

Salinas v. Texas

(2013) __ U.S. __ [133 S.Ct. 2174]

Issue

If officers questioned a suspect who was not in custody, and if the suspect remained silent when asked a certain question, do prosecutors violate the suspect's Fifth Amendment rights by presenting testimony at the suspect's trial that he refused to answer?

Facts

Early one morning, two men were shot and killed inside their home in Houston. There were no witnesses, but a neighbor heard gunshots from inside the house, then saw a man run out the front door, get into a dark-colored car and speed off. At the scene, officers recovered six shotgun shell casings. They also learned that the victims had hosted a party earlier in the evening, and that Salinas was one of the guests. When investigators went to Salinas's home and spoke with him, he admitted owning a shotgun and agreed that they could take it for ballistics testing. He also agreed to accompany them to the police station for further questioning. The investigators noticed there was a dark-colored car parked in the driveway.

At the station, Salinas freely answered all of the officers' questions until they asked if he thought the ballistics test would prove that his shotgun was the murder weapon. To that question, Salinas did not respond verbally, but his physical reaction registered "surprise and anxiety"; i.e., he "looked down at the floor, shuffled his feet, bit his bottom lip, clenched his hands in his lap, and began to tighten up." After a few moments of silence, the officers asked him some additional questions which he freely answered.

Because they did not have probable cause to arrest Salinas, the officers released him at the conclusion of the interview. A few days later, however, they obtained some new evidence and, as a result, prosecutors charged Salinas with murder. At trial, the prosecutor was permitted to present testimony from the officers that Salinas remained silent when asked whether the shotgun was the murder weapon. In addition, the prosecutor elicited testimony as to Salinas's physical reaction to the question. The prosecutor later argued that both of these circumstances were indications that he was guilty. Salinas was convicted.

Discussion

On appeal to the U.S. Supreme Court, Salinas argued that his conviction should be overturned on grounds that the introduction of his testimony about his silence and physical response to the shotgun question violated his Fifth Amendment rights. The Court disagreed.

At the outset, it is important to understand that this was not a *Miranda* case. That is because Salinas voluntarily accompanied the officers to the police station and was, therefore, not "in custody" for *Miranda* purposes.¹ Nevertheless, Salinas possessed a Fifth

¹ See *Oregon v. Mathiason* (1977) 429 U.S. 492, 495. **NOTE:** If Salinas had been "in custody," his silence in response to the question would have constituted only a limited *Miranda* invocation of the right to remain silent as to that particular question. See *People v. Silva* (1988) 45 Cal.3d 604, 629-30 ["A defendant may indicate an unwillingness to discuss certain subjects without manifesting a desire to terminate an interrogation already in progress."].

Amendment right to remain silent because everyone—whether in or out of custody—has a right to refuse to answer a question that might incriminate him.

Consequently, the issue was whether Salinas, by not answering the question, had effectively invoked his Fifth Amendment right not to say anything that would incriminate him. If so, the admission of the officers' testimony would have violated the Fifth Amendment because it is settled that a person cannot be penalized for exercising a constitutional right.

Unfortunately, at this point we must stop and explain an issue that, although technical in nature, was key to the Court's decision. *Salinas* was a 5-4 opinion. Five justices agreed that the testimony as to Salinas's silence did not violate Salinas's Fifth Amendment rights. But three of the five justices (the "plurality") ruled that the reason no violation occurred was that Salinas had not affirmatively invoked his Fifth Amendment right to remain silent by saying, for example, "I refuse to answer that question," or "I'll take the Fifth." The other two justices agreed there was no Fifth Amendment violation, but for a different reason: that the admission of the testimony "did not compel [Salinas] to give self-incriminating testimony" and, thus, a Fifth Amendment violation would not have resulted even if he *had* expressly invoked.

Consequently, because a majority of the Court agreed that Salinas's Fifth Amendment rights were not violated, the plurality's reasoning became the ruling of the Court because it was the "position taken by those Members who concurred in the judgment on the narrowest grounds."²

Back to the non-technical issues. The Court acknowledged that a suspect who stands mute may intend that his action be interpreted as an invocation of his Fifth Amendment rights. But it noted that a suspect may also not answer a particular question because, for example, he might be stalling for time while he tried "to think of a good lie," or he might have been reluctant because the answer to the question would have embarrassed him or because he was protecting someone else.

So, because a suspect may stand mute for several reasons, the Court ruled that such conduct cannot, in and of itself, constitute a Fifth Amendment invocation. As the Court pointed out, "[I]t would have been a simple matter for [Salinas] to say that he was not answering the officer's question on Fifth Amendment grounds. Because he failed to do so, the prosecution's use of his noncustodial silence did not violate the Fifth Amendment."

Comment

There are two other things about this decision that officers should keep in mind. First, the Court did not elaborate on what a suspect must say to invoke his Fifth Amendment right not to incriminate himself. Instead, it simply observed that, "[a]lthough no ritualistic formula is necessary in order to invoke the privilege, a witness does not do so by simply standing mute." It seems apparent, however, that an invocation would result if the suspect said something like "I'm not going to answer that question" or "I don't want to talk about that." But remember that officers are not required to terminate the interview at that point; they are merely prohibited from insisting that he answer that particular question. Furthermore, the Court said that, if a suspect refuses to answer

² See *Marks v. United States* (1977) 430 US 188, 193 ["When a fragmented Court decided a case and no single rationale explaining the result enjoys the assent of five Justices, the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds."]; *U.S. v. Williams* (9th Cir. 2006) 435 F.3d 1148, 1158.

question, officers may inform him that his refusal to answer the question “could be used in a future prosecution.” Said the Court, “[P]olice officers have done nothing wrong when they accurately state the law.”

Second, because the Court ruled that Salinas’s physical responses to the officer’s question were also admissible (i.e., he “looked down at the floor, shuffled his feet, bit his bottom lip, clenched his hands in his lap, and began to tighten up”), officers in such a situation should carefully describe these responses in their police report so that prosecutors will be alerted that such evidence exists and also because it will help the officers remember exactly what the suspect said or did. POV

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