



Police Law Bulletin



City Attorneys' Office

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NORTH CAROLINA SUPREME COURT



Reversing the Court of Appeals, North Carolina Supreme Court Holds Ambiguous Statement By Juvenile Implicating Right to Have a Parent Present During Custodial Interrogation Does Not Require Law Enforcement to Clarify Statement Before Continuing Questioning

State v Saldiena, ___ N.C. ___, ___ S.E.2d ___ (Dec. 21, 2016).

On December 17 and 18, 2012, several homes in Charlotte were broken into, burglarized and vandalized. Saldierna, who was 16-years-old at the time, was arrested in connection with those crimes. Before asking him any questions about the crimes, Detective Kelly gave Saldierna written Juvenile Waiver of Rights forms in both English and Spanish. Kelly read each part of the English language form to Saldierna as he followed along on the forms in both languages. After reading each paragraph, Kelly asked Saldierna if he understood the right. Saldierna answered “yeah” or “yes ma’am” to the inquiries and initialed each paragraph on the form, including the paragraph which stated “I DO wish to answer questions now WITHOUT a lawyer, parent, guardian, or custodian here with me.” Then, Saldierna asked Kelly if he could call his mom. Kelly asked, “You want to call her now before we talk?” The officers directed Saldierna to step outside where he could call his mother. His mother, however, was on her lunch break and could not be reached. When Saldierna stepped back into the room with Detective Kelly, she said, “Alright Felix, so, let’s talk about this thing going on.” At this point, Kelly continued her interview with Saldierna, and, over the course of the next hour, he confessed his involvement in the incidents.

Saldierna was indicted on two counts of felony breaking and entering and one count each of conspiracy to commit breaking and entering and conspiracy to commit common law larceny after

breaking and entering. He moved to suppress his confession but his motion was denied by the trial court. Saldierna pled guilty to both felony breaking and entering charges as well as one count of conspiracy to commit breaking and entering, but reserved his right to appeal. On appeal, defendant argued that his request to call his mother was an unambiguous invocation of his right to have his parent present during custodial interrogation, and that, in the alternative, if his request was ambiguous, due to his status as a juvenile, Kelly was required to make further inquiries to clarify whether he actually meant that he was invoking his right to end the interrogation until his mother was present.

The Court of Appeals decided that the defendant's request to speak to his mother was, at best, an ambiguous request to have his mother present during questioning. After noting that the General Assembly has expressed a clear intent to offer greater protections to the rights of juveniles when they are subject to custodial interrogation, the Court of Appeals held that an ambiguous statement by a juvenile implicating his statutory right to have a parent present during a custodial interrogation requires that the law enforcement officer conducting the interview clarify the meaning of the juvenile's statement before continuing questioning. Accordingly, the court then granted defendant's motion suppressing his statements to Detective Kelly. (*See January-February 2016 Police Law Bulletin*). The State appealed.

The North Carolina Supreme Court held that the juvenile defendant's statement--"Um. Can I call my mom?"--was not a clear and unambiguous invocation of his right to have his parent or guardian present during questioning. Reversing the Court of Appeals, the North Carolina Supreme Court held that without an unambiguous, unequivocal invocation of rights, neither North Carolina statutory law nor the Constitution require law enforcement to ask clarifying questions or to cease questioning.



NORTH CAROLINA COURT OF APPEALS



Defendant Was In Custody and Subject to Interrogation When Officer Posed Incriminating Question Without Benefit of Miranda Warnings

State v. Cook, ___ N.C. App. ___, ___ S.E.2d ___ (June 7, 2016).

On June 14, 2013, Detective Barale with the Fletcher Police Department was patrolling the hotels and motels of the area. He parked at the Knights Inn Motel and was sitting in his vehicle when a black Jeep pulled in and parked behind him. Detective Barale ran the vehicle's license plate number and discovered that the plate had been revoked and belonged to a Crown Victoria. The detective then searched for the registered owner of the Crown Victoria and learned that Nicholas Taylor, who had an active warrant, owned the car. A picture of Taylor showed that he had a large

