



**United States Supreme Court  
Maryland v. Shatzer**

**Miranda Based Custody  
Following an Invocation of Rights  
- Expires After 14 Days -**

**March 2010**



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©2010 **Brian S. Batterton, Attorney, Legal & Liability Risk Management Institute** - Under *Miranda v. Arizona*<sup>i</sup>, a person subject to a custodial interrogation has several options. The person can waive their rights and talk to the police, they can invoke their right to silence or they can invoke their right to counsel. The most stringent right that a person can assert is their right to counsel. The invocation of the right to counsel has been addressed by the United States Supreme Court in the *Edwards/Roberson/Minnick* line of cases.

In *Edwards v. Arizona*<sup>ii</sup>, officers arrested Edwards and read him his rights under Miranda. He waived his rights. After a while, Edwards said he wanted an attorney. The police ceased questioning. The next day, officers went to the jail re-read Edwards his rights under Miranda, and began questioning him again. Edwards confessed. The issue before the court was whether officers can reinitiate contact with a person who has previously invoked his right to counsel. The Supreme Court held that police could not reinitiate contact with Edwards because he invoked his right to counsel. The purpose of this rule was to prevent the police from "wearing down" an in custody suspect by repeated interview attempts. Thus, **an in custody suspect who states that they wish to communicate with police through an attorney may not be re-approached by the police for an interview.** If the police reinitiate contact with the suspect, the court will presume any statements made are involuntary. The only way to re-interview this person is with their attorney present or if the suspect initiates contact with the police.

The Supreme Court extended the *Edwards* rule in *Arizona v. Roberson*.<sup>iii</sup> Roberson was arrested at the scene of a burglary. He was given his *Miranda* warnings and he said that he wanted an attorney. Three days later, while still in custody, and without a lawyer, a different officer contacted Roberson at the jail to interview him about a different crime. This officer was unaware of Roberson's prior invocation of his right to counsel. The officer provided Roberson his *Miranda* warnings and he agreed to speak. He then made incriminating statements about the new crime. The issue before the court

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was whether *Edwards* rule would prevent a different officer from approaching an in-custody suspect about a different crime after a suspect had previously invoked his right to counsel. The Court held that **the invocation of the *Fifth Amendment* right to counsel by a suspect that is custody prevents any officer from approaching the defendant about any crime unless the suspect has a lawyer present.**

In *Minnick v. Mississippi*<sup>iv</sup>, Minnick was wanted for murder in Mississippi and he was arrested in California. The day after his arrest, two FBI agents went to the jail to interview him. They advised him of his rights under *Miranda*, which he waived. He initially spoke to the agents but later told them to come back after he had a lawyer. The agents properly stopped their interview. Three days later, after Minnick had consulted with a lawyer, a deputy arrived to interview him. Jail personnel summoned Minnick and told him that he “had to talk to the sheriff. They also told him that he could not refuse. Minnick spoke to the deputy without his lawyer present but refused to sign a *Miranda* waiver of rights form. He made incriminating statements. The issue before the Supreme Court was whether the police could re-initiate contact with a suspect who invoked his right to counsel and had an opportunity to consult with counsel, even though counsel was not present for the new interview. The Supreme Court held that **“when counsel is requested, interrogation must cease, and officials may not reinitiate interrogation without counsel present, whether or not the accused has consulted with his attorney.”**<sup>v</sup>

The United States Supreme Court provided further interpretation of the *Edwards* rule on February 24, 2010 in *Maryland v. Shatzer*.<sup>vi</sup> The facts of *Shatzer*, taken from the case are as follows:

In August 2003, a social worker assigned to the Child Advocacy Center in the Criminal Investigation Division of the Hagerstown Police Department referred to the department allegations that respondent Michael Shatzer, Sr., had sexually abused his 3-year-old son. At that time, Shatzer was incarcerated at the Maryland Correctional Institution-Hagerstown, serving a sentence for an unrelated child-sexual-abuse offense. Detective Shane Blankenship was assigned to the investigation and interviewed Shatzer at the correctional institution on August 7, 2003. Before asking any questions, Blankenship reviewed Shatzer's *Miranda* rights with him, and obtained a written waiver of those rights. When Blankenship explained that he was there to question Shatzer about sexually abusing his son, Shatzer expressed confusion -- he had thought Blankenship was an attorney there to discuss the prior crime for which he was incarcerated. Blankenship clarified the purpose of his visit, and Shatzer declined to speak without an attorney. Accordingly, Blankenship ended the interview, and Shatzer was released back into the general prison population. Shortly thereafter, Blankenship closed the investigation.

