Tenth Circuit

Legal Advisor

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Miranda has become so much a part of law enforcement officers' lives that they sometimes advise suspects of Miranda Rights when it isn't necessary.

Since it is easier to remember the few situations where a Miranda advisory is not required, Mike Cusick of SAO Intake Division details them in October Legal Advisor.

Investigative Procedures

By Mike Cusick

To Miranda....or not to Miranda

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

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 not necessary to give Miranda warnings.

In Oregon v. Mathiason, 97 S. Ct. 711,50 L. Ed. 2d 714 (197), the United States Supreme Court discussed when Miranda warnings are required: "Any interview of one suspected of a crime by a police officer will have coersive aspects to it, simply by virtue of the fact that the police officer is part of a 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 is that sort of coersive 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 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, approach or 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 coersive.

There are several things that can be done by the investigating officer to avoid a questioning situation being coersive: 1. Make it clear to the suspect that he is not under arrest; 2. Limit the period of questioning. (thirty minutes has been held not to be coersive.) 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 goals 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 suspects' 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 coerced.

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 a suspect of his Miranda rights.

It may make the difference in whether or not a statement is obtained. Ultimately, it may make the difference in whether or not the defendant is convicted.

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FROM THE COURTS

Edited by Chip Thullbery

Hate crime statute is constitutional

The defendant was charged with battery. The evidence at his trial showed that he was a member of an anti-semitic organization known as the Skinheads.

When he learned that another member of the organization was of Jewish background, he and several others attacked him.

He was convicted as charged, and the battery was enhanced to a third degree felony under section 775.085, Florida Statutes, the Hate Crime Statute.

On appeal, the Fifth District affirmed the conviction, holding that the Hate Crime Statute is constitutional because it punishes not intolerant opinions but rather the act of choosing a victim because of his race or religion.

Dobbins v. State, 17 FLW D 2222 (Fla. 5th DCA Sept. 24, 1992).

Defendant's actions did not justify stop by police

The defendant was charged with resisting an officer without violence. At his trial, the evidence showed that an officer saw him crossing a vacant field. When he saw the officer he made a furtive movement as if to hide something behind his back and ran away.

The officer ordered him to stop, and then pursued him.

The defendant was convicted as charged but on appeal, the Fourth District reversed, holding that the officer had no grounds to stop the defendant and that thus the defendant could not resist the officer by running away.

Breedlove v. State, 17 FLW D2252 (Fla. 4th DCA Sept. 30, 1992).

Putting hand through open vehicle window sufficient entry to support burglary charge

The defendant, a juvenile, was charged with being delinquent by committing a burglary.

At his hearing, the evidence showed that he reached into the open window of the victim's van, put a gun to the victim's head, and demanded money. On the basis of this evidence the trial court adjudicated the defendant delinquent.

On appeal, the Third District affirmed, holding that the evidence established that the defendant made an unauthorized entry into a conveyance.

W.M. v. State, 17 FLW D2255 (Fla. 3rd DCA Sept. 29, 1992).

Search warrant was not stale

The defendant was charged with possession of cocaine and marijuana and filed a motion to suppress.

The evidence on the motion showed that the state obtained a warrant to search the defendant's residence based on an affidavit which stated that a controlled buy of a small amount of cocaine was made at the residence between June 10 and June 20, 1988.

Based on this affidavit, a judge issued the warrant on June 23, 1988, and it was executed July 1.

The trial court granted the motion to suppress finding that the warrant was stale, but on appeal, the Second District reversed, holding that both the issuance and the execution of the warrant were timely.

State v. Lewis, 17 FLW D2267 (Fla. 2nd DCA Sept. 30, 1992).

Movement of victims of sexual assault sufficient to justify kidnapping charge

The defendant was charged with two counts of kidnapping and two counts of lewd act on a child.

The evidence at his trial showed that he received permission from the parents of two boys to take the boys swimming at a certain pool.

Once at the pool, he took the boys to a nearby nature trail where he committed the lewd acts.

One of the boys testified that when he told the defendant he did not want to go to the nature trail, the defendant told him that if he did not go along with them he would have to sit in the car until the defendant and the other boy returned.

The defendant was convicted as charged, and on appeal, the First District affirmed, holding that the evidence was sufficient to support the allegations of kidnapping.

Gay v. State, 17 FLW D2241 (Fla. 1st DCA Sept. 25, 1992).