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Wilson v. United States: The Narrow Line between Innis and Edwards

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WILSON V. UNITED STATES: THE NARROW LINE BETWEEN *INNIS* AND *EDWARDS*

In *Wilson v. United States*,[1] the District of Columbia Court of Appeals ruled that once a suspect invokes the right to remain silent, a law enforcement officer fails to "scrupulously honor" this right by answering a suspect's questions in a manner designed to elicit an incriminating response.[2] The *Wilson* decision expands Supreme Court interpretation of custodial interrogation while clarifying the guidelines of permissible police investigatory techniques.

Since *Miranda v. Arizona*,[3] the United States Supreme Court has expounded on permissible police conduct in the context of protecting individual rights. In *Miranda*, the Supreme Court criticized coercive police interrogation techniques and outlined the significant presumptive rights of the accused. The *Miranda* Court set forth a two-prong test to determine whether a suspect's right to remain silent has been honored. First, did the suspect invoke the right to remain silent? Second, if not, did the suspect voluntarily, knowingly, and intelligently waive that right?[4] The Court emphasized that until "procedural safeguards" are established to protect the right to remain silent and to "assure that the exercise of the right will be scrupulously honored," the two-prong test must be applied.[5] In the course of its holding, the *Miranda* Court defined custodial interrogation as "questioning *initiated* by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any signifi-

1. 444 A.2d 25 (D.C. 1982).

2. *Id.* at 28-29.

3. 384 U.S. 436 (1966).

4. *Id.* at 444. The Court set forth what has become a familiar litany:

> Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. The defendant may waive effectuation of these rights provided the waiver is made voluntarily, knowingly, and intelligently.

Id. The Court emphasized that if a suspect "indicates in any manner and at any stage of the process that he wishes to consult with an attorney before speaking there can be no more questioning." *Id.* at 444-45. It continued: "Likewise, if the individual is alone and indicates in any manner that he does not wish to be interrogated, the police may not question him." *Id.* at 445.

5. *Id.* at 479. By "procedural safeguards," the Court may well be referring to both legislative and internal changes mandating proper police behavior. *See generally Miranda*, 384 U.S. 436 (1966).

cant way."[6]

Nine years later, however, the Supreme Court qualified its seemingly absolute *Miranda* test and ruled that there must be no further interrogation once the suspect has invoked his right to remain silent. In *Michigan v. Mosely*,[7] the Court noted that the *Miranda* decision did not "state under what circumstances, if any, a resumption of questioning is permissible."[8] The *Mosley* Court indicated that this omission fostered the creation of "wholly irrational obstacles to legitimate police investigative activity, and deprive[d] suspects of an opportunity to make informed and intelligent assessments of their interests."[9] The Court concluded that the "reasonable and faithful interpretation" of *Miranda* would ensure that the suspect has been notified of his right to remain silent, and that this right has been "scrupulously honored."[10] In determining whether a suspect's rights have been so honored, courts must examine the nature of the interrogation.[11]

Because of *Miranda*'s ambiguous definition of what constitutes interrogation, and *Mosley*'s failure to clarify such definition, the Supreme Court in *Rhode Island v. Innis*[12] was again faced with determining in what circumstances *Miranda* warnings are necessary. The Court held that "the *Miranda* safeguards come into play whenever a person in custody is sub-

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6. *Id.* at 444 (emphasis in original).

7. 423 U.S. 96 (1975).

8. *Id.* at 101. The *Mosley* court, however, pointed to a footnote in *Miranda* that cited circumstances where resumption of questioning may be permissible:

> If an individual indicates his desire to remain silent, but has an attorney present, there may be some circumstances in which further questioning would be permissible. In the absence of evidence of overbearing, statements then made in the presence of counsel might be free of the compelling influence of the interrogation process and might fairly be construed as a waiver of the privilege for purposes of these statements.

Id. at 101-02 n.8 (quoting *Miranda*, 384 U.S. at 474 n.44).

9. 423 U.S. at 102. The Court, in referring to the familiar *Miranda* warnings, *supra* note 4, continued: "Clearly, therefore, neither this passage nor any other passage in the *Miranda* opinion can sensibly be read to create a per se proscription of infinite duration upon any further questioning by any police officer . . . once the person in custody has indicated a desire to remain silent." *Id.* at 102-03.

10. *Id.* at 104. The Court concluded that the "critical safeguard" is the suspect's "right to cut off questioning." *Id.*

11. *Id.* at 103-04.

