



When An Arrestee Invokes His Constitutional Rights, Stop Questioning Him



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In *United States v. Shoulders*, 2018 WL 4204452 (D.S.D. Sept. 4, 2018), Defendant Jamie Shoulders asked the United States District Court for the District of South Dakota to suppress certain statements that he made to law enforcement officials. Shoulders argued that law enforcement officers continued questioning him after he invoked his Fifth Amendment right to remain silent and his Sixth Amendment right to counsel. The District Court agreed.

On the issue of Shoulders' Fifth Amendment right to remain silent, the District Court found that, on June 1, 2017, two special agents with the Federal Bureau of Investigation ("FBI") interrogated Shoulders at the Pennington County Investigation building. The special agents ("SAs") were Matt Weber and Tyler Vose. SA Weber started by asking Shoulders whether he had a cellphone or Facebook account. Less than one minute into the interrogation and before anyone brought up anything related to his charges, Shoulders stated, "I don't know what this is about, so I am going to remain silent." Immediately after that statement, SA Weber remarked, "Oh, okay, sure." Shoulders stated, "I have the right to remain silent so[—]" before SA Weber interrupted and proceeded talking to Shoulders saying, "we will make it real clear[]" and "you don't have to say anything. I will do all of the talking. So you are being charged with first degree murder." Shoulders responded, "On what?", and the interrogation continued. Neither agent read Shoulders his Miranda rights until just after two minutes into the interrogation.

Based upon these facts, the District Court determined that the FBI agents had violated Shoulders' Fifth Amendment rights. The District Court explained that, in *Miranda*, the United States Supreme Court adopted a set of prophylactic measures to protect a suspect's Fifth Amendment right from the inherently compelling pressures of custodial interrogation. The rule in *Miranda* requires that any time a person is taken into custody for questioning, a law enforcement officer must, prior to questioning, advise the individual of his right to be free from compulsory self-incrimination and his right to the assistance of counsel. During an interrogation, if the individual indicates in any manner at any time prior to or during questioning that he wishes to remain silent, the interrogation must cease. Generally, any statements elicited from a suspect in violation of these rules are inadmissible in the government's case-in-chief.

In this case, the District Court determined that Shoulders was subjected to custodial interrogation and sufficiently invoked his right to remain silent when he stated, "I don't know what this is about, so I am going to remain silent." SA Vose testified that he understood this statement to be a "pretty straightforward" and to be an unambiguous invocation of Shoulders' right to silence. SA Weber also testified at the suppression hearing that he believed that Shoulders had invoked his right to remain silent.

When a suspect invokes his right to remain silent, police must "scrupulously honor" this invocation by, at the very least, ceasing the interrogation immediately and waiting a substantial period before reinitiating questioning. In determining whether a defendant's right to silence has been scrupulously honored, a court considers three factors: (1) whether the initial interrogation ceased immediately upon the defendant's request;

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(2) whether a significant period had passed and fresh Miranda warnings were given before resuming questioning; and (3) whether the later interrogation is restricted to a crime that was not the subject of the first interrogation.

The District Court's rejected the Government's argument that Shoulders had waived his right to remain silent when he initiated contact with the agents after initially invoking his right. The District court found that the issue was whether the interrogation encounter with law enforcement stopped once Shoulders invoked his right to silence, and the District Court held that it did not. Rather, after Shoulders invoked his right to remain silent, SA Weber immediately advised Shoulders of the charges against him and, then, continued conversing with Shoulders. Because the agents did not sufficiently respect Shoulders' right to remain silent after he invoked that right and because Shoulders had not waived his right to remain silent, the District Court held that the subsequent portion of the interview was obtained in violation of Miranda, and the District Court suppressed those statements from the Government's case-in-chief.

On the issue of Shoulders' Sixth Amendment right to counsel, the District Court found that, approximately two minutes into the interrogation, SA Weber read Shoulders his Miranda rights and asked him to sign an FBI Advice of Rights Form. SA Weber said, "If you don't mind, I'd just like you to, uh, sign the bottom right here just saying that I read you your rights." Shoulders did not sign at that time and responded, "I need my attorney man, I ain't gonna do nothing until—", before SA Weber interrupted, "That's fine. You can sign that and you can lawyer up, that is fine. You don't have to sign it, that is fine. All right."

