

What We've Got Here...:
Miranda Breaks The Language Barrier
Legal Question of the Week
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“What we've got here is . . . (a) failure to communicate. Some men you just can't reach.”
-- From “Cool Hand Luke” (1967)

Chances are, in our diverse melting pot of a country, you have had occasion while carrying out your law enforcement duties to run across some folks that do not count English as their first language. Sometimes in these circumstances, it can become difficult to communicate with your witness or suspect. Maybe you attempt to speak with them with the Spanish you've picked up from watching “Dora the Explorer” and “Handy Manny.” Another option is to find another officer who can translate. Despite your best efforts, you have probably experienced the courtroom battles that ensue when the defense attorney later argues that his client didn't understand a word you were saying and therefore, any evidence you uncovered should be thrown out.²

One particular area of concern arises whenever an officer is asking a person with limited command of the English language to give up certain rights, such as asking for consent to search or trying to obtain a Miranda waiver. How does the court determine whether these rights were understood and voluntarily waived? The North Carolina Court of Appeals decided two cases this week that dealt with this issue and decided both in favor of the State.

In State v. Jose Fernando Medina,³ officers with the Charlotte-Mecklenburg Police Department approached the defendant in the parking lot of a Burger King based on information received from a confidential source. One officer spoke to the defendant in English and the defendant was non-responsive. Another officer, Officer Williamson,⁴

¹ Extra points if you know what this line is referring to...Answer coming later in this update.

² I have prosecuted cases where the trial quickly became more about how well the officer spoke Spanish than whether the defendant was guilty or not (which is usually just fine with the defense attorney.) I have seen officers cross-examined in Spanish, and Spanish interpreters called to testify whether the officer is actually speaking Spanish or is really only spouting jibberish (another language I'm fluent in, by the way). It's very hard to know when to object when you don't understand the question or the answer.

³ COA10-71 (2010).

⁴ Officer Williamson had taken four semesters of Spanish in high school and an additional four semesters of Spanish in college but apparently was not fluent in the language. Tuition money well spent! Actually, I

addressed defendant and asked in Spanish if the defendant had any guns, weapons, or drugs in the vehicle and the defendant said no. Officer Williamson then pointed to the defendant's car and asked if he could "look" to which the defendant nodded his head "yes." During the search, the officers found heroin and cocaine in an arm rest and in a can of WD-40 that had a false bottom.⁵

The defendant was arrested and taken to the Law Enforcement Center⁶ and Officer Williamson began filling out a Spanish version of the Miranda rights form. The defendant answered Officer Williamson's questions about his age, date of birth, and education level and wrote his address down as well. Officer Williamson then read the Spanish rights form out loud in Spanish while defendant read along and initialed next to each right to indicate he understood.

After this waiver, Vice Detectives interviewed the defendant while Officer Williamson translated. Over a 20 to 30 minute interview, the defendant gave coherent and appropriate answers to the questions asked and confessed to possessing the drugs found in his car. At trial and on appeal, the defense attorney argued that both the consent search and the confession should have been suppressed because the language barrier made it impossible for the defendant to voluntarily and understandingly waive his rights.

WAR STORY INTERRUPTION!

Sorry to interrupt, but I vividly remember trying a very serious assault case in Guilford County Superior Court where a language barrier proved quite troublesome. The "victim" in this case was a manager of a local, um, "motel" we'll call it, who hailed originally from somewhere in Pakistan. On the day in question, the victim observed a taxi van pull up to the "motel," and watched as the driver got out of the van with a large cooler. He further observed the driver take the cooler to the "motel's" ice machine, fill the cooler with ice, and then return to his vehicle to drive away. The victim confronted the man about the brazen theft of ice and then was struck by the taxi van as he went to the back of the vehicle to write down the license plate number.

