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COURT OF APPEALS
STATE OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

-against-

NO. 20

TIMOTHY MARTIN,

Appellant.

20 Eagle Street
Albany, New York
February 14, 2019

Before:

CHIEF JUDGE JANET DIFIORE
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE LESLIE E. STEIN
ASSOCIATE JUDGE EUGENE M. FAHEY
ASSOCIATE JUDGE MICHAEL J. GARCIA
ASSOCIATE JUDGE ROWAN D. WILSON

Appearances:

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1 CHIEF JUDGE DIFIORE: The next appeal on this
2 afternoon's calendar is appeal number 20, The People of the
3 State of New York v. Timothy Martin.

4 Good afternoon, counsel.

5 MS. BYRNE: Good afternoon. And may it please
6 the court, my name is Megan Byrne, and I represent the
7 appellant, Timothy Martin. With Your Honor's permission,
8 I'd like to reserve two minutes for rebuttal?

9 CHIEF JUDGE DIFIORE: You may.

10 MS. BYRNE: When the police asked Mr. Martin
11 where he lived, he was handcuffed and in an apartment where
12 the police had just found drugs, pursuant to a warrant that
13 directed them - - -

14 JUDGE STEIN: Well, you don't dispute that they
15 could have asked him for his address if they had just
16 waited another few minutes, had him handcuffed, brought him
17 down to the precinct and then asked those questions, do
18 you? Or am I misunderstanding your - - - your argument?

19 MS. BYRNE: If this - - - if this question was
20 asked in regard to a typical booking scenario, I think it
21 becomes a different situation than what's at hand here.

22 JUDGE STEIN: Well, why - - - I - - - I'm having
23 a hard time understanding that position; because it seems
24 to me it either is - - - falls within the pedigree
25 exception or it doesn't. And if there are five adults



1 being arrested at the scene, and they're about to be taken
2 down to the precinct, it seems to me that the same purpose
3 is served of asking those questions before they get them
4 all into the paddy wagon, or whatever. And - - - and I- -
5 - and I don't - - - I just - - - if they knew that they
6 were only going to ask those questions ten minutes later,
7 what's the difference where it took place?

8 MS. BYRNE: Well, this court in Rodney directed -
9 - - directed us to look at all the circumstances around a
10 question regarding whether the police should know it's
11 reasonably likely to elicit an incriminating admission.
12 Here, where the police - - - the search warrant said look
13 for drugs and evidence of the resi - - - the residents of
14 the apartment.

15 The police found drugs, and then at the same - -
16 - at the same scene asked Mr. Martin in handcuffs where he
17 lived.

18 JUDGE STEIN: But the same result would - - -
19 would - - - would occur whether - - - what if the - - -
20 what if the - - - what if this apartment building was next
21 door to the precinct, and all they had to do was walk out
22 the front door and then walk into the door of the precinct
23 and ask the question. Why would that make any difference?

24 MS. BYRNE: Well, I think to the extent that
25 there's - - - there's evidence that the police are kind of



1 using the booking procedure to get at this question, to do
2 an investigation, Rodney indicates that that would be an
3 issue. Here, where - - - you know, where the question's
4 being asked in the course of an investigation and goes to
5 an element of the crime, it's clear that - - - you know,
6 that the - - - that - - -

7 JUDGE RIVERA: So counsel, I - - - I thought you
8 had argued in your briefing that it's not just whether or
9 not it can be asked, it's whether or not it can be
10 admitted. They can ask it; it doesn't mean it gets in.

11 MS. BYRNE: Yes, exactly. Yes. Where it's
12 likely to incriminate, there should have been Miranda.

13 JUDGE GARCIA: But let's go back - - -

14 JUDGE RIVERA: So why doesn't it get in? What -
15 - - what is it about - - - what's the root of the exception
16 that you're arguing it shouldn't get in, even if it's
17 mistakenly asked?

