RECENT DEVELOPMENTS

Criminal Procednre: Miranda Warnings by Federal Officers Sufficient to Remove "Taint" of Prior Unconsititutional State Interrogation

In *United States v. Knight*,[1] the Second Circuit announced that the administration by federal officers of the warnings concerning procedural rights demanded by *Miranda v. Arizona*[2] can isolate a federal confession from the "taint" of inadmissible prior statements to state authorities, which were made in a situation of minimal coercion. The defendant Knight was originally detained by New York City police when, in response to a police inquiry, he produced a rental agreement indicating that his car was overdue in California. After suggesting that the officers accompany him to his apartment to call the rental agency, Knight described a film mounted on a projector there as being "dirty." In response to further inquiries, Knight exhibited the film and stated that he had brought the film and certain photographs in the room from California. At no time did the police advise Knight of his constitutional rights. Following his arrest on local charges, the FBI was summoned; and one of the federal agents, after removing Knight's handcuffs, informed him of his rights. Knight again stated that he had brought pornographic material from California. In the district court the defense sought unsuccessfully to rebut this admission, and Knight was convicted for the interstate transportation of obscene materials.[3] The court of appeals affirmed, rejecting a challenge to the admissibility of the defendant's inculpatory statement to federal agents.[4]

The *Miranda* decision formulated a catalogue of constitutional admonitions, concerning the rights to silence and to counsel, that law enforcement officers must make known to a suspect at the outset of custodial interrogation.[5] If at trial the state cannot prove that such warnings were given and that the suspect "intelligently and knowingly" waived his rights,[6] then "no evidence obtained as a result

---

[1] 395 F.2d 971 (2d Cir. 1968).

[2] 384 U.S. 436 (1966) (consolidated for decision with *Vignera v. New York*, *Westover v. United States*, and *California v. Stewart*).

[3] *See* 18 U.S.C. § 1465 (1964).

[4] 395 F.2d at 973-75.

[5] 384 U.S. at 479.

[6] *Id.* at 475.

of interrogation" is admissible.[7] The Supreme Court, however, did not definitely indicate the limitations of this exclusionary rule,[8] leaving unanswered the question whether the "fruit of the poisonous tree"[9] doctrine would apply in a *Miranda* situation.[10] One of the *Miranda* cases, *Westover v. United States*, did concern itself with a portion of the "poisonous fruits" problem. *Westover* considered the factors necessary to sufficiently dissipate the "taint" of an unconstitutional interrogation so as to permit the introduction into evidence of a subsequent confession made shortly after the belated administration of constitutional-rights warnings. After fourteen hours of state custody and interrogation, without any warnings, Westover was given the necessary warnings by an FBI agent and confessed for the first time during a two-hour federal interrogation. Since the warnings by the federal officers came, from Westover's viewpoint, at the end of one extended interrogation, the Court was unable to find a sufficient waiver of constitutional rights.[11] After implicitly rejecting the rationale that a confession is per se tainted by *any* prior unconstitutional attempt to elicit the confession, the Court established the parameters to be employed in future judicial inquiries by noting that a different case would be presented if the interrogation leading to the defendant's confession was "removed both in time and place" from the original interrogation.[12]

The "time and place" criterion has been accepted as the appropriate test in decisions subsequent to *Westover*. In *Evans v. United States*,[13] where three days elapsed between the confession to state police, invalid because of a failure to warn, and the subsequent confession to a postal inspector who gave the defendant appropriate warnings, the Court of Appeals for the Eighth Circuit held that the *Westover* test had not been fully satisfied since there was no removal

---

[7] *Id.* at 479.

[8] *See* Pye, *Interrogation of Criminal Defendants—Some Views on Miranda v. Arizona*, 35 FORD. L. REV. 199, 216 (1966). *Compare* 384 U.S. at 500 (dissenting opinion of Clark, J.), *with id.* at 545 (dissenting opinion of White, J.). *But see* Shannon v. State, ___ Tenn. ___, ___, 427 S.W.2d 26, 29 (1968) (dictum) (the "poisonous fruits" problem is treated as having been solved by *Westover*).

