

Jenkins v. The State, 317 Ga. 585 (2023)¹

Decided by the Supreme Court of Georgia on November 2, 2023.²

Counsel for Larry Jenkins, Plaintiff–Appellant: Robert L. Persse, Savannah, GA.³

Counsel for The State of Georgia, Defendant–Appellee: Keith Higgins, District Attorney, Benjamin E. Gephardt, Assistant District Attorney, Christopher M. Carr, Attorney General, Beth A Burton, Deputy Attorney General, Paula K. Smith, Senior Assistant Attorney General, Micheal A Oldham, Assistant Attorney General.⁴

Before Hon. Nels S.D. Peterson, Presiding Justice, Hon. Michael P. Boggs, Chief Justice, Hon. Sarah Hawkins Warren, Hon. Charles J. Bethel, Hon. John J. Ellington, Hon. Carla Wong McMillian, Hon. Shawn Ellen LaGrua, Hon. Verda M. Colvin, Hon Andrew A. Pinson.⁵ Opinion authored Hon. Nels S.D. Peterson, Presiding Justice; Hon. J. Ellington, Hon. J. McMillian, Hon. J. LaGrua, and Hon. J. Colvin, dissenting.⁶

KEY ISSUES PRESENTED

Only one central issue stood before the Court in this matter; that being if Larry Jenkins invocation of his *Miranda*⁷ rights when unequivocally stating he would not speak with law enforcement without an attorney present while proceeding through the booking process constituted a peremptory invocation of his *Miranda* rights.⁸

¹ *Jenkins v. State*, 317 Ga. 585 (2023).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Jenkins*, 317 Ga. at 585.

⁷ *Miranda v. Arizona*, 384 U.S. 436 (1966).

⁸ *Jenkins*, 317 Ga. at 585.

PROCEDURAL HISTORY & POSTURE

In January 1993 Jenkins was indicted by a grand jury in Wayne County, Georgia on charges of malice murder of Terry and Michael Ralston, armed robbery, kidnapping with bodily injury, theft by taking, and theft by receiving stolen property.⁹ Jenkins successfully moved to suppress his custodial statements, however, the trial court nonetheless found him guilty and sentenced him to death for a murder he committed while 17 years old.¹⁰ Jenkins's conviction and subsequent sentencing were vacated in 2006 pursuant a grant of habeas corpus relief following the Supreme Court's ruling in *Roper v. Simmons*¹¹, which forbade the imposition of the death penalty on juvenile offenders.¹² On appeal, the Supreme Court of Georgia upheld the grant.¹³ In 2014 the State sought to retry Jenkins and filed a "Motion to Admit into Evidence at Trial Defendant's Post-Arrest Statements to Law Enforcement Officers [...]"¹⁴ The trial court viewed this as a motion to reconsider the previously granted motion to suppress, and held Jenkins's invocation was anticipatory and therefore invalid, as it was given when he was neither being interrogated, nor was an interrogation imminent.¹⁵ Jenkins's custodial statements, including his confession, were admitted as evidence against him during the second trial.¹⁶ Jenkins was convicted of murder for both Ralstons with life sentences to run consecutively.¹⁷ The current case arises from an appeal to the trial court's admission of the custodial statements.¹⁸

⁹ See *Jenkins*, 317 Ga. at 586, n.2.

¹⁰ *Id.*

¹¹ *Roper v. Simmons*, 543 U.S. 551, 555 (2005).

¹² See *Jenkins*, 317 Ga. at 586, n.2.

¹³ *Id.*

¹⁴ *Jenkins*, 317 Ga. at 586.

¹⁵ *Jenkins*, 317 Ga. at 593.

¹⁶ *Id.*

¹⁷ See *Jenkins*, 317 Ga. at 586, n.2.

¹⁸ *Jenkins*, 317 Ga. at 587.

