People v. Krebs  
(2019) \_\_ Cal.5th \_\_ [2019 WL 6207609]

Issues

(1) Did an investigator obtain a murder confession by utilizing a two-step interrogation process? (2) Did the investigator coerce the suspect into confessing?

Facts

In 1998, Krebs kidnapped, raped, and murdered a woman who was a student at Cal Poly in San Luis Obispo. About four months later, he murdered, raped, and kidnapped a student at Cuesta College, which is also located in San Luis Obispo. He became a suspect when his parole officer notified investigators of similarities between the two crimes and Krebs’s criminal history of sex crimes. Investigators subsequently conducted parole searches of Krebs’s home and truck during which they found a distinctive keychain that was later identified as belonging to one of the victims. They also found a BB gun and, as the result, they arrested Krebs for violating his parole by possessing a “simulated firearm.”

Following his arrest, Krebs was interviewed for about an hour by an investigator with the San Luis Obispo County District Attorney’s Office. The investigator did not *Mirandize* Krebs beforehand.[[1]](#footnote-1) The interview was largely unproductive. A few days later, Krebs agreed to take a polygraph examination. Prior to the test, the polygraph examiner *Mirandized* Krebs and obtained an oral and written waiver.

About three weeks later, on April 21, 1999, while Krebs was still being held on the parole violation, the investigator met with him again, confirmed that he was willing to talk to him about the crimes and that the polygraph examiner had *Mirandized* him and that he remembered his *Miranda* rights. Krebs was cooperative at the start and acknowledged that he had “fantasized about abducting women” but claimed to have “worked through” that. Then, after the investigator informed him about some of the physical evidence linking him to the crimes, he “lapsed into silence” for about 15 minutes and did not respond to any of the investigator’s questions.

After a ten minute break, the investigator told Krebs “we know you did it, what matters is why you did it.” Krebs responded that he “had nothing to say” and “[p]ut me down in a holding cell and let me think, all right?” When the investigator did not honor the request, Krebs told him that if he “sits there and tried to keep beating on him,” he was “not gonna say nothing.” Before terminating the interview, the investigator asked Krebs if it would be okay if he visited him the next day, and Krebs responded, “Maybe I’ll deal with it tomorrow.”

The next day, the investigator returned to the jail and met with Krebs in an employee break room. He decided to use the break room because it was a “noncustodial-type situation” where Krebs “would not feel any type of coercion.” The investigator began by informing Krebs that “the investigation painted a terrible picture” and Krebs responded, “I’m nothing but an animal, and I don’t deserve to live. . . . Nothing can justify what I did.” At this point, the investigator *Mirandized* Krebs who acknowledged that he understood his rights. Krebs then confession of both crimes.

Before trial, the judge suppressed Krebs’s statement about being an animal on grounds that the investigator failed to *Mirandize* him. However, the judge ruled that the subsequent confession was admissible because it occurred after Krebs had waived his rights. Krebs was convicted and sentenced to death.

Discussion

On appeal, Krebs argued that his confession should have been suppressed for various reasons. In this report we will discuss the most significant circumstances: (1) that his confession was obtained as the result of an illegal interrogation tactic known as “the two step,” and (2) that he did not confess voluntarily.

The two-step

Although he had been *Mirandized* before giving the statement, Krebs argued that his confession was inadmissible because it was obtained by means of an illegal “two step” interrogation process. What’s the “two step”? The term refers to an interrogation tactic in which officers would question a suspect at length without *Mirandizing* him. Then, if he confesses or makes a damaging admission, they would seek a waiver and, if he waived, they would try to get him to repeat the statement. The two-step was often successful because most suspects would waive their rights and repeat their confession or incriminating statement because they would think (erroneously) that it could be used against them at trial and, therefore, they had nothing to lose by repeating it.

Although there is no standard list of circumstances that must exist for an interrogation to be deemed a two-step, the courts are likely to invalidate a statement if, before *Mirandizing* the suspect, the officers engaged him in a systematic and exhaustive conversation pertaining to the crime under investigation. Other indications of a two-step interview are:

Interrogation tactics: During the conversation, the officers utilized interrogation tactics that were designed to produce an admission; e.g., “good cop/bad cop.”

Short time lapse: The post-waiver interrogation occurred shortly after the pre-waiver interrogation.

Nothing to lose: Officers reminded the suspect that he had already confessed so he would think he had nothing to lose by repeating it.[[2]](#footnote-2)

Applying these criteria to the facts of the case, the court ruled there was insufficient reason to believe that the investigator had utilized a two-step procedure. Among other things, the court noted that “there was no extended questioning before *Miranda* warnings were given,” and Krebs’s pre-warning statements “were nonspecific and lacking in detail.” The court acknowledged that the investigator “could have read defendant his *Miranda* rights before defendant made inculpatory statements” but ruled this “was not enough to show that he delayed in a calculated way to undermine the *Miranda* warning.” Thus, the court concluded that, even if the investigator “had no good reason for failing to give *Miranda* warnings when he first approached defendant,” there was not reason to believe that he “acted deliberately to obscure both the practical and legal significance of the admonition.”

Was Krebs coerced?

The court did not disturb the trial judge’s ruling that Krebs invoked his right to remain silent on April 21st when, after remaining mute for about 15 minutes, he said he had “nothing to say” and wanted to go back to his cell. This did not mean, however, that Krebs’s confession on April 22nd was obtained in violation of *Miranda*. For one thing, Krebs agreed that the investigator could return; i.e., “Maybe I’ll deal with it tomorrow.” Furthermore, even if Krebs had not done so, the investigator did not violate *Miranda* because the Supreme Court has ruled that if officers violated Miranda in obtaining a statement from a suspect, but later obtained a second statement from him in full compliance, the second statement may be admissible if the Miranda violation was “technical” in nature, meaning it was not inherently coercive; e.g., the officers neglected to obtain a waiver but did not pressure the suspect.[[3]](#footnote-3)

Consequently, the court examined the investigator’s conduct during the interview and determined that there no evidence that he had pressured or otherwise coerced Krebs to confess. Among other things, the court pointed out that the interview on April 21st lasted only about fifteen minutes, Krebs was not handcuffed, the interview occurred in an employee break room instead of a more imposing interrogation room, the investigator *Mirandized* Krebs twice and merely asked him to tell the truth. In addition, Krebs later told the investigator that he decided to confess—not because of coercion—but because he felt “what he did was wrong,” and because of the incriminating evidence that officers had gathered to date; e.g., the blood from one of the victims was found on the jump seat of his truck.

Consequently, the court ruled that the investigator had sufficiently complied with *Miranda*, and it affirmed Krebs’s confession and death sentence. POV

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1. NOTE: It is possible the investigator did not *Mirandize* Krebs because he had not yet been arrested for the murder; i.e., he was in custody on a parole violation. If so, he was wrong: *Miranda* rights are not “case specific,” meaning that a suspect who is in custody for one crime is deemed “in custody” even if officers questioned him about an unrelated crime. See *Michigan* *v.* *Mosley* (1975) 423 U.S. 96; *Mathis v. United States* (1968) 391 U.S. 1, 4-5. [↑](#footnote-ref-1)
2. See *Missouri v. Seibert* (2004) 542 U.S. 600, 616; *Bobby v. Dixon* (2011) 565 U.S. 23, 30-31. [↑](#footnote-ref-2)
3. See *Oregon* *v.* *Elstad* (1985) 470 US 298, 318; *Michigan* *v.* *Har*v*ey* (1990) 494 US 344, 351. [↑](#footnote-ref-3)