MIRANDA & INTERROGATION UPDATE

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I. Due Process Voluntariness – Not product of coercion as determined by totality of circumstances

A. Characteristics of Interviewee

1. Age
2. Mental Capacity

B. Environment and Location

C. Techniques

II. Miranda v. Arizona, 384 US 436 (1966) – Custodial interrogation requires warnings and waiver.

A. Custody

A. Oregon v. Mathiason, 429 US 492 (1977) – No custody when suspect voluntarily comes to police station, is told not under arrest, allowed to leave after ½ hour.

B. Berkemer v. McCarty, 468 US 420 (1984) – Custody judged according to reasonable person in suspect's shoes; unannounced intent of police officer irrelevant to custody; custody requires arrest of restraint comparable to formal arrest.

C. Pennsylvania v. Bruder, 488 US 9 (1988) – Ordinary traffic temporarily detains a person, but lacks coercive aspects essential to render detainee "in custody" for Miranda.

D. J.D.B. v. North Carolina, 131 S.Ct. 2394 (2011) – Child's age is relevant to Miranda custody analysis.

B. Interrogation

A. Rhode Island v. Innis, 446 US 291 (1980) – Interrogation may consist of direct questioning or its functional equivalent (reasonably likely to elicit incriminating response); whether police conduct constitutes interrogation must be judged largely from suspect's perspective.

B. Pennsylvania v. Muniz, 496 US 582. (1990) – Miranda does not apply to standard booking questions, even thought the answers demonstrate intoxication.

C. Warnings

A. California v. Prysock, 435 US 355 (1981) – No "talismanic incantation" for Miranda.

B. Missouri v. Seibert, 542 US 600 (2004) – Practice of "beachheading" violates purpose of Miranda.

C. Florida v. Powell, 130 S.Ct. 1195 (2010) – Miranda warnings that fail to expressly state that a suspect has a right to have an attorney present during questioning, but that advise he has "the right to talk to a lawyer before answering any of our questions" and the right to exercise that right at "anytime you want during this interview," satisfy Miranda. Still cited FBI warning "You have the right to talk to a lawyer for advice before we ask you any questions. You have the right to have a lawyer with you during questioning."

D. Waiver

A. Moran v. Burbine, 475 US 412 (1986) – Waiver need be only knowing, intelligent, and voluntary, not smart.

B. Berghuis v. Thompkins, 130 S.Ct. 2250 (2010) – If demonstrate warnings provided and understood, an uncoerced statement establishes an implied waiver.

C. Michigan v. Mosely, 423 US 96 (1975) – Reinterrogation permissible if officer scrupulously honors the invocation of silence by ceasing interrogation, waiting substantial period of time, and then re-advising.

D. Edwards v. Arizona, 451 US 477 (1981) – Once defendant invokes the right to counsel under Miranda, he may not be subjected to further custodial interrogation unless counsel is present or defendant reinitiates.

E. Minnick v. Mississippi, 498 US 146 (1990) – Once request counsel, no interrogation absent presence of attorney.

F. Maryland v. Shatzer, 130 S.Ct. 1213 (2010) – Once the suspect invokes the Miranda right to counsel, renewed interrogation is permissible after 14 days from release of custody. Return to general prison population considered break in custody.

E. Public Safety Exception, New York v. Quarles, 467 US 649 (1984) – Miranda warnings and waiver requirements do not apply in emergency situations where questions are reasonably prompted by a concern for public safety, regardless of officer's motivation.

III. Sixth Amendment Right to Counsel

A. Attachment of Right

A. Massiah v. US, 377 US 201 (1964) – Attaches at the earliest of a formal charge (indictment or information) or initial court appearance.

B. US v. Gouveia, 104 S.Ct. 201 (1964) – No 6th amendment right to counsel at suspect stage.

B. Deliberate Elicitation

A. Brewer v. Williams, 430 US 387 (1977) – Includes direct interrogation or words or action tantamount to interrogation.

B. US v. Henry, 447 US 264 (1980) – Includes use of undercover or informant to intentionally elicit incriminating statements.

C. Kuhlman v. Wilson, 477 US 436 (1986) – Mere listening by cellmate informant not elicitation.

C. Waiver

A. Patterson v. Illinois, 487 US 285 (1988) – Warnings that suffice for waiver of Miranda rights are also sufficient to waive the 6th amendment right to counsel.

B. Montejo v. Louisiana, 129 S.Ct. 2079 (2010) – Defendant can waive 6th amendment right to counsel following arraignment. Not triggered unless requested.

IV. Senate Bill 77, ORC Section 2933.81 - Provides incentive to audio-visual recordings (presumed voluntary)

A. Custodial interrogation in place of detention

B. Aggravated Murder, Murder, Voluntary Manslaughter, Involuntary Manslaughter, Vehicular Homicide, Rape, Attempted Rape, and Sexual Battery