[9] *See generally* Nardone v. United States, 308 U.S. 338 (1939); Silverthorne Lumber Co. v. United States, 251 U.S. 385 (1920).

[10] *See generally* George, *The Fruits of Miranda: Scope of the Exclusionary Rule*, 39 COLO. L. REV. 478, 492-94 (1967); Pye, *supra* note 8, at 216-18.

[11] 384 U.S. at 494-96.

[12] *Id.* at 496.

[13] 375 F.2d 355 (8th Cir. 1967).

of "place."[14] In *People v. Raddatz*,[15] after a detention of one hour and a short interrogation, the defendant confessed without the benefit of any warnings. Thirty minutes later he confessed again, this time after warnings in the office of the state's attorney. Under the teachings of *Westover*, the second authority was an unconstitutional "beneficiary,"[16] and warnings alone by this authority could not dissipate the taint.[17] Similarly, in *United States v. Pierce*[18] there was no removal in time or place, but the Court of Appeals for the Fourth Circuit, dealing with a factual situation quite similar to *Knight*, chose to hold the confession inadmissible on the grounds that the suspect was probably aware of the FBI's knowledge of his prior statements to the local police and that, therefore, the *Miranda* waiver was not "voluntary."[19] Three post-*Westover* cases, however, have dismissed claims of inadmissibility. In *Nobles v. United States*[20] the Fifth Circuit indicated that a sufficient removal in time and place had occurred when the defendant went home after questioning by state authorities and returned voluntarily to confess to an FBI agent.[21] In *Robinson v. State*,[22] the tenuous distinction was drawn that *Westover* involved a defendant who had not expressly waived his rights. However, it was noted that the passage of time was one factor supporting admissibility.[23] Finally, the *Robinson* court employed the time and place test, without citing *Westover*, in *Wiggins v. State*[24] when it stated that "a significant passage of time and a change of environment and of interrogators . . . [would] remove any initial taint."[25]

Knight maintained on appeal that *Westover* required the exclusion of his confession to the federal officer, since the failure of the local police to warn him of his rights poisoned the subsequent statement.[26] While the court acknowledged the significant question of whether the

---

[14] *Id.* at 360.
[15] 91 Ill. App. 2d 425, 235 N.E.2d 353 (1968).
[16] *See* 384 U.S. at 496-97.
[17] 91 Ill. App. 2d at ____, 235 N.E.2d at 357.
[18] 397 F.2d 128 (4th Cir. 1968).
[19] *Id.* at ____.
[20] 391 F.2d 602 (5th Cir. 1968) (per curiam).
[21] *Id.* at 602-03.
[22] 3 Md. App. 666, 240 A.2d 638 (1968).
[23] *Id.* at __, 240 A.2d at 643.
[24] __ Md. App. __, 241 A.2d 424 (1968).
[25] *Id.* at __, 241 A.2d at 431.
[26] 395 F.2d at 973.

inquiries made by the local police in the defendant's apartment constituted such a "custodial interrogation" as would activate the exclusionary rule of *Miranda*,[27] it explicitly assumed that Knight's responses to state police were inadmissible.[28] Notwithstanding this assumption, the Second Circuit proceeded to examine the level of compulsion involved in the interrogation by state police in order to determine if the statement to the FBI was tainted. The fact that Knight was at home was considered by the court relevant to this level of pressure as was the brevity of the state interrogation. The court also noted that the major elements of the crime had been established by the "voluntary act" of the defendant when he exhibited the film. Moreover, the force of having let "the cat out of the bag"[29] through admissions to state authorities was said to be limited by the fact that Knight was mistaken as to the legal effect of having obtained the material in California. Accenting this low level of coerciveness, in the court's opinion, was the federal agent's request that Knight's handcuffs be removed. The pressures against which *Miranda* was directed were said not to be present. The "totality" of these "circumstances" provided no evidence of a "causal relationship" between the two statements. Therefore, the court concluded, the giving of the warnings alone was sufficient to insulate the second statement from the infirmities of the first.[30]

