

A defendant was validly arrested for the murder of a store clerk and was taken to a police station where he was given Miranda warnings. When an interrogator asked the defendant, "Do you understand your Miranda rights, and are you willing to give up those rights and talk to us?" the defendant replied, "Yes." When asked, "Did you kill the clerk?" the defendant replied, "No." When asked, "Where were you on the day the clerk was killed?" the defendant replied, "Maybe I should talk to a lawyer." The interrogator asked, "Are you sure?" and the defendant replied, "I'm not sure." The interrogator then asked, "Why would you want to talk with a lawyer?" and the defendant replied, "Because I killed the clerk. It was an accident, and I think I need a lawyer to defend me." At that point all interrogation ceased. Later, the defendant was formally charged with murdering the clerk.

The defendant has moved to suppress evidence of his statement "I killed the clerk" on the ground that this statement was elicited in violation of his Miranda rights. Should the defendant's motion be granted?

- A. No, because although the defendant effectively asserted the right to counsel, the question "Why would you want to talk with a lawyer?" did not constitute custodial interrogation.
- B. No, because the defendant did not effectively assert the right to counsel, and his conduct prior to making the statement constituted a valid waiver of his Miranda rights.
- C. Yes, because although the defendant did not effectively assert the right to counsel, his conduct prior to making the statement did not constitute a valid waiver of his Miranda rights.
- D. Yes, because the defendant effectively asserted the right to counsel, and the question "Why would you want to talk with a lawyer?" constituted custodial interrogation.

## Explanation:

### Right to counsel

	Applicability	Request	Waiver
<b>Fifth Amendment</b>	Suspect has right to counsel when:  in custody <i>and</i> subjected to interrogation	Unambiguous request required	Valid if made:  knowingly intelligently
<b>Sixth Amendment</b>	Defendant has right to counsel when:  judicial proceedings commence <i>and</i> critical stage of prosecution	No request required  (attaches automatically)	voluntarily

Police must inform suspects of their Fifth Amendment **Miranda right to counsel** before a custodial interrogation. Police are **free to question** a suspect if he/she **waives** this right, but must **stop questioning** once the suspect makes an **unambiguous request for counsel** (eg, "I want a lawyer"). If police fail to honor that request and continue to question the suspect without the presence of counsel, the court should suppress the suspect's responses.

Here, the defendant validly waived his Miranda right to counsel before the custodial interrogation. And though the defendant later told the police interrogator "*Maybe* I should talk to a lawyer" and reiterated that he was "*not sure*," his statements were too ambiguous to effectively request counsel. Therefore, the interrogator was free to continue questioning the defendant without counsel present and the court should deny the defendant's motion to suppress his statement that he killed the clerk.

**(Choices A & D)** Since the defendant was validly arrested (custody) and the police interrogator's questioning was reasonably likely to elicit an incriminating response (interrogation), the question "Why would you want to talk to a lawyer?" does constitute custodial interrogation. But since the defendant validly waived his Miranda rights and did not effectively assert his right to counsel, his answer is admissible at trial.

**(Choice C)** After being Mirandized, the defendant clearly stated that he understood his rights and that he was willing to give up those rights and talk to the interrogator. Therefore, the defendant unequivocally and validly waived his Miranda rights.

### Educational objective:

Police are free to question a suspect who waives his/her Fifth Amendment (Miranda) right to counsel. However, if the suspect later makes an unambiguous request for counsel, police

must stop questioning until the suspect's lawyer is present. If the police continue questioning, the suspect's responses should be suppressed.

**References**

U.S. Const. amend. V.

Davis v. United States, 512 U.S. 452 (1994) (ineffective assertion of right to counsel).

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