Chapter 17—Confessions and Admissions: Cases Weakening *Miranda*

Introduction

Since 1966, when *Miranda* was decided, the Supreme Court has continued to refine the *Miranda* rule—either affirming or weakening it by carving out instances in which the *Miranda* rule does or does not apply. This chapter briefs some of the more significant cases dealing with the general rule that the *Miranda* warnings must be given whenever there is a "custodial interrogation."

As the cases briefed in this chapter indicate, the main exceptions to the police giving *Miranda* warnings to a suspect are:

1. when there is concern for public safety;

2. statements made when the mental state of the defendant interfered with his "rational intellect" and "free will" are not automatically excludable. Instead, their admissibility is governed by state rules of evidence;

3. when the suspect believes that the interrogation will focus on minor crimes, but the police later shift the questioning to cover a different and more serious crime;

4. when giving an oral confession;

5. after a knowing and voluntary waiver of *Miranda* rights, law enforcement officers may continue questioning unless the suspect clearly requests an attorney;

6. the *Miranda* warnings need not be given in the exact form as worded in *Miranda v. Arizona*, as long as the warnings convey to the suspect his or her rights.

The *Miranda* case, decided by a 5 to 4 vote, was intensely controversial when it came out in 1966, particularly in the law enforcement community. Over the years, however, reservations about the adverse effects of *Miranda* in police work continued to diminish. At present, its acceptance is assured even among those who administer it. The *Miranda* rule has become an integral part of policing.

The leading cases briefed in this chapter are *New York v. Quarles* and *Duckworth v. Eagan*. A more recent significant case, *United States v. Patane* (2004), holds that failure to give a suspect the *Miranda* warnings does not require suppression of the physical fruits of a suspect's unwarned but voluntary statements.

South Dakota v. Neville
459 U.S. 553 (1983)

CAPSULE: The admission into evidence of a suspect's refusal to submit to a blood-alcohol test does not violate the suspect's privilege against self-incrimination.

FACTS: South Dakota law permits a person suspected of driving while intoxicated to submit to a blood-alcohol test and authorizes revocation of the driver's license of any person who refuses to take the test. The statute permits such refusal to be used against the driver as evidence of guilt during the trial. Neville was arrested by the police for driving while intoxicated. He was asked to submit to a blood-alcohol test and warned that he could lose his license if he refused to take the test. He was not warned, however, that the refusal could be used against him during trial. Neville refused to take the test. During trial, Neville sought to exclude the evidence obtained, claiming that it violated his right to protection against compulsory self-incrimination.

ISSUE: Does a state law that allows the admission into evidence of a suspect's refusal to submit to a blood-alcohol test violate the suspect's Fifth Amendment right against self-incrimination? NO.

SUPREME COURT DECISION: The admission into evidence of a defendant's refusal to submit to a blood-alcohol test does not violate the suspect's Fifth Amendment right against self-incrimination. A refusal to take such a test, after a police officer has lawfully requested it, is not an act coerced by the officer, and thus is not protected by the Fifth Amendment. A law that allows the accused to refuse to take a blood-alcohol test and provides that such refusal may be admitted in evidence against him or her is constitutional.

REASON: "The simple blood-alcohol test is so safe, painless, and commonplace that respondent concedes, as he must, that the state could legitimately compel the suspect, against his will, to accede to the test. Given, then, that the offer of taking a blood-alcohol test is clearly legitimate, the action becomes no less legitimate when the State offers a second option of refusing the test, with the attendant penalties for making that choice. Nor is this a case where the State has subtly coerced respondent into choosing the option it had no right to compel, rather than offering a true choice. To the contrary, the State wants respondent to choose to take the test, for the inference of intoxication arising from a positive blood-alcohol test is far stronger than that arising from a refusal to take the test. . . . We recognize, of course, that the choice to submit or refuse to take a blood-alcohol test will not be an easy or pleasant one for a suspect to make. But the criminal process often requires suspects and defendants to make difficult choices. We hold, therefore, that a refusal to take a blood-alcohol test, after a police officer has

lawfully requested it, is not an act coerced by the officer, and thus is not protected by the privilege against self-incrimination."

CASE SIGNIFICANCE: This case legitimizes the practice, established by law in many states, of giving suspected DWI offenders a choice to take or refuse blood-alcohol tests, but to use the refusal as evidence of guilt later in court. The defendant in this case argued that introducing such evidence in court, in effect, coerces the suspect to waive constitutional protection against self-incrimination because of the consequence. The Court rejected this contention, saying that any incrimination resulting from a blood-alcohol test is physical in nature, not testimonial, and hence is not protected by the Fifth Amendment; therefore, a suspect has no constitutional right to refuse to take the test. The Court said that the offer to the suspect to take the test is clearly legitimate and becomes no less legitimate when the state offers the option of refusing the test but prescribes consequences for making that choice. The Court added that the failure by the police to warn Neville that his refusal to take the test could be used as evidence against him during the trial was not so fundamentally unfair as to deprive him of "due process" rights. The evidence obtained could, therefore, be admissible during trial.

New York v. Quarles
467 U.S. 649 (1984)

CAPSULE: Concern for public safety represents an exception to the *Miranda* rule.

