

Hanrahan Law ...Cops Teaching Cops



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Special points of interest:

- Legal Impact of Police Questioning
- Safe Harbor Rule
- Police may suggest it would be best to tell the truth
- Post arraignment questioning gets a make-over

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The Legal Impacts of Police Questioning

This edition of **Hanrahan Law** focuses on a variety of Court decisions that impact police interrogation and questioning. In the eyes of a jury little evidence is more persuasive than a confession or an admission from a defendant. However, failing to follow proper criminal procedure can prevent a confession or admission from ever getting to the ears of a juror.

In the past several

months the courts have ruled on a variety of cases dealing with the questioning and interrogation of a suspect, both before and after arraignment. We have learned that the time limit placed on police questioning has jurisdictional limitations and that the US Supreme Court has lifted a long standing ban on the questioning of a formally charged defendant without his/her attorney being present. These and



other important issues are discussed in this issues of Hanrahan Law.

Police Questioning techniques and timing often play

The Safe Harbor Rule Does Not Apply to Out-of-State Arrests

In **Com. v. Morganti**, the SJC declared that the Safe Harbor Rule does not apply to arrests executed outside of Massachusetts.

In *Morganti*, the defendant committed a drug related murder in 1988. A warrant was issued and the defendant fled the state. The defendant was arrested on March 16, 2000 in California for OUI. Sgt. Leonard G. Copenrath of the Massachusetts State police learned on March 17, 2000, that the defendant had been apprehended, and he departed the next day for California. When Sgt. Copenrath arrived, he met with

the defendant, who was then in custody, and advised him of his Miranda rights from a Miranda form. The defendant eventually made some incriminating statements.

The defendant argued that



the questioning took place beyond the six hour time limit set under the so-called Safe Harbor Rule.

The SJC declared that "the safe harbor rule applies **only to persons arrested in**

Massachusetts who could be arraigned in Massachusetts; it was not intended to apply to persons arrested in other States on warrants issued in Massachusetts, whose arraignment would need to await their rendition to Massachusetts. The danger that triggered the need for the rule--that police officers would delay a defendant's arraignment in order to procure a confession from an unrepresented defendant--does not arise when the defendant must await a rendition hearing before being transported to Massachusetts for arraignment."

Police May Suggest Broadly that the Truth is Best

During an interrogation the police can suggest broadly that it would be better to tell the truth and this will not deem an otherwise lawful confession or admission involuntary, providing no promises of leniency in exchange for the statements have been offered.

In *Com v. Tolan*, The defendant was suspected of killing her husband in what appeared to be a phony suicide scene. The defendant voluntarily agreed to accompany the police to the police station and discuss the incident. The questioning began at 11:20 A.M. The room was comfortable and adequately ventilated. During the interrogation, the officer repeatedly offered the defendant food, drinks, and the opportunity to use the restroom. The officer secured the defendant's waiver of her Miranda rights at several points during the interrogation, though he

also informed her that she was not under arrest. During the 11 hour interview



the defendant made some inconsistent and incriminating statements.

The interrogating officers

Promises for leniency will likely deem a confession involuntary but suggesting it would be better to tell the truth is generally permissi-

made the following four statements that the defendant claims made her statements involuntary: "You can do yourself a lot of good if you tell us what happened"; "We'll help you because that's why we're here, to find the truth"; "Now it's time to help yourself out"; and, "You need to help

yourself by telling the truth."

The Court concluded that her statements were voluntarily given and that the officers' statements were not promises of leniency which would render her statements involuntary.

"An officer may suggest broadly that it would be 'better' for a suspect to tell the truth, may indicate that the person's cooperation would be brought to the attention of the public officials or others involved, or may state in general terms that cooperation has been considered favorably by the courts in the past. None of the statements made by the officers provides the type of 'assurance' forbidden by *case law*; all are more similar to the broad suggestion that it would be "better" to tell the truth. The officers 'did not overstep the permissible line' by offering leniency or promising that a confession would assist in the defense."

Miranda Error not Always Fatal

Under Federal law an illegally obtained statement does not automatically have a negative impact on other properly obtained statements. However, in Massachusetts, the "taint" of an illegally obtained statement is "presumed to remain with subsequent statements." But as explained in the re-

cent of case of *Com. v. Harris*, there are two circumstances when the taint of a Miranda violation may be removed; (1) when sufficient time has elapsed and there has been a sufficient break in the course of events to allow the conclusion that the taint has been dissipated, and (2) when the

pre-Miranda interview led to no incriminating statement.

Although it is often critically important to ensure that the rules of Miranda are properly followed an error in questioning is not without hope.



Miranda errors are not always fatal

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Displaying Evidence that is not Evidence OK?

Displaying items purporting to be evidence during an interview of a suspect does not alone make the suspect's incriminating statements involuntary. In *Com. v. Jones*, a murder occurred on or about July 2, 1975. The victim was initially believed to have died from natural causes.

In 1997, the victim's body was exhumed and a new autopsy was conducted. This new autopsy indicated that the victim had died from "asphyxia by compression of the neck" and that "it [was] very likely that there's an element of chest compression and likely smothering along with the neck compression."

The defendant was interviewed by police in 1997. He initially denied any memory of the victim or her family, but then acknowledged he had been

with her on the night in question. He said they had been kissing and rolling around on the golf course, where her body was found the next morning, but that they had parted company on good terms and separately walked home.

The interview took place in an employee lounge of an office building. Approximately eight feet from the head of the table, the police placed a clear plastic bag containing a white bra and another clear plastic bag containing a white sweater. Several manila file folders that contained crime scene photographs and an aerial photograph of the golf course were placed with the clothing.

One file had the letters DNA written on its front. The police had recovered no DNA evidence and the clothes had no evidentiary connection to the case. Al-

though these items were clearly visible during the interview, the police never referred to them.

The defendant argued that his statement was improperly induced by displaying false evidence. The Appeals Court upheld the conviction, ruling that the statement was not improperly induced.

When deciding whether a confession was voluntary or coerced the Court will look at the totality of the circumstances. Indicating falsely that evidence has been discovered against the defendant can be a factor in deciding whether or not the statements are voluntary, however this alone will not automatically make the statements involuntary.

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Current Status of Post Arraignment Questioning?

In May of 2009 the U.S. Supreme Court decided *Montejo v. Louisiana*, and in this decision the Supreme Court overturned their previous 1986 decision in *Michigan v. Jackson* which prohibited law enforcement from questioning a defendant regarding the crime for which they had been formally charged without the presence of the defendant's attorney. The U.S. Supreme Court now permits law enforcement to question defendants regarding the offense for which they were formally charged without an attorney present.

However, Massachusetts Courts are likely to continue to prohibit law enforcement from



questioning defendants under these circumstances. The SJC has interpreted the Massachusetts Declaration of Rights art. 12 right to counsel more expansively than the Sixth Amendment in previous decisions.

**Supreme Court overturns
*Michigan v. Jackson***

We will not know for sure whether the SJC will continue to prohibit law enforcement from questioning a defendant regarding a crime for which they have been formally charged until a case is presented before the SJC. However, it is anticipated by many in the criminal justice and legal professions that the SJC will continue to prohibit this type of questioning. The best course of action is to follow the rule delineated in *Michigan v. Jackson* until and unless the SJC rules otherwise.