Recent Case Report

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Doody v. Schriro

(9th Cir. 2008) __ F.3d __ [2008 WL 4937964]

Issues

(1) Was the defendant's confession to multiple murders obtained in violation of *Miranda*? (2) Was the confession voluntary?

Facts

Johnathan Doody, Alessandro Garcia, and possibly one other young man armed themselves with a rifle and other firearms, broke into a Buddhist temple near Phoenix, Arizona; herded six monks, an elderly nun, and two male followers into the living room; lined them up; and shot each one in the head. The motive was robbery. As one Arizona newspaper described it, "Perhaps not since the Manson family crawled out of the desert has there been a crime scene as horrible."

Having recovered the rifle, detectives with the Maricopa County Sheriff's Department learned that Doody, then 17-years old, had borrowed it from a friend before the murders. They located Doody that evening at a high school football game, and he agreed to accompany them to the sheriff's station to discuss the matter.

The interview began at 9:25 P.M. Before advising Doody of his *Miranda* rights, one of the two detectives in the interview room explained the purpose of the *Miranda* warning:

> [S]ince we're in kind of a formal setting . . . what I'd like to do is before we, we go into that is read something to you and, so that you understand some of the protections and things that, that you have. It's not meant to scare you or anything like that. Don't, don't take it out of context, okay? . . . I don't want you to feel that because I'm reading this to you that we necessarily feel that you're responsible for anything. It's for your benefit, it's for your protection and for ours as well.

After the detective read each right, he confirmed with Doody that he understood that right. Doody then initialed a *Miranda* waiver form and agreed to speak with the detectives without a parent or attorney present.

At first, Doody denied that he had borrowed the murder weapon, but after about an hour he said that Garcia might have borrowed it. About one hour after that, he admitted that both he and Garcia had borrowed the rifle, but claimed he had returned it before the murders. He continued to deny any involvement in the killings.

For about 45 minutes—between 2:45 A.M. and 3:30 A.M.—Doody stopped answering questions. Although he did not invoke his right to remain silent, he just stopped answering. During this time, according to the court, the detectives did the following:

- Asked him 12 times who had planned the murders: No response.
- Asked him 14 times whether one of his friends had planned it: A denial to one of the questions, no response to the others.
- Asked 25 times whether he was present at the temple: No response.

In urging Doody to respond, the detectives were, according to the Arizona Court of Appeal, "courteous, [and] almost pleading," although the Ninth Circuit said "their tones at times were far from pleasant. Indeed, their tones varied from 'pleading' to scolding to

sarcastic to demeaning to demanding." In any event, during the period in which Doody was not answering their questions, the detectives said such things as:

- You have to tell us.
- We have to know; you have to let us know.
- Answer, Johnathan, answer.
- I'm going to stay here until I get an answer.
- You've got to answer me.
- Now, you start talking to me.
- Tell me, John. Talk to me, John.
- Don't sit there like that, talk to me.

At about 3:30 A.M., a detective asked Doody once again if he had been "involved" in the murders—but this time he said "yes." As the interview continued, Doody continued to ignore some questions, and would answer others with just one word. But then, at about 4 A.M., he began talking about the murders "in narrative fashion." Among other things, he admitted that he, Garcia, and one other person herded the monks, the nun, and the others from their rooms to the living room where they murdered them.

Doody's statements were used against him at his trial, and he was convicted of nine counts of first-degree murder.

Discussion

On appeal to the Ninth Circuit, Doody argued that his statements should have been suppressed because, (1) they were obtained in violation of *Miranda*, and (2) they were involuntary. Although the court was highly critical of the manner in which the detectives obtained a *Miranda* waiver from Doody, it ultimately ruled that the detectives' conduct did not warrant reversal of the state court's ruling that they had complied with *Miranda*. It did, however, rule that Doody's statements were involuntary, and that they should have been suppressed.

***MIRANDA*:** Although Doody was advised of his *Miranda* rights, said he understood them, and expressly waived them, the court ruled there was a "troubling subtext" throughout the warning process that would have caused Doody to believe that the warnings "were merely a formality" and "a meaningless bureaucratic step." This conclusion was based on the detectives having provided Doody with the following information:

- The warnings are "not meant to scare you."
- "[You] should not take [the warnings] out of context."
- The warnings "are for your benefit, as well as for ours."
- "I don't want you to feel that because I'm reading this to you that we necessarily feel that you're responsible for anything."

The court also said that the detectives delivered the *Miranda* warnings in an "excessively casual" manner, and they "implied" that Doody was not a suspect.

In the court's view, all of these things sent Doody a "clear message" that he "need not take the warnings seriously and should waive his rights." Nevertheless, it concluded that the detectives' conduct was not so objectively unreasonable as to warrant a reversal on that ground alone.

