



# Police Law Bulletin



City Attorneys' Office

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## United States Supreme Court



### **Defendant Must Make Unambiguous Assertion of the Right to Remain Silent to Require An Officer to Stop Custodial Interrogation; Defendant Implicitly Waived Miranda Rights**

***Berghuis v. Thompkins*, No. 08-1470 (1 March 2010).**

On January 10, 2000, a shooting occurred outside a mall in Southfield, Michigan. There were two victims: Samuel Morris, who died from multiple gunshot wounds, and Frederick France, who later recovered and testified. A year after the shooting, Van Chester Thompkins, a suspect who had fled, was arrested in Ohio. Two Southfield police officers traveled to Ohio to interrogate Thompkins, who was awaiting transfer to Michigan. Starting at 1:30 p.m., Thompkins was interrogated for almost three hours in an 8-foot-by-10-foot room. Prior to the interrogation, the officers gave Thompkins a form with the *Miranda* warnings. Thompkins read the fifth warning aloud: "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 other four warnings were read aloud by one of the interrogating officers. Thompkins refused to sign a form to demonstrate that he understood his rights, but at no point did he say he wanted to remain silent or that he wanted an attorney. After two hours and 45 minutes, during which Thompkins remained "largely silent," he was asked whether he believed in God and whether he prayed to god. Thompkins answered affirmatively to both questions. Thompkins was then asked whether he "pray[ed] to God to forgive [him] for shooting that boy down?" he again responded, "Yes." He refused to make a written confession, and the interrogation ended 15 minutes later.

He moved to suppress his statements, claiming, among other things, that he had invoked his 5<sup>th</sup> Amendment right to remain silent and that he had not waived that right. The trial court denied the motion. The jury found Thompkins guilty of first-degree murder, assault with intent to commit murder, and certain firearms-related offenses, and he was sentenced to life in prison without parole. Thompkins appealed but the Michigan Court of Appeals denied his claim that his *Miranda* rights had been violated. The Michigan Supreme Court refused to hear the case on further appeal. Thompkins then filed a petition for a writ of habeas corpus in the U.S. District Court for the Eastern District of Michigan. The Federal District Court denied his habeas request reasoning that Thompkins did not invoke his right to remain silent and that it was not unreasonable for the State Court of Appeals to determine that he had waived his right to remain silent. The Sixth Circuit reversed, holding that the State court was unreasonable in finding an implied waiver of Thompkins right to remain silent. The United States Supreme Court reversed and held that the State court's decision rejecting Thompkins' *Miranda* claim was correct.

First, the Court found that Thompkins' silence during the interrogation did not constitute an invocation of his right to remain silent. The Court has previously held that the *Miranda* right to *counsel* must be invoked unambiguously. If a suspect makes an ambiguous statement or no statement at all, the police are not required to end the interrogation, or to ask questions to clarify the suspect's intent. The Court found there was no reason for adopting different standards for determining when an accused has invoked the *Miranda* right to remain silent. Had Thompkins said that he wanted to remain silent or that he did not want to talk, he would have invoked his right to end the questioning. However, he did neither.

Second, the Court found that Thompkins waived his right to remain silent when he knowingly and voluntarily made a statement to the police. The Court noted that while some language in *Miranda* could be read to indicate that a waiver of *Miranda* is difficult to establish absent an explicit written waiver or a formal, explicit oral statement, subsequent cases from the Court have made it clear that a waiver may be "implied" through a defendant's silence, coupled with an understanding of his rights and a course of conduct indicating waiver. Thus, the Court held that if the State establishes that a *Miranda* warning was given and that it was understood by the defendant, a defendant's uncoerced statement establishes an implied waiver. In this case, there never was any contention that Thompkins did not understand his rights; his answer to the question about God was a "course of conduct indicating waiver" of that right. Had he wanted to remain silent, he could have said nothing in response, or unambiguously invoked his *Miranda* rights ending the interrogation.

Note: Despite the Court's ruling, officers should continue to attempt to obtain an explicit waiver of *Miranda* as reflected in the Department's Rights Waiver form. A properly obtained explicit waiver will increase the likelihood – compared to an implied waiver – that a court will find a valid waiver.

### **Second Amendment Guarantees An Individual's Right to Possess a Firearm and to Use a Firearm for Traditionally Lawful Purposes**

*McDonald v. City of Chicago*, No. 08-1521 (28 June 2010).

Two years ago, in *District of Columbia v. Heller*, 554 U.S. \_\_\_, the United States Supreme Court held that the Second Amendment protects the right to keep and bear arms for the purpose of self-defense, and struck down a District of Columbia law that banned the possession of handguns in the home. Note that the District of Columbia, however, is governed by Congress so the ruling in *Heller* only applied to the federal government.

Chicago (hereinafter City) and the Village of Oak Park, a Chicago suburb, had laws effectively banning handgun possession by almost all private citizens. After *Heller*, petitioners filed a federal suit against the City alleging that the City's handgun ban had left them vulnerable to criminals. Several of the individuals had experienced violence or threats of violence firsthand, including a community activist crusading against drugs in a violent neighborhood and a woman whose home was targeted by burglars. They sought a declaration that the ban and several related City ordinances violated the Second and Fourteenth Amendments.

