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TRAINING BULLETIN: LEGAL UPDATE

Reinitiating Custodial Interrogations

By Charles Gillingham

For the readers of the Legal Update, this is a California case and cites law unique to California. For readers outside of California please contact your local prosecutor for guidance in this area of Miranda.

Facts

Latisha Stephens was shot in the head as she drove her Ford Explorer from a skating rink. The killers were in a white SUV with special rims. A short time later Kenith Murphy's SUV was fired upon but he was not injured. Murphy ducked as he was shot at. Murphy looked back up in time to see the white SUV open fire on a pickup truck. Curtis Galbert was in his pickup truck when he was shot by someone in a white SUV that he had earlier seen at a skating rink. Galbert described the shooter as being in the back passenger seat of the white SUV.

The following day, a man was beaten outside of a wedding reception. The assailants were people who emerged from a white SUV. Defendant was one of the passengers in the white SUV. The defendants shouted gang slogans while they were beating the victim.

Advisement of Rights?

Stallworth, an identified passenger in the white SUV, was arrested and questioned at approximately 5:00 p.m. at the Long Beach Police Department. At that time, Stallworth waived his rights, signed a waiver form and gave a statement.

The following morning between 9:00 a.m. and 9:30 a.m, Stallworth again was questioned by one of the detectives from the night before and a new officer. The detectives asked Stallworth whether he was read his rights, that they were "still in effect," and whether he understood those rights. Stallworth answered in the affirmative to each question. Stallworth was also asked whether he still wanted to talk to the officers and Stallworth answered that he did.

The question for the court and you readers of the legal update is whether the second “advisement” is valid? Or whether, the defendant was even entitled to another advisement?

Subsequent Advisement?

The California Supreme Court has held that readvisement of rights is not necessary before a custodial interrogation is resumed provided a proper warning has been given, and the subsequent interrogation is reasonably contemporaneous with the prior valid waiver. (*People v. Smith* (2007) 40 Cal.4th 483, 504.)

The court set out factors that you should consider in determining whether a subsequent interrogation is reasonably contemporaneous; 1. The amount of time that has passed from the advisement to the second interrogation; 2. Any change in the identity of the interrogation or location of the interrogation; 3. An official reminder of the prior advisement of rights; 4. the suspect’s sophistication or past experience with law enforcement; and 5. any other evidence that the suspect subjectively understands his rights and knowingly waives them.

Under the facts here, the second interrogation occurred 16 hours after the first; Stallworth remained in custody in the same location as the first interrogation; one of the detectives was the same in the second interview as in the first; Stallworth was reminded of his earlier *Miranda* waiver; and Stallworth had a juvenile record, while not fully flushed out indicated some knowledge of the system; finally there was nothing about Stallworth that would have given the detectives pause to believe he did not understand his situation.

When resuming questioning with a suspect who has previously waived, it would be good to remember the four factors set out above. The detectives here conducted their subsequent interrogation and *Miranda* waiver in a legal manner that allowed Stallworth’s statement to be admitted at trial. (Note: This case was reversed on other grounds.)

Chuck Gillingham is a veteran prosecutor and regular instructor for the California District Attorney’s Association and the Federal Internet Crimes Against Children Task Force. Chuck also teaches Multidisciplinary Child Interviewing and Child Exploitation Investigation for Third Degree Communications, Inc.

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