

## EXAMINERS' ANALYSIS OF QUESTION NO. 13

### (1) Miranda Rights

Under *Miranda v Arizona*, 384 US 436, 469-473 (1966), police interrogating an in-custody suspect must, prior to that interrogation, advise the suspect (1) that he has the right to remain silent, (2) that anything he says can be used against him in court, (3) that he has the right to the presence of an attorney, and (4) that if he cannot afford an attorney, one will be appointed for him. This litany of rights was established by *Miranda* to protect the accused's constitutional privilege against self-incrimination. The articulation of the right to counsel is correlative to the right against self-incrimination. Failure to advise an accused custodial person of his *Miranda* rights warrants suppression but so does an invalid waiver of the rights articulated.

### Factors for Waiver

*Miranda* rights may be waived, but such a waiver must be voluntary, knowing and intelligent. In this vein, "voluntary" means that it was the product of a free and deliberate choice rather than through intimidation and coercion. The waiver must have been made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it (knowingly and intelligently). *Id.* at 475-479.

### Application

The issue raised by Askins' motion is whether Detective Upton's failure to advise Tommy of Askins' pre-interrogation presence and desire to speak with him rendered his *Miranda* waiver unknowingly and unintelligently made. *Moran v Burbine*, 475 US 412 (1986), rejects this contention. *Moran* explained that all that was necessary for an accused to knowingly and intelligently waive his rights to silence and counsel is to understand those rights and be aware that the waiver of those rights and a subsequent statement opens for courtroom use the statement made. *Id.* at 420-423. Neither *Miranda*, nor its progeny, factors into the analysis the wisdom of such a waiver nor the advisability of waiver. Comprehension of the

articulated rights and awareness of the consequence of waiver is the focus. Why a suspect waives his rights is not the guiding principle. See *People v Daoud*, 462 Mich 621, 639-644 (2000).

*Moran* went on to hold that a suspect being kept unaware of an attorney's presence and availability does not impact the understanding of the rights nor the waiver of those rights as being knowing and intelligent. As *Moran* stated in pertinent part:

Events occurring outside of the presence of a suspect and entirely unknown to him surely can have no bearing on the capacity to comprehend and knowingly relinquish a constitutional right. . . . (W)e have never read the Constitution to require that the police supply a suspect with a flow of information to help him calibrate his self-interest in deciding whether to speak or stand by his rights. Once it is determined that a suspect's decision not to rely on his rights was un-coerced, that he at all times knew he could' stand mute and request a lawyer, and that he was aware of the State's intention to use his statements to secure a conviction, the analysis is complete and the waiver is valid.

*Moran*, 475 US at 422 (internal citations omitted).

Accordingly, Askins has not raised a valid reason for the court to determine Tommy's waiver was invalid. Suppression is not warranted.

## (2) Michigan Law

The decision to deny suppression would not be different under Michigan law. While Michigan once accorded defendants more rights in this regard than did the United States Supreme Court, now such is not the case. In *People v Tanner*, 496 Mich 199 (2011), the Michigan Supreme Court overruled *People v Bender*, 452 Mich 594, 620 (1996), which had held that the failure of police to advise a suspect held in custody for interrogation that an attorney was available to speak with the suspect, violated the knowing and intelligent prong of the *Miranda* waiver factors, dooming any subsequent confession to inadmissibility.

*Tanner*, however, jettisoned that holding, bringing Michigan in line with the holding discussed above from *Moran*. Accordingly, the decision would be no different under Michigan law.

In sum, the police's failure to advise Tommy of Askins' presence does not impact his *Miranda* waiver.