Supplementary Material

Chapter 11: The Contemporary Era—Criminal Justice/Interrogations

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Berghuis v. Thompkins, 560 U.S. ___ (2010)

Van Chester Thompkins was arrested and interrogated by police about his role in the murder of Samuel Morris. At the beginning of the questioning, Thomkins was handed a form in which five Miranda *warnings were listed. Thompkins read one warning out loud. The others were read to him. He refused, however, to sign the form. For the next 2 hours and 45 minutes, Thompkins was largely unresponsive to police questioning. Late in the third hour, Thompkins said "Yes," when asked "Do you pray to God to forgive you for shooting that boy down?" He answered no more questions and refused to make a written confession. The trial judge refused to suppress Thompkins confession. Thompkins was subsequently found guilty and sentenced to life in prison. After the Michigan Supreme Court refused to hear his appeal, Thompkins filed a habeas corpus suit in federal court against Mary Berghuis, the prison warden in Michigan. He claimed that the decision to admit his confession violated the Fifth Amendment, as incorporated by the due process clause of the Fourteenth Amendment. The local federal district court disagreed, but that decision was reversed by the Court of Appeals for the Sixth Circuit. The United States appealed to the Supreme Court.*

The National Association of Criminal Defense Lawyers and the ACLU filed an amicus brief urging the Supreme Court to overturn Thompkins's conviction. That brief asserted,

> *Given* Miranda*'s concern with the coercive pressures of lengthy interrogation, the government cannot meet that "great" burden unless the suspect begins responding to police shortly after interrogation begins.*

The United States, the Criminal Justice Legal Foundation and Wayne County, Michigan, filed amicus briefs urging the Supreme Court to affirm the conviction. The brief for the Obama administration stated,

> *Respondent validly waived his Fifth Amendment privilege against compelled self-incrimination when he answered police questions after receiving and understanding his* Miranda *rights. Respondent listened to police questions for a time, without either invoking or waiving his rights, but he ultimately decided to speak. That course of conduct evidenced a knowing, intelligent, and voluntary waiver of his* Miranda *rights, and his statements were therefore admissible in the State's case in chief.*

The Supreme Court by a 5–4 vote ruled that the confession was constitutionally admitted into evidence. Justice Kennedy's majority opinion asserted that persons wishing to assert their Miranda *right to remain silent must do so unambiguously. Why did he reach that conclusion? Why did the dissent disagree? What standard would Justice Sotomayor demand for determining whether the right to remain silent had been invoked? The brief for the Obama Administration was written by then–Solicitor General Elena Kagan. Kagan was subsequently appointed to the Supreme Court. Would you predict any differences between the briefs filed by Solicitor General Kagan and opinions written by Justice Kagan?*

JUSTICE KENNEDY delivered the opinion of the Court.

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. . . Thompkins makes various arguments that his answers to questions from the detectives were inadmissible. He first contends that he "invoke[d] his privilege" to remain silent by not saying anything for a sufficient period of time, so the interrogation should have "cease[d]" before he made his inculpatory statements.

This argument is unpersuasive. In the context of invoking the *Miranda* right to counsel, the Court [in past cases] . . . held that a suspect must do so "unambiguously." If an accused makes a statement concerning the right to counsel "that is ambiguous or equivocal" or makes no statement, the police are not required to end the interrogation, or ask questions to clarify whether the accused wants to invoke his or her Miranda rights.

[T]here is no principled reason to adopt different standards for determining when an accused has invoked the *Miranda* right to remain silent and the *Miranda* right to counsel. . . . Both protect the privilege against compulsory self-incrimination by requiring an interrogation to cease when either right is invoked.

There is good reason to require an accused who wants to invoke his or her right to remain silent to do so unambiguously. A requirement of an unambiguous invocation of *Miranda* rights results in an objective inquiry that "avoid[s] difficulties of proof and . . . provide[s] guidance to officers" on how to proceed in the face of ambiguity. If an ambiguous act, omission, or statement could require police to end the interrogation, police would be required to make difficult decisions about an accused's unclear intent and face the consequence of suppression "if they guess wrong." Suppression of a voluntary confession in these circumstances would place a significant burden on society's interest in prosecuting criminal activity. Treating an ambiguous or equivocal act, omission, or statement as an invocation of *Miranda* rights "might add marginally to *Miranda*'s goal of dispelling the compulsion inherent in custodial interrogation." But "as *Miranda* holds, full comprehension of the rights to remain silent and request an attorney are sufficient to dispel whatever coercion is inherent in the interrogation process."