12. 446 U.S. 291 (1980). The suspect was arrested on charges of murdering a cab driver with a sawed-off shotgun. After being read his *Miranda* rights, the suspect was transported to the station. The officers transporting the suspect engaged in a conversation, revealing that a school for the handicapped was located near the area in which the weapon was missing. One officer expressed his hope that a "little girl" would not find the weapon and hurt herself on the way to school. The suspect, apparently overhearing the conversation, interrupted the officers and told them to turn around and return to the site of his arrest, whereupon he led the officers to the gun. *Id.* at 294.

jected to either express questioning or its functional equivalent."[13] It defined the functional equivalent of interrogation as including "not only express questioning, but also . . . any words or actions on the part of the police . . . that the police should know are reasonably likely to elicit an incriminating response from the suspect."[14] The *Innis* Court ruled that law enforcement officers must not initiate further attempts to interrogate the suspect after he has invoked his right to counsel or his right to remain silent.[15] Accordingly, it developed a two-prong test to be applied to any discussion between police officers and a suspect that takes place after the suspect has invoked either of these two rights. The first prong requires the court to determine which party initiated the meeting or conversation at issue.[16] The second prong requires the court to determine whether the officers employed any tactics that they "should know are reasonably likely to elicit an incriminating response from the suspect."[17] If either of these prongs indicates that law enforcement officers acted improperly in obtaining the confession, the statement is inadmissible.[18]

In *Edwards v. Arizona*,[19] the Supreme Court emphasized the application of the first prong of the *Innis* test as a limitation on questioning. The Court held that when a suspect expresses a desire to have an attorney present, he "is not subject to further interrogation by the authorities until counsel has been made available to him, [or] unless the accused himself initiates further communication, exchanges, or conversations with the police."[20] The *Edwards* Court cautioned, however, that merely because the suspect initiates a conversation, he does not thereby immediately waive his rights. It further observed that "in the course of a meeting initiated by the accused . . . it is likely that the officers will say or do something that clearly would

13. *Id.* at 300-01.

14. *Id.* at 301. The Court held, however, that the officers' conversation in *Innis* did not amount to the functional equivalent of interrogation, in part because the officers could not have known that their "offhand remarks" would evoke the response they did. *Id.* at 302-03.

15. *Id.* at 298-300. *See also Miranda*, 384 U.S. at 445 (if suspect "indicates in any manner that he does not wish to be interrogated, the police may not question him"); *but see Mosley*, 423 U.S. at 104 n.10 (1975) (distinguishing between invoking the right to remain silent and the right to an attorney).

16. 446 U.S. at 298.

17. *Id.* at 301.

18. *Id.* at 291, 298-301.

19. 451 U.S. 477 (1981).

20. *Id.* at 484-85. The suspect requested an attorney, and questioning ceased. The following morning, Edwards was told he "had to" speak with detectives waiting to see him, whereupon he confessed. *Id.* at 479. The Court held that the fruits of the police-initiated session were inadmissible because no interrogation was permissible until the request for an attorney had been honored, unless the suspect had himself initiated the meeting. *Id.* at 484-85.

be 'interrogation.' "[21] Under these circumstances, a court must focus on whether the suspect knowingly, voluntarily, and intelligently waived his rights.[22]

The line of Supreme Court cases since *Miranda* has clearly emphasized the rights of the suspect to have counsel and to remain silent. To safeguard these rights, the Court will not tolerate law enforcement behavior that is designed to elicit an incriminating response from the suspect. The court of appeals has had two recent opportunities to apply the definition of interrogation enunciated in *Innis*.[23] Its first opportunity arose in *United States v. Alexander*.[24] The District of Columbia Court of Appeals applied the *Innis* test, concluding that a suspect's rights had not been "scrupulously honored" where the suspect had not been permitted to "cut-off questioning."[25] Then, in *Robertson v. United States*,[26] the court held that an officer's question, "Do you know why I'm here?" was not the *Innis* functional equivalent of custodial interrogation. The court noted that the officer had interrupted the ensuing confession to read the suspect his rights.[27]

In 1982, in *Wilson v. United States*,[28] the District of Columbia Court of Appeals broadened the definition of custodial interrogation to include answers to a suspect's questions that are designed to elicit an incriminating response. Joseph Wilson was arrested on a military base in Virginia and was subsequently read his rights. The following morning, two District of Columbia homicide detectives read Wilson his rights again, whereupon he stated that he had "nothing to tell."[29] While riding back to the District of Columbia, Wilson asked the detectives how they had obtained his name. The detectives then discussed the case with Wilson, providing only general

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21. *Id.* at 486 n.9.

22. *Id.*

23. These District of Columbia Court of Appeals' decisions were decided in the same Term as *Edwards*, 451 U.S. 477 (1981). For a discussion of *Edwards*, see *supra* notes 19-22 and accompanying text.

24. 428 A.2d 42 (D.C. 1981). *See Wilson*, 444 A.2d 25, 28 (D.C. 1982) ("[t]his court adopted the *Innis* test in United States v. Alexander . . .").

