

CRIMINAL PROCEDURE - Interrogation and Confession

I. Introduction: Miranda only applies to use of defendant's statements in trial against him.

II. Interrogation and Miranda

Interrogation must be knowingly and intelligently voluntary and the state must show that it acted to make the accused aware of constitutional rights.

A. Interrogation, Defined: Questions by police of a person they suspect of a crime.

1. Confession: Statement claiming commission of a crime
2. Admission: Assertion of inculpatory facts without amounting to a confession.

B. Rights under Miranda: Miranda applies to interrogation while in custody.

1. remain silent
2. statements will be used in trial
3. right to consult with counsel and have counsel present during a statement
4. counsel will be appointed if accused cannot afford one.
5. If once begin, can stop answering questions or making a statement at any time

C. Exceptions:

1. voluntary statements
2. background or routine questions
3. emergency
4. traffic stops
5. spontaneous questions
6. undercover cops

D. Re-initiating questions

1. Not required to "re-Mirandize" when continuing interrogation after a break
2. Once accused has terminated questioning under Miranda, not permitted to go back another day and start asking questions.

E. Questions must stop when defendant says wants to stop, or wants to talk to an attorney. Cops can't try to talk defendant out of it.

F. Voluntary Statements: Cops can't use trickery, because a statement obtained is not knowing and intelligent.

G. Violation of Miranda means that the statement cannot be mentioned in trial, except can be used for impeachment,. Fruit of the poison tree applies.

III. Interrogation

A. Psychological profiling

B. Custodial interrogation

1. Would a reasonable person, viewing the entire circumstances, believe the defendant was not free to leave.
2. Test is not what the police say, or intend, nor is it purely subjective on the part of the defendant

C. Detention may not be based in desire to question. Detention must be based on probable cause.

D. Required disclosures:

1. When defendant is not in custody, the Miranda rules do not apply and do not permit defendant to avoid identifying himself.
2. May limit responsiveness to identification and calling for an attorney.

IV. Confessions: Distinguish confessions and statements. For a confession to be used, the state must prove it was voluntary. Involuntary, means that the defendant's free will was subverted.

A. Jackson-Denno hearing: State must prove no coercion, to overcome the assumption that the confession was coerced.

1. Promises: May promise to recommend low bond or mention the cooperation of the defendant. May not promise no charge, or will only get minor sentence.

2. Privilege:

3. Waiver:

V. Electronic Surveillance:

A. Originally, no trespass. Now, Protected expectation of privacy.

B. Federal Wiretap Act (Title III, Omnibus Crime Control Act,, 1968)

Where parties have a reasonable expectation of privacy, no tapping.

Exclusion. penalties.

C. Court approval: specified crimes. Court approval is a warrant.

D. Execution: all are recorded. Minimize intrusion to unrelated areas.

Many factors: percentage of calls not related. number of one time calls. length of calls. ambiguous calls. Known conspirators.

E. Exceptions:

1. where one party consents to the tap (there's no reasonable expectation that the other party won't record the conversation)

2. wireless telephone. cordless phones. Radio

3. employee of communications company

4. national security

5. emergency, follow up within forty eight hours

6. electronic beepers, pen registers. Not a search.