

Yarborough v. Alvarado
(June 1, 2004) ___ US ___

ISSUE

In determining whether a juvenile was “in custody” for *Miranda* purposes, must officers and courts consider the juvenile’s age and experience?

FACTS

Francisco Castaneda was emptying trash from his truck into a dumpster in the parking lot of a mall in Santa Fe Springs, California. Nearby was a group of teenagers, among them Paul Soto and 17-year old Michael Alvarado. Soto decided to steal Castaneda’s truck and Alvarado agreed to help. While Alvarado walked around to the passenger side, Soto approached Castaneda, displayed a .357 Magnum, and demanded money and the keys to the ignition. When Castaneda refused to comply, Soto shot and killed him. Soto and Alvarado ran off.

About a month later, the lead investigator in the case, Det. Cheryl Comstock of the Los Angeles County Sheriff’s Department, learned that Alvarado might have been one of the perpetrators. So she notified Alvarado’s mother that she wanted to interview him. Alvarado’s parents drove him to the sheriff’s station where he was questioned by Det. Comstock in an interview room. Mr. and Mrs. Alvarado waited in the lobby.

In the interview—which was not preceded by a *Miranda* waiver—Alvarado admitted going to the mall that night but claimed he didn’t see a shooting. Det. Comstock responded:

Det.: Well I’m afraid you did.

Alvarado: I had never seen no shooting.

Det.: Well I beg to differ with you. I’ve been told quite the opposite and we have witnesses that are saying quite the opposite.

Alvarado: That I had seen the shooting?

Det.: So why don’t you take a deep breath, like I told you before, the very best thing is to be honest. You can’t have that many people get involved in a murder and expect that some of them aren’t going to tell the truth, okay? . . . Now all I’m simply doing is giving you the opportunity to tell the truth . . .

At this point, Alvarado began to change his story. At first, he admitted being present during the attempted robbery, but stuck with his story that he didn’t know about the shooting. Det. Comstock continued to encourage him to tell the truth. Among other things, she said, “I know it’s very difficult when it comes time to drop the dime on somebody . . . [but] if that had been your parent, your mother, or your brother, or your sister, you would darn well want [the killer] to go to jail ’cause no one has the right to take someone’s life like that.” Alvarado then told Det. Comstock what had really happened.

Alvarado and Soto were charged with first-degree murder and attempted robbery. During their joint trial, Alvarado changed his story again, testifying he wasn’t involved in the robbery. The trial court then permitted the DA to impeach this testimony by playing the tape recording of the interview to the jury. Although the defense had attempted to have the tape suppressed on grounds that Alvarado had not waived his *Miranda* rights, the trial judge had ruled there was no need to obtain a waiver because Alvarado was not “in custody” at the time. Both Soto and Alvarado were convicted of first-degree murder, although the judge reduced Alvarado’s conviction to second-degree murder.

DISCUSSION

On appeal to the United States Supreme Court, the central issue was whether Alvarado was “in custody” for *Miranda* purposes. If so, according to the Ninth Circuit his statement should have been suppressed because he did not waive his *Miranda* rights.¹ The California Court of Appeal had determined he was not in custody. But in a habeas proceeding, the Ninth Circuit ruled the court had utilized an improper procedure in making that determination. The Supreme Court ruled it was the Ninth Circuit that erred.

It is settled that a suspect is “in custody” for *Miranda* purposes if, (1) he was told he was under arrest, or (2) a reasonable person in his position would have believed his freedom had been restricted to the degree associated with an actual arrest.² Because Alvarado was never told he was under arrest, the issue was whether he reasonably believed he was.

In determining what a “reasonable person” would have believed, the courts apply an objective test. Specifically, they take note of the surrounding circumstances that would have been apparent to the suspect, then ask whether a reasonable person under those circumstances would have believed he was under arrest.³ For example, in cases such as *Alvarado* where the suspect was interviewed at a police station, the courts will ordinarily consider such things as the length of the interview, whether the suspect was told he was free to leave, whether the suspect came voluntarily to the station, whether the officers were confrontational or restrained and courteous, and whether the officers’ questions were accusatory or merely investigatory.⁴

In making its determination, the California Court of Appeal followed this procedure, balancing the circumstances indicating Alvarado was in custody against the circumstances that indicated he was not. It then determined he was not in custody. The Ninth Circuit, however, ruled this procedure was flawed because the court failed to consider Alvarado’s age (17) and his lack of experience with the police.

