

U.S. Supreme Court Lessens Miranda Burden

You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have a right to an attorney. If you cannot afford an attorney, one will be appointed to you. Do you understand these rights as they have been read to you?

Few rights are more ubiquitous than *Miranda*. If you're a fan of TV police dramas, you're no doubt familiar with the above oft-quoted rights delivered in memorable fashions ranging from the no-nonsense monotone of Sergeant Joe Friday to the hard-edged, irascible barking of Detective Andy Sipowicz. This warning and slight variations of it derive from the case of the same name, *Miranda v. Arizona*. In that case, the United States Supreme Court never actually prescribed the exact wording of the warning that must be given to suspects prior to custodial interrogation, but rather promulgated a set of guidelines to be followed: "He must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires." *Miranda v. Arizona*, 384 U.S. 436, at 479 (1966). These procedural safeguards against self-incrimination, which find their origins in the Fifth and Fourteenth Amendments to the U.S. Constitution, must be provided by the police to criminal suspects before initiating custodial interrogations. The *Miranda* Court placed a "heavy burden ... on the government to demonstrate that the defendant knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel."

In a 5-4 case that Justice Sotomayor, writing her first major dissent since her appointment to the high court, characterized as turning "*Miranda* upside down," the United States Supreme Court recently held that an accused must now unambiguously invoke his right to remain silent. Moreover, the Court held that so long as a *Miranda* warning is provided and understood by the accused an uncoerced statement can constitute an implied waiver of one's right to remain silent. *Berghuis v. Thompkins*, No. 08-1470.

The case involved the killing of one man and the injuring of another outside a mall in Southfield, Michigan. The suspect in the shootings, Van Chester Thompkins, fled and was apprehended a year later in Ohio. Two Southfield police officers traveled to Ohio to interrogate Thompkins and arrange for his transfer back to Michigan. Before questioning began, Southfield Detective Helgert gave Thompkins a form explaining his *Miranda* rights. Thompkins was asked to read a part of the form out loud to demonstrate he could read, after which Detective Helgert read the rest of it to him. Thompkins was also asked to sign the form to acknowledge he understood his rights, which he refused to do. The officers then began interrogating Thompkins, a process that, in spite of Thompkins's nonresponsiveness, took nearly three hours. "To the extent Thompkins gave any response, his answers consisted of a word or two. A 'yeah,' or a 'no,' or 'I don't know.' ... And sometimes ... he simply sat down ... with [his] head in [his] hands looking down." Near the end of the interrogation, Detective Helgert asked Thompkins "Do you pray to God to forgive you for shooting that boy down?" Thompkins replied, "Yes." Thompkins was charged with first-degree murder, assault with intent to commit murder, and firearms related offenses. Despite his attempt to suppress his statements, the jury found Thompkins guilty on all counts and was sentenced to life in prison without parole.

There were three main questions before the Court related to the admissibility of Thompkins's statements. The first was whether Thompkins invoked his right to remain silent by not saying anything for an extended period of time. The Court answered this question by drawing an analogy to an accused's right to counsel. Refusing to adopt a different standard to determine whether an accused has invoked the right to counsel and the right to remain silent, the Court reasoned that just as with the right to counsel, the right to remain silent must be invoked unambiguously. Such a standard the Court held will "avoid difficulties of proof and ... provide guidance to officers on how to proceed in the face of ambiguity." Since Thompkins did not say that he wanted to remain silent or that he did not want to talk, he did not invoke such a right.

The second question before the Court was whether Thompkins waived his right to remain silent. Under *Miranda*, inculpatory statements are inadmissible at trial unless it can be shown that the accused "in fact knowingly and voluntarily waived [Miranda] rights" at the time the statement was made. Despite *Miranda*'s heavy burden to demonstrate that the defendant "knowingly and intelligently" waived his privilege against self-incrimination and right to counsel, the Court held that such a showing of a waiver of *Miranda* rights does not have to be express. Consistent with the "main purpose" of *Miranda* to ensure that the accused is advised of and understands his rights, a waiver may be implied by an uncoerced statement. Here, Thompkins's "Yes" reply to Detective Helgert's question of whether he prayed to God for forgiveness for shooting the victim established a "course of conduct indicating waiver."

The last question before the Court was whether the police were allowed to question Thompkins without first obtaining a waiver of his right to remain silent. The Court held that obtaining a waiver was unnecessary, as Thompkins's words and actions themselves inferred waiver. The primary protection afforded suspects is the *Miranda* warning. "[A] suspect who has received and understood the *Miranda* warnings, and has not invoked his *Miranda* rights, waives the right to remain silent by making an uncoerced statement to police."

Though the unassailable logic of Justice Sotomayor's critique that "[c]riminal suspects must now unambiguously invoke their right to remain silent – which counterintuitively, requires them to speak" may be hard to ignore, law enforcement in Vermont will likely find the Court's ruling in *Thompkins* to be easier to adhere to when interrogating criminal suspects.

Justice Kennedy, writing for the majority, summarized the Court's new perspective on *Miranda* rights as follows:

"The *Miranda* rule and its requirements are met if a suspect receives adequate *Miranda* warnings, understands them, and has an opportunity to invoke the rights before giving any answers or admission... (A)fter giving a *Miranda* warning, police may interrogate a suspect who has neither invoked nor waived his or her *Miranda* rights... If the right to counsel or the right to remain silent is invoked at any point during questioning, further interrogation must cease...(A) suspect who has received and understood the *Miranda* warnings, and has not invoked his *Miranda* rights, waives the right to remain silent by making an uncoerced statement to the police."

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