The Federal District Court noted that the Seventh Circuit had previously upheld the constitutionality of a handgun ban and that it had a duty to follow precedent established by that Circuit. Petitioners appealed to the Seventh Circuit. The Seventh Circuit affirmed noting that its hands were tied by a series of 19<sup>th</sup>-century cases, even though it described the rationale of those cases as "defunct." The United States Supreme Court agreed to hear the Petitioners' appeal.

The Supreme Court concluded that the Fourteenth Amendment incorporates the Second Amendment and thereby makes its provisions applicable to the States. The Court then recognized, as it did in *Heller*, that the Second Amendment guarantees an individual's right to possess a firearm, unconnected to service in a militia, and to use a firearm for traditionally lawful purposes, such as self-defense. Explaining, the Court reiterated, among other points from *Heller*, that "the need for defense of self, family, and property is most acute" in the home and that right applies to handguns because they are "the most preferred firearm in the nation to keep and use for protection of one's home and family." The Court went on to note also that it had clearly stated in *Heller* that its ruling did not cast doubt on the validity of longstanding regulatory measures such as prohibitions on the possession of firearms by felons and the mentally ill, laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of firearms. The Court repeated those assurances in this case.



**Defendant Was Not In Custody to Require *Miranda* Warnings;  
Defendant Made Ambiguous Request for Counsel**

*State v. Little*, No. COA09-1223 (4 May 2010).

Defendant and the victim, Anthony Jones, had a volatile relationship. In the fall of 2005, defendant planned to sell crack to Jones, but Jones pulled a gun on defendant and stole the drugs instead. Defendant also believed Jones had broken into his home, and that Jones had robbed one of his girlfriends at gunpoint. On June 13, 2006, defendant took another one of his girlfriends to a cellular telephone store and was waiting in the car while she went inside. Jones happened to be in the store. When defendant recognized Jones' car in the parking lot, defendant called his brother and a friend to come beat up Jones. The two men arrived and waited outside. As Jones exited the store, he saw the two men and ran towards defendant's car. Defendant shot him several times and then drove away. Jones died from multiple gunshot wounds. After learning from family members that his brother had been arrested in connection with the homicide, Defendant went to the New Bern Police Department to turn himself in. Defendant was met in the lobby by a detective who knew him. The detective invited him into a report writing room which was within a secured area of the station. The detective offered the defendant pizza, which he accepted. The detective asked another officer to keep an eye on defendant while he went to get the pizza. Another detective arrived a short time later and asked defendant to step to an interview room upstairs. The detective assured defendant that he was not under arrest. He then interviewed him about the events at the store. Another detective observed from an adjoining room and took notes. When the interview touched on Jones' shooting, defendant asked if he needed an attorney. The detective replied, "I don't know, I can't answer that for you, are you asking for one?" Defendant did not reply to this question and continued talking with the detective. At one point, defendant said he was leaving, but did not, and instead, continued the interview. Eventually he admitted to shooting Jones and provided details about the crime. When the detective asked defendant to write out a statement, defendant asked for an attorney and the interview ended.

The defendant was charged with and convicted of first-degree murder. He appealed arguing that the trial court erred in denying his motion to suppress the confession.

The defendant contended that he was in custody when questioned by the police and thus, was entitled to be advised of his *Miranda* rights. In determining whether a suspect was in custody, a court must examine all the circumstances surrounding the interrogation, but the definitive inquiry is whether there was a formal arrest or a restraint on freedom of movement associated with a formal arrest. In the case at hand, defendant voluntarily drove to the police station; there was no warrant for his arrest, nor had police attempted to contact him or request his presence for an interview. Defendant was invited from the lobby into a secure area which required a passkey for entry, but from which anyone could exit at anytime without any type of key; the door to the room even remained open. The detective who invited defendant into the secure area never told defendant that he was under arrest or could not leave, never handcuffed him, and never spoke to him in an intimidating manner. Although another detective stayed in the hallway to keep defendant from leaving, the defendant was unaware of the detective's intentions. The detective who met with defendant 20-30 minutes after his arrival at the station told defendant he was not under arrest and was free to leave. The detective then suggested that they speak upstairs where it was quieter. At the elevator, the detective again told the defendant that he was not under arrest and was free to leave. Once in the interview room, defendant was again told that he was not under arrest and was free to leave. Although another officer had entered an adjacent room to take notes, this was unknown to the defendant. At one point when the defendant stood up and said "I'm trying to leave, I didn't do it," the detective did not restrain defendant; the defendant sat back down on his own. Based upon these facts, the Court of Appeals agreed with the trial court's determination that defendant was not in custody to require *Miranda* warnings.

Defendant also argued that the trial court erred in denying his motion to suppress because he had invoked his right to counsel prior to making any incriminating statements. The Court of Appeals first noted that because the defendant was not in custody when the interview occurred, the defendant was not entitled to *Miranda*'s protections. Nonetheless, as a guide to trial courts, the Court of Appeals decided to address the defendant's argument regarding his request for counsel. When a defendant is afforded the protections of *Miranda*, if he or she makes an unambiguous request for counsel, then all questioning, or words or conduct likely to elicit an incriminating response must cease. In this case, even if defendant were entitled to *Miranda*'s protections (which he was not due to the lack of custody), defendant did not unambiguously ask for an attorney; rather, he asked the detective's opinion as to whether he needed one.

Therefore, the Court of Appeals upheld the trial court's denial of defendant's motion to suppress.