

Legal Updates

After the suspect's initial refusal to talk about murder are his later statements admissible?

Herbert v. Cain, 5th U.S. Circuit Court of Appeals, No. 03-31158

(2005)

Facts:

Gaspard was arrested for the murder of the manager of the Green Oaks Lounge. His roommate, Herbert, was also a prime suspect in the murder. Police officers asked Herbert to come to the police station to discuss the murder. A neighbor of Herbert's gave officers a bag of clothes that she said Herbert had asked her to hold for him.

At 2:30 that afternoon Herbert arrived at the police station and was placed in an interrogation room where he was read his Miranda rights. Herbert signed a form consenting to the interview and offered an alibi to the officers. Upon learning about the bag of clothes Herbert became visibly shaken and declined to talk further about the murder. After his third refusal to discuss the case any longer the officer discontinued the interview.

Shortly after the first officer left the interview room his partner entered and re-advised Herbert of his Miranda warnings. This second interview continued for approximately 3 hours before Herbert made incriminating statements. At no time during this second interrogation did Herbert refuse to talk about the murder.

Are the suspect's incriminating statements from the second interrogation admissible?

Decision: Affirmed

Herbert had asked the trial court to suppress his statements since he invoked

his right to remain silent and police did not honor his request. The trial court had refused to suppress his statements and he appealed his conviction.

The Court of Appeals found that Herbert had voluntarily made statements incriminating himself. The first officer terminated the interrogation as a result of Herbert's refusal to talk about the murder.

However, police could re-interrogate a suspect if they:

- 1) Immediately ceased the original interrogation when requested to do so,
- 2) waited a significant period of time before resuming the interrogation,
- 3) gave the suspect a fresh set of Miranda warnings,
- 4) Interrogated the suspect about a different crime, and
- 5) The suspect was advised he did not have to speak with officers

Clearly the initial officer did not stop the interrogation immediately, waiting until after Herbert's third refusal to talk about the murder.

There was also no significant time period between the first and second interrogation that was on the same topic, the murderer of the lounge manager.

It is clear that Herbert received a second set of Miranda warnings, had frequent breaks during the second interrogation and was not "browbeaten" to wear him down. The court viewed the totality of circumstances concluding that police had honored Herbert's right to silence. It should be noted that the court of appeals felt that this was a very close call, but declined to overturn the lower court's conclusion.