Two years and six months later, the same social worker referred more specific allegations to the department about the same incident involving Shatzer. Detective Paul Hoover, from the same division, was assigned to the investigation. He and the social worker interviewed the victim, then eight years old, who described the incident in more

detail. With this new information in hand, on March 2, 2006, they went to the Roxbury Correctional Institute, to which Shatzer had since been transferred, and interviewed Shatzer in a maintenance room outfitted with a desk and three chairs. Hoover explained that he wanted to ask Shatzer about the alleged incident involving Shatzer's son. Shatzer was surprised because he thought that the investigation had been closed, but Hoover explained they had opened a new file. Hoover then read Shatzer his *Miranda* rights and obtained a written waiver on a standard department form.

Hoover interrogated Shatzer about the incident for approximately 30 minutes. Shatzer denied ordering his son to perform fellatio on him, but admitted to masturbating in front of his son from a distance of less than three feet. Before the interview ended, Shatzer agreed to Hoover's request that he submit to a polygraph examination. At no point during the interrogation did Shatzer request to speak with an attorney or refer to his prior refusal to answer questions without one.

Five days later, on March 7, 2006, Hoover and another detective met with Shatzer at the correctional facility to administer the polygraph examination. After reading Shatzer his *Miranda* rights and obtaining a written waiver, the other detective administered the test and concluded that Shatzer had failed. When the detectives then questioned Shatzer, he became upset, started to cry, and incriminated himself by saying, "I didn't force him. I didn't force him." After making this inculpatory statement, Shatzer requested an attorney, and Hoover promptly ended the interrogation.

The State's Attorney for Washington County charged Shatzer with second-degree sexual offense, sexual child abuse, second-degree assault, and contributing to conditions rendering a child in need of assistance.<sup>vii</sup>

Shatzer filed a motion to suppress his 2006 statements arguing that his interview violated the Edwards rule because he had invoked his right to counsel. The trial court denied the motion to suppress because it found that, for *Miranda* purposes, there had been a break in custody. The statements were admitted at trial and Shatzer was convicted. The Maryland Court of Appeals later reversed the trial court holding that the statements were not admissible because the passage of time does not end the protection afforded by Edwards.

Additionally, they held that custody in general population at a prison does not constitute a break in custody. The state then appealed to the United States Supreme Court, who granted certiorari.

### **The two issues before the Supreme Court were as follows:**

1. Whether a break in custody allows the police to initiate contact with an in-custody suspect who has previously invoked his right to counsel and thereby ends the presumption of involuntariness established in *Edwards v. Arizona*?

2. Whether Shatzer's release back into the general prison population constituted a break in custody for the purposes of Miranda?

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**Issue One:** Does a break in custody allows the police to initiate contact with an in-custody suspect who has previously invoked his right to counsel and thereby ends the presumption of involuntariness established in *Edwards v. Arizona*?

In its analysis, the Court noted first that the *Fifth Amendment* provides that "no person...shall be compelled in any criminal case to be a witness against himself."<sup>viii</sup> The Court then noted that, taking into consideration the *Fifth Amendment*, they adopted a series of prophylactic measures in *Miranda v. Arizona*. These measures were intended to protect a person's *Fifth Amendment* rights when he is in custody, and thus exposed to the pressures of a police dominated environment. This police dominated environment, the Court reasoned, is likely to undermine an individual's will to resist and make a statement where he otherwise would not.

