



1998

Recent Developments: Hughes v. State: The Routine Booking Question Exception to Miranda Pertains Only to Questions Securing Identification Information of the Most Basic Sort

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Recommended Citation

Cox, John E. (1998) "Recent Developments: Hughes v. State: The Routine Booking Question Exception to Miranda Pertains Only to Questions Securing Identification Information of the Most Basic Sort," *University of Baltimore Law Forum*: Vol. 28 : No. 1 , Article 9. Available at: <http://scholarworks.law.ubalt.edu/lf/vol28/iss1/9>

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Hughes v. State:

**THE ROUTINE
BOOKING QUESTION
EXCEPTION TO
MIRANDA PERTAINS
ONLY TO QUESTIONS
SECURING
IDENTIFICATION
INFORMATION OF
THE MOST BASIC
SORT**

By John E. Cox

The Court of Appeals of Maryland, in *Hughes v. State*, 346 Md. 80, 695 A.2d 132 (1997), held that the routine booking question exception to *Miranda* does not encompass questions that are designed to elicit incriminating admissions. The court's ruling narrowed the exception allowed for booking questions and clarified the standard as to the proper application of the routine booking question exception.

Michael Patron Hughes ("Hughes") was arrested for suspected involvement in the distribution of illegal drugs. At the time of the arrest, the police found eight rocks of crack cocaine in Hughes' possession. While Hughes was being detained, the arresting officer completed a standard Prince George's County Police Department arrest report. Question number eighteen on the arrest report asked whether the arrestee was a narcotic or drug user. Hughes responded in the negative. Hughes was later charged with possession with intent to distribute cocaine, possession of cocaine, conspiracy to distribute cocaine and conspiracy to possess with intent to distribute cocaine.

At trial, evidence was produced to establish Hughes's intent to distribute narcotics. Among this evidence was the arrest report filed at the time of Hughes's arrest. The State used Hughes's negative response on the arrest report to establish that the cocaine found in his possession was not for his personal consumption but rather

for distribution. The defense counsel objected to the admission of the police officer's testimony, arguing that at the time of the booking, Hughes had not been advised of his *Miranda* rights. The State contended that the question was exempt from *Miranda* under the routine booking question exception. After hearing arguments by both sides, the trial judge allowed the testimony into evidence.

Hughes was convicted on all charges in the Circuit Court of Maryland for Prince George's County. Citing a *Miranda* violation, Hughes appealed to the Court of Special Appeals of Maryland. The court of special appeals affirmed the lower court's decision, holding that the drug use question fell within the routine booking question exception. The Court of Appeals of Maryland granted certiorari to determine whether the routine booking question exception to *Miranda* encompasses a question as to whether the arrestee was a narcotic or drug user. The court found that the question did not fall

within the routine booking question exception and overturned the decisions of the circuit court and court of special appeals.

The routine booking question exception "exempts from *Miranda's* coverage questions to secure the 'biographical data necessary to complete booking or pretrial services.'" *Hughes v. State*, 346 Md. 80, 88, 695 A.2d 132, 136 (1997) (quoting *Pennsylvania v. Muniz*, 496 U.S. 582 (1990)). The court of appeals determined that not every question asked during the booking process automatically falls under the routine booking question exception. *Id.* at 89, 695 A.2d at 137.

In determining which questions fall within the exception, the court examined two different standards set forth in *Rhode Island v. Innis*, 446 U.S. 291 (1980) and *Pennsylvania v. Muniz*, 496 U.S. 582 (1990). The *Innis* standard prohibited police from asking questions during the booking process that they knew or should have known were reasonably likely to elicit an incriminating response. *Id.* at 91, 685 A.2d at 137-38 (citing *Innis*, 446 U.S. at 301); whereas the *Muniz* standard prohibits police from asking questions that were designed to elicit incriminating admissions during the booking process. *Id.* at 92, 695 A.2d at 138 (citing *Muniz*, 496 U.S. at 601 (1990)). The difference between the two standards is that *Innis* was an objective test based upon the particular circumstances and the likelihood the question will elicit an incriminating response, whereas

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Muniz was based on the actual intent of the police. *Id.* at 93, 685 A.2d at 138.

The court reconciled the gap between the two standards by reaffirming the standard set forth in *Innis*. *Id.* at 95-96, 685 A.2d at 140. Questions that fall outside the routine booking exception are questions designed to elicit incriminating admissions. *Id.* at 100, 695 A.2d at 142. In determining whether the question was designed to elicit an incriminating admission, the court must consider the totality of the circumstances, including the context of the questioning and the content of the question. *Id.* The court acknowledged that the intent of the police officer was relevant, but not the controlling factor. *Id.*

In applying this standard to the case at bar, the court determined that the narcotics use question fell outside the routine booking question exception. *Id.* at 97, 695 A.2d at 141. The State argued that the question should fall within the exception because it was contained on a standard booking form and was asked of every arrestee, regardless of the charge. *Id.* The court rejected this argument, stating that simply because a question is asked during the booking process does not mean the question automatically falls under the routine booking question

exception. *Id.* at 98, 695 A.2d at 141. The court added that a seemingly benign question in one instance, may be incriminating in another. *Id.*

The State also argued that the narcotics use question addressed certain administrative concerns. *Id.* at 99, 695 A.2d at 141. For example, knowledge of a suspect's drug use would allow the police to meet health needs of the suspect and prevent harm to others. *Id.* However, the court determined this specific question would not adequately address those concerns. *Id.* at 99, 695 A.2d at 142. The court noted a question directed toward the present physical state of the suspect would be better suited to redress the administrative concerns of the State. *Id.*

The court put a great deal of emphasis on analyzing the specific circumstances of the case to determine whether the question fell within the routine booking question exception. *Id.* at 100, 695 A.2d at 142. Since *Hughes* was arrested for a drug related crime, the court determined the question on the booking form as to *Hughes*'s use of drugs would elicit an incriminating admission. *Id.* at 100-01, 695 A.2d at 142. The court did not specifically address whether the question asked of *Hughes* would be allowed in other circumstances, but did determine

that the question did not appropriately address the administrative concerns set forth by the State. *Id.* at 99, 695 A.2d at 142. Although the question in the case was held not to be within the routine booking question, the court noted that if the question were rephrased to more adequately address the administrative concerns of the State, it may be acceptable in non-drug related cases. *Id.* at 99-100, 695 A.2d at 142.

The court's decision in *Hughes* clarifies the standard to be used in determining whether a question falls within the routine booking question exception. The ruling narrowed the exception allowed for booking questions, which is necessary to keep police from abusing the booking process as a method of interrogation absent the *Miranda* safeguards. Although the decision may cause revisions in some of the standard booking forms used by police in Maryland, the court made an important decision in upholding the fundamental principles behind the *Miranda* rights.

Editor's Note: Maryland appealed the decision to the U.S. Supreme Court which denied certiorari. *Maryland v. Hughes*, 118 S.Ct. 459 (1997).