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LAW ENFORCEMENT OFFICER TRAINING CASE OF THE MONTH

By Don Hays

Month of November – 2022 - ALTERNATIVE

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LAW ENFORCEMENT OFFICER TRAINING CASE OF THE MONTH

Month of November 2022 - ALTERNATIVE

People v. Frank Buschauer, 2022 IL App (1st) 192472, September 19, 2022.

Was this defendant in custody when he made statements to the police about the death of his wife?

FACTS: The defendant's wife was found dead in her bathtub. A week later, Illinois State Police officers interviewed the defendant for 13 hours at a police station. During the morning, the defendant gave inconsistent answers, and after a lunch break, he was read his *Miranda* rights and signed a waiver indicating he understood the warnings. He continued to answer questions throughout the afternoon and evening. In the early evening he signed a voluntary consent to search his home. Finding nothing during their search and having insufficient evidence to prosecute him, Buschauer was released. Thereafter, the case went cold. Buschauer and his young son moved to Wisconsin.

More than a decade later, police reopened their investigation and interviewed Buschauer again. Officers went to Wisconsin with a criminal complaint and warrant for Buschauer's arrest. When they met Buschauer, they did not execute the warrant or tell Buschauer they had it; instead, they asked Buschauer to accompany them to a local police station for an interview. Buschauer said he "always wanted to find out what happened" and agreed to answer their questions. Buschauer voluntarily got into the back seat of a patrol car and rode unhandcuffed to the County Sheriff's Office. He spoke with detectives for hours before invoking his right to counsel.

Two years later, Buschauer was arrested and charged for his wife's murder. The defense filed motions to suppress his statements and exclude evidence seized from his home. After a two-day hearing, the trial court ruled that the totality of the circumstances demonstrated Buschauer was "arrested" without probable cause while at the police station and granted his motions to suppress. The brought an appeal. The appellate court disagreed with the conclusions of the trial court and reversed its order.

After remand and after a bench trial, the trial court found Buschauer guilty and sentenced him to 25 years' imprisonment. Again, an appeal followed.

The First Appeal:

ARGUMENT: The People argued that the trial court erred in granting the defendant's motion to suppress.

ISSUES AND FINDINGS: The People argued that the defendant voluntarily made his statements at the police station. In response to this argument, the appellate court noted that whether a person is in custody for purposes of *Miranda* involves two inquiries: (i) a full assessment of the circumstances at the interrogation; and (ii) given the circumstances, whether a reasonable person would believe he or she was free to leave the interrogation. (Note: This is an objective standard. It is whether a "reasonable person" would believe he was free to go; not this particular defendant.)

(1) Did the circumstances of the defendant's interrogation indicate that the defendant was under arrest? The Court first noted that the circumstances of the interview—the location, time, length, mood, and mode of the questioning—might, at first glance, seem somewhat coercive. But the timing of this interview was 9:30 a.m. until late evening with multiple breaks including for lunch and dinner. Although stretching several hours, no overnight or extended uninterrupted periods of time occurred. Further, the evidence indicated the mood of the questioning was not confrontational. Additionally, the defendant rode in the front passenger seat in the unlocked police car to the station. The Court noted that while it is unrealistic to assume that the defendant could have just gotten out of the police car and walked away, it was also unlikely that any individual "in custody" would be seated in the front passenger seat next to an officer. For these reasons, the Court ruled that circumstances of the defendant interrogation did not indicate that he was detained at the station.

(2) Would a reasonable person have felt free to leave? First, the Court noted that the defendant was neither a youth nor was he of limited intelligence and was he not suffering from mental issues that would indicate a failure to appreciate the situation. Further, there was no indication that the defendant lacked an understanding of his situation while at the police station. Indeed, despite his wife having recently drowned under mysterious circumstances, he agreed to come in for questioning and remained after receiving the *Miranda* warnings. Additionally, he did not invoke his right to remain silent nor did he ask to leave or even call anyone. There was no evidence of a formal arrest procedure in this case, such as the show of weapons or