Thus, *Miranda* provided a safeguard to suspects who were in custody and being interviewed by the police. However, the Court held that, when a suspect has previously invokes his right to counsel, an additional safeguard was needed, hence the *Edwards* rule. In *Edwards*, the Supreme Court held

[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.<sup>ix</sup>[Internal quotations omitted]

The rationale for the *Edwards* rule is that, after a person has invoked their right to counsel, any subsequent contact by the police may produce "inherently compelling pressures" which will make a waiver of rights be deemed involuntary.

The Court then explained that the *Edwards* rule is not a constitutional mandate but rather a "judicially prescribed prophylaxis."<sup>x</sup> Therefore, since the Court made the rule, the court can amend, or clarify the rule. Additionally, they noted that numerous lower courts have held that a break in custody ends the *Edwards* protection.<sup>xi</sup> After weighing the costs and benefits of the *Edwards* rule, the Court stated that extending the rule to protect Shatzer, as did the Maryland Court of Appeals, is not justified.<sup>xii</sup>

The Court reasoned

The protections offered by *Miranda*, which we have deemed sufficient to ensure that the police respect the suspect's desire to have an attorney present the first time police interrogate him, adequately ensure that result when a suspect who initially requested

counsel is re-interrogated after a break in custody that is of sufficient duration to dissipate its coercive effects.<sup>xiii</sup>

Thus, the Court decided that, if there is a sufficient break in custody, simply re-advising a suspect of his *Miranda* warnings will sufficiently protect that suspect's rights.

The Court then set out to decide what qualified as a sufficient break in custody. The Court remarked that it would be impractical for them to not state a specific time frame for the break in custody because law enforcement officers would face uncertainty and courts would have to decide the issue on a case by case basis.<sup>xiv</sup> The Court then chose 14 days as the time frame for a sufficient break in custody and reasoned

It seems to us that period is 14 days. That provides plenty of time for the suspect to get re-acclimated to his normal life, to consult with friends and counsel, and to shake off any residual coercive effects of his prior custody.

The 14-day limitation meets Shatzer's concern that a break-in-custody rule lends itself to police abuse. He envisions that once a suspect invokes his *Miranda* right to counsel, the police will release the suspect briefly (to end the *Edwards* presumption) and then promptly bring him back into custody for re-interrogation. But once the suspect has been out of custody long enough (14 days) to eliminate its coercive effect, there will be nothing to gain by such gamesmanship -- nothing, that is, except the entirely appropriate gain of being able to interrogate a suspect who has made a valid waiver of his *Miranda* rights.<sup>xv</sup>

Therefore, the Court established a new rule regarding a suspect's invocation of his right to counsel: **If an in-custody suspect, in response to *Miranda* warnings, invokes his right to counsel, law enforcement may re-initiate contact with the suspect if the suspect experiences a break in police custody of at least 14 days. *Miranda* warnings should be re-advised.**

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***Issue Two: Does Shatzer's release back into the general prison population constitute a break in custody for the purposes of *Miranda*?***

The standard for determining "custody" for the purposes of *Miranda* has been whether "there is a formal arrest or restraint on freedom of movement of the degree associated with formal arrest."<sup>xvi</sup> The court noted that all forms of incarceration meet the standard for custody for *Miranda* purposes.<sup>xvii</sup> However, Shatzer's case brings an interesting set of facts. Shatzer was not kept in custody while the police were gathering evidence directly associated with the case that resulted in his custody. To the contrary, after Shatzer's first interview attempt in 2003, he was not contacted again about the child abuse of his son until 2006. The Court stated:

Here, we are addressing the interim period during which a suspect was not interrogated, but was subject to a baseline set of restraints imposed pursuant to a prior conviction. Without minimizing the harsh realities of incarceration, we think lawful imprisonment imposed upon conviction of a crime does not create the coercive pressures identified in *Miranda*.

