

Recent Case Report

People v. Davis

(July 21, 2005) __ Cal.4th __ [2005 WL 1691654]

ISSUES

(1) May officers secretly record conversations between arrestees that occur in police stations? (2) Was a murder suspect “interrogated” when a detective told him that his fingerprint had been found on the murder weapon? (3) If so, should the trial court have suppressed an incriminating statement the suspect made while discussing the interview with his cellmate?

FACTS

Davis and Wright were arrested for some unspecified crime in Los Angeles. Davis posted bail; Wright couldn't. To raise some quick cash for Wright's bail, Davis, Brown, Redmond, and Bennett decided to rob a liquor store. Although there are plenty of liquor stores in Los Angeles, for some unexplained reason they decided to go to Barstow to rob one. But to get there, they needed a car. So one night, having armed themselves with an Uzi semi-automatic pistol, they went over to Westwood to steal one.

When they arrived, they spotted young man and woman inside a Honda. They stole the car and took the couple with them. Before heading for Barstow, however, they stopped in a field off Mulholland Drive where Davis shot and killed both victims.

The four gunmen then headed for Barstow. But they got lost and wound up in Bakersfield, which is about 130 miles from Barstow. Witlessly determined to rob only a liquor store located within the city limits of Barstow, they figured out how to get there and continued their trek. When they eventually arrived and located a suitable liquor store, they sent Brown inside to check it out. He returned a few minutes later, telling his accomplices it “wasn't cool.”

So, having robbed no liquor store in Barstow or elsewhere—but having murdered two innocent people—they drove home.

While en route, Redmond was assigned the job of getting rid of the Honda. He decided to burn it up to eliminate any prints. After dropping off his buddies, he parked the car in an alley, saturated the passenger compartment with gasoline, then reached in and tossed a match. Apparently unaware that fiery explosions often result when lighted matches are thrown into gasoline-soaked vehicles, Redmond's hands and face were severely burned by the resulting fireball. He fled.

After firefighters extinguished the blaze, LAPD investigators searched the trunk and found a wallet belonging to one of the murder victims. Investigators also found Redmond's fingerprint on the car, and they learned that Redmond's known associates included Davis and Brown.

Redmond was arrested a few days later; there were burns on his face and hands. Brown was also arrested. While searching his bedroom, officers found the Uzi and a ring belonging to one of the victims. During questioning, Brown confessed, implicating Davis

and the others. He also led officers to the victims' bodies. At the murder scene, officers found shell casings that were later linked to the Uzi. A few hours later, Davis surrendered.

After Davis was *Mirandized*, he invoked his right to remain silent. He and Redmond were then placed in separate but adjacent cells in an isolated holding area. The cells were bugged. It appears Davis knew that Brown had told the officers that Davis was the shooter because he complained to Redmond that Brown did not actually *see* him shoot the couple. Said Davis, "No mother fucker didn't see me shoot no mother-fuckin-body. Tell you the truth, the mother fucker that told them that didn't really see you know, they just heard, you know what I'm sayin'?" A little later, an LAPD detective entered Davis's cell and said, "Remember that Uzi?" When Davis replied, "Yeah," the detective said, "Think about that little fingerprint on it. We'll see ya."

No fingerprint had been found on the Uzi—it was a ploy. And it worked. When the detective left, the beleaguered Davis told Bennett, "Man if that nigger De De [Brown] don't die, I am going to kick man. The fingerprints on the Uzi is mine. I know that motherfucker has been handled since I handled it."

Recordings of these conversations assisted the jury in convicting Davis of kidnapping, robbery, and two counts of first-degree murder. He was sentenced to death.

DISCUSSION

Davis argued that the recordings should have been suppressed for two reasons: (1) he had a reasonable expectation of privacy in his cell and, therefore, a warrant was required to bug it; and (2) the detective violated *Miranda* when, after Davis invoked, he represented that his fingerprints had been found on the Uzi.

BUGGING THE CELLS: It is settled that prisoners in jails and police stations cannot reasonably expect that their conversations with visitors and other inmates will be private.¹ Nevertheless, Davis argued this rule should not apply to pretrial detainees; i.e., people who have not yet been convicted..² The California Supreme Court disagreed, summarily ruling that "pretrial detainees can have no legitimate expectation that their jailhouse conversations will not be monitored or recorded."³

MIRANDA: Davis also contended that his statements should have been suppressed because they were obtained in violation of *Miranda*. As noted, he invoked his *Miranda* right to remain silent immediately after he was *Mirandized*. Later that day, the detective entered his cell and told him, essentially, that his fingerprint had been found on the Uzi.

