



### NINTH CIRCUIT CASE UPDATE: PERKINS OPERATIONS AND MIRANDA

#### Question:

If a subject invokes his right to counsel under *Miranda v. Arizona*, can the police still lawfully obtain statements from him during a *Perkins* Operation?

#### Short Answer:

Yes.

#### Facts and Investigation Findings:

On February 12, 2014, Adrian Dawson and his fiancée Marrisha Robinson parked their Mitsubishi at a Los Angeles strip mall. Dawson went into a store while Robinson waited in the car with their infant daughter. Christopher Grimes drove into the same parking lot in his gold four-door Mercedes and double parked behind Dawson and Robinson's Mitsubishi. Grimes exited his Mercedes without putting it in gear or setting the brake, causing it to roll forward and hit the rear bumper of the Mitsubishi. Robinson immediately checked on her daughter in the back seat and then exited her car. Grimes told Robinson not to worry and said he would "take care of it." Dawson ran out of the store and "sucker punched" Grimes in the face two or three times yelling, "My baby's in the car." Grimes told Dawson that he did not want to fight, quickly got back in his Mercedes, and drove away from the parking lot. Afterward, Robinson and Dawson left too.

Two minutes later, the couple saw the gold Mercedes behind their car. Robinson slowed down, thinking she and Grimes might exchange insurance information. The Mercedes suddenly sped up and fired four gunshots from the driver's side window toward the front passenger seat of the Mitsubishi. Dawson, who was seated in the front passenger seat, was struck. He told first responders that the shooter was driving a gold four-door Mercedes. Dawson died later that day from a gunshot wound to his abdomen. Grimes was arrested a couple of days later and invoked his right to counsel. Grimes was in a jail cell and began making incriminating statements to his cell mate. The cell mate was an informant working with the investigators.

Robinson identified Grimes in a photographic lineup. Ammunition and bullet casings capable of being fired by a nine-millimeter firearm, the type of weapon used to kill Dawson, were also found in a search of Grimes' home and car. Cell-phone records revealed that Grimes made 11 phone calls to friends immediately after the shooting and sent several incriminating text messages.

#### Jury Trial:

The trial court denied Grimes' motion to suppress statements from his conversation with an undercover jailhouse informant, which took place after Grimes invoked his Fifth Amendment right to counsel under *Miranda v. Arizona*, 384 U.S. 346 (1966). The trial court ruled that the recorded statements to the undercover jailhouse informant were admissible because Grimes was not aware that the informant was working for the police and spoke freely. The jury convicted Christopher Grimes of 2<sup>nd</sup> Degree Murder. Grimes appealed his



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conviction, arguing that his statements to the informant should have been suppressed because they were obtained in violation of his Fifth Amendment right to counsel.

## Grimes Filed Multiple Appellate Reviews in State and Federal Court and Lost:

The California Court of Appeal affirmed Grimes' conviction and held that the statements were admissible because law enforcement is not required to give *Miranda* warnings to a suspect before placing them in a jail cell with an undercover informant under *Illinois v. Perkins*, 496 U.S. 292 (1990). Later, Grimes filed a federal appeal arguing investigators violated *Edwards v. Arizona*, 451 U.S. 477 (1981) and lost again. Ultimately, the Ninth Circuit explained that the U.S. Supreme Court has never squarely addressed whether the Fifth Amendment precludes an undercover jailhouse informant, or law enforcement officer posing as an inmate, to question a suspect who previously invoked his right to counsel. Therefore, the California Court of Appeal's decision is not contrary to, or an unreasonable application of, clearly established federal law.

## Bottom Line and Major Case Law Review:

Statements and testimony obtained by an informant or an undercover officer posing as an inmate during a lawful *Perkins* Operation is constitutional, even if the suspect previously invoked the right to counsel. Please refer to Department Policy 608 for more specific guidance and protocols related to Informants.

## Perkins Rule:

In *Perkins*, the U.S. Supreme Court held that the policy underlying *Miranda*— “protecting a suspect from coercion inherent in the ‘police-dominated atmosphere’ of a custodial interview”—is not implicated when a suspect makes statements to an individual, they believe is a fellow inmate. When a suspect “boast[s] about their criminal activities in front of persons whom they believe to be their cellmates,” those statements are considered voluntary. *Perkins*, 496 U.S. at 298.

## Edwards Rule:

In *Edwards*, the Supreme Court held that officers violated the defendant's Fifth Amendment rights because the invocation of his right to counsel during the initial interview precluded “further interrogation” until the defendant's counsel was present, or he initiated communication with police. *Edwards v. Arizona*, 451 U.S. at 484–85. *Edwards* made clear that “a valid waiver of [the right to counsel] cannot be established by showing only that [the defendant] responded to further police-initiated custodial interrogation even if he [was] advised of his rights.” *Edwards v. Arizona*, 451 U.S. at 484.

## What about the Sixth Amendment's Right to Counsel?

Charges had not been *filed* against Grimes at the time the undercover jailhouse informant obtained statements from the suspect, therefore the Sixth Amendment right to counsel does not apply. The Sixth Amendment right to counsel attaches when adversary judicial proceedings have been initiated against the defendant. *Massiah v. United States*, 377 U.S. 201 (1964); *Fellers v. United States*, 540 U.S. 519 (2004). In cases where arrest warrants and Ramey warrants are coupled with the filing of a criminal complaint, then statements cannot be obtained from the suspect because the 6<sup>th</sup> Amendment Right to Counsel applies.

*Christopher Grimes v. Phillips, Warden High Desert State Prison*, No. 21-56353 (9th Cir., June 26, 2024)

