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Recent Legal Developments: *Maryland v. Shatzer: Revisiting Reinterviewing After Invoking Miranda’s Right to Counsel*

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Abstract

A unanimous Supreme Court modified its previously strict holding forbidding reinterviewing a suspect after he invoked his right to counsel under Miranda. An initial request for an attorney no longer means that police can never reinitiate questioning. Questioning may be resumed when a suspect has returned to his normal life for some time before the later attempted interrogation. Once a break in custody occurs that is of sufficient duration to dissipate its coercive effects, it is permissible for detectives to reapproach suspects to inquire whether there is a change of heart regarding interrogation without counsel. Adequate breaks in custody suitably attenuate the inherently compelling and coercive pressures that existed during the original custodial interrogation. This decision militates against the finite *Edwards* presumption of an involuntary waiver of rights.

Keywords

Miranda; confessions; interrogations; re-investigation; Fifth Amendment

Introduction

Arguably, one of the most recognizable landmark cases in policing is the U.S. Supreme Court decision in *Miranda v. Arizona* (1966). Although not every American citizen has read the reported decision, most are familiar with the words, “You have the right to remain silent,” and the other four warning statements in accordance with *Miranda*, from watching TV cop shows and movies for more than 40 years. *Miranda* holds that evidence obtained by the police during a custodial interrogation of a suspect is not admissible in court in the State’s case-in-chief unless the suspect was provided with the requisite *Miranda* “warnings” and a valid waiver was given by the suspect.

Fundamental to police work is the interview of witnesses and the interrogation of suspects. Police interrogate an arrested suspect to acquire an admission or confession of guilt that can be later used in court to convict the suspect. To guard the suspect from potential abusive interrogations by the police...
whereby gaining a coerced confession, the Court has established constitutional parameters to check abusive interrogations: (a) due process to prevent abuse and torture of suspects in accordance with the Fifth and Fourteenth Amendments; (b) the privilege against self-incrimination established under the Fifth Amendment; and (c) under the Sixth Amendment, the right to counsel, requiring or allowing an attorney to be present for all questioning of a person formally charged with a crime or formally seized by law enforcement. Because *Miranda* suspects who are in custody, and who have been provided with notice of their Fifth and Sixth Amendment rights, may voluntarily waive them. Waivers allow police to pursue additional questioning presumptively free from subtle compulsion or inherent coercion. If these protections are strictly followed, an admission or confession is admissible, if not, the evidence is inadmissible.

*Miranda* warnings protect suspects during custodial interrogations and must be afforded by the police prior to any questioning. Establishment of the *Miranda* warnings has created a bright-line rule, providing guidance for police officers engaged in custodial interrogations. The *Miranda* rule offers protection at one level. It protects suspects from inherent coercion during custodial interrogations. The term custodial signifies that the suspect is under arrest or is deprived of his or her freedom in a significant way. The term interrogation refers to questioning by the police that might link them to the crime. To counteract the coercive pressures that may be connected with the first-level, custodial interrogation, police officers must provide adequate warnings to the suspect and then the suspect must affirmatively acknowledge these rights and then waive them.

To further protect suspect rights, the Court has taken occasion to expand its restrictions on interrogation when a suspect refused to waive his right to counsel under *Miranda*. The Supreme Court’s ruling in *Edwards v. Arizona* (1981) and its progeny provided a second layer of protection. *Edwards* created a presumption that once a suspect had invoked his right to counsel, any subsequent police-initiated attempt to gain a waiver while the suspect was in would be involuntary. The *Edwards* decision definitely prevented police from badgering a custodial suspect into waiving his right to counsel. The fundamental purpose of this decision was to preserve the integrity of an accused’s choice to communicate with police only through counsel.

Under the *Edwards* rule, if a suspect in custody requests counsel, that suspect cannot be interrogated unless or until he himself obtains counsel or independently approaches the police to confess or make incriminating statements. The decision created an irrebuttable presumption of coercion. Courts must assume that all subsequent statements made by a suspect in custody to police are the result of coercive pressures inherent to the interrogation process.

Over the years, lower courts have been split as to whether a break in physical custody or the passage of time terminates this presumption. Some courts hold that such a break or passage of time terminates the presumption whereas others hold that the presumption applies regardless. This split has created problems causing police officers to need further guidance. The Court sought to resolve this issue in *Maryland v. Shatzer* (2010) by examining when police may interrogate and reinterrogate a suspect after he has waived his right for counsel for custodial questioning.

The *Miranda* decision was important. It substantially changed the way police interrogate suspects and the way courts determine the admissibility of an admission or confession. However, as significant as the decision was, the rule regarding custodial interrogations is far from settled. Indeed, since its decision in 1966 the Court has examined 34 additional cases concerning issues and legal principles surrounding custodial interrogation. This article presents a review of the relevant case decisions regarding custodial interrogations, a review of the facts of the *Shatzer* decision, and presents an analysis of the Court’s decision and their rationale.

**Historical Background**

*Miranda* mandated an adoption of a set of prophylactic measures to ensure protection of suspects’ Fifth Amendment rights during custodial interrogation. The *Miranda* decision dealt with confessions
and addressed the matter under the Fifth Amendment’s due process clause. Specifically, the decision sought to mitigate the undue compulsion and coercive police tactics that are potentially present during police custodial interrogations. The decision focused on two distinct areas of concern: the right to remain silent and the right to an attorney. It is the later right, the right to have counsel present during an interrogation that will be dealt with here.

The Court has long been concerned with the secrecy of police interrogations. Suspects who are held in custody are thought to be easy targets for psychological pressures. Custody invokes a feeling of unfamiliarity in a police-dominated atmosphere or domain. Suspects may feel pressured to confess. They are more easily involuntarily manipulated to respond to police-generated questions when they are secluded from associates, placed in unfamiliar surroundings, and left at the mercy of the police.

