



LEGAL UPDATE

City of Madison

Winter 2004

Lieutenant Victor Wahl

Auto Searches—Probable Cause

Maryland v. Pringle, No. 02-809 (U.S. Sup.Ct. 2003); Decided December 15, 2003 by the United States Supreme Court.

In *Pringle*, an officer stopped a vehicle for speeding at 3:16am. The vehicle was occupied by three males, one of whom was Pringle (seated in the front passenger seat). The officer obtained consent to search the vehicle from the driver (who was also the vehicle's owner). The search yielded \$763 in U.S. currency in the glove compartment, and five small baggies of cocaine. The cocaine was located behind the back-seat armrest, having been placed between the armrest and the back seat. The officer asked the three occupants about the drugs; none of them admitted to ownership of or any knowledge about the contraband. The officer then arrested all three for possession of a controlled substance. All three were conveyed to the police station, where Pringle eventually admitted to ownership of the cocaine. He was convicted and sentenced to 10 years in prison with no possibility of parole.

Pringle appealed his conviction, arguing that the officer did not have probable cause to arrest him, and that his subsequent confession was a fruit of that unlawful arrest. The Court of Appeals of Maryland agreed, and reversed Pringle's conviction. The State of Maryland appealed to the U.S. Supreme Court.

The U.S. Supreme Court, in a unanimous decision, reversed the Maryland court, ruling that Pringle's arrest was proper. The court stated:

In this case, Pringle was one of three men riding in a Nissan Maxima at 3:16 a.m. There was \$763 of rolled-up cash in the glove compartment directly in front of Pringle. Five plastic glassine baggies of cocaine were behind the back-seat armrest and accessible to all three men. Upon questioning, the three men failed to offer any information with respect to the ownership of the cocaine or the money...We think it an entirely reasonable inference from these facts that any or all three of the occupants had knowledge of, and exercised dominion and control over, the cocaine. Thus a reasonable officer could conclude that there was probable cause to believe Pringle committed the crime of possession of cocaine, either solely or jointly.

As a result, Pringle's conviction was reinstated. The court gave considerable weight to the type of contraband discovered ("The quantity of drugs and cash in the car

indicated the likelihood of drug dealing, an enterprise to which a dealer would be unlikely to admit an innocent person with the potential to furnish evidence against him"), and the fact that it was located in a vehicle ("a car passenger...will often be engaged in a common enterprise with the driver, and have the same interest in concealing the fruits of evidence of their wrongdoing...Here we think it was reasonable for the officer to infer a common enterprise among the three men").

It is important to note that the Court did **not** establish a bright-line rule that finding contraband in a vehicle will always provide probable cause to arrest all the occupants. The court reinforced that probable cause to arrest will always be assessed on a case-by-case basis, based on an evaluation of the totality of the circumstances. The court stated:

To determine whether an officer had probable cause to arrest an individual, we examine the events leading up to the arrest, and then decide 'whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to probable cause.'

So, in some cases where contraband is located in a vehicle – such as those where one individual admits ownership of the contraband or other evidence points to ownership/possession by one individual to the exclusion of the other occupants – the discovery will likely not provide probable cause to arrest every occupant of the vehicle. In cases with facts similar to those in *Pringle*, however, officers will have probable cause to arrest every occupant of a vehicle. Understand that these types of cases can be very difficult to prosecute successfully, as the DA's office will still need to prove—beyond a reasonable doubt—that whomever is prosecuted knowingly possessed the contraband. As a result, officers should attempt to obtain information to further demonstrate possession by whomever is arrested (subsequent confessions, proximity in the vehicle to the contraband, etc.).

Confessions—Voluntariness

State v. Hoppe, No. 00-1886 (2003); Decided May 22, 2003 by the Wisconsin Supreme Court.

In *Hoppe*, officers were dispatched to an apartment to investigate a death. The responding officers found Hoppe, who was in "poor physical condition," and the body of a dead female (his girlfriend). Hoppe was transported to a hospital, where it was determined that he was in a state of severe alcohol withdrawal. Hospital staff were about to administer Librium to treat Hoppe, but the officers asked

them to delay the treatment so that they could interview Hoppe. Initially, Hoppe was interviewed in the hospital for about an hour and fifteen minutes. Hoppe was very confused during the interview, and denied any involvement in his girlfriend's death. Hoppe was also given a voice stress analysis test during this interview. He appeared confused during this test, and had difficulty following the test instructions.

