451 U.S. 477, *; 101 S. Ct. 1880, **;
68 L. Ed. 2d 378, ***; 1981 U.S. LEXIS 96

EDWARDS v. ARIZONA

No. 79-5269

SUPREME COURT OF THE UNITED STATES

451 U.S. 477; 101 S. Ct. 1880; 68 L. Ed. 2d 378; 1981 U.S. LEXIS 96; 49 U.S.L.W. 4496

November 5, 1980, Argued
May 18, 1981, Decided

Held: The use of petitioner's confession against him at his trial violated his right under the Fifth and Fourteenth Amendments to have counsel present during custodial interrogation, as declared in Miranda, supra. Having exercised his right on January 19 to have counsel present during interrogation, petitioner did not validly waive that right on the 20th. Pp. 481-487.

(a) A waiver of the right to counsel, once invoked, not only must be voluntary, but also must constitute a knowing and intelligent relinquishment of a known right or privilege. Here, however, the state courts applied an erroneous standard for determining waiver by focusing on the voluntariness of petitioner's confession rather than on whether he understood his right to counsel and intelligently and knowingly relinquished it. Pp. 482-484.

(b) When an accused has invoked his right to have counsel present during custodial interrogation, a valid waiver of that right cannot be established by showing only that he responded to police-initiated interrogation after being again advised of his rights. An accused, such as petitioner, having expressed his desire to deal with the police only through counsel, is not subject to further interrogation until counsel has been made available to him, unless the accused has himself initiated further communication, exchanges, or conversations with the police. Here, the interrogation of petitioner on January 20 was at the instance of the authorities, and his confession, made without having had access to counsel, did not amount to a valid waiver and hence was inadmissible. Pp. 484-487.

COUNSEL: Michael J. Meehan, by appointment of the Court, 447 U.S. 903, argued the cause and filed briefs for petitioner.

Crane McClennen, Assistant Attorney General of Arizona, argued the cause for respondent. With him on the briefs were Robert K. Corbin, Attorney General, and William J. Schafer III.

JUDGES: WHITE, J., delivered the opinion of the Court, in which BRENNAN, STEWART, MARSHALL, BLACKMUN, and STEVENS, JJ., joined. BURGER, C. J., filed an opinion concurring in the judgment, post, p. 487. POWELL, J., filed an opinion concurring in the result,

in which REHNQUIST, J., joined, post, p. 488.

OPINION BY: WHITE

OPINION: JUSTICE WHITE delivered the opinion of the Court.

We granted certiorari in this case, 446 U.S. 950 (1980), limited to Question 1 presented in the petition, which in relevant part was "whether the Fifth, Sixth, and Fourteenth Amendments require suppression of a post-arrest confession, which was obtained after Edwards had invoked his right to consult counsel before further interrogation . . . ."

I.

On January 19, 1976, a sworn complaint was filed against Edwards in Arizona state court charging him with robbery, burglary, and first-degree murder. n1 An arrest warrant was issued pursuant to the complaint, and Edwards was arrested at his home later that same day. At the police station, he was informed of his rights as required by *Miranda v. Arizona*, 384 U.S. 436 (1966). Petitioner stated that he understood his rights, and was willing to submit to questioning. After being told that another suspect already in custody had implicated him in the crime, Edwards denied involvement and gave a taped statement presenting an alibi defense. He then sought to "make a deal." The interrogating officer told him that he wanted a statement, but that he did not have the authority to negotiate a deal. The officer provided Edwards with the telephone number of a county attorney. Petitioner made the call, but hung up after a few moments. Edwards then said: "I want an attorney before making a deal." At that point, questioning ceased and Edwards was taken to county jail.

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n1 The facts stated in text are for the most part taken from the opinion of the Supreme Court of Arizona.

