

## **People v. Waidla**

(April 6, 2000) \_\_ Cal.4th \_\_

### **ISSUE**

After a murder suspect invoked his *Miranda* right to counsel, did his comments to officers reasonably indicate he had changed his mind and wanted to talk to them about the crime?

### **FACTS**

Waidla and Sakarias brutally murdered a woman named Viivi Piirisids during the course of a robbery in the woman's home in Los Angeles. The next day they flew to New York. Shortly thereafter, LAPD detectives obtained a warrant for their arrests.

About a month later, Waidla was detained near the U.S.-Canada border in New York on suspicion of illegal entry. When a border patrol agent advised Waidla of his *Miranda* rights he said "he wanted an attorney." LAPD was notified of the arrest and immediately sent two homicide detectives to New York to take custody of Waidla.

After the detectives arrived at the border patrol station in New York where Waidla was being held, a border patrol agent was escorting Waidla out of a holding cell when Waidla spotted one of the detectives. It appears Waidla had seen the detective about two weeks earlier in New York City and was aware he was an LAPD officer. Waidla said to the detective, "You're the detective from Los Angeles?" The detective identified himself to Waidla and was about to explain what he was doing in New York when Waidla "interrupted" him and said, "What can I do for you?" or "What do you want from me?"

The detective, who was unaware that Waidla previously invoked his *Miranda* right to counsel, wanted to obtain a *Miranda* waiver before talking to him, so he told Waidla not to say anything until he could find an interview room. When they located a room and sat down, the detective started to explain that he was investigating the murder of Viivi Piirisids. Again, Waidla interrupted and said "he knew Viivi very well and that he had lived with the Piirisids." The detective "once again cautioned him not to say anything" and to "please just listen to what he had to say." When the detective told Waidla that he was a suspect in the murder, Waidla again interrupted and said something like, "What can I do to help you?" The detective then advised him of his *Miranda* rights and obtained a waiver from Waidla.

At first, Waidla denied any involvement in the murder but eventually made incriminating statements, and finally a confession. Waidla was subsequently convicted and sentenced to death.

### **DISCUSSION**

Waidla contended his statements to the detective, including his confession, should have been suppressed because they were obtained after he had invoked his *Miranda* right to counsel. Although the detective who questioned Waidla was unaware that Waidla previously invoked the *Miranda* right to counsel, the law is clear that when a suspect invokes, all officers are deemed to have knowledge of the invocation.<sup>(1)</sup> Consequently, Waidla's confession would be inadmissible unless the detective could lawfully question him despite the previous invocation.

After a suspect has invoked the *Miranda* right to counsel, officers may question the suspect if such questioning was initiated by the suspect.<sup>(2)</sup> **Attorney present:** After an invocation of the *Miranda* right to counsel, officers may also recontact the suspect to see if he is now willing to talk only if, (1) the suspect's attorney was present when police sought to initiate questioning, (2) the suspect agreed to talk with officers, (3) the suspect's attorney was present throughout the interrogation, and (4) the suspect waived his *Miranda* rights. See *Minnick v. Mississippi* (1990) 498 US 146, 152-3 ["Our cases following *Edwards* have interpreted the decision to mean that the authorities may not initiate questioning of the accused in counsel's absence. . . . [W]e now hold that when counsel is requested, interrogation must cease, and officials may not reinitiate interrogation without counsel present, whether or not the accused has consulted with his attorney."]; *Edwards v. Arizona* (1981) 451 US 477, 484; *Davis v. United States* (1994) 512 US 452, 458. Such questioning will be deemed "suspect-initiated" only if the following requirements are met:

(1) **No pressure:** Officers must not have pressured the suspect into changing his mind and talking to them.<sup>(3)</sup>

(2) **Suspect wants to open up a "generalized discussion" of the crime:** Officers must have reasonably believed the suspect wanted to open up a generalized discussion of the crime.<sup>(4)</sup>

