People v. Gonzalez
(January 24, 2005) __ Cal.4th __

ISSUE

Did a murder suspect invoke his *Miranda* right to counsel when he said he wanted a public defender if he was charged with the crime?

FACTS

On the evening of August 8, 1998, Catarino Gonzalez shot and killed Los Angeles police officer Filbert Cuesta as the officer sat in his patrol car. The motive for the murder was apparently revenge, as Officer Cuesta and other members of LAPD's gang unit frequently encountered Gonzalez, a "confrontational" gang member.

Two eyewitnesses to the shooting positively identified Gonzalez as the shooter. Homicide detectives were looking for him when, three days after the shooting, his brother-in-law brought him to police headquarters. Although it is not clear when Gonzalez was actually placed under arrest, he was probably "in custody" for *Miranda* purposes when he walked through the door.

After waiving his *Miranda* rights, Gonzalez claimed he did not shoot the officer but, as questioning continued, some "inconsistencies" in his story became apparent. One of the homicide detectives asked Gonzalez if he would take a polygraph test tomorrow. He agreed but then told the detective he wanted to talk to a public defender if he was going to be charged with any crime. Here are his exact words:

> That, um, one thing I want to ask you to that, if for anything you guys are going to charge me I want to talk to a public defender too, for any little thing. Because my brother-in-law told me that if they're trying to charge you for this case you might as well talk to a public defender and let him know cause they can't [untranslatable].

The detective told Gonzalez that he could have a public defender "anytime you want to," but that he was now going to be booked. "Book me on what?" asked Gonzalez. "On murder," replied the detective, adding, "That doesn't mean you're going to be filed on." A little later, the other detective told him, "An arrest is not a prosecution; you hear me?" Gonzalez responded, "Yes, sir."

The next day, the examiner obtained another *Miranda* waiver from Gonzalez. But just before the test was to begin, Gonzalez and the examiner had the following exchange:

> Gonzalez: Sir, I was going to ask you that, if there any, like—cause they told me about a public defender.
>
> Examiner: What about a public defender?
>
> Gonzalez: They said that he would show up for anything.
>
> Examiner: Oh, you have a right to a public defender. That's why I asked you did they—they told you about your rights.
>
> Gonzalez: They read my rights, yeah.

At that point, the polygraph test began and, at some point, Gonzalez confessed to shooting Officer Cuesta.

Before trial, Gonzalez sought to have his confession suppressed on grounds that his references to the public defender during the initial interview and before the polygraph exam constituted an invocation of his *Miranda* right to counsel. At the *Miranda* hearing, one of the detectives testified that he understood Gonzalez's references to a public defender to mean he wanted a public defender if he was charged with a crime, and that he had explained to Gonzalez the difference between being charged with a crime and being arrested. The other detective testified, "He never asked for an attorney. ¶ He mentioned a public defender. But he never asked for one."

The trial court denied Gonzalez's motion, and his confession was introduced into evidence at his trial. He was found guilty and sentenced to life without parole plus three consecutive life-top enhancements.

DISCUSSION

On appeal, Gonzalez argued that his confession should have been suppressed because his references to a public defender constituted an invocation of his *Miranda* right to counsel. The California Supreme Court disagreed.

Gonzalez's argument would have had some merit in the past because the courts were routinely ruling that virtually any reference to an attorney by a suspect during interrogation was an invocation. This changed, however, in 1994 when the United States Supreme Court announced its decision in *Davis* v. *United States*.[1] In *Davis*, the Court concluded that the ease by which suspects were invoking their *Miranda* rights—whether they intended to or not—was transforming the *Miranda* safeguards into "wholly irrational obstacles to legitimate police investigative activity."

The Court also determined that when officers have informed a suspect of his right to have an attorney before or during questioning, it is not asking too much of the suspect to require him to state clearly that he wants an attorney.

Consequently, the Court ruled that an invocation of the *Miranda* right to counsel occurs only if the suspect says something that would have caused a reasonable officer to believe he wanted to talk to an attorney before or during questioning. It follows, said the Court, that an invocation does *not* result if a suspect's reference to an attorney was "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."

The ruling in *Davis* had three other immediate consequences. First, if a suspect makes an ambiguous statement that might conceivably constitute an invocation, officers are not required to inquire as to whether the suspect intended to invoke. Instead, they may continue to question him. Second, a suspect does not invoke his *Miranda* right to counsel if he merely says he wants to be represented by an attorney *in court*.[2] Third, a suspect may make a limited or conditional invocation of the right to counsel. If so, the interview may continue if officers honor the limitations or conditions. For example, if a suspect refuses to talk about a certain subject without an attorney, officers may continue to question him about other subjects.[3]

With these principles in mind, the California Supreme Court ruled that Gonzalez's references to a public defender did not constitute an invocation because, (1) they were, at most, ambiguous; and (2) they were conditional. Said the court:

> On its face, defendant's statement was conditional; he wanted a lawyer *if* he was going to be *charged*. The conditional nature of the statement rendered it, at best, ambiguous and equivocal because a reasonable police officer in these circumstances would not necessarily have known whether the condition would be fulfilled since, as these officers explained, the decision to charge is not made by police. Confronted with this statement, a reasonable officer would have understood only that the suspect might be invoking the

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[1] (1994) 512 U.S. 452.

[2] *McNeil* v. *Wisconsin* (1991) 501 U.S. 171; *People* v. *Sully* (1991) 53 Cal.3d 1195, 1234; *People* v. *Morris* (1991) 53 Cal.3d 152, 201-2; *People* v. *Johnson* (1993) 6 Cal.4th 1, 28; *People* v. *Turnage* (1975) 45 Cal.App.3d 201, 211, fn.5; *People* v. *Maynarich* (1978) 83 Cal.App.3d 476, 479; *People* v. *Watkins* (1970) 6 Cal.App.3d 119; *People* v. *Clark* (1992) 3 Cal.4th 41, 120; *People* v. *Cunningham* (2001) 25 Cal.4th 926, 994.

[3] See *People* v. *Clark* (1992) 3 Cal.4th 41, 122 ["Defendant did not refuse to talk at all without an attorney. Rather, he indicated he would not talk about one limited subject"].

right to counsel, which is insufficient under *Davis* to require cessation of questioning.

Gonzalez's conviction was affirmed.