



Miranda Interrupted



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In *United States v. Abdallah*, ___ F.3d ___, 2018 WL 6613333 (4th Cir. Dec. 18, 2018), the United States Court of Appeals for the Fourth Circuit considered several arguments raised by Defendant Nader Abdallah as to why his conviction and sentence for drug-related crimes should be set aside. The purpose of this article is to discuss one issue raised by Abdallah and considered by the Fourth Circuit on appeal: whether the United States District Court for the Eastern District of Virginia erred when the District Court admitted Abdallah's incriminating statements that he made after he unambiguously invoked his right to remain silent. The relevant facts are as follows.

In June 2012, law enforcement officers began investigating the sale and distribution of unlawful synthetic cannabinoids (known as "spice") in Newport News, Virginia, and the surrounding area. During the investigation, the officers received complaints that spice was being sold at a local Red Barn gas station and convenience store that was owned and operated by Abdallah and his son. The officers conducted multiple controlled purchases of spice at the Red Barn, the last of which occurred on September 16, 2014.

Two days after the last purchase, the officers executed a search warrant at the Red Barn. Inside, they found and seized cardboard parcels filled with packages of spice; a digital scale; \$109,308 in cash; and two keys. One of the keys opened a storage unit containing more spice, and the other key opened Abdallah's safe deposit box. After obtaining another warrant, the officers seized an additional \$701,450 in cash from the safe deposit box.

Thereafter, the United States Customs and Border Protection sent Abdallah a notice that it had confiscated his property and that he could file an administrative petition for its return. Abdallah filed two sworn petitions to recover the two sums of cash that had been confiscated from the Red Barn and the safe deposit box. Each petition stated: "I maintain my earnings in cash form for religious reasons. I am a Muslim and I strictly adhere to the tenets of my faith. One of these is the law against usury. I, therefore, do not maintain a bank account and whenever possible keep my money in cash . . . and other tangible forms that do not accrue interest." But, Abdallah had multiple bank accounts and had conducted bank transactions on the same day.

After the search, Abdallah sold the Red Barn and bought another building at the former Newport Video location. Thereafter, Abdallah's son emailed Michael McMahon—the owner of a spice distribution company—and informed McMahon that he and Abdallah wanted to use the Newport Video location to sell spice wholesale. The officers intercepted these emails and began to track the location's packages. On April 20, 2015, the officers executed a search warrant at the Newport Video location, during which they found additional spice, a revolver, crack cocaine, drug paraphernalia, and \$10,000.

Five days before the Newport Video search, a federal grand jury returned its first indictment against Abdallah and, that same day, a federal court issued an arrest warrant for him. The officers arrested Abdallah at the Newport Video location and took him to the Newport News Police Headquarters for interrogation. Three

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officers were present for Abdallah's interrogation: (1) Special Agent Lewis of the Department of Homeland Security, (2) Inspector Sylvester of the United States Postal Inspection Service, and (3) Detective Calhoon of the Newport News Police Department.

On April 1, 2016, Abdallah filed a motion to suppress all statements made during his custodial interrogation. During the suppression hearing, the officers testified that they chose not to record the interrogation. Instead, Inspector Sylvester took notes, and Detective Calhoon observed, while Special Agent Lewis interrogated Abdallah. According to the officers, Special Agent Lewis started the interrogation by reading Abdallah his Miranda rights. Abdallah purportedly interrupted approximately halfway through to inform the officers that he wasn't going to say anything at all. Agent Lewis responded by stating, "Well, just let me finish your Warning first." Immediately after the warning, Agent Lewis asked, "Do you even know why you're under arrest[?]" Abdallah responded, "No, tell me." Agent Lewis then repeated the Miranda warning. This time, Abdallah did not interrupt, and Abdallah indicated that he understood his rights. Abdallah subsequently made multiple inculpatory statements.

In his motion to suppress, Abdallah argued that, by stating that he was not going to say anything at all, he unambiguously requested to remain silent. Because the officers failed to scrupulously honor his request, Abdallah maintained that his statements were inadmissible. The District Court denied Abdallah's suppression motion, finding his invocation to be ambiguous, especially given the fact that he voluntarily waived his Miranda rights minutes later once informed of the charges against him and the subject of the interrogation. Abdallah was subsequently tried before a jury, and the jury found him guilty on all charges contained within the indictment.

