

A suspect was taken into custody for questioning. After receiving Miranda warnings, which the suspect stated he understood, he was questioned by two detectives for three hours. The detectives told the suspect that the interrogation was about an illegal sale of automatic weapons. During this time, the suspect neither expressly waived nor expressly invoked his Miranda rights. Instead, he participated only sporadically in the conversation and responded to incriminating questions with silence.

Toward the end of the three-hour session, one of the detectives began to question the suspect about the recent murder of an arms dealer. The suspect was nonresponsive, so the detectives decided to pause the interrogation. As they were walking out of the interrogation room, one of the detectives asked the suspect, "Have you prayed for forgiveness for killing that man?" The suspect, tired from the hours of questioning, responded that he had. He then immediately told the detectives that he wanted to speak with an attorney. The detectives immediately terminated the interrogation and left the room.

If the suspect moves to suppress his admission about killing the arms dealer, how will the court likely rule on his motion?

- A. Deny the motion, because the interrogation immediately ceased after the suspect asserted his right to counsel.
- B. Deny the motion, because the suspect knowingly and voluntarily waived his right to remain silent by making the statement.
- C. Grant the motion, because the detectives failed to advise the suspect of the full subject matter of the interrogation.
- D. Grant the motion, but allow the prosecution to use the suspect's incriminating statement at trial for impeachment purposes only.

## Explanation:

**Incriminating statements** obtained from a custodial interrogation **may not be used** against a suspect at a subsequent trial **unless** police provided **procedural safeguards** to secure the suspect's Fifth Amendment privilege against self-incrimination. Police safeguard this privilege by informing the suspect of his/her **Miranda rights** prior to a **custodial interrogation** (as seen here).

A suspect may then choose to specifically and unambiguously **invoke a Miranda right**—eg, by clearly and unambiguously asserting his/her desire to remain silent. Therefore, a suspect's silence in response to police questioning does not invoke Miranda rights, even if questioning was extensive. A suspect may also choose to expressly (eg, by signing a waiver form) or **impliedly waive Miranda rights**.

Waiver is implied when a suspect (1) has not asserted his/her Miranda rights, (2) understands those rights, and (3) engages in a **course of conduct** that indicates a **knowing and voluntary waiver**—eg, by making an **uncoerced incriminating statement** (as the suspect did here). Therefore, the court will likely deny the suspect's motion to suppress his admission about killing the arms dealer.

**(Choice A)** The suspect made the inculpatory statement *before* invoking his Fifth Amendment right to counsel and *after* initially waiving his right to remain silent. It is this—not the fact that the detectives immediately ceased their interrogation upon the suspect's request—that renders the statement admissible.

**(Choice C)** Police need not provide a suspect with the subject matter of the interrogation before administering Miranda warnings. Therefore, the detectives' failure to inform the suspect of the interrogation's full subject matter did not invalidate the suspect's waiver.

**(Choice D)** A voluntary and trustworthy statement taken in violation of Miranda is admissible to impeach a criminal defendant who gives contradictory testimony at trial. But an incriminating statement that does *not* violate Miranda is also admissible as substantive evidence.

## Educational objective:

Miranda rights may be expressly or impliedly waived. A waiver is implied when a suspect (1) has not asserted his/her Miranda rights, (2) understands those rights, and (3) engages in a course of conduct indicating waiver.

## References

U.S. Const. amend. V (privilege against self-incrimination).

Miranda v. Arizona, 384 U.S. 436, 468–70 (1966) (listing Miranda warnings).

Berghuis v. Thompkins, 560 U.S. 370, 384–85 (2010) (holding that voluntary incriminating statement by suspect who has not invoked but understands rights constitutes waiver).

Colorado v. Spring, 479 U.S. 564, 577 (1987) (holding that a suspect's lack of awareness of an interrogation's possible subject matter does not invalidate the suspect's waiver of Fifth Amendment rights).

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## Waiver of Miranda rights

