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Suspect Interviews:

When does the Interview have to Stop?

Written by: Victoria J. Avalon, Assistant State Attorney

When you're in the moment, and trying to complete an investigation, whether you are in uniform or a detective, you're going to find yourself interviewing a suspect. The location might be in your car, or at the police station, or in the suspect's house, or at roadside. Wherever you are, you must keep in the back of your mind that a suspect is never required to talk to you. They have the right to remain silent, and when they exercise that right, you must scrupulously honor it. Let's take a look at a case where that did not happen. This is a particularly over-the-top example, but it serves to illustrate the problem.

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Sheriff's deputies on road patrol received a dispatch call to a townhome for an unverified 911 call. Arriving within thirty minutes of the dispatch, the deputies approached the townhome on foot. Discovering an unlocked front door, they entered and found an elderly victim on the floor, murdered. Crime scene technicians recovered trace evidence from underneath the victim's fingernails, which yielded a DNA profile matching that of a man in Florida's statewide DNA database. Detectives went to make contact with the suspect, advising him that they were investigating the murder and asking him to come to the sheriff's substation to discuss it. The suspect was not in custody; he rode to the substation free of restraint, in the front seat of the officers' unmarked vehicle, and was not questioned during the ride. At the substation, the suspect walked with the detectives to an interview room.

In the interview room, the suspect was not restrained. The detectives specifically informed him that he was not under arrest, the door was unlocked, and he could leave anytime he wanted to. The suspect, who had prior arrests, responded that he understood. The detectives then administered the suspect's rights warning pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966). After the suspect stated that he was familiar with his rights, the detectives engaged him in small talk to loosen him up, finding out that he'd had a full night's sleep, had not eaten all that day, and had no drugs or alcohol in his system. It was about 3:00pm when the interview began. And up to this point, all was well.

The interview did not go well for the suspect. He incriminated himself by saying that whoever had killed the victim had to have known her because of the way the murder went down. He asked how the investigation would turn out for him. He wanted to know when it would be finished. Then, the detectives confronted him and openly accused him of the murder. The following exchange took place:

THE DEFENDANT: How much better can I explain, I did not do this.

DETECTIVE: Listen, listen to me. That's not the question. You did do it. [Suspect]—

THE DEFENDANT: ***I'm done. I'm done.***

DETECTIVE: What does that mean?

THE DEFENDANT: ***I'm done.***

DETECTIVE: ***What does that mean, I'm done?***

THE DEFENDANT: ***I'm done. I'm ready to go home and I did not do this and if I did do it, I want you all to show me that I did do it.***

. . . .

Continued on Page 3...

THE DEFENDANT: ***I'm done. I'm ready to go home. Can I leave?***

DETECTIVE: ***No***.

The italicized and bolded portions are some of those that the Florida Supreme Court later was concerned about, and subsequent to this exchange, the suspect confessed to the murder. *See Deviney v. State*, 38 Fla. L. Weekly S124-133 (Feb. 21, 2013). There are others, but this will serve. As you have probably guessed, the justices threw out the suspect's confession. Why?

Miranda's purpose is to provide a detainee with the rights that he or she has, so that those rights may be exercised intelligently. The state and federal constitutions are clear that a suspect is not required to speak to you. No one may be compelled to be a witness against themselves. At the same time, the law recognizes the position of power that a law enforcement officer is in relative to the detainee. It is all too easy inadvertently to compel someone to speak when they're trying not to talk to you. You must be cognizant of a suspect's right to cut off questioning. Here, the suspect unequivocally told the officers he did not want to talk anymore. The interview should have ended. But as you can see, the detectives kept interrogating the suspect. The courts will suppress confessions obtained by persistent questioning after a suspect has clearly, unequivocally tried to cut off interrogation, as this suspect did.

What if a suspect's attempt to cut off questioning is equivocal? In *Deviney*, 38 Fla. L. Weekly at S131, the high court gave examples of what is and what is not equivocal. For example, if the suspect says something along the lines of "I'd rather not talk about it," without telling you he does not want to speak, that's equivocal. *See State v. Owen*, 696 So. 2d 715, 719 (Fla. 1997). You do not have to ask him clarifying questions in such instances, but the justices recommend that you do. And be careful; the courts hold that you must consider <u>any</u> manner in which a suspect tries to cut off interrogation. For example, a suspect's remark that "I don't want to declare anything" after being given the rights warning was sufficient to cut off questioning. *See Cuervo v. State*, 967 So. 2d 155, 160-62 (Fla. 1997). "I'm not talking anymore," as the suspect said in *Pierre v. State*, 22 So. 3d 759, 769 (Fla. 4th DCA 2009), would seem to be a clear invocation of a suspect's rights.

