



POLICE / PROSECUTOR UPDATE

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A recent United States Supreme Court case strongly denounced the “**Question-first**” technique, often used by police to evade the requirements of Miranda. In the case, the police arrested a suspect for an arson that resulted in the death of the suspect’s son. The suspect was taken to the police station and questioned for 30-40 minutes without being advised of her Miranda rights. During this questioning, she confessed that her plan was for her son, who was afflicted with cerebral palsy, to die in his sleep in the fire. The interrogating officer then gave the suspect a 20 minute break. He proceeded at that point to advise her of her Miranda rights and obtained a signed waiver. He resumed questioning, confronting the suspect with her prewarning confession and getting her to repeat her confession.

At the hearing on the suspect’s motion to suppress, the interrogating officer testified that he made a *conscious decision* to withhold Miranda warnings, question first and get a confession, then give the warnings and repeat the questioning until he got the confession previously given.

The U.S. Supreme Court held that this interrogation technique rendered both confessions inadmissible. Question-first’s object is to render Miranda warnings ineffective by waiting to give them until after a suspect has already confessed. By any objective measure, it is likely that warnings withheld until after interrogation and confession will be ineffective in preparing a suspect for successive interrogation *close in time and similar in content*, i.e., when the warnings are inserted in the midst of *coordinated and continuing interrogation*. The court found the following circumstances significant: the completeness and detail of the questions and answers to the first round of questioning; the two statements’ overlapping content; the timing and setting of the first and second rounds; the

continuity of police personnel; and the degree to which the interrogator’s questions treated the second round as continuous with the first.

In summary, under the “question-first” technique, the first, unwarned confession is clearly inadmissible. Postwarning statements related to the substance of prewarning statements must also be excluded unless “curative measures” are taken before the postwarning statement is made. In most cases, a substantial break in *time and circumstances* between the prewarning statement and the Miranda warnings could suffice. Alternatively, an additional warning that explains the likely inadmissibility of the prewarning statement may also suffice. Missouri v. Seibert, ___ U.S. ___ (06/28/04).

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It has long been the law that when police make a lawful custodial arrest of an occupant of a vehicle, the officer is allowed to **search the passenger compartment of the vehicle**. The U.S. Supreme Court recently decided whether this rule also applies when the officer first makes contact with the arrestee after the arrestee has stepped out of the vehicle. The answer is yes. Police are allowed to search the passenger compartment of the vehicle incident to the lawful custodial arrest of both “occupants” and “recent occupants.”

Thornton v. U.S., ___ U.S. ___ (05/24/04).