

U.S. Supreme Court loosens Miranda rule June 2, 2010

Suspects must speak up to guarantee rights

WASHINGTON — The Supreme Court backed off Tuesday from strict enforcement of the famous Miranda decision and its right to remain silent, ruling that a crime suspect's words can be used against him if he fails to clearly tell the police that he does not want to talk.

In the past, the court had said the "burden rests on the government" to show that a crime suspect has "knowingly and intelligently waived" his rights. Some police departments tell officers not to begin questioning until a suspect has waived his rights, usually by signing a waiver form.

But in Tuesday's 5-4 decision, the court shifted the balance in favor of the police and against the suspect. It said the suspect has a duty to speak up and to say he does not want to talk. Moreover, the police are "not required to obtain a waiver" of the suspect's "right to remain silent before interrogating him," Justice Anthony M. Kennedy wrote.

In her first strongly written dissent, Justice Sonia Sotomayor said the ruling "turns Miranda upside down" and "marks a substantial retreat from the protection against compelled self-incrimination."

Some experts on police questioning said the court's subtle shift will be felt in station houses across the country.

"This is the most important Miranda decision in a decade. And it will have a substantial impact on police practices," said Charles Weisselberg, a law professor at the University of California, Berkeley. "This decision approves of the practice of giving the warnings and then asking questions of the suspect, without asking first whether he wants to waive his rights."

"If you sit there and say nothing, they can continue to ask you questions, which basically makes Miranda meaningless," said Nashville defense attorney David Raybin. "When they say you have the right to remain silent, to me that should mean exactly what it says."

Raybin went on to say that the new ruling assumes that ordinary citizens know Miranda because it's shown on television and it is simplistic.

"It's become part of our culture," he said. "We've accepted it, and now we're removing its simplicity. I think the ruling will create more confusion for the police and for the citizens for the very reason that the dissent pointed out.

"I see this as a gradual erosion of Miranda itself. The court is chipping away at it, and I don't know that it's a healthy thing."

'Takes guesswork out'

Sumner County District Attorney Ray Whitley agreed with the ruling.

"I think this makes it clear that a person wants to remain silent and takes the guesswork out of the investigation with the officer involved," he said. "It makes things easier on the judge and the officer rather than assuming or erroneously thinking that a person wants to remain silent. In this case, the officer will know for sure whether to continue questioning. If the right is invoked, the officer has to stop.

"It shouldn't be subjective."

In the case decided Tuesday, Van Thompkins was arrested as a suspect in the shooting a year earlier of two men outside a mall in Southfield, Mich. One of them died. A police detective read Thompkins his rights, including the right to remain silent and the right to have a lawyer. Thompkins said he understood, but he did not sign a form.

For about two hours and 45 minutes, Thompkins said almost nothing in response to questions. The detective asked the suspect if he believed in God and then said: "Do you pray to God to forgive you for shooting that boy down?"

"Yes," Thompkins said, and looked away. He refused to sign a confession or speak further, but he was convicted of first-degree murder, based largely on his one-word reply.
