Third Degree Communications, Inc.

TRAINING BULLETIN: LEGAL UPDATE

Tricky Tricky Tricky—AND Legal

By Charles Gillingham

There are *Miranda* cases, and there are *Miranda* cases. Really, there are as many factual scenarios that reach the appellate courts in this country as there are enterprising officers seeking to do justice. The California Supreme Court recently handed down a decision in *People* v. *Thorton*, (2007) 41 Cal.4th 391, wherein they addressed whether an enterprising officer violated the *Miranda* rights of a suspect.

Carjack and Murder

The defendant, Thorton, wanted to kidnap his ex-girlfriend, but he needed a car to do it. Thorton stole a car and kidnapped the owner, an unfortunate young woman named Kellie O'Sullivan. Thorton drove Kellie from Ventura county to a remote area in Los Angeles County where Thorton killed Kellie.

Kidnap

Thorton later kidnapped Stephanie, his ex-girlfriend using Kellie's car. Thorton drove Stephanie to Reno, Nevada. Thorton decided he needed to gamble and while he was in a casino, Stephanie contacted security officers. The security officers called the Reno police who responded and arrested Thorton.

Nevada

A Ventura detective went to Reno to interview Thorton. Thorton confessed to stealing Kellie's car, but denied murdering her. Shortly after the interview, Thorton appeared for an extradition hearing. The detective attended the hearing.

At the hearing, Thorton's Nevada lawyer stated on the record that he was invoking Thorton's *Miranda* right to counsel. The attorney also told the court that Thorton was instructed not to speak with anyone in California or Nevada unless his attorney was present. The court assumed, for purposes of the opinion, that the detective was present for this portion of the proceeding and heard what the attorney said.

Remember, an attorney, despite how much they may, yell, plead, fulminate or otherwise prostrate themselves—CANNOT invoke someone's rights for them. They cannot

anticipatorily invoke someone's rights either. The rights are personal and can ONLY be invoked by the suspect. *Moran* v. *Burbine* (1986) 475 U.S. 412.

California

Thorton was extradited back to Ventura County. Before he was charged with murder, the detective set up a visit between Thorton and his grandmother. It is crucial to the determination of the case that the defendant had not yet been charged. Had he been charged before his conversation with grandma, adversarial proceedings would have begun and the defendant's Sixth Amendment rights would have kicked in.

The detective told Thorton's grandmother, Lois, that the meeting was going to be tape recorded. Thorton obviously was not told of the recording. The detective plainly hoped that Lois would assist in producing incriminating statements by Thorton. Lois did not disappoint. Those statements were admitted at Thorton's trial and the jury found him guilty.

Motion to Suppress Statement to Lois

Thorton contended that his *Miranda* rights were violated during his conversation with his grandmother. Thorton argued that he should have been given his *Miranda* warnings before his conversation with Lois. Thorton argued that the detective was interrogating him through Lois who was acting as a police agent. It was clear that the detective sent Lois in with every intention of eliciting incriminating reponses from Thorton and that the detective hoped to later use those at trial.

The problem with Thorton's contention is that the Supreme Court has held that undercover officers or police agents do not have to *Mirandize* suspects prior to questioning. *U.S.* v. *Perkins* (1990) 496 U.S. 292. Because the officer thought outside the box, understood the law, and executed his plan flawlessly, Thorton was convicted of Kellie's murder and sentenced to death.

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