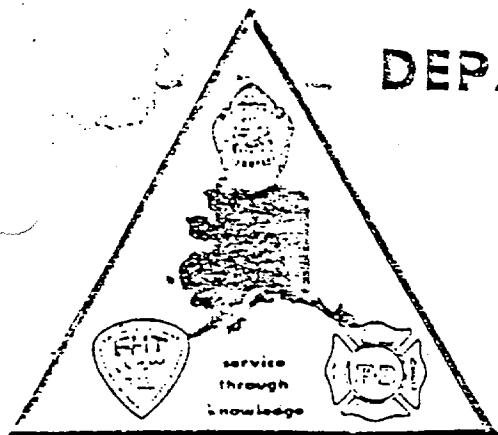


DEPARTMENT OF PUBLIC SAFETY
TRAINING ACADEMY



LEGAL BULLETIN NO. 48
June 1, 1981

THE RIGHT TO COUNSEL DURING
CUSTODIAL INTERROGATION

Reference: Robert EDWARDS
v.
State of Arizona

U. S. Supreme Court
~~Opinion No. 79-5269~~
451 US 477
May 18, 1981

FACTS:

On January 19, 1976, a warrant was served on EDWARDS at his home for burglary, robbery and first-degree murder. He was brought to the police station and given his Miranda warning; he was willing to submit to questioning. He was advised that another suspect was in custody and had implicated him in the crime. EDWARDS gave a taped statement denying involvement and offering an alibi as defense. Later, he sought to "make a deal", but the officer told him he did not have authority to negotiate a deal.

EDWARDS was furnished the phone number of an attorney, but before the call had been completed he hung up, stating: "I want an attorney before making a deal." No further questions were asked of him and he was returned to jail.

The following morning, two other detectives went to the jail to get EDWARDS. When the detention officer told EDWARDS the officers wanted to talk to him, he said he did not want to speak to anyone. The guard told EDWARDS "he had" to talk to them and took him to the detectives. EDWARDS was again given his rights and said he would be willing to talk after first listening to the taped statement of the accomplice. After hearing this tape, EDWARDS agreed to give a statement provided it was not tape recorded. A statement was taken that was subsequently used at his trial.

ISSUE:

Did EDWARDS make a knowing and intelligent waiver of counsel before he gave the detectives the statement?

HELD: No.

REASONING:

1. In Miranda, the court determined that the Constitution (Fifth and Fourteenth Amendments) prohibits compelled self-incrimination and that custodial interrogation be preceded by advice to the putative defendant

that he has the right to remain silent and also the right to the presence of an attorney. (emphasis added)

2. Waivers of counsel must not only be voluntary but constitute a knowing and intelligent relinquishment or abandonment of a known right.

3. When an accused has invoked his right to have counsel present during custodial interrogation, a valid waiver of that right cannot be established by showing only that he responded to further police-initiated custodial interrogation even if he has been advised of his rights. (emphasis added)

4. When an accused has expressed a desire to deal with the police only through counsel, he is not subject to further interrogation until counsel has been provided UNLESS THE ACCUSED HIMSELF INITIATES FURTHER COMMUNICATION, EXCHANGES OR CONVERSATION WITH THE POLICE. (emphasis added)

NOTES:

When we give the Miranda Warning, we are actually asking the suspect to give up two rights---the first is his right to remain silent (Fifth Amendment) and the second is his right to counsel (Sixth Amendment). If the suspect was in custody, it is incumbent on the prosecution to demonstrate to the court that the confession was voluntary and that the defendant made a "knowing and intelligent" waiver of his right to counsel. When the Arizona Supreme Court upheld this confession, they only looked at the volunteerism of the confession itself and not the waiver of counsel.

You should remember when taking statements from suspects the court will examine at least three issues:

1. How was the suspect seized? If he did not consent to accompany you to the police station and you had no probable cause to arrest him even though he may waive his right to remain silent and right to counsel, the confession may be "thrown out" because he was illegally seized under the Fourth Amendment. (See Dunaway v. N.Y., Legal Bulletin No. 33)
2. Was the confession given voluntarily?
3. Did the accused waive his right to counsel?

If the accused initiates contact with you after having requested an attorney, remember that you are allowed to listen to him. If this is in a jail setting, take a statement from the jailor and/or obtain a copy (if available) of the request to see you. This will assist the prosecutor in demonstrating to the court that the accused initiate contact. Also, if the suspect is going to give you a statement, cover the fact that he initiated contact in that statement.