People v. Duff

(2014) 58 Cal.4th 527

Issues

(1) Did officers violate *Miranda* before they obtained an incriminating statement from a murder suspect? (2) Was the suspect's statement voluntary?

Facts

Duff was a small-time gun trafficker in Sacramento. One of his customers, Roscoe Riley, purchased a .357 from him but neglected to pay for it. Over the next few months, Duff became more and more angry at Riley, so he decided to kill him. Duff then concocted a plan whereby Riley would pick him up in a car and Duff would shoot him. But when Riley arrived he had an unexpected passenger, Brandon Hagan.

Duff did not consider this a serious obstacle, so he got into the car, and Riley began driving to Rio Linda to get some drugs. But before they left Sacramento, Duff told Riley to stop at a bar so he could use the restroom. When he returned, he stood outside the car and opened fire on Riley and Hagan with a .38, killing both. After that, he abandoned the car and the bodies in a muddy field, took the victims' money and jewelry, and started walking to his mother's house.

As he approached the residence, he spotted a patrol car—at which point both he and the officers in the patrol car made a miscalculation. Duff mistakenly thought the officers had somehow found out about the murders and were looking for him. So he started running. The officers—who didn't yet know about the murders and were looking for a fugitive—mistakenly believed that Duff was the fugitive because he was fleeing. So they gave chase and quickly apprehended him. They then searched the area where they had first spotted him and found two rings (later identified as Riley's) and a .357 revolver with blood in the chamber. Suspicious, they went back to Duff's mother's home and obtained her consent to search the premises. When they found .22 caliber bullets, they arrested Duff for being a felon in possession of ammunition.

As the homicide investigation got underway, detectives learned that the victims had been killed with a .357 or a .38; and they figured that Duff might have been the killer because, shortly after the murders, he was carrying a .357 and had run from officers. So they decided to interview him at the jail. After *Mirandizing* him and asking if he would talk to them, Duff said, "I don't know. Sometimes they say it's—it's better if I have a—lawyer." One of the detectives said he just wanted to clear up some things, and that Duff could stop answering questions at any time. Duff then agreed to speak with the detectives and eventually confessed to the shootings but claimed it was self-defense. He was subsequently convicted of two counts of first-degree murder and sentenced to death.

Discussion

Duff argued that his conviction should be reversed because his incriminating statement had been obtained in violation of *Miranda* and was also involuntary. The California Supreme Court disagreed.

MIRANDA: As noted, when Duff was asked if he would talk to the detectives, he responded, "I don't know. Sometimes they say it's—it's better if I have a—lawyer." In the past, such a comment would have been interpreted as an invocation of the *Miranda* right to counsel. But in 1994 the Supreme Court ruled in *Davis v. United States* that such a

remark can constitute an invocation only if it clearly and unambiguously manifested a desire to invoke.[1] Clearly, Duff's words did not satisfy that requirement. So he argued instead that if a suspect makes an ambiguous statement *before* he waived his rights, officers should be required to stop the interview and clarify whether he had intended to invoke. Citing an opinion from the Ninth Circuit, the court agreed with Duff. But it also ruled that such clarification does not require that officers specifically ask the suspect to "clarify" his words. Instead, it is sufficient that officers "talk to him to see whether or not he wanted to talk." And because that is what the detective had done, and because Duff then made it clear that he was willing to undergo questioning without an attorney, the court ruled his confession was not obtained in violation of *Miranda*.

VOLUNTARINESS: Duff also argued that his statement should have been suppressed because it was involuntary. As a general rule, a statement is involuntary if (1) officers utilized tactics that were so coercive that the suspect felt compelled to confess or make a damaging admission, and (2) the coercive tactics were the motivating force behind his decision to make the statement.[2] Apart from the fact that the detectives did not utilize coercive tactics, the court ruled that "it appears Duff confessed to shooting Riley and Hagan not because his will was overborne, but because he was capable of making, and made, the rational choice to offer his side of events, in which he shot Riley and Hagan in self-defense, rather than out of a premeditated desire to obtain revenge for past slights."

Having determined that Duff's statements were obtained lawfully, the court affirmed his conviction and death sentence.

Comment

Although the court ultimately ruled that the detectives had not violated Duff's *Miranda* rights, it is necessary to discuss some of the things it said and why there is some confusion in this area of the law..

As noted, the U.S. Supreme Court in *Davis v. United States* ruled that a remark by a suspect in custody can constitute a *Miranda* invocation only if it clearly and unambiguously manifested a desire to invoke. The Court explained that such a rule was necessary because officers who are questioning a suspect need to know precisely what kind of remark will require that they terminate the interview. Any other rule, said the Court, "would transform the *Miranda* safeguards into wholly irrational obstacles to legitimate police investigative activity."