Miranda sought to reduce the pressure from this inherently compelling situation by affirmatively notifying the suspect that he or she has rights, the right to remain silent and the right to assistance of counsel. The Miranda right to assistance of counsel is not the equivalent of the Sixth Amendment’s right to counsel. The purpose of Miranda’s right to counsel is to ensure that a suspect’s ability to choose to speak or to remain silent is unfettered. It is believed that counsel’s presence at custodial interrogations will reduce the likelihood of coercive police conduct and will assure the accuracy of confessions attributed to a suspect at trial.

By advising a suspect of his Miranda rights, the suspect will realize that he has choices; a choice to speak or not and a choice to have or refuse to have an attorney assist him in protecting his right against self-incrimination during the interrogation. Additionally, Miranda requires that once notified of his rights, a suspect must affirmatively and voluntarily waive them before police questioning may begin. Unless a suspect is specifically informed of each Miranda right and its consequences, and freely and voluntarily waives them, all statements made under those circumstances are inadmissible. In other words, the prosecution may not use any statements flowing from custodial interrogation against a suspect in its case-in-chief unless the prosecution demonstrates that it effectively used procedural safeguards to secure the privilege against self-incrimination (Miranda v. Arizona, 1966, p. 444).

The Court believes that the warnings and voluntary waiver required per Miranda are effective procedural safeguards. The warnings and waiver counteract coercive pressures and even the playing field. Plus, the harshness of the rule’s effect is somewhat diluted if the suspect takes the stand in a later proceeding. Then his statement may be used to impeach his conflicting testimony (Oregon v. Hass, 1975).

The beauty and chief advantage of the Miranda decision is the clarity of its ruling. As the Court heralded in Fare v. Michael C. (1979), “Miranda’s holding has the virtue of informing police and prosecutors with specificity as to what they may do in conducting custodial interrogation, and of informing courts under what circumstances statements obtained during such interrogation are not admissible” (Fare v. Michael C., 1979, p. 718). The Miranda safeguards promote fairness and provide procedural mechanisms to ensure that the police do not coerce or manipulate suspects into confessing. The Miranda process relieves the inherently compelling pressures generated by the custodial setting itself, which works to undermine the individual’s will to resist, and to a certain extent, the process reduces contested litigation as to whether particular confessions were voluntary (Berkemer v. McCarty, 1984, p. 433).

Initially, the burden of waiver of Miranda rights rests on the government to demonstrate that the suspect knowingly and intelligently waived his right to retained or appointed counsel. There is a presumption against waiver. “The courts must presume that a defendant did not waive his rights; the prosecution’s burden is great” (North Carolina v. Butler, 1979, p. 373). The record must show that the accused was offered counsel but intelligently and knowingly rejected the offer. The waiver need not be express; but an express statement of waiver is a strong indication of the validity of that waiver.
An initial waiver may be inferred from the actions and words of the person interrogated but not from mere silence.

Whether a waiver of rights has occurred is determined by a totality of the circumstances test and the test is met when it reflects the intentional relinquishment of a known right (Johnson v. Zerbst, 1938, p. 464). The test requires a subjective consideration of “the particular facts and circumstances surrounding the case, including the background, experience, and conduct of the accused” (North Carolina v. Butler, 1979, p. 375). The validity of a waiver focuses on the state of mind of the suspect and not of the police. An accused’s waiver of counsel is “knowing and intelligent,” if he is aware of the usefulness of counsel at the particular stage of the proceedings in question and if he is aware of the dangers of proceeding without counsel at that stage (Patterson v. Illinois, 1988, p. 293). The key inquiry is whether the accused made the choice to forgo counsel with his eyes wide open, fully aware of the potential consequences (Adams v. United States ex rel. McCann, 1942, p. 279).

Suspects need not waive their rights. A suspect may invoke his right to counsel; however, he must do so unambiguously. This determination involves an objective test. An unmistakable request for counsel occurs when the suspect articulates a desire to have counsel present sufficiently clearly that a reasonable police officer viewing the circumstances would understand the statement to be a request for an attorney (Davis v. United States, 1994, p. 459).

Once warnings have been given and an accused indicates at any time prior or during questioning that he wishes to invoke his rights, and/or withdraw his waiver, the procedure is clear. The interrogation must cease. The police must honor the suspect’s choice. In fact, not only must they preserve the accused’s choice to seek assistance of counsel, they have an “affirmative obligation not to act in a manner that circumvents and thereby nullifies the protection afforded by the right to counsel” (Maine v. Moulton, 1985, p. 171). Thus, when an accused in custody invokes his right to counsel, the game is over. No reapproaching or reinterviewing without an attorney is permissible. If the accused makes a clear and unambiguous request for counsel, all questioning must stop. Furthermore, “an accused’s postrequest responses to further interrogation may not be used to cast retrospective doubt or clarity of the initial request itself” (Smith v. Illinois, 1984, p. 100). In other words, when a suspect says no to questioning without counsel, the police may not inquire further in an attempt to change his mind. No means no and the interrogation must be terminated.

Once a suspect invokes his right to an attorney, interrogation may not be reinitiated until an attorney is present or unless the suspect himself reinitiates the interview. The rule is that any change of heart concerning counsel’s assistance cannot happen as a result of a subsequent police attempt at custodial interrogation. Subsequent attempts at questioning are seen as coercive by wearing down a suspect’s resistance. This type of conduct would interfere with the integrity of an accused’s decision to communicate with the police only through an attorney. Ultimately, the waiver would be deemed involuntary (Patterson v. Illinois, 1988, p. 291).

