MIRANDA WARNINGS IN WELFARE INVESTIGATIONS

State v. Graves, 60 N.J. 441, 291 A.2d 2 (1972)

Welfare officials questioned Mrs. Graves, a welfare recipient, in an open setting at the welfare office to determine if her husband was living with her. After receiving warnings of her fifth amendment rights,[1] except for the right to remain silent, she made incriminating statements. Mrs. Graves was convicted of obtaining welfare funds under false pretenses by failing to disclose a change in living conditions.[2] The appellate court reversed, holding full *Miranda* warnings were required. The New Jersey Supreme Court modified the decision and *held*: questioning conducted in an open setting does not constitute custodial interrogation requiring *Miranda* warnings as long as it is not threatening or overbearing and the individual is free to leave.[3]

Miranda v. Arizona[4] established that a suspect "in custody or otherwise deprived of his freedom of action in any significant way"[5] must be warned of his rights before a statement made during interrogation is admissible.[6] Custody or a deprivation of one's freedom of action in a

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1. "[A person] must 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." Miranda v. Arizona, 384 U.S. 436, 479 (1966).

2. N.J. STAT. ANN. § 2A:111-3 (1962):

> Any person who . . . by false representation as to income or other financial resources, or by concealing or failing to disclose a material fact which it is his duty to reveal, obtains for himself or for any other person from any agency of the State or from any county or municipality, or any agency of such county or municipality, financial or other assistance in any form is guilty of a misdemeanor.

3. State v. Graves, 60 N.J. 441, 291 A.2d 2 (1972). The New Jersey Supreme Court reversed the defendant's conviction by reading intent into the statute and finding that the defendant lacked the intent to defraud the welfare board.

4. 384 U.S. 436 (1966).

5. *Id.* at 445.

6. Prior to *Miranda*, the criterion for the admissibility of statements was whether they were voluntary in fact, a requirement of due process. To determine whether a statement was voluntary, the Court looked to see whether pressures exerted by the police during detention and interrogation resulted in the confession. Included in the Court's decisions were cases in which the confession resulted from ignorance, or physical or psychological pressures. *See Developments in the Law—Confessions*, 79 HARV. L. REV. 935 (1966). The decision in *Miranda* was based on the fifth amendment: "No per-

significant way must be present before a court will apply *Miranda*. In *Miranda* the Court was concerned about the compulsory effect of questioning conducted while the defendant was in custody or was not free to leave.[7] The Court believed that the custodial atmosphere would overbear the defendant's will, deprive him of his freedom to choose whether to talk, and thus compel him to incriminate himself in violation of the fifth amendment.[8] Custody, therefore, has become a threshold standard by which to measure whether one's statement is voluntary.[9]

The question of what constitutes custody, however, remains unresolved. *Miranda* and two subsequent decisions have provided only bare outlines. In *Mathis v. United States*,[10] the Court found *Miranda* warnings necessary when the defendant was questioned while in custody on an unrelated charge. In *Orozco v. Texas*,[11] the Court required *Miranda* warnings even though the defendant was questioned in his room, since the police testified that they would not have allowed him to leave.[12] The *Miranda* opinion, however, specifically excluded on-the-scene questioning[13] and statements freely volunteered.[14] Generally,

son . . . shall be compelled in any criminal case to be a witness against himself. . . ." U.S. CONST. amend. V.

7. 384 U.S. at 445.

8. *Id.* at 467.

9. Determination that the defendant was or was not in custody does not replace the requirement that a confession must be voluntary. Rather, a finding that the defendant was in custody creates a presumption that the statement was involuntary unless *Miranda* warnings were given. Even if *Miranda* warnings are given, if the defendant is compelled by other facts to make statements he would not freely choose to make, those statements are not admissible. Garrity v. New Jersey, 385 U.S. 493 (1967); Spevak v. Klein, 385 U.S. 511 (1967).

10. 391 U.S. 1 (1967).

11. 394 U.S. 324 (1969).

12. The Court emphasized that the *Miranda* warnings were required in a custodial situation, even if the defendant was not in actual custody, stating, "The *Miranda* opinion declared that the warnings were required when the person being interrogated was 'in custody at the station or *otherwise deprived of his freedom of action in any significant way*.'" *Id.* at 327 (emphasis original).