Thompkins did not say that he wanted to remain silent or that he did not want to talk with the police. Had he made either of these simple, unambiguous statements, he would have invoked his "'right to cut off questioning.'" Here he did neither, so he did not invoke his right to remain silent.

We next consider whether Thompkins waived his right to remain silent. Even absent the accused's invocation of the right to remain silent, the accused's statement during a custodial interrogation is inadmissible at trial unless the prosecution can establish that the accused "in fact knowingly and voluntarily waived [*Miranda*] rights" when making the statement. The waiver inquiry "has two distinct dimensions": waiver must be "voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception," and "made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it."

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. . . Where the prosecution shows that a *Miranda* warning was given and that it was understood by the accused, an accused's uncoerced statement establishes an implied waiver of the right to remain silent.

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The record in this case shows that Thompkins waived his right to remain silent. . . . There was more than enough evidence in the record to conclude that Thompkins understood his *Miranda* rights. Thompkins received a written copy of the *Miranda* warnings; Detective Helgert determined that Thompkins could read and understand English; and Thompkins was given time to read the warnings. Thompkins, furthermore, read aloud the fifth warning, which stated that "you have the right to decide at any time before or during questioning to use your right to remain silent and your right to talk with a lawyer while you are being questioned." He was thus aware that his right to remain silent would not dissipate after a certain amount of time and that police would have to honor his right to be silent and his right to counsel during the whole course of interrogation. Those rights, the warning made clear, could be asserted at any time. . . .

Second, Thompkins's answer to Detective Helgert's question about whether Thompkins prayed to God for forgiveness for shooting the victim is a "course of conduct indicating waiver" of the right to remain silent. If Thompkins wanted to remain silent, he could have said nothing in response to Helgert's questions, or he could have unambiguously invoked his *Miranda* rights and ended the interrogation. The

fact that Thompkins made a statement about three hours after receiving a *Miranda* warning does not overcome the fact that he engaged in a course of conduct indicating waiver. Police are not required to rewarn suspects from time to time. Thompkins's answer to Helgert's question about praying to God for forgiveness for shooting the victim was sufficient to show a course of conduct indicating waiver. This is confirmed by the fact that before then Thompkins had given sporadic answers to questions throughout the interrogation.

Third, there is no evidence that Thompkins's statement was coerced. Thompkins does not claim that police threatened or injured him during the interrogation or that he was in any way fearful. The interrogation was conducted in a standard-sized room in the middle of the afternoon. It is true that apparently he was in a straight-backed chair for three hours, but there is no authority for the proposition that an interrogation of this length is inherently coercive. . . .

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JUSTICE SOTOMAYOR, with whom JUSTICE STEVENS, JUSTICE GINSBURG, and JUSTICE BREYER join, dissenting.

The Court concludes today that a criminal suspect waives his right to remain silent if, after sitting tacit and uncommunicative through nearly three hours of police interrogation, he utters a few one-word responses. The Court also concludes that a suspect who wishes to guard his right to remain silent against such a finding of "waiver" must, counterintuitively, speak—and must do so with sufficient precision to satisfy a clear-statement rule that construes ambiguity in favor of the police. Both propositions mark a substantial retreat from the protection against compelled self-incrimination that *Miranda v. Arizona* (1966), has long provided during custodial interrogation. . . .

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The strength of Thompkins' *Miranda* claims depends in large part on the circumstances of the 3-hour interrogation, at the end of which he made inculpatory statements later introduced at trial. The Court's opinion downplays record evidence that Thompkins remained almost completely silent and unresponsive throughout that session. One of the interrogating officers, Detective Helgert, testified that although Thompkins was administered *Miranda* warnings, the last of which he read aloud, Thompkins expressly declined to sign a written acknowledgment that he had been advised of and understood his rights. There is conflicting evidence in the record about whether Thompkins ever verbally confirmed understanding his rights. The record contains no indication that the officers sought or obtained an express waiver.

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This Court's decisions subsequent to *Miranda* have emphasized the prosecution's "heavy burden" in proving waiver. . . . We have also reaffirmed that a court may not presume waiver from a suspect's silence or from the mere fact that a confession was eventually obtained.

. . . It is undisputed here that Thompkins never expressly waived his right to remain silent. His refusal to sign even an acknowledgment that he understood his *Miranda* rights evinces, if anything, an intent not to waive those rights. That Thompkins did not make the inculpatory statements at issue until after approximately 2 hours and 45 minutes of interrogation serves as "strong evidence" against waiver. . . .

