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When is a Prisoner Not in Custody?

Written by: Wade Warren: Assistant State Attorney

On February 12, 2012, the United States Supreme Court decided the case of *Howes v. Fields*. This case has been the source of both enthusiasm and puzzlement for the law enforcement community. In fact, its existence was brought to my attention by an officer the day after it was decided. The thrust of most conversations concerning this decision is: "Does this case suggest I can question people who are imprisoned without the necessity of reading them *Miranda*?" The answer is a qualified: "Maybe."

Assistant State Attorney, Wade Warren has been with our office for 26 years.

In order to understand the reason for uncertainty, it is first important to understand exactly what the Court was deciding in this case. Fields had been incarcerated in a Michigan state prison where he was questioned about a crime he had allegedly engaged in prior to being sentenced. The deputies who questioned him did not read Fields his *Miranda* rights and he ultimately confessed. The confession was used in his prosecution after the trial court denied his motion to suppress. The Michigan appellate court agreed with the lower court which prompted Fields to seek habeas relief in the Federal system.

On the Federal habeas issue, two lower courts decided that Fields had been subjected to custodial interrogation that required the administration of *Miranda* and reversed the decision of the Michigan courts. The case was finally presented to the United States Supreme Court which granted certiorari review. The holding of the Supreme Court Justices was that no "clearly established" rule existed that mandated that the removal of a prisoner from the general population necessarily was proof of custody for purposes of *Miranda*. What the case does not say, however, is that all questioning of prisoners does not require the reading of their rights.

The first thing the courts are going to look at is whether the defendant's perception would be that his freedom of movement has been impaired based on the "objective circumstances of the interrogation." Not all restraints on freedom of movement create custody. In order for that to occur, there has to be circumstances that present a danger of coercion and that the individual will not feel free to leave or terminate the discussion. Factors to be considered are location of the questioning, duration of the dialogue, statements made during the interview, the use of physical restraints such as handcuffs, and the release at the end of the questioning.

So what were the specific circumstances in *Howes v. Fields* that the Supreme Court decided did not constitute custody? Fields was escorted to a well-lit conference room by a corrections officer. He was not handcuffed at any point. The two deputies questioning him were armed at the time. Fields was told he was free to leave and return to his cell on multiple occasions. The door to the conference room was sometimes open and sometimes closed. The questioning lasted between five to seven hours. He was offered food and water during the interview. One of the deputies did use a sharp tone at a point during the proceedings. Fields never asked to return to his cell.

The Justices saw some of these factors leaned towards establishing custody (armed officers, duration of the event, and harsh tone), but others offset them (open door, lack of handcuffs, and arrangements for refreshment). The single most important circumstance appears to be the fact that he was told he was free to

end the questioning and could return to his cell. Without that factor, the balancing of the circumstances might well have been decided differently. Or, to put it in the Supreme Court's words, "All of these objective facts are consistent with an interrogation environment in which a reasonable person would have felt free to terminate the interview and leave."

The Court also discussed the aspect of taking a prisoner out of the general population for questioning and whether that implicated custody. They pointed out that a prisoner is not always on friendly terms with his fellow inmates. In fact, the prisoner might encounter hostility or danger discussing some topics within earshot of the other prisoners. Also, escort by guards, regardless of the purpose, is a standard procedure for an inmate meeting a visitor, even their own attorney. None of these circumstances evidence custody for the *Miranda* purposes.

The issue before us then is how to react to this decision. If law enforcement questions a prisoner without *Miranda* and the court later determines that the circumstances made it a custodial interrogation, the statement will be suppressed. While damaging enough in a simple drug case, this outcome may be horrendous in a homicide investigation. To create the greatest probability of admissibility by the courts, it may be wise to go ahead and administer *Miranda* to the prisoner. If the rights are not given, however, follow these basic guidelines:

- Do not handcuff the subject.
- Try to limit the length of the questioning.
- Conduct the interview in a comfortable environment.
- Provide food and water.
- Do not yell or act aggressively during the questioning.
- Above all, make sure the defendant is told he is free to leave at any time. (I suggest repeating this a few times during the interview).

