

A defendant was indicted and arrested for bank robbery. The defendant had an initial appearance before a magistrate judge in which he was notified of the charges and told that counsel would be appointed for him the next day. The police then required the defendant to participate with other prisoners in a lineup in which each person had to wear a white T-shirt and say, "Put your hands in the air." At the lineup, witnesses to the bank robbery identified the defendant as the bank robber. The next day, counsel was provided and the defendant was arraigned on the charges.

The defendant argues that his Sixth Amendment right to counsel was violated when he was denied counsel at two critical stages of the proceeding: his initial appearance in court before the magistrate judge and the lineup identification.

Was the defendant's Sixth Amendment right to counsel violated?

- A. No.
- B. Yes, based only on the denial of counsel at the initial appearance.
- C. Yes, based only on the denial of counsel at the lineup.
- D. Yes, based on the denial of counsel at both stages of the proceeding.

Explanation:

Sixth Amendment right to counsel

(critical stages after prosecution has commenced)

Interrogations & lineups

Preliminary hearings & arraignments

Plea negotiations & hearings

Trial & sentencing

Appeals

The Sixth Amendment right to counsel:

automatically attaches once judicial proceedings commence (eg, indictment, filing of formal charges, preliminary hearing, arraignment) *and*

guarantees that criminal defendants will have the assistance of counsel during all **critical stages of prosecution**—any event where the absence of counsel may **prejudice** the defendant's **right to a fair trial**.

An indictment is a judicial proceeding that triggers a defendant's Sixth Amendment right to counsel. And a post-indictment lineup is a critical stage of prosecution because suggestive lineup procedures can lead to an unreliable and prejudicial identification. Since an attorney would have helped to ensure that the lineup was conducted fairly and protected the defendant's right to a fair trial, the denial of counsel violated his Sixth Amendment right.

In contrast, an initial appearance is not a critical stage if the judge merely conducts administrative tasks like notifying the defendant of the charges and explaining that an attorney will be appointed the next day. As a result, the defendant did not have a Sixth Amendment right to counsel during his initial appearance **(Choices A, B & D)**. But had the defendant been required to make decisions that might adversely affect the outcome of his trial (eg, deciding whether to enter an affirmative defense), then his initial appearance would have been a critical stage.

Educational objective:

The Sixth Amendment right to counsel automatically attaches once judicial proceedings begin and applies to all critical stages of prosecution. A critical stage is any event where the absence of counsel may prejudice the defendant's right to a fair trial.

References

U.S. Const. amend. VI (right to assistance of counsel).

Rothgery v. Gillespie County, 554 U.S. 191, 198 (2008) (explaining that right to counsel attaches at commencement of judicial proceedings).

United States v. Wade, 388 U.S. 218, 237 (1967) (recognizing that post-indictment lineup is a critical stage of prosecution).

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