Bobby (Warden) v. Dixon
--- U.S. --- (2011)
Decided November 7, 2011

FACTS: Dixon and Hoffner murdered Hammer, in Ohio, "in order to steal his car." They two men "beat Hammer, tied him up, and buried him alive, pushing the struggling Hammer down into his grave while they shoveled dirt on top of him." They used his identification to obtain an ID card in Hammer's name and used that identification to sell the stolen vehicle for cash. During that same time frame, Hammer was reported missing. Dixon became a target of the subsequent investigation. On November 4, 1993, "a police detective spoke with Dixon at a local police station." It was a chance encounter but the detective gave Dixon Miranda warnings and "then asked to talk to him about Hammer's disappearance." Dixon refused to answer without his lawyer. (He was not in custody at the time, but simply visiting the station for another purpose.)

Upon further investigation, it was determined the Dixon had sold the car using forged paperwork. He was arrested for forgery on November 9. He was interrogated, intermittently, over several hours, for a total of about 45 minutes but he was not given Miranda during this time. Dixon admitted to selling the car and signing Hammer's name but stated that Hammer had given him permission to do so. He claimed not to know Hammer's whereabouts, stating that he "thought Hammer might have left for Tennessee" The officers told him that Hoffner "was providing them more useful information" and that the first one of the pair to cut a deal would be the only one to get a deal. Dixon continued to deny knowing anything about the disappearance and was booked for forgery.

That same afternoon, Hoffner led the police to Hammer's grave. He claimed that Dixon "had told him that Hammer was buried there." Dixon was brought back to the police station and he asked if it was correct that the police had found Hammer's body and that Hoffner was in custody. They agreed that they had found the body but denied that Hoffner was in custody. Dixon stated that he had spoken to his attorney and that he wanted to talk to them about what had happened. He was given Miranda again and gave a detailed confession, but tried to pin the "lion's share of the blame on Hoffner."

Both confessions were excluded at his state trial for murder. The prosecution did not dispute that the initial confession should have been excluded but argued that the second "was admissible because Dixon had received Miranda warnings prior to that confession." The Ohio Court of Appeals agreed and allowed the second to be admitted, whereupon Dixon was convicted of murder, kidnapping, robbery and forgery. He was sentenced to death. The Ohio Supreme Court affirmed the convictions. Dixon filed for habeas corpus in the U.S. District Court and was denied. However, the Sixth Circuit Court of Appeals reversed that denial, noting, however, that it had authority to do so if the Ohio Courts was either contrary to the law or "involved an unreasonable application no clearly established Federal law." The Sixth Circuit identified three errors that it believed occurred in the trial. First, the Court said it was clearly established that "police could not speak to Dixon on November 9, because he had invoked his right to counsel on November 4." Next, the Sixth Circuit held that his rights were violated by the police urging him to make a deal (and confess) before Hoffner did so. Finally, the Court held that the later confession was technically in violation of

Miranda and that under Elstad, was inadmissible because it was "the product of a 'deliberate question-first, warn-later strategy."[1] Ohio appealed and the U.S. Supreme Court granted certiorari.

ISSUE: May a subject invoke the right to counsel before being taken into custody?

HOLDING: No

DISCUSSION: With respect to the first alleged error in the trial, the Supreme Court noted that it was "undisputed that Dixon was not in custody during his chance encounter with police on November 4." The Court noted that it had never held before that a person can invoke "Miranda rights anticipatorily in a context other than 'custodial interrogation.'"[2] He was certainly not in custody when he gave that initial confession. With respect to the second alleged error, the Court noted no court had held that "this common police tactic is unconstitutional" or to hold that a "defendant who confesses after being falsely told that his codefendant has turned State's evidence does so involuntarily."

With respect to the third alleged error, the Court found that unlike in Seibert, "there is no concern here that police gave Dixon Miranda warnings and then led him to repeat an earlier murder confession, because there was no earlier confession to repeat." In fact, his later confession actually *contradicted* his prior unwarned statements" in which he claimed no knowledge of what had happened to Hammer. Dixon declared that he wanted to talk to the police before the interrogation session even began. The Court found no nexus between the previous unwarned admission and his "later, warned confession to murder." In addition, a significant break in time (over four hours) had occurred and he had been taken to another location as well.

The Court ruled that because the Ohio court's reasoned judgment was in accord with precedent, the judgment of the Sixth Circuit was reversed and the case remanded.

For Full Text of Opinion, see http://www.supremecourt.gov/opinions/11pdf/10-1540.pdf.

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[1] Oregon v. Elstad, 470 U.S. 298 (1985); Missouri v. Seibert, 542 U.S. 600 (2004).
[2] McNeil v. Wisconsin, 501 U.S. 171 (1991); Montejo v. Louisiana, 556 U.S. 778 (2009).