13. Miranda v. Arizona, 384 U.S. 436, 477 (1966). Subsequent to *Miranda*, courts have had to decide the limits of "general on-the-scene questioning." *See, e.g.*, United States v. Edwards, 444 F.2d 122 (9th Cir. 1971) (information obtained from defendant during investigation of possible automobile theft at used car lot was obtained during on-the-scene investigation); Lowe v. United States, 407 F.2d 1391 (9th Cir. 1969) (questions about defendant's destination, finances, or permission to use car asked by deputy sheriff after defendant gave a social security card in response to request for driver's license and said car belonged to employer did not exceed scope of on-the-scene questioning); United States v. Thomas, 396 F.2d 310 (2d Cir. 1968) (exculpatory statements made in response to railroad police questions asked on street corner when

courts have construed custody narrowly, limiting it to situations in which the defendant was questioned while under arrest,[15] at the stationhouse,[16] or under circumstances which would make him feel he was not free to leave.[17]

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defendant was not restrained admissible although *Miranda* warnings were not given); Sablowski v. United States, 403 F.2d 347 (10th Cir. 1968) (information that two men in military fatigues had attempted to sell a car at a curio shop sufficient to satisfy an officer's stopping the car and requesting the car's registration and the driver's license); Jennings v. United States, 391 F.2d 512 (5th Cir.), *cert. denied*, 393 U.S. 868 (1968) (information obtained from defendant who initiates conversation with police officer while officer is looking at vehicle suspected of being stolen admissible).

14. 384 U.S. at 478. Lower courts have also been required to decide under what circumstances statements are freely volunteered. *See, e.g.*, United States v. Powers, 444 F.2d 260 (5th Cir. 1971) (defendant's incriminating statement made to jailer while defendant was in jail is admissible because it was not made as a result of any interrogation or questioning by jailer); United States v. Pellegrini, 309 F. Supp. 250 (S.D.N.Y. 1970) (defendant's statement that stolen merchandise was at his home was admissible because statement was not made in response to inspector's question); Jorgensen v. People, 495 P.2d 1130 (Colo. 1972) (defendant's statement of "I'm the one you're looking for" was voluntary when made to police who, suspecting him of homicide, asked him his name).

15. Since the decision in *Mathis*, it is clear that when a defendant is questioned while under arrest for any reason, *Miranda* warnings must be given. *See* Blyden v. Hogan, 320 F. Supp. 513 (S.D.N.Y. 1970); *cf.* United States v. Stamp, 458 F.2d 759 (D.C. Cir. 1971), *cert. denied*, 406 U.S. 975 (1972); note 10 *supra* and accompanying text.

16. *See* United States v. Pierce, 397 F.2d 128 (4th Cir. 1968) (defendant's statements made after being detained and questioned extensively by police were not admissible because defendant had not been given *Miranda* warnings); Dickerson v. State, 276 N.E.2d 845 (Ind. 1972) (defendant was deprived of his freedom of action when questioned in police interrogation room by one officer about complaint against him even though defendant knew he was not under arrest and had voluntarily gone to the police station about another matter). *But see* Parson v. United States, 387 F.2d 944 (10th Cir. 1968) (defendant's incriminating response to sheriff's question asked while defendant was being detained at station house for other law enforcement officials, about a matter unrelated to the suspected offense, was admissible as a voluntary statement); Mikulovsky v. State, 54 Wis. 2d 699, 196 N.W.2d 748 (1972) (no custodial interrogation when defendant is extensively questioned at police station after missing persons report has been filed, but before defendant is suspected of homicide).

17. For cases finding the defendant was in custody, *see, e.g.*, United States v. Bekowies, 432 F.2d 8 (9th Cir. 1970) (defendant was not unreasonable in believing he was in custody when FBI agents had arrest warrant for fugitive when they entered defendant's apartment, defendant knew the apartment had been staked out, agents requested defendant to accompany them in search, warned him of federal harboring statute, and questioned him persistently); People v. Arnold, 66 Cal. 2d 438, 426 P.2d 515, 58 Cal. Rptr. 115 (1967) (when defendant felt she had no alternative but to comply with interrogation proceeding, defendant was deprived of her freedom of action); Myers v. State, 3 Md. App. 534, 240 A.2d 288 (1968) (when defendant, a prime suspect, was taken from street corner, put in police vehicle, and interrogated on the way to the

The tendency to interpret custody narrowly has prevented the extension of *Miranda* to agency investigations. Although suspected of criminal conduct, the subject of the investigation is not under arrest nor restrained during the questioning, which may occur at the defendant's place of business,[18] the agency office,[19] or some other public place.[20] Because during questioning the subject is neither in custody nor deprived of his freedom of action in any significant way, courts have not applied *Miranda*.[21]

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station, there was a custodial interrogation). For cases finding that the defendant was not in custody, *see, e.g.*, United States v. Hall, 421 F.2d 540 (2d Cir. 1969) (defendant was not focus of investigation nor in custody when questioned by FBI agents who knew of bank robbery and that a car similar to defendant's had been near the scene); United States v. Montez-Hernandez, 291 F. Supp. 712 (E.D. Cal. 1968) (interrogation is not custodial when an officer on each side of the car asks for immigration cards of occupants, all Mexican, because of apparent nervousness); State v. Bode, 108 N.J. Super. 363, 261 A.2d 396 (1970) (where police chief called on-duty officer aside for private discussion about alleged theft by officer, and officer resumed duties and was not arrested, statements were not made in custody); People v. Rodney P. (anonymous), 21 N.Y.2d 1, 233 N.E.2d 255, 286 N.Y.S.2d 225 (1967) (*Miranda* warnings not required where defendant responded to police questions while defendant was in his yard after police asked friends to leave and had not arrested or restrained defendant).

