WARRANTLESS ARREST AND CUSTODIAL INTERROGATION: SOME PROBLEMS OF CONSTITUTIONAL LAW*

*Vicente V. Mendoza***

To illustrate the constitutional issues involved when a person is arrested and investigated for a crime, and provide perspective for their discussion, let me begin with the following hypothetical case:

> Suppose a policeman directing traffic in a busy downtown section hears a scream that someone has been stabbed and when he looks around he sees about five yards away a person sprawled on the street bleeding and not long after also sees *A* running away with a blood-stained knife in his hand. Suppose further the policeman runs after *A* and grabs him and takes him to the police station for questioning. What are the constitutional issues likely to arise?

For our purpose, our reference should be the Search and Seizure Clause of the Constitution and the *Miranda* rule which it embodies. The Search and Seizure Clause reads:

> *Art. III, Sec.* 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

On the other hand, the *Miranda* rule states:

> *Art. III, Sec. 12.* (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his

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**Associate Justice, Court of Appeals, and Professorial Lecturer, UP College of Law; LL.B., 1957, U.P. College of Law; LL.M., 1971, Yale Law School.

> be provided with one. These rights cannot be waived except in writing and in the presence of counsel.
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> (2) No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, *incommunicado*, or other similar forms of detention are prohibited.

I will list only five issues. I am sure you can mention more. But considering the topic assigned to me I will limit myself to five, namely: (1) Was there an arrest made? (2), If so, could the policeman lawfully arrest and interrogate *A*? (3) Under what conditions may *A* be interrogated? Can he be presented in a police lineup even without the presence of counsel? (4) When does Art. III, Sec. 12 apply? And finally, (5) if the answers to all of the preceding questions is yes, will this not remove the incentive for securing warrants and strip the probable cause requirement of all meaning? Let me discuss these questions separately.

Arrest Distinguished from Seizure

First, was there an arrest in the example we have? What is an arrest? Rule 112, Sec. 1 of the Rules of Criminal Procedure defines it as the taking of a person into custody in order that he may be bound to answer for the commission of an offense. If the idea is the eventual prosecution of the person arrested, there may be no arrest in this case since the immediate purpose of the police is simply to find out if *A* is not the assailant.

However, the Search and Seizure Clause covers not only arrests but "searches and seizures of whatever nature and for any purpose." At the very least, therefore, in the hypothetical case, there is a "seizure" within the meaning of the Constitution.

As the U.S. Supreme Court held, "not all personal intercourse between policemen involves 'seizures' of persons. [But] when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen we may conclude that a `seizure' has occurred."[1] Indeed, to deny that there is at least a seizure which may not result in the filing of criminal charges against *A* would be to deprive him of constitutional protection.

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[1]Terry v. Ohio, 392 U.S. 1 (1968).

Conditions for Arrest and Interrogation

This brings me to the next question: Was the arrest lawful and, if so, can he be interrogated? Rule 113, Sec. 5 (b) of the Rules on Criminal Procedure authorizes an arrest without a warrant "when an offense has in fact just been committed, and [the person making the arrest] has personal knowledge of facts indicating that the person to be arrested has committed it."

Those who would deny the power of the policeman to seize or arrest *A* are likely to invoke this provision since admittedly the policeman has no knowledge of facts indicating that *A* has committed the crime. To be sure the policeman did not know if *A* had a quarrel with the victim just before the incident which might indicate that he was the one who committed the crime.

But do you really belive that in the circumstances of the case the policeman has no power to arrest *A*?

Does the Constitution ban arrests on reasonable grounds and the subsequent questioning of the suspect? For in the example we have the fact is that the policeman heard a scream that someone had been stabbed. He saw someone lying in a pool of blood on the street. And he saw *A* running away with a blood-stained knife in his hand.

The Search and Seizure Clause has two parts, one which forbids "unreasonable searches and seizures" and the another which requires a finding of probable cause before a warrant of arrest or search warrants may be issued by a judge.[2]

The first, the general proscription against unreasonable searches and seizures, has been held to authorize a search or a seizure if a police officer has reasonable grounds to believe that the individual to be arrested or searched has committed an offense or is dangerous.[3] It does not require a police officer to stand idly by until probable cause develops before he can make an arrest. For the police officer may find himself in an emergency situation which requires that he act swiftly on the basis of on-the-spot observations, often incomplete.

