

Opinion of the Court

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SUPREME COURT OF THE UNITED STATES

No. 99–1702

TEXAS, PETITIONER *v.* RAYMOND LEVI COBB
ON WRIT OF CERTIORARI TO THE COURT OF CRIMINAL
APPEALS OF TEXAS

[April 2, 2001]

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

The Texas Court of Criminal Appeals held that a criminal defendant’s Sixth Amendment right to counsel attaches not only to the offense with which he is charged, but to other offenses “closely related factually” to the charged offense. We hold that our decision in *McNeil v. Wisconsin*, 501 U. S. 171 (1991), meant what it said, and that the Sixth Amendment right is “offense specific.”

In December 1993, Lindsey Owings reported to the Walker County, Texas, Sheriff’s Office that the home he shared with his wife, Margaret, and their 16-month-old daughter, Kori Rae, had been burglarized. He also informed police that his wife and daughter were missing. Respondent Raymond Levi Cobb lived across the street from the Owings. Acting on an anonymous tip that respondent was involved in the burglary, Walker County investigators questioned him about the events. He denied involvement. In July 1994, while under arrest for an unrelated offense, respondent was again questioned about the incident. Respondent then gave a written statement confessing to the burglary, but he denied knowledge relating to the disappearances. Respondent was subse-

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quently indicted for the burglary, and Hal Ridley was appointed in August 1994 to represent respondent on that charge.

Shortly after Ridley's appointment, investigators asked and received his permission to question respondent about the disappearances. Respondent continued to deny involvement. Investigators repeated this process in September 1995, again with Ridley's permission and again with the same result.

In November 1995, respondent, free on bond in the burglary case, was living with his father in Odessa, Texas. At that time, respondent's father contacted the Walker County Sheriff's Office to report that respondent had confessed to him that he killed Margaret Owings in the course of the burglary. Walker County investigators directed respondent's father to the Odessa police station, where he gave a statement. Odessa police then faxed the statement to Walker County, where investigators secured a warrant for respondent's arrest and faxed it back to Odessa. Shortly thereafter, Odessa police took respondent into custody and administered warnings pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966). Respondent waived these rights.

After a short time, respondent confessed to murdering both Margaret and Kori Rae. Respondent explained that when Margaret confronted him as he was attempting to remove the Owings' stereo, he stabbed her in the stomach with a knife he was carrying. Respondent told police that he dragged her body to a wooded area a few hundred yards from the house. Respondent then stated:

"I went back to her house and I saw the baby laying on its bed. I took the baby out there and it was sleeping the whole time. I laid the baby down on the ground four or five feet away from its mother. I went back to my house and got a flat edge shovel. That's all

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I could find. Then I went back over to where they were and I started digging a hole between them. After I got the hole dug, the baby was awake. It started going toward its mom and it fell in the hole. I put the lady in the hole and I covered them up. I remember stabbing a different knife I had in the ground where they were. I was crying right then.” App. to Pet. for Cert. A–9 to A–10.

Respondent later led police to the location where he had buried the victims’ bodies.

Respondent was convicted of capital murder for murdering more than one person in the course of a single criminal transaction. See Texas Penal Code Ann. §19.03(a)(7)(A) (1994). He was sentenced to death. On appeal to the Court of Criminal Appeals of Texas, respondent argued, *inter alia*, that his confession should have been suppressed because it was obtained in violation of his Sixth Amendment right to counsel. Relying on *Michigan v. Jackson*, 475 U. S. 625 (1986), respondent contended that his right to counsel had attached when Ridley was appointed in the burglary case and that Odessa police were therefore required to secure Ridley’s permission before proceeding with the interrogation.

The Court of Criminal Appeals reversed respondent’s conviction by a divided vote and remanded for a new trial. The court held that “once the right to counsel attaches to the offense charged, it also attaches to any other offense that is very closely related factually to the offense charged.” ____ S. W. 3d ____ 2000 WL 275644, *3 (2000) (citations omitted). Finding the capital murder charge to be “factually interwoven with the burglary,” the court concluded that respondent’s Sixth Amendment right to counsel had attached on the capital murder charge even though respondent had not yet been charged with that offense. *Id.*, at *4. The court further found that respon-

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dent had asserted that right by accepting Ridley's appointment in the burglary case. See *ibid.* Accordingly, it deemed the confession inadmissible and found that its introduction had not been harmless error. See *id.*, at *4–*5. Three justices dissented, finding *Michigan v. Jackson* to be distinguishable and concluding that respondent had made a valid unilateral waiver of his right to counsel before confessing. See 2000 WL, at *5–*13 (opinion of McCormick, P. J.).

