Recent Case Report

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People v. Richard Allen Davis

(2009) __ Cal.4th __

Issues

(1) Did a kidnapping suspect's remark—"Well then book me and let's get a lawyer"—constitute an invocation of his *Miranda* right to counsel? (2) Did an officer violate the suspect's *Miranda* rights when he later asked him if the kidnapping victim was still alive?

Facts

On October 1, 1993 at about 11 P.M., a career criminal named Richard Allen Davis broke into a home in Petaluma and walked into the bedroom of 12-year old Polly Klass who was having a slumber party with two other girls. After telling the girls not to scream "or I'll slit your throats," Davis kidnapped Polly and drove her to a remote area off Pythian Road between Santa Rosa and Sonoma where he sexually assaulted her. Having determined that he had to kill her to avoid returning to prison, he strangled her and dumped the body in a remote area just south of Cloverdale.

The kidnapping was covered extensively by the national media, and the investigation was intense. In addition to Petaluma and Sonoma County investigators, as many as 75 FBI agents were assigned to the case. Although the nightmarish crime resulted in thousands of leads, there were no significant developments until November 27th. That was when Polly's clothing was discovered at the Pythian Road clearing.

The case developed quickly after that. Investigators learned that Sonoma County sheriff's deputies had contacted Davis near Pythian Road within hours of the kidnapping after a nearby resident reported that Davis's car was stuck in a ditch, and that Davis appeared odious and "scary." (The deputies had not yet been notified of the kidnapping.) Investigators then learned that Davis was a parolee-at-large who was currently living at his sister's home in Mendocino County. So, on November 30th they went to the house and arrested him on the parole violation warrant.

THE NOVEMBER 30TH INTERVIEW: A Petaluma police officer and an FBI agent met with Davis at the Mendocino County Jail and, after obtaining a *Miranda* waiver, asked him questions about his whereabouts on October 1st. The agent then accused him of abducting Polly, and the officer alluded to "trace evidence and DNA evidence" that linked Davis to the murder. At that point, Davis stood up and said, "Well then book me and let's get a lawyer and let's go for it. . . . Let's shit or get off the pot." When the FBI agent responded, "It's going to happen," Davis said, "That's the end, the end." When asked if he still wanted to talk, Davis responded, "Get real." The investigators then asked Davis why he had abducted Polly, and he responded, "I didn't kidnap that fucking broad man. . . . Get me a lawyer and let's go down the road." The officer asked, "So you want a lawyer?" and Davis responded "Hey, it's over and done now. Like I say, shit or get off the pot."

THE DECEMBER 4TH STATEMENTS: After criminalists matched Davis's palm print with a print found in Polly's bedroom, Sgt. Michael Meese of the Petaluma Police Department met with Davis at the jail and asked if there was "any hope" that Polly was alive; and, if so, he asked him to "give thought to talking to him." He added that investigators had "enough physical evidence to make the case" and that if Davis decided he wanted to talk, he should call him. About 15 minutes after Sgt. Meese left, Davis notified a corrections officer that he wanted to talk to the sergeant.

Shortly thereafter, Sgt. Meese spoke with Davis on the phone, with Davis saying, "I fucked up big time." Sgt. Meese then asked if Polly was still alive and Davis said no. After asking for protective custody and a pack of cigarettes, Davis said he would show him where the body was located. A few hours later, Sgt. Meese, an FBI agent, and DA's investigator met with Davis and, after obtaining a *Miranda* waiver, elicited a lengthy video statement. After that, Davis led them to Polly's remains.

Davis's statements were used against him at trial, and he was found guilty of, among other things, first degree murder, burglary, and attempted lewd act against a child. He was sentenced to death.

Discussion

Davis contended that all of his statements should have been suppressed because they were obtained in violation of *Miranda*. The California Supreme Court disagreed.

THE NOVEMBER 30TH INTERVIEW: Davis argued that he had invoked his *Miranda* right to counsel when he said, "Well then book me and let's get a lawyer and let's go for it . . . " The United States Supreme Court has ruled that an invocation of the *Miranda* right to counsel occurs only when the suspect, during custodial interrogation or shortly beforehand, clearly and unambiguously stated that he wanted to talk with a lawyer or have one present.[1] Although it is true that Davis's words would appear to constitute an invocation in the abstract, the trial court concluded that, in the context of what Davis and the investigators had been saying at that point, he was merely "standing up and issuing 'a challenge' to his questioners: If you can prove it, go for it." The California Supreme Court agreed, saying, "Here defendant's initial comments were not an *unambiguous* invocation of the right to immediate presence of an attorney."

But the court ruled that Davis did clearly invoke his right to counsel when he later blurted out, "Get me a lawyer and let's go down the road . . . Hey, it's over and done now." It also concluded, however, that any error in admitting Davis's subsequent statements during that interview was harmless because they were not incriminating.