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[2]Fraenkel, *Concerning Searches and Seizures*, 34 HAR. L. REV. 361, 366 (1921).
[3]Posadas v. Court of Appeals, G.R. No. 89139, 188 SCRA 288 (1990).

Arrests Based on Reasonable Grounds

The fact that Rule 113, Sec. 5(a) (b) authorize warrantless arrests in cases where the arrestee is caught *in flagrante delicto* or where the peace officer has personal knowledge of facts indicating that arrestee is guilty of a crime recently committed cannot mean that an arrest without a warrant cannot be made on less than probable cause. In the first place, the Search and Seizure Clause does not say that. On the contrary, the *Miranda* rule providing protection to suspects under custodial interrogation impliedly recognizes that there may be an arrest without a warrant even though there is no probable cause, otherwise why should it allow the interrogation of suspects who may already have been arrested in the technical sense of the term? In the second place, existing statutes authorize various peace officers, *i.e.*, municipal policemen and agents of the National Bureau of Investigation, to make arrests without warrant even where they have only "reasonable grounds to strongly believe that the person so arrested is guilty of [a] crime" recently committed,[4] or to "pursue and arrest, ... any person found in suspicious circumstances reasonably tending to show that such person has committed, or is about to commit, any crime or breach of the peace."[5] Can a Rule of Court repeal or amend a statute?

It is, therefore, *reasonable* for a policeman to make an arrest even if there is no probable cause, if there is otherwise reasonable ground to believe that the person arrested is guilty of a crime recently committed. In the hypothetical case, there may be no probable cause for arresting *A* but there is reasonable cause for seizing him and interrogating him. Such investigation is in fact necessary to determine whether there is probable cause for taking him into custody and subsequently prosecuting him.

On the otherhand, the Warrants Provision requires a finding of probable cause as basis for the issuance of a warrant. Such requirement, which entails time for its determination, is justified by the fact that there is no exigent necessity to act with dispatch since unlike in the situations covered by the general proscription against unreasonable searches and seizures, it may have been some time since the offense was committed.

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[4]*See, e.g.*, REV. ADM. CODE, sec. 2258; Com. Act No. 181 (1936), sec. 3; United States v. Santos, 36 Phil. 853 (1917); People v. Santos, 68 Phil. 415 (1939).

[5]REVISED CHARTER OF THE CITY OF MANILA (Rep. Act No. 409 (1949), sec. 37.

General Investigation not Covered by Miranda Rule

May the interrogation of *A* be carried out without complying with the *Miranda* rule (Art. III, Sec. 12) which requires that the suspect be informed of his right to remain silent and to counsel? In my view yes, for the reason that at this point the stage of custodial interrogation has not yet been reached. The investigation has not focused on a particular suspect since, as already stated, the purpose of interrogation is not to elicit an incriminating statement from the suspect but only to determine if he did not commit the crime.[6] At this point the investigation is only a general inquiry into an unsolved crime.

Indeed, the questioning may result in the exoneration of the innocent just as it may in incriminating the guilty. Suppose, in the example given, *A* is a butcher that is why he had a butcher's knife and the reason he was running was because his wife was after him and not really because he was the one who committed the crime. How is he to establish his innocence if before he can be interrogated the police must first give him the *Miranda* warnings and even after he has indicated that he is waiving his right to silence and to counsel, the police will still have to look for a counsel to assist him in making a waiver?

Indeed, it is unnatural to expect the policeman, who has just nabbed *A*, to talk to him about the PBA game the night before on their way to the police station. If at this point he confesses to the crime, no constitutional prohibition is violated. The privilege against self-incrimination does not prohibit the extraction of all confessions but only those obtained by compulsion.

Purpose and Conditions of General Interrogations

Thus, the brief interrogation that must follow the seizure of *A* performs a vital screening function which is the reason for the seizure. This function cannot be performed by the police if interrogation without counsel at this stage is prohibited. Otherwise, instead of a boon the right to counsel becomes a bane.