The State sought review in this Court, and we granted certiorari to consider first whether the Sixth Amendment right to counsel extends to crimes that are “factually related” to those that have actually been charged, and second whether respondent made a valid unilateral waiver of that right in this case. 530 U. S. 1296 (2000). Because we answer the first question in the negative, we do not reach the second.

The Sixth Amendment provides that “[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence.” In *McNeil v. Wisconsin*, 501 U. S. 171 (1991), we explained when this right arises:

“The Sixth Amendment right [to counsel] . . . is offense specific. It cannot be invoked once for all future prosecutions, for it does not attach until a prosecution is commenced, that is, at or after the initiation of adversary judicial criminal proceedings— whether by way of formal charge, preliminary hearing, indictment, information, or arraignment.” *Id.*, at 175 (citations and internal quotation marks omitted).

Accordingly, we held that a defendant's statements regarding offenses for which he had not been charged were admissible notwithstanding the attachment of his Sixth Amendment right to counsel on other charged offenses. See *id.*, at 176.

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Some state courts and Federal Courts of Appeals, however, have read into *McNeil*'s offense-specific definition an exception for crimes that are "factually related" to a charged offense.¹ Several of these courts have interpreted *Brewer v. Williams*, 430 U. S. 387 (1977), and *Maine v. Moulton*, 474 U. S. 159 (1985)—both of which were decided well before *McNeil*—to support this view, which respondent now invites us to approve. We decline to do so.

In *Brewer*, a suspect in the abduction and murder of a 10-year-old girl had fled from the scene of the crime in Des Moines, Iowa, some 160 miles east to Davenport, Iowa, where he surrendered to police. An arrest warrant was issued in Des Moines on a charge of abduction, and the suspect was arraigned on that warrant before a Davenport judge. Des Moines police traveled to Davenport, took the man into custody, and began the drive back to Des Moines. Along the way, one of the officers persuaded the suspect to lead police to the victim's body. The suspect ultimately was convicted of the girl's murder. This Court upheld the federal habeas court's conclusion that police had violated the suspect's Sixth Amendment right to counsel. We held that the officer's comments to the suspect constituted interrogation and that the suspect had not validly waived his right to counsel by responding to the officer. See 430 U. S., at 405–406.

Respondent suggests that *Brewer* implicitly held that the right to counsel attached to the factually related murder when the suspect was arraigned on the abduction

¹ See, e.g., *United States v. Covarrubias*, 179 F. 3d 1219, 1223–1224 (CA9 1999); *United States v. Melgar*, 139 F. 3d 1005, 1013 (CA4 1998); *United States v. Doherty*, 126 F. 3d 769, 776 (CA6 1997); *United States v. Arnold*, 106 F. 3d 37, 41 (CA3 1997); *United States v. Williams*, 993 F. 2d 451, 457 (CA5 1993); *Commonwealth v. Rainwater*, 425 Mass. 540, 556, 681 N. E. 2d 1218, 1229 (1997); *In re Pack*, 616 A. 2d 1006, 1010–1011 (Pa. Super. 1992).

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charge. See Brief for Respondent 4. The Court’s opinion, however, simply did not address the significance of the fact that the suspect had been arraigned only on the abduction charge, nor did the parties in any way argue this question. Constitutional rights are not defined by inferences from opinions which did not address the question at issue. Cf. *Hagans v. Lavine*, 415 U. S. 528, 535, n. 5 (1974) (“[W]hen questions of jurisdiction have been passed on in prior decisions *sub silentio*, this Court has never considered itself bound when a subsequent case finally brings the jurisdictional issue before us”).

