Recent Case Report

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Berghuis v. Thompkins

(June 1, 2010) __ U.S. __ [2010 WL 2160784]

Issue

Are officers required to obtain an express *Miranda* waiver before questioning suspects? Or are implied waivers sufficient?

Facts

Thompkins was arrested for murder after he shot and killed a man outside a mall in Michigan. Before questioning him in a police interview room, an officer gave him a written copy of the *Miranda* warnings and, having determined that Thompkins could read English, gave him some time to read them. The officer also provided Thompkins with a supplemental warning saying, "you have the right to decide at any time before or during questioning to use your right to remain silent and your right to talk with a lawyer while you are being questioned." The officers then began to question Thompkins about the shooting. They did not ask him if, having his *Miranda* rights in mind, he wanted to waive them.

During the subsequent interview, Thompkins admitted nothing and was "largely silent," although he would sometimes nod his head or give "limited verbal responses" such as "yeah," "no," or "I don't know." This went on for about three hours but then, when asked "Do you pray to God to forgive you for shooting that boy down?" he responded, "Yes." His admission was used against him at trial, and he was convicted of, among other things, first degree murder.

Discussion

Thompkins argued that his admission should have been suppressed because he did not expressly waive his *Miranda* rights. The Court ruled, however, that an express waiver is not required—that an implied waiver will suffice under certain circumstances.

By way of background, there are two types of waivers: express and implied. An express waiver occurs when the suspect is advised of his *Miranda* rights and thereafter responds in the affirmative when asked something like, "Having these rights in mind, do you want to talk to us?" In contrast, an implied waiver occurs when the suspect responds to the officers' questions after having been advised of his rights and having by word or conduct indicated that he understood his rights.

Although California courts have long ruled that implied waivers are sufficient,[1] the United States Supreme Court has not directly ruled on the matter—until now. In *Thompkins*, the Court ruled that an implied *Miranda* waiver will suffice, and it also

[1] See *People* v. *Lessie* (2010) 47 Cal.4th 1152, 1169 ["While defendant did not expressly waive his *Miranda* rights, he did so implicitly by willingly answering questions after acknowledging that he understood those rights."]; *People* v. *Johnson* (1969) 70 Cal.2d 541, 558 ["Once the defendant has been informed of his rights, and indicates that he understands those rights, it would seem that his choosing to speak and not requesting a lawyer is sufficient evidence that he knows of his rights and chooses not to exercise them."].

explained the circumstances under which a waiver will be implied. Those circumstances are as follows:

(1) **Mirandized**: The suspect was correctly informed of his *Miranda* rights.

(2) **Rights understood**: There was reason to believe the suspect understood his rights.

(3) **No invocation**: The suspect did not thereafter invoke his rights.

(4) **No coercion**: The suspect's subsequent statement was not coerced.

In the words of the Court, "In sum, a suspect who has received and understood the *Miranda* warnings, and has not invoked his *Miranda* rights, waives the right to remain silent by making an uncoerced statement to the police."

The question, then, was whether these four requirements were satisfied in *Thompkins*. It was apparent that Thompkins had not been coerced, that he had been correctly advised of his rights, and that he had not invoked them.[2] But did he understand them? He claimed there was insufficient proof that he had, pointing to some conflicting testimony as to whether he had specifically stated that he understood.

The Court ruled, however, that an express statement of understanding is not an absolute requirement. Instead, it concluded that the suspect's understanding can be inferred and, moreover, the following circumstances supported such an inference in the case at hand: (1) Thompkins had "received a written copy of the *Miranda* warnings," (2) the officers determined that he "could read and understand English," and (3) he had been "given time to read the warnings." In addition, an officer had informed him that he could invoke his *Miranda* rights "at any time before or during questioning." Accordingly, the Court concluded that "[t]here is no basis in this case to conclude that [Thompkins] did not understand his rights."

Because all four of the requirements for an implied waiver were satisfied, the Court ruled that Thompkins had implicitly waived his rights and, as a result, his admission was properly received in evidence. POV

[2] **NOTE**: The Court also rejected Thompkins' argument that he had effectively invoked his right to remain silent when he did not freely respond to questioning; i.e., "by not saying anything for a sufficient period of time." But the Court ruled that, like invocations of the *Miranda* right to counsel (see *Davis* v. *United States* (1994) 512 U.S. 452, 459), invocations of the right to remain silent can occur only if the suspect says or does something that demonstrated an *unambiguous* and *unequivocal* intent to remain silent. It then ruled that Thompkins' conduct did not demonstrate such an intent.