18 MS. BYRNE: Where - - - well, where - - - where
19 Mr. Martin's Fifth Amendment, you know, privilege is
20 violated, of course, and there was no Miranda to tell him
21 that he didn't have to answer that question when he was
22 handcuffed in that apartment that's - - -

23 JUDGE FAHEY: Well - - - well, you didn't get
24 notice of it either, under 710.30, did you?

25 MS. BYRNE: Exactly. And so, yes, to the extent



1 that there are questions of fact here regarding was this an
2 investigatory - - -

3 JUDGE FAHEY: If you had gotten notice - - -

4 MS. BYRNE: - - - question - - -

5 JUDGE FAHEY: - - - what would have happened?

6 There would have been a Huntley hearing, then, right?

7 MS. BYRNE: Yes, there would have been a hearing,
8 and then - - -

9 JUDGE FAHEY: And then all of this would have
10 been fleshed out, the exact nature of it. But none of that
11 took place because you didn't get notice?

12 MS. BYRNE: Exactly. And - - -

13 JUDGE STEIN: I - - - I thought - - - I thought
14 that Rodney acknowledged that these questions can - - - can
15 - - - constituted interrogation, but concluded that the - -
16 - the answer to the question generally falls outside
17 Miranda protection, if it's reasonably related to
18 administrative concerns.

19 MS. BYRNE: So the - - - the court said in Rodney
20 that the People may not rely on this exception where
21 questions are likely to elicit an incriminating admission
22 because of the circumstances.

23 JUDGE GARCIA: But that test, to me, seems like
24 the Rhode Island v. Innis test for when you need to
25 Mirandize somebody. So that test - - - and I know we have



1 some language in Rodney - - - but that test seems to go to
2 when are you interrogating someone, therefore you have to
3 Mirandize them. And now we're kind of coming back around
4 and saying that's the test for the exception to Miranda.

5 So in order to get the pedi - - - but the
6 pedigree is an exception. Otherwise you would have to
7 Mirandize, right? So if otherwise you would have to
8 Mirandize, meaning it's reasonably likely to elicit
9 incriminating information, how can you use that as the test
10 for the exemption? To me, the test for the exemption
11 should have been "designed to elicit incriminating
12 admissions."

13 And isn't "designed" more of a subjective look
14 than "reasonably could have"? Like "reasonably" to me is
15 the reasonable-person standard, right, under these
16 circumstances. And that is the test for interrogation.
17 And even in Rodney, I mean, you ask a drug dealer what's
18 your job, is it - - - he potentially may say a drug dealer,
19 right? I mean, that's the honest answer to that question.

20 But it wasn't designed to elicit that. And to me
21 "designed" is the pedigree exception. And what you want to
22 use is the test for when you have to Mirandize somebody.

23 MS. BYRNE: So the - - - so a subjective test of
24 "designed" would, one, be completely out of line with all
25 other, you know, doctrines that are similar. For instance

1 the - - - the exigency doctrine that the respondents
2 mentioned, it's a - - - it's an objective look at the
3 circumstance. And what - - -

4 JUDGE GARCIA: But how is that different than the
5 standard for when you need to Mirandize someone?

6 MS. BYRNE: So Miranda - - - I believe you're
7 referring to Muniz - - - the court there said that the
8 booking questions were interrogation, but something that's
9 interrogation, one, if it's express question in a custodial
10 setting, which is what is the situation here. And the - -
11 - the Supreme Court has also noted that there - - - there
12 could be other circumstances, other words or actions, that
13 are reasonably likely to elicit an incriminating response
14 that could be - - - that - - - that do constitute
15 interrogation as well.

16 So those are two separate standards - - -

17 JUDGE GARCIA: Innis - - - Innis said that the
18 standard for Miranda - - - Miranda safeguards come into
19 play when the police should know or are reason - - - they
20 are - - - questions are reasonably likely to elicit an
21 incriminating response from the suspect.

22 And that seems to me like the test you want to
23 apply for the pedigree exception. How is that different -
24 - - that language from Rhode Island v. Innis - - - how is
25 that different from your test for the pedigree exception?



1 MS. BYRNE: So that is similar. But there - - -
2 so there, Rhode Island was talking about circumstances
3 outside of express questioning, what else constitutes
4 interrogation. In Rhode Island v. Innis, for instance, it
5 was two police who were having a conversation in a police
6 car, saying oh, it would be a shame if this gun were found,
7 and that, you know, elicited some admissions. And the
8 court was trying to determine whether that was
9 interrogation, because the Fifth Amendment is directed at
10 whether police should know that a - - - an incriminating
11 admission is likely.

