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# Criminal Procedure - Confessions - Application of Miranda v. Arizona - People v. Rodney P. (Anonymous), 233 N.E.2d 255 (N .Y .1967)

**Criminal Procedure—Confessions—Application of Miranda v. Arizona.** Rodney P., age 16, was implicated in the theft of an automobile by another youth, Daniel W. Subsequently, a detective approached Rodney in his yard and asked his two companions if they would leave, which they did. The detective then questioned Rodney briefly, and he admitted taking the auto along with Daniel.[1] He was not advised at any time of his right to counsel or to remain silent. Following his plea of guilty, he was adjudicated a youthful offender and was given a three-year suspended sentence. The trial court found that the *Miranda* warnings[2] were not required before the brief interrogation and refused to suppress his oral admissions. On appeal from the Appellate Division (which affirmed the lower court conviction), the New York Court of Appeals affirmed the judgment and, collaterally, the decision concerning Rodney's oral confession.[3]

The abolition of certain judicial and police interrogations and the extension of the right to remain silent has gradually and somewhat systematically evolved.[4] The Supreme Court apparently climaxed this movement in *Miranda v. Arizona*[5] when it said that an individual has the constitutional right to remain silent whenever ". . . he has been taken into custody or otherwise deprived of his freedom of action in any significant way." [6] The Court held that neither exculpatory nor incul-

1. It would appear that the detective intended to arrest Rodney before he made the self-incriminating statements and that the youth was aware of this intent.

2. Miranda v. Arizona, 384 U.S. 436 (1966).

3. People v. Rodney P. (Anonymous), 21 N.Y.2d 1, 233 N.E.2d 255, 286 N.Y.S.2d 225 (1967).

4. *See generally*, J. George, Constitutional Limitations on Evidence in Criminal Cases, 69-70 (I.C.L.E. Specialty Handbook No. 16, 1966); Kamisar, *A Dissent from the Miranda Dissents*, 65 Michigan L. Rev. 59, 66 (1966). *Miranda* was actually the culmination of a group of decisions extending the sixth amendment right to counsel: Hamilton v. Alabama, 368 U.S. 52 (1961) (to arraignment stage); White v. Maryland, 373 U.S. 59 (1963) (to preliminary hearing stage); Massiah v. United States, 377 U.S. 201 (1964) (to indictment stage); Escobedo v. Illinois, 378 U.S. 478 (1964) (to accusatory stage). *Escobedo* also required that an accused individual be given a warning that he had a right to remain silent. *Id.* at 490-491. This case marked a radical change in the law of confessions because it shifted the basis for exclusion from involuntariness to constitutional rights under the fifth amendment. *Miranda* extended the fifth amendment right to the custodial stage, and also extended the right to counsel in a manner similar to *Escobedo's* extension of the right to remain silent.

5. 384 U.S. 436 (1966).

6. *Id.* at 444. Before *Escobedo* and *Miranda*, the Supreme Court had relied primarily on a "voluntariness" test of confessions applied under the due process clause of the fourteenth amendment. *See The Supreme Court, 1965 Term*, 80 Harv. L. Rev. 91 at 203. Under this former interpretation, the Court was limited to dealing with confes-

patory statements stemming from questioning initiated by law enforcement officers after an individual has been deprived of his freedom may be used as evidence unless that individual had been warned of his rights.[7]

Clearly, this constitutional right[8] applies to station house questioning[9] and probably to police car questioning,[10] and, by the terms of the decision, does not extend to general on-the-scene questioning,[11] however, exactly what " . . . deprived of his freedom of action in any significant way . . ." means and at what point home and street interrogations are included has not been clearly resolved.[12]

Recent cases in which the courts were required to determine where the right to remain silent arose have employed several different approaches. A subjective test involving the voluntariness of a confession, i.e., whether it was the product of "free and rational choice"—had been used by most courts since 1941.[13] This test has generally been rejected

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sions in the courtroom (at the trial or at preliminary hearings). *Id.* However, recent decisions ending with *Miranda* have held that the fifth amendment self-incrimination clause also applies to the states through the fourteenth amendment. Miranda v. Arizona, 384 U.S. 436 (1966); Schmerber v. California, 384 U.S. 757 (1966); Griffin v. California, 380 U.S. 609 (1965); Murphy v. Waterfront Commission, 378 U.S. 52 (1964); Malloy v. Hogan, 378 U.S. 1 (1964). By shifting the emphasis to the fifth amendment, the Court, in *Escobedo* and *Miranda*, was able to extend rights against self-incrimination to the pre-courtroom stage.