FACTS: Officers were approached by a woman claiming that she had just been raped by an armed man. She described him, and said that he had entered a nearby supermarket. The officers drove the woman to the supermarket and one officer went in while the other radioed for assistance. The officer in the supermarket quickly spotted Quarles, who matched the description provided by the woman, and a chase ensued. The officer ordered Quarles to stop and place his hands over his head. The officer frisked Quarles and discovered an empty shoulder holster. After handcuffing Quarles, the officer asked him where the gun was. Quarles nodded in the direction of some empty cartons and responded, "the gun is over there." The gun was retrieved from the cartons and Quarles was placed under arrest and read his *Miranda* warnings. Quarles indicated that he would answer questions without an attorney present and admitted that he owned the gun.

ISSUE: Were the suspect's initial statements and the gun admissible in evidence despite the failure of the officer to give him the *Miranda* warnings prior to asking questions that led to the discovery of the gun? YES.

SUPREME COURT DECISION: Responses to questions asked by a police officer that are reasonably prompted by concern for public safety are admissible in court even though the suspect was in police custody and was not given the *Miranda* warnings.

REASON: "We hold that on these facts there is a 'public safety' exception to the requirement that *Miranda* warnings be given before a suspect's answers may be admitted into evidence, and that the availability of that exception does not depend upon the motivation of the individual officers involved. In a kaleidoscopic situation such as the one confronting these officers, where spontaneity rather than adherence to a police manual is necessarily the order of the day, the application of the exception which we recognize today should not be made to depend on post hoc findings at a suppression hearing concerning the subjective motivation of the arresting officer. Undoubtedly most police officers, if placed in Officer Kraft's position, would act out of a host of different, instinctive, and largely unverifiable motives—their own safety, the safety of others, and perhaps as well the desire to obtain incriminating evidence from the suspect."

CASE SIGNIFICANCE: *New York v. Quarles* carves out a "public safety" exception to the *Miranda* rule. The Supreme Court said that the case presents a situation in which concern for public safety must be paramount to adherence to the literal language of the rules enunciated in *Miranda*. Here, although Quarles was in police custody and therefore should have been given the *Miranda* warnings, concern for public safety prevailed. In this case, said the Court, the gun was concealed somewhere in the supermarket and therefore posed more than one danger to the public. The Court hinted, however, that the "public safety" exception needs to be interpreted narrowly and added that police officers can and will distinguish almost instinctively between questions necessary to secure their own safety or the safety of the public and questions designed solely to elicit testimony evidence from a suspect. Whether the police will be able to do this remains to be seen.

Oregon v. Elstad
470 U.S. 298 (1985)

CAPSULE: A confession made after proper *Miranda* warnings and waiver of rights is admissible even if the police obtained an earlier voluntary but unwarned admission from the suspect.

FACTS: Officers went to a burglary suspect's home with a warrant for his arrest. Elstad's mother answered the door and led the officers to her son's room. One officer waited with Elstad while the other explained his arrest to the mother. The officer told Elstad that he was implicated in the burglary, to which he responded "Yes, I was there." Elstad was then taken to the police station

where he was advised of his *Miranda* rights for the first time. Elstad indicated that he understood his rights and wanted to talk to the officers. He then made a full statement that was typed, reviewed, and read back to Elstad for corrections, then signed by the officer and Elstad. Elstad was charged with and convicted of first degree burglary.

ISSUE: Do voluntary but unwarned statements made prior to *Miranda* warnings render all subsequent statements inadmissible under the Fifth Amendment's protection from self-incrimination? NO.

SUPREME COURT DECISION: If a confession is made after proper *Miranda* warnings and waiver of rights, the Fifth Amendment does not make it inadmissible solely because the police obtained an earlier voluntary but unwarned admission from the suspect.

REASON: "Far from establishing a rigid rule, we direct courts to avoid one; there is no warrant for presuming coercive effect where the suspect's initial inculpatory statement, though technically in violation of *Miranda*, was voluntary. The relevant inquiry is whether, in fact, the second statement was also made voluntarily. As in any such inquiry, the finder of fact must examine the surrounding circumstances and the entire course of police conduct with respect to the suspect in evaluating the voluntariness of his statements. The fact that a suspect chooses to speak after being informed of his rights is, of course, highly probative. We find that the dictates of *Miranda* and the goals of the Fifth Amendment proscription against use of compelled testimony are fully satisfied in the circumstances of this case by barring the use of the unwarned statement in the case in chief. No further purpose is served by imputing 'taint' to subsequent statements obtained pursuant to a voluntary and knowing waiver."

CASE SIGNIFICANCE: This case partly weakens the *Miranda* doctrine by holding that "a suspect who has once responded to unwarned yet noncoercive questioning is not thereby disabled from waiving his or her rights and confessing after he or she has been given the requisite *Miranda* warnings." The suspect in this case alleged that the "statement he made in response to questioning at his house (without *Miranda* warnings) 'let the cat out of the bag,' … and tainted the subsequent confessions as 'fruit of the poisonous tree.'" In most cases, the courts have held that any evidence obtained as a result of an illegal act by the police is inadmissible in court because it is, indeed, fruit of the poisonous tree. Such was not the case here, however, because, while the statement, "Yes, I was there," from Elstad was inadmissible because it was in response to a police question asked before the *Miranda* warnings were given, such an act by the police was not, in itself, illegal. As long as subsequent facts prove that the second statement, after *Miranda* warnings were given, was valid, the fact that no warnings were given earlier

does not render the second statement inadmissible. The police should note, however, that the rule still holds that if the police commit an illegal act, any evidence obtained as a result of that illegal act is inadmissible as "fruit of the poisonous tree."

