

In re Robert E.

(January 11, 2000) __ Cal.App.4th __

ISSUE

Did officers violate the defendant's Sixth Amendment right to counsel by questioning him about a crime that was separate, but somewhat related, to a crime with which he had been charged and was represented by counsel?

FACTS

Robert was charged in Orange County juvenile court with vandalism and assault with intent to cause great bodily harm. During a juvenile court hearing, he committed perjury while testifying in his defense. He was found guilty of vandalism and assault, and sentenced to a juvenile camp for 180 days.

Some 43 days later, two Fullerton police officers visited Robert in the juvenile camp, obtained a *Miranda* waiver, and questioned him about his testimony. During the questioning, Robert admitted he had committed perjury. He was subsequently charged with perjury, and his confession was admitted into evidence against him. He was convicted.

DISCUSSION

Robert contended his confession should have been suppressed because it was obtained in violation of the Sixth Amendment right to counsel. The court disagreed.

A suspect's Sixth Amendment right to counsel is violated if officers question him about a crime with which he has been charged and is represented by counsel. ⁽¹⁾

A violation may also occur if the suspect is questioned about an uncharged crime that is "inextricably intertwined" with the charged crime. ⁽²⁾ On the other hand, it is not a Sixth Amendment violation for officers to question a suspect about an uncharged crime that is "logically distinct" from, or even "closely related" to, a charged crime. ⁽³⁾

The question, then, was whether the uncharged perjury was "inextricably intertwined" with the charges of vandalism and assault. The court noted that in determining whether two crimes are "inextricably intertwined," the courts usually examine "the time, place, victims, and circumstances surrounding the offenses to determine whether a defendant is being pursued for essentially the same activities."

Applying this test to the facts of the case, the court ruled the two crimes were not inextricably intertwined. Said the court, "True, the subject of Robert's perjured testimony was his conduct on April 24 [when the vandalism and assault occurred] . . . But the perjury itself was committed during the December 3 hearing and from the act of lying about it in court."

Accordingly, Robert's conviction was affirmed.

NOTE: For another look at this issue, see the report on *People v. Slayton* in the Recent Cases section.

1. See *McNeil v. Wisconsin* (1991) 501 US 171, 175; *Michigan v. Jackson* (1986) 475 US 625, 636; *Maine v. Moulton* (1985) 474 US 159, 170; *People v. Hayes* (1988) 200 Cal.App.3d 400, 407; *People v. Stephens* (1990) 218 Cal.App.3d 575, 583; *People v. Frye* (1998) 18 Cal.4th 894, 987.

2. See *People v. Sully* (1991) 53 Cal.3d 1195, 1234; *United States v. Covarrubias* (9th Cir. 1999) 179 F.3d 1219 ["On the basis of a uniform reading of two Supreme Court cases, every circuit to consider the question, including our own, has recognized that an exception to the offense-specific requirement of the Sixth Amendment occurs when the pending charge is so inextricably intertwined with the charge under investigation that the right to counsel for the pending charge cannot constitutionally be isolated from the right to counsel for the uncharged offense."].

3. See *People v. Wader* (1993) 5 Cal.4th 610, 654, fn.7; *People v. Plyler* (1993) 18 Cal.App.4th 535, 547-8.