

**Defendant's Rights**  
By Michael J. McNamara

The Minnesota Supreme Court recently issued a significant decision clarifying the rights of a defendant (or suspect) against self-incrimination. In Minnesota V. Staats, (decided March 27, 2003) the court held that a suspect's right to counsel and, therefore, his protection against self-incrimination, begins when a reasonable person in the suspect's position would conclude that he was in custody (and not free to leave). At that point, the law enforcement agent/agency is required to "record" (make a record of) all communications between the defendant and law enforcement agents, Minnesota v. Scales, and if the suspect has requested to speak to an attorney, law enforcement agents may not resume questioning of the suspect unless the suspect plainly and unequivocally initiates new conversation about the alleged criminal conduct.

Prior to the Supreme Court decision in Staats it was routinely argued by prosecutors and accepted by trial courts that the touchstone for determining whether a suspect was in custody and therefore entitled to self-incrimination protections was whether the *arresting officer* reasonably believed the suspect "volunteered" information and not whether the suspect reasonably believed he was in custody.

In light of the large number of incriminating statements admitted into evidence based upon a police officer's description of the circumstances of the statement, this change of focus from the alleged reasonable belief of the law enforcement agent to the belief of a reasonable person in the suspect's position could have a far-reaching impact if trial courts diligently attempt to apply it. In those cases where the voluntary nature of an incriminating statement is denied by the defendant, the Staats reasonable person analysis should be argued vigorously by defense counsel.

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