Under Miranda, the invocation of the right to counsel is treated differently than the invocation of the right to remain silent regarding resuming questioning and subsequent waivers. Although both invocations initially cause the interrogation to stop, it is much more difficult to establish a valid later waiver of the right to have counsel present than it is to establish a later waiver of his right to remain silent. Police may, under certain circumstances, reapproach and reinterview suspects who have invoked their right to remain silent; but they may not reapproach suspects who requested counsel.

The Michigan v. Mosley (1975) decision identified the factors that allow for the admission of a statement into evidence after a suspect has invoked his right of silence. The Mosley Rule allows the police to reinterview a suspect who had invoked his right to remain silent under the following circumstances: a sufficient lapse of time between the two interrogations had occurred and before the second interrogation the suspect was again fully advised of his Miranda rights. Additionally, the second interrogation must concern a different offense or be triggered by new circumstances (Weeks v. Angelone, 1999).
The *Edwards v. Arizona* (1981) decision controls in situations where a suspect has invoked his right to counsel under *Miranda*. Just as *Miranda* did not confer a substantive constitutional right (*Michigan v. Payne*, 1973, p. 54) that had not existed before, neither does *Edwards*; both “created a protective umbrella serving to enhance a constitutional guarantee” (*Michigan v. Payne*, 1973, p. 54). This protective umbrella required a stricter standard when a suspect unambiguously invoked his right to counsel. Per *Edwards*, the waiver standard of *Johnson v. Zerbst* (1938) is not enough. More is needed than that the suspect merely responded to further police-initiated custodial interrogation (*Edwards v. Arizona*, 1981, p. 484). Police reapproaching a suspect after a brief lapse of time or reinterviewing about a different offense will not suffice, even if the new waiver appears to be voluntarily given.

When a suspect requests assistance of counsel during a custodial interrogation, any future waiver given in a discussion initiated by police is presumed invalid, and the evidence obtained pursuant to this discussion is inadmissible in the prosecution’s case-in-chief. This rule is harsh by design. It helps guarantee that waivers are truly voluntary. Hence, what was sufficient initially and may be sufficient under *Mosley* is not sufficient here.

A valid waiver of assistance of counsel requires more than the traditional case-by-case inquiry, showing that the statement was knowing, intelligent, and voluntary. More is required even if a suspect gave the statement after he was once again advised of his rights. Police may not question the suspect again without the presence of counsel. A valid subsequent waiver of counsel is only possible if the suspect initiates subsequent conversations or communication with the investigating officer (*Oregon v. Bradshaw*, 1983) or the suspect is released from custody and then reapproached by police. Thus, all subsequent attempts to seek waiver of counsel to interrogate require more than a showing of voluntariness. This prophylactic rule is necessary because subsequent requests pose a greater risk of coercion. The rule from *Edwards* is designed to protect suspects from that greater risk, the risk of being badgered into submitting to a waiver by relentless police contact while in custody.

The *Edwards* rationale is premised on the belief that a suspect who invokes his right to counsel clearly understands that he is incapable of undergoing interrogation without advice of counsel. He considers himself unable to adequately deal with the pressures of custodial interrogation without legal assistance. Unlike the request to discontinue questioning by invoking one’s right to silence, the request for counsel raises a presumption of self-inadequacy. This inadequacy to proceed without a lawyer’s assistance does not go away in a matter of days or disappear simply because a different line of questioning is pursued. The compelling pressures due to the unfamiliar surroundings associated with custody and police dominance are still present. Any change of heart resulting in this situation would be viewed as inherently suspect and involuntary. As Justice White articulated, “the accused having expressed his own view that he is not competent to deal with the authorities without legal advice, a later decision at the authorities’ insistence to make a statement without counsel’s presence may properly be viewed with skepticism” (*Michigan v. Mosley*, 1975, p. 110, no.2).

The *Edwards* decision serves as a corollary to *Miranda*’s admonition that “if the individual states that he wants an attorney, the interrogation must cease until an attorney is present” (*Miranda v. Arizona*, 1966, p. 474) and all further communications are strictly forbidden. The rule provides both clear and unequivocal guidelines to police and prosecutors as to what is permissible while conducting custodial interrogations. The purpose of the *Edwards* decision like that of *Miranda* was “to give concrete constitutional guidelines for law enforcement agencies and courts to follow” (*Miranda v. Arizona*, 1966, pp. 441–442). The value of these rigid requirements condemning further interrogations was extolled in *Fare v. Michael C.* (1979).

The bright line outlined in *Edwards* was reinforced in *Arizona v. Robinson* (1988). Therein, the Court stretched the *Miranda* rule to apply to situations involving separate investigations. In *Robinson*, the Court found that where police reinitiated interrogation, following a defendant’s request for counsel, the subsequent statements were involuntary even though the interrogation
concerned a completely different criminal act. The Court attached no significance to the fact that the interrogation concerned an entirely separate investigation or to the fact that the officer who conducted the second interrogation was unaware that the suspect had previously made a request for counsel. In either instance, the suspect’s rights must be protected. His request for the presence of an attorney to counteract the inherent pressures of custodial interrogation must be honored. His desire for an attorney arose from his need for assistance during custodial interrogation. The need never dissipated as he was still in custody 3 days later when the police sought to question him again. Furthermore, the need for counsel existed regardless of the number of crimes the police sought to investigate or whether those crimes resulted in formal charges.

The Fifth Amendment invocation of the right to counsel is not offense-specific. It applies not only to the current charges for which the suspect may be in custody but also to any additional charges about which the police may wish to inquire. Once an accused invokes the right to counsel for interrogation regarding one offense, he may not be approached regarding any offense unless counsel is present.

