

SUPREME COURT OF GEORGIA

State v. Darby, 284 Ga. 271

663 S.E.2d 160 (2008) · No. No. S08A0658 · Decided June 30, 2008

SUMMARY

The Supreme Court of Georgia addressed the admissibility of statements made after the defendant invoked his right to counsel. The court held that police improperly reinitiated interrogation and that the defendant's prior waiver was not knowing and intelligent because officers had incorrectly represented that signing a waiver was required to give his side of the story. The court affirmed in part and reversed in part, holding that portions of a videotaped conversation with the defendant's mother unrelated to the illegal interrogation could be admissible.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Carley, Justice
JURISDICTION	Georgia
DECIDED	June 30, 2008
DOCKET	No. S08A0658
DISPOSITION	other
PROCEDURAL POSTURE	The State appealed from a pretrial order suppressing the defendant's custodial statements and a videotaped conversation with his mother.
STANDARD OF REVIEW	The court reviewed the suppression ruling under the totality of the circumstances, with deference to the trial court's factual findings and credibility determinations when supported by the evidence.
PRECEDENTIAL VALUE	Published opinion; precedential
PARTIES	State v. Darby

TOPICS

- right to counsel
- miranda rights
- suppression of evidence
- criminal procedure
- evidence

PRACTICE AREAS

- criminal procedure
- constitutional criminal procedure
- evidence

QUESTIONS PRESENTED

1. Whether Darby's statements during the initial interrogation were admissible after he invoked his right to counsel and signed a Miranda waiver only after being incorrectly told that a waiver was required to tell his side of the story.
2. Whether the subsequent interrogation was barred by Edwards because police initiated the conversation after Darby had invoked his right to counsel.
3. Whether the entire videotaped conversation with Darby's mother was inadmissible as the product or fruit of the unlawful interrogation.

HOLDINGS

1. After Darby invoked his right to counsel, his responses to further police questioning were admissible only if he initiated further discussions and knowingly and intelligently waived the invoked right. The trial court was authorized to find that Darby's waiver was not knowing and intelligent because officers incorrectly represented that signing the waiver was a precondition to telling his side of the story.
2. The trial court was authorized to find that Officer Adkison, rather than Darby, reinitiated interrogation in violation of Edwards by initiating a conversation about the preliminary hearing that was reasonably likely to evoke an incriminating response. The subsequent statement was therefore inadmissible.
3. The trial court erred by excluding the videotape in its entirety. Only the portion of the conversation that was, in effect, a recap of the illegal interrogation was inadmissible; dialogue between Darby and his mother before the officer recited the contents of the illegal interrogation remained admissible.

KEY QUOTATIONS

"Once Darby invoked the right to counsel, his responses to further questioning by Officers Simms and Walker may be admitted only on finding that he (a) initiated further discussions with the police, and (b) knowingly and intelligently waived the right he had invoked." (162)

"The trial court, having considered the totality of the circumstances and assessing the credibility of Officer Adkison's testimony, was authorized to find that, in violation of Edwards, the police, rather than Darby, reinitiated interrogation after he invoked his Sixth Amendment right to counsel." (163)

"If, under Edwards, Darby's statement would not be admissible directly, it could not be admitted indirectly in the form of Officer Adkison's recital on the videotape of what Darby had said to him during the illegal interview, followed by a discussion between Darby and his mother of his inculpatory admissions." (164)

FACTUAL BACKGROUND

Nineteen-year-old Damorrial Darby surrendered to police in connection with a fatal shooting and was arrested and questioned after receiving Miranda warnings. He initially requested a lawyer, but officers told him he had to sign a waiver before telling his side of the story; he then signed a waiver and made an exculpatory statement before again invoking counsel. Later, another officer transported him for a preliminary hearing, initiated conversation about the hearing, and questioned him without obtaining a new express waiver, resulting in an

inculpatory statement. During a subsequent videotaped meeting with Darby's mother, the officer recited information from the illegal interrogation and Darby made additional admissions.