12 And so - - -

13 JUDGE STEIN: Let - - - let's assume that it is
14 interrogation, okay, but that there is this exception, and
15 that ordinarily that would be - - - fall - - - require a
16 Miranda warning. But - - - but we've said that a Miranda
17 warning isn't required if it falls within the pedigree
18 exception. However, there's an exception to the exception
19 - - - in other words, it doesn't fall within the pedigree
20 exception - - - if the surrounding circumstances
21 objectively indicate that in fact the question was designed
22 to elicit incriminating - - - an incriminating response.
23 Doesn't that all make sense?

24 MS. BYRNE: That - - - that - - - yes, the court
25 certainly said that. The court then went on to say: or



1 where it's reasonably likely to elicit an incriminating
2 response. And we agree that the test should be objective.
3 And just to be clear, it's our contention that the
4 objective circumstances here, where the police are looking
5 for drugs and evidence of who lives there, find drugs ask
6 Mr. Martin if he lives there, that this also shows that
7 objectively this was a - - - there was a design here to
8 investigate.

9 JUDGE STEIN: Let's assume you're right. Why
10 isn't it harmless error?

11 MS. BYRNE: Here, the - - - the evidence was far
12 from overwhelming that Mr. Martin actually lived at this
13 address. Mr. Martin was found on what the detective
14 referred to as a makeshift bed. His clothes were - - -
15 were not in dressers; they were in - - - they were in
16 portable garbage bags. There was - - -

17 JUDGE STEIN: They saw - - - they saw the - - -
18 they saw the - - - the drugs in plain sight. He was in the
19 room, right? He had clothes there. He had a hospital bill
20 with that address on it.

21 MS. BYRNE: He had a - - -

22 JUDGE STEIN: Why - - - why - - - why wouldn't
23 that be enough to meet the constructive possession
24 requirements that - - - that he was charged under?

25 MS. BYRNE: So the - - - the - - - the hospital



1 bill, it should be noted, was seven months old. Other
2 people in the house shared his same last name and seemed to
3 be relatives of his. So I mean, it could be evidence that
4 maybe seven - - - seven months ago he did live there.
5 Maybe seven months ago he had his mail sent there.

6 There was also a separate woman's benefit card
7 found in the same room. So maybe it was her room. And
8 it's also very notable that the prosecution heavily relied
9 on his own statement, both in opening and at close. And at
10 close, the office - - - the prosecutor had actually said he
11 lives in that apartment; he has control over the items in
12 that apartment. So that was clearly the prosecution's
13 theory as to why he had dominion and control over the
14 drugs.

15 CHIEF JUDGE DIFIORE: Thank you, Ms. Byrne.

16 MS. BYRNE: Thank you.

17 CHIEF JUDGE DIFIORE: Counsel?

18 MR. MICHAELS: May it please the court, Alexander
19 Michaels on behalf of the People. In People v. Rivera,
20 People v. Rodriguez, and People v. Rodney, this court
21 embraced the pedigree exception to the Miranda rule.

22 JUDGE RIVERA: What's the administrative concern
23 that the police are addressing when they ask about the
24 address in the apartment, when he's cuffed?

25 MR. MICHAELS: Well, an administrative concern



1 that exists, particularly under the circumstances of this
2 case - - -

3 JUDGE RIVERA: Um-hum.

4 MR. MICHAELS: - - - is that you have five
5 separate people being taken into custody in a chaotic
6 situation. And in the course of taking those people into
7 custody at the apartment and transporting them to the
8 precinct, you have a lot of things that can go wrong. You
9 could have an escape attempt. You could have an injury of
10 some kind. You could also have an allegation of police
11 misconduct of - - - of some kind.

12 And for that reason, you really want to make sure
13 that you know which police officers are transporting which
14 defendants - - - arrestees. And that's a consideration
15 that kicks in immediately upon taking these people into
16 custody.

