CASENOTE

United States v. Patane: The Supreme Court's Continued Assault on *Miranda*

I. INTRODUCTION

In *United States v. Patane*,[1] the United States Supreme Court ruled on the issue of whether a police officer's failure to give a suspect the complete *Miranda* warnings required the court to suppress a gun found as a result of the suspect's voluntary statements.[2] In a 5-4 decision, the Court held that failure to give such warnings does not require suppression of physical evidence gained from unwarned voluntary statements.[3] The dissenting justices were concerned about the negative effects this ruling would have on police procedures, judicial inquiries, and suspect's rights.[4] This decision creates another exception to the *Miranda* rule and could have the effect of weakening the rule in its entirety.

1. 124 S. Ct. 2620 (2004) (plurality opinion).
2. *Id.* at 2624 (plurality opinion).
3. *Id.* at 2630 (plurality opinion).
4. *Id.* at 2631-32 (plurality opinion).

II. FACTUAL BACKGROUND

In 2001 Samuel Francis Patane violated a restraining order by attempting to telephone his ex-girlfriend, Linda O'Donnell. In June of that year, Colorado Springs Police Officer Tracy Fox began to investigate the matter. Around the same time, another detective, Josh Benner, received information that Patane, a convicted felon, illegally possessed a .40 caliber Glock pistol. Fox and Benner proceeded to Patane's residence together.[5]

After reaching the residence, Officer Fox inquired into Patane's attempts to contact O'Donnell and found sufficient cause to make an arrest for violation of a restraining order. After the arrest, Detective Benner attempted to advise Patane of his rights under *Miranda v. Arizona,*[6] but Patane interrupted, asserting that he knew his rights. Neither officer attempted to complete the *Miranda* warnings. Benner then proceeded to ask Patane about the Glock. Patane was initially hesitant to discuss the matter, saying that he was not sure he should tell Benner anything because he did not want Benner to take the gun away. After Benner persisted, Patane told him that the pistol was in his bedroom and gave the detective permission to retrieve the gun.[7]

Patane was charged with, and later indicted by a grand jury for, possession of a firearm by a convicted felon. The United States District Court for the District of Colorado granted Patane's motion to suppress the pistol on the grounds that the officers lacked probable cause to arrest him. Although the Tenth Circuit Court of Appeals reversed the probable cause ruling, the Court affirmed the suppression order on an alternate theory that the gun was the fruit of an unwarned statement.[8] On a grant of certiorari, the Supreme Court reversed and remanded the case in a 5-4 decision.[9]

III. LEGAL BACKGROUND

A. Miranda: A Solution to Coercive Police Tactics

The Self-Incrimination Clause of the Fifth Amendment states: "No person . . . shall be compelled in any criminal case to be a witness

5. *Id.* at 2624-25 (plurality opinion).
6. 384 U.S. 436 (1966).
7. *Patane*, 124 S. Ct. at 2625 (plurality opinion).
8. *Id.* (plurality opinion).
9. *Id.* at 2630 (plurality opinion).

against himself."[10] The Supreme Court has long recognized that the Fifth Amendment, in concert with the Fourteenth Amendment's due process clause, prohibits the use of coerced confessions in both state and federal courts.[11] In the early twentieth century, the Court based its determination of whether a confession was coerced or voluntary on the evaluation of the "totality of the circumstances" surrounding the interrogation.[12] A confession was deemed voluntary, and therefore admissible, if it was not "'extracted by any sort of threats or violence, nor obtained by any direct or implied promises, however slight, nor by the exertion of any improper influence.'"[13] While the "totality of the circumstances" test proved to be effective at deterring physical coercion by police during custodial interrogations, the test had less of an effect on deterring the increasingly psychological tactics used by police towards the middle of the twentieth century.[14] These psychological tactics made the voluntariness of a statement harder to determine and the "totality of the circumstances" test more difficult to apply.[15]

Recognizing that the modern practice of custodial interrogation was becoming more psychological in nature, the Warren Court attempted to set concrete guidelines for law enforcement agencies to follow.[16] In

---

10. U.S. CONST. amend. V.

11. *See, e.g.*, Ashcraft v. Tennessee, 322 U.S. 143, 154 n.9 (1944) (overturning the conviction of a man who confessed after 36 straight hours of police interrogation without sleep or rest by experienced investigators and highly trained lawyers).

