

COA Opinion: Police's failure to inform defendant that his attorney was trying to reach him was not a basis for the trial court's suppression of defendant's custodial statement, since defendant was aware that he had counsel and that his counsel wanted to talk to the police at the time of his arrest.

6. April 2011 By Layla Kuhl

In *People v Crockran*, the Court of Appeals reversed the trial court's suppression of defendant's custodial statement and reinstated the first-degree premeditated murder, felon in possession of a firearm, and possession of a firearm during the commission of a felony charges. The charges arose from a shooting that resulted in the death of Nate Henson. During the weeks preceding defendant's arrest, defendant had numerous contacts with Frederick Blanchard, an attorney. Shortly after defendant's arrest, defendant's family members made payment to Blanchard to act as counsel for defendant. Blanchard called the police station several times to advise them that he was defendant's attorney and that he wanted to speak to defendant. No one advised defendant that Blanchard attempted to contact him. During a custodial interview, defendant admitted to the shooting, but claimed that he acted in self-defense.

The trial court suppressed defendant's custodial statements based on *People v Bender*, 452 Mich 594; 551 NW2d 71 (1996). In *Bender*, the Michigan Supreme Court affirmed the trial court's suppression of a defendant's statement after the police failed to inform the defendants that counsel had been retained for them and of counsel's attempt to contact them. Justice Cavanagh authored the lead opinion with Justice Levin and Mallett concurring, and Chief Justice Brickley concurred in the result. Chief Justice Brickley authored a concurring opinion and Justices Levin, Mallett, and Cavanagh concurred.

The Court of Appeals concluded that the trial court erroneously relied on the lead opinion in *Bender*, as it was not the majority opinion. Relying on *People v Sexton*, 458 Mich 43, 53 (1998) the Court stated that Justice Brickley's opinion actually expressed the "ultimate holding" of *Bender*. Justice Brickley's opinion reasoned that based on the constitutional provisions protecting a defendant's right to counsel and right to be free from compulsory self-incrimination, law enforcement investigators, as part of a custodial interrogation, cannot conceal from suspects that counsel has been made available to them and is at their disposal.

At the time of his arrest, Defendant was on the phone with Blanchard and told the officers that Blanchard wanted to speak with them. The Court of Appeals reasoned that because defendant was aware he had counsel and that his counsel wanted to speak to the police officers at the time of his arrest, there was no violation of *Bender*. The Court concluded that even though defendant had not paid Blanchard a retainer prior to his arrest, there indeed was an attorney-client relationship and that defendant knew that he had counsel available to him.

Although it not been expressly raised on appeal, the Court briefly addressed defendant's waiver of right to counsel during the custodial interview. Defendant testified that while at the police station, before the interview, he asked if he could have his lawyer present, stating, "I need my lawyer." Defendant also testified that the investigator told him that if he "lawyered up," it would be "a problem." In determining that defendant did indeed waive his right to counsel, the Court relied on *Montejo v Louisiana*, ___ US ___; 129 S Ct 2079, 2090; 173 L Ed 2d 955 (2009) which held that the right to counsel may be validly waived in custodial interrogation after the Sixth Amendment right to counsel has attached, even if the interrogation was police initiated.