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[6]Escobedo v. Illinois, 378 U.S. 473 (1964).

The problem here is how to preserve the free choice of the suspect, while recognizing the value of police investigation. The following measures, adopted from studies in the United States,[7] are recommended: [i] There must be no prolonged custody, because this is coercive. In any event, the detention must not exceed the periods prescribed in Art. 125 of the Revised Penal Code. [ii] The suspect must be told that he has no obligation to speak if he does not wish to. [iii] He must not be held *incommunicado* and must be told that it is his right to have counsel. The balance to be struck between the right of the individual and that of the state is thus more or less similar to that made in Art. III, Sec. 12. It is different, however, in the sense that the state has no duty to provide counsel, otherwise there would be an undue extension of the *Miranda* rule to the stage of general exploratory investigation. The purpose of the investigation must be kept in mind: for screening, to enable the police to decide whether to charge the suspect or to release him and if the decision is to charge him, what offense to charge him with. The purpose is to permit the processing of the case and not to obtain evidence. Such investigation may well include the identification of the suspect by witnesses, such during a police lineup.[8]

When Miranda Rule Applies

This brings me to the fourth question: When does Art. III, Sec. 12 apply? Only after the investigation has ceased to be a general inquiry into an unsolved crime and now begins to focus on a particular suspect, the suspect is taken into custody, and it is evident that the purpose of interrogation is to elicit an incriminating statement from him.[9] As the the Court explained in *Escobedo v. Illinois:*[10]

Nothing we have said today affects the powers of the police to investigate "an unsolved crime" ... by gathering information from witnesses and by other "proper investigative efforts." ... We hold only that when the process shifts from investigatory to accusatory – when its focus is on the accused and its purpose is to elicit a confession – our adversary systems

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[7]Bator and Vorenberg, *Arrest, Detention, Interrogation and the Right to Counsel; Basic Problems and Legislative Solutions*, 66 COLUM. L. REV. 62, 71-77 (1966).

[8]Gamboa v. Cruz, G.R. 36291, 162 SCRA 642 (1988); People v. Loveria, G.R. 79138, 187 SCRA 47 (1990).

[9]Escobedo v. Illinois, 378 U.S. 478, 490-491 (1964); Miranda v. Arizona, 384 U.S. 436 (1966).

[10]*Id.*

begins to operate and, under the circumstances here, the accused must be permitted to consult with his lawyer.

Actually, after the police has concluded from the suspect's identification by witnesses and possibly his answers to questions that there is probable cause for believing that he has committed the offense, the appropriate charge can be filed with the public prosecutor for the eventual filing of a case in the court. If, therefore, the police decides to continue the detention, it can only be for the purpose of extracting a damaging statement from him. Since the ensuing custodial interrogation is likely to be secret and, for that reason inherently coercive, it becomes important to insist on the observance of the safeguards provided in Art. III, Sec. 12. More specifically, before he is interrogated, the following warnings must be given:[11]

> First, the person in custody must be informed in clear and unequivocal terms that he has a right to remain silent. The purpose is to apprise him of his privilege not to be compelled to incriminate himself, to overcome the inherent pressures of the interrogation atmosphere, and to assure the individual that his interrogators are prepared to recognize his privilege should he choose to exercise it.
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> Second, the person in custody must be warned that anything he will say can and *will* be used in court against him. This warning is intended to make him aware not only of the privilege but also of the consequences of foregoing it. For this reason, the previous practice of warning the individual under custody that anything he will say *may* be used against him in court no longer suffices.
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> Third, since the circumstances surrounding in-custody interrogation can operate very quickly to overbear the will of one merely made aware of his privilege by his interrogators, it is indispensable that he has the assistance of counsel.

The suspect may waive the right to remain silent and to the assistance of counsel, but not the right to be informed of these rights. For the right to be informed is the basis of a "voluntary, knowing and intelligent" waiver of the right to silence and to counsel.

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[11]People v. Duero, G.R. 52016, 104 SCRA 379 (1981), *citing* Miranda v. Arizona, *supra* note 9.

