NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Argued January 24, 2023
Decided February 27, 2023

Before

DAVID F. HAMILTON, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

CANDACE JACKSON-AKIWUMI, *Circuit Judge*

No. 20-3528

MIGUEL RUIZ,
Petitioner-Appellant,

v.

ANTHONY WILLS,
Respondent-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 18 C 4429

Jorge L. Alonso,
Judge.

O R D E R

Before questioning Miguel Ruiz about a fatal shooting, detectives told him that he had a right to silence, a right to an attorney, and, more specifically, a right to have that attorney present "during" questioning. Because Ruiz's warning did not expressly state that his consultation with a lawyer could start "before" (not just "during") questioning, he seeks a writ of habeas corpus under 28 U.S.C. § 2254(a). But no Supreme Court precedent clearly establishes that detectives were required to use words like

"before" or "prior to," and the state appellate court's rejection of Ruiz's theory is not an unreasonable application of *Miranda v. Arizona*, 384 U.S. 436 (1966). We therefore affirm the district court's denial of habeas relief. *See* 28 U.S.C. § 2254(d).

An Illinois jury convicted Ruiz of first-degree murder and aggravated discharge of a firearm, for which he was sentenced to 45 years' imprisonment, though he was not himself the shooter. Ruiz drove a truck whose passenger shot and killed a man; then, after a car chase, the passenger was killed in a shootout with police. At trial there was no dispute that Ruiz was the driver. His liability thus hinged on his confession to detectives, during two custodial interviews over several hours, that he and the passenger had set out with the express intent "to shoot somebody" from a rival gang.

At the start of both interviews, detectives relied on their memory of *Miranda* to warn Ruiz of his constitutional rights. At the first interview, a detective reminded Ruiz of his right to silence and confirmed that Ruiz understood he had "a right to an attorney" and, specifically, to have an attorney present "during questioning." At the second interview several hours later, another detective again confirmed that Ruiz understood he had a "right to an attorney," though without specifying any timeframe for exercising the right.

Before trial and on direct appeal, Ruiz unsuccessfully argued that these warnings were inadequate under *Miranda* because they did not specify that he could consult with counsel *before* questioning. In his view, a suspect might take these warnings to mean he must start answering questions before counsel may speak with him.

But the Illinois Appellate Court rejected that argument, citing state-court rulings that a simple reference to the right to counsel sufficiently implies that the right begins before questioning and remains throughout the interrogation, even if no timeframe is spelled out. *See People v. Martinez*, 867 N.E.2d 24, 28 (Ill. App. Ct. 2007); *People v. Walton*, 556 N.E.2d 892, 894 (Ill. App. Ct. 1990). The Illinois Supreme Court denied discretionary review. *People v. Ruiz*, 93 N.E.3d 1067 (Ill. 2017) (table).

Ruiz then sought a federal writ of habeas corpus under 28 U.S.C. § 2254, again contending that *Miranda* requires police to specify that any consultation with a lawyer may begin "before" the first question. But the district court denied the petition, concluding that the state court's pragmatic reading of *Miranda* was neither contrary to nor an unreasonable application of federal law as clearly established by the Supreme Court. *See* 28 U.S.C. § 2254(d)(1).

The district court was correct. Ruiz's view is that telling a suspect that his right to counsel will apply "during" questioning leaves him uncertain whether he must start answering questions in order to obtain counsel at all. But under 28 U.S.C. § 2254(d)(1), it would not be enough for Ruiz to convince us that his view is, on balance, correct. Instead he must show that the state court's contrary reading of *Miranda* is not even reasonable. *Harrington v. Richter*, 562 U.S. 86, 103 (2011) (state-court view must be wrong "beyond any possibility for fairminded disagreement"). He has not done so.

To start, no Supreme Court case directly addresses Ruiz's narrow problem: warnings that specify a right to counsel "during" questioning but do not expressly state that the right may be exercised "before" or "prior to" detectives' first question. (Ruiz takes his two interviews and warnings together, rather than arguing that the suppression inquiry for one differs from the other, and so we do not parse them separately.) Still, Ruiz insists that the wording of *Miranda* itself mandates that the warning must specify the times during which counsel may be consulted: "the need for counsel to protect the Fifth Amendment privilege comprehends not merely a right to consult with counsel prior to questioning, but also to have counsel present during any questioning if the defendant so desires." 384 U.S. at 470.

