New North Carolina Appellate Cases on the Meaning of Custody Under Miranda v. Arizona

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Probably the most litigated issue involving *Miranda v. Arizona* is the meaning of custody under its ruling that requires law enforcement officers to give prescribed warnings when conducting custodial interrogation. My last post (May 24, 2016), available here, discussed the custody issue involving traffic stops. Since then there have been three published North Carolina appellate cases on the custody issue in other contexts, which will be the focus of this post.

Meaning of Custody. The United States Supreme Court ruled in Berkemer v. McCarty, 468 U.S. 420 (1984), California v. Beheler, 511 U.S. 318 (1994), and other cases that a person is in custody under the Miranda rule when officers have formally arrested the person—for any offense, whether a felony or misdemeanor—or have restrained a person's movement to a degree associated with a formal arrest. The North Carolina Supreme Court in State v. Buchanan, 353 N.C. 332 (2001), later ruling, 355 N.C. 264 (2002), made clear that it follows the Court's rulings on the meaning of custody and disavowed inconsistent statements in prior North Carolina appellate cases.

State v. Hammonds. The defendant in Hammonds was placed on watch in a 24-hour facility after being involuntarily committed based on a magistrate's finding that he was mentally ill and dangerous to himself or others. The next day two detectives went to the facility and questioned him about a recent armed robbery without giving *Miranda* warnings. He made incriminating statements, which he moved to suppress on the grounds that his statements violated the *Miranda* ruling because he was in custody when questioned, and also because the statements were involuntarily given. The trial court denied the motion, he was convicted, and the N.C. Court of Appeals, 777 S.E.2d 359 (2015), available here, affirmed the trial court's ruling, but there was a dissenting opinion. Although there have been North Carolina appellate court opinions involving the custody issue when defendants were voluntarily in a hospital for medical treatment or confined in a correctional facility, I believe this case is the first involving an involuntary commitment.

After hearing oral argument last month, the N.C. Supreme Court on its own motion in an opinion filed June 10, 2016, available here, vacated both the opinion of the court of appeals and the trial court's order denying the suppression motion, along with its supporting findings and conclusions. It remanded the case back to the trial court for a new suppression motion hearing. The court required the trial court to apply a totality of the circumstances test as set out in Howes v. Fields, 132 S. Ct. 1181, 1194 (2012), in which the state supreme court added the following parenthetical describing *Howes*: "(holding that an imprisoned suspect was not in custody for *Miranda* purposes after '[t]aking into account all of the circumstances of the questioning—including *especially* the undisputed fact that [the inmate] was told that he was free to end the questioning and to return to his cell' (emphasis added))." And the state supreme court stated that the trial court must consider all factors, including the important factor of whether the involuntarily committed defendant "was told that he was free to end the questioning" (quoting from *Howes*). Once the trial court holds a new suppression hearing and issues an order, it must certify its order to the supreme court. Thus, we will have a final resolution of this significant custody issue in the relatively near future.

State v. Crook. The N.C. Court of Appeals on June 7, 2016, in State v. Crook, available here, reversed the trial court's ruling that the defendant was not in custody under *Miranda* when a detective questioned him. The court of appeals noted that the detective handcuffed the defendant, placed him under arrest, conducted a pat-down, and then asked a question of the defendant whose answer the defendant sought to suppress. I believe that even if the detective did not

explicitly tell the defendant that he was under arrest, the circumstances would fit the definition of custody, particularly considering defendant was handcuffed. For cases on handcuffing establishing custody, see State v. Johnston, 154 N.C. App. 500 (2002) (custody existed even though officers informed the defendant that he was not under arrest but only in "secure custody" for the defendant's safety and the safety of others); State v. Hemphill, 219 N.C. App. 50 (2012); State v. Crudup, 157 N.C. App. 657 (2003).

[Note carefully, however, there is a different analysis whether under the Fourth Amendment handcuffing converts a seizure from one requiring only reasonable suspicion to one requiring probable cause. Handcuffing a suspect during an investigative stop for flight or security reasons generally does not convert the seizure to one requiring probable cause. See page 46 of Arrest, Search, and Investigation (4th ed. 2011).]

State v. Portillo. The N.C. Court of Appeals on June 7, 2016, in State v. Portillo, available here, affirmed the trial court's ruling that the defendant was not in custody under *Miranda* when he was in a hospital for medical treatment and answered officers' questions. There was no evidence that the defendant knew a guard was present when the interview was conducted; the defendant was interrogated in an open area of the ICU where other patients, nurses, and doctors were situated, and he had no legitimate reason to believe that he was in police custody. None of the officers who were guarding him spoke with him about the case before the interview, and the detectives who did so wore plain clothes. There was no evidence that the defendant's movements were restricted by anything other than the injuries he had sustained and the medical equipment connected to him.