Home work 2.

TEXTBOOK CITATION you can use

**PAGE 342**

Equivalent to a Waiver? Yes. In Berghuis v. Thompkins, 560 U.S. — (2010), Thompkins, a murder suspect, was interrogated by two Michigan police officers for almost three hours. He was given his Miranda warnings but remained silent throughout the interrogation. At the end of the interrogation, however, he was asked if he prayed to God to forgive him for what he had done. He answered, “Yes.” He was convicted, but later appealed his conviction saying that his right against self-incrimination was violated when the officers continued to ask him questions even when he wished to remain silent. The Court disagreed, saying that Thompkins did not invoke his right to remain silent through his actions and, therefore, the police validly continued to interrogate him. The Court added that a waiver cannot be implied based on a suspect’s understanding of the right and then failing to invoke that right. What is needed is an “unambiguous” waiver of the right. Moreover, Thompkins waived that right when he “knowingly and voluntarily” made a statement to the police.When must the Miranda warnings be given? This question is crucial in policing. Answer: Whenever there is “custodial interrogation.” Knowing this phrase avoids a lot

**(PAGE 343**) of misunderstanding. The key words that need to be understood well and separately are “custodial” and “interrogation.” Courts assume that custodial interrogations are inherently coercive; therefore, the Miranda warnings are needed to ensure that suspects’ statements are voluntary. In Escobedo v. Illinois (discussed previously), the Court stated that the warnings must be given as soon as the investigation has “focused” on the individual as a suspect. In Miranda, the Court abandoned the focus of the investigation test and replaced it with the custodial interrogation standard. In other words, a person who is the focus of an investigation is entitled to the Miranda warnings if that person is under custodial interrogation. That phrase, in turn, means that the suspect is: (1) in custody and (2) under interrogation. Both factors must be present; otherwise, there is no custodial interrogation. Here are examples:

◆ Example 1. Suspect Sam is in custody but is not being questioned—there is no need for the Miranda warnings.

◆ Example 2. Suspect Martha is being interrogated but is not in custody—there is no need for the Miranda warnings.

Next, we will discuss each component of this term, custodial interrogation, separately. When Is the Suspect in Custody? A suspect is in custody in two situations: 1. When the suspect is under arrest or 2. When the suspect is not under arrest but is “deprived of freedom in a significant way.” In the words of the Court, the test that determines whether a person is in custody for Miranda purposes is “whether the suspect has been subjected to a formal arrest or to equivalent restraints on his freedom of movement” (California v. Beheler, 463 U.S. 1121 [1983]). Moreover, whether a person is in custody is determined not by just one fact but by the totality of the circumstances. Each of these situations deserves an extended.

Custody Situation 1: When the Suspect Is under Arrest The rule is clear that, when a person is under arrest, the Miranda warnings must be given prior to an interrogation. It makes no difference whether the arrest is for a felony or a misdemeanor. When, then, is a suspect under arrest? The answer is whenever the four elements of arrest are present: intent, authority, custody, and understanding (as discussed in Chapter 6). ◆ Example 1. A suspect is arrested by virtue of a warrant. En route to the police station, the officer questions the suspect about the crime. The suspect must first be given the Miranda warnings. ◆ Example 2. A suspect is arrested without a warrant because the police have probable cause to make a warrantless arrest (as when a crime is committed in the presence of the police). If the suspect is questioned by the police at any time after the arrest, the suspect must first be given the Miranda warnings. The brief questioning of a person by the police is not an arrest if the police officer intends to let the person go after the brief detention. Also, stopping a motor vehicle for the purpose of issuing the driver a ticket or citation is not an arrest, so the Miranda warnings are not needed even if the police ask questions.

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