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Interrupting to Remain Silent

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United States v. Abdallah

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Everyone remembers where they were for certain important historical tragic events: the Kennedy assassination,[1] the Space Shuttle Challenger explosion,[2] the 9/11 attacks,[3] and the 2009 MTV Video Music Awards. In case the last one is a little fuzzy for you,[4] this was the night that Taylor Swift came up on stage to accept her VMA for "Best Female Music Video" only to be interrupted by Kanye West. As Swift started to graciously thank the people in her life that made this pinnacle moment possible,[5] West, who was apparently upset that Beyonce did not win the award, grabbed the microphone away from Swift and said, "Yo, Taylor, I'm really happy for you, I'mma let you finish, but Beyonce had one of the best videos of all time. One of the best videos. Of. All. Time." He then politely handed the microphone back to Taylor and left her to thank the people who helped her win the award that he had just told the world she didn't deserve.[6]

Today's case features another awkward and graceless interruption. The Fourth Circuit's decision in United States v. Abdallah[7] considers the question of whether a person unambiguously invokes his right to remain silent when he interrupts the giving of Miranda warnings to say, "I'm not going to say anything at all." In Abdallah, officers received complaints that unlawful synthetic cannabinoids (known as "spice") were being sold at a local Red Barn gas station[8] and convenience store that was operated by defendant Abdallah and his son. After making multiple controlled purchases at the Red Barn, they executed a search warrant there and seized packages of spice, a digital scale, $109,308 in cash, and two keys. One of the keys opened a storage unit filled with spice and the other opened Abdallah's safe deposit box from which officers seized an additional $701,450 in cash pursuant to another search warrant.[9]

After the search, the defendant sold the Red Barn and bought another building where he continued to sell spice. About six months after the first search, officers executed a search warrant at the new location and recovered

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[1] I'm old, but I wasn't alive for the Kennedy assassination. My mom, however, watched about every minute of the Watergate hearings right after I was born, which probably subconsciously led me to become a lawyer. I'm just glad it didn't cause me to be a politician.
[2] I was in junior high school and had to call my mom for something at lunchtime (probably forgot lunch money or my homework.) She told me the news on the phone. I'm sure later a television was rolled in to our class so we could watch the news just like we would watch the ACC tournament every year.
[3] I was managing a heavy traffic court docket in Durham on September 11, 2001 and lawyers would come in talking about it. I thought the whole thing was a weird accident and thought the stories about a second plane were just rumors. I remember that once air travel resumed, it was an eerie feeling hearing a plane fly over your house for a while after that.
[4] Because you are not as hip as your police attorney. Although calling myself "hip" is probably not the best way to prove that point.
[5] Which no doubt included a number of ex-boyfriends who were the inspiration to every one of her songs.
[6] Beyonce would later that night take home the VMA award for "Video of the Year" for "Single Ladies," which proved (1) that Kanye was right; (2) that he just needed to be patient and shut up; and (3) that the VMA awards had way too many similar categories.
[7] No. 17-4230 (4th Cir. Dec. 18, 2018).
[8] I'm not familiar with the Red Barn brand, but apparently there are a lot of them in Virginia and at least one in North Carolina.
[9] Abdallah would later file a motion to get this money back, claiming that because of his religion's (Islam) law against usury (unreasonably high interest), he did not maintain a bank account and kept his money in cash "and other tangible forms that do not accrue interest." His argument was hurt by the fact that he in fact had multiple bank accounts and had conducted bank transactions on the same day as the search.

additional spice, a revolver, crack cocaine, drug paraphernalia, and $10,000 in cash. Abdallah was arrested and taken back to police headquarters for interrogation.

A Special Agent with the Department of Homeland Security started the interrogation by reading the defendant his Miranda rights. About halfway through this process, the defendant interrupted and stated that he "wasn't going to say anything at all." The agent responded by saying, "Well, just let me finish your warning first." Immediately after the warning, the agent asked, "Do you even know why you are under arrest?" Abdallah replied, "No, tell me." Apparently, the agent then re-read the Miranda warnings. This time, the defendant didn't interrupt, indicated that he understood them, and then made several incriminating statements.[10]

After being convicted of several federal crimes by a jury of his peers, the defendant appealed to the Fourth Circuit. He argued that these incriminating statements should not have been admissible against him because they were obtained in violation of his Fifth Amendment rights. Specifically, he argued that he had clearly invoked his right to remain silent during his custodial interrogation and the officer should have ceased all questioning after he stated he wasn't going to say anything at all.

As any law enforcement officer or casual watcher of television police drama knows, the Miranda v. Arizona[11] case held that any statement made during a custodial interrogation[12] is not admissible unless officers first inform the suspect of a set of rights that they have. These rights, of course, include the right to remain silent and the right to have an attorney present. If the subject of the interrogation clearly and unambiguously invokes either the right to remain silent or the right to an attorney, all interrogation must cease. If the right to an attorney is the one invoked, interrogation may not resume (assuming it is not reinitiated by the defendant) until there has been at least a fourteen-day break in custody or an attorney is made available.[13] If the defendant invokes his right to remain silent, officers may not try to initiate a custodial interrogation unless the right to silence has been scrupulously honored by the passage of time.[14]

So the first question was whether defendant's statement that he wasn't "going to say anything at all" was a clear invocation of his right to remain silent. The Fourth Circuit cited several previous cases that had held very similar statements to be just that:

"I have decided not to say anymore."
"I don't want to talk no more."
"I don't want nothing to say to anyone."[15]
"I don't wanna talk about it."
"I have nothing to say."
"I have nothing else to say."