(3) ***Miranda* waiver:** If the suspect was in-custody when he initiated questioning, officers must have obtained a *Miranda* waiver before the questioning began.<sup>(5)</sup>

Waidla contended the second requirement was not met. Specifically, he argued that he did not demonstrate a desire to open up a "generalized discussion" of the murder when he asked the detective, "What can I do for you?" or "What do you want from me?" The court disagreed:

"Waidla's words and conduct can fairly be said to represent such a desire with respect to the [LA murder]. In fact, their only apparent referent is that investigation, and nothing else. That they might perhaps be construed otherwise if construed subjectively-for example, as merely a manifestation of politeness-is of no consequence."

The court pointed out that if Waidla had not interrupted the detective and indicated a desire to talk about the case, the detective would probably have questioned him in violation of *Miranda*, in which case the confession would have been suppressed. As the court summarized this turn of events, "Waidla may have saved [the detective] from himself. But save him he did."

1. See *Arizona v. Roberson* (1988) 486 US 675, 687-8.

2. See *People v. Superior Court (Zolnay)* (1975) 15 Cal.3d 729, 736-7 ["A suspect who has asserted his rights and prevented further lawful interrogation nonetheless retains the option, thereafter, voluntarily to initiate a confession."]; *People v. Hayes* (1985) 169 Cal.App.3d 898, 909 ["*Miranda* does not proscribe a suspect from changing his mind concerning speaking to the police, when his change of heart is a voluntary one, based on factors that do not involve coercion by the police."]; *People v. McClary* (1977) 20 Cal.3d 218, 226 ["[A] change of mind on the part of the defendant prompted by the advice of counsel, his own psychological make-up, or similar facts is not proscribed by *Miranda*."]; *People v. Powell* (1986) 178 Cal.App.3d 36, 41; *People v. Brockman* (1969) 2 Cal.App.3d 1002, 1007.

**NOTE:** Questioning is also permitted under either of the following circumstances:

**Suspect released:** Officers may seek to interrogate a suspect who has invoked if, (1) the suspect was released from custody after he invoked, and (2) the release was made in good faith, meaning it was not a pretext or subterfuge. See *People v. Inman* (1986) 186 Cal.App.3d 1137, 1143; *In re Bonnie H.*, (1997) 56 Cal.App.4th 563, 583 ["Once released, the suspect is no longer under the inherently compelling pressures of continuous custody where there is a reasonable possibility of wearing the suspect down by badgering police tactics . . . . A break in custody between the first and second interrogations also provides the suspect the opportunity to speak with an attorney, family member or any person the suspect cares to consult without police constraints."]; *People v. Mack* (1980) 27 Cal.3d 145, 152-4; *People v. Scaffidi* (1992) 11 Cal.App.4th 145, 152.

3. See *Edwards v. Arizona* (1981) 451 US 477, 485, fn.9; *People v. McClary* (1977) 20 Cal.3d 218, 226-7 ["(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."]; *People v. Morris* (1991) 53 Cal.3d 152, 199-202; *People v. Boyer* (1989) 48 Cal.3d 247, 274. **COMPARE** *People v. Superior Court (Zolnay)* (1975) 15 Cal.3d 729.

4. See *Edwards v. Arizona* (1981) 451 US 477, 484-5; *Oregon v. Bradshaw* (1983) 462 US 1039, 1041-8; *People v. Bradford* (1997) 14 Cal.4th 1005, 1034-7. *People v. Dominick* (1986) 182 Cal.App.3d 1174, 1190; *People v. McClary* (1977) 20 Cal.3d 218, 226; *People v. Superior Court (Zolnay)* (1975) 15 Cal.3d 729, 737; *People v. Dingle* (1985) 174 Cal.App.3d 21, 28.

5. See *Oregon v. Bradshaw* (1983) 462 US 1039, 1041-8; *Edwards v. Arizona* (1981) 451 US 477, 485, fn.9.