

Tenth Circuit

Legal Advisor

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Vol. 2, No.s 9-10

September-October 1988

There are circumstances under which law enforcement offices are not required to give Miranda warnings to suspects. Felony Intake director Mike Cusick goes over this issue in September-October Legal Advisor.

Chip Thullbery reviews Florida court system decisions on auto theft, burglary tools, consent to search, tipsters and special deputies.

INVESTIGATIVE PROCEDURES

By Mike Cusick

Knowing when you do not have to give Miranda rights may make an important difference

A victim files a report accusing a suspect of theft.

After verifying the information supplied by the victim, you decide to question the suspect.

You go to the suspect's home to question him.

Do you advise him of his rights?

If you ask him to come to the police station, do you advise him of his Miranda rights?

Your knowing when Miranda rights are not required may make a difference in whether the defendant gives you a statement.

While a lot of suspects do give statements after Miranda, some do not.

There seems to be a compulsion among law enforcement officers to advise a suspect of his Miranda

rights even when it isn't necessary.

The purpose of this article is to give you a better understanding of when it is necessary to give Miranda warnings.

In Oregon v. Mathiason, 97 S. Ct. 711, 50 L. Ed. 2d 714 (1977), the United States Supreme Court discussed when Miranda warnings are required:

Any interview of one suspected of a crime by a police officer is part of law enforcement system which may ultimately cause the suspect to be charged with a crime.

But police officers are not required to administer Miranda warnings to everyone they question.

Nor is the requirement of warnings to be imposed simply because the questioning takes

place in the station house, or because the questioned person is one whom the police suspect.

Miranda warnings are required only where there has been such a restriction on a person's freedom as to render him "in custody".

It was that sort of coercive environment to which Miranda by its terms was made applicable, and to which it is limited.

Two points stand out in this opinion. First, Miranda warnings are only required when a defendant is in custody.

The courts have used an objective test in determining whether a person is in custody.

The test is whether a reasonable person under the circumstances would have believed that he was in custody.

In the absence of an actual arrest, the courts have looked for something done by law enforcement either in their manner of approach or by the tone or

extent of questioning which indicates that the police would not have allowed the suspect to leave.

This brings up the second point highlighted in Mathiason. The circumstances under which the suspect was questioned must not have been coercive.

There are several things that can be done by the investigating officer to avoid a questioning situation being coercive:

- (1) Make it clear to the suspect he is not under arrest.
- (2) Limit the period of questioning (thirty minutes has been held not to be coercive).
- (3) If it is convenient, try to question the suspect away from the police station.
- (4) If at the station, make it clear to the suspect that he is free to leave at any time.

With these guidelines in mind, you will be able to question

suspects without the inhibitions caused by Miranda rights.

It should result in more statements being given by suspects while avoiding a violation of the suspect's constitutional rights.

There may be a challenge to the admission of the defendant's statement in court.

Therefore, it is important that you document in your report that at the time of questioning (1) the defendant was not under arrest, and (2) he was made clearly aware of that fact.

Your report should also document any other information which shows that the statement was not coercive.

In conclusion; you must be knowledgeable about when Miranda warnings must be given.

However, it is just as important to know when you don't have to advise the suspect of his Miranda rights.

Ultimately, it may make the difference in whether or not the defendant is convicted.

FROM THE COURTS

Edited by Chip Thullbery

A case of grand theft auto

The defendant was charged as a juvenile and found delinquent for the theft of an automobile.

The evidence presented at his hearing established that he rode as a passenger in a motor vehicle which had been stolen earlier that

day and which he knew was stolen.

On appeal, he argued that he was not guilty of theft because he did not have control over the vehicle at any time.

(See "auto" next page)

"auto"

While the First District reversed the adjudication of delinquency on other grounds, it held that the State had presented sufficient evidence

to show the defendant was guilty of theft.

D.N. v. State, 13 FLW 1828 (Fla. 1st DCA, August 4, 9188).

A case of possession of burglary tools

The defendant was charged with possession of burglary tools.

he had entered the area to commit a burglary.

At his trial, the evidence showed that a confidential informant advised police tht the defendant had committed a number of burglaries in a particular neighborhood.

The court granted the defendant's motion to dismiss, finding that there was insufficient evidence that he had possessed tools for the purpose of a burglary and that such evidence would be necessary to enable the confession to be introduced against him.

During a surveillance, the police saw him jump over a fence and attempt to run away.

On appeal, the Supreme Court reversed, holding that the State had presented sufficient evidence of possession of burglary tools.

He was wearing a pair of socks over his hands and carrying a screwdriver.

Thomas v. State, 13 FLW 464 (Fla., August 4, 19988).

After being arrested, he admitted

A case on consent to search

The defendant was charged with possession of cocaine and filed a

motion to suppress.

(See "consent" next page)

"consent"

The evidence on the motion showed that officers of the West Palm Beach Police Department boarded a Trailways bus and asked various passengers for consent to search their luggage.

The defendant gave his consent, and the officers searched his bags and found cocaine.

The trial court granted the

motion to suppress, finding that if consent was given, it was coerced by the officers' actions.

On appeal, the Fourth District reversed, holding that the officers' operation did not, of itself, create a coercive situation.

State v. Avery, 13 FLW 1816 (Fla., August 3, 1988).

A case of a proper arrest on a tip from an unidentifiable source

The defendants were charged with trafficking in cocaine and filed a motion to suppress.

The evidence showed that an unidentified person gave a police officer a tip that a transfer of a kilogram of cocaine would take place at a certain location.

The caller said that it would involve a Latin male wearing a green shirt and driving a Ford Granada.

Acting on this tip, officers began

a surveillance.

Within forty-five minutes, they saw a Latin male wearing a green shirt drive a Ford Granada into the area.

He parked and remained there for a few minutes until another man approached.

After a short conversation the other man gave car keys to the first who opened the trunk of the second man's car and took out a

(See "tip" next page)

"tip"

plastic container consistent with the size of a kilogram of cocaine.

He then put the container in the trunk of the Granada.

At this point, officers arrested both men for possession of contraband and seized the tupperware container.

The trial court granted the motion to suppress, but on appeal, the Third District reversed, holding that based on the totality of the circumstances, the officers had probable cause to arrest the defendants.

State v. Maya, 13 FLW 2024 (Fla. 3rd DCA, August 30, 1988).

What is the jurisdiction of a municipal officer acting as a special deputy

The defendant was indicted for murder and filed a motion to suppress evidence.

At the hearing on the motion, the evidence showed that a policeman with the West Palm Beach Police Department who was also a West Palm Beach County Special Deputy was ordered to investigate a possible stolen vehicle located outside of West Palm Beach.

Accompanied by an agent from a private insurance organization, the policeman located the automobile.

The agent discovered the car was in fact stolen, and based on this information the policeman seized the vehicle and had it towed to the West Palm Beach Police Station where an inventory search was conducted without a warrant.

Evidence was found that linked the defendant to the murder.

The officer testified that in order to retain his special deputy status he merely renewed his card every year.

(See "jurisdiction" next page)

"jurisdiction"

He was not required to post a bond.

The trial court granted the motion to suppress.

On appeal, the Supreme Court affirmed, holding that the municipal

police officer did not have the authority to make a search and seizure outside his jurisdiction based on his status as a special deputy sheriff.

Ramer v. State, 13 FLW 495 (Fla., August 18, 1988).

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*The "Tenth Circuit Legal Advisor" is published by the Office of the State Attorney
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