17 JUDGE RIVERA: What else can you ask?

18 MR. MICHAELS: What else can you ask?

19 JUDGE RIVERA: If those are all the problems,
20 what else can you ask?

21 MR. MICHAELS: Well, asking for the - - -

22 JUDGE RIVERA: Or what else can a police officer
23 ask? Excuse me.

24 MR. MICHAELS: Asking for an arrestee's name is
25 obviously proper pedigree questioning. Asking for an



1 arrestee's date of birth is also proper pedigree
2 questioning, in this context. Those are the - - - that's
3 the universe of questions that was discussed in this case
4 at trial. So I - - - I'm - - - I don't want to opine too -
5 - - too aggressively on what else there could be, but - - -

6 JUDGE STEIN: Would it make a difference if they
7 asked him if that was his room? Would that - - - would
8 that permit the answer to fall within the pedigree
9 exception?

10 MR. MICHAELS: That - - - that would - - - that
11 would - - - that may well make a difference. Absolutely.
12 That's what happened in People v. Buza, the Fourth
13 Department case that the defense cites. And the crucial
14 distinction there is that the particular room is not
15 necessarily pedigree information. It's not clear why law
16 enforcement would need to know which room belonged to a
17 particular person.

18 JUDGE STEIN: Would that be - - - would that be
19 circumstan - - - you know, evidence of circumstances
20 indicating that it was designed to be investigatory?

21 MR. MICHAELS: Yes, it may well - - - it may well
22 qualify as that.

23 JUDGE GARCIA: Or: do you own this place? I
24 think there's a DC case about "do you own" rather than "do
25 you live here" and what's the difference in own, other than



1 you're trying to prove - - -

2 MR. MICHAELS: Um-hum.

3 JUDGE GARCIA: - - - some legal fact.

4 MR. MICHAELS: Right. And that goes partly to
5 the administrative reasons for asking this kind of
6 question. I mean, one of the crucial reasons is that you
7 want to be able to contact the person in question. The
8 person is ultimately going to be up for release on his own
9 recognizance perhaps or up for bail of some other kind. If
10 that person is then released, you need to know that
11 person's address.

12 JUDGE FAHEY: But that - - - that isn't the
13 process, is it? I mean, they don't - - - you don't - - -
14 when you're arresting somebody, when you're in the location
15 when you're arresting them, you're not talking about - - -
16 you're not - - - you're not trying to establish where you
17 would release them if the judge gives them ROR.

18 MR. MICHAELS: That - - -

19 JUDGE FAHEY: You wouldn't ask a question for
20 that reason.

21 MR. MICHAELS: Well, it may be a question that's
22 ultimately going to get asked either way, and - - -

23 JUDGE FAHEY: Well, sure - - -

24 MR. MICHAELS: - - - a decision is - - -

25 JUDGE FAHEY: - - - it'd be asked by a booking



1 sergeant at a desk in the - - - in the precinct house,
2 right?

3 MR. MICHAELS: Right.

4 JUDGE FAHEY: That's where it's normally asked.
5 So that's - - - that's not the reason.

6 MR. MICHAELS: Well, but - - -

7 JUDGE FAHEY: So - - - so - - -

8 MR. MICHAELS: Sorry.

9 JUDGE FAHEY: - - - so we're still - - - we're
10 still - - - we still go back to the idea of: is the
11 question itself - - - does it prove an element of the crime
12 that the person who's in custody charged with? And - - -
13 and isn't that really what we have to be concerned with
14 here?

15 MR. MICHAELS: No, that is not the sole
16 consideration, whatsoever.

17 JUDGE FAHEY: All right. But from our point of
18 view, from the judges' point of view, it seems to me that
19 that's one of the things we've got to look at?

20 MR. MICHAELS: It - - - it - - - it is one
21 consideration - - -

22 JUDGE FAHEY: Okay.

23 MR. MICHAELS: - - - as Judge Garcia pointed out
24 - - -

25 JUDGE FAHEY: And so what difference would it



1 make - - - and I thought Judge Stein made a good point - -
2 - the where of where these questions are asked is - - - is
3 underneath all this. Why would you have to ask that
4 question before you go down to the booking station? Why
5 would - - - why would you have to ask any question about an
6 element of a crime when you're in custody and you haven't
7 been Mirandized - - - why should an officer be asking those
8 questions?

