

Defendant's Request for an Attorney – Stop & Clarify: The Connecticut Constitutional Standard Has Changed

Description

On March 29, 2019 the Connecticut Supreme Court officially released the opinion in the matter of the State of Connecticut v. Robert John Purcell (the full opinion can be found here [SC19980](#)). The Connecticut Supreme Court decided whether the standard of Davis v. United States, 512 U.S. 452 (1994) (stating that after a defendant has been advised of his/her Miranda rights, “the police officers conducting a custodial interrogation have no obligation to stop and clarify an ambiguous invocation by the defendant his right to have counsel present. Instead they must cease interrogation only upon an *objectively unambiguous, unequivocal invocation of that right*” (Davis v. U.S., 512 U.S. 452, 459-460 (emphasis added)) and if the Davis standard was not met, then whether the Connecticut Constitution requires a more protective rule.

Two important issues that must be considered before discussing State v. Purcell. First, as we all know the restrictions of Miranda require both custody and interrogation (Miranda v. Arizona, 384 U.S. 436, (1966)). Second, we need to remember that everything that we say and do will be recorded either via BWC, in-car camera, cameras in booking, holding, temporary holding or interview rooms. While the concept of being recorded seems apparent, it is important to remember that the entire interaction with the defendant/suspect will be recorded and all statements made will be analyzed should these issues be raised in the future.

The Davis Standard: Did the defendant make an unequivocal, unambiguous request for an attorney?

In Purcell, the defendant made reference to an attorney on a few occasions during his interview with police officers. The defendant made comments such as, “my lawyer said not to talk about it...” “...if my lawyer was here...” “I’m supposed to have my lawyer here. You know that.” The defendant made other references to his attorney, although it should be noted that the attorney he referenced was representing the defendant in a DCF matter. However, at no time did the defendant make an unequivocal and unambiguous request for an attorney as is the requirement to cease interrogation under the rule set forth by the United States Supreme Court in Davis v. United States.

Therefore, the Connecticut Supreme Court needed to consider whether article first, §8 of the Connecticut Constitution requires a more protective rule for defendants who are subject to a police interrogation. The relevant language of Article first S8 of the Connecticut Constitution states: “...no person shall be compelled to give evidence against himself, nor be deprived of life, liberty or property without due process of law...”

State v. Purcell: a more prophylactic rule under the Connecticut Constitution is required

As this case made its way through the Connecticut Court system, the defendant sought to have his statements suppressed claiming that they were made after his invocation of his right to counsel. The trial court denied the motion to suppress stating that the defendant did not invoke his right to counsel in

an unambiguous manner. The Appellate Court affirmed the trial courts decision, although the Appellate Court, “admonished law enforcement that the better practice is to clarify such issues at the time of the interrogation...” State v. Purcell, 174 Conn. App. 428, 440 (2017).

As this is a matter of interpretation of Connecticut state law, the Connecticut Supreme Court can decide whether to adopt an additional layer or prophylaxis to prevent a significant risk of deprivation of those vital constitutional rights protected under Miranda. See State v. Dickson, 322 Conn. 410 (2016). In determining whether or not a more protective rule is required under Connecticut law, the Connecticut Supreme Court considered extensive social science research as a basis for their decision to provide more safeguards for the defendants including educational abilities and the typical speech patterns of those typically arrested for crimes.

The Connecticut Supreme Court continued that the “**stop and clarify**” approach would aid law enforcement in dispelling any ambiguity and that even the Davis majority stated that it would be “good police practice” even if was not constitutionally mandated under federal law. Davis v. U.S., 512 U.S. 461.

The Connecticut Supreme Court stated, “our state constitution requires that:

...if a suspect makes an equivocal statement that arguably can be construed as a request for counsel, interrogation must cease except for narrow questions designed to clarify the earlier statement and the suspect’s desire for counsel. (internal quotation marks omitted.) State v. Anderson, 209 Conn. 622, 627-628 (1989). Interrogators confronted with such a situation alternatively may inform the defendant that they understand his statement(s) to mean that he does not wish to speak with them without counsel present and that they will terminate the interrogation. In either case, if the defendant thereafter clearly and unequivocally expresses a desire to continue without counsel present, the interrogation may resume. See, e.g. State v. Acquin, 187 Conn. 660, 669-70 (1982)

The Connecticut Supreme Court held that, “to adequately safeguard the right against compelled self-incrimination under article first, §8 of the Connecticut Constitution, police officers are required to clarify an ambiguous request for counsel before they can continue the interrogation.”

Practical Application in Light of Purcell

Once the threshold of Miranda, custody and interrogation, is met, Miranda warnings must be given. At any point thereafter, if the defendant/suspect makes any reference to an attorney, lawyer or counsel, whether equivocal or unequivocal, ambiguous or unambiguous; the interrogation must cease. This is where the officers *must **STOP & CLARIFY** the intent of the defendant/suspect*. The only question at that point can be an attempt to clarify the suspect’s request for counsel. Only after an unequivocal desire to continue the interrogation – i.e. a signed statement acknowledging the desire to continue the interrogation after a previous request for counsel would be the best course of action here – may the questioning commence.

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