

Recent Case Report

Date posted: February 1, 2010

People v. Navarrete

(2010) __ Cal.App.4th __ [2010 WL 338138]

Issue

During the trial of a man charged with lewd conduct on a child, should the trial judge have declared a mistrial after a detective intentionally violated the court's order not to inform the jury that the defendant's statement to officers had been suppressed?

Facts

Navarrete was charged with lewd conduct on a four year old girl in Maywood, California. At the close of a *Miranda* hearing, the trial judge ruled that an incriminating statement that Navarrete had made to officers must be suppressed because they neglected to *Mirandize* him. In making his ruling, the judge also questioned the credibility of a detective who had testified at the hearing.

In the course of the trial, a nurse testified that she had taken several swabs from various parts of the girl's body, and that she had given the swabs to Maywood police. The next witness was the detective who had testified at the *Miranda* hearing. He said he decided not to have the swabs tested, and the prosecutor asked why. "Well, for several reasons," he said, "the first of which it's a court rule that the defendant's statement is inadmissible. So I can't state the first reason."

Literally "standing up from the bench," the trial judge called a recess, and the defendant's attorney moved for a mistrial. The motion was denied, but the judge ordered the detective removed from the courtroom, saying "Your decision to make statements of the nature that you have made has delayed, disrupted, and jeopardized any result that may now be reached in this case. Your decision to do so was rash and wholly improper." The judge also instructed the jurors to disregard his testimony.

Later that day, the prosecutor told the judge that she had learned that the detective, just before he testified, told another prosecutor, Robert Britton, that he was upset by the suppression order and that he was "going to show" the court. Britton warned him "not to do anything stupid on the stand." When Britton learned what the detective had done during the trial, he notified the trial prosecutor who informed the judge. The trial continued on, and Navarrete was convicted.

Discussion

The defendant contended that his motion for a mistrial should have been granted, and the Court of Appeal agreed. Although the detective did not testify that Navarrete had "confessed" to the crime (he said that Navarrete had made a "statement"), the court ruled that the jury might well have believed he had confessed because it would have appeared to the jurors that the detective felt it was unnecessary to test the swabs because Navarrete had already confessed.

The court's ruling was also based on the fact that the detective's misconduct "was neither ambiguous nor inadvertent; it was deliberate, triggered seemingly by his apparent pique at the court's wondering the previous day about the detectives' credibility." Said the court, "He *intended* to tell the jury about appellant's statement because he *intended* to prejudice the jury against appellant." The court concluded, "On one point we agree with

the detective: His misconduct more likely than not achieved the effect he sought. But for the price of his success, [he] cost the court, the parties, and the public the time and expense of a retrial.” POV