



LEGAL UPDATE

MICHIGAN STATE POLICE TRAINING DIVISION

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Uttering and publishing includes use of false gift certificates.

The defendants in this case obtained a stolen Discover credit card and false Utah identification. They went to two JC Penny stores and purchased \$3,000 in gift certificates. They then purchased cologne and a ring using the certificates. Later the same evening they returned to exchange the ring for a cash refund.

The Court of Appeals upheld their convictions for uttering and publishing. “Although the defendant presented ‘facially valid’ gift certificates, defendant’s fraudulent acts induced the creation of the gift certificates. Nevertheless, defendant presented the gift certificates to the J.C. Penney store clerk, thus asserting their genuineness, knowing that the instruments were fraudulently acquired, and demanded goods to which he was not entitled and for which liability in someone other than defendant might have been created if defendant could have accomplished his illegal purpose. We hold that such conduct is proscribed by the uttering and publishing statute.” People v Aguwa, C/A No. 217104 (March 6, 2001)

After a suspect requests an attorney under the Sixth Amendment, officers may initiate questioning on unrelated charges.

The defendant in this case was arrested for home invasion. He confessed to the charge but denied any knowledge of a woman and child who had disappeared from the residence. He was charged with burglary and counsel was appointed to represent him. Later, he told his father that he had killed the woman and her child during the B and E. The father told police and they interviewed the suspect while he was in custody. He waived his Miranda rights and confessed to the murders. The question presented in this case was whether the officer could initiate questioning on the murder

after an attorney was appointed for the burglary charge.

The United States Supreme Court held that the officers could initiate the questioning. The Sixth Amendment right to counsel, which attaches during formal judicial proceeding, is offense specific and bars officers from initiating questioning on the same offense. “At the time respondent confessed to the murders, he had been indicted for burglary but had not been charged in the murders. These crimes are not the same offense. Thus, the Sixth Amendment right to counsel did not bar police from interrogating respondent regarding the murders, and his confession was therefore admissible.” Texas v Cobb, 121 S.Ct. 1335 (2001)

Armed robbery may occur where the victim “reasonably believes” the suspect is armed.

The defendant in this case walked into a gas station and placed his hand inside his partially-buttoned jacket and into the front of his pants. The victim testified that it appeared the defendant grabbed something in his jacket and that he saw a bulge near the defendant’s hand. The defendant then stated, “This is a stick up,” and “open the drawer.” The defendant was convicted of armed robbery but he argued that there was insufficient evidence that he was armed. Under statute, an armed robbery may occur when the suspect is armed with a dangerous weapon or an article “used or fashioned in a manner to lead the person assaulted to reasonably believe it to be a dangerous weapon.” The Court of Appeals upheld the conviction.

“In a ‘feigned weapon’ case, the prosecutor meets the ‘armed’ requirement of the statute by proving that during the commission of a robbery the defendant simulates a weapon so as to induce the victim to ‘reasonably believe’ he is armed. Here, because the defendant placed his hand under his clothing, the victim observed a bulge under the

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clothing and defendant announced a robbery ('this is a stick up'), all of which led the victim to reasonably believe defendant was armed, we find that the prosecutor met his burden by introducing a sufficient quantum of evidence to prove the 'armed' element of armed robbery." People v Taylor, C/A No. 216362 (April 6, 2001)

Restitution may include unrecovered buy money.

As part of sentencing for delivering marijuana, defendant was ordered to pay \$7,650 in restitution to the NET team for the buy money that was used to set up the charges. The Court of Appeals upheld the order based on the Crime Victim Right's Act. "We conclude from the plain language of the statute, as well as from the intent behind the CVRA, that the Legislature intended to permit narcotics enforcement teams to obtain restitution of buy money lost to a defendant's criminal act of selling controlled substances." People v Crigler, C/A No. 220111 (January 26, 2001)

After a knowing and voluntary waiver of Miranda rights, law enforcement officers may continue questioning until and unless the suspect clearly requests an attorney.

During an interview for a robbery/murder, the suspect asked the officer when he could talk to an attorney. The officer responded that the interview could stop immediately. The suspect then asked, "Can I talk to him right now?" The detective stated yes, and the suspect then stated that he wanted to think about it for five minutes.

The United States Supreme Court has held that, "After a knowing and voluntary waiver of the Miranda rights, law enforcement officers may continue questioning until and unless the suspect 'clearly' requests an attorney." The question presented in this case was whether the statement, 'Can I talk to him [a lawyer] right now?' constitutes a clear request for an attorney. "We hold that this utterance was not sufficient to invoke the right to counsel and cut off all further questioning under the specific circumstances of this case. The transcript reveals that defendant began this exchange with the police detective by asking when he would be able to talk to a lawyer if he wanted to do so. Only when

the police detective correctly answered that they could stop the interview 'right now' did defendant ask if he could talk to an attorney 'right now?' The police detective then, again correctly, told defendant that they would stop the interview if he wanted to talk to a lawyer. Critically, defendant next asked for 'about five minutes' to think. This clearly indicated that defendant's previous questions were merely inquiries into the way the process worked, not an actual demand for an attorney." People v Adams, C/A No. 208006 (April 6, 2001)

The courts will take an objective assessment of the "totality of the circumstances" in determining if a confession is admissible.

The police suspected that the defendant had been involved in a murder and went to her house to interview her. The officers told her she was not under arrest, and that if she wanted them to leave they would. The officers also testified that the suspect appeared to be normal and cognizant, and although she claimed to have smoked marijuana earlier, she did not appear to be under the influence. She argued that her subsequent confession should have been suppressed because she was in custody and was not advised of her Miranda rights. The Court of Appeals disagreed.

"The evidence showed that defendant permitted the police officers to enter her apartment building and permitted them to enter her apartment. The officers did not display weapons, and the officer indicated that he informed defendant several times that she was not under arrest. The officer also told defendant that if she wanted them to leave, they would go. Contrary to defendant's contention, her subjective belief that she was not free to leave (because the officer asked her about the murder) is not dispositive because an objective assessment of the totality of the circumstances indicates that she was not in custody or under arrest when she gave her oral statement. Defendant proceeded to give a statement, largely in narrative form, with little police questioning. She fully acknowledged that she was not compelled or coerced to give a statement." People v Coomer, C/A No. 208849 (April 6, 2001)