neck tattoo. Two younger white males stepped out of the Jeep and walked past the detective. Barale identified one of the men as Taylor. The men entered one of the motel rooms. After confirming that the warrant for Taylor was still active, Barale called for backup. A few minutes later, Officer Fulmer arrived, and they knocked on the motel room door which Taylor and the other male had entered. Detective Barale knocked a couple times, and announced, "Fletcher Police," but no one initially answered. Eventually, Defendant Christopher Cook opened the door, walked outside, and tried to shut the door behind him. Detective Barale told him "to get out of the way" and that they "had a warrant for arrest for one of the persons inside." When Cook tried to go back inside, the detective grabbed him and a brief struggle ensued. Cook was arrested for resisting, delaying and obstructing a government official. Cook was then handcuffed and frisked. The frisk revealed scales in his pocket. After retrieving the scales, the detective asked defendant if he had "anything else on him." Defendant responded by stating, "I have weed in the room." Consequently, the detective entered the room with the defendant and seated the defendant on a chair. The detective entered the bathroom where he saw what appeared to be marijuana and paraphernalia in the toilet. The detective went back to the defendant and asked Cook to point him to where the weed was located. The defendant produced a jewelry box from a nightstand containing marijuana and paraphernalia. The detective asked defendant to identify what else in the room belonged to him. Defendant pointed to a backpack. The detective went back into the bathroom to retrieve the substances and paraphernalia he had seen in the toilet and while doing so discovered an additional baggie containing a light or white tan powder. After retrieving the items, the detective returned to the defendant and read him *Miranda* rights. When asked if he knew who the powder belonged to, defendant denied any knowledge of it. When asked if he had bought or sold anything to the other individuals found in the room, defendant said no. Detective Barale placed defendant in Officer Fulmer's patrol vehicle. Detective Barale testified that he saw defendant looking toward him, so he opened the car door and saw a small, folded piece of paper on the floorboard that contained a small amount of clear crystal. Defendant denied knowing anything about it and accused the detective of having planted it in the vehicle.

Defendant was indicted for various violations of the controlled substances act. Defendant made a motion to suppress the statements he made while in custody and prior to receiving *Miranda* warnings. The trial court denied defendant's motion. The jury found defendant not guilty of possession of methamphetamine and trafficking in heroin; defendant pleaded guilty to possession of a schedule IV controlled substance; and the jury found defendant guilty of the remaining charges. Defendant appealed arguing that the trial court erred in denying his motion to suppress.

In *Miranda v. Arizona*, the Supreme Court held, "the prosecution may not use statements stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination." In other words, statements arising from the interrogation of an in-custody suspect will be inadmissible absent the suspect having first been advised of, and waiving, his or her *Miranda* rights.

In determining if a suspect is in custody, the definitive inquiry is whether 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, immediately following the scuffle with Detective Barale, defendant was handcuffed

behind his back and placed under arrest for resisting a public officer. Accordingly, because defendant was under formal arrest, he was in custody for purposes of *Miranda*.

In *Rhode Island v. Innis*, the Supreme Court concluded that “the *Miranda* safeguards come into play whenever a person in custody is subjected to either express questioning or its functional equivalent.” In this case, after Detective Barale handcuffed defendant, placed him under arrest, and conducted a pat-down which led to the recovery of a digital scale, he expressly asked defendant, “Do you have anything else on you?” Defendant, in custody in front of the doorway to the motel room, stated, “I have weed in the room.”

Accordingly, because defendant was subjected to interrogation while he was in custody, under *Miranda*, he was entitled to procedural safeguards informing him of his right to remain silent. Since defendant did not receive *Miranda* warnings, the prosecution was not permitted to use defendant’s statement stemming from the custodial interrogation.

The Court of Appeals disagreed with the State’s argument that the public safety exception established in *New York v. Quarles* applied, finding that the facts of this case are noticeably distinguishable from those in *Quarles*. Here, the need for answers to questions did not pose a threat to the public safety, outweighing the need for a rule protecting defendant’s privilege against self-incrimination. Defendant was not suspected of carrying a gun or other weapon. Rather, he was sitting on the ground in handcuffs and he had already been frisked, which produced only a digital scale. Moreover, the officers in this case conducted a full search of the motel room and posed further investigatory questions to defendant, including asking him to reveal everything he owned in the motel room, before ultimately reading him his rights.

Accordingly, the Court of Appeals concluded that the trial court erred in denying defendant’s motion to suppress, and sent the case back to the lower courts for a new trial.