



POLICE / PROSECUTOR UPDATE

Issue No. 82

September 1998

The Indiana Supreme Court recently decided a case in which one of the issues was what constitutes "interrogation" for purposes of *Miranda*.

The necessary facts for purposes of discussion of this issue are that the defendant was arrested for murder and brought to an office in the police station where he was read his *Miranda* rights and signed a rights waiver form. The interrogating officer asked him "if he wanted to talk to me about the incident or why he was there." At that point, the defendant hesitated and said, "I think it would be in my best interest to talk to an attorney." The officer acknowledged that the defendant had that right but nevertheless continued, saying he wanted to explain to the defendant the facts of the case and then told the defendant of the evidence against him. The defendant then interrupted the officer's recitation and confessed to the killing but claimed it was in self defense. The officer then turned on a video camera and asked the defendant to repeat this story, which resulted in a detailed videotape that was later played to the jury.

The Supreme Court stated that the officer's continued discussion of the case was in "blatant disregard" of the defendant's Fifth Amendment right to counsel, which requires that once a suspect requests an attorney, all interrogation must cease. The State contended that the officer's recitation of the evidence was not an "interrogation" for purposes of *Miranda* because no questions were asked. However, this is not the law. The test for whether police "interrogate" a suspect

is not whether questions are asked but whether the police should know that their words or actions are "reasonably likely to elicit an incriminating response from the suspect." Here, the Court stated that the officer's monologue about the discovery of incriminating evidence had no apparent purpose other than to induce the defendant to say something incriminating. Therefore, confronting the defendant in an interrogation room with incriminating evidence was "interrogation" for purposes of *Miranda*.

The prosecution also argued that the defendant's confession should be admissible because his request for counsel was not clear and unequivocal. As discussed in Issue No. 74 of the PPU, under both the federal and Indiana constitutions a request for assistance of counsel, to be valid, must be clear and unequivocal. In the past, courts have held that statements such as "maybe I should talk to a lawyer," and "I guess I really want a lawyer, but . . . I don't know," were not valid because they were not clear and unambiguous requests for counsel. Rather, the statements were qualified by expressions of doubt. In the present case, the defendant's statement, in the court's view, was an unequivocal request for counsel. It was an affirmative declaration of his desire to secure his "best interests." Even the interrogating officer understood it to be a request for counsel when he acknowledged to the defendant that "that's fine, that's your right."

Alford v. State, ___ N.E.2d ___ (Ind. 08/19/98)