9 MR. MICHAELS: Well, for the reasons I described.
10 There are a lot of things that could happen in the course
11 of transporting somebody to the precinct. There - - -
12 again, there's a distinct possibility of escape. That was
13 actually a very high-profile issue in New York City just a
14 few years ago. There's also a possibility of injury.
15 There's a possibility of allegations of cle - - - police
16 misconduct. And in this case there's actually another
17 pressing issue, which is figuring out what to do with a
18 four-year-old child - - -

19 JUDGE RIVERA: But why wouldn't you give - - -

20 MR. MICHAELS: - - - in the room.

21 JUDGE RIVERA: - - - him the - - - he's
22 handcuffed, he's arrested, why - - - why not Mirandize him?
23 What's going on there? I don't understand that.

24 I understand at the precinct you've got to
25 process someone, you've got to move through. So I still



1 don't understand why you haven't Mirandized him and - - -
2 and you're moving forward, or the officers are. But in
3 that moment that he's being arrested, that - - - I'm having
4 a little confusion with that.

5 MR. MICHAELS: Well, the bottom line is that
6 Miranda warnings are not required for a request for
7 pedigree information. And if, for instance, Miranda
8 warnings were delivered and the defendant says oh, I invoke
9 my right to remain silent - - -

10 JUDGE RIVERA: Um-hum.

11 MR. MICHAELS: - - - once the defendant has
12 invoked that right - - -

13 JUDGE RIVERA: Well, let - - - let me ask you - -
14 - let me ask you this. Rodney does say, "Statements made
15 in response to questions which are not directed solely to
16 administrative concerns are subject to the requirements of
17 710.30."

18 If - - - if there are two purposes that are
19 served by the question, one of them being to establish an
20 element of the crime, doesn't that then fit under the
21 710.30 requirement?

22 MR. MICHAELS: No, the - - - 710.30 makes it
23 clear that it - - - it applies only to statements whose
24 admissibility turns on the question of voluntariness.

25 Now, as this court held in Rodney, the



1 admissibility of pedigree statements does not turn on the
2 question of voluntariness. The court explained that
3 whether - - - if a question is properly within the pedigree
4 exception, whether or not Miranda warnings were issued
5 beforehand does not dictate its admissibility.

6 JUDGE WILSON: How do we deal with the "likely to
7 elicit" language in Rodney and the statement in I think the
8 Appellate Division brief, that the detectives could
9 reasonably have anticipated the question might lead to an
10 incriminating response?

11 MR. MICHAELS: The - - - so the "likely to
12 elicit" statement is in Rodney, of course, likely to elicit
13 an incriminating response statement is there. But Rodney
14 is also saying that questions that are reasonably related
15 to administrative concerns fall within the pedigree
16 exception. That comes, I think, two sentences before the
17 "likely to elicit an incriminating response."

18 And Rodney enunciates the test that accommodates
19 both of those concerns. The test in Rodney is that it
20 qualifies for the pedigree recip - - - exception if it's
21 reasonably related to administrative concerns and is not a
22 disguised attempt at investigatory interrogation. And
23 that's a theme that Rodney developed earlier in the
24 decision too.

25 Rodney made clear that the crucial distinction



1 for Miranda purposes is whether it's an investigative
2 question or whether it's a non - - - a non-investigative
3 question. And in some cases you have questions that could
4 legitimately be seen as both.

5 JUDGE RIVERA: So - - - so - - -

6 MR. MICHAELS: And Rodney says - - -

7 JUDGE RIVERA: - - - so following your analysis
8 and your rule all the way through, this - - - this means
9 that any time that more than one person is arrested - - -
10 or I guess anybody - - - anybody who's arrested, you can
11 ask all of these questions at the point of arrest, because
12 there's always a possibility of escape, I guess, right?

13 MR. MICHAELS: Um - - -

14 JUDGE RIVERA: So now what was called pedigree or
15 the booking exception is now expanded to any location where
16 anyone's arrested or stopped?