Additionally, the “giving of fresh sets of Miranda warnings would not necessarily ‘reassure’ a suspect who has been denied requested counsel that his rights have remained untrammeled. In fact, in a case such as this, in which three days elapsed between the unsatisfied request for counsel and the separate-offense interrogation, there is a serious risk that the mere repetition of the warnings would not overcome the presumption of coercion created by prolonged police custody” (Robinson, p. 679).

The resumption of questioning by the police without providing an attorney may infer to a suspect that he has no choice but to answer.

The case of Minnick v. Mississippi (1990) continued the trend begun by Edwards’ bright-line prophylactic measure to preserve the integrity of choice by the accused. In Minnick, “the Supreme Court ruled that once a suspect asks to speak with an attorney, the suspect has, in essence, demanded his right to have an attorney present during interrogation. Allowing Minnick to simply confer with his attorney separately and then continuing with the uncounseled interrogation by police was not satisfactory. Conferring is not the equivalent of actually having counsel present during police interrogation. Consultation with an attorney does not remove the suspect from persistent attempts by officials to persuade him to waive his rights, or from the coercive pressures that accompany custody that may increase as custody is prolonged” (Minnick v. Mississippi, 1990, p. 153). Hence, the police are still forbidden from questioning the suspect without the presence of counsel unless the suspect’s attorney is present during the interrogation or the suspect initiates the interrogation. Thus, Minnick extended Edwards to prohibit resumption of questioning beyond when a suspect has met with or confers with his attorney. Minnick requires that no questioning can resume until the attorney is physically present during the interrogation.

Edwards assumes that repeated requests for waiver while a suspect remains in custody will be in themselves coercive. This assumption has repeatedly been supported by the decisions in Minnick and Roberson. Minnick asserted that the coercive police pressure begins initially when a suspect is taken into custody and continues and increases the longer custody is prolonged (Minnick v. Mississippi, 1990, p. 153). Roberson follows up by asserting that police will take advantage of prolonged police custody by badgering suspects into submission to induce a waiver (Roberson p. 690).

Minnick, Edwards, and their progeny apply to all persons subjected to custodial interrogation regardless of the nature or severity of the offense. The prophylactic rules designed by Miranda and Edwards to prevent constitutional violations are, as mentioned previously, not offense-specific. If a suspect is in custody and is being interrogated, Miranda and Edwards apply. The purpose of Miranda and Edwards are implicated as much by in-custody questioning of persons suspected of misdemeanors as felonies, to informal proceedings as formal proceedings, and for indicted offenses as well as suspicious behavior (Berkemer v. McCarty, 1984, pp. 433–434). The intention of Miranda, and later Edwards, was to afford suspects procedural safeguards whenever “a person has
been taken into custody or otherwise deprived of his freedom of action in any significant way” (Miranda v. Arizona, 1966, p. 444). “Preserving the integrity of an accused’s choice to communicate with police only through counsel is the essence of Edwards” (Patterson v. Illinois, 1988, p. 291).

Loyalty to the doctrines announced in Miranda and Edwards require strict enforcement—but only in situations and under circumstances for which the rule was designed—custodial encounters where a suspect is deprived of his freedom of action in any significant way. Custody is determined by using an objective standard demonstrating that a reasonable person would believe that he was significantly deprived of his freedom of movement (Oregon v. Mathiason, 1977). Custody requires more than a mere detention. Hence, traffic encounters are not considered custodial nor are typical Terry seizures.

Custody requires an examination of all circumstances surrounding an encounter, including events that occurred before, during, and after an interrogation. In Berkemer v. McCarty (1984), the U.S. Supreme Court held that courts must examine “all of the circumstances surrounding the interrogation” and determine “how a reasonable person in the position of the individual being questioned would gauge the breadth of his or her ‘freedom of action’” (Berkemer v. McCarty, 1984, p. 440). Some objective factors that are relevant to custody include: the timing of the encounter; the location of the questioning; the duration of the questioning; its purpose; how the suspect arrived or was brought to the location; and the circumstances incidental to the questioning.

Custody for Fourth Amendment purposes is not the same as custody for Fifth Amendment purposes. The salient features rendering an encounter custodial under the Fifth Amendment are not simply the deprivation of freedom of movement or the location of the encounter (a home, police station, or a prison). Custody, for Fifth Amendment purposes, involves feeling incommunicado or isolated in unfamiliar surroundings, so that police have the advantage (Miranda v. Arizona, 1966, p. 450). No single factor is determinative. Even some interrogations that take place at the suspect’s home may be custodial (Oregon v. Elstad, 1985; Orozco v. Texas, 1969). Incarceration itself does not necessarily constitute custody. However, for Miranda purposes, custody has always been interpreted to mean that degree of formal restraint of movement associated with a formal arrest (New York v. Quarles, 1984, p. 655; Stansbury v. California, 1994, p. 322).

Restraint of movement is, but, one aspect of consideration for custody. The rationale provided in Berkemer exempting traffic encounters from Miranda’s litany illustrates this notion. Detention of motorists restrains their freedom of movement, but only for temporary and brief periods of time. The motorist remains in a familiar surrounding, his own vehicle (Orozco v. Texas, 1969). Motorists expect that they will spend just a few minutes answering questions before being allowed to continue on their way. The questions themselves are quite limited in scope; whereas, Miranda’s and Edwards’ situations, the encounters were quite different. The detained suspects had no rational basis for predetermining the length of the questioning or the scope of the questions. The detained suspects’ has no real expectation that they would be free to leave after answering the questions or, that by answering the questions, the encounter would end with their release (Berkemer v. McCarty, 1984, p. 438).

