

STATE V. SHOWALTER, 1980-NMCA-105, 94 N.M. 663, 615 P.2d 278 (Ct. App. 1980)

**STATE OF NEW MEXICO, Plaintiff-Appellant,
vs.
JAMES MARK SHOWALTER, Defendant-Appellee**

No. 4640

COURT OF APPEALS OF NEW MEXICO

1980-NMCA-105, 94 N.M. 663, 615 P.2d 278

July 31, 1980

Appeal from the District Court of Bernalillo County, Riordan, Judge.

COUNSEL

JEFF BINGAMAN, Attorney General, ART ENCINIAS, Assistant Attorney General, Santa Fe, New Mexico, Attorneys for Appellant.

SCOTT McCARTY, Albuquerque, New Mexico, Attorney for Appellee.

JUDGES

Hendley, J., wrote the opinion. WE CONCUR: B. C. Hernandez, J., Ramon Lopez, J.

AUTHOR: HENDLEY

OPINION

{*664} HENDLEY, Judge.

{1} This appeal by the State from the trial court's suppression of defendant's statements was placed on a limited calendar. When the brief in chief was due, the State filed a motion for summary disposition.

{2} In its memorandum, the State recited that "[t]he Defendant requested counsel but this request was ignored by [the] police who proceeded with continuous interrogation for an hour or an hour and a half." This was improper. In **Fare v. Michael C.**, 442 U.S. 707, 61 L. Ed. 2d 197, 99 S. Ct. 2560 (1979), the United States Supreme Court, quoting from **Miranda v. Arizona**, 384 U.S. 436, 16 L. Ed. 2d 694, 86 S. Ct. 1602, 10 A.L.R.3d 974 (1966), reaffirmed the procedure to be followed when an individual asks for an attorney:

If [a suspect in custody] indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease.

* * * * *

If the individual states he wants an attorney, the interrogation must cease until an attorney is present.

{3} Because the police ignored defendant's request for an attorney and continued the interrogation, the trial court properly suppressed the statements.

{4} The suppression is affirmed.

{5} IT IS SO ORDERED.

WE CONCUR: B. C. Hernandez, J., Ramon, Lopez, J.