People v. Neal
(2003) __ Cal.4th __

ISSUE

Did an officer's refusal to honor a murder suspect's *Miranda* invocation render his subsequent confession inadmissible?

FACTS

Neal was living with Donald Collins in Collins' home in Tulare County. Collins was 69 years old; Neal was 18. They met at a group home for boys where Neal lived and Collins worked as a child care worker. On April 3, 1999, Neal strangled Collins to death with an electrical cord. The motive was that Collins had recently made some sexual advances. Later that evening, Neal called the Tulare County Sheriff's Office, claiming he had just discovered Collins' body in the house.

At first, the sheriff's investigator viewed Neal as merely a witness. So he asked Neal if he would accompany him to the sheriff's station for an interview. Neal consented. During the course of the interview, the investigator noticed some "fresh marks" on Neal's hands. When he asked about them, Neal adopted "a defensive tone" and said he didn't know where they came from. The investigator responded that they looked fresh. Neal then became "animated and self-protective," saying he wanted to leave—"I'm ready to go right now." At this point, the investigator advised Neal of his *Miranda* rights. Although Neal did not waive his rights, the investigator continued to question him. The court described what happened next:

> [The investigator] made plain he believed that defendant was lying, and suspected that defendant had killed Collins. Defendant repeatedly denied being a liar or a killer. Defendant soon invoked his right to counsel—"I am ready to talk to my lawyer"—as well as his right to remain silent—"I am not saying nothing now." [The investigator] continued with the interrogation. Defendant continued to invoke his right to counsel repeatedly, for a total of nine times in all.

The investigator later testified that he continued to question Neal after the invocations because he wanted to obtain a statement that could used to impeach Neal at his trial. He said he learned about this tactic from a supervisor, he knew it was "improper" but it was a "useful tool."

When Neal continued to assert his innocence, the investigator arrested him,[1] at which point he made what the court called "a promise and a threat":

> [I]f you don't try and cooperate, the system is going to stick it to you as hard as they can. They are going to just hit you as hard as they can, that is, charge you with a heavier charge as they can, you know first degree murder or whatever.

Still, Neal would not confess. He was then booked and kept overnight in a cell. According to Neal, the cell had no toilet or sink, he was not permitted to use a bathroom, and he was given nothing to eat, although he was given water in the morning.

At about 10:25 A.M., Neal sent word that he wanted to talk to the investigator. He testified he did so "'cause I felt like he'd be able to help me" and because he was "feeling guilty" and the guilt "was weighing pretty heavy on my mind." At the start of the interview, Neal waived his *Miranda* rights. He subsequently confessed. The next day, he gave a second confession.

Neal's confessions were admitted at his trial, and he was convicted of second degree murder.

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[1] **NOTE:** Probable cause to arrest plainly did not exist. It was immaterial, however, in light of the court's ruling.

DISCUSSION

Neal contended his confessions were obtained illegally and should have been suppressed. In a unanimous opinion, the California Supreme Court agreed.

The term "outside *Miranda*" is used to describe a procedure whereby officers continue to question a suspect who has clearly invoked the right to remain silent or the right to counsel. The purpose of going "outside *Miranda"* is usually to obtain leads or a statement that can be used to impeach the suspect's credibility if he testifies at his trial. Although it is true that prosecutors may not use the suspect's subsequent statements to prove he is guilty, the United States Supreme Court ruled in *Harris* v. *New York*[2] that a suspect's statement obtained in violation of *Miranda* may be used to impeach him if he testifies at his trial.

Although *Harris* provides a legal basis for admitting statements obtained "outside *Miranda*," some courts have been troubled by this procedure inasmuch as it involves a deliberate violation of one of *Miranda's* fundamental rules: when a suspect invokes, the interrogation ends.[3] In some cases, these courts have responded by approaching the issue from a different direction. Instead, of analyzing it as a *Miranda* violation, they have viewed it as coercion. The theory is that an officer's unwillingness to respect a suspect's invocation increases the coercive atmosphere by communicating to the suspect that, (1) he has no rights, or (2) he is in the hands of a renegade officer who has no regard for the law.[4] In either case, an officer's refusal to honor an unambiguous invocation necessarily increases the degree of coercion in a custodial interview.

The question, then, was whether the totality of circumstances surrounding Neal's confessions, including the *Miranda* violation, rendered them involuntary.

MIRANDA VIOLATION: The violation was obvious and aggravated. To say that the investigator acted in "blatant disregard" of Neal's *Miranda* rights, said the court, "is to understate its blameworthiness." The court went on, "[The investigator's] message to defendant could not have been clearer: [He] would not honor defendant's right to silence or his right to counsel until defendant gave him a confession." The court concluded, "As we have emphasized on more than one occasion, misconduct such as [the investigator's] is unethical and must be strongly disapproved."

THREATS: Recall that the investigator told Neal, "[I]f you don't try and cooperate, the system is going to stick it do you as hard as they can. They are going to just hit you as hard as they can, that is, charge you with a heavier charge as they can, you know first degree murder or whatever." This, said the court, was a coercive threat.

NEAL'S STATE OF MIND: Although the voluntariness of a statement depends on what the interrogating officers said or did, the suspect's age, maturity, education, experience, and intelligence are all relevant because they tend to show the impact of the

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[2] (1971) 401 US 222.

[3] See *Miranda* v. *Arizona* (1966) 384 US 436, 473-4 ["Once warnings have been given, the subsequent procedure is clear. If the individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease. . . . If the individual states that he wants an attorney, the interrogation must cease until an attorney is present."].

