

OT 1965

No. 759
MISC No. 419
Timely

MIRANDA v. ARIZONA

great

Cert to SC Arizona. (No opinion in petition)

Issues: Whether the failure of a defendant to request counsel, justifies the exclusion of a confession made while in police custody.

This is another Escobedo case. Petr, who is "a poorly educated, mentally abnormal, indigent", was apprehended at his home and taken to police headquarters. No reason is given for why the police decided to pick him up. He was placed in a line-up and there identified by the victim of a kidnapping and rape. Immediately afterwards he was interrogated and a confession taken. Up to this point he had not been informed of his right to counsel, nor had he requested counsel.

The written confession and testimony to the oral confession made while in police custody were admitted at trial over the objection of his counsel. Petr was convicted of rape and of kidnapping, receiving concurrent sentences of 20-30 years. The SC Arizona aff'd.

Petr seeks review here for what he considers is an emasculation of the rule in the Escobedo case.

Petr contends that the SC Arizona refused to apply Escobedo because of failure of the petr to request counsel. The Court felt that by reason of previous arrests, petr "was certainly not unfamiliar with legal proceedings and his rights in court." Petr counters with the reasoning that his failure to ask for counsel belies any implicit assumption of a ^{conscious} waiver of his right to counsel. If he had in fact known of his right to counsel by virtue of his previous experience, why then did he not request counsel.

Petr contends that Arizona, by requiring that all five of the conditions laid down in Escobedo appear before rendering a confession excluded, destroys the effectiveness of his VI Amdt rights and distinguishes Escobedo in tortured fashion.

Apparently, the court below also held that Escobedo would not apply because at the time of the line-up attention had not focused on petr. Petr answers this by pointing out that the confession was made during a period following his identification by the victim. Surely, he was by that time in the accusatory stage.

Petr points out conflict among the states in the development of Escobedo. He shows 3 states,

Ariz., Maryland, and Nevada, following a restricted view of Escobedo and 4 states, California, Oregon, Virginia, and Rhode Island, following a liberal interpretation.

The AG Arizona also urges granting the writ. He feels that the confusion in this area of the law needs further clarification.

I would tend to grant on this one. There is confusion in the handling of Escobedo. The Court has denied cert in several such cases already, perhaps in order to allow experimentation.

No opinion

17 Sept 1965

cdr