Traffic encounters differ from custodial encounters in other significant ways. Traffic encounters occur in public, in full view of passersby. The public exposure “both reduces the ability of an unscrupulous policeman to use illegitimate means to elicit self-incriminating statements and diminishes the motorist’s fear that, if he does not cooperate, he will be subjected to abuse” (Berkemer v. McCarty, 1984, p. 439). Custodial encounters occur in police dominated atmospheres where a suspect is more isolated and more at the mercy of the officer.

It is the inherent coercion caused by the totality of these circumstances—the isolation from impartial observers, the restriction on freedom of movement, and the uncertainty and police domination—that Miranda and Edwards seeks to address and prevent. When these circumstances come together, to the degree associated with a formal arrest (California v. Beheler, 1983, p. 1125), then a suspect is deemed “in custody” and will be entitled to the protections prescribed by Miranda and
Edwards (Oregon v. Mathiason, 1977, p. 495). After all, the reason the Supreme Court requires both the warnings and the waiver is to safeguard suspects’ rights and “combat the police dominated atmosphere of a custodial interrogation. Police have the home field advantage during a custodial interview, so a lot of suspects in that situation might feel overwhelmed. They might feel like they can’t refuse to answer questions by the police once they’re in custody. So to balance out that coercive atmosphere, police have to let the suspect know that he has that right against self-incrimination” (Michigan v. Harvey, 1990, p. 350).

To briefly summarize, Miranda and Edwards are rigidly enforced prophylactic rules designed to preserve the integrity of an accused’s choice to communicate with police only through counsel. Edwards and its progeny hold that after an accused has invoked his right to counsel, any waiver of that right is invalid until counsel has been made available, the accused has been released from custody, or the accused initiates further communications with the police. Edwards has created an irrebuttable presumption that once a suspect requests an attorney, the suspect considers himself inadequate or unable to deal with the pressures of custodial interrogation without legal assistance.

All attempts to limit this holding and allow more flexibility in police reinitiating or resuming questioning have been vigorously rejected by the Court. In fact, the rule prohibiting police contact has been more firmly ingrained. Police may not badger suspects into waiving their previously asserted right to counsel under Miranda. Edwards’ prohibition on police-initiated reinterrogation applies to questioning concerning any offense and about unrelated matters. The ban applies after a suspect has consulted with an attorney and even when the detective is not aware of the former request for counsel by the suspect. Finally, Edwards has been held to apply to officers conducting investigations from other jurisdictions. Basically, the Supreme Court has never waivered in its support of Edwards’ strong stand toward protecting suspects’ constitutional rights and preventing the police from taking advantage of coercive pressures of prolonged detention. The prophylactic rule of Edwards remains solid.

Facts of the Maryland v. Shatzer

Michael Shatzer, respondent in the case, was serving a prison sentence at the Maryland Correctional Institution-Hagerstown, for a child-sexual abuse conviction. In August 2003, a social worker assigned to the Child Advocacy Center in the Criminal Investigation Unit of the Hagerstown Police Department brought an allegation to detectives that Shatzer had sexually abused his 3-year-old son (a charge unrelated to his conviction). On August 7, 2003, Detective Blankenship visited Shatzer at the correctional institution to investigate the charge. Blankenship informed Shatzer of the nature of the visit and read him his Miranda rights. Shatzer invoked his right to have counsel present during the interview, refusing to speak about the allegations without his attorney present. Detective Blankenship immediately stopped the interview. Shatzer returned to the general population of the prison. Later that year, the investigation was closed.

In February 2006, with Shatzer’s son being older and providing a more detailed account about the incident, the same social worker brought the allegations to the detective unit. Detective Paul Hoover was assigned the investigation and interviewed Shatzer’s son, accompanied by the social worker. On March 2, 2006, Hoover interviewed Shatzer at the Roxbury Correctional Institution where he had been transferred. Hoover advised Shatzer about the investigation and the allegations and then advised him of his Miranda rights. Shatzer invoked his right to have counsel present during the interview, refusing to speak about the allegations without his attorney present. Detective Blankenship immediately stopped the interview. Shatzer returned to the general population of the prison.

Hoover questioned Shatzer for about 30 min and he denied performing fellatio on his son but did admit that he masturbated in front of him from a distance less than 3 feet. Prior to the interview
ending, Shatzer agreed to submit to a polygraph examination pursuant to Hoover’s request. Shatzer did not request the presence of counsel at any time during the questioning.

On March 7, 2006, Hoover and another detective returned to the prison to administer the polygraph. Shatzer was again read his Miranda rights and he signed a waiver form. Detective Schultz administered the polygraph and determined that Shatzer had failed the examination. After the examination, the detectives began questioning Shatzer. Shatzer became emotional, started to cry, and stated that he did not force him. After making the incriminating statement, Shatzer requested an attorney and the detectives immediately ended the questioning.

On June 16, 2006, the State’s Attorney for Washington County brought charges against Shatzer, including second-degree sexual offense, sexual child abuse, second-degree assault, and contributing to conditions rendering a child in need of assistance. Shatzer moved to suppress the March 2006 statements prior to trial on the basis that the statements were obtained in violation of the protections established in Edwards. The Washington Circuit Court denied the motion to suppress reasoning that the Edwards protections did not apply because Shatzer had experienced a break in custody for Miranda purposes between the 2003 and 2006 interrogation. Shatzer pleaded not guilty, waived his right to jury trial, and proceeded with a bench trial based on an agreed statement of facts. The circuit court found Shatzer guilty of sexual abuse and sentenced him to 15 years of imprisonment.