Officers returned to interview Hoppe again about a day and-a-half (37 hours) later. He had remained hospitalized during this time, though he was not in police custody (police had placed no restrictions on his visitors, medical care or freedom of movement). The physician diagnosed Hoppe as suffering from "chronic alcoholism, alcohol withdrawal, delirium tremors, dehydration, electrolyte imbalance and chronic brain syndrome." Hoppe remained confused during this period, and was also administered Librium. This second interview lasted about an hour and forty-five minutes. Hoppe remained confused, spoke with slurred speech, and appeared to drift in and out of consciousness several times during the interview. It also appeared that Hoppe was experiencing periodic hallucinations. Hoppe continued to deny any involvement in his girlfriend's death.

The following day, officers again returned to interview Hoppe a third time. The officers asked a nurse to place Hoppe in a chair for the interview so that he would stay awake (it took two people to get Hoppe into the chair). During the interview, Hoppe was confronted with

inconsistencies that officers had discovered in his previous statements. Hoppe admitted that he had been dishonest about some things he said during the previous two interviews. The officers then began discussing several emotional topics with

A court reviewing the voluntariness of a statement will, analyzing the totality of the circumstances, balance the personal characteristics of the defendant with the police pressures and tactics used to obtain the statements

Hoppe, including the death of his parents, his military service, and the experiences he had had while in Vietnam. The officers also expressed to Hoppe the stress that the victim's family was experiencing and their need for an understanding of what had occurred. At the end of the interview, which lasted about two hours, Hoppe admitted that he had fought with his girlfriend. Hoppe stated that he had struck her several times and that he had kicked her after she fell to the ground.

Hoppe was charged for his girlfriend's death, and sought to have his statements suppressed. The trial court and the Court of Appeals both agreed with Hoppe, and ordered that his statements be suppressed.

Recall that any police-obtained statement must be analyzed under three separate and distinct tests: the Fifth Amendment (the requirements of *Miranda* as related to custodial

interrogations), the Sixth Amendment (the right to counsel for defendants that have been formally charged with a crime) and the Fourteenth Amendment (the voluntariness of the statement). The issue in *Hoppe* was the voluntariness of Hoppe's statement.

A statement will be voluntary "if the totality of the circumstances demonstrates that it was the product of rational intellect and not the result of physical abuse, psychological intimidation, or deceptive interrogation tactics calculated to overcome the defendant's free will." *Watson v. Detella*, 122 F.3d 450 (7th Cir.1997). A clear and consistent rule regarding voluntariness of confessions is that coercive or improper police conduct is a necessary prerequisite for a finding of involuntariness. A court reviewing the voluntariness of a statement will, analyzing the totality of the circumstances, balance the personal characteristics of the defendant (age, education, intelligence, physical and emotional condition, prior experience with law enforcement, etc.) with the police pressures and tactics used to obtain the statements (length of questioning, general conditions under which the statements took place, any excessive physical or psychological pressure brought to bear on the defendant, any inducements, threats, methods or strategies used by the police to compel a response, whether the defendant was prevented from eating or sleeping, whether the defendant was under the influence of alcohol or drugs, and whether the defendant was informed of the right to counsel and the right against self-incrimination).

The *Hoppe* court agreed with the trial court and the Court of Appeals, ruling that Hoppe's statement was involuntary, and therefore inadmissible. The Court's decision was based primarily on Hoppe's condition at the time of the police interviews. The Court described Hoppe as "suffering from cognitive impairment associated with chronic alcoholism. He had deficits in his short-term memory and impairment of his reasoning and problem-solving abilities. He was hallucinating." The Court also pointed out that Hoppe demonstrated difficulty following simple directions, had slurred speech, and drifted off during the interviews. He was lethargic, dehydrated, had been vomiting and had been suffering from tremors. Hoppe also had low blood sugar at the time he was admitted to the hospital. The Court also noted that the doctor who had treated Hoppe when he was admitted to the hospital appeared at the suppression hearing, and testified that Hoppe had not been competent to consent to the police questioning, and that he had been confused and delusional during the questioning.

