

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

THURMAN JONES,

Defendant-Appellee.

UNPUBLISHED

February 1, 2007

No. 273193

Genesee Circuit Court

LC No. 05-015500-FC

Before: Saad, P.J., and Cavanagh and Schuette, JJ.

SCHUETTE, J. (*concurring*).

I concur in the majority opinion and decision of my distinguished colleagues, Judges Cavanagh and Saad. I write separately to discuss certain aspects of the voluntariness of defendant’s confession and his repeated statements requesting an attorney.

This case involves a brutal murder in Flint and the interrogation of defendant, who is currently in jail charged with four separate felonies.

The United States Supreme Court decisions in *Davis v United States*, 512 US 452, 458-459; 114 S Ct 2350; 129 L Ed 2d 362 (1994); *Michigan v Harvey*, 494 US 344, 350; 110 S Ct 1176; 108 L Ed 2d 293 (1990); *Edwards v Arizona*, 451 US 477, 484-485; 101 S Ct 1880; 68 L Ed 2d 378 (1981); and *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966), as well as this Court’s ruling in *People v Adams*, 245 Mich App 226; 627 NW2d 623 (2001), provide a framework to determine whether a criminal defendant’s confession is voluntary and whether a request for an attorney is ambiguous or equivocal.

This case is close to the edge of the *Miranda* principles, which require a law enforcement officer to cease questioning a criminal defendant who states a desire to speak with an attorney. The prosecution argues that defendant Jones’s statement—“can I have one now while we talk?”—is equivocal in nature, an interrogatory (a question) in form, and not a direct statement demanding an attorney. Further, the prosecutor contends that defendant Jones’s statement is similar to the case of *People v Mary Ann McBride*, ___ Mich App ___; ___ NW2d ___ (2006), in which the defendant offered the following equivocal and indirect statements: “do I need a lawyer?” and “aren’t I suppose to have a lawyer?” The statements made in the *McBride* case were equivocal comments, not unequivocal demands warranting the protective shield of *Miranda* and its progeny. But in the case before this Court, the totality of the circumstances and the manner of questioning defendant Jones over two separate time periods warranted the

interrogation to cease and law enforcement officials to acquiesce to his requests to speak with an attorney.

On September 19, 2004, the first interview of defendant commenced at roughly 6:40 a.m. Initially, defendant was not given *Miranda* warnings. But the investigative officer overheard incriminating statements made by defendant while speaking with his family members because, although he left the room, a video recorder was left on, so the officer was able to watch defendant and his family and listen to their conversation. Defendant later made incriminating statements before *Miranda* warnings were given and after he asked for an attorney. Only then did the investigative officer stop interrogating defendant.¹

On the very next day, September 20, 2004, the same investigative officer conducted a second interview of defendant. The following exchange occurred:

K[imes]. You have the right to talk with a lawyer before questioning and to have a lawyer present with you during the questioning. Do you understand that?

J[ones]. Yes *can I have one now while we talk?*

K[imes]. Well, let me finish them . . .

J[ones]. Okay.

K[imes]. . . and then if you have any questions okay?

J[ones]. Okay.

K[imes]. If you want a lawyer but do not have the money to hire one, you are entitled to have a lawyer appointed to represent you at public expense. Do you understand that?

[Jones]. Yes.

K[imes]. If you give up your right to remain silent and later wish to stop answering questions, the questioning will stop.

J[ones]. Yes.

K[imes]. If you give up your right to have a lawyer present and later change your mind, the questioning will stop until you've talked with a lawyer.

J[ones]. Okay.

K[imes]. That should answer your question.

¹ The September 19, 2004 statements were suppressed by the trial court in January 2006 and were not appealed by the prosecution

J[ones]. Yeah. Okay.

K[imes]. Does that answer your question?

J[ones]. Yes.

K[imes]. Okay. Then the next thing is called the “Waiver.” Do you wish to to [sic] give your right to have a lawyer present at this time and to discuss this matter with me?

J[ones]. *No, I want a lawyer, but, I do wanna say. . .* [emphasis added]

In light of the statements made by defendant on September 19, his request for an attorney made on September 19, and the “stop and start, interruptive” exchange of September 20 (when defendant stated “can I have one now while we talk?”), questioning should have ceased. While defendant’s statement was interrogatory in nature—a form of a question, instead of a declarative statement demanding an attorney—the totality of the circumstances surrounding his confession crossed the edge, triggering the protections offered by *Miranda* and subsequent cases.

A fundamental purpose of law enforcement and our system of justice is to provide safety and security to the public. This maxim is balanced by the safeguards and constitutional protections guaranteed to any citizen charged with the commission of a crime. In this instance, these important constitutional safeguards require the suppression of defendant’s statements.

/s/ Bill Schuette