¹ See *People v. Loyd* (2002) 27 Cal.4th 997; *Hudson v. Palmer* (1984) 468 U.S. 517, 527-8; *Lanza v. New York* (1962) 370 U.S. 139, 143 ["[I]t is obvious that a jail shares none of the attributes of privacy of a home, an automobile, an office, or a hotel room. In prison, official surveillance has traditionally been the order of the day."].

² **NOTE:** Davis was able to reach this nonsensical conclusion by distorting two cases decided by the U.S. Supreme Court: *Bell v. Wolfish* (1979) 441 U.S. 520 [Court assumed, *without deciding*, that pretrial detainees retain an expectation of privacy, although a diminished one], and *Hudson v. Palmer* (1984) 468 U.S. 517 [*convicted prisoners* cannot reasonably expect privacy in their cells].

³ Citing *Hudson v. Palmer* (1984) 468 U.S. 517, 527 [the need for "close and continued surveillance of inmates and their cells" extends to "anyone being held in jail."]; *Bell v. Wolfish* (1979) 441 U.S. 520, 546-7 ["[t]here is no basis for concluding that pretrial detainees pose any lesser security risk than convicted inmates."].

Although Davis did not immediately respond, he did later when he was alone with Redmond and admitted he had, in fact, handled the Uzi.

As we discussed in the Summer 2005 *Point of View*, officers may not “interrogate” a suspect after he has invoked his rights. We also explained that “interrogation” occurs when an officer asks a question or makes a statement that is reasonably likely to elicit an incriminating response.⁴ Finally, we noted that the courts routinely rule that an incriminating response is reasonably likely if officers accuse a suspect of committing a crime or if they inform him of the evidence of his guilt, especially if it’s done in a provocative or goading manner.⁵

Not surprisingly, the court ruled the detective’s comment in which he implied that Davis’s fingerprint was found on the Uzi constituted “interrogation.” Said the court:

[When the detective] said, “Think about that little fingerprint on [the Uzi],” he implied that defendant’s fingerprint had been found on the Uzi, and thus indirectly accused defendant of personally shooting the victims. [T]his comment was likely to elicit an incriminating response and thus was the functional equivalent of interrogation.

Although the detective’s comment violated *Miranda*, the court ruled that Davis’s response was not the product or “fruit” of the comment and was, therefore, properly received into evidence. As the court explained, Davis made his incriminating comment after the interview had concluded, and while he and Bennett were alone in their cells.⁶ As the court pointed out, “there was no longer a coercive, police-dominated atmosphere, and no official compulsion for him to speak.”⁷

Davis’s murder convictions and death sentence were affirmed.

⁴ See *Rhode Island v. Innis* (1980) 446 U.S. 291, 301; *People v. Wader* (1993) 5 Cal.4th 610, 637.

⁵ See *In re Albert R.* (1980) 112 Cal.App.3d 783, 787-93 [“That was sure a cold thing you did, selling a stolen car to a friend”]; *People v. Boyer* (1989) 48 Cal.3d 247, 274.

⁶ See *United States v. Leon* (1984) 468 U.S. 897, 911 [“[T]he connection between police misconduct and evidence of crime may be sufficiently attenuated to permit the use of that evidence at trial”]; *Murray v. United States* (1988) 487 U.S. 533, 537 [evidence will not be suppressed if the connection between it and the unlawful conduct “becomes so attenuated as to dissipate the taint.”]; *Wong Sun v. United States* (1963) 371 U.S. 471, 488; *United States v. Wade* (1967) 388 U.S. 218, 241; *U.S. v. Smith* (9th Cir. 1998) 155 F.3d 1051, 1060 [“[A]t some point, even in the event of a direct and unbroken causal chain, the relationship between the unlawful search or seizure and the challenged evidence becomes sufficiently weak to dissipate any taint resulting from the original illegality.”].

⁷ **NOTE:** The court could also have upheld the admission of the statement on grounds that *Miranda* does not apply when a prisoner is talking with a friend, relative, an undercover officer, or an undercover police agent. *People v. Guilmette* (1991) 1 Cal.App.4th 1534; *People v. Plyler* (1993) 18 Cal.App.4th 535, 545.