjected to "interrogation." "Interrogation" means not only express questioning, but also any words or actions on the part of the police that the police should know are reasonably likely to elicit an incriminating response from the suspect. In the case at hand, Defendant's statements were made in response to a question directed to Officer Suitt from his supervisor over the police radio. The conversation between the officers included no express questioning of defendant. Rather, the conversation was nothing more than a dialogue between the two officers to which no response from the defendant was invited. Nor was there any reason for the officers to believe that the conversation was reasonably likely to elicit an incriminating response from the defendant.

For the reasons discussed above, the Court of Appeals concluded that defendant's statements were spontaneous utterances and not the result of interrogation in violation of defendant's Fifth Amendment rights. Thus, the court held that the trial court did not err by denying defendant's motion to suppress the statements.

Juvenile Did Not Knowingly, Willingly and Understandably Waive His *Miranda* Rights

State v. Saldierna, No. COA14-1345-2 (18 July 2017).

Sixteen-year-old Felix Saldierna was arrested at his home in South Carolina in connection with incidents involving several homes around Charlotte that had been broken into the previous year. Before questioning, a detective with the Charlotte-Mecklenburg Police Department read defendant his rights in English and asked whether he understood them. While defendant had been given two copies of a Juvenile Waiver of Rights form - one in English and one in Spanish - he ultimately signed the English version. After initialing and signing the form, Felix asked to call his mother. Although he placed two calls, defendant could not reach his mother. The custodial interrogation then began. Over the course of the interrogation, defendant confessed his involvement in the incidents.

Defendant was indicted for two counts of felony breaking and entering, conspiracy to commit breaking and entering, and conspiracy to commit common law larceny after breaking and entering. Defendant moved to suppress his confession. The trial court denied the motion. Defendant entered guilty pleas to two counts of felony breaking and entering and two counts of conspiracy to commit breaking and entering. Defendant appealed the denial of his motion to suppress. The Court of Appeals reversed the trial court's order denying defendant's motion to suppress holding that when a juvenile makes an ambiguous statement pertaining to the right to have a parent present, an interviewing officer must clarify the

juvenile's meaning before proceeding with questioning. The North Carolina Supreme Court granted the State's petition for review. In reviewing the Court of Appeals' opinion, the North Carolina Supreme Court reasoned that although defendant asked to call his mother, he never gave any indication that he wanted to have her present for his interrogation, nor did he condition his interview on first speaking with her. As a result, the Supreme Court reversed the decision of the Court of Appeals because defendant's juvenile statutory rights were not violated. However, in doing so, the Supreme Court noted that even though it had determined that defendant's N.C.G.S. § 7B-2101(a)(3) right (to have a parent present during questioning) was not violated, defendant's confession is not admissible unless he knowingly, willingly, and understandingly waived his rights. Thus, the case was sent back to the Court of Appeals for consideration of this issue.

Before admitting into evidence any statement resulting from custodial interrogation, the court must find that the suspect knowingly, willingly, and understandingly waived his rights. Whether a waiver is knowingly and intelligently made depends on the totality of the specific facts and circumstances of each case.

In the instant case, there is no indication that defendant had any familiarity with the criminal justice system. The interrogation took place in the booking area of the Justice Center, and defendant was at all times in the presence of three law enforcement officers. At the time he was interviewed, defendant had just turned 16 years of age and had only obtained an eighth grade education. Defendant indicated Spanish was his primary language. He stated he could write in English, but that he had difficulty reading English and difficulty in understanding spoken English. The recording of the interview contains several unintelligible remarks or non-responses by defendant, mostly following the detective's questions regarding whether or not defendant understood his rights. Further, the court found that defendant's request to call his mother immediately after he executed a form stating he was giving up his rights, including his right to have a parent present, shows enough uncertainty and anxiety on the juvenile's behalf to call into question whether, under all the circumstances present in this case, the waiver was valid. Defendant stated firmly to the officer that he wanted to call his mother, even after the officer asked (unnecessarily), "Now, before you talk to us?" Further, defendant reiterated this desire. While his first attempt to contact his mother should have been a sufficient indication to any reasonable person that the defendant did not want to waive his rights, his last ditch effort to call for help was certainly a strong indicator.

Finding that too much evidence contradicted the English written waiver signed by defendant, the court declined to give any weight to the form. To be valid, a waiver should be voluntary, not just on its face, i.e., the paper it is written on, but *in fact*.

Based upon the totality of the circumstances, the Court of Appeals concluded that the State did not meet its burden of showing that defendant knowingly, willingly and understandably waived his rights and therefore, defendant's motion to suppress should have been granted.