In these circumstances, Thompkins' "actions and words" preceding the inculpatory statements simply do not evidence a "course of conduct indicating waiver" sufficient to carry the prosecution's burden. . . . I believe it is objectively unreasonable under our clearly established precedents to conclude the prosecution met its "heavy burden" of proof on a record consisting of three one-word answers, following 2 hours and 45 minutes of silence punctuated by a few largely nonverbal responses to unidentified questions.

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Today's dilution of the prosecution's burden of proof to the bare fact that a suspect made inculpatory statements after *Miranda* warnings were given and understood takes an unprecedented step away from the "high standards of proof for the waiver of constitutional rights" this Court has long

demanded. . . . When waiver is to be inferred during a custodial interrogation, there are sound reasons to require evidence beyond inculpatory statements themselves. *Miranda* and our subsequent cases are premised on the idea that custodial interrogation is inherently coercive. Requiring proof of a course of conduct beyond the inculpatory statements themselves is critical to ensuring that those statements are voluntary admissions and not the dubious product of an overborne will. Today's decision thus ignores the important interests *Miranda* safeguards. The underlying constitutional guarantee against self-incrimination reflects "many of our fundamental values and most noble aspirations," our society's "preference for an accusatorial rather than an inquisitorial system of criminal justice"; a "fear that self-incriminating statements will be elicited by inhumane treatment and abuses" and a resulting "distrust of self-deprecatory statements"; and a realization that while the privilege is "sometimes a shelter to the guilty, [it] is often a protection to the innocent." For these reasons, we have observed, a criminal law system "which comes to depend on the 'confession' will, in the long run, be less reliable and more subject to abuses than a system relying on independent investigation." "By bracing against 'the possibility of unreliable statements in every instance of in-custody interrogation,'" *Miranda*'s prophylactic rules serve to "'protect the fairness of the trial itself.' " Today's decision bodes poorly for the fundamental principles that *Miranda* protects.

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. . . The suspect's "'right to cut off questioning'" must be "'scrupulously honored.'" Such a standard is necessarily precautionary and fact specific. The rule would acknowledge that some statements or conduct are so equivocal that police may scrupulously honor a suspect's rights without terminating questioning—for instance, if a suspect's actions are reasonably understood to indicate a willingness to listen before deciding whether to respond. But other statements or actions—in particular, when a suspect sits silent throughout prolonged interrogation, long past the point when he could be deciding whether to respond—cannot reasonably be understood other than as an invocation of the right to remain silent. Under such circumstances, "scrupulous" respect for the suspect's rights will require police to terminate questioning under *Michigan v. Mosley* (1975).

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[T]he Court's concern that police will face "difficult decisions about an accused's unclear intent" and suffer the consequences of "'guess[ing] wrong,'" is misplaced. If a suspect makes an ambiguous statement or engages in conduct that creates uncertainty about his intent to invoke his right, police can simply ask for clarification. It is hardly an unreasonable burden for police to ask a suspect, for instance, "Do you want to talk to us?" Given this straightforward mechanism by which police can "scrupulously hono[r]" a suspect's right to silence, today's clear-statement rule can only be seen as accepting "as tolerable the certainty that some poorly expressed requests [to remain silent] will be disregarded" without any countervailing benefit. Police may well prefer not to seek clarification of an ambiguous statement out of fear that a suspect will invoke his rights. But "our system of justice is not founded on a fear that a suspect will exercise his rights. 'If the exercise of constitutional rights will thwart the effectiveness of a system of law enforcement, then there is something very wrong with that system.'"

The Court asserts in passing that treating ambiguous statements or acts as an invocation of the right to silence will only "'marginally'" serve *Miranda*'s goals. Experience suggests the contrary. In the 16 years since Davis was decided, ample evidence has accrued that criminal suspects often use equivocal or colloquial language in attempting to invoke their right to silence.

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Today's decision turns *Miranda* upside down. Criminal suspects must now unambiguously invoke their right to remain silent—which, counterintuitively, requires them to speak. At the same time, suspects will be legally presumed to have waived their rights even if they have given no clear expression of their intent to do so. Those results, in my view, find no basis in *Miranda* or our subsequent cases and are inconsistent with the fair-trial principles on which those precedents are grounded. Today's broad new rules are all the more unfortunate because they are unnecessary to the disposition of the case before us. I respectfully dissent.