

April 10, 2001

LEGAL BULLETIN NO. 01-3

SUBJECT: Sixth Amendment Right to Counsel

On April 2, 2001, the United States Supreme Court handed down an opinion dealing with the right to counsel under the Sixth Amendment to the United States Constitution.¹ In that opinion, the Court held that the Sixth Amendment right to counsel is “offense specific” and does not necessarily extend to offenses that are factually related to those that have actually been charged.

In order to understand the opinion, it is helpful to understand the facts of the case. In December 1993, Lindsey Owings reported to the Walker County, Texas, Sheriff’s Office that the home he shared with his wife, Margaret, and their 16-month-old daughter, Kori Rae, had been burglarized. He also informed police that his wife and daughter were missing. Raymond Levi Cobb lived across the street from Owings. Acting on an anonymous tip that Cobb was involved in the burglary, Walker County investigators questioned Cobb about the events. He denied involvement. In July 1994, while under arrest for an unrelated offense, Cobb was again questioned about the incident. Cobb then gave a written statement confessing to the burglary, but he denied knowledge relating to the disappearances. Cobb was subsequently indicted for the burglary, and Hal Ridley was appointed in August 1994 to represent Cobb on that charge.

Shortly after Ridley’s appointment, investigators asked and received his permission to question Cobb about the disappearances. Cobb continued to deny involvement. Investigators repeated this process in September 1995, again with Ridley’s permission and again with the same result. In November 1995, Cobb, free on bond in the burglary case, was living with his father in Odessa, Texas. At that time, Cobb’s father contacted the Walker County Sheriff’s Office to report that Cobb had confessed to him that he killed Margaret Owings in the course of the burglary. Walker County investigators directed Cobb’s father to the Odessa Police Station where he gave a statement. Odessa police then faxed the statement to Walker County where investigators secured a warrant for Cobb’s arrest and faxed it back to Odessa. Shortly thereafter, Odessa police took Cobb into custody and administered warnings pursuant to *Miranda v. Arizona*. Cobb waived his right to remain silent and after a short time, confessed to murdering both Margaret and Kori Rae. Cobb explained that when Margaret confronted him as he was attempting to remove the Owings stereo, he stabbed her in the stomach with a knife he was carrying. Cobb told police that he dragged her body to a wooded area a few hundreds yards from the house. He then went back to

¹ *Texas v. Cobb*, 2001 WL 309572.

the house and “saw the baby lying on its bed. I took the baby out there and it was sleeping the whole time. I laid the baby down on the ground four (4) or five (5) feet away from its mother. I went back to my house and got a flat-edged shovel. That’s all I could find. Then I went back over to where they were and I started digging a hole between them. After I got the hole dug, the baby was awake. It started going toward its mom and it fell in the hole. I put the lady in the hole and I covered them up. I remember stabbing a different knife I had in the ground where they were. I was crying right then.”

Cobb later led the police to the location where he had buried the victims. He was convicted of capital murder for murdering more than one (1) person in the course of a single criminal transaction and sentenced to death.

The issue before the Court was whether the confession to the murder charge was obtained in violation of the Sixth Amendment right to counsel. The Sixth Amendment basically provides that in all criminal prosecutions, the accused shall enjoy the right to have the assistance of counsel for his defense.

The Supreme Court had previously held that the Sixth Amendment is crime-specific. That means, a defendant cannot make a Sixth Amendment request that covers all future activities. The Sixth Amendment only comes into play after there has been a criminal charge filed.

The Court in Cobb held that an individual charged with a crime who has the assistance of counsel can be interrogated on an unrelated charge in the absence of his counsel without violating the Sixth Amendment. The issue becomes what amounts to an unrelated charge. The Court held that when the Sixth Amendment right to counsel attaches, it does encompass offenses that, even though not formally charged, would be considered the same offense. Whether a second offense is the same offense depends on whether the two (2) offenses are such that one (1) offense requires proof of a fact that the other offense does not require. The Court held that in this case the Sixth Amendment right to counsel did not bar police from interrogating Cobb regarding the murders even though he had been charged with a burglary that arose out of the same general circumstances. Decisions as to what constitutes an unrelated charge are going to be made on an individual case-by-case basis using the guidelines set out by the Supreme Court in this opinion.

The Court made two (2) specific findings in dealing with this case. First, there can be no doubt that a suspect must be apprised of his rights against compulsory self-incrimination and to consult with an attorney before authorities may conduct a custodial interrogation. In this case, Cobb was given a Miranda Warning before he confessed to the murders. Secondly, it is critical to recognize that the Constitution does not negate society’s interest in the ability of police to talk to witnesses and suspects, even those who have been charged with other offenses. Admissions of guilt resulting from valid Miranda waivers are more than

merely desirable. They are essential to society's compelling interest in finding, convicting and punishing those who violate the law.

For further information concerning this issue, contact the Legal Advisor's Office.

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