Abdallah timely appealed. On appeal, Abdallah argued that the officers violated his Fifth Amendment rights when they continued to question him after he unambiguously invoked his right to remain silent, and therefore, the District Court erred by failing to suppress the incriminating statements that he made in response to those questions.

The Fourth Circuit began its consideration of Abdallah's appeal by noting that, in order to protect the Fifth Amendment right against self-incrimination, the United States Supreme Court established, in *Miranda*, certain "procedural safeguards" that officers must comply with to subject a suspect to custodial interrogation. Suspects must be informed of their right to remain silent and their right to the presence of an attorney. If a suspect indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease. Similarly, if a suspect states that he wants an attorney, the interrogation must cease until an attorney is present. Thus, by invoking either the right to remain silent or the right to counsel, a suspect has the right to cut off questioning and officers must cease questioning the suspect.

To invoke the right to remain silent or the right to counsel and thereby cut off questioning, the suspect's invocation must be unambiguous. An invocation is unambiguous when a reasonable police officer under the circumstances would have understood the suspect intended to invoke his Fifth Amendment rights. Accordingly, a suspect need not speak "with the discrimination of an Oxford don" to invoke his Fifth Amendment rights. Instead, the test is an objective one, and this objective inquiry avoids difficulties of proof and provides guidance to officers' on how to proceed in the face of ambiguity.

The Fourth Circuit held that the District Court erred in applying this standard and found that Abdallah had unambiguously invoked his Fifth Amendment rights before he made his incriminating statements. Specifically, the Fourth Circuit determined that, by telling the law enforcement officers that he "wasn't going to say anything at all," he unambiguously invoked his Fifth Amendment rights despite the fact that the officers later read

Abdallah his Miranda rights in full and without interruption and Abdallah, thereafter, made incriminating statements.

The Government argued that, because Abdallah made his statements before Agent Lewis completed the Miranda warnings, he could not have invoked his right to remain silent knowingly and intelligently. But the Fourth Circuit noted that there is no requirement that an unambiguous invocation of Miranda rights must be made knowingly and intelligently. According to the Fourth Circuit, that is the standard applied to the waiver of Miranda and other constitutional rights, not to the invocation of such rights.

The Fourth Circuit also noted that neither it nor the Government could find any case that held that a that defendant must wait until the completion of Miranda warnings prior to invocation—and with good reason. The Fourth Circuit stated that the Government's argument does more than misapply the "knowing and intelligent" standard to invocations of constitutional rights. It was also rested on an unwarranted assumption that no defendant can ever be aware of his Constitutional rights before the Government informs him of those rights. That assumption runs counter to the deeply rooted presumption in the criminal justice system that every person is presumed to know the law. When criminal defendants complain that complex statutes are too difficult for the average citizen to know and comprehend the extent of the duties and obligations imposed by law, courts nevertheless apply this presumption and hold that ignorance of the law is no defense to criminal prosecution. The Government asked the Fourth Circuit to adopt the opposite presumption—that defendants cannot know their Constitutional rights prior to receiving a warning—in the context of those rights that Miranda protects—rights that Miranda has rendered part of our national culture. The Fourth Circuit declined the Government's request and held that there is no principled reason to adopt the conflicting presumptions that defendants must know the criminal laws which inculcate them but cannot know the Constitutional rights which protect them. Nor is there any reason for the law to effectively penalize a defendant who, even without receiving the warnings required by Miranda, is aware of his constitutional rights and chooses to exercise them.

Accordingly, the Fourth Circuit held that the officers could not ignore Abdallah's unambiguous invocation merely because they decided that his invocation was not made knowingly and intelligently. Under black-letter Fifth Amendment law, once a suspect unambiguously indicates that he wishes to remain silent, the interrogation must cease. Here, the law enforcement officers' questioning of Abdallah did not cease one he unambiguously made known to them that he did not want to answer their questions. Nevertheless, the law enforcement officers continued to question him. As a result, the Fourth Circuit held that the District Court should have suppressed Abdallah's incriminating statements that he made after the invocation of his Fifth Amendment right to remain silent, and the fact that Abdallah did not wait until the agents had finished providing him with his Miranda rights before invoking his right to remain silent was of no consequence. Accordingly, the Fourth Circuit reversed the District Court's denial of Abdallah's motion to suppress.