Subsequent Interrogation Of A Defendant Who Has Invoked His Right To Counsel

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On December 12, 2018, the New Jersey Supreme Court, in State v. Wint, addressed the admissibility of a Defendant's statement that was provided while he remained in pre-indictment, pretrial custody, but after having invoked his right to counsel during a previous encounter with law enforcement. In an opinion that relied almost exclusively on United States Supreme Court precedent, the Court suppressed the Defendant's statement, ruling that there was no "break in custody" sufficient to permit law enforcement to speak to the Defendant after his earlier invocation of his right to counsel.

The relevant facts of the case are as follows: On June 16, 2011, the Defendant was charged with a murder in New Jersey. On June 29, 2011, the Defendant was charged with a murder in Pennsylvania. On July 31, 2011, the Defendant was arrested by New Jersey police and brought to the Camden County Prosecutor's Office for questioning. During questioning, Defendant received his Miranda warnings and invoked his right to have counsel and the questioning was terminated. Immediately thereafter, two Pennsylvania detectives, who had been investigating the Pennsylvania murder, attempted to question the Defendant. The Pennsylvania detectives had been monitoring the initial questioning and knew Defendant invoked his right to counsel. Nevertheless, the Pennsylvania detectives attempted to speak to the Defendant. They provided him with his Miranda warnings, and Defendant again requested the presence of counsel. The second interrogation then ended.

After the second interrogation ended, the Defendant left the interview room. The Pennsylvania detectives then initiated an unrecorded conversation with the Defendant, wishing him good luck and stating that they would talk to the Defendant when he returned to Pennsylvania. The Defendant responded by saying: "[Y]eah, I'll talk to you when we get back to" Pennsylvania. Several months later, the Pennsylvania detectives returned to New Jersey to secure DNA samples from the Defendant, who remained in custody on the New Jersey murder charge. The Pennsylvania detectives told Defendant that they were taking steps to transfer him to Pennsylvania and would like to talk to him. Defendant

stated: “I'll talk to you when I get back” to Pennsylvania. During neither of those informal conversations did the Defendant express a desire to speak to the Pennsylvania detectives without counsel present.

Defendant remained in continuous pre-indictment, pretrial custody in Camden County on the New Jersey murder change. Approximately six months after his initial arrest, Defendant was transported to Pennsylvania. Once there, the two Pennsylvania detectives again attempted to speak to the Defendant. The Defendant was not provided with the assistance of counsel as previously requested. However, he was informed of his Miranda rights and waived his rights, providing incriminating information about the New Jersey murder.

Prior to trial on the New Jersey murder charge, the Defendant sought to suppress his statement to the Pennsylvania detectives regarding the New Jersey murder. The trial court denied the motion. The Defendant went to trial and was convicted of passion/provocation manslaughter and related weapons crimes. The Defendant appealed to the Appellate Division, and that court reversed and remanded.

The matter was appealed to the New Jersey Supreme Court. The Court first held that the Pennsylvania detectives violated the Defendant’s constitutional rights by attempting to question the Defendant immediately after the Defendant had invoked his right to counsel to the New Jersey detectives while at the Camden County Prosecutor’s Office. Second, the Court held that the Defendant did not re-initiate communication with the two Pennsylvania detectives when they spoke to him immediately after their first interrogation, and when they spoke to him during their efforts to obtain his DNA sample.

Most importantly, the Court held that the Defendant’s statement to the two Pennsylvania detectives while in Pennsylvania regarding the New Jersey murder was without the assistance of counsel despite the Defendant’s two previous requests for counsel. The Court ruled that this was a violation despite the fact that repeated Miranda warnings had been given.

In its ruling, the Court relied on rules that had been set forth by the United States Supreme Court. In Edwards v. Arizona, 451 U.S. 477 (1981), the Court ruled that when an accused invokes his right to

have counsel present during a custodial interrogation, questioning must cease unless the accused initiates further communication. In Maryland v. Shatzer, 559 U.S. 98 (2010), the Supreme Court provided a "break in custody" exception to the Edwards rule. There, the Court stated that the Edwards rule does not apply when a suspect who initially requested counsel is interrogated after a break in custody that is of sufficient duration – fourteen days - to dissipate its coercive effects. In that situation, the suspect can be interrogated if fresh Miranda warnings are provided and a proper waiver is secured.

The Court also highlighted the importance it places on the United States Supreme Court's opinion in Arizona v. Roberson. 486 U.S. 675 (1988). In Roberson, the Court elaborated on the Edwards rule and made clear that once a suspect requests the presence of counsel during an interrogation relating to one investigation, neither the same nor another law enforcement agency may initiate a second interrogation of that suspect while he remains in custody, even if the second interrogation relates to a different investigation, without providing the suspect with counsel. This is so even if the different officer, investigating a different crime, is unaware that the defendant earlier requested the assistance of counsel.

In reliance on these United States Supreme Court cases, the Court held that if a defendant requests counsel during a custodial interrogation, any statement secured during a subsequent custodial interrogation must be suppressed unless: (1) counsel was provided during the questioning; (2) defendant initiated the communication; or (3) a break in custody occurred. Because the Defendant in this case remained in continuous pre-indictment, pretrial custody for a period of six months before the questioning in Pennsylvania, there was no "break in custody."