

SEARCH AND SEIZURE BRIEFS

(02/28/07)

I. Fourth Amendment:

A. Three primary rules under the 4th Amendment:

- The **warrant rule** (preference for warrants for all searches).
- **The probable cause rule** (P.C. for all warrants and arrests).
- The **reasonableness rule** (Police actions must be reasonable).
- **Privacy** (reasonable expectation thereof).
- Prohibition against **unreasonable** searches **AND** seizures;

II. Fifth Amendment (*Escobedo v. Illinois*, 378 U.S. 478 (1964), *Miranda v. Arizona*, 384 U.S. 436 (1966)):

The **right to remain silent** **AND** the **right to counsel** under the 5th Amendment.
Privilege against **compulsory** self-incrimination.

A. Two Issues:

- Was suspect **in custody** and **under interrogation**?
- Were **warnings** adequate; were rights **clearly waived**; was suspect competent to waive; is more than one interrogation allowed?
- **Express** waiver (written) vs. **implied** waiver (oral/verbal).
- Custody (arrest) and Interrogation (questioning) = Warning + Waiver!
- Functional equivalent of interrogation (*Rhode Island v. Innis*, 446 U.S. 291 1980).

B. What is Interrogation? (*Exceptions to Miranda*):

- Volunteered statements
- Clarifying questions
- Routine questions
- Spontaneous questions (by law enforcement officers)
- Question related to public safety (*New York v. Quarles*, 467 U.S. 649 (1984))
- Field sobriety tests.
- Routine motor vehicle stops.
- *Terry* stops.

- Confrontation of suspect with evidence(without Miranda)
- Confrontation of suspect with accomplice(without Miranda)

Is this a ploy reasonably likely to elicit an incriminating response?

- Interrogation by private citizens (won't apply unless *citizen acts as an agent* for police).

C. **Multiple Attempts at Interrogation** (Three basic rules):

1. **The Mosley Rule** (*Michigan v. Mosley*, 423 U.S. 96 (1975) ability to conduct a second interrogation of a person who has *exercised his Miranda right to remain silent*):

- Honor the person's right to terminate questioning.
- Allow significant amount of time to intervene between the first and second interrogation attempt.
- Give person complete *Miranda* warnings again.
- Do not employ any pressure to cooperate or other illegal tactics.

Sample Only

2. **The Edwards Rule** (*Edwards v. Arizona*, 451 U.S. 477(1981) ability to conduct a second interrogation after a person has *exercised his Miranda right to counsel present*):

- Cannot do - even if accused is re-advised and agrees.
- Cannot be subject to further interrogation until counsel has been made available to accused and counsel is present.
- **UNLESS accused himself initiates** further communication.

3. **The Roberson Rule** (*Arizona v. Roberson*, 486 U.S. 675(1988).

An accused, *who is in custody*, and has *invoked the right to counsel*, may not be subjected to a police-initiated interrogation *even if* the interrogation *concerns a different crime*.

If the police initiate an interrogation after the defendant asserts his or her right to counsel at arraignment or similar proceedings, any waiver of that right for a police-initiated interrogation is invalid (*Michigan v. Jackson*, 475 U.S. 625.636 (1986).

Once an accused asks for or has a lawyer, the police must not interrogate the accused except in the presence of a lawyer (*Michigan v. Jackson*), (*Edwards v. Arizona*, *Minnick v. Mississippi*, 498 U.S. 146,153(1990, *Arizona v. Roberson*).

III. **Sixth Amendment** (Right to Counsel - *McNeil v. Wisconsin*, 501 U.S. 171 (1991) *People v. Trujillo* 773 P.2nd 1086 (1989):

- Further interrogation is prohibited without counsel present *after assertions* of the *right to counsel* are made *at or after the initiation of adversary judicial proceedings* (i.e. *grand jury indictment, arraignment*).

- Assistance of counsel is required for all criminal trials if jail is a possibility (supplied by the state if defendant cannot afford).
- The 6th Amendment right to counsel, unlike the Miranda 5th Amendment right to counsel, *is offense specific*.
Invocation of the 6th Amendment right to counsel bars police initiated interrogation regarding *only the offense at issue*; it does not bar the *later* police-initiated interrogation on an unrelated charge *when an accused is not in custody!*

“The US Supreme Court has also ruled that a suspect who previously asserted his 6th Amendment right to counsel (by appearing in court with an attorney) may be subsequently questioned (without an attorney present) for unrelated, uncharged crimes. The Court noted that 6th Amendment right to counsel is offense-specific (so it does not apply to other prosecutions) but the 5th Amendment right to counsel is not (so it does apply to other prosecutions).

This is a complex issue and it is critical that you know the facts involved before you question a suspect about unrelated, uncharged crimes. You need to know whether the suspect has previously asserted his Sixth Amendment right to counsel (by appearing with an attorney) or his Fifth Amendment right to counsel (by requesting an attorney during questioning)”. *Colorado Peace Officers Handbook*, Robert Keatly, 2004-2005.

IV. **Pre-Trial Identification Procedures - Showups and On-Scene Identifications:** (*Kirby v. Illinois*, 406 U.S. 682 (1972), *Stovall v. Denno*, 388 U.S. 293 (1967), *Neil v. Biggers*, 409 U.S. 188 (1972).

The **right to counsel attaches** to lineups and showups conducted *at or after the initiation of adversary judicial proceedings (examples below)* :

Formally charged	Indictment	Preliminary hearings
Information	Arraignment	

Showups and on-scene identifications are by their very nature *suggestive*.

- **Avoid indications that suspect is in custody** (may use handcuffs or physical restraint if you believe suspect may flee, committed a violent crime, or fear for personal safety);
- **Bring eyewitness to suspect** unless eyewitness cannot move or the suspect consents to the movement or you have probable cause to arrest;
- **Don't say anything** to eyewitness;
- **Let eyewitness identify suspect** without prompting or questions;
- **Don't search** suspect, *except* for protective purposes, until eyewitness has identified suspect.