12. Fikes v. Alabama, 352 U.S. 191, 197 (1957) (holding that the admission into evidence of the confession of an uneducated African-American, who was taken to the state prison far from his home, repeatedly questioned in isolation, and denied the presence of his father and lawyer, was a violation of his due process rights).

13. Bram v. United States, 168 U.S. 532, 542-43 (1897) (quoting 3 RUSSELL ON CRIMES 478 (6th ed. 1896)) (finding a detective's testimony regarding confessionary statements made by the accused to him in a previous interview to be inadmissible due to the fact that they were not given voluntarily by the accused).

14. Police began developing psychological interrogation tactics such as good cop/bad cop (one police officer being extremely friendly and understanding while the other acted in an overly harsh and antagonizing manner), false line-ups (in which the suspect was put in a line-up and identified by a coached witness before interrogation), blame shifting (where the interrogating officer would downplay the seriousness of the crime and blame the victim or society), and false legal advice (for example, officers telling suspects that their crimes only constituted self-defense in order to gain confessions). Interrogators also developed canned responses to discourage witnesses from following through on requests to consult an attorney. Miranda v. Arizona, 384 U.S. 436, 455 (1966) (citing FRED E. INBAU & JOHN E. REID, CRIMINAL INTERROGATION AND CONFESSIONS (1962)).

15. Spano v. New York, 360 U.S. 315, 321 (1959) (holding a conviction based on the confession of a suspect invalid when police officers denied a suspect that turned himself in the right to see his previously retained attorney and continued to question him for eight more hours).

16. *Miranda*, 384 U.S. at 441-42.

Miranda v. Arizona, the Court first developed a specific set of pre-interrogation warnings that must be given to suspects under custodial interrogations.[17] According to the Court, 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."[18] Before police interrogate a suspect in custody, the suspect must be informed that (1) they have the right to remain silent, (2) that any statement they do make may be used against them, and (3) that they have a right to an attorney, either retained or appointed.[19] Waiver of these rights is only effective if made voluntarily, knowingly, and intelligently after the warnings have been given.[20] In addition to the warning, the Court also established procedural safeguards to protect a suspect's Fifth Amendment right against self-incrimination. Once a suspect has invoked their Fifth Amendment right to remain silent, the police must stop the interrogation, and the prosecution may not use the suspect's refusal to cooperate against the suspect at tial.[21]

The Court implemented the *Miranda* warnings and their procedural safeguards based on the reasoning that confessions gained in a coercive atmosphere could never truly be the product of free choice.[22] The Court based this conclusion on cases in which the defendants' statements may have been voluntary in the traditional sense, but their admissions were nonetheless violations of the Fifth Amendment right against self-incrimination.[23] The Court made it clear that a statement would not be admissible without both the proper warnings and adequate waiver.[24]

---

17. *Id.* at 444.
18. *Id.*
19. *Id.*
20. *Id.* at 444, 470.
21. *Id.* at 468, 473-74.
22. *Id.* at 458.
23. *Id.* at 456. The Court was referring to *Townsend v. Sain,* 372 U.S. 293, 303 (1963) (holding inadmissible the confession of a 19-year-old heroine addict who was described as a "near mental defective"); *Lynumn v. Illinois,* 372 U.S. 578 (1963) (reversing the conviction of a woman who confessed after being told that her children would be removed by the authorities if she did not cooperate); and *Haynes v. Washington,* 373 U.S. 503 (1963) (reversing the conviction of a man who repeatedly asked to speak with either his wife or attorney during police interrogation and was refused until he gave a written confession).
24. *Miranda,* 384 U.S. at 476.

