

Anything You Say May Be Used Against You In a Court of Law

A Miranda warning informing an individual of his or her right against unwittingly incriminating oneself under the Fifth Amendment is only required to be given to a suspect if the person is *both* in custody and under interrogation.

Therefore, law enforcement can use anything you say *until* those two requirements are fulfilled as evidence against you. Additionally, the Fifth Amendment right against self-incrimination applies only to communication and does not prohibit the police from collecting physical bodily evidence from an individual, including but not limited to - fingerprints, saliva and hair samples - without permission.

It should be noted there is an exception to Miranda if immediate "public safety" is an issue which the Court asserted in its 1984 decision of *New York v. Quarles*.

Mr. Quarles, matching the description of an alleged assailant, was stopped and frisked by police in a supermarket. Upon seeing Quarles' empty gun holster, police asked him where the gun was and Quarles responded. He was then arrested and read his Miranda rights. Quarles' appeal was unsuccessful because the Court held that the officer's request for the location of the gun was prompted by an immediate interest for public safety, his failure to read the Miranda warning before asking Quarles about a weapon did not violate the Constitution.

Additionally, images obtained by the use of body cameras, dash cams and surveillance video can be used as evidence of a defendant's actions and general demeanor by the police.

For example: An officer witnesses a driver swerving all over the road. This is recorded on the patrol car's dash camera. When the officer walks up to the car, the police officer's body camera records the slurred speech of the driver's response and the resulting field sobriety test. The driver is clearly impaired. The driver is arrested and driven in the back of the police car with the dash cam, now turned around, recording anything done or said in the back seat. At the police station, the officer gives the driver the option to either take a Breathalyzer test or have his or her license suspended immediately for one year. At no point during this example is Miranda required, and all the evidence is still admissible should this DWI case go to court.

While Miranda has been added to the procedural process to help protect against an overreaching government, it should be noted that the lack of the formal warning is not always a get-out-of-jail free card.

Look for an example of a court case using surveillance video as evidence in a trial. Do you think use of the video evidence is fair? Why or why not?

*Next installment: **You Have the Right to an Attorney...***

Law Day 2016

MIRANDA

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