The United States Supreme Court's Ruling in *Maryland v. Shatzer*

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On February 24, 2010, the United States Supreme Court decided *Maryland v. Shatzer*, 130 S. Ct. 1213 (2010), which modified the ruling in *Edwards v. Arizona*, 451 U.S. 477 (1981). The Court ruled that when a prisoner serving a sentence asserted the right to counsel during custodial interrogation in prison: (1) the officer had the authority to reinitiate custodial interrogation with *Miranda* warnings and a waiver of rights after there had been a break in custody for fourteen days or more; and (2) the prisoner's return to the general prison population after he had asserted the right to counsel was a break in custody that began the running of the fourteen days. This memorandum discusses the ruling and its impact on law enforcement practices and the introduction of evidence in court. The text of the *Shatzer* opinion is available at http://www.supremecourt.gov/opinions/09pdf/08-680.pdf.

I. Pertinent United States Supreme Court Rulings Before *Shatzer*

It is useful to review prior United States Supreme Court rulings discussed in *Shatzer* to provide an appropriate background to the Court's ruling.

The United States Supreme Court in *Miranda v. Arizona*, 384 U.S. 436 (1966), adopted a set of prophylactic measures—the well-known *Miranda* warnings and waiver of rights—to protect a defendant's Fifth Amendment privilege against compelled self-incrimination from the "inherently compelling pressures" of custodial interrogation.[1] The Fifth Amendment applies to the states through the Fourteenth Amendment.

Fifteen years after *Miranda*, the Court was confronted with the question whether an officer could reinitiate custodial interrogation with *Miranda* warnings and waiver after a defendant had previously asserted the right to counsel. In *Edwards v. Arizona*, 451 U.S. 477 (1981), an officer arrested the defendant for murder and other offenses on January 19, 1976. He was properly informed of his *Miranda* rights at the police station and agreed to answer questions. During the interrogation, the defendant said, "I want an attorney before making a deal." Interrogation stopped and the defendant was taken to the county jail. The next morning, two other officers approached the defendant in jail and properly informed him of his *Miranda* rights. The defendant agreed to talk with the officers and made incriminating statements that the state introduced into evidence at his trial. The United States Supreme Court ruled that the introduction of the defendant's statements violated his Fifth Amendment rights under *Miranda*. The Court determined that the *Miranda* waiver of rights was insufficient to protect a defendant's right to have counsel present at a later interrogation if he had previously requested counsel, as the defendant had done in this case. The Court imposed a second layer of protection: when a defendant has invoked the right to have counsel present during custodial interrogation,[2] a valid

[1] For a discussion of the *Miranda* warnings and waiver, see pages 200-03 of Robert L. Farb, *Arrest, Search, and Investigation in North Carolina* (3d ed. 2003) (hereafter, *Arrest, Search, and Investigation).*
[2] To be effective, a *Miranda* assertion of the right to counsel must be made when the defendant is in custody and shortly before or during the giving of *Miranda* warnings or during the interrogation. *See* pages 203-204 of *Arrest, Search, and Investigation in North Carolina.*

waiver of that right cannot be established by showing that he responded to later officer-initiated custodial interrogation—even if he had been advised of his *Miranda* rights and waived them. He is not subject to further interrogation until counsel has been made available to him, unless the defendant himself initiates further communication, exchanges, or conversations with officers.

As explained in *Shatzer*, the *Edwards* rationale provides that once a defendant indicates he is not capable of undergoing custodial interrogation without the advice of counsel, any later *Miranda* waiver initiated by officers is itself the product of "inherently compelling pressures" and is not the defendant's purely voluntary choice. The *Edwards* presumption of involuntariness ensures that officers will not take advantage of the mounting coercive pressures of prolonged custody by repeatedly attempting to question a defendant who had previously requested counsel until the defendant is badgered into submission.[3]

