

People v. Anthony

(2019) 32 Cal.App.5th 1102

Issue

After a suspect in a gang-related murder invoked his right to counsel, did a detective violate *Miranda* by questioning him about a related murder?

Facts

One evening, Stephon Anthony and three other members of an Oakland street gang known as NSO loaded up Anthony's gold Cadillac with assault weapons and headed to Berkeley for the purpose of killing Jermaine Davis. They wanted to kill Jermaine because he was a member of a rival gang that was responsible for the murder, three weeks earlier, of an NSO member named Nguyen Ngo. Anthony was an eyewitness to that murder and a possible target.

While looking for Jermaine, the men spotted his brother, Charles, who happened to be walking to the store to buy a cigar. Although Charles was not a gang member, one of the men got out and shot Charles "from head to foot" with a semiautomatic assault rifle. As this was happening, the driver started doing celebratory "donuts," while another passenger jubilantly waved a rifle out the window, and Anthony began yelling "yahoo" out the window. The fun didn't last long.

A few minutes later, a Berkeley officer spotted their distinctive getaway car and chased them into Oakland where they sped through a busy intersection and crashed into a Mazda which then hit a pedestrian. The pedestrian and the driver of the Mazda were killed. Two of the gang members fled on foot and were arrested weeks later. Anthony and the fourth gang member were arrested at the scene.

The next morning, a Berkeley police detective sought to interview Anthony about the murder but he invoked his right to counsel. Later that day, Anthony notified another Berkeley detective that he wanted to talk to Oakland police detectives, but he didn't say why. When they arrived, Anthony said he would talk to them about the murder of Mr. Ngo but he did not want to talk about the murder of Charles Davis. The detectives agreed to this condition. Because Anthony was only a witness to the murder of Mr. Ngo, the detectives did not seek a *Miranda* waiver. Much of the subsequent interview consisted of a detailed discussion of the animosity between the two gangs.

Before trial, prosecutors notified the court that they planned to present the recordings to establish the motive for the murder of Charles Davis, and to prove that the murders were gang related. Anthony filed a motion to suppress but the motion was denied. The four defendants were convicted, the gang enhancements were affirmed, and all were sentenced to life without the possibility of parole.

Discussion

On appeal, Anthony argued that his statements should have been suppressed because they were obtained in violation of *Miranda*. The court agreed.

As general rule, officers may not question a suspect in custody who has invoked the right to remain silent or the right to counsel. But there are exceptions. And one of them provides that post-invocation questioning is permitted if (1) the suspect freely initiated it, and (2) he waived his *Miranda* rights before the questioning began or resumed.

Although the first requirement was satisfied, the second was not. And while the OPD detectives had a reason for not seeking a waiver from Anthony (he was only a witness to the murder of Mr. Ngo), the court ruled it didn't matter because the detectives knew, or should have known, that anything he said about gang animosity would help establish the motive for the murder of Mr. Ngo; i.e., gang retaliation. Said the court:

[The detectives] had reason to believe Anthony was involved in the [murder of Charles Davis that was] committed in gang-retaliation for the [murder of Ngo]. Yet they did not advise Anthony of his *Miranda* rights and pursued lines of questioning that called for Anthony to give responses that bore directly on his motive and intent and were thus incriminating.

The court also pointed out that, even if the detectives had obtained a waiver, Anthony's statement should have been suppressed because they had assured him that they would restrict their interview to the murder of Mr. Ngo. But that was a promise they could not keep because of the close connection between the murders.¹

The court also ruled, however, that the trial court's error in admitting the recordings was harmless because the motive for the murders was proven by testimony from other witnesses. Thus, the convictions of Anthony and the other three were affirmed. POV

Date posted: March 27, 2019

¹ Compare *People v. Wader* (1993) 5 Cal.4th 610 [“[The sergeant’s] inquiry regarding the whereabouts of Hillhouse was designed to elicit information about Hillhouse, not defendant.”]; *People v. Moore* (2011) 51 Cal.4th 386, 395 [the interview “focused on information defendant had indicated he possessed rather than on defendant’s potential responsibility for the crimes”].