

The police suspected that a 15-year-old high school student had committed a series of burglaries. One day, two officers went to the student's high school and asked the principal to call the student out of class and to search his backpack. While the officers waited, the principal took the student into the hall where she asked to look in his backpack. When the student refused, the principal grabbed it from him and found jewelry that she turned over to the officers.

The officers believed that the jewelry had been taken in one of the burglaries. They arrested the student, took him to the station, and gave him Miranda warnings. The student then asked to see a lawyer. The police called the student's parents to the station. When the parents arrived, the police asked them to speak with the student. The officers put the student and his parents in a room and secretly recorded their conversation with a concealed electronic device. The student immediately broke down and confessed to his parents that he had committed the burglaries.

The student was charged with the burglaries.

If the student moves to suppress the use of the statement he made to his parents, what is the student's best argument for exclusion?

- A. Once the student had invoked his right to counsel, it was improper for the police to listen to any of his private conversations.
- B. The meeting between the student and his parents was arranged by the police to obtain an incriminating statement.
- C. The police did not comply with the student's request for a lawyer.
- D. The student was in custody at the time the statement was recorded.

Explanation:

The **Fifth Amendment** protects defendants from compelled self-incrimination. To safeguard this privilege, police must give a suspect **Miranda warnings** before a custodial interrogation (suspect in custody and subjected to interrogation). Police conduct amounts to an **interrogation** if that conduct is reasonably likely to elicit an incriminating response based on the **totality of the circumstances**. Such circumstances include:

- the suspect's personal characteristics (eg, age, mental capacity, religion)
- whether police asked a close relative to speak with the suspect
- whether police concealed that they were recording the suspect's conversations
- other coercive tactics

A custodial interrogation must stop once a suspect invokes the Fifth Amendment **right to counsel**. If the interrogation continues, any statements made during that interrogation will be suppressed (ie, excluded) at trial.

Here, the student was arrested and taken to police headquarters (custody). Once he asked to see a lawyer, no interrogation should have occurred. However, the totality of the circumstances suggests that an interrogation took place since:

- the student was only 15 years old
- the police asked his parents to speak with him *and*
- the police secretly recorded their conversation.

Therefore, the student's best argument for exclusion is that the police arranged the meeting with his parents to elicit an incriminating statement in violation of his Fifth Amendment rights.

(Choice A) Although police cannot conduct an interrogation once the Fifth Amendment right to counsel is invoked, they can still listen to a suspect's private conversations for safety or security purposes (eg, to thwart escape plans).

(Choice C) Police need only comply with a request for an attorney if they intend to conduct a custodial interrogation. Therefore, the officers' disregard of the student's request does not justify exclusion unless the student also shows that he was subsequently interrogated.

(Choice D) The Fifth Amendment excludes incriminating statements obtained when the defendant was in custody *and* subject to interrogation. Therefore, the fact that the student was in custody does not, by itself, trigger Fifth Amendment protections.

Educational objective:

Police conduct amounts to an interrogation when that conduct is reasonably likely to elicit an incriminating response under the totality of the circumstances, including the suspect's personal characteristics and coercive tactics.

References

U.S. Const. amend. V (privilege against self-incrimination).

Arizona v. Mauro, 481 U.S. 520, 526–28 (1987) (evaluating whether police conduct amounted to interrogation).

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