THE DECEMBER 4TH STATEMENTS: As noted, four days later Sgt. Meese met with Davis in the jail and told him that investigators now had "enough physical evidence to make the case." Sgt. Meese then asked Davis if there was "any hope" that Polly was alive, and that he "ought to give thought to talking to him." About 15 minutes after Sgt. Meese left, Davis told a correctional officer that he wanted to talk to Meese. This led to his admissions that he had "fucked up big time," and that Polly was dead.

The United States Supreme Court has ruled that officers may not seek to question a suspect who had previously invoked his *Miranda* right to counsel.[2] There is, however an

[1] *McNeil* v. *Wisconsin* (1991) 501 U.S. 171, 178; *Davis* v. *United States* (1994) 512 U.S. 452, 459.
[2] See *Arizona* v. *Roberson* (1988) 486 U.S, 675; *Montejo* v. *Louisiana* (2009) __ U.S. __ [2009 WL 1443049] ["If Montejo made a clear assertion of the right to counsel when officers approached him about accompanying them on the excursion for the murder weapon, then no interrogation

exception to this rule known as the "public safety" or "rescue" doctrine. Specifically, officers may seek to question a suspect who has invoked—and may question him without obtaining a *Miranda* waiver—if, (1) the officers reasonably believed that the suspect had information that would help them save a life or prevent serious injury, and (2) their questions were reasonably necessary to eliminate the threat.[3] This exception is based on the sound principle that, when a substantial threat to people could be reduced or eliminated by questioning a suspect, it is not in the public interest to require that officers begin by warning him, essentially, that he'd be better off if he refused to assist them.

Davis argued that the rescue doctrine did not apply because he had kidnapped Polly over two months earlier, and that it would have been unreasonable to believe that a missing kidnap victim would still be alive after such a long time. The court disagreed, saying "the length of time a kidnap victim has been missing is not, by itself, dispositive of whether a rescue is still reasonably possible." Moreover, it pointed out that when Davis confronted the girls in Polly's bedroom he claimed that he was "only doing this for the money," thus implying that he did not intend to kill her. Furthermore, no blood had been discovered at the Pythian road site. The court went on to say:

> Here, the police and the FBI continued to try to locate the kidnapped Polly during the four days after defendant had invoked his right to counsel and made no statements regarding Polly's whereabouts. But that search proved fruitless. Defendant was law enforcement's best hope to gain vital information about Polly, who had been missing for over two months after defendant had kidnapped her: Where was she? Was she still alive? The questions posed to defendant on the morning of December 4, 1993, were specifically aimed at getting answers to those questions. So long as she remained missing, her safety was of paramount importance.

Under these "extraordinary circumstances," said the court, Sgt. Meese's inquiry "did not violate the high court's decisions in *Miranda*." And because the inquiry did not violate *Miranda*, Davis's subsequent request to speak with the sergeant was not the fruit of a *Miranda* violation. Thus, the court ruled that Davis's incriminating statements were admissible, as was the testimony of officers that Davis led them to Polly's remains. The court also affirmed the death sentence.

Comment

Even if Davis's statements had been obtained in violation of *Miranda*, it would have made no sense to suppress them because Davis's own words demonstrated that he did not feel the slightest bit of coercion as the result of anything the investigators said to him before or during the interviews.

Keep in mind that the sole purpose of *Miranda* compliance is to alleviate the coerciveness that is inherent in custodial interrogation. It would seem, therefore, that if a court finds beyond a reasonable doubt—based on the suspect's words, criminal history, or

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should have taken place unless Montejo initiated it."]; *McNeil* v. *Wisconsin* (1991) 501 U.S. 171, 177 ["Once a suspect invokes the *Miranda* right to counsel for interrogation regarding one offense, he may not be reapproached regarding any offense unless counsel is present."].

[3] See *New York* v. *Quarles* (1984) 467 U.S. 649, 658 ["[T]he need for answers to questions in a situation posing a threat to the public safety outweighs the need for [*Miranda* compliance]."]; *Oregon* v. *Elstad* (1985) 470 U.S. 298, 309 [*"Miranda* warnings may inhibit persons from giving information"].

other circumstances—that the suspect was simply not vulnerable to coercion, it should be permitted to rule that *Miranda* compliance was unnecessary.

There is already substantial precedent for such a rule. As we will discuss in the article on interrogation in the Summer 2009 edition of *Point of View*, a statement will not be suppressed on grounds it was coerced if a court finds that the suspect was not vulnerable to coercion. And after reading the transcripts of the interviews with Davis, most people would probably agree that, of all the words that could be used to describe him, "vulnerable" was not one of them. Just listen:

> "Well then book me and let's get a lawyer and let's go for it . . . Let's shit or get off the pot . . . Get me a lawyer and let's go down the road . . . Hey, it's over and done now . . . Like I say, shit or get off the pot, let's go . . . I didn't kidnap that fucking broad . . ."

Thanks to Davis, we now have a Three Strikes law in California. It would be fitting if he was also the inspiration for a "thug" exception to *Miranda*. POV