

## 10-02: Miranda Right to Counsel and Break In Custody

Case: Maryland v. Shatzer, 08-680, U. S. Supreme Court, \_\_\_\_ U.S. \_\_\_\_ (2010)

Date: February 24, 2010

Subject: U.S. Supreme Court decides rules for when officers may re-approach a suspect who has invoked his/her Miranda right of counsel; and clarifies what is a "break in custody" for incarcerated persons who are returned to the general prison population after an interrogation attempt

FACTS: In 2003, a police detective tried to interview Shatzer about allegations that he had sexually abused his son. At the time of the attempted interview, Shatzer was incarcerated in a Maryland prison for an unrelated crime. After advising Shatzer of his Miranda rights, the suspect invoked his right to have counsel present, and the interview was terminated. Shatzer was released back into the general prison population, and the case was closed. Approximately 2 1/2 years later, in 2006, another detective re-opened the investigation. He re-approached Shatzer in a different prison to which he had been transferred, and again advised him of his Miranda warnings. That time Shatzer waived his rights, and provided inculpatory statements.

At trial, Shatzer, tried to suppress his statements, citing *Edwards v. Arizona*, *Arizona v. Roberson*, and *Minnick v. Mississippi*. He argued that since he had been in prison between the first and second interview attempts, there was no break in custody which would have allowed the police to re-approach him for a Miranda waiver without counsel present. The trial court refused to suppress the statements, holding that the 2 1/2 year passage of time constituted a "break in custody" for Miranda purposes, even though Shatzer was incarcerated during the entire period. Shatzer was convicted of the sexual offense. Maryland's highest state appeal court reversed the trial court, holding that the mere passage of time does not invalidate the Edwards protections, and that Shatzer's release back into the general prison population did not constitute a "break in custody."

RULING: The United States Supreme Court overruled the Maryland Court of Appeals, holding that because Shatzer experienced a break in custody for at least 14 days between the first and second interview attempts, *Edwards* and its progeny do not mandate suppression of the statements. Additionally, the court held that under the facts of this case, returning Shatzer to the general prison population constituted a "break in custody," thereby starting the 14 day period.

DISCUSSION: *Edwards* and the cases following it created a presumption that once a suspect invokes his 5th Amendment right to counsel post-Miranda, he cannot be re-approached by the police seeking a waiver to discuss any crime until there has been a significant break in custody (*Edwards*, *Minnick*, *Traylor v. State*, 596 So.2d 957 (Fla. 1992). (Note that the ability of police to re-approach after a suspect simply invokes his 5th Amendment right to remain silent, after the passage of a reasonable period of time, is a different circumstance.) Until now, the court has never provided a bright-line rule addressing how long a "break in custody" has to be in order to re-approach one who has invoked right of counsel, nor has it addressed the situation which occurs when the suspect is incarcerated for an extended period of time.

In *Shatzer*, the court explained that the purpose of the *Edwards* rule was to prevent police from "wearing down" an in-custody suspect with repeated, coercive attempts to force the suspect to speak with them without a lawyer present. As explained by the court, "(i)t is easy to believe that a suspect's later waiver was coerced or badgered when he has been held in uninterrupted Miranda custody since his first refusal to waive. He remains cut off from his normal life and isolated in a 'police-dominated atmosphere'." (continued next page...)

The court went on to say, however, that a suspect who has been released from custody for 14 days has had ample time to "get reacclimated to his normal life, consult with friends and counsel, and shake off any residual effects of prior custody." (The court acknowledges that 14 days is an arbitrary period, but it is the period that it has chosen.) Additionally, the court held that, as a sentenced prisoner, Shatzer's release from the interrogation room back into the general prison population (on an

unrelated offense) constituted a "break in custody" which initiated the 14 day clock, stating that "(w)hen previously incarcerated suspects are released back into the general prison population, they return to their accustomed surroundings and daily routine - they regain the degree of control that they had over their lives before the attempted interrogation."

ADDITIONAL NOTES: The court did not specifically apply the 14 day rule to pre-trial detainees who are incarcerated while pending trial. In this case, Shatzer was a long-term inmate, and prison life was his "world" to which he was returned after the interrogation attempt. Only time and subsequent case law will determine whether this bright-line 14 day rule is applied to pre-trial detainees as well.

Note also that this case applies to the invocation of a suspect's 5th Amendment right to counsel; it does NOT invalidate a suspect's 6th Amendment right to counsel which may have attached after being charged with a specific crime. When a 6th Amendment attachment has occurred, contact with the defendant should be made through counsel.

Finally, remember that the Edwards/Robison/Minnick protections apply when the police are approaching the suspect for a statement; they do not apply when the suspect initiates the contact, and makes a request on his or her own to speak with law enforcement.

John E. Kemner  
Regional Legal Advisor  
Florida Department of Law Enforcement  
Jacksonville Regional Operations Center

Officers should consult with their agency legal advisors to confirm the interpretation provided in this Update and to determine to what extent the case discussed will affect their activities.