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MEMORANDUM OF POINTS AND AUTHORITIES

ARGUMENT

I. The Defendant's statement should not be suppressed in violation of the miranda because the defendant was not in custody and the police officers did not interrogate him during the meeting with him.

The issue here is whether the defendant's 5th amendment was violated when the police officers questioned him at their office prior to giving him his miranda warnings.

The defendant claims that his confession to the police should be suppressed because it was obtained in violation of his 5th amendment rights. In *Miranda v. Arizona*, the US Supreme Court held that a person questioned by the police after being taken into custody or otherwise deprived of his freedom of action in any significant way must first be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to a presence of an attorney, either retained or appointed. Statements obtained in violation of this rule cannot be used to establish guilt. It is settled that Miranda advisements are only required when a person is subjected to custodial interrogation. Custodial interrogation, is the questioning initiated by law enforcement officers after a person has been taken into custody or otherwise

deprived of his freedom of action in any significant way. Interrogation refers not only to express questioning, but also to any words or actions on part of the police that the police should know are reasonably likely to elicit an incriminating response from the suspect. In order to determine if the defendant was in custody and there was interrogation the court must consider the following elements separately:

A. The Defendant's statement should not be suppressed in violation of the miranda because the defendant was not in custody when he went to the office voluntarily.

The issue here is whether the defendant was in custody when the police officers questioned him regarding the whereabouts of his friend, Jennifer Clark.

The defendant must first show that he was in the police custody. In *US.v. Cray*, the court stated that the only relevant inquiry in considering that the question is how a reasonable person in Defendant's position would have understood his situation. In making the evaluation, the court must consider the totality of the circumstances that confronted the defendant at the time of questioning.

In *Cray*, the court identified atleast eight factors for consideration in making the custody determination. However while the nonexhaustive factors and their attendant balancing test are often cited in the court's decision, concerning miranda, there is no requirement that they be followed ritualistically in every Miranda case. While the act of counting the factors on each side may help decide if the defendant was in custody, the ultimate inquiry is whether the defendant was restrained as though he were under formal arrest. If the prosecution can show that the factors favor the prosecution, it can successfully show that the defendant was not in custody while he made his statement thus

allowing the statement to be admissible.

1. The defendant was informed during the interview that the questioning was voluntary, and that if he asked the officers to leave or take a break was granted, and he was not considered under arrest or and was aware of his freedom to leave throughout the questioning by the police;

In Cray, the court said the most obvious and effective means of demonstrating that a suspect has not been taken into custody is the for the police to inform the suspect that an arrest is not being made and that the suspect may terminate the interview at will. In Cray, the police officers interviewed the defendant and informed him atleast 8 times that his participation in the interview was voluntary, and he was free to ask the agents to leave his home. The court found that the one factor should not be treated equally as the others in the multi-factor balancing test designed to discern whether a reasonable person would have understood him to be in custody. No governing precedent of the Supreme Court, or any court holds that a person is in custody after being clearly advised of his freedom to leave or terminate questioning.

In Cray, the defendant was suspected of fraud. FBI agents went to the defendant's home and questioned him over 7 hours. The agents informed him that he was free to leave at anytime but 3 hours after he was needed for work, the fbi agents told him to call in sick, but not to tell them about the investigation. The defendant was instructed not to answer his phone. He was told if he didn't comply they would question others including his father and light up his world - meaning, inform everyone of his suspected involvement. He never asked them to leave and eventually signed a document admitting to his involvement. He was later indicted for 27 counts of various crimes. The court found that he was not in custody because they continuously told him he was free to leave.

Here, the police officers were investigating the missing appearance of the defendant's friend, Jennifer Clark. The defendant was known to be her friend and asked to come to the police station to investigate the matter. The police officer's questioning last over 5 hours. The police officers never told the defendant he had to stay. He voluntarily drove the station. In addition, when the defendant wanted a break for a cigarette, the police officer got him some coffee. In addition 3 hours after the interview, and soon after that they took breaks. The defendant could have left if he wished.

