Tenth Circuit

Legal Advisor

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The U.S. Supreme Court has some new rules for the old Miranda game. Intake Division Director Mike Cusick explains Miranda changes resulting from the McNeil and Edwards decisions.

U.S. SUPREME COURT

By Mike Cusick

Supreme Court permits certain custodial interrogation of defendants who have not invoked their right to counsel under Miranda

In the recent United States Supreme Court case of McNeil v. Wisconsin, the Court reestablished the ability of law enforcement to question in-custody defendants about other cases when they have not invoked the Miranda right to counsel.

A prior ruling, Arizona v. Roberson, had been interpreted by some courts as preventing law enforcement from questioning an in-custody defendant about other cases once counsel was appointed for him at a first appearance hearing. The Supreme Court has now clarified the law in this area in the McNeil decision.

Paul McNeil was arrested on a warrant for armed robbery. he was questioned about the robbery. He refused to make a statement but did not request an attorney under Miranda. At a court hearing, a public defender was appointed to represent him on the robbery charge.

While he was in custody, investigators on a separate murder case came and questioned him on three different occasions. On each visit, McNeil was advised of his Miranda rights and he signed a rights waiver form before giving a statement. He was charged with murder.

His attorney moved to suppress the statements, claiming they were illegally obtained because counsel had been appointed in the robbery case.

In deciding the case, the Supreme Court said there are two separate and distinct rights to counsel.

The first is the Sixth Amendment right to counsel which provides the defendant with

the right to have an attorney represent him in the defense of the charge against him. The Court said this right is offense -specific. That means the right only applies to charges for which counsel has been appointed.

This right does not exist until the defendant has actually been charged. It does not apply to future charges which have not been filed against the defendant. Once counsel has been appointed on a specific case, the defendant cannot be questioned about that case unless his attorney is present.

The second right to counsel is based on the Fifth Amendment Miranda ruling. This is the right to have an attorney present during in-custody interrogation.

In Edwards v. California, The Supreme Court held that once a defendant has asked for an attorney under Miranda, not only must the present questioning cease, but he may not be questioned later unless an attorney has been made available to him.

The Court has ruled that this right is not offense-specific, so that once an in-custody defendant has invoked his right to counsel under Miranda, he may not be questioned about any offense unless counsel is present.

In McNeil, the Court found that McNeil had not invoked his Fifth Amendment right to counsel. Therefore, the Court ruled that it was permissible to use his statements in the murder trial. The Court said the Sixth Amendment right to counsel only applied to statements, if any, on the robbery case.

WHAT DOES THIS MEAN TO YOU AS LAW ENFORCEMENT OFFICERS?

First, if an in-custody defendant invokes his right to an attorney under Miranda, he cannot be questioned about the case he is in custody for as well as any other case in which he is a suspect.

Second, if he is in-custody but has not invoked his right to counsel

under Miranda, he can be questioned about any case other than the one for which he has been arrested and for which counsel has been apointed.

The effect of McNeil, therefore, is to permit you to question an in-custody defendant about other cases besides the one in which he has been charged by you or some other officer, as long as he has not invoked his right to counsel under Miranda at some prior questioning.

If you have any questions about the McNeil case or if you would like a copy of it, you can contact me at 534-4800.

FROM THE COURTS

Edited by Chip Thullbery

A rock can be a deadly weapon

The defendant, a juvenile, was charged with aggravated assault. At his hearing, evidence showed that he threw a rock the size of a baseball at another person.

The trial court adjudicated him delinquent and on appeal, the Third District affirmed, holding that the rock was a deadly weapon.

A.H. v. State, 16 FLW D963 (Fla. 3rd DCA, Apr. 9. 1991).

A kindergarten is not a school for purposes of drug statute

The defendant was charged with purchasing cocaine within 1,000 feet of a school. She filed a motion to dismiss, asserting that the kindergarten/preschool near where she purchased the cocaine was not a school within the meaning of section 893.13(1)(e). The trial court granted the motion to dismiss, and on appeal, the Fourth District affirmed, holding that kindergartens

(See "school" next page)

"school"

and preschools are not schools within the meaning of the statute.

State v. Roland, 16 FLW D869 (Fla. 4th DCA Apr. 3, 1991).

Passenger in stolen car not guilty of theft

The State filed a petition alleging that the defendant, a juvenile, was delinquent for having committed a grand theft. The evidence at his hearing showed tht he accepted a ride from a friend driving a stolen car. Shortly thereafter the police arrested both the driver and him. In a post arrest statement he indicated that upon entering the car he suspected that it had been stolen because of the broken steering column. The trial court adjudicated the defendant delinquent for theft. On appeal, the Supreme Court reversed, holding that a mere passenger in a stolen vehicle who has not exercised possession or control over the vehicle cannot be convicted of theft. State v. G.C., 16 FLW S45 (Fla. Jan. 3, 1991)

Use of force in fleeing from shoplifting creates a robbery

The defendant was charged with robbery. The evidence at his trial showed that an officer saw him shoplift a greeting card from a store. The officer followed him to his car and advised him he was under arrest. The defendant put his car in reverse and attempted to flee, striking and injuring the officer. Based on this evidence, he was convicted of robbery. On appeal, the defendant argued that he was not guilty of robbery because the violence did not occur during the course of the taking. The Fifth District rejected this argument and affirmed, holding that the continuity of the defendant's progression from the store to his forceful act made it within the course of the taking of the property.

Santilli v. State, 15 FLW D2836 (Fla. 5th DCA Nov. 21, 1990).

Snatching money from victim is not robbery

The defendant was charged with unarmed robbery.

The evidence at his trial showed that while an undercover officer was attempting to purchase crack cocaine from him, he snatched a ten dollar bill from the officer's hand and ran.

He did not touch the officer in the process.

He was convicted of robbery, but on appeal, the Second District reversed, holding that the slight force used to remove the bill from the officer's hand was insufficient to constitute the crime of robbery.

Goldsmith v. State, 16 FLW D356 (Fla. 2nd DCA Feb. 1, 1991).

A case of actual physical control

The defendant was charged with DUI and filed a (c)(4) motion to dismiss.

The facts on which the motion was based were that the defendant was found passed out, slumped over the steering wheel in the front seat of his car which was parked in the parking lot of a restaurant.

The keys to the car were in his hands.

The trial court granted the motion to dismiss, but on appeal, the circuit court and the Fourth District reversed, holding that the facts presented a prima facie showing that the defendant was in actual physical control of the vehicle.

Baltrus v. State, 15 FLW D2979 (Fla. 4th DCA Dec. 12, 1990).

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Information learned through license tag check justified stop

The defendant was charged with carrying a concealed weapon and filed a motion to suppress.

The evidence on the motion showed that while patrolling a high drug activity area, a police officer noted a car occupied by one man.

In response to a license tag check, the officer was advised that the owner of the car had no valid drivers' license.

The officer did not know the driver, but stopped the vehicle to determine if the driver had a valid license.

Upon doing so, he learned that the driver was not the owner, but the driver made a spontaneous statement to the effect that he did not have a license.

The officer arrested him, and a search incident to that arrest resulted in the discovery of the weapon.

The trial court denied the motion to suppress, and the defendant pled no contest to the charge reserving his right to appeal.

On appeal, the Fifth District affirmed, holding that the information the officer received during the license check justified his stop of the vehicle.

Smith v. State, 16 FLW D497 (Fla. 5th DCA Feb. 14, 1991)

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