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Summary of Carter v. State, 129 Nev. Adv. Op. 26

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Carter v. State, 129 Nev. Adv. Op. 26 (April 25, 2013)¹

CRIMINAL PROCEDURE—MIRANDA, DUE PROCESS, FIFTH AMENDMENT,
FOURTEENTH AMENDMENT, RIGHT TO COUNSEL

Summary

Whether a suspect who asks, “Can I get an attorney?” after he has been advised of his rights under *Miranda*², unambiguously invokes his right to counsel, and if so, whether the State can resume the interrogation of the suspect by reading him a second set of *Miranda* warnings and obtaining an otherwise valid waiver.

Disposition/Outcome

The question “Can I get an attorney?” is an unequivocal request for the aid of counsel, triggering the requirement that all interrogation immediately cease. Also, once a suspect invokes his right to counsel, there may be no further interrogation unless the suspect reinitiates contact with the police, there is a sufficient break in custody, or the suspect is provided the aid of the counsel that he requested.

Facts and Procedural History

Appellant Christopher Carter’s convictions stem from an investigation by the Las Vegas Metropolitan Police Department (LVMPD), in conjunction with the FBI, into a series of robberies. Law enforcement suspected that the robberies were related, but theorized that more than one man was responsible due to witnesses’ varying descriptions of suspects’ heights and weights, and reports of waiting escape vehicles. When a witness identified a black Mazda Miata as the escape vehicle for one of the robberies, FBI agents searched DMV records and came up with Carter as a possible suspect. At the police station, Carter confessed to multiple robberies, burglaries, and possession of a firearm. Ultimately, a jury found Carter guilty of eight counts of burglary while in possession of a firearm, twelve counts of robbery with the use of a deadly weapon, and one count of coercion.

Carter moved to suppress his confession prior to trial, claiming that interrogation began after he invoked his right to counsel. The district court conducted an evidentiary hearing where Detective Joel Martin testified that while escorting Carter to the police station after his arrest, he advised Carter of his rights under *Miranda*. According to Martin, during the drive, Carter expressed “concern” about hiring an attorney, and although Martin could not recall exactly what was said, he did not interpret it as a demand for an attorney. Martin admitted that Carter could have asked, “Can I get a lawyer?” or “Can I get an attorney?” Carter testified that he asked Detective Martin, something like “Can I get a lawyer?” and was requesting an attorney, and Martin replied that they could talk about it later. During argument, the State conceded that Carter asked either “Can I have a lawyer?,” “May I have a lawyer?,” or “Can I have my lawyer?,” and

¹ By Brittany Puzey

² *Miranda v. Arizona*, 384 U.S. 436 (1966).

framed the issue before the district court, stating: “This whole case, or this whole motion, comes down to one thing: Can I have an attorney? Is that question, is that an unequivocal request to I’m not speaking to you unless I have my attorney?”

The district court found that Carter asked “Can I get an attorney?” and denied the motion to suppress his confession, concluding that (1) Carter’s statement was ambiguous, and (2) there was no substantive questioning until after Carter was given a second set of *Miranda* warnings at the police station and waived his right to counsel.

Discussion

On appeal, Carter contended that the district court erred in denying the motion to suppress his confession, arguing that it was obtained in violation of *Miranda* and was therefore inadmissible as a matter of law.

In *Miranda*, the United States Supreme Court determined that the Fifth and Fourteenth Amendments’ prohibition against self-incrimination required that any interrogation of a suspect in custody “be preceded by advice to the putative defendant that he has the right to remain silent and also the right to the presence of an attorney.”³ In *Edwards*, the Court added a ‘second layer’ of protection, so that once a suspect invokes the right to counsel under *Miranda*, he cannot be subject to further interrogation and all questioning must cease until counsel has been made available to him.⁴ To determine whether, under *Edwards*, all interrogation must cease, a court must first “determine whether the accused actually invoked his right to counsel.”⁵

“Invocation of the *Miranda* right to counsel ‘requires, at a minimum, some statement that can reasonably be construed to be an expression of a desire for the assistance of an attorney.’”⁶ However, “if a suspect makes a reference to an attorney that is ambiguous or equivocal in that a reasonable officer in light of the circumstances would have understood only that the suspect *might* be invoking the right to counsel, our precedents do not require the cessation of questioning.”⁷ “Second, if the accused invoked his right to counsel, courts may admit his responses to further questioning only on finding that he (a) initiated further discussions with the police, and (b) knowingly and intelligently waived the right he had invoked.”⁸

Whether Carter invoked his right to counsel

Following *Edwards*, the court first determined whether Carter’s statement “Can I get an attorney?” is an unequivocal demand for counsel, requiring that all questioning immediately cease until counsel is present, or is merely an ambiguous inquiry into the extent of his rights. The court concluded that Carter’s statement was an unambiguous and unequivocal request for the assistance of counsel during questioning. The court considered the words used and the

³ *Edwards v. Arizona*, 451 U.S. 477,481-82 (1981) (citing *Miranda*, 384 U.S. at 479).

⁴ *Id.* at 484-85.

⁵ *Davis v. United States*, 512 U.S. 452, 458 (1994).

⁶ *Id.* at 459.

⁷ *Id.*

⁸ *Smith v. Illinois*, 469 U.S. 91, 95 (1984) (per curiam) (internal citations and quotation marks omitted).

circumstances in which they were spoken, to find that Carter expressed his desire for the assistance of an attorney, and a reasonable officer would have understood it as such.

The fact that shortly thereafter Carter communicated that he was merely “concerned” about an attorney did nothing to alter the decision. Once a suspect requests an attorney, *Miranda* and its progeny do not allow police officers to subtly interrogate the suspect under the guise of clarifying intentions that are already clear. Here, Carter clearly expressed that he would like the assistance of an attorney in dealing with the police. His words were unequivocal and unambiguous and his request should have been honored.

Policy

To hold that a suspect who asks “Can I get an attorney?” does not invoke his right to counsel would suggest that no statement phrased as a question could invoke one’s right to counsel—a holding contrary to law and lacking a fundamental understanding of the nature of human interaction.

Whether Carter’s waiver was valid

The court then determined whether Carter validly waived his right to counsel. *Edwards* makes abundantly clear that once counsel is requested, all questioning must immediately cease, and the right may only be waived if (1) the accused initiates subsequent communication, (2) there is a break in custody, or (3) he receives the counsel that he asked for—none of which occurred here. Once an accused expresses his desire to confer with counsel, there are no actions that police officers can take to revive questioning other than honoring that request. Because Carter’s confession was an uncounseled response to questioning that occurred after he invoked his right to counsel, it must be suppressed regardless of whether his subsequent waiver was otherwise valid.

Because Carter’s confession was the linchpin in the case against him, the admission was not harmless.⁹ Absent his confession, the entirety of the evidence against Carter was his ownership of a vehicle consistent with one seen leaving the scene of a robbery, ownership of a firearm consistent with one used during the robberies, and the discovery of a white T-shirt with eyeholes cut out of it consistent with a facial covering used by the suspect at two robberies. No other physical or testimonial evidence placed Carter at any of the robberies.

Conclusion

Appellant’s confession was inadmissible, because the error in admitting the confession is not harmless. Judgment of conviction reversed and remanded for further proceedings consistent with the opinion.

⁹ *Arizona v. Fulminante*, 499 U.S. 279, 295 (1991).