

## Miranda Under the Microscope Again

By John Wilkinson, JD\*

On June 1, 2010, the United States Supreme Court rendered its opinion in *Berghuis, Warden v. Thompson*, 560 U.S. \_\_\_\_ (2010), a case involving an individual's waiver of his right to remain silent pursuant to *Miranda v. Arizona*.<sup>1</sup> The Court held that after properly administering the *Miranda* warning, police did not need an express or implied waiver of rights before they interrogated the suspect and that the suspect in this case failed to clearly invoke his right to remain silent by simply remaining mostly silent during the interrogation.

### FACTS

In January of 2000, Michigan Police issued an arrest warrant for Van Chester Thompson for murder, attempted murder, and other charges from his involvement in a shooting that killed one person and injured another. Thompson fled Michigan but was arrested in Ohio a year later. Two Michigan Detectives went to Ohio to interview Thompson while he was being held in custody awaiting transfer back to Michigan. The interrogation, conducted in an 8 by 10 foot room, began at 1:30 p.m. and lasted about three hours. The officers read the *Miranda* warning from a preprinted form and had Thompson read the last line of the warning from the form out loud to establish he could read and understand English. After advising him of his rights the record is in conflict as to whether Thompson was asked if he understood his rights. The Detective testified at a suppression hearing that he had asked and received verbal confirmation from Thompson that he understood his rights but then testified at trial that he wasn't sure that occurred. Either way, Thompson declined to sign the form acknowledging that he had been advised of his rights and understood them. During the three-hour interrogation Thompson remained almost completely silent, except for a few one-word answers to questions and a complaint about his uncomfortable chair. After 2 hours and 45 minutes into the interview, the Detective asked Thompson "Do you believe in God?" Thompson made eye contact with the Detective and said "Yes," his eyes welling up with tears. The Detective then asked "Do you pray to God?" Thompson answered "Yes." He then asked, "Do you pray to God to forgive you for shooting that boy down?" Thompson said, "Yes" and looked away. The interview ended about fifteen minutes later. At no time during the interview did Thompson say that he did not want to talk with the police or that he wanted an attorney. Thompson moved to suppress the confession on the grounds that the police interrogated him before obtaining a waiver of his *Miranda* rights and that, by remaining silent during the three hour interrogation, he had invoked his right to remain silent, and not waived it. The trial court denied his motion and the jury found him guilty on all counts, sentencing him to life without parole. That decision was upheld by the Michigan Court of Appeals and the United States District Court. The United States Court of Appeals for the 6<sup>th</sup> Circuit reversed the trial court saying that Thompson's persistent silence clearly demonstrated that he did not wish to waive his rights.

### THE DECISION

In rejecting Thompson's appeal, The Supreme Court made three key findings: (1) Thompson's remaining silent during his interrogation did not amount to an invocation of his right to remain silent; (2) Thompson knowingly waived his right to remain silent by making a statement to the police without being coerced; and (3) after giving *Miranda* warnings, the police did not need to obtain a waiver of those rights before they interrogated Thompson.

**(1) Invoking Right to Remain Silent.** The Supreme Court first ruled that, after being properly advised of his *Miranda* rights, Thompson did not invoke his rights by mostly remaining silent during the interrogation. The Court relied on its ruling in *Davis v. U.S.*,<sup>2</sup> which examined a suspect's request for counsel. In *Davis*, the Court held that a suspect's request for counsel must be made unambiguously and unequivocally. They further found that a suspect must clearly indicate to police that he wishes to exercise his 6<sup>th</sup> Amendment right to counsel, upon which interrogation must end. Further, when a suspect makes ambiguous or unclear statements about their right to a lawyer, the police are not required to ask questions to clarify what the suspect wishes nor are they required to stop questioning. The *Thompson* Court said that there is no difference between exercising your 6<sup>th</sup> Amendment right to counsel and exercising your 5<sup>th</sup> Amendment right to remain silent. A suspect must clearly invoke his right to remain silent just as he would to invoke his right to have a lawyer. In this case, simply remaining silent during most of the interrogation was not a clear and unambiguous message to the police that Thompson did not want to be questioned.

**(2) Waiving Right to Remain Silent.** Next, the Court ruled that Thompkins not only did not invoke his right to remain silent, he waived his right to remain silent. A suspect can expressly waive the right to remain silent, usually by signing a waiver form or verbally agreeing to speak with the police, or they can implicitly waive their *Miranda* rights by engaging in a course of conduct that indicates waiver. This is usually established by showing that the suspect made statements to police and was treated well, or at least not poorly, during questioning. The Court relied on the standard set in *Moran v. Burbine*,<sup>3</sup> which stated that a valid waiver of *Miranda* rights must be done knowingly and voluntarily. The prosecution has the burden to establish (only by a preponderance of the evidence under *Colorado v. Connelly*<sup>4</sup>) that the individual understood his rights and appreciated the consequences of abandoning those rights -- and that he did so freely, without being forced or coerced. In this case, Thompkins never suggested that he didn't understand his rights or the consequences of speaking with the police. He never told the police he didn't want to speak with them and although he didn't say much, he did answer some of their questions including admitting that he shot someone. The Court said there was no evidence to suggest that the length of the interrogation or the conditions were coercive.

**(3) Interrogation Prior to Waiver.** Finally, the Court ruled that the police are not required to obtain an express waiver of *Miranda* rights prior to interrogating a suspect. The police must always properly advise a person in custody of their *Miranda* rights prior to questioning. This would usually include asking the suspect if they understood those rights and if they wished to talk with the police. However, as in *Thompkins*, suspects often refuse to acknowledge, either verbally or in writing, that they understand and are willing to speak with the police. At the same time they will not clearly tell police they don't wish to talk. The Court relied on *North Carolina v. Butler*,<sup>5</sup> which said that you can infer that someone has waived their rights from their words and actions during interrogation. If you can look at what a suspect said and did during questioning to determine if they waived their right to remain silent, obviously questioning can occur prior to an express waiver of those rights. In this case, Thompkins neither expressly nor impliedly waived his rights when questioning began, however, during the course of questioning it became clear that he was willing to talk to the police and did so.

## IMPACT

The *Thompkins* decision does not appear to drastically change the *Miranda* holding. Police must still advise people in custody of their *Miranda* rights prior to questioning. However, *Thompkins* does say that police can question a suspect prior to a clear indication that the suspect wishes to remain silent. As a best practice, police departments should not change policy on *Miranda* and should still require officers to ask if a suspect wishes to speak with the police prior to questioning. Each case is fact specific and while this Court said that 3 hours was not inherently coercive, 7, 9 or 12 hours might be viewed differently. The *Thompkins* opinion appears to reflect the realities of police investigations and interviews which are often fluid situations, changing throughout the course of ongoing interactions. This may be particularly true in cases of domestic violence or sexual assault, where defendants may be willing to speak with the police -- or even want to do so -- but are inhibited by the shame of their actions. The *Thompkins* decision thus offers law enforcement additional guidance on when and how they can proceed with the questioning of suspects.

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## ENDNOTES

<sup>1</sup> 384 U.S. 436 (1966).

<sup>2</sup> 512 U.S. 452 (1994).

<sup>3</sup> 475 U.S. 412 (1986).

<sup>4</sup> 479 U.S. 157 (1986).

<sup>5</sup> 441 U.S. 369 (1979).

*This project was supported by Grant No. 2009-TA-AX-K024 awarded by the U.S. Department of Justice, Office on Violence Against Women (OVW). The opinions, findings, conclusions, and recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of OVW.*

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