The District Court opined that, once an accused who is in custody expresses his desire to deal with the police only through counsel, the accused cannot be 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. Like Miranda, the Supreme Court's holding in Edwards relates to the Fifth Amendment, but the Supreme Court has frequently emphasized that the Edwards rule is not a constitutional mandate but is a judicially prescribed prophylaxis. The rationale of Edwards is that, once a suspect indicates that he is not capable of undergoing custodial questioning without advice of counsel, any subsequent waiver that has come at the authorities' behest and not at the suspect's own instigation is itself the product of the inherently compelling pressures and not the purely voluntary choice of the suspect. The Edwards presumption of involuntariness ensures that police will not take advantage of the mounting coercive pressures of prolonged police custody by repeatedly attempting to question a suspect who previously requested counsel until the suspect is badgered into submission. In short, Edwards is a second layer of prophylaxis for the Miranda right to counsel.

An interrogation occurs when a law enforcement officer engages in either express questioning or its functional equivalent, which includes any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the subject. The applicability of the rigid prophylactic rule of Edwards requires courts to determine whether the accused actually invoked his right to counsel. Only a clear and unequivocal request for the assistance of counsel may serve to invoke a defendant's right. A suspect must articulate his desire to have counsel present sufficiently clearly that a reasonable police officer in the circumstances would understand the statement to be a request for an attorney.

In this case, the District Court determined that Shoulders' statement, "I need my attorney, man, I ain't gonna do nothing until—" sufficiently invoked his right to counsel. The Government did not object to this conclusion. Instead, the Government argued that Shoulders waived his right to counsel by initiating contact with the FBI agents after he had invoked his right to counsel, thereby allowing the FBI agents to interrogate him.

The District Court noted that a defendant “initiates” an interrogation if he or she evinces a willingness and a desire for a generalized discussion about the investigation. Once a defendant invokes his or her right to counsel, the defendant’s initiation of police interrogation is necessary but not sufficient to establish a waiver of that right. The ultimate question is whether the circumstances as a whole (including the initiation) indicate that the defendant voluntarily, knowingly, and intelligently waived his or her right to counsel.

Here, the District Court found that the record did not establish that Shoulders initiated the dialogue with the agents after invoking the right to counsel. After he requested an attorney, Shoulders reiterated that he did not know why the agents were questioning him (“I don’t know what you guys are talking about.”) in response to a question from SA Weber (“You are at a crossroads, ok?”). SA Weber then asked, “Why shoot Chris Janis?”

Although the District Court conceded that Shoulders’ questions on why the agents were interrogating him cut in favor of finding that he initiated contact, the District Court ultimately concluded that that factor was outweighed by other circumstances. Specifically, there was no break between Shoulders asking for an attorney and the agents continuing their dialogue with him and encouraging him to speak without a lawyer. SA Weber’s immediate question, “You are at a crossroads, ok?”, constituted the interrogation because it constituted “express questioning” and was “reasonably likely to elicit an incriminating response” by encouraging defendant to comment on his charges.

Likewise, SA Weber’s question, “Why shoot Chris Janis?”, was obviously interrogation according to the District Court. SA Weber testified that his “intention was to make a statement, telling him what the hole in our investigation was. It came out as a rhetorical question. It was not my intention to elicit a response from him. I was sending him home to think about cooperating in the future, generally.”

But, considering the agents’ reasons for sitting down with Shoulders, the subject matter of the question and SA Weber’s prefatory comments, the District Court held that it defied commonsense to say the question, “Why shoot Chris Janis?”, was not “express questioning” that was “reasonably likely to elicit an incriminating response.

Therefore, based on the circumstances as a whole, the District Court found that Shoulders did not initiate interrogation with the FBI agents and that the agents violated Miranda and Edwards after Shoulders invoked his right to counsel. Accordingly, the District Court suppressed from the Government’s case-in-chief Shoulders’ statements following his invocation of his right to counsel.