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ONE MINUTE BRIEF

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NUMBER: 2020-17 **DATE:** 05-14-20 **BY:** Devallis Rutledge **TOPIC:** *Miranda* Waiver Validity

ISSUE: What are the three requirements for a valid *Miranda* waiver?

Obtaining a fully-admissible statement from a suspect via custodial police interrogation usually requires advice as to so-called “*Miranda* rights” (but see 1MB 2019-14, discussing four exceptions). “*The defendant may waive effectuation of these rights, provided the waiver is made [1] voluntarily, [2] knowingly and [3] intelligently.*” *Miranda v. Arizona* (1966) 384 US 436, 444. What do these three separate requirements mean?

- “**Voluntary.**” “*The voluntariness of a [Miranda] waiver ... has always depended on the absence of police overreaching....*” *Colorado v. Connelly* (1986) 479 US 157, 170. “[A]ny evidence that the accused was **threatened, tricked or cajoled** into a waiver will, of course, show that the accused did not voluntarily waive his privilege.” *Miranda*, at 476.

- Therefore, a *Miranda* waiver is involuntary if coerced by police **threats**. *People v. Esqueda* (1993) 17 Cal.App.4th 1450, 1484 and fn. 20 (involuntary waiver where officers threatened the suspect with greater charges and unrelenting interrogation to obtain a waiver).

- Waiver resulting from police **tricks** is involuntary. *People v. Superior Court (Keithley)* (1975) 13 Cal.3d 406, 409 (falsely telling the suspect his fingerprint was found at the crime scene, **before** getting a waiver). However, **after** a **voluntary waiver** is obtained, interrogators may use plausible deception to obtain a **voluntary statement**. See 1MB 2007-03.

- Use of pre-waiver “**cajoling**” to get a waiver may make the waiver involuntary. *People v. Honeycutt* (1977) 20 Cal.3d 150, 161 (“clever softening-up” by extensive pre-advisement “ingratiating conversation” with the suspect while denigrating the victim rendered the subsequent waiver involuntary).

- **“Knowing.”** For a waiver to have been “knowingly” made, “*the waiver must have been made with a full awareness of both the nature of the right being abandoned [‘silence and counsel’] and the consequences of the decision to abandon it [‘may be used against you’].*” *Moran v. Burbine* (1986) 475 US 412, 421.

This requirement is routinely satisfied by **reading** the advisement of rights in a language the suspect comprehends, **asking whether he understands**, and reporting or recording the suspect’s responses. *Tague v. Louisiana* (1980) 444 US 469 (waiver was invalid where the officer testified that he could not recall whether he asked the suspect if he understood his rights).

- **“Intelligent.”** An “intelligent” waiver can only be obtained from a suspect who “*has the capacity to understand the warnings given him, the nature of his Fifth Amendment rights, and the consequences of waiving those rights,*” taking into consideration the suspect’s “*age, experience, education, background, and intelligence.*” *Fare v. Michael C.* (1979) 442 US 707, 725. Where a suspect is obviously of youthful age, limited education or low intelligence, or is injured, ill, drunk or otherwise impaired, well-trained interrogators will ask a **few** baseline questions to reveal the suspect’s degree of lucidity and responsiveness. (“Where are we?” “What’s your date of birth?” “Where did you go to school?” etc.)

Cases have held that as long as the suspect’s responses show that he understands his situation, the fact of some physical or intellectual limitation does not necessarily make him incapable of giving an intelligent waiver. *People v. Jenkins* (2004) 122 Cal.App.4th 1160, 1171 (IQ of 64; severe cognitive disability); *People v. Whitson* (1998) 17 Cal.4th 229, 248 (injured; hospitalized; mentally retarded; on pain killers); *People v. Clark* (1993) 5 Cal.4th 950, 988 (alcohol; Valium; meth; marijuana); *People v. Anderson* (1990) 52 Cal.3d 453, 469 (no sleep for 30 hours beforehand); *People v. Kelly* (1990) 51 Cal.3d 932, 951 (low IQ; brain atrophy).

BOTTOM LINE: To be valid, a *Miranda* waiver must be “**voluntary**” (no threats, tricks or cajoling), “**knowing**” (awareness and understanding of the rights and of the potential use of any statements), and “**intelligent**” (having the rational capacity to decide whether to waive or invoke).

(Emphases added; citations omitted in quoted material.)

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