A District Court holds that law enforcement officers did not violate the Defendant's Fifth or Sixth Amendment rights when they spoke to him weeks after he had invoked his right to counsel

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In United States v. Mahkimetas, 2018 WL 1640045 (E.D. Wis. Apr. 5, 2018), the Defendant Ricki Mahkimetas was charged with attempted aggravated sexual abuse involving children under the age of twelve within the boundaries of the Menominee Indian Reservation in violation of 18 U.S.C. § 2241 and § 1153. Thereafter, Mahkimetas filed a motion asking the Court to suppress certain statements that he made to law enforcement officers. Specifically, Mahkimetas argued that the Court should suppress the statements that he made to law enforcement officers while he was being transported from the tribal jail to federal court for his initial appearance. Mahkimetas claims that the statement was taken when law enforcement officers initiated further interrogation of him after he had previously invoked his right to counsel in violation of the bar to further questioning established by the Supreme Court in Arizona v. Edwards, 451 U.S. 477 (1981). Alternatively, Mahkimetas argued that, based on the fact that he had previously been charged in tribal court with essentially the same charges, law enforcement officers violated his Sixth Amendment right to counsel.

The relevant facts for purposes of Mahkimetas' motion to suppress were largely undisputed. Mahkimetas was first interviewed on September 5, 2017, by FBI Special Agent Sarah Deamron and by Tribal Detective Todd Otradovec about the events underlying the charges. Mahkimetas was in custody at the Menominee Tribal Police Department at the time and was advised of his Miranda rights. Mahkimetas initially waived his rights and agreed to answer questions. At some point, however, Mahkimetas changed his mind and clearly and unequivocally invoked his right to counsel. Accordingly, the interview was immediately terminated, and Mahkimetas was returned to the Tribal Jail that was in the same building.

Mahkimetas was released from tribal custody on October 7, 2017. On October 25, 2017, Mahkimetas was arrested on tribal charges for the same conduct and was placed in the Menominee Tribal Jail where he remained in custody on a cash bond. On December 19, 2017, a grand jury sitting in Milwaukee indicted him on federal charges arising out of the same conduct. Two days later, Mahkimetas was transported by FBI Special Agent Deamron and Detective Otradovec from the Menominee Tribal Jail to the United States District Court in Green Bay for his initial appearance on the federal charges.

The District Court in Green Bay is about an hour drive from the Menominee Tribal Jail. After he was retrieved from the Tribal Jail, Mahkimetas was handcuffed and placed in the back seat of FBI Special Agent Deamron's F150 pick-up truck with Detective Otradovec seated next to him. FBI Special Agent Deamron drove. As they left the jail, FBI Special Agent Deamron explained to Mahkimetas where they were going and what would occur. She told Mahkimetas that he had been indicted on two (eventually, three) counts of sexual abuse of a minor and that he would be transported to Green Bay for his initial appearance. Further into the drive, FBI Special Agent Deamron explained to Mahkimetas that he would have a right to a trial and that, if he went to trial, "the three little girls would be brought in and would testify to the acts that happened to them that he was charged with." FBI Special Agent Deamron also told Mahkimetas that it would be beneficial to him to admit

what he had done and that this was his opportunity to do so. She explained that she didn't want the girls to have to testify.

Detective Otradovec, likewise, spoke with Mahkimetas about the importance of helping himself. There was also some discussion of the cultural traditions they shared, and Mahkimetas said that he had been reading the Bible. Detective Otradovec suggested that religion and the native cultural traditions can help in dealing with the difficulties that he was facing. Mahkimetas seemed receptive to what Detective Otradovec was saying and seemed less subdued. A little more than half-way into the drive, Mahkimetas told Detective Otradovec that he wanted to make a statement, but first, he would like to smoke a cigarette.

Detective Otradovec conveyed Mahkimetas' request to FBI Special Agent Deamron, and she pulled off the highway at a gas station to buy some cigarettes. When she returned to her truck, FBI Special Agent Deamron gave a soft drink to Mahkimetas and turned on her recording device. As FBI Special Agent Deamron pulled back onto the highway, Detective Otradovec read Mahkimetas his Miranda rights which Mahkimetas then waived. Mahkimetas proceeded to make a recorded statement about the offenses with which he had been charged. When they arrived at the federal courthouse in Green Bay, Mahkimetas was allowed to smoke a cigarette before they entered. This audio recorded statement that was taken on the way to the District Court constituted the statement that Mahkimetas asked the District Court to suppress on the ground that it was obtained in violation of the rights established in Miranda v. Arizona, 384 U.S. 436 (1966), Arizona v. Edwards, and his Sixth Amendment right to counsel.

