

People v. Orozco

(2019) 32 Cal.App.5th 802

Issue

Did officers violate *Miranda* when, after a murder suspect invoked, they placed him in a room with his girlfriend and asked her to question him about the crime?

Facts

While babysitting his six-month old daughter—her name was Mia—Orozco phoned Mia’s mother and said the child had stopped breathing. Mia’s mother, Nathaly Martinez, immediately returned home and found that Mia was dead. Los Angeles County sheriff’s detectives responded and saw that Mia had been beaten. They would later learn that she suffered 29 bruises, seven rib fractures, a punctured right lung, and a lacerated liver.

At the scene, Orozco claimed he did not know how Mia had been injured, but he agreed to accompany the detectives to their office for further questioning. Although he had not been arrested, a detective *Mirandized* him when they arrived, apparently because of the likelihood that the interview would become contentious. And it did. Orozco continued to deny knowing anything about Mia’s injuries, and because this was highly unlikely, the detectives continued to press. He eventually invoked his right to counsel and was arrested.

Before he was taken to jail, however, he asked to speak alone with Ms. Martinez. The detectives granted this request. But before she entered the interview room, one of them asked her to try to get a “full explanation” from him. He added, “You are the mother of Mia and you have a right to know [everything].”

At first, Ms. Martinez was unsuccessful. So, one of the detectives entered the room and said he had just received a copy of the autopsy report and it showed that Mia had been beaten to death. (This was probably a ploy as autopsies are not conducted this quickly.) The detective then left the room and Ms. Martinez continued to press Orozco for an explanation, saying “If you love me, you need to tell me the truth.” He then confessed.

Prior to trial, Orozco filed a motion to suppress his confession on grounds that it was obtained in violation of *Miranda*. The motion was denied, Orozco was found guilty and sentenced to life.

Discussion

It is settled that officers must obtain a *Miranda* waiver from a suspect in custody before asking any questions that were reasonably likely to elicit an incriminating response.¹ It is also settled that officers must promptly stop questioning a suspect who has invoked.

There are, however, exceptions to these rules. And one of them, the so-called “undercover agent” exception, provides that subsequent questioning is permitted if the person asking the questions was an undercover officer or civilian police agent, and if the officer or agent did not pressure the suspect.² As the California Supreme Court explained, *Miranda* does not apply “when the suspect is in the process of a custodial interrogation”

¹ See *Rhode Island v. Innis* (1980) 446 U.S. 291, 301.

² See *Illinois v. Perkins* (1990) 496 U.S. 292, 296; *Arizona v. Mauro* (1987) 481 U.S. 520, 526 [questioning by suspect’s wife].

and he makes “voluntary statements to someone the suspect does not believe is a police officer or agent, in a conversation the suspect assumes is private.”³

In the seminal “undercover agent” case, *Illinois v. Perkins*,⁴ the defendant and a fellow prison inmate, Donald Charlton, were talking one day and Perkins mentioned that he had committed a murder in East St. Louis, Illinois for which he had not been arrested. Charlton notified the investigating officers who devised a plan whereby an undercover officer, John Parisi, would pose as a fellow inmate and engage Perkins “in a casual conversation and report anything he said about the murder.” During one such conversation, Parisi broached the subject of the murder and Perkins proceeded to describe it “at length.” Perkins was later charged with the crime and his statements were used against him at trial. He was convicted.

On appeal to the Supreme Court, Perkins argued that his statement should have been suppressed because Parisi had not *Mirandized* him. But the court ruled that a waiver was not required because “[c]onversations between suspects and undercover agents do not implicate the concerns underlying *Miranda*. The essential ingredients of a ‘police-dominated atmosphere’ and compulsion are not present when an incarcerated person speaks freely to someone that he believes to be a fellow inmate.”

Applying *Perkins* to the facts in *Orozco*, the court ruled that, even though Orozco had previously invoked his right to counsel, and even though the detective had asked Ms. Martinez to try to obtain incriminating information from him, this did not violate *Miranda* because (1) Orozco was unaware of the ploy, and (2) Martinez did not utilize any form of coercion.

Finally, Orozco contended that the detective effectively interrogated him when he interrupted the interview and reported that the coroner determined that Mia had been beaten to death. This was a valid argument because the court indicated that the detective’s comment was reasonably likely to elicit an incriminating response. But, ultimately, it didn’t matter because Orozco did not respond. As the court pointed out, “Had defendant answered the officer’s question with an incriminating statement, he would have been interrogated. But he did not. Instead, defendant said nothing, and the officer left. At that point, defendant resumed his one-on-one conversation with Martinez, completely unaware she was an agent of the police.” Orozco’s conviction was affirmed.

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³ *People v. Tate* (2010) 49 Cal.4th 635, 686. Also see *People v. Gonzales* (2011) 52 Cal.4th 254, 284 [Miranda does not prohibit “mere strategic deception by taking advance of a suspect’s misplaced trust” in a fellow prisoner].

⁴ (1990) 496 U.S. 292.