Paula Forum post,

In Berghuis v. Thompkins (2010), two detectives interrogated Thompkins regarding a homicide. (fn. 1).  During this interrogation, Thompkins did not invoke or waive his right to remain silent, although he was mostly silent throughout the three hour questioning.  At the end of the interrogation, one detective asked him if he prayed for God’s forgiveness in this murder.  Thompkins simply answered “yes.” (fn. 2).  Furthermore, Thompkins claimed he had ineffective representation.  At trial, Thompkins’ motion to have his confession suppressed because it violated his right to remain silent, granted by the Fifth Amendment, was denied.  He was found guilty and denied a new trial.  The trial court found that his ineffective representation claim would not stand simply because the defense attorney failed to give any limiting instruction regarding a key witness.  On appeal, both claims were also rejected.  Federal district court denied his habeas corpus request, stating that he did not invoke his right to remain silent.  This decision was reversed in the Sixth Circuit before coming before the Supreme Court.

This was a 5-4 decision against Thompkins and the opinion of the court was delivered by Justice Kennedy.  In the opinion, Justice Kennedy stated that to invoke Miranda rights, it must be done unambiguously.  Because Thompkins did not do that, he neither invoked nor waived his rights.  Furthermore, Justice Kennedy stated that there cannot be a presumption of waiver just from the silence of the person being interrogated.  Justice Kennedy went further stating that by answering the detective’s question at the end that essentially waived his right to remain silent.  Regarding the ineffective representation, Justice Kennedy shot that down by basically saying it was irrelevant to the outcome of the case.  It would not have mattered if his defense had instructed the jury to limit the information they heard from the key witness.

In the dissent by Justice Sotomayor, she mentions that Thompkins had refused to even sign that he understood his Miranda rights, therefore implying that he would not waive the rights.  All four dissenters did not feel the burden of proof of waiver was established by Michigan.  They also felt that this decision moved us backwards from what the Miranda rights were meant to protect.  In essence, Justice Sotomayor felt that the suspect’s long period of silence should have been enough to detectives that Thompkins was invoking his right to remain silent.  Simply catching him off guard at the end of this silent spell should not be enough to claim a waiver.

The impact that Miranda rights have had on law enforcement is huge.  They are now required to expressly inform a suspect of their rights and make sure they understand them.  Previous to the Miranda (1966) decision, police obtained a higher confession rate. (fn. 3).  It is difficult to solve violent crimes without a confession.  Some of the confessions obtained prior to Miranda may very well have been coerced or false confessions, but many were not.  (fn. 4). When a suspect invokes their Miranda rights, the interrogation must come to a complete halt.  Investigators may have someone right on the verge of confessing when they suddenly invoke the right to remain silent.  That being said, when suspects waive their Miranda rights that is a bonus for law enforcement.  Research shows that police receive a high rate of waivers because they intentionally set out to use techniques designed to keep suspects from invoking their rights. (fn. 5).  Furthermore, interrogators will trick suspects into waiving their right to remain silent by intentionally accusing them of something they know the suspect did not do, merely to get them to speak by denying it. (fn. 6).

Footnotes

1. Berghuis v. Thompkins, 560 U. S. \_\_\_\_ (2010).

2. Id.

3. Miranda v. Arizona, 384 U.S. 435 (1966).

4. Paul Cassell, Handcuffing the Cops: Miranda's Harmful Effects on Law Enforcement, NCPA.org (1998), http://www.ncpa.org/pdfs/st218.pdf (last visited Jan 10, 2017).

5. Anthony Domanico, Michael Cicchini & Lawrence White, Overcoming Miranda: A content analysis of the Miranda portion of police interrogations, 49 Idaho L. Rev. 1, 8-9 (2012).