The Court applied *Edwards* in *Arizona v. Roberson*, 486 U.S. 675 (1988). In that case, the defendant was arrested on April 16, 1985, for a burglary committed on that date. In response to *Miranda* warnings, the defendant replied that he "wanted a lawyer before answering any questions." On April 19, 1985, while still in jail for the April 16 arrest, a different officer interrogated him about a different burglary that had occurred on April 15. The officer was not aware that the defendant had requested counsel three days earlier. After advising the defendant of his *Miranda* rights and obtaining a waiver of rights, the officer obtained an incriminating statement about the April 15 burglary. The issue before the United States Supreme Court was the admissibility of the statement in the state's case-in-chief[4] in the prosecution of the April 15 burglary. The Court ruled that the statement was inadmissible under *Edwards* and other cases. The Court stated that the presumption raised by the defendant's request for counsel—that he considers himself unable to deal with the pressures of custodial interrogation without legal assistance—does not disappear simply because officers have approached the defendant, still in custody and without counsel, about a separate investigation.[5]

The Court further refined the *Edwards* analysis in *Minnick v. Mississippi*, 498 U.S. 146 (1990). In *Minnick*, the defendant was arrested in California on August 22, 1986, for murders that had occurred in Mississippi four months earlier. He was committed to jail. The next day, Federal Bureau of Investigation agents came to the jail, gave *Miranda* warnings to the defendant, who answered a limited number of questions about the Mississippi crimes and then stated, "Come back Monday when I have a lawyer" and he would make a more complete statement with his lawyer present. The FBI interview ended. After the interview, an appointed lawyer met with the defendant. On August 25, 1986, an officer from Mississippi came to the jail and the defendant, after being advised of his *Miranda* rights and waiving them, made incriminating statements that were admitted at his Mississippi murder trial. The Court ruled that the incriminating statement was not admissible in the state's case-in-chief.[6] The Court stated that whatever the ambiguities of

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[3] *Maryland v. Shatzer*, slip opinion at 5-6.

[4] The term "case-in-chief" refers to the state's presentation of evidence after the selection of the jury in an attempt to prove the charged offense(s). There are some circumstances in which the state may impeach a testifying defendant with a statement taken in violation of the *Miranda* ruling that is otherwise voluntarily given. *See Harris v. New York*, 401 U.S. 222 (1971); *Oregon v. Hass*, 420 U.S. 714 (1975); *State v. Bryant*, 280 N.C. 551 (1972); *State v. Stokes*, 357 N.C. 220 (2003).

[5] 486 U.S. at 683. The Court also stated that it attached no significance to the fact that the officer who conducted the interrogation about the April 15 burglary did not know the defendant had made a request for counsel. *Edwards* focuses on the defendant's state of mind, not that of law enforcement, and it is an officer's duty to determine whether a defendant has previously requested counsel. *Id.* at 687-88.

[6] See note 4.

earlier cases,[7] when counsel is requested, interrogation must stop and officers may not reinitiate custodial interrogation without counsel present, whether or not the defendant has consulted with his attorney.[8]

II. *Maryland v. Shatzer*

A. Facts

A detective went to a Maryland prison in 2003 to question the defendant about his alleged sexual abuse of his son, for which he was not then charged. The defendant was serving a prison sentence for a conviction of a different offense. The defendant asserted his right to counsel under *Miranda*, and the detective terminated the custodial interrogation. The defendant was released back to the general prison population to continue serving his sentence, and the child abuse investigation was closed. Another detective reopened the investigation in 2006 and went to another prison where the defendant had been transferred and was still serving his sentence. The detective gave *Miranda* warnings to the defendant, who waived his *Miranda* rights and gave a statement that was introduced at his child sexual abuse trial.

B. Analysis and Ruling

1. Court's Discussion of *Miranda* and *Edwards*

The Court first reviewed its rulings in *Miranda* and *Edwards* and noted that lower courts have uniformly ruled that a break in custody ends the *Edwards* presumption of involuntariness that bars an officer from initiating custodial interrogation after a defendant has asserted the right to counsel under *Miranda*.[9] The Court then discussed whether the *Edwards* rule should be extended to include a break in custody. It stated that the benefit of retaining the *Edwards* presumption of involuntariness is the conservation of judicial resources which would otherwise be expended in making difficult determinations of voluntariness. *Edwards* prevents officers from badgering a defendant into waiving his or her previously asserted *Miranda* right to counsel. Another benefit is measured by the number of coerced confessions the rule suppresses that otherwise would have been admitted at trial. The Court noted that the model *Edwards* case occurs when a defendant has been arrested for a crime and is held in uninterrupted pretrial custody while the crime is being actively investigated. After the initial interrogation, and up to and including the second one, the defendant remains separated from his or her normal life and companions and is isolated in a law enforcement-dominated atmosphere where officers control the defendant's fate. The Court stated that this was the situation confronted by the defendants in *Edwards*, *Roberson*, and *Minnick*.