After consideration of these facts, the District Court denied Mahkimetas' motion to suppress. Initially, the District Court noted that Mahkimetas did not argue or claim that his statement was the result of any coercion or physical force employed upon him by FBI Special Agent Deamron or Detective Otradovec. Instead, Mahkimetas' arguments for suppression were based upon the technical application of the set of prophylactic rules created by the United States Supreme Court to insure coercive measures by law enforcement are not used.

As for Mahkimetas' argument that his statement to FBI Special Agent Deamron and Detective Otradovec was obtained in violation of his Fifth Amendment rights, the District Court explained that the primary requirement adopted by the Supreme Court is that, before an interrogation begins, the officer must give the suspect the familiar Miranda warnings and obtain a knowing and voluntary waiver of the suspect's right to remain silent and his right to have an attorney assist him, even if he cannot afford to hire one on his own. Subsequently in Edwards, the Supreme Court added to the protections afforded to a suspect in Miranda by requiring additional safeguards after the suspect invokes his right to counsel: "[W]hen 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 . . . . [He] 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." Edwards, 451 U.S. at 484-85.

In Maryland v. Shatzer, 559 U.S. 98 (2010), however, the Supreme Court observed that the bar that it had created in Edwards was intended to protect the suspect who had been arrested for a particular crime and then held in uninterrupted pretrial custody while that crime is being actively investigated. "After the initial interrogation, and up to and including the second one, he remains 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." Id. at 106. Thus, the Supreme Court declined to extend the Edwards bar to further questioning beyond the circumstances justified by its "prophylactic purpose." Id. The Supreme Court noted that when, unlike the petitioner in Edwards, "a suspect has been released from his pretrial custody and has returned to his normal

life for some time before the later attempted interrogation, there is little reason to think that his change of heart regarding interrogation without counsel has been coerced." Id. 107.

In this case, the District Court concluded that the passage of time between Mahkimetas' initial arrest, his invocation of his right to counsel, and his transportation to the District Court where he made his confession demonstrated that his statement was voluntary, knowingly made, and should not be suppressed. Mahkimetas was out of custody for more than fourteen days after he invoked his right to counsel at a custodial interview, and therefore, the District Court held that Edwards did not apply. Because Mahkimetas' subsequent waiver of his Miranda rights was knowing and voluntary and because his resulting statement was likewise voluntary and uncoerced, the District Court denied his motion to suppress on grounds that law enforcement officers violated his Fifth Amendment rights in obtaining his statement.

As for Mahkimetas' argument that his statement to FBI Special Agent Deamron and Detective Otradovec was obtained in violation of his Sixth Amendment right to counsel, the District Court declined to adopt Mahkimetas' argument for three reasons. First, the Supreme Court has held that "the Sixth Amendment does not apply to tribal court proceedings." United States v. Bryant, 136 S.C.t 1954, 1958 (2016). Second, the bar to police initiated questioning only arises when two conditions occur: (1) the defendant's right to counsel must have attached and (2) the defendant must have invoked that right. Here, Mahkimetas did not invoke his Sixth Amendment right to counsel because the Menominee Tribe does not provide counsel to indigent defendants at tribal expense, and Mahkimetas made no effort to retain counsel himself.

Third, the Supreme Court has held that that neither a defendant's request for counsel at an arraignment or similar proceeding nor the appointment of counsel by the court, gives rise to a presumption that any subsequent waiver by the defendant to police-initiated interrogation is invalid. Montejo v. Louisiana, 556 U.S. 778, 196-97 (2009). Thus, even if Mahkimetas' Sixth Amendment right to counsel had attached, the District Court held that the initiation of questioning by law enforcement thereafter was not a violation of his Sixth Amendment rights, and therefore, the District Court denied Mahkimetas' motion to suppress.