On December 28, 2006, Shatzer appealed the conviction to the Maryland Appellate Court, Court of Special Appeals, and the court reversed the circuit court’s decision on February 13, 2008. Citing Edwards the Appellate Court ruled that the passage of time alone is insufficient to end the protections afforded by Edwards. The court held that the circuit court erred in failing to suppress Shatzer’s statements. The court also ruled that it would adhere to the bright-line rule established in Edwards and declined to consider the broader question of whether a break in custody would vitiate the Edwards presumption. Shatzer’s return to general population did not constitute such a break.

On January 26, 2009, the U.S. Supreme Court granted Maryland’s petition for certiorari to determine whether a confession made by a criminal defendant more than 2 years and 6 months after invoking his Fifth Amendment right to counsel is admissible under Edwards. The Court also considered whether Shatzer’s release back into the general prison population constituted a break in custody for the purposes of Miranda.

Court Holding and Rationale

Because custodial interrogations play a significant role in police work and have great impact on the criminal justice system, the Court granted certiorari to examine two issues. The first issue addressed by the Court was whether a break in custody allows the police to initiate contact with an in-custody suspect who had previously invoked his right to counsel and thereby ends the presumption of involuntariness established in Edwards. The Supreme Court held on February 24, 2010, that Shatzer experienced a break in Miranda custody lasting more than 2 weeks between the first and second attempts to question him. The Court concluded that Edwards does not mandate suppression of Shatzer’s 2006 statements.

Issue One

In a unanimous decision, Justice Scalia delivered the opinion of the Court. The Court first noted that the Fifth Amendment is made applicable to the States through the Fourteenth Amendment and provides that no person shall be compelled in any criminal case to be a witness against himself. Furthermore, the Court stated that in their decision in Miranda, they adopted a set of prophylactic measures to protect a suspect’s Fifth Amendment right from the inherently compelling pressures of custodial interrogation. The Court reasoned that “incommunicado interrogation” as in a police
station setting, dominated by the police, and questioned by the police, involved “psychological” pressures that work to induce involuntary statements by a suspect, when he would not normally otherwise do so. As a result, unless there are protections in place which counter these psychological pressures indicative of the police custodial setting, no statement obtained from the accused can be taken to be provided freely of his own choice. Hence, the Miranda warnings were adopted to warn a suspect that he has the right to remain silent and has the right to the presence of an attorney. They were adopted to serve as a safeguard for suspects who were in custody and were being interviewed by the police. The warnings were developed to give concrete constitutional guidelines for law enforcement agencies and courts to follow.

Over time, the Court determined that when a suspect had previously invoked his right to counsel, additional safeguards were needed, as noted in Edwards discussed previously. At the core of the Edwards rule was the desire to protect the accused from police badgering and compelled self-incrimination and is another prophylactic rule. As indicated, Edwards created the bright line that interrogation must cease unless the defendant reinitiates interrogation. The rationale of Edwards is that once a suspect requests counsel during custodial questioning, any subsequent waiver that derives from the police, and not from the suspect himself, it is the product of inherently compelling pressures and not purely voluntary. Subsequent attempts of reinterrogation of the suspect are not permitted unless there has been an adequate period of time in which the suspect is no longer in police custody. Shatzer argued that his statements made during the second visit of detective Hoover to interrogate him about the allegations were inadmissible as there had been no break in custody between Detective Blankenship’s first interrogation.

Shatzer also argued that the bright line established in Edwards ensured statements made while a suspect is in custody are not obtained through coercion. He further argued that because he was in custody (prison) at the time of the first interrogation and still confined in prison on the second reinterrogation, any statement made was inadmissible as there was not a break in custody pursuant to the Edwards rule. Indeed, the Maryland Appellate Court agreed with him, holding that the passage of time alone is insufficient to end the protections afforded by Edwards. Hence, the first issue addressed by the Court dealt with defining a period of time where police may reinterrogate a suspect about a crime and still maintain the integrity of the Miranda holding.

The Court addressed the second layer of protection afforded under the Edwards rule. The number of coerced confessions it suppresses that may otherwise have been admitted measures the benefits of the rule. It conserves judicial resources that would be expended in making difficult determinations of voluntariness. However, at the same time, the Court was concerned that extending the Edwards rule yields diminished results, extends the costs: the in-fact voluntary confessions it excludes at trial, and the voluntary confessions it deters law enforcement officers from even trying to obtain (p. 9).

The Court explained that the Edwards rule is not a constitutional mandate but rather a “judicially prescribed prophylaxis.” Because the rule is a Court-made rule, the Court may amend or clarify it as needed to support its original purpose. The Court commented that voluntary confessions are not merely a proper element in law enforcement, they are an unmitigated good, essential to society’s compelling interest in finding, convicting, and punishing those who violate the law. The Court recognized that lower courts have held that a break in custody ends the Edwards protection and also recognized that law enforcement officers need clarification when renewed interrogation is lawful. After weighing the benefits of the protections of the Edwards rule, the Court held that extending the rule to protect Shatzer, as the Maryland Appellate Court did, is not justified.

Keeping the framework of Miranda in place, the Court decided that if there is a sufficient break in custody, simply readvising a suspect of his Miranda warnings will sufficiently protect the rights of the suspect. The Court reasoned that although Shatzer was confined in prison and was not reinterrogated about the charges of sexual abuse of his son for 2½ years, the duration of time met the definition of a “break in custody.” For further clarification purposes, the Court next specified a period
of time in which the police may reapproach a suspect for questioning. The Court reasoned that 14 days was appropriate to qualify for a “break in custody.”