B. A Changing Court's Distaste for Miranda as Evidenced by a Systematic Erosion of the Ruling

The Warren Court decided *Miranda* in 1966, but soon after, beginning in 1970, the Burger Court started to weaken the precedent *Miranda* set forth. With the addition of Chief Justice Burger in 1969, followed by Blackmun in 1970, and later Powell and Rehnquist in 1972, the Court began to back away from the rationale adopted in *Miranda*. Instead of classifying *Miranda* warnings as a constitutional right in and of themselves, the newly structured Court chose to view the warnings prescribed by *Miranda* as prophylactic in nature. Characterizing the *Miranda* decision as prophylactic instead of constitutional allowed the Court much more discretion in determining how *Miranda* should be applied. The newly aligned Court used this distinction to systematically weaken the rule instead of overruling their brethren on a decision with which they did not agree.

Evidence of this strategy can first be seen in *Harris v. New York*.[25] A mere five years after the *Miranda* decision, the Court held that while statements gained from a suspect in violation of *Miranda* could not be used in the prosecution's case-in-chief, they were admissible for impeaching a witness's testimony at trial.[26] In *Harris* a suspected drug dealer was arrested and then questioned without being advised of his right to counsel.[27] At trial, the prosecution used the transcript of this questioning to impeach Harris's testimony.[28] Chief Justice Burger stated that "the shield of *Miranda*" could not be used to prevent the prosecution from admitting into evidence prior inconsistent utterances the defendant made voluntarily.[29] The Court was not concerned about weakening the deterrence effects of *Miranda*, reasoning that inappropriate police conduct was sufficiently discouraged by the exclusion of evidence from the prosecutions case-in-chief.[30]

Using similar reasoning, the Court in *Michigan v. Tucker*[31] approved the use of testimony from a man that police located only as a result of the suspect's comments during unwarned questioning.[32] In *Tucker* the Court reiterated the proposition that statements taken in violation of

25. 401 U.S. 222 (1971).
26. *Id.* at 226.
27. *Id.* at 224.
28. *Id.* at 223.
29. *Id.* at 226.
30. *Id.*
31. 417 U.S. 433 (1974).
32. *Id.* at 452.

Miranda principles cannot be used by the prosecution to prove its case at trial.[33] However, the court reasoned that because Tucker's statements were only used to locate a witness and were not used by the prosecution in its case-in-chief, there was no violation of Tucker's constitutional rights under the Fifth Amendment.[34] The Court concluded that the police did not violate the suspect's right against self-incrimination, but only infringed upon the prophylactic rules put in place by *Miranda* to protect that right.[35] Again, the Court was not swayed by the need to deter inappropriate police conduct, stating that this rationale loses much of its force when the police acted in good faith.[36]

The Supreme Court developed another exception to the *Miranda* rule in *New York v. Quarles*.[37] In *Quarles* a police officer pursued Benjamin Quarles, an armed rape suspect, into a grocery store. After apprehending Quarles, the officer noticed that Quarles was wearing an empty shoulder holster and asked him where he hid the gun. Quarles indicated that the gun was hidden in some empty cartons, and the officer retrieved the weapon.[38] The Supreme Court of Queens County, New York held that the gun was inadmissible because the suspect was not given *Miranda* warnings before his confession about the whereabouts of the weapon.[39] This decision was affirmed on appeal through the New York Court of Appeals.[40] On a grant of certiorari, the Supreme Court reversed.[41] In an opinion written by Justice Rehnquist, the Court introduced a "public safety" exception to the *Miranda* rule.[42] Once again, the Court viewed *Miranda* warnings as prophylactic, saying that the warnings themselves are not rights, but simply a means to protect the actual right against self-incrimination.[43] The Court reasoned that the need for answers from a suspect when public safety is concerned outweighed the need for a prophylactic rule protecting the constitutional right against self-incrimination.[44]

---

33. *Id.* at 445.
34. *Id.*
35. *Id.* at 445-46.
36. *Id.* at 447.
37. 467 U.S. 649 (1984).
38. *Id.* at 652.
39. *Id.* at 652-53.
40. *Id.* at 653.
41. *Id.* at 660.
42. *Id.* at 655-56.
43. *Id.* at 654.
44. *Id.* at 657.

