

The United States Supreme Court's Ruling in *Berghuis v. Thompkins*

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On June 1, 2010, the United States Supreme Court decided *Berghuis v. Thompkins*, which ruled that: (1) the defendant impliedly waived his rights under *Miranda v. Arizona*, 384 U.S. 436 (1966); and (2) a defendant must make an unambiguous assertion of the right to remain silent to require an officer to stop custodial interrogation. This memorandum discusses the Court's decision and its impact on law enforcement practices. The text of the *Berghuis* opinion is available at <http://www.supremecourt.gov/opinions/09pdf/08-1470.pdf>.

I. Facts

Officers were investigating a murder. Before beginning a custodial interrogation, one of the officers presented the defendant with a *Miranda* form. The form included the four warnings required by *Miranda v. Arizona*, 384 U.S. 436 (1966) (right to remain silent; use of statements in court; right to have lawyer present; right to have appointed lawyer if indigent), and an additional warning not required by *Miranda*: "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." The officer asked the defendant to read the fifth warning aloud so he could ensure that the defendant understood English, which he did. The officer then read the other four *Miranda* warnings aloud and asked the defendant to sign the form to demonstrate that he understood his rights. The defendant declined to sign the form. There was conflicting evidence whether the officer verbally confirmed that the defendant understood the rights listed on the form. The officer did not discuss or obtain a waiver of *Miranda* rights from the defendant.

During the interrogation, the defendant never stated that he wanted to remain silent, did not want to talk with the officers, or wanted a lawyer. About two hours and forty-five minutes into the interrogation, during which the defendant was mostly silent, an officer asked the

defendant, “Do you believe in God?” The defendant said “yes.” The officer asked, “Do you pray to God?” The defendant said “yes.” The officer then asked, “Do you pray to God to forgive you for shooting that boy down?” The defendant said “yes” and looked away, and the interview ended shortly thereafter. At trial, the defendant moved to suppress these statements. The issue before the United States Supreme Court was the admissibility of these statements under *Miranda v. Arizona* and later *Miranda*-related cases.

II. Court’s Ruling on Waiver of *Miranda* Rights

The Court noted that some language in *Miranda v. Arizona* could be read to indicate that a waiver of *Miranda* rights is difficult to establish absent an explicit written waiver or a formal, explicit oral statement. However, the Court discussed its rulings since *Miranda*, particularly *North Carolina v. Butler*, 441 U.S. 369 (1979) (valid waiver when defendant read *Miranda* rights form, said he understood his rights, refused to sign waiver at bottom of form, but said, “I will talk to you but I am not signing any form”), indicating that its later decisions made clear that a waiver of *Miranda* rights may be implied through the defendant’s silence, coupled with an understanding of his or her rights and a course of conduct indicating waiver. The Court in effect disavowed the language in *Miranda* suggesting that it is difficult to establish a *Miranda* waiver without an explicit written waiver or a formal, explicit oral statement.

The Court concluded that if the prosecution shows that a defendant was given *Miranda* warnings and understood them, a defendant’s uncoerced statements establish an implied waiver of *Miranda* rights. A defendant’s explicit waiver need not precede custodial interrogation. Any waiver, explicit or implied, may be withdrawn by a defendant’s invocation at any time of the right to counsel or right to remain silent.

Turning to the case before it, the Court ruled that the defendant waived his right to remain silent and his statements were admissible at trial. The Court found that there was no basis to conclude that the defendant did not understand his *Miranda* rights, and he chose not to invoke or rely on those rights when he made his uncoerced statements.

III. Court's Ruling on Assertion of Right to Remain Silent

The Court rejected the defendant's argument that he invoked his right to remain silent by not saying anything for a sufficient time period during the interrogation. The Court noted it had ruled in *Davis v. United States*, 512 U.S. 452 (1994), that in the context of invoking the *Miranda* right to counsel, a defendant must do so unambiguously. If a defendant makes a statement concerning the right to counsel that is ambiguous or equivocal or makes no statement, officers are not required to end the interrogation or ask questions whether the defendant wants to invoke his or her *Miranda* rights. The Court concluded that there was no principled reason to adopt different standards for determining when a defendant has invoked the *Miranda* right to remain silent and the *Miranda* right to counsel. The Court noted that the defendant did not say that he wanted to remain silent or that he did not want to talk with the officers, and therefore the Court ruled that he did not invoke the right to remain silent to require the officers to stop their interrogation.

IV. Custodial Interrogation by Officers After *Berghuis v. Thompkins*

The Court effectively ruled that a court may find a legally sufficient waiver of *Miranda* rights following the giving of warnings without an officer's explicitly discussing a waiver with the defendant, if other factors show an implied waiver. Although the Court specifically focused on the waiver of the right to remain silent, its broader ruling and rationale applies to the waiver of all *Miranda* rights. In effect, after giving *Miranda* warnings that are understood by the defendant, officers may interrogate a defendant who has neither invoked nor explicitly waived his or her *Miranda* rights.

Despite the Court's ruling, cautious officers may want to continue obtaining an explicit waiver of *Miranda* rights as reflected in many existing *Miranda* forms. A properly obtained explicit waiver will increase the likelihood—compared to an implied waiver—that a court will find a valid waiver. And even if there are deficiencies in obtaining an explicit waiver, there still may be sufficient evidence that a court will find a legally sufficient implied waiver.

If an officer does not seek to obtain an explicit waiver, it would be beneficial to add to the *Miranda* warning a statement similar to the one given in *Berghuis*: “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.” The Court noted that this warning made the defendant aware that his right to remain silent would not dissipate over time, and the officers would be required to honor that right as well as the right to counsel during the entire interrogation. Some existing *Miranda* forms in North Carolina already contain a similar statement. For example, the Greensboro Police Department form includes the following: “You may decide now or at any later time to exercise these rights and not answer any questions or make any statement.”