PROCEDURAL HISTORY

After Darby was arrested for murder, the trial court held a suppression hearing at which three officers testified. The trial court ruled that Darby's statements to the officers and the videotape of his conversation with his mother were inadmissible under *Miranda v. Arizona* and *Edwards v. Arizona*. The Supreme Court of Georgia affirmed in part and reversed in part.

DISPOSITION

other

REMAND INSTRUCTIONS

The order suppressing the videotape was reversed only to the limited extent that it excluded dialogue between Darby and his mother that was not based on Officer Adkison's recital of the events from the impermissible interrogation. The suppression of the interrogation-derived portions remained in effect.

CASES CITED

- *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966)
- *Edwards v. Arizona*, 451 U.S. 477, 101 S. Ct. 1880, 68 L. Ed. 2d 378 (1981)
- *Zubiadul v. State*, 193 Ga. App. 235, 236-237, 387 S.E.2d 431 (1989)
- *Sanders v. State*, 182 Ga. App. 581, 582(1), 356 S.E.2d 537 (1987)
- *Hibbert v. State*, 195 Ga. App. 235, 236, 393 S.E.2d 96 (1990)
- *Roper v. State*, 258 Ga. 847, 850(1)(a), 375 S.E.2d 600 (1989)
- *State v. Woods*, 280 Ga. 758, 759, 632 S.E.2d 654 (2006)
- *Richmond County v. McElmurray*, 223 Ga. 440, 443(1), 156 S.E.2d 53 (1967)
- *Cook v. State*, 270 Ga. 820, 826(2), 828(2), 514 S.E.2d 657 (1999)

OPINION

State v. Darby 663 S.E.2d 160

CARLEY, J.

663 S.E.2d 160 (2008) The STATE v. DARBY. No. S08A0658. Supreme Court of Georgia. June 30, 2008. Reconsideration Denied July 25, 2008.

*161 Gwendolyn Keyes Fleming, Dist. Atty., Leonora Grant, Asst. Dist. Atty., Decatur, Thurbert E. Baker, Atty. Gen., Department of Law, Atlanta, for Appellant.

Michael R. Hauptman, Atlanta, for Appellee. CARLEY, Justice. While investigating the fatal shooting of Alexys Anderson, the police learned of the possible involvement of Damorrial Darby. Accompanied by his parents, Darby, who was nineteen-years old, surrendered to the authorities.

Officers Simms and Walker placed him under arrest for murder, and separated him from his parents for questioning. After the officers explained his rights in accordance with the procedure mandated by *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966), Darby stated that he wished to speak with a lawyer. Then, however, he spontaneously asked why he was being charged with the murder of Mr. Anderson and stated "there's no way I could *162 be doing this." At that point, the officers told him: "[I]f you want to tell us your side of the story you can you know, you can sign off on a waiver and tell us your side of the story. . . ." Darby indicated that he did want to make a statement, and he executed a written waiver of his rights. Under questioning, Darby denied participation in the shooting of Mr. Anderson. Eventually, he became upset and started crying. When he asked to see his parents, the officers told him that, as an adult, he could not have them present at the interrogation. Darby then invoked his right to counsel, and the questioning immediately ceased. Darby was booked into jail, and the interrogating officers made a note to the effect that he wished to speak with his mother. Officer Adkison, who was in charge of the homicide investigation, subsequently arrived to transport Darby to his preliminary hearing. That officer was aware of Darby's request to speak with his mother. Apparently, however, he did not know that the prior interview had ended with Darby's request for an attorney. According to Officer Adkison, upon meeting with Darby, he went "over the rules and the regs and the procedures [regarding the preliminary hearing]. . . . And after that process [Darby] asked would he be able to speak with his mother." The officer also stated: We brought him back preparing him for his hearing and he stated that he wanted to talk to his mother. He was talking he wanted to talk to us, but he wanted to talk to his mother as well. . . . If I'm correct I believe he stated I'm willing to talk to you as long as I can talk to my mother. While awaiting the arrival of Darby's mother, the questioning began. Officer Adkison did not obtain another express waiver of Miranda rights, but he did produce the Miranda form and waiver Darby had previously executed. Darby acknowledged the waiver and his execution of it. In the ensuing interrogation, Darby gave an inculpatory statement regarding his involvement in Mr. Anderson's homicide. When his mother arrived, their meeting was videotaped. In that meeting, he made incriminating admissions to her as well. Darby filed a pre-trial motion to suppress his statements to the officers and his conversation with his mother. The trial court conducted a hearing, at which only the three officers who had questioned him testified. Based on the testimony at that hearing, the trial court found that all of statements made to the officers and the tape of the conversation with Darby's mother were inadmissible under *Miranda v. Arizona*, supra, and *Edwards v. Arizona*, 451 U.S. 477, 101 S. Ct. 1880, 68 L. Ed. 2d 378 (1981). The State appeals from the trial court's order.

