

Legal Updates

Should the employee's statements be suppressed when promises not to call police are made?

Mirabal v. State, 698 So.2d 360 Fla 4th 1997

A store employee, Mirabal, was confronted about losses in the store. During the interview the defendant was told that "if he admitted it, they would not call the police, and he could keep his job.

They also pointed out to him that they knew he was on probation and insinuated that if he did not cooperate he would end up in jail." Mirabal at 361. The defendant ultimately confessed and the police, contrary to the store's promise, were contacted.

The police officer arrived and advised the employee of his Miranda rights. The employee waived his Miranda rights and freely spoke with the officer reiterating his admissions.

Should the employee's statements be suppressed?

Discussion

One of the primary issues in admitting a defendant's statements at trial was whether or not the statements were voluntary. Once the voluntariness of a statement is questioned, the court must determine that voluntariness by an examination of the "totality of circumstances".

In this case the court held that the employee's statements to store representatives should be inadmissible because they were involuntary. The statements made to store representatives by the employee were involuntary because they were obtained by direct or implied promises. Essentially, talk or the police will be called.

One could also argue that the mention of being on probation and winding up in jail was a threat. On this point the courts differ somewhat. Some courts would say that this statement was true and not a threat to it do anything illegal to the associate, but rather a possible outcome. This point was addressed in *U.S. v. Carpenter*, 4th U.S. Circuit Court of Appeals, No. 04-4925 (2005). In this case investigators told Carpenter that they would subpoena his family to testify before the grand jury if he did not confess. They also said that his family would have to pay their own way to get to court and if they failed to appear or perjured themselves they could go to jail. Raised as one issue in his appeal, Carpenter claimed that his confession was involuntary because his family was threatened with arrest. The court disagreed, finding that the investigator's statements relating to Carpenter's family were true possible outcomes and not threats to do anything illegal to them. They would, in fact, have to pay their own way to the hearing and if they failed to appear or lied, they could go to jail.

However, in the Mirabal case, the employee's statements to police after waiving his Miranda rights were admissible at trial. Those statements were voluntarily made after a knowing waiver of his Miranda rights. In addition, the officer made no direct or implied promises to obtain the statement and the employer's promise had obviously been broken with the arrival of the police.

Suggesting that the police will not be called and the matter will be handled within the company may create problems about the statements ultimate admissibility and voluntariness. On a separate note, introducing the idea of police and criminal charges only magnifies the seriousness of the incident in the subject's mind. This may actually increase the individual's resistance to making an admission.