Similar to Cray, The prosecution should claim that the defendant was there voluntarily and free to leave as shown when he asked to take breaks. The officers told him they just wanted to investigate the crime of the missing person, Jennifer Clark. Because the defendant could leave at anytime, this factor should favor the prosecution.

However, the defendant may claim that he was not free to leave and the breaks were only when the police officers wished. Defendant's facts may not have credibility because he never actually asked for additional breaks. If he had asked for them, he may have received them.

Therefore, this factor is satisfied.

2. The defendant possessed unrestrained freedom of movement during questioning where he could take a break or leave at anytime;

The prosecution must next show that the defendant possessed an unrestrained freedom to leave during the questioning.

Here, the defendant while at the station asked for breaks and was granted

them. The police officers also took breaks throughout the questioning. The defendant was not placed in any handcuffs, locked in any room, or told to not move.

The prosecution will claim that because the defendant was not restrained in any way by handcuffs, or locking device, he was free to move anytime he wished.

The defendant may claim however that he was in a police station and the police officers led him to believe he could not leave unless he confessed. While the defendant may claim this, it was not on the record.

Therefore, this factor should benefit the prosecution.

3. The defendant voluntarily acquiesced to official questioning by the police where he continued to answer the questions to him;

In Cray, the court reviewed *US v. Sutera*, the case involved the police officer's conduct of securing a room for questioning and instructing the defendant not use the phone. The court concluded that the the defendant's prohibition of the use of the phone was not a factor to consider whe determing his acquiescence. In Cray, the mere act of the defendant attempting to end the questioning did not rise to the level to qualify as restraint on his freedom of movement. The fact that he was continuously told he was not under arrest and free to terminate the interview gave way to not find restraint.

Here, the police officers told the defendant that they were simply trying to understand what happened. The police officers questioned the defendant about the whereabouts with him and Jennifer and the last tim he saw her. The defendant answered the questions each time throughout the five hour period.

The defendant did not object to the question and asked if he was going to be charged until the end of the questioning.

The prosecution will claim that the defendant was continuously told that he was not being investigated and they were simply looking into to finding out what happened to the missing girl. They knew he was last seen with the girl and were trying to find out what happened. The defendant could have left the room if he wished to leave. However, he chose not to and continued to answer the questions. The fact that he eventually asked if he was going to be charged at the end, should not give rise to show the questioning was involuntary.

The defendant may claim that he only answered questions because he did not feel free to leave. However, because the defendant did not ask to end the meeting until the end, his actions demonstrated acquiescence.

Therefore, this factor favors the prosecution.

4. The tactics which were used by the police were aggressive, confrontational, and threatening when they repeatedly asked the Defendant if he knew what happened to the victim;

In Cray, the court uses that example of tactics which lead a person to believe that they were culpable due to evidence which they had is another factor to consider.

Here, the police officers told the defendant that they had witnesses in the apartment building, fingerprints on the furniture linking the defendant to the scene.

The prosecution may claim that while the police told the defendant the evidence they had, the evidence was present and could be verified. In addition, the police officers did not use any tactics unreasonable to get the defendant to claim he did the the crime.

However, the defendant may claim that the police officers did not have the evidence and were using mere trickery. The demeanor used by the police officers also tended to be aggressive when they began to accuse the defendant of stabbing and killing the defendant.

This factor favors the defendant because the police officer's conduct was aggressive.

5. The questioning while it involved a police-dominated atmosphere the defendant was placed in a separate room and only conducted by two police officers.

The prosecution must next show that the atmosphere was not dominating the defendant's free will to speak.

Here, the police used two officers to question the defendant. The defendant was placed in a separate room and allowed breaks as he wished.

The prosecution will claim that while the questioning took place a police station, it was not around many policeman.