7. Miranda v. Arizona, 384 U.S. 436 at 444. The Court required that an individual be given a four-point warning 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.*

The Court incidentally confirmed that the right to appointed counsel is coextensive with the right to retained counsel. *Id.* at 472-473. *See also* Gideon v. Wainwright, 372 U.S. 335 (1963).

8. The Court submitted that this right could be waived; however, the requirements for proof of such waiver are indeed strenuous. Miranda v. Arizona, 384 U.S. 436 at 470-471, 475 (1966).

9. Miranda v. Arizona, 384 U.S. 436 at 445-458, 477 (1966).

10. This would probably be true because a police car can be viewed as an extension of the station house.

11. Miranda v. Arizona, 384 U.S. 436 at 477-478 (1966).

12. For general discussions, *see* Kamisar, *A Dissent from the Miranda Dissents*, 65 MICHIGAN L. REV. 59 (1966); Rothblatt and Pitler, *Police Interrogation*, 42 NOTRE DAME LAWYER 479 (1967); 33 BROOKLYN L. REV. 347 (1967); 67 COLUM. L. REV. 130 (1967); 36 FORDHAM L. REV. 141 (1967). *See also* note 33 *infra*.

13. *See, e.g.*, Haynes v. Washington, 373 U.S. 503 (1963); Blackburn v. Alabama, 361 U.S. 199 at 207 (1960); Watts v. Indiana, 338 U.S. 49 at 53 (1949); United States v. Mitchell, 322 U.S. 65 at 68 (1944); Lisenba v. California, 314 U.S. 219 at 241 (1941).

by the courts in interpreting *Miranda*.[14] After *Escobedo v. Illinois*[15] shifted the emphasis to fifth amendment rights, most courts have apparently determined that the "accusatory" stage of *Escobedo* and the "in custody" stage of *Miranda* were reached when a questioned individual was made aware of a police intent to arrest him.[16] Generally, the courts have examined the police intent and the individual's awareness on a case-to-case basis, considering the surrounding circumstances in each.[17] However, some courts have suggested that, in the absence of warnings, no statements would be allowed after the police first formed the intent to arrest.[18] California, for example, has established an objective standard—whether a reasonable man would have felt restrained in a significant way.[19] The only apparent generalization is that most courts

14. This test was suggested by the language of the *Miranda* Court that an individual is "in custody" if he is deprived of his freedom in any significant way. Miranda v. Arizona, 384 U.S. 436 at 444 (1966). It was further suggested when the Court said that compulsion consisted of inherent psychological pressures which prevented a statement from ". . . truly being the product of his own free choice." *Id.* at 456. It is generally rejected however, apparently because *Miranda* was not intended to subject the police to the idiosyncrasies of every person they question.

15. 378 U.S. 478 (1964).

16. The holding in *Escobedo* was generally that the right to retained counsel accrues ". . . when the process shifts from investigatory to accusatory, *i.e.*, when its focus is on the accused and its purpose is to elicit a confession." *Id.* at 490 (for complete holding, see pp. 490-492). *Escobedo* applied primarily to sixth amendment rights which also affect the states because of the fourteenth amendment. Gideon v. Wainwright, 372 U.S. 335 (1963); Chandler v. Fretag, 348 U.S. 3 (1954); House v. Mayo, 324 U.S. 42 (1945). However, it did require that the accused be warned that he has a right to remain silent. Since the *Miranda* Court said it was defining *Escobedo's* "focus" of the investigation as custodial interrogation (Miranda v. Arizona, 384 U.S. 436 at 444), the courts have extensively employed decisions interpreting *Escobedo* in interpreting *Miranda*.