The U.S. Supreme Court disagreed, pointing out, “Our opinions applying the *Miranda* custody test have not mentioned the suspect’s age, much less mandated its consideration.” Furthermore, the Court noted that in most cases “police officers will not know a suspect’s interrogation history. Even if they do, the relationship between a suspect’s past experiences and the likelihood a reasonable person with that experience would feel free to leave often will be speculative. . . . We do not ask police officers to consider these contingent psychological factors when deciding when suspects should be advised of their *Miranda* rights.”

¹ NOTE: A defendant’s voluntary statement obtained in violation of *Miranda* is admissible to impeach him if, as in *Alvarado*, he testifies at trial and gives an inconsistent story. See *Harris v. New York* (1971) 401 US 222, 226. Consequently, Alvarado’s statement was admissible even if he was “in custody” when he was questioned. The Ninth Circuit, however, avoided the issue by developing a strained theory whereby the *Miranda* “violation” effectively—and illegally—forced Alvarado to testify. The Supreme Court did not think it necessary to address the issue.

² See *Berkemer v. McCarty* (1984) 468 US 420, 442 [(“T)he only relevant inquiry is how a reasonable man in the suspect’s position would have understood his situation.”]; *Stansbury v. California* (1994) 511 US 318, 322-3; *California v. Beheler* (1983) 463 US 1121, 1125; *Oregon v. Mathiason* (1977) 429 US 492, 495.

³ See *Thompson v. Keohane* (1995) 516 US 99, 112 [“Two discrete inquiries are essential to the determination: first, what were the circumstances surrounding the interrogation; and second, given those circumstances, would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave.”].

⁴ See *People v. Stansbury* (1995) 9 Cal.4th 824, 832; *People v. Aguilera* (1966) 51 Cal.App.4th 1151, 1162-4; *People v. Spears* (1991) 228 Cal.App.3d 1, 25; *People v. Boyer* (1989) 48 Cal.3d 247, 272; *People v. Vasquez* (1993) 14 Cal.App.4th 1158, 1163-4; *People v. Blouin* (1978) 80 Cal.App.3d 269, 283; *In re Victor B.* (1994) 24 Cal.App.4th 521, 524; *People v. Bellomo* (1992) 10 Cal.App.4th 195, 199; *People v. Breault* (1990) 223 Cal.App.3d 125, 135; *People v. Morris* (1991) 53 Cal.3d 152, 197-8; *In re Danny E.* (1981) 121 Cal.App.3d 44, 50; *People v. Salinas* (1982) 131 Cal.App.3d 925, 936; *People v. Lopez* (1985) 163 Cal.App.3d 602; *People v. Herdan* (1974) 42 Cal.App.3d 300, 307, fn. 12, 308; *People v. Celaya* (1987) 191 Cal.App.3d 665, 672.

There were other problems with the Ninth Circuit's analysis. First, it improperly imported principles from other areas of the law, such as consent searches and the voluntariness of confessions, in determining that the suspect's age and police experience were circumstances that must be considered. But, as the Supreme Court pointed out, "There is an important conceptual difference between the *Miranda* custody test and the line of cases from other contexts considering age and experience."

Second, by framing the issue in the case in terms of how the circumstances would have appeared to a "reasonable 17-year old, with no prior history of arrest or police," the Ninth Circuit had essentially converted the required objective test into an impermissible subjective one. Third, it failed to give the required deference to the California Court of Appeal's decision. As the Supreme Court explained:

A federal habeas court may not issue the writ simply because that court concludes in its independent judgment that the state-court decision applies the law incorrectly. Relief is available . . . only if the state court's decision is objectively unreasonable.

To summarize, the California Court of Appeal did exactly what it was supposed to do: balance the circumstances or "differing indications" that the interview was custodial against the indications it wasn't. So long as they followed this procedure, its determination that Alvarado was not in custody cannot be overturned merely because a panel of the Ninth Circuit would have reached a different conclusion. As the Supreme Court put it, "These differing indications lead us to hold that the state court's application of our custody standard was reasonable. The [Ninth Circuit] was nowhere close to the mark when it concluded otherwise."

DA's COMMENT

In ruling that officers are not required to take into account a suspect's experience with the police, the Supreme Court said, "We do not ask police officers to consider these contingent psychological factors when deciding when suspects should be advised of their *Miranda* rights." Note that a suspect's chronological age is also a "contingent psychological factor." For example, a 15-year old may be an experienced, coldly-calculating criminal, while a 17-year old may be just a very terrified youngster. If officers were required to, as the Ninth Circuit would have it, determine the psychological age and level of comfort with the police of every person they interview, officers would seldom know for sure whether a *Miranda* waiver was required. This would have been a windfall for the criminal element and their apologists. Fortunately, the Supreme Court in *Alvarado* understood this, although it was, sadly, a 5-4 decision.