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At 9:15 the next morning, two detectives, colleagues of the officer who had interrogated Edwards the previous night, came to the jail and asked to see Edwards. When the detention officer informed Edwards that the detectives wished to speak with him, he replied that he did not want to talk to anyone. The guard told him that "he had" to talk and then took him to meet with the detectives. The officers identified themselves, stated they wanted to talk to him, and informed him of his Miranda rights. Edwards was willing to talk, but he first wanted to hear the taped statement of the alleged accomplice who had implicated him. n2 After listening to the tape for several minutes, petitioner said that he would make a statement so long as it was not tape-recorded. The detectives informed him that the recording was irrelevant since they could testify in court concerning whatever he said. Edwards replied: "I'll tell you anything you want to know, but I don't want it on tape." He thereupon implicated himself in the crime.

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n2 It appears from the record that the detectives had brought the tape-recording with them.

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Prior to trial, Edwards moved to suppress his confession on the ground that his Miranda rights had been violated when the officers returned to question him after he had invoked his right to counsel. The trial court initially granted the motion to suppress, n3 but reversed its ruling when presented with a supposedly controlling decision of a higher Arizona court. n4 The court stated without explanation that it found Edwards' statement to be voluntary. Edwards was tried twice and convicted. n5 Evidence concerning his confession was admitted at both trials.

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n3 The trial judge emphasized that the detectives had met with Edwards on January 20, without being requested by Edwards to do so, and concluded that they had ignored his request for counsel made the previous evening. App. 91-93.

n4 The case was *State v. Travis*, 26 Ariz. App. 24, 545 P. 2d 986 (1976).

n5 The jury in the first trial was unable to reach a verdict.

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On appeal, the Arizona Supreme Court held that Edwards had invoked both his right to remain silent and his right to counsel during the interrogation conducted on the night of January 19. n6 122 Ariz. 206, 594 P. 2d 72. The court then went on to determine, however, that Edwards had waived both rights during the January 20 meeting when he voluntarily gave his statement to the detectives after again being informed that he need not answer questions and that he need not answer without the advice of counsel: "The trial court's finding that the waiver and confession were voluntarily and knowingly made is upheld." *Id.*, at 212, 594 P. 2d, at 78.

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n6 This issue was disputed by the State. The court, while finding that the question was arguable, held that Edwards' request for an attorney to assist him in negotiating a deal was "sufficiently clear" within the context of the interrogation that it "must be interpreted as a request for counsel and as a request to remain silent until counsel was present." 122 Ariz., at 211, 594 P. 2d, at 77.

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Because the use of Edward's confession against him at his trial violated his rights under the Fifth and Fourteenth Amendments as construed in *Miranda v. Arizona*, supra, we reverse the judgment of the Arizona Supreme Court. n7

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n7 We thus need not decide Edwards' claim that the State deprived him of his right to counsel under the Sixth and Fourteenth Amendments as construed and applied in *Massiah v. United States*, 377 U.S. 201 (1964). In that case, the Court held that the Sixth Amendment right to counsel arises whenever an accused has been indicted or adversary criminal proceedings have otherwise begun and that this right is violated when admissions are subsequently elicited from the accused in the absence of counsel. While initially conceding in its opening brief on the merits that Edwards' right to counsel under *Massiah* attached immediately after he was formally charged, the State in its supplemental brief and during oral argument took the position that under *Kirby v. Illinois*, 406 U.S. 682, 689-690 (1972), and *Moore v. Illinois*, 434 U.S. 220, 226-227 (1977), the filing of the formal complaint did not constitute the "adversary judicial criminal proceedings" necessary to trigger the Sixth Amendment right to counsel. Under the State Constitution, "[no] person shall be prosecuted criminally in any court of record for felony or misdemeanor, otherwise than by information or indictment; no person shall be prosecuted for felony by information without having had a preliminary examination before a magistrate or having waived such preliminary examination." Ariz. Const., Art. 2, § 30. The State contends that the Sixth Amendment right to counsel does not attach until either the constitutionally required indictment or information is filed or at least no earlier than the preliminary hearing to which a defendant is entitled if the matter proceeds by complaint. Under Arizona law, a felony prosecution may be commenced by way of a complaint, Ariz. Rule of Criminal Procedure 2.2. The complaint is a "written statement of the essential facts constituting a public offense, made upon oath before a magistrate," Rule 2.3, upon which the magistrate either issues an arrest warrant or dismisses the complaint. Rule 2.4. Once arrested, the accused must be taken before the magistrate for a hearing. Rule 4.1. At that hearing, the magistrate ascertains the accused's true name and address, and informs him of the charges against him, his right to counsel, his right to remain silent, and his right to a preliminary hearing if charged via complaint. Rule 4.2. Unless waived, the preliminary hearing must take place no later than 10 days after the defendant is placed in custody. Rule 5.1. The purpose of the hearing is to determine whether probable cause exists to hold the defendant for trial. Rule 5.3. Against this background and in support of its position, the State relies on *Moore v. Illinois*, supra, where after recognizing that under Illinois law "[the] prosecution in this case was commenced . . . when the victim's complaint was filed in court," we noted that "adversary judicial criminal proceedings" were initiated when the ensuing preliminary hearing occurred. *Moore, supra*, at 228. Cf. *United States v. Duvall*, 537 F.2d 15, 20-22 (CA2) (the filing of a complaint and the issuance of an arrest warrant does not trigger the right to counsel under the Sixth Amendment, that right accruing only upon further proceedings), cert. denied, 426 U.S. 950 (1976). The Arizona Supreme Court did not address the Sixth