17 MR. MICHAELS: Well, as to core pedigree
18 information like this information, yes, it may well be that
19 in other situations when someone's being taken into
20 custody, if there's a legitimate concern about escape or
21 whatever else, then yes, that question would be allowed to
22 be asked.

23 JUDGE WILSON: Really, essentially - - -

24 MR. MICHAELS: But what I would like to note that
25 it's a very - - -



1 JUDGE WILSON: - - - essentially - - -

2 MR. MICHAELS: - - - universe of potential
3 questions here.

4 JUDGE WILSON: Well, yeah, right. Narrow
5 universe. But essentially, every time you're executing a
6 search warrant, you can ask: do you live here?

7 MR. MICHAELS: That may be the case. It's not
8 clear - - -

9 JUDGE WILSON: Well, then, when - - - then what's
10 the rule? When could you not?

11 MR. MICHAELS: When you can not ask whether - - -

12 JUDGE WILSON: Yeah.

13 MR. MICHAELS: - - - a person lives there?

14 JUDGE WILSON: I've got a search warrant. I
15 knock on the door. I'm admitted. Present the warrant.
16 Can I always ask that?

17 CHIEF JUDGE DIFIORE: Well, isn't there a
18 difference between "do you live here" and "what is your
19 address," sir?

20 MR. MICHAELS: Sure. Well, there's not
21 necessarily a difference. But in this case, it was: where
22 do you live? So, yeah, that question is a core pedigree
23 question.

24 As Judge Stein pointed out, it's going to get
25 asked one way or another. There's a reason to ask it



1 sooner rather than later. And yes, that may apply in other
2 situations involving executions of search warrants.

3 JUDGE STEIN: Is there a difference between
4 timing of - - - if they've already taken the person into
5 custody versus they knock on the door to execute a search
6 warrant, but they haven't decided to take anybody into
7 custody yet? Is - - - is there a difference in what they
8 can ask at those two different times?

9 MR. MICHAELS: I - - - I'm not sure how that
10 would affect the applicability of the Miranda rule in the
11 first place, if someone hasn't been - - -

12 JUDGE STEIN: Well, because the administrative
13 concerns, do they - - -

14 MR. MICHAELS: Right, but if - - -

15 JUDGE STEIN: - - - do they only come into play
16 when they're taking someone into custody, or might those
17 concerns come into play - - - I think that's - - - that's
18 some - - - those are some of the questions that are being
19 asked, and - - -and I just kind of wanted - - -

20 MR. MICHAELS: There is a theoretical possibility
21 that those concerns could come into play earlier,
22 especially if it's about responding to allegations of
23 police misconduct or something like that. But that's not
24 the case we have here, of course. The case we have here is
25 that people being taken into custody and - - - and as - - -



1 in the process of taking them into custody these questions
2 were asked.

3 JUDGE RIVERA: You may very well make a very
4 compelling argument about why an officer always gets to ask
5 this question, but I'm - - - I'm not sure I really
6 understand the argument for why it gets to be admitted?

7 MR. MICHAELS: Um - - -

8 JUDGE RIVERA: I get why - - - why - - - I - - -
9 I understand your argument about why you get to ask it.
10 But why does it get to be admitted? Because that's really
11 at the end of the game, what - - - what is most
12 disconcerting.

13 MR. MICHAELS: Applying the exclusionary rule
14 here would be providing a remedy without a violation in the
15 first place. Right? The - - - the recognition of the
16 pedigree exception - - - and again, this court has
17 recognized the pedigree exception on three previous
18 occasions - - - what that means is that law enforcement is,
19 in fact, allowed to collect this pedigree information.

20 If law enforcement is, in fact, allowed to
21 collect this pedigree information, regardless of the
22 Miranda situation, then there is no violation to be
23 addressed by applying the exclusionary rule.

24 JUDGE RIVERA: Yeah, but the argument is that - -
25 - that it's getting information that goes to an element of



1 the crime without having been advised of one's rights.