Colorado v. Connelly
479 U.S. 157 (1986)

CAPSULE: Statements made when the mental state of the defendant interfered with his "rational intellect" and "free will" are not automatically excludable. Their admissibility is governed by state rules of evidence.

FACTS: Connelly approached a uniformed Denver police officer and confessed that he had murdered someone in Denver in 1982 and wanted to talk to the officer about it. The officer advised Connelly of his *Miranda* rights. Connelly indicated that he understood his rights and wanted to talk about the murder. After a homicide detective arrived, Connelly was again advised of his *Miranda* rights and again indicated that he understood them and still wanted to speak with the police. Connelly was then taken to the police station, where he told officers that he had come from Boston to confess to the murder. He made a full statement of the facts, and agreed to take the officers to the scene of the murder. When he became visibly disoriented, he was sent to a state hospital where, in an interview with a psychiatrist, Connelly revealed that he was following the advice of God in confessing to the murder. He was found incompetent to assist in his own defense but competent to stand trial.

ISSUE: Is a suspect's waiver of the *Miranda* rights that is not fully rational (because he was allegedly "following the advice of God") valid? YES.

SUPREME COURT DECISION: The admissibility of statements made when the mental state of the defendant interfered with his "rational intellect" and "free will" is governed by state rules of evidence rather than previous Supreme Court decisions regarding coerced confessions and the *Miranda* waivers. Such evidence therefore is not automatically excluded; its admissibility instead depends upon state rules.

REASON: "We have … observed that 'jurists and scholars have recognized that the exclusionary rule imposes a substantial cost on the societal interest in law enforcement by its proscription of what concededly is relevant evidence.' … Moreover, suppressing respondent's statements would serve absolutely no purpose in enforcing constitutional guarantees. The purpose of excluding evidence seized in violation of the Constitution is to substantially deter future violations of the Constitution.… Only if we were to establish a brand new constitutional right—the right of a criminal defendant to confess to

his crime only when totally rational and properly motivated—could respondent's present claim be sustained."

CASE SIGNIFICANCE: The Supreme Court indicated in this case that confessions and admissions are involuntary and invalid under the Constitution only if coercive police activity is involved. If the waiver is caused by anything other than police behavior, admissibility of the confession should depend on the state's rules of evidence. It is clear in this case that the *Miranda* warnings were repeatedly given and that there was a waiver. Such waiver, however, was later challenged as involuntary because it was promoted by a "voice of God." The Court said that this was not sufficient to render the waiver involuntary because the police did not act improperly or illegally. As long as police behavior is legal, a waiver is considered voluntary under the Constitution and its admissibility is governed by state law. This means that if state law allows its admissibility, such evidence can be used.

Colorado v. Spring
479 U.S. 564 (1987)

CAPSULE: The waiver of *Miranda* rights is valid even if the suspect believes that the interrogation will focus on minor crimes but the police later shift the questioning to cover a different and more serious crime.

FACTS: Spring and a companion shot and killed a man during a hunting trip in Denver. An informant told federal agents that Spring was engaged in interstate trafficking in stolen firearms and that he had participated in the murder. Pursuant to that information, agents set up an undercover operation and arrested Spring in Kansas City. Agents advised Spring of his *Miranda* rights upon arrest. At the agent's office, Spring was again advised of his *Miranda* rights and signed a statement that he understood and waived his rights. Agents then asked Spring about his involvement in the firearms transactions leading to his arrest. He was also asked if he had ever shot a man, to which he responded affirmatively, but denied the shooting in question. Thereafter, Colorado officials questioned Spring. He was again read his *Miranda* warnings and again signed a statement asserting that he understood and waived his rights. This time, Spring confessed to the Colorado murder. A written statement of his confession was prepared, which Spring read, edited, and signed. Spring was charged with and convicted of first degree murder.

ISSUE: Must a suspect be informed of all crimes of which he or she is to be questioned before there can be a valid waiver of the Fifth Amendment privilege against self-incrimination? NO.

SUPREME COURT DECISION: A suspect's waiver of *Miranda* rights is valid even if he or she believes that the interrogation will focus on minor

crimes but the police shift the questioning to cover a different and more serious crime.

REASON: "Respondent's March 30 decision to waive his Fifth Amendment privilege was voluntary absent evidence that his will was overborne and his capacity for self-determination critically impaired because of coercive police conduct. His waiver was also knowingly and intelligently made, that is, he understood that he had the right to remain silent and that anything he said could be used as evidence against him. The Constitution does not require that a suspect know and understand every possible consequence of a waiver of the Fifth Amendment privilege. Here, there was no allegation that respondent failed to understand that privilege or that he misunderstood the consequences of speaking freely."