Amendment question, nor do we.

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II.

In *Miranda v. Arizona*, the Court determined that the Fifth and Fourteenth Amendments' prohibition against compelled self-incrimination required that custodial interrogation be preceded by advice to the putative defendant that he has the right to remain silent and also the right to the presence of an attorney. 384 U.S., at 479. The Court also indicated the procedures to be followed subsequent to the warnings. If the accused indicates that he wishes to remain silent, "the interrogation must cease." If he requests counsel, "the interrogation must cease until an attorney is present." *Id.*, at 474.

Miranda thus declared that an accused has a Fifth and Fourteenth Amendment right to have counsel present during custodial interrogation. Here, the critical facts as found by the Arizona Supreme Court are that Edwards asserted his right to counsel and his right to remain silent on January 19, but that the police, without furnishing him counsel, returned the next morning to confront him and, as a result of the meeting, secured incriminating oral admissions. Contrary to the holdings of the state courts, Edwards insists that having exercised his right on the 19th to have counsel present during interrogation, he did not validly waive that right on the 20th. For the following reasons, we agree.

First, the Arizona Supreme Court applied an erroneous standard for determining waiver where the accused has specifically invoked his right to counsel. It is reasonably clear under our cases that waivers of counsel must not only be voluntary, but must also constitute a knowing and intelligent relinquishment or abandonment of a known right or privilege, a matter which depends in each case "upon the particular facts and circumstances surrounding that case, including the background, experience, and conduct of the accused." *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938). See *Faretta v. California*, 422 U.S. 806, 835 (1975); *North Carolina v. Butler*, 441 U.S. 369, 374-375 (1979); *Brewer v. Williams*, 430 U.S. 387, 404 (1977); *Fare v. Michael C.*, 442 U.S. 707, 724-725 (1979).

Considering the proceedings in the state courts in the light of this standard, we note that in denying petitioner's motion to suppress, the trial court found the admission to have been "voluntary," App. 3, 95, without separately focusing on whether Edwards had knowingly and intelligently relinquished his right to counsel. The Arizona Supreme Court, in a section of its opinion entitled "Voluntariness of Waiver," stated that in Arizona, confessions are prima facie involuntary and that the State had the burden of showing by a preponderance of the evidence that the confession was freely and voluntarily made. The court stated that the issue of voluntariness should be determined based on the totality of the circumstances as it related to whether an accused's action was "knowing and intelligent and whether his will [was] overborne." 122 Ariz., at 212, 594 P. 2d, at 78. Once the trial court determines that "the confession is voluntary, the finding will not be upset on appeal absent clear and manifest error." *Ibid.* The court then upheld the trial court's finding that the "waiver and confession were voluntarily and knowingly made." Ibid.

