Recent Case Report

People v. Guerra

(2006) 37 Cal.4th 1067

ISSUE

Did a detective's act of ignoring a murder suspect's *Miranda* invocation, and his threat to arrest him if he refused to waive his rights, render the suspect's subsequent statements inadmissible?

FACTS

Guerra was working at a construction site located next to the home of Kathleen Powell in Los Angeles. Actually, he would spend only part of the day working; he spent the rest of it at Kathleen's house, pursuing and pestering her. Although Kathleen made it clear to him that she was not interested, he persisted.

One day, Kathleen told one of Guerra's co-workers, "I got a problem with [Guerra]. I can't keep him away from my house." A few hours later, a friend discovered Kathleen's body on the floor of her utility room. She had been stabbed repeatedly.

There was blood on the walls and on the kitchen counter. There were also bloody fingerprints and palm prints. LAPD detectives would later determine they were Guerra's prints. But even before that happened, they had become suspicious of him, having learned of his apparent obsession with Kathleen. So, the next day, they went to the construction site and obtained Guerra's consent to accompany them to the West Los Angeles police station for questioning. They also told him he was not under arrest and that he would not be handcuffed.

The interview took place in an interrogation room. Because Guerra did not speak English, or at least speak it well, officers summoned a Spanish interpreter. When the interpreter arrived, one of the detectives confirmed with Guerra that he had come in voluntarily, and reminded him that he was not in custody. Nevertheless, the detective advised Guerra of his *Miranda* rights and sought a waiver.

Guerra indicated he was confused about his right to counsel. At first he said he didn't need an attorney because he hadn't done anything wrong. But then he said he didn't have any money for an attorney. When the detective explained again that an attorney would be appointed at no cost, Guerra said, "[W]ell then, appoint one for me. . . . Yes, I want an attorney."

Apparently surprised by the invocation, the detective responded by informing Guerra that he was arrestable for the murder and, furthermore, if he didn't talk "we'll book [you] into jail right now." [Interpreter: ". . . and if you want the attorney present here, then they are going to go, put you in jail."] At that point, Guerra told the translator, "I would rather speak to them, and I don't want an attorney."

During the subsequent interview, Guerra made several incriminating statements that were used against him at his trial. He was convicted and sentenced to death.

DISCUSSION

Guerra contended that his statements should have been suppressed because they were involuntary. The court disagreed. Before going further, however, we need to explain something. Guerra's attorney did *not* seek to have the statements suppressed on grounds the detective violated Guerra's *Miranda* rights. This was a tactical decision based on two valid considerations. First, because Guerra's bloody fingerprints and palm prints were found at the murder scene, the attorney had no choice but to put Guerra on the witness stand to try to explain how this could have happened if he wasn't the murderer.

Second, because Guerra was going to testify, his statements to the detectives were going to be admitted into evidence regardless of the *Miranda* violation. This was because the United States Supreme Court has ruled that a statement obtained in violation of *Miranda* may be used to impeach the defendant if he testifies at trial.[1] As the court in *Guerra* pointed out, "If counsel succeeded in having defendant's statements excluded solely under *Miranda*, they still would be admissible to impeach him."

So Guerra's attorney abandoned the *Miranda* argument and focused on the only legal theory that could result in total suppression: involuntariness. Specifically, he contended that the combination of the detective's disregard for Guerra's invocation and his threat to arrest him rendered his statements involuntary and, therefore, inadmissible for *any* purpose.

Guerra's attorney had a strong argument because a statement is deemed involuntary if it resulted from coercive interrogation tactics, which would include making threats and ignoring a suspect's *Miranda* invocation.[2] But because voluntariness depends on the totality of circumstances,[3] the court also considered the fact that Guerra had assumed the role of a concerned witness who was eager to assist the detectives in solving the crime. Thus, he *had* to speak with the detectives, not because they forced him to, but because it was the only way he could maintain the illusion of a concerned citizen.

Guerra's conviction and death sentence were affirmed.

COMMENT

This was a close one. The court could easily have ruled that the detective's disregard of Guerra's invocation and his threat to arrest him rendered his statements involuntary.

But more than that, the entire *Miranda*/Voluntariness issue was avoidable. That is because Guerra was not "in custody" for *Miranda* purposes until he was arrested, which occurred long after the interview concluded. Consequently, there was no need to seek a *Miranda* waiver. And if Guerra had not been *Mirandized*, he would not have been asked if he wanted an attorney which, as noted, triggered all the confusion and litigation that followed.

In light of this, it might be appropriate to restate something we said in the article entitled, "*Miranda*: When Warnings are Required" (Summer 2005 edition): The courts have consistently ruled that suspects who voluntarily accompany officers to a police station for questioning are not automatically "in custody" for *Miranda* purposes. In fact, they are *never* "in custody" when, as occurred in *Guerra*, they were told they were not under arrest or were free to leave, the questioning was investigatory (not accusatory),

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[1] *New York* v. *Harris* (1971) 401 U.S. 222, 226.
[2] See *Oregon* v. *Hass* (1975) 420 U.S. 714, 723.
[3] See *People* v. *Jablonski* (2006) 37 Cal.4th 774, 814; *People* v. *Bradford* (1997) 14 Cal.4th 1005, 1041.

and the other surrounding circumstances would not have caused a reasonable person to believe he was under arrest.[4] POV

[4] See *California* v. *Beheler* (1983) 463 U.S. 1121, 1122 ["Beheler voluntarily agreed to accompany police to the station house"]; *Oregon* v. *Mathiason* (1977) 429 U.S. 492, 495 ["He came voluntarily to the police station"]; *Yarborough* v. *Alvarado* (2004) 541 U.S. 652, 664-5 [suspect who came in voluntarily was not in custody based on totality even though he was not told he was free to leave]; *People* v. *Stansbury* (1995) 9 Cal.4th 824, 831-2 ["A reasonable person who is asked if he or she would come to the police station to answer questions, and who is offered the choice of finding his or her own transportation or accepting a ride from the police, would not feel that he or she had been taken into custody."]; *People* v. *Chutan* (1999) 72 Cal.App.4th 1276, 1280 ["He was invited to the police station and expressly told he was not under arrest."]' *People* v. *Fierro* (1991) 1 Cal.4th 173, 217 ["Ms. Fierro accompanied the police to the station voluntarily, and voluntarily cooperated with their investigation."].