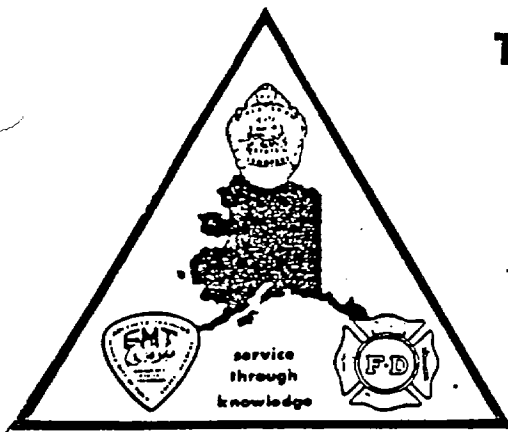


# DEPARTMENT OF PUBLIC SAFETY

## TRAINING ACADEMY

LEGAL BULLETIN NO. 74  
July 11, 1983



### CONFESSION GIVEN BY DEFENDANT WHO REQUESTED ATTORNEY THEN CHANGED HIS MIND

Reference: Oregon  
v.  
James E. BRADSHAW

United State Supreme Court  
~~33 CrL 3211~~ 462 US 1039  
( 1983 )

#### FACTS:

The body of Lowell Reynolds was found in his wrecked pick-up truck. It appeared that he had been a passenger at the time the vehicle left the roadway, struck a tree and an embankment, then finally came to rest on its side in a shallow creek. Reynolds died from traumatic injury and asphyxia by drowning.

Police officers suspected that BRADSHAW had been driving the vehicle at the time of the accident. He was asked to go to the police station for questioning. Upon his arrival, he was given his Miranda warning and agreed to talk to the officers. BRADSHAW denied driving the vehicle, but did admit to giving Reynolds, a minor, some alcohol prior to the accident. BRADSHAW was placed under arrest for furnishing liquor to a minor and again advised of his Miranda rights. The officer then gave BRADSHAW his theory on how the accident occurred, placing BRADSHAW behind the wheel at the time of the accident. BRADSHAW said, "I do want an attorney before it goes very much further." The officer immediately terminated the conversation.

While being transported to the county jail and about ten or fifteen miles from the police station, BRADSHAW asked the officer, "Well, what is going to happen to me now?" The officer answered by saying, "You do not have to talk to me. You have requested an attorney and I don't want you talking to me unless you desire. It has to be at your own free will." BRADSHAW said he understood and continued the conversation.

On the following day and after having been again given his Miranda rights, BRADSHAW took a polygraph examination. During the test, he admitted that it was he who had been driving when the accident occurred. He was charged with first-degree manslaughter and his admission was used against him at his trial. He appealed to the Oregon Supreme Court who reversed the conviction based on his admissions because he requested but had not conferred with an attorney. They based their decision on Edwards v. Arizona (see Legal Bulletin No. 48). The State of Oregon appealed to the United States Supreme Court.

ISSUE:

Did the question BRADSHAW asked the police officer constitute his "initiating" a conversation with the officer, thereby making the subsequent confession admissible?

HELD: Yes.

REASONING:

1. In asking, "Well, what is going to happen to me now?", BRADSHAW "initiated" further conversation. His statement evinced a willingness and a desire for a generalized discussion about the investigation and was not merely a necessary inquiry arising out of the incident of the custodial relationship. It is apparent that the police officer understood it because he immediately reminded BRADSHAW that he did not have to talk. The conversation took place only after BRADSHAW said he understood.

NOTES:

The court found that a knowing and intelligent waiver was made by BRADSHAW and it was he, not the police, who re-opened the dialogue. There are situations where a defendant or a police officer might make an inquiry regarding use of the telephone, a drink of water or similar requests which are not directly related to the investigation. In those situations, the defendant will not have initiated a conversation to entitle you to ask questions about the investigation once he has requested a lawyer. It must be the defendant who initiates conversation about the case.

Once a defendant has indicated a desire to consult with an attorney, he can change his mind as long as it is he who "initiates" the conversation. Reminder warnings of his rights should be given as soon as he begins his dialogue.

You should review Legal Bulletin No. 48, Edwards v. Arizona, wherein police initiated contact which resulted in a confession and it was held inadmissible.