2. Distinction Between *Shatzer* and *Edwards, Roberson,* and *Minnick*

The Court noted that—unlike the defendants in *Edwards*, *Roberson*, and *Minnick*, who had not been released from custody before being reinterrogated—when a defendant has been released from custody and returned to normal life for some time before a later attempted interrogation, there is little reason to believe that the defendant's change of heart concerning

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[7] Particularly, the meaning of the phrase in *Edwards* "not subject to further interrogation by the authorities until counsel has been made available to him . . . ." 451 U.S. at 484-85.
[8] 498 U.S. at 153.
[9] North Carolina recognized the break-in-custody theory in *State v. Warren*, 348 N.C. 80 (1998). See the discussion in note 84 on page 220 of *Arrest, Search, and Investigation*.

interrogation without counsel has been coerced. The defendant likely has been able to seek advice from an attorney, family, and friends. And the defendant knows from the earlier experience that a demand for counsel stops any interrogation, and investigative custody does not last indefinitely. A change of mind to allow questioning is likely attributable not to "badgering," but from a belief after further deliberation that cooperating with the investigation is in his or her best interest. The *Shatzer* Court concluded that an uncritical extension of *Edwards* to the facts presented in this case would not significantly increase the number of genuinely coerced confessions that should be inadmissible, as long as a break in custody is of sufficient duration to dissipate its coercive effects.

3. Court Adopts Fourteen-Day Break-in-Custody Rule

The Court adopted a fourteen-day break in custody as sufficient to deal with potential law enforcement abuse that could occur by releasing the defendant and promptly bringing him or her back into custody for reinterrogation.[10] The Court noted that under *Edwards*, courts had to determine whether the defendant was in custody when he or she requested counsel and when the defendant later made the statements he or she sought to suppress. With its new fourteen-day break-in-custody rule, courts simply need to repeat the inquiry for the time between the initial assertion of the right to counsel and reinterrogation. And when it is determined that the defendant has been out of custody for two weeks before the contested reinterrogation, a court is spared the fact-intensive inquiry whether he or she ever, anywhere, asserted the *Miranda* right to counsel.

4. Court Finds Break in Custody Occurred in *Shatzer*

The Court noted that there is no dispute that (1) Shatzer was in custody under *Miranda* during the interrogations in both 2003 and 2006; and (2) he asserted the right to counsel when in 2003 he stated that "he would not talk about the case without having an attorney present." The issue before the Court was whether Shatzer's subsequent release back into the general prison population where he was serving an unrelated sentence constituted a break in *Miranda* custody. The Court ruled that a break in custody occurred because that period of release into the general prison population did not create the coercive pressures identified in *Miranda*. The Court reasoned that when prisoners are released back into the general prison population, they return to their accustomed surroundings and daily routine—they regain the degree of control over their lives that existed before the interrogation. Sentenced prisoners are not isolated with their accusers.[11] They live among other inmates, guards, and workers, and often can receive visitors and communicate with people on the outside by mail or telephone.

The Court found that detention of prisoners is, moreover, relatively disconnected from their prior unwillingness to cooperate with an investigation. The former interrogator[12] has no power to increase the duration of incarceration, which was determined at sentencing. And even when the possibility of parole exists, the former interrogator has no apparent power to decrease the time served.[13] The Court stated that this is in stark contrast to the circumstances faced by the

[10] The Court explained that fourteen days provide sufficient time for a defendant to get reacclimated to normal life, to consult with counsel and friends, and to "shake off any residual coercive effects of his prior custody." Slip opinion at 11.

[11] The Court's term, "accusers," refers to officers when they are conducting custodial interrogation.

[12] The Court's term, "former interrogator" refers to the officer who conducted the initial custodial interrogation at which the defendant asserted the *Miranda* right to counsel.

