Fellers v. United States
(January 26, 2004) 540 US ___

ISSUE

Must a statement obtained in compliance with the defendant's Sixth Amendment right to counsel be suppressed if officers violated the Sixth Amendment in obtaining an earlier statement from him?

FACTS

Officers went to Fellers' home to arrest him after a grand jury indicted him for conspiracy to distribute methamphetamine. After Fellers admitted the officers into his living room, one of them explained that he had been indicated, that they had come to arrest him, and that they also wanted "to discuss his involvement in methamphetamine distribution." During the subsequent conversation, Fellers made some incriminating statements.

Although Fellers was not asked to waive his *Miranda* rights at his home, the officers sought and obtained a waiver later that day at the county jail. During the subsequent interview, Fellers made some additional incriminating statements. At trial, the judge suppressed Fellers' in-home statement but admitted his in-jail statement. Fellers was convicted.

DISCUSSION

If the Court were to analyze *Fellers* solely in terms of *Miranda*, the trial judge's rulings would have been correct. The in-home statement would be suppressed because Fellers did not waive his *Miranda* rights even though he was told he was under arrest and was therefore "in custody" for *Miranda* purposes.[1]

As for his in-jail statement, it would be admissible under the rule of *Oregon* v. *Elstad*.[2] In *Elstad*, the U.S. Supreme Court ruled that if a *Miranda* violation was not coercive in nature (e.g., no waiver, but no coercion), a subsequent voluntary statement will not be suppressed as the result of the violation if it was obtained in compliance with *Miranda*. Thus, because Fellers waived his *Miranda* rights before the in-jail interview, and because there was no indication of coercion, the prior *Miranda* violation would not result in the suppression of his in-jail statement.

The problem in *Fellers* was that, in addition to *Miranda*, there was another Constitutional issue in play—the Sixth Amendment right to counsel. Fellers had been charged with the crime under investigation (an indictment constitutes a charge[3]), which means his Sixth Amendment rights had attached.[4]

This complicates things, but it does not mean the officers could not question Fellers. Instead, it means they could do so only if he waived his Sixth Amendment rights, which happens automatically when a suspect waives his *Miranda* rights.[5] But because the officers did not obtain a *Miranda* waiver before questioning Fellers at his home, his in-home statement was obtained in violation of the Sixth Amendment, as well as *Miranda*.

What about his in-jail statement? If the rule of *Oregon* v. *Elstad* applies to Sixth Amendment violations as well as *Miranda* violations, his in-jail statement would be admissible because he waived his *Miranda* and Sixth Amendment rights beforehand, and there was no coercion.

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[1] See *Berkemer* v. *McCarty* (1984) 468 US 420, 434.
[2] (1985) 470 US 298.
[3] See *McNeil* v. *Wisconsin* (1991) 501 US 171, 175.
[4] *Maine* v. *Moulton* (1985) 474 US 159 170.
[5] See *Patterson* v. *Illinois* (1988) 487 US 285, 298.

So, now the issue before the Court in *Fellers* can be clearly stated: Does *Elstad* also apply to violations of the Sixth Amendment?

Although the question can be clearly stated, the answer remains muddled. For whatever reason, the Court decided not to tackle the issue, at least for now. Instead, it sent the case back to the Eighth Circuit, simply noting:

> [W]e have not had occasion to decide whether the rationale of *Elstad* applies when a suspect makes incriminating statements after a knowing and voluntary waiver of his right to counsel notwithstanding earlier police questioning in violation of Sixth Amendment standards. We therefore remand to the Court of Appeals to address this issue in the first instance.

In other words, the issue remains unresolved.