

Recent Case Report

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Bobby v. Dixon

(2011) __ U.S. __ [2011 WL 5299458]

Issues

(1) Did a murder suspect effectively invoke his *Miranda* right to counsel when he refused to talk about the victim's disappearance without his attorney present? (2) After the victim's body was found, did investigators obtain the suspect's confession to the murder by employing the illegal "two step" procedure?

Facts

In order to steal Chris Hammer's car, Archie Dixon and Tom Hoffner tied him up and buried him alive. The next day, Hammer's mother reported him missing. Investigators were aware that Hammer and Dixon were acquaintances, so when a police detective happened to spot Dixon at the local police station (he had gone there to recover his car which had been impounded on an unrelated matter), the detective *Mirandized* him and asked if he would be willing to talk about the disappearance. Dixon said he would not talk about it without his lawyer.

In the meantime, Dixon sold Hammer's car and forged Hammer's name on the check. When investigators found out, they arrested Dixon for forgery and took him to the police station for questioning. Because of the likelihood that Dixon would invoke his *Miranda* rights again, the officers did not seek a waiver. In any event, Dixon claimed he did not know anything about Hammer's disappearance. He did, however, confess to the forgery and was booked on that charge.

Later that day, Hoffner led officers to Hammer's grave, claiming that Dixon told him that Hammer was buried there. After recovering the body, officers brought Dixon from the jail to the police station and *Mirandized* him. Dixon waived his rights and, after learning that Hammer's body had been found and that Hoffner was cooperating with the officers, he confessed to the murder. He was subsequently convicted and sentenced to death. The Sixth Circuit, however, issued a writ of habeas corpus, contending that the investigators were guilty of "grievous" *Miranda* errors. The state appealed to the United States Supreme Court which concluded that the only errors in this case were made by the Sixth Circuit.

Discussion

There were essentially two issues on appeal: (1) Did Dixon initially invoke his *Miranda* right to counsel when he refused to talk about Hammer's disappearance without his attorney present? (2) Did the investigators subsequently obtain Dixon's murder confession by employing the illegal "two step" procedure? In a *per curiam* opinion, the Supreme Court ruled that the answer to both questions was no.

AN INVOCATION? The Sixth Circuit had ruled that Dixon invoked his *Miranda* right to counsel when, while visiting the police station, he refused to answer questions about Hammer's disappearance without his attorney. This ruling, said the Supreme Court, was "plainly wrong" because it is settled that a suspect can invoke his *Miranda* rights only if

he was “in custody” at the time. But here, it was beyond dispute that Dixon was not in custody because he had freely gone to the police station to recover his impounded car.

TWO STEP? As noted, when investigators questioned Dixon about forging Hammer’s name on the check, they did not seek a *Miranda* waiver because they thought he would probably invoke again. Because Dixon was in custody this time, his confession to the forgery was suppressed by the trial court. The propriety of the suppression order was not disputed.

The Sixth Circuit ruled, however, that this *Miranda* violation also rendered Dixon’s subsequent confession to the murder inadmissible. Specifically, it held that this tactic was tantamount to the so-called “two step” procedure which the Supreme Court condemned in *Missouri v. Seibert*.¹ By way of background, the “two step” was a tactic in which officers would deliberately question an arrested suspect without obtaining a *Miranda* waiver. Then, if he confessed or made a damaging admission, they would seek a waiver and, if he waived, they would try to get him to repeat the statement. The “two step” works on the theory that the suspect will usually waive his rights and repeat his incriminating statement because he will think (erroneously) that his first statement can be used against him and, therefore, he has nothing to lose by repeating it. That is why the Court in *Seibert* ruled that a statement obtained by means of the “two step” procedure must be suppressed.

But, as the Court pointed out in *Dixon*, there were significant differences between the questioning of Dixon and *Seibert*. The main difference was that, unlike *Seibert*, Dixon did not respond to the unwarned questioning by providing the officers with a detailed confession or otherwise “letting the cat out of the bag.” In fact, Dixon denied knowing anything about Hammer’s disappearance. Thus, said the Court, “unlike in *Seibert*, there is no concern here that police gave Dixon *Miranda* warnings and then led him to repeat an earlier murder confession, because there was no earlier confession to repeat.”

In addition, two things happened that would have caused Dixon to understand that the questioning pertaining to the murder was entirely separate from the questioning that produced his confession to the forgery: (1) four hours passed between the time the investigators questioned Dixon in violation of *Miranda* and the time they *Mirandized* him and obtained a waiver, and (2) Dixon had been informed of two major developments in the case: Hammer’s body had been found, and Hoffner was cooperating with the investigators. Said the Court, “this significant break in time and dramatic change in circumstances created a new and distinct experience, ensuring that Dixon’s prior, unwarned interrogation, did not undermine the effectiveness of the *Miranda* warnings he received before confessing to Hammer’s murder.”

Consequently, the Court ruled that the Sixth Circuit had erred when it held that Dixon’s confession should have been suppressed. It added, however, that this “does not excuse the detective’s decision not to give Dixon *Miranda* warnings before his first interrogation.” But the appropriate remedy for this violation, said the Court, was the suppression of Dixon’s confession to the forgery, which is exactly what had occurred. POV

¹ (2004) 542 U.S. 600.