VOLUNTARINESS: A statement is "involuntary" if it was obtained "by techniques and methods offensive to due process, or under circumstances in which the suspect clearly

had no opportunity to exercise a free and unconstrained will."[1] But because the purpose of the *Miranda* procedure is to reduce the coerciveness that is inherent in police interrogations, the courts rarely suppress statements on grounds of involuntariness if the officers had obtained a valid waiver. Thus, the United States Supreme Court observed that *Miranda* waivers have "generally produced a virtual ticket of admissibility," and "litigation over voluntariness tends to end with the finding of a valid waiver."[2]

Nevertheless, the court ruled that Doody's statements were involuntary for the following reasons:

(1) **Weak *Miranda* compliance:** The detectives' compliance with *Miranda* was "weak."
(2) **Length of interview**: Doody had been interrogated for several hours before he made his statements.
(3) **Threat to continue questioning**: By telling Doody, in effect, that he was required to answer their questions, the detectives led him to believe that "they would continue relentlessly questioning him until he told them what they wanted to hear, and that he would eventually have to do so."
(4) **Doody was "vulnerable"**: Doody was "particularly vulnerable" because he was only 17 years old, he had never been arrested or *Mirandized* before, and there were no "friendly adults" in the room.

Consequently, the court reversed Doody's conviction on grounds that his statements should have been suppressed.

Comment

As noted, the court was highly critical of the manner in which the detectives advised Doody of his *Miranda* rights. Although the court acknowledged that "each required warning was technically delivered correctly," it felt there existed a "troubling subtext" in which the detectives downplayed the importance of the *Miranda* protections. As the result of this "subtext," the court said it had "little comfort" that Doody actually understood "what was at stake."

In particular, the court complained that the detectives delivered a "flimsy version" of the warnings by telling Doody that the warnings were "not meant to scare you"; that he should not take them "out of context"; and that he should not feel that, by giving him a *Miranda* warning, they believed he was guilty. But not only were each of these statements unquestionably true, the only apparent "subtext" is that the detectives were trying to make Doody feel more relaxed. That the court would view this as "troubling" is bizarre, especially considering that the court spent most of its opinion complaining that detectives said things that might have made him anxious.

The court also claimed that the *Miranda* warnings given to Doody "did little actually to inform him, a seventeen-year-old who had never heard of *Miranda,* of the importance of his rights." Although Doody acknowledged that he understood each of his rights and had expressly waived them, the court felt that the detectives should have taken additional steps to make him "more acutely aware that he is faced with a phase of the adversary system—that he is not in the presence of persons acting solely in his interest." Other than the three judges who decided this case, there is probably no one on the planet who would

[1] *Oregon* v. *Elstad* (1985) 470 US 298, 304.
[2] *Missouri* v. *Seibert* (2004) 542 U.S. 600, 608.

have believed that Doody was under the impression that the detectives were "acting solely in his interest."

Furthermore, the court's act of rewriting the established *Miranda* warning—to require an additional admonition if the suspect is tense or thinks he might be in the presence of adversaries—constitutes a display of judicial arrogance that is stunning, even for a court with a sordid history of presumptuous conduct.

In ruling that Doody's statements were involuntary, the court said that the interview lasted for "more than twelve unbroken hours, embracing an entire night." This was nothing but melodrama. After only one hour or so, Doody admitted that he knew about the murder weapon (i.e., he knew Garcia might have borrowed it), and about one hour after that he admitted that he—Doody—had borrowed the weapon before the murders. Then, at about 4 a.m., he began discussing his participation in the murders. Thus, while the entire interview lasted about 12 hours, Doody made his most incriminating admissions after about six hours. Furthermore, as the court acknowledged, Doody was offered "food, drink, and bathroom breaks several times during the night."

One recurring theme in the court's decision was that Doody was a "sleep-deprived juvenile" who was experiencing "inevitable fatigue" at 3 a.m. While a federal judge might be "inevitably fatigued" at that hour, that is hardly the case for a 17-year old. Furthermore, any fatigue that Doody might have experienced would have been offset by the inevitable adrenaline rush that would have begun early on when his statements about the murder weapon were exposed as lies, and he suddenly realized that he would probably spend the rest of his life in prison.

Thus, one of the detectives testified that Doody never "displayed any real overt sign of being fatigued or tired," and another testified that, when Doody first confessed his involvement in the murders, he was "alert" and was "sitting upright and erect." Unlike the Ninth Circuit, the Arizona Court of Appeals credited this testimony, concluding that Doody "remained alert and responsive throughout the interrogation and did not appear overtired or distraught."

Admittedly, there were some troubling aspects to the interrogation. Officers should not *insist* that suspects answer their questions. But if Doody had wanted to stop the interview, he could have said so. He knew he had that right.

Throughout its opinion, the Ninth Circuit attempted to portray Doody as the defenseless victim of police overreaching. In fact, its ruling was based mainly on its conclusion that Doody was, in the court's words, "particularly vulnerable." *Vulnerable?*

For one thing, it would have been more fitting for the court to have used the word "vulnerable" to describe the nine innocent people who were slaughtered by Doody. But more to the point, this remorseless killer had planned and participated in the cold-blooded execution of nine men and a woman in a Buddhist temple! Any person who is capable of such a monstrous crime is fully capable of enduring a few hours of "pleading" by officers.[3] POV

[3] **NOTE**: Even in the absence of Doody's confession, there was sufficient proof that he was the killer for this circumstance to be considered in determining the voluntariness of his statements. For example, his accomplice (Garcia) testified that Doody planned the killings to get money to buy a car. Shortly after the murders, Doody did, in fact, buy a car. Three other witnesses testified that Doody told them he had committed the murders. ALSO SEE *U.S.* v. *Matlock* (1974) 415 U.S. 164, 178 ["[T]he controlling burden of proof at suppression hearings should impose no greater burden than proof by a preponderance of the evidence."].