2 MR. MICHAELS: But it's not - - -

3 JUDGE RIVERA: Right? That's right against self-
4 incrimination. That - - - that's the point of that
5 argument.

6 MR. MICHAELS: Right. But as this court has
7 held, the Miranda rule does not apply to pedigree
8 questioning. So if it is, in fact, bona fide pedigree
9 questioning, then there is no meri - - - Miranda violation
10 - - -

11 JUDGE RIVERA: Well, yeah - - -

12 MR. MICHAELS: - - - in the first place and - - -

13 JUDGE RIVERA: Right, if the pedi - - -

14 MR. MICHAELS: - - - there's nothing to exclude.

15 JUDGE RIVERA: - - - yes, if it - - - if it's
16 direct - - - not directed solely to administrative
17 concerns, though, it doesn't apply.

18 MR. MICHAELS: Correct.

19 JUDGE RIVERA: And so if it - - - if it - - -
20 that was my question before. If it has a dual purpose - -
21 -

22 MR. MICHAELS: Um-hum. It does - - -

23 JUDGE RIVERA: - - - why - - - you could ask it -
24 - -

25 MR. MICHAELS: - - - still need to be directed to



1 - - -

2 JUDGE RIVERA: - - - but why should it be
3 admitted?

4 MR. MICHAELS: I'm sorry, I'm failing to follow
5 the - - -

6 JUDGE RIVERA: It served your - - - it served the
7 police officers' purpose. You've gotten the pedigree
8 information. You can proceed with the processing, protect
9 whatever concerns you outlined at the beginning of your
10 argument, but we also address the concerns about the
11 Constitutional rights of the defendant.

12 MR. MICHAELS: Um-hum. Well, if the court
13 applies the test enunciated in Rodney, whether it's a
14 disguised attempt at investigatory interrogation, and finds
15 that it was not such an attempt, then there has been no
16 violation of the Miranda rights in that case. And if there
17 has been no violation of the Miranda rights in that case,
18 then there's no basis for applying the exclusionary rule.

19 JUDGE RIVERA: Does - - - does Rodney use the
20 word "disguised"?

21 MR. MICHAELS: Mirand - - - sorry. Does Rodney?
22 Yes.

23 JUDGE RIVERA: Is - - -

24 MR. MICHAELS: Disguised attempt at investigatory
25 interrogation.



1 JUDGE RIVERA: It's "disguised attempt".

2 MR. MICHAELS: Is the exact language.

3 CHIEF JUDGE DIFIORE: Thank you, counsel.

4 MR. MICHAELS: Thank you, Your Honors.

5 CHIEF JUDGE DIFIORE: Counsel?

6 MS. BYRNE: Thank you.

7 JUDGE RIVERA: Counsel, he says it's only a
8 disguised attempt that we have to be worried about. Is he
9 wrong?

10 MS. BYRNE: He's wrong. That's - - - that would
11 certainly be a circumstance under which Miranda should have
12 been given. However the court clearly says also, if it was
13 "reasonably likely to elicit an incriminating response".
14 And in fact, in the - - - in the holding in Rodney, the
15 court found that that particular question was not a
16 disguised attempt and was not reasonably likely to elicit
17 an incriminating response, because both factors are
18 relevant.

19 Because what the courts are getting at and what
20 the court was getting at in the - - - the Supreme Court was
21 getting at in Muniz, is if it is solely an administrative
22 question.

23 JUDGE GARCIA: In Muniz they used the "design".
24 They don't use "disguised", but they use "designed". I
25 think Rodney uses "designed" at some point again. And just



1 to go back, and I think it was an interesting explanation
2 of Rhode Island v. Innis, but then you are using the
3 functional equivalent of interrogation test to define
4 whether or not actual interrogation falls within the
5 pedigree exception, right?

6 MS. BYRNE: In essence; because the court in
7 Innis came up with that func - - - with that test to make
8 sure that these actions other than questioning - - -

9 JUDGE GARCIA: You know this is interrogation.
10 This is actual interrogation. So why do we need the
11 functional equivalent test to tell us whether or not this
12 falls within the pedigree exception?

13 MS. BYRNE: Because with the functional
14 equivalent test, the court was trying to make sure that
15 these other words and actions that aren't express
16 questioning came in the ambit of the Fifth Amendment,
17 because that's exactly what it's designed protect, is where
18 an officer should know that what they're doing or saying is
19 likely to elicit an incriminating response.

