

Question MEE 6 – July 2023 – Selected Answer 1

1. The Issue is Whether Adam's Motion to Suppress the Incriminating Statement Made to Officer One Should be Granted Because it Violated His Rights Under Miranda

In *Miranda v. Arizona* the Supreme Court essentially created a prophylactic rule requiring law enforcement officers to read a suspect his or her rights under the 5th Amendment. Importantly, *Miranda* rights only have to be read to the suspect when the suspect is subjected to the "inherently compulsive" nature of custodial interrogation. Custodial interrogation has two prongs: (1) custody and (2) interrogation. Custody is determined by a totality of the circumstances, but the paradigmatic instance of custody is when a suspect is placed under arrest and taken to the police station. The guiding question courts use when determining whether a suspect is in "custody" for purposes of *Miranda* and its progeny is whether a reasonable person in the defendant's circumstances would believe that he or she is free to leave. Some factors the court considers in making the determination of custody are whether the defendant was placed under arrest and in handcuffs, whether there was a show of force by the officer, where the suspect was detained (more likely to be custody if taken to police station). Importantly, courts have consistently held that a suspect who is pulled over in a valid *Terry* stop is not in "custody for purposes of *Miranda*". On the other hand, "interrogation" for purposes of *Miranda* is when the officer (1) directly asks a question of the suspect or (2) says something either to or in the presence of the suspect that is reasonably likely to elicit an incriminating response. If one of the two prongs of custodial interrogation is lacking, *Miranda* rights need not have been read by the officer.

Here, Adam was stopped pursuant to a valid *Terry* stop. This is because Officer One saw Adam's car driving illegal without headlights. The fact that the Officer saw the car operating without headlights (which is an infraction) indicates that he had probable cause of criminal wrongdoing when all that is needed is reasonable, articulable, particularized suspicion of criminal wrongdoing to make a valid *Terry* stop. *Terry v. Ohio*. It is immaterial that the stop may have been a mere pretext to allow Officer One to ferret out his suspicions that the driver of the car may have been involved in a prior burglary because courts have frequently held that all that is needed to stop a car is reasonable suspicion, a pretextual stop will not violate the Constitution. Since Adam was stopped pursuant to a valid *Terry* stop, he was not in custody and therefore Officer One did not need to read Adam his *Miranda* rights before asking questions.

Adam may argue that the fact that he was asked to exit his car as well as the fact that he was patted down for weapons makes this situation rise to the level of custody because he felt he was unable to leave. However, Officer One was well within his

rights to do both of these things. An officer may order the driver out of his car for any reason as long as the stop was valid and an officer may conduct a pat down if there is reasonable suspicion that the suspect was armed. Here there was reasonable suspicion because the Officer saw a bulge. In sum, Adam was not in custody because this was a valid *Terry* stop and frisk, therefore Officer One did not need to read Adam his *Miranda rights* before asking questions.

2. The Issue is Whether Ben's Motion to Suppress the Incriminating Statement Made to Officer Two Should be Granted Because it Violated His Rights Under Miranda

The Supreme Court has held that since *Miranda* warnings are only a prophylactic rule, they need not be recited verbatim to the suspect. Rather, all that is required of the law enforcement officer is to convey a reasonable understanding of the suspect's rights to the suspect.

Here, unlike Adam, Ben was placed in custody because he was placed under arrest. As mentioned in the above rule, a suspect being placed under arrest and taken to the police station is the paradigmatic "custody" situation that *Miranda* intended to protect against. He was read some semblance of his *Miranda* rights when Officer Two said "You have all the rights under the Constitution, along with any *Miranda* rights. The former of these two statements is less likely to satisfy *Miranda* because he cannot expect a lay person (presumably Ben is not a lawyer) to know all of his rights in the Constitution. But the second might be valid because most Americans can recite the *Miranda* rights and know them well because of how prevalent the rights are on television and pop culture generally. In any event, Officer Two did not need to read the *Miranda* rights to Ben because there was no interrogation. Soon after informing him of his rights, Ben voluntarily confessed to the crime. It does not appear from the facts that the officer asked any questions and saying that he has rights and understands them is not a statement reasonably likely to elicit an incriminating response because it has nothing to do with the crime. Thus, Ben's motion to suppress will not be granted.

3. The Issue is Whether Carl's Motion to Suppress the Incriminating Statement Made to Officer Three Should be Granted Because it Violated His Rights Under Miranda

There are two things a suspect can do after he is read his *Miranda* rights: invoke the rights or waive them. An invocation needs to be clear and unequivocal. Language such as "maybe I need a lawyer, I'm not sure" is not a sufficient invocation. When there is no clear invocation and the defendant speaks anyway, he is deemed to have waived his *Miranda* right to silence. Staying silent in the face of questioning is not

enough for an invocation, there must be an affirmative statement showing that the suspect intends to invoke.

Here, Carl was read his *Miranda* rights verbatim. He was also placed in custody and was interrogated for two hours. He was in custody because he was arrested and taken to the station. He was interrogated because there was express questioning. However, nowhere in the facts does it indicate that Carl ever *invoked* his *Miranda* rights clearly and unequivocally. Staring sternly at Officer Three and staying silent is not enough to waive. Therefore, Carl's motion to suppress should be denied because he did not expressly invoke and he implicitly waived his *Miranda* right to silence by voluntarily speaking.

