

# Recent Case Report

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## People v. Nelson

(2012) \_\_ Cal.4<sup>th</sup> \_\_ [2012 WL 88552]

### Issues

(1) In determining whether a remark by a juvenile constituted a *Miranda* invocation, must the officers and courts apply the same test as is used when the suspect was an adult? (2) Does a juvenile's request to speak with a parent constitute a *Miranda* invocation? (3) Can waivers by juveniles be implied, or must they be express?

### Facts

Late one night, 15-year old Samuel Nelson burglarized the home of a 72-year old woman in Orange County and startled her as she slept on the living room sofa. As she awakened, Nelson hit her over the head several times with a hammer, killing her.

Shortly after they began their investigation, sheriff's detectives began to suspect that Nelson was the killer, so they visited him at his home and obtained his consent to accompany them to the sheriff's station for questioning. After *Mirandizing* him and confirming that he understood his rights, the investigators began to question him. They did not seek an express waiver.

Nelson eventually admitted that he had burglarized the house, but denied killing the woman. The detectives asked if he would be willing to take a lie detector test, and Nelson responded by asking if he could phone his mother to "let her know what's happening" and to ask her "what I should do." The investigators permitted him to call home, and he spoke to his grandmother who advised him not to take the test or "do anything" until his mother arrived in about ten minutes.

The investigators then left Nelson alone in the interview room with a pencil and paper, suggesting that he "do the right thing" and write down what had really happened. But when they returned to the room, Nelson had written nothing, saying he wanted to be alone "until my family gets here." One of the investigators told Nelson that he was "real tired" of playing games and urged him to "take this opportunity to say what happened in his own words." They left him alone again, but this time Nelson wrote a statement in which he admitted killing the woman, writing that after he broke into her home he had "walked by her and she woke up. I freaked out and I hit her in the head several times."

Nelson was tried as an adult for murder and burglary. The trial court rejected Nelson's argument that his statement was obtained in violation of *Miranda* and, following a court trial, found him guilty as charged. But in an unpublished 2-1 decision, the Court of Appeal reversed the murder conviction, ruling that Nelson's statement should have been suppressed. Specifically, the court ruled that, in determining whether a remark by a juvenile constituted an invocation, the test is whether the juvenile subjectively intended to invoke; and not, as with adults, whether the objective circumstances reasonably demonstrated an intention to invoke. Applying its new subjective test, the court ruled that Nelson's "purpose when he first requested to speak with his mother was to secure her assistance to protect his [*Miranda*] rights." Consequently, the court ruled that Nelson's request constituted an invocation. The People appealed to the California Supreme Court.

## Discussion

It is settled that a remark by an adult can constitute an invocation of the *Miranda* right to remain silent or the right to counsel only if it clearly and unambiguously constituted an invocation.<sup>1</sup> This is called an “objective” test because it depends solely on the facts known to the officers and how the facts would have been interpreted by a reasonable officer in the same situation. As noted, the Court of Appeal ruled that the courts must apply a different test—a “subjective” test—when the suspect is a juvenile; i.e., officers and judges must try to divine the juvenile’s subjective intent behind the remark. And because the court concluded that Nelson’s request to speak with his mother demonstrated a subjective intent to invoke, it ruled that his statement should have been suppressed.

The Supreme Court disagreed, ruling there is “no principled reason” for imposing different standards for juvenile and adult invocations, especially considering that the “interest in protecting lawful investigative activity is equally weighty in the adult and juvenile contexts.” Said the court, “Because this standard is an objective one, the invocation determination does not call for an evaluation of the juvenile’s state of mind or subjective desire.”

**REQUEST TO SPEAK WITH A PARENT:** Having determined that a remark by a juvenile can constitute an invocation only if it was clear and unambiguous, the Supreme Court ruled that the Court of Appeal also erred when it ruled that Nelson’s request to speak with his mother constituted an invocation. Said the court;

Where, as here, a juvenile has made a valid waiver of his *Miranda* rights and has agreed to questioning, a postwaiver request for a parent is insufficient to halt questioning unless the circumstances are such that a reasonable officer would understand that the juvenile *is actually* invoking—as opposed to *might be* invoking—the right to counsel or silence.

The court then reviewed the surrounding circumstances and determined that there were no objective circumstances that would have demonstrated to a reasonable officer that Nelson was invoking. Among other things, it pointed out that, “[a]fter waiving his *Miranda* rights, defendant was open and responsive to questioning on any topic,” and that his stated purpose for wanting to talk to his mother was to let her “know what’s happening” and “to ask her what he should do.”

**IMPLIED WAIVERS:** As noted, Nelson did not expressly waive his *Miranda* rights; i.e., he was not asked the question, “Having these rights in mind, do you want to talk to us?” Instead, the officers advised him of his rights and began questioning him after determining that he understood them. Although the validity of implied waivers had been unsettled for many years, the U.S. Supreme Court ruled in 2010 that an implied waiver will suffice, and that a waiver will be implied if (1) the suspect was correctly advised of

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<sup>1</sup> See *Davis v. United States* (1994) 512 U.S. 452, 459 [“Invocation of the *Miranda* right to counsel requires, at a minimum, some statement that can reasonably be construed to be an expression of a desire for the assistance of an attorney. But if a suspect makes a reference to an attorney that is ambiguous or equivocal in that a reasonable officer in light of the circumstances would have understood only that the suspect might be invoking the right to counsel, our precedents do not require the cessation of questioning.”]; *Berghuis v. Thompson* (2010) \_\_ U.S. \_\_ [2010 WL 2160784] [“[T]here is no principled reason to adopt different standards for determining when an accused has invoked the *Miranda* right to remain silent and the *Miranda* right to counsel at issue in *Davis*.”].

his rights, (2) he said he understood his rights, and (3) the waiver and subsequent questioning were not coerced.<sup>2</sup> The court in *Nelson* ruled that these circumstances will also constitute a waiver by a juvenile and, accordingly, it ruled that Nelson had impliedly waived his rights “by willingly answering questions after acknowledging that he understood those rights.”

Consequently, the Supreme Court reversed the Court of Appeal’s dismissal of Nelson’s murder conviction. POV

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<sup>2</sup> *Berghuis v. Thompson* (2010) \_\_ US \_\_ [2010 WL 2160784].