

IN THE MARYLAND COURT OF APPEALS

ANNAPOLIS, MARYLAND

FILED APR 26 1965

J. LLOYD YOUNG, CLERK
COURT OF APPEALS OF MARYLAND

TERM: 1964

NO. 368

To the Honorable Chief Judge, and Associate Judges, of The Court of Appeals of Maryland:

I, LIDGE SCHOWGULOW, do hereby respectfully request, that when my case is heard by this Court that:

I. My attorneys, J. Grahane, Walker and J. Gifford, Scarborough, raise the point of my right to counsel; as stated below in the recent Court rulings.

On the uncontroverted fact, the principle of ESCOBEDO v. ILLINOIS, 374 US 478 (1964). is applicable. In that case, the Supreme Court formulated its holdings in two (2) separate statements. The first was:

"Where, as here, the investigation is no longer a general inquiry into an unsolved crime but has begun to focus on a particular suspect, the suspect has been taken into police custody, the police carry out a process of interrogation that lends itself to eliciting incriminating statements, the suspect has requested and been denied an opportunity to consult with his lawyer, and the police have not effectively warned him of his absolute right to remain silent, the accused has been denied 'the Assistance of Counsel' in violation of the Sixth Amendment of the Constitution as 'made obligatory upon the States by the Fourteenth Amendment,' GIDEON v. WAINWRIGHT 372 US at 342, and that no statement elicited by the police during the interrogation may be used against him at a criminal trial."

The Court says in summation:

"We hold only that when the process shifts from investigatory to accusatory---when its focus is on the accused and the purpose is to elicit a confession--- our adversary system begins to operate, and the circumstances here, the accused must be permitted to consult with his lawyer."

Thus ESCOBEDO announced no new constitutional right, but indicated circumstances in which the right to counsel, previously announced in GIDEON v. WAINWRIGHT 372 US 335 (1963), would be available.

The Supreme Court's holding in ESCOBEDO was explicitly based upon its earlier teachings in HAMILTON v. ALABAMA, 368 US 52 (1961); WHITE v. MARYLAND 373 US 59 (1963); and MASSIAH v. UNITED STATES, 377 US 201 (1964), that under the Constitution a ...state criminal defendant is entitled to the "guiding hand of counsel" when a critical stage in the proceedings has been reached. The Doctrinal importance of ESCOBEDO is found in its recognition that the interrogation of a suspect in police custody is a critical juncture in the criminal process, and that the inquisition may not be persisted in without according him the right to counsel. Otherwise, the real trial occurs in the police station, and the trial in court is;

"no more than an appeal from the interrogation; and the 'right to use counsel at the formal trial is a very hollow thing when for all practical purposes the conviction is already assured by pretrial examination' (cont')

In re; CROBAN, 352 US 330,344 (BLACK, Judge dissenting) quoted in ESCOBEDO at pp. 487-88.

" It is as illogical to exclude from the operations of the ESCOBEDO doctrine all but the very circumstances of that case, disregarding cases presenting analogous circumstances, as it would be to embrace within its doctrine, indiscriminately, all cases irrespective of circumstances. The Fourth Circuit Court of Appeals of the United States have no borderline case where the police may fairly claim some latitude in questioning a person whose status is still obscure. Schowgurow was definitely the suspect when he was arrested and kept under special guard. From then on the officer's concentrated effort was to draw out of his own mouth words that would perfect the case against him. This was a bald violation of his rights.

Nor is there any force in the argument that Schowgurow, according to the testimony of the State Police, did not ask for a lawyer. It has been adjudicated that the failure to demand counsel at other critical points works no forfeiture of the right. *SMITH v. MASSIAH* v. UNITED STATES 377 US 201 (1964)

WHITE v. MARYLAND 373 US 59 (1963)

CARNLEY v. OCHRAJ 369 US 506,513 (1962)

HAMILTON v. ALABAMA 368 US 52 (1961)

Neither should the right be lost for failure to assert it when the accused is subjected to interrogation in the police station. ESCOBEDO does not make it necessary under all circumstances for the person in custody to ask to see a lawyer. It happens that ESCOBEDO did make such a request. The fact as to whether Schowgurow did or didn't make a request to have the assistance is unimportant. Once the State Police knew this man wasn't born in this country, they fully knew he could not know all its laws, and they should have told him of his right to the Sixth Amendment and the Fourteenth Amendment.

The CALIFORNIA SUPREME COURT in *PEOPLE v. DURADO*, 33 U.S.L. WEEK 2122 (CAL. SEPT. 15, 1964). Which held applicable the rule announced in ESCOBEDO, irrespective of whether or not the defendant has actually requested counsel.

" We find no strength in an artificial requirement that a defendant must specifically request counsel; the test must be a substantive one; whether or not the point of necessary protection for guidance of counsel has been reached.....

We should not penalize the defendant who, not understanding his legal rights, does not make the formal request and by such failure demonstrates his helplessness."

SEE..... *CULOMBE v. CONNECTICUT*, 367 US 568 (1961)

HAYNES v. WASHINGTON, 373 US 503 (1963)

LEDBETTER v. WARDEN, Civil No. 14551 (1965)

ESCOBEDO v. ILLINOIS, 376 US 478 (1964)

JACKSON v. DENNO, 378 US 368 (1964)

HILLER v. WARDEN, 4th Cir., 338 F. 2d 201 (1964)

MASSIAH v. UNITED STATES, 377 US 202 (1964)

DAVIS v. NORTH CAROLINA, 4th Cir., F. 2d (1965)

~~*WEEFORD v. STATE*, 235 Md. 497 (1964)~~

GIDRON v. WAINWRIGHT, 372 US 335 (1963)

ALSO SEE;

BRENNAN, The Bill of Rights and the States (James Madison, Lecture at the New York University School of Law) 36 N.Y.U.L. Rev. 761 (1961).

CLARK, The Sixth Amendment and the Law of the Land, 6 St. Louis U.L.J. 1 (1963).

WARREN, Science and the Law: Changes and the Constitution, 12 J. DSA Pub. L. 3 (1963)

When this honorable court meets to hear the case of *LIDSE SCHOWGUROW v. STATE OF MARYLAND* ... NO 363, please review the above quoted and reflect on my right to the assistance of counsel as stated in the Sixth Amendment. My statement was given because I was held incommunicado, and feared for my life. The Statement was involuntary and should be ruled unconstitutional.

COPY CHIEF JUDGE AND ASSOCIATE JUDGES

J. GRAHAM WALKER ESQ

J. GIFFORD SCARBOROUGH-1-

Respectfully,

Lidse Schowgurow
LIDSE SCHOWGUROW