25. *Alexander*, 428 A.2d at 49-50. The suspect indicated that she was unwilling to answer questions without an attorney present. *Id.* at 45. The officer then stated "we know what happened" or "we know you are responsible for the stabbing," *id.*, which the officer later admitted was "an interrogation technique designed to get her to talk." *Id.* at 45 n.9. The officer subsequently remained in the room, asking the suspect questions concerning "paperwork," until she confessed. *Id.* at 45.

26. 429 A.2d 192 (D.C. 1981).

27. *Id.* at 195.

28. 444 A.2d 25 (D.C. 1982). Judge Mack wrote the majority opinion, joined by Judge Kelly. Judge Pryor dissented.

29. *Id.* at 26-27.

answers to his questions.[30] Following booking procedures and a fresh set of *Miranda* warnings, the detectives drove Wilson to the Superior Court cellblock. During the drive, the detectives answered Wilson's questions more specifically.[31] Upon approaching the cellblock's entrance, Wilson asked the detectives to stop the car, and requested the identity of their witness. The detectives complied, and Wilson was "flabbergasted."[32] The detectives then suggested to Wilson that he make a statement.[33] The trial court found Wilson guilty, primarily on the basis of this statement.[34]

At trial, the detectives admitted that they had previously discussed the strategy of supplying Wilson with increasingly more specific information in the hope of "getting him to talk." One of the detectives testified that they had employed a "deliberate strategy" designed to cause Wilson to "change his mind and give us a statement."[35] The court of appeals reversed the trial court's conviction, holding that the detectives had failed to "scrupulously honor" Wilson's right to remain silent.[36] Judge Mack, writing for the court, agreed with the trial court's finding that Wilson had invoked his right to remain silent when he stated he had "nothing to tell," as well as when he subsequently failed to waive his rights.[37] The *Wilson*

30. *Id.* at 27.

31. Wilson was read his rights at least once more before arriving at his final destination. *Id.*

32. *Id.* Apparently, the detectives told Wilson that he had been identified by a witness. *Id.*

33. *Id.*

34. *Id.* at 26.

35. *Id.* at 27. The relevant portion of the cross-examination is as follows:

Q. And your prior discussion with Detective Chaney about whether or not to talk to him further, in those discussions, was there any indication of what might be your purpose in revealing such information?

A. We felt if we were more specific, perhaps Mr. Wilson would decide to change his mind and give us a statement.

Q. You were working in effect on Mr. Wilson, to abandon the—to induce Mr. Wilson to abandon the—his position of the exercise of his rights?

A. I don't like the terminology, but I'll say yes.

Q. It was a deliberate strategy, was it not?

A. It [sic] would say it was deliberate only that he initiated the questions of us. *Id.*

36. *Id.* at 26.

37. *Id.* at 28. Judge Pryor dissented, arguing that because Wilson had initiated the questions, the "failure of the police to answer appellant's questions in an immediate and exhaustive fashion" did not constitute an impermissible form of interrogation. *Id.* at 32. He claimed that the court's holding would constitute "a per se rule which both the Supreme Court and this court have previously rejected." *Id.* at 33. For a discussion refuting this contention, see *supra* note 9 and accompanying text. Judge Pryor's dissent, however, embodies a selective use of precedent as supporting authority. He believed the fact that Wilson had initiated the conversations should have been dispositive. Even if the record were clear

court rendered its decision in light of *Innis*, finding that the detectives' deliberate strategy of answering questions in a manner designed to elicit an incriminating response constituted the functional equivalent of an interrogation.[38]

The *Wilson* decision rests comfortably between the Supreme Court rulings in *Innis* and *Edwards*. The Supreme Court held in *Innis* that an interrogation includes words or actions by police designed to elicit an incriminating response.[39] In *Wilson*, the detectives admitted that they had designed their answers to Wilson's questions precisely for the purpose of changing Wilson's mind about making a statement.[40] *Innis*, however, did not deal with the initiation of conversation by the suspect. In *Edwards*, the Supreme Court held that in order for his statements to be admissible, the suspect must initiate further meetings and conversations after invoking the right to remain silent.[41] The Court noted, though, that simply because the

on this point, see *infra* note 38, the minority analysis remains flawed. Judge Pryor ignored the *Innis* holding that police conduct need only be designed to elicit an incriminating response for it to be interrogation. He also failed to address the footnote in *Edwards* that explicitly cautioned against a per se initiation rule. *See* 451 U.S. at 486 n.9. Finally, Judge Pryor failed to comment on the fact that the detectives had urged Wilson to make a statement—an action that would appear to render any statement inadmissible under the circumstances. *Wilson*, 444 A.2d at 27.

