United States Supreme Court: Cases Affecting Criminal Law and Procedure June 2004[*]

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Arrest, Search, and Confession Issues

(1) Fourth Amendment Was Not Violated When Suspect, Who Had Been Stopped Based on Reasonable Suspicion That He Had Committed a Crime, Was Arrested For Refusing to Disclose His Name As Required by State Law
(2) Defendant's Conviction for Refusing to Disclose His Name, After Being Stopped Based on Reasonable Suspicion That He Had Committed a Crime, Did Not Violate His Fifth Amendment Privilege Against Compelled Self-Incrimination

Hiibel v. Sixth Judicial District Court of Nevada, 124 S. Ct. 2451, 159 L. Ed. 2d 292, 75 Crim. L. Rep. 269 (21 June 2004). A caller to a sheriff's department reported seeing a man assault a woman in a truck on a certain road. When the officer arrived there, he found the truck parked on the side of the road, the defendant standing by the truck, and a young woman sitting inside. The defendant was stopped by a law enforcement officer based on reasonable suspicion that the defendant had committed the assault. The officer asked the defendant for identification, explaining that he wanted to determine who the man was and what he was doing there. The defendant refused to provide identification. The defendant was convicted of willfully obstructing and delaying the officer in attempting to discharge a legal duty—based on a Nevada statute that requires a person subject to an investigative stop to disclose his name. (1) The Court ruled that the officer's request for the defendant's name was reasonably related in scope to the circumstances that justified the stop and did not violate the Fourth Amendment. (2) The Court ruled that the defendant's conviction did not violate the defendant's Fifth Amendment privilege against compelled self-incrimination because in this case the defendant's refusal to disclose his name was not based on any articulated real and appreciable fear that his name would be used to incriminate him, or that it would furnish a link in the chain of evidence needed to prosecute him. The Court noted that a case may arise when there is a substantial allegation that furnishing identity at the time of an investigative stop would have given an officer a link in the chain of evidence needed to convict the defendant of a separate offense. In that case, a court can then consider whether the Fifth Amendment privilege applies, and, if the privilege has been violated, what remedy must follow. But those questions need not be resolved in the case before the Court.

[Author's note: The ruling in this case that the Nevada law is constitutional does not resolve the issue whether it is a violation of North Carolina law when a person refuses to give his or her name during an investigative stop. That is a matter for North Carolina state courts to decide. Unlike Nevada law, there is no North Carolina statute that requires a person who is the subject of an investigative stop based on reasonable suspicion to disclose his or her name. (There is a limited provision in G.S. 20-29 that it is a Class 2 misdemeanor for a person operating a motor vehicle, when requested by a uniformed officer, to refuse to write his or her name for identification or give his or her name.) Without such a statute, it does not appear that a person's mere refusal to disclose his or her name is sufficient evidence by itself to arrest or convict the person of violating G.S. 14-223 (resisting, delaying, or obstructing a public officer in discharging or attempting to discharge a duty of office) absent a showing how the mere refusal to disclose

[*] For a summary of the Court's decision in *Blakely v. Washington,* 124 S. Ct. 2531 (2004), see Bob Farb's separate handout.

resisted, delayed, or obstructed the officer in that particular investigative stop. Although a mere refusal may be insufficient to arrest a person for violating G.S. 14-223, the refusal under certain circumstances may allow an officer additional time to detain the person to determine whether a crime was committed.]

Failure to Give a Defendant *Miranda* Warnings Did Not Require Suppression of Firearm Obtained as a Result of Defendant's Unwarned But Voluntary Statement

United States v. Patane, 124 S. Ct. 2620, 159 L. Ed. 2d 667, 75 Crim. L. Rep. 324 (28 June 2004). An officer arrested the defendant at his residence for violating a restraining order involving his ex-girlfriend. When another officer began to give *Miranda* warnings, the defendant interrupted the officer, asserting he knew his rights, and neither officer attempted to complete the *Miranda* warnings. Because one of the officers had been previously informed that the defendant, a convicted felon, illegally possessed a Glock pistol, he asked the defendant about it. The defendant, after persistent questioning, told the officer that the pistol was in his bedroom. The officer received consent from the defendant to retrieve the pistol. The pistol was admitted at his trial, and he was convicted of possession of a firearm by a convicted felon. An opinion representing the views of three Justices and announcing the judgment of the Court ruled, distinguishing Dickerson v. United States, 530 U.S. 428 (2000) (*Miranda* announced a constitutional rule that Congress may not supersede legislatively), that the Fifth Amendment's self-incrimination privilege is not implicated by the admission into evidence of the physical fruit of a voluntary statement taken in violation of the *Miranda* ruling. An opinion representing the views of two other Justices and concurring in the judgment stated that it agreed with the opinion announcing the judgment of the Court that the nontestimonial physical fruit of the defendant's unwarned statement, the Glock pistol, was admissible—although it did not necessarily agree with all of the statements in the opinion. [Author's note: State v. May, 334 N.C. 609, 434 S.E.2d 180 (1993) (physical evidence discovered as a result of a voluntary statement taken in violation of *Miranda* is admissible), is consistent with this ruling.]

