University of Baltimore Law Forum

Volume 6
Number 3 *March, 1976*

Article 5

3-1976

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In the recent case of *Michigan v. Mosley,* 44 L.W. 4015, the United States Court held that the procedural requirements established in *Miranda v. Arizona,* 384 U.S. 436, do *not* prescribe a second custodial interrogation of a criminal defendant where: (1) *Miranda* warnings are properly given before each custodial interrogation session, (2) the defendant exercised his right to remain silent in the first session and the session was immediately stopped, (3) a significant amount of time elapsed between the two sessions, (4) the defendant did not request an attorney, and (5) the crime that is the subject-matter of the second session differs in nature, time and place of occurrence from the crime that is the subject-matter of the initial interrogation session.

The facts of Mosley are that defendant Mosley was arrested for robberies, based upon an anomymous telephone call received by the police, and was then interrogated at the police station by the arresting officer, who gave the defendant the full *Miranda* warnings. The defendant told the officer that he didn't wish to answer any questions about the robberies and the interrogation was then promptly terminated. Over two hours later, a different police officer questioned the defendant abot a murder and robbery that were notsubjects of the first interrogation; full *Miranda* warnings were again given. This time, in response to the officer's untruthful statement that "Smith had confussed to participating in the slaying and had named [Mosley] as the shooter." 44 L.W. at 4016, Mosley implicated himself in the murder. Mosley was subsequently convicted for first-degree murder at a trial in which his motion to suppress his incriminating statement was denied and in which this statement was admitted into evidence: he was then given a mandatory life sentence. The Michigan Court of 'appeals reversed the judgement of conviction and held that the second interrogation was a *per se* violation of the *Miranda* requirement that interrogation cease upon defendant's exercise of his right to remain silent, 51 Mich. App. 105 214 N.W. 2d 564. The Michigan Supreme Court denied further appeal, 392 Mich. 764. The United States Supreme Court then granted certiorari to consider whether the second interrogation violated the *Miranda* procedure that:

". . .If the individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease. At this point he has shown that he intends to exercise his Fifth Amendment privilege; any statement taken after the person invokes his privilege cannot be other than the product of compulsion, subtle or otherwise. Without the right to cut off questioning, the setting of in-custody interrogation operates on the individual to overcome free choice in producing a statement after the privilege has been once invoked. [*Miranda v. Arizona,* 384 U.S. at 473-474]"

Justice Stewart's majority opinion examined the above passage from *Miranda* and found that:

". . .To permit the continuation of custodial interrogation after a momentary cessation would clearly frustrate the purposes of *Miranda* by allowing repeated rounds of questioning to undermine the will of the person being questioned. At the other extreme, a blanket prohibition against the taking of voluntary statements or a permanent immunity from further interrogation, regardless of the circumstances, would transform the *Miranda* safeguards into wholly irrational obstacles to legitimate police investigative activity, and deprive suspects of an opportunity to make informed and intelligent assessments of their interests. Clearly, therefore, neither this passage nor any other passage in the *Miranda* opinion can sensibly be read to create a *per se* proscription of indefinite duration upon any further questioning by any police officer on any subject, once the person in custody has indicated a desire to remain silent," 44 L.W. at 4017.

From this examination of *Miranda,* Justice Stewart concluded that "[t]he critical safeguard identified in the passage at issue is a person's 'right to cut off questioning' " and that "...the admissibility of statements obtained after the person in custody has decided to remain silent depends under *Miranda* on whether his 'right to cut off questioning' was 'scrupulously honored'." 44 L.W. at 4018.

The Court found that the 'scrupu-

lously honored' test was met, in the instant case, from the facts that the initial interrogation took only about twenty minutes, that there was over a two hour period in between interrogations, that *Miranda* warnings were fully given both times and great care was taken both times to ensure that Mosley understood them, and that the two interrogations concerned different and separate factual occurrences. Whereas the Michigan Court of Appeals viewed Mosley's case as factually similar to *Westover v. United States,* 384 U.S. 436 (a companion case to *Miranda*), the United Staes Supreme Court found marked factual differences in that *Westover* involved prolonged, sequential interrogations with no significant time lapses and without any warnings to the arrestee. In essence, the Court found no overreaching by the state, that Mosley's statement was voluntarily and informedly given, and that the principles of *Miranda* were preserved. For these reasons, the decision of the Michigan Court of Appeals was reversed in favor of the state and the case remanded.