The Court balanced this picture of Hoppe's condition against the police conduct during the interviews. The total length of the questioning was about five hours (all three interviews), and the officers used psychological pressure by discussing emotional topics (the death of Hoppe's parents, the concerns of the victim's family and Hoppe's experiences in Vietnam). The court also noted that the officers had made little effort to consult with medical personnel prior to or during the

interviews (to ascertain his “condition and capacity to be interviewed”).

The court stated the facts of the case were “somewhat unique,” and that the voluntariness determination was “a very difficult one.” Despite concluding that the police conduct was not “egregious or outrageous,” the Court stated, “put together, the actions of the police and the personal characteristics of Hoppe indicate that Hoppe’s statements were involuntary.” Two justices dissented, arguing that—since the officers had not engaged in any improper conduct—Hoppe’s statement should have been admissible.

The *Hoppe* decision is a departure from the manner in which most courts have analyzed voluntariness issues recently. Since 1986, when the U.S. Supreme Court established that improper police conduct was required to render a confession involuntary (*Colorado v. Connelly*, 107 S.Ct 515 (1986)), courts have typically required a fairly significant degree of improper police behavior before finding a confession involuntary. The relatively few recent instances in which courts have found confessions to be involuntary have involved either physical mistreatment of suspects by officers or express physical threats. The degree to which the *Hoppe* court focused on the suspect’s condition – rather than on the conduct of the officers – is a departure from this trend and potentially problematic for officers. Officers should view the *Hoppe* decision as most applicable only to suspects with significant medical issues such as Hoppe’s. The *Hoppe* court itself stated, “the tactics used and the pressures exerted by the police were subtle and certainly not improper if used in the questioning of a person whose personal characteristics did not make him or her uncommonly susceptible to police pressures.” When interviewing suspects who are hospitalized or under medical duress, officers should clearly articulate the condition of the suspect in their report (to demonstrate that the suspect was coherent, lucid, and was not in medical duress to the degree Hoppe was).

Miranda—Physical Evidence

State v. Knapp, 00-2590 (WI Sup.Ct. 2003); Decided July 22, 2003 by the Wisconsin Supreme Court.

The *Knapp* decision addressed the question of whether physical evidence obtained as a result of a statement taken in violation of *Miranda* is admissible. In *Knapp*, officers were investigating a homicide and learned that Knapp had been the last person to see the victim the night of her death. Knapp was on parole, and the investigating officers obtained a parole hold for Knapp. The day after the murder, officers responded to Knapp’s residence (a second floor apartment), and knocked on the door. The officers saw Knapp through a window, told him that they had a warrant to arrest him for a parole violation, and directed him to open the door. Knapp eventually did open the door, and the officers told him that he needed to accompany them to the station. Prior to

leaving, the officers accompanied Knapp into his bedroom to allow him to put on some shoes. One of the officers asked Knapp what he had been wearing the prior evening. Knapp pointed to a pile of clothing on the floor, and the officers collected it as evidence. A subsequent DNA test revealed that the sweatshirt contained traces of the victim’s blood.

Knapp was eventually charged with homicide and challenged a variety of police actions prior to and during his arrest. The *Knapp* court addressed a number of these issues in its decision, but the most pertinent topic addressed by the court concerned the applicability of the exclusionary rule to physical evidence discovered by statements obtained in violation of *Miranda*.

Recall that *Miranda* warnings are required when two conditions are present: **custody** and **interrogation**. Custody, for *Miranda* purposes, is defined as “formal arrest or restraint on freedom of movement of the degree associated with a formal arrest.” *California v. Beheler*, 103 S.Ct. 3517 (1983). Interrogation, for *Miranda* purposes, is express questioning, or any actions that

are the functional equivalent of questioning, that “the police should know are reasonably likely to elicit an incriminating response from the suspect.” It is well established that statements

Physical evidence obtained as a result of an intentional *Miranda* violation will be suppressed

obtained in violation of *Miranda* cannot be used against the person questioned at a criminal trial (although they can, in some situations, be introduced to impeach the defendant if he or she testifies in a manner inconsistent with the un-Mirandized statement).