4. The Issue is Whether Dillon's Motion to Suppress the Incriminating Statement Made to Officer Four Should be Granted Because it Violated His Rights Under Miranda

Miranda was designed to protect against the inherently compulsive nature of custodial interrogation. However, one cannot be subject to inherent compulsion if they do not even know they are speaking with a police officer. For that reason, courts have consistently held that an undercover informant does not need to read a suspect his *Miranda* rights when speaking to him.

Here, Dillon did not know he was speaking to an undercover informant, therefore he was not in custody because he likely felt free to terminate the questioning (indeed he was free to terminate the questioning but he nevertheless bragged about committing the crime) at any point. Therefore, his motion to suppress will be denied.

Question MEE 6 – July 2023 – Selected Answer 2

ESSAY 6

Question 1: Adam's Statement

The issue here is: Was Adam in custody at the time he made the statement to the officer? Adam was not in custody at that time, therefore his statements were admissible.

A police officer may make a stop of a vehicle upon reasonable suspicion that the car is violating the law. He may detain the car/occupants for a brief investigatory inquiry (called a Terry stop). He may not extend the time beyond that investigation unless he has grounds to do. During that search, the individuals are considered "seized" if they are not free to leave at that time, or a reasonable person would not feel they are free to end the interaction with the police. Custody, on the other hand is when an

individual has been taken into custody such that a reasonable person would believe that they are going to jail and will not be allowed to freely leave. Any statements made before being in custody can be used freely against the individual because they are presumed to be made voluntarily.

Here, the court should deny the motion to suppress and admit the statement Adam made to Officer 1 (O1). O1 saw the car driving without its lights on. That was reasonable suspicion to stop the car. His seizure did not violate any of the defendant's 4th amendment right to be free from unreasonable seizure. During the investigatory Terry stop, O1 has the ability to ask the individuals to get out of the car and to identify themselves for the safety of the officers. O1 was within his rights to ask Adam to leave the vehicle. The cursory pat down (a Terry pat down) was ok because an officer who reasonably believes the individual may be armed is allowed to do a cursory pat-down to see if there are weapons. The bulge in Adam's jacket could have been a weapon, so that was ok. Adam was not in custody at any point. In fact, the officer told Adam that they would be released in a few minutes whether they answered questions or not. Under these circumstances, a reasonable person would believe they were going home and not in custody. Therefore, Adam's statements were voluntary and can be admitted against him.

Question 2

The issue in this question is: Is a waiver of Miranda without being informed of Miranda considered voluntary?

Once in custody, an officer may not interrogate an individual without giving him Miranda warnings. This is to ensure that the government's overarching coercive power does not overcome the individual to make an involuntary waiver or involuntary confession. A waiver of Miranda rights must be knowing and voluntary. Because of this, the Supreme Court has held that officers must give suspects Miranda warnings which inform the individual that he has a right to remain silent and that he has a right to an attorney. These must be provided so that the individual can knowingly waive those rights. Without those rights, the individual can not effectively waive Miranda and their statements are not admissible against them. However, even without a Miranda warning, an individual in custody may voluntarily speak and admit to crimes. If that is the case, the statements are admissible. The Miranda warnings must be given before police interrogate the individual.

A court will likely find that the Miranda warnings given by Officer 2 (O2) were not sufficient to meet the requirements of Miranda. He simply told the suspect that he had "all the rights the constitution gives you, along with any Miranda rights you might have." This does not inform the suspect enough so that he may knowingly waive his right to remain silent. Additionally, Miranda warnings were required because Ben (B) was arrested, taken to the police station and placed in a room. However, the police must administer Miranda warnings BEFORE interrogation. Here, the police officer

did not even ask a question of Ben and therefore he was not in an unduly coercive environment that would constitute as interrogation. Because he was not interrogated, the incorrect miranda warnings will not matter. His statement will be considered a voluntary statement and will be admitted against him. The court should deny the motion to suppress.

Question 3 - Carl

The issue in this question is: Does silence invoke the right to remain silent.

To invoke the right to remain silent, an individual must unequivocally invoke the right to remain silent. He must express that he wishes to remain silent to invoke that right. Simply remaining silent will not invoke that right. Once the right is invoked, the police must scrupulously honor the request and not question him any more. If speaking after remaining silent, the statement is admissible.

Here, Carl (C's) statement is admissible. His miranda warnings were correct. They were knowing and voluntary after receiving an appropriate miranda warning (See discussion in Q2). However, C never invoked his right to remain silent. He simply sat and said nothing. To invoke his right to remain silent he had to unequivocally invoke it. Because he did not O3 did not have to stop the questioning. Even when the officer told C that he wasn't assuming that he was exercising his right to remain silent, C did not invoke it. Because he was informed of his right to remain silent and he never invoked it his admission will be considered a voluntary waiver of his right to remain silent. Therefore, his statements may be admitted at trial. The court should deny the motion to suppress.