CASE SIGNIFICANCE: The confession was held valid in this case because there was no deception or misrepresentation by the police in obtaining the confession. Here, the police first questioned Spring about firearms transactions (a lesser offense) and, after he incriminated himself on these, the police asked him about a more serious offense, the murder, and Spring again incriminated himself. Spring, in challenging the validity of the waiver, felt that he should have been informed first of the offense for which he would be interrogated. The Court said that the police did not have to do so as long as there was no intention on the part of the police to mislead or deceive Spring. The principle is that a valid waiver of the *Miranda* rights allows the police to ask questions of the suspect about any crime as long as the interrogation does not involve misrepresentation or deception. There is no need to repeat the *Miranda* warnings if the suspect is asked about a different crime.

Connecticut v. Barrett
479 U.S. 523 (1987)

CAPSULE: A suspect's oral confession is admissible even if the suspect tells the police that he or she will not make a written statement without a lawyer present.

FACTS: Barrett was arrested in connection with a sexual assault. Upon arrival at the police station, Barrett was advised of his *Miranda* rights and signed a statement acknowledging the understanding of his rights. Barrett stated that he would not give a written statement in the absence of counsel, but that he would talk to the police about the incident. In two subsequent interrogations, Barrett was again advised of his rights and signed a statement of understanding. On both occasions he gave an oral statement admitting his involvement in the assault but refused to make a written statement. Because of a malfunction in the tape recorder, an officer reduced the confession to writing

based on his recollection of the conversation. Barrett was charged with and convicted of sexual assault.

ISSUE: Is there a valid waiver of the *Miranda* rights if a defendant requests assistance of counsel and refuses to make written statements, but makes oral statements voluntarily to the police? YES.

SUPREME COURT DECISION: The oral confession made by a suspect is admissible as evidence in court even if the suspect tells the police that he would talk with them but would not make a written statement without a lawyer present. The waiver of *Miranda* rights by Barrett is valid because he was not "threatened, tricked, or cajoled" into speaking to the police.

REASON: "Respondent's statements to the police made it clear his willingness to talk about the sexual assault, and, there being no evidence that he was 'threatened, tricked, or cajoled' into speaking to the police, the trial court properly found that his decision to do so constituted a voluntary waiver of his right to counsel. Although the *Miranda* rules were designed to protect defendants from being compelled by the government to make statements, they also gave defendants the right to choose between speech and silence."

"Respondent's invocation of his right to counsel was limited by its terms to the making of written statements, and did not prohibit all further discussions with the police. Requests for counsel must be given broad, all-inclusive effect only when the defendant's words, understood as ordinary people would understand them, are ambiguous. Here, respondent clearly and unequivocally expressed his willingness to speak to police after the sexual assault."

CASE SIGNIFICANCE: The issue in this case was the validity of the waiver of *Miranda* rights. The defendant told the police that he would talk with them, but would not make a written statement without a lawyer present. Ordinarily, a waiver is unconditional; here, the waiver was conditional in that the suspect did agree to make oral statements without a lawyer present. He later challenged his incriminating oral statements as inadmissible because he had asked for a lawyer, even though he agreed to make an oral statement. The Supreme Court rejected the challenge, saying that the sole test for the admissibility of an oral confession was voluntariness. There was a voluntary waiver of rights here, although the defendant refused to make a written statement. What this case tells the police is that the waiver of rights does not have to be complete or unconditional to be valid. Refusal to have a statement in writing does not make a confession inadmissible, as long as the police can establish that the *Miranda* warnings were given and the waiver was intelligent and voluntary.

Patterson v. Illinois
487 U.S. 285 (1988)

CAPSULE: A valid waiver after the *Miranda* warnings constitutes a waiver of the right to counsel as well as the privilege against self-incrimination.

FACTS: After being informed by the police that he had been charged with murder, Patterson, who was in police custody, twice indicated his willingness to discuss the crime with the authorities. He was interrogated twice, and on both occasions was read a form waiving his *Miranda* rights. He initialed each of the five specific warnings on the form and then signed it. He then gave incriminating statements to the police about his participation in the crime. He was tried and convicted of murder.

ISSUE: Is a waiver of rights after the *Miranda* warnings a waiver of the Sixth Amendment right to counsel as well as a waiver of the Fifth Amendment privilege against self-incrimination? YES.

SUPREME COURT DECISION: A defendant who has been given the *Miranda* warnings has been sufficiently made aware of the Sixth Amendment right to counsel so that any waiver of that right is valid if it is a knowing and intelligent waiver.

REASON: "This Court has never adopted petitioner's suggestion that the Sixth Amendment right to counsel is 'superior' to or 'more difficult' to waive than its Fifth Amendment counterpart. Rather, in Sixth Amendment cases, the court has defined the scope of the right to counsel by a pragmatic assessment of the usefulness of counsel to the accused at the particular stage of the proceedings in question, and the dangers to the accused of proceedings without counsel at that stage.... *Miranda* warnings are sufficient for this purpose in post-indictment questioning context, because, at that stage, the role of counsel is relatively simple and limited, and the dangers and disadvantages of self-representation are less substantial and more obvious to an accused than they are at trial."