force, physical restraint, booking or fingerprinting. When the defendant was presented with the possibility that perhaps he killed his wife, he emphatically denied this. During the post-*Miranda* questioning, the defendant asked to be given truth serum and to take a polygraph. Here, the focus on the defendant as a suspect emerged after the statements he made during the morning when he spoke of his marital difficulties and the arguments over the house. The defendant also gave inconsistent descriptions of the position of his wife's body in the bathtub. He had no explanation for the items undisturbed on the tub ledge, even though he said he pulled her lifeless body onto the floor. After making these statements, the defendant received his *Miranda* rights as a precaution, and he then signed a written waiver of those rights. The Court noted simply giving *Miranda* warnings as a precautionary measure does not transform an investigative interrogation into a custodial interrogation. According to the Officers, the defendant was free to leave, would not have been prevented from doing so, was never formally arrested, and was given *Miranda* warnings only as a precaution. Finally, after agreeing to return in the morning, the defendant was driven to his car and allowed to go home. Consequently, after examining the intent of the officers; the understanding of the defendant; whether the defendant was told he was free to leave or that he was under arrest; whether the defendant would have been restrained if he had attempted to leave; the length of the interrogation; and whether *Miranda* warnings were given, The Court declared that a reasonable individual, innocent of wrongdoing, would have felt free to leave under these circumstances. Therefore, the appellate court concluded that the trial court erred in finding that the defendant was arrested and in granting the defendant's motion to suppress his statements.

The Second Appeal:

ARGUMENT: Buschauer made several arguments that the trial court erred by allowing the People to introduce the video of his Wisconsin interrogation. First, he claimed the officers and prosecutors involved in his interrogation violated the Illinois Constitution's due process clause (see Ill. Const. 1970, art. I, § 2) by (i) misrepresenting the nature of the interrogation as voluntary and (ii) failing to tell him they had a warrant for his arrest when they asked him to accompany them to the station. He also argued the officers' tactics violated both his right against self-incrimination and right to counsel under both the United States and Illinois Constitutions. Specifically, he argued the Officer's decision to withhold information that they had a warrant for his arrest (i) undermined his ability to waive his *Miranda* rights knowingly and intelligently and (ii) frustrated his ability to retain counsel promptly. The People responded that information about the arrest warrant issued for Buschauer at most "affected the wisdom" of invoking his *Miranda* rights, not his ability to waive them knowingly and intelligently. The People further argued that Buschauer failed to claim that he was in custody at the time of the videotaped statement. As to Buschauer's right to counsel, the People claimed the right did not attach by mere issuance of the arrest warrant but, even if it had, Buschauer's *Miranda* waiver was still effective. Finally, the People argued the officers' decision to keep hidden the information about the arrest warrant could not violate Illinois's due process clause because Buschauer had no right to the information in the first place.

ISSUES AND FINDINGS: A. Due Process: Buschauer maintained that he was denied "due process" when the Officers failed to inform him that they had already obtained a warrant for his arrest prior to this interrogation. In response, the appellate court noted that Buschauer cited no source of law giving him a right to know the officers had a warrant for his arrest when they otherwise convinced him to accompany them to the police station voluntarily and talk to them. The Court held that absent a source of law vesting Buschauer with a right to the information he seeks, the due process clause of the Illinois Constitution was not a code of ethics for police or prosecutors. And, though the Court did not condone the officers' conduct, where their lie by omission served to make the circumstances of Buschauer's interrogation arguably less coercive, it declined to hold that their deceptive tactics were "oppressive, arbitrary, or unreasonable." Therefore, Buschauer was not denied due process.

ISSUES AND FINDINGS: B. Self-Incrimination and right to counsel: Buschauer argued that he did not have enough information to validly waive either right because the officers never told him "that he had already been charged with first degree murder." The People responded that Buschauer had enough information and sophistication to validly waive both rights without knowing every detail about the progress of the officers' investigation. We agreed with the People that neither the United States Constitution nor the current interpretations of the Illinois Constitution require officers to inform a defendant about an arrest warrant before giving *Miranda* warnings. The Court concluded that nothing in the record before it, therefore, renders involuntary Buschauer's waiver of his right against self-incrimination or waiver of his right to counsel.