Interrogated suspects who have previously been convicted of crime live in prison. When they are released back into the general prison population, they return to their accustomed surroundings and daily routine -- they regain the degree of control they had over their lives prior to the interrogation. Sentenced prisoners, in contrast to the *Miranda* paradigm, are not isolated with their accusers. They live among other inmates, guards, and workers, and often can receive visitors and communicate with people on the outside by mail or telephone.

Their detention, moreover, is relatively disconnected from their prior unwillingness to cooperate in an investigation. The former interrogator has no power to increase the duration of incarceration, which was determined at sentencing. And even where the possibility of parole exists, the former interrogator has no apparent power to decrease the time served. This is in stark contrast to the circumstances faced by the defendants in *Edwards*, *Roberson*, and *Minnick*, whose continued detention as suspects rested with those controlling their interrogation, and who confronted the uncertainties of what final charges they would face, whether they would be convicted, and what sentence they would receive.<sup>xviii</sup>

The Court then stated that **this case “illustrates the vast difference between *Miranda* custody and incarceration pursuant to conviction.”<sup>xix</sup> Therefore, incarceration pursuant to conviction may constitute a break in custody for the purposes of *Miranda*.**

In conclusion, the Court held

Because Shatzer experienced a break in *Miranda* custody lasting more than two weeks between the first and second attempts at interrogation, *Edwards* does not mandate suppression of his March 2006 statements. Accordingly, we reverse the judgment of the Court of Appeals of Maryland, and remand the case for further proceedings not inconsistent with this opinion.

## The Bottom Line

- The *Edwards* rule, as well as the holdings of *Roberson* and *Minnick* must still be followed. In each of those cases, the suspect was still in *Miranda* custody.
- Where a suspect who has asserted his right to counsel (*Fifth Amendment*) in response to *Miranda* warnings has experienced a break in custody of at least 14 days, police can re-initiate contact with the suspect and re-warn the suspect of his rights under *Miranda*.

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- Incarceration pursuant to conviction may constitute a break in custody for the purposes of *Miranda*.
- This case does not change a suspect’s right to counsel under the *Sixth Amendment*, which attaches after a suspect has been formally charged. The Sixth Amendment right to counsel is “offense specific” and not “custody specific.” As such, a person retains this right regarding the specific charge(s) regardless of whether he is in custody or not.

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<sup>i</sup> 384 U.S. 436 (1966)

<sup>ii</sup> 451 U.S. 477 (1981)

<sup>iii</sup> 486 U.S. 675 (1988)

<sup>iv</sup> 498 U.S. 146 (1990)

<sup>v</sup> *Id.*

<sup>vi</sup> 559 U.S. \_\_\_\_ (2010), No. 08-680, 2010 U.S. LEXIS 1899

<sup>vii</sup> *Shatzer*, No. 08-680 at 4-7

<sup>viii</sup> *Id.* at 8 (quoting *U.S. Const., Amdt. 5*)

<sup>ix</sup> *Id.* at 10-11 (quoting *Edwards*, 451 U.S., at 484-485

<sup>x</sup> *Id.* at 12

<sup>xi</sup> *Id.* (citing *People v. Storm*, 28 Cal. 4th 1007, 1023-1024, 124 Cal. Rptr. 2d 110, 52 P.3d 52, and n. 6, 28 Cal. 4th 1007, 124 Cal. Rptr. 2d 110, 52 P. 3d 52, 61-62, and n. 6 (2002) (collecting state and federal cases), but we have previously addressed the issue only in dicta, see *McNeil, supra*, at 177, 111 S. Ct. 2204, 115 L. Ed. 2d 158 (*Edwards* applies "assuming there has been no break in custody").

<sup>xii</sup> *Id.* at 18

<sup>xiii</sup> *Id.* at 19-20

<sup>xiv</sup> *Id.* at 20

<sup>xv</sup> *Id.* at 21-22

<sup>xvi</sup> *Id.* at 24 (quoting *New York v. Quarles*, 467 U.S. 649 (1984)

<sup>xvii</sup> *Id.*

<sup>xviii</sup> *Id.* at 25-26

<sup>xix</sup> *Id.* at 28