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TRAINING BULLETIN: LEGAL UPDATE

"Necessarily" in Custody?

By Charles Gillingham

You have an unsolved case and discover your suspect is in the county jail or state penitentiary either pending trial, awaiting sentencing or serving a sentence in another case. You have been told by the unreasonable prosecutor that s/he won't issue the case until you get a statement from the suspect. You know that you can talk to the suspect provided the suspect does not invoke his right to an attorney in his prior case. The question in your mind is "do I have to Mirandize the suspect when I speak to him in custody?" ***Is an inmate in a county jail or state prison "necessarily" in custody*?**

The court in *People* v. *Macklem* (2007) 149 Cal.App.674, held that the officer did not need to *Mirandize* the defendant before questioning him regarding a different crime than that offense for which he was in custody.

MACKLEM: FACTS OF INITIAL CRIME

Macklem has an anger management problem. Macklem killed his ex-girlfriend after a conversation during which she spoke about a different ex-boyfriend. Macklem said he "snapped." Earlier that day, however, Macklem told another friend that he was thinking about killing the victim because she was depressed. Macklem was arrested and subsequently charged with murder.

MACKLEM: FACTS OF SECOND CRIME

While in the San Diego County Jail awaiting trial for the murder, Macklem assaulted his sleeping cellmate, Doane, with a plastic pipe. Deputies had to subdue him to stop the assault. The investigating officer for the jail assault took Macklem to an interview room, removed his handcuffs and told Macklem he did not have to speak to her. The Deputy did not give *Miranda* warnings. Macklem stated that he cannot control himself when he gets angry and that he would have killed Doane had the deputies not stopped him. Macklem went on to say that he is a smart guy but "just not wired right…and "that's the reason why I'm in here, because no one was there to stop me." The cases were tried together and the astute prosecutor used his statements against him. The jury convicted Macklem of the murder and assault with a deadly weapon. He was sentenced to prison for life.

MOTION TO SUPPRESS STATEMENTS FOR LACK OF *MIRANDA* WARNING

Macklem moved to suppress his statements to the deputy as a *Miranda* violation. Macklem argued that he was in custody in the jail facility and therefore was entitled to *Miranda* warnings.

The general rule in *Miranda* is that when a suspect is in custody and interrogation occurs, a *Miranda* waiver is required.[1] Custodial interrogation is "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way."[2]
However, courts have held that someone in a prison or jail is not necessarily in custody. The court in *Macklem* sought to determine whether Macklem was in custody for *Miranda* purposes when interviewed at a custodial facility where he was already confined.[3] The court in *Macklem* held that there are different types of custody. Custody as generally understood does not mean custody for *Miranda* purposes. Just because someone is in jail, does not mean they are in custody. So the court looked at some factors to determine whether someone in jail is in custody for *Miranda* purposes.

THE NINTH CIRCUIT TO THE RESCUE: FACTORS EXPLAINED

The Ninth circuit, in *U.S.* v. *Cervantes* (9th Cir.) 589 F.2d 424, rejected the argument that any prison interrogation constituted custodial interrogation and required *Miranda* warnings. The court set out some loose guidelines to evaluate when *Miranda* warnings are a prerequisite to an admissible interview:

1. Whether the language summoning defendant from his prison cell was coercive. For example, was the defendant told he had to meet with the officers and answer questions;
2. Whether the defendant was confronted with evidence of guilt or was questioning investigatory;
3. Whether the defendant was handcuffed;
4. Where in the facility was the questioning done? There is a distinction, for instance, between questioning done in a visiting room or in a coercive environment such as the prison administrator's office.

People v. *Fradiue* (2000) 80 Cal.App.4th 15, also held that a state prison inmate was not necessarily in custody for the purposes of Miranda. The *Fradiue* court stated that in evaluating a *Miranda* claim, the court must consider whether, a defendant, as a reasonable person, would believe there had been a restriction of his freedom over and above that inherent in his custodial setting. The court also looked to the surrounding circumstances of the statement to determine whether the defendant was in custody.

PRISON OR JAIL DOES NOT NECESSARILY MEAN CUSTODY

Looking at the facts in *Macklem*, the court found that the investigating deputy asked the housing deputy to contact Macklem. Macklem was asked whether he wanted to be interviewed. The investigating deputy made clear that Macklem was not required to submit to the interview. Macklem was uncuffed prior to the interview and the door to the

interview room was left open. The interview room was one used by doctors and attorneys and Macklem was told he could go back to his housing unit whenever he chose. Finally, the deputy did not confront him with his guilt but rather merely questioned him about the incident with Doane. Finally, when Macklem began to talk about the murder the deputy ceased questioning him.

The court held that the interview was not coercive and did not indicate an additional restraint on Macklem's liberty over and above that of the custodial setting. Therefore, the court held that Macklem was not in custody and the statement did not require a *Miranda* waiver to be admissible.

Take the factors laid out above into consideration when questioning a subject who is "in custody."

Chuck Gillingham is a veteran prosecutor and regular instructor for the California District Attorney's Association and the Federal Internet Crimes Against Children Task Force. Chuck also teaches the legal portion of Multidisciplinary Child Interviewing for Third Degree Communications, Inc.

[1] *Berkemer* v. *McCarty* (1984) 468 U.S. 420.
[2] *Yarborough v. Alvarado* (2004) 541 U.S. 652.
[3] *People* v. *Anthony* (1986) 185 Cal.App.3d 1114.