The *Escobedo* and *Miranda* decisions are not retroactive to cases which went to trial before June 22, 1964 and June 13, 1966, the dates they were decided, respectively. Johnson v. New York, 384 U.S. 719 (1966).

17. *See* Gaudio v. State, 1 Md. App. 455, 230 A.2d 700 (1967); State v. Boscia, 93 N.J. Super. 586, 226 A.2d 643 (App. Div. 1967); People v. Kulis, 18 N.Y.2d 318, 221 N.E.2d 541, 274 N.Y.S.2d 873 (1966); People v. Terrell, 53 Misc.2d 32, 277 N.Y.S.2d 926 (Sup. Ct. 1967); People v. Kenny, 53 Misc.2d 527, 279 N.Y.S.2d 198 (Sup. Ct. 1966); People v. Glover, 52 Misc.2d 520, 276 N.Y.S.2d 461 (Sup. Ct. 1966); People v. Reason, 52 Misc.2d 425, 276 N.Y.S.2d 461 (Sup. Ct. 1966); Commonwealth v. Jefferson, 423 Pa. 541, 226 A.2d 765 (1967).

18. People v. Reason, 52 Misc.2d 425, 276 N.Y.S.2d 196 (Sup. Ct. 1966); Commonwealth v. Jefferson, 423 Pa. 541, 226 A.2d 765 (1967).

19. People v. Arnold, 58 Cal. Rptr. 115, 426 P.2d 515 (1967); People v. Hazel, 60 Cal. Rptr. 437 (Dist. Ct. of Appeal, 1967).

have rejected physical coercion or compulsion as a controlling factor,[20] primarily because of the *Miranda* Court's emphasis on "psychological" pressure.[21]

Here, in *People v. Rodney*,[22] the New York Court of Appeals first rejected the generally applied subjective-type tests[23] because it felt that the circumstances did not evidence any sort of coercion.[24] It then rejected the other subjective test (from the questioned individual point of view) because it would ". . . place upon the police the burden of anticipating the frailties or idiosyncracies of every person whom they question." [25] It did, however, adopt the objective standard (reasonable man), relying heavily on what it considered the purposes and evils intended to be eradicated by the *Miranda* decision, ". . . to protect the individual's freedom of choice—to answer or not answer—in situations which are inherently coercive." [26]

However, the New York Court introduced a new factor in applying the objective test. It found that Rodney could not as a reasonable man have believed that his freedom of action was restrained in a significant way because he was not physically restrained (given the fact that he was not told that he was under arrest or would be arrested). Most courts, as mentioned above, had apparently rejected physical coercion as a significant factor.[27]

20. *E.g.*, People v. Arnold, 58 Cal. Rptr. 115, 426 P.2d 515 (1967); People v. Glover, 52 Misc.2d 520, 276 N.Y.S.2d 461 (Sup. Ct. 1966); People v. Reason, 52 Misc. 2d 425, 276 N.Y.S.2d 196 (Sup. Ct. 1966); Commonwealth v. Jefferson, 423 Pa. 541, 226 A.2d 765 (1967); *see also* Graham, *What is Custodial Interrogation?*, 14 U.C.L.A. LAW REV. 59, 76-77. *Contra*, People v. Johnson, 50 Misc.2d 1009, 271 N.Y.S.2d 814 (1966).

21. Miranda v. Arizona, 384 U.S. 436 at 456. A possibility not actually discussed in court opinions is that all of these interpretations are means of avoiding the inevitable. The spirit of *Miranda* and *Escobedo* suggests that the Supreme Court may ultimately require warnings at every stage of police interrogation (except general on-the-scene questioning). The Court said, "[A] system of criminal law enforcement which comes to depend on the 'confession' will, in the long run, be less reliable and more subject to abuses than a system which depends on extrinsic evidence independently secured through skillful investigation." Escobedo v. Illinois, 378 U.S. 478, 488-489 (1964). *See* Kamisar, *A Dissent from the Miranda Dissents*, 65 MICHIGAN L. REV. 59 at 66 (1966).

