

San Antonio Express-News
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Suspects caught, but not their confessions
San Antonio police buck trend of videotaping interviews.

Ihosvani Rodriguez EXPRESS-NEWS STAFF WRITER

Publication Date : August 4, 2003

Jacob Kluesner claims he doesn't remember confessing to killing his best friend in a hotel room last year.

He says he was drunk when San Antonio police investigators grilled him for hours and then booked him on a murder charge.

Whether Kluesner, 22, was drunk or not, the jury hearing his murder case, which is set for Aug. 14, will have to take the detective's word that the suspect said what's in his signed confession because police did not record it.

As a matter of policy, when it comes to homicides and other felony investigations, the San Antonio Police Department and other law enforcement agencies in Bexar County do not electronically record statements.

The issue has become a controversial topic throughout the country, particularly in Chicago, Philadelphia and Miami, where the police departments have been accused of wrongfully obtaining confessions from innocent people, said Lawrence Goldman, president of the National Association of Criminal Defense Lawyers.

Goldman said growing pressure from the public, media and civil rights organizations - combined with a rash of DNA-based exonerations - increasingly has made police agencies nationwide switch on cameras or tape recorders during felony interrogations.

While most departments still rely only on pen and paper, many agencies, including large Texas departments such as Houston's, Fort Worth's and Austin's, have started to use video regularly. On July 18, Illinois became the first state to require police to videotape all homicide interrogations and confessions.

No existing law

But not San Antonio and Dallas, where officials say they won't be going into the video age anytime soon.

"The only reason I see why police still oppose recording confession is because it gives them a leeway to lie," Goldman said.

Not so, say local police officials.

Assistant Chief Jerry Pittman pointed to what he described as an exceptional record for clearing crimes and not having statements tossed out in court. He added that San Antonio police handle approximately 50,000 felony cases each year.

There is no law requiring recordings. Recording each suspect, storing the tapes and training officers to take the statements would be a financial burden for the city.

"It's a policy and practice that has served us well," he said. "We are not hiding anything. Our practice has plenty of built-in procedures that assures that we don't violate anyone's constitutional rights and prevents the conviction of someone who is innocent."

Pittman and others also noted that cameras are unlikely to silence defense lawyers intent on undermining confessions.

"Since we began video and audio, the biggest question now in court is what was done before we flipped the switch," said John Leggio, spokesman of the Houston Police Department. "The question becomes 'At what point does the interrogation begin?' Does it begin when they are stopped or when they are in the confession room?"

Bexar County prosecutors acknowledged SAPD's policy has caused them trouble in the courtroom. In virtually every trial involving a confession, attorneys make big issues of the manner police took them.

Prosecutors say they have learned to work around the often-contested confessions - and have managed to secure convictions despite them - but also say adopting a new policy ultimately will become necessary in this era of high-tech television cop shows.

"We're not telling them to do it or not to do it," First Assistant District Attorney Michael Bernard said. "But as more and more time goes by, juries are going to want to see the video, and police are going to have a harder time explaining why there isn't one."

The issue came to focus late last month in the case of a man charged with murder in the shooting death of his girlfriend.

In that case, local defense attorney Pat Hancock effectively exposed how his client, Sean Woodard, was questioned for nearly three hours, and yet police produced only a 29-line confession.

Perhaps even more damaging for the state's case, two detectives who took the statement admitted Woodard spent a large part of the interrogation crying and insisting the shooting was an accident.

"And still not even the word 'sorry' or 'remorse' appeared once in this so-called confession," Hancock said. "The state of mind of a person who gives a statement is crucial in determining the absolute truth. When you don't provide a recording of that, you are hiding the truth and the circumstances of how that statement was given."

Deceptive tactics

Attorneys and civil rights organizations calling for the recording of all homicide statements say the principal reason police don't want to do so is because they don't want juries to see the tactics used to obtain confessions.

Suspects, they say, typically are brought in and told they are free to end the interview and leave at any point. They are told others already have snitched them out, or that police have collected damaging evidence against them - even if it's a lie. Or suspects are made to believe the sympathetic detective is out to help them because he understands why they butchered their nagging wives. Go ahead, tell us what

really happened.

"It is legal for us to use deception," is the mantra-like testimony of former SAPD homicide Detective Butch Matjeka, referred to by many in the courthouse as "The King of Confessions."

As the suspect tells his story, the detective asks a series of questions and writes the answers in narrative form. Police have said it is against their policy to allow suspects to write out the confessions themselves, blaming bad handwriting and "verbose" ramblings.

Veteran defense attorney Jimmy Parks described the police tactics as "a psychological warfare" that - although legal - increases the chances of convicting someone wrongfully.

"Most people watch shows like 'NYPD Blue' and 'Law & Order' and they know the type of deception that goes on. Juries almost expect police to use them. So why not put them on video and show they have nothing to hide?" Parks said.

Assistant Chief Pittman and others pointed out that the statements are printed on a sheet containing the Miranda rights warnings. The suspects are asked to read the statements and make corrections. Then police bring in a dispatcher or a secretary to witness the suspect signing the statement. These police employees often testify they witnessed no coercion or intimidation by police.

"I don't think we've lost any confession over the years," said homicide Sgt. Larry Lewis of the Dallas Police Department, which follows virtually the same procedure as SAPD. "We still get the convictions."

Sure, but some legal experts are asking if those are legitimate convictions.

Northwestern University law professor Steven Drizin and University of California-Irvine psychology professor Richard Leo compiled a tally called the "Proven False Confession List." It contains 144 names.

Drizin said some suspects confess to crimes they never committed because they want to end interrogations that amount to "psychological torture."

"Their thinking is that the truth will ultimately come out in court, that the truth will exonerate them," he said. "But what they don't realize is that, for juries, the confession is the truth, and juries don't often see past the confessions."

One precaution against wrongful convictions, many say, is videotape.

"We are in the age of video, and (SAPD) needs to get on with the time," local attorney Angus McGinty said. "They either move along with us, or stay behind. I think they will have to move sooner than later."

irodrig@express-news.net