

LAWYERS CORNER

If You Are a Suspect: The Dos and Don'ts for Criminal Suspects

By: Shannon D. Sexton

It is a surprising fact that a large volume of people who encounter the police as a suspect talk to the police. This often results in a confession that dramatically increases the odds of conviction. Miranda warnings are part of our popular culture – anyone who has ever watched an episode of Law and Order has heard the Miranda warnings – “you have the right to remain silent, anything you say can and will be used against you.” Despite this fact, a majority of clients provide damaging statements to the police prior to hiring me to represent them. Why is this? Why do people talk to the police when it will often hurt them?

As a criminal defense attorney who witnesses this phenomenon on an almost daily basis, I have developed some theories. First, we are taught from a young age to respect authority and the police (There is nothing wrong with respecting the police, but this does not mean that we must ignore our constitutional rights). This respect means we often talk to the police because we are intimidated by their authority. Think of the most common contact with law enforcement – the traffic stop. Even though I deal with the police on a daily basis, if I see the “blue lights” in my rear view mirror, it makes me very nervous. Multiply that feeling ten times, and you can start to realize the pressure of being interrogated by the police. In addition, most people sincerely believe that telling their side of the story will help them. Simply put, talking to the police will likely hurt your case. As a matter of fact, talking to the police can drastically increase your chances of conviction and punishment.

Of course, there are exceptions to every rule. There are times when talking to the police can be a positive, as I will explain, but it happens so infrequently that no competent criminal defense attorney can ever advise a client to talk without first consulting with an attorney. I have worked cases where a client's statement to the police has helped their case. If the police believe what you are saying, then talking to the police can help. If the police officer ultimately describes you as cooperative and you are charged with a minor offense, talking to the police will help you. Unfortunately, in that pressure filled-moment when you are the suspect, you will not know if the police believe you and you will not know if your offense is minor. The police are expert interrogators, and they are permitted to trick you. When you are being questioned by a police officer, you are simply in a fight that you cannot win. There is only one way to play it safe, and that is to know and exercise your constitutional rights.



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You have a constitutional right to remain silent. You also have the right to deny consent to search your person or property. This denial of consent will stop a search unless the police have a warrant or an exception to the warrant requirement. The following is a list of “Dos and Don'ts” that will help you intelligently and effectively exercise your constitutional rights:

1. Do not consent to a search of your person when a police officer asks for permission to search.
2. Do not consent to a search of your vehicle when a police officer asks for permission to search.
3. Do not consent to a search of your residence when a police officer asks for permission to search.
4. In short, do not consent to a search of anything. Do always respectfully and verbally decline a police officer's request to search.
5. Do not be fooled by an aggressive request to search. For instance, “I am going to look in your purse, ok?” This is still a request, and it is a request that should be declined.
6. Do not be intimidated by a threat to get a warrant or bring a police dog to the scene. The officers may follow through on this threat, but they may not have sufficient probable cause to follow-through with the threat. Do continue to respectfully decline any requests to search.
7. Do behave politely and respectfully when dealing with police officers. Behaving in an aggressive or belligerent manner during an encounter with a police officer will only result in more criminal charges and will negatively impact your case.

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8. Do not attempt to actively stop a police officer from searching your person or property. Engaging in a physical altercation with a police officer is dangerous and should be avoided at all costs. In addition, physically interfering with the police officer will result in additional criminal charges and harsher punishment. There are times when an officer does not need your permission to search. If a police officer persists in a search despite your verbal statement denying permission, your only option is to allow them to search and contact an attorney.
9. Do provide the police with your correct name and identification. If you lie about who you are, that could be a crime.
10. Do not say anything else to the police besides your correct identification. After providing your accurate identifiers, do consistently exercise your right to counsel by requesting to speak to an attorney in response to every question asked by the police.
11. Do actually use the words "attorney" or "lawyer". If you only reference the attorney by name, that may be an insufficient exercise of your right to remain silent. There is a case where the son of a prominent criminal defense attorney repeatedly told the police he wanted to speak to his father, and it was ruled that because the young man did not say "attorney" or "lawyer" when asking to speak to his father who was an attorney, he failed to adequately exercise his right to remain silent.
12. Do not think you can talk your way out of a situation with the police. You are likely only hurting yourself by talking with the police when you are being questioned.

13. Do realize that everything you are saying is potential evidence. Do realize that every word you say besides your accurate identifiers and requesting to speak to an attorney is giving the police evidence against yourself.
14. Do not be tricked into re-engaging the police with later conversation. Once the officer's questioning has ceased, the officer may still use anything you say at a later time.
15. Do not talk about the facts of your case with anyone other than your attorney. By discussing the facts of your case with others, you are only creating additional potential witnesses against yourself. I had a case where a mother and father had to be a witness against their own son because he had allegedly confessed to them. If he had said nothing to them, he would not have made them witnesses against himself.
16. Do realize that by requesting to talk to an attorney, this does not mean that the police have to provide you with an attorney. The police do not have to give you an attorney. A "Law and Order" episode where the attorney gets brought into the interrogation room after a suspect requests an attorney is fiction. Requesting to talk to an attorney is a method of exercising your rights. It does not entitle you to an immediate attorney or remedy. However, by exercising your right to remain silent you will likely avoid providing additional evidence against yourself.

The above are some examples to demonstrate when and how to exercise your constitutional rights. If you have been contacted by the police, and/or if you are a suspect, you need to contact a criminal defense attorney immediately. If you have additional questions, you may contact me at my law office - (859) 431-9999, or you may visit my website at www.shannonsextonlaw.com.

