People v. Riva
(October 22, 2003) __ Cal.App.4th __

ISSUES

(1) Under what circumstances can a *Miranda* waiver be implied? (2) Does a suspect invoke his right to remain silent when he tells an officer he doesn't want to say anything else "right now?"

FACTS

While sitting in his Chevrolet Blazer, Riva fired a shot into another car at an intersection in Long Beach. The motive was never determined. In any event, the bullet missed the occupants of the car but hit and seriously wounded a grandmother who was walking nearby with her grandchildren. Based on information from witnesses, Long Beach police were able to identify Riva as the shooter and arrest him.

Upon arrival at the police station, Riva was advised of his *Miranda* rights by the investigating officer. The officer asked Riva if he understood his rights. He said yes. Without asking Riva whether he wanted to waive his rights, the officer began questioning him about the shooting. Riva began by making some incriminating statements. But then he told the officer, "I don't want to say anything else right now." The interrogation promptly ended.

About an hour later, the officer approached Riva in the booking area of the jail and asked if he was willing to talk now. Riva said yes. During the subsequent interview, Riva made additional incriminating statements.[1] At his trial, Riva's statements were admitted into evidence. He was convicted; the sentence was 30 years to life.

DISCUSSION

On appeal, Riva argued that his statements should have been suppressed because, (1) he did not expressly waive his *Miranda* rights, and (2) the officer violated *Miranda* when he sought to question him after he invoked.

Implied waiver

As noted, the officer did not expressly ask Riva if he was waiving his *Miranda* rights. Instead, he began questioning him after Riva said he understood his rights. The question was whether this procedure resulted in a valid *Miranda* waiver.

The United States Supreme Court has ruled a waiver may be implied if the suspect engaged in a "course of conduct indicating waiver."[2] Although the phrase is imprecise, the courts have interpreted it to mean a waiver results if all of the following circumstances existed:

(1) The suspect was correctly advised of his *Miranda* rights.
(2) The suspect said he understood those rights.
(3) The suspect freely answered the officers' questions, as opposed to, for example, grudging responses to leading questions.

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[1] NOTE: The officer did not seek a new waiver before questioning Riva at the jail. Under such circumstances, however, a new waiver is not required if the original waiver was "reasonably contemporaneous" with the subsequent interview. See *People* v. *Lewis* (2001) 26 Cal.4th 334, 386; *People* v. *Mickle* (1991) 54 Cal.3d 140, 170. In *Riva*, the court ruled the warning and jailhouse interview were reasonably contemporaneous because only an hour separated them, the officer who obtained the waiver was the same officer who questioned Riva, the location of the two interviews was not significantly different, and the subject matter of both interviews was the same.
[2] See *North Carolina* v. *Butler* (1979) 441 US 369, 373.

(4) There was no indication the waiver was coerced.[3]

Because all four of these circumstances plainly existed, the court summarily ruled that "Riva validly waived his right to remain silent." Consequently, the statements he made before he "invoked" were admissible.

Invocation

Riva contended he effectively invoked his right to remain silent when he told the officer, "I don't want to say anything else right now." It follows, he argued, that the admissions he made in the jail must be suppressed.

In the past, such a statement would likely have constituted an unequivocal invocation. But now the courts take a more realistic approach. They understand that suspects often say things that indicate a desire to limit the scope of the interview or the manner in which is was conducted—but are otherwise willing to be questioned. For example, when a suspect refuses to answer a certain question or discuss a certain topic, he is essentially saying, "I don't want to talk about *this*. If you want to talk about something else, fine."

When a suspect says something like this, it is now viewed as a conditional or limited invocation.[4] In other words, the suspect is simply placing conditions on his willingness to continue the interview. And if officers comply with the conditions, they may continue to question the suspect or, as in *Riva*, seek to question him later. As the court pointed out, "Riva's statement he did not want to talk anymore 'right now' clearly indicated he might be willing to talk in the future." Consequently, because the officer promptly stopped questioning Riva when he invoked, and because the officer waited an hour before approaching Riva in the jail, the court ruled the officer complied with the conditions imposed by Riva. Thus, there was no *Miranda* violation.

Riva's conviction was affirmed.

