

## 12-08: Interrogation After Suspect Invokes Right To Counsel

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**FACTS:** Gilbert was a suspect in an attempted first degree murder. A detective interviewed Gilbert and immediately read *Miranda*. After hearing *Miranda*, Gilbert said, "I'd rather have somebody to represent me." The detective then made a series of statements encouraging Gilbert to talk. For example, the detective said he was "just trying to protect" Gilbert. The detective also said he was just doing his job in trying to hear Gilbert's side of the story. These statements prompted Gilbert to say, "I need to give a side... cause I don't have no part in this." The detective then asked Gilbert what he wanted to do. The detective added that he would respect Gilbert's decision either way, and that Gilbert wouldn't be forced to speak. Eventually, Gilbert agreed to give his side of the story. While giving his story, Gilbert admitted to firing a gun. After he was charged, Gilbert moved to suppress his statements on the grounds that the detective interrogated him after he invoked his right to counsel. The trial court denied the motion to suppress, finding that even though Gilbert invoked his right to counsel, the detective had stopped the interview and Gilbert had reinitiated contact with the detective. The appellate court, however, overturned the trial judge and suppressed Gilbert's statements.

**RULING:** If a suspect invokes his **right to counsel** after hearing *Miranda*, the detective cannot make any further efforts to persuade the suspect to talk about the offense.

**DISCUSSION:** If a suspect requests the help of a lawyer, the police must immediately stop any efforts toward interrogation; however, the police can talk to a suspect who voluntarily reinitiates contact. In this case, Gilbert invoked his right to counsel by saying that he'd "rather have somebody to represent me." The trial judge found that the detective ended the interrogation and that Gilbert had reinitiated the interview. However, the appellate court found that the detective never ended the interrogation in the first place; therefore, Gilbert could not have "reinitiated" contact. The appellate court explained that "interrogation" is not limited to direct questioning of a suspect; "interrogation" includes any communication that is reasonably likely to elicit an incriminating response. In this case, the detectives "interrogated" Gilbert by telling him they were trying to protect him, and by encouraging him to share his side of the story. This interrogation occurred immediately after Gilbert invoked his right to counsel; therefore, the interrogation never truly ended, and Gilbert never "reinitiated" contact with anyone. Because the detective interrogated Gilbert after he requested representation, Gilbert's statements were suppressed.

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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.