The Court's characterization of *Miranda* as a prophylactic rule continued in *Oregon v. Elstad*.[45] In *Elstad*, Michael Elstad was suspected of burglarizing his neighbor's home. Two police officers went to his home with a warrant for his arrest. During an interrogation in his living room, Elstad admitted that he had participated in the burglary, and the officers transported him to the sheriff's headquarters. Approximately one hour later, Elstad was advised of his *Miranda* rights and proceeded to give a full confession.[46] The Oregon Court of Appeals reversed Elstad's conviction, reasoning that after the earlier confession in the living room the "'cat was sufficiently out of the bag to exert a coercive impact on [Elstad's] later admissions.'"[47] On a grant of certiorari, the Supreme Court suppressed Elstad's first unwarned confession but allowed his later confession to be admitted at trial.[48] The Court reasoned that a subsequent administration of *Miranda* warnings would cure the condition that made the previous statement inadmissible.[49] If the first statement was voluntary, then the only relevant inquiry is whether the second statement was also voluntary.[50] Thus, the Court held that a suspect can waive their rights and confess despite previously responding to unwarned questioning.[51]

C. Dickerson Demands a Commitment: Miranda as a Prophylactic Rule or a Constitutional Rule?

After three decades and numerous decisions characterizing *Miranda* as a prophylactic rule, the Supreme Court complicated the issue when it held that *Miranda* was a constitutional rule in *Dickerson v. United States*.[52] In *Dickerson* the Court held that because *Miranda* announced a constitutional rule, Congress could not supercede it legislatively.[53] *Miranda*'s application to state court proceedings was one factor the Court relied upon in its characterization of *Miranda* as constitutional.[54]

---

45. 470 U.S. 298 (1985).
46. *Id.* at 300-01.
47. *Id.* at 303.
48. *Id.* at 318.
49. *Id.* at 310-11.
50. *Id.* at 318.
51. *Id.*
52. 530 U.S. 428 (2000).
53. *Id.* at 444. At issue in *Dickerson* was 18 U.S.C. § 3501, a federal evidentiary statute, which created the rule that the admissibility of a statement made during a custodial interrogation would turn on whether it was voluntarily made. According to the statute, the issue of whether *Miranda* warnings were given or not would simply be one factor for ascertaining the voluntariness of the statement.
54. *Id.* at 438.

The Court reasoned that *Miranda* must be a constitutional decision because the Supreme Court has no supervisory authority over state judicial proceedings unless enforcement of the Constitution is involved.[55] The Court also noted that this conclusion was buttressed by the fact that prisoners were allowed to bring *Miranda* violations before the federal courts in habeas corpus proceedings.[56] For a habeas corpus proceeding to be available, the prisoner must allege that they were in custody in violation of either the Constitution, laws, or treaties of the United States.[57] The Court stated that "[s]ince the *Miranda* rule is clearly not based on federal laws or treaties . . ." allowing for review of *Miranda* claims in habeas corpus proceedings assumes that *Miranda*'s origin is constitutional.[58]

The Court addressed some of the exceptions previously made to the *Miranda* rule in cases such as *Quarles* and *Harris* by explaining that the earlier decisions illustrated that "no constitutional rule is immutable."[59] The Court stated that it would be impossible for courts to foresee all the circumstances in which counsel could attempt to apply a general rule that had been laid down, and the modifications represented by the earlier cases "are as much a normal part of constitutional law as the original decision."[60] The Court also stated that *Elstad* simply stood for the proposition that "unreasonable searches under the Fourth Amendment are different from unwarned interrogation under the Fifth Amendment."[61]

In holding that *Miranda* announced a constitutional rule, the Court in *Dickerson* moved away from its former view of *Miranda* as a prophylaxis protecting the right against self-incrimination. Although the Court reasoned that the holding in *Dickerson* was reconcilable with its earlier decisions in *Harris, Tucker, Quarles,* and *Elstad* because "no constitutional rule is immutable,"[62] the decision created splits in the courts of appeals on the issue.[63] Four years after *Dickerson*, the Court attempted to clarify its position in *Patane*.[64]

---

55. *Id.*
56. *Id.* at 438 n.3.
57. *Id.*
58. *Id.*
59. *Id.* at 441.
60. *Id.*
61. *Id.*
62. *Id.*
63. United States v. Patane, 124 S. Ct. 2620, 2624 (2004) (plurality opinion).
64. 124 S. Ct. 2620 (plurality opinion).