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Speaking Up to Stay Silent

The Miranda warnings remind suspects of their right to remain silent but were never particularly clear on what happens when a suspect actually stays silent. Can the police question the suspect? If so, can they do so for just a few minutes or as long as they want?

A five-justice majority on the Supreme Court addressed the issue in an opinion on Tuesday, but it did not provide much clarity. This was not a burning issue crying out for the court’s attention, and the justices left so many crucial questions unanswered that it is hard to see how they protected the rights of suspects who do not read complex court decisions.

The court’s 5-to-4 opinion in the case of Berghuis v. Thompkins said that a suspect who wants the police to stop an interrogation must explicitly invoke the right to remain silent. Otherwise, Justice Anthony Kennedy wrote for the majority, the questioning can continue.

Though the court did not address the issue, there must be limits to that questioning. In this case, Van Chester Thompkins Jr., a murder suspect, was read his rights, and the Southfield, Mich., police interrogated him for nearly three hours until he made a one-word statement that was used to help convict him.

The dissenting justices, led by Justice Sonia Sotomayor, are correct in saying that the majority is essentially rewriting an essential aspect of the Miranda system without admitting it, following the Roberts court’s disturbing pattern of stealthily overturning precedents.

As Justice Sotomayor points out, the original Miranda decision said the police cannot presume a suspect has waived the rights of the Fifth Amendment simply because he or she is silent. A lengthy interrogation that eventually results in a confession, the Miranda decision says, usually means the confession was coerced.

The problem is that the piece of Miranda at issue did not provide clear guidance for police departments. Some departments will not question a suspect without an explicit waiver of his or her Miranda rights; some set time limits on questioning; others, like the one in Southfield, will
go as long as they want.

The American Civil Liberties Union says there should have been no questioning in this case because Mr. Thompkins refused to sign a form indicating he understood his rights. That seems to give police officers too little leeway in questioning a suspect; Mr. Thompkins was told that anything he said could be used against him, and he demonstrated an understanding of his rights.

But a three-hour interrogation is too long and too coercive. If the court really wanted to bring clarity to a murky issue, it should have gone further. In cases where a suspect does not explicitly invoke the right to remain silent, the court should have set a time limit on how long the police can continue questioning.

Alternatively, the court could have explicitly changed the Miranda warnings by having police officers tell suspects that they have to verbally invoke their rights. This court’s majority has not been particularly friendly to Miranda, and if it really felt some tinkering was needed, it should have done a much better job of helping suspects know and understand their rights.