SUBSTANTIVE FACTS

Jenkins was apprehended by officers pursuant to a foot chase.¹⁹ The apprehending officer read Jenkins his *Miranda* rights en route to the patrol car and prior to his transportation to Wayne County Jail.²⁰ All parties concede a custodial interrogation by officers occurred while transporting Jenkins from the scene to Wayne County Jail.²¹ Upon arrival and during the booking process, Jenkins stated he wanted an attorney present before answering any further questions.²² Officers then booked Jenkins and placed him in a cell.²³ The following morning, two Georgia Bureau of Investigation agents returned to the jail, brought Jenkins to an interrogation room, again advised him of his *Miranda* rights, at which time Jenkins signed a *Miranda* acknowledgement and waiver.²⁴ It was from this custodial interrogation that officers elicited Jenkins's confession.²⁵ A *Jackson-Denno*²⁶ hearing was conducted prior to the 1995 trial regarding Jenkins's confession.²⁷ Testimony from this hearing provided by the arresting officers led to the trial court's conclusion that Jenkins "unequivocally invoked his right to counsel [...] when he arrived at the Wayne County Detention Center," and thereby suppressed any custodial statements thereafter obtained.²⁸

LEGAL ANALYSIS LEADING TO THE COURT'S DISPOSITION

A. Prior Relevant Law

Georgia case law emphasizes,

¹⁹ *Jenkins*, 317 Ga. at 589.

²⁰ *Id.*

²¹ *Jenkins*, 317 Ga. at 598.

²² *Jenkins*, 317 Ga. at 593.

²³ *Id.*

²⁴ *Jenkins*, 317 Ga. at 603.

²⁵ *Jenkins*, 317 Ga. at 604.

²⁶ *Jackson v. Denno*, 378 U.S. 368, 369 (1964).

²⁷ *Jenkins*, 317 Ga. at 593.

²⁸ *Id.*

Miranda warnings must be administered to an accused who is in custody and subject to interrogation or its functional equivalent. This requirement arises when a person is (1) formally arrested or (2) restrained to the degree associated with formal arrest.²⁹

Miranda then informs us,

. . . once warnings have been given, the subsequent procedure is clear. If the individual 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 that he wants an attorney, the interrogation must cease until an attorney is present.³⁰

The *Edwards* rule, derived from *Edwards v. Arizona*³¹, reaffirms *Miranda* and reiterates that “once the right to counsel is invoked, a suspect in custody has the right to be ‘free of interrogation until has ha[s] consulted with a lawyer’ or until the ‘accused himself initiates further communication, exchanges, or conversations with the police.’”³² This invocation is accepted to be effective for fourteen days, wherein law enforcement officers are not permitted to engage in further interrogation of the accused without the opportunity to speak with counsel and for counsel to be present during interrogation.³³

However, invocation of one’s *Miranda* rights cannot be anticipatory.³⁴ Many courts have construed this exception to the invocation of *Miranda* rights to provide *Miranda* rights may only be invoked either during a custodial interrogation or when such interrogation is imminent.³⁵ This logic stems from a Supreme Court footnote in *McNeil v. Wisconsin*,

²⁹ State v. Walden, 311 Ga. 389 (2021).

³⁰ *Miranda*, 384 U.S. at 473-474 (emphasis added).

³¹ *Edwards v. Arizona*, 451 U.S. 477, 478 (2018).

³² *Id.*

³³ *Id.*

³⁴ *Jenkins*, 317 Ga. at 593.

³⁵ *Jenkins*, 317 Ga. at 595.

wherein the Court held “[w]e have in fact never held that a person can invoke his *Miranda* rights anticipatorily, in a context other than ‘custodial interrogation.’”³⁶

This exception to *Miranda* does not apply in the case at hand because the defendant, as both sides concede, was not only in custody, but also had already been subjected to a custodial interrogation, and was in the process of being booked.³⁷ The arresting officer who had subjected Jenkins to the custodial interrogation in the patrol car was present in the booking area, and a reasonable person in Jenkins’ position would have interpreted the booking process as a mere break in the questioning, believing the interrogation to continue.³⁸ Therefore, since Jenkins’ had the reasonable belief that continued interrogation was imminent, his invocation of his *Miranda* rights was not peremptory, and any subsequently procured custodial statements were properly suppressed.³⁹