CASE SIGNIFICANCE: Many police officers believe that *Miranda v. Arizona* is a right to counsel case. It is not. Instead, it is a right against self-incrimination case, meaning that the main reason *Miranda* warnings must be given by the police is because these warnings protect a suspect's right against self-incrimination. The statement that "you have the right to a lawyer" is given primarily because a lawyer can help protect a suspect's self-incrimination privilege. In this case, Patterson conceded that he validly waived his Fifth Amendment right when he signed the waiver, but asserted that such waiver did not mean a waiver of his Sixth Amendment right to counsel, a right given the

accused after charges are filed, as they were in this case. In essence, Patterson maintained that he ought to have been specifically informed of his right to counsel (apart from the *Miranda* warnings) and that there must be a separate waiver for that right. The Court disagreed, saying that the *Miranda* warnings were sufficient to inform Patterson of both rights and that his statements were, therefore, admissible in evidence.

Duckworth v. Eagan
492 U.S. 195 (1989)

CAPSULE: The *Miranda* warnings need not be given in the exact form as worded in *Miranda v. Arizona*; what is needed is that they simply convey to the suspect his or her rights.

FACTS: Duckworth, when first questioned by Indiana police in connection with a stabbing, made incriminating statements after having signed a waiver form that provided, among other things, that if he could not afford a lawyer, one would be appointed for him "if and when you go to court." Twenty-nine hours later, he was interrogated again and signed a different waiver form. He confessed to the stabbing and led officers to a site where they recovered relevant physical evidence. Over respondent's objection, his two statements were admitted into evidence at trial. Duckworth was charged with and convicted of attempted murder. He challenged his confession as inadmissible, saying that the first waiver form did not comply with the requirements of *Miranda*; therefore, his confessions were not admissible.

ISSUE: Was the waiver form used by the police in this case (which informed the suspect that an attorney would be appointed for him "if and when you go to court") sufficient to comply with the requirements of *Miranda v. Arizona*? YES.

SUPREME COURT DECISION: The *Miranda* warnings need not be given in the exact form as outlined in the case; they must simply convey to the suspect his or her rights. The initial warning given to Duckworth in this case, namely: the right to remain silent, that anything said could be used against him in court, that he had the right to talk to a lawyer for advice before and during questioning even if he could not afford to hire one, that he had the right to stop answering questions at any time until he talked to a lawyer, and that the police could not provide him with a lawyer, but one would be appointed for him, "if and when you go to court," complied with all the requirements of the *Miranda* case. The evidence obtained was, therefore, admissible.

REASON: "We think it must be relatively commonplace for a suspect, after receiving *Miranda* warnings, to ask when he will obtain counsel. The 'if and when you go to court' advice simply anticipates the question. Second,

Miranda does not require that attorneys be producible on call, but only that the suspect be informed, as here, that he has the right to an attorney before and during questioning, and that an attorney would be appointed for him if he could not afford one. The Court in *Miranda* emphasized that it was not suggesting that 'each police station must have a "stationhouse lawyer" present at all times to advise prisoners.' If the police cannot provide appointed counsel, *Miranda* requires only that the police not question a suspect unless he waives his right to counsel. Here, respondent did just that."

CASE SIGNIFICANCE: This case clarifies two unclear points in the *Miranda* case. First, must the police use the exact wording in the *Miranda* decision to warn a suspect of his or her rights? The Court said no. It is sufficient that the warnings, however worded, "reasonably convey to a suspect his rights." Note, however, that although the warnings need not be adopted verbatim from the *Miranda* case, the substance of the warnings, as indicated above, must be conveyed to the suspect. The second point addresses whether the police must immediately produce a lawyer if a suspect asks for one. The Court also said no. There is no requirement that the police produce a lawyer on call. The police need to inform the suspect that he or she has the right to an attorney and to an appointed attorney if he or she cannot afford one. If the suspect wants a lawyer and the police cannot immediately provide one, the interrogation simply stops; there is no obligation to provide a lawyer immediately. If the interrogation continues, however, any evidence obtained cannot be used in court.

Pennsylvania v. Muniz
496 U.S. 582 (1990)

CAPSULE: The police may validly ask routine questions of persons suspected of driving while intoxicated and videotape their responses without giving them the *Miranda* warnings.

FACTS: An officer stopped Muniz's vehicle and directed him to perform three standard field tests. Muniz performed these tests poorly and informed the officer that he failed the tests because he had been drinking. The officer then arrested Muniz and took him into custody. After informing him that his actions and voice would be videotaped, Muniz was processed through procedures for receiving persons suspected of driving while intoxicated. Without being given his *Miranda* warnings, he was asked seven questions regarding his name, address, height, weight, eye color, date of birth, and age. He was also asked, and was unable to give, the date of his sixth birthday.

An officer directed Muniz to perform each of the sobriety tests he had performed during the initial stop, which he again completed poorly. While performing these tests, Muniz attempted to explain his difficulties in completing the tasks and often requested further instruction on the tests.

