

People v. Peracchi

(January 17, 2001) __ Cal.App.4th __

ISSUE

Did officers violate a suspect's *Miranda* rights by asking him why he wanted to remain silent?

FACTS

At about 1:00 a.m., two CHP officers on patrol in Fresno County attempted to make a traffic stop on a suspected DUI in a red Volkswagen. The driver, later identified as Peracchi, refused to stop and led the officers on a chase. About four minutes into the chase, Peracchi and his passenger bailed out and ran toward some houses. The officers chased them on foot but lost them.

During the foot pursuit, the officers became separated. As one of them was walking alone back to his patrol car, he passed a garbage can. As he shined his flashlight in the direction of the can, "a man jumped up, pointed a gun at him and told him not to move. The officer ran for cover, and the man began firing, striking him in the right leg." The officer returned fire but the man got away.

The area was presumably sealed off and searched thoroughly because, at about 8:00 a.m. officers found Peracchi hiding in a shed about a quarter mile away. Also in the shed, officers found a loaded .45-caliber handgun wrapped in a black watch cap. A search of the VW, which was registered to Peracchi, yielded two ski masks and a .45-caliber bullet.

Peracchi was transported to a police station and *Mirandized*. When asked if he wanted to talk to officers, the following exchange took place:

Peracchi: At this point, I don't think so. At this point, I don't think I can talk.

Officer: Why is that?

Peracchi: I just feel like my mind is not clear enough to discuss this. My mind is not clear enough right now. I need to be able I [sic] think. Right now isn't a good time.

Officer: And you're saying the reason is because—

Peracchi: I guess I don't want to discuss it right now. I guess I want—

Officer: You want what?

Peracchi: I don't want to discuss it right now.

Officer: Is it because you're too tired?

Peracchi: Not really. To be honest with you, not really. I mean, I'll give—I'll give you a little rundown maybe, but it's not going to be—go too deep about—that's what you want. It's not going—I didn't stop and that was it. Do you know what I mean?

Officer: Why didn't—

Peracchi: I lost control.

Peracchi's admission that he was the driver of the VW—"I didn't stop and that was it"—was admitted into evidence at his trial. He was convicted of evading a police officer and being a felon in possession of a firearm. The jury acquitted him of the charge that he fired a gun at the officer. Being a three-striker, Peracchi was sentenced to two consecutive terms of 25 years to life.

DISCUSSION

Peracchi contended his statement to the officer was obtained in violation of *Miranda* and should therefore have been suppressed. The court agreed.

It is settled that officers may not interrogate a suspect after he has invoked the right to remain silent.¹ The purpose of this requirement is to prevent "badgering or overreaching, explicit or subtle, deliberate or unintentional" that may "wear down" the suspect and persuade him to talk.²

Consequently, Peracchi's incriminating statement would have been inadmissible if, (1) he had invoked his right to remain silent before making the statement, and (2) the statement was made in response to "interrogation" by the officer.

Invocation?

An invocation of the right to remain silent occurs only if a reasonable officer would have understood that the suspect, by his words or actions, was refusing to be interviewed or wanted to stop an interview in progress.³ Significantly, an invocation does not occur if the suspect makes an ambiguous statement that only *might* have been intended as an invocation.⁴

The court acknowledged that Peracchi's first three alleged invocations may have been ambiguous; specifically, (1) "At this point, I don't think I can talk," (2) "I just feel like my mind is not clear enough to discuss this . . . Right now isn't a good time." (3) "I guess I don't want to discuss it right now. I guess I want—."⁵ Consequently, the officer's next question to Peracchi ("You want what?") did not violate *Miranda*.

As noted, Peracchi responded by saying, "I don't want to discuss it right now." This, ruled the court, was clearly an invocation, which meant no further interrogation was permitted. The question, then, was whether any further "interrogation" occurred.

"Interrogation?"

In the context of *Miranda*, an officer's words are deemed "interrogation" only if the officer should have known they were reasonably likely to elicit an incriminating response.⁶ As noted, Peracchi invoked by saying he did not want to "discuss it right now." The officer then asked, "Is it because you're too tired?" Was this question reasonably likely to elicit an incriminating statement?

Surprisingly, the court did not really address this issue. Instead, it focused on the officer's *motivation* for asking the question. And because the court concluded his only plausible motivation was to get Peracchi to talk, it ruled the question constituted "interrogation." In the words of the court, "An interrogator would only want to probe beyond the suspect's presumed desire to avoid self-incrimination if he expected either to evoke an incriminating response or to get a clue as to how the suspect might be persuaded to abandon his rights."