Justice White concurred in the result, but would have gone further than the Court and would have overruled *Miranda* to the extent that the ". . .*Miranda* decision might be read to require interrogation to cease for some magical and unspecified period of time following an assertion of the 'right to silence,' and to reject voluntariness as the standard by which to judge informed waivers of that right." 44 L.W. at 4020.

Justice Brennan, joined by Justice Marshall, dissented on the ground that ". . .as to statements which are the product of renewed questioning, *Miranda* established a virtually irrebuttable presumption of compulsion . . . and that presumption stands strongest where, as in this case, a suspect, having initially determined to remain silent, is subsequently brought to confess his crime. Only by adequate procedural safeguards could the presumption be rebutted." 44 L.W. at 4021. Justice Brennan would find two alternative adequate safeguards to be a speedy arraignment or presence of counsel. He said:

"I do not mean to imply that counsel may be forced on a suspect who does not request an attorney. I suggest only that either arraignment or counsel must be provided before resumption of questioning to eliminate the coercive atmosphere of in-custody interrogation. The Court itself apparently proscribes resuming questioning until counsel is present if an accused has exercised the right to have an attorney present at questioning." 44 L.W. at 4021, n.4.

The dissent also feels that the subject-matter of the two interrogations were related because the informer's tip for the arrest covered both sets of crimes, the homicide arose from the factual context of a robbery, and defendant had told the initial interrogator that he didn't want to say "[a]nything about robberies," 44 L.W. at 4022. That is, the dissent believes the right to remain silent was exercised in a manner to cover the subject-matter of the second interrogation.

In evaluating the *Mosley* case, it appears to me that the subject-matter test is a *non sequitur*; i.e., that *Mosley* stands for the proposition that repeated interrogations are proper if (1) *Miranda* warnings are given before each interrogation session, (2) there are significant time lapes between sessions, (3) each session ceases when the defendant exercises his Fifth Amendment rights, and (4) the factual case-by-case context does not show relentless badgering of a suspect in such a manner as to coerce his testimory or undermine the voluntariness factor essential to an informed and willful statement. As a practical matter, strong limits remain upon the ability of the state to repeatedly custodially interrogate suspects. These limits include the suspect's rights to continually exercise his right to remain silent, his right to obtain the assistance of counsel at any stage of interrogation, and his right to a speedy hearing before a magistrate. Further, excessive pressure from the state will still result in the inadmissibility of inciminating statements. The net effect of *Mosley* still leaves the public interests in police investigative work in balance with the constitutional rights of public defendants.

Federal Court Intervention and Local Police Departments

by Lindsay Schlottman

In an action brought under 42 U.S.C. sec. 1983, the Supreme Court, led by Justice Rehnquist, reversed a federal district court's attempt to end a pattern of illegal and unconstitutional police mistreatment of citizens. *Rizzo v. Goode,* 44 LW 4095, was decided on January 21; 1976 and is the resting spot for litigation which lasted six years.

Rizzo began as two separate actions *(Goode v. Rizzo* and *COPPAR v. Tate),* each commencing in 1970, in which the principal defendants were the officials occupying the offices of Mayor, City Managing Director (who supervises and, with the Mayor's approval, appoints the Police Commissioner) and Police Commissioner (who has direct supervisory power over the police department). The two suits, permitted to proceed as class actions, alleged a pervasive pattern of illegal and unconstitutional police mistreatment, of minority citizens particularly, and of Philadelphia residents generally. The defendants were charged with conduct ranging from express authorization or encouragement of police misconduct to failure to act in a manner which would assure that such misconduct would not occur in the future.

Before the District Court for the Eastern District of Pennsylvania, forty-odd incidents of alleged police misconduct were revealed. Hearings lasted twenty-one days and two hundred and fifty witnesses testified, resulting in findings of fact which both sides accepted with respect to thirty-six incidents. (The inci-