18. United States v. Webb, 398 F.2d 553 (4th Cir. 1968) (at defendant's office by interstate commerce commission agents); White v. United States, 395 F.2d 170 (8th Cir.), *cert. denied*, 393 U.S. 844 (1968) (at private club, which defendant owned and operated, by IRS agents); SEC v. Dott, 302 F. Supp. 169 (S.D.N.Y. 1969) (at defendant's office where he worked by IRS agents); United States v. Morton Provision Co., 294 F. Supp. 385 (D. Del. 1968) (at defendant's place of business by department of agriculture agents); United States v. Roth, 285 F. Supp. 364 (S.D.N.Y. 1968) (at defendant's office by postal inspectors); Ouletta v. Arkansas, 246 Ark. 1130, 442 S.W.2d 216 (1969) (at bank where defendant worked by bank examiners).

19. United States v. Hamlin, 432 F.2d 905 (8th Cir. 1970) (postal inspector's office); United States v. Kroll, 402 F.2d 221 (3rd Cir. 1968), *cert. denied*, 393 U.S. 1043 (1969) (armed services induction center); United States v. Holmes, 387 F.2d 781 (7th Cir.), *cert. denied*, 391 U.S. 936 (1968) (armed services induction center); United States v. Shermeister, 286 F. Supp. 1 (E.D. Wis. 1969), *rev'd on other grounds*, 425 F.2d 1362 (7th Cir. 1970) (armed services induction center).

20. *See, e.g.*, White v. United States, 395 F.2d 170 (8th Cir.), *cert. denied*, 393 U.S. 844 (1968) (private club); United States v. Messina, 388 F.2d 393 (2d Cir.), *cert. denied*, 390 U.S. 1026 (1968) (public restaurant).

21. *See* notes 18-20 *supra*. For arguments that *Miranda* should be extended to agency investigations, *see*, Duke, *Prosecution for Attempts to Evade Income Tax: A Discordant View of a Procedural Hybrid*, 76 YALE L.J. 1 (1966); Elsen, *Securities Law Investigation*, 2 REV. SEC. REG. 873 (1969); Lyton, *Constitutional Rights in Criminal Tax Investigations*, 45 F.R.D. 323 (1968); Note, *Extending Miranda to Administrative Investigations*, 56 VA. L. REV. 690 (1970).

Courts usually do not apply *Miranda* to Internal Revenue Service investigations. Under IRS procedures, Audit Division agents, called Revenue Agents, investigate possi-

The New Jersey Supreme Court, after considering the conditions surrounding the interview, found the defendant was neither in custody nor

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ble civil liability. If they find evidence sufficient to warrant further investigation with possible criminal charges, they refer the case to Special Agents of the Intelligence Division. After receiving information, either through the Audit Division, independent investigation, other governmental agencies, or the public, the Special Agents seek more information through interviews with the informant, inquiries into banks and business contacts, and discussions with governmental agencies. Most investigations (94 percent) end here. If the investigation continues, agents contact the taxpayer, attempt to inspect his records, and interview third parties. In the 2.5 percent of the investigations which continue beyond this point, agents conduct a full-scale investigation to collect detailed evidence of fraud. The resulting report and recommendations filter through various commissioners and counsel to the Justice Department for prosecution. Only about .5 percent of the cases originally audited go to trial. *See* Note, *The Miranda Warnings and Tax Fraud Investigation*, 31 OHIO ST. L.J. 596 (1970).