The defendant however may claim that it was a precinct involving many others and he felt intimidated by them.

This factor may benefit the prosecution.

6. The defendant was placed under arrest at the termination of the questioning;

Here, this factor favors the defendant because he was arrested following his confession to the police.

7. The express purpose of the interview was to question the defendant not to arrest him;

Here, the prosecution will claim that the purpose of the interview was to question the defendant to learn about what happened to Jennifer, and not to arrest him for the crime.

The defendant however may claim that the police's sole purpose was to get his confession and arrest him because they had evidence linking him to the scene.

Therefore, this factor may favor the defendant.

8. The interrogation lasted a reasonable period of time

Here, the investigation lasted 5 hours. A period which may be reasonable considering the circumstances. The defendant could have easily asked to leave within that period, but he chose not to.

Therefore, because he did not leave or end the questioning sooner, it was reasonable.

Therefore, the factors while not weighed evenly may benefit the prosecution to show that there in fact that the defendant was not in custody.

B. Defendant's statement should be admissible and miranda should not apply where the defendant was not interrogated where the police officers were merely asking questions trying to determine the whereabouts of the missing girl.

The defendant must next show that the police officers interrogated him. In *People v. Adams*, the court identified a variety of relevant circumstances to consider in deciding whether an interrogation was in a custodial environment. No one factor is dispositive, rather must look at the interplay and combined effect of all of the circumstances to determine whether on balance they created a coercive atmosphere such that a reasonable person would have experienced a restraint tantamount to arrest. The court further held that accusatory questioning is more likely to communicate to a reasonable person in the position of the suspect that he is not free to leave than would general and neutral investigative questions. Thus, on the issue of custody, courts consider highly significant whether the questioning was brief, polite, and courteous, lengthy, aggressive, confrontational, threatening, or intimidating.

In *People v. Adams*, the police officers continued to accuse the defendant of lying. The officers continued to pressure him and told him if he kept lying they could not help him. Finally, the defendant gave in and told the police officer's of his involvement. The police officer's then in search for the remainder of the story

told the defendant he could not leave unless he told them the remainder of the story. The defendant then dropped all resistance and admitted to being part of the crime. The court found that based on the totality of the circumstances the police officers interrogated the defendant and illustrated the nature in which miranda was designed to protect.

Here, the defendant was questioned by two police officers over a period of 5 hours. Both police officers took turns questioning the defendant. The questioning while starting with general background questions began to get more direct and accusatory. The officers after a period of a few hours began accusing the defendant that he had in fact stabbed and murdered the suspect. They also continuously accused the defendant that he was lying about his whereabouts. The officers asked him if it was over another guy, if he did drugs, and why didn't he call the police.

Unlike in *People v. Adams*, The prosecution may claim however that the questioning while direct was polite and brief when it came to the accusations. The questioning in the beginning may have been polite and general asking about his relations with Jennifer, but became direct and aggressive.

The defendant may claim that they continuously accused him of murdering Jennifer, questioning his story, and trying to form his motive.

The defendant's arguments may not have much merit however because the prosecution can gather the evidence to place the defendant in the scene and show that he was at Jennifer's apartment. The officers were merely trying to understand why he was lying and kept asking why he didn't call the police. The questions involving calling the police are not the type accusing him of a crime. Rather they are intended to try and understand the events which took place. In addition, the prosecution may claim that they took breaks whenever the defendant requested and offered him coffee and explained that they were merely

investigating the missing of Jennifer.

Therefore, because the officers were merely trying to understand the events which took place and clarify the scene, this questioning was not interrogation.

IV. CONCLUSION

Therefore, the miranda warning should not be applicable to the defendant's statements and the statement should not be suppressed per Defendant's motion. A reasonable person in the same or similar circumstances would have asked to leave prior to continually answering questions. The defendant did not decide to ask if he was being charged until 5 hours into the interrogation. He could have asked before that time period and left.

(Question 1 continued)

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