

ANSWER TO QUESTION No. 15

*Miranda* warnings are required when a person is interrogated by police while in custody or otherwise deprived of freedom of action in any significant manner. *Miranda v Arizona*, 384 US 436 (1966), *People v Roark*, 214 Mich App 421 (1995). To determine whether a defendant was in custody" at the time of the interrogation, we look at the totality of the circumstances, with the key question being whether the defendant reasonably believed that he or she was not free to leave. *Id.* at 423. The *Miranda* court noted that general on-the-scene questioning as to facts surrounding a crime or other general questioning of citizens in the fact-finding process is not affected by its holding. *Miranda*, *supra* at 477.

The ambulance driver for a private company is not a state actor, so regardless of the questions asked and the location of the homeowner, *Miranda* rights were not required to be given. In *Griffin v Maryland*, 378 US 130, 135 (1964), the Supreme Court held that "if an individual is possessed of state authority and purports to act under that authority, his action is state action." However, there was nothing in the fact pattern to suggest that the ambulance driver possessed any state authority. Statements made to private individuals need not be preceded by *Miranda* warnings. *Grand Rapids v Impens*, 414 Mich 667 (1982).

The local police officer is a state actor. Although his questioning of the homeowner may qualify as interrogation, no indication is given the homeowner, while in his own home, was detained in any way nor his movement restricted. On these facts, any claim he was in custody, thereby triggering advice of *Miranda* rights, is unpersuasive. The same is true about the deputy sheriff's first involvement with the homeowner.

However, once the homeowner was taken out of his home and put in a locked police car after having been handcuffed, he was clearly in custody. The determination of custody depends on the objective circumstances of the interrogation rather than the subjective views harbored by either the interrogating officers or the person being questioned. *People v Zahn*, 234 Mich App 438, 449 (1999). As such, before the deputy sheriff could question the homeowner in the squad car, *Miranda* warnings were required.

One of the purposes of *Miranda* warnings is to give the interrogated person the right to cut off questioning by asking for a lawyer. When a defendant invokes his right to counsel, the

police must terminate their interrogation immediately and may not resume questioning until such counsel arrives. *Edwards v Arizona*, 451 US 477, 482 (1981). However, the defendant's invocation of his right to counsel must be unequivocal. *Davis v United States*, 512 US 452, 457 (1994). If the invocation is ambiguous or equivocal, interrogating officers may question further to resolve the ambiguity. *Davis, supra*. Statements such as "[m]aybe I should talk to an attorney" and "I might want to talk to an attorney" were not "sufficient to invoke . . . [the] right to counsel." *People v Tierney*, 266 Mich App 687, 711 (2005). Here, the homeowner's inquiries about counsel did not amount to an unequivocal and unambiguous assertion of the right to counsel and the interrogating homicide detective's clarifying question did not violate the homeowner's *Miranda* right to cut off questioning by requesting counsel.

Finally, a different result is not compelled by a claim that the confession given was "fruit of the poisonous tree" flowing from the improper interrogation in the squad car. The Mirandizing of the suspect makes such an argument unpersuasive.

In sum, only the statement made to the deputy sheriff while in the squad car need be suppressed.