These procedures create a unique situation in which a taxpayer, out of ignorance or a sense of duty, feels compelled to cooperate with the IRS. IRS investigations may change from civil to criminal without the taxpayer's knowledge. The desire to cooperate is probably greater in IRS investigations because, unlike other agency investigations, the defendant may not realize the government's regulatory powers and the consequences which follow from violations. Many taxpayers believe that the government will only assess a deficiency if they cooperate. Furthermore, taxpayers fear an investigation because it may result in notice to creditors, business associates, or friends. Finally, tax investigations lack the built-in warnings of being questioned by police or FBI agents, or being shown a badge or other symbol. These factors combine to create a situation in which the taxpayer may not intelligently exercise his rights. *See* Duke, *supra*; Lipton, *supra*; Note, *The Miranda Warnings and Tax Fraud Investigations*, 31 OHIO ST. L.J. 596 (1970); Note, *Extending Miranda to Administrative Investigations*, 56 VA. L. REV. 690 (1970). Yet, because the questioning occurs in an open setting, information obtained from the taxpayer without benefit of *Miranda* warnings is admissible. *See, e.g.*, United States v. Ponder, 444 F.2d 816 (5th Cir. 1971), *cert. denied*, 405 U.S. 918 (1972); Marcus v. United States, 422 F.2d 752 (5th Cir. 1970); Cohen v. United States, 405 F.2d 34 (8th Cir. 1968), *cert. denied*, 394 U.S. 943 (1969); United States v. Squeri, 398 F.2d 285 (2d Cir. 1968); United States v. Bagdasian, 398 F.2d 971 (4th Cir. 1968). A few courts, however, have found the requisite custody in IRS investigations and have applied *Miranda*. United States v. Dickerson, 413 F.2d 1111 (7th Cir. 1969) (physical conditions under which the questioning was conducted so resembled custody that *Miranda* warnings were required); United States v. Lackey, 413 F.2d 655 (7th Cir. 1969) (psychological pressures which the questioning created necessitated giving of *Miranda* warnings); United States v. Gower, 271 F. Supp. 655 (M.D. Pa. 1967) (*Miranda* warnings required because defendant was ignorant of his rights).

This controversy is somewhat moot because the IRS now requires its agents in effect to give *Miranda* warnings. The IRS announcement states that the "taxpayer in a criminal non-custody investigation will be advised of his constitutional rights in the following manner. At the initial meeting, a special agent is now required to identify himself, describe his functions, and advise the taxpayer that anything he says may be used against him, that he cannot be compelled to incriminate himself by answering questions or producing documents, and that he has the right to seek the assistance of

deprived of her freedom of action in any significant way.[22] In reaching its decision, the court concentrated on the physical aspects of custody or freedom of action. It dismissed as unencompassed by *Miranda* the compulsion generated by the investigation itself. Although it was argued that Mrs. Graves was under compulsion to cooperate because of a state regulation which deprived a welfare recipient of benefits if she failed to cooperate,[23] the court found that no compulsion existed because she was unaware of the regulation. The court decided that neither the expressed standard, nor the underlying concern, for the application of *Miranda* was present.

Although the New Jersey Supreme Court has followed the decisions of most courts by refusing to find that *Miranda* warnings were required by the circumstances surrounding the defendant's interview, it did not deny that *Miranda* warnings could be required in a welfare investigation. In dictum, it stated that if the circumstances of the investigation would lead a reasonable person to believe he was not free to leave, it may well be that *Miranda* should apply."[24] Unlike most decisions in this area, New Jersey has left open the possibility of applying *Miranda* to welfare investigation.[25]

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any attorney before responding." IRS News Release IR-949 (Nov. 26, 1968), 7 CCH 1968 STAND. FED. TAX REP. ¶ 6946.

22. The court emphasized that while there are certain pressures inherent in any interview, the presence of only two officials, the open setting of the questioning and the fact that she could leave at any time did not create a custodial situation requiring the application of *Miranda*. State v. Graves, 60 N.J. 441, 443, 291 A.2d 2, 6 (1972).

23. NEW JERSEY DEPARTMENT OF WELFARE MANUAL OF ADMINISTRATION 2123.2: General Policy:

> The client must understand, however, that it is the CWB [county welfare board] which is responsible for determining whether he is or is not eligible. If he is unwilling to have the necessary inquiries made and is unable or unwilling to secure the required information from such sources himself, then it shall be explained to him that the CWB will be unable to make an affirmative determination. In this situation, unless he wishes to withdraw his application he must expect that it will be denied by the CWB.

The regulation is quoted in Green v. Department of Institutions and Agencies, 109 N.J. Super. 462, 263 A.2d 796 (App. Div. 1970), a case in which the court upheld the county welfare board's termination of the appellant's benefits because she refused to provide the board with the required information.

24. State v. Graves, 60 N.J. 441, 291 A.2d 2 (1972).

25. It is unlikely, however, that *Miranda* warnings will be required in welfare investigations. A recent United States Supreme Court decision held that a mandatory home visit by a welfare case worker did not violate the recipient's right against unreasonable searches. The Court in part based its decision on the fact that a welfare recipient need not submit to the home visit, and if he does not, the termination of benefits

is a consequence produced by his own actions and has no constitutional implications. Wyman v. James, 400 U.S. 309, 324 (1971). Similarly here, the recipient can refuse to answer questions, but if she does, the detriment which may follow is of her own making. Furthermore, the Supreme Court, in dictum to *Harris v. New York*, stated that it was unwilling to extend *Miranda* requirements beyond "statements of an accused made while in custody prior to having or effectively waiving counsel." 401 U.S. 222, 224 (1971).