20 JUDGE GARCIA: But - - - but the language Muniz
21 picks up isn't that language in the footnote of Muniz that
22 you cite; it's "designed to". Which seems to me somehow
23 different than that standard for a functional equivalency
24 of interrogation.

25 MS. BYRNE: Well, the - - - so the courts all - - -



1 - court also noted there, and this is where the "reasonably
2 related" language came from - - - that the questions in
3 that case were requested for recordkeeping purposes only,
4 which comes back to this concern that this has to be the
5 sole reason these questions are being asked.

6 And of course the three - - -

7 JUDGE GARCIA: But what if you had the - - - the
8 police officer testify, this is the sole purpose I asked
9 this question? Then you're really doing a subjective
10 analysis, right?

11 MS. BYRNE: Well, you need to look at the
12 objective - - - objective circumstances. Here, I think the
13 objective circumstances would belie that the sole reason he
14 asked where he lived, when the war - - - the warrant said
15 to find out who lived here after finding drugs, was for
16 that reason.

17 JUDGE GARCIA: Is that a credibility
18 determination or a reasonableness standard?

19 MS. BYRNE: It's a reasonableness standard. And
20 in fact, it's something that ag - - - again, could have
21 been determined at a hearing, if we had just gotten proper
22 notice here. And where this was outside the typical - - -
23 typical booking scenario, which by the way, all three cases
24 respondent recited that this court has looked at have been
25 in a typical booking scenario where - - -



1 JUDGE GARCIA: What - - - what would the hearing
2 be?

3 MS. BYRNE: The hearing would be, you know, what
4 - - - what other questions did you ask?

5 JUDGE GARCIA: But it's not subjective. So you
6 have a question we admit is asked. You have the
7 circumstances of the search warrant. What's a hearing
8 doing for you here?

9 MS. BYRNE: It's - - -

10 JUDGE GARCIA: I mean, you either win or you
11 lose, it seems, on the notice issue, I think, which is kind
12 of Rodney, right?

13 MS. BYRNE: Well, you're - - - you're looking at
14 other objective indicia of whether this was solely for an
15 administrative purposes. For instance, was it pursuant to
16 a war - - - to a form? In Rodney it was. It was just a
17 form, a list of question. Here it doesn't seem any form
18 was used.

19 You know, what are the circumstances leading up
20 to the asking of the question - - -

21 JUDGE GARCIA: So if the question was on a form
22 in these circumstances, that would be different?

23 MS. BYRNE: I think that's another factor to look
24 at. Who's - - - and who's asking? For instance, in
25 booking, often it's a different officer that does booking,



1 you know, just pursuant to a form, you ask the questions.

2 Whereas this was the exact officer who'd just
3 found drugs in the room that Mr. Martin was sleeping in.

4 JUDGE STEIN: In the end, isn't this question of
5 whether it was or was not custodial interrogation for
6 purposes of Miranda a mixed question that we can overrule
7 only if the pedigree exception is inapplicable as a matter
8 of law?

9 MS. BYRNE: Well, while we would say that as a
10 matter of law it isn't applicable here, what we're
11 contesting here with the first - - -

12 JUDGE STEIN: Well, we may disagree about that.

13 MS. BYRNE: Sure.

14 JUDGE STEIN: But my - - - but the question is,
15 is - - - is that - - - is that the only way that we can
16 overrule the Appellate Division's conclusion?

17 MS. BYRNE: No. No, because here there's - - -
18 there's a - - - there's a matter of law where the - - - the
19 Appellate Division allowed that this was reasonably likely
20 to elicit an incriminating response, but said nonetheless,
21 because we didn't also find design, that the booking
22 exception applies.

23 And the First Department not just in New York,
24 but in - - - in the country, is - - - is the only opinion
25 to state that particular standard, which directly goes



1 against the language in Rodney.

2 CHIEF JUDGE DIFIORE: Thank you, counsel.

3 MS. BYRNE: Thank you.

4 (Court is adjourned)

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C E R T I F I C A T I O N

I, Penina Wolicki, certify that the foregoing transcript of proceedings in the Court of Appeals of The People of the State of New York v. Timothy Martin, No. 20 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

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