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Recent Developments: Fairchild Space Co. v. Baroffio: "Early Bird" Employee Not Eligible for Workers' Compensation under the Coming and Going Rule

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words to all suspects." 459 U.S. at 564, n. 15. Since the officer's inquiry was not designed to elicit testimonial evidence from McAvoy, again no *Miranda* advice was required.

The right that McAvoy did possess, and which was not infringed, was the right not to be unreasonably refused counsel if requested. In addressing McAvoy's contentions in this regard, the court of appeals relied on *Sites v. State*, 300 Md. 702, 481 A.2d 192 (1984), which holds that "a person under detention for drunk driving must, *on request*, be permitted a reasonable opportunity to communicate with counsel before submitting to a chemical sobriety test..." *Id.* 300 Md. at 717-18, 481 A.2d at 192 (emphasis added). However, the right to counsel is limited only to circumstances that "will not substantially interfere with the timely and efficacious administration of the testing process." *Id.* Since McAvoy had neither requested counsel nor been formally charged with a crime, the court found that his Sixth Amendment rights were also not violated.

By holding that a suspect is not entitled to *Miranda* advice prior to either a field or chemical sobriety test, the court of appeals has merely adopted the prevailing law set forth by the Supreme Court in its decisions of *Berkemer* and *Neville*. The decision still insures that a suspect will not be deprived of counsel if requested. However, the court is further guaranteeing that persons who drive while intoxicated will nonetheless be accountable for such imprudent acts.

— *Timothy Mitchell*

Fairchild Space Co. v. Baroffio: "EARLY BIRD" EMPLOYEE NOT ELIGIBLE FOR WORKERS' COMPENSATION UNDER THE COMING AND GOING RULE

In *Fairchild Space Co. v. Baroffio*, 77 Md. App. 494, 551 A.2d 135 (1989), the Court of Special Appeals of Maryland held that an "early bird" employee who was told by her supervisor to report to work early was not eligible for workers' compensation for injuries sustained on her way to work. As a result, the court limited the application of the "dual purpose" and "special errand or mission" exceptions under the "coming and going" rule.

Susan Baroffio, the appellee, was an Associate Contract Administrator for Fairchild Space Company, the appellant. Her duties sometimes required her to work overtime without pay. On Friday, September 5, 1986, she was told by her supervisor to arrive at work one-half hour early on Monday to prepare a presentation. In preparation for the presentation, the appellee worked late on Friday, returned to work on Saturday and worked at home on Sunday evening. On Monday, Ms. Baroffio left for work one-half hour earlier than normal by her usual route and was injured in a car accident.

Ms. Baroffio filed a claim for compensation with the Maryland Workers' Compensation Commission. The Commission made an "Award of Compensation" which Fairchild appealed to the Circuit Court for Montgomery County, which affirmed the Commission's award. Fairchild then appealed to the Court of Special Appeals of Maryland where both parties agreed to proceed on an expedited appeal and an agreed statement of facts.

To begin its analysis, the court examined the language of the "coming and going" rule. The court noted that while the Workers' Compensation Act was designed to provide compensation for work-related injuries, injuries sustained while traveling to or from the work place are not covered. *Id.* at 497, 551 A.2d at 136, (citing, Gilbert & Humphreys, *Maryland Workers' Compensation Handbook*, §6.6 (1988)). There are, however, two applicable exceptions to this rule which allow an injured employee to receive compensation for injuries sustained while coming and going to the work place.

The court first applied the "dual purpose" exception which states:

> Injury during a trip which serves both a business and a personal purpose is within the course of employment if the trip involves the performance of a service for the employer which would have caused the trip to be taken by someone even if it had not coincided with the personal injury.

1 Larson, *Workmen's Compensation Law*, § 18.00 (1965). If an employee chooses to work at home for her convenience, coming and going to work is not for a business purpose within the exception. *Id.*, § 18.33 at 4-316. Based upon this, the court found no evidence that Ms. Baroffio was required to work at home, rather, it was a matter of her personal preference, and concluded that her injuries did not fall within the dual purpose exception.

In support of this conclusion, the court found *Stoskin v. Board of Educ. of Montgomery County*, 11 Md. App. 335, 274 A.2d 397 (1971) to be directly on point. In *Stoskin*, a school teacher who was told by the principal to study certain books prior to the first day of school, attempted to rely on the "dual purpose" exception after being injured on her way to work. Even though the teacher was in the course of her employment when reviewing the books, the court found no evidence that she was required to work at home. The *Stoskin* court found the "dual purpose" exception inapplicable because the teacher's review ended before she began her trip to work the following day.

The court next proceeded to address the appellee's primary argument, that her injury was compensable under the "special errand or mission" exception. This exception provides:

> When an employee, having identifiable time and space limits on his employment, makes an off-premises journey which would normally not be covered under the usual going and coming rule, the journey may be brought within the course of employment by the fact that the trouble and time of making the journey, or the special inconvenience, hazard, or urgency of making it in the particular circumstances, is itself sufficiently substantial to be viewed as an integral part of the service itself.

1 Larson, *Workmen's Compensation Law*, § 16.11 (1985). The court rejected this exception, and noted that the exception usually applies to employees who are regularly "on call" and are subsequently injured on their way to work. *Fairchild*, 77 Md. App. at 500, 551 A.2d at 139. The court of special appeals reiterated its finding in *Coats & Clark's Sales Corp. v. Stewart*, 39 Md. App. 10, 13, 383 A.2d 67, 70 (1978) that "the essential characteristic of a special errand or mission is that it would not have been undertaken except for the obligation of employment."

The court also found *Trent v. Collin S. Tuttle & Co.*, 20 A.D.2d 948, 249 N.Y.S. 2d 140 (1964) persuasive in its rejection of the special errand exception. In *Trent*, an executive secretary who was required to turn in a report early the next day, worked late and completed the report at home. She left early the following morning and was injured on her way to work. The New York court rejected her argument that the "special errand" exception applied. That court held that travel to and from work is not a risk of employment unless the employee's home is really a second employment location where services are required to be rendered. *Fairchild*, 77 Md. App. at 502, 551 A.2d at 139.

The Court of Special Appeals of Maryland applied the New York court's rationale and found that Fairchild did not require Ms. Baroffio to work at home and that the "special errand or mission" exception to the "coming and going" rule did not apply. In so holding, the court has declined to expand workers' compensation laws to include an employee who is required to report to work early.

— *Michael P. Sawicki*