An officer then asked Muniz to submit to a Breathalyzer test and read him the law regarding sanctions for failing or refusing the test. After asking several questions and commenting on his state of inebriation, Muniz refused to submit to the test. At this point, Muniz was read his *Miranda* warnings for the first time. He then waived his rights and admitted in further questioning that he had been driving while intoxicated. The evidence obtained by the police in the form of Muniz's responses and the videotape of Muniz's performance during booking was submitted into court over his objection and he was convicted of driving under the influence of alcohol.

ISSUE: Do the police need to give drunk driving suspects the *Miranda* warnings when asking routine questions and videotaping the proceeding? NO.

SUPREME COURT DECISION: The police may ask persons suspected of driving while intoxicated routine questions and videotape their responses without giving *Miranda* warnings. The questions and videotape do not elicit testimonial responses that are protected by the Fifth Amendment.

REASON: "The privilege against self-incrimination protects an 'accused from being compelled to testify against himself, or otherwise provide the state with evidence of a testimonial or communicative nature,' but not from being compelled by the state to produce 'real or physical evidence.' To be testimonial, the communication must, explicitly or implicitly, relate to a factual assertion or disclose information."

"Muniz's answers to direct questions are not rendered inadmissible by *Miranda* merely because the slurred nature of his speech was incriminating. Requiring a suspect to reveal the physical manner in which he articulates words, like requiring him to reveal the physical properties of the sound of his voice, by reading a transcript, does not, without more, compel him to provide a 'testimonial' response for the purposes of the privilege."

"However, Muniz's response to the sixth birthday question was incriminating not just because of his delivery, but because the content of his answer supported an inference that his mental state was confused. His response was testimonial because he was required to communicate an expressed or implied assertion of the fact or belief and, thus, was confronted with the 'trilemma' of truth, falsity, or silence, the historical abuse against which the privilege against self-incrimination was aimed."

CASE SIGNIFICANCE: This case aids the police in obtaining evidence for prosecutions in drunk driving cases. Another case, decided by the Court a few days earlier, holds that sobriety checkpoints in which the police stop every vehicle do not violate the Constitution (*Michigan Department of State Police v. Sitz*, 496 U.S. 444 [1990]). Within a week's time, the Court gave the police a virtual one-two punch in DWI cases.

This case holds that the police may ask questions of a drunk driving suspect and videotape the whole proceeding without giving the suspect the *Miranda* warnings. This case, however, addresses only "routine" questions (namely: eye color, date of birth, and current age). Questions that are not routine were not addressed in this case. The fact that the answers to the seven questions were slurred and therefore incriminating did not render the evidence inadmissible.

Four justices who voted with the majority said that this decision constitutes a new exception to the *Miranda* rule, and that this routine booking exception is justified because the questions asked are not intended to obtain information for investigatory purposes. Four other justices, however, said that the *Miranda* rule simply did not apply to such questions and therefore did not consider the ruling an exception to the *Miranda* rule. Despite this disagreement, the fact remains that, when asking routine questions, the *Miranda* warnings need not be given and the videotaping of the proceedings is constitutional.

From the perspective of police officers, this case means that they now have greater leeway in handling DWI cases. From a legal perspective, however, the main issue is what kind of self-incriminating evidence is admissible in court. The rule is that the Fifth Amendment prohibition against self-incrimination (which is protected by the *Miranda* rule) prohibits only testimonial or communicative self-incrimination and does not prohibit physical self-incrimination. The asking of routine questions, the answers to which were slurred, and the videotaping of the proceedings were self-incriminatory, but such incrimination was physical; the *Miranda* warnings were, therefore, not needed and the evidence was admissible in court. Note, however, that Muniz's answer to the question about the date of his sixth birthday was excluded because "the content of his answer supported the inference that his mental state was confused." In sum, if the evidence obtained was physical instead of mental in nature, the evidence was admissible in court, even without the *Miranda* warnings being given.

McNeil v. Wisconsin
501 U.S. 171 (1991)

CAPSULE: An accused's request for a lawyer at a bail hearing after being charged with an offense does not constitute an invocation of the Fifth Amendment right to counsel under *Miranda* for other offenses for which the accused has not yet been charged.

FACTS: McNeil was arrested in Omaha, Nebraska pursuant to a warrant charging him with an armed robbery in a suburb of Milwaukee, Wisconsin. In that case, McNeil asked for and was represented by a public defender at a bail hearing for that offense. While in detention because of that charge, he was asked by the police about a murder and related crimes in a nearby town.

McNeil was advised of his *Miranda* rights; he signed forms waiving them and then made statements incriminating himself in those crimes. Over the next four days, McNeil was interviewed twice more, each time being read his *Miranda* warnings and signing statements that he waived his rights. Ultimately, McNeil confessed to the murder, attempted murder, and armed burglary. McNeil sought to suppress his confession, saying that his request for a lawyer during the bail hearing for the armed robbery charge constituted an invocation of his *Miranda* rights, thus precluding any further police interrogation.

ISSUE: Does an accused's request for counsel at a bail hearing constitute an invocation of his Fifth Amendment right to counsel under *Miranda* for other unrelated offenses for which he had not yet been charged? NO.

SUPREME COURT DECISION: An accused's request for a lawyer at a bail hearing, after being charged with an offense, does not constitute an invocation of the Fifth Amendment right to counsel under *Miranda* for other offenses for which he had not yet been charged.