Moulton is similarly unhelpful to respondent. That case involved two individuals indicted for a series of thefts, one of whom had secretly agreed to cooperate with the police investigation of his codefendant, Moulton. At the suggestion of police, the informant recorded several telephone calls and one face-to-face conversation he had with Moulton during which the two discussed their criminal exploits and possible alibis. In the course of those conversations, Moulton made various incriminating statements regarding both the thefts for which he had been charged and additional crimes. In a superseding indictment, Moulton was charged with the original crimes as well as burglary, arson, and three additional thefts. At trial, the State introduced portions of the recorded face-to-face conversation, and Moulton ultimately was convicted of three of the originally charged thefts plus one count of burglary. Moulton appealed his convictions to the Supreme Judicial Court of Maine, arguing that introduction of the recorded conversation violated his Sixth Amendment right to counsel. That court agreed, holding:

“Those statements may be admissible in the investigation or prosecution of charges for which, at the time the recordings were made, adversary proceedings had not yet commenced. But as to the charges for which

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Moulton's right to counsel had already attached, his incriminating statements should have been ruled inadmissible at trial, given the circumstances in which they were acquired.'" 474 U. S., at 168 (quoting *State v. Moulton*, 481 A. 2d 155, 161 (1984)).

We affirmed.

Respondent contends that, in affirming reversal of both the theft and burglary charges, the *Moulton* Court must have concluded that Moulton's Sixth Amendment right to counsel attached to the burglary charge. See Brief for Respondent 13–14; see also Brief for the National Association of Criminal Defense Lawyers et al. as *Amici Curiae* 22–23. But the *Moulton* Court did not address the question now before us, and to the extent *Moulton* spoke to the matter at all, it expressly referred to the offense-specific nature of the Sixth Amendment right to counsel:

"The police have an interest in the thorough investigation of crimes for which *formal charges* have already been filed. They also have an interest in investigating new or additional crimes. Investigations of either type of crime may require surveillance of individuals already under indictment. Moreover, law enforcement officials investigating an individual suspected of committing one crime and *formally charged* with having committed another crime obviously seek to discover evidence useful at trial of either crime. In seeking evidence pertaining to *pending charges*, however, the Government's investigative powers are limited by the Sixth Amendment rights of the accused. . . . On the other hand, to exclude evidence pertaining to charges as to which the Sixth Amendment right to counsel had not attached at the time the evidence was obtained, simply because other charges were pending at that time, would unnecessarily frustrate the public's interest in the investigation of criminal activi-

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ties.” 474 U. S., at 179–180 (emphasis added; footnote omitted).

See also *id.*, at 168 (“[T]he purpose of their meeting was to discuss the *pending charges*”); *id.*, at 177 (“[T]he police knew . . . that Moulton and [the informant] were meeting for the express purpose of discussing the *pending charges* . . .” (emphasis added)). Thus, respondent’s reliance on *Moulton* is misplaced and, in light of the language employed there and subsequently in *McNeil*, puzzling.

Respondent predicts that the offense-specific rule will prove “disastrous” to suspects’ constitutional rights and will “permit law enforcement officers almost complete and total license to conduct unwanted and uncounseled interrogations.” Brief for Respondent 8–9. Besides offering no evidence that such a parade of horrors has occurred in those jurisdictions that have not enlarged upon *McNeil*, he fails to appreciate the significance of two critical considerations. First, there can be no doubt that a suspect must be apprised of his rights against compulsory self-incrimination and to consult with an attorney before authorities may conduct custodial interrogation. See *Miranda v. Arizona*, 384 U. S., at 479; *Dickerson v. United States*, 530 U. S. 428, 435 (2000) (quoting *Miranda*). In the present case, police scrupulously followed *Miranda*’s dictates when questioning respondent.² Second, it is critical to

²Curiously, while predicting disastrous consequences for the core values underlying the Sixth Amendment, see *post*, at 3–7 (opinion of BREYER, J.), the dissenters give short shrift to the Fifth Amendment’s role (as expressed in *Miranda* and *Dickerson*) in protecting a defendant’s right to consult with counsel before talking to police. Even though the Sixth Amendment right to counsel has not attached to uncharged offenses, defendants retain the ability under *Miranda* to refuse any police questioning, and, indeed, charged defendants presumably have met with counsel and have had the opportunity to discuss whether it is advisable to invoke those Fifth Amendment rights.

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recognize that the Constitution does not negate society's interest in the ability of police to talk to witnesses and suspects, even those who have been charged with other offenses.