CONCLUSION: The Court of Appeals affirmed Buschauer's conviction.

NOTE: *The appellate court issued the following warning: "No one should read our conclusion to foreclose, in an appropriate case with fully developed arguments, that the Illinois Constitution forbids the kind of deception the officers employed against Buschauer."*

QUIZ QUESTIONS FOR THE MONTH OF NOVEMBER 2022 - ALTERNATIVE

People v. Frank Buschauer, 2022 IL App (1st) 192472, September 19, 2022.

1. The Fourth Amendment to the United States Constitution guarantees that no person “shall be compelled in any criminal case to be a witness against himself.”
 - a. True.
 - b. False.

2. Does Illinois law require Officers to inform a suspect that a warrant has been issued for his arrest prior to providing the suspect with *Miranda* warnings?
 - a. Yes.
 - b. No.

3. The police in this case failed to inform Buschauer that they had already obtained a warrant for his arrest. As a result, the appellate court concluded that the Officers had lied to Buschauer.
 - a. True.
 - b. False.

4. In this week’s case, did the appellate court hold that a suspect cannot knowingly and intelligently waive his or her *Miranda* rights where the police fail to inform that suspect that they have already obtained a warrant for his or her arrest.
 - a. Yes.
 - b. No.

QUIZ ANSWERS AND DISCUSSION FOR THE MONTH OF NOVEMBER 2022 - ALTERNATIVE

People v. Frank Buschauer, 2022 IL App (1st) 192472, September 19, 2022.

1. The Fourth Amendment to the United States Constitution guarantees that no person “shall be compelled in any criminal case to be a witness against himself.”
 - b. False.** The Fifth Amendment provides that guarantee. People v. Schoening, 333 Ill. App.3d 28, (2002)

2. Does Illinois law require Officers to inform a suspect that a warrant has been issued for his arrest prior to providing the suspect with Miranda warnings?
 - b. No.** The Court in this case concluded that currently, no Illinois case has determined that a defendant is entitled to such a warning.

3. The police in this case failed to inform Buschauer that they had already obtained a warrant for his arrest. As a result, the appellate court concluded that the Officers had lied to Buschauer.
 - a. True.** The Court held: “And, though we do not condone the officers’ conduct, where their lie by omission served to make the circumstances of Buschauer’s interrogation arguably less coercive, we cannot say their deceptive tactics were “oppressive, arbitrary, or unreasonable.”

4. In this week’s case, did the appellate court hold that a suspect cannot knowingly and intelligently waive his or her Miranda rights where the police fail to inform that suspect that they have already obtained a warrant for his or her arrest.
 - b. No.** The Court concluded that no such case has made such a finding in Illinois; yet. Specifically, the Court held: “knowledge about the existence of the unexecuted arrest warrant would not have affected the defendant’s “aware[ness] of the gravity of his situation,”” based on the officers asking the defendant to come with them to a police station and reading the defendant the Miranda warnings.”

Mandated In-Service Police Training

IL Law Enforcement Training and Standards Board

Month of November - 2022

Esker v. Lutz, No. 21-2574, 2022 WL 3544402, August 18, 2022.

Esker was a mean drunk. While drunk he picked up a chain saw and threatened his ex-wife. An Officer shot and killed him. *Excessive Force?*

Key Law Update Guidelines

- Recent Illinois Statutes that affect law enforcement

Police Community Relations Improvement Act

- Recent Federal or State Case law decided that affects law enforcement

Constitutional Issues

Search and Seizure

- Procedural and substantive legal issues important to patrol officers and investigators

Civil Liability and Qualified Immunity

Mandated In-Service Police Training
IL Law Enforcement Training and Standards Board

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Key Law Update Guidelines

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Additions to the Illinois Criminal Code

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- Recent Federal or State Case law decided that affects law enforcement

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Right to Counsel

- Procedural and substantive legal issues important to patrol officers and investigators

Interviews and Interrogations