REASON: "In *Michigan v. Jackson*, 475 U.S. 625 (1986) we held that once this right to counsel has attached and has been invoked, any subsequent waiver during a police-initiated custodial interview is ineffective.... In *Edwards v. Arizona*, 451 U.S. 477 (1981), we established a second layer of prophylaxis for the *Miranda* right to counsel: once a suspect asserts the right, not only must the current interrogation cease, but he may not be approached for further interrogation until counsel has been made available to him.... The *Edwards* rule, moreover, is not offense-specific: once a suspect invokes the *Miranda* right to counsel for interrogation regarding one offense, he may not be reapproached regarding any offense unless counsel is present.... The Sixth Amendment right, however, is offense-specific. It cannot be invoked once for all future prosecutions, for it does not attach until a prosecution is commenced.... To exclude evidence pertaining to charges as to which the Sixth Amendment right to counsel had not attached at the time the evidence was obtained, simply because other charges were pending at that time, would unnecessarily frustrate the public's interest in the investigation of criminal activities." [Citations omitted.]

CASE SIGNIFICANCE: In several decisions that followed *Miranda v. Arizona*, the Supreme Court strengthened *Miranda* by holding that once a person has invoked his or her right to counsel, the person could not be subjected to any further police-initiated questioning for any crime (*Edwards v. Arizona*) and unless counsel is present (*Minnick v. Mississippi*). This case is slightly different in that the accused maintained that when he invoked the right to counsel during a bail hearing for armed robbery, he was in effect also invoking his *Miranda* rights for the other offenses with which he had not yet

been charged; therefore, police interrogation for the other offenses could not take place. The Court disagreed, saying that his invocation of *Miranda* during that bail hearing did not apply to the other cases with which he had not yet been charged, particularly because he voluntarily waived his *Miranda* rights when interrogated by the police concerning those cases. The Court said that "requesting the assistance of an attorney at a bail hearing does not satisfy the minimum requirement of some statements that can reasonably be construed as an expression of a desire for counsel in dealing with custodial interrogation by the police." In other words, the request for counsel at a bail hearing is different from a request for counsel when being interrogated by the police for a crime.

Davis v. United States
512 U.S. 452 (1994)

CAPSULE: After a knowing and voluntary waiver of *Miranda* rights, law enforcement officers may continue questioning until and unless the suspect clearly requests an attorney.

FACTS: Davis and Keith Shackleford were playing pool on October 2, 1988. Shackleford lost a game and a $30 wager but refused to pay. Shackleford was later beaten to death with a pool cue. An investigation into the murder revealed Davis's presence on the evening of the murder and that he was absent without authorization from his Naval duty station the next morning. The investigation also found that only privately owned pool cues could be taken from the club and that Davis had two of them, one of which was subsequently found to have a blood stain on it. Investigative agents were told by others that Davis had either admitted committing the murder or had recounted details that clearly indicated his involvement. On November 4, 1988, Davis was interviewed by Naval Investigative Service agents. As required by military law, the agents advised Davis that he was a suspect, that he was not required to make a statement, that any statement made could be used against him at a trial, and that he was entitled to speak to an attorney and to have the attorney present during questioning. Davis waived his rights to remain silent and to counsel both orally and in writing. An hour and a half into the interview, Davis stated "Maybe I should talk to a lawyer." When agents inquired if Davis was asking for an attorney, he replied that he was not. After a short break, agents reminded Davis of his rights and the interview continued. After another hour, Davis said "I think I want a lawyer before I say anything else." At that time, questioning ceased. At his court-martial hearing, a motion to suppress the statements obtained prior to requesting an attorney was denied and Davis was convicted of murder.

ISSUE: After a knowing and voluntary waiver of the *Miranda* rights, does a suspect's statement during custodial interrogation that does not qualify as an

unambiguous invocation of the right to counsel require officers to cease questioning? NO.

SUPREME COURT DECISION: "Invocation of the *Miranda* [*v. Arizona*, 384 U.S. 436, (1966)] right to counsel 'requires, at a minimum, some statement that can reasonably be construed to be an expression of a desire for the assistance of an attorney.' *McNeil v. Wisconsin*, 501 U.S. 171 (1991) at 178. But if a suspect makes a reference to an attorney that is ambiguous or equivocal in that a reasonable officer in light of the circumstances would have understood only that the suspect might be invoking the right to counsel, our precedents do not require the cessation of questioning."

