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policing with perspective

MPTC IN-SERVICE: UPDATE¹

Change in police obligation when attorney calls

Massachusetts requires that police immediately notify a suspect of his attorney's effort to contact him. The landmark case of *Comm. v. Mavredakis*, 430 Mass. 848 (2000) declared: Under Article 12, when a suspect's attorney identifies herself to the police, the police have a duty to *immediately* stop questioning *and* inform the suspect of his attorney's request to communicate.

Now, as an additional requirement, the police must tell the suspect that his attorney recommends that he not speak further with the authorities. Consider *Comm. v. McNulty*, 458 Mass. 305 (2010). Jerome McNulty stabbed his girlfriend to death and Salem Police arrested him that same morning. His appointed lawyer, Raymond Buso, called the station and requested that an officer tell McNulty that Buso: (1) represented him; (2) wanted to speak to him; (3) recommended that he not talk to the police; and (4) would arrive at the station soon.

The officer who spoke to Buso delayed contacting the officers conducting the interview.²

Once informed, the detectives told McNulty only that Attorney Buso was his appointed counsel and that it was his choice to either continue speaking or wait for his attorney. McNulty decided to continue and signed an incriminating statement.

The information provided by police would have been sufficient under the existing *Mavredakis* standard, but the SJC inaugurated a more stringent standard: "[B]ecause the police did not convey adequately to the defendant the substance of his attorney's telephone message and advice, the defendant's subsequent indication that he would continue to speak to the police did not constitute [a valid *Miranda* waiver]."

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² The initial call taker (who booked the defendant) did not tell the attorney his client was at the station. This officer directed the attorney's call into voice mail. When the attorney called back, she referred him to another officer. That officer gave counsel yet another number for a sergeant who eventually informed the interviewers, but only after consulting with the district attorney's office. The SJC viewed this delay as improper.

The court expects that police officers will notify an arrestee or suspect that:

- His attorney wants to speak with him;
- Either immediately on the telephone or upon arrival at the station; and
- Recommends that his client not communicate with the police in the meantime.

Once police sufficiently notify the arrestee or suspect, officers may remind the suspect that it is his choice whether to continue talking or not.

This notification process was done correctly in *Comm. v. Vao Sok*, 435 Mass. 743 (2002). The defendant was a suspect in the murder of a five year old girl in Revere. His appointed attorney spoke with the officer administering a polygraph. The attorney requested that the polygraph and all questioning cease. The officer informed the defendant of his attorney's wishes, but said that it was his choice. The defendant agreed to continue and ultimately confessed. The SJC affirmed Vao Sok's conviction and acknowledged the professionalism of the investigating officer.

Victim/witness courthouse accommodations

Separate waiting area and conspicuous notice of rights. G.L. c. 258B § 3 (governing the rights of crime victims and witnesses) now requires that courts provide a secure waiting area for victims, family members and witnesses. The area must be separate from the place where defendants, their family, friends, attorneys or witnesses stay, and it must be separate from the district attorney's office. A task force has been established to assess how each courthouse in Massachusetts will be brought into compliance with this new law.

Finally, a poster containing victim/witness rights under Chapter 258B must be conspicuously posted in all Commonwealth courthouses *and* police stations. The Massachusetts Office of Victim Assistance (MOVA) is currently designing the poster.

Public assistance for alcohol or tobacco

No alcohol or tobacco with benefit cards. With respect to the Department of Transitional Assistance (which distributes public assistance or "welfare" payments to indigent people), G.L. c. 18, § 5I forbids the use of direct cash assistance funds (which are provided on electronic benefit transfer cards) to purchase alcoholic beverages or tobacco products. For an individual or store owner who knowingly uses or accepts a card for these items, penalty: HC NMT 2½ years; and/or Fine NLT \$1,000.

G.L. c. 18, § 5J punishes anyone who embezzles, willfully misapplies, steals or obtains by fraud any funds. Penalty: With a value of \$100 or more, SP NMT 5 years; and/or Fine NMT \$25,000. With a value of less than \$100: HC NMT 1 year; and/or Fine NMT \$1,000.

Department of CJIS created

Within the Executive Office of Public Safety & Security (EOPSS), the Criminal History Systems Board is now known as the Department of Criminal Justice Information Services.