

## Arrest, Search & Investigation

*Warden v. Dixon*, 565 U.S. \_\_\_ (Nov. 7, 2011) (<http://www.supremecourt.gov/opinions/11pdf/10-1540.pdf>). The Court, per curiam, held that the Sixth Circuit erroneously concluded that a state supreme court ruling affirming the defendant's murder conviction was contrary to or involved an unreasonable application of clearly established federal law. The defendant and an accomplice murdered the victim, obtained an identification card in the victim's name, and sold the victim's car. An officer first spoke with the defendant during a chance encounter when the defendant was voluntarily at the police station for completely unrelated reasons. The officer gave the defendant *Miranda* warnings and asked to talk to him about the victim's disappearance. The defendant declined to answer questions without his lawyer and left. Five days later, after receiving information that the defendant had sold the victim's car and forged his name, the defendant was arrested for forgery and was interrogated. Officers decided not to give the defendant *Miranda* warnings for fear that he would again refuse to speak with them. The defendant admitted to obtaining an identification card in the victim's name but claimed ignorance about the victim's disappearance. An officer told the defendant that "now is the time to say" whether he had any involvement in the murder because "if [the accomplice] starts cutting a deal over there, this is kinda like, a bus leaving. The first one that gets on it is the only one that's gonna get on." When the defendant continued to deny knowledge of the victim's disappearance, the interrogation ended. That afternoon the accomplice led the police to the victim's body, saying that the defendant told him where it was. The defendant was brought back for questioning. Before questioning began, the defendant said that he heard they had found a body and asked whether the accomplice was in custody. When the police said that the accomplice was not in custody, the defendant replied, "I talked to my attorney, and I want to tell you what happened." Officers read him *Miranda* rights and obtained a signed waiver of those rights. At this point, the defendant admitted murdering the victim. The defendant's confession to murder was admitted at trial and the defendant was convicted of, among other things, murder and sentenced to death. After the state supreme court affirmed, defendant filed for federal habeas relief. The district court denied relief but the Sixth Circuit reversed.

The Court found that the Sixth Circuit erred in three respects. First, it erred by concluding that federal law clearly established that police could not speak to the defendant when five days earlier he had refused to speak to them without his lawyer. The defendant was not in custody during the chance encounter and no law says that a person can invoke his *Miranda* rights anticipatorily, in a context other than custodial interrogation. Second, the Sixth Circuit erroneously held that police violated the Fifth Amendment by urging the defendant to "cut a deal" before his accomplice did so. No precedent holds that this common police tactic is unconstitutional. Third, the Sixth Circuit erroneously concluded that the state supreme court unreasonably applied *Oregon v. Elstad*, 470 U.S. 298 (1985), when it held that the defendant's second confession was voluntary. As the state supreme court explained, the defendant's statements were voluntary. During the first interrogation, he received several breaks, was given water and offered food, and was not abused or threatened. He freely acknowledged that he forged the victim's name and had no difficulty denying involvement with the victim's disappearance. Prior to his second interrogation, the defendant made an unsolicited declaration that he had spoken with his attorney and wanted to tell the police what happened. Then, before giving his confession, the defendant received *Miranda* warnings and signed a waiver-of-rights form. The state court recognized that the defendant's first interrogation involved an intentional *Miranda* violation but concluded that the breach of *Miranda* procedures involved no actual compulsion and thus there was no reason to suppress the later, warned confession. The Sixth Circuit erred by concluding that *Missouri v. Seibert*, 542 U.S. 600 (2004), mandated a different result. The nature of the interrogation here was different from that in *Seibert*. Here, the Court explained, the defendant denied involvement in the murder and then after *Miranda* warnings were given changed course and confessed (in *Seibert* the defendant confessed in

both times). Additionally, the Court noted, in contrast to *Seibert*, the two interrogations at issue here did not occur in one continuum.