REASON: "The rationale underlying *Edwards* [*v. Arizona*, 451 U.S. 477 (1981)] is that the police must respect a suspect's wishes regarding his right to have an attorney present during custodial interrogation. But when the officers conducting the questioning reasonably do not know whether or not the suspect wants a lawyer, a rule requiring the immediate cessation of questioning 'would transform the *Miranda* safeguards into wholly irrational obstacles to legitimate police investigative activity' *Michigan v. Mosley*, 423 U.S. 96, 102 (1975) . . . "

CASE SIGNIFICANCE: This 5-to-4 decision by the Court represents a modification of the *Edwards* rule. The Edwards case stated that once a suspect asks for a lawyer, questioning by the police must cease. In this case, the suspect argued that the statement, "Maybe I should talk to a lawyer" constituted an invocation of the right to a lawyer under *Miranda*, hence police interrogation should have stopped. The Court disagreed, saying that the statement was an ambiguous request for counsel and therefore did not trigger the protections under *Edwards* or *Miranda*. Had the request been unambiguous to a reasonable investigator, the result would have been different. A statement such as, "I want a lawyer before I say anything else," would likely have been considered an unambiguous request. That the case was decided on such a close vote indicates that the other justices did not think that the preceding phrase, "Maybe . . ." made all that difference in the tone of the request. This case holds that the request for the right to counsel must be clear and unambiguous (as judged from the perspective of a reasonable interrogator) where there was a previous valid and intelligent waiver, before the *Edwards* rule applies.

United States v. Patane
542 U.S. 630 (2004)

CAPSULE: Failure to give a suspect the *Miranda* warnings does not require suppression of the physical fruits of the suspect's unwarned but voluntary statements.

FACTS: Patane was arrested for harassing his ex-girlfriend. He was released on bond, subject to a restraining order that prohibited him from contacting her. Patane violated the restraining order by contacting his ex-girlfriend by phone. An officer investigating the matter was provided information by a probation officer that Patane illegally possessed a pistol. The officer went to Patane's home and inquired about his attempts to contact his girlfriend. The officer then arrested Patane for violating the restraining order. When another officer attempted to read Patane his *Miranda* warnings, Patane interrupted and said he knew his rights. Neither officer attempted to further warn Patane about his *Miranda* rights. The officer then asked Patane about the pistol. Patane was initially reluctant to discuss the matter, but upon the officer's insistence told him where the pistol was located. He then gave the officer permission to retrieve the pistol and it was seized by the officer. Patane was arrested for being a felon in possession of a firearm.

ISSUE: Does the failure to give a suspect the *Miranda* warnings require suppression of the physical fruits of the unwarned but voluntary statements? NO.

SUPREME COURT DECISION: Failure to give a suspect the *Miranda* warnings does not require suppression of the physical fruits of the suspect's unwarned but voluntary statements.

REASON: The Court based its ruling on three foundations: the relationship between the self-incrimination clause and physical evidence, the requirement to provide *Miranda* warnings for physical evidence, and the relationship to the exclusionary rule.

On the self-incrimination clause, the Court stated, "... the *Miranda* rule is a prophylactic employed to protect against violation of the Self-Incrimination Clause. The Self-Incrimination Clause, however, is not implicated by the admission into evidence of the physical fruit of a voluntary statement.... The core protections afforded by the Self-Incrimination Clause is a prohibition on compelling a criminal defendant to testify against himself at trial." The court in *Elstad*, upon which Patane partially based his arguments, agreed that the Fifth Amendment was not concerned with non-testimonial evidence.

Even if this were so, the Court stated that "[o]ur cases make clear the related point that a mere failure to give *Miranda* warning does not, by itself, violate a suspect's constitutional rights or even the *Miranda* rule.... And although it is true that the Court requires the exclusion of the physical fruit of actually coerced statements, it must be remembered that statements taken without sufficient *Miranda* warnings are presumed to have been coerced only for certain purposes and then only when necessary to protect the privilege against self-incrimination.... It follows that police do not violate a suspect's constitutional rights (or the *Miranda* rule) by negligent or even deliberate failures to provide the suspect with the full panoply of warnings prescribed by

Miranda. Potential violations occur, if at al, only upon the admission of unwarned statements into evidence at trial. And at this point, 'the exclusions of unwarned statements … is a complete and sufficient remedy' for any perceived *Miranda* violation.… Finally, nothing in *Dickerson*, including its characterization of *Miranda* as announcing a constitutional rule, 530 U.S., at 444, changes any of these observations."

Turning to the exclusionary rule, the Court reiterated that the exclusionary rule was created to control police conduct. The court noted that the *Miranda* rule is not aimed at police conduct, and police do not violate the Constitution by mere failure to warn. "Thus, unlike unreasonable searches under the Fourth Amendment or actual violation of the Due Process clause or the Self-Incrimination Clause, there is, with respect to mere failures to warn, nothing to deter. There is therefore no reason to apply the 'fruit of the poisonous tree' doctrine of *Wong Sun*, 371 U.S., at 448."

CASE SIGNIFICANCE: This case involved the suppression of physical, not testimonial, evidence obtained without the suspect being given the *Miranda* warnings. It did not involved the admissibility of statements or confessions obtained without the *Miranda* warnings (as is the issue in most *Miranda* cases); instead, it focused on the admissibility of the pistol that was obtained without the suspect being given the *Miranda* warnings and after he had asserted that he knew his rights. The Court held that the physical evidence obtained was admissible on the grounds that it did not violate the constitutional guarantee against self-incrimination because the evidence involved was physical, not testimonial (spoken). Neither was there any need to apply the "fruit of the poisonous tree" doctrine (which holds that evidence obtained from other evidence illegally obtained is not admissible in court) because the "fruit of the poisonous tree" doctrine involves a violation of the Fourth Amendment protection against unreasonable searches and seizures and is unrelated to the *Miranda* rule, which was the issue in this case.