

Supreme Court Clarifies Miranda: 14-Day Rule to Question Suspects After They Decide to Remain Silent *Christopher Mallios, JD**

On February 24, 2010, the United States Supreme Court decided *Maryland v. Shatzer*, 559 U.S. ____ (2010), in which it reinstated a defendant's child sexual abuse conviction and announced a new rule that permits the police to resume questioning of suspects who invoke their right to remain silent after 14 days pass after they are released from police custody.

FACTS

In August of 2003, police questioned the defendant regarding allegations that he had sexually abused his three-year-old son. At the time of the interrogation, the defendant was incarcerated in a Maryland state correctional institution where he was serving a sentence for a prior conviction for sexual abusing a different child. The investigator advised him of his *Miranda* warnings, and he invoked his right to speak to an attorney. The investigator stopped the questioning, and the defendant was returned to the general prison population. Shortly thereafter, police closed the investigation.

Two and one-half years later, a social worker made a second referral to the police that the defendant had molested his own son. The referral was based on more detailed allegations, and the case was assigned to a different investigator. After interviewing the child, the social worker and police investigator went to the state correctional institution where the defendant remained incarcerated. After advising him of his *Miranda* warnings, the defendant agreed to talk to them and signed a written waiver of his rights. During questioning, the defendant denied forcing oral copulation on his son, but admitted to masturbating in front of him. At no time during that interview did he invoke his *Miranda* rights or refer to his prior request for counsel.

Five days later, police returned to the state correctional institution to administer a polygraph examination. The defendant again waived his *Miranda* rights and participated in the polygraph test. When the police told him that he failed, he became upset, started to cry, and incriminated himself by saying, "I didn't force him. I didn't force him." He then asked for an attorney and the questioning stopped.

Following his arrest on charges of child sexual abuse, the defendant filed a motion to suppress his statement claiming that the police violated his rights by questioning him in 2006 after he had previously invoked his right to counsel in 2003. The trial court denied the motion, and the defendant was convicted.

On appeal, the Maryland Court of Appeals reversed the defendant's conviction and suppressed his 2006 confession. The court, relying on *Edwards v. Arizona*, 451 U.S. 477 (1981), held that the mere passage of time did not allow police to resume questioning and that the defendant's release from police custody back into the general prison population between interrogations did not constitute a "break in custody" for purposes of *Miranda*.

HOLDING

In reversing the Maryland state court, the Supreme Court held that the two and a half year lapse between the defendant asking for an attorney and police questioning him again eliminated the chance that he could have been coerced to talk. The court reasoned that once a suspect has been released from an interrogation, there is little concern that his decision to talk to police is coerced. Although the defendant remained in prison, he was "released" from the custody of police who were investigating the new child abuse allegations.

The Court also announced a new rule for future cases that sets the minimum time for a break from custody before the police can resume questioning. The Court held that 14 days is a sufficient period of time because it “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. . .”

The *Shatzer* ruling applies common sense and a practical understanding of the realities of sexual assault investigations to limit the impact of the Court’s prior decision in *Edwards*. In *Edwards*, the Court held that when a detained suspect asks to speak with a lawyer, the police must stop the questioning and cannot question the suspect further, even after time passes and the suspect has met with his attorney, unless the suspect reinitiates the questioning on his own. *Edwards* was intended to prevent the police from harassing and badgering a suspect after he or she invoked his right to remain silent.

The United States Department of Justice filed an amicus brief in support of the prosecution in *Shatzer*, citing the need for effective law enforcement and noting that inmates who are already incarcerated for one crime frequently become suspects in another. It urged the Court to rule the defendant’s confession admissible and limit the impact of the *Edwards* decision, stating that it would be a mistake to interpret the Constitution to make an entire class of inmates unapproachable for the entire duration of their often lengthy sentences.

The *Shatzer* ruling expands the ability of law enforcement officers to conduct suspect interviews in ongoing investigations where the body of evidence continues to build over time. If the police take a suspect into custody and he or she asserts the right to remain silent, they can still question the suspect again later -- as long as the suspect has been released from custody for 14 days before they resume questioning. This new rule will be especially helpful in solving crimes and holding offenders accountable in cases in which disclosures become more complete over time, additional victims are discovered, or the results of criminalistics or DNA testing become available after the initial attempt to interview the suspect. The facts of *Shatzer* exemplify that a victim’s disclosure of sexual abuse is often a process that takes time, and the facts of this case presented the Court with an opportunity to create a common sense rule that appropriately balances the constitutional rights of the accused with the need to hold offenders accountable and seek justice for victims of crime.

The Court’s opinion is available at <http://www.supremecourt.gov/opinions/09pdf/08-680.pdf>.

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