At issue at trial was whether the taxi-van driver meant to hit the victim with the car to flee from the scene of the crime, or whether the striking was accidental. The bigger issue was that the victim did not speak English and a translator was required. We attempted to find an Urdu⁷ speaker through the Administrative Office of the Courts only to find that the victim spoke a language dialect that was used only in his small village of approximately 50 people. Fortunately, the victim's cousin was in court and helpfully volunteered to translate.

believe Officer Williamson was simply being humble – it appears from the facts of this case that he had a good command of the Spanish language.

⁵ The official webpage for WD-40 touts an "official list of 2000 uses!" I'm guessing that hiding your illegal drugs is not on the list, making it number 2001.

⁶ The Charlotte-Meck name for a Police Department.

⁷ Official language of Pakistan.

Unfortunately, like a scene out of a bad movie, during the victim's testimony, no matter how simple the question posed to him, he and his cousin would confer back and forth for about 10 minutes in their language before answering. For example, when I asked the victim if he could identify the perpetrator of this horrible crime, he and his cousin carried on a conversation for several minutes before his cousin turned to the jury and said, "He says 'yes.'"⁸ Although the jury was initially amused, the joke got old quickly, their mood became snarky,⁹ and they returned a Not Guilty verdict as soon as they had the chance.

The second case, State v. Ahmed Babiker Ibrahi Mohamed,¹⁰ dealt with an armed robbery case in Greensboro where the victim's stolen credit card was used at a gas station six minutes after the robbery occurred.¹¹ The gas station clerk knew the defendant's last name, realized that the credit card was in a different name, and called the police. He described the defendant¹² and the defendant's vehicle, which was seen by a Greensboro police officer and stopped. Upon stopping the vehicle, the officer instructed the defendant to turn the car off, step out of the car with his hands up, and walk backwards toward him. The defendant complied with these instructions without any problem.

Down at the police station, a detective read Miranda rights to the defendant and wrote "yes" next to each sentence after the defendant indicated that he understood it. The defendant signed the rights form, indicating that he was waiving his rights. The detective testified that the defendant had an accent, but he had no problem communicating with him. The defendant did not ask for an interpreter either before or during the interrogation and the detective never felt the need for one.

During the interrogation, the defendant initially admitted to making a purchase at the gas station with a credit card he found and volunteered, "I did not rob anybody." When the detective pointed out that no one to this point had mentioned a robbery and asked the defendant why he robbed the victim, the defendant became emotional and cried out, "I was broke!"¹³ Defendant then verbally confessed to the crime and wrote out the following written statement himself: "I want to same white gay and I poot the gun in has face and I take 20\$ and cradet card and after that I went to the par[t]y."

The defense attorney presented evidence that the defendant was the son of a Sudanese native who had been granted political asylum in the United States. The defendant spoke Classical Arabic, with a native dialect of Sudanese and a native tongue of Egyptian Colloquial Arabic or Donglawi. At the time of the alleged robbery, the defendant had been in the United States less than six months. Because of this, the defense argued that the statement should be suppressed.

⁸ I am not making this up.

⁹ Snark-y: Adjective: (of a person, words, or a mood) Critical; cutting; testy.

¹⁰ COA 09-943 (2010).

¹¹ Looking back, I think the defendant might agree this was where the master plan broke down.

¹² This description matched the description provided by the robbery victim. After all, six minutes is certainly not enough time to change clothes.

¹³ Everybody has their cracking point, I guess.

For both of these cases, the court stated that in order to prove a valid waiver of Miranda rights, the State must prove by a preponderance of the evidence¹⁴ that the defendant waived his rights voluntarily, knowingly and intelligently.¹⁵ According to the court, this is done by examining the totality of the circumstances of each case, including “the background, experience, and conduct of the accused.”¹⁶

In both of the cases, the most significant evidence that the defendant understood his Miranda rights was that he gave “logical responses to the questions asked.” In other words, the court put a great deal of emphasis on whether the answers and actions of the defendants showed that they comprehended the questions or instructions of the police.

