Recent Case Report

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Maryland v. Shatzer

(2010) __ U.S. __ [2010 WL 624042]

Issue

If a suspect invokes his *Miranda* right to counsel, may officers seek to interview him at a later time?

Facts

Officers in Maryland received a report that Shatzer may have sexually abused his 3-year old son. They also learned that he was currently serving time in a Maryland state prison for sexually abusing another child. An officer went to the prison to interview Shatzer about the allegation but he invoked his *Miranda* right to counsel.

The investigation stalled for two years and six months, but then officers obtained additional incriminating information from the victim, Shatzer's son. So they returned to prison and asked Shatzer if he would now be willing to speak with them about the matter. He said yes, waived his *Miranda* rights, and made incriminating admissions which were used against him at trial. He was convicted.

Discussion

On appeal to the United States Supreme Court, Shatzer argued that, because he made his statements after he had invoked his *Miranda* right to counsel, they were inadmissible. The Court disagreed.

In 1988, the Court ruled in *Arizona* v. *Roberson* that officers may not seek to interview incarcerated suspects about any crime if they had previously invoked their *Miranda* right to counsel.[1] One of the more obvious problems with this rule is that suspects such as Shatzer who remained incarcerated after they invoked could never—ever—be subjected to police-initiated questioning. While this rule can (and did) lead to absurd results, it has been rigorously enforced.

The Court in *Shatzer*, however, concluded that there must a point in time at which this restriction terminates; i.e., a time when officers may seek to question a suspect who has remained in custody after invoking his *Miranda* right to counsel. Moreover, the Court observed that a "logical endpoint" to this restriction would make sense because, although incarcerated suspects remain in custody, there is a psychological "break" in custody when they return to the general population because, at that point, they "return to their accustomed surroundings and daily routine—they regain the degree of control they had over their lives prior to the interrogation." In addition, they "are not isolated with their accusers. They live among other inmates, guards, and workers, and often can receive visitors and communicate with people on the outside by mail or telephone."

The question, then, was how long must officers wait before recontacting the suspect after he has been returned to the general inmate population. Rather than saddle the lower courts with the job of debating what constitutes a reasonable time, the Court ruled

[1] (1988) 486 U.S. 675. ALSO SEE *Edwards* v. *Arizona* (1981) 451 US 477, 483-84.

that 14 days would suffice.[2] Specifically, it ruled that officers may seek to question an incarcerated suspect who had previously invoked his *Miranda* right to counsel if, (1) the inmate was returned to the general inmate population, and (2) the officers did not recontact the suspect until at least 14 days after he invoked.

The Court also ruled, however, that this 14-day rule also applies if the suspect was released from custody after he invoked. In other words, if an invoking suspect was later released from custody (via bail, O.R., or if the charges were dropped), officers would still be required to wait for 14 days before seeking to question him.

Applying these new standards, the Court ruled that Shatzer's return to the general prison population after he invoked constituted a "break" in *Miranda* custody. And because the break lasted more than 14 days (actually, almost three years), the officers did not violate *Miranda* when they sought to question him.

Comment

There are two problems with this opinion that must be addressed. First, the Court did not explain why officers must wait 14 days before seeking to interview a suspect who had been released from custody and who was under absolutely no compulsion. In fact, it observed that such a suspect has "returned to his normal life," has "no longer been isolated," and "has likely been able to seek advice from an attorney, family members, and friends," and "he knows from his earlier experience that he need only demand counsel to bring the interview to a halt."

Second, over the past few years, the lower courts have ruled that county jail and state prison inmates were not "in custody" for *Miranda* purposes if they were not restrained to a degree *greater* than that which is inherent in the facility.[3] At first glance, the Court in *Shatzer* seemed to wholeheartedly agree with the rationale of these cases, having ruled that a "break" in *Miranda* custody occurs when incarcerated suspects have returned to the general inmate population. As noted earlier, the Court pointed out that these inmates have returned "to their accustomed surroundings and daily routine," they "regain the degree of control they had over their lives prior to the interrogation," they "are not isolated with their accusers," they "live among other inmates, guards, and workers, and

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[2] **NOTE**: The Court acknowledged that 14 days is somewhat arbitrary, but it said that 14 days "provides plenty of time for the suspect to get reacclimated to his normal life, to consult with friends and counsel, and to shake off any residual coercive effects of his prior custody."

[3] See, for example, *People* v. *Macklem* (2007) 149 Cal.App.4th 674 [county jail inmate awaiting trial was not "in custody" for *Miranda* purposes when he was questioned about a jailhouse assault]; *People* v. *Fradiue* (2000) 80 CA4 15, 21 ["no restraints were placed upon defendant to coerce him into participating in the interrogation over and above those normally associated with his inmate status. Hence, *Miranda* warnings were not required"; *People* v. *Anthony* (1986) 185 Cal.App.3d 1114, 1121 ["We also decline to read [*Mathis* v. *US* (1968) 391 US 1] to compel that *Miranda* warnings be given to a prisoner or jail inmate under all circumstances. A prisoner or one incarcerated in jail is not automatically in 'custody' within the meaning of *Miranda*."]; *Saleh* v. *Fleming* (9th Cir. 2008) 512 F.3d 548, 551 ["[I]ncarceration does not ipso facto render an interrogation custodial, and that the need for a *Miranda* warning to the person in custody for an unrelated matter will only be triggered by some restriction on his freedom of action in connection with the interrogation itself."]; *Georgison* v. *Donelli* (2nd Cir. 2009) 588 F.3d 145, 157 ["[T]he mere fact of incarceration does not necessarily require that an individual be in the sort of custody that warrants *Miranda* warnings before an interview."].

often can receive visitors and communicate with people on the outside by mail or telephone."

And yet, the Court implied that, when such an inmate voluntarily agrees to speak with officers, he is necessarily back in *Miranda* custody, there he is "cut off from his normal life and companions, thrust into and isolated in an unfamiliar, police-dominated atmosphere, where his captors appear to control his fate"—and is thus subjected to the full weight of *Miranda* "custody." Unfortunately, the Court was either unaware of its illogical leap or chose to ignore it.[4] In any event, while trying to clear up the confusion it generated when it issued its decision in *Roberson*, the Court created more of the same. Still, we do not think that *Shatzer* necessarily undermines the rationale of these other cases, especially if the inmate was told that he may leave the room at any time. POV

[4] **NOTE**: The Court said, "No one questions that Shatzer was in custody for *Miranda* purposes [when he was interviewed about molesting his son]." It is, therefore, not clear whether the "ones" who did not question Shatzer's custody status included the justices.