[4] See *People* v. *Montano* (1991) 226 Cal.App.3d 914, 935-6 ["It would be difficult to imagine a more egregious example of law enforcement authorities arrogating to themselves the exclusive power to decide whether a constitutional right could have more than a purely theoretical existence. No tolerance can be given to the officers' flagrant trampling of defendant's rights, particularly because [the interrogating officers] began the interrogation with no intention of respecting those rights."; *People* v. *Bey* (1993) 21 Cal.App.4th 1623, 1628; *People* v. *Dingle* (1985) 174 Cal.App.3d 21, 27, fn.7; *In re Gilbert E.* (1995) 32 Cal.App.4th 1598, 1602 ["This is a very troubling case, presenting a deliberate police violation of *Miranda*."]; *People* v. *Vasila* (1995) 38 Cal.App.4th 865, 869, fn.2.

interrogation methods on the suspect.[5] Here, said the court, these circumstances demonstrate that Neal was particularly susceptible to police coercion. Among other things, the court noted that he was 18 years old, his education "was minimal" [he had failed to graduate from continuation school], his background was "one of thoroughgoing neglect if not abuse," and his intelligence "was quite low."

PSYCHOLOGICAL COERCION: As noted, Neal was deprived of food, water, and the use of bathroom facilities throughout the night. He was also kept incommunicado. Said the court, "Although defendant's situation might not have reflected physical punishment in the strictest sense of the phrase, its harshness cannot be ignored. Put simply, defendant's situation could only have increased his feelings of helplessness."

There was, however, one significant circumstance indicating that Neal's decision to confess was not the result of coercion: he initiated the interview. But, as the court pointed out, Neal testified he decided to talk "'cause I felt like he'd be able to help me." In any event, the court concluded that this single circumstance could not undo the damage done by the rest of them. In the words of the court:

> [I]n light of all the surrounding circumstances—including the officer's deliberate violation of *Miranda*; defendant's youth, inexperience, minimal education, and low intelligence; the deprivation and isolation imposed on defendant during his confinement; and a promise and a threat made by the officer—defendant's initiation of further contact with the officer was involuntary . . . .

Consequently, the court ruled that Neal's confessions were inadmissible for any purpose. His murder conviction was reversed.

DA's COMMENT

Although the court's ruling was based on a combination of circumstances, the justices were unanimous in their condemnation of the "outside *Miranda*" tactic, saying it is "unethical and must be strongly disapproved." As they explained, "The consequence of the officer's misconduct—the absolute inability to introduce the confessions at trial—is severe, but is intended to deter other officers from engaging in misconduct of this sort in the future."

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[5] See *Schneckloth* v. *Bustamonte* (1973) 412 US 218, 226 [suspect's mental state relevant to assess the "psychological impact on the accused"]; *Colorado* v. *Connelly* (1986) 479 US 157 163-4 ["(A)s interrogators have turned to more subtle forms of psychological persuasion, courts have found the mental condition of the defendant a more significant factor in the 'voluntariness' calculus."]; *Fenton* v. *Miller* (1985) 474 US 104, 109 [interrogation techniques "either in isolation or as applied to the unique characteristics of a particular suspect" may violate Due Process]; *In re Aven S.* (1991) 1 Cal.App.4th 69, 75 ["The age of a minor may color all or most aspects of a court's analysis of voluntariness" because interrogation methods and surrounding circumstances "are all likely to have a more coercive effect on a child than an adult."]; *Haley* v. *Ohio* (1947) 332 US 596, 599 ["What transpired would make us pause for careful inquiry if a mature man were involved. And when, as here, a mere child [15 years old]—an easy victim of the law—is before us, special care in scrutinizing the record must be used."]; *Withrow* v. *Williams* (1993) 507 US 680, 693; *In re Shawn D.* (1993) 20 Cal.App.4th 200, 212 ["At the time he was questioned, appellant was 16 years old. He had prior contact with the police but was described as 'unsophisticated' and 'naïve' in the probation report. . . ."]; *People* v. *Hinds* (1984) 154 Cal.App.3d 222, 238 ["The record shows appellant was 19 years old, immature and relatively unsophisticated . . . "]; *Davis* v. *North Carolina* (1966) 384 US 737, 742 [". . . a third of fourth grade education."]; *Reck* v. *Pate* (1961) 367 US 433, 435 ["He dropped out of school at the age of 16, never having completed the 7th grade . . ."]; *Spano* v. *New York* (1959) 360 US 315, 322 ["He had progressed only one-half year into high school . . ."]; *People* v. *Sanchez* (1969) 70 Cal.2d 562, 573 ["(D)efendant had received only a fifth or sixth grade education . . . "].

In his concurring opinion, Justice Baxter said "[p]erhaps the most disturbing aspect of this fiasco is [the investigator's] admission that he was *taught on the job* to disregard *Miranda*." "[O]ur community should never be subjected to cynical efforts by police agencies, or the supervisors they employ, to exploit perceived legal loopholes by encouraging deliberately improper interrogation tactics. Such practices tarnish the badge most officers respect and honor.

In conclusion, Justice Baxter made this comment which, we believe, is particularly apt:

> *In a free society, we place the police in a position of unique power, but only on condition that they will do their best to uphold the law . . . The community must trust that they do not operate by deliberately violating the very standards they are sworn to observe. When the police dishonor proper procedures, community respect for the police, and for the law itself, is undermined.*