[13] The Court's statement appears somewhat misleading. Although an officer does not have the "power" to increase or decrease the amount of time served, in jurisdictions where an officer may be asked by a parole

defendants in *Edwards*, *Roberson*, and *Minnick*, whose continued detention rested with those controlling their interrogation, and who confronted the uncertainties of what final charges they would face, whether they would be convicted, and what sentence they would receive. The Court noted that Shatzer's continued detention after the 2003 interrogation did not depend on what he said (or did not say) to the interrogating officer, and he did not allege that he was placed in a higher level of security or faced any continuing restraints as a result of the 2003 interrogation.[14] Thus, the "inherently compelling pressures" of custodial interrogation ended when he returned to his normal life in prison.

The Court ruled that because Shatzer experienced a break in *Miranda* custody lasting more than two weeks between the first and second attempts at interrogation, *Edwards* did not require suppression of his 2006 statements.

III. Post-*Shatzer* Issues

A. How will courts calculate the fourteen-day period?

It is highly likely that the courts will count the fourteen days from the date the assertion of the right to counsel took place to two weeks later on the same day of the week.[15] For example, a defendant asserts the right to counsel on Monday, June 7, 2010. An officer could initiate custodial interrogation on Monday, June 21, 2010. Courts would not likely examine the time of the assertion on June 7 (for example, 11:30 a.m.) and require an officer to wait until that same time or later on June 21. In other criminal law contexts, courts have not adopted a time-of-day requirement.[16] However, a cautious officer may want to wait until the fifteenth day, June 22, until this issue is resolved. Waiting until the fifteenth day is certainly advisable if the officer is unsure whether an assertion occurred on June 7 because it was near midnight on June 7 and possibly could have occurred on June 8.

If courts decide, as discussed in section B below, that the fourteen-day rule does not include time a defendant serves in pretrial custody in a jail and other detention facility, then the calculation of fourteen days becomes more complex. For example, a defendant is arrested for a felony assault on Wednesday, July 7, 2010, asserts the right to counsel during custodial interrogation, and is committed to jail because he cannot satisfy pretrial release conditions. On Tuesday, July 13,

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authority to comment on the possibility of parole, the officer's views may have a significant impact on whether parole is granted or denied.

[14] This statement appears to raise a question whether the break-in-custody rule would apply if officers retaliated against a defendant who asserted the right to counsel by persuading prison officials to impose more severe conditions of prison confinement, and the reinterrogation occurred during that confinement.

[15] It is almost certain that the Court did not intend to exclude weekends and holidays in the running of fourteen days, which is sometimes the rule in criminal and civil procedure. First, the Court sought to adopt a simple rule that officers could easily understand and follow, and if it intended to exclude weekends and holidays, it would have said so. Second, requiring an officer to be aware of court holidays in his or her own jurisdiction as well as other jurisdictions (for a defendant arrested there for an offense committed in the officer's jurisdiction) would convert a simple rule into a highly complex one.

[16] *See In re Robinson*, 120 N.C. App. 874 (1995) (fraction of a day is not considered in determining when a person becomes a certain age; person became thirteen just after midnight on date of birthday, regardless of time when person was born; it was irrelevant that person was born at 10:45 p.m. on August 22, 1981, and allegedly committed the offense at 3:00 a.m. on August 22, 1994).

2010, he is released on a $4,000.00 secured bond. If the six days spent in pretrial trial custody do not count toward the fourteen days, an officer could not attempt to reinitiate custodial interrogation until Tuesday, July 27, 2010.

B. Is *Shatzer's* fourteen-day rule applicable to defendants serving pretrial custody in jails and other detention facilities?