There are cases where even though the statement itself seemed clear, the circumstances under which it was made cast some doubt over whether the subject was actually invoking his rights. In Abdallah, the government argued that the fact that he voluntarily waived his Miranda rights minutes later and was very cooperative indicated that he was not really invoking his rights with his earlier statement. However, the Fourth Circuit held that courts can consider the circumstances leading up to the statement but may not use circumstances that occurred after the invocation to cast doubt on an otherwise clear statement. As a result, in this case, they ruled that Abdallah had clearly invoked his right to remain silent by saying he wasn't going to say anything at all.

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[10] His statements included that he sold spice to "pretty much everybody," had sold approximately 10,000 grams of spice, he used crack cocaine and would give prostitutes crack cocaine as a "bonus." In addition, he told police that he had another safe deposit box that they were "too late" to seize that contained $150,000.
[11] 384 U.S. 436 (1966).
[12] Miranda rules only apply when the person being interrogated is in custody. A person is in custody when they are formally arrested or their movement is restrained to the degree associated with a formal arrest. We'll talk about the definition of "interrogation" in a bit.
[13] Maryland v. Shatzer, 559 U.S. 98 (2010).
[14] Michigan v. Mosley, 423 U.S. 96 (1975). We'll dive into what this means a little later on also.
[15] Proper grammar is clearly not required to invoke one's rights, either.

The court also held that there is no requirement that the defendant wait for the Miranda warnings to be completed before asserting his rights. The fact that he interrupted the officer before he was done did not make his invocation any less effective. Therefore, the officer should have ceased going over the warnings at that time and stopped the interrogation.

Second, the court considered whether the officer "interrogated" Abdallah after he invoked his right to remain silent. "Interrogation" is any words or actions by the officer which are reasonably likely to elicit an incriminating response. As with the previous issue, the court looked at other cases and found that the question, "Do you even know why you are under arrest?" often led to an incriminating response. For example, in a Texas case, the response was, "Yes, I know I'm under arrest for killing that fifteen-year old girl," while in a case from Washington, the arrestee answered, "Of course I do, you might as well shoot me now."[16] Because this question was reasonably likely to elicit an incriminating response, it constituted interrogation in violation of the defendant's asserted Fifth Amendment rights.

As I mentioned before, officers may not try to initiate a custodial interrogation with a defendant who has invoked their right to silence unless the right to silence has been scrupulously honored by the passage of time. There is no hard and fast rule as to the amount of time that must pass, but it is probably at least a few hours if the same officer will be questioning about the same crime and it might be a little less time if the questioning is done by a different officer or the questioning concerns a different crime.[17] In the Fourth Circuit, the court generally weighs five factors (although this is not an exhaustive list of what they might consider):

1. Whether the police had given the suspect Miranda warnings at the first interrogation and the suspect acknowledged that he understood the warnings;
2. Whether the police immediately ceased the interrogation when the suspect indicated that he did not want to answer questions;
3. Whether the police resumed questioning the suspect only after the passage of a significant period of time;[18]
4. Whether the police provided a fresh set of Miranda warnings before the second interrogation; and
5. Whether the second interrogation was restricted to a crime that had not been a subject of the earlier interrogation.[19]

Clearly in Abdallah, since there was really no passage of time after the defendant invoked his right to remain silent, this was not an issue that would save the statements from being suppressed. As a result, Abdallah's convictions were overturned and he was awarded a new trial.

That concludes our review of the right to remain silent. I'm sure some of you expected this legal update to include some references to a certain basketball game that was played last Wednesday, but because I'm such a nice guy…

"I'm not going to say anything at all."

Brian Beasley
Police Attorney
High Point Police Department

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[16] This particular arrestee had apparently murdered two young employees of a Burger King. Pirtle v. Lambert, 150 F.Supp.2d 1078 (E.D. Wash. 2001).

[17] The great Bob Farb cites a lot of cases on this issue on pages 581-82 of the Fifth Edition of Arrest, Search, and Investigation in North Carolina. Reviewing them will give you a sense of how much time needs to pass before re-approaching the suspect.

[18] Again, there is no bright line rule for "significant period of time," although the court says that it is "a function of the degree to which police persisted in efforts to wear down the suspect's resistance and make him change his mind."

[19] It is not required that the second interrogation be about a separate crime, but it seems that less time is required to pass between interrogations if it is.

ABOUT THE AUTHOR: Brian Beasley is the Legal Advisor for the High Point Police Department. This legal update is provided free of charge to the SR Webpage in the hopes that officers across the state would be able to benefit from it. Brian is not an attorney with Smith Rodgers, PLLC but he thinks they're pretty cool guys.

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