

People v. Hensley

(2014) 59 Cal.4th 788

Issues

While interrogating a serial killer and obtaining a confession, did a detective violate his *Miranda* rights? If not, did he pressure him into confessing?

Facts

During a period of 48 hours in 1992, Hensley robbed an ice cream store in Stockton, shot and killed his father-in-law in rural San Joaquin County, shot and paralyzed a prostitute in Stockton, and then killed a man during a robbery in Sacramento. The next day, a Sacramento police officer found Hensley sleeping in a stolen car and arrested him. In Hensley's possession the officer found a checkbook and a payroll check, both issued to the Sacramento murder victim. He also found the murder weapon.

Hensley was transported to a police interview room where he answered a few preliminary questions but then invoked his *Miranda* right to counsel when he said "I'm being set up, I want to see my lawyer." Hensley was then left alone in the interview room for about three hours, after which a detective reentered the interview room to take a photo of him. While the detective was doing this, Hensley asked, "When am I gonna get to see a lawyer or get a phone call." The detective responded, "Once you're booked into the county jail, you'll get that and you'll get your phone calls." At that point, the detective started to leave the room but Hensley stopped him by asking, "Can I talk to you for a minute?" The detective said "sure." The following is a heavily edited account of their subsequent conversation which, for *Miranda* purposes, constituted "interrogation" because the detective's words were reasonably likely to elicit an incriminating response:

Hensley: Why are you guys trying to work me so hard? I told you I didn't do anything.

Detective: Well, unfortunately there was a man killed here in Sacramento and you have his checkbook, you have casings in your car, you have a gun on you, you have a check in his name. It's kind of hard to explain. Why wouldn't we work you hard?

Hensley: Hey well, hey—I understand.

Detective: I can't really talk to you because you want an attorney okay?

Hensley: No, I just—all I said was you know, you can't put it all on me. You've gotta find Donzelle.

Detective: You wanna talk or you want an attorney?

Hensley: No, man. I didn't do any—I didn't fucken do shit! But accept some fucken stuff you know?"

Detective: Accept what?

Hensley: An I.D. and some checks.

Detective: I want to talk to you, but I've got to clarify something. You had initially told me in my first interview with you that you wanted an attorney; that you thought you were being set up, and you wanted an attorney.

Hensley: Not by you; I mean Donzelle and her fucken buddy tried to set me up for what they did; I didn't do nothing but steal my fucken father-in-law's car.

Detective: Well, can I continue to talk to you without an attorney? "

Hensley: Yeah, I don't give a fuck! I'm going to jail anyway!

Over the next few hours, Hensley “confessed in detail” to all of the crimes. His confession was used against him at trial and he was convicted. The trial court sentenced him to death.

Discussion

Among other things, Hensley argued that his confession should have been suppressed because the detective continued to question him after he had invoked his *Miranda* rights, and also because his confession was involuntary. The court rejected both arguments.

MIRANDA: It was apparent that Hensley had, in fact, invoked his *Miranda* right to counsel when, at the start of the interview, he said “I’m being set up. I want to see my lawyer.” Although there was some subsequent small talk between them, the detective complied with *Miranda* because he did not ask Hensley any questions that constituted “interrogation”; i.e., questions that were reasonably likely to elicit an incriminating response.¹ A few minutes later, however, the detective resumed the interview. Did this violate *Miranda*?

It is settled that officers may resume an interview following an invocation if four things occurred: (1) the suspect initiated the questioning, (2) the suspect was not pressured to do so, (3) the suspect’s words indicated he wanted to open up a general discussion about the crime (as opposed to merely discussing incidental or unrelated matters),² and (4) the suspect then waived his *Miranda* rights. The question, then, was whether these requirements were satisfied.

The California Supreme Court ruled they were because, as the detective was leaving the room, Hensley initiated further questioning when he spontaneously asked, “Can I talk to you for a minute.” He then impliedly waived his *Miranda* rights by freely discussing the case after the detective “repeatedly sought to confirm that defendant understood he did not have to speak but was nonetheless choosing to do so.”³ Accordingly, the court ruled that the detective’s resumption of the interview was in full compliance with *Miranda*.

COERCION: Hensley also argued that his confession was involuntary because, at the start of the interview, the detective impliedly promised him a reduced sentence if he talked to him about the case. This allegation was based on the following comment made by the detective: “There are two sides to every story, okay? And we’re real anxious to get your side of what happened today.” But the court ruled that the detective’s remarks did

¹ See *Rhode Island v. Innis* (1980) 446 US 291, 301 [“the definition of interrogation can extend only to words or actions on the part of police officers that they *should have known* were reasonably likely to elicit an incriminating response”].

² See *Oregon v. Bradshaw* (1983) 462 U.S. 1039, 1045 [“There are some inquiries, such as a request for a drink of water or a request to use a telephone, that are so routine that they cannot be fairly said to represent a desire on the part of an accused to open up a more generalized discussion”].

³ See *People v. Nelson* (2012) 53 Cal.4th 367, 375 [“Although he did not expressly waive his *Miranda* rights, he did so implicitly by willingly answering questions after acknowledging that he understood those rights.”]; *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. Hawthorne* (2012) 46 Cal.4th 67, 86 [“We have recognized that a valid waiver of *Miranda* rights may be express or implied. A suspect’s expressed willingness to answer questions after acknowledging an understanding of his or her *Miranda* rights has itself been held sufficient to constitute an implied waiver of such rights.”].

not constitute an implied promise but, instead, he had “simply indicated a willingness to listen to defendant” and had “encouraged him to tell what happened.”

ERRONEOUS WARNING: Finally, Hensley argued that the detective “improperly diluted” the *Miranda* warning when, instead of asking the standard waiver question (“Having these rights in mind, do you wish to talk to us now?”) he said, “I want to talk to you about what you’ve been doing over the last couple of days. Can I talk to you about that?” Henley responded “yes.” In rejecting the argument, the court simply observed that “*Miranda* and its progeny have never mandated some sort of talismanic recitation.”

Consequently, the court affirmed the trial court’s ruling that Hensley’s confession was admissible. POV

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