What has been less clear is the result when a statement obtained in violation of *Miranda* leads to the discovery of physical evidence. In *State v. Yang*, 233 Wis.2d 545 (Ct. App. 2000), officers questioned a suspect – in violation of *Miranda* – and used information obtained in the statement to locate physical evidence. The Court of Appeals ruled that the exclusionary rule did not apply to physical evidence obtained in this manner, and allowed Yang’s conviction to stand.

It was clear that Knapp had been in custody (the officers informed him that they were arresting him and that they were about to convey him to the police station), and that the officer’s question – asking Knapp what he had been wearing the prior evening – constituted interrogation. So, Knapp argued that the U.S. Supreme Court’s decision (a few months after the *Yang* decision) in *Dickerson v. United States*, 530 U.S. 428 (2000) – in which the court clarified that the *Miranda* decision articulated a “constitutional rule” – required that the *Yang* decision be overruled (and that the pile of clothing and subsequent DNA test results be suppressed).

The court agreed with Knapp, and ruled that the physical

evidence discovered as a result of his un-Mirandized statement be suppressed. The *Knapp* court considered the officer's questioning of Knapp as an "intentional" violation of *Miranda*, and stated:

We hold that the policy considerations related to deterrent effect and judicial integrity, which are the underpinnings of the exclusionary rule, support the suppression of physical evidence in situations where there was an intentional *Miranda* violation.

The court went on to state, "we do not have to, and do not, decide whether a negligent *Miranda* violation would result in the same holding." The *Knapp* decision did not offer any explanation of why the officer's questioning of Knapp was viewed as an intentional *Miranda* violation, nor did it offer any guidance for what types of situations might be viewed as "negligent" violations of *Miranda*. In any case, officers should be aware that physical evidence discovered as a result of statements will be suppressed if the statement if found to have been obtained in violation of *Miranda*.

LEGAL RESOURCES

There are a number of websites that offer free access to legal information or legal research. For anyone interested in staying up to date on legal issues, these websites offer access to a tremendous amount of information:

Wisconsin State Court System [All Wisconsin Supreme Court and Court of Appeals decisions are posted on this website at 8:30am the morning they are released. Recent cases may be searched for by date, party name or keyword. This site also maintains a table of pending cases, access to briefs for some cases, and a schedule of oral arguments]

www.courts.state.wi.us

Wisconsin State Legislature [Offers access to current Wisconsin statutes, as well as to current administrative code provisions. Both statute and administrative code can be searched by keyword. Newly enacted or modified statutes are posted on this site shortly after they are signed into law (and long before they appear in our yellow statute books). Bills that have been proposed and are going through the legislative process can also be tracked.]

www.legis.state.wi.us

Wisconsin State Bar Association [Another option for searching Wisconsin case law, although cases are not posted as quickly as they are on the official State of Wisconsin site. This site also allows access to administrative law decisions as well as links to a number of other legal research/resource sites.]

www.wisbar.org

Labor Relations Information System [Focuses more on legal issues related to personnel, employment and discipline. Also offers a free email newsletter as well as an internet Q&A service.]

www.lris.com

United States Supreme Court [Official site of the U.S. Supreme Court, allows rapid access to recent cases as well as access to oral argument transcripts (in some cases).]

www.supremecourtus.gov

Seventh Circuit Court of Appeals [Official site of the 7th Circuit Court of Appeals, which is the Federal Appeals Court that has jurisdiction over Wisconsin, Illinois and Indiana. The Federal Courts of Appeals are very powerful—only the U.S. Supreme Court is a higher authority on issues of Federal or Constitutional law.]

www.ca7.uscourts.gov

Findlaw Home Page [very comprehensive site offering access to a tremendous amount of State and Federal law. Also offers free email subscription services on a variety of topics.]

www.findlaw.com

University of Wisconsin Law School [Contains a variety of legal resource information, including a much more comprehensive list of legal resources: <http://library.law.wisc.edu/guides/bibliographies/legalinfo.htm>.]

www.law.wisc.edu

VersusLaw Home Page [Only site listed that is not free, however it offers tremendous access to State and Federal case law with a very effective and easy to use search engine.]

www.versuslaw.com

International Association of Chiefs of Police

www.theiacp.org

Americans for Effective Law Enforcement [Offers a variety of legal outlines, as well as updates on current national legal trends.]

www.aele.org