Question 4 - Dillion

The issue in this question is: Can an admission be voluntary if obtained by a 3rd party. Yes, an individual does not have a reasonable expectation to privacy when conversing with 3rd people and because the individual was not known to be a government actor, the miranda right did not attach.

The purpose of miranda warnings is to allow suspects to know their rights to prevent the coercive power of the government from compelling them to talk. If an individual does not know they are talking with a government actor, there is no inherent coercive pressure which could make the individual confess involuntarily.

Dillion's (D) statements should be admitted against him. His admission was to a cellmate and was voluntary. It does not matter that the officer did not correctly give D miranda rights, he was not being interrogated within a coercive environment. Additionally, because D did not know that the cellmate was a government actor, there was no pressure on him to confess. The cellmate was a government actor because he was acting at the direction of the officer. Because D did not know the cellmate was a government actor, his confession will be considered voluntary and will be admissible against him. The court should deny the motion to suppress.

Question MEE 6 – July 2023 – Selected Answer 3

1. Adam's incriminating statement to Officer one.

Adam's statement to officer one is not subject to suppression on the basis of a Miranda violation. The 5th amendment provides that individuals have the right against self incrimination. The Supreme Court, recognizing the importance of this right along with the risk that this right may be too readily waived in the face of police pressure, provides that as a prophylactic measure to combat the inherent pressures of police questioning, police are required to provide certain warnings prior to obtaining admissible statements from an individual subject to custodial interrogation. For a Miranda violation to occur, an individual must be subject to both (1) custody, and (2) interrogation. The existence of custody is a flexible inquiry, but the more that the restraint looks like a traditional arrest or station house questioning, the more likely that an individual will be considered to be in custody for purposes of Miranda. Interrogation would include any words or conduct on behalf of the police which is designed to elicit an incriminating response. If these conditions are met, then Miranda applies. If Miranda applies, then the requisite miranda warnings must be given to a suspect, and a waiver obtained, prior to any statement being admissible. Thus, each statement needs to be evaluated to determine (1) whether an application of Miranda was required, and (2) whether the requirements of Miranda were satisfied.

Regarding Adam's statement to Ben, Adam was stopped following an officer observing the vehicle being driven by without headlights. He informed Adam that this was the purpose of the stop, and that they would be free to leave as soon as they were ticketed and their license was valid. The officer in fact did not intend to let them leave as he intended to arrest Adam; however, this is not relevant for purposes of Miranda. What is important is what Adam would believe regarding his ability to go about his business. Additionally, the supreme court has previously ruled that temporary vehicle stops are not custody for the purposes of Miranda, as these stops are inherently temporary in nature and they are done in public. The officer's statement to this effect would bolster this conclusion. Thus, Adam's statement was made while he wasn't in custody, thus he was not required to receive any Miranda warnings prior to being subject to questioning. As a result, Adam's statement is not inadmissible due to Miranda.

2. Ben's statement to officer two.

Ben's statement to officer will likely not be excluded on the basis of a Miranda violation. Here, Ben was arrested upon suspicion of burglary and brought to the stationhouse. Stationhouse questioning is a classic example of custody for the

purposes of Miranda, thus custody existed regarding Ben's statement. Additionally, the "warnings" given by officer two were woefully inadequate. The supreme court specified the warnings that are to be given in order for the questioning to comply with miranda. While the substance of the warnings may be given rather than their exact phrasing, it is surely insufficient to state that an individual has all of the rights given by the constitution as well as Miranda. Nevertheless, Ben's statement will be admissible as he was not subject to the requisite interrogation for the purposes of Miranda. The statement by officer two was not an attempt to get an incriminating response, it was simply the provision of a form of warnings. In response, Ben blurted out the incriminatory statement. As this statement was not elicited by interrogation, it will not be subject to exclusion due to Miranda.

3. Carl's statement to officer three.

Carl's statement to officer three will be admissible. For a proper invocation of a right to either counsel or to remain silent to occur, a suspect needs to make a clear invocation of his rights. Equivocal statements are not sufficient. Nor is it sufficient for an individual to remain silent in order to invoke his right to remain silent. Where a clear waiver is not given, it is sufficient to show that a suspect understood his rights and then chose to speak. To invoke the right to remain silent, first a clear statement of that invocation must occur. Here, the officer informed Carl of his rights and watched him read it. This will likely be sufficient to show understanding. Then, after being questioned for hours, the suspect relented to questioning and gave his statement. This will suffice for an implied miranda waiver, thus this statement will be admissible.

4. Dillon's statement to cellmate.

Dillon's statement to cellmate will be admissible. For a miranda violation to occur, the statement needs to be made by a suspect to someone that he knows is an agent of the police. A miranda violation will not occur where a cellmate is convinced to question another prisoner on behalf of the police. The justification behind this rule is that the Miranda rule was designed to counter the inherent pressure of police interrogation. That same coercive pressure is not present when someone is speaking to an individual who they do not know is acting on the behalf of the police. As a result, the statements given to cellmate, who Dillon did not know was acting on the police's behalf, will not be subject to suppression due to miranda.