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[1] (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."].

[2] See *Culombe v. Connecticut* (1961) 367 U.S. 568, 576 [coercion acts as a "suction process" that has "drained [his] capacity for freedom of choice"]; *Arizona v. Fulminante* (1991) 499 U.S. 279, 287 ["coercion can be mental as well as physical, and the blood of the accused is not the only hallmark of an unconstitutional inquisition"]; *Oregon v. Elstad* (1985) 470 U.S. 298, 304 [statement is involuntary if obtained "by techniques and methods offensive to due process, or under circumstances in which the suspect clearly had no opportunity to exercise a free and unconstrained will"]; *People v. Depriest* (2007) 42 Cal.4th 1, 34 ["Involuntariness means the defendant's free will was overborne."].

Nevertheless, in 2008 the Ninth Circuit in *U.S. v. Rodriguez* narrowly construed *Davis*, ruling it does not apply if the suspect made the ambiguous remark just *before or while* officers sought a waiver from him.[3] According to the court, if that happens the officers cannot proceed with the interview unless they clarify with the suspect that he did not intend to invoke. Because the California Supreme Court in *Duff* cited *Rodriguez* as the only direct authority for its ruling that the detectives were required to clarify Duff's intent when he made the "ambiguous" remark, the validity of its ruling depends on whether *Rodriguez* is good law today. For the following reasons, we think it is not.

Two years after *Rodriguez* was decided, the United States Supreme Court announced its decision in *Berghuis v. Thompkins*.[4] In *Thompkins*, the Court ruled that *Miranda* waivers can be implied as well as express, and that a waiver will be implied if (1) the suspect was correctly informed of his rights, (2) he said he understood his rights, (3) he responded to the officers' questions, and (4) the officers neither coerced nor pressured him into speaking with them. Said the Court, "As a general proposition, the law can presume that an individual who, with a full understanding of his or her rights, acts in a manner inconsistent with their exercise has made a deliberate choice to relinquish the protection those rights afford."

Of particular importance to the issue at hand, the defendant in *Thompkins* did not immediately respond to the officers' questions after he had been *Mirandized*. Instead, during the subsequent three-hour interview he was "largely" silent except for giving a "few limited verbal responses" (such as "yeah," "no," or "I don't know") and occasionally nodding his head. But—and this was significant—he did not impliedly waive his rights until later in the interview when he directly responded to an officer's question.

Consequently, both Thompkins and Rodriguez said or did something before they impliedly waived their rights, and such conduct arguably constituted an ambiguous invocation. But while the court in *Rodriguez* ruled that officers in such a situation were required to immediately stop the interview and clarify the defendant's intent, the Supreme Court in *Thompkins* ruled they were not. On the contrary, the Court said, "If an accused makes a statement concerning the right to counsel that is ambiguous or equivocal," officers "are not required to end the interrogation or ask questions to clarify whether the accused wants to invoke his or her *Miranda* rights." For these reasons, it appears *Rodriguez* was implicitly overturned by *Thompkins* and that the California Supreme Court in *Duff* should have ruled that the officers were not required to clarify Duff's ambiguous remarks.

We also question the court's ruling that Duff's pre-waiver words were, in fact, ambiguous. Let's look at what he said. First, he responded "I don't know" when asked if he wanted to waive his rights. These words were nothing more than an expression of uncertainty, not that he might have reached a decision on the matter. As for his reference to a lawyer, Duff observed that some people say it's better to have a lawyer. That is a truism, like saying that some people enjoy baloney sandwiches and others do not. In neither case, do the words demonstrate—ambiguously or unambiguously—that the speaker might have made his own decision on the matter. Consequently, even if *Rodriguez* was still good law (which we doubt), we do not think the officers would have

[3] (9th Cir. 2008) 518 F.3d 1072.
[4] (2010) 560 U.S. 370.

been required to clarify Duff's remark since there was nothing about it that required clarification.

In conclusion, it is important to recall the reason the U.S. Supreme Court ruled in *Davis* that officers are not prohibited from interviewing a suspect merely because he said something that *might* have constituted an invocation. It was because, as the Court later explained in *Thompkins*, it "avoids difficulties of proof and provides guidance to officers on how to proceed in the face of ambiguity." In *Duff*, however, the California Supreme Court—unintentionally, we think—reignited these difficulties of proof and in the process undermined the guidance that the U.S. Supreme Court hoped to provide officers in situations such as these. POV

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