Remember the hallmarks for admissibility of any statement (whether with or without Miranda) is that it is freely and voluntarily given by the suspect. Do not use coercive tactics that will transform an otherwise non-custodial interview into a custodial one. Also bear in mind that *Howes* involves an inmate serving a sentence. It is not directed to the status of an individual who is detained while pending charges. For a prisoner having their freedom of movement restricted is the status quo of their daily life, but a detainee has been isolated and removed from the support of their family and friends, which raises a greater potential for coercion. The detainee may also believe his or her cooperation may have an impact on the length of incarceration. For these reasons it would always be wise to administer *Miranda* to persons not currently under sentence.

The goal is ultimately to secure admissions or confessions that can be used both in the investigation and prosecution of criminal offenses, not to push the envelope on what can be left out and still be admissible. Just as a skydiver packs a backup chute that he hopes he will never need, it is better to err on the side of caution if there is any doubt about whether the defendant is considered to be in-custody. This case provides a safety net, but if caution is observed, it will rarely be needed.

FROM THE COURTS...

AGGRAVATED ASSAULT ON A LEO CONVICTION AFFIRMED

The defendant was charged with, among other things, Aggravated Assault on a Law Enforcement Officer. At his trial the evidence established that he backed his car at a high rate of speed towards an officer who was standing nearby. The officer testified that he was fearful he would be hit by the car. The defendant was convicted as charged. On appeal the Second District, in an *en banc* opinion, affirmed, holding that the state proved the defendant had the intent to do an act which was substantially certain to put the victim in fear of imminent violence. In so doing the Court receded from an earlier case which indicated that the state had to prove that the defendant had the intent to do violence to the victim. *Pickney v. State*, 36 FLW D2528 (Fla. 2d DCA Nov. 18, 2011).

BITE BY PERSON WITH AIDS WAS AGGRAVATED BATTERY

The defendant was charged with attempted first-degree murder of a law enforcement officer. At his trial, the evidence established that while the officer/victim was attempting to restrain the defendant, the defendant yelled, "I have AIDS, and I'm going to kill you." He then bit the officer, breaking the skin and causing bleeding and later a scar. The jury convicted the defendant of the lesser included offense of aggravated battery on a law enforcement officer, and on appeal, the Third District affirmed, holding that the evidence was sufficient to support an Aggravated Battery conviction. *Jamerson v. State*, 36 FLW D2550 (Fla. 3d DCA Nov. 23, 2011).

INTENT TO DRIVE IS NOT AN ELEMENT OF DUI

The defendant was charged with DUI. Prior to trial, the state filed a motion in limine seeking to prohibit the defendant from arguing that the state had to prove the defendant's intent to drive in order to prove actual physical control. The trial court denied the state's motion, but in response to a Petition for Writ of Certiorari the Circuit Court quashed the trial court's order. On appeal, the First District affirmed the Circuit Court's order, holding that intent to drive a motor vehicle is not an element of the crime of DUI. *McCoskey v. State*, 36 FLW D2661 (Fla. 1st DCA Dec. 2, 2011).

WEIGHT OF CANNABIS INCLUDES WEIGHT OF WATER IT CONTAINS

The defendant was charged with trafficking in excess of twenty-five pounds of cannabis. He filed a motion to dismiss asserting that when his expert weighed the cannabis it only weighed twenty-four pounds and that there was a pool of water in the bottom of the container in which the cannabis was stored. The state traversed, stating that it had an expert which would explain that the water had seeped out of the marijuana after it was initially weighed. The trial court granted the motion, but on appeal, the Third District reversed, holding that the weight of cannabis includes water inherently found in the plant. *State v. Estrada*, 36 FLW D2771 (Fla. 3d DCA Dec. 21, 2011).

http://www.sao10.com

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Domestic Violence	**534-4861**
Felony Intake	**534-4987**
Felony	**534-4964**
Investigations	**534-4804**
Violation of Probation	**534-4803**
Child Abuse	**534-4857**
Homicide	**534-4959**
On Call Phone	**860-8243**
Worthless Checks	**534-4874**
Juvenile	**534-4905**
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Witness Management	**534-4021**
Fax	**534-4034**

Officers can submit their vacation to Witness Management at the following email address:

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