

584 - Stewart (Bad case)

Oral confession - interrogation recorded -
Nothing Asher warning etc - no
request -

Kidnap - robbery - rape - murder
several women at different times

Should Escobedo be extended

Dasado - (1) right to counsel
(2) right to remain silent (3) stops
at arrest -

Inhibit ? of suspects

off failure to
give warning -
Silent record use
Henny & Miss
M

CALIFORNIA v. STEWART

Cert to California Supreme Court

Timely

Issues: (1) Whether a voluntary confession by a defendant--who has neither requested nor been refused counsel--is inadmissible in a state criminal trial because investigating officers did not advise him of his right to consult with counsel and his right to remain silent.

(2) Whether such a confession is inadmissible because prosecution did not establish that the defendant made a knowing and intelligent waiver of his rights to consult counsel and remain silent.

(3) Whether such a confession is inadmissible where the record does not affirmatively establish that defendant was not advised of his rights and did not waive them.

After a jury trial, Stewart was convicted of robbery and murder. The California Supreme Court reversed the conviction on the basis of Escobedo.

The state contends that Escobedo should not control because of Stewart's failure to request counsel. Moreover, the state should not be given the burden of showing that it properly advised defendant of his rights and that he waived them. "A defendant should bear the burden of establishing that he did not know his rights and did not waive them

if he seeks to exclude his own free and voluntary confession from the evidence.

11/9/65

LAF

if he seeks to exclude his own free and voluntary

Crime in Calif - ~~page 29~~ ^{confession} ~~page 29~~ ^{evidence}

100 000 arrested in 1964 in Calif
27 1/2 released -

LAF _____ 11/9/62

I request that a necessary
ingredient to right to counsel -

OT 1965

No. 584

CALIFORNIA v. STEWART

Motion to Dismiss

~~Dec 17 1965~~
~~STW~~

Respondent argues that since the state may retry him, the judgment on review is not a "final judgment or decree" within the meaning of § 1257(3). The reversal of Stewart's conviction simply remands the case "for a new trial and places the parties in the same position as if the case had never been tried," Only an acquittal would qualify as a final judgment.

Respondent points out that at the new trial the prosecution may be able to establish that Stewart waived his right to counsel before he confessed. But, as the state rejoins, this assumes the validity of respondent's own position on the merits. The question is whether the burden of proof should be imposed on the state.

Stewart also argues that the questions on review may be mooted if he prevails on the "reserved" issue that his confession was involuntary. But reversal of the conviction was based on Dorado and Escobedo-- this ruling would govern introduction of confession at new trial apart from issue of involuntariness.

The cases cited by Stewart may be distinguished as involving interlocutory pre-trial order. Review in this type of case was anticipated in a footnote in Rogers v. Richmond, 365 U.S. 534, 546.