Preserving the Warrant Requirements

Finally, the question is whether warrantless arrests will not destroy the incentive for securing a warrant since the police would need less evidence in making them.

We have already noted that the Search and Seizure Clause requires a finding of probable cause as basis for the issuance of a warrant by a judge but not in warrantless arrests because in such cases it is the general prohibition against "unreasonable searches and seizures" that is applicable and reasonable ground for belief suffices.[12]

Of course, there is strong preference for a warrant of arrest.[13] Of course, it is desirable to commit the decision to make arrest to a detached and neutral magistrate rather than to "the officer engaged in the competitive enterprise of ferreting out crime."[14] But the preference for warrants should not be confused with the necessity for them. Warrantless arrests, as we have seen, are authorized because of an exigent necessity -- either because the crime has been committed in the presence of the arresting officer or because he has reasonable grounds to believe that the person to be arrested has committed the crime. Even here the peace officer is not entirely free to arrest anyone on the basis of mere suspicion. While probable cause -- the basis for the issuance of warrants -- requires "facts and circumstances within their [arresting officers'] knowledge and of which they had reasonably trustworthy information... sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed (by the person to be arrested),"[15] reasonable cause nonetheless requires "specific and articulable facts, which when taken together with rational inferences from those facts, justify an arrest."[16]

Moreover, considering the practice here, the determination of probable cause in arrests is virtually left to public prosecutors and officers

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[12]People v. Ancheta, 68 Phil. 415 (1939); Umil v. Ramos, G.R. Nos. 81567, 84581-82, 84583-84, 83162, 85727, 86322, July 9, 1990.

[13]People v. Aminudin, 163 SCRA 402 (1988); Beck v. Ohio, 379 U.S. 89 (1964).

[14]Giordenello v. United States, 357 U.S. 480 (1958); *reiterated* in United States v. Ventresca, 380 U.S. 102 (1965) (requirement for search warrants).

[15]Caroll v. United States, 267 U.S. 132, 162 (1924); Brinegar v. United States, 338 U.S. 160, 175-176 (1949). *See* Harvey v. Defensor-Santiago, 162 SCRA 840, 846-847 (1988) adopting the definition of probable cause in search cases (People v. Syjuco, 64 Phil. 667 (1937); Alvarez v. CFI, 64 Phil. 33 (1937)) to arrest cases.

[16]*Cf.* Terry v. Ohio, *supra* note 1.

conducting preliminary investigation. What the judge who issues the warrant of arrest does is little more than routinely make his own finding.[17] The recent ruling in *Lim v. Felix*,[18] invalidating a warrant of arrest issued by a judge solely on the basis of the public prosecutor's certificate without the judge having the records of the preliminary investigation, stops short of requiring judges to make an independent evaluation of the evidence. In any event, there is no means of checking whether a judge has considered the evidence because he is not required to conduct the examination of witnesses or embody his findings in writing.

Given this practice, the objection to warrantless arrests based on reasonable ground does not have much force.

The questions I have discussed often elude judicial scrutiny, and yet they are important requiring as they do a delicate balancing of the rights of individuals and the paramount interest of the State. Questions regarding the legality of searches are likely to survive the filing of cases and thus receive the attention of courts as the evidence obtained will most likely be used in the trial. A ruling admitting the evidence constitutes a judicial approval, just as a ruling excluding the evidence signals judicial disapproval of the search made. In contrast, questions concerning the legality of an arrest are not likely to be preserved for the consideration of the court. Even a petition for *habeas corpus* questioning the legality of an arrest and detention may not be adequate as the question of legality of an arrest can easily be rendered moot and academic by filing of the case and the issuance by a judge of a commitment order. Even if the court should later grant a reinvestigation, the fact stands that in the meantime the suspect remains in custody.

I hope that these questions will be discussed in public fora in order to promote public awareness of basic individual rights and the need for accommodating them with societal interests. These issues touch the very heart of the social order and so should be the abiding concern of every thoughtful citizen.

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[17]*See, e.g.*, Beltran v. Makasiar 167 SCRA 393 (1988); Amarga v. Abbas, 98 Phil. 739 (1956).

[18]G.R. Nos. 94054-57 and 94266-69, Feb. 19, 1991.