In Medina, the court found the following facts important:

1. The defendant gave coherent, logical, and appropriate answers to the questions asked.
2. The officer read aloud in Spanish from a Spanish version of a Miranda waiver form while the defendant read along in Spanish.¹⁷
3. The defendant initialed next to each Miranda right and signed the form indicating he understood his rights.

Based on the totality of the circumstances, the court ruled that the waiver was voluntarily, knowingly, and intelligently made and the statement was admissible.¹⁸

In Mohamed, the court again focused on whether the defendant’s responses and actions seemed to indicate that he understood what was being communicated. They pointed out that the defendant was able to follow the orders of the initial officer to turn off the car, exit with his hands up, and walk backwards toward the police car. The evidence indicated that the defendant gave appropriate answers to the questions asked of him, and the court stated that “[a]lthough Defendant’s written statement is not a model of English composition, it is easily comprehensible.” Therefore, the court held the Miranda waiver valid and the confession admissible.

¹⁴ This standard of proof is also referred to as “the greater weight of the evidence.”

¹⁵ “Intelligently” as used here does not mean that it was the smart move to waive these rights, only that it was done with comprehension that the rights were being waived.

¹⁶ The Mohamed opinion lists several other factors, which I include here for your further enlightenment on this issue: (1) the familiarity of the accused with the criminal justice system, (2) the length of the interrogation, (3) whether the accused has been deprived of sleep, (4) whether the accused was held incommunicado, (5) whether there were threats of violence, (6) whether promises were made in exchange for a statement, (7) whether the accused has been deprived of food, and (8) the age and mental condition of the accused. The court clarified that “the presence of any one of these factors is not determinative.”

¹⁷ Officers are not required to orally apprise a defendant of his or her Miranda rights to effectuate a valid waiver, but it helped that they did so in this case. See State v. Strobel, 164 N.C. App. 310 (2004).

¹⁸ The court reached the same conclusion with regards to the consent search in this case. The standard for consent searches is that the State must prove that the “defendant freely and voluntarily, without coercion, duress, or fraud, consented to the search.” (State v. Williams, 314 N.C. 337 (1985)). Based on the totality of the circumstances and the evidence that the defendant understood what was being asked, the court found that the consent search was legal.

Some Bottom Line Legal Advice

When dealing with defendants who may not be fluent in English, keep in mind the following:

1. The burden is going to be on you and the State to prove that the defendant understood his or her rights and voluntarily agreed to waive those rights.
2. You should be careful to document how well the defendant seemed to understand what was going on, how well the defendant followed directions, and how the defendant's responses were appropriate to the questions asked.
3. If dealing with a Spanish speaker, it is always a good idea to at minimum present them with a Spanish Miranda form as you go over their rights and have them initial each right if they understand it.
4. If feasible, get an interpreter if there is any question as to whether the defendant understands you. Remember that in serious cases, you not only will have to convince a judge that the waiver was valid, but you will have to convince 12 jurors that the defendant's statement is reliable. If they feel like the police were taking advantage, the confession will not carry much weight.

The Long Awaited Answer to Footnote Number 1¹⁹

Sam Ervin, a country lawyer and U.S. Senator from North Carolina, is probably best remembered by most as the chair of the Senate Watergate Committee which investigated the Watergate burglaries and cover-up in 1973-74. During the questioning of John Ehrlichman, the chief advisor on domestic affairs to President Nixon, Senator Ervin made a statement to which Mr. Ehrlichman replied in a very condescending fashion,²⁰ "How do you know that, Mr. Chairman?" Ervin's reply to this insulting and stupid question: "Because I can understand the English language. It's my mother tongue."²¹

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¹⁹ I know – you've already forgotten what the question was. Go back and read footnote number one. We'll wait.

²⁰ In other words, it was a snarky question.

²¹ Incidentally, Ervin is buried in the same Morganton, N.C. graveyard as my paternal grandmother. You get that piece of trivia free of charge.