1. The trial court found the custodial statements inadmissible for several reasons, one of which was that Officers Simms and Walker erroneously informed Darby that he had to sign the Miranda waiver before making a statement.

As the trial court correctly held, that was erroneous because a suspect can always make a spontaneous, voluntary statement which would be admissible at trial. *Zubiadul v. State*, 193

Ga.App. 235, 236-237, 387 S.E.2d 431 (1989). Thus, the correct response to Darby would have been that he could make a voluntary statement, but that he could not be interrogated by the officers, without signing the waiver. Once Darby invoked the right to counsel, his responses to further questioning by Officers Simms and Walker "may be admitted only on finding that he (a) initiated further discussions with the police, and (b) knowingly and intelligently waived the right he had invoked. [Cits.]" *Zubiadul v. State*, supra at 236, 387 S.E.2d 431. The trial court was authorized to find that Darby did not knowingly and intelligently waive his Sixth Amendment right by executing the Miranda waiver, because he signed that document only after receiving the erroneous information that it was a precondition to telling his "side of the story."

2. The trial court found that the subsequent statement given to Officer Adkison was inadmissible under *Edwards*, supra, because that officer "initiated conversation with [Darby] by telling him what to expect at the [preliminary] hearing."

*163 [A]n analysis of whether a suspect who has invoked his right to counsel under *Miranda*, supra, has later waived that right proceeds in two steps. First, a determination as to whether the defendant initiated further talks with the police, and second, if so, whether his waiver was shown to be voluntary under the totality of the circumstances. [Cits.] (Emphasis in original.)

Sanders v. State, 182 Ga.App. 581, 582(1), 356 S.E.2d 537 (1987). The State urges that *Edwards* is inapplicable because Officer Adkison did not initiate interrogation about Mr. Anderson's murder, but began the conversation simply by providing Darby with information regarding the scheduled preliminary hearing. As the trial court noted, however, in opening up the dialogue, the officer was not engaging in "routine inquiry concerning identification of [Darby's] family members, having nothing to do with the criminal investigation. . . ." *Hibbert v. State*, 195 Ga.App. 235, 236, 393 S.E.2d 96 (1990). Instead, the very purpose of the preliminary hearing was to address Darby's arrest and probable guilt for Mr. Anderson's murder. The trial court found that Officer Adkison picked up [Darby] from the jail for the five minute ride to his first appearance hearing more than ninety minutes before the hearing was scheduled. He was taken not to the Magistrate Court but to police headquarters, where he was placed in an interrogation room. [Officer] Adkison initiated conversation with [Darby] by telling him what to expect at the hearing. . . . [The officer] was not empowered to spontaneously advise [Darby] about his legal situation at the hearing. This information, properly obtained from the judge or through requested counsel, does not fall within the boundaries of the "booking exception" from *Miranda*, nor does it serve any other administrative function. Indeed, the only function served by this communication was to reestablish communication between the police and [Darby]. The trial court, having considered the totality of the circumstances and assessing the credibility of Officer Adkison's testimony, was authorized to find that, in violation of *Edwards*, the police, rather than Darby, reinitiated interrogation after he invoked his Sixth Amendment right to counsel. "A practice that the police should know is reasonably likely to evoke an incriminating response from a suspect . . . amounts to interrogation. . . ." [Cit.] *Hibbert v. State*, supra. It is immaterial that the officer may not have been aware that the