When Officer as Part of Interrogation Technique Deliberately Failed to Give Required *Miranda* Warnings and Obtained a Confession, Then Twenty Minutes Later Gave *Miranda* Warnings and Obtained a Confession, Neither the First Nor Second Confessions Were Admissible

Missouri v. Seibert, 124 S. Ct. 2601, 159 L. Ed. 2d 667, 75 Crim. L. Rep. 329 (28 June 2004). An officer arrested the defendant for her involvement with a unlawful burning of a mobile home and the resulting death of a person inside. As part of a interrogation technique, the officer deliberately failed to give the defendant *Miranda* warnings, interrogated her for 30 to 40 minutes, and obtained a confession. The defendant was then given a twenty-minute break. The same officer then gave *Miranda* warnings to the defendant, obtained a waiver, interrogated her again (referring in this second interrogation to statements she had made in the first interrogation), and obtained another confession. The trial judge suppressed the first confession but admitted the second confession. The issue before the United States Supreme Court was the admissibility of the second confession. Distinguishing Oregon v. Elstad, 470 U.S. 298 (1985) (second voluntary incriminating statement obtained with *Miranda* warnings and waiver at police station was admissible even though it occurred after the defendant had made voluntary incriminating statement at his house that was inadmissible under *Miranda* because warnings had not been given), an opinion announcing the judgment of the Court and representing the views of four Justices (a plurality opinion) ruled that the second confession was inadmissible. The opinion stated that it would have been reasonable for the defendant to regard the two interrogation sessions as a continuum in which it would have been unnatural to refuse to repeat at the second interrogation what had been said before. These circumstances challenged the comprehensibility and efficacy of the *Miranda* warnings given before the second interrogation such that a reasonable person in the defendant's shoes would not have understood the warnings to convey a message that she retained a choice about continuing to talk. A fifth Justice concurred in the judgment that the second confession was inadmissible, although he disagreed with the reasoning of the plurality opinion. He stated that the admissibility of post-*Miranda* warning statements

should continued to be governed by *Oregon v. Elstad* except if the second statement is obtained in the two-step interrogation technique deliberately used in this case to undermine the *Miranda* warning. In such a case, post-*Miranda* warning statements that are related to the substance of the pre-*Miranda* warning statements must be excluded unless curative measures are taken before the post-*Miranda* warning statement is made. The curative measures discussed in his opinion were not taken in this case, so he concluded that the second confession was inadmissible. [Author's note: When a fifth vote is necessary to support a judgment of the Court, the concurring opinion defines the scope of the ruling if it rests on the narrowest grounds that supports the judgment, which it does in this case. *See, e.g.,* Chandler v. Florida, 449 U.S. 560 (1981); Grutter v. Bollinger, 539 U.S. 306 (2003); Marks v. United States, 430 U.S. 188 (1977).]

(1) State Appellate Court's Ruling That Defendant Was Not in Custody to Require *Miranda* Warnings Was Not Unreasonable Application of Federal Law Under Federal Habeas Corpus Standard
(2) Court States That Defendant's Age or Inexperience with Law Enforcement Are Not Factors in Determining Whether Custody Exists Under *Miranda*

Yarborough v. Alvarado, 124 S. Ct. 2140, 158 L. Ed. 2d 938, 75 Crim. L. Rep. 204 (1 June 2004). An officer was investigating the involvement of the defendant, a 17 year old, in committing a murder. In response to the officer's request, the parents of the defendant brought him to the sheriff's facility for questioning. Without giving *Miranda* warnings and without the parents' presence, the officer questioned the defendant for about two hours. A state appellate court ruled that the defendant was not in custody to require *Miranda* warnings. A federal appellate court ruled that the state court ruling unreasonably applied federal law under the federal habeas corpus standard, 28 U.S.C. § 2254(d)(1). The United States Supreme Court reversed the federal appellate court. (1) The Court examined its rulings on custody under *Miranda* and the facts of this case and ruled that the state appellate court ruling on custody was not an unreasonable application of federal law under the federal habeas corpus standard. (2) The Court stated that a defendant's age or inexperience with law enforcement are not factors in determining whether custody exists under *Miranda*. The Court noted that whether custody exists involves an objective, not subjective, test.

Miscellaneous

Ruling in *Ring v. Arizona* Is Not Retroactive

Schriro v. Summerlin, 124 S. Ct. 2519, 159 L. Ed. 2d 442, 75 Crim. L. Rep. 338 (24 June 2004). The Court ruled that its ruling in Ring v. Arizona, 536 U.S. 584 (2002) (because Arizona law authorized the death penalty only if an aggravating factor was present, the ruling in Apprendi v. United States, 530 U.S. 466 (2000), required the existence of such a factor to be proved to a jury rather than a judge), is not retroactive under the retroactivity analysis set out in Teague v. Lane, 489 U.S. 288 (1989).

Ruling in *Maryland v. Mills* Is Not Retroactive

Beard v. Banks, 124 S. Ct. 2504, 159 L. Ed. 2d 494, 75 Crim. L. Rep. 343 (24 June 2004). The Court ruled that its ruling in Mills v. Maryland, 486 U.S. 367 (1988) (unconstitutional to require jury to disregard mitigating circumstances not found unanimously), is not retroactive under the retroactivity analysis set out in Teague v. Lane, 489 U.S. 288 (1989).