Yet at other points *Miranda* formulates its holding differently, focusing only on the right to counsel "during" questioning. Just one page later, for instance, there is this summary: "an individual held for interrogation must be clearly informed that he has the right to consult with a lawyer and to have the lawyer with him during interrogation under the system for protecting the privilege we delineate today." *Id.* at 471. The first warning given to Ruiz—"Do you understand that you have a right to an attorney and have an attorney present during questioning?"—mirrors this part of *Miranda*.

Later Supreme Court interpretations of *Miranda* further undercut Ruiz's strict reading. Indeed, the Court has repeatedly reversed grants of relief when lower courts insisted on unduly expansive readings of *Miranda*. In *California v. Prysock*, for example, the suspect was initially told that the right to an attorney applied both before and during questioning. 453 U.S. 355, 356 (1981). But he also was told that an attorney could be appointed at public expense, which the California courts worried could confuse a suspect into thinking that only a privately funded lawyer could attend the interview, with appointed counsel becoming available only later, as trial approached. *Id.* at 357–59. But the Supreme Court reversed that decision as unrealistic: a reasonable suspect would

understand the warning to mean that a lawyer could be appointed before any questioning. *Id.* at 360–61.

Later, in *Duckworth v. Eagan*, the Supreme Court reversed a Seventh Circuit decision along similar lines. 492 U.S. 195, 205 (1989). The warning in *Eagan* began by mentioning the right to appointed counsel before and during questioning but added this proviso: "We have no way of giving you a lawyer, but one will be appointed for you, if you wish, if and when you go to court." *Id.* at 198. The Seventh Circuit granted relief, opining that this wording suggested that counsel could not be appointed until a first court appearance (i.e., sometime after a police interview). *Id.* at 200. But the Supreme Court reversed, again reasoning that the warnings, taken together and in context, conveyed the core right to appointed counsel before and during questioning. *Id.* at 200–01.

Most recently, in *Florida v. Powell*, the justices reversed the Florida Supreme Court's grant of relief where the warning did not expressly cite a right to counsel *during* questioning; instead, the warning mentioned a right to consult counsel "before" questioning but then added that all relevant "rights" could be exercised at "any time." 559 U.S. 50, 54 (2010). Again, the Supreme Court inferred that this was sufficient for a reasonable suspect. "In combination, the two warnings reasonably conveyed Powell's right to have an attorney present . . . at all times." *Id.* at 62.

Ruiz objects that he, unlike Powell, was not told his rights could be exercised at "any time." Even so, he *was* told that he could have counsel "during" the interrogation, and *Powell* assumes that suspects will not adopt "unlikely" and "counterintuitive" readings of the warnings they hear. *Id.* at 62. Yet Ruiz's argument imagines just such a scenario: a suspect who thinks that although he may consult a lawyer during questioning, he cannot consult the lawyer until at least some questioning has taken place. Reasonable jurists may take that scenario as unlikely. So, even though *Powell*'s "at any time" language is absent here, we cannot say the state court's reading of *Powell* and similar cases is unreasonable under § 2254(d)(1).

Next, Ruiz asserts that the facts that led to relief in *Miranda* are "indistinguishable" from his facts. But that is incorrect. The cases reviewed in *Miranda*, unlike here, involved interrogations with no warning about the right to counsel at all, or else warnings delivered only partway through a lengthy set of interrogations. 384 U.S. at 484, 491, 496. The problem there was the absence of timely warnings, not the wording of warnings actually given.

Finally, Ruiz cites *Texas v. Cobb*, a case about the scope of the Sixth Amendment right to counsel, for its fleeting reference to the need to "apprise[]" suspects of the right "to consult with an attorney before authorities may conduct custodial interrogation." 532 U.S. 162, 171 (2001). But this language is not focused on the wording of the *Miranda* warnings and, in context, merely serves as a reminder that *Miranda* warnings must come "before" interrogation.

In sum, then, the state court's determination that the warnings here adequately conveyed Ruiz's rights does not fall outside the bounds of reasonable disagreement. *See Richter*, 562 U.S. at 103. We therefore defer to the state court's conclusion that Ruiz's *Miranda* warnings were adequate. *See Dunn v. Reeves*, 141 S. Ct. 2405, 2407 (2021).

AFFIRMED