The *Deviney* court found most persuasive *State v. Kasel*, 488 N.W.2d 706 (Iowa 1992), from the Iowa Supreme Court. There, a 22 year old defendant was at the police station of her own free will for an interview in a child abuse case. When confronted with the allegations, the defendant tried to leave and was actually grabbed by the interviewer. Up until that point, the interview had been consensual and non-custodial. But when the interviewer prevented Kasel from leaving, it became custodial. Having been previously given the *Miranda* warning, Kasel's attempt to leave the room had to be interpreted as an attempt unequivocally to cut off questioning, and the detective should have either renewed the warning and clearly given her the opportunity to invoke them, or honored the warnings already given. The Iowa Supreme Court held that the fact that the detective did neither, failed to honor the right to cut off questioning, and the Florida Supreme Court approved of that result.

When you're interviewing a suspect, remember that you must <u>scrupuloulsy</u> honor the suspect's right not to talk to you. If the suspect unequivocally lets you know that he does not want to talk to you, cut questioning off, and do not renew it unless <u>he</u> approaches <u>you</u>. Otherwise, you risk a finding that any statement you get after that point will be suppressed as involuntarily obtained.

FROM THE COURTS...

OFFICER'S QUESTIONS DID NOT TRANSFORM STOP

The defendant was charged with trafficking in hydrocodone and filed a motion to suppress evidence and statements. The facts on which the motion was based were that an officer stopped the defendant for a traffic violation. When the officer approached the car, he asked the defendant whether she had any weapons or drugs in the car. She responded that she had a bag of pills. The officer asked her to step out of her car, and when she did she pulled the bag from her pocket. The trial court granted the motion to suppress, but on appeal, the Third District reversed, holding that the officer's question did not transform the traffic stop into a formal arrest or custodial interrogation.

State v. Hinman, 37 FLW D2555 (Fla. 3d DCA Oct. 31, 2012).

PLAIN FEEL DOCTRINE

The defendant was arrested for possession of cocaine, following a consensual encounter with a police officer. The encounter began when the officer pulled his car next to the defendant, who was riding a bike. Although the defendant denied the officer's request for a search of his person, the officer was concerned because the defendant was fidgeting, exhibiting nervous energy and told the officer he was carrying a pocketknife. The officer secured the pocketknife and also felt the outer part of the defendant's clothing to check for other weapons. The officer felt the bottom of the defendant's shirt pocket and immediately felt a plastic baggy with a rock-like substance in it. At his trial, the cocaine was admitted under the plain-feel doctrine because the officer testified, due to his training, he knew immediately what it was upon touching it. The defendant was convicted. On appeal, the First District affirmed the defendant's conviction (and the trial court's denial of the motion to suppress), holding that the plain-feel doctrine applied.

June v. State, 37 FLW D2691e (Fla. 1st DCA November 26, 2012).

SEARCH AND SEIZURE

The defendant's vehicle was stopped by law enforcement for violation of the noise statute. It was also discovered that the defendant was driving while his driver's license was suspended. After the defendant was charged, but prior to his case being resolved, the noise statute was declared unconstitutional. The defendant filed a motion to suppress the evidence in his case, alleging that the officer did not have reasonable suspicion for the stop because the noise statute was unconstitutional. The trial court granted the motion to suppress. On appeal, the Fourth District reversed the trial court, holding that at the time of the stop, a reasonable law enforcement officer would not have known that the noise statute was unconstitutional and therefore acted in an objectively reasonable manner.

State v. Lockett, 37 FLW D2790a (Fla. 4th DCA December 5, 2012).

http://www.sao10.com

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Misdemeanor	**534-4926**
Domestic Violence	**534-4861**
Felony Intake	**534-4987**
Felony	**534-4964**
Investigations	**534-4804**
Violation of Probation	**534-4803**
Child Abuse	**534-4857**
Homicide	**534-4959**
On Call Phone	**860-8243**
Worthless Checks	**534-4874**
Juvenile	**534-4905**
Main Fax	**534-4945**
Witness Management	**534-4021**
Fax	**534-4034**

Officers can submit their vacation to Witness Management at the following email address:

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