Accordingly, the court ruled Peracchi's admission that he was the driver of the car should have been suppressed. And because this admission was used to obtain the conviction for evading, that conviction was reversed. (The conviction for possession of a gun by a felon was affirmed because it did not depend on Peracchi's statement to the officer.)

DA's COMMENT

There is reason to question the soundness of the court's ruling that the officer's remarks following Peracchi's invocation constituted "interrogation." As noted, the term "invocation" is defined as any words or conduct that were reasonably likely to elicit an incriminating response.⁷ Let's look at what the officer actually said:

Peracchi: I don't want to discuss it right now.

Officer: Is it because you're too tired?

The court did not explain why a suspect who is asked, "Is it because you're too tired?" would respond by making an incriminating statement. After all, the question called for a yes or no answer that had nothing to do with the crime under investigation.

Instead, the court seemed to have ruled that "interrogation" occurs automatically whenever an officer inquires into a suspect's reasons for wanting to remain silent. Why? Because, said the court, the officer *intended* to elicit an incriminating response. To support this proposition, the court cited the following quotation from *Anderson v. Smith*⁸: "An interrogator would only want to probe beyond the suspect's presumed desire to avoid self-incrimination if he expected either to evoke an incriminating response or to get a clue as to how the suspect might be persuaded to abandon his rights."

The problem with the court's reliance on *Anderson v. Smith* is that it was based on reasoning that was subsequently rejected by the United States Supreme Court. In *Arizona v. Mauro*⁹ the Court ruled an officer's motivation for asking a question is not pertinent to the issue of whether the question was reasonably likely to elicit an incriminating response. Said the Court, "Officers do not interrogate a suspect simply by hoping that he will incriminate himself."

The court in *Peracchi* also accused the officer of “badgering” Peracchi, employing such phrases as, “the officer persisted in asking him questions,” and “repeated questioning” by the officer. But when you look at what was said after Peracchi allegedly invoked, the only question asked by the officer was, “Is it because you’re too tired?” Under any definition of the word, that is not “badgering.”¹⁰

There is another reason the officer’s question did not constitute badgering: it was an entirely appropriate question under the circumstances. Peracchi had apparently been up all night evading police and hiding in a shed. In fact, he had said earlier he was too tired to talk to the officers (“I just feel like my mind is not clear enough to discuss this. My mind is not clear enough right now. I need to be able I [sic] think. Right now isn’t a good time.”). Thus, the officer’s question was reasonably necessary to determine whether Peracchi wanted merely to take a break, get some rest and talk later, or whether he did not want to talk at all. For this, the officer was rebuked and a conviction overturned.

Peracchi received a real break in this case, one he didn’t deserve.

¹ See *Miranda v. Arizona* (1966) 384 US 436, 473-4; *Edwards v. Arizona* (1981) 451 US 477, 484-5.

² See *Smith v. Illinois* (1984) 469 US 91 98.

³ See *Davis v. United States* (1994) 512 US 452, 459.

⁴ See *Davis v. United States* (1994) 512 US 452, 461-2 [(“W)e decline to adopt a rule requiring officers to ask clarifying questions. If the suspect’s statement is not an unambiguous or unequivocal request for counsel, the officers have no obligation to stop questioning him.”].

⁵ **NOTE:** The court’s belief that Peracchi’s statement was ambiguous (“I guess I don’t want to discuss it right now. I guess I want—”) was well grounded. In *People v. Wash* (1993) 6 Cal.4th 215, 238-9 the California Supreme Court rejected the argument that an invocation resulted when the suspect said, “I don’t know if I wanna talk anymore.” Said the court, “[I]t is evident that, viewed in context, defendant’s statement here does not amount to even an equivocal assertion of his right to remain silent. Defendant expressed uncertainty as to whether he wished to continue—‘I don’t know if I wanna talk anymore.’” And in *Davis v. United States* (1994) 512 US 452 the court let stand a ruling that an invocation did not occur when the defendant told officers, “Maybe I should talk to a lawyer.”

⁶ See *Rhode Island v. Innis* (1980) 446 US 291, 301.

⁷ See *Rhode Island v. Innis* (1980) 446 US 291, 301.

⁸ (2nd Cir. 1984) 751 F.2d 96, 105.

⁹ (1987) 481 US 520, 528-9.

¹⁰ **NOTE:** In *People v. Wash* (1993) 6 Cal. 4th 215, 239 the California Supreme Court ruled an officer did not violate *Miranda* when, after a suspect invoked, the officer said, “I thought you said you liked [one of the murder victims]. Don’t you wanna help?” Said the court, “[T]he brief remarks by Detective Little, while perhaps ill-advised, cannot reasonably be construed as repeated attempts to wear down defendant’s resistance nor, clearly in light of the totality of the circumstances, did they operate as such.”