DA's COMMENT

Even when a suspect unconditionally invokes his right to remain silent (as opposed to the right to counsel[5]), officers may seek to question him later about any crime if they "scrupulously honored" the invocation.[6] For example, if Riva had actually invoked the

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[3] See *North Carolina* v. *Butler* (1979) 441 US 369, 374; *People* v. *Johnson* (1969) 70 Cal.2d 541, 558 ["Once the defendant has been informed of his rights, and indicates that he understands those rights, it would seem that his choosing to speak and not requesting a lawyer is sufficient evidence that he knows of his rights and chooses not to exercise them."]; *People* v. *Sully* (1991) 53 Cal.3d 1195, 1233; *People* v. *Whitson* (1998) 17 Cal.4th 229, 249.

[4] See *People* v. *Clark* (1992) 3 Cal.4th 41, 122 ["Defendant did not invoke the right (to counsel) as to all subjects, only as to one."]; *People* v. *Hurd* (1998) 62 Cal.App.4th 1084, 1090 ["(A) defendant may, during an ongoing interrogation, refuse to answer certain questions without manifesting a desire to terminate the whole interview."]; *People* v. *Hayes* (1985) 38 Cal.3d 780, 786 ["(Defendant's reluctance to discuss the details of the crime) is an understandable reaction to a confession of multiple robbery-murder, and does not rise to the level of an implied assertion of the defendant's constitutional right to cut off questioning."]; *People* v. *Ashmus* (1991) 54 Cal.3d 932, 968-70 ["(Defendant) evidently sought to alter the course of the questioning. But he did not attempt to stop it altogether."]; *People* v. *Watkins* (1970) 6 Cal.App.3d 119, 124 ["(T)he court determined that, although defendant at one time halted questioning on one subject, he did not refuse to carry on any further conversation."].

[5] See *Arizona* v. *Roberson* (1988) 486 US 675.

[6] See *Michigan* v. *Mosley* (1975) 423 US 96; *People* v. *Warner* (1988) 203 Cal.App.3d 1122, 1129-31; *People* v. *DeLeon* (1994) 22 Cal.App.4th 1265, 1271; *People* v. *Lispier* (1992) 4 Cal.App.4th 1317, 1324 ["Until a suspect affirmatively invokes the *Miranda* right to counsel during interrogation, the less stringent rule of *Michigan* v. *Mosley* applies."]; *People* v. *Harris* (1989) 211 Cal.App.3d

right to remain silent, the officer—had he "scrupulously honored" the invocation—could have approached him later to see if he had changed his mind.

What must officers do to "scrupulously honor" an invocation? The cases indicate there are four things:

(1) They must stop questioning the suspect when he invoked.
(2) They must not try to persuade him to reconsider his decision to invoke.
(3) They must not approach him until a "significant period of time" had passed, which, in one case, was as little as two hours.
(4) When officers recontact the suspect, they must not pressure him to talk.[7]

It appears the officer in *Riva* complied with these requirements, with the possible exception of number three. As noted, he approached Riva one hour after he had invoked. Does one hour constitute a "significant period of time?" We don't know because the court, having ruled that Riva did not unconditionally invoke, did not need to decide the issue.

Another issue raised in *Riva* was whether *Miranda* rulings made by a trial judge are binding on another trial judge to whom the case was sent after a mistrial. The relevant facts are as follows.

Before Riva's first trial began, the trial judge ruled that Riva unconditionally invoked his right to remain silent when he said, "I don't want to say anything else right now." Further, the judge ruled the officer violated *Miranda* by approaching Riva later in the jail. Consequently, the judge ordered the post-invocation statements suppressed. The case ended in a mistrial and was later sent to a different trial judge.

The second trial judge, after ruling he was not bound by the first judge's *Miranda* rulings, conducted a modified *Miranda* hearing in which he read transcripts of the first hearing and listened to argument by counsel. He then ruled the invocation was conditional—that Riva merely said he did not want to say anything else "right now." Thus, the officer could lawfully approach him later.

Riva contended the second trial judge was bound by the ruling of the first trial judge. The Court of Appeal disagreed:

> [P]retrial rulings on the admissibility of evidence, like rulings on pleadings, should be reviewable by another judge following a mistrial because they are intermediate, interlocutory rulings subject to revision even after the commencement of trial.

The court added, however, the trial courts "should decline to reverse or modify other trial judges' rulings unless there is a highly persuasive reason for doing so—mere disagreement with the result of the order is not a persuasive reason for reversing it."

640; *People* v. *McClary* (1977) 20 Cal.3d 218, 226 ["(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."].

[7] See *Michigan* v. *Mosley* (1975) 423 US 96.