At first glance, the answer to this question would be no, given the *Shatzer's* distinction between interrogation of a defendant in pretrial custody and interrogation of a prisoner serving a sentence after a conviction of a crime. Some aspects of the Court's rationale would apply in most cases only to convicted prisoners: Their detention is relatively disconnected from their prior unwillingness to cooperate in an investigation. The former interrogator has no power to increase the duration of incarceration, which was determined at sentencing. And even when the possibility of parole exists, the former interrogator has no apparent power to decrease the time served. And these circumstances are in stark contrast to the defendants in *Edwards*, *Roberson*, and *Minnick*, whose continued detention as suspects rested with those controlling their interrogation and who confronted the uncertainties of what final charges they would face, whether they would be convicted, and what sentence they would receive.[17]

On the other hand, some aspects of the Court's rationale could apply equally to pretrial custody: When released back into the general jail population, inmates return to their accustomed surroundings and daily routine; they regain the degree of control they had over their lives before the interrogation.[18] They are not isolated with their accusers, law enforcement officers.[19] They live among other inmates, guards, and workers, and often can receive visitors and communicate with people on the outside by mail or telephone.[20]

The answer remains unclear for various reasons. First, the Court's comparison of the facts in *Shatzer* with the facts in *Edwards, Roberson*, and *Minnick* is not dispositive because the three cases involved officers' custodial interrogations of defendants within one (*Edwards*), three (*Roberson*), and two days (*Minnick*). Thus, the interrogations occurred well before the fourteen-day break-in-custody rule adopted in *Shatzer* and would not have been permissible even if the rule applied to pretrial custody. Second, the Court noted the state had argued that the

[17] Slip opinion at 14-15.

[18] An argument contrary to the statement in the text would be based on the Court's statement that after the initial interrogation and up to and including the second one, pretrial detainees remain cut off from their normal lives and companions in an unfamiliar, police-dominated atmosphere, where their captors appear to control their fate until they are released, and do not regain a sense of control or normalcy. Slip opinion at 7-8. However, would the Court describe pretrial custody in the same manner if a defendant has spent at least fourteen days in pretrial custody before the reinitiation of custodial interrogation, during which time a defendant has had the opportunity to have visitors, meet with an attorney, and the like? Justice Stevens in footnote 14 on pages 9-10 of his opinion concurring in the judgment appeared to recognize, using *Roberson* as an example, that a pretrial detainee may become "accustomed" to a detention facility.

[19] It appears that the Court's phrase, "isolated with their accusers," means the time a defendant is undergoing custodial interrogation.

[20] Slip opinion at 14. Although the Court was referring to prisoners, this paragraph modifies the Court's language to apply to jail inmates to show how part of the Court's rationale could apply to them.

interrogation of the defendant in 2006 was permissible simply based on the length of time between Shatzer's assertion of the right to counsel in 2003 and the officer's custodial interrogation in 2006. Because the Court adopted the fourteen-day rule, it did not need to address this argument.[21] Some defendants spend several months to years in pretrial custody awaiting trial. Even if the Court decided not to apply the fourteen-day rule, it could decide in a future case that a significant time period between the assertion of counsel and later interrogation permits the admission of a defendant's statement.

C. How often may an officer attempt to reinterrogate a defendant under the *Shatzer* rule?

The *Shatzer* Court was not required to answer this question and did not answer it. However, the Court has consistently stated that officers may not repeatedly attempt to question a defendant who previously requested counsel until the defendant is "badgered into submission."[22] Absent unusual circumstances or a significant time period between attempts to reinterrogate, a defendant's assertion of the right to counsel at an attempted reinterrogation under the *Shatzer* rule would prohibit a second attempt at reinterrogation.

D. Does *Shatzer* modify case law on reinterrogation of a defendant who asserted the right to remain silent but did not assert the right to counsel?

No. There is nothing in *Shatzer* that would modify case law on reinterrogation after an assertion only of the right to remain silent.[23]

E. Does *Shatzer* modify case law that an officer is imputed with knowledge of a defendant's prior assertion of the right to counsel during custodial interrogation even though the officer does not know of the assertion?

No. It is the officer's obligation to learn whether a defendant had previously asserted the right to counsel.[24] For example, if officer Smith conducts a custodial interrogation of a defendant who previously asserted the right to counsel during custodial interrogation that occurred ten days earlier (and thus not within the fourteen-day *Shatzer* rule), the state will be not allowed to introduce in the state's case-in-chief[25] the defendant's statements made during officer Smith's interrogation, even though officer Smith was unaware of the defendant's prior assertion.

F. Does *Shatzer* apply to an officer's reinterrogation of a defendant who is not in custody? What if the defendant has a Sixth Amendment right to counsel for the offense(s) that are the subject of the reinterrogation?