22. People v. Rodney P. (Anonymous), 21 N.Y.2d 1, 233 N.E.2d 255, 286 N.Y.S.2d 225 (1967).

23. Cases cited note 17 *supra*.

24. *Id.* at 5, 233 N.E. 2d at 259, 286 N.Y.S.2d at 231.

25. *Id.* at 6, 233 N.E.2d at 260, 286 N.Y.S.2d at 233.

26. *Id.* at 5, 6, 233 N.E.2d at 259, 260, 286 N.Y.S.2d at 231, 233.

27. The different approach is made apparent in the dissenting opinion, which stated that isolation was certainly sufficient psychological pressure and the officer's first question was sufficient notice of probability of arrest. Any reasonable man would be-

In *Escobedo*, the Supreme Court required that an individual be warned of his right to remain silent when the investigation focused on the accused, i.e., when it shifted from the investigatory to the accusatory stage.[28] Without exception, the authorities have regarded *Miranda* as a liberalization of the rights assured in *Escobedo*.[29] A questioned individual must now be informed of his rights whenever he has been substantially deprived of his freedom of action whether or not the accusatory stage has been reached. In the instant case, the accusatory stage had obviously been reached before any questions were asked, yet the New York Court of Appeals held that the accused need not have been warned of his rights. It is possible that this decision deprived the accused of rights he had before the *Miranda* decision.

**Constitutional Law—The Right of a Labor Union to Provide Free Legal Counsel to Members.** A program whereby District Twelve of the United Mine Workers of America furnished its members free legal counsel in presenting their individual workman's compensation claims to the Illinois Industrial Commission resulted in a charge of unauthorized practice of law against the union.[1] Under the

lieve that he would be detained until he answered and that he had been significantly deprived of his freedom of action. *Id.* at 8-9, 233 N.E.2d at 262-63, 286 N.Y.S.2d at 235-36.

The dissent went so far as to say that police intent to arrest, alone, was a sufficient reason to find that an individual had been deprived of his freedom in a significant way. *See also* People v. Reason, 52 Misc.2d 425, 276 N.Y.S.2d 196 (Sup. Ct. 1966); Commonwealth v. Jefferson, 423 Pa. 541, 226 A.2d 765 (1967).

28. *See* note 6 *supra*. *Escobedo* was generally restricted to its facts. Birnbaum v. United States, 356 F.2d 856 (8th Cir. 1966); United States v. Cone, 354 F.2d 119 (2d Cir. 1965); United States v. Childress, 347 F.2d 448 (7th Cir. 1965); United States v. Konigsberg, 336 F.2d 844 (3d Cir. 1964), *cert. denied*, 379 U.S. 933 (1964); People v. Hartgraves, 31 Ill. 2d 375, 202 N.E.2d 33 (1964); Commonwealth v. Tracy, 207 N.E.2d 16 (1965); State v. Coleman, 46 N.J. 16, 214 A.2d 393 (1965); People v. Gunner, 15 N.Y.2d 226, 205 N.E.2d 852, 257 N.Y.S.2d 204 (1965); Biddle v. Commonwealth, 206 Va. 14, 141 S.E.2d 710 (1965); Browne v. State, 24 Wis.2d 491, 131 N.W2.d 169 (1964). *Contra*, People v. Dorado, 40 Cal. Rptr. 264, 394 P.2d 952 (1964), *rev'd on rehearing*, 42 Cal. Rptr. 169, 398 P.2d 361 (1965). The *Miranda* decision actually determined four different cases (*Miranda v. Arizona*, *Westover v. United States*, *California v. Stewart*, and *Vigera v. New York*); therefore, *Miranda* could not be restricted to a single set of facts. Perhaps, the Supreme Court implied by this that *Escobedo* should not be so restricted, either.

29. *E.g.*, Kamisar, *A Dissent from the Miranda Dissents*, 65 Michigan L. Rev. 59 (1966).

1. United Mine Workers of America, Dist. 12 v. Ill. State Bar Ass'n, 88 S.Ct. 353 (1967).