Description: In this episode, Dr. Artello walks Nia through the first stage of the criminal justice system—from the report of crime to an arrest.

Nia: Hi Dr. Artello!

Dr. Artello: (greeting) Hi Nia. Are you ready to talk about criminal justice process?

Nia: Thank you for agreeing to answer my questions about the court system. So I love to watch the crime shows on TV—CSI and Midsomer Murders. So is that really how things happen? Can they really charge in and arrest you? Please tell me that was actually happens, right? The detective like Columbo just asks the most perfect question. Or Perry Mason who always revealed the real culprit at the end?

Dr. Artello: You have several questions altogether there. Let’s take them one at a time—TV takes license to make drama and for many shows, they are fictionalizations. If you want to work like CSI, I recommend theater as a major. The other questions are about arrest and one’s rights. So let’s talk arrest first. To arrest someone you need probable cause.

Nia: Probable cause? What is that? How do they get it?

Dr. Artello: Probable cause to arrest means that officers, based on their training and experience, know enough facts and circumstances to reasonably believe that: 1. A crime has been committed, is being committed or is about to be committed and 2. The person arrested has committed, is committing or is about to commit the crime.

Nia: What does that mean? How do you know?

Dr. Artello: I know that standard sounds a bit nebulous so let’s put it into a scenario or a hypothetical as we say in the legal world.

Nia: So like when I come to you for advice and say hypothetical this happened to my friend—and you know that there is no friend.

Dr. Artello: kind of like that. I am going to create a factual situation that we’ll use to discuss the criminal justice process. So let’s say that Professor Xavier took a number of VCU Students out to Shenandoah Forest National Park on an overnight research excursion to understand ecological changes. Professor Xaiver has a twin brother, let’s call him Skippy who comes along too.

Nia: Oh can I come along? I love Shenandoah forest.

Dr. Artello: Great idea—You, Xavier and Skippy are the chaperones to make sure no one is eaten by bears.

Nia: Awesome bears!

Dr. Artello: So you have a campfire and discuss the discoveries on your nature walk. During this time, Skippy gets bored and leaves the group. You and Xaiver settle everyone into tents for the night and Skippy still has not returned. You go to your tent and Xaiver waits for his twin brother, Skippy. The next morning, you hear sirens
and as you are packing to return to Richmond, the FBI arrive. You learn that someone has been killed last night and found this morning.

Nia: Omg! The FBI! Do they normally investigate a murder?

Dr. Artello: That is a great question. The vast majority of murders are investigated by local authorities. But in this hypothetical, you are on federal lands. The entity to investigate violent crimes on federal properties are generally FBI. I have put us in the federal system because as we progress through the system, there will be differences based on jurisdiction.

Nia: Jurisdiction?

Dr. Artello: Yes, that is what is in one's authority. For criminal procedure, it is usually where the crime occurred--so there is a major geographic component to jurisdiction. We also have specialized courts--military, juvenile, bankruptcy, admiralty just to name a few. But in this case, we are talking federal jurisdiction because we are on federal land and dealing with adults.

Nia: Got it. So I have a question. Can they question me? Can they question the students?

Dr. Artello: Yes, they can ask you questions. I imagine they would ask for your name and contact information. They will probably ask when you arrived in the park, what you had done, and who was with you and if anyone left the group. Those would be typical questions to try to glean who was around and may have access to commit the crime.

Nia: Ok I can understand that but do I have to answer their questions?

Dr. Artello: That is another great question. So you can ask them if you are free to leave. If you are not free to leave, you are being detained and they are asking you questions. That will invoke Miranda, which we discuss in a different podcast. However, at this point, all they know is that you are in the area with about 12 students and two other people.

Nia: So I can refuse them.

Dr. Artello: That is one choice you can make. But understand--if you are staying overnight at a national park, chances are you had to sign in or at least Dr. Xavier had to report who was in their party. They know you are there. So you will become a suspect or at least a person of interest.

Nia: So it is best to answer their questions?

Dr. Artello: Again that is a judgement call. But you also need to understand that it is different for a short middle age Caucasian woman who is a librarian to say no politely to the police. African-American and other minorities have experienced and continues to experience heightened suspicion based entirely on one’s skin color which is contrary to principles of justice--a topic for another podcast. But to get back to your question--If the questioning is short and they don’t have to take you anywhere, the intrusion is viewed as minimal by the law.
Nia: So let’s say that most people answer the police questions. What happens next?

Dr. Artello: During questioning, it becomes clear that the majority of the group stayed together for the entire trip. No one was alone except for Dr. Xavier after everyone went to bed and Skippy who left right after dinner. So if the coroner is able to give a preliminary time of death—let’s say between 6 pm and 9 pm. You and Dr. Xavier were with the group so the only person without an alibi would be Skippy. So the police will probably focus on him.

Nia: What is an alibi? And what does that mean that they are focusing on him?

Dr. Artello: An alibi is when you have someone or something can verify that you were not at the crime scene—think about witness, video from a store, or red light camera catching you running a red light. What focusing on a suspect means that let’s say the murder was done by a sharp object and not a gun shot. You and others would have heard the gunshot. So let’s say it was some type of knife. Killing someone with a knife is close work and would have gotten blood on one’s clothing. Maybe the police ask what everyone was wearing and they had found a bloody shirt—of the same description of what Skippy was wearing on Saturday when he left the campsite. The police may ask Skippy if he could show them the shirt. Skippy says that he doesn’t have it anymore—it had gotten torn up or dirty and he threw it away when he went out.

Nia: wow, Skippy may have some problems here.

Dr. Artello: You are right. Let’s say that they also found blood footprints near the body. They ask Skippy to show them the bottom of his shoes but he refuses. The police notice a stain on the shoe that could be blood. They ask Skippy what the stain is and when he got it? Let’s say that Skippy says it was from a cut on his hand and that it was old.

Nia: Skippy should probably stop talking, right? When does his Miranda rights come into play?

Dr. Artello: Since Skippy does not have an alibi, can’t produce the shirt he wore on Saturday and has stains that look recent on his shoes, he might want to keep quiet but he may not yet be in custody which is required for Miranda. Let’s say that at this point, the FBI is thinking that Skippy may be their guy. They also know a knife was used and are concerned about finding the weapon.

Nia: Could they pat him down? I’ve seen that on TV shows.

Dr. Artello: They might if they have reason to believe that he has a weapon and presents a danger to public safety or their safety. We’ll talk more about this during our podcasts on Terry v. Ohio and search cases. But let’s say that while they’ve been talking to people, it becomes clear that Skippy was missing during the window of the murder, was seen near the site of the murder, had been wearing a similar shirt that is now missing, and has stains on his shoes that could be the blood of the victim.

Nia: is this when they arrest Skippy?

Dr. Artello: Given all of the totality of the circumstances, yes.

Nia; What is totality of circumstances?
Dr. Artello: It is when the court takes all of the facts together and the likelihood that Skippy would be leaving the area--after all he does not live in the park or the surrounding area, he has no ties to the area, he lives in Norfolk area so even further than Richmond, all of these factors would support a probable cause to arrest Skippy to prevent him from disposing of the shoes, since he has already disposed of his shirt and any other evidence he may have. The court would probably find would equal probable cause to arrest him on murder charges.

Nia: So what would be next?

Dr. Artello: Next time we talk in next episode.

Nia: No, it's a cliff hanger!