Furthermore, the Court held that 14 days was a sufficient amount of time for a suspect to get reacclimated to his normal life, to consult with friends and counsel, and to shake off any residual coercive effects of his prior custody. The Court elaborated by commenting that the 14-day limitation meets Shatzer’s concern that a break in custody rule lends itself to police abuse. He envisioned 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 reinterrogation. However, once the suspect has been out of custody long enough, for 14 days, to eliminate is coercive effect, there will be nothing to gain by such gamesmanship, nothing that is, except the entirely appropriate ability to interrogate a suspect who has made a valid waiver of his Miranda rights (pp. 21–22).

In addressing the first issue, the Court established a new rule regarding a suspect’s invocation of his right to counsel. The rule provides that if an in-custody suspect, in response to Miranda warnings, invokes his right to counsel, police officers may reinitiate contact with the suspect if the suspect experiences a break in custody of at least 14 days, and Miranda warnings should be readvised.

**Issue Two**

The facts of this case set it apart from others and pose a second issue. The Court addressed the issue of whether Shatzer’s release back into general population of the prison amounted to a break in custody in accordance with Miranda. This was the first time the Court examined whether incarceration constituted custody for purposes of Miranda.

The standard for determining “custody” under Miranda has been whether there is a formal arrest or restraint on freedom of movement of the degree associated with formal arrest. The test of custody is an objective determination of whether the suspect was deprived of freedom in any significant way. “In custody” does not become custodial merely because of location rather it depends instead on the circumstances of the interrogation atmosphere (Zalman, 2008). The Court commented that the test to the component of custody is satisfied by all forms of incarceration. The Court ruled in Berkemer v. McCarty (1984) that Miranda is enforceable only in those type of situations in which the concerns that powered the decision are implicated. So, the temporary and relatively nonthreatening detention involved in a traffic stop or a Terry stop does not equate to Miranda custody. Furthermore, the Court held in Minnesota v. Murphy (1984) that a probation interview is not custody for Miranda purposes, even though the probationer is legally required to attend probation interviews and a condition of probation is that he or she answers all questions truthfully.

The Court noted that Shatzer was indeed incarcerated in prison and convicted of a crime. However, for Miranda purposes, the Justices made a distinction between a suspect being accused of a crime, confined in a lock-up or jail while the police continued their investigation into the issues that led to the accused being confined, and a convicted and incarcerated prisoner. The Court ruled that there is a vast difference between Miranda custody and incarceration pursuant to conviction. Arrestees are held in detention by their interrogators and have the power to continue their detention, have the power to present the final charges they would face, have some influence over whether they may be convicted, and what type of sentence they may receive.

Conversely, convicted prisoners are viewed in sharp contrast. Shatzer was serving a prison sentence in 2003 when Detective Blankenship interviewed him. He was released back to the general population after he requested that his attorney be present. He was transferred to another correctional facility when Detective Hoover interviewed him in 2006. Although there was a break in custody between the interviews, the status of Shatzer did not change. The Court noted that convicted prisoners who have been interrogated are released back to general population. They return to their
accustomed surroundings and daily routine and regain the degree of control they had over their lives prior to the interrogation (p. 14). They live among other prisoners, they are not isolated with their accusers, they can generally visit the library, they may participate in recreational activities, they may participate in educational and occupational programs, they may send and receive mails, and they are allowed phone calls and receive visitors. A convicted prisoner’s confinement is disconnected from their prior unwillingness to cooperate in an investigation. An interrogator has no power to increase the period of confinement which was determined at the time of sentencing. The interrogator has no apparent power over the prospects of parole decision making. The Court reasoned that lawful imprisonment imposed on conviction of a crime does not create the coercive pressures identified in _Miranda_ (p. 14).

**Discussion**

The Court concluded that the case illustrates the vast difference between _Miranda_ custody and incarceration pursuant to conviction (police custody and correctional custody). Hence, incarceration pursuant to conviction may constitute a break in custody for the purposes of _Miranda_. Furthermore, because Shatzer experienced a break in _Miranda_ custody lasting more than 2 weeks between the first and second interrogation attempts, _Edwards_ does not mandate suppression of his statements made in 2006. As a result, the Court reversed the judgment of the Court of Appeals of Maryland.

The Court’s decision is important as it provides clarification for police officers, attorneys, and the courts in how to proceed in matters pertaining to custodial interrogations. The decision reflects the first time the Court determined whether incarceration constitutes “custody” for _Miranda_ purposes. The Court had previously explicitly declined to address the issue. In this decision, the Court makes a specific distinction between police custody and correctional care for purposes of interrogations in accordance with _Miranda_.

The Court’s decision also illustrates a departure of their Court-made rule in _Edwards_. Pundits who extol the virtues of _stare decisis_ may voice a concern that such a ruling is contrary to the principle. This would be a dubious critique, however. The legal principle of _stare decisis_ emanates from the Latin phrase, _stare decisis et non quieta mouere_, which means to stand by the precedent and not to disturb settled points. Originating in England, as case law was developed, the decisions set the precedent for other cases and provide guidance to judges in deciding similar cases. In the United States, the Supreme Court is the ultimate authority for creating and determining precedent. The doctrine of _stare decisis_ in binding on lower courts once a higher court makes a case ruling. The use of case precedents in judicial decisions provides stability in the law and thus provides for equitable application of the law to individuals who find themselves in similar situations. This practice of judicial decision making results in predictability and uniformity.