The *Knight* rationale denies, by implication, the legitimacy of *Westover*. From the perspective of *Pierce, Evans,* and *Raddatz*, it is possible to say that the "time and place" test represents a prescription by the Supreme Court of two basic parameters by which dissipation should be measured. *Westover* indicated that such determinations were necessarily ad hoc,[31] but it did not imply that courts were to be free to adopt any measure of attenuation. The *Knight* opinion is void of any reference to the *place* of the FBI interrogation. Thus, in emphasizing such factors as Knight's presence in his home during state interrogation and the removal of his handcuffs, the *Knight* court seemingly rejects the "time and place" test in favor of some ad hoc

[27] *See, e.g.*, Westover v. United States, 384 U.S. at 478-79; United States v. Gleason, 265 F. Supp. 880, 882 (S.D.N.Y. 1967); United States v. Knight, 261 F. Supp. 843, 844 (E.D. Pa. 1966); United States v. Littlejohn, 260 F. Supp. 278, 282 (E.D.N.Y. 1966); People v. P., 21 N.Y.2d 1, 233 N.E.2d 255, 286 N.Y.S.2d 225 (1967).

[28] 395 F.2d at 974.

[29] *See* United States v. Bayer, 331 U.S. 532, 540 (1947).

[30] 395 F.2d at 974-75.

[31] 384 U.S. at 496.

examination of voluntariness. The danger of this approach lies primarily in its potential as a panacea for *Miranda* violations. If future decisions find that the level of coerciveness surrounding the violation was minimal, it will be easier to avoid the exclusionary rule. This is contrary to the clear teachings of *Miranda* which demand observance whenever the citizen is in custody. While *Knight* may be a harbinger of attempts to obviate *Miranda*, it is suggested that if the spirit of the *Miranda* safeguards is to continue to be viable, a better approach would be to explicate or expand *Westover*. Several isolation devices, other than removal in time and place, have been suggested.[32] Procedurally, the rebuttable presumption, developed in decisions dealing with physical coercion and inducements,[33] that all statements given after an inadmissible one are tainted, should be specifically extended to the *Westover* situation.[34] In addition to the removal in time and place, a knowing and intelligent waiver should require that the suspect be informed of the possible inadmissibility of his prior statement, regardless of how clear it may seem to subsequent interrogators that the earlier statement is admissible. Absent such a "possible-inadmissibility" warning, the tainting effect of an earlier confession should bar the admissibility of the subsequent confession.[35] Alternatively, the mandatory intervention of counsel in an effective manner, between the interrogations, would presumably assure the admissibility of the later statement. *Westover* is perhaps susceptible of internal limitation, as well as expansion, but *Knight* does not represent the proper approach. It attempts to solve a post-*Miranda* problem with pre-*Miranda* tools.

---

[32] *See, e.g.*, Killough v. United States, 315 F.2d 241, 248-51 (D.C. Cir. 1962) (concurring opinion of Wright, J.).

[33] *See, e.g.*, Payne v. State, 231 Ark. 727, 729, 332 S.W.2d 233, 235 (1960); People v. Brommel, 56 Cal. 2d 629, 634, 364 P.2d 845, 848, 15 Cal. Rptr. 909, 912 (1961); Lee v. State, 236 Miss. 716, 722, 112 So. 2d 254, 256 (1959); Wechsler v. State, 172 Tex. Crim. 559, 564, 361 S.W.2d 379, 383 (1962); 3 J. WIGMORE, EVIDENCE 855 (3d ed. 1940).

[34] *See* Killough v. United States, 315 F.2d 241, 249-50 (D.C. Cir. 1962) (concurring opinion of Wright, J.).

[35] *But see id.* at 250 (concurring opinion of Wright, J.).