

## ISSUE

After a murder suspect invoked his *Miranda* right to counsel, did a detective pressure him into changing his mind when he gave him a copy of a newspaper that contained a story about the crime and the suspect's arrest?

## FACTS

On May 6, 1990, San Nicholas repeatedly stabbed his wife, Mary, during an argument in their home in Modesto. Mary was killed. As San Nicholas was standing at a bathroom sink still holding the knife, a nine year old houseguest named April happened to see him. San Nicolas stabbed and killed her. He fled to Nevada but was arrested on May 10<sup>th</sup> in Sparks.

San Nicolas was placed in an interview room in the Sparks police station where a Stanislaus County sheriff's detective told him, "If you want to talk to me, I'll advise you of your rights." San Nicolas responded, "I would like to talk to an attorney first and then I'll talk to you." Later that day, the detective told San Nicolas:

If between now and tomorrow, or between now and the time we get back to Modesto you change your mind about that, let me know so I can set up a time we can talk in an interview room like this. [Y]ou may change your mind, and I want you to know you have the option to do that.

On May 16<sup>th</sup>, the detective and another deputy drove San Nicolas back to Modesto. At some point, the detective began reading a copy of the *Modesto Bee* newspaper. When San Nicolas asked if he could read part of it, the detective handed him the Metro section. Although the detective had already read the Metro section, he did not notice the front page story about San Nicolas's arrest, headlined "Officers to Return Suspect." The story said that San Nicolas would be arraigned on two counts of murder, that he was suspected of repeatedly stabbing Mary and April following a heated argument, and that the autopsy showed that April had been sexually assaulted after she had been killed.

San Nicolas read the paper "briefly" and handed it back to the detective, commenting that it contained an article about the case. They did not discuss the article or the case.

As they neared the Stanislaus County line, San Nicolas told the detective that he was "ready" to talk if the detective was "still interested." The detective said they could talk at the sheriff's office. When they arrived at about 10 P.M., San Nicolas waived his *Miranda* rights and eventually admitted killing Mary and April, saying he "simply exploded."

A tape of San Nicolas' statement was played for the jury at his trial. He was convicted and sentenced to death.

## DISCUSSION

San Nicolas contended, among other things, that his statement should have been suppressed because he had invoked his *Miranda* right to counsel when the detective spoke with him at the Sparks police station. The court acknowledged that San Nicolas had, in fact, made it clear to the detective that he was invoking his right to counsel when he said "I would like to talk to an attorney first and then I'll talk to you."

Even so, as the court pointed out, officers may question a suspect who has invoked if the questioning was initiated by the suspect and if both of the following circumstances existed:

- (1) No pressure: After the suspect invoked, officers did not pressure him into changing his mind.<sup>1</sup>
- (2) General discussion: When the suspect initiated questioning, it reasonably appeared that he wanted to open up a “general discussion of the crime.”<sup>2</sup>

It was apparent that San Nicolas intended to engage in a general discussion of the crime with the detective when he said he was “ready” to talk. But he argued that the detective’s act of giving him a copy of the newspaper story constituted subtle pressure to talk which, in turn, caused him to agree to be interviewed.

The court rejected this argument, noting that it was San Nicolas who asked if he could read the paper, that the detective did not know about the story it contained, and that the story was brief. In the words of the court, “There was no coercive activity here. Nor did defendant respond to the newspaper article by offering [the detective] any incriminating information. Defendant simply noted that the paper included an article about the case.”

Consequently, the court ruled that San Nicolas’ statement was properly admitted into evidence. San Nicolas’ conviction was affirmed.

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<sup>1</sup> See *Edwards v. Arizona* (1981) 451 U.S. 477, 485, fn.9; *People v. McClary* (1977) 20 Cal.3d 218, 226-7 [“(A) change of mind prompted by continued interrogation and efforts to convince the defendant to communicate with the officers cannot be considered a voluntary, self-initiated conversation.”]; *People v. Morris* (1991) 53 Cal.3d 152, 199-202; *People v. Boyer* (1989) 48 Cal.3d 247, 274.

<sup>2</sup> See *Edwards v. Arizona* (1981) 451 U.S. 477, 484-5; *Oregon v. Bradshaw* (1983) 462 U.S. 1039, 1041-8; *People v. Bradford* (1997) 14 Cal.4th 1005, 1034-7; *People v. Waidla* (2000) 22 Cal.4th 690, 730-2 [suspect opened up a generalized discussion of a murder when he asked the investigating officer, “What can I do for you?” or “What do you want from me?”].