In referring to the necessity to find Edwards' confession knowing and intelligent, the State Supreme Court cited *Schneckloth v. Bustamonte*, 412 U.S. 218, 226 (1973). Yet, it is clear that *Schneckloth* does not control the issue presented in this case. The issue in *Schneckloth* was under what conditions an individual could be found to have consented to a search and thereby waived his Fourth Amendment rights. The Court declined to impose the "intentional relinquishment or abandonment of a known right or privilege" standard and required only that the consent be voluntary under the totality of the circumstances. The Court specifically noted that the right to counsel was a prime example of those rights requiring the special protection of the knowing and intelligent waiver standard, id., at 241, but held that "considerations that informed the Court's holding in Miranda are simply inapplicable in the present case." *Id.*, at 246. *Schneckloth* itself thus emphasized that the voluntariness of a consent or an admission on the one hand, and a knowing and intelligent waiver on the other, are discrete inquiries. Here, however sound the conclusion of the state courts as to the voluntariness of Edwards' admission may be, neither the trial court nor the Arizona Supreme Court undertook to focus on whether Edwards understood his right to counsel and intelligently and knowingly relinquished it. It is thus apparent that the decision below misunderstood the requirement for finding a valid waiver of the right to counsel, once invoked.

Second, although we have held that after initially being advised of his Miranda rights, the accused may himself validly waive his rights and respond to interrogation, see *North Carolina v. Butler, supra*, at 372-376, the Court has strongly indicated that additional safeguards are necessary when the accused asks for counsel; and we now hold that when an accused has invoked his right to have counsel present during custodial interrogation, a valid waiver of that right cannot be established by showing only that he responded to further police-initiated custodial interrogation even if he has been advised of his rights. n8 We further hold that an accused, such as Edwards, having expressed his desire to deal with the police only through counsel, is not subject to further interrogation by the authorities until counsel has been made available to him, unless the accused himself initiates further communication, exchanges, or conversations with the police.

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n8 In *Brewer v. Williams*, 430 U.S. 387 (1977), where, as in *Massiah v. United States*, 377 U.S. 201 (1964), the Sixth Amendment right to counsel had accrued, the Court held that a valid waiver of counsel rights should not be inferred from the mere response by the accused to overt or more subtle forms of interrogation or other efforts to elicit incriminating information. In Massiah and Brewer, counsel had been engaged or appointed and the admissions in question were elicited in his absence. But in *McLeod v. Ohio*, 381 U.S. 356 (1965), we summarily reversed a decision that the police could elicit information after indictment even though counsel had not yet been appointed.

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Miranda itself indicated that the assertion of the right to counsel was a significant event and that

once exercised by the accused, "the interrogation must cease until an attorney is present." 384 U.S., at 474. Our later cases have not abandoned that view. In *Michigan v. Mosley*, 423 U.S. 96 (1975), the Court noted that Miranda had distinguished between the procedural safeguards triggered by a request to remain silent and a request for an attorney and had required that interrogation cease until an attorney was present only if the individual stated that he wanted counsel. 423 U.S., at 104, n. 10; see also *id*., at 109-111 (WHITE, J., concurring). In *Fare v. Michael C., supra*, at 719, the Court referred to Miranda's "rigid rule that an accused's request for an attorney is per se an invocation of his Fifth Amendment rights, requiring that all interrogation cease." And just last Term, in a case where a suspect in custody had invoked his Miranda right to counsel, the Court again referred to the "undisputed right" under Miranda to remain silent and to be free of interrogation "until he had consulted with a lawyer." *Rhode Island v. Innis*, 446 U.S. 291, 298 (1980). We reconfirm these views and, to lend them substance, emphasize that it is inconsistent with Miranda and its progeny for the authorities, at their instance, to reinterrogate an accused in custody if he has clearly asserted his right to counsel.

