



Police Law Bulletin



City Attorneys' Office

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On March 29, 2010, Memo No. 2010-38 was distributed to all personnel from Chief Lopez regarding the holding and practical implications of *Maryland v. Shatzer*. The following is a more detailed analysis of this case. General Order 4005 R-1 will be amended accordingly. In the interim, please feel free to direct any questions or concerns to the department's legal advisors.



United States Supreme Court



Prohibition Against Law Enforcement Officers Re-approaching A Suspect For Custodial Interrogation Once Suspect Has Invoked The Right To Counsel Applies For 14 Days After Suspect Is Released From Custody; Lawful Imprisonment Imposed Upon A Conviction Of A Crime Does Not By Itself Constitute "Custody" For Purposes of *Miranda*

***Maryland v. Shatzer*, No. 08-680 (24 February 2010).**

In 2003, a police detective tried to question Michael Shatzer, who was incarcerated at a Maryland prison pursuant to a prior conviction, about allegations that he had sexually abused his son. Shatzer invoked his *Miranda* right to have counsel present during interrogation, so the detective terminated the interview. Shatzer was released back to the general prison population, and the investigation was closed. Another detective reopened the investigation in 2006 and attempted to interrogate Shatzer, who was still incarcerated. Shatzer waived his *Miranda* rights and made inculpatory statements.

The trial court refused to suppress the statements, reasoning that *Edwards v. Arizona*, 451 U.S. 477 (1981), did not apply because Shatzer had experienced a break in "custody" prior to the 2006 interrogation. Shatzer was convicted of sexual child abuse. The Court of Appeals of Maryland reversed, holding that the mere passage of time does not end the *Edwards* protections, and that, assuming, for the sake of argument, a break-in-custody exception to *Edwards* existed, Shatzer's release back into the general prison population did not constitute such a break. The United States Supreme Court agreed to hear the State's appeal.

In *Miranda v. Arizona*, 384 U.S. 436 (1966), the United States Supreme Court announced that police officers must warn a suspect prior to custodial questioning that he has a right to remain silent, and a right to the presence of an attorney. After the warnings are given, if the suspect indicates he wishes to remain silent, the interrogation must cease. Similarly, if the suspect states that he wants an attorney, the interrogation must cease until an attorney is present. However, a suspect can waive these rights. To establish a valid waiver, the State must show that the waiver was knowing, intelligent and voluntary.

In *Edwards v. Arizona*, the Court created a presumption that once a suspect invokes the *Miranda* right to the presence of counsel, any waiver of that right in response to a subsequent police attempt at custodial interrogation is involuntary. Police may not attempt to re-initiate interrogation of the suspect until counsel has been made available to him, unless the accused himself initiates further communication. The rationale of *Edwards* is that subsequent requests for interrogation pose a significantly greater risk of coercion. That increased risk results not only from the police's persistence in trying to get the suspect to talk, but also from the continued pressure that begins when the individual is taken into custody as a suspect and sought to be interrogated – pressure “likely to increase as custody is prolonged,” *Minnick v. Mississippi*, 498 U.S. 146, 153 (1990).

Lower courts have uniformly held that a break in custody ends the *Edwards* presumption, but the Supreme Court had never addressed this issue directly. Because the *Edwards* presumption was originally created by the Supreme Court, the Court deemed it appropriate for it to specify the period of release from custody that will terminate *Edwards*' application. The court found it easy to believe that a suspect may be coerced or badgered into abandoning his earlier refusal to be questioned without counsel in cases where the suspect has been arrested for a crime and held in uninterrupted pretrial custody while the 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, isolated in an unfamiliar and police-dominated atmosphere. There has been no opportunity for the suspect to regain a sense of control or normalcy. However, once 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. He has no longer been isolated and has likely been able to seek advice from an attorney, family and friends, and he knows from his earlier experience that he only needs to demand counsel to bring the interrogation to a halt. Thus, the Court concluded that the only logical endpoint for the *Edwards* presumption is termination of *Miranda* custody and any of its lingering effects. Otherwise, the *Edwards* prohibition would just apply indefinitely (a result which Shatzer advocated). The Court found that such an extension of the *Edwards* rule would not be justified and, in fact, would lead to disastrous results because officers would not practically be able to determine whether a suspect had at some point in the past, in connection with other offenses in other jurisdictions, obtained *Edwards* immunity.

To clarify for law enforcement how long of a break in custody is sufficient, the Court decided to set forth a precise time limit. The Court concluded that the appropriate period is 14 days, which provides ample time for the suspect to get re-acclimated to his normal life, consult with friends and counsel, and shake off any residual effects of prior custody.

The Court then addressed whether Shatzer's 2003 release back into the general prison population constitutes a break in *Miranda* custody. The Court had never decided whether incarceration constitutes custody for *Miranda* purposes. The answer depends upon whether it exerts the coercive pressure that *Miranda* was designed to guard against. The Court expressed the opinion that lawful imprisonment imposed upon conviction does not create that type of coercive pressures. Interrogated suspects who have previously been convicted of a 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 before the attempted interrogation. Based upon this analysis, the Court concluded that Shatzer's release back into the general prison population constituted a break in *Miranda* custody.*

Therefore, the United States Supreme Court held that 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 2006 statements.

*Note - A suspect's detention in jail is different than incarceration in prison. "Jail" is a local government's detention center where persons awaiting trial or those convicted of misdemeanors are confined. Prison, by contrast, is a state of federal facility of confinement for convicted criminals, especially felons.

Practical Implications

Officers wishing to interrogate an in-custody suspect should determine if the suspect has been in prior custody for any offense within the past two weeks. If so, then officers will have to determine whether, during that period of custody, the suspect was advised of and invoked his or her 5th Amendment right to have counsel present during questioning. If so, officers may not approach the suspect and attempt to obtain a waiver of his or her 5th Amendment Miranda rights until the suspect has been released from custody for more than 14 days, the suspect's attorney is present, or the suspect initiates communication with police.