Criminal Justice Assignment 8

Name of the Writer

Name of the University

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**What two elements must be present for “Miranda Warnings” to be required? Explain each element.**

In the USA and in the other countries around the world Miranda Warnings are said out to the person at the time of arrest of an accused of a certain crime. These Miranda Warnings entails statements such that the accused has the right to be silent. Anything the accused says can be used against him in any court of law. The accused has the right of consultation with their lawyer and if the accused is unable to afford a lawyer, the state appoints a lawyer to represent the accused. These are Miranda Warnings that are a necessity that needs to be issued whenever a lawful arrest is made as it informs the accused of his rights.

But there are certain elements that need to be present in order for Miranda Warnings to be required. Specifically, there are two elements that need to be in play so that Miranda Warnings could be said out loud. The first element is that the questioning should be done by the police or the investigation is also done by them (Kelley, et al, 2018). So in a case where questioning or the interrogation is done by a security guard or an officer for loss prevention, they are not legally obliged to readout Miranda Warnings during their questioning. As they are not the police and not acting on the behalf of the state but on private interests.

The second most important element that requires the reading of the Miranda Warnings is that the accused needs to be in custody (Berk-Seligson, 2016). This means that the movement of the accused is restricted to the extent that the law allows for. An example would be the person is handcuffed, placed in a police car, taken to jail and then transferred to holding facility. This all is a representation of someone under arrest. In some cases, police start asking questions on the side of the road or stop a car for a DUI. During these times police will ask questions of incriminating nature and this all is done before any handcuffs are put on but in these situations, Miranda Warnings are not required as these are non-custodial.

**Russell Williams Murder Confession**

**Do you think the Investigator coerced the suspect in any way?**

The confession of Russell Williams was in no way signaled any form of coercion on the behalf of the investigator. The confession looked more closely to a counseling session of the psychotherapeutic nature. The investigation did not seem coercive in nature but rather was more similar to motivational interviewing. This thereby influenced change inside William without using coercive or aggressive methods (The Fifth Estate, 2014). Rather than target him directly the investigator worked on the giving Williams the respect he wanted during the whole interview. This, in turn, helped the interviewer in building a rapport between him and Russell Wiliams. This is not easy when someone comes face to face with a murderer.

**Do you think the Investigator acted unfairly or unethically to the suspect?**

It can be seen that the investigators were suffering from tunnel vision (The Fifth Estate, 2014). This can prove to be very problematic for investigators as it leads investigators to make claims that are inaccurate in nature. In past cases, tunnel vision has been one of the major factors that influenced wrongfully convicted cases in Canada. Examples of these are Guy Paul Morin and Thomas Sophnow. Tunnel vision is also detrimental because once it sets in the investigative teams focus is directed to premature observations which lead to arrests of suspects against whom they have very less evidence. Other potential avenues are also left explored leaving the investigation full of holes.

**What in particular did you notice about the interrogation/confession**

It was clearly visible from the way the interview was conducted that the investigator had to intention of ever coercing the accused or the suspect. Instead, he used his brilliant interrogative skill to focus more on motivational interviewing techniques. He furthermore focused on building a relationship of understanding between him and the suspect. He did this by giving the suspect the respect he wanted and was able to finally get a confession out of him (The Fifth Estate, 2014).

References

Berk-Seligson, S. (2016). Totality of circumstances and translating the Miranda warnings. *Discursive Constructions of Consent in the Legal Process*, 241-263.

Kelley, S., Zelle, H., Brogan, L., & Goldstein, N. E. (2018). Review of Research and Recent Case Law on Understanding and Appreciation of Miranda Warnings. In *Advances in Psychology and Law* (pp. 77-117). Springer, Cham.

The Fifth Estate. (2014). *Russell Williams-The Confession* [Video]. Retrieved from https://www.youtube.com/watch?v=lj7QRP37Wn0