In concluding that the fruits of the interrogation initiated by the police on January 20 could not be used against Edwards, we do not hold or imply that Edwards was powerless to countermand his election or that the authorities could in no event use any incriminating statements made by Edwards prior to his having access to counsel. Had Edwards initiated the meeting on January 20, nothing in the Fifth and Fourteenth Amendments would prohibit the police from merely listening to his voluntary, volunteered statements and using them against him at the trial. The Fifth Amendment right identified in Miranda is the right to have counsel present at any custodial interrogation. Absent such interrogation, there would have been no infringement of the right that Edwards invoked and there would be no occasion to determine whether there had been a valid waiver. *Rhode Island v. Innis, supra*, makes this sufficiently clear. 446 U.S., at 298, n. 2. n9

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n9 If, as frequently would occur in the course of a meeting initiated by the accused, the conversation is not wholly one-sided, it is likely that the officers will say or do something that clearly would be "interrogation." In that event, the question would be whether a valid waiver of the right to counsel and the right to silence had occurred, that is, whether the purported waiver was knowing and intelligent and found to be so under the totality of the circumstances, including the necessary fact that the accused, not the police, reopened the dialogue with the authorities.

Various decisions of the Courts of Appeals are to the effect that a valid waiver of an accused's previously invoked Fifth Amendment right to counsel is possible. See, e. g., *White v. Finkbeiner*, 611 F.2d 186, 191 (CA7 1979) ("in certain instances, for various reasons, a person in custody who has previously requested counsel may knowingly and voluntarily decide that he no longer wishes to be represented by counsel"), cert. pending, No. 79-6601; *Kennedy v. Fairman*, 618 F.2d 1242 (CA7 1980); *United States v. Rodriguez-Gastelum*, 569 F.2d 482, 486 (CA9) (en banc) (stating that it makes no sense to hold that once an accused has requested counsel, "[he] may never, until he has actually talked with counsel, change his mind and decide to speak with the police without an attorney being present"), cert. denied, 436 U.S. 919 (1978). See generally

Cobbs v. Robinson, 528 F.2d 1331, 1342 (CA2 1975); *United States v. Grant*, 549 F.2d 942 (CA4 1977), vacated on other grounds sub nom. *Whitehead v. United States*, 435 U.S. 912 (1978); *United States v. Hart*, 619 F.2d 325 (CA4 1980); *United States v. Hauck*, 586 F.2d 1296 (CA8 1978). The rule in the Fifth Circuit is that a knowing and intelligent waiver cannot be found once the Fifth Amendment right to counsel has been clearly invoked unless the accused initiates the renewed contact. See, e. g., *United States v. Massey*, 550 F.2d 300 (1977); United States v. Priest, 409 F.2d 491 (1969). Waiver is possible, however, when the request for counsel is equivocal. *Nash v. Estelle*, 597 F.2d 513 (CA5 1979) (en banc). See *Thompson v. Wainwright*, 601 F.2d 768 (CA5 1979).

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But this is not what the facts of this case show. Here, the officers conducting the interrogation on the evening of January 19 ceased interrogation when Edwards requested counsel as he had been advised he had the right to do. The Arizona Supreme Court was of the opinion that this was a sufficient invocation of his Miranda rights, and we are in accord. It is also clear that without making counsel available to Edwards, the police returned to him the next day. This was not at his suggestion or request. Indeed, Edwards informed the detention officer that he did not want to talk to anyone. At the meeting, the detectives told Edwards that they wanted to talk to him and again advised him of his Miranda rights. Edwards stated that he would talk, but what prompted this action does not appear. He listened at his own request to part of the taped statement made by one of his alleged accomplices and then made an incriminating statement, which was used against him at his trial. We think it is clear that Edwards was subjected to custodial interrogation on January 20 within the meaning of *Rhode Island v. Innis, supra*, and that this occurred at the instance of the authorities. His statement, made without having had access to counsel, did not amount to a valid waiver and hence was inadmissible. n10

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n10 We need not decide whether there would have been a valid waiver of counsel had the events of January 20 been the first and only interrogation to which Edwards had been subjected. Cf. *North Carolina v. Butler*, 441 U.S. 369 (1979).

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Accordingly, the holding of the Arizona Supreme Court that Edwards had waived his right to counsel was infirm, and the judgment of that court is reversed.

So ordered.