

Clark v. Maryland
(2001) ___ A.2d ___

INTRODUCTION

Although we don't ordinarily report on cases from other states, this case from the Maryland Court of Special Appeals deals with an important issue that neither the California courts nor the U.S. Supreme Court have yet resolved.¹ That issue is as follows:

If a suspect invoked his *Miranda* right to counsel as to a crime for which he was convicted and is now in prison, can officers seek to question him about some other crime?

Because the Maryland court's opinion is well-reasoned and solidly grounded in common sense and the sparse law on the subject, it ought to have some persuasive value for California courts.² In any event, it may be of help to officers and prosecutors who confront this issue.

FACTS

In 1986, Clark murdered 6-year old Michelle Dorr in Montgomery County and disposed of her body. Although Clark was questioned about Michelle's disappearance and was considered the prime suspect, officers were unable to develop sufficient evidence to arrest him.

In 1992, Clark committed another murder in Montgomery County. The victim was 23-year old Laura Houghteling. The court did not furnish details as to this murder, nor did it need to. It's relevance to this case is limited to the following:

- (1) In November of 1992, while Clark was in custody on the Houghteling case, he invoked his *Miranda* right to counsel.
- (2) Clark was convicted of murdering Laura Houghteling in 1993 and sentenced to 30 years in prison.

While in prison, Clark admitted to some inmates that he had murdered Michelle Dorr. The inmates eventually notified Montgomery County police but it is not clear exactly when they did so. In any event, in 1998 officers went to the state prison and asked Clark if he would be willing to talk to them about Michelle's disappearance (her body was never discovered). Clark waived his *Miranda* rights and, during the subsequent interview, made some incriminating statements which were used against him at his trial on charges he murdered Michelle. He was convicted.

DISCUSSION

¹ **NOTE:** The issue was before the U.S. Supreme Court in *U.S. v. Green* (1992) 504 US 908 but was dropped when, about four months after oral argument, Green was murdered. In *Clark*, the court noted, "At oral argument in *Green*, a number of justices asked questions that indicated their concern about the duration of Green's question-proof status after he invoked his right to counsel."

² **NOTE:** In the absence of California authority on point, courts may consider decisions from other states for their persuasive value. See *J.C. Penney Casualty Ins. Co. v. M.K.* (1991) 52 Cal.3d 1009, 1027; *Magill v. Superior Court* (2001) 86 Cal.App.4th 61, 121; *Squaw Valley Ski Corp. v. Superior Court* (1992) 2 Cal.App.4th 1499, 1508, fn.2.

The United States Supreme Court has ruled that when a suspect invokes the *Miranda* right to counsel, officers may not seek to question him about *any* crime while he is in custody.³ Although this rule is rather harsh and has drawn much criticism over the years, it is at least based on a certain logic. Specifically, it is intended to prevent officers from badgering or pressuring suspects into changing their minds and talking to them without an attorney present.⁴

If this rule were to be strictly applied, however, it would effectively render a suspect question-proof for however long he remains in custody. In other words, it creates a privileged class of criminals who, unlike virtually everyone else in the country, cannot even be asked by officers if they are willing to submit to questioning. The facts in *Clark* demonstrate the absurdity of such an interpretation.

Clark invoked his *Miranda* right to counsel in 1992 when he was being questioned about the murder of Laura Houghteling. He was subsequently convicted of murdering Houghteling and sentenced to 30 years in prison. Almost six years after arriving in prison, the officers asked him if he would be willing to discuss the disappearance of Michelle Dorr. He said yes, and waived his *Miranda* rights.

Did the officers' conduct constitute "badgering?" Did the officers "pressure" Clark into talking with them? Unquestionably, no. Furthermore, it cannot be honestly contended that the pressures inherent in custodial interrogation, which as noted were the concern of the *Miranda* court, not only remain forever but remain in full force. If such were the case, no felon could be sentenced to prison because the existence of such unremitting pressure would necessarily constitute cruel and unusual punishment.

Consequently, the court ruled that the passage of time eventually eliminates the pressures inherent in custodial interrogation.⁵ And when those pressures no longer exist, the suspect is no longer in "custody" for *Miranda* purposes.⁶ Said the court:

Common sense dictates that, if a rule is devised to prevent badgering a suspect into giving up his right to counsel, and because of an immense time gap, no badgering even arguably occurred, then blind obedience to the rule is not required.