B. Changes, Modifications, Clarifications, & Extensions to Georgia Law Made in Jenkins v. The State

The Court in *Jenkins* has reaffirmed its position and application of *Miranda*.⁴⁰ The Court held these rights do not evaporate when an interrogation is moved from one location to another.⁴¹ Much like how police officers are not required to readminister *Miranda* rights during follow-up interviews that occur at a different location, once invoked, *Miranda* rights do not need to be reasserted during a continued or follow-up interview.⁴² “At the time Jenkins invoked his *Miranda* rights, he was (1) in custody for the crimes at issue in this case, (2) had been given his *Miranda* warnings, (3) had already been subjected to custodial interrogation by law enforcement on the way to the jail, and (4) was going through the booking process.”⁴³ Because a

³⁶ *McNeil v. Wisconsin*, 501 U.S. 171, 173 (1991).

³⁷ *Jenkins*, 317 Ga. at 594.

³⁸ *Jenkins*, 317 Ga. at 597.

³⁹ *Jenkins*, 317 Ga. at 599.

⁴⁰ *Id.*

⁴¹ *Jenkins*, 317 Ga. at 601.

⁴² *See Jenkins*, 317 Ga. at 599, n.17.

⁴³ *Jenkins*, 317 Ga. at 585.

reasonable person in Jenkins's position would have believed interrogation to be imminent his invocation was not anticipatory.⁴⁴ Because his invocation was not anticipatory and therefore valid, his statements were inadmissible.⁴⁵ Because the State failed to show the inadmissible evidence used during trial was harmless, the convictions must be reversed.⁴⁶

IMPACT UPON GEORGIA CRIMINAL PROCEDURE PRACTICES

The Court in *Jenkins* has gone to great lengths to reaffirm the seminal holding in *Miranda v. Arizona*.⁴⁷ It is definitive in its emphasis that Fourth Amendment rights are a constitutional guarantee that do not evaporate during the booking process; they remain wholly intact.⁴⁸ Furthermore, it reminds us that once invoked, the Edwards rule is triggered, thereby providing the accused with the right to be free from interrogation until he/she has either had the opportunity to consult with an attorney or voluntarily chooses to engage officers in further communications.⁴⁹ The court dispels the notion that *Miranda's* right to counsel can only be invoked during a custodial interrogation.⁵⁰ Upon the Court's own research and review, it found no court which would hold Jenkins' invocation, that being after having been not only read his *Miranda* rights, but also subject to a custodial interrogation, to be impermissibly anticipatory.⁵¹ With respect to Georgia's criminal practice and procedures, *Jenkins* serves as a beacon, solidifying the Court's integrity to adherence to the Constitution and the protections it affords its citizens. It serves as a stark reminder to law enforcement agents throughout the state that neither negligent nor conscious disregard of these constitutional guarantees will be tolerated. While hindsight enables the Courts themselves to view the individual circumstances surrounding each event from a macro perspective, it is during the initial occurrences themselves where the reasonable person standard must be first applied.

⁴⁴ *Jenkins*, 317 Ga. at 599.

⁴⁵ *Jenkins*, 317 Ga. at 585.

⁴⁶ *Id.*

⁴⁷ *Jenkins*, 317 Ga. at 602.

⁴⁸ *Jenkins*, 317 Ga. at 601.

⁴⁹ *Id.*

⁵⁰ *Jenkins*, 317 Ga. at 602.

⁵¹ *Id.*

The decision in *Jenkins* has left the door open for further discussions as to what does constitute anticipatory invocation.⁵² The Court specifically held the anticipatory invocation precedent was not applicable given the facts at hand, but chose not to comment further on what facts, if any, would have given rise to the application of the precedent.⁵³ What does and does not specifically constitute anticipatory invocation is left for future cases upon which to expound.

Prepared by: *Elissa H. Codrea*

⁵² *Jenkins*, 317 Ga. at 591.

⁵³ *Jenkins*, 317 Ga. at 585.