“Since the ready ability to obtain uncoerced confessions is not an evil but an unmitigated good, society would be the loser. Admissions of guilt resulting from valid *Miranda* waivers ‘are more than merely “desirable”; they are essential to society’s compelling interest in finding, convicting, and punishing those who violate the law.’” *McNeil*, 501 U. S., at 181 (quoting *Moran v. Burbine*, 475 U. S. 412, 426 (1986)).

See also *Moulton*, *supra*, at 180 (“[T]o exclude evidence pertaining to charges as to which the Sixth Amendment right to counsel had not attached at the time the evidence was obtained, simply because other charges were pending at the time, would unnecessarily frustrate the public’s interest in the investigation of criminal activities”).

Although it is clear that the Sixth Amendment right to counsel attaches only to charged offenses, we have recog-

Thus, in all but the rarest of cases, the Court’s decision today will have no impact whatsoever upon a defendant’s ability to protect his Sixth Amendment right.

It is also worth noting that, contrary to the dissent’s suggestion, see *post*, at 1–2, 3, there is no “background principle” of our Sixth Amendment jurisprudence establishing that there may be no contact between a defendant and police without counsel present. The dissent would expand the Sixth Amendment right to the assistance of counsel in a criminal prosecution into a rule which “‘exists to prevent lawyers from taking advantage of uncounseled laypersons and to preserve the integrity of the lawyer-client relationship.’” *Post*, at 5 (quoting ABA Ann. Model Rule of Professional Conduct 4.2 (4th ed. 1999)). Every profession is competent to define the standards of conduct for its members, but such standards are obviously not controlling in interpretation of constitutional provisions. The Sixth Amendment right to counsel is personal to the defendant and specific to the offense.

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nized in other contexts that the definition of an “offense” is not necessarily limited to the four corners of a charging instrument. In *Blockburger v. United States*, 284 U. S. 299 (1932), we explained that “where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not.” *Id.*, at 304. We have since applied the *Blockburger* test to delineate the scope of the Fifth Amendment’s Double Jeopardy Clause, which prevents multiple or successive prosecutions for the “same offence.” See, e.g., *Brown v. Ohio*, 432 U. S. 161, 164–166 (1977). We see no constitutional difference between the meaning of the term “offense” in the contexts of double jeopardy and of the right to counsel. Accordingly, we hold that when the Sixth Amendment right to counsel attaches, it does encompass offenses that, even if not formally charged, would be considered the same offense under the *Blockburger* test.³

While simultaneously conceding that its own test “lacks the precision for which police officers may hope,” *post*, at 10, the dissent suggests that adopting *Blockburger*’s definition of “offense” will prove difficult to administer. But it is the dissent’s vague iterations of the “‘closely related to’” or “‘inextricably intertwined with’” test, *post*, at 10, that would defy simple application. The dissent seems to presuppose that officers will possess complete knowledge of the circumstances surrounding an incident, such that the officers will be able to tailor their investigation to avoid addressing factually related offenses. Such an

³ In this sense, we could just as easily describe the Sixth Amendment as “prosecution specific,” insofar as it prevents discussion of charged offenses as well as offenses that, under *Blockburger*, could not be the subject of a later prosecution. And, indeed, the text of the Sixth Amendment confines its scope to “all criminal *prosecutions*.”

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assumption, however, ignores the reality that police often are not yet aware of the exact sequence and scope of events they are investigating—indeed, that is why police must investigate in the first place. Deterred by the possibility of violating the Sixth Amendment, police likely would refrain from questioning certain defendants altogether.

It remains only to apply these principles to the facts at hand. At the time he confessed to Odessa police, respondent had been indicted for burglary of the Owings residence, but he had not been charged in the murders of Margaret and Kori Rae. As defined by Texas law, burglary and capital murder are not the same offense under *Blockburger*. Compare Texas Penal Code Ann. §30.02(a) (1994) (requiring entry into or continued concealment in a habitation or building) with §19.03(a)(7)(A) (requiring murder of more than one person during a single criminal transaction). Accordingly, the Sixth Amendment right to counsel did not bar police from interrogating respondent regarding the murders, and respondent's confession was therefore admissible.

The judgment of the Court of Criminal Appeals of Texas is reversed.

It is so ordered.