Although it is important in American law to have settled and stable law, the Court is more willing to consider overruling its previous decisions if constitutional benefits are better served. The legal principle, however, does allow the Court to change the law over time. For example, Justice Brandeis wrote in _Hertz v. Woodman_ (1932) “that _stare decisis_ is not like the rule of _res judicata_, a universal inexorable command . . . whether it should be followed or departed is a question entirely within the discretion of the Court” (p. 45). Moreover, Justice Jackson commented in _Douglas v. City of Jeannette_ (1943) that the Court “is forever adding new stories to the temples of constitutional law, and the temples have a way of collapsing when one story too many is added” (p. 28). In _Monell v. New York City of Department of Social Services_ (1978) the Court wrote that “we have never applied _stare decisis_ mechanically to prohibit overruling our earlier decisions determining the meaning of statutes” (p. 39).

This is not the first time the Court has reversed a previous decision. From 1960 to 2005, the Court overturned their previous rulings in 74 case decisions, which average about two cases per year over
the period (Standler, 2009). Some examples illustrating this point include the following: the Court overturned their previous decision in *Olmstead v. U.S.* (1928) regarding the legality of wiretappings in their decision in *Katz v. United States* (1967); in *Gregg v. Georgia* (1976), the Court declared that the death penalty is not unconstitutional overturning their previous decision in *Furman v. Georgia* (1972); and finally the Court in *Monell v. City of New York Department of Social Services* (1978) reversed their previous decision regarding municipal liability in *Monroe v. Pape* (1961).

In *Shatzer*, the Court explained that the rule established in *Edwards* is not a constitutional mandate but a judicially prescribed prophylaxis and further extension is not justified (pp. 6, 10). Because the rule was Court-made, they were unwilling to extend it further, thus refusing to open the “protective umbrella” any further. This case illustrates that the law is dynamic and as changes occur the Court reserves the discretion to overrule previous decisions. It demonstrates that a precedent setting case is not eternal and may be overturned as necessary. Without question, criminal procedure and constitutional law in general would be easier to learn if the Court never changed their decisions. However, other disciplines such as science, medicine, industry, and technology change over time, requiring continual updating in knowledge. Equally important is that the law change with time, particularly when it is shown that a change is necessary to ensure fairness or that further extensions of a decision are fundamentally unwarranted.

In reversing their position regarding the *Edwards* rule, the Court provided further guidance on what time period is reasonable for police officers to reapproach a suspect for interrogation purposes. This is another important feature of the decision. The Court determined that it would be impractical for them to leave the issue unanswered or to leave it open to determine the issue on a case-by-case basis. Although the Court has historically been reluctant to set time limits governing police activities, they have issued decisions prescribing such limitations previously. For example, the Court held that no rigid time limits for the length of an investigatory stop should be required rather they held specific circumstances should be taken into account in *United States v. Sharpe* (1985).

Yet, in other cases, the Court has prescribed directives on time limitations. Under the Federal “Time Test,” the Court held in *McNabb v. United States* (1943) and in *Mallory v. United States* (1957) that all confessions, even voluntary ones, were excluded from evidence if there was an unnecessary delay in bringing the arrested suspect before a magistrate. The strict rule is inapplicable to state and local law enforcement officers but enforces the Federal Rules of Criminal Procedure.

In *County of Riverside v. McLaughlin* (1991), the Court ruled that detention of a suspect for 48 hrs is presumptively reasonable as the maximum amount of time permitted between arrest and the probable cause hearing. If the time-to-hearing is longer, the burden of proof shifts to the police to prove reasonableness. In *United States v. Banks* (2003), the Court determined that waiting 15–20 s after knocking and announcing their presence and intention to search was a sufficient time for officers to wait before forcing entry into a home to execute a search warrant for drugs (based on the circumstances of the incident). In *United States v. Edwards* (1974), the Court held that after a lawful arrest and detention, a warrantless seizure of clothes taken from a suspect several hours after being placed in custody was valid under the Fourth Amendment.

These case examples illustrate the concern of the Court in lieu of statutory guidelines on police activities. The decisions to specify time periods provide clarity and guidance for appropriate constitutional police work. Guidance by providing time specifications provide some degree of certainty so that criminal justice agencies may establish procedures with confidence that they fall within constitutional bounds, while simultaneously providing a level of discretion for the police to perform their sworn duties. The Court determined, like in previous cases, for clarity for the police, and while protecting a suspect’s rights, it was appropriate to establish the 14-day time period to avoid the consequence that continuation of the *Edwards* presumption would not reach the correct result most of the time (p. 11). In setting the time period, the Court noted a court is spared the fact-intensive inquiry into whether a suspect, pleading an *Edwards* violation, ever asserted his *Miranda* right to counsel.
Finally, the Shatzer decision not only bolsters Miranda but brings specific guidance to all of the criminal justice players who are involved in questioning, defending, prosecuting, and adjudicating a suspect accused of a crime. This decision provides clarity for both the police and the accused. The 14-day time period will strengthen Miranda and Edwards by providing concrete guidelines to law enforcement, the accused, defense counsel, State’s Attorneys, and the courts. The new rule informs law enforcement that once an accused requests counsel, officers must stop from initiating a new request for a waiver until the expiration of 14 days. The accused’s attorney will also be aware that it is possible for the police to reapproach the suspect after the 14-day time period has expired. Armed with this information, counsel could advise the client that he would have to request his attorney be present during the second interrogation.

The new time period will also give courts one more way to assess the voluntariness of a Miranda waiver. Without speculating over whether lapse of time had eliminated the presumption of coercion, courts would know that the proper amount of time had passed, and the accused would have to show that his second interrogation was coercive. The 14-day time period will terminate the threat of the slippery slope feared by the Maryland Court of Appeals. They feared that by holding the vague standard of “lapse of time” sufficient, the protections against the coercive pressures of interrogation would expire after an indeterminate time period had passed. With the implementation of the 14-day rule, there will be no question as to what amount of time is sufficient. The new rule will work to better preserve the fundamental purpose of Miranda.

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