



LEGAL UPDATE · RESOURCES

Constitutional Rights in Interviews and Interrogations

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United States v. Carpentino, 948 F.3d 10 (1st Cir. 2020)

There will always be constitutional limitations placed on interview and interrogation activities. The simple math for any interview and interrogation situation is custody plus interrogation equals *Miranda*. With that being said, however, no case is that cut and dry and there are going to be nuances in every case. Some thoughts to consider include: (1) was the suspect actually in custody; (2) did the suspect properly waive his rights; and (3) did the suspect properly engage the officers after first electing to remain silent or speak with an attorney?

To further examine some discrepancies that may come up with interview and interrogation we will highlight a 1st Circuit Court of Appeals case, *United States v. Carpentino*. As can happen in these situations, the suspect initiated a subsequent conversation with his arresting officers after first electing to remain silent until he spoke with his attorney. Let's see what the 1st Circuit had to say about this case.

FACTS

Vermont State Police received a call that a fourteen-year-old girl from New Hampshire was missing and may have been kidnapped and driven over the border to Vermont. A trooper responded to an abandoned motel in Rockingham, Vermont where he was met by members of a search party. Members of the search party advised the trooper that they suspected the girl was abducted by the landlord of the building where they lived. The abandoned motel that officers arrived at was owned by the landlord's family.

The suspect was found in his vehicle at 9:00 AM and the female victim was found a short time later. The victim affirmed that she had been kidnapped and raped by the suspect. The defendant (Carpentino) was arrested and brought to the barracks. Three hours later, investigators advised Carpentino of his *Miranda* advisements and Carpentino signed the waiver form. Carpentino then stated that he had driven to New Hampshire alone the night before. When challenged by the investigators, Carpentino stated he wished to speak with his attorney and the interview ceased. On the way to his cell, Carpentino asked to call his attorney and the troopers said they would make a phone available. However, the troopers never provided Carpentino with access to a phone. Forty minutes later, and before being given access to a phone, Carpentino signaled to the monitoring trooper that he

wished to talk with the investigators. The investigators went to the cell and asked the defendant if he wished to speak with them. The defendant responded that he did.

Back in the interview room, with the recording equipment activated, the defendant was reread his *Miranda* warnings. During the exchange the defendant mentioned that he had earlier asked for a phone to call his attorney. The exchange continued with the troopers and the defendant going back and forth. At the end of the discussion the defendant agreed to speak with the investigators, signed a second *Miranda* waiver and admitted that he drove the juvenile to New Hampshire and had sex with her.

At trial, the defendant filed a motion to suppress the statement claiming that the second interview process violated his 5th Amendment protections. The trial court denied the motion and the defendant was ultimately sentenced to thirty years imprisonment. This appeal followed.

FIRST CIRCUIT FINDINGS

The defendant's first claim on appeal is that he did not initiate the second interaction in order to talk with the officers and that he just wanted access to a phone in order to speak with his attorney. Certainly, it has long been held that once a suspect invokes his right to an attorney the interview must stop and only the suspect can initiate any further discussion. In addition, it must be clear that the suspect is initiating a substantive conversation about the case at hand, and not some other matter, such as a request for food or to seek medical assistance. In this case the suspect initiated the contact with the officers and his first question was, "how much, would, uhm, the maximum time be for something like this?"^[1]

Based on the question "**a reasonable officer could have interpreted this case-related question from the defendant as evincing a desire on his part to discuss the investigation**".^[2] The court then reviewed the give-and-take between the investigators and the defendant using the interview video. The court determined that there was a "dual-purpose" to the defendant's request to re-initiate a discussion with the investigators, and after a careful review of the recording, determined that the investigators were careful to resolve the suspect's request and therefore the second interview was permissible under the *Edwards* standards.^[3]

TAKEAWAYS

This is a closed case and illustrates the difference between a suspect's request to speak with an attorney and a suspect's request to remain silent. When a suspect invokes his right to remain silent, officers must stop the interview and cannot reinitiate the interview until the suspect has had a

reasonable period of time to reflect on his situation. When a suspect invokes his right to counsel officers must immediately cease questioning and cannot initiate any further questioning until an attorney is present. However, officers may continue the discussion with the suspect if the **SUSPECT** initiates further communication without any prodding on the part of the police. This dichotomy between the two scenarios is an important contrast for officers to understand. Officers are also cautioned that the case law in their specific jurisdiction may be more stringent than that provided by SCOTUS or the federal appeals courts.

So remember, the next time you have a chatty suspect, make sure you took the right steps to get them to talk and didn't push them. Sometimes all a suspect needs is a guilty conscience to do that work for you, and following these guidelines makes you less liable in the long run.

[1] *United States v. Carpentino*, 2018 DNH 114 (D.N.H. 2018)

[2] 2018 DNH 114 (D.N.H. 2018)

[3] 2018 DNH 114 (D.N.H. 2018)