

People v. Delgado

(2018) __ Cal.App.5th __ [2018 WL 4691176]

Issue

Did detectives violate *Miranda* while questioning a murder suspect?

Facts

Delgado shot and killed DeShawn Cannon and his girlfriend in what was probably a drug rip-off. At the scene, Sacramento County sheriff's detectives found Cannon's cell phone which contained a text message pertaining to the sale of marijuana. This led them to Delgado who was arrested and driven to the sheriff's station where he was placed in an interrogation room and shackled.

About an hour later, a detective entered the room and was "surprised" to find Delgado in shackles because he did not then consider him a suspect. So he removed the shackles and told Delgado that he was free to leave. Then, without advising Delgado of his *Miranda* rights, he questioned him about the murder and, although Delgado denied involvement, he made statements that conflicted with information from a witness.

After obtaining the admissions, the detective left Delgado alone in the room but suggested to another detective that he continue to question him. When that detective entered the room, he "demanded" that Delgado unlock his cell phone and told him that he could not leave until he complied. After he complied, the detective questioned him "at length" about the murders without *Mirandizing* him. In the course of the interview, Delgado confessed that he had shot Cannon.

Another detective who had been listening to the interview from another room phoned the interrogation room and told the detective that "it was time" to advise Delgado of his *Miranda* rights. The detective did so and then, in the court's words, "invited" him to repeat his confession. He did so.

Before trial, Delgado filed a motion to suppress his admissions and both confessions. The court suppressed the admissions but admitted the confessions. Delgado was found guilty of two counts of first-degree murder.

Discussion

On appeal, Delgado argued that his motion to suppress his first confession should have been granted because he had not yet been *Mirandized* and had therefore not waived his rights. He also argued that the confession he made after he had been *Mirandized* should have been suppressed because he made it in the course of an illegal "two-step" interrogation process.

THE FIRST CONFESSION: It is settled that officers may not interrogate a suspect who is in custody unless he expressly or impliedly waived his *Miranda* rights.¹ The Attorney General argued that a waiver was not required before Delgado made the first confession because he had just been notified that he was free to go and, therefore, he was no longer in custody for *Miranda* purposes. Even so, said the court, Delgado was back in custody

¹ See *Illinois v. Perkins* (1990) 496 U.S. 292, 297 ["It is the premise of *Miranda* that the danger of coercion results from the interaction of custody and official interrogation."]; *Stansbury v. California* (1994) 511 U.S. 318, 322 ["An officer's obligation to administer *Miranda* warnings attaches only where there has been such a restriction on a person's freedom as to render him 'in custody.'"].

before he made the first confession because the detective had notified him that he could not leave until the contents of his phone had been downloaded. Thus, the court ruled that his first confession should have been suppressed.

THE SECOND CONFESSION: As a general rule, if officers obtain a statement from a suspect in violation of *Miranda*, a second statement will also be suppressed. There is, however, an exception to this rule. Specifically, a second statement may be admissible if (1) the *Miranda* violation was neither coercive in nature nor the result of a tactical *Miranda* violation, and (2) the suspect freely waived his rights before he made the second statement.²

Delgado argue that the detectives had, in fact, deliberately violated *Miranda* because they had engaged in an illegal “two-step” interrogation process. What’s the “two step”? It is a technique or ploy in which officers intentionally interrogate a suspect in custody without obtaining a *Miranda* waiver. Then, if he confesses or makes a damaging statement, they will *Mirandize* him and encourage him to repeat it.³ The two-step works on the theory that the suspect will usually waive his rights and repeat his *unMirandized* statement because he will think (erroneously) that it could be used against him and, thus, he had nothing to lose by repeating it.

Delgado argued that the two separate interrogations in this case constituted an unlawful two-step. The court disagreed, but only because the detectives’ conduct demonstrated confusion and miscommunication rather than a coherent plan. Said the court, “The record, far from suggesting any deliberate protocol to undermine *Miranda* guided the detectives, instead suggests they acted with little or no method at all.” The court added, “The fair administration of justice demands that peace officers be trained in *Miranda* procedures and adhere to their training. The system did not function in several ways in this case.” But because the court ruled that the detectives’ error was not intentional, it ruled that the second confession was admissible. It also ruled that, although the first confession should have been suppressed, the error was harmless because it contained virtually nothing that Delgado did not repeat during the second interrogation.

Consequently, the court affirmed Delgado’s convictions. POV

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² See *Oregon v. Elstad* (1985) 470 U.S. 298; *Missouri v. Seibert* (2004) 542 U.S. 600.

³ See *Missouri v. Seibert* (2004) 542 U.S. 600; *U.S. v. Narvaez-Gomez* (9th Cir. 2007) 489 F.3d 970, 973 [“A two-step interrogation involves eliciting an unwarned confession, administering the *Miranda* warnings and obtaining a waiver of *Miranda* rights, and then eliciting a repeated confession.”].