

“Say What?!”

A Review of Recent U.S. Supreme Court 5th Amendment Self-incrimination Case Law

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5th A Self-Incrimination

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; **nor shall be compelled in any criminal case to be a witness against himself**, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Self-Incrimination Review

5th A. privilege against SIC applies when:

1. Government Compels
2. Testimonial Evidence
3. Potential for Prosecution

Miranda Review

Miranda advisement required when there is:

1. Police (Cops)
2. Custody
3. Interrogation (“C”uestioning)

(PIC / 3Cs)

Miranda Review

A valid Miranda waiver is:

- Voluntary
- Intelligent & Knowing
- Affirmative

Miranda Review

Invocation of Silence

- **STOP**
- Suspect can reinitiate
or
- Cooling Off Period (2hrs)
- Gov't Reinitiates
then
- Re-advise
- New Waiver
- Proceed

Invocation of Counsel

- **STOP**
- Suspect can reinitiate
or
- Lawyer actually present
then
- Re-advise
- New Waiver
- Proceed

**THE NEW
STUFF...**

Scenario 1

- Police question a 13-year-old seventh grade student at school about his involvement in two home break-ins that had occurred five days prior.
- He admits involvement.
- He is not arrested and is permitted to go home on the school bus at the end of the day.
- He files a motion to suppress his admission, arguing that, as a child, he should have been Mirandized even though he was questioned at school and not arrested?

Should the police have considered his age when deciding whether to Mirandize him?

J.D.B. v. North Carolina

131 S. Ct. 2394 (2011)

The U.S. Supreme Court held that police *should* consider a child's age in determining whether that child is in custody for purposes of Miranda.

Scenario 2

- Two armed deputies question a state prisoner in a conference room at the prison for between 5 and 7 hours one night about an unrelated crime that had allegedly occurred prior to his incarceration.
- The conference room is well lit, and the door is sometimes open and sometimes closed.
- The prisoner is offered food and water.
- The prisoner is never Mirandized, nor told that he does not have to speak to the deputies, but he is told at the beginning of the interview, and again during the interview, that he is free to leave and return to his cell.
- He is not handcuffed or otherwise restrained.
- The deputies at times speak “sharply” and once use profanity.
- The prisoner states several times that he no longer wants to talk to the deputies, but he does not ask to go back to his cell.
- He ultimately confesses and is returned to his cell by prison officers.

Will his confession be admissible in the criminal trial against him?

Howes v. Fields

132 S. Ct. 1181 (2012)

- Initially, the 6th Circuit overturned his conviction finding that his interrogation was *per se* custodial requiring Miranda because he was separated from the general prison population and questioned about an outside crime.
- **The U.S. Supreme Court reversed, holding that there is no such *per se* rule for prisoners. Rather, the Court held that whether a prisoner is in Miranda custody is determined by examining all of the facts and circumstances of the interrogation including any restraints on his freedom of movement and any coercive police pressures. Here, Fields was not in custody.**
- *Note that three Justices agreed that there is no *per se* rule, but, based on these facts, would have held that Fields was in Miranda custody.

Scenario 3

Police arrest a suspect and read him the following Miranda warnings prior to questioning:

- You have the right to remain silent.
- If you give up the right to remain silent, anything you say can be used against you in court.
- You have the right to talk to a lawyer before answering any of our questions.
- If you cannot afford to hire a lawyer, one will be appointed for you without cost and before any questioning.
- You have the right to use any of these rights at any time you want during this interview.

The suspect waives his rights and makes criminal admissions.

Will his admissions be admissible in the criminal trial against him?

Florida v. Powell

130 S. Ct. 1195 (2010)

- Powell moved to suppress his admissions arguing that the warning language used did not adequately inform him of his right to have his attorney present during questioning.
- **The U.S. Supreme Court held that the warning used was sufficient because it reasonably conveyed to the suspect his rights as required by Miranda.**

Scenario 4

- Police arrest a suspect for shooting and killing someone in a strip mall parking lot.
- They Mirandize him, and he confirms that he understands his rights but refuses to sign the form. He does not respond when asked if he agrees to speak to police.
- The suspect says almost nothing while police question him for almost 3 hours before he makes an admission. The admission is his first substantive statement.
- The defendant tries to suppress his statement at trial arguing that he had not affirmatively waived his rights.

Will his statement be admissible in the criminal trial against him?

Berghuis v Thompkins

130 S. Ct. 2250, (2010)

The U.S. Supreme Court held that a suspect who:

- **receives and understands Miranda warnings, and**
- **fails to invoke his Miranda rights,**

waives his right to remain silent when offering an *uncoerced* statement to the police.

Scenario 5

- Police Mirandize a prisoner who is serving a sentence, and attempt to interview him about an unrelated crime. He invokes his right to counsel, the interview is terminated, and the case closed due to lack of evidence.
- More than 2 years later, police, armed with new evidence, re-open the case and re-approach the prisoner who is still serving a sentence.
- Police advise him of his Miranda rights, and, without counsel present, he waives his rights and makes incriminating admissions about the unrelated crime.

Will his statements be admissible in the criminal trial against him?

Maryland v. Shatzer
130 S. Ct. 1213 (2010)

The U.S. Supreme Court held that police may re-approach a suspect in custody who has previously invoked his right to counsel and obtain a valid Miranda waiver from the suspect without his counsel being present after a break in custody of **14 days or more.**

Hypothetical Non-Inmate Scenario

- Police arrest a suspect in a theft case. They Mirandize him, but he says he wants a lawyer, so they stop talking with him. He is released that day from the station with a summons to appear in court the following month.
- A week later, he is arrested for a domestic assault. Police again Mirandize him, and, this time, he agrees to talk. He admits to the assault but claims he acted in self-defense.
- **Will his statement be admissible in the domestic assault criminal case against him?**

Scenario 6

- The defendant murdered a man, stole his ID and his car, then used the ID establish ownership of the car and sell it.
- Police speak with the defendant 3 times during the investigation:
 - **Nov. 4:** Chance meeting at the police station, suspect Mirandized, asked for lawyer, left
 - **Nov. 9 (11:30 a.m.):** Arrested for forgery, not Mirandized, questioned for approx. 45 minutes over a period of several hours, admitted to taking ID card but said victim told him to sell the car, claimed not to know where victim was, taken to jail
 - **Nov. 9 (7:30 p.m.):** Brought back to station, Mirandized, says he spoke to his lawyer & heard about body, confesses to murder

Will his statement regarding the murder be admissible in the criminal trial against him?

Bobby v. Dixon

132 S. Ct. 26 (2011)

- Dixon was convicted of murder. At trial his murder confession the 2nd Nov. 9 statement, was admitted.
- The 6th Circuit reversed, holding that the murder confession should have been excluded because, among other things, his warned confession followed a deliberately unwarned interrogation - the 1st Nov. 9 statement. (citing Missouri v. Seibert)
- **The US Supreme Court reversed, holding that since both of Dixon's statements were voluntary, and his earlier unwarned statement in no way undermined the effectiveness of the Miranda warnings prior to the second statement, the murder confession was properly admitted.**

Questions?

Thank you for attending.

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