initial interview ended with Darby's invocation of his right to an attorney. *Roper v. State*, 258 Ga. 847, 850(1)(a), 375 S.E.2d 600 (1989). Likewise, it does not matter that, prior to the questioning, Officer Adkison showed Darby his previously executed Miranda waiver form which Darby acknowledged. As held in Division 1, that waiver was invalid because, due to the erroneous information given to Darby, it did not represent a knowing and intelligent waiver of his Sixth Amendment rights. Moreover, even if the waiver was valid, Darby's statement would still not be admissible, because it was the product of interrogation initiated by Officer Adkison. See *Sanders v. State*, supra (admissibility of statement made after request for counsel requires a two-step determination).

3. The trial court found the videotape of the meeting between Darby and his mother to be inadmissible because it

shows that, despite [Officer] Adkison's constant urging, [Darby] would not talk to his mother about the events surrounding the victim's death. [Officer] Adkison finally repeated to [Darby's] mother what her son had told them during the second interrogation. All the dialogue between [Darby] and his mother was based on [Officer] Adkison's recital of the events obtained from the illegal interview. Therefore, the dialogue between [Darby] and his mother . . . is excluded from the trial as fruits of an illegal interrogation. The trial court did not err in characterizing the second interrogation as "illegal," since the requirements of *Edwards* were not met for the reasons discussed in Division 2. "[H]owever, 'the "fruit" of a voluntary statement obtained in violation of *Edwards v. Arizona* is not subject to the exclusionary rule. (Cits.)' [Cit.]" *State v. Woods*, *164 280 Ga. 758, 759, 632 S.E.2d 654 (2006). Nevertheless, the videotape is not merely a "fruit" of the illegal interrogation. If, under *Edwards*, Darby's statement would not be admissible directly, it could not be admitted indirectly in the form of Officer Adkison's recital on the videotape of what Darby had said to him during the illegal interview, followed by a discussion between Darby and his mother of his inculpatory admissions. "It is a general rule that one cannot do indirectly that which the law does not allow to be done directly." *Richmond County v. McElmurray*, 223 Ga. 440, 443(1), 156 S.E.2d 53 (1967). However, only so much of the conversation between Darby and his mother as was, in effect, a recap of the interrogation by Officer Adkison would be inadmissible. See *Cook v. State*, 270 Ga. 820, 826(2), 514 S.E.2d 657 (1999). Although the trial court's order states that "all" of the conversation between Darby and his mother was premised on what Officer Adkison told her transpired during the interview, that is inaccurate. The meeting between Darby and his mother did not commence with the officer's recital of what he had learned from the interrogation. The trial court seemingly recognized that when it stated that Officer Adkison "finally repeated" to Darby's mother the inculpatory admissions her son made during the unauthorized interview. Any exchange between Darby and his mother prior to the officer "finally repeat[ing]" the contents of the illegal interrogation would be "admissible under *Miranda* and *Edwards*. [Cit.]" *Cook v. State*, supra at 828(2), 514 S.E.2d 657. Therefore, the trial court's order holding the videotape to be inadmissible in its entirety is reversed to the limited extent that it

excludes dialogue between Darby and his mother that was not based on Officer Adkison's recital of the events which occurred during the impermissible questioning. Judgment affirmed in part and reversed in part. All the Justices concur.

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