

# Recent Case Report

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## People v. Dement

(2011) \_\_ Cal.4<sup>th</sup> \_\_ [2011 WL 5903459]

### Issue

After a murder suspect invoked his right to counsel, did an officer violate *Miranda* by engaging in small talk about an unrelated murder case?

### Facts

One evening at the Fresno County Jail, Dement and some other inmates were in the dayroom when a new inmate, Greg Andrews, arrived. Dement detested Andrews, apparently because he suspected that Andrews and Dement's wife, Patricia, were more than friends. In fact, Dement told one inmate that "[if] they move him in my cell, I'm going to do him." And then, when Dement learned that Andrews had been assigned to his cell, he told another inmate that he "was going to take care of the home boy that had just been put into his tank." After the cells were locked for the night, Dement tormented and savagely beat Andrews, then strangled him.

After the body had been discovered the next morning, a sheriff's detective sought to question Dement about the murder but, after being *Mirandized*, Dement invoked his right to counsel. The detective then drove Dement to a local hospital for treatment to his right hand which appeared to have been broken.

While waiting at the hospital, the detective sought to "make conversation" with Dement by mentioning that he had recently interviewed Dement's wife in connection with another murder case. The detective told Dement that Patricia was with the suspect in that case, Tom Rutledge, when Rutledge was arrested in South Lake Tahoe. He then asked Dement if he knew Rutledge, and Dement replied that they were "enemies," that he "was going to take care of Rutledge for getting his wife involved in that incident," and that if he were placed in a cell with Rutledge, the detective "would not have to worry about the murders anymore." Dement then asked the name of the inmate who had been killed last night—"the guy that went to sleep." When the detective told him it was Greg Andrews, Dement "nodded his head and said, 'He was a friend of Tom's.'"

Dement's statements to the detective were used against him at trial. He was convicted and sentenced to death.

### Discussion

On appeal to the California Supreme Court, Dement argued that, because he had previously invoked his *Miranda* right to counsel, his statements to the detective should have been suppressed. The court disagreed.

In 2010, the United States Supreme Court ruled that, when a suspect invokes his *Miranda* right to counsel, officers may not initiate questioning about any crime for 14 days following the invocation.<sup>1</sup> This does not mean that officers are prohibited from speaking with the suspect for 14 days. As the court pointed out in *Dement*, such a conversation would violate *Miranda* only if the officer's words constituted "interrogation."

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<sup>1</sup> See *Maryland v. Shatzer* (2010) \_\_ U.S. \_\_ [130 S.Ct. 1213].

In the context of *Miranda*, “interrogation” occurs if an officer asked a question or made a statement that was reasonably likely to elicit an incriminating response from the suspect, even if it did not blatantly call for one.<sup>2</sup> And because this test focuses on what the officer knew, the court in *Dement* examined the record to see if the detective should have known that his conversation about Rutledge’s murder case would have reasonably caused Dement to respond by incriminating himself.

For one thing, the court noted that the names “Tom Rutledge” and “Patricia Dement” had “not previously arisen in the investigation of Greg Andrews’s death.” In addition, the detective “had no information that would link Tom Rutledge to Greg Andrews.” Finally, the court pointed out that the detective’s act of telling Dement that Greg Andrews was the person he was accused of killing was “not the type of statement [the detective] should have known was likely to elicit an incriminating response.”

For these reasons, the court ruled that the detective’s words did not constitute “interrogation” under *Miranda* and, therefore, Dement’s incriminating statements were properly admitted at this trial.<sup>3</sup> POV

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<sup>2</sup> See *Rhode Island v. Innis* (1980) 446 U.S. 291, 301 [“the definition of interrogation can extend only to words or actions on the part of police officers that they *should have known* were reasonably likely to elicit an incriminating response”].

<sup>3</sup> **NOTE:** Dement also argued that the detective must have known that, by bringing up the subject of Dement’s wife and Rutledge, Dement would become angry and emotional. The court responded, “[O]fficers do not have to avoid all remarks that might make a suspect upset or angry, but only those that are reasonably likely to elicit an incriminating response.”