

U.S. v. Medunjanin

(2nd Cir. 2014) __ F.3d __ [2014 WL 2054016]

Issue

Did FBI agents and NYPD detectives violate a terrorist's *Miranda* rights?

Facts

A Joint Terrorism Task Force (JTTF) in New York City, composed of FBI agents and NYPD detectives, obtained information that two local residents, Medunjanin and Zazi, had traveled to Pakistan for the purpose of fighting U.S. forces in Afghanistan. The agents also learned that, while there, Medunjanin had been persuaded by al-Qaeda to undergo weapons training and participate in a coordinated suicide bombing attack on the New York City subway system. When Medunjanin returned to New York, task force agents executed a warrant to search his apartment for explosive devices. They didn't find any.

But the search was underway, an FBI agent and NYPD detective asked Medunjanin if he would be willing to speak with them. He said yes, and the three walked outside to talk. Before asking any questions, the agents told Medunjanin that he was not under arrest and he could leave if he wished. In the course of the interview, which lasted over two hours, Medunjanin vouched for Zazi's character and spoke about such things as Islam, American-Israeli and American-Islamic relations, and the 9/11 attacks on New York City. He also claimed that the purpose of his trip to Pakistan was to find a wife but that he had been unsuccessful. Apparently, the agents did not find any explosives or other incriminating evidence in the apartment. Three days later, Medunjanin agreed to accompany the same agents to the U.S. Attorney's Office in Brooklyn for a second interview. Although the interview lasted about ten hours, it appears the officials learned nothing new except that Medunjanin was "evasive" about his trip.

Two days later, JTTF agents arrested Zazi. After learning of the arrest, Medunjanin retained a lawyer to represent him in the matter. The lawyer, Gottlieb, then notified an FBI agent assigned to the case and an Assistant U.S. Attorney that he was Medunjanin's lawyer and that he did not want anyone to speak with his client unless Gottlieb was present. Medunjanin remained free but was kept under surveillance.

About four months later, FBI agents and NYPD officers searched Medunjanin's apartment for his passports, which they seized. During the search, Medunjanin asked the agents if his attorney had been notified about the search, and they said no. Having learned that Medunjanin had recently adopted the al-Qaeda name "Muhammad," an agent asked if that was true. He denied it, but was "visibly shaken by the question." He also became upset when he learned that the crimes the agents were investigating included conspiracy to commit murder. In fact, this news disturbed him so much that he decided to kill himself and others in a high-speed traffic collision on the Whitestone Expressway in Queens.

Driving at speeds of up to 90 m.p.h. and weaving in and out of traffic, Medunjanin phoned 9-1-1- and said "there is no God but Allah and Muhammad is His messenger." He then crashed head-on into an oncoming car. Medunjanin survived the crash and ran from the scene but was arrested by one of the agents who had been following him. (The conditions of the occupants of the other car were not reported.)

Medunjanin was taken to a hospital where agents learned that he was alert and had not been medicated, so they sought to question him. They told him they knew he was

represented by an attorney but that it was “up to him” to decide whether or not to talk to them, that he could avoid any topics he wished, and that he could stop at any time. Medunjanin then read and signed a *Miranda* waiver. During questioning, he admitted that he had gone to Pakistan to fight with the Taliban in Afghanistan against U.S. forces, and he admitted that he had undergone weapons training at an al-Qaeda camp. Although he was “almost boastful” as he described the types of weapons he had been trained to use, he became “defensive and evasive” when asked about any impending attacks on the United States and whether he knew of any terrorist activity. Finally, he admitted that the car crash he had caused was his “final act of jihad.”

Medunjanin was subsequently charged with two counts of receiving military-type training from al-Qaeda and conspiring to commit murder in a foreign country. His motion to suppress his statements was denied and he was convicted.

Discussion

Medunjanin asserted that his conviction should be overturned because his incriminating statements were obtained in violation of *Miranda*. Specifically, he argued that Gottlieb had effectively invoked his *Miranda* right to counsel when he told the agents that he represented Medunjanin and did not want them to talk with his client unless he was present. The court rejected the argument for two reasons.

First, a suspect cannot invoke rights he does not have, and a suspect does not have *Miranda* rights unless (1) he was “in custody,” and (2) he was being “interrogated” or was about to be interrogated. As the U.S. Supreme Court pointed out, it has “never held that a person can invoke his *Miranda* rights anticipatorily, in a context other than ‘custodial interrogation.’”¹ Although Medunjanin was clearly in custody (having been arrested), Gottlieb’s purported invocation occurred long before the agents sought question Medunjanin. Consequently, because none of the agents were questioning or about to question Medunjanin when Gottlieb attempted to invoke his client’s *Miranda* rights, the attempt failed.

The second reason that Gottlieb’s instructions to the agents did not constitute an invocation was that the only person who can invoke a suspect’s *Miranda* rights is the suspect himself—not his parents, spouse, girlfriend, or his attorney.² As the court explained, “That right [*Miranda*] was personal to Medunjanin. Only he could waive it; only he could properly invoke it.” Accordingly, even if Medunjanin had been “in custody” for *Miranda* purposes, Gottlieb’s attempt to invoke his rights would have been ineffective. For these reasons, the court ruled that the agents had not violated Medunjanin’s *Miranda* rights and it affirmed his conviction.

Comment

Although this was a *Miranda* case, it should be noted that even if Medunjanin had been charged by the U.S. Attorney with the crime under investigation, the agents’

¹ *McNeil v. Wisconsin* (1991) 501 U.S. 171, 182, fn.3.

² See *Moran v. Burbine* (1986) 475 U.S. 412, 433, fn.4 [“the privilege against compulsory self-incrimination is, by hypothesis, a personal one that can only be invoked by the individual whose testimony is being compelled”]; *People v. Beltran* (1999) 75 Cal.App.4th 425, 430 [“The [Fifth Amendment] right is a personal one which must be invoked by the individual whose testimony is being compelled, and there is no agency theory under which Beltran’s attorney could invoke that personal right on his behalf.”].

questioning would not have violated his Sixth Amendment right to counsel since he had waived his *Miranda* rights.³ POV

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³ See *Montejo v. Louisiana* (2009) 556 U.S. 778; *Michigan v. Harvey* (1990) 494 U.S. 344, 349 [“[W]hen a suspect waives his right to counsel after receiving warnings equivalent to those prescribed by *Miranda v. Arizona*, that will generally suffice to establish a knowing and intelligent waiver of the Sixth Amendment right to counsel for purposes of postindictment questioning.”].