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The relationship between probable cause and the need to give *Miranda* warnings.

QUESTION: If a police officer who already has probable cause to arrest questions the suspect at the police station, does his or her questioning become a custodial interrogation that requires the giving of *Miranda* warnings?

ANSWER: No. Whether a police officer has probable cause to arrest, or believes he or she does, is irrelevant to a *Miranda* determination. The totality of the circumstances test applied by the courts for determining if *Miranda* warnings were required is an objective test; it does not turn on the subjective beliefs of the interrogating officer.

CASE: *Konnyack A. Thomas v. State of Maryland*, Court of Appeals of Maryland
Decided October 26, 2012

In this case, our Court of Appeals reviewed the issue of the admissibility of a confession given in the absence of *Miranda* warnings. Konnyack Thomas' daughter made allegations of sexual abuse against him. Thomas was contacted by police and agreed to speak to officers at the police station. The police only told Thomas that their request had something to do with one of his children. *Before his arrival at the station*, Thomas' estranged wife told him that he would be asked about the allegations of sexual abuse made by their daughter. When he arrived at the station, Thomas met with two detectives. They led him to an interview room meant for children and told him that he was not under arrest. The officers closed the door to the interview room but it remained unlocked. *The officers told Thomas that the door was unlocked but they did not tell him that he was free to leave.* He spoke with them for approximately an hour and a half. During that time, he confessed to touching his daughter inappropriately and having intercourse with her. The interrogation was recorded. Thomas was arrested approximately twenty minutes after the interview ended and was charged in the Circuit Court for Montgomery County with one count of sexually abusing a minor, two counts of second degree rape, and six counts of second degree sexual abuse.

Prior to trial, Thomas moved to suppress the statements he had made to the police. He argued that he had not been given *Miranda* warnings at the time he arrived at the police station, although he should have been. The circuit court judge agreed and suppressed the statements. In fact, the circuit court judge commented that "a system of subterfuge has developed in the law enforcement community with respect to interrogation techniques" and that "interrogations in police stations are inherently custodial...." The State appealed. The Court of Special Appeals determined that Thomas was not in custody at the time he made the statements to police and reversed the decision. The Court of Appeals, Maryland's highest court, agreed to review the case.

The Court of Appeals began its analysis by stating that in determining whether an individual is in custody for *Miranda* purposes, “we ask, under the ‘totality of the circumstances’ of the particular interrogation, ‘would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave.’” The “totality of the circumstances test” requires a court to examine the events and circumstances before, during, and after the interrogation took place. The circumstances are then viewed as a whole. Factors that aid in the court in the determination include:

- The length and location of the interview;
- The number of police officers involved;
- Any physical restraint on the suspect;
- How the suspect got to the interview; and
- Whether the suspect was arrested after the interview concluded.

In this case, the Court of Appeals decided that the circuit court judge had gotten it wrong by focusing too narrowly on where the interrogation was conducted and what the end result was. In fact, the circuit court judge essentially ruled that each person who confesses in a police station must have previously been given *Miranda* warnings. This is not the law. Simply said, a confession does not automatically turn an interview into a custodial interrogation. A confession is just one of the circumstances to consider in evaluating whether a reasonable person would have felt free to leave.

Looking at all of the circumstances of Thomas’ confession revealed that: the police *asked* Thomas to meet with them; Thomas drove himself to the station; the interview occurred in the children’s interview room, adorned with toys and a couch; only two officers were present and they were not in uniform and not carrying weapons; the officers were courteous and respectful throughout the interview; Thomas was not restrained; the officers told him that the interview room door was unlocked; the officers repeatedly told him that he was not under arrest; and the nature of the interview did not significantly change in any way even after Thomas confessed. Importantly, it was Thomas’ wife who told him before he even got to the station that the officers wanted to question him about the allegations of sexual abuse. So, Thomas knew he was a suspect, and not a mere witness, without being told so by the police. In fact, the police never referred to him as a suspect. For all of these reasons, the Court of Appeals ruled that a reasonable person in Thomas’ situation would have felt free to leave. As such, Thomas’ motion to suppress should have been denied.

NOTE: Obviously, directly telling the suspect that he or she is not under arrest and *is free to leave* and documenting that through video or audio recording goes a long way towards assuring the admissibility of any confession. Here, the officers’ telling Thomas that he was not under arrest and that the door was unlocked, in combination with all of the other circumstances, led the court to side with the prosecution. Each case, however, is intensely fact dependent, and while expressly telling the suspect that he or she is free to leave carries some risk for the investigating officers, not doing so also carries the risk of the suppression of evidence.

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