Although the court did not attempt to determine how much time must pass before those pressures are eliminated, it concluded that "five plus years" was

³ *Edwards v. Arizona* (1981) 451 US 477; *Arizona v. Roberson* (1988) 486 US 675.

⁴ See *Smith v. Illinois* (1984) 469 US 91 98.

⁵ **NOTE:** The court quoted the following from Magid, Laurie, *Questioning the Question-Proof Inmate Defining Miranda Custody for Incarcerated Suspects* (1997) 58 Ohio St. L.J. 883: "There is little in the [United States Supreme] Court's cases to suggest that the great potential for coercion existing shortly after arrest, or arguably at any time pre-trial, also continues to exist for every moment of all the subsequent years of the defendant's incarceration. Even in the early pre-trial, post-arrest stages, the inherently compelling nature of custody is a fiction in many cases."

⁶ **NOTE:** The court in *Clark* pointed out, "Federal and state courts have unanimously accepted the view that the *Edwards* prohibition against reinterrogation is inapplicable if, after a suspect asks for counsel, there is a break in custody before reinterrogation commences." Citations omitted.

certainly enough. Thus, it ruled the officers did not violate *Miranda* by seeking to question Clark about the disappearance of Michelle Dorr.

DA's COMMENT

Assuming California courts are persuaded by the reasoning in *Clark* and the cases upon which it was based, the question remains: What circumstances must exist before officers may seek to question a suspect who has invoked the *Miranda* right to counsel?

Taking a cautious approach to the issue (which we must because the issue remains undecided in California), we think officers could safely seek to question a suspect who invoked the *Miranda* right to counsel if, (1) the suspect was subsequently convicted of the crime for which he invoked, (2) the suspect was sentenced to prison for the crime, (3) the suspect was released into the general prison population,⁷ (4) a sufficient amount of time passed so that the suspect had become settled into the prison routine, (5) the suspect agreed to speak with officers and waived his *Miranda* rights, and (6) the suspect was not restrained in any manner other than that which is inherent in a prison facility.⁸

⁷ See Magid, Laurie, *Questioning the Question-Proof Inmate Defining Miranda Custody for Incarcerated Suspects* (1997) 58 Ohio St. L.J. 883, 947-9 ["While release into the general population as a sentenced prisoner is obviously quite different than release to one's home, it is still a significant event for *Miranda* purposes. Release into the general prison population places an inmate in a very different atmosphere than the one he endured after arrest as a pre-trial detainee, worried and uncertain about his fate with regard to the pending charges. A sentenced prisoner, settled into the routine of his new life in the general prison population, is incarcerated but may well be out of *Miranda* custody. . . . [T]he inmate who has assumed his new routine in prison no longer needs the extra protection of [the rule prohibiting police-initiated questioning following an invocation of the *Miranda* right to counsel]. The restraints necessarily imposed by incarceration become familiar matters to inmates and do not create the coercive circumstances in which it must be presumed that one's free will is overcome."].

⁸ ALSO SEE *U.S. v. Arrington* (8th Cir. 2000) 215 F.3d 855, 856-7 ["Although the Fifth Amendment right to counsel continues throughout the duration of police custody, we find no support in *Edwards* or *Roberson* for *Arrington's* contention that the right also 'continues ad infinitum,' and certainly not where, as here, the accused has entered a guilty plea and has begun serving his sentence."]. BUT ALSO SEE *Kochutin v. Alaska* (1991) 813 P.2d 298. ALSO SEE ⁸ See *People v. Anthony* (1986) 185 Cal.App.3d 1114, 1122-3; *People v. Fradiue* (2000) 80 Cal.App.4th 15, 20-1; *Cervantes v. Walker* (9th Circuit 1978) 589 F.2d 424, 427-8; *U.S. v. Turner* (9th Cir. 1994) 28 F.3d 981, 983-4; *State v. Ford* (New Hampshire Supreme Court 1999) 738 A.2d 937, 943 ["In this case, the . . . interview took place in a relatively uncoercive area of the prison, the correctional officers' lunch room, not a prison cell or interrogation room."]; *U.S. v. Conley* (4th Cir. 1985) 779 F.2d 970, 973-4 ["Although *Conley* wore handcuffs and, at some points, full restraints, evidence in the record indicates that this was standard procedure for transferring inmates to the infirmary or elsewhere in this maximum security facility. Both officers knew *Conley*, addressed him by his nickname, and testified that they questioned him a witness to . . . the murder . . ."].