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[21] See footnote 4 of the Court's slip opinion at 9.
[22] Slip opinion at 6, 7, and 9
[23] For a discussion of reinterrogation after the assertion of the right to remain silent, see pages 204-205 and 452-54 of *Arrest, Search, and Investigation in North Carolina*.
[24] See note 5.
[25] See note 4.

The rulings in *Miranda, Edwards*, and all later cases apply only to custodial interrogation. It is clear from the Court's opinion that it contemplates that reinterrogation issues only arise when an officer is conducting custodial interrogation.[26] For example, a defendant is arrested for felonious breaking and entering on Tuesday, July 6, 2010, undergoes custodial interrogation that day and asserts the right to counsel, is brought before a magistrate for his initial appearance, and is released on a $2,000.00 secured bond. Two days later on July 8, 2010, an officer is on patrol and sees the defendant in a parking lot. He has a non-custodial conversation with the defendant in which the defendant makes incriminating statements that the state seeks to introduce at trial. The *Shatzer* rule—requiring the passage of fourteen days before reinterrogation—does not apply. However, the Sixth Amendment right to counsel for this offense began (attached) at the defendant's initial appearance before the magistrate.[27] Because an officer's deliberate efforts to elicit information from a defendant by interrogation or conversation about a pending charge after the beginning of the Sixth Amendment right to counsel is a critical stage, the officer would be required to give *Miranda* warnings before eliciting information about the pending charge.[28] If the defendant volunteered an incriminating statement without an officer's elicitation, then the statement would likely be admissible without *Miranda* warnings.

G. Does *Edwards* or *Shatzer* prohibit custodial interrogation of a defendant who is arrested for a new offense committed after the assertion of the right to counsel?

Assume that a defendant is arrested on Friday, August 6, 2010, for common law robbery, undergoes custodial interrogation that day and asserts the right to counsel, is brought before a magistrate for his initial appearance, and is released on a $7,500.00 secured bond. Five days later (Wednesday, August 11, 2010), he is arrested for armed robbery and murder committed that day. Does *Edwards* or *Shatzer* prohibit custodial interrogation even if an officer gives *Miranda* warnings and obtains a waiver of rights? The author is unaware of a published case in any jurisdiction deciding this issue under *Edwards* and later cases. Would *Shatzer* prohibit the interrogation because fourteen days had not elapsed after the assertion of the right to counsel? The answer is not clear, although I am inclined to believe that the United States Supreme Court would rule that an arrest for the commission of a new crime after the assertion of the right to counsel is sufficiently different than the circumstances leading to the restrictions on custodial interrogation set out in *Edwards* and *Shatzer*. The Court may conclude that the government's interest in initially investigating the commission of a

[26] "In every case involving *Edwards*, the courts must determine whether the suspect was in custody when he requested counsel and when he later made the statements he seeks to suppress." Slip opinion at 12. For a post-*Shatzer* case recognizing this issue, see *United States v. Cook*, 599 F.3d 1208 (10th Cir. 2010).
[27] Rothgery v. Gillespie County, 554 U.S. 191 (2008).
[28] See page 206 under "When Sixth Amendment Right to Counsel Exists" of *Arrest, Search, and Investigation*. *Miranda* warnings and waiver are generally sufficient to waive the Sixth Amendment right to counsel. See page 209 of *Arrest, Search, and Investigation*.

newly-committed offense outweighs the defendant's right not to be reinterrogated after asserting the right to counsel.[29]

[29] The Court in *Shatzer* noted that the *Edwards* rule is not a constitutional mandate, but judicially prescribed prophylaxis. Slip opinion at 6. The Court crafted the fourteen-day break-in-custody rule by balancing its benefits and costs. The Court would likely undertake the same balancing analysis in deciding the issue discussed in the text.

Of course, if the Court overruled *Arizona v. Roberson*, 451 U.S. 477 (1981), discussed in the text on page 2, then the custodial interrogation would clearly be permitted. Justice Kennedy, who dissented in *Roberson*, implicitly called for a reconsideration of *Roberson* in his concurring opinion in *McNeil v. Wisconsin*, 501 U.S. 171, 183 (1991).