38. 444 A.2d at 28-30. The court cited United States v. Alexander, 428 A.2d 42 (D.C. 1981), for an example of interrogation techniques that were not in question form. In *Alexander*, the officer told the suspect he knew what she had done, eventually eliciting a confession. *Id.* at 45. The *Wilson* court also analyzed events in light of Michigan v. Mosley, 423 U.S. 96 (1975), and concluded that a fifth amendment violation had occurred. In applying the factors which it deemed relevant, see *infra* note 46 and accompanying text, the *Wilson* court stated: "In *Mosley*, the Court noted the factors which are to be considered in determining whether a suspect's right to cut off questioning has been scrupulously honored." 444 A.2d at 29. The *Wilson* court observed that despite the dispute over which party initiated the discussions, *id.*, the detectives had discussed the case with the appellant over a four-hour period. The court decided that this lent a "potentially coercive atmosphere" to the discussion, *id.*, and ruled that the appellant had not intentionally abandoned his fifth amendment rights. *Id.* The record is unclear as to whether "the appellant's 'curiosity' was piqued initially as a result of the detectives having told him about the existence of an unnamed witness to the alleged crime or the detectives having told him of the witness was a result of the appellant's questioning . . . ." *Id.* at 29 n.7. The court concluded that it did not need to arrive at a finding on the initiation issue because the case could be disposed of on the issue of eliciting an incriminating response. *Id.*

The court of appeals also discussed the appellant's claim of a sixth amendment violation. It decided that because the sixth amendment right was never invoked, no abridgement occurred. *Id.* at 30.

39. 446 U.S. at 301.

40. 444 A.2d at 27.

41. 451 U.S. at 484-85.

suspect is the initiator, he does not automatically waive his rights.[42] While it appears that Wilson initiated the conversation with the detectives, the *Wilson* court found that the detectives had nonetheless planned their answers in anticipation of "piquing" Wilson's curiosity, thereby laying a trap for the unwary appellant.[43] As the court of appeals aptly noted, the appellant could not have knowingly waived his rights during this procedure. In addition, the detectives exceeded the question-and-answer format threshold by suggesting to Wilson that he would be better off if he gave them a statement.[44]

Although the court of appeals could have disposed of *Wilson* on these findings alone, it additionally cited *Michigan v. Mosley*.[45] The court treated the particular facts present in *Mosley* as if they constituted a more generic "test" for the presence or absence of rights violations, while in reality the *Mosley* court was merely examining the facts to determine whether the suspect's rights had been violated.[46]

The ruling in *Wilson* should not impair police investigative techniques any more than they are already constricted by *Innis* and *Edwards*. Indeed, by attempting to clarify the role of a law enforcement officer's tactics in determining admissibility of statements, *Wilson* may well afford the officers greater insight into permissible conduct. The case law, including *Wilson*, dictates that law enforcement officials not attempt, under any circumstances, to elicit incriminating responses when the suspect has invoked either the right to remain silent or the right to an attorney. Although such an imperative may appear to hamper legitimate investigations, it is also

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42. *Id.* at 486 n.9. For a discussion of *Edwards*, see *supra* notes 19-22 and accompanying text.

43. 444 A.2d at 29 n.7.

44. *Id.* at 27. The record indicates that no express waiver was given prior to the detectives' encouragement to confess.

45. 423 U.S. 96 (1975). See the discussion of *Mosley*, *supra* notes 7-11 and *infra* note 46 and accompanying text.

46. 444 A.2d at 29. The *Wilson* court described the relevant factors as follows:

> 1) Was the suspect advised of his rights and did he orally acknowledge them; 2) did the police immediately cease questioning and make no attempt to resume or ask him to reconsider; 3) was there a two hour break between the first and second interrogations and was the second performed at a different location by a different officer about a different crime; and 4) were *Miranda* warnings given before the second questioning session.

Id. These same factors, however, were listed as facts in *Mosley*, 423 U.S. at 104. The *Mosley* court analyzed the facts in this manner to determine if the suspect's "right to cut off questioning" was respected. *Id.* The Court led into this discussion with: "A review of the circumstances leading to Mosley's confession reveals that his 'right to cut off questioning' was fully respected in this case." *Id.* The Court then listed these factors, which were repeated in Wilson. *See supra* note 38.

possible that because the *Wilson* opinion provides clearer guidelines, fewer cases will be dismissed on *Miranda* violations. This, in turn, may ultimately reduce the pragmatic cost arising from freed criminals that society now pays to maintain its high constitutional standards.

The *Wilson* decision represents a careful and correct analysis of Supreme Court case law. Although the suspect initiated the conversation with police officers after invoking his right to remain silent, the court applied the *Innis* definition of interrogation, hence interpreting *Edwards* as a flexible standard to be used in isolated cases. The *Wilson* court's interpretation of *Mosley* to include a "test" does not